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# **2G SPECTRUM SCAM**

## **MOCIT's CLAIMS VERSUS FACTS**

**New Delhi, 21 January, 2011**

# Today's Presentation

1. Why are the facts important and why this Meeting
2. The MoCIT/Planning Commission “zero loss” theory
3. Challenges step-by-step their contentions on :
  - i. Zero loss
  - ii. CAG's calculations outrageously erroneous / flawed
  - iii. TRAI said no auctions, therefore Raja followed recommendations
  - iv. Public interest is more important than Exchequer revenue, and therefore, no auctions
  - v. Tenth Five Year Plan supports the theory of no auction
  - vi. Telecom is comparable to Highways, fertilizers and coal subsidy
  - vii. Had Supreme Court taken on board the CAG Report
  - viii. Implications of MOCIT's “No Loss” Statements
4. Summary / Conclusions

**All evaluation based on evidence**

# Why are the facts important and why this Meeting

1. Too many scams go unpunished.
2. The main reason is that these are sophisticated Economic Crimes. The investigating agencies and prosecutors are most of the time over matched in investigating these crimes. Overmatched by the system and the perpetrators.
3. The media also, in most cases, overwhelmed by spin and complex techno-economic issues. “Policy” used to obfuscate matters.
4. The people of India don't relate to these scams – because they are not aware that they are paying for it.
5. Moneys lost or skimmed or swindled are tax payer money or assets and the victims of each of these scams is the people.
6. Politicians tend to make all things political, because it suits them – and the people then tune out!

# Sibal's View on First Come, First Served Policy

**Sibal, as a lawyer in the “Home Communications Limited versus Union of India” case, in the Delhi High Court, has argued:**

*“FCFS methodology, as envisaged will result in black marketing of time slots by unscrupulous licensees, which could be at the costs of the public revenue as well as sufferings of the viewers. Policy promotes trafficking in licensees...”*

**Sibal, as the MoCIT in 2011:**

*“Policies aimed at maximizing growth and competition, rather than revenue and minimizing tariffs.”*

**Change of Mind?**

# Basic Premise of MoCIT's Presentation

1. MoCIT says TRAI is a statutory body and Government has followed its recommendations.
2. TRAI did not recommend auction since 2003, and therefore, the auction route was not followed. How could the Government disagree with TRAI?
3. CAG's loss calculation is utterly erroneous. Actual loss is zero
4. Revenue maximization is not Government policy. Government acted in public interest. Lower prices and teledensity is more important than Exchequer revenue, and therefore, no auctions.
5. Policy documents – NTP'99 and 10<sup>th</sup> Five Year Plan oppose the notion of revenue maximization, and therefore, justify no auctions.
6. Sectors such as highways (free land), coal and fertilizer get subsidy. So why should telecom be any different?

# What this Presentation Evaluates

1. Is the loss zero, or is CAG correct in its evaluations?
2. Has CAG Performance Audit process demonstrated rigor or is it based on assumptions?
3. Is the Government bound by TRAI recommendations? Did TRAI oppose auctions?  
Did the government follow TRAI recommendations as it claims?
4. Is public interest better served if Exchequer loses money by allocating scarce resources at historical prices? Or does auction serve overall public interest and public policy objectives better?
5. Does the Tenth Five Year Plan support MoCIT's contention?
6. Are Highways, Coal and fertilizers relevant examples? Or an attempt to confuse?
7. Has the Supreme Court taken on board the CAG Report including the issue of losses?
8. What are the implications of MoCIT's 'No Loss' statement?
9. Summary

# 1. Is the loss zero, or is CAG correct in its evaluations?

Loss According to CAG based on 3G Auction Prices :

New Licenses (122)	Rs. 1,02,498 crores
Dual technology (35 licenses)	Rs.37,154 crores
Spectrum beyond contracted quantity of 6.2 MHz	Rs.36,993 crores
<b>Total loss</b>	<b>Rs.1,76,645 crores</b>

**However, MoCIT claims that this loss is zero**

# 1 - MoCIT's Questionable Arithmetic

MoCIT says :

