

SHARED MOBILE INFRASTRUCTURE SCHEME**MINISTRY OF COMMUNICATIONS & IT****PUBLIC ACCOUNTS COMMITTEE
(2016-17)****SIXTY FORTH REPORT**

SIXTEENTH LOK SABHA**LOK SABHA SECRETARIAT
NEW DELHI**

PAC NO. 2097

SIXTY FORTH REPORT

PUBLIC ACCOUNTS COMMITTEE **(2016-17)**

(SIXTEENTH LOK SABHA)

SHARED MOBILE INFRASTRUCTURE SCHEME

MINISTRY OF COMMUNICATIONS & IT



Presented to Lok Sabha on: 17.03.2017

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**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2017 /Phalguna, 1938 (Saka)

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2016-17)	(iii)
COMPOSITION OF THE SUB-COMMITTEE V OF PUBLIC ACCOUNTS COMMITTEE (2016-17)	(iv)
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2015-16)	(v)
COMPOSITION OF THE SUB-COMMITTEE V OF PUBLIC ACCOUNTS COMMITTEE (2015-16)	(vi)
INTRODUCTION	(vi)
REPORT	
PART I	
I Introductory	1
II Defective Agreement – Non Rollout of Services	3
III Non provision of mobile services in 290 sites	6
IV Non-recovery of penalty for interruptions/downtime in services	7
V Quality of service	10
VI Absence of penal provisions on agreement resulting in non-payment of operating expenses by USPs	11
PART II	
Observations/ Recommendations	13
ANNEXURES	
A Minutes of the sitting of the Sub-Committee-V of PAC (2015-16) on 10.08.2015	
B Minutes of the sitting of the Public Accounts Committee (2016-17) on 10.02.2017	

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2016-17)

Prof. K.V. Thomas - Chairperson

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3. Shri Prem Singh Chandumajra
4. Shri Nishikant Dubey
5. Prof. Richard Hay
6. Shri Gajanan Chandrakant Kirtikar
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22. Shri Ajay Sancheti

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2. Shri S.C Chaudhary - Joint Secretary
3. Shri Jaya Kumar - Director
4. Smt. Anju Kukreja - Under Secretary

* Elected w.o.f. 09.08.2016 vice Shri Vijay Goel, MP appointed as Minister of State w.e.f. 05.07.2016.

**Sub-Committee – V [Infrastructural Projects other than Railways]
of PAC (2016-17)**

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| | | 5. | Shri Satyavrat Chaturvedi |

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (2015-16)

Prof. K.V. Thomas Chairperson

MEMBERS

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18. Shri Anil Madhav Dave
19. Shri Vijay Goel
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21. Shri Shantaram Naik
22. Shri Sukhendu Sekhar Roy

Sub-Committee – V [Infrastructural Projects other than Railways]

- | | | | |
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| Convenor | : | 1. | Shri Sukhendu Sekhar Roy |
| Alternate Convenor | : | 2. | Shri Satyavrat Chaturvedi |
| Members | : | 3. | Shri Gajanan Kirtikar |
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INTRODUCTION

I, the Chairperson, Public Accounts Committee (2016-17), having been authorised by the Committee, do present this Sixty Fourth Report (Sixteenth Lok Sabha) on 'Shared Mobile Infrastructure Scheme' based on Para 2.2 of C&AG Report No. 17 of 2014, relating to the Ministry of Communications & IT (Department of Telecommunications).

2. The Report of the Comptroller and Auditor General of India was laid on the Table of the House on 1st August, 2014.

3. The Public Accounts Committee (2015-16) took up the subject for detailed examination and report. The Sub-Committee-V was constituted under the Convenorship of Shri Sukhendu Sekhar Roy, MP (RS) and Member of PAC that took evidence of the representatives of the Ministry of Ministry of Communications & IT (Department of Telecommunications) on the subject at their sitting held on 10th August, 2015. Accordingly, a draft Report was prepared and finalized by the Sub-Committee and placed before the Public Accounts Committee (2016-17) for their consideration.

4. The Committee considered and adopted this draft Report at their sitting held on 10th February, 2017. Minutes of the sittings are appended to the Report.

5. For facility of reference and convenience, the Observations/Recommendations of the Committee have been printed in bold and form Part II of the Report.

6. The Committee would like to express their thanks to the representatives of the Ministry of Communications & IT (Department of Telecommunications) for tendering evidence before them and furnishing information in connection with the examination of the subject.

7. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of the Comptroller and Auditor General of India.

NEW DELHI;
14 March, 2017
23 Phalguna, 1938 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee

REPORT

PART - I

I INTRODUCTORY

The C&AG of India presented its Compliance Audit Report No. 17 of 2014 for the year ended March 2012. Accordingly, based on the findings of Audit and given the importance to infrastructure and mobile services in remote rural areas, the Committee took up Para No.2.2 of the Report on 'Shared Mobile Infrastructure Scheme' for detailed examination.

