

A close-up portrait of Rajeev Chandrasekhar, a man with a beard and glasses, looking directly at the camera. The background is a gradient of blue and black.

# MY WORK AS A PARLIAMENTARIAN

RAJEEV CHANDRASEKHAR

**SPEECHES & LETTERS**

VOLUME I

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My Work  
As A  
Parliamentarian

Rajeev Chandrasekhar

SPEECHES & LETTERS

Volume I

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# Foreword

This Book of compilation of Speeches and Letters represents Rajeev Chandrasekhar's outreach and impact in areas of the key issues he has taken up over the past 11 years. I have known Rajeev for many years now, and his steadfast commitment to serving the Nation and citizens and being at the forefront of policy reforms and national debates/discussions in Parliament on numerous fronts is commendable.

Rajeev's journey as a Member of Parliament and his articulation of critical matters is well documented in this book. His speeches in Parliament reflect his deep commitment to the Constitution of India and the rights and duties it carries. His debates and discussions are backed by accurate facts and figures and convey his deep resolve to his work. His debate around his Private Member's Bill - The Declaration of Countries as Sponsor of Terrorism Bill, 2016 stirred the sentiments of the people.

Rajeev's persistent letters and his steadfast approach have resulted in many landmark results. His call for facts to address Zero Loss Theory during the Spectrum Allocation Scam was crucial. For his city, Bengaluru, Rajeev's demand for good governance and accountability and safeguarding the rights of the citizens of the city has made him one of the most popular and endeared politicians in Karnataka. And of course, Rajeev's championing of the various causes of the Armed Forces and its veterans has had remarkable impact. It is not for nothing that he was called "OROP Rajeev", by many in Parliament.

It has been a pleasure to see Rajeev's journey over the past years and a privilege writing this foreword.

I wish him all the best for his future endeavours.



H D Deve Gowda  
Former Prime Minister of India  
Member of Parliament, Lok Sabha



# Contents

## Volume I

<b>Transform India</b>	1
Speeches	5
Letters	175
<b>Digital India</b>	229
Speeches	233
Letters	267



# TRANSFORM INDIA

## ECONOMY AND GOVERNANCE

### Introduction

The Transform India campaign represents my views on issues pertaining to the Government of India's economic and governance policy decisions.

I have for some time now made my views known on policy issues of national importance – the most notable of these include regarding the ad hoc allocation of 2G licenses in 2008 – which in the years to come became one of the main indictments against the UPA government. Other issues have included the restructuring of Public Sector Banks, creating Transparency in the Management of Public Assets, Repairing Key Sectors in the Economy to revive growth amongst others.

I believe that there is a need to redefine the role of government and restore the credibility of government institutions. This requires the creation of a new architecture, a coherent economic vision, prudent financial management and installing a team of credible leaders to ensure the revival of the economy.

The Issues that need addressing include:

#### **1. Non-Performing Loans of Public Sector Banks**

- PSBs/banks must be able to assume management control of defaulting companies swiftly and non-disruptively;
- Stop the practice of masking bad loans through regulatory forbearance, ever-greening or restructuring corporate loans;

- No borrower must be allowed to dodge contracted liabilities;
  - There is a need to review and improve the legal process of enforcing securities.
- 2. Integrated Approach to Economic Reform (Coordination between MUDRA Bank, Make in India, Skill India, Digital India)**
- The Government needs to ensure proper coordination between programs that have aligned policy impacts – Make in India, Skill India and MUDRA Bank have connected mandates and require close coordination so that the impact of these programs are magnified and not diluted;
  - Bringing in the untapped informal sector into the formal one will benefit business and economy. It is to address this large population that the Budget has proposed the MUDRA Bank;
  - The MUDRA Bank will boost loans and cut borrowing costs for the cash-starved domestic small businesses. It will create a framework that regulates and provides refinancing capital flows to microfinance institutions that are in turn in the business of lending to micro/small business entities engaged in manufacturing, trading and services activities;
  - The ‘change’ to our economic architecture could be deep and transformational. It involves funding the unfunded, and unlocking the potential of a new pool of entrepreneurs and future taxpayers in this country.
- 3. Transparency in the Management of Public Assets: Coal**
- Coal auctions have not only earned the ex-chequer over Rs. 3 lakh crore, but have also demonstrated that auctions are the best way to manage natural resources;

- There is, however, still a need for an Independent Regulator for the Coal Sector;
- The Coal Ordinance, although an improvement from the UPA approach to Natural Resource Management, had many flaws. These include issues pertaining to true, free and fair auctions for price discovery, obligations of mines to citizens residing in their vicinity and to the environment, and other drafting errors.

#### **4. Smart Cities:**

- The development of cities cannot be surrendered to the commercial interests of builders, contractors and real estate companies;
- The statutory multi-year plan is the most important tool for coping with the pressures that growth will place on housing, infrastructure and public services;
- States must pass legislation that achieves a formal role for citizens in governance (including budgeting and oversight), a regional scope for the metropolitan planning commission, and executive mayors with financial and administrative autonomy for urban local bodies (ULBs);
- Governance reforms and cleaning up chronic corruption, rebuild city institutions and administrative capacity;

#### **5. Interest Rates and Retaining the Autonomy of the RBI:**

- The issue of deciding on the interest rates has resulted in much friction between the Government and the RBI;
- Rate cuts or not, RBI should be kept autonomous even if it does not pander to the Government's expectations all the time.;
- The focus on getting the economy going is the right one.

But as an earlier CRISIL report in November last year stated, the overemphasis on interest rates to spur growth is an erroneous one and the lowering of interest rates by the central bank has a limited effect on the economy;

- Investment growth has slowed down sharply in the last two years even though policy rates have been negative in real terms and real lending rates have averaged less than 3%;
- The focus should be on restarting the investment cycle and that requires equity flows to lead the credit demand;
- Credit and interest rates are only relevant if there are equity capital flows. Further, if interest rates are lowered without foreign equity flow, the risk of the flight of foreign portfolio capital is high;
- Hence the interest rates should be left alone for now and the powers of an independent regulator like the RBI which has been fairly successful in containing inflation must not be diluted.

# TRANSFORM INDIA

## Speeches



# 1

## Situation Arising Out of the Heavy Floods in Various Parts of the Country

Rajya Sabha

30th August, 2007

Thank you very much for allowing me to participate in this discussion and put forward my views.

Sir, as many of my senior colleagues in this House have said and I join them in reiterating – the problem of floods in our country occurs almost every year and disrupts millions of lives and causes havoc and untold misery to those millions. Almost every year almost as routine, we stand up and discuss the floods and the government responds with aid, grants and relief. Little aid reaches the people affected and in many cases despite the government aid or support, lives are irreparably damaged and destroyed

Sir, let me break my discussion into two parts. Firstly, I would like to summarize the impact of the floods and rains this year on my state Karnataka and plead with the Central government for financial support

Sir, my state has recorded very high rainfall this year between June and August. The rainfall over the State between June and August is the highest since 1970. Districts of Koppal, Raichur, Bellary, Chitradurga, Belgaum, Bidar, Bagalkote, Bijapur, Hassan recorded significantly higher rainfall with some districts recording rain highest ever in the last 100 years.

This has resulted in large inflow and all the major reservoirs have reached full capacity. Huge releases from these reservoirs have led to flooding, inundation and extensive damage to life, property, infrastructure agriculture and crops. 43 lives have been lost and over 1,77,733 hectares of standing agriculture crops and 20,900 hectares of horticulture crops have been damaged - with total financial damages estimated to crops and infrastructure estimated to be Rs. 1600 Crores.

Our state has already submitted a First Flood Memorandum of Rs 407 Crores to the Government of India and the Central study team has visited the state and submitted its report to Government of India. Even today the Central Government has not released any amount under NCCF. Central Government has only released 23.70 Crores under CRF and I urge the Government of India to release funds to my state expeditiously.

Sir, coming to the second part of what I wish to say,

Sir, we visit and revisit floods every year. Given our country's geography and its many rivers and basins and the increasing impact of Global Warming, floods will occur. As a speaker before has said, and I quote, "river valleys were cradles of civilizations and today they have almost become graves".

I also agree with many members and I reiterate that despite this almost annual event with them when he said earlier, we do not seem to have any long term plan to address the problem of floods.

I believe that it would be very appropriate that in this the 60th year of our independence that we develop a longer term and sustainable strategy to address this debilitating tragedy that visits our country every year. We owe it to our future generations that we leave behind some plan to address this problem.

Sir, there are many variables at play here that is creating this recurrent occurrence of floods – excessive rains, excessive and indiscriminate damming of rivers, encroachment of river banks and basins, erosion of river banks and increasingly evident phenomenon of Global warming and so there cannot be any simple or short term solution to this.

Sir, let me make some suggestions on what the Government can do in this long term plan.

Firstly, the process of granting financial relief from the Centre to the States should be completely restructured with the objective of ensuring speedier and more transparent financial resources to the affected state and its people and removing or at least reducing corruption and political partisanship in the process of allocating funds. One suggestion could be that the Government structure its various calamity funds into one Central Government Guaranteed Line of Credit made available to states which can be drawn down during a calamity. Of course this should be accompanied by clear guidelines that prevent the misuse of this (including adjusting against Plan outlays etc.) since rampant misuse of Calamity funds is the norm today.

Secondly, we must improve forecasting of floods - better forecasting can and should save lives, which today seem to be collateral damage of our lack of will to develop a new approach to Floods. Our Meteorological Department must be given more resources and their forecasting technologies and equipment must be upgraded. In addition either the Met Dept or an appropriate agency of the

Government like IRSA should also look at using Technology to remote sense and survey all our rivers, the basins and especially flood prone regions - creating a modern and high technology database that can be the basis of planning and forecasting strategy. Technology can and should be used to reduce the impact by some forecasting.