- I. Government has not made up its mind on the charge for spectrum beyond 6.2 MHz, therefore, loss of Rs.36,993 crores needs to be excluded.
- II. The remaining loss of Rs.1,39,652 crores is only Rs.99,000 crores since government has only given 4.4 MHz spectrum, while CAG has wrongly calculated loss based on 6.2 MHz.
- III. Since the 3G auctions were held in 2010, but 2G licenses were given in 2008, the “time value” of loss of spectrum is not Rs.99,000 crores, but Rs.56,000 crores. (46% discount – without calculation).
- IV. Since spectrum was given late and not in 2008, license term is 19, not 20 years, loss is down to Rs.53,000 crores.
- V. Since 3G spectrum is three times more efficient than 2G, the loss is further down to Rs.17,755 crores.
- VI. Since 4.4 MHz is free with UASL license anyway, the actual loss is zero.

**Consequently, loss is zero, and not Rs.1.76 crores**

# 1 - Response to MoCIT's Questionable Arithmetic

- I. Government has not made up its mind on the rate for spectrum beyond 6.2 MHz, therefore, loss of Rs.36,993 crores needs to be excluded.

1. TRAI recommendations, 11 May, 2010, Section 3.99, states :

*“Accordingly, the Authority recommends that all the service providers having spectrum beyond the contracted quantum should pay excess spectrum charges at the “Current Price”, pro-rated for the period of the remaining validity of their license subject to a minimum of seven years.”*

*(Page 6)*

Loss calculated on that basis alone.

2. “Current Price” defined in Section 3.82 and Table 3.4 of TRAI Recommendations dated 11 May, 2010 as 3G auction price. *(Pages 3, 5)*
3. Is CAG wrong in calculating recoverable Government revenue from the last 8 years as loss to the Government at the current time?
4. Till the Government recovers revenue, any auditor will consider this as a loss
5. Let the Government recover the revenue and then this figure can be reduced from the losses.

**MoCIT's arithmetic is wrong. Contradicts TRAI**

# 1 - Response to MoCIT's Questionable Arithmetic

- II. The remaining loss of Rs.1,39,652 crores is only Rs.99,000 crores since government has only given 4.4 MHz spectrum, while CAG has calculated 6.2 MHz.
- a) This is a blatant misrepresentation and a classical move to confuse those who are unfamiliar with the details of TRAI Recommendations and licensing regime.
  - b) **TRAI Recommendations of 11 May, 2010 (Section 2.47) concludes : “Authority is clearly of the view that contracted spectrum for all access licenses issued in or after 2001 is 6.2 MHz.” CAG’s calculation is based on this.**  
**(Page 18)**
  - c) TRAI bases its recommendations on :
    - DoT action since 2000
    - DoT Tender Document – 4<sup>th</sup> Cellular Mobile – 2001
    - UASL License agreements (legal contract) – 2003-04
    - UASL Guidelines dated 14.12.2005, Section 37
    - DoT affidavit in TDSAT dated 18.08.2008
    - DoT affidavit in Delhi High Court dated 14.01.2008 **(Pages 11-17)**
  - d) The license entitlement is for 6.2MHz. That 4.4 MHz has been given initially, does not mean that the entitlement is limited to 4.4 MHz. In most cases, it is given in phases – 4.4 MHz, then 1.8 MHz and so on.

**MoCIT’s arithmetic is wrong. Contradicts TRAI, license, guidelines,  
DoT affidavits**

# 1 - Response to MoCIT's Questionable Arithmetic

- III. Since the 3G auctions were held in 2010, but 2G spectrum was given in 2008, the time value of loss of spectrum is not Rs.99,000 crores, but Rs.56,000 crores.
- a) TRAI Recommendations dated 11 May, 2010 had concluded that the 3G price has determined in May 2010 (middle of 3G auctions) that the 3G price discovered in 2010 should be the “current price” to be charged for 2G spectrum beyond 6.2 MHz in 1800 band and 1.5 times 3G price in 900 MHz band. MoCIT has contradicted these recommendations. *(Pages 5, 8)*
  - b) This recommendation applies to spectrum beyond 6.2 MHz given since 2003, not just 2008. CAG has calculated loss based on TRAI's recommendation – no assumption here. *(Page 3)*
  - c) Curiously, MoCIT is willing to discount Government revenue by 46% between 2010 and 2008, but doesn't see the loss from spectrum given in 2008 at 2001 prices.
  - a) Clearly, MoCIT thinks time value of money works between 2008 and 2010, but fails between 2001 and 2008. Again, cherry-picking .