2. Recognizing the importance of communications in achieving the country's social and economic goals, the Government of India envisaged in its New Telecom Policy of 1999, provision of Universal Service of Telecommunications facilities to all uncovered areas including rural, remote, hilly and tribal areas at affordable prices. Accordingly a Scheme named 'Shared Mobile Infrastructure Scheme' was launched in 2007 by Department of Telecommunications (DoT) under 'Universal Service Obligation Fund' (USOF). The Scheme was to provide subsidy support for setting up and managing 7353 identified infrastructure sites for provisioning of mobile services in 500 districts spread over 27 States which were otherwise not covered through wireless or mobile services. Villages or clusters of villages with a population of 2000 or more were taken into consideration for the scheme. Each infrastructure site so created was to be shared by three service providers for provision of mobile services.

3. The above scheme had two components:-

Part 'A': Setting up and managing infrastructure sites (land, tower, power, security, civil and electrical works) by Infrastructure Providers (IPs) with subsidy support as a percentage of capital recovery for setting up the infrastructure.

Part 'B': Provisioning of mobile services by Universal Service Providers (USPs) by installation of Base Trans-receiver Stations (BTS) on towers/ infrastructures with subsidy support as a

percentage of capital recovery for providing the equipment at the infrastructure sites.

The operation and maintenance expenses of the infrastructure site were to be shared by the Universal Service Providers (USPs) using that site for provisioning of mobile services.

4. Tenders were invited by Department of Telecommunications in January 2007 for 81 clusters both for setting up, managing infrastructure sites and provision of mobile services in specified rural and remote areas from Basic Service Providers, Cellular Mobile Telephone Service Providers, Unified Access Services Licensees and Infrastructure Providers. The agreements were signed (June 2007) with seven successful bidders for providing infrastructure sites, who had quoted the lowest subsidy for a cluster. As per the agreement, the infrastructure sites were to be made ready by June, 2008 but considering the difficulties faced in remote areas, mostly in north eastern region, two extensions were granted for postponing the date of completion to August, 2011. Against the target of 7353 towers/infrastructure sites required to be commissioned, 7317 were actually commissioned as on October, 2016. A subsidy of ₹ 406.82. crore has been paid to the infrastructure providers (up to September, 2016) as per the scheme. For implementation of the second part of the scheme, the Department selected 14 USPs to provide mobile services in the identified areas. The agreement with the USPs was valid for six and half years from the effective date i.e. 1st June 2007 (one year for last rollout, five years subsidy period and half year for delayed period, if any). Further as per the Operating Conditions of Part-B of the agreement, the USPs were to provide mobile services from each of the sites within two months of commissioning of the infrastructure site by the IPs. Against the target of 22059 Base Trans-receiver Stations (BTS), the IPs made ready 21921 sites out of which only 15767 BTS (71.93 per cent) were installed till 31 August, 2012 as detailed in the Table given below:

Name of USP (Group company)	No. of sites from which services are to be rolled out by USPs	No. of BTS to be commissioned against tower sites made ready by IPs	No. of sites from which services were rolled out	Sites not rolling out services	Short fall percentage
Bharti*	1174	1173	1126	47	4.00
BSNL	5311	5268	5109	159	3.02
Aircel* (Dishnet)	1586	1544	914	630	40.80
Idea*	2630	2627	2540	87	3.31
RCL	4774	4771	1633	3138	65.77
RTL	3641	3599	1886	1713	47.60
Vodafone* (Hutch)	2943	2939	2559	380	12.93
Total	22059	21921	15767	6154	28.07

(Source: Information as furnished by the Administrator, USOF) Group of companies

During the oral evidence the representatives of the Ministry of Communications and IT (Department of Telecommunications) stated that the number of BTS rose from 15,767 to 16,254.

DEFECTIVE AGREEMENT - NON-ROLLOUT OF SERVICES

5. Audit highlighted that as per the agreement, the Liquidated Damages (LD) chargeable for delay in provisioning of mobile services ranged between 5 to 10 per cent of annual subsidy. The Performance Bank Guarantee (PBG) would be 5 per cent of the subsidy payable to the bidder, which could be forfeited by the Administrator in case of failure of performance of terms and conditions by the USP. A successful bid with minus or negative subsidy could not attract LD or PBG but could also be a successful bidder. This fact regarding ensuring safeguard of LD or forfeiture of PBG even for those bidders who quoted minus or negative subsidy was neither envisaged while finalizing the scheme nor while calling for bids. It was further pointed out that in the final bid under

part-B of the scheme, in 74 out of 81 clusters, the successful bidders quoted negative or zero bids. The agreements thus signed with these bidders did not have any LD or PBG clause to protect the interest of the DoT in case of non fulfillment of any conditions by the USPs which envisaged that USPs were to provide mobile services within two months of the commissioning of the Infrastructure Site by the IP. However, it was observed that the performance of the USPs, mainly M/s RCL, RTL, Aircel and Vodafone in respect of commissioning of mobile services was very poor. As on October, 2016, against 7317 sites out of the targeted 7353 sites provided by the IPs for provisioning of services, the USPs could provide services only from 7065 sites till closure of the Scheme i.e November 2013. Due to non-inclusion of safeguards and penal clauses in the agreements in case of non/delayed roll out of services, no action could be taken against the defaulting USPs. The Ministry replied that 16254 Base Trans-receiver Station (BTS) had been installed till closure of the Scheme for provisioning of mobile services from 7317 tower sites. 7317 of 7353 towers had BTS installed and radiating thereby benefitting approximately 99 per cent of the villages / sites. Under this circumstance the objective of the scheme was achieved to a very high extent. Therefore, one of the objectives of the scheme i.e. setting up of infrastructure in rural and remote areas for provisioning of mobile services had been achieved. The presence of even one BTS radiating from each tower entails achievement of the objective and hence, the second objective of the scheme i.e. provisioning of mobile services had also been achieved.

