
THIRTEENTH REPORT
STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(1999-2000)

(THIRTEENTH LOK SABHA)

MINISTRY OF COMMUNICATIONS
(DEPARTMENT OF TELECOMMUNICATIONS)

FUNCTIONING OF TELECOM REGULATORY
AUTHORITY OF INDIA (TRAI)

Presented to Lok Sabha on.....

Laid in Rajya Sabha on.....



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

November 2000/कॉपी-1022 (6-4)

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**COMPOSITION OF THE STANDING COMMITTEE
ON INFORMATION TECHNOLOGY
(1999-2000)**

Shri Somnath Chatterjee — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ambareesha
3. Shri Mahendra Baitha
4. Shri Pawan Kumar Bansal
5. Prof. Dukha Bhagat
6. Shri Tara Chand Bhagora
7. Shri Nikhil Kumar Chaudhary
8. Shri Adhir Ranjan Chowdhary
9. Shri T. Govindan
10. Adv. Uttamrao Dhikale
11. Shri Jawahar Lal Jaiswal
12. Shri K. K. Kaliappan
13. Dr. C. Krishnan
14. Shri Bhartruhari Mahtab
15. Shri Simranjit Singh Mann
16. Shri G. Ram Mohan
17. Shri A. K. Moorthy
18. Shri Karia Munda
19. Shri K. Balrama Krishna Murthy
20. Shri Sheeshram Singh Ravi
21. Shri K. A. Sangtam
22. Shri Saroj Tufani
23. Sardar Buta Singh
24. Shri Chandra Vijay Singh
25. Rajkumari Ratna Singh

(iv)

26. Shri Vinay Kumar Sorake
27. Shrimati D.M. Vijaya Kumari
28. Shri Vinay Katiyar
29. Shri A. Krishnaswamy
30. Shri G. Ganga Reddy

Rajya Sabha

31. Dr. M. N. Das
32. Shri Balkavi Bairagi
33. Shri Shatrughan Sinha
34. Shri Narendra Mohan
35. Shri Balbir K. Punj
36. Dr. Y. Radhakrishna Murthy
37. Shri Munavvar Hasan
38. Shri P. N. Siva
39. Shri Kartar Singh Duggal
40. Miss Lata Mangeshkar
41. Shri R. N. Arya
42. Shri K. Rama Mohana Rao
43. Shrimati Kum Kum Rai
44. Dr. Dasari Narayana Rao
45. Shri Rajiv Shukla

SECRETARIAT

1. Dr. A. K. Pandey — *Additional Secretary*
2. Shri P. D. T. Achary — *Joint Secretary*
3. Shri S. K. Sharma — *Deputy Secretary*
4. Shri A. S. Chera — *Under Secretary*

INTRODUCTION

1. I, the Chairman, Standing Committee of Information Technology (1999-2000) having been authorised by the Committee to submit the Report on its behalf, present this Thirteenth Report (Thirteenth Lok Sabha) on 'Functioning of Telecom Regulatory Authority of India (TRAI)' pertaining to the Ministry of Communications (Department of Telecommunications).

2. The Committee took oral evidence of the representatives of the Department of Telecommunications (DoT) at its sittings held on 11 February, 17 May and 31 July, 2000. The Committee also took evidence of the representatives of Telecom Regulatory Authority of India (TRAI) at its sitting held on 16 May, 2000.

3. The Committee wishes to express its thanks to the representatives of the Department of Telecommunications (DoT) and Telecom Regulatory Authority of India (TRAI) for appearing and placing before the Committee the detailed information that the Committee desired in connection with the examination of the subject. The Committee is also thankful to all the non-official witnesses *i.e.* Shri D.K. Sangal, former Secretary and Director General, Department of Telecommunications (DoT) for appearing before the Committee on 11 February, 2000, Shri Shanti Narain, President, Telecom Watchdog, Shri Anil Kumar, Secretary, Telecom Watchdog, Shri T.S. Subramaniam, Member (Retd.) Telecom Board for appearing before the Committee on 2 March, 2000 as well as Shri R.K. Takkar, former Secretary, Department of Telecommunications (DoT) for appearing before the Committee on 9 May, 2000 and placing before it valuable information desired in connection with examination of the subject.

4. The Report was considered and adopted by the Committee at its sitting held on 5 September, 2000.

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

NEW DELHI;
November, 2000
Kartika, 1922 (Saka)

SOMNATH CHATTERJEE,
Chairman,
Standing Committee on
Information Technology.

REPORT

I. Introductory

1. The Telecom Regulatory Authority of India (TRAI) was established on 20 February, 1997 through the Telecom Regulatory Authority of India (TRAI) Ordinance, 1997 which was later replaced by an Act of Parliament on 28 March 1997. The functions of the Authority covered a wide spectrum of areas, which can be categorised as recommendatory, regulatory, advisory and dispute settlement. In a nutshell the TRAI Act, 1997 empowered TRAI to settle disputes, frame regulations, levy fees, fix tariffs, call for information, institute enquiries and sanction prosecution for disobedience of its directives.

2. However, during its existence of three years an impression was created that perhaps TRAI felt that it had powers which the Act of 1997 had not conferred on it and as a result, it was involved in a series of controversies, problems and legal dispute besides creating somewhat uneasy working relationship with the Department of Telecommunications (DoT).

3. In an attempt to resolve the subsisting problems in the Telecom Sector, the Government on 13 December 1999 constituted a "Group on Telecom and IT Convergence" under the Chairmanship of the Finance Minister with several terms of reference. One of the terms of reference of this Group was to consider and make recommendations to strengthen the TRAI through suitable legislative amendments and in this regard Government accepted the Report of the Group on Telecom and IT convergence which envisaged certain structural changes in the TRAI Act 1997.

4. However, without bringing a Bill for amending the Act, on the plea of urgency an Ordinance, namely, the Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 (No. 2 of 2000) was promulgated on 24 January, 2000 to make changes in the 1997 Act. The Ordinance subsequently became an Act on 25 March, 2000.

5. It was against this background that the Committee took up the subject for examination and in course of the evidence given by the Department officials and its deliberations, the Committee has tried to

ascertain objectively the reason for the promulgation of the Ordinance necessity of the changes that have been brought about by the new Act, the objective behind the separation of the adjudicatory functions, the regulatory *vis-a-vis* the recommendatory functions of TRAI, and also the rationale and justification of keeping certain matters including accounts of TRAI, out of the purview of audit scrutiny and other related matters.

II. Urgency in the promulgation of the Ordinance

6. As noted earlier, TRAI (Amendment) Ordinance 2000 was promulgated by the President of India on 24 January 2000. Under Article 123 of the Constitution of India, an Ordinance may be promulgated by the President when circumstances exist which render it necessary for the President to take immediate action. Of course, the President acts on the advice of the Council of Ministers. An Ordinance under the Constitution can be issued where some immediate action is needed to be taken by the Government.

7. In view of the above provision of the Constitution, the Committee desired to know the urgency as well as the necessity for which the Ordinance was promulgated on 24 January 2000, when the Parliament was to meet within three/four weeks later. Further, the Committee wanted to know what was the action, which was immediately to be taken, and was in fact taken after the promulgation of the Ordinance. For the implementation of the Ordinance it was essential that TRAI to be reconstituted immediately and also desirable that the Tribunal be duly constituted expeditiously. Though the Tribunal had been established and appointment orders issued for Chairperson, the Members were yet to be appointed, when the matter was taken up by the Committee for consideration in July, 2000. When requested to justify the promulgation of the Ordinance, when some of the provisions thereof could not be implemented for months together (and even before the enactment of legislation replacing the Ordinance) the answer that was given by the Secretary, DoT was that while reconstituted TRAI was fully functional (w.e.f. 30 April, 2000), there was some delay due to procedural difficulties in making TDSAT operational.