**MoCIT's arithmetic is wrong. Contradicts TRAI , basic economics**

# 1 - Loss based on MoCIT's Logic of Time Value of Money

1. According to MoCIT, a 140% increase in subscriber base from 249 million in January 2008 to 601 million in June 2010 translates into a 76% increase in time value of spectrum. (from Rs.99,000 crores to Rs.139,652 crores).
2. Spectrum value (76%) increases at approx. half the increase in subscriber value (140%).
3. By this calculation, the subscriber base in 2001 increased from 4 million to 249 million or an increase of 62 times. By MoCIT's logic, the spectrum value should increase by half or 31 times, i.e.,  $\text{Rs.1,658 crores} \times 31 = \text{Rs.52,235 crores}$ .
4. This would be approx. 2½ times 3G price. By this calculation, the total loss would be Rs.4.4 lakh crores
5. MoCIT might wish to reconsider the rationale of his arithmetic, apart from the fact that he is contradicting TRAI.

# 1 - Response to MoCIT's Questionable Arithmetic

IV. Since spectrum was given late and not in 2008, license term is 19, not 20 years, loss is down to Rs.53,000 crores

- (a) **UASL guidelines, Section 37, clearly states spectrum allocation “subject to availability”. (Page 21)**
- (b) Operators knew exactly what they were getting into. No demand from operators for extending license period.
- (c) Why is MoCIT discounting Exchequer losses in favour of private interest, when the private companies have not sought any relief?
- (d) Why did Raja give licenses in 2008 when he didn't have spectrum till 2009? What was the hurry to rush? Why did he not listen to TRAI? CAG has said “undue haste” – is that wrong?
- (e) Can DoT take advantage of its own wrong (delay) to mitigate its crime (loss)?
- (f) MoCIT exposes DoT to litigation / claims for extension of license by operators, in an attempt to defend Raja.

**MoCIT's arithmetic is wrong. Appropriate protection under UASL guidelines being ignored in favor of private companies**

# 1 - Response to MoCIT's Questionable Arithmetic

V. Since 3G spectrum is three times more efficient than 2G, the loss is further down to Rs.17,755 crores

(a) TRAI Recommendations of 11 May, 2010 – Section 3.82 had clearly stated that :

*“Spectral efficiency of 3G and 2G are comparable”,*

and therefore, concluded that 3G price should be the “current price” for 2G spectrum in 2010. **(Pages 4-5)**

(b) Gross misrepresentation vis-à-vis TRAI Recommendations.

(c) CAG cannot assume technical conclusions. It has based its calculations on TRAI recommendations.

(d) MoCIT is cherry-picking - cites TRAI recommendations to defend no auction, but rejects TRAI technical calculations of 3G and 2G being equated.

(e) Reportedly, TRAI is under pressure to take a U-turn to support MoCIT's position.

**MoCIT's arithmetic is wrong. Contradicts TRAI (may take a U-turn!)**

# 1 - Response to MoCIT's Questionable Arithmetic

- VI. Since 4.4 MHz is free with UASL license anyway, the actual loss is zero.
- (a) TRAI recommendations dated 13.01.2005, Section 9 states:  
*“In the existing policy, spectrum charges are two components : (i) **one time spectrum charge which is paid as a part of the one time entry fee by service providers** “.* **(Page 23-24)**
  - (b) TRAI recommendations of 11 May, 2010 on Unified License (**without spectrum**) prices UASL + NLD + ILD + Internet + IP-1 as a single license **only Rs.20 crores.** **(Page 26)**
  - (c) MoCIT wants us to believe that UASL license minus spectrum is Rs.1658 crores. Flies in the face of the above recommendations.
  - (d) Entry fee was discovered through an auction in 2001 where license came bundled with 6.2 MHz. Operators valued the 6.2 MHz, and not a piece of paper. Without spectrum, there is no mobility. Fixed line license is free in UASL.
  - (e) Bid for entry fee is a bid for bundled spectrum. Without spectrum, UASL is worthless.

