

FIFTY-THIRD REPORT
STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(2003)

(THIRTEENTH LOK SABHA)

MINISTRY OF COMMUNICATIONS AND
INFORMATION TECHNOLOGY
(DEPARTMENT OF TELECOMMUNICATIONS)

*[Action Taken by Government on the Recommendations/Observations contained in the
Thirteenth Report (Thirteenth Lok Sabha) of the Standing Committee on Information
Technology on "Functioning of Telecom Regulatory Authority of India (TRAI)]"*

Presented to Hon'ble Speaker on.....

Presented to Lok Sabha on

Laid in Rajya Sabha on



LOK SABHA SECRETARIAT
NEW DELHI

July, 2003/Asadha, 1925 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE
ON INFORMATION TECHNOLOGY
(2003)

Shri Somnath Chatterjee — *Chairman*

MEMBERS
Lok Sabha

2. Shri Yogi Aditya Nath
3. Shri Pawan Kumar Bansal
4. Prof. Dukha Bhagat
5. Shri Ajay Singh Chautala
6. Shri P.D. Elangovan
7. Shri Rama Mohan Gadde
8. Shri Jarbom Gamlin
9. Kumari Bhavana Pundlikrao Gawali
10. Shri T. Govindan
11. Shri Jawahar Lal Jaiswal
12. Shri K.K. Kaliappan
13. Shri A. Krishnaswamy
14. Shri K. Balrama Krishna Murthy
15. Shri Bhartruhari Mahtab
16. Shri Amarsinh Vasantrao Patil
17. Shri Sheeshram Singh Ravi
18. Shri Saroj Tufani
19. Shri K.A. Sangtam
20. Shri C.N. Singh
21. Rajkumari Ratna Singh
22. Shri Nikhil Kumar Chowdhary
- *23. Vacant
24. Shri Vanlalawma
25. Shri Rajesh Varma
26. Smt. Kanti Singh
27. Shri Amir Alam Khan
28. Shri Charanjit Singh
29. Shri Arun Kumar
30. Dr. Bikram Sarkar

*Vacancy caused *vice* appointment of Shri P.C. Thomas as Minister *w.e.f.* 24 May, 2003.

(iv)

Rajya Sabha

31. Shri Vijay J. Darda
32. Shri Dasari Narayana Rao
33. Dr. Prabha Thakur
34. Shri Suresh Pachouri
35. Shri S.S. Ahluwalia
36. Shri Balbir K. Punj
37. Shri Dina Nath Mishra
38. Smt. Sarla Maheshwari
39. Shri K. Rama Mohana Rao
40. Shri Shahid Siddiqui
41. Ms. Lata Mangeshkar
42. Shri Rajeev Shukla
43. Shri Sanjay Nirupam
44. Shri Kartar Singh Duggal
45. Shri Mukhtar Abbas Naqvi

SECRETARIAT

- | | | |
|-----------------------|---|-----------------------------|
| 1. Shri P.D.T. Achary | — | <i>Additional Secretary</i> |
| 2. Shri S.K. Sharma | — | <i>Joint Secretary</i> |
| 3. Shri S.K. Sharma | — | <i>Deputy Secretary</i> |
| 4. Shri B.D. Swan | — | <i>Under Secretary</i> |
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INTRODUCTION

I, the Chairman, Standing Committee on Information Technology (2003) having been authorised by the Committee to submit the Report on its behalf, present this Fifty-Third Report on Action Taken by Government on the Recommendations/Observations of the Committee contained in its Thirteenth Report (Thirteenth Lok Sabha) on "Functioning of Telecom Regulatory Authority of India (TRAI)" relating to the Department of Telecommunications (DoT).

2. The Thirteenth Report was presented to Lok Saha on 22 November, 2000 and was laid in Rajya Sabha on the same day. The Department furnished Action Taken Notes on the recommendations contained in the Report on 1 March, 2001.

3. The Report was considered and adopted by the Committee at its sitting held on 2 July, 2003.

4. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

5. An analysis of Action Taken by Government on the recommendations contained in the Thirteenth Report (Thirteenth Lok Sabha) of the Standing Committee on Information Technology is given at Annexure-II.

NEW DELHI;
3 July, 2003
12 Asadha, 1925 (Saka)

SOMNATH CHATTERJEE,
Chairman,
Standing Committee on
Information Technology.

CHAPTER-I**REPORT**

This Report of the Standing Committee on Information Technology deals with action taken by government on the Recommendations/Observations of the Committee contained in its Thirteenth Report (Thirteenth Lok Sabha) on “Functioning of Telecom Regulatory Authority of India (TRAI)” pertaining to the Department of Telecommunications.

2. The Thirteenth Report was presented to Lok Sabha on 22.11.2000 and was also laid on the Table of Rajya Sabha the same day. It contained 18 Recommendations/Observations.

3. Action Taken Notes in respect of all the Recommendations/Observations contained in the Report have been received and categorized as under:-

- (i) Recommendations/Observations which have been accepted by the Government:-

Paragraph Nos.:- 94, 96, 98, 101, 102 & 104

Total: 6
Chapter-II

- (ii) Recommendations/Observations which the Committee does not desire to pursue in view of the reply of the Government:-

Paragraph Nos.:- 91, 92, 93, 95, 97, 99 & 103

Total : 7
Chapter-III

- (iii) Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration:-

Paragraph Nos.:- 87, 88, 89, 90 & 100

Total: 5
Chapter-IV

- (iv) Recommendations/Observations in respect of which replies are of interim nature:-

Paragraph Nos.:- Nil

Total: Nil
Chapter -V

4. The Committee trusts that utmost importance would be given to the implementation of the recommendations accepted by the Government. In cases, where it is not possible for the Department to implement the recommendations in letter and spirit for any reason, the matter should be reported to the Committee with reasons for non-implementation. The Committee further desires that Action Taken Notes on the Recommendations/Observations contained in Chapter I of this Report should be furnished to it at an early date .

5. The Committee will now deal with action taken by Government on some of its recommendations.

Undue haste in promulgation of Ordinance
(Paragraph Nos. 87 to 90)

6. The Committee had pointed out in its earlier Report that the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 was promulgated on 24 January, 2000 even though the Parliament was to meet soon thereafter in February for the Budget session. The Committee had further observed that the purpose of the Ordinance was not achieved as would be seen from the fact that although the Ordinance was promulgated on 24 January, 2000, the TRAI was actually reconstituted on 30 April, 2000 and the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) was not constituted till the end of August, 2000 i.e. even after seven months of promulgation of the Ordinance. The Committee did not accept the Department's contention that the Ordinance was passed to make the Private Sector participation more vigorous in view of the dismal performance of the Private Basic Service Providers.

7. The Committee had further noted that as per the Amendments, although it was made mandatory for the Government to seek the recommendations of TRAI in respect of matters specified in sub-clauses (i) and (ii) of Section 11(1) (a) yet it was not made obligatory on the part of the Government to indicate in writing the reasons for not accepting TRAI's recommendations. Thus, the Committee found that the only purpose of rushing with the Ordinance was to alter the terms and conditions of the office of the

Chairman and Members of the erstwhile TRAI while the earlier shortcomings still persisted in the amended Act. The Committee, therefore, asked for an explanation for the unnecessary haste with which the Department promulgated the Ordinance thereby depriving this Committee from giving its views before the amendments were carried out.

8. The Department of Telecom in its Action Taken Note has stated that erstwhile TRAI's interpretation of certain provisions of the Act about its powers, which were at variance with the scheme of the statute, had resulted in numerous litigations creating impediments in the growth of the telecom sector as the investment climate had been vitiated due to doubts and misgivings in the minds of the Private Sector. As urgent and immediate measures were deemed necessary to clarify the situation, the Ordinance was promulgated based on the Report of the Finance Minister's Group on Telecom and IT Convergence. Based on the amendments made, TRAI was reconstituted and became operational in March, 2000. Due to some unavoidable procedural delays, TDSAT, though constituted in May, 2000, could be made operational only towards March, 2001. This, however, did not impede the functioning of the Regulatory Authority.