8. Under Rule 331E of the Rules of Business and Conduct in Lok Sabha (and there are similar provisions in the Rules of Rajya Sabha) the functions of each of the Standing Committees shall be, *inter alia*, to examine such Bills pertaining to the concerned Ministries/ Departments as are referred to the Committee by Chairman, Rajya Sabha or Speaker, Lok Sabha, as the case may be, and make a Report thereon.

9. It is the Hon'ble Speaker or the Hon'ble Chairman, who refers Bills introduced in either House to the concerned Standing Committee for examination and for making a Report thereon. The promulgation of an Ordinance preclude such examination by the Committee, subject, of course to the decision of the Hon'ble Chairman or Hon'ble Speaker as the case may be to refer the Bill to the Standing Committee, as may be decided. Subsequently when the Ordinance was replaced by the amending Bill, the Committee could not examine the same, as the same had to be made an Act of Parliament, within a given time limit.

10. As the TRAI Amendment Act, 2000 contains many important provisions, on which the Committee could not give its views earlier to its enactment, the Committee decided to study its provisions and make a Report thereon. Incidentally, it may be stated that before the present Act was passed in 1997, the Committee had the opportunity to consider the provisions of the concerned Bill, upon reference by the Hon'ble Speaker, and the views and the recommendations of the Committee are contained in the Fourth Report (11th Lok Sabha) of the Committee.

11. In response to a query from the Committee about the necessity for the changes in the Act, the Secretary, DoT submitted that prior to the constitution of TRAI in 1997, the Government was exercising all the major functions like licensing, regulation, tariff setting and to certain extent dispute settlement etc. pertaining to the telecom sector. After the setting up of TRAI in 1997, the licensing part continued to be with the Government while regulatory, recommendatory tariff setting and some dispute settlement functions were given to TRAI. TRAI's role in licensing matters caused certain misconceptions and problems in the implementation of the TRAI Act, 1997.

12. Due to these misconceptions and misinterpretations, the Secretary, DoT further stated, certain matters went to the Court of Law questioning the role of the Government as a licensor. This was not creating a proper environment under which investments could come in and private sector participation could be pro-active and invigorating. Therefore, it was felt that if changes were brought about and Ordinance was proclaimed at the earliest all the doubts and misgivings would be resolved.

13. The Committee asked whether an emergent situation had developed wherein the Ordinance was required to take some immediate action. The Secretary, DoT replied that it was in the overall context of general good that the Government took some advance action with reference to the changes that had been made in the Ordinance.

14. The Committee asked what were the salient features of the amendments made through the Ordinance. It was replied that some of the salient amendments made through the Ordinance were the redrafting of section 11 (1) of the Principal Act wherein the distinction between the recommendatory/advisory functions of TRAI on one hand and regulatory functions on the other was made. A provision was included 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 license to a service provider. In order to make the process time bound, the amendments provided that TRAI should forward its recommendations within a period of sixty days from the date on which the recommendations had been sought and that the Government might issue a license to a service provider if no recommendations were received within the stipulated period or within such period as might be mutually agreed upon between the Government and TRAI. Further, sub-section (3) of section 11 of the Principal Act was amended in order to bring the tariff setting functions of TRAI also under its purview.

15. Secondly, the composition of the TRAI has been changed and as per the new 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. The Chairperson and other Members of the Authority shall be appointed by the Central Government from amongst persons who have special knowledge of and professional experience in telecommunication, industry, finance, accountancy, law, management or consumer affairs. The Chairperson and Members shall hold office for a term not exceeding three years.

16. Chapter IV of the Principal Act has been replaced to provide for the establishment of a separate disputes redressal body known as the "Telecom Disputes Settlement and Appellate Tribunal (TDSAT)" to adjudicate upon any dispute between a licensor and a licensee, between

two or more service providers and between a service provider and group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI. This Appellate Tribunal will consist of a Chairperson and not more than two Members who shall hold office for a term not exceeding three years. The Chairperson will be a person who is or has been, a Judge of the Supreme Court or the Chief Justice of a High Court. The Member shall be a person who has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration. Appeals against the order of the Appellate Tribunal shall lie to the Supreme Court.

17. Another Amendment was brought in Section 23 of the Principal Act where after sub-section (2), an explanation was inserted *i.e.* "for the removal of doubts, it is hereby declared that 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, shall not be subject to audit under this section".

18. After a perusal of the above cited amendments brought about by the Ordinance, the Committee wanted to hear the views of some experts closely connected with the subject. They appeared before the Committee as non-official witnesses. One such witness who happened to be a former Secretary of DoT, submitted that the TRAI Act, 1997 had a number of lacunae. Firstly, there was ambiguity in the licensing provisions in as much as TRAI thought that their functions included recommending the number of licenses to be issued and the Government thought that it was for them to decide whether to ask for any recommendations from TRAI or not. Because of such different views there were conflicts between the Authority and the Government. Secondly, the erstwhile Act provided for a combination of recommendatory, regulatory and adjudicatory functions in one and the same body which led to difficulties.

19. Asked to state categorically, whether the Ordinance or for that matter the new Act was an improvement on the previous one, the witness stated that in many ways the Ordinance (Act) was an improvement on the TRAI Act 1997, but it still needed to be further fine tuned. One such fine tuning could be made if Universal Service and Universal Service Access be made an objective of the Authority and also defined and included in the Act.

20. In the same context, another non-official witness who was also a former Secretary of DoT, also welcomed the latest development in so far as the old Act had been superceded by a new Act for one major reason that it tried to end the uncertainty regarding the role and responsibility of TRAI and the unfortunate dispute that had been going on between the DoT on one hand and the TRAI on the other. He elaborated that by virtue of the new Act, the TRAI knew it for certain that its recommendations would be necessarily sought by the Government on a large number of items, as mentioned in Section 11 and that there are subjects on which it could give it recommendation, not binding, *per se* on the Government. He further stated that adjudicatory functions should not have been given to the Authority, which was also dispensing services like issuing a license or giving a frequency allocation etc. He, therefore, welcomed the provisions of the new Act which separated the adjudicatory functions of TRAI.

21. The Chairperson, TRAI, while responding to a query of the Committee in this regard, stated that he had not been able to understand the reasons for which an Ordinance needed to be passed. He, however, agreed that the TRAI Act, 2000 was a distinct improvement over the earlier Act in as much as it had clarified a number of situations which earlier seemed to be not so clear. However, there were still a few items in the new Act on which according to him, a further degree of clarity, in regard to the independence of TRAI, could have been provided.

22. The Committee then asked whether the purpose for which the Ordinance was passed had been achieved and the Secretary, DoT replied that the purpose of the Ordinance was achieved because the Department had acted swiftly on the Ordinance as a result of which the new TRAI had come into existence, the Ordinance replaced by an Act and that TDSAT was shortly to be constituted.

