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Dear *Shri Sidal,*

At the outset, please accept my belated but heartiest congratulations on your appointment as the Minister of Communications & IT.

I realize that your first few weeks in the office have been full of challenges, especially given the current controversy around 2G spectrum and the hearings / Judgment of the Hon'ble Supreme Court.

As a Member of the Parliamentary Standing Committee on Information Technology, I am deeply interested in all these issues and have been at the forefront of raising these issues both with the Hon'ble Prime Minister and your predecessor, as well as within the Parliament through debates and questions.

I wholeheartedly welcome your move and announcements to clean up the sector and bring the guilty to book. Your first step in this direction to issue Show Cause Notices to delinquent companies - as pointed out in the CAG report and the TRAI letter of 18 November, 2010 - is a welcome first step.

In this regard, I request you to consider the following:

1. Rid DoT of Lobbyists and wheeler dealers

Telecom policy in India has been influenced for too long by corporates and lobbyists who have free access to Sanchar Bhawan in a manner that is unhealthy for the sector. Some regulations about genuine company representatives representing their issues with prior permission and appointments must be put in place to immediately decline the free access and influence that lobbyists and former Government officials (working as lobbyists) continue to have.

2. Don't make Telecom policy making become only about Corporates

The current policy dialogue between the Department of Telecom (DoT) and TRAI often has only two stakeholders involved – the corporates who operate the licenses,

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and the DoT who is the licensor. The space to be occupied by citizens, consumers of telecom services, media and policy analysts who may be able to provide important and relevant perspectives and points of view, is completely missing. Till this balance is restored, all policy dialogues will continue to be skewed in favor of corporates who often indulge in regulatory capture and their healthy track record is already known to all and is in public domain. The Department needs to proactively encourage participation of consumer groups and citizens as well as media so that the users' point of view is well represented in the policy making function.

3. Corporate wars are the symptom and not the cause

It would be a dangerous mistake and oversimplification to see the current policy distortion and 2G controversy as a result of corporate wars. As a matter of fact, the corporate wars only served to expose the rot. It is often the government and the TRAI which, out of compulsions or due to regulatory capture, tend to take policy decisions which favor some companies over others. Once such level playing field is destroyed, it is obvious that corporates who have been short changed will either fight or litigate to protect their self interest. When this occurs, Government often finds it convenient to call it a "corporate war". But corporate wars are usually a fight over the spoils and a symptom rather than the cause.

Therefore, there is a need to adapt transparent, pro-competitive and level playing field policy decisions that keep the government equidistant from all corporate interests and closer to the consumers / users of telecom services. This by itself can remove vast majority of the current problem. Governments Public policy making should be public centric and while investor interest must be kept in mind, the policy should not be architected or captured by the investors in the process.

4. DOTs actions and responses to show cause notices must be in public domain and visible to all

The DOTs recent show cause notices to those Telecom operators that have not met their rollout conditions or have been allegedly given licenses despite their ineligibility – is welcome. However there is a need for the DOTs actions from here on to be fully in public domain and transparent. The DoT has a long track record of colluding with private companies and therefore you will understand the suspicion and concern that the DoT may blandly accept the responses of the Telecom companies to the show cause notices. More so, because the DoT has issued these show cause notices only under pressure from the TRAI and/or the media and there are enough vested interests in the DoT. The lack of oversight on

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the DoTs handling of responses to these show causes notices – necessitates that this entire discourse between the DoT and private Telecom companies be done under public glare and scrutiny.

5. TRAI as an Independent institution needs strengthening

There is also a serious shortcoming in the scheme of the TRAI Act. Under the Act, the government is mandated to seek recommendations in the areas of introduction of new service providers or while setting terms and conditions of license, but it often circumvents TRAI. When it does so, the TRAI has no powers to stop the government, even when it knows that its recommendations are being manipulated or provisions of the TRAI Act being vitiated. This needs to be corrected through appropriate amendments in the legislation so that there is a greater check that is introduced in the way the DoT functions vis-à-vis the TRAI and the practice of cherry picking/selective interpretation of TRAI's recommendation is stopped.

6. TRAI needs better oversight and be made more accountable to people of India

The functioning of TRAI also suffers greatly on many accounts. Firstly, it needs to be accountable and a fresh approach to its oversight by Public through Parliament needs to be developed and articulated. The whole area of TRAI's accountability to the Parliament is highly questionable, especially given the fact that its current relationship with DoT and MoCIT smacks of a conflict of interest, with retired DOT secretaries invariably becoming TRAI chairman. Also as pointed above, it is unable to check the government when the TRAI Act is being violated by DoT. Secondly, TRAI lacks any form of annual planning that is available for scrutiny. TRAI's performance during the year is not measured in any objective fashion. There is no accountability within TRAI in terms of time taken once an issue is raised, except when it is a formal reference. With respect, the MoCIT is responsible for the financial well being of BSNL and MTNL on one hand, and the rest of the telecom sector on the other. It also sits in judgment of TRAI recommendations which may sometimes be against the interests of the government companies. Equally, TRAI's independence is greatly curtailed if the DoT becomes the sole decision maker within the ambit of such conflict of interest.

It is important, therefore, that the accountability of the TRAI to the Parliament is re-evaluated within the scheme of the TRAI Act and appropriate amendments carried out in this regard. TRAI must be guaranteed the independence - both financial and functional - but at the same time, its accountability must be at a far higher level and certainly not to the MoCIT alone. Even though this goes to the heart of your role, I am sure you will agree with the principles that are enunciated here.

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7. Investigation can only be successful if you seek out views and opinions outside the DoT

Your current focus on the ongoing investigation is very welcome. There are many nuances and twists in policy since 2001 to 2010 which need to be considered and brought to light so that you are able to direct the investigations better. I am sure you have the full assistance of the officials of the Department and the corporates / licensees. I am afraid, however, that even if well-intentioned, these two parties have a serious conflict of interest – the first (DoT officials) who are required to defend their own actions over the last decade and the second (licensees) who are required to plead their own case in front of you. Under the circumstances, I request you to kindly seek neutral feedback from those who understand the sector but are not necessarily either decision makers (DoT officials, TRAI officials or operators). This would include analysts, media, Members of Parliament, Members of the Parliamentary Standing Committee on IT, as well as citizen groups, if possible. This is the only way you will receive a new insight into how some of the policy distortions, leading up to the huge 2G spectrum controversy, occurred. I am prepared to make myself available as well to you if you deem it necessary.

I hope you will consider this letter in all sincerity.

If there is anything I can help with in this regard, please do not hesitate to contact me as I can assist you with the picture of telecom – every twist and turn in policy since 1994 – from the time when I first took a deep interest in the sector.

Please accept my best wishes for the season and for the New Year ahead!

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Shri Kapil Sibal
Hon'ble Minister of Communications & IT
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