9. The Department has further stated that while it may not be obligatory for the Government to necessarily accept TRAI's recommendations in the sovereign functions where its decision is final, due weightage has now mandatorily to be given to TRAI's recommendations, since it has been provided that in case of a difference of opinion. Government shall refer the matter back to TRAI for reconsideration and there is also a schedule stipulating for time-bound consultations. Further, since the recommendatory role of TRAI on licensing matters has not been clearly defined in the Act, there need not be any concern any more about the possible conflict between the TRAI & DoT. The Department has also stated that the amendments brought about had been widely welcomed by TRAI itself and by various Industrial Chambers and Associations who had seen it as a positive move in removing many of the ambiguities that had existed in the earlier Act.

10. The Committee is not at all impressed by the reasoning advanced by the Department for hurriedly promulgating the Ordinance in January, 2000. No doubt urgent measures were necessary to remove certain ambiguities that arose due to certain contradictory provisions of the TRAI Act, 1997, yet the unconscionable delay in the constitution and operations of both TRAI and TDSAT can hardly justify promulgation of the Ordinance. The Committee never dispute the need for amendments. It objected to promulgation of ordinance and unusual delay in follow up action. What it tried to emphasize was that the constitution of TRAI and TDSAT took months after the promulgation of the Ordinance, within which period, a Bill could have been introduced in the Parliament, which in the usual course could have given an opportunity to the Committee to give its considered view. In other words, the intention of promulgation of the Ordinance is not reconcilable with the means adopted and the results achieved. That the amendments brought about has been welcomed by all concerned is not relevant. The Committee's objections were with regard to deliberate attempts made to rush through the Ordinance and in the process this Committee was deprived from giving its view for consideration of the Parliament and the Government. Needless to say, due care has to be taken in future not to by pass Parliamentary institutions, specifically so created for the purpose, from important legislative processes more so when the purpose of initiating any Ordinance is not well achieved, as has happened in the instant case.

11. Further, Department's contention that the Ordinance was passed to make Private Sector Participation more vigorous is not sustainable in the light of the fact that Private Basic Service Providers have consistently been neglecting the rural areas all these years as there is no apparent return to their investment in these areas. Their dismal performance has extensively been dealt with and severely criticized by the Committee in several of its Reports, the most recent being the Forty-Sixth Report wherein the Committee has pointed out that Private Operators have provided only 8,545 VPTs as on 28 February 2003 against the commitment of 97, 806 VPTs.

Tariff setting function out of Audit purview

12. In its Thirteenth Report the Committee had observed that one of the most disturbing features of the TRAI (Amendment) Act, 2000 related to the explanation inserted in Section 23 of the Principal Act after sub-section (2) that kept the decision of the Authority taken in discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of Section 11 and Section 13, being matters appealable to the Appellate Tribunal, out of the purview of audit scrutiny. The Committee did not agree with the Secretary, DoT and Chairman, TRAI as well as some non-official witnesses who were of the view that if tariff setting functions were put under audit scrutiny, it would affect the independence of the Authority. The Committee held the view that accountability did not amount to encroachment upon authority or its independence and that all functions/decisions which have implications on Public Exchequer are subject to audit by C&AG and tariff setting functions of TRAI have wide implications on Government revenue. Therefore, keeping these functions of TRAI, despite huge financial implications, out of audit purview, would render constitutional provisions under Article 148 to 151 of the Constitution redundant, the Committee so opined and urged the Government to bring about necessary changes in the Act so that accountability to Parliament was maintained.

13. The Department, in its Action Taken Notes has stated that the Explanation inserted under Section 23(2) has clarified the legal position in the matter and has not changed the position that was existing in the earlier TRAI Act (1997), because the purview of C& AG's audit could not, even before the insertion of the Explanation, extend to decisions taken by TRAI in discharge of its regulatory and tariff setting functions. The Explanation expressly limits the general powers of audit available under the CAG Act in respect of the decisions of TRAI in discharge of its regulatory and tariff setting functions under clause (b) of sub-section (1) and sub-section (2) respectively of Section 11 and Section 13 of the Act and therefore not violative of either the CAG Act or the Constitution.

14. As regards accountability to Parliament, the Department has mentioned that the Annual Report of TRAI, giving a summary of its activities including the measures taken to fix tariffs and if already fixed the reaction of service providers thereto, is required to be laid every year before the Parliament.

15. The Department has further stated that a Public Interest Litigation (PIL) (in which the C&AG had also been made a respondent) had been filed in February, 2000 in the Delhi High Court, in which the petitioner has, inter-alia, prayed for striking down the above mentioned amendment to Section 23 of the TRAI Act. This PIL has not yet come for final hearing.

16. The Committee is not satisfied with the reply of the Department as it still holds the view that keeping tariff setting functions of TRAI, which have huge financial implications, under audit scrutiny will by no means encroach upon the authority or independence of TRAI. That the purview of C& AG's audit under the TRAI Act, 1997 and before the insertion of the Explanation, could not extend to the decisions taken by TRAI in discharge of its regulatory and tariff setting functions is no excuse for continuing the same provision in the Amended Act. Just by laying the Annual Report of TRAI in the Parliament, the Department can not claim to have maintained accountability to Parliament. In view of the fact that C&AG has already been auditing quasi-judicial functions like assessment of Income Tax, Central excise etc. by Income Tax/Central Excise Departments etc. which are equally appealable to respective Tribunals, the Committee reiterates that the Government should relook into the matter so that the system of governance does not go against the spirit of the Constitution and sanctity of and accountability to Parliament is adhered to. The Committee would further like to be apprised of the verdict of the Delhi High Court in the Public Interest Litigation (PIL) wherein a petitioner has prayed for striking down the controversial Amendment.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendation/Observation of the Committee (Paragraph No. 94)

The Committee notes that there is a provision for consultation between the DoT and the TRAI which is obligatory if there is a difference between the Authority and the Government. The Committee desires that not only the process of consultation should be made effective, the Government should also disclose the reasons if it rejects the recommendations of TRAI so that there may be transparency in the process.

Action Taken by Government

As submitted in the ATN on the previous recommendations, the Department of Telecommunications always gives due and serious consideration to the opinion of TRAI before taking its decisions, and on no account will the views of TRAI be ignored. In fact, the process of consultation stipulated in the TRAI Act on licensing matters itself makes the procedure transparent. It is further submitted that the Department is committed to make the process of consultation between TRAI and DoT effective and transparent.

Recommendation/Observation of the Committee (Paragraph No. 96)

The Committee notes that out of the 14 cases referred to the TRAI so far, its recommendations have been accepted without any modifications only in two cases i.e. the case relating to licence fee for Radio Paging Service from 4th year onwards and the case of licence fee for E-Mail service for 6th year onwards. In two other cases i.e. opening up of the Long Distance service and License for Global Mobile Personal Communications Service (GMPCS) using Satellite, recommendations of TRAI were reviewed and resubmitted on 15 May, 2000 and 23 June, 2000, respectively and these are being finalized by the Department. In two more cases pertaining to new licence for fixed

service providers, consultation process has been reported to be over and recommendations of TRAI are being framed and expected to be submitted shortly. In three cases relating to fresh licence for Cellular Mobile Provider, migration of existing Cellular Operators etc., recommendations of TRAI have been received and are under examination of the Department. In the remaining five cases relating to fresh licence for VSAT services, funding Universal Service Obligation etc., the recommendations of the newly constituted TRAI are still expected. The Committee would like the Department to expedite the cases under its examination in which TRAI has furnished its final recommendations. The Committee would particularly like to know which specific recommendations of TRAI on opening up of the Long Distance Service and license for Global Mobile Personal Communication Service (GMPCS) were rejected or modified by the Department, the reasons for such rejection/modification and the subsequent improvement if any, made therein. The Committee also desires TRAI to expedite its recommendations in the other five cases which were referred to it more than a year ago.

Action Taken by Government

It has been informed by TRAI that the recommendations on all 14 cases referred to it except the following have already been sent:—

Sl. No.	Details of the case	Status
1.	Fresh License for Radio Paging service	Consultation papers released in Dec. 2000
2.	Funding Universal service obligation	The process of consultation completed. Recommendation shall be sent shortly.

It is stated that the recommendations on the terms and conditions of GMPCS service license and the terms and conditions and issues relating to Cellular Mobile Telephone Service have been accepted except for the definition of Adjusted Gross Revenue. The only point of difference in the definition of Adjusted Gross Revenue is that Government have decided to include revenues earned from sale of Handsets in the Adjusted Gross Revenue, whereas TRAI had recommended that the revenue forgone through subsidies on handsets or any rebate should be included in the Adjusted Gross Revenue.