III. Recommendatory and Regulatory functions of TRAI

23. Clause (a) of sub-section (1) of Section 11 of the TRAI (Amendment) Act, 2000 provides that the functions of the Authority shall be to:—

“(a) make recommendations, either *suo motu* or on a request from the licensor, on the following matters, namely:—

- (i) need and timing for introduction of new service provider;
- (ii) terms and conditions of licence to a service provider;

- (iii) revocation of licence for non-compliance of terms and conditions of licence;
- (iv) measures to facilitate competition and promote efficiency in the operation of telecommunications service so as to facilitate growth in such services;
- (v) technological improvements in the services provided by the service providers;
- (vi) type of equipment to be used by the service providers after inspection of equipment used in the network;
- (vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
- (viii) efficient management of available spectrum"

The Act provides that the above mentioned recommendations of TRAI shall not be binding upon the Central Government.

24. The Committee pointed out that licensing aspect which was meant to be a sovereign function could well be exercised by the Government alone, but with regard to other important functions like measures to facilitate competition and promote efficiency, technological improvement in the services, efficient management of the available spectrum etc., which had nothing to do with the sovereign character, why the Authority should not be allowed, to give its views which should be binding on the Government. The Secretary, DoT replied that to facilitate competition, promote efficiency and technological improvements, there would be, as contemplated in the Act, a two-way traffic, *i.e.* the Department would benefit by TRAI's recommendations and simultaneously they would like TRAI to consider the Department's point of view.

25. Asked to elucidate, the Secretary clarified that with regard to the issues of technological improvements etc., the Department would benefit by seeking recommendations from TRAI although in such matters the final view of the Government would prevail.

26. It was further stated that keeping in view various aspects of the Indian economy, infrastructure conditions, financial viability of operators etc. certain matters like technological improvements, facilitating competition etc. had been kept in the recommendatory category instead of the regulatory category.

27. The Committee asked the Chairperson, TRAI about the power of the TRAI under the amended Act to ensure compliance in view of the fact that the Authority can not take decisions on important issues like technological improvements, measures to facilitate competition and promote efficiency etc. and whether the Authority would not feel hampered in the discharge of their functions so far as clause (a) of Section 11 was concerned. The Chairperson, TRAI responded that these functions being recommendatory would indeed be factors of limitation and it would have been desirable if in matter like change of technology, TRAI had greater say.

28. Asked in this context, a non-official witness submitted that as per the Act, TRAI would only make a recommendation to the Government and it was for the latter to decide whether to accept such recommendations or not. That was an area which could cause considerable embarrassment to both DoT and TRAI in the coming years. The witness elaborated that not accepting the recommendations of TRAI on an issue of policy was one thing, but if TRAI were to recommend that licence of a particular operator should be cancelled and then the Government did not accept or sat over it, there could be an obvious working problem. He, therefore, expressed the view that either TRAI should be given the final authority to issue or revoke licences, otherwise the Government should take full responsibility on its own in this regard. According to him no major parliamentary democracy in the world, like Great Britain, Australia, Canada, New Zealand etc., vested in a statutory regulator the power to issue licences. He summed up by saying that even the advisory role of TRAI should not be there so far as grant of licence was concerned.

29. Reacting to the above mentioned views, at the instance of the Committee, the Chairperson, TRAI stated that there were some other angles of the issue *i.e.* time, number and terms of licences. These aspects were related to the gradual opening of the market and a recommendation in this regard from a body, which had the obligation and the duty of regulating the market was desirable. He further stated that a Regulator had a certain role in licensing and an impression should not be created that the Authority was only recommendatory in nature.

30. To a specific query in this regard, the Chairperson replied that the Government should at least disclose the reasons for not accepting the recommendations of TRAI.

31. The Committee then asked the Secretary, DoT about the modalities of seeking, accepting or not accepting the recommendations of TRAI. The Secretary replied that so far as the matter relating to the need and timing for introduction of new service providers and the terms and conditions of licence to a service provider were concerned, it was mandatory for the Government to seek recommendations of TRAI. Even in case of non-acceptance of TRAI's recommendations, there would be the process of consultation which was obligatory if the Government differed with the recommendations of TRAI.

32. Asked to elaborate, the Secretary stated that if there was difference between what was recommended by the Authority and what the Government was willing to accept, then a reference to the Authority would be made. After such reference and consultation, the Authority would give their final recommendations and if there were any modifications on the final recommendations of TRAI, the same would be discussed in the Telecom Commission and finally approved by the Government.

33. To a specific query as to whether the Government should give reasons for rejecting any of the recommendations of TRAI, mandatory or otherwise, the Secretary, DoT responded in the affirmative.

34. The Committee then asked about the details of matters/issues referred to TRAI, response of TRAI to each of those issues, action taken by the Government thereafter, and the matters still pending with TRAI. In a post-evidence note, the following statement was furnished to the Committee containing the above cited details.

Sl. No.	Subject	Date of Reference	Recommendations Sought for	Target Date indicated by TRAI	Action taken by the Government
1	2	3	4	5	6
1.	Opening up of the Long Distance Service	11.4.2000	Reconsideration sought on (a) Service area for operation (b) Entry fees (c) Licence Fee (d) Infrastructure Providers (e) Type of Competition	Recommendations reviewed and resubmitted on 15.5.2000	Being finalised
2.	Licence for Global Mobile Personal Communications Service (GMPCS) using satellite	16.11.1998	(a) Entry fee (b) Revenue Sharing (c) Basis of Selection of new operators (d) Terms & conditions of licence	Recommendations reviewed and resubmitted on 23.6.2000	Being finalised

1	2	3	4	5	6
3.	New Licence for Fixed Service Providers	23.4.1999	For issue of fresh licence in vacant circles (a) Number of private service providers in a circle besides DoT (b) Selection Criteria (c) Licence Fee structure (d) Other facets of licence conditions	Consultation process over Recommendations are being framed and expected to be submitted shortly	
4.	New Licence for Fixed Service Providers	17.4.2000	Issue of additional licence in the Circles where one Basic Service licence has already been issued	-do-	
5.	Fresh Licences for Cellular Mobile Provider	23.4.1999	For issue of fresh licence in 6 vacant circles/slots (a) Entry fee (b) Revenue share (c) Basis of selection of new operators	Received on 23.6.2000	Under examination

1	2	3	4	5	6
6.	Fresh Licences for Cellular Mobile Provider	26.4.2000	Issue of fresh licences for more operators in all service areas (vacant slots as well as additional operators)	Received on 23.6.2000	Under examination
7.	Migration of existing operators of cellular metor, cellular circles and basic services to National Telecom Policy-1999 (NTP-99) regime.	12.7.1999	License fee arrangement for migration	-do- Excluding basic service migration package	Under examination
8.	Fresh license for VSAT services	21.5.1999	(a) Entry fee and revenue share (b) Other facets of licence conditions	End of September, 2000	
9.	Funding Universal Service Obligation (USO)	19.5.1999	(a) Class of operator to fund Universal Access Levy (UAL)	End of August, 2000	

1	2	3	4	5	6
10.	Fresh license for Public Mobile Radio Trunking Service (PMRTS) Providers	28.4.1999	<p>(b) Possible cost models to determine percentage contribution, per unit subsidy for VPT and rural DELs</p> <p>(a) Entry fee (b) Revenue share (c) Basis of selection of new operators (d) Appropriate level of license fee for extended period of license in respect of existing licensees (e) Definition of Revenue</p>	End of September, 2000	
11.	Fresh license for the Radio Paging Service	19.5.1999	<p>(a) Entry of more operators in a service area on the basis of review after two years. (b) Level of entry fee (c) Percentage of revenue share (d) Definition of Revenue (e) Basis for selection</p>	End of September, 2000	