6. When asked about ensuring that zero/ negative bidding by the USPs do not adversely affect the operation of the Scheme, the Ministry of Communications and IT (Department of Telecommunications) replied as follows:

"As per terms and conditions of tender document the Performance Bank Guarantees and Liquidated Damages are percentage of contract value of the agreement. In the tender process for Part B of the scheme where zero or negative bidding by the bidder, PBG and LD becomes zero or negative. For the issues related to submission of PBG, and LD in case of clusters with zero or negative Representative Rates, discussions were held with USPs on 10.04.2007 & 20.04.2007. Since no unilateral decision on including of PBG and LD clauses could be taken after bidding process in these meetings, it was decided that no

PBG would required to be submitted for the clusters with zero or negative Representative Rate and no Liquidated Damage Charges are to be recovered from USPs. However, a penalty of Rs 500 per day shall be charged on account of interruption of services for part-B of the zero or negative subsidy."

7. When enquired on the amendments/ modifications made by the Ministry in the agreements to include clauses in case of non-rolling out of services on time by the USPs, the Ministry of Communications and IT (Department of Telecommunications) replied as follows:

"The Department has tried to make amendments/modifications in the agreement to include clauses in case of non – rolling out of services on time by USPs. The competent authority has set up a committee under the Chairmanship of Secretary (Telecom) to consider all the aspects of delay in roll out of mobile services under Shared Mobile Infrastructure Scheme of USOF Scheme and suggest appropriate action that may be taken."

8. When asked about the quality of service provided by the USPs, the representatives of the Ministry of Communications and IT (Department of Telecommunications) stated during evidence as follows:

"When it comes to the quality of service, there can be an issue that if the competition is not there, then quality of service to that extent may not be available; if the competition would have been there, probably, that competition would have improved the quality of service. Now, quality of service is maintained by two methods. One method is the competition; another method is the regulation. I totally agree that there is no substitute for the competition. Competition is the thing which is paramount for maintaining the quality or for keeping the rates down. If it is not possible to keep the competition there, then there is a fall back system of regulations. Regulations are there and they can do the needful. What I am saying is this, in the backward areas, whenever we have taken such schemes, our paramount purpose should be to take the mobile – even if a single party is going, let us take the single party. If two parties are going, let the two parties go; if three parties, it is all the more better."

9. When asked about the achievements of the Scheme, the representatives of the Ministry stated as follows:

"By and large, this scheme can be termed as a successful scheme. Out of these towers, there are 252 towers where not even a single service provider reached. We spent the money on putting up the towers, but nobody reached. It is a very, very small percentage. We have more than 7,000 towers. Out of more than 7,000 towers, if only 252 towers are there, whether you will call this scheme successful

or not. Whenever you are making such kind of projections and people have shown interest, and later on if they backed out, and if that number is very small, you cannot say that the scheme is not a successful one. There are only 252 towers through which we could not reach."

NON PROVISIONING OF MOBILE SERVICES IN 290 SITES

10. Audit pointed that in Maharashtra, Odisha, Madhya Pradesh, Chhattisgarh, North East-II & Bihar Telecom Circles, 3488 numbers of infrastructure sites were commissioned by the IPs under the Scheme. However, no mobile services were provided by a single USP in 290 sites even after 18 to 36 months of their commissioning as of March 2012. The Department had paid ₹ 5.67 crore to the IPs towards subsidy (till March 2012) in respect of 290 sites. Further, in four Telecom Circles (viz. Maharashtra, Uttar Pradesh (East), UP (West) & Uttarakhand), out of 1582 commissioned sites, 474 sites were radiated by USPs with delays up to 949 days. The subsidy of ₹ 4.09 crore paid to the IPs for managing these 474 sites during non radiation period was thus rendered unfruitful. The Ministry replied (December 2012) that there were separate agreements with the IPs and USPs and the subsidy was being disbursed as per the terms and conditions of the respective agreement. In fact, the subsidy paid to IPs was in lieu of the cost of infrastructure incurred by them and was not remuneration for radiation of mobile services. Nothing undue had been paid to the IPs. The infrastructure so created would be utilized in future also for services in rural and remote areas even after the expiry of the USOF agreement and the USPs would continue services even after the expiry of the subsidy period and hence subsidy paid to IPs could not be rendered unfruitful.