Thirdly, interlinking of rivers must be looked at. The previous government had planned an ambitious interlinking of rivers and basins project – There are no signs of this project anymore. Its not clear if the current Government has shelved this project or modified it or is just ignoring it. Either way, it deserves a relook and some form of interlinking, even in a smaller more targeted way at certain geographies will serve to rebalance peaking water surges during flood season. As one of my previous speakers also said, there is no doubt that this is a significant project with other important issues that get tossed up like environment impact and relocation of people as a consequence of interlinking etc, but the Government must attempt to create a political consensus around this or at least develop a scaled down plan that meets political consensus.

Fourthly, States must focus on the twin issues of river bank encroachment and river bank erosion – both of which contribute to floods. This is squarely in the territory of State responsibility. The Government of India must develop a plan to work with States to encourage and incentivize State Governments and Panchayats in this connection both in terms of funding and enforcement.

Finally – it is clear that our decades of abuse of the environment and ongoing abuse is causing the Global Warming effect- The Government and specifically the Environment Ministry must get on top of this issue and give the nation a State of the Nation report at the earliest that can be the basis for the country to start sensitising itself to the impact of this abuse on recurrent floods and natural phenomenon. Legislation should be introduced to reverse

the impact of Global Warming in our country at the earliest. Sir, I would urge a separate debate and discussion on this issue.

To end, Sir I reiterate – While the Government must ensure maximum efforts to speed up relief and aids to the millions of displaced and flood-affected people, the Government must also immediately take the initiative to start the process of protecting its people from this annual occurrence of floods. I urge all the political parties and members who otherwise stand for the oppressed and downtrodden to persuade the government to launch this permanent long term strategy towards the whole issue of water and in particular flood prevention and protection of people from floods. I hope the Government will take necessary steps in this regard.

Thank you.

## 2

# ‘Propelling India’s Growth The Challenges Ahead’

FICCI, New Delhi

15th February, 2008

Respected Pradhan Mantri ji,

Hon’ble Minister Shri Kamal Nath,

Shri Habil Khorakiwala, President, FICCI

Dr. Amit Mitra,

Your Excellencies, Delegates, Members of the Media, Ladies and Gentlemen,

We just heard the Hon’ble Prime Minister and he has underlined the critical challenges that we as a nation face today. Respected Pradhan Mantriji also gave us the blueprint for an action plan for sustaining India’s growth as well as distributing the benefits of growth particularly to those who are vulnerable.

Sir, we are aware and quite alive to the needs of inclusive growth. And we from FICCI will ensure that we do our best in this direction in the year ahead. This is our pledge to our Prime Minister.

Sir, later this afternoon, we would be adopting the resolution on the theme 'Propelling India's Growth – The Challenges Ahead'. In our agenda, we have listed development of infrastructure, revival of the agriculture sector, further strengthening of the manufacturing sector and revamping of the education sector as our four priority areas for the year ahead. In this context, I would like to flag off three issues.

First, formalizing the informal sector. Pradhan Mantri ji, a major plank for achieving inclusive growth would be development of a framework and supporting infrastructure for formalizing the informal economy. Today, only 8% of the workforce is employed in the organized sector. It is therefore imperative that we take measures to tap the potential of the informal sector. The informal sector's energy and ability can be harnessed to give a massive push to growth. This will give income in the hands of the weaker and the vulnerable sections of the society and in turn augment demand within the economy. It will set off a 'virtuous cycle'. A set of recommendations has already been placed for developing this sector. These may be implemented.

Second, taking now the issue of globalization. We have, admittedly, gained in a major way since we opened our economy. Today, India is in the midst of negotiations with a number of countries for deepening and strengthening economic ties. We are working on several bilateral and regional FTAs. These are indeed welcome measures as these can give access to the domestic industry to the global market as well as help us meet some of our resource requirements. However, Sir, we must at this juncture also keep in mind that in a bid to promote greater integration with the world, the interest of domestic industry is not neglected. Pradhan Mantri

ji, we must enter into agreements and be a party to frameworks that would improve India Inc's competitiveness and help us leverage our domestic strengths of favourable demographics, a large workforce and a growing consumer base. Agreements that have the potential to generate competition that crowds out domestic industries should be avoided.

Third, a level playing field within the country. Sir, at this point of time, when we are globalizing, it is also important that Indian industry gets a level playing field within the country. Major policy reforms that have taken place at the level of the central government have unleashed a wave of economic activity throughout the country. However, these productive processes are hampered by procedural constraints at the state level. Businesses have to still face a lot of procedural impediments to their operations. Labour laws affect our competitiveness in the domestic market as well as globally. Addressing these issues, we believe, is important if we are to move on to the next level of the growth trajectory.

Pradhan Mantri ji, India, today, has been able to break the 9% percent growth ceiling despite huge gaps in the infrastructure. Imagine what will happen when these gaps are filled. We, at FICCI, believe that the natural growth path for India is the double-digit growth path.

Sir, in the end I would like to say that we have a very clear action agenda for the economy in place. If, we as a nation, work steadfastly on these stated measures, not only will we be able to weather the global storm we are witnessing today but also very soon pierce the 10% growth mark and then repeat the performance year on year. This will attack the scourge of poverty and change the lives of millions of our brothers and sisters who are still at the periphery.

With these few words I, once again, thank the Hon'ble Prime Minister and the Hon'ble Commerce Minister for gracing the 80th Annual General Meeting of the Federation.

Thank you.

# 3

## Parliamentary Discussion on the General Budget 2008-2009

Rajya Sabha

14th March 2008

Sir:

Thank you for the opportunity to speak on the budget 2008-2009. It's the first time I am speaking on the National budget and I am grateful for the opportunity.

Sir, this budget is an important one – because it's an end of term of budget and it's also a transition budget to the next government.

Sir, I support this governments and previous governments strategy to use growth as the primary way to ensure the pressing problems of poverty and despair are addressed and eradicated in the shortest possible time. I support this model of entrepreneurial led growth and efficiency in our economy. This is at the heart of the how

and the why we have had growth for the last several years across governments – This is the growth that’s caused this windfall of government revenues – allowing more spending power by the government.

The growth in the last five years have been on the back of significant increased investments, higher infrastructure investment to GDP ratio, higher consumer spending and a robust consumption economy, robust services sectors, revived manufacturing and manufacturing exports growth – This growth is showing signs of being self-accelerating in the words of our RBI governor. This is on the plus side. On the minus side, we had a weak and increasingly vulnerable agricultural sector and inflation driven by surging prices in primary products and commodities and the fact is that unlike in the past we are also less insulated from global shocks and global movements of markets and economies.

Much has been spoken and written about the budget before this discussion and during it. So, I will focus on just a few areas.

This budget read along with the 11th plan tells us one thing – The government and all of us have realized that growth benefits need to trickle down further and that this needs to be done faster. This budget and the 11th plan is creating an economic architecture that seeks to restructure policies to achieve a new vision of a faster, more broad based and inclusive growth. Sir, I believe as do many of my colleagues inside this house and outside - in this broad objective for us as a nation. I believe that true inclusive growth is essential for us to bring out of misery and despair the millions of Indians who are seeing this economic miracle and growth story of India pass them by.

Therefore, I support the central theme of this budget – that of a budget for the poor. I support this budget in many things it is attempting to do – the never seen before investments in education

capacity building, the trigger to the consumption economy through personal tax exemptions and the significantly increased investments and spending in Rural infrastructure, Irrigations, Skill development, Wild life protection and Climate change and most importantly the attempt to monitor spending outcomes through the Central Plan scheme monitoring scheme (CPSMS).

I also agree wholeheartedly with the focus on inflation control because to quote Dr. YV Reddy Governor of RBI “Fighting inflation was a bigger priority than growth because spiralling prices hammered the poor immediately whilst the benefits of economic expansion took time to trickle down to the poor”

That brings me to the issues that care concern with this budget.

Sir, Firstly for us to achieve this goal of inclusive growth , we need to accept and understand that we need a medium term plan and a plan that’s aimed at ensuring sustainable inclusive growth and not fits and starts . I say this because I see nothing in this budget or speech that points to any part of this being part of a longer term sustainable strategy. One response could be that the budget isn’t supposed to do that and the 11th plan document should do this. Sir, if this is the case, then the house should have a broader and longer discussion around the 11th plan objectives and strategies on how to make inclusive growth sustainable. I would request to allow such a discussion at the earliest sir. We must make inclusive growth a national obsession and not political football for any one political party. Let the politics be about innovation and ideas how to get us there and not about the objective.

Sir, as we all agree the poor and impoverished don’t remain poor and impoverished through generations because they want to or that they don’t try hard enough to break out of their vicious cycle of despair and hopelessness. It’s just that they don’t have the institutional support that gives them a fair chance to use their

skills, hard work and intelligence to change their lives. I believe sir, that our approach to this inclusive growth objective should be one of providing these millions of Indians a brand new fully integrated infrastructure of opportunity (IOO). This framework and infrastructure must be integrated and must contain health, education, skill development, credit and finance, security solutions. This will require some out of the box thinking by the government – something that the governments aren't very good at usually, but I strongly urge the Finance Minister and the government to examine the creation of a long term and sustainable model that will address the core issue of empowering and giving opportunity to the millions who don't have it today.

Sir, secondly is an issue that “I believe is at the core of any changed approach to bring about inclusive growth”. Inclusive growth outcomes cannot be met in a fast track approach unless we restructure the way governments spends its money. I never tire of reminding ourselves of Rajiv Gandhi's quote of only 15 paise of every rupee from government programs reaching the intended people. The house is already aware of the CAG report on the performance of NREGS in some districts. Sir, if we are to be serious about addressing these problems of poverty and despair we have to fix this problem. With the growing economy and the robust revenues as the wind behind the sail of the government, the budget is making very significant allocations for spending for the poor and disadvantaged. But the same old leaky and inefficient system is being used to deliver these vastly increased spends. That's a bad strategy and will no doubt make many middlemen rich but will severely impair the urgency of our objectives. The Budget does talk about the setting up of a Central Plan Schemes Monitoring scheme (CPSMS) along with a comprehensive Decision support system. This is the best news I have heard in a long time about our efforts to reform and improve government program efficiency. But I would strongly suggest a deeper restructuring of our programs

aimed at improving this 15 paise to 95 paise per rupee. Sir let's make this money and spending really work and deliver real results for our people. I would urge the Finance Minister and government to do more.