1	2	3	4	5	6
12.	Licence fees for Radio Paging Service from 4th years onwards	6.7.1998	(a) Licence fees for the fourth years onwards	Recommendation Received	The recommendations of TRAI have been accepted by the Government for the 4th and 5th year licence fees
13.	Licence fee for 6th year onwards for E-mail Service	26.5.1999	Licence fee to be charged for a period of next 4 years	Recommendation Received	Recommendations of TRAI accepted by the Government and orders under issue
14.	Licence fee Arrangement for migration of existing circle radio paging service Licensee to NTP-99 regime.	20.9.1999	(a) Licence fee arrangements (revenue share) as also the definition of revenue	End of September, 2000	

35. It would be observed from the above statement that in 14 cases recommendations were sought from TRAI. Out of these 14 cases, TRAI's recommendations were accepted, without any modifications, in two cases only *i.e.* relating to license fee for Radio Paging Service from 4th year onwards and license fee for E-mail service from 6th year onwards; in five cases TRAI was yet to give its initial recommendations; three cases were under examination by the Department; in two cases *i.e.* Opening up of the Long Distance Service and License for Global Mobile Personal Communication Service (GMPCS) using satellite, TRAI was requested to review their recommendations. In two other cases, consultation process was over and final recommendations of TRAI were being framed and expected to be submitted to the Department shortly.

36. The Committee was further informed that in two matters *i.e.* accounting operation and regulation relating to service, the TRAI gave *suo motu* recommendations. With regard to accounting operation, consultation paper was released by TRAI on 4 May 2000, comments of DoT were given on 6 June, 2000 and recommendations of TRAI would be submitted in the first week of September, 2000. Regulation on quality of service was released on 5 July, 2000.

37. Some of the important regulatory functions as conferred upon TRAI by sub-section (b) of Section 11 of the TRAI Act, 2000 include compliance with terms and conditions of license, ensuring effective compliance of Universal Service Obligation and technical compatibility and effective inter-connection between different service providers amongst other functions. In this context, the Committee asked the Chairperson TRAI, whether the Authority, under the new law would be able to effectively discharge its non-recommendatory functions. The Chairperson replied that in the absence of any provisions in the Act for taking the party to task, to that extent the weakness was there and that would be a handicap for the Authority.

38. The Committee then asked the Secretary, DoT about the reasons for not giving the Authority any power to enforce its decisions. The Secretary replied that as given in the Act itself, under Section 13 and sub-section 4 of section 12, the Authority could give directions. The Committee pointed out that giving direction did not amount to enforcement of decision and asked if somebody disobeyed the directions of TRAI, how could the Authority enforce it.

39. The Secretary, DoT replied that if there was a contravention, there was a penalty clause provided by Section 29 of the Act which says that if anybody violates the directions of the Authority then certain fines would be imposed. The Secretary simultaneously admitted that the power to impose such fines did not lie with TRAI which could at best take the case to the court on the ground that its directions had been violated and thereby offence had been committed. Therefore, the power of penalty or punishment lies with the Court.

IV. Composition of the TRAI

40. As regards the composition of the TRAI, the amended Act 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, to be appointed by the Central Government". The Act further says "the Chairperson and other Members of the Authority shall be appointed by the Central Government from amongst person who have special knowledge of, and professional experience in telecommunication, industry, finance, accountancy, law, management or consumer affairs". Here, it may be mentioned that the earlier Act provided that the Authority shall consist of a Chairperson and not less than two, but not exceeding six members, to be appointed by the Central Government.

41. In this context, the Committee desired to know the rationale behind the change in the composition and asked why the concept of part-time Members was incorporated in such an important body. The Secretary, DoT replied that the composition had been kept with reference to the roles given to the two bodies *i.e.* TRAI and TDSAT. Part-time Members were brought in because the required expertise was not available to the regulatory body. In other words, to have a wider choice the part-time concept was brought in.

42. The Committee enquired whether inclusion of part-time Members in the TRAI meant that it would be staffed with Government officers. The Secretary, DoT clarified that the names which were being considered for part-time Members were not Government officials alone. The Member (Finance), Telecom Commission supplemented that it was not really important whether they had two Members as part-time or full-time. What kind of discipline or professional expertise they represented, was all that mattered. He cited the example of one of the part-time members who is a very noted economist and whose qualitative and innovative ideas would improve the functioning of the TRAI.

43. The Committee asked about the job of the whole time members and desired to know whether they, like their part-time counterparts, would be able to bring in any new ideas. The Members (F) replied that the TRAI was expected to take decisions collectively based on the combined wisdom of all the Members, irrespective of their status.

44. Asked in this context, the Chairperson, TRAI responded that this provision might have been incorporated to attract people from different walks of life.

V. Composition of TDSAT

45. As mentioned earlier, Chapter IV of the TRAI Act, 1997 has been replaced to provide for the establishment of a separate dispute redressal body, known as 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 a group of consumers, and to hear and dispose of appeals against any direction, decision or order of the TRAI.

46. The Committee desired to be apprised of the reasons which precipitated the separation of the adjudicatory functions of the Authority. It was replied that TRAI Act, 1997, prior to its amendment by the TRAI (Amendment) Act, 2000 had provided for regulatory as well as adjudicatory functions. Under the adjudicatory functions, the Authority was empowered to exercise all such jurisdiction, powers and authority as were exerciseable by any Civil Court on any matter relating to:—

- (i) technical compatibility and inter-connections between service providers;
- (ii) revenue sharing arrangements between different service providers; and
- (iii) quality of telecommunication services and interest of consumers.

47. Thus, the TRAI was not empowered to adjudicate upon any dispute between the Licensor and the Licensee. The Authority, however, on its own, ruled that it had the jurisdiction to settle dispute between the licensor and the licensee and passed some orders assuming its recommendatory functions under Section 11 (1) (a), (b) and (f) as mandatory which were merely advisory in nature. In the course of events, such orders passed by the Authority were struck down by the Single Bench and Division bench of the High Court of Delhi.

48. Secondly, the Authority also issued interim orders and issued directions to the Licensor for which there was no provision in the Act. These self-assuming adjudicatory powers of TRAI created a lot of misconceptions and confusion for which the Government thought it prudent to separate the adjudicatory functions of TRAI altogether.

49. It was further submitted that prior to its amendment by the Ordinance, the TRAI had very limited adjudicatory role which did not include adjudication upon licensor-licensee disputes. With a view to having effective and quick dispute redressal mechanism, the Government, therefore, decided to constitute a separate Appellate Tribunal empowering it to adjudicate disputes between licensor and licensee, between two or more service providers and between a service provider and a group of consumers.

50. Asked in the context of the separation of the adjudicatory functions of TRAI, a non-official witness stated that at least one road block in the way of the functioning of TRAI had been removed because its adjudicatory functions had been taken away. He further stated that adjudicatory functions should not be entrusted to a body which was dispensing services like issuing a license or giving a frequency allocation etc.