In so far as policy of National Long Distance Service is concerned, it is stated that the major recommendations of TRAI have been accepted by the Government. The recommendations of TRAI regarding entry fee and roll out obligation have been accepted by the Government in toto. TRAI originally recommended open and free competition in the NLD service. The DoT, however, desired to keep the competition limited to make the projects viable. In their reconsidered opinion TRAI recommended the limited competition and tendering procedure for selection of bidders. However, keeping in mind the complexities involved in tendering procedures, the Government decided to accept the original recommendation of TRAI for open and free competition. As regards the revenue share, TRAI originally recommended 5% revenue share plus U.S.O. In the reconsidered opinion TRAI suggested that the licenses may be granted on the basis of bidding for revenue share as licence fee. Since unrestricted entry was decided, bidding process was not required. It was felt that licence fee as revenue share should not be so high as to become a constraint or impediment nor so low so as to be construed to be soft to the relatively better sector of telecom. Therefore, the amount of revenue share including Universal Service Obligation (USO) has been kept as 10%+USO subject to maximum cap of 15%. The recommendation of TRAI relating to coverage of rural and uneconomic areas has also been accepted by the Government. The original recommendation relating to carrying of intracircle long distance traffic has also been accepted subject to mutual agreement with the FSPs. The guidelines were issued on 13.8.2000.

The recommendations for issue of licences for Basic Service Operators had also been received, and guidelines for the same were issued on 25.1.2001.

The recommendations received from TRAI on VSAT services were referred back to TRAI on 19.1.2001 for review. The reconsidered opinion of TRAI as been received on 13th Feb. 2001 and are under active considerations.

**Recommendation/Observation of the Committee
(Paragraph No. 98)**

The Committee notes that Chapter IV of the TRAI Act, 1997 has been amended to pave the way for a separate dispute redressal body, known as the "Telecom Disputes Settlement and Appellate Tribunal (TDSAT)" to adjudicate upon dispute between a licensor and a licensee, between two or more service providers, between a service provider

and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI. The separation of TRAI's adjudicatory functions has been stated to be one of the major considerations for promulgation of the ordinance. However, establishment of TDSAT has been delayed inordinately and even after 7 months of the issue of the Ordinance, it has not been constituted. It is a matter of grave concern. The Committee desires that the TDSAT should be constituted without further loss of time.

Action Taken by Government

Though the Telecom Disputes Settlement and Appellate Tribunal had been established earlier, it could not become functional earlier as there had been delays in the appointment of the Chairperson and Members because of consultations involved with the highest judicial authority, and certain outstanding issues which needed settlement. This did not, however, impeded the functioning of the Regulator. Now, with the assumption of office by the Chairperson and the two Members of TDSAT, it has become operational. The Tribunal has also started hearing cases.

Recommendation/Observation of the Committee (Paragraph No. 101)

The Committee is concerned to note that as a result of tariff rebalancing done by TRAI in the year 1999-2000, DoT revenues have been adversely affected to the tune of Rs. 1755 crore (for 11 months). Since the DoT utilises all surplus revenue to pursue developmental activities, any diminution in revenue earning is bound to affect seriously the implementation of developmental plans and attainment of national objectives. Keeping the above mentioned factors in view, the Committee recommends TRAI to rework the second phase of the tariff order compatible with the objectives of the New Telecom Policy, 1999.

Action Taken by Government

The observations/recommendations of Standing Committee on Information Technology in para 101 were forwarded to TRAI and the Authority has given its comments on 27th December, 2000. In its reply, the Authority has stated that they have already conducted the review of the second phase of the Tariff re-balancing as compatible with the objectives of NTP 1999. Based on this review, the Authority has notified on 28.08.2000 in the Gazette of India the new tariff for the

basic services (other than ISDN). As per the new tariff order notified on 28.08.2000:

- (1) The rentals specified for the period 1st April, 1999 to 31st March, 2000 shall remain in operation also for the period 1st April, 2000 to 31st March, 2002.
- (2) The tariffs for STD/ISD have been reduced from 1st October, 2000 and will remain in operation till 31st March, 2002. The 2nd phase of tariff re-balancing was given effect from 1.10.2000 instead of 1.4.2000, which was to be the date for introducing of the 2nd phase of tariff re-balancing as per the original plan. Similarly, the 2nd phase of tariff re-balancing would be up to 31st March, 2002 instead of 31st March 2001 as per the original plan.

It is expected that a longer period of tariff re-balancing would cause demand elasticity to manifest itself by way of higher volumes to off set some part of the short fall in revenue.

**Recommendation/Observation of the Committee
(Paragraph No. 102)**

The New Telecom Policy, 1999 envisages a scheme of revenue sharing in lieu of fixed licence fee with effect from 1 April 1999. The change over has been sought to be justified on the basis of making the service providers operate under the multi-poly arrangement, and due to swift changes in the information and communication technology and a large number of litigations between the licensees and the licensor. The Committee also finds that conflicting views have been expressed in the Open House Discussions held by TRAI on what should be the amount of licence fee. It is also significant to note that revenue sharing system will not be half as efficient as the fixed license fee system. In this context, while examining the Demands for Grants (2000-2001) pertaining to the DoT and DTS, the Committee in its Tenth Report had observed that the switch over from fixed license fee system to a revenue sharing package has cost the exchequer more than Rs. 2,000 crore and has unduly favoured the Private Service providers. The Committee feels that under the revenue sharing system, private service providers will not be under any compulsion to expand their infrastructure expeditiously as was the case under the licence fee system. The Committee would like both DoT and TRAI not to come to any hasty conclusions on the revenue sharing issue and after observing very carefully its all round implications, a proper decision should be taken.

Action Taken by Government

The policy regarding migration of the existing licensees to the New Telecom Policy, 1999 (NTP-99) regime of revenue sharing arrangement was formulated as a result of informed and institutionalized decision in best public interest making pragmatic adjustments warranted by ground realities in relation to the Telecom Industry. The uniform application of NTP-99 which was desirable to provide a level playing field to all operators, was also aimed at ensuring accelerated growth of telecom sector by bringing in multi-poly, better accessibility, and improved/cost effective service to customers and this mid course correction was considered an important instrument to achieve the objective of NTP-1999. The number of cellular subscribers has grown from 12.03 lakhs in July 1999 to 31.07 lakhs in December 2000, thus witnessing a growth of 158% after Migration. The number of subscribers has increased from around 39,466 in July, 1999 to more than 2.05 lakh in December 2000 for private Basic Service Operators, thus witnessing a growth of 421% after migration.

The suggestions of Standing Committee have been noted. However, it is felt that the new revenue sharing regime in NTP-1999 would enhance competition by bringing in multiple operators, giving them flexibility to adjust in future to fast changing technologies and tariff changes; lead to induction of more number of players in the field and offer lower tariffs and better quality of service to the consumer. Once the growth of the sector is ensured, the revenue streams will also be more healthy and the Government will be in a better position to realize revenues due to it.

Recommendation/Observation of the Committee (Paragraph No. 104)

The Committee learns that ever since the TRAI was first constituted, it has been involved in a number of controversies *i.e.* withdrawing disproportionately high allowances, accepting hospitality from organisations which were subject to its regulatory control, tending to assume more powers than what the law permitted etc., as a result of which there had been a lot of misunderstandings between the Department and the Authority. The submission of the Secretary, DoT that problems arose on account of the provision of the Principal Act and not because of the attitude of the then Members of TRAI does not convince the Committee for the reason that law did not allow

TRAI to accept hospitality nor did it permit them to exceed the mandate conferred upon them. Therefore, it is the attitude or behaviour of the Members of the erstwhile TRAI rather than the lacunae in the Act which apparently created controversies. However, now that the TRAI has been reconstituted, the Committee trusts that its considered advice will be respected by the Government. The Department of Telecommunications and the TRAI should act in proper coordination, within their respective jurisdiction and according to the perceived direction so that possible areas of conflict are reduced to the unavoidable minimum.