11. When asked about the reason behind the non-provisioning of telecom services in rural and remote areas, the Ministry of Communications and IT (Department of Telecommunications) replied as follows:

"The following difficulties experienced for provisioning/expansion of telecom services in rural and remote areas are observed:

- (i) The areas are diversely located and are not financially viable. The Average Revenue per User (ARPU) in these areas is very low.
- (ii) The CAPEX (Capital Expenditure) and OPEX (Operational Expenditure) for development of telecom infrastructure in these areas is very high.
- (iii) Lack of backhaul connectivity.
- (iv) Remote and tough terrain.
- (v) Lack of proper infrastructure (road, power etc.)
- (vi) Areas affected by insurgency."

12. When asked about the improvement in the performance of USPs in providing services from these 290 sites, the Ministry of Communications and IT (Department of Telecommunications) replied as under:

"The balance number of towers have been reduced from 290 to 252 by the USPs where no USP has installed any BTS."

13. The Ministry further submitted as under:

"The contracts of Shared Mobile Infrastructure Scheme for provision of mobile services in uncovered villages of the country were signed with successful bidders in May 2007. The agreements with the bidder(s) were valid upto 30.11.2013. As per open and transparent bidding process, Universal Service Fund provided/ received the fund as per terms and conditions of the agreement. The ownership of the assets rests with the Infrastructure Service Providers/ Telecom Service Providers. Department of Telecommunications has already been seized of the matter. The various options are being explored for starting the mobile services in the left over uncovered villages of the country"

NON-RECOVERY OF PENALTY FOR INTERRUPTIONS/ DOWNTIME IN SERVICES

14. Audit scrutiny revealed that financial conditions of the Part-B Agreement stipulates that a penalty shall be payable by the USP on pro-rata basis on account of prolonged interruptions of service due to any reason. The USPs shall furnish the details of interruption/downtime of the service along with the payment statement as per prescribed 'proforma'. The agreement further stipulates that no penalty shall be payable in case of interruption of mobile services for a period up to 7 days in a quarter. Penalty @ ₹ 500 per day shall be payable if there is interruption in service for more than 7 days

in a quarter. However, if there is interruption in services for 45 days or more in a quarter, penalty shall be payable for the whole quarter. Audit noticed that in Orissa and Karnataka Telecom Circles, USPs did not furnish the requisite information related to interruptions/downtime to CCA office regularly in the prescribed format. On being pointed out by Audit, demands were raised by Orissa circle against M/s Bharti Airtel Limited (BAL) & M/s Dishnet Wireless Limited (DWL) for ₹ 9.62 lakh and ₹ 2.40 lakh respectively. M/s DWL has paid the downtime penalty of ₹ 2.40 lakh alongwith interest upto January 2016. M/s BAL stated that interruptions in services were on account of infrastructure related failures which were to be attended by IPs and penalty could not be levied on them. Karnataka circle raised a demand for ₹ 53.84 lakh on M/s Bharti Airtel after being pointed out by Audit and the said penalty amounting to Rs.53.84 lakh alongwith interest has been paid by M/s Bharti Airtel Limited. In Madhya Pradesh Telecom Circle, CCA office levied a penalty of ₹ 2.48 crore for interruption/downtime of services on M/s IDEA for the period from April, 2008 to March, 2011 but no payment was made to DoT so far. CCA office, Bhopal replied (July, 2012) that the matter had been referred to DoT. The penalty of ₹3.14 crore levied on four USPs for down time/interruptions in service had not been realized by DoT.

15. When enquired about the latest status of recovery of penalty for interruptions and downtime in services from the USPs, the representatives of the Ministry of Communications and IT (Department of Telecommunications) stated during evidence as follows:

"Sir, audit had pointed out three specific cases. One was in Karnataka circle where about Rs.54 lakh was outstanding from Bharti Airtel. That was up to a particular year. But I am happy to say that we have actually recovered not just ₹54 lakh but ₹1.14 crore till 2013-14 because of interest as well as the penalty. So, the full recovery has been done there.

The second case which the audit had pointed out was in the case of Odisha circle. Here two service providers are involved – one is Bharti and one is Dishnet. The amount involved is somewhat less. For Bharti it was ₹ 9.62 lakh and for Dishnet it was about ₹2.4 lakh. This was a negative subsidy circle. So, we had no performance bank guarantee. We have issued notices and we are following up regularly so as to be able to recover this amount.

In the case of MP, which is the third circle which had been pointed out, the service provider was Idea. Here we had issued them a notice. However, the matter has gone to court and we are fighting it out in the court. The matter is sub judice right now. It is in the High Court of Jabalpur."

Since then the Ministry have recovered the downtime penalty of ₹ 2.40 lakh alongwith interests upto January 2016, from M/s DWL of Odisha Circle.

16. With regard to the recovery of penalty for interruption/downtime of services from M/s IDEA, the Ministry of Communications and IT (Department of Telecommunications) have replied as follows:

"As per Audit para, the penalty against M/s IDEA has been stated as ₹ 2.48 crore only whereas CCA, Madhya Pradesh has imposed the penalty and interest as ₹ 27.10 crore on M/s IDEA. The details are as under:

In Rupees

Penalty up to 30-11-2013	=	18,67,24,000.00
Interest up to 06-2014	=	8,42,84,835.00
Total penalty and interest	=	27,10,08,835.00

M/s IDEA has not paid any amount. Writ Petition has been filed by M/s IDEA in Hon'ble High Court, Jabalpur against the demand of penalty. The matter is still sub-judice and recovery will be made after decision of Hon'ble High Court. A counter reply by the CCA office, Bhopal has been prepared. However, the vetting process is yet to be completed."