51. The amended Act provides that the TDSAT will consist of a Chairperson and not more than two Members who shall hold office for a term not exceeding three years. The Chairperson will be a person who is, or has been a judge of the Supreme Court or the Chief Justice of a High Court. The Member shall be a person who has held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government or a person who is well versed in the field of technology, telecommunications, industry, Commerce or administration. In this context, when the Committee enquired about the formation of the TDSAT, the Secretary, DoT replied that the process of consultation with the Chief Justice of India, as contemplated in the Ordinance, had already commenced and in accordance with the suggestion of the Chief Justice, they were in the process of setting up the Tribunal at the earliest. Subsequently, the Committee was informed that the process of consultation with the Chief Justice was over and final approval of the Government was awaited and the Tribunal was expected to be in position by the end of May, 2000. However, the Committee learnt that recommendations of the Chief Justice about the two members of the TDSAT has just been received (31 July) and it was expected that the Tribunal would start functioning soon.

52. The Committee then asked how, in the absence of the Tribunal, adjudicatory functions were being performed. The Secretary, DoT clarified that the amended Act provided that the adjudicatory functions would be dealt with by TRAI unit the TDSAT was formally constituted.

53. The Committee queried whether any reference had been made for adjudication during the interim period. The Chairperson, TRAI replied in the negative.

54. The Committee desired to know details of the matters pending before the Authority, the period of pendency and the nature of the cases referred. In reply, DoT has stated that section 14M of the TRAI Act 1997, as amended by the TRAI (Amendment) Act, 2000, lays down the procedure for dealing with the pending cases, and reads as follows:

“All applications, pending for adjudication of disputes before the Authority immediately before the date of establishment of the Appellate Tribunal under this Act, shall stand transferred on that date to such Tribunal:

Provided that all disputes being adjudicated under the provisions of Chapter IV as it stood immediately before the commencement of the Telecom Regulatory Authority of India (Amendment) Act, 2000, shall continue to be adjudicated by the Authority in accordance with the provisions contained in the Chapter, till the establishment of the Appellate Tribunal under this Act:

Provided further that all cases referred to in the first proviso shall be transferred by the Authority to the Appellate Tribunal immediately on its establishment under Section 14”.

55. The Committee was informed that no case, which came under the purview of the first para of Section 14M of the amended TRAI Act, was pending with the TRAI. However, as regards cases which came under the purview of the second para, the following statement was furnished to the Committee:

List of Pending Cases with TRAI as on 2.8.2000

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.
Vs. Union of India
 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. Tele System (India) Pvt. Ltd.
Vs. Union of India
- 1998**
1. Petition No. 2/98 M/s. Hutchinson Max. Telecommunications 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. 17/18 M/s. DSS Mobile Communications Ltd.
Vs. Union of India

VI. Audit

56. In Section 23 of the Principal Act, after sub-section (2), the following explanation has been inserted by amending that section in the TRAI (Amendment) Act, 2000:—

“Explanation: For the removal of doubts it is hereby declared that 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, shall not be subject to Audit under this Section”.

57. In this context, the Committee asked about the rationale for excluding certain decisions of Authority from the purview of Audit. In reply, it was stated that whatever was implicit in the Principal Act with regard to the role of Audit in TRAI had been stated explicitly in the new Act. It was further stated that the accounts of TRAI shall continue to be audited by the C&AG but certain decisions of TRAI being appealable to the Tribunal, would not be subjected to Audit.

58. Asked to clarify how it was implicit in the original Act, the Secretary, DoT submitted that in the previous law, it was provided that C&AG audit would be with reference to expenditure and accounts of TRAI. In other words, even in the earlier Act, it was not explicitly provided that fixing of tariff would be covered by Audit.

59. When asked why certain activities like tariff fixation were kept out of the audit purview, the Secretary replied that setting tariff was not an item of expenditure incurred by the Authority and that was why it was kept out of the purview of Audit jurisdiction. The Secretary further stated that the Authority would fix tariff with reference to the broad parameters which would be set up by the Authority itself. And if this tariff fixation was to be put under audit scrutiny and if the audit went into the question of whether the tariff had been properly fixed or not, conflicts might arise thereby creating a lot of uncertainty.

60. The Committee enquired whether the tariff decided by TRAI could be altered by the Tribunal or not. The Secretary replied in the affirmative. The Committee then queried how C&AG could alter a decision taken by a judicial body *i.e.* the TDSAT and pointed out that C&AG could at best go into the issues of propriety of expenditure, maintenance of accounts in proper manner etc. The Secretary, DoT responded that they did not want to create any confusion in the tariff setting mechanism and, therefore, audit was kept out of the picture.

61. During deliberations with various non-official witnesses, the Committee desired to know their views about the provision incorporated in the Ordinance/Act so far as audit was concerned. Two of the witnesses submitted that administrative expenses by TRAI should be subjected to audit but fixation of tariff should be kept out of its purview lest it might affect the independence of TRAI.

62. However, some other non-official witnesses strongly argued that wherever there were revenue implications, the C&AG should be involved. In other words, any Institution on which public money is being spent, C&AG should audit it. They categorically stated that on the plea of interference, the tariff setting functions of TRAI should not be kept out of the purview of audit scrutiny as these functions involved revenue to the Government.

63. In this context, the Committee desired to hear the views of Chairperson, TRAI. He submitted that accounts of TRAI were and should be audited. But so far as tariff setting was concerned, it was to be adjudicated if necessary, by the adjudicatory body and therefore audit might not be necessary. Secondly, tariff setting being a regulatory activity, should not be subjected to yet another super regulator kind of an approach. He further clarified that no audit angle was involved in the tariff setting functions of TRAI because if these activities were left open to yet another authority that could rule or overrule or ask for explanation, then, the very purpose of the existence of a regulator would be defeated.

64. The Committee then asked if the decision of TRAI was commented upon by another constitutional authority whether it would *ipso facto* affect the Authority's status or independence. The Chairperson, TRAI responded in the affirmative.

65. The Committee learnt that the C&AG had reservations about the proposed amendment and vide his letter dated 19 January, 2000 had clarified the position to the Prime Minister in no ambiguous terms stating that of the two functions of the TRAI, namely, adjudication on disputes and setting tariff, the first function had hitherto not been performed within the Government and it being a quasi-judicial function required a judicial review rather than any jurisdiction of audit. However, the second function of setting tariff was an executive function which was required to be discharged with accountability to Parliament by

way of scrutiny by the Audit. The proposed amendment takes away from the ambit of audit, the scrutiny of the executive functions of TRAI. The C&AG had pointed out that since nothing had changed and law continued to remain the same, a different interpretation is suggested to conceal from the people and from Parliament something which they are entitled to know.

66. Subsequently, the Chairman, Public Accounts Committee also wrote to the Prime Minister stating that there was no justification for excluding tariff fixing, revenue sharing, conditions of licensing, etc., prescribed under Section 11 of the Act from the purview of the audit and Public Accounts Committee. Since fixing of tariff and other attendant functions result in receipts to Government, their exclusion from accountability to Parliament and from the Public Accounts Committee on the recommendations of the C&AG's audit is unconstitutional. He further wrote that amendment of Section 11 of the Act would tantamount to negation of powers and duties of the C&AG as prescribed in the Constitution. It was further pointed out in the letter that there are Appellate Authorities and Tribunals in the country for Income Tax, Customs, Central Excise, Sales Tax and other receipts and these receipt collections are also justiciable in the High Courts and the Supreme Court and are subjective to audit by the C&AG and accountable to Parliament.