Sir Finally, I come to the issue of the gathering storm clouds of a slowdown. It was clear much before the budget that certain parts of our economy were already showing signs of slowing down. Manufacturing sector showed a slowdown from of 25% year on year and steeper if looked at month of Dec. The Electricity sector showed a more than 50% slowdown compared to previous years December. The weak dollar is also causing tremendous havoc and pain in the manufacturing export sector including many SMEs. We are all very aware that many lakhs of people are employed by this sector. We are no longer as insulated from the global economy swings as we once were. Today our Economy has a higher component of volatile portfolio flows on capital account and the RBI has admitted that there are severe policy challenges in managing the capital flows.

Reports point to this prediction of a slowdown becoming a slow and sure reality. I am sure that the Finance Minister is aware of this and he has said that he will keep an eye on this and take necessary action to ensure that this sector doesn't go sick. I am only afraid that given the governments general track record of responsiveness – any response will be too late to prevent an irreversible slowdown and all its attendant problems.

Sir, before ending let me congratulate the two Finance Minister on the two things that have to do with the future – the institutional climate change program and the investment in Wild life protection. People who care about wildlife and environment are not wildlife fundamentalists as was regrettably characterized by a senior colleague in this house and I applaud fully your step in modernizing and arming our ill-equipped forest reserve forces.

Sir, in ending this year is a transition year and a critical year – it’s important we don’t fall off the growth track and get derailed. I remember very well what happened the last time our Honourable Prime Minister presided over a pre-election budget in the mid 90s. Increased public spending in the face of an economic slowdown caused us to spiral into a 3-year recession and it took some time for us to get out of that one. This budget is amongst all other previous ones of this government - is the most risky to pull off. This budget would have worked like a charm if this was a year or even 2 years ago. “The weakening global economic cues and signs of our domestic slowdown in some areas – reinforces the view that this could turn out to be a high-risk budget” with consequences on the current growth strategy and slope.

I know that the Finance Minister is a lucky Finance Minister – I think he will have to command all the luck and best wishes he has at his command for this year. I wish him all the best.

Thank you.

## 4

# Prime Minister's Meeting on 'Global Economic Scenario'

FICCI, New Delhi

3rd November, 2008

There's absolutely no doubt or ambiguity in my mind that our economy and business is poised at a very critical point today. There is a crisis of confidence in investors, in business – and the crisis of confidence is about the growth scenarios in the forward looking years of 09-10, 10-11. This crisis of confidence has crept down rapidly to the credit markets and banks following the cues of our Central Bank governors comments on National Television, where he quite candidly said he is not sure what the coming year will be like !

If this crisis of confidence is allowed to continue, it will most certainly become a self fulfilling prophecy and we can then look forward to dramatic slowdown as in the mid-90s.

FICCI has pointed out repeatedly over the last few quarters that all wasn't well with the economy – in the face of the oxygen being sucked out by the RBI through its monetary policy measures. I say this not necessarily to criticize today but to make a point on how much we need to rollback our previous monetary tightening.

Let me give you an example of what's happening today. Just four days ago in a meeting called in Bangalore to understand the implications on Economic slowdown, a PSU bank chief said “Despite the rate cuts our cost of capital remains high and therefore costs of borrowing will be high. We are telling corporates not to come to us to borrow and to either defer their capital spending/expansion programs or to use their internal accruals or equity for growth”. Given that almost 70%+ of FICCI members big, medium and small are in investment and expansion mode currently you can imagine the implication of this view from within the credit market.!

Further, we are aware at least in two private bank cases, where despite the rate cuts, the banks have increased their lending rates! There is very little short term money and its expensive as we know from weekend call money rates and there's almost no medium and long term money available. It is clear therefore that the measures by the RBI in rate cuts and liquidity infusion have clearly had almost ZERO effect in reaching the businesses and consumers, thus far, except for PSUs and some large corporates. Recent policy action of liquidity infusion and rate cuts are proving to be totally ineffective in the face of widespread and general risk aversion in the Banking sector.

My suggestions:

While FICCI has suggested a series of policy actions and prescriptive measures to stimulate the economy and growth again and I will hand it over to you and we did this once before a few months ago unfortunately it was ignored for the most part and

will go down as a lost opportunity at the top of the market — I will share the crux of these new suggestions:

Before I start I accept the basic premise that businesses that have built business models that cannot weather a moderation in growth rates will and should pay a price, but they should be the exception. Insolvency shouldn't be visiting all businesses and Industry as a whole and hence the issue of general risk aversion in our banks HAS to be solved.

Firstly, the only way to address this malaise of risk aversion is to get confidence going around our growth story. The most important policy action on the part of the government is to get all the focus – monetary and fiscal policies wise - on growth. There is enough potential consumer and infrastructure demand in our economy to fuel growth, if the focus is on growth. We must stop this monetary policy contradiction of trying to manage inflation in an economy going downhill and at the same time trying to stimulate growth. We have repeatedly said our inflation is a supply constrained inflation and by suppressing demand we are damaging the real economy. We are the only major economy and central bank still playing around with this concept of managing inflation through monetary policy – when every other central bank is focused on aligning its monetary policy to prevent deflation, recession and stimulating growth. This is the only way to address this risk aversion in credit markets today. Sir, given the trends of global markets, inflation will decline naturally. Eg over the last week alone the prices of most block building raw materials that are input to a host of industries have crashed! Eg, Sulphur from \$350 to \$85, Glycerin from \$1600 to \$600, all significant inputs into pharma, FMCG, Fertilizer industries. If for some reason the government is not willing to go the full hog on growth, then the only other solution to this problem of risk aversion is to have direct lending windows from government to sectors affected by this unrealistic risk aversion!

Secondly, immediate, deeper cuts in rate and CRR and we are suggesting CRR from 5.5 to 4.5 which is same level as 2004/2005 and repo rates to 5% in the near term. These levels enable more liquidity to be made available to the credit and equity markets to step up and address the gaps from the stalled International flows.

Thirdly, Exporters especially the small and medium ones have been impaired for many quarters now and are now being hit by lack of pre-shipment credit and need to do business with open credit etc and freezing of credit lines. Government must in mission mode address the exporters issues and get them fully enabled, given the competitive advantages of a weaker rupee. For Eg, the 90 days window for refunding Excise Duty for exporters must be reduced to 7 to 15 days since this is an important source of working capital for them.

Fourthly, review and relax sectoral caps in Insurance, Telecom, Aviation, Retail, and thus, increase FDI flows.

Fifthly, Railway rates must be effectively reduced, by changing classification – as you know rates have gone up over the last few years for a number of commodities, not directly but as a result of tariff reclassification.

Sixth, NRE deposit rates be increased and a strong FDI strategy be pursued even if there is very little time left for this government.

Seventh, in addition, step up public spending on infrastructure.

Like these seven, there are a series of measures that we hope Government takes note of. We have spent significant effort in putting this together and I hope the Government examines these. As I mentioned earlier, our economy has significant potential consumption and infrastructure demand capacities domestically on the back of which we can achieve growth.

I believe this critical moment can be weathered over by our economy by firm, clear decisive steps on part of the Government and there is no reason for us to be derailed from our broad growth trajectory.

Thank you, Jai Hind.

## 5

# Parliamentary Debate on the National Investigation Agency Bill, 2008 and the Unlawful Activities (Prevention) Amendment Bill, 2008

Rajya Sabha

18th December, 2008

Hon'ble Chairman,

Thank you for this opportunity to speak on this vital bill. This bill marks what I hope is the first of the many steps required – legislative, administrative – to secure our nation and our people.

Sir, 26/11 was an unprecedented attack on our nation. It reinforced the sometimes forgotten fact, that we have a war being waged against us. The difference was that this time, the attack was unambiguously on our economic centers and the economic establishment.

Sir, after some years of being neglected, the vital issue of fighting terror is now taking center stage, albeit on the back of the tragic events of Mumbai. Sir, we must approach this whole challenge of

terrorism with the assumption that there will be further attempts to attack us. The war on terror is not a short term problem, it's a medium to long term challenge requiring us to think of solutions for both the immediate and long term.

Sir, we are all agreed on the fact that it is the most solemn obligation of the government to protect its people and therefore priorities facing the government are stark and clear.

To prevent and pre-empt any future terrorist attacks and Secondly to upgrade, scale up our civil defence preparedness in anticipation of any future attacks, Thirdly, investigate and track down perpetrators of attacks and their supporters.

It is in the context of these priorities and objectives of the government that we need to discuss this bill to create a National Investigative Agency and some questions need to be asked, to which I hope the Hon'ble Home Minister will provide answers.

Keeping in mind and reiterating that the government's immediate objective is to prevent and pre-empt further attacks, what is clearly required today is a coherent, cogent counter terrorism strategy and agency to implement that strategy. Sir, the overwhelming opinion in police and security circles is that NIA should have been the National Counter terrorism agency and the skills, capabilities, personnel and tools required to fight this war on terror be assembled here.

From the reading of the bill, NIA is not the counter terrorism agency that the country requires. It is not obvious to me, where that resides in the government. Which agency is designated to lead this counter terrorism efforts? Is it the NIA? Or is it the same old multiplicity of agencies and institutions. Who is leading the nation's efforts in this fight on terror? Who or where is India's counter-terrorism czar? I would humbly and most respectfully urge the government to establish a clear counter terrorism strategy and

leadership. If this has to remain secret, so be it. But a confirmation from the government, that there is such an effort in place with clear leadership to this, will go a long way to making the people of India confident about our efforts.