17. When asked about the existing monitoring mechanism in the DoT to ensure timely recovery of demands raised, the Ministry of Communications and IT (Department of Telecommunications) in their written submission replied as under:

"It may be noted that the financial/subsidy support & its modalities of disbursement from the Fund on the Net Cost (Operating Cost + Capital Recovery - Revenue) basis along with the penal provisions such as Performance Bank Guarantee is governed by an individual Agreement entered into with the Universal Service Provider.

It may be stated that, generally, for recovery of any outstanding dues against USP under a USOF agreement, demand notice is raised by the field office to USP. If the matter is not resolved, despite repeated efforts, the issue is followed-

up at USOF, Hq. level. If the outstanding dues are not paid by the USP, even then, the PBG for that particular agreement is invoked and encashed.

It may be highlighted that the CCA, Karnataka, the field office of USOF, did recover the outstanding dues along with interest of ₹1,14,02,335/- against M/s Bharti Airtel Ltd. Further M/s Idea has filed writ petition against the demand notice, for outstanding dues, raised by the CCA, MP and matter is thus sub-judice. Thus, it may be seen that the steps are being taken to realise the outstanding dues against USPs.

The attention may also be drawn to the fact that, during the tendering process for Shared Mobile Infrastructure Scheme of USOF, it was so aggressively bid by the market players that there was even zero and negative subsidy quotes (i.e. no subsidy outgo, instead of revenue receipts) for substantial clusters by the TSPs for getting a BTS slot on the USOF-funded towers. Orissa Circle was one such example, wherein there was no PBG, as the tender document linked the PBG amount to 5% of the total subsidy amount disbursable to the USP under the Scheme.

However the issue has been persistently being pursued by the CCA, Orissa. The recovery of dues would also be followed up at USOF, HQ level."

QUALITY OF SERVICE

18. The Shared Mobile Infrastructure Scheme envisages to provide wireless/ mobile services to uncovered areas including rural, remote, hilly and tribal areas. The scheme has two components, namely, setting up and managing of Infrastructure by IPs and provisioning of mobile services by USPs. However, the success of the scheme can only be measured through the quality of service provided to the consumers at reasonable tariff rates.

19. When the Committee sought details on the measures/steps taken to improve the internal controls relating to providing quality of service by USPs, the Ministry of Communications and IT (Department of Telecommunications) replied as under:

"To avoid the undermining of the existing internal control measures, due to unanticipated negative and zero quotes in Shared Mobile Infrastructure Scheme, the upcoming USOF tenders would have the PBG clause linked to the project estimate (or the ceiling for the subsidy support) for each bidding unit i.e. 5% of the Total Benchmark value (upper ceiling for submission of bids) instead of earlier contract value, to ensure the performance of the deliverables of the respective USOF scheme.

In addition, penalty clauses for mobile interruptions would be made more stringent with higher per day penalty per site @ ₹ 2,000 and recovery of one quarter subsidy paid for the site, in case of interruption in services for more than 45 days in a quarter.

Further provision would also be made for scrutiny of the relevant Network Operation Centre (NOC) / Network Management System (NMS) data/systems to facilitate independent verification of the subsidy claimed and paid such as to verify the interruption period in a quarter, furnished with the subsidy claim by USP to field office on self-certificate basis."

ABSENCE OF PENAL PROVISIONS IN AGREEMENT RESULTING IN

NON-PAYMENT OF OPERATING EXPENSES BY USPs

20. Audit scrutiny revealed that BSNL successfully bid for 63 clusters out of 81 clusters as Infrastructure Provider (IP) for setting up and managing infrastructure sites and entered into agreement with DoT (May 2007) for a period of six and half years. As per Commercial Conditions of the agreement under part-A of the Scheme, the infrastructure sites were to be shared for a period of five years by three USPs on payment of operational expenses to the IP (BSNL) for providing mobile services and accordingly the IP (BSNL) entered into Service Level Agreements (SLAs) with the USPs namely, M/s Reliance, M/s Aircel and M/s Idea Cellular. The USPs were required to pay the fixed maintenance charges and recurring operating expenses to the IP on shareable basis. The agreement stipulated payment of rolling advance and fixed maintenance charges within 15 days of receipt of invoices. USPs were liable to pay interest @ 2 per cent per month for the period of default on any fee or other amount payable to the IPs. Audit pointed out that the outstanding from five USPs had increased to ₹123 crore by the end of August, 2012 constituting outstanding amount of ₹78.10 crore from M/s Reliance, ₹15.69 crore from M/s Aircel, ₹10.80 crore from M/s Idea, ₹16.17 crore from Vodafone and ₹2.24 crore from Airtel. It was also observed that there was no clause in the SLA to take action either by BSNL or by DoT to rescind the agreement for non-payment of operating expenses and hence this had resulted in unwarranted burden on BSNL as IP.