67. The Chairman, PAC had further pointed out that the matter was discussed by the Public Accounts Committee on 21 January, 2000 while examining the Audit Report on DoT and the Members of the Committee were quite exercised about the proposed Ordinance which contemplated to do away with the existing provisions of audit of the C&AG and accountability to the PAC and the Parliament. Thus the Chairman, PAC as well as the C&AG apprised the Prime Minister of their reservations about the contemplated amendments and requested him to ensure that the existing provisions of audit are not tampered with and the TRAI remains accountable to Parliament as before.

68. The Committee also learnt that the C&AG was already auditing quasi-judicial functions like assessment of income tax, central excise etc., by Income Tax/Central Excise Departments, which were also appealable to respective tribunals. It is known that all government functions/decisions except judicial functions are subject to audit by CAG, if such functions/decisions have implications on public exchequer.

VII. Other Areas of Concern

(a) Revenue Sharing

69. One of the most important issues on which the TRAI was engaging itself was to finalise terms on which the Cellular Mobile Service Operators would be allowed to function and the revenue-sharing that they would have to do with the Government after migration.

70. Asked about the merits of revenue sharing system over fixed licence fees, a prominent non-official witness deposed before the Committee that revenue-sharing system would not be a half-efficient as that of fixed license fee.

71. Reacting to these views of the non-official witness, the Chairperson, TRAI stated that they had held a number of Open House Discussions in which there were conflicting views on quantum of license fee. There was one view that the license fee should be very minimum in the sense that wherever there were Universal Service Obligation requirements, they should be provided for. In short, there should be some provision for administrative cost of the license, cost of administration and for R & D. The other point of view was that an opportunity was being given to the licensee and as there is an opportunity cost, in the form of Government's obligations to ensure certain services to the weaker sections, there has to be an element of rent.

72. The Committee then asked how TRAI proposed to reconcile the revenue sharing and the licensing fee system. The Chairperson replied that if there was to be a fee, it could be levied either as a fixed amount or as a share of the earnings of the license. In reply to Committee's query whether license fee was for entry and revenue sharing was the recovery from the operators, the Chairperson stated that license fee could also come by way of revenue sharing, like franchising. The Committee asked whether the issue could be settled by having a proper license fee on the basis of revenue, the Chairperson replied in the affirmative.

73. In this context, the Committee desired to hear from the Department about the justification of the replacement of the license fee system by that of revenue sharing. In reply, it was stated that the New Telecom Policy, 1999 adopted by the Government and effective

from 1 April, 1999 envisaged a scheme of charging the license fee in the manner of one time entry fee and license fee on the revenue earning. The justification for such a change over was stated to be due to the fact that existing licensees under the 1994 policy enjoyed the right to operate their licenses under duopoly arrangement (with DoT/MTNL as the third operator in cellular services). However, these existing licensees would have to operate under the multipoly arrangement as provided in the NTP-99 and as accepted by the licensees. Secondly, the changes in the information and communication technology had been so fast and swift that the events had overtaken the policy objective and framework of the 1994 Telecom Policy. It was further stated that with the services being made more affordable, the consumer base was bound to increase substantially thereby increasing the Government revenue. Moreover, due to numerous litigations between the Licensees and the Licensor, the Government thought it prudent to evolve the revenue sharing package in larger public interest.

(b) Tariff Revision

74. The Chairperson, TRAI apprised the Committee that the most important issue before the newly constituted Authority was whether to implement or not the second phase of the tariff order which was, as a matter of fact, to be taken up from 1 April, 2000. They, however, deferred the decision for four months as the figures were available upto September, 1999 but TRAI wanted the results for the year ending 1999.

75. As regards the revenue impact of the first phase of the tariff order issued by the erstwhile TRAI one and half years back, the Committee was informed that the decrease in revenue attributable to tariff rebalancing in the year 1999-2000 might be to the tune of Rs. 1755 crore (for 11 months). In this context, the Committee referred to the second phase of the tariff order which was to be implemented from 1 April, 2000 but had been deferred for four months by TRAI, as mentioned above, and desired to know whether the first phase of the tariff order had affected the already poor teledensity of the country in addition to the revenue generation by the Government. In reply, it was stated that the overall revenue surplus which was partly generated by a deliberate cross subsidisation of local services by long distance tariff, has shown a tendency to decline due to rebalancing of tariff. It was further stated that since the Department used to plough back all

surpluses to pursue developmental activities, any diminution in revenue earning is bound to make the job of financing of developmental plans and attainment of national objective much more difficult. The Department, therefore, requested the TRAI to rework the tariff in synchronisation with the New Telecom Policy, 1999. The proposal was under active consideration of the TRAI in the ongoing tariff review.

76. The Committee desired to know about the priorities of the reconstituted Authority. The Chairperson TRAI responded that there were three prime areas of concern, which unless attended to would affect the independent functioning of TRAI. The first one was the non-formation of the TRAI Fund although the amended Act provided for the same. The funding of TRAI's total operations could be through this fund *i.e.* by means of taking a certain fee that it could charge from all those who were regulated by this body. The second area of concern was stated to be taking away the freedom or independence of TRAI in framing rules for its own employees, as guaranteed previously by the earlier Act.

77. The Chairperson, TRAI further stated that as the operations of TRAI were very different from that of the Government Departments, it needed a lot of guidance and assistance from experts both within and outside the country. It would become very difficult to attract such people if they were to come only on terms and conditions applicable to Government service.

78. The Committee desired to hear the views of the Department on each of the three issues mentioned above. As regards the TRAI fund, it was stated the "Telecom Regulatory Authority General Fund" had already been constituted with effect from 31 March, 1999 pursuant to sections 21 and 22 of the TRAI Act, 1997. The Member (Finance), Telecom Commission further submitted, in an evidence before the Committee, that the erstwhile TRAI had come up to the Government asking for complete financial autonomy and independence. Through such provision TRAI intended to impose a cess as a percentage of the gross revenue of each and every operator, create a corpus of the fund and meet their expenses out of this Fund. The Department, after inter-Ministerial consultations, came to the conclusion that it would not be within the parameters of law to authorise TRAI to impose a cess which would virtually have the impact of a tax.

79. As regards framing rules by TRAI for its employees and engagement of consultants/experts, the Member (Finance) deposed that the employees and consultants of the erstwhile TRAI had been engaged with certain perquisites which were far in excess of what was generally considered reasonable in the Government system and that was creating its own problems elsewhere. The C&AG had also taken a very serious objection to that. Accordingly, the Government felt that no particular organisation should be allowed to create an island of prosperity for itself and, therefore, the provision of the earlier Act in this regard was changed.

80. The Secretary, DoT supplemented that the Authority could take the best brains in the country for seeking required consultancy, but there must be some parity in the terms of appointment which should be compatible with the other similarly placed bodies.

81. Asked about the manner of interaction between the Department and the newly constituted TRAI, the Secretary, DoT submitted that there were formal as well as informal channels of interaction between the Department and the TRAI. So far as the formal statutory interactions were concerned, matters were proceeding in accordance with the provisions of the Telecom Regulatory Authority of India Act. The Secretary further stated that the process of interaction started off as soon as the amended Act came into being. To a specific query whether TRAI interacted with the Department before making recommendations, the Secretary replied that there is a process of consultation where the consultation papers come to the Department from TRAI and based on those consultation papers, the Department give their comments.

82. Regarding the erstwhile TRAI, it was stated that rather than any personal attitude or egos of the individual Members, the problem between the DoT and TRAI arose on account of certain difficulties that started coming up during the implementation of the earlier TRAI Act. It was simultaneously stated that there had been no controversies with TRAI after its reconstitution in pursuance of the amendments brought out by the TRAI (Amendment) Act, 2000.