**MoCIT's arithmetic is wrong. Contradicts TRAI, 2005 and 2010**

## **2. CAG has based its Report on DoT files, TRAI Recommendations and License Agreements; No Assumptions**

- a) MoCIT has justified all decisions citing TRAI's statutory status and recommendations of no auction.
- b) CAG's calculations have only taken TRAI recommendations, licensing regime, tender documents and DoT affidavits into consideration.
- c) CAG has depended (for calculations) on the exact same source (TRAI) as MoCIT (for not holding auctions).
- d) MoCIT's loss figure is contradicted at every stage by the TRAI (since 2005) in what he calls statutory recommendations and have been the basis of DoT's actions since 2003. CAG has made no assumptions.

**Again like his predecessors, MoCIT is cherry picking TRAI Recommendations**

## 2 - Has CAG Performance Audit process demonstrated rigor?

- (a) CAG's Performance Audit process includes the following :
  - CAG-DoT Entry Conference – 23 December, 2009
  - Performance audit tenure – Jan-September 2010
  - Period covered under audit – 2003-2010
  - Basis of Audit – Files of DoT, DoT files with CBI, TRAI's statutory recommendations, MoF files / comments, public documents on website of Ministry of Corporate Affairs, replies of DoT and MoF.
- (b) Did DoT have a chance to reply to audit observations? : Yes, in July 2010 and September 2010
- (c) Did MoF have a chance to respond to audit observations ? : Yes
- (d) Was extra time given to DoT? : Yes
- (e) Was meeting held to discuss draft audit report? – Yes, on 04 October, 2010
- (f) CAG leads Dy. CAG and Advisor Finance DoT – Exit Conference - 20 May, 2010

**CAG Report is not ex-parte; deals with every single reply of DoT / MoF – through multiple opportunities**

## **2 - Has CAG been unfair in calculating loss without taking into consideration increase in tax, revenue share?**

- a) Tax and revenue share would accrue regardless of auctions or First Come, First Served. Bidders also need to pay revenue share, spectrum charge etc. It is not one or the other.
- b) For revenue share and tax, there should be rollout and subscribers
- c) Recent 2G beneficiaries have not rolled out, so no increase in tax revenue or revenue share
- d) Market share of new entrants after two years less than 5%, so no impact on tax / revenue share, competition or prices.
- e) Incumbents and not new entrants serving unserved areas even today
- f) No public policy objective met – nor have taxes or revenue incomes increased on account of new entrants.

**CAG is entirely correct in basing loss on TRAI Recommendations. No perceptible increase in revenue or tax**

### 3. Are TRAI recommendations binding on the DoT?

An impression that TRAI recommendations are binding is entirely false. TRAI Act allows DoT to reject, modify or accept recommendations subject to procedure laid down under TRAI Act, Section 11, Fifth Proviso (Page 29)

*“Provided also that if the Central Government having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation if any, the Central Government shall take a final decision.”*

**DoT is fully empowered to reject or modify TRAI’s recommendations – and it routinely does. It has to follow the statutory process of re-reference before modification.**

### 3 - Did the TRAI oppose auctions since 2003 as the MoCIT claims?

- a) TRAI recommendations dated 27 October, 2003, Section 7.39

*“The induction of additional mobile service providers (became UASL in 2003) in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4<sup>th</sup> cellular operator “*

*(Page 31)*

- b) Mobile licensing regime was converted into UASL regime in November 2003.
- c) UASL is exactly similar to 4<sup>th</sup> mobile with fixed line thrown in free.