Action Taken by Government

As regards the observations of the Standing Committee regarding proper coordination between TRAI and DoT, it is submitted that with the amendments made to the TRAI Act, the role, powers and jurisdiction of TRAI has been clarified, thus removing the areas of conflict. Furthermore, a clear and time bound process of consultation between Government and TRAI on licensing matters has also been stipulated in the amended Act; the Department of Telecommunications, while acting within the ambit of TRAI Act, on licensing matters, is always taking into account the opinion of TRAI before taking its decisions and on no account will the views of TRAI be ignored. There is thus better coordination on various matters between Government and TRAI.

CHAPTER III

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DOES NOT DESIRE TO PURSUE IN VIEW OF THE REPLY OF THE GOVERNMENT

Recommendation/Observation of the Committee (Paragraph No. 91)

The Committee notes that under Clause (a) of sub-section (1) of Section 11 of the TRAI Act, some of the important functions like measures to facilitate competition and promote efficiency in the operation of telecommunication service so as to facilitate growth in such services, technological improvements in the services provided by the service providers etc. have been kept under the category of recommendatory functions. The Committee can well appreciate the Government's final say in matters of issue and revocation of licence, which are considered to be sovereign functions. However, it fails to understand the rationale of keeping other functions like measures to facilitate competition and growth or promote efficiency, within the recommendatory category. Department's reasoning, that in view of various aspects of Indian economy, infrastructure conditions, financial viability of various operators etc. the above mentioned important functions have been kept in the recommendatory category, seems to be vague and displays some lack of confidence in TRAI. Moreover, the two-way traffic system as contemplated in the Act to interact with TRAI in this regard appears to be unreal as the ultimate views of the Government would prevail. Thus, it is pertinent to note that the Government will have the final say not only in matters of licence but also in other matters like promotion of efficiency and facilitation of growth. Therefore, it will not be an understatement to state that no substantial power has been conferred upon TRAI which, despite being an independent regulatory authority, cannot take final decisions on important matters like the improvement in conflicting types of technologies nor can it take measures on its own to facilitate competition or growth in telecommunications sector.

Action Taken by Government

Keeping in view the need for urgent resolution of subsisting problems in the Telecom Sector and to expedite implementation of

NTP '99 while taking into account the convergence between Telecom and IT, the Government had constituted on 10.12.99 a Group on Telecom and IT Convergence under the Chairmanship of Finance Minister. One of the terms of reference of this Group was to consider and make recommendations to strengthen TRAI through suitable legislative amendments. Based on the acceptance of the recommendations of the Group, the Government promulgated TRAI Ordinance, 2000 for making suitable amendments to principal TRAI Act, 1997 for strengthening of TRAI. This Ordinance has been replaced by an Act of Parliament.

Some of the major amendments made are the redrafting of Section 11 (1) of the TRAI Act to bring about a clear distinction between the recommendatory functions of TRAI and its regulatory functions; it has been made mandatory for the Government to seek recommendations of TRAI in respect of need and timing for introduction of new service providers, and terms and conditions of licence to a service provider; the dispute settlement mechanism has been strengthened by the creation of a new body known as the Telecom Disputes Settlement and Appellate Tribunal with much wider adjudicatory power as compared to the powers available to the erstwhile TRAI; furthermore, certain additional functions have been entrusted to TRAI *i.e.* to fix the terms and conditions of interconnectivity between service providers, to lay down standards of quality of service to be provided by the service providers and ensure quality of service to make recommendations of technological improvements in the services provided by the service providers, and to make recommendations on efficient management of available spectrum.

It is submitted that the rationale behind keeping functions like measures to facilitate competition and promote efficiency in the operation of telecommunications services, development of telecommunication technology etc. under the recommendatory category, is that various aspect of Indian economy, infrastructure conditions, financial viability of various operations would have to be kept in view, for which Government's participation is imperative. It would therefore not be correct to state that no substantial powers have been conferred on TRAI.

**Recommendations/Observations of the Committee
(Paragraph Nos. 92 & 93)**

92. Taking into consideration the view of the Chairperson, TRAI as well as those closely connected with Telecom sector that TRAI's

exercise of power will be very limited due to categorization of the above mentioned functions as recommendatory, the Committee would like to the Government to examine in depth, various provisions of the TRAI Act so as to allow the Authority a greater say in the matter in the best interests of the Telecom Sector.

AND

93. Another important function which has been put under the recommendatory category under clause (a) of sub-section (1) of Section 11 of the TRAI Act is fixation of the terms and conditions of licence to a service provider. Needless to mention, in this case also the TRAI can give its recommendations *suo motu* or if referred to it by Government, but the law provides that the ultimate view of the Government will prevail as licensing is a sovereign function. Here, the Committee agrees with the views expressed by one of the non-official witnesses who was closely associated with the DoT, that it is a tricky area which might cause considerable embarrassment to both DoT and the TRAI in the coming years. For example, if TRAI recommends revocation of licence of a particular service provider because of non-performance or any other reason and the Government does not accept that, it would obviously lead to strain in the relationship between TRAI and DoT. The Committee shares the sentiment of the chairperson, TRAI that as a regulator, TRAI must have a role in matters of licensing also. The Government should duly take into account the opinion of a body like the TRAI before taking its decision. The position of the Government will be untenable if it totally ignores the views of TRAI.

Action Taken by Government

Prior to the amendments made in the TRAI Act, 1997, it was not mandatory for Government to seek TRAI's recommendations on licensing matters. However, after amendment of TRAI Act, it is mandatory for Government to seek the recommendations of TRAI in respect of matters specified in sub-clauses (i) and (ii) of Section 11 (1) (a), dealing with the need and timing for introduction of new service providers and the terms and conditions of license to a service provider. Suitable provisions have also been made to make the process time bound. Section 11 (1) (a) also specifies various other recommendatory functions of TRAI, in wide ranging areas of the telecom sector such as technological improvements in the services provided by the service providers, efficient management of available spectrum etc. It may also

be added that as part of the amendments, it has now been clearly specified that on matters contained in Section 11 (1) (a), TRAI is empowered to make recommendations, either on a request from the licensor, or *suo motu*.

Thus, the amendments made to the TRAI Act constitute a complete self contained code regarding the role of TRAI. It is further stated that by virtue of the above amendments, TRAI now has a statutory role to play in licensing matters. Furthermore, the Department of Telecommunications, while acting within the ambit of TRAI Act, on licensing matters, is always giving due consideration to the opinion of TRAI before taking its decisions and on no account will the views of TRAI be ignored.

In this connection, it may however also be stated that Government is contemplating to bring forward a Legislation titled 'Communication Convergence Bill'. One of the features of the proposed legislation is the setting up of a Communication Commission of India, which may also have licensing powers. It is also presently envisaged that at the enactment of the Bill, five existing Acts, including the Telecom Regulatory Authority of India Act 1997 will stand repealed.

The present text of the Bill has been put on the internet to seek comments from interested organisations/individuals. These comments will be considered by the Sub-Group under Shri Fali Nariman's Chairmanship, and thereafter by the Group on Telecom and IT Convergence for finalising its report/recommendations on the provisions of the Communication Convergence Bill.

**Recommendation/Observation of the Committee
(Paragraph No. 95)**

95. The Committee notes that some of the important regulatory functions as conferred upon TRAI by sub-section (b) of Section 11 of the TRAI (Amendment) Act, 2000 include compliance of terms and conditions of licence, Universal Service Obligations, technical compatibility and effective inter-connection between different service providers amongst other functions. But, no penal provision has been incorporated in the Act by virtue of which TRAI can penalize the defaulting service provider. Secretary, DoT's contention, that under the Section 13 and sub-section 4 of Section 12 of the TRAI Act, TRAI can

give directions, does not convince the Committee for the reason that giving direction does not mean or ensure enforcement of decisions. Although under Section 29 of the Act, a fine can be imposed for violation of the directions of TRAI, the Authority itself has not been empowered to impose such fines. Thus, although the TRAI has been vested with important regulatory powers, in reality it would feel handicapped in taking the defaulters to task. The Committee would therefore, like the Government to consider whether it would not be desirable to empower TRAI itself to enforce compliance of its orders, if necessary, by imposing penalty on the defaulters.