21. During oral evidence, the representative of the Ministry had stated that the outstanding amount of ₹123 crore from five USPs namely Reliance, Vodafone, Idea, Airtel and Aircel has been substantially realized. The Committee were further apprised that major chunk of the outstanding was from Reliance Communications and Reliance Telecom. Presently, the principal amount outstanding vis-à-vis Reliance Telecom and Reliance Communications with BSNL is Rs 13.42 crore and ₹30 crore respectively.

22. When asked if any periodical joint meetings with IP (BSNL) and the defaulting USPs have been facilitated by the USOF/ Ministry for clearance of dues, the Ministry of Communications and IT (Department of Telecommunications) replied as under:

"Yes, the meetings were held in which payment issues of defaulting USPs have been discussed. Various USPs have written letter to USOF that the up-time of BSNL tower sites is very low and not as per parameters of SLAs. The USPs were requested to sort out disputes as per agreement signed between them."

23. The Ministry, in this regard, further added:

"In future tenders of only USPs are under consideration for execution of all the activities for provision of mobile services i.e. only USPs would be responsible for installation of infrastructure and mobile BTS. The issue of payment with USPs and IPs would not arise in future."

PART-II

OBSERVATIONS/RECOMMENDATIONS

1. The Committee note that Shared Mobile Infrastructure Scheme was launched in 2007 by DoT under the Universal Service Obligation Fund, to provide subsidy support for setting up and managing 7353 identified infrastructure sites for provisioning of mobile services in 500 districts of 27 States which were not covered through wireless or mobile services. Villages or clusters of villages with a population of 2000 or more were considered for the scheme. Accordingly tenders for 81 clusters both for setting up and managing of infrastructure and provisioning of mobile services, were invited and agreements were signed with 7 bidders, who quoted the lowest subsidy, for setting up infrastructure and 14 Universal Service Providers (USPs) for provisioning of mobile services. While examining the subject, the Committee noted with serious concern about the deficiencies such as defective subsidy support with USPs, non-provisioning of mobile services in uncovered areas, non-recovery of penalty for non-provisioning of mobile services, ineffective penal clauses in Service Level Agreement, non existence of clauses to safeguard DoT against defaulting Infrastructure Providers (IPs) and Universal Service Providers (USPs) etc. The Committee also desired that action should be taken against those responsible for non-implementation of green towers. Against this backdrop, the Committee have made certain observations and recommendations on the following major aspects.

2. DEFECTIVE AGREEMENT-NON-ROLL OUT OF SERVICES

The Committee are perturbed to note the poor performance of USPs, mainly M/s Reliance Communications Limited (RCL), Reliance Telecommunications Limited (RTL), Aircel and Vodafone in commissioning of mobile services at the allotted sites. As on October, 2016, against 7317 sites out of the targeted 7353 sites provided by the IPs for provisioning of services, the USPs could provide services only from 7065 sites till closure of the Scheme i.e

November 2013. The Committee are dismayed to note that due to non-inclusion of safeguards and penal clauses in the agreements to prevent non/delayed roll out of services within the stipulated time, no action could be taken against the defaulting USPs. However, the Department of Telecommunications had apprised that they had tried to make amendments/modifications in the agreements to include penalty clauses in case of non-rolling out of services on time by USPs. Besides, a committee under the Chairmanship of Secretary (Telecom) had been set up to consider all the aspects of delay in roll out of mobile Services under the Scheme and suggest appropriate action that might be taken. The Committee also note that the USPs were to provide mobile services from each of the sites within two months of commissioning of the infrastructure site by the IPs. When the Committee enquired on the shortfalls in commissioning mobile services in the areas where towers have already been set up, the Ministry had reasoned that one of the objectives of the scheme i.e. setting up of infrastructure in rural and remote areas for provisioning of mobile services had been achieved as 16254 Base Trans-receiver Stations (BTSSs) had been installed till closure of the Scheme i.e. November 2013 for provisioning of mobile Services from 7317 tower sites. The Committee are unable to comprehend the logic behind the argument made by the Ministry and observe that since the objective of the scheme is two-fold, namely, setting up and management of infrastructure and provisioning of mobile services, the overall success of the scheme was dependent on the efficient and strict implementation of both components of the scheme. The Committee are of the considered view that implementation of these two components ought to go hand in hand. The Committee, therefore, recommend that the Ministry ought to have put in place an effective monitoring mechanism to obviate slippages in adherence to the guidelines of the scheme by the IPs and USPs in order to achieve the target set under the scheme. The Committee exhort that, henceforth, while awarding contract to bidders for establishment and management of infrastructure and provisioning of mobile services, DoT should also check the past achievement records and credibility of IPs and USPs before finalizing the contract. The Committee are astonished to note that the DoT failed miserably to incorporate

relevant penalty clauses in the agreements before its finalization resulting in delayed/non roll out of mobile services within the stipulated time. The Committee, therefore, desire that disciplinary action should be taken against those officers responsible for preparing and entering into faulty agreements with USPs.