**MoCIT is wrong. TRAI did recommend auctions since 2003**

# 3 - Did the TRAI oppose auctions in August 2007 as the MoCIT claims?

- a) TRAI differentiated between spectrum auction and entry fee auction on 28 August, 2007 – basis of the current 2G scam, TRAI recommended in Section 2.73

*“The entry fee as it exists today is, in fact, a result of the price discovered through a markets based mechanism applicable for the grant of license to the 4<sup>th</sup> cellular operator. In today’s dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price for obtaining a license. Perhaps, it needs to be reassessed through a market mechanism.”*  
**(Page 33)**

- b) DoT quotes Section 2.78, 2.79 (no auction) **(Pages 36-37)**
- c) Why did the DoT not follow 2.73 regarding auction of entry fee?
- d) Why did it not seek clarification from TRAI in case of conflicting Sections, i.e., Section 2.73 versus Section 2.78 / 2.79?
- e) It has statutory powers to do so under Section 11 of the TRAI Act.
- f) TRAI wrote three letters on 15 October, 2007, 19 October, 2007 and 14 January, 2008 asking DoT to consult it before issuing Lols. Why were these letters ignored?

# **3 - MoCIT says TRAI Recommendations of 28 August, 2007 have been followed**

What do the recommendations cover?

1. Issue of Entry Fee
2. Issue of spectrum auction
3. Issue of Cap on the Number of Service Providers
4. Issue of M&A
5. Issue of Rollout Obligations
6. Others

This is a single interlinked set of recommendations in response to DoT Reference of April 2007.

# 3 - Did the government follow TRAI Recommendations as it claims?

1. TRAI's Recommendations of August 28, 2007 recommended :
  - a) Section 6.1 : No cap – violated (122 out of 575 applications, by advancing cutoff date to 25.09.2007 from 01.10.2007) as per Delhi High Court Judgment – July 2009  
*(Pages 39, 42, 44)*

**This ensured that genuine bidders were kept out. Market created.**

- b) Section 5.27 : No M&A till rollout obligations are met – violated by DoT. Acquisitions allowed, mergers linked to three years, and not rollout obligations. Allowed Unitech / Swan to sell within 8 months  
*(Pages 47, 48, 51, 53)*

**This ensured that buyers could only buy from private companies. Sale ensured.**

- c) Section 5.41, 5.2 : Rollout obligations unchanged, Linked to “effective date of license” – violated by DoT. Changed to “effective date of spectrum allocation”. Therefore, no rollout and eventually, Show Cause Notices.  
*(Pages 57/58 read with 55/56, 60)*

**This ensured that sale could be made at a windfall without any investment in infrastructure / rollout.**

**DoT has violated TRAI Act with impunity and violated recommendations / cherry picked at will. Has ignored TRAI letters**

# 3 - TRAI wrote three letters to DoT – Two before Lols, one after Lol

- a) TRAI cautioned DoT that its recommendations of 28 August, 2007 have to be read in its entirety. It warned against cherry-picking.
- b) DoT / TRAI is hiding these letters (RTI reply).
- c) TRAI warned DoT on 19 October, 2007 (three months before 122 Lols were given at 2001 prices) :

*“It would be unfair and misleading if any decision and consequent action is initiated without identifying and implementing the linkages elsewhere in the Recommendation.”* (Page 63)

- d) TRAI warned DoT on 14 January, 2008 (two months before licenses were given) :

*“It was reiterated that the Authority should be formally consulted if there is any deviation from the totality of the Recommendation.”* (Page 63)

- e) RTI applications filed with TRAI have yielded no response. Attempt to hide? (Page 68)

**Why were these letters ignored if MoCIT claims that TRAI Recommendations have been followed?**

# 4. Is public interest better served if Exchequer takes the loss by giving scarce resources at a loss?

## Public Interest more important than Exchequer revenue

- (a) Sacrificing auctions and causing loss to Exchequer does not mean consumer will not pay market price.
- (b) Public auctions (2001,3G) were replaced by private auctions (Unitech and Swan). Consumer still pays a price which includes the asset's market price.
- (c) By this logic, diesel, petrol, power, water should all be free. Taxes should be slashed.
- (d) Giving scarce national resources at historical prices when companies are willing to pay market price is a bizarre logic.