Action Taken by Government

As regards the observations of the Standing Committee regarding empowerment of TRAI for enforcing penalty on the defaulters, it is submitted that the TRAI is empowered to issue directions under section 13 of the TRAI Act, 1997. If a person violates the directions of Authority, then such contravention is punishable with fine under section 29 of the Act. Sections 30 and 31 deal with the offences committed by a Company or a Govt. Department, and it is prescribed that the person in-charge of the business of the company or Head of the Department of Government can be held guilty of an offence. These are criminal offences punishable by a competent criminal court. No civil Authority including TRAI can assume powers of a criminal court. Section 6 Chapter II of the Criminal Procedure Code prescribes classes of criminal courts in India and these are (i) High Court (ii) Court of session (iii) Chief Judicial Magistrate/Chief Metropolitan Magistrate (iv) Judicial Magistrate of Ist Class or Metropolitan Magistrate and (v) Judicial Magistrate IInd Class.

The contravention of the directions of TRAI is punishable and cognizance of such offence can be taken by Chief Judicial Magistrate/Chief Metropolitan Magistrate under section 34 of the TRAI Act on a complaint made by TRAI. The scheme of the TRAI Act, 1997 does not envisage granting of any power to impose penalty against a criminal offence by TRAI. In this situation, TRAI cannot also be granted the power to punish the contravention of its directions under the rule making power, for the reasons that this would be against the scheme of the Act, and also that TRAI cannot assume criminal jurisdiction.

**Recommendation/Observation of the Committee
(Paragraph No. 97)**

The Committee notes that the TRAI (Amendment) Act, 2000 provides that the Authority shall consist of a Chairperson and not more than two whole-time Members and not more than two part-time Members, who shall hold office for a period not exceeding three years whereas the earlier Act provided for a Chairperson and not less than two, but not more than six Members who were to hold office for a period not exceeding five years. Non-availability of the required expertise for the regulatory body, the reason as forwarded by the Secretary, DOT for bringing in the part-time concept, is hardly convincing. It may not be correct to think that only the part-time Members can provide the required expertise to the Authority. The Committee agrees with Member (F)'s submission that it is not really important whether the Authority consists of two Members as part-time or whole-time, what matters is the kind of professional expertise or discipline they represent. In this context, the Committee fails to understand why the earlier provision has been diluted to accommodate part-time Members, Chairperson, TRAI's statement that it might have been done to attract people from different walks of life is equally unconvincing because whole-time Members can also be drawn from various fields. The provision of part-time Members in the TRAI (Amendment) Act, 2000 appears to have been incorporated to include Government officials in the Authority who will generally implement Government decisions. Thus, the provision is likely to erode the credibility of the Authority so far as it is projected to be an independent regulatory Authority.

Action Taken by Government

As regards the observations of the Standing Committee regarding part-time Members, it is stated that as earlier submitted by the Department during the oral evidence to the Standing Committee, the provision for part-time Members in TRAI was made to broad base the Authority and give it the benefits of experts who cannot devote their whole time to the Authority. In this connection, it is also stated that Government is contemplating to shortly bring forward a legislation titled "Communication Convergence Bill", on the enactment of which certain existing Acts, including the TRAI Act 1997, will stand repealed, and TRAI will be replaced by the Communications Commission of India (CCI). Accordingly, it may be added that on receipt of the

Standing Committee's present report on the "Functioning of TRAI", a copy thereof had been sent to the Sub-Group under Shri Fali Nariman's chairmanship, and also these observations of the Standing Committee had been brought to the Sub-Group's notice by the Departmental representative during one of the meetings of the Sub-Group. The Group on Telecom and IT Convergence had however decided to retain the option for appointment of part-time Members in the CCI.

As earlier indicated in the ATN under recommendations nos. 92 and 93, the present text of the Bill has been put on the internet to seek comments from interested organisations/individuals. These comments will be considered by the Sub-Group under Shri Fali Nariman's chairmanship, and thereafter by the Group on Telecom and IT Convergence for finalising its report/recommendations on the provisions of the Communication Convergence Bill.

**Recommendation/Observation of the Committee
(Paragraph No. 99)**

The Committee finds that under Section 14M of the TRAI (Amendment) Act, 2000, 15 cases are pending with TRAI for adjudication. Out of these 15 cases, 8 were referred to TRAI in 1997 and 7 in 1998. The Committee would like to know the nature of these cases, the reasons for which these are pending so long with TRAI and whether TRAI as per the provisions of Section 14M of the Act, is waiting for the transfer of these cases to TDSAT upon its establishment.

Action Taken by Government

It has been intimated by TRAI that all the pending cases have been transferred to TDSAT. The details of the cases transferred by TRAI to TDSAT is at Annexure.

ANNEXURE

TELECOM REGULATORY AUTHORITY OF INDIA NEW DELHI

List of pending cases as on 27.6.2000

1997

1. Petition No. 7/97 M/s Marcsat Communications Pvt. Ltd. Vs. Union of India.
2. Petition No. 12/97 M/s Microwave Communications Ltd., Vs. Union of India.
3. Petition No. 13/97 M/s Modi Korea Telecommunications Ltd.
4. Petition No. 14/97 M/s Usha Martin Telecommunications Ltd. Vs. Union of India.
5. Petition No.15/97 M/s Easycall Communications. (I) (P) Ltd., Vs. Union of India.
6. Petition No. 16/97 M/s Matrix Paging (I) Pvt. Ltd., Vs. Union of India
7. Petition No. 17/97 M/s ABC Communications India Pvt. Ltd., Vs. Union of India.
8. Petition No. 18/97 M/s Telesistem (India) Pvt. Ltd., Vs. Union of India

1998

1. Petition No. 2/98 M/s Mutchison Max. Telecom Ltd., Vs. Union of India.
2. Petition No. 8/98 M/s Modi Korea Telecommunications Ltd. Vs. Union of India
3. Petition No.9/98 M/s Modi Korea Telecommunications Ltd. Vs. Union of India.
4. Petition No. 10/98 M/s Modi Korea Telecommunications Ltd. Vs. Union of India.

5. Petition No. 15/98 M/s Hughes Escorts Communications Ltd. Vs. Union of India.
6. Petition No. 16/98 M/s Essel Shyam Communications Ltd. Vs. Union of India.
7. Petition No. 17/98 M/s DSS Mobile Communications Ltd. Vs. Union of India.

1999

1. Petition No. 5 of 99 M/s Sanjay Kaushik Vs. U.O.I.

S.No.	Case. No.	Parties Name	Prayer in Brief	Stay
1	2	3	4	5
1.	Petition 7/97	M/s. Marcsat. Communications (P) Ltd. Vs. Union of India.	To direct the respondent to forthwith allocate the sport frequency without insisting upon payment of past transponder charges & space segment charges.	Restrain the Respondents from invoking Bank guarantee during the pendency of the Petition. Granted the prayer of the Respondents to permit them to lodge their claim for encashment of the relevant Bank Guarantees with the rider that the proceeds thereof be kept in the bank and be not remitted to the respondents except with the permission of this Authority.
2.	Petition 12/97	M/s. Microwave Communications Ltd. Vs. Union of India.	1. Provide fee resources for junctions including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of Licence Fee. 3. Not to encash the Bank Guarantees.	Respondents are restrained from cancelling the licence of the Petitioners as also encashment of their Bank Guarantees. <i>Status quo</i> as on date to continue until the next date of hearing. Recovery from the Petitioners in respect of bill dated 25.2.99 is stayed till further orders.
3.	Petition 13/97	M/s. Modi Korea Telecommunications Ltd Vs. Union of India.	1. Provide fee resources for junctions including PCM/ OFC cables.	Restrained from cancelling the licence of the Petitioners as also encashment of their bank guarantee.

1	2	3	4	5
			2. Restraining from demanding payment of the outstanding amount of licence fee.	Operations of the impugned letter of the Chief General Manager Calcutta of January 7, 1998 is hereby stayed till further orders.
			3. Not to encash the Bank Guarantees.	Operations of the impugned letter of the Chief General Manager, Chennai of December 5, 1997 is hereby stayed till further orders.
				Stayed the operations of the Letter of C.G.M. Calcutta of November 25, 1998 till the next date of hearing.
4.	Petition 14/97	M/s Usha Martin Telekon Ltd. Vs. Union of India.	1. Provide fee resources for junctions including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee.	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.
5.	Petition 15/97	M/s. Easycall Communications (I) Ltd. Vs. Union of India.	1. Provide fee resources for junction including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee.	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.
6.	Petition 16/97	M/s. Matrix Paging (India) Pvt Ltd. Vs. Union of India.	1. Provide fee resources for junction including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee.	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.