The bill and the accompanying notes and the discussions in the public domain suggests that this is a National Investigative agency, replacing the often politicized Crime or Investigating branches of the state polices and therefore tasked with investigating offences that have already been committed.

One of the reasons for the weakening and crippling of the capabilities of the state police Crime and investigative divisions has been the excessive political interference in appointments, transfers and promotions – to such an extent that the best talent in our police forces shun going to these departments. So what steps is the government taking to ensure that the NIA will not become another politicized institution. This is not a passing concern, given that governments have had a pathetic track record of building and nurturing new credible institutions in our governance? And keeping them focused on real work instead of political investigation and intelligence. We have also seen to our disgust and dismay, Political leaders playing politics with the work and performance of many of our brave Police officers and their work in Malegaon, Batla house etc., including one performance as recently as yesterday.

Fareed Zakaria in his book, “Post American World” talks of US, Britain, Israel shrugging off and bouncing back after terrorist attacks. That’s mainly because they have managed to create professional and capable institutions in this area that respond swiftly and capably. So I would urge you to look into the downstream issues of how to nurture and build the NIA into a fine, capable, professional agency and most important an agency that’s resistant to politicization of the kind that’s crippled and eroded so many others in our country. This will also allow it to gain the

respect and trust of the people in what it does and how it does it.

Sir, I am not an expert on the subject of terrorism. But post 26/11 everyone in India has become aware of its serious threat and the inadequacy of our intelligence and security organizations and leadership to counter terrorism. Even the home minister has admitted to lapses in the security operations. I had sought through letters to the PM and for a discussion in the house, for a full independent enquiry into what went wrong, like the 9/11 commission in the US. I have since been advised that, that may demoralize the security agencies. That is clearly not my objective. But I would reiterate that unless we know what went wrong, we will not know what to fix and unless we fix the mistakes, we could pay the cost again on some future date. I would urge that he give us an assurance that he has independently and comprehensively examined and established the systemic flaws , especially in areas of joint action, intelligence follow-up ownership and integrated functioning of agencies vis a vis this threat.

Sir, let me end by saying that securing the country has to be a truly national effort and I hope the current political consensus continues, as the other important steps to increase and strengthen the security of our country are planned and implemented. I am pleased to support this bill wholeheartedly with the observations made earlier.

Jai Hind.

## 6

# Motion of Thanks on the President's Address in Parliament

Rajya Sabha

8th June, 2009

Hon'ble Deputy Chairman Sir,

Thank you for this opportunity to speak on the Presidential Address. I rise to support the motion of thanks to Her Excellency the President's speech, moved in our House.

Sir, the Presidential address at the beginning of the term of a government is an important statement – because it reflects in many ways the goals and objectives that the government has set for itself in its new term. It reflects the goals and the general architecture of its policies to reach these goals, and given that it occurs once in 5 years, this is a good opportunity for those of us who are not in government to comment and contribute to the shaping of the governance and public policy for the next five years.

Sir, the country and indeed all of us have become used to grandiose political speeches that constantly promise the moon to our people. It is also known that in almost all cases, the governments under-deliver, and therefore, cynicism prevails when such a list of promises are made, as they have been in the Presidential address. With the greatest respect to the Prime Minister, his last term also started with a large number of promises of structural reform in areas like Regulation, Governance and public policy – precious little of them became reality. This has been explained away as the limitations of the complex coalition that had to depend on political support from those who did not like these reforms.

Be that as it may, this mandate is widely seen as a far wider mandate for this government with less political pulls and pushes and there should be therefore no reasons for some real changes to occur.

The defining statement in the address is the statement “The dreary sand of dead habit must be left behind”. This is especially true in the critical aspects of Governance reform. Sir, Shri Arun Shourie said in his speech earlier, the challenge facing is not just about new ideas and specifically new spending programs – which seems to dominate the President’s address. Economic growth is not about fiscal profligacy and spending alone! There’s a need for new economic architecture, the centerpiece of which is a more transparent and responsive governance model – that focuses on outcomes as its deliverables.

Given that we are all agreed that sustained Economic growth is the panacea for the ills of deprivation and poverty in large part of our population, addressing the declining or dysfunctional or compromised governance model that we have today should be priority number one – because the biggest risk factor to seeking long term FDI and capital into our economy remains this issue of Governance and the connected Political and Execution risk that’s linked to India. Recent reports characterizing India’s bureaucratic

and administrative machinery as amongst the worst performing does not add confidence to the Investors – whose capital is critical to ensure we develop a sustainable economic model of growth.

This is not the first time that a reference to Governance has found place in a speech by the President. In June 2005, President's address said the following "My government is committed to the reform of Government and to making it more transparent, responsive and efficient. A model code of good governance is being drawn up".. etc.

So while it seems like the idea of good governance has been tossed around and discussed for the last many years, it seems that precious little real action at addressing this has been implemented. That, therefore, is the crux of what the Government should be focusing on urgently. As a recent Editorial in a leading paper commented, if the Government is to show it means business it must focus on governance reforms first and foremost.

Governance is not about abstract notions of people with high integrity and reputation. The focus must move to strengthening the institutions of governance. The administrative machinery, the regulators, the judicial capacity and efficiency. Over the last few decades, while India has developed tremendously on the back of energy and innovation of private entrepreneurs, it is obvious that the state capacity has lagged significantly – We need both private entrepreneurship and Efficient governance as two critical elements of the long term equation of growth. The rhetoric of India becoming an Economic superpower will remain a dream if the state of Institutions of Governance doesn't improve dramatically.

While the Presidential address addresses governance in broad terms as has been in the past, let me suggest the following ideas for inclusion in its planning :The time has come for reform of subsidy delivery – my friend Mysura Reddy has spoken about this.

The entire area of Independent regulators – a concept that's about a decade and a half old in our country – needs review and strengthening. Regulators currently are becoming parking spots for retired bureaucrats leading to numerous cases of conflict of Interest. The quality of Independent regulation has declined over the last many years with no signs or initiative of strengthening. For example almost 2 decades after Telecom liberalization, our Telecom regulator is unable to establish a transparent model of auctioning licenses/spectrum. There's clearly something quite wrong in this picture. I strongly urge a comprehensive review – including amendments of Laws and creating more independence and development of a new cadre of regulators – that are distinguished by their independence, integrity and competence. The vision of Independent regulators was to create independent administrative/judicial bodies – instead they are beginning to increasingly look and sound like parallel bureaucracies. These regulators must be made to depose compulsorily before the Parliament and these depositions be made public to the media and civil society.

The Administrative Reforms Commission under Shri Veerappa Moily have also made far reaching recommendations to make Governance and bureaucrats more accountable and responsive. I would urge that the government not consign this one to the dustbin like most reports, and instead seriously start a time bound program of implementing these recommendations and transforming Governance.

Sir, let me briefly touch on a few more issues that are missing from the President's address. First, the issue of monetization of public assets like Mines, Spectrum, Oil Blocks, land etc. Sir, a comprehensive policy relating to monetization of assets like Iron ore Mines or spectrum for Telecom or Oil blocks, or infrastructure projects should transparently and clearly benefit the exchequer and citizens of India in particular and in general Private Public partnerships

should not imply that the public side of the equation loses and private gains. In recent times, PPP partnerships have resulted in less than equitable deal. For example, I know of one Private-Public project where the private sector had to make an investment of only 300 Crores and state had to invest over 6000 Crores and in return to get control of asset and monopoly status. There are many examples of lopsided deals in Mines, Petroleum, Telecom, Airports – a fresh look at PPPs where there is equitable benefit to the public side as well is required. I sometimes am compelled to say in some cases, the deals are so lopsidedly in favour of the private investor that these are fit cases for nationalization!

Sir, in the area of National security, I wish to point out one glaring chink in our preparedness. This is in the area of Cyber security and Cyber threats. This is a chink because no department of the Government is tasked with this responsibility and it falls in the grey bureaucratic twilight zone of responsibilities between Home, Telecom and Defence Ministries. I would urge that this responsibility be squarely assigned to the Home Ministry which in turn can have arrangements with other ministries.

Lastly Sir, the address is silent about the crying need for introducing a new Tax code that will spur compliance and widen the tax net. Widening the tax net is critical to bring about fiscal stability in Government. We also need improvements in the Government's economic Monitoring methodologies. We all know that over the last 12 months, the Government had to respond belatedly to the economic crisis, because it missed the signs of the coming crisis, even when it was obvious to many. There is a need for the Government to invest in and develop a new set of Economic indicators both leading and lag – which can be in the public domain that will allow all of us invested in the economy to plan, respond and march the same set of data and assumptions.

Sir, in summary, what we need is a New Deal for all of India – similar to what President Franklin Roosevelt unveiled in 1939 in the US – resulting in a long period of unprecedented growth, progress and transformation.

Sir, let me end by quoting from the Presidential address -“Our young people are tearing down the narrow walls of religion, region, caste, language and gender. The nation must invest in their hope”. The only way the Parliament and Government can do this is to work on this recent green shoot phenomenon of political consensus around the critical issues that face our nation and people. I am sure we are all happy to see this new spirit of co-operation in our polity. I would urge the Government to nurture this and grow this and let this spirit of consensus bloom – because the goals they have to meet are significant and the expectations of the people of India are high. This time around, the Government has a mandate with no excuses.

Jai Hind.

## Parliamentary Discussion on the Railway Budget 2009-10

Rajya Sabha

08th July, 2009

Deputy Chairman,

I thank you for the opportunity to speak in this debate on the Railway budget.

Much has been spoken about the Railway budget already by the many other Hon'ble MPs in this house and I would reiterate my support to the some of the points made by Leader of Opposition and Shri Ram Gopal Yadav amongst others! I will also repeat those points.

Sir, I will add some points and suggestions from my perspective and analysis of the budget.