3. NON-PROVISIONING OF MOBILE SERVICES IN 252 SITES

The Committee note that no mobile services were provided by a single USP in 252 sites even after the agreements signed with the bidders expired on 30.11.2013. Moreover, in four Telecom Circles (viz. Maharashtra, Uttar Pradesh (East), UP (West) & Uttarakhand), out of 1582 commissioned sites, 474 sites were radiated by USPs with delays upto 949 days and the subsidy of ₹ 4.09 crore paid to the IPs for managing these 474 sites during non radiation period had been unfruitful. The Committee were apprised that DoT disbursed the subsidy to IPs and USPs as per the separate agreements with them. DoT further stated that subsidy paid to IPs was in lieu of the cost of infrastructure incurred by them and was not remuneration for radiation of mobile services. The Committee are unable to understand the rationale behind disbursement of subsidy to USPs and IPs despite prolonged delay in commissioning of services and non-radiation of towers. The Committee are displeased to note the loss of money due to the inaction and incompetence of the USPs and IPs and lack of proper planning and indifference of DoT on the matter. The Committee, accordingly, desire to be apprised of the reasons for the delay in commissioning and radiation of these sites. The Committee are of the view that release of subsidy support should have been effected only after timely achievement of targets. The Committee also recommend that immediate necessary steps may be taken to attract service providers to these 252 sites so that radiation and provision of mobile services can be commenced at these sites without further delay.

4. INCORPORATION OF SUITABLE CLAUSES IN FUTURE TENDERS AND SERVICE LEVEL AGREEMENT (SLA)

The Committee note that 5 to 10 percent of annual subsidy is chargeable as Liquidated Damages (LD) for delay in provisioning of mobile services. The Performance Bank Guarantee (PBG) would be 5 per cent of the subsidy payable to the bidder, which could be forfeited by the Administrator in case of failure of performance of terms and conditions by the USP. The Committee further note that a successful bid with minus or negative subsidy could not attract LD or PBG. The agreements thus signed with these bidders did not have any LD or PBG clause to protect the interest of the DoT in case of non fulfillment of any conditions by the USPs which envisaged that USPs are to provide mobile services within two months of the commissioning of the Infrastructure site by the Infrastructure Provider (IP). The Committee observe that USPs that have successfully bided with minus or negative subsidy are not bound by any clause in the agreement for timely provisioning of mobile services. The Committee, therefore, recommend that necessary amendments may be carried out and suitable clauses be incorporated in all future tenders/ contract agreements as well as Service Level Agreements so as to ensure timely and prompt provisioning of mobile services and imposition of penalties against defaulting parties for any delays.

5. PROVISIONING OF MOBILE SERVICES IN LEFTOUT REMOTE AREAS

Audit pointed out that though more than 99 per cent of target set for setting up and managing of infrastructure sites by Infrastructure Providers (IPs) had been achieved, the objective of providing wireless or mobile services to uncovered areas including rural, remote, hilly and tribal areas had been achieved only to the extent of 72 per cent and services from 6026 sites were not rolled out as on October, 2012. The Committee observe that an array of difficulties like diverse location, lack of backhaul connectivity, remote and tough terrain, lack of proper infrastructure, insurgency etc. had been enumerated by the Ministry in

provisioning/expansion of mobile services in rural and remote areas. Observing that the basic aim of the Scheme was to provide telecom facilities to all uncovered areas including rural, remote, hilly and tribal areas at affordable prices, the Committee find the justification/arguments, given by the Ministry on non-provisioning of mobile services in rural/ remote areas, unacceptable. While acknowledging that hurdles mentioned by the Ministry are genuine concerns, the Committee recommend that to overcome such bottlenecks in future, the Ministry should come up with better system of planning, coordination between different implementing agencies and execution.

6. SAFEGUARD AGAINST DEFAULTING USPs

The Committee note that as per the agreement, penalty shall be payable by the USP on pro-rata basis for prolonged interruptions of mobile service due to any reason. The USPs shall furnish the details of interruption/downtime of the service along with the payment statement as per prescribed 'proforma'. The agreement further stipulates that no penalty shall be payable in case of interruption of mobile services for a period up to 7 days in a quarter and ₹ 500 per day shall be payable if there is interruption in service for more than 7 days in a quarter. However, if there is interruption in service for 45 days or more in a quarter, penalty shall be payable for the whole quarter. The Committee were apprised that penalizing USPs with negative subsidy for service interruptions/downtime is problematic as the Ministry do not have performance bank guarantee. The Ministry have however issued notices to expedite recovery of the penalty from the concerned USPs. The Committee are of the strong opinion that the defective agreement and the absence of an elaborate provision for recovery of interruption/ downtime penalty from USPs under contract with negative subsidy, have left the Department of Telecommunications toothless in pressing for speedy recovery from defaulting service providers. The Committee, therefore, recommend that explicit provisions/ safeguards, clearly citing appropriate penalties for service interruptions/downtime against all USPs

irrespective of those under subsidy or negative subsidy, be incorporated in all future agreements/contracts.

