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22<sup>nd</sup> December, 2010

Dear

*Shri Thomas*

Please find below a formal complaint being filed with regards to the dubious functioning of the former TRAI Chairman, Mr. Pradip Baijal, during his tenure at TRAI between 2003 and 2006.

My complaint specifically refers to the fact that he acted in the interest of private companies in violation of the TRAI Act (Section 11) to illegally allow cellular mobile licenses with precious startup spectrum from 2003 onwards, under the garb of Unified Access Service License (UASL), by subverting an open, transparent auction process adopted by the government in 1995 and 2001. In doing so, he also violated specific provisions of the TRAI Act and NTP 1999.

Mr. Baijal also did a U-turn on his own recommendations by making an artificial distinction between cellular mobile and UASL, while knowing fully well that UASL was nothing but cellular mobile licenses with fixed line provision thrown in free. Further, he exceeded his authority - which is limited to making recommendations under Section 11 of the TRAI Act - and illegally interpreted Government guidelines for new UASL service providers in contravention of his own recommendations made merely two weeks ago. These acts of Mr. Pradip Baijal caused massive loss to the Exchequer and gains to private operators.

Later, on his retirement, in what seems like a *quid pro quo*, he went on to become a lobbyist / consultant for some of the telecom companies - which were beneficiaries of Mr. Baijal's illegal actions.

The matter needs to be thoroughly investigated in line with the Hon'ble Supreme Court's Judgment (arising out of SLP (C) No. 24873 of 2010) dated 16 December, 2010 in the matter of CPIL & others versus Union of India & others, delivered by Justice G. S. Singhvi and Justice Asok Kumar Ganguly, specifically relating to :

*"The reports produced before the Court show that the CBI and the Enforcement Directorate have started investigation in the right direction. At the same time, keeping in view the statements made by the learned Solicitor General and the learned senior counsel representing the CBI and with a view to ensure that in a serious matter like this,*

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*comprehensive and coordinated investigation is conducted by the CBI and the Enforcement Directorate without any hindrance, we deem it proper to issue the following directions"*

and

*"(iii) The CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19.10.2007."*

## FACTS OF THE CASE

### 1. Policy Regime

The policy governing the Indian telecom sector in 2003, and even today is NTP 1999. NTP'99 has a specific provision under Section 5 relating to spectrum allocation – which is a precious and scarce national resource. The guidelines for allocation of spectrum in the NT'99 are clearly defined as :

#### *"5.0 Spectrum Management*

*With the proliferation of new technologies and the growing demand for telecommunication services, the demand on spectrum has increased manifold. It is, therefore, essential that spectrum be utilized efficiently, economically, rationally and optimally. There is a need for a transparent process of allocation of frequency spectrum for use by a service and making it available to various users under specific conditions."*

From the above, it is clear that the operating words for allocation of spectrum are "efficient, economical, rational and optimal". There is a specific direction / policy to adopt a transparent process of allocation for frequency spectrum. (*Annexure*)

Further, please be advised that subsequent to the National Telecom Policy '99, one of India's most successful Tender/auctions for mobile licenses (with spectrum) was held in 2001, where the government garnered approx. Rs.1658 crores per nationwide license (aggregate of circles) from this auction/tender





## 2. Government introduces Limited Mobility regime

In 2001, the government introduced Limited Mobility regime for fixed line operators. This was seen as a backdoor entry into mobile telephony by existing Cellular Mobile Operators (CMSPs). These Cellular Mobile operators used the legitimate process of litigation to approach TDSAT in this matter, from where the appeal went to the Hon'ble Supreme Court, who in turn, remanded the matter back to TDSAT.

## 3. Cellular Mobile Auctions in 2001

The Government held an open, transparent, multistage bidding for cellular mobile licenses in 2001. As is clear from these auctions, it was one of the fastest, litigation free and non-controversial allocation of licenses with spectrum. The Government collected approx. Rs.1658 crores as revenue for a pan-India license of which bids were received in 17 circles out of 23. The national subscriber base for mobile services was approx 4.2 million. These licenses began services by mid-2002.