Sir, firstly the suggestion that the much vaunted Financial

performance of the Railways was less than authentic comes as a shock! I have been amongst those who have written and spoken and waxed eloquently about the performance of the Railways over the last five years and spoken about it as a shining example of a Government entity revitalized and performing to high expectations! Just the recent Railway budget had spoken about cumulative earnings of 90,000 Crores in 5 years or USD 20 Billion! This suggestion that this wasn't true, coming as it does in the background of corporate misdemeanors and frauds in the private sector, raises serious questions! The white paper promised by the Hon'ble Minister will go a long way to establishing the correct financial and operational picture of the railways – given these doubts and questions!

So, first and foremost, my suggestion to the Minister is that this white paper be presented in the shortest possible time and be made available in the public domain.! I would also suggest an amendment to the Railway Act, that makes the Chairman - Railway board and Member Finance, explicitly statutorily responsible for the financial position of the Railways as presented to the Ministry and Parliament. I would also suggest the CAG auditing financial statements of Railways every year and CAG's Audit Report being part of the papers presented by the Minister to Parliament during the Budget.

Railways is a proud and very important part of our national economy - given its pervasive role in movement of goods and people all around the country, including the remotest and most strategic locations.! Railways and its freight costs also have an impact of the inflation. It is vital that the Railways is put on a path of sustainable growth and a multi-year plan be put into motion. The Railways should be used for more than populism and political point scoring – which unfortunately increasingly it is beginning to look like.

The most important statement in the budget was in the last paragraph of Hon'ble Minister's speech – the promise of a Vision 2020. I would urge the Hon'ble Minister that this document be developed as a strategic development and growth plan for the Railways – and this must have the following specific focus areas (in addition to anything else that's put in there).

1. Rail track capacity expansion

The Railways must remember they are in the business of hauling freight and passengers, and expanding the Railway network must be their pre-eminent focus. The current 60,000+ km railway network must be ambitious and aggressively expanded by at least 50% in the next 5-7 years. This is a target that the Hon'ble Minister must take on and implement with all the energy in her command. This will easily be taken care by track doubling in many years and the Dedicated Rail freight corridors.

2. Utilization and Efficiency improvements

The Railways must embark on an implementing the latest Signalling technologies through its entire network. There has been much talk about Pilot projects etc. for this. But a clear plan to upgrade the signaling technology and hence the throughput of trains and utilization of our network must be completed and rolled out starting immediately. The current approach of installing various incompatible technologies at various pieces of the network is ad hoc and is not strategic. I look forward to the Hon'ble Minister's Vision 2020 addressing this.

The other area of utilization is to enhance track and axle loading – for this, the dedicated high speed, high load Dedicated Freight corridor must be put on the fast track and design of this freight corridor must be done keeping in mind our requirements as a nation for the next 50 years. The Dedicated Freight Corridor will be the single largest Rail expansion anywhere in the world,

except China, and definitely the biggest expansion of the Indian railways since Independence. It is an important project for India's aspirations to be an Economic Superpower and it will transform India's competitiveness as an exporting and manufacturing hub and bring in tremendous efficiencies in costs to the Retail sector as well. The Railways must focus on this with the same intensity and priority that this deserves, and start its implementation in right earnest.

### 3. Project Management

Sir, we all know that the Railways is littered with incomplete projects. In my city of Bangalore alone, I know of various Railway Overbridges and other projects that are small sized but have taken decades to complete, including the famous KR Puram Railway over bridge that took almost 2 decades to complete. There is something very, very wrong in how the Railways approves projects, allocates funds and completes these projects. I strongly urge the Hon'ble Minister to direct the Department to evolve a modern methodology where projects once launched are given the highest priority on funds, instead of the current dispensation where funds are diverted from launched projects to new projects. This is an approach that causes thousands of Crores of economic losses to the Railways due to overruns and delays. So, in short, it is not enough to appoint a JS in charge of project overseeing, the Railways must develop a fresh and modern methodology to project conception, management, financing and execution. To start with, I will request that no further projects are sanctioned until all the financing of all existing sanctioned projects are met and completed.

### 4. Customer experience enhancement

Sir, I won't say any more on this. Much has been said on this already in the budget and by my various colleagues. I will only add this - Indian Railways serves the poor and needy sections of

India. But that doesn't mean that the poor and needy sections of India must suffer a poor and often unsafe travel experience. The Railways must not treat its passengers as anything but valued customers and must step up to the plate and give them a superior customer experience. The Minister has promised this, but I caution her that these kinds of promises have been made in the past and are yet to translate.

#### 5. Premium Trains

World over in the travel business, it is well known that Premium passengers contribute more to the profitability of a transport operator, be it Airlines, or Trains, or Bus services. I would urge the Indian Railways to target the growing middle class and youth and create Rail travel experiences along with Tourism departments – Railways have done this successfully in Rajasthan and also in my State. But making this a key component of Railways Vision 2020 strategy will go a long way in attracting a % of travelling public away from the Airlines – This has been tried and been successful in Europe, US and other places.

#### 6. Freight tariff regulator

Sir, we all know that the Railways is a monopoly. Being a monopoly brings with it many bad habits and some have crept into the Railways over the past many years and decades. The area of concern today is the setting of freight tariffs and classification of freight tariffs.

Whilst Parliament is told that freight tariffs remain unchanged, the same is sometimes effected by changing classifications of items. There is a need to bring in transparency into this. I suggest that an Independent Freight Tariff Regulator's office be created that will be responsible for transparently setting tariffs without favour.

## 7. Public Private Partnerships

The last point is about stress on PPP in the budget. I welcome PPPs as a way for the Railways to augment its financial capacity but I would urge extreme caution. The first principle of such PPP is that Railways must benefit and this must not be another PPP that causes the disproportionate profits to the Private sector. I would urge you to use competent external financial advisors and Lawyers from outside to negotiate and structure these PPPs to make them truly balanced and also explore the possibility of a dedicated regulatory office in the Railways that will be responsible for structuring and executing PPPs including that of land.

## 8. Railways Financial investments in States and Karnataka

Sir, let me end by reiterating what all my senior colleagues from Karnataka have already stated strongly in both the Houses. The investments in my state fall far below what is being done in other states and can be construed as unfair and discriminatory. We are all people of one nation and the Railways serve the nation and all its people. There is a strong case for relooking at the investment distribution in this budget and ensuring that investments and new projects/trains are done in a more equitable manner so that all states and all people benefit.

Sir, I reiterate that the Railways is and will remain for the conceivable future an important and vital part of the complex equation for our economic progress. The Railways must structurally be architected to meet the challenges of the coming years and not continue the 60 year old status quo. I hope despite me being a lone voice of an independent MP in this house, the Minister and her colleagues take note of the points made and incorporate them into their plans for the Railways for this year and the future.

Thank you, Sir.

## 8

# Parliamentary Debate on Union Budget 2009-10

Rajya Sabha

14th July, 2009

Sir, Elections are over, the people have spoken and the Government has been given a fresh and stronger mandate, and because of statements in the Presidential Address like “The dreary sand of dead habit must be left behind”, the expectations from this Government are high - as they should be. There is a lot to learn from the last five years on what we should do and what we shouldn’t do. For the UPA in terms of reforms, the last five years should be forgettable – the next five years can be and should be its legacy.

Sir, it was clear to most of us that fiscally there was very little room for the Finance Minister to do more than what was already done in the Interim Budget. This Budget is clearly a wait-and-watch Budget with some additional fiscal support thrown in to try and reinforce the ambiguous signs of a recovery. So I call it a sensible

Budget, because it has avoided the temptation to create a flourish at a higher fiscal cost and risk.

But let's be clear, we are in a sticky situation as far as the economy is concerned. The signs of growth at best can be described as tentative. There are some attempts in some quarters to spin the precarious fiscal situation as not serious since "even the US is operating a trillion Dollar fiscal deficit". But with great respect to the spin masters, the US and Western economies have very different capacities to rebound and are architected very, very differently in so many ways. This argument is as credible as saying that just because a few companies can leverage their balance sheets and borrow large amounts – therefore all companies can!

Sir, our economy has for the last several years grown on the back of sustained investment flows (Equity, Credit) and a surging services/export sector, which has resulted in a downstream consumption economy that creates a further spiking of growth. Over the last several months and looking forward, it is safe to make some assumptions – Given the global credit crisis, Foreign Investment flows have moderated (FII flows decreased from 33 billion to minus 11 billion dollars) and will show little signs of reversing (except for the short term phenomenon of funds playing the arbitrage game between markets) – leaving the domestic sources of capital as prime driver of investments. Even assuming that liquidity in Indian credit and equity markets remain high, the problem is that, with the increasing fiscal deficit and increased borrowing needs of the Government, the chances of Private sector and investment requirements being crowded out by the Government's own and Government-linked entities' financing needs of Rs.4,60,000 crores in a total market of Rs.5 lakh crores, is very high. Simply put, the capacity of the domestic markets to finance the ambitious investment requirements of our economy are limited and if foreign investment flows don't materialize and in significant numbers, the

investment side of the equation of our economy will falter. China is using investments to pump-prime its domestic economy and brace itself against the global downturn. Given our fiscal situation, we will not be able to do this without significant external capital!

Pressing this point further, if investment flows falter as they have in the last 8 months, then the economy could be vulnerable – given that the second leg of our economy (i.e. exports and services like IT, BPO) is weak because of its linkages to the global downturn and is already plateauing or declining (Manufactured exports are very hit!).

It follows from this, that the derived consumption economy is also sputtering as is obvious from the results of the retail companies and retail sector in general! This sputtering so far has been gradual and not been sharp – which could either mean that things aren't as bad or about to get worse!

Given this background, I can understand the challenges for economic strategy and policy making for this Government and the partly self-made predicament it finds itself in –

- a) It has a significant social spending program which it has to finance and
- b) The economy needs a significant investment program to kick-start or pump-prime!
- c) Both these objectives will compete for capital – increasingly limited to domestic banking and capital markets.