1	2	3	4	5
7.	Petition 17/97	M/s. ABC Communications (I) Pvt. Ltd. Vs. Union of India.	<ol style="list-style-type: none"> 1. Provide fee resources for junction including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee. 	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.
8.	Petition 18/97	M/s. Telesistem (India) Pvt. Ltd. Vs. Union of India.	<ol style="list-style-type: none"> 1. Provide fee resources for junction including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee. 	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.
9.	Petition 2/98	M/s. Hutchison Max Telecon Ltd. Vs. Union of India.	<ol style="list-style-type: none"> 1. Provide fee resources for junction including PCM/ OFC cables. 2. Restraining from demanding payment of the outstanding amount of licence fee. 3. Not to encash the Bank Guarantee. 	Respondent is restrained from cancelling the licence of the Petitioner as also encashment of their Bank Guarantee.
10.	Petition 8/98	M/s. Modi Korea Telecommunications Vs. Union of India.	<ol style="list-style-type: none"> 1. Stay the termination of the licence agreement with respect to the West Bengal. 2. Stay invoking the Financial Bank Guarantees. 3. Direct that the defendant is not entitled to receive the monies under the Bank Guarantee & restrain the defendant. 	Restrained from encashing the Bank Guarantees of the Petitions till further orders.
11.	Petition 9/98	M/s. Modi Korea Telecommunications Vs. Union of India.	<ol style="list-style-type: none"> 1. Stay invoking the Financial Bank Guarantees. 	Restrained from encashing the Bank Guarantees of the Petitions till further orders.

1	2	3	4	5
			2. Stay the termination of the licence agreement with respect to Rajasthan circle.	
12. Petition 10/98	M/s. Modi Korea Telecommunications Vs. Union of India.		1. Stay invoking the Financial Bank Guarantees. 2. Stay the termination of the licence agreement with respect to M.P. circle.	Restrained from encashing the Bank Guarantees of the Petitions till further orders.
13. Petition 15/98	M/s. Hughes Escorts Communications Ltd. Vs. Union of India.		To direct the respondents for providing adequate and uninterrupted interconnection to the petitioners to enable it to provide operations and service during the licence period.	The case adjourned for 17th February 2000. The Authority demitted office on 24th January 2000.
14. Petition 16/98	M/s. Essel Shyam Communications Ltd. Vs. Union of India.		Since there was a delay in granting SACFA clearance by Union of India by 23 Months and therefore proportioned extension of time by ways of moratorium for payment of licence fee by at least 24 months from 28/3/96 may be granted.	The case adjourned for 17th February 2000. The Authority demitted office on 24th January 2000.
15. Petition 17/98	M/s. DSS Mobile Communications Ltd. Vs. Union of India.		1. Stay the operation of the letter dated 14.9.98 by R-1 seeks to impose charges for providing junctions from network exclusively setup for the petitioners. 2. Restrain from disconnecting any junction. 3. Direct the respondents to provide free resources for junctions including PCM/OFC in accordance with licence agreement.	Stayed the operation of the letter of September 14, 1998 in so far as it seeks to impose charges for providing junctions from networks setup exclusively for the petitioner & also its three year limitations on the provision of free junctions. We also restrain respondent No. 1 from disconnecting any of the junctions provided to the petitioner till the next date of hearing.

**Recommendation/Observation of the Committee
(Paragraph No. 103)**

The Committee notes that the reconstituted TRAI has expressed its concern over three areas *i.e.* non-formation of the TRAI Fund, withdrawal of the freedom in framing rules and difficulties in engaging experts both from India and abroad. The Committee also notes that the proposal of TRAI to impose a cess as a percentage of the gross revenue of each and every operator, to create a corpus out of that to meet their expenses out of it, has been rejected by the Government after inter-ministerial consultations as it would have impact of a tax. Secondly, as stated by the Department, the employees and consultants of the erstwhile TRAI were engaged with certain perquisites which were far in excess as compared to other Government establishments. The C&AG had taken very serious exception to the same and accordingly, the Government withdrew the powers of the TRAI to frame rules and regulations for its own employees. However, in view of the functional character of the Authority, the committee feels it would be desirable to allow some flexibility, within the permissible limits, as is the case with some other organisations so that the TRAI can have the required and timely assistance and guidance of experts/consultants.

Action Taken by the Government

Prior to amendments brought about to the TRAI Act, 1997, TRAI was empowered under section 10 (2) to make its own regulations on the salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed by TRAI under sub-section (1) of section 10. The said Regulations were notified by TRAI on 31.3.1999. Prior to the notification, certain facilities had been granted to the staff of TRAI which were higher than Government norms and was also adversely commented upon by the CAG. However, the Group on Telecom and IT Convergence constituted by the Government to consider amongst other things strengthening of TRAI through suitable Legislative amendments had recommended that Government should determine that salaries and allowances payable to and other terms and conditions of service of officers and other employees of the Authority. Accordingly section 10 (2) of the Act was amended.

With regard to the observation of the Standing Committee that in view of the functional character of the Authority it would be desirable

to allow some flexibility within permissible limits, it is stated that the observations of the Committee were brought to the notice of GOT & IT which is considering the proposed Communications Convergence Bill, so as to give the required autonomy to the proposed Communications Commission of India and Communications Appellate Tribunal. The GOT & IT had however not agreed to it and consequently as per the present provisions of the *draft* Communications Convergence Bill, the power to frame the terms and conditions of service of officers and staff of Communication Commission of India and the Communication Appellate Tribunal vests with the Government.

In pursuance of provisions contained in sections 21 and 22 of the TRAI Act, the Government has already created the TRAI General Fund of 31st March, 1999. The said sections have not been amended by the TRAI (Amendment) Act, 2000. A copy of the Department of Telecommunication's order dated 31st March, 1999 had already been forwarded to the Lok Sabha Secretariat *vide* Department's OM No. 10-17/2000-Restg. dated 8th August 2000.

CHAPTER IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation/Observation of the Committee (Paragraph No. 87)

The Committee notes that the Telecom Regulatory Authority of India (TRAI) Act, 1997, empowered TRAI to frame regulations, levy fees, fix tariffs, settle disputes, institute enquires etc. but licensing aspect was kept out of its jurisdiction. The role of the Government as a licensor caused certain misconceptions and misinterpretations about the role of the then TRAI as well as the implementation of the erstwhile TRAI Act, as a result of which certain matters went to the Court of Law. On 13 December, 1999 the Government constituted, under the Chairmanship of the Finance Minister, a "Group on Telecom and IT Convergence" which suggested certain structural changes in the TRAI Act, 1997 with the objective to strengthen TRAI. In these circumstances, the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 was promulgated on 24 January, 2000 even though the Parliament was to meet soon thereafter in February for the Budget Session. Secretary, DoT's submission that the Ordinance was passed to resolve, at the earliest, the doubts and misgivings which arose out of the 1997 Act, does not convince the Committee for the reason that even the Ordinance or for that matter the TRAI (Amendment) Act, 2000 itself created several confusions in some other areas, as would be discussed in the succeeding paragraphs. The purpose of the Ordinance was not achieved as would be seen from the fact that although the Ordinance was promulgated on 24 January, 2000, the TRAI was actually reconstituted on 30 April, 2000, and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has not been constituted till the end of August, 2000 *i.e.* even after seven months of promulgation of the Ordinance. The statement that the Ordinance was passed to make the Private Sector participation more vigorous is unacceptable to the Committee in view of the poor and dismal performance of the Private Basic Service Providers. Thus, it is clear that the Ordinance was issued in haste and without any justification which precluded this Committee from giving its views before the amendments were made.

Action Taken by Government

Prior to amendments brought about in the principal TRAI Act 1997, TRAI had been empowered, under section 11 (1), to discharge recommendatory, regulatory and dispute settlement functions, and under section 13, to issue directions to service providers on these functions. Under section 14, TRAI had also been given adjudicatory powers in the settlement of disputes amongst service providers or between service providers and a group of consumers on certain matters specified in the said section 14.