## 4. Mr. Pradip Baijal takes over as TRAI Chairman – April 2003

Even while the TDSAT was seized of the matter (after being remanded back from Supreme Court) and the matter was reserved for judgment on the very issue of whether fixed line operators were gaining backdoor entry into mobile telephony using Limited Mobility, Mr. Pradip Baijal floated *suo motu* a Consultation Paper on Unified Licensing for basic and cellular services on 16 July 2003. (*Annexure*)

The Consultation Paper was divided into four chapters with the last chapter raising issues for consideration as below :

### *"Issues For Consideration*

- 5.1 *Should there be a unified license for basic and cellular mobile service in India?*
- 5.2 *If a unified license is to be implemented, what changes in the license terms and conditions should be made to bring about such a license, both in terms of entry conditions as well as other conditions during the term of the License?*
- 5.3 *How should consistency be achieved within a regime of unified License for basic and cellular mobile regarding the differences in:*
  - a) *definition of service areas;*
  - b) *roll out obligations;*
  - c) *performance bank guarantees;*



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- d) spectrum availability and charges;
- e) interconnection between services,
- f) call carriage/charging;
- g) termination charge regime applicable to different types of calls;
- h) definition of interconnection seeker/provider;
- i) numbering;
- j) mobile technologies used
- j) any other.

5.4 What is the implication of a unified licensing regime for sustainability of the market?

5.5 Unified License may imply a need to facilitate mergers and acquisitions. What conditions should apply for this purpose in respect of:

- a) spectrum available with the merged entities
- b) definition of "market" in order to determine whether a merged entity has significant market presence;
- c) conditions that should be specified to ensure that competition is not compromised.

5.6 Should the regulator evolve some specific principles with respect to the number of operators that are desirable to be present in the market;

5.7 What should be the validity period and the effective date of the unified License."

Please note that there is not a single question in the Consultation Paper that relates to the issue of need and timing for introduction of new service provider - which is a statutory power and responsibility of the TRAI under Section 11(1)(a)(i).

The questions here in this Public consultation relate to whether or not a concept of Unified Licensing should be invented; what changes would be required in license terms; how differences between fixed and mobile would be reconciled; implications on the market; impact of M&A; whether principles should be evolved as to the number of operators that are desirable; and what should be the period and effective date of license.

During the consultation, it became clear that Mr. Baijal was misusing his position to legitimize Limited Mobility operators into Cellular mobile telephony and received tremendous criticism for trying to define Unified licensing as only fixed and mobile telephony. Stung by criticism, he issued an Addendum to enhance the scope of Unified Licensing to include NLD, ILD and ISP services. (*Annexure*)

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5. Mr. Baijal issues Recommendations on Unified Licensing

- On 27 October, 2003, Mr. Baijal, through the TRAI, came up with recommendations on what he called Unified Licensing, but in effect, invented a sub term called 'Unified Access Licensing' by arguing that this was the first step to the unified licensing process. Please note that seven years after these recommendations, there is still no sign of Unified Licensing – The answer is obvious - because Unified licensing or Unified Access License in policy terms achieves nothing different from individual licenses – either by way of costs or infrastructure sharing or obligations etc. The only difference in practical terms would be for an operator to file five different documents vis-à-vis one document.
- In these recommendation, Mr. Baijal and TRAI stuck to two specific areas :
  - (i) He wanted to find a way out for Private Operators since the TDSAT Judgment, in a 2:1 ruling, had ruled that the only way Limited Mobility could work was if it was kept limited, with the dissenting member (the only Judicial member and retired Supreme Court Judge) ruling that it was completely illegal. Mr. Baijal proceeded to carve out an escape route for Limited Mobility operators under the garb of UASL.