Indeed, it seems that the Government is changing course and ensuring a healthy dose of Government spend – primarily in the consumption side (NREGA, etc.) and some infrastructure (NHAI, Bharat Nirman) to pick up the slack here. But this is not the solution, nor is it sustainable, unless it is accompanied by strong spending efficiency measures!

Knowing as we all do that the Finance Minister cannot compromise the Government's spending programs, the policy measures and Government actions post the Budget will have to lay out bold, decisive, clear policy and administrative measures for the following critical objectives:

- a) Accelerate external capital flow and other sources of capital into the investment programs of the private and public sector (including Deepening Domestic debt markets, FDI, FII, ECBs)
- b) Reform the Government's own finances primarily by focusing on efficiency of Government spending, to ensure that Government requirements for its social programs don't increase and cause more financing pressure!

This Budget should have been more explicit about this. This time around, the larger financial and economic strategies are more important than ever before.

So to come back to the Budget – This is a high risk year for all of us. We are poised on a razor edge fiscally! There are question marks on the monsoon. The so called green shoots need be less patchy and imaginary and more even and credible. This is the year that will take the green shoots into a path of full economic revival or not. It is precisely for this that a directional signal for the next five years is critical – The Budget doesn't do that, but to be fair, the Finance Minister has promised that Government and various ministries and ministers will roll this out - I hope this is done as pieces of a coherent picture – because the current efforts of a 100 day agenda of different ministries is anything but coherent.

These next five years must not be – stop and go, to quote the Finance Minister, who I respect very much. It must be continuous, he has said. I agree. It must also be broad based and deep. Reforms must be three dimensional – Continuous along the time axis, broad based along the various sectors and areas, and deep into each of

the sectors. Stealth reforms must be replaced with bold, decisive moves in the critical areas that are holding back our economy and its participants. Most world economists like Morgan Stanley's Stephen Roach with experience of Asia, believe that India can outperform China. Not 'will' but 'can'.

Sir, there has been much talk for most part of the last 3 years, about a so-called inclusive growth architecture to drive our growth. The thing about using phrases like this is that they need describing and articulation. Every time I hear someone in the Government say that phrase, I look for some idea of what that means. Apart from profligate spending in a notoriously leaky pipeline, there's not one thing that can be called architectural!

Inclusive architecture is not a phrase to be used for speeches, it should provide answers to the specific questions facing us. For example:

1. How does the subsidy get delivered without leakages? What will be the targeted outcomes of these subsidies every year over the next 5 years?
2. What is the definition of Poverty? Who qualifies to be poor, and therefore, the recipient of Poverty alleviation programs - States are all using different criteria
3. How can we ensure Government is more responsive and accountable?
4. How can we ensure that public and Government policy is for the good of all people and not for one lobby or the other?
5. How can we ensure that PPPs don't give disproportionate returns to only the Private sector, and public assets, like spectrum, oil / gas blocks, iron ore mines, are not given to private parties on less than market terms?
6. What is the realistic roadmap to fiscal consolidation?
7. What is the broad roadmap of growth?

8. What happens to the fiscal deficit?
9. Can we use better economic forecasting and monitoring techniques and indices – so that we are not caught napping again like last year?

I can suggest and outline the kind of reforms and public policy path the Government should follow through on. But there's no need, because the Economic Survey is a good blueprint and architecture for the Government to implement. It's the best Economic Survey that I have read in my years of reading this document and if the Government goes down the path of using that as the basis of its architecture, then I will be satisfied.

Let me end by taking serious exception to the way the Government has handled the issue of One Rank One Pension demand for the veterans and retirees of the Armed forces. By not giving the officers the benefits and giving them only to PBORs, you are creating divisions in the structure of the armed forces and creating haves and have nots. This is a classic bureaucratic short sighted approach to handling institutions – which we will all come to regret many years later if we don't fix it. Sir, I strongly urge you to reconsider this – don't allow bureaucratic politics with this institutions. Many institutions have been diluted, corroded and often destroyed by this kind of short-sighted mishandling. These men and their families served the nation at a time when things were much more difficult and challenging than today in terms of environment and resources. These officers were responsible in allowing our armed forces to develop into an apolitical and professional institution that we can all be proud of – a fact that should not be underplayed – given the extent of politicisation of the forces in other nations in our neighbourhood. Let these people who have served this nation, get their proud due! Please don't let a few bureaucrats and a few 100 crores come in the way of this.

Thank you, Sir.

Jai Hind

## 9

# Parliamentary Discussion on The Right to Education Bill, 2008

Rajya Sabha

20th July, 2009

Sir, I rise to support the objectives of this Bill completely and wholeheartedly.

Sir, Like many other legislations that we enact in Parliament, it is yet another bill that is no doubt driven by good intentions and will entail significant spending, but it raises many questions and provides very little clarity on critical issues like Education Outcomes, Financing sharing between state and Center, Delivery of Education etc.

I accept the need, so will the entire country without any reservation – that we must ensure that our children are educated and have access to education. This is the single biggest investment we can make for the future of our great nation. But there is a need to go beyond the rhetoric and vision, into what will make or unmake

the goals that we set for ourselves and promises we make to our children. Towards this, I will make a few points in addition to those made by my Honorable Colleagues in this discussion.

Sir, we all will accept that despite all the work of the Kothari commission which was appointed in 1964, with broadly the same set of goals – the country has achieved very little of the goals and objectives set out by the Indian Education Commission of the 1960s. Understanding the ‘why’ of this will be important if we are to make this Bill a success on the ground. I look forward to the Government’s and Minister’s views on what went wrong in the last many years.

Sir, one of the big mistakes we are making is to assume that education is simply about building more schools or simply about bringing private sector into elementary education. That would be naïve. The education problem in our country is more about capacity building through the entire education value chain which includes teachers and faculty as well as School infrastructure – the software and the hardware of Education. This Bill focuses predominantly on the hardware of education i.e., of Schools.

The biggest crisis facing education in India is that the profession of Teaching is on the decline – both in terms of numbers and in terms of the quality! I would urge the Government to focus on this issue in more than a passing way, as it has in the Bill – What is the total number of teachers required? What kind of capacity for training and developing teachers of tomorrow is the Government going to create? What is he doing to make teaching an attractive profession for upcoming students?

I would like the Minister to shed more light on his strategy on this.

Second is the issue of Government School system itself. Somehow I get the sense that the Minister and Government’s strategy is to use Private schools to increase competition and quality in Government

schools. Sir, with the greatest respect to this naïve dream – this is not going to happen as some automatic consequence of private school and investor entry into elementary education. The Government school system needs top to bottom reform and restructuring – starting with Faculty compensation, infrastructure improvement, facilities improvement and creating a cadre of teachers and principals that can do their jobs with sufficient oversight in performance, quality and safety but with no political interference.

Unless the existing government school system is invested in, reformed and modernized – they will suffer the fates that they are already suffering, which is that students are moving to private schools for better quality education. Without fixing the current system, widespread entry of private schools will hasten the demise of the government schools. If you don't believe this theory, look around you in other areas like Hospitals, Airlines, Telecom – where private sector competition without preparing the Government entity do not result in any improved quality or competitiveness on the part of the Public entity – rather it hastens its decline into irrelevance.

Thirdly, there are ambiguities around the role of Local Government, State and Central government roles in discharging this obligation of universal education – which needs addressing. Many Bills passed by this house have resulted in increased litigation due to broad interpretive and administrative discretion and grey areas.

Sir, in my last three years, I have seen many many Bills – all driven by good intentions but driven by very unclear outcomes - leading to profligate spending with not proportionate outcomes!

Sir, I request the Minister to address these issues to make this dream of universal education a reality and not an empty promise, making this bill another case of 'When in doubt, legislate!'

Thank you sir.

# 10

## “Promoting Excellence in Governance”

AIMA National Conference

21st July 2009

Today, we are a trillion dollar economy. The liberalization initiated in the early 1990s has sparked unprecedented growth, opportunity and wealth creation. Government revenues have doubled in the past three years and consumer demands are rising at a rate faster than the economy's. And we are a nation of young people.

While the statistical snapshot of India today is compelling, it is still difficult to get a fix of where we are as a nation. On one hand, we are a nation of confident professionals and entrepreneurs. On the other hand, multitudes live in abject poverty. And while we have politicians who wax eloquent about a bright future, we also have governance deficit of a kind that makes you despair.

While India has developed tremendously over the last decade and a half on the back of the innovation, creativity and energy

of Private entrepreneurs, it is obvious that the state capacity has lagged behind significantly, and make no mistake, we require both Private Entrepreneurship and Efficient Governance as two critical elements of the Long term growth equation or challenge. Notwithstanding the rhetoric in exotic International locations like Davos, New York etc of India becoming a superpower or an Incredible India etc, we must accept that, all of that will remain a pipe dream if the state of the Government and governance doesn't improve dramatically and keep pace with the changes in the private side of our economy.

Take a look at the last 60 years. Whilst the private side of India equation has reformed and evolved – the Government side has remained almost unchanged in its structure with almost no new changes except for creating of a new layer in the 90s of Independent regulators. So a restructuring and reinvention of Government is overdue to say the least.

This form of restructuring is vital because Vibrant Entrepreneurship in India is having to contend with deteriorating state capacity. The Indian state and government, despite rapid economic growth, has deteriorated over time. Whether its providing Law and order, Sanctity of contracts, Delivery of Public services, Public policy formulation, the signs of decline are obvious. A recent article in a newspaper described, on a crude measure of government effectiveness, India's Governance performance as having declined sharply, in the early 1960's, India was in the top 20% of countries in governance, slipping to middle i.e., only in the 50% of the countries sampled in recent times.

Part of the reason is that, it is easier to create a free market and entrepreneurship because all it requires is for the government to get out of the way; it's harder to create state capacity and governance. That requires creation of institutions, building them, nurturing them and protecting them from politicization and ad-

hocism, and as importantly, keeping them accountable. In Weber's memorable words, "Building public institutions is like slow boring of hard boards". In this context, it is a much harder job for us to address this issue of arresting Government Institutional decline than the past few years of economic liberalization and unleashing of entrepreneurship.

