Telecommunications Regulatory Commission - 2013

The audit of Financial Statements of the Telecommunications Regulatory Commission of Sri Lanka for the year ended 31 December 2013 comprising the statement of financial position as at 31 December 2013 and the profits and losses and comprehensive income statement, the statement of changes in equity and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information, was carried out under my direction in pursuance of provisions in Article 154(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read in conjunction with Section 13(1) of the Finance Act, No. 38 of 1971 and Section 22(a)(2) of the Sri Lanka Telecommunications (Amendment) Act, No. 27 of 1996. My comments and observations which I consider should be published with the Annual Report of the Commission in terms of Section 14(2)(c) of the Finance Act appear in this report. A detailed report in terms of Section 13(7)(a) of the Finance Act was furnished to the Chairman of the Commission on 02 May 2014.

1.2 Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Sri Lanka Accounting Standards and for such internal controls as the management determines is necessary to enable the preparation of financial statements that are free from material misstatements whether due to fraud or error.

1.3 Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with Sri Lanka Auditing Standards consistent with International Standards of Supreme Audit Institutions (ISSAI 1000-1810). Those Standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatements of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of financial statements. Sub - sections (3 and 4) of Section 13 of the Finance Act, No. 38 of 1971 give discretionary powers to the Auditor General to determine the scope and the extent of the audit.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

1.4 Basis for Qualified Opinion

My opinion is qualified based on the matters described in paragraph 2.2 of this report.

2. Financial statements

2.1 Qualified Opinion

In my opinion except for the effects of the matters described in paragraph 2:2 of this report, the financial statements give a true and fair view of the financial position of the Telecommunications Regulatory Commission of Sri Lanka as at 31 December 2013 and its financial performance and cash flows for the year then ended in accordance with Sri Lanka Accounting Standards.

2.2 Comments on Financial Statements

2.2.1 Sri Lanka Accounting Standards

Non-compliance with the following Sri Lanka Accounting Standards were observed during the course of audit.

Reference to Sri Lanka Accounting Standards	Non-compliance
Accounting Standard No. 16	(i) Even though the depreciation of property, plant and equipment should commence from the date of making them fit for use, the Commission had followed an accounting policy for depreciating for the full year of purchase of assets and for not depreciating in the year of disposal.
	(ii) Out of a land 112 acres 01 rood 10.5 perches in extent owned by the Commission, an extent 50 per cent approximately had been acquired by the Divisional Secretary, Katana while, a sum of Rs.45,000,000 had been shown under property, plant and equipment as the value of the entire land. Even though the asset should have been revalued and brought to account under the fair value, this had been shown as a note to the accounts over the preceding 11 years.
	(iii) The fixed assets costing Rs.399,451,975 fully depreciated by 31 December of the year under review but being used for operations had been brought to account at zero value without being revalued.

2.2.2 Accounting Deficiencies

The following observations are made.

(a) The frequency licence income for the year under review had been overstated by a sum of Rs.130,544,231 as invoices valued at Rs.130,544,231 in respect of preceding year had been issued in the year 2013.

(b) Even though the profit from the sale of fixed assets amounting to Rs.2,367,160 and recoveries through Court cases amounting to Rs.630,000 of the preceding year had been shown in the Note on the other Income, that had been added to the comprehensive income for the year instead of being added to the income in the income statement.

2.2.3 Accounts Receivable and Payable

The following observations are made.

(a) Even though a sum of Rs.365,254,867 out of the amount of trade debtors of the Commission as at the end of the year under review had been classified as debtors balances older than 02 years, that included debtors balances existing for more than 20 years.

(b) Even though a sum of Rs.105,727,789 remained receivable as at 31 December 2011 from the Sri Lanka Broadcasting Corporation, the invoices for the services provided in the years 2012 and 2013 had not been issued. Even though a sum of Rs.224,805,159 had been receivable from 11 debtors owing more than Rs.1 million each over periods ranging from 02 years to 14 years, invoices had not been issued to those debtors over several years.

(c) Even though 34 institutions using frequencies had made payments exceeding the amounts payable amounting to Rs.1,640,929 more than two years ago, the Commission had not formulated a methodology for settlement of such payments up to date.

(d) The staff loan balances remaining without being recovered for more than one year amounted to Rs.2,461,764.

2.3 Non-compliance with Laws, Rules, Regulations and Management Decisions

Non-compliance with the following laws, rules, etc. were revealed during the course of audit.

