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11th January, 2011

Respected Prime Minister,

This is with regard to the press conference held by Mr. Kapil Sibal, Hon'ble Minister of Communications & IT, trashing the CAG and mounting humiliation on a constitutional body, as well as making a mockery of the CAG's detailed analysis by suggesting, through some bizarre arithmetic, that the actual loss caused due to the 2G spectrum scam is, in fact, zero.

His decision to publicly announce that the loss resulting from the 2G scam is in fact zero by issuing an official press release, is an unprecedented and dangerous move which has compromised the Government, the Supreme Court hearing that is currently in progress, the CBI investigation, and in fact, even the residual (according to Mr. Sibal) task of investigating the improprieties that have been committed.

Mr. Sibal has overstepped the line which defines the dignity of a Union Minister who is duty bound to cooperate with the ongoing investigation and the Supreme Court Order, or is completely misled by those who have committed the crime (both DoT officials and corporates in collusion) based on whose advice he chose to lead this misadventure. Specifically, he can easily be held responsible for various acts and omissions which are detrimental to the overall investigation process, as listed in the *Annexure*.

Mr. Sibal also needs to be reminded that the arguments that he made are a bland repetition of what has already been made in great detail in the affidavits that the Department of Telecom and Mr. A. Raja submitted in the Supreme Court – in spite of which an investigation has been ordered on the issue of losses by the Supreme Court. Clearly, these arguments have failed to persuade the Supreme Court, or else, the Supreme Court would not have expanded the scope of investigation to include losses which are included in the CAG Report.

Additionally, his criticism of the CAG Report is also completely unwarranted. As anyone in government knows or should know, the CAG would have given the DoT every opportunity to respond during the audit process between January-September 2010. The CAG Report itself openly lays out the process followed by it in its Chapter 2 'Audit Approach'. It makes clear that the information is based on DoT files and TRAI recommendations.

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The Report takes into account replies by DoT and Ministry of Finance in response to the audit observations communicated to them in July 2010 and September 2010. Performance audit guidelines were followed by the CAG to perfection, including holding of entry and exit conferences in December 2009 and May 2010. DoT sought and was given additional meetings to discuss the report, and extension to provide responses. All the arguments forwarded by Mr. Sibal have been included and analyzed by the CAG at the end of which they have arrived at this Report. Mr. Sibal is neither stating anything new nor revealing anything that the department officials and lawyers have not already argue unsuccessfully, both in front of CAG and Supreme Court – both of whom were unimpressed with DoT's replies. The attack on the CAG is made even more tragic, given that you as Prime Minister just recently praised the CAG and the trend of independent constitutional bodies seemingly becoming extinct in our country.

I can assure you that Mr. Sibal's arithmetic of bringing the loss down to zero is thoroughly erroneous and a gross misrepresentation. It flies in the face of obvious evidence available of many Private companies profiteering from this spectrum allocation. Most of his other conclusions in the press release aimed at defending Mr. A. Raja's decision of giving away spectrum in 2008 at 2001 prices without an open, transparent auction, are deeply flawed, without logic, and misrepresent facts while cherry picking statements from government documents (policy and Five Year Plan), DoT notifications and TRAI recommendations.

Apart from insulting the intelligence of the many Indians concerned with corruption in our governance, his repeated statements that the 'Prime Minister did not ask for auctions' also has him implying that you had, as Prime Minister, chosen to ignore all the letters to you on the subject that were written by various well meaning persons in Parliament, Government and elsewhere, seeking a more transparent and fair form of allocating a scarce national asset. While that may be Mr. Sibal's views, I believe that you were genuinely concerned about seeking an alternative to this dubious method of giving spectrum – this is clear from your letter dated 02 November, 2008 addressed to Mr. A. Raja. Mr Sibal also needs to be informed that spectrum is a national asset – and the trusteeship of this asset by the Government is on behalf of the people of India, and cannot be a private dispute between Political parties.

I am perfectly willing to give him the benefit of the doubt that, he may have been ill advised by some bureaucrats or private companies who are currently fearing prosecution. Through this letter, I request you to kindly advise him to recall his press release and the presentation, but more specifically, the official statement relating to the fact that "the loss emanating from the 2G spectrum scam is zero." This statement has wide ranging implications on the judicial and investigative process. Additionally, he should seriously consider apologizing for his erroneous choice of words in describing the efforts of the

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diligent and fearless officials of CAG, presented through its Report covering the shortcomings since 2003. The most recent interview by him, has him justifying the losses, as the "consumers have benefited". As all of us are aware, most scams are almost always under the garb of benefitting the consumer!!

Mr. Sibal is badly misreading the mood of the people and the nation in the face of this scam. The correct thing for the government would be address the scam squarely and assist the various investigations to identify the crime and its perpetrators, punish them and recover the moneys/spectrum lost. The people of India expect the Government of India, and their representatives in Parliament and media to discharge their solemn duty and investigate this crime. Any amateurish efforts to sweep this under the carpet, such as the one being attempted by Mr. Sibal, will backfire and be severely rejected by the people of India.