His recommendation for the existing Limited Mobility / BSOs came in Sections 7.18 and 7.19 below of the TRAI UASL recommendations of 27<sup>th</sup> Oct 2003 :

"Section 7.18

*7.18 The 3<sup>rd</sup> alternative is that the existing entry fee of the fourth Cellular Operator would be the entry fee in the new Unified Access Licensing Regime. BSOs would pay the difference of the fourth CMSP's existing entry fee and the entry fee paid by them. It may be recalled that, even in the past, entry to cellular and basic services has been on fixed fee basis, e.g., for metros in the case of cellular and for the second BSO.*

Section 7.19

*7.19 It is recommended that the 3<sup>rd</sup> alternative as mentioned in para-7.18 above may be accepted for fixing the entry fee for migration to Unified Access Licensing regime for Basic and Cellular services at the circle level. "*



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Please note that even this Section 7.19 is specific to migrating unified licensees only, and NOT new unified licenses.

- (ii) Even though there was not a single question of need and timing of introduction of new service providers in TRAI's Consultation Paper of 16 July, 2003 (questions given as above), Mr. Baijal went on to make suo motu recommendations without holding a consultation on the issue. This by itself was a violation of the TRAI Act, Section 11(4). In making this recommendation, he wrote :

*"7.37 On the issue of introducing more competition, the TRAI has always been in favour of open and healthy competition. In its recommendations on the introduction of the 5<sup>th</sup> and 6<sup>th</sup> Cellular Mobile license, the TRAI opined that "Induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum for the existing service providers as well as for the new players, if permitted."*

*Taking cognisance of spectrum availability, the TRAI is in favour of introducing more competition. However, we feel that it in lieu of more cellular operators, it would be more appropriate to have competition in a Unified Licensing framework which will be initiated after six months.*

*7.39 As brought out in Para-7.37 above, the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation of spectrum and if Government ensures availability of additional spectrum then in the existing Licensing Regime, they may introduce additional players through a multi-stage bidding process as was followed for 4<sup>th</sup> cellular operator."*

So, it is clear from the above that within the UASL regime, Mr. Baijal spoke about cellular mobile since he fully realized that UASL was nothing but cellular mobile with fixed line thrown in free. His recommendations were explicit wherein 5<sup>th</sup> and 6<sup>th</sup> mobile operator should come in through a multi stage bidding process of the kind adopted in 2001 for the 4<sup>th</sup> mobile operator.

#### **6. TRAI UASL Recommendations approved by GoM and Cabinet – 31<sup>st</sup> oct 2003**

The recommendations of the TRAI were considered by the Group of Ministers (GoM), which in turn, recommended the following course of action :

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- a) Scope of NTP'99 may be enhanced to provide for licensing of Unified Access Service for basic and cellular license services and Unified Licensing comprising all telecom services. DoT may be authorized to issue a necessary addendum to NTP'99 to this effect.
- b) Recommendations of TRAI with regard to implementation of the UASL regime for basic and cellular services may be accepted.
- c) Recommendations of the GoM were accepted by the Union Cabinet in its meeting of 31st October, 2003. Thereafter, NTP-99 was amended vide Office Memo dated 11 November, 2003. On the same day, guidelines were issued for UASL (basic and cellular services) license.

7. DoT issues UASL guidelines on 11 November 2003

DoT issued guidelines for UASL services which essentially implemented the recommendations of TRAI. The recommendations were divided into 14 parts. The main highlights being :

- a) Existing BSOs and Limited Mobility operators could migrate to a UASL license in those specific service areas by paying an entry fee equivalent to the 4<sup>th</sup> cellular operator. BSOs would have to pay the difference between their entry fee and the 4<sup>th</sup> mobile operator.
- b) For areas where no Fourth cellular bids were received, UASL licenses could be given at the existing basic services entry fee i.e., West Bengal - Rs. 1 crores, Assam - Rs. 5 crores, Bihar - Rs. 10 crores, J&K - Rs. 2 crores, North East - Rs. 5 crores, Orissa - Rs. 5 crores.

Therefore the Nov 11 DOT UASL guidelines could not have any mention of new licenses for circles where there were existing fourth cellular licenses, since the cabinet had accepted the recommendations of TRAI, which explicitly laid out that that new licenses will be through multi stage bidding after a public consultation determined need and timing for such new licenses. There is no mention whatsoever in the guidelines with regards to introduction of new service providers – need or timing. This is because neither the TRAI's Consultation Paper of 17 July, 2003 nor the TRAI's recommendations of 27 October, 2003 concern themselves with need and timing of entry of new service providers.