Reference to Laws, Rules, Regulations and Management Decisions	Non-compliance
(a) Section 11 of the Finance Act, No. 38 of 1971, the Public Finance Circular No. PF/PE/09 of 27 June 2000 and the Public Enterprises Circular No. PE 56 of 27 January 2011.	The Commission had invested a sum of Rs.18,524,500,000 in fixed deposits in a Bank and Treasury Bills without obtaining the approvals for the investment of money and retention of money.
(b) Establishments Code of the Democratic Socialist Republic of Sri Lanka	
(i) Sub-section 7.9.2 of Chapter XXIV	Even though the loans should be recommended within the 40 per cent recovery limit of the salary of the officer exclusive of all allowances, a motor vehicle loan for the Director (Network) had been recommended and paid despite the total of recoveries from his salary had exceeded 40 per cent limit.
(ii) Sub-section 7.2.5 of Chapter XXIV	Even though the Director (Networks) had obtained a loan of Rs.1,500,000 in the year 2006 for the purchase of a motor vehicle, a motor vehicle had not been purchased from that money. Money had been utilized for private purposes up to March 2011 and a motor vehicle loan of Rs.2,100,000 had been obtained by settling Rs.865,358 payable as the loan and interest to the Commission as at that date. Even though a motor vehicle loan can be obtained only once in 05 years, he had obtained a further motor vehicle loan of Rs.2,260,000 in July 2013 after settling the loan obtained in the year 2011.

(c)	Financial Regulations of the Democratic Socialite Republic of Sri Lanka -- Financial Regulation 757(2)	The Commission had not taken action to appoint a Board of Survey at the end of the year under review, conduct a Board of Survey and furnish a copy of the report to the Auditor General.
(d)	Circular letter dated 19 February 1990 of the Secretary to the Ministry of Policy Development and Implementation	All services relating to the legal affairs of Public Corporations, Government Institutions, Business Undertakings and Public Companies should be done by the Attorney General as decided by the Cabinet of Ministers. But, without taking action accordingly, the Commission had, in one instance, selected a private firm as the legal firm and had paid Rs.242,130 in that connection up to 13 September 2013.
(e)	Circular No. 15/2007 dated 12 June 2007 of the Secretary to the Ministry of Public Administration and Home Affairs.	Even though motor vehicle loans should be paid through Commercial Banks, the Commission had paid motor vehicle loans from its own funds based on the Commissions Circular No. TRC/04/12 of 14 August 2013.
(f)	(i) Paragraph 2.2(b) of Public Administration Circular No. 15/2007 dated 12 June 2007 and Sub-section 7.4.1 of Chapter XXIV of the Establishments Code.	The Commission had recovered interest on the grant of motor vehicle loans at 4.2 per cent per year without making enquiries from the General Treasury on the interest recoverable on motor vehicle loans.
	(ii) Public Enterprises Circular No. 130 of 18 March 1998.	Even though the interest should be recovered at the interest rates prevailing in the market and under recoveries made should be computed and included in the accounts of the Commission, it had not been so done.

(g)	National Budget Circular No. 81 of 06 January 1999.	The Commission had not obtained the approval of the Treasury for the purchase of 02 Jeeps costing Rs.39,800,000 in the year under review.
(h)	Procurement Guidelines 2006	
	(i) Section 4.1.1	Even though it is specified that adequate budgetary provision should be available for purchase, provisions for the year under review had not been made for the purchase of 05 data storage machines, a security software, a data storage rack and two LCD monitors. Even though the transaction was planned for completion in the year 2012 purchase had been made in the year 2013 as it could not be done in the year 2012 and brought to account as expenditure on repairs and maintenance.
	(ii) Section 8.9.1(a)	Even though an agreement should be entered into with the supplier company for the purchase of goods for more than Rs.500,000, such agreements had not been entered into in connection with the purchase of 05 data storage machines for Rs.3,478,013 and a security software for Rs.841,574. Even though the equipment had been supplied after a delay, liquidated damages for delays could not be recovered in view of this position.
	(iii) Section 3.5	The Procurement Committee had decided to purchase the 02 Jeeps from a private institution instead of inviting quotations for the purchase.
	(iv) Sections 2.8 and 3.3	A Technical Evaluation Committee had not been appointed for the purchase of equipment costing Rs.5,115,465 for the Physical Fitness Centre while national competitive bids had not been invited for the purchase.

(i)	Paragraph 04 of the letter No. BD/CPB/1/1/2012 dated 30 December 2011 of the Secretary to the Ministry of Finance and Planning	Even though the maximum distress loan payable to an employee had been limited to Rs.250,000, a sum of Rs.1,890,040 had been paid as excess of that limit in 13 instances.

2.4 Transactions not supported by Adequate Authority

The following observations are made.