83. As regards the controversies that engulfed the erstwhile TRAI, one of the non-official witnesses submitted before the Committee that ever since the TRAI was first constituted, it was involved in a number of controversies because the Members provided for themselves extremely high allowances, accepted hospitality from organisations which were subject to their regulatory control; tended to exceed the mandate very often; acted more like a court rather than a regulator etc.

84. In the same context, another non-official witness submitted that right from the beginning, the erstwhile TRAI tried to assume more powers than what the law had given it as a result of which a lot of misunderstandings were created between the DoT and the TRAI. He cited one example where the Government issued a license for a Cellular service to MTNL and also issued guidelines for licensing for Internet Service Providers (ISPs). The TRAI, on the plea that it had not been consulted, issued a stay order to the Government to suspend the guidelines as well as the license. This action of TRAI was not within its powers.

85. The non-official witness further advocated that with a view to avoiding any controversy and problem, TRAI's powers should be limited to three areas *i.e.* tariff fixation authority, inter-connection authority and advisory functions with the assurance from the Government that its opinions would ordinarily be respected.

86. The Chairperson, TRAI, when asked to state how there could be a better relationship with the DoT, suggested that the Authority should be respected. An impression should not be created that the Authority was only recommendatory in nature. He summed up by saying that it would add to the honour of the country as well as the Regulator if there were only very few examples of TRAI's recommendations being rejected.

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.

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 license 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 can not 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.

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.

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.

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 license, 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 license 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.

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 categorisation of the above mentioned functions as recommendatory, the Committee would like 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.

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 license 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 the 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 license 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.

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.

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 license, 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 penalise 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.

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 license fee for Radio Paging Service from 4th year onwards and the case of license 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 finalised 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 license 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 license 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.

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.

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.

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.

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 implication 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 Articles 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 in the Country. The Committee, therefore, urges the Government to bring about necessary changes in the Act so that the accountability to Parliament is maintained.

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.

102. The New Telecom Policy, 1999 envisages a scheme of revenue sharing in lieu of fixed license 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 multipoly 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 license 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.

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 and 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 prerequisites 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.

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.

NEW DELHI;
November, 2000
Kartika, 1922 (*Saka*)

SOMNATH CHATTERJEE,
Chairman,
Standing Committee on
Information Technology.

APPENDIX I

MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (ERSTWHILE STANDING COMMITTEE ON COMMUNICATIONS) (1999-2000)

The Committee sat on Friday, the 11th February, 2000 from 11.00 hours to 12.30 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 Nikhil Kumar Chaudhary
4. Shri Jawahar Lal Jaiswa
5. Dr. C. Krishnan
6. Shri Bhartruhari Mahtab
7. Shri G. Ram Mohan
8. Shri A.K. Moorthy
9. Shri K. Balrama Krishna Murthy
10. Shri K.A. Sangtam
11. Shri Chandra Vijay Singh
12. Rajkumari Ratna Singh
13. Shrimati D.M. Vijaya Kumari

Rajya Sabha

14. Dr. M.N. Das
15. Shrimati Veena Verma
16. Shri Balkavi Bairagi
17. Shri Narendra Mohan
18. Dr. Mahesh Chandra Sharma
19. Dr. Y. Radhakrishna Murthy
20. Shri S. Agniraj
21. Shri Kartar Singh Duggal
22. Shri R.N. Arya

SECRETARIAT

1. Shri S.K. Sharma — *Deputy Secretary*
2. Shri A.S. Chera — *Under Secretary*

**Representatives of the Department of Telecommunications (DoT)
and Department of Telecom Service (DTS)**

1. Shri Shyamal Ghosh — Chairman, Telecom Commission and Secretary, DoT
2. Shri P.S. Saran — Member (Services), Telecom Commission and Secretary, DTS
3. Shri A. Prasad — Member (Finance), Telecom Commission
4. Shri Dhanendra Kumar — Additional Secretary, DoT
5. Shri N.R. Mokhariwale — Advisor (Operation), DoT

Telecom Regulatory Authority of India (TRAI)

- Shri N. Sharma — Secretary

2. At the outset, the Chairman welcomed the Chairman, Telecom Commission and Secretary, DoT and other officials who accompanied him to the sitting of the Committee.

3. The Committee then sought certain clarifications on the subject "Functioning of Telecom Regulatory Authority of India (TRAI)" from the representatives of the Department who responded to the same.

4. The Chairman thanked the officials for furnishing valuable information to the Committee and for the free and frank views expressed by them on various points raised by the Members.

5. A verbatim record of the sitting has been kept.

The witnesses then withdrew.

The Committee then adjourned.

APPENDIX II

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (ERSTWHILE STANDING COMMITTEE ON COMMUNICATIONS) (1999-2000)

The Committee sat on Friday, the 11th February, 2000 from 15.00 hours to 16.30 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 Nikhil Kumar Chaudhary
4. Dr. C. Krishnan
5. Shri G. Ram Mohan
6. Shri A.K. Moorthy
7. Shri K. Balrama Krishna Murthy
8. Shri K.A. Sangtam
9. Shri Chandra Vijay Singh
10. Rajkumari Ratna Singh
11. Shrimati D.M. Vijaya Kumari

Rajya Sabha

12. Dr. M.N. Das
13. Shri Balkavi Bairagi
14. Shri Narendra Mohan
15. Dr. Y. Radhakrishna Murthy
16. Shri R.N. Arya

SECRETARIAT

1. Shri S.K. Sharma — *Deputy Secretary*
2. Shri A.S. Chera — *Under Secretary*

Non-Official Witness

Shri Devendra Kumar Sangal — Former Secretary & Director
General, Department of
Telecommunications

2. At the outset, the Chairman welcomed Shri Devendra Kumar Sangal, former Secretary and Director General, Department of Telecommunications as non-official witness to the sitting of the Committee.

3. The Committee then heard the views of Shri Sangal on various aspects of the subject "Functioning of Telecom Regulatory Authority of India (TRAI)" and sought certain clarifications from him on the subject.

4. The Chairman thanked Shri Sangal for appearing before the Committee and for expressing his free and frank views on the subject.

5. A verbatim record of the sitting has been kept.

The non-official witness then withdrew.

The Committee then adjourned.

APPENDIX III

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (ERSTWHILE STANDING COMMITTEE ON COMMUNICATIONS) (1999-2000)

The Committee sat on Thursday, the 2nd March, 2000 from 15.00 hours to 16.18 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahendra Baita
3. Shri Pawan Kumar Bansal
4. Prof. Dukha Bhagat
5. Shri Nikhil Kumar Chaudhary
6. Shri K.K. Kaliappan
7. Shri Shreechand Kriplani
8. Dr. C. Krishnan
9. Shri Bhartruhari Mahtab
10. Shri Simranjit Singh Mann
11. Shri Karia Munda
12. Shri K.A. Sangtam
13. Shrimati D.M. Vijaya Kumari

Rajya Sabha

14. Shri Shatrughan Sinha
15. Shri Narendra Mohan
16. Shri Kartar Singh Duggal

SECRETARIAT

1. Shri S.K. Sharma — *Deputy Secretary*
2. Shri A.S. Chera — *Under Secretary*

Non-Official Witnesses

1. Shri T.S. Subramanian — Member (Retd.), Telecom Board
2. Shri Shanti Narain — President, Telecom Watchdog, (NGO)
3. Shri Anil Kumar — Secretary, Telecom Watchdog, (NGO)

2. At the outset, the Chairman welcomed the Non-official witnesses to the sitting of the Committee.

3. The Committee then heard the views of the Non-official witnesses on various aspects of the subject "Functioning of Telecom Regulatory Authority of India (TRAI)" and sought certain clarifications from them on the subject.