## 4 - If Consumer interest is more important than Exchequer revenue, petrol should cost Rs.35.18 and not Rs.59 per litre

<b>Basic Price</b>	<b>Rs 28.93</b>
<b>Dealer commission</b>	Rs 1.05
<b>Transportation Charge</b>	Rs 6.00
<b>Government Levies and Taxes</b>	
<b>Excise duty</b>	Rs 14.35
<b>Education Tax</b>	Rs 0.43
<b>VAT</b>	Rs 5.5
<b>Crude Oil Custom duty</b>	Rs 1.1
<b>Petrol Custom Duty</b>	Rs 1.54
<b>Total price</b>	<b>Rs 58.90</b>

**Clearly, MoCIT / Planning Commission's logic is not acceptable to the Cabinet**

# 4 - Is public interest better served if Exchequer takes the loss by giving scarce resources at a loss?...Contd

**Auctions for revenue versus auctions for transparency / selecting winners / meeting policy objectives**

- (a) Auctions goes beyond protecting Exchequer revenue
  - Only fair way to select winners when demand exceeds supply.  
Ex: 575 applications for 122 slots
- (b) Market price forces operators to roll out asap. 3G 2010 (rolled out) versus 2G 2008 (Show Cause for rollout violation).
- (c) Tariff based on 20-year license and subscriber acquisition, not merely recovery of auction price— Tata's pricing of 3G voice lower than 2G voice.
- (d) Auction design can help prevent high bids and price regulation can protect consumer interest – TRAI Act, Section 11(2).

**From every aspect, well-designed auctions score higher**

# 5. Does Tenth Five Year Plan support MoCIT / Planning Commission's argument?

(a) MoCIT cites Tenth Five Year Plan of the NDA, but fails to cite the Eleventh Five Year Plan (2007) of the UPA – wonder why?

(b) MoCIT states from the Tenth Five Year Plan:

*“Government’s broad policy of taxes and regulation for telecom sector has to be a promotional one. Mopping up of resources or revenue generation by Government should not be a determinant of the ;policy governing the sector.”*

(c) What the Tenth Plan, Section 8.5.38 actually states :

*“Government’s broad policy of taxes and regulation for telecom sector has to be a promotional one. Mopping up of resources or revenue generation by Government should not be a determinant of the ;policy governing the sector. **The incidence of license fees in the form revenue share and spectrum charges has to be guided by this principle. Keeping in line with the policy adopted by most of the progressive administrations in the world, the license fee need to be aligned to the cost of regulation and administration of Universal Service Obligations (USO).**”*  
**(Page 70)**

**MoCIT is quoting the Tenth Five Year Plan selectively. The Tenth Plan is about lowering revenue share/spectrum charge, and not about auction of entry fee. 30**

# 5 - Does Tenth Five Year Plan support MoCIT / Planning Commission's argument?...Contd.

**MoCIT states from the Tenth Five Year Plan:**

*“Spectrum policy needs to be promotional in nature : with revenue considerations playing a secondary role.”*

**What the Tenth Plan, Box 8.5.7, Guiding Principles – Spectrum Policy, actually states :**

*“Spectrum policy needs to be promotional in nature : with revenue considerations playing a secondary role.*

*“Pricing and allocation should ensure that available spectrum is utilized optimally.”*

*“Spectrum pricing needs to be based on relative demand and supply over space and time in a dynamic manner. Opportunity cost to reflect the relative scarcity of the resource in a given situation.”*

**(Page 72)**

**MoCIT is quoting the Tenth Five Year Plan selectively. Tenth Five Year Plan is about dynamic pricing of spectrum based on demand / supply and stresses on efficient utilization (Prime Minister's letter of 02 November, 2007). Plan has no opposition to auction of entry fee**

# 5 - Tenth Five Year Plan - Comparing Demand Supply Equation 2001 vs 2008

	2001	2008
Subscriber Base	4 million	249 million
No. of applications	10-12 (at any one time)	575 (with 01 October cutoff)
No. of Licenses Available (based on spectrum)	210 (51 – 2003-07 + 157 – 2008 onwards)	157 (122 + 35 Dual Tech)
Demand for spectrum from existing operators	None	150 existing operators in queue
Relative Scarcity	Minimal	Acute

**Going by Tenth Five Year Plan, demand supply recommendation or transparent need to select 122 out of 575 applicants – auctions was the only way forward**