(a) The National Salaries and Cadre Commission had, by its letter No. NSCC/3/ABC/24 dated 13 June 2007, clearly stated that it had not recommended for the payment of rent allowance at 10 per cent of the salary by the institutions to its employees. Contrary to that provision, the Commission had paid a sum of Rs.7,555,959 during the year under review as rent allowance to its employees.

(b) A sum of Rs.3,486,312 representing 2/3 of the interest on the housing loans obtained from the Bank by the employees of the Commission, had been paid by the Commission in the year 2013 without the approval of the Treasury.

(c) The particulars of payments made to the staff based on the decision of the Commission and the internal circulars without the approval of the Treasury and contrary to the provisions in the Public Enterprises Circular No. PED/12 of 02 June 2003, the Management Services Circular No. 39 of 26 May 2009, the Public Finance Circular No. PF/PE/05 of 11 January 2000 and the Public Enterprises Circular No. 95 of 04 June 1994 are given below.

(i) Rs.3,341,995 as the attendance allowance for the year 2012.

(ii) Rs.1,763,533 as the telephone allowance for the year under review.

(iii) Rs.547,500 to 32 officers for the performance of duties of the GSR Project.

(iv) Rs.4,103,890 as the bonus for the year 2012.

(d) The particulars of payments made contrary to the matters specified in the letter No. NSCC/3/ABC/24 dated 01 June 2007 of the National Salaries and Cadre Commission are given below.

(i) According to the above letter a monthly transport allowance of Rs.2,000 had been approved for the non-staff grade officers. But a monthly transport allowance of Rs.6,000 had been paid. As such a sum of Rs.5,328,000 had been paid for the year under review without approval.

(ii) According to the above letter the monthly fuel allowance of the officers of the Commission had been limited at Rs.5,000 per month to a Deputy Director and Rs.3,500 per month to an Assistant Director. Nevertheless, contrary to the above limits, the Deputy Directors and the Assistant Directors had been paid monthly fuel allowances at the rate of Rs.17,000 and Rs.15,500 respectively. Accordingly, a sum of Rs.2,268,000 had been paid for the year under review without authority.

(e) Contrary to the decision of the Cabinet of Ministers dated 18 March 2009 as appearing in the Management Services Circular No. 39 of 26 May 2009, the salary steps approved by the Department of Management Services for the groups of employees had been revised based on the decision of the Commission dated 15 August 2013 and salaries had been paid at the higher salary scales prepared. This contravenes the National Salaries Policy as well as surpassing the salary scales approved for the different groups of salaries. The overpayments of salaries made relating to the year under review amounted to Rs.18,284,450.

(f) The provisions in the Management Services Circular No. 39 of 26 May 2009 had not been taken into consideration in determining the salaries of 05 staff officers recruited on contract basis.

3. Financial Review

3:1 Financial Results

According to the financial statements presented, the operations of the Commission for the year under review had resulted in a surplus of Rs.47,367,276,561 as compared with the corresponding surplus of Rs.37,684,009,841 for the preceding year, thus indicating an increase of Rs.9,683,266,720 in the financial result.

3.2 Analytical Financial Review

Significant variances were observed at a companion of the income and expenditure of the Commission with that of the preceding year.

Particulars	**31 December 2013**	**31 December 2012**	**Difference**	**Percentage of Difference**
	Rs.	**Rs.**	**Rs.**	
Income				
Operator Licence Fees	2,060,743,487	1,418,317,869	642,425,618	45.30
Broadcasting Frequency Fees	8,226,962,705	6,532,360,699	1,694,602,006	26.06
Prepayment of Frequency Fees	5,661,038,940	367,346,939	5,293,692,001	1441.10
Cordless Telephone Fees	24,910,893	20,054,795	4,856,098	24.20
Sundry Income	1,991,028,937	826,946,847	1,164,082,090	140.77
Total Income	49,202,055,538	38,603,814,047	10,598,241,491	27.45
Expenditure				
Regulatory Expenditure	870,579,295	272,988,566	597,590,729	219.0
Bad Debts	83,367,539	5,783,816	77,583,723	1,341.4
Nation Building Tax	421,995,689	227,945,588	194,050,101	85.1
Total Expenditure	1,834,778,977	919,804,206	914,974,771	99.3
Pre-tax Operating Profit for the year	47,367,276,561	37,684,009,841	9,683,266,720	25.7

4. Operating Review

4.1 Performance

The following observations are made.

(a) Even though the Commission had taken action to regulate the use of frequencies, there were 45 public complaints relating to frequency defects.