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8. Private Company apply for 7 licenses on 12 November, 2003

As is clear from the Affidavit filed in the Hon'ble Supreme Court and reported by Media (*annexure*) a Private company, Tata Teleservices Limited filed for 7 applications on 12 November, 2003 for circles such as HP, Orissa, Rajasthan, UP (East), MP and West Bengal. Of these, Bihar, Orissa, and West Bengal are circles where no bids have been received in the fourth cellular, but for the other four circles, these application was for a new UASL license.

9. Chairman TRAI's Letters to the DoT

On 14 November, 2003, the Chairman TRAI Mr. Baijal wrote a DO to the DoT stating :

*"It would be clear from the above that the entry fee of the new Unified Access Licenses would be the entry fee of the fourth cellular operator, and in service areas, as there is no fourth operator – the entry fee of the existing BSO fixed by the government (based on TRAI recommendations)."*

The above position of the TRAI was further stated in another letter dated 19 November, 2003 as follows :

*"Regarding entry fee to new Unified Access license, the matter has already been clarified vide Chairman TRAI's DO Letter dated 14.11.2003".*

Source: Affidavit by Respondent No. 5 (*Annexure*)

10. Tata puts in more applications following Baijal DO of 14 November 2003

On receipt of the communication of the Chairman TRAI to DoT dated 14 November, 2003, private company Tata Teleservices put in an additional application for Kolkata on 14 November, 2003 and four applications for Haryana, Kerala, Punjab and UP (West) on 29 November, 2003. Bharti also put in applications for Bihar, J&K, Orissa and UP (East) on 17 November, 2003 (three 'C' category circles where no bids were received). Vodafone put in an application on 28 November, 2003 for UP (West), followed by an application for West Bengal on 13 February, 2004. On 05 March 2004, Dishnet put in 7 applications – six 'C' category circles and HP.

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## 11. Operators get Licenses

- Tatas were the first to get 11 licenses on 30 January, 2004 plus one license for MP on 12 February, 2004. Following this, other operators also started getting licenses between February and April 2004.
- Of the total 26 licenses given till April 2004, 12 licenses (Tatas – 9; Bharti – 1, Vodafone – 1; Dishnet – 1) were given as new UASL licenses for which no recommendations or guidelines had been issued. The other 14 were given in 'C' category circles which was consistent with Section (vii) of the UASL guidelines dated 11 November, 2003.

It is clear from the above that this was the first time new mobile licenses (5<sup>th</sup> and 6<sup>th</sup>) were given under the garb of UASL regime, in spite of the fact that :

- No consultation had been held under Section 11(1)(a)(i) – need and timing for introduction of new service providers – a statutory requirement under TRAI act.
- No mention of new UASL licenses had been made in TRAI recommendations of 27 October, 2003; and
- No mention of new UASL licenses to be given was made in the guidelines dated 11 November, 2003.

It was Mr. Bajaj's letter of 14 November, 2003 based on which such new licenses were issued, in complete contravention of the statutory provisions of the TRAI Act and violation of TRAI recommendations which had been approved by the GoM and the Union Cabinet.

The questions that arise from this illegal act need to be investigated and these include :

1. Why were new UASL licenses issued without specific recommendations which are a statutory mandate under Section 11(1)(a)(i) of the TRAI Act?
2. Why was no consultation paper floated on the subject of introduction of new service providers under the UASL regime? This flouts Section 11 (4) of the TRAI Act.
3. Given that the TRAI 27 October 2003 recommendations were silent on the issue of introduction of new service providers under the Unified Access Service regime, how could such licenses be given - since the GoM and the Cabinet had only approved the TRAI recommendations and has Government has no powers to issue fresh licenses unless it specifically seeks recommendations in this regard, consistent with Section 11 of the TRAI Act?