So what are the changes required? What should we be doing to create a Government that we deserve and is in tune with the current?

The solutions are neither easy nor one dimensional. To quote Ramachandra Guha, the historian - "We have to repair one by one, the institutions that we have inherited and build new ones to help us meet the challenges of the coming years".

1. Change in the Administrative structure and organization – for which the ARC has produced some great reports. I hope the ARC reports don't become another set of dusty reports that tend to be created and then shelved without action in Government.
2. We need to strengthen existing institutions and create new ones – to be accountable yet independent – capable of handling the sophisticated economic and other requirements. This trend of Independent Regulators becoming automatic parking slots for retired bureaucrats only must stop – because in effect we are creating a second bureaucracy.
3. Rewarding excellence in Government is necessary. There is no incentive to perform as there is very little public debate and recognition of excellence in government. As proof, I point to the Padma awardees - while it includes the usual friends of government (industrialists, journalists, etc), regulators serving bureaucrats and PSU heads remain excluded. Does this mean there isn't anyone in government who does good work or is it

just that there is no need to recognize them?

4. I have said earlier that our politics is crippling growth of institutions. This requires constitutional changes to make Political leadership more accountable – including Recall elections after half the term is over, Better Parliamentary oversight of Regulators, More visibility of Parliamentary committee hearings. If anyone of you is really serious about what the changes ought to be, go to my website and I have put together what I believe should be an Agenda for India.

Let me end by saying this – that at the end of the day, as civil society, we get the governments we deserve. And if we want something different from today, it is necessary to shape the agenda of debate during elections to reflect this or by asking questions of the government – instead of the same old tired issues that tend to bog down our democratic debates. And the media, except for a few bright exceptions, has done less than stellar service to this quest for better governance.

Why are we not asking questions -

1. Why is inclusive economic growth only about profligate spending? Is increased spending the only hallmark of a good government?
2. How does the subsidy get delivered without leakages? What will be the targeted outcomes of these subsidies every year over the next 5 years?
3. What is the definition of Poverty? Who qualifies to be poor, and therefore, the recipient of Poverty alleviation programs - States are all using different criteria
4. How can we ensure that public and Government policy is for the good of all people and not for one lobby or the other?
5. How can we ensure that PPPs don't give disproportionate

returns to only the Private sector, and public assets, like spectrum, oil / gas blocks, iron ore mines, are not given to private parties on less than market terms?

6. Can we use better economic forecasting and monitoring techniques and indices – so that we are not caught napping again like last year?

A few weeks ago, I watched a stock analyst broker-type on one of the business channels putting a spin on the falling markets. His spin was that this was short-term, and investors should look beyond this because (get this!) the economy had structurally moved to the next level, therefore long term growth was a given. This treatise has been bandied about a lot on the back of a deadly combination of rhetoric and euphoria and we have come to believe that growth and prosperity is in some way our destiny and will continue regardless. But as recent events have shown, this is wrong. I am those who believe that our long term prosperity can only be achieved through sustained governance reforms, and like we have had about two decades of economic reforms, we need one full decade of governance reforms.

Thank you.

Jai Hind.

# 11

## Motion of Thanks on the President's Address in Parliament

Rajya Sabha

4th March, 2010

Hon'ble Deputy Chairman Sir,

Thank you for this opportunity to speak on the Presidential Address.

Sir, all of us accept that our country faces significant challenges – challenges to address deprivation, financial, governance, security etc. that have to be addressed, before we can come close to achieving the potential of a true economic superpower.

For a government with such a strong mandate, the general expectation was that it would be decisive in its ideas and bold in their implementation and usher in some real change. This feeling was reinforced in last year's Presidential address - "The dreary sand of dead habit must be left behind".

But I am deeply disappointed with this year's address and plans of the Government. It seems that the gap between the Government rhetoric and the actual ideas are widening.

Let me take three of the most important issues that represent significant challenges that have to be overcome and solved, which the President's Address is silent on :

Firstly, Governance, Subsidy Delivery and Spending Reforms :

I have spoken about the need for this repeatedly in Parliament. Government spending has more than doubled over the last 6 years from Rs 5 Lac crores to more than Rs 11 lac crores. Rs 11 Lac crores are being spent by various government ministries, bureaucrats in Delhi. It is very very obvious that our development objectives are no longer limited by capital or money. It is about lack of imagination and an excess of corruption and leakage. Profligate spending has somehow become the sole descriptor of this new Inclusive economics and Governance. Even 6 years on, there is precious little outcome orientation of the old or new schemes including the much vaunted flagship programs.

The Government's Chief Economic Advisor – the no-doubt competent Professor from Cornell, Kaushik Basu said in the recent Wall Street Journal “The key is to reduce leakages. You can give the target population, double the benefits by spending half the money and once you save this money, you can direct it to improve human capital, infrastructure and deficit control”.

As if it's some new revelation – Aren't we aware of this? Do we have to start every year as if it's a brand new year with the same issues being repackaged as new revelations, or does the government not have a multi year plan for this? If yes, where or what is it, and how come in the last 6 years no progress has been made?

Way back in June 2005, President's address said the following “My government is committed to the reform of Government and

to making it more transparent, responsive and efficient. A model code of good governance is being drawn up”...etc.

Why is there no mention about the need to reform and revamp the Independent regulatory framework – that is increasingly looking, sounding and acting more and more like another layer of Bureacracy and/or a parking place for retired bureaucrats.? Given all the repeated noise about need for infrastructure PPPs, isn't this critical or are we comfortable to continue with this cosy political-corporate nexus without any independent regulatory oversight?. By implementing a cherry picked set of ARC recommendations, government is playing with solutions around the fringes, what sir, is the point?

As a recent Editorial last year in a leading paper, which I quoted, commented, if the Government is to show it means business it must focus on governance reforms first and foremost with a specific move to strengthening the institutions of governance and increasing accountability and transparency. I said this last year and say it again, Reports characterizing India's bureaucratic and administrative machinery as amongst the worst performing do not add confidence to the Investors – whose capital is critical to ensure we develop a sustainable economic model of growth.

We all agree that sustained Economic growth is the panacea for the ills of deprivation and poverty in large part of our population, addressing the declining or dysfunctional or compromised governance model that we have today should be Priority No 1. The rheoteric of India becoming an Economic superpower will remain a dream if we don't do this.

Second issue is of Military and National Security

Yesterday two sons of India, Lt. Cdr. Rahul Nair, 33 and Cdr. S. K. Maurya – died flying a jet trainer that is almost 40 year design and technology – We are putting our best and brightest

who volunteer to serve the nation out there with antiquated or inadequate infrastructure. Whether it be the Navy, Airforce, Para Military or indeed the Police – the uniformed men and women in this country are being sent out to do impossible tasks with sub-standard equipment and training – The government must fix this and start modernizing. Sir, I caution you to remember 1962 – when an ill-equipped Armed Forces had to deal with China – many brave hearts gave their lives for their country and service, but were let down by equipment and logistics shortages and technology. This apathy must end and has its roots in the fact that very few politicians or bureaucrats have their children serving in uniform. Its approach to the OROP demand from the ex-servicemen has been flawed and instead of recognizing these proud warriors and their service to the nation, the Government's decision serves to create a division between veteran officers and veteran men. Don't create divisions in the Armed forces – after almost destroying our social fabric with divisions created by many decades of politics.

Third point is the issue of Consensus in Politics

A famous politician said that “In politics, every day you have to get up and destroy your opponents. In governing, every day you have to get up and learn to be nice to your opponents”. Naively I mentioned in last year's speech that I detected a recent green shoot phenomenon of political consensus around the critical issues that face our nation and people. I had urged last year that the Government nurture and let this spirit of consensus bloom – because the goals they have to meet are significant and the expectations of the people of India are high. But there has been hardly any growth of this consensus. The onus of creating a consensus is always on the government. The big decisions and challenges facing our country can only be addressed if there is political consensus – Governance reforms, Pakistan, China and standing united against terror etc. Pushing through decisions on issues like Pakistan, China and other

critical issues using Parliamentary majority will simply not be the right thing. I used to be a critic of disruptions in Parliament, but have come to the sad conclusion that any deliberate, substantive effort at placing facts and ideas in Parliament through a debate doesn't guarantee that those ideas and suggestions are considered by the Government. I speak from my own experience.!

Sir, let me end by saying that even if the President's speech do not address these, I would request and hope of the Government that they make these three issues a priority – not just till the next speech but for the duration of their government for the next four years and bring an urgency to them.

Jai Hind.

# 12

## Parliamentary Debate on Union Budget 2010-11

Rajya Sabha

15th March, 2010

Sir, Thank You for the opportunity to speak on the Central Budget 2010-11.

In the new post 2008 global financial crisis world, few countries have the growth potential that India has! We have a relatively clean and efficient financial system, a confident and reasonably competitive private sector, a significant long term demand for infrastructure investments and services that remains huge and untapped, a demographic profile that points to at least 2 to 3 decades of strong growth of the consumption economy.

This is the background, this is the opportunity – and the reasons that India has the potential to be a real economic power house and use this economic power and growth to address rapidly the destitution and poverty that still afflicts a majority of our brothers and sisters.

So what ought to be the Government's role given this – A government that seemingly has a broader mandate to effect some real change and also is, in their own words, unfettered by their former political partners, the Left - It is to create a framework and basket of policies and strategies that fully exploits this inherent potential of our country and do so over the next 4 years.

To this, there are a number of positives in this Budget that need highlighting – Hon'ble Finance Minister has articulated the 10% growth as his objective. For the first time in some years, the growth in expenses is lower than the growth in projected revenues – a critical element of bringing fiscal responsibility in our finances, The budget has also for the first time in several years increased outlay to Capex from 1.87% to 2.16% with a consequent decline in revenue expenditure. This is an important structural improvement in Government spending. After several years of increase of Debt service to GDP, interest payments as a percentage of GDP are shown to be declining this year. All very necessary and positive changes to the structure of the budget, it is left to be seen how many of these turn to be real – given all their dependence on revenue targets.