However, TRAI's interpretations of certain provisions of the Act about its powers, which were at variance with the scheme of the statute, had resulted in numerous litigations creating impediments in the growth of the telecom sector. A notable instance in this regard is the Single Bench judgment of the Delhi High Court, which was later upheld by the Division Bench of the Delhi High Court in October 99, that the recommendatory powers of TRAI were not mandatory, and that TRAI could not adjudicate upon a dispute between a licensor and a licensee. All this had resulted in confusion and uncertainties; there were doubts and misgivings in the minds of the private sector, and the investment climate had been vitiated. Valuable time was being lost in the fast changing global telecom scenario in numerous pending litigations involving issues of interpretations of provisions of the statute. This was not in the overall interest of rapid development of the telecom sector. There were accordingly persistent suggestions from different quarters to clearly define the role and jurisdiction of TRAI so as to strengthen the regulatory framework and increase investor's confidence.

As urgent and immediate measures were deemed necessary to clarify the situation, recommendations for legislative amendments was made one of the terms of reference of the Finance Minister's Group on Telecom and IT Convergence. Keeping in view the urgency in the matter, the Ordinance was promulgated based on the Group's report. The Ordinance has since been replaced by an Act of Parliament. Based on the amendments made TRAI was reconstituted and became operational in March 2000. Due to some unavoidable procedural delays, the Telecom Disputes Settlement and Appellate Tribunal though constituted in May 2000, in pursuance of the amendments brought about, could be made operational only recently. This however did not impede the functioning of the Regulatory Authority.

The desired objectives of removing contradictions, bringing about functional clarity, strengthening the regulatory framework etc. have been attained. It is to be noted that the amendments brought about had been widely welcomed by TRAI itself, and the various Industrial Chambers and Associations who had seen it as a positive move in removing many of the ambiguities that had existed in the TRAI Act.

Comments of the Committee

Please *see* Paragraph Nos. 10 & 11 of Chapter-I

Recommendation/Observation of the Committee (Paragraph No. 88)

The Committee is unhappy to note that four amendments to the TRAI Act, 1997 have been brought out by the Ordinance on the plea of urgency. The first amendment is regarding the redrafting of Section 11 (1) of the Principal Act wherein a distinction between the recommendatory/advisory functions of TRAI on one hand and regulatory functions on the other has been made and a provision has been incorporated to make it mandatory for the Government to seek the recommendations of TRAI in respect of matters specified in sub-clauses (i) and (ii) of Section 11 (1) (a) dealing with the need and timing for introduction of new service providers and the terms and conditions of licence to a service provider. Here it is pertinent to note that although it has been made mandatory for the Government to seek the recommendations of TRAI in respect of matters specified above, it has not been made obligatory on the part of the Government to accept the recommendations of TRAI nor is it necessary for the Government to indicate in writing the reasons for not accepting the recommendations. Thus, the confusion and uncertainty still persists and one cannot rule out a possible conflict between the newly constituted TRAI and the DoT in this regard. Therefore, the claim that the Ordinance was passed in a hurry to resolve the doubts and misgivings is not sustainable.

Action Taken by Government

After the amendments made to TRAI Act, the recommendatory functions of TRAI are contained in section 11 (1) (a). It has been clarified that the recommendations of TRAI on matters contained in

section 11 (1) (a) shall not be binding upon the Central Government. Earlier it was not mandatory for Government to seek TRAI's recommendations on licensing matters. It has now been made mandatory for the Government to seek the recommendations of TRAI in respect of matters specified in sub-clauses (i) and (ii) of section 11 (1) (a), dealing with the need and timing for introducing of new service providers and the terms and conditions of licence to a service provider. In order to make the process time bound, it has been provided that TRAI shall forward its recommendations within a period of sixty days from the date on which recommendations have been sought, and that the Government may issue a licence to a service provider if no recommendations are received within this period or within such period as may be mutually agreed upon between the Government and TRAI. It has also been provided that if, having considered TRAI's recommendations, Government comes to a *prima facie* conclusion that it cannot be accepted or needs modification, it shall refer the recommendations back to TRAI for its reconsideration. TRAI may within 15 days from the receipt of such reference forward to Government its recommendation after considering the reference received by it, and after receipt if any of such further recommendation, Government shall take a final decision.

While it may not be obligatory for the Government to necessarily accept TRAI's recommendations in the sovereign functions where its decision is final, it may be noted that by virtue of these amendments, due weightage has now mandatorily to be given to TRAI's recommendations, since it has been provided that in case of a difference of opinion, Government shall refer the matter back to TRAI for reconsideration, and there is also a scheduled stipulated for time-bound consultations.

Licensing being a sovereign function, the final say in the matter is vested in Government; making the recommendatory process time bound, and in case of difference of opinion, a second consultation too, is aimed at removing the confusion and uncertainty in such matters. Further, since the recommendatory role of TRAI on licensing matters has not been clearly defined in the Act, there need not be any concern any more about possible conflict between TRAI and the DoT.

Comments of the Committee

Please see Paragraph Nos. 10 & 11 of Chapter-I

**Recommendation/Observation of the Committee
(Paragraph No. 89)**

The second amendment pertains to the composition of TRAI wherein as per the amended provisions the Authority shall consist of a Chairperson and not more than two whole-time Members and not more than two part-time Members to be appointed by the Central Government. It has further been provided that the Chairperson and Members shall hold office for a term not exceeding three years. The Committee feels that such amendments do not justify the issuance of the Ordinance. As seen before, the constitution of both the Authority and the Tribunal has taken months after the Ordinance was promulgated within which period, a Bill could have been introduced in Parliament, which, in the usual course, would have given opportunity to the Committee to give its views for the consideration of the Government and the Parliament. Thus, the only immediate effect of the Ordinance was the termination of the terms of office of the Chairman and Members of the erstwhile TRAI while many shortcomings still remain even in the amended Act. The Department thus owes an explanation for the unnecessary haste with which it proceeded to by-pass the usual process of legislation and also scrutiny of the proposed amendments by this Committee.

Action Taken by Government

As it would be conceptually inappropriate that the recommending Authority and the adjudicating Authority be the same, it was decided to establish the 'Telecom Dispute and Appellate Tribunal' with wider adjudicatory powers. The Tribunal will adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and group of consumers and will also hear and dispose of appeals against any direction, decision or order of TRAI. There is also a provision for time-bound resolution of disputes by TDSAT in the interest of expeditious disposal of cases. Appeals against the orders of the Tribunal shall lie to the Supreme Court.

In view of aforesaid facts and that adjudicatory functions have been hived off from TRAI, it was necessary to reconstitute TRAI and accordingly TRAI was reconstituted to comprise of a Chairperson, two whole time Members and two part-time Members.

As earlier indicated in this ATN under recommendation no. 87, certain Rulings of the erstwhile TRAI had resulted in numerous

litigations creating impediments in the growth of the telecom sector, thereby necessitating clear definition of the role and jurisdiction of TRAI and the above said amendments were imperative in view of achieving these objectives. To immediately clarify the ambiguities, and Ordinance was promulgated, which was welcomed by all concerned.

Comments of the Committee

Please *see* Paragraph Nos. 10 & 11 of Chapter-I

Recommendation/Observation of the Committee (Paragraph No. 90)

An important change which has been made in Chapter IV of the Principal Act, is to provide for the establishment of a separate disputes redressal body namely, the "Telecom Disputes Settlement and Appellate Tribunal (TDSAT)" to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and group of consumers and to hear and dispose of appeals against and directions, decision or order of the TRAI. Notwithstanding the establishment of the TDSAT, the Committee feels that it is strange, to say the least, that although urgency of constituting TDSAT was stated to justify the issuance of the Ordinance on 24 January 2000, TDSAT has not come into existence till the end of August, 2000; thus disproving the case of urgency.

Action Taken by Government

TDSAT could not be made functional immediately as there were delays in the appointment of the Chairperson and Members of TDSAT because of consultations involved with the highest judicial authority and certain outstanding issues which needed settlement. This did not however impede the functioning of the Regulator. TDSAT has now become functional and has also started hearing cases.