(b) The Commission had allowed the private institutions to programme the equipment deployed for the use of frequencies. As such the possibility of using the power exceeding the allocation made by the Telecommunication Regulatory Commission as well as programming a larger number of equipment than the number approved was observed. The Commission had not intervened to rectify the situation.

4:2 Operating Inefficiencies

The following observations are made.

(a) The specific determination of the amount receivable by the Commission had been delayed due to the delay in submitting the audited final accounts by certain institutions.

(b) According to the Notification published in the Gazette Extraordinary No. 1986/4 dated 27 December 2010 of the Democratic Socialist Republic of Sri Lanka, the Telecommunication Operators should pay the cess with effect from 01 January 2011. Nevertheless, the arrears due as at 25 April 2014 from 5 institutions totalled to Rs.50,876,397. The Commission had not formulated a methodology for obtaining legal authority for charging a penalty from the operations who do not pay or delay the payment of cess. As such the payment of the cess collected by the Telecommunications Operators to the Commission had been defaulted by them. Even though it was informed me on 28 June 2011 and 16 June 2012 that a methodology for obtaining the legal authority applicable to every licence holder would be included in the Telecommunications Act, such action had not been taken up to date.

(c) A formal methodology had not been introduced for the recovery of the frequencies income while a procedure for charging penalty or taking legal action for the non-payment of frequencies income had also not been introduced. Out of the invoices issued in the year 2013, invoices valued at Rs.4,133,666 had not been settled even by 29 April 2014. In view of the delays prevailing in the issue of invoices to the respective institutions the invoices relating to the income of Rs.130,544,231 which were recoverable in respect of preceding years had been issued in the current year.

(d) The Commission is not vested with the powers by the Telecommunication Act for the recovery of an additional penalty for the default in the payment of the radio frequency fees. But action had not been taken to amend the Telecommunications Act, to obtain such powers.

(e) In terms of Section 22(1) of the Telecommunications Act, as amended by the Amendment Act, No. 25 of 1991 and Amendment Act, No. 27 of 1996, any persons should not use any radio frequency in Sri Lanka except under a licence issued by the Telecommunications Regulatory Commission. Even though one company had used frequencies without a licence, the Commission had not taken action in that connection.

(f) In terms of provisions in the Telecommunications Tax Act, No. 21 of 2011, the Telecommunications Operators should collect the Telecommunication Tax at 20 per cent and remit to the Commission before the fifteenth day of the month following. Nevertheless, two companies had not made payments accordingly.

(g) The accounts for the year 2012 furnished by a company paying the Telecommunications Tax had not been certified by the auditors while two companies had not furnished the final accounts for the year 2012. The Commission had not taken action to obtain those accounts and as such it was not possible to be satisfied in audit with regard to the accuracy of the tax for that year.

(h) Even though a period of nearly one year had elapsed after the due date for the renewal of the Operator Licences action had not been taken for the recovery of a sum of Rs.101 million due from two operators.

(i) In terms of provisions in the Inland Revenue Act, No. 10 of 2006 and the subsequent amendments thereto, the Pay As You Earn Tax should be recovered from the salaries of the respective officers and remitted to the Department of Inland Revenue. Nevertheless, the Pay As You Earn Tax amounting to Rs.3,512,759 had been paid to the Department of Inland Revenue by the Commission without being recovered from the officers.

4.3 Transactions of Contentious Nature

The Commission had spent a sum of Rs.5,091,903 for accommodation and food in connection with a get-together and a tour of the officers of the staff and their families in the year under review.

4.4 Underutilization of Funds

The sum of U.S.$ 420,000 invested by the Telecommunications Regulatory Commission in the year 2003 in a Savings Bank Account had increased to U.S.$ 532,111.45 or Rs.69.605,498.77 by the end of the year under review. That money had remained without being utilized during a period of 10 ½ years.

4.5 Identified Losses

The following observations are made.

(a) As a sum of Rs.8,000,000,000 invested in the Public Institutions Temporary Surplus Trust Fund had been discounted by the General Treasury before maturity, the balance investment of Rs.285,642,376 and the dividend income receivable amounting to Rs.325,812,879 had been deprived of.

(b) A motor vehicle of the Commission used by a Minister up to 29 February 2012 had been damaged due to an accident during that period. Even though the Commission had spent a sum of Rs.625,409 for the repairs to the motor vehicle, a loss of Rs.173,031 had been incurred as the insurance company had reimbursed only Rs.452,377. Action had not been taken for the recovery of the loss from the party responsible.

4.6 Deficiencies in Contract Administration

Construction of Lotus Tower Television and Telecommunication Multi-Transmission Tower.