4. The Chairman, then, thanked the Non-official witnesses for appearing before the Committee and for expressing their free and frank views on the subject.

5. A verbatim record of the sitting has been kept.

The Non-official witnesses then withdrew.

The Committee then adjourned.

APPENDIX IV

MINUTES OF THE NINETEENTH, TWENTY-FIRST, TWENTY-SECOND AND TWENTY-THIRD SITTINGS OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (ERSTWHILE STANDING COMMITTEE ON COMMUNICATIONS) (1999-2000)

The Committee sat on Tuesday, 9 May, 2000 from 15.00 hours to 16.50 hours in Committee Room 'E', on 16 May, 2000 Tuesday from 16.00 hours to 17.45 hours in Main Committee Room, on Wednesday, 17 May, 2000 from 15.00 hours to 16.00 hours in Committee Room 'C' and on Monday, 31 July, 2000 from 15.00 hours to 16.30 hours in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

Lok Sabha

- *2. Shri Mahendra Baitha
- **3. Shri Pawan Kumar Bansal
- ***4. Shri Nikhil Kumar Chaudhary
- @5. Adv. Uttamrao Dhikale
- @@6. Shri T. Govindan
- @@@7. Shri K.K. Kaliappan
- ***8. Dr. C. Krishnan
9. Shri Bhartruhari Mahtab
- @@@10. Shri Simranjit Singh Mann
- ***11. Shri A.K. Moorthy
- @12. Shri K. Balarama Krishna Murthy

*was present on 9 and 17 May and 31 July, 2000

**was present on 16 and 17 May and 31 July, 2000

***were present on 17 May and 31 July, 2000

@were present on 16 May, 2000

@@were present on 16 and 17 May, 2000

@@@was present on 16 May and 31 July, 2000

13. Shri K.A. Sangtam
- *14. Rajkumar Ratna Singh
- *15. Shri Vinay Kumar Sorake
- *16. Smt. D.M. Vijaya Kumari
- **17. Shri A. Krishnaswamy
- ***18. Shri Vinay Katiyar

Rajya Sabha

- 19. Shri Balkavi Bairagi
- 20. Shri Narendra Mohan
- 21. Dr. Y. Radhakrishna Murthy
- 22. Shri P.N. Siva
23. Shri Kartar Singh Duggal
24. Shri K. Rama Mohana Rao
- †25. Smt. Kum Kum Rai
- ***26. Dr. Dasari Narayana Rao
27. Shri Rajiv Shukla

SECRETARIAT

1. ‡Dr. A.K. Pandey — *Additional Secretary*
2. ‡Shri P.D.T. Achary — *Joint Secretary*
3. Shri S.K. Sharma — *Deputy Secretary*
4. Shri A.S. Chera — *Under Secretary*

Non-Official Witness (9 May, 2000)

1. Shri R.K. Takker — Former Secretary, Department of Telecommunications (DoT)

Representatives of Telecom Regulatory Authority of India (TRAI) (16 May, 2000)

1. Shri M.S. Verma — Chairperson
2. Shri R.R.N. Prasad — Member (full-time)
3. Shri Ravi Kant — Member (full-time)

* were present on 16 and 17 May, 2000

** were present on 16 May, 2000

*** were present on 9 May, 2000

• was present on 17 May, 2000

•• was present on 9 and 16 May and 31 July, 2000

••• was present on 16 and 17 May and 31 July, 2000

† was present on 9 and 17 May and 31 July, 2000

‡ were present on 9 May and 31 July, 2000

**Representatives of DoT, DTS and DTO
(17 May and 31 July, 2000)**

- | | | | |
|------|-----------------------|---|---|
| 1. | Shri Shyamal Ghosh | — | Chairman, Telecom Commission and Secretary, DoT |
| *2. | Shri P.S. Sarah | — | Secretary, DTS and Member (S), TC |
| **3. | Shri R.N. Goyal | — | Secretary, DTO and Member (P), TC |
| 4. | Shri A. Prasad | — | Member (F), TC |
| 5. | Shri N.R. Mokhariwala | — | Member (S), TC |
| 6. | Shri Dhanendra Kumar | — | Additional Secretary, DoT |
| **7. | Shri M.A. Chowdappa | — | Advisor (O), DoT |
| 8. | Dr. D.P.S. Seth | — | Sr. DDG (CS), DTS |
| 9. | Shri Anil Kumar | — | Joint Secretary, DoT |

2. At the outset, the Chairman welcomed the non-official witness, the representatives of TRAI as well as those of DoT, DTS and DTO to the respective sittings of the Committee.

3. The Committee took up further examination of the subject "Functioning of Telecom Regulatory Authority of India (TRAI)". The non-official witness, the representatives of TRAI and the officials of DoT, DTS and DTO responded to the queries of the Members on the subjects.

4. The Chairman, thanked the non-official witness, the representatives of the TRAI and the officials of DoT, DTS and DTO for appearing before the Committee and for expressing free and frank views on the subject.

5. A verbatim record of each of the sittings, has been kept separately.

The Committee then adjourned.

*was present on 17 May, 2000

**were present on 31 July, 2000

APPENDIX V

MINUTES OF THE TWENTY SIXTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (1999-2000)

The Committee sat on Tuesday, 5 September, 2000 from 15.00 hours to 16.00 hours in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Somnath Chatterjee — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mahendra Baitha
3. Shri Pawan Kumar Bansal
4. Prof. Dukha Bhagat
5. Shri Nikhil Kumar Chaudhary
6. Shri T. Govindan
7. Adv. Uttamrao Dhikale
8. Shri Jawahar Lal Jaiswal
9. Shri K.K. Kaliappan
10. Shri Bhartruhari Mahtab
11. Shri G. Ram Mohan
12. Shri A.K. Moorthy
13. Shri Karia Munda
14. Shri K. Balarama Krishna Murthy
15. Shri Sheeshram Singh Ravi
16. Shri Saroj Tufani
17. Rajkumari Ratna Singh
18. Shri Vinay Kumar Sorake
19. Shri A. Krishnaswamy

Rajya Sabha

20. Dr. M.N. Das
21. Shri Balkavi Bairagi
22. Shri Shatrughan Sinha
23. Shri Balbir K. Punj
24. Dr. Y. Radhakrishna Murthy
25. Shri Munavvar Hasan
26. Shri Kartar Singh Duggal
27. Shri R.N. Arya
28. Shrimati Kum Kum Rai
29. Shri Rajiv Shukla

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Shri S.K. Sharma — *Deputy Secretary*
3. Shri A.S. Chera — *Under Secretary*

2. The Committee took up for consideration the Draft Thirteenth Report of the Standing Committee on Information Technology (Thirteenth Lok Sabha) on "Functioning of Telecom Regulatory Authority of India (TRAI)" relating to the Ministry of Communications (Department of Telecommunications) and adopted the same without any modification/amendment. The Committee appreciated the contents and quality of the Report.

3. The Committee, then, authorised the Chairman to finalise and present the Report to the House in light of the factual verification received from the Department.

The Committee then adjourned.