Comments of the Committee

Please *see* Paragraph Nos. 10 & 11 of Chapter-I

Recommendation/Observation of the Committee (Paragraph No. 100)

One of the most disturbing features of the TRAI (Amendment) Act, 2000 relates to the explanation inserted in Section 23 of the Principal Act after sub-section (2), to keep the decision of the Authority taken in discharge of its functions under clause (b) of sub-section (1)

and sub-section (2) of Section 11 and Section 13, being matters appealable to the Appellate Tribunal, out of the purview of audit scrutiny. Secretary, DOT's submission that tariff setting function, being not an item of expenditure incurred by the Authority has been kept out of the audit purview, does not convince the Committee. The C&AG himself and the Chairman, Public Accounts Committee have brought the matter to the notice of the Prime Minister stating that tariff setting function of TRAI is very much an executive function and hence should be discharged with accountability to the Parliament. The Committee does not appreciate the view that in case the C&AG examines the manner of fixation of tariff and its propriety, it will create any problem, as the C&AG cannot alter a decision taken by a judicial body *i.e.* TDSAT nor of TRAI. Even if C&AG makes any adverse comment, that will not be *ipso facto* binding on the Government and on that plea accountability of TRAI to Parliament can not be avoided. On the same reckoning, the Committee does not agree with the Chairperson, TRAI and some of the non-official witnesses who are of the view that if tariff setting functions are put under audit scrutiny, it would affect the independence of the Authority. The Committee holds the view that accountability does not amount to encroachment upon authority or independence. Moreover, the C&AG is already auditing quasi-judicial functions like assessment for income tax, central excise etc. by Income Tax/Central Excise Departments, which are equally appealable to respective Tribunals. Further, all functions/decisions which have implications on Public Exchequer are subject to audit by C&AG and tariff setting functions of TRAI have wide implications on Government revenues. The decisions taken by TRAI will determine the telecom receipts credited into the Consolidated Fund of India, to the tune of about Rs. 18,000 crore as on date. Despite such huge financial implications of the decisions taken by TRAI, keeping these functions out of the purview of C&AG will render constitutional provisions under Article 148 to 151 of the Constitution of India redundant in the important sector of telecom to a great extent. Thus, the committee is of the definite opinion that limiting the powers of C&AG in the matter of auditing some of the important functions of the TRAI like tariff setting, regulating revenue sharing arrangements etc. would be amounting to the telecom regulator becoming non-accountable even to Parliament. Needless to mention, such a system of governance is against the spirit of Constitution and a retrograde step intended to weaken the very basis of the Constitution and the authority of Parliament, the Supreme body of the country. The Committee, therefore, urges the Government to bring about necessary changes in the Act so that the accountability to Parliament is maintained.

Action Taken by Government

Section 23 of the TRAI Act defines the scope of Audit as far as TRAI is concerned, and states that the accounts of the Authority shall be audited by the CAG.

The amendment brought about to section 23 (2) does not change this position, and is only for the removal of doubts regarding decisions of TRAI which are not subject to Audit, being matters appealable to the Appellate Tribunal; in other words, the accounts of TRAI shall continue to be audited by the CAG, and there has been no change in the position.

Similarly, under the unamended TRAI Act, 1997, TRAI had been empowered under section 11 (2) to notify the rates for telecommunication services, and this position is also unchanged.

Thus the Explanation inserted under section 23 (2) has clarified the legal position in the matter and has not changed the position regarding the audit of TRAI's accounts because the purview of CAG's audit could not, even before the insertion of the Explanation, extend to decisions taken by the TRAI in discharge of its regulatory and tariff setting functions. In this connection, it may be added that the views of the learned Attorney General of India were also obtained, and he had further advised that the matter needed to be considered in the light of the provision contained in Article 149 of the Constitution of India. The salient features of Article 149 are that:

- (a) The powers and duties of CAG are in relation to the accounts of the Union, the States and other bodies covered by it.
- (b) The powers and duties are such as may be prescribed by law. Parliament had prescribed the powers and the duties of the CAG in the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. Under Section 13, CAG is required to audit all expenditure from the Consolidated Fund of India and of each State and to ascertain whether the monies as shown in the accounts as having been disbursed were legally available for and applicable to the purpose to which they have been applied and whether the expenditure conforms to the authority which governs it. The CAG is also called upon to audit all transactions of the Union and of the States relating to Contingency Fund and Public Accounts.

The provisions of the CAG Act, therefore contemplate that decisions taken by an independent statutory Authority like TRAI functioning as a regulator cannot be subject to an audit by the CAG. Moreover, under Section 14 of the CAG Act, the CAG's powers to audit is subject to provisions of any law for the time being in force applicable to the Body or Authority. Section 23 of the Act, constitutes a complete self-contained code as to the role of CAG in relation to TRAI. The Explanation expressly limits the general powers of audit available under the CAG Act in respect of the decisions of TRAI in discharge of its regulatory and tariff setting functions under clause (b) of sub-section (1) and sub-section (2) respectively of section 11 and section 13 of the Act. Therefore the Explanation clarifies and enunciates and correct legal position and is not violative of Article 149 of the Constitution or the provisions of the CAG Act.

In this connection it may however be added that a Public Interest Litigation (in which the C&AG had also been made a respondent) had been filed in February 2000, in the Delhi High Court, in which the petitioner had *inter-alia* prayed for striking down the above mentioned amendment to Section 23 of the TRAI Act. This PIL has not yet come up for final hearing.

With regard to the Standing Committee's observations regarding accountability to Parliament, it is submitted that the Annual Report of TRAI, giving a summary of its activities including the measures taken to fix tariffs and if already fixed the reaction of service providers thereto, during the previous year, is required to be laid every year before each House of Parliament under section 24 (3) of the TRAI Act.

Comments of the Committee

Please see Paragraph No. 16 of Chapter-I

CHAPTER V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES ARE INTERIM IN NATURE

~~-NIL-~~

NEW DELHI;
3 July, 2003
12 Asadha, 1925 (Saka)

SOMNATH CHATTERJEE,
Chairman,
Standing Committee on
Information Technology.

ANNEXURE I

MINUTES OF THE TWENTIETH SITTING OF THE STANDING
COMMITTEE ON INFORMATION TECHNOLOGY (2003)

The Committee sat on Wednesday, 2 July, 2003 from 1500 hours to 1700 hours in Committee Room 'B,' Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

Lok Sabha

2. Shri Pawan Kumar Bansal
3. Shri Balrama Krishna Murthy
4. Shri Bhartruhari Mahtab
5. Shri Sheeshram Singh Ravi
6. Shri Saroj Tufani
7. Shri K.A. Sangtam
8. Shri Nikhil Kumar Chaudhary
9. Shri Vanlalawma
10. Shri Rajesh Singh
11. Smt. Kanti Singh
12. Shri Amir Alam Khan
13. Shri Arun Kumar
14. Dr. Bikram Sarkar

Rajya Sabha

15. Dr. Prabha Thakur
16. Shri S.S. Ahluwalia
17. Smt. Sarla Maheshwari
18. Shri K. Rama Mohana Rao
19. Shri Rajeev Shukla
20. Shri Sanjay Nirupam
21. Shri Kartar Singh Duggal

1. Shri P.D.T. Achary	—	<i>Additional Secretary</i>
1. Shri S.K. Sharma	—	<i>Joint Secretary</i>
3. Shri S.K. Sharma	—	<i>Deputy Secretary</i>
4. Shri B.D. Swan	—	<i>Under Secretary</i>

(i) ***

3. *** *** *** ***

5. The Committee then authorized the Chairman to finalized the above mentioned Reports in the light of the factual verification received from the Ministry and present the same to the Hon'ble Speaker.

6. *** *** *** ***

7. ***

8. *** *** *** ***

9. *** *** *** ***

The Committee, then, adjourned.

ANNEXURE-II

(Vide para 5 of introduction of the Report)

ANALYSIS OF ACTION TAKEN BY GOVERNMENT ON THE
THIRTEENTH REPORT (THIRTEENTH LOK SABHA) OF THE
STANDING COMMITTEE ON INFORMATION TECHNOLOGY

- (i) Recommendations/Observations which have been
accepted by the Government:—
Paragraph Nos.: 94, 96, 98, 101, 102 and 104

Total: 6

Percentage: 33.3

- (ii) Recommendations/Observations which the
Committee does not desire to pursue in
view of the replies of the Government:
Paragraph Nos.: 91, 92, 93, 95, 97, 99 and 103

Total: 7

Percentage: 38.8

- (iii) Recommendations/Observations in respect of
which replies of the Government have not
been accepted by the Committee and which
require reiteration:
Paragraph Nos.: 87, 88, 89, 90 and 100

Total: 5

Percentage: 27.7

- (iv) Recommendations/Observations in respect of
which replies are interim in nature:
Paragraph No.: Nil

Total: Nil

Percentage: Nil