7. RECOVERY OF PENALTY FOR INTERRUPTIONS/ DOWNTIME

The Committee, while appreciating the recovery of penalty for service interruptions from the USPs of Karnataka Circle and M/s Dishnet Wireless Limited (DWL) of Odisha Circle, are disappointed to find that recovery of penalty of ₹ 9.62 lakh has not been effected so far from M/s Bharti Airtel Limited (BAL) of Odisha Circle. The Committee also note that the matter of recovery of ₹ 27.10 crore as penalty from M/s IDEA of CCA, Madhya Pradesh is sub-judice and hence it is pending. The Committee recommend for expeditious recovery of the penalty amount, along with the admissible interest from M/s Bharti Airtel Limited (BAL) Odisha Circle, without any further delay.

The Committee also note with concern about the sub-judice case of non-recovery of penalty for interruptions/ downtime of service viz, ₹ 27.10 crore on M/s IDEA in Madhya Pradesh Telecom Circle. The Universal Service Providers (USPs) in this regard have stated that since the interruptions in the services were on account of infrastructure related failures which were attended to by the Infrastructure Providers (IPs), therefore, the penalty should not be levied on them. The Committee, are of the view that since the responsibility of managing infrastructure facilities lie with the IPs, the IPs should be held responsible for all infrastructure related failures and penalties be imposed accordingly. The Committee, therefore desire to be apprised of the latest status of the cases pending in the court seeking recovery of penalty from M/s IDEA of CCA, Madhya Pradesh. Further, to avoid such litigations in future, the Committee recommend that while signing the Service Level Agreement, DoT should ensure that clauses, denoting clear-cut responsibilities of the USPs and IPs, are incorporated in the agreement not only to facilitate efficient and quality mobile services but also to ensure fixation of responsibility and empower DoT to take the guilty party to task without any delay.

8. STRINGENT PENALTY FOR SERVICE INTERRUPTIONS/ DOWNTIME

The Committee are pleased to note that penalty clauses for mobile interruptions are being made more stringent with higher per day penalty per site @ ₹ 2,000 and recovery of one quarter subsidy paid for the site, in case of interruption in services for more than 45 days in a quarter. The Committee, however recommend that in future agreements, to discourage Service Providers with negative/ zero subsidy from laxity in providing continuous and quality service, penalty for interruption in services should not only be levied from the subsidy but also from the proceeds of the installed BTS. The Committee, also recommend that in all future agreements/contracts more stringent punishment also be imposed on IPs for any lapse in their responsibility of maintenance and management of towers.

9. ENSURING QUALITY OF SERVICE

The Committee observe that some towers have only one BTS installed, indicating absence of competition amongst service providers in the area where the towers are set up. The Ministry have also submitted that the paramount purpose of the scheme should be provisioning of mobile services in as much area as possible, even at the cost of compromising on the quality of service. While admitting that provisioning of mobile service is of outmost importance, the Committee feel that provision of quality service is also of equal importance. The Committee opine that competition between different service providers improve the quality of service in the area/circle, keep the tariff rates in check and ultimately benefit the customers. The Committee, also recommend that Department of Telecommunications may come forward to sensitize the local customers about the benefits of competition amongst different service providers and invite different USPs to showcase/advertise their varied offers/services and establish a market base for their services at the single BTS installed sites.

10. EFFECTIVE PENAL CLAUSES IN CONTRACT TENDERS & SERVICE LEVEL AGREEMENTS FOR NON-PAYMENT OF OPERATING EXPENSES BY USPs

The Committee are concerned to note that there is no clause in Service Level Agreement for action either by BSNL (IP for 63 clusters out of 81 clusters) or DoT against USPs for non-payment of operating expenses. The Committee are further dismayed to note that taking advantage of the ambiguity in the penalty for non-payment of operation charges, USPs have withhold payment of operation charges, and the unwarranted burden of it is faced by BSNL. The Committee are unable to comprehend as to why no clauses to safeguard BSNL against non-payment of operation and maintenance charges by USPs were incorporated in the Service Level Agreement (SLA). The Committee recommend that in all future agreements/ contracts, clauses imposing stringent penalty on USPs for delay/ non-payment of operation charges may be incorporated. This would deter the USPs from taking advantage of the existing lacunae in the agreement and withhold operation and maintenance charges which would in turn discourage IPs to manage the towers.

The Committee are pleased to note that outstanding amount of ₹123 crore from five USPs namely Reliance, Vodafone, Idea, Airtel and Aircel have been substantially realized by the DoT. During oral evidence, the Committee were apprised that presently, the principal amount outstanding against Reliance Telecom and Reliance Communications with BSNL is ₹13.42 crore and ₹30 crore respectively. The Committee observe that as per the agreement, USPs are obligated to make payment of rolling advance and fixed maintenance charges within 15 days of receipt of invoices. USPs are also liable to pay interest @ 2 per cent per month for the period of default on any fee or other amount payable to the IPs. The Committee strongly express their displeasure on non-compliance to the extant agreement. The Committee would like to be apprised of the reasons for non-payment and recommend that DoT may pursue the aforementioned USPs to settle the operation charges along with the admissible interest for the period of

default on payment, without any further delay. The Committee would also like to be informed about the action taken in this regard.

NEW DELHI;
14 March, 2017
23 Phalguna, 1938 (Saka)

PROF. K.V. THOMAS
Chairperson,
Public Accounts Committee

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