## 6. Are Highways, Coal and fertilizer relevant?

**MoCIT in his Press Release quotes free land given for Highways, subsidized coal prices and fertilizers:**

- (a) It is preposterous to compare highway with telecom. Highway has no takers while spectrum had 575 applicants waiting to bid in queue.
- (b) Highway involves negative subsidy while telecom has generated Rs.70,000 crores as revenue in taxes and revenue share Rs.1,00,000 on sale of 3G and BWA.
- (c) Coal and fertilizer subsidy is the equivalent of rural fixed line tariffs (70 paise) – served by the USO regime. India had lower fixed line tariffs for 60 years in rural India, just as coal and fertilizer.
- (d) USO is the mechanism for subsidizing telephony, not largess to corporates by way of spectrum in 2008 at 2001 prices.
- (e) Attempt to confuse Consumer targeted subsidy with largess to private companies ignoring the fact that consumer will bear the brunt of assets' market price.
- (f) Unitech and Swan replace public auction with private auction. Consumer will bear market price of asset

**These comparisons are an insult to the intelligence of the people of India**

# 7. Has the Supreme Court taken on board the CAG Report including the issue of losses?

- a) PIL in Supreme Court filed before CAG Report was released
- b) CAG Report released in November, 2010
- c) DoT affidavit in SC presented same arguments as MoCIT (on CAG calculation and TRAI Recommendations), in its affidavit – 11 November, 2010. Opposes SC supervision of CBI **(Page 73-83)**
- d) A. Raja's affidavit in SC also argues the same points as MoCIT (on CAG calculation and TRAI Recommendations). **(Pages 84-89)**
- e) Supreme Court Judgment of 16 December, 2010:
  - Decides to supervise CBI
  - **Expands scope to include CAG and period from 2001- 2007**
  - **Specifically issues raised in CAG Report including “losses running into thousands of crores to the Exchequer”.****(Pages 91, 92)**

**Supreme Court has considered MoCIT's defence of Mr. Raja's actions. Remains unimpressed – expanded investigation to CAG**

# 8. Implications of MoCIT's 'No Loss' statement

1. Pressure TRAI to take a U-turn on its 3G / 2G spectrum parity recommendations of 11 May 2010. (Section 3.82 /Table 3.4)
2. Makes it impossible for Government to recover lost revenues
3. Opens DoT to litigation and claims if license is 19 years, and not 20
4. Insult to Supreme Court Judgment bordering on contempt
5. Misused position as Union Minister to influence / prejudice the CBI Investigation which has specifically filed a FIR quoting “wrongful loss” and a figure of “more than Rs.22,000 crores.”  
*(Pages 97, 98)*
6. Attempt to whitewash scams and giving safe passage to the beneficiaries
7. Undermined PAC and breach of Parliamentary privilege
8. Publicly humiliated, compromised and undermined institution of CAG

**If there is no crime (loss), then there are no criminals (DoT officials / private companies)**

# 9. Summary

- a) Corruption isn't a moral issue. Its an economic and governance issue.
- b) The scams and swindles are no longer simple. They involve sophisticated capture of Public Policy, Regulatory policy and Contracts.
- c) To stop this trend, media needs to build capacity and get behind this. This needs to be understood by the people as crimes against the taxpayer and citizens.
- d) Only then will the institutions of democracy like Parliament really get pressured into addressing this.
- e) No scams ever seem to be properly investigated and concluded.
- f) Our desire must be to simply ensure that proper investigation into these scams isn't prevented by smooth talking ministers and their meekly complying bureaucrats and statutory bodies that are also meekly politically pliable.
- g) The tendency of smooth talking ministers and politicians to talk and spin their way out of this can only be challenged by media.
- h) We owe it to the people of India to ensure that these scams are not brushed under the carpet.

*In the interest of a transparent discussion, this Presentation is being sent to the Hon'ble Prime Minister, MoCIT, Chairman – PAC, Leader of the Opposition in Lok Sabha, Leader of the Opposition in Rajya Sabha, Vice Chairman - Planning Commission and Petitioners of the PIL in Hon'ble Supreme Court.*