

**GOVERNMENT OF INDIA
COMMUNICATIONS AND INFORMATION TECHNOLOGY
LOK SABHA**

STARRED QUESTION NO:185
ANSWERED ON:18.12.2013
VIOLATION OF LICENSING NORMS
Das Shri Khagen;Paswan Shri Kamlesh

Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

- (a) whether some of the mobile service providers have reportedly violated the licensing norms in providing 3G services;
- (b) if so, the details of such violations reported along with the action taken against the erring service providers during each of the last three years and the current year, company-wise;
- (c) whether the service providers have complied with the directions issued by the Government against such violations;
- (d) if so, the details thereof and if not, the reasons therefor; and
- (e) the details of the steps taken by the Government to ensure compliance of licensing norms by the mobile service providers?

Answer

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY & LAW AND JUSTICE (SHRI KAPIL SIBAL)

(a) to (e) A Statement is laid on the Table of the House.

STATEMENT TO BE LAID ON THE TABLE OF THE LOK SABHA IN RESPECT OF PARTS (a) TO (e) OF LOK SABHA STARRED QUESTION NO. 185 FOR 18TH DECEMBER, 2013 REGARDING "VIOLATION OF LICENSING NORMS"

(a) to (e) Violations related to provisioning of 3G services by some of the CMTS/UAS Licensee(s) without specific authorization came to the notice of Government. The licence(s) of these CMTS/UAS Licensee(s) have neither been amended for use of 3G spectrum nor 3G spectrum have been allocated to them. On examination, it came to notice that such licensee(s) are providing 3G services to their customers by entering into a commercial agreement called Intra Service Area Roaming Agreement with such CMTS/UAS Licensee(s) whose licences have been amended for use of 3G spectrum and 3G spectrum has also been allocated to them in that service area(s).

Instructions were issued on 23rd December, 2011 to licensee companies as detailed in Annexure who were providing 3G services under the above mentioned so called Intra Service Area Roaming arrangements without any specific authorization / amendment in their license(s) for use of 3G spectrum and without any allocation of 3G spectrum for rollout of the 3G network, in those particular service areas, for immediate stoppage of provisioning of 3G services.

These companies impugned the instructions issued vide above referred letter dated 23rd December, 2011 before Hon'ble Telecom Disputes Settlement & Appellate Tribunal (TDSAT). TDSAT in its interim orders dated 24th December, 2011 inter-alia directed that Department of Telecommunications (DoT) is restrained from taking any coercive steps against these companies to enforce the impugned order dated 23rd December, 2011. The judgment pronounced on 3rd July, 2012 in the matter by Hon'ble TDSAT was split in the ratio of 1:1. As per judgment, Chairman TDSAT had inter-alia concluded that the impugned orders dated 23rd December, 2011 are set aside with liberty to the Department of Telecommunications (DoT) to pass appropriate orders upon giving due opportunity of hearing to these companies. However, Member TDSAT in his judgment had inter-alia concluded that the companies who have not got 3G spectrum allotted by the licensor in certain circles, cannot provide 3G services to its customers in those circles by way of making intra circle arrangement with the service providers having 3G spectrum.

As these companies had not submitted the compliance of DoT instructions dated 23rd December, 2011 even after the pronouncement of split judgment by Hon'ble TDSAT, Show Cause Notice (SCN) to M/s Bharti Airtel Limited was issued on 28th September 2012 to show cause within 60 days as to why financial penalty be not imposed for violation of the license conditions and Licences of 7 Licensed Service Areas (LSAs) be not terminated where the company was providing 3G services without any specific authorization. Simultaneously, in the same notice, the company was asked again to stop provisioning of 3G services in these 7 LSAs within 3 days from the date of issue of notice.

The company challenged the above said SCN dated 28th September 2012 before Hon'ble High Court of Delhi. While disposing of the petition, Hon'ble High Court inter-alia ordered that the company would file a reply to the impugned show cause notice dated 28th September 2012. On receipt of the reply, the concerned authority will adjudicate upon the issues raised before it, after according the company, through its representative, a hearing in the matter. Pending the adjudication, the DoT will not take any coercive measures against the company.

Keeping in view, the above mentioned order of Hon'ble High Court in the matter, similar SCNs to M/s Vodafone, M/s Idea, M/s Aircel Ltd./M/s Dishnet Wireless Ltd.& M/s Tata Teleservices Ltd. who were also reportedly in violation of similar license conditions were issued on 21st December, 2011.

Consequent to personal hearing granted to M/s Bharti Airtel Limited, a demand notice imposing a penalty of Rs.350 crores was issued on 15th March, 2013 and M/s Bharti Airtel Ltd. challenged the aforesaid notice in the High Court. Single bench of Delhi High Court granted a stay on 18th March, 2013 as an interim measure. The said stay was vacated by the double bench of High Court of Delhi vide its order dated 4th April, 2013 in Letter Patent Appeal (LPA) No.189 of 2013 filed by M/s Reliance Communications Limited. M/s Bharti Airtel Ltd. approached Hon'ble Supreme Court against the interim order of the double bench and Hon'ble Supreme Court passed an order on 11th April, 2013 on the appeal filed by M/s Bharti Airtel Limited that no coercive steps be taken by the Department against the company which shall also not extend the facilities to any new customer on the basis of the Intra Circle Roaming (ICR) Agreements.

Further, demand notices to the tune of Rs. 550 crores to M/s Vodafone and Rs.300 crores to M/s Idea imposing the penalty for the violation of licence condition on this account were issued on 5th April, 2013. Both the companies challenged the demand notices in Delhi High Court which stayed the demand notices on 8th April, 2013. On 12th April, 2013, the Delhi High Court passed the similar order as passed by the Hon'ble Supreme Court on 11th April, 2013 in the matter of M/s Bharti Airtel Ltd.

The Supreme Court of India vide its order dated 23.09.2013 in Civil Appeal No.8468/2013 arising out of SLP (C) No.14568 of 2013 M/s.Bharti Airtel Ltd. Vs. UoI has transferred this matter to TDSAT and the Delhi High Court vide its order dated 04.09.2013 in WP(C) No.2221/2013- Vodafone Mobile Services Ltd. Vs. UoI and order dated 05.08.2013 in WP(C) No.2222/2013 -Idea Cellular Ltd. Vs. UoI has also transferred the matter to TDSAT.

Further, in reply to SCN, M/s.Tata Telservices Ltd. had informed of terminating the 3G ICR agreement in July, 2012 with its partner M/s. Aircel Ltd.. Similarly, M/s. Aircel Ltd./M/s Dishnet Ltd. had intimated that it had not commercially launched 3G services and have also withdrawn its technical configuration pilot testing in 5 licensed service areas during May-July, 2012 itself. The matter is sub-judice at present.