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4. Considering the fact that Mr. Baijal's letter of 14.11.2003 was a recommendation regarding new UASL licenses – how could he have issued such a letter without consultation, consistent with Section 11(4) of the TRAI Act?
5. If this letter was to merely clarify his recommendations, then it should have been issued before the guidelines of 11 November, 2003. How does he explain the fact that for the 5<sup>th</sup> and 6<sup>th</sup> operators, he recommended multi stage bidding of the kind adopted for the 4<sup>th</sup> cellular operator, but for UASL (which is nothing but cellular mobile licenses, with fixed line thrown in free), a fixed entry fee of 4<sup>th</sup> mobile license, even for new entrants (other than those migrating in specific circles from limited / BSO or in circles where no bid was received for CMSP)?
6. Why was this letter not in the public domain or issued along with a press release so that the information was publicly available and could have been duly opposed by those who believe that these recommendations were limited to only those service areas where migration was taking place?
7. How come one company knew even before Mr. Baijal sent his letter on 14 November, 2003 and put in applications for new UASL licenses on 12 November, 2003?
8. If a clarification had been sought from Mr. Baijal, why did he not stick to his original recommendations – auction for 5<sup>th</sup> and 6<sup>th</sup> mobile operator, and by consequence, UASL operator (since UASL is nothing but a cellular mobile license, with fixed line thrown in free) with all terms and conditions exactly matching those of cellular mobile including rollout, fees, charges etc)?
9. If the TRAI recommendations of 27 October, 2003 and Guidelines of 11 November, 2003 were explicit, where was the need to write such letter on 14 and 19 November, 2003?
10. How can there be any difference between a cellular mobile license (which requires spectrum, and therefore, a need for auction) and UASL license (which also requires the exact same spectrum, but can be given without auction or tender for the first time since 1995)?
11. How did Mr. Baijal explain giving licenses in November 2003 when the subscriber base was 26.5 million at 2001 prices to new UASL applicants, given that the subscriber base was merely 4.2 million in 2001? The subscriber base had gone up six times, but Mr. Baijal still believed that the price should be the same not only for migrating operators (approved by GoM and the Union Cabinet), but also new

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entrants who could have been easily invited to auction – consistent with TRAI recommendations of 27 October, 2003, Section 7.37 read with Section 7.39. Why was this market reality not taken into consideration when Mr. Baijal knew fully well that the exact same spectrum (quantity, quality, efficiency) would be given along with UASL licenses, as was given for the 4<sup>th</sup> cellular mobile ?

12. Who are the big gainers of this illegal clarification provided by Mr. Baijal on 14 November, 2003 and repeated on 19 November, 2003?
13. What was Mr. Baijal's relationship with these companies, during his tenure as TRAI Chairman and later on, on retirement, after his cooling off period was over?
14. Is there a quid pro quo involved in writing such illegal letters which circumvented several provisions of the TRAI Act, vitiated TRAI's own recommendations of 27 October, 2003 and were extraordinary, unprecedented steps taken without placing any of this communication in the public domain?

The Hon'ble Supreme Court's Order dated 16 December, 2010, states :

*"The reports produced before the Court show that the CBI and the Enforcement Directorate have started investigation in the right direction. At the same time, keeping in view the statements made by the learned Solicitor General and the learned senior counsel representing the CBI and with a view to ensure that in a serious matter like this, comprehensive and coordinated investigation is conducted by the CBI and the Enforcement Directorate without any hindrance, we deem it proper to issue the following directions"*

and

*"(iii) The CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19.10.2007."*

The UASL licensing matter/ Spectrum scam is fairly complex and the perpetrators may be in a position to hoodwink those who are non-specialists in matters of spectrum policy and licensing. To assist with the process of investigation, I am prepared to make myself available to explain the nuances and spotlight the acts of then Chairman, TRAI and the beneficiaries of his acts.



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You are requested to kindly investigate this matter and take appropriate action consistent with the Hon'ble Supreme Court's Judgment.

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

Yours Sincerely,

RAJEEV CHANDRASEKHAR

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