(a) Even though this construction work had been awarded to a Chinese Company on the approval of the Cabinet of Ministers, according to the Business License of the Company the business scope of the company did not include Multi-Transmission Towers or large scale construction contracts.

(b) Even though the Critical Path containing the period of construction and the related items of work to be completed had been furnished, the management had failed to furnish the progress of construction for the past 17 months in physical and financial terms. Even though the work should be completed within 912 days in accordance with the agreement, it was not possible to examine whether the work could be completed on the due date as expected.

(c) Even though over 55 per cent of the work completion period had elapsed, a report on the changes to the contract cost during that period had not been prepared by the Consultancy Company.

(d) According to the agreement, a detailed Bill of Quantities as set-out in Note “C” should be prepared within 05 months after signing of the contract. But such detailed Bill of Quantities had not been prepared despite the elapse of 17 months.

4.7 Commencement of Projects on Lands/Properties not Formally Acquired

The Cabinet of Ministers had decided on 14 December 2011 that in view of the Lotus Tower Project being a Project of national importance, the Urban Development Authority should transfer the land concerned to the Telecommunications Regulatory Commission of Sri Lanka on the basis of recovery of only the development cost incurred up to date by the Urban Development Authority. Contrary to that, a sum of Rs.1,800 million had been paid to the Urban Development Authority at the end of the year under review without computing the expenditure incurred on the land by the Urban Development Authority and in addition it had been agreed to pay a further sum of Rs.9,900 million.

4.8 Personnel Administration

Even though the approved cadre of the Commission as at 31 December 2013 had been 290, the actual cadre stood at 207. Even though 29 employees had been recruited on contract basis and secondment basis, the approval of the Department of Management Services for that had not been obtained. Details appear below.

Category of Employees	Cadre as at 31 December 2013 Approved	Actual	Vacant Posts	Excess Posts
Executive/ Staff Grades	62	28	34	-
Support Grades	182	109	73	-
Minor Employees	46	41	05	-
Secondment Basis	-	02	-	02
Contract Basis	-	27	-	27
	290	207	112	29

4.9 Motor Vehicles Utilizations

The following observations are made.

(a) The Daily Running Charts in terms of the Public Finance Circular No. 353(5) dated 31 October 2004 had not been maintained for the motor vehicle obtained on hire basis at the rate of Rs.80,000 per month, for the Construction Supervising Officer of the Lotus Tower Project.

(b) As the Daily Running Charts had not been furnished to audit it was not possible to establish in audit the use of the motor vehicle, the number of kilometres run, the number of days the motor vehicle was run, etc. As such the appropriateness of obtaining the motor vehicle on hire basis could not be established in audit.

5. Accountability and Good Governance

5.1 Corporate Plan

The following observations are made.

(a) The Corporate Plan prepared for the years 2009 to 2013 had not been revised. The current Corporate Plan did not include information in areas such as the policy methodologies of human resources management, financial and supplies areas, the operating activities of the Commission including those responsible for operation as well as the period of operation. The operating activities of 3 preceding years had not been reviewed and included therein. As such that Corporate Plan had not been prepared in a manner to build up a connection between the Corporate Plan and the budget and with a view to achieving the Vision and Mission of the Commission.

(b) Even though a sum of Rs.22,231,205 had been paid to a private institution for the preparation of the Corporate Plan for the years 2000 to 2001 an acceptable Corporate Plan had not been prepared. Even though it was reported that the Criminal Investigation Department was conducting an investigation, any progress thereon was not reported.

5.2 Action Plan

Even though the Action Plan should be prepared before the commencement of the year and take action to achieve the targets and to ascertain how far the planned targets had been achieved within a specified period, an Action Plan prepared for the year under review had not been furnished to the Auditor General.

5.3 Procurement Plan

The Commission had not prepared a Procurement Plan for the year under review and furnished to audit. As procurements had not been made according to a plan such a plan had not been made use of as an instrument of control.

5.4 Budgetary Control

A comparison of the budget forecasts prepared by the Commission with an actual values revealed a large number of variances. Those variances ranged between 4 per cent to 124 per cent. As the assets and liabilities, income and expenditure for the year under review had not been forecasted accurately, the budget had not been made use of as an effective instrument of financial control.

5.5 Tabling of Annual Reports

The Annual Report for the year 2012 had not been tabled in Parliament up to date.

6. Systems and Controls

The observations in systems are controls made during the course of audit were brought to the notice of the Chairman of the Commission by my detailed report in terms of Section 13(7)(a) of the Finance Act. Special attention is needed in respect of the following areas control.

(a) Budget
(b) Corporate Plan
(c) Debtors
(d) Investments
(e) Procurements
(f) Payment of Allowances
(g) Contract Administration