I request that my letter be given careful consideration for the wider good of justice and to safeguard the current investigation whose completion is the only way to restore citizens' trust in the functioning of your government and to show due respect for the Supreme Court Order dated 16 December 2010.

I will keenly await Mr. Sibal's retraction.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Dr Manmohan Singh
Hon'ble Prime Minister
Government of India
New Delhi

Implications of Mr. Kapil Sibal's Press Statement

1. Insult to Supreme Court Judgment bordering on contempt

As a lawyer, Mr. Sibal should know that the Supreme Court, after hearing detailed defense by the lawyers of DoT and Mr. Raja, has not only allowed for the investigation to proceed, but in fact, expanded its terms, including a decision to supervise the CBI. Specifically, the Supreme Court has stated that it is "prima facie satisfied with the allegations contained in the writ petition and affidavits filed before this Court which are supported not only by documents produced by them, but also the report of the CVC and the findings recorded by CAG in its performance audit report need a thorough and impartial investigation." Further, it has given a specific direction to the CBI to "conduct thorough investigation into various issues highlighted in the report of the CVC and the report of CAG who have prima facie found serious irregularitiesand the huge losses to the public Exchequer running into several thousand crores."

Mr. Sibal's position second guesses the finding of the Court and its decision to direct an enquiry into the losses. As a Minister, he should be assisting the process of justice, rather than thwarting the investigation into the issue of losses due to the 2G scam.

2. Misused position as Union Minister to influence / prejudice the CBI Investigation

The CBI, as you are aware, has registered a specific FIR on 20 October 2009. Apart from being under directions to investigate losses from the 2G scam (not just procedural irregularities), the CBI FIR specifically mentions that "officials of DoT entered into criminal conspiracy with certain private persons / companies and misused their official position in grant of UASL causing wrongful loss to the government and corresponding wrongful gain to these private companies." Further, it mentions even back in 2009, an independent figure of an estimated loss of "more than Rs.22,000 crores" without including dual technology or spectrum beyond 6.2 MHz. Mr. Sibal has now thwarted this investigation process by informing the CBI and the nation that the loss is, in fact, zero – thus unduly influencing the Supreme Court monitored investigation by CBI.

3. Makes it impossible for Government to recover lost revenues

By making a public statement and issuing an official press release criticizing the CAG's report by concluding that "a large loss to the exchequer has no merit", he has made it virtually impossible for the Government to recover even a small portion of the said loss, regardless of whether he agrees with the loss of Rs.1.76

crores. His conclusion that the loss is, in fact, zero - aided by a press release and a presentation - will be a permanent defense for the beneficiaries of the scam in all forums, including courts, against any efforts by the Government to recover the losses. It is a self goal that has robbed the Exchequer of any opportunity to recover additional revenues.

4. Attempt to whitewash scams and giving safe passage to the beneficiaries

If according to Mr. Sibal, the loss is zero, and by consequence, there are no gains to private parties - then it would be virtually impossible to prosecute the beneficiaries of this scam. Any irregularity that does not lead to a loss to the Exchequer will go virtually unpunished. In one sweeping statement, Mr Sibal has compromised your government's position, that of CBI and the entire investigation process, since the beneficiaries will now argue that the Union Minister himself has given them a clean chit (since procedural irregularities can only accrue to DoT, and not the beneficiaries).

5. Undermined PAC and breach of Parliamentary privilege

As the Union Minister, whose department is required to respond to the PAC, he has bordered on breaching Parliamentary privilege and put his position out in public, before his department has fully responded to the queries of PAC - a process that has only just begun. It would have been up to the PAC to conclude, based on his department's responses, on whether or not the CAG report is accurate. While he has every right to defend the department (even if for political reasons), the defense should have been aimed at PAC under the protocol that needs to be followed in the Parliament, rather than jumping to an external press release - that too, without any provocation. Moreover, the argument that he is making should have been made by the Secretary at his deposition in front of PAC.

6. Publicly humiliated, compromised and undermined institution of CAG

Without going into the language that Mr. Sibal has used, his phraseology to describe the workings and analysis of CAG is to say the least "humiliating and demotivating". The Government's auditor as it is has an extremely difficult job to point misuse of power, leading to losses by senior Ministers. In this case, it had done an outstanding job of providing multiple options to calculate presumptive losses without favoring one over the other. It had detailed the irregularities in decision making and left it to the PAC to draw final conclusions. It is extremely unbecoming of Mr. Sibal to put the CAG under such pressure by humiliating its honest and diligent officers and demotivating and discouraging them from producing such honest and detailed reports which have served as an eye opener for the nation in the future. He owes the CAG an apology for his language.

7. Insult to the intelligence of a Billion Indians

While Mr. Sibal had the right to his opinion and could have debated on the actual level of loss rather than the 1.76 crore which caught the attention of the media and the nation – his attempt to suggest that it is "zero loss" is a pure simple insult to the intelligence and sensitivities of a nation that is seething with anger and frustration due to this episode. He should have demonstrated at least minimal sensitivity and some basic level of rigor while dealing with this sensitive issue of losses to the Exchequer.