Sir, the challenges for the Finance Minister and the Government are quite obvious –

1. Fiscal consolidation
2. Potential slowdown through the coming tightening monetary policy and impact of an uncertain global environment on Investment flows which could be made worse by a double dip recession
3. The strong inflation bias in our economy that has remained unattended to since mid 2006.

It is in this context that we should examine the Budget – shorn of the rhetoric and spin that nowadays usually accompanies this

process – this Budget does not meet the test of setting a clearer direction for the next four years. Yes, it does do a number of things like make more a credible roadmap to fiscal consolidation – as I have mentioned above. But unfortunately, there is no other big idea in this Budget or accompanying this Budget – which is critical to set the directional cue for the next four years. Let me say something about the three challenges :

Firstly, fiscal discipline - Even in the area of fiscal consolidation, with the greatest respect Pranabda, unfortunately time will prove that you took the wrong turn at the fork. The process of fiscal consolidation and reforming subsidies should have and could have been done together, and indeed, represented a huge opportunity to restructure subsidies. If politically you have chosen to increase fuel prices, the correct and sustainable way to have done it would've been to allow the OMCs to increase pricing, reduce under-recoveries, and therefore, reduce the funding pressures on the Government, as the Kirit Parikh Committee report has suggested. This fiscal jugglery - and unfortunately sir, this is what it is – does not address the liabilities and losses of OMCs and other Government linked companies – which given the sovereign nature of these companies, can never be allowed to default, and therefore, are Government liabilities. Pushing the debt and liabilities off the Government balance sheet and into OMC balance sheets will not pass the test for investors who closely view our economy.

The simple rule for fiscal management is the simple, common sense economics that millions of homes and businesses practise all over our country. Spending has to be aligned to revenues. Every rupee of the Rs. 11 lakh crores that will be spent this year, should be spent wisely. We cannot continue going on borrowing from the future to finance the present. With the proliferation of entitlements and consequent profligate spending that has become the hallmark of this Government – it is clear that public spending

will be under pressure to be increased year on year – That in itself isn't a bad thing – as long as the spending is efficient and that there is accompanying and sustainable top line growth as well. But this critical issue so important to our long term fiscal sustainability – of spending reforms and restructuring - finds very little mention in the Budget.

Secondly, the issue of economic growth. As we all know our economic growth has been fuelled primarily by investment economy – which has created the consequent jobs and consumption economy. There is real risk around these investment flows – as is an opportunity. I hope that the Finance Minister focuses on this as a clear area of focus and concern. To boost our economic growth amidst a tightening credit cycle/policy by our Central bank, we need significant FDI flows into our economy and on a sustained basis. The Government must have a target of US\$ 40-50 Billion of FDI this year if we are to continue this growth trend and move to a 10% growth trajectory, and the Finance Ministry must coordinate the public policy action of various economic ministries to align to this objective – and not have the current scene of each Ministry going at its own direction and pace.

Thirdly, inflation bias in our economy not addressed. Sir, I have been saying for some years now including in this house that we are not addressing our inflation as a structural problem. This challenge of demand-supply mismatch led inflation was brought to the attention of the Government in 2006/2007 when inflation was first rearing its head. The solution should have been thought of then and we would have not been still discussing this today as if it was a brand new phenomenon. Any economy that's been structurally aligned to high levels of growth needs to ensure that the supply side is managed, as is the growth. This is common sense economics and given the proliferation of economists and wise men that seem to speak on behalf of the government or consult with the Government, I find it surprising that there has been so little real

action on this front, including in this Budget. Sir, platitudes and rhetoric are no solution to this form of structural inflation.

Sir, this is a transition year globally – This Budget is hopefully a transition Budget as Government address the many years of profligate spending and consolidates its fiscal situation. Sir, in this house I cautioned the Government in 2007, saying that it was not the time to be complacent and to believe that tomorrow will take care of itself. I fear that the Government is getting complacent and falling into a comfort zone again – being taken in by statistics and numbers – that economists are famous for, where growth numbers are replacing common sense and logic – almost a license to reform around the edges. And this despite the promise in last year’s Presidential Address “The dreary sand of dead habit must be left behind”.

I hope and wish the Hon’ble Finance Minister him luck, but would also urge him to use his credibility and respect to get the many parts of the government that seem to have slipped into a comfort zone and/or private agendas to be kick-started. He needs to use his goodwill and respect to make this happen and not allow this year to be a year of lost opportunity.

Jai Hind.

# 13

## Discussion on the Draft Regulatory Reforms Bill

Parliamentarians' Forum on  
Economic Policy Issues, New Delhi

3rd August, 2010

Thank you for the opportunity to speak on the Draft Regulatory Reforms Bill.

As most of you know, my views on Independent Regulation is drawn from real experiences of all three of the challenges facing us - Independent Regulators who aren't, Politicians who insist on interfering and businesses who seek from public policy and regulation more than their due.

When first introduced in India, Independent regulators were envisioned as strong and credible institutions that safeguard consumer interest and act as catalysts for investments by ensuring a predictable set of ground rules - Instead they have declined and morphed, in most cases, into a second bureaucracy – indistinguishable in conduct, will and performance from the regular bureaucracy.

So the need for reforms in this department is unquestionable and urgent and overdue. So no questions about that.

The issue is what constitutes real reforms of the regulatory framework in our country and does this Bill as proposed achieve this?

For this, let's examine the background of where we are :

Different sectors require different forms of Regulation – In sectors like Power, Highways and Airports which are utilities and are inherently loss-making economics, the role of the regulator is to drive tariffs and user charges higher and create a viable platform for investments, whereas in sectors like Telecom, the role of the regulator is simply to ensure consumer benefit and intervene when competition isn't fair or there are any cases of action that is required to benefit the consumer, and its role as far as investors is concerned is to limit itself to ensuring a predictable set of rules. So we must understand there isn't a one shoe that fits all form of regulation that cuts across all sectors.

Currently, almost all Regulators are retired bureaucrats – and regulators are (except for a few exceptions) acting and looking like a second layer of bureaucracy – with all that means – but importantly, diluting considerably the word “Independent” that is part of Independent Regulator. Not one sectoral regulator has been filled with a good credible talent that will enhance the capacity and quality of these institutions – since clearly this has never been an objective for the political leadership.

We have a situation where Regulators have failed deliberately or through incompetence – openly and obviously – but despite that not being held accountable. There are instances of malafide conduct on part of Regulators that are obvious and known, but no action has been possible because of ambiguity of oversight of these regulators. Hundreds and thousands of crores of Taxpayer

money has been impacted by Regulatory orders and decisions, and there has been unfortunately little or no debate or review of these decisions.

We have a recently developed situation where a Ministry is now seeking to curtail the Independent Regulators' role in matters of licensing – a key aspect of managing competition – and if successful, will almost completely make the Regulator redundant.

Lastly, and very important – the roles and responsibilities of Independent Regulators aren't defined. Instead of such clear and transparent regulatory objectives like the ones I mentioned above, Regulators are being used for advisory/housekeeping activities, for example, Regulators are being asked to intervene in issues like determining sectoral FDI – issues that are in the domain of the political and executive, and not for independent regulation.

In a nut shell, the situation today can be summarized as – We have allowed Independent regulators to become part of the system rather than overseeing the system. So the first thing is to understand this transformation, and reform is not some simple solution, and definitely, the proposed solution of a Regulatory Reforms Bill isn't the only answer.

The real solution is, of course, to start with amendments and changes to each of the statutes and laws that empower the regulator. Example - to fix the obvious problems in the Telecom sector, the TRAI Act must be amended and the ambiguities that are merrily being exploited need to be plugged. It is ironical that in 1998 when there was a judgment by Justice Usha Mehra in the Delhi High court saying that the Government had powers in licensing over the TRAI, the government then amended the TRAI Act to give the powers to the TRAI and the principle was established. More than a decade later, a new set of politicians and bureaucrats are testing the same thing again by saying that licensing terms is not with TRAI.

The other reason why an omnibus regulatory bill as the operating law/statute for all sectors is simply impractical and won't work is this – each of the sectors have different structural models of competition, tariff management, investment issues as described earlier – Telecom regulation principles are vastly different from Power, Highways, Airports, Hydrocarbon – issues where the focus is on cost based tariffs, and the focus is to ensure that the costs are not padded.

However, there are three common issues that cut across all regulatory bodies – which is what this Regulatory Reforms Bill should focus on and stop there :

Criteria and process to ensure all Regulators are independent – which should cover the process of selection and members. A modern, competitive set of commercial terms of employment and perquisites for members of these regulatory bodies.

Process of ensuring Accountability of Regulators and ensure their transparent and unbiased functioning. Giving them Financial Independence and budgeting – a Non-lapsable budget for duration of a plan period.

Defining precise relationship between administrative Ministry and the sectoral regulator.

So in short, the Regulatory Reforms Bill should be doing some real work by establishing the independence of regulators, giving them financial powers and ensuring their transparency and oversight. The second leg of regulatory reforms must be achieved by independently amending each of the statutes and addressing the issues relating to each of the sectors there.

Thank you, Jai Hind.

# 14

## “India: Challenges Ahead?”

Cisco International Investors’  
Roundtable Meet, Bengaluru

14th October, 2010

Thank you for having me here and for those of you who are in my city for the first time, Welcome to Bangalore!

I have been asked to speak about India and the challenges we face.

I am assuming that most of you present here are, no doubt, familiar with the India story and have read or heard different variants of it.

Let me give you my perspective - I see India as a work in progress, as a cup half full, but with a genuine aspiration to filling it and complete the idea of India. My perspective is a bit different because my life and progress has been linked inextricably to the progress that India has made since 1990 when the opening up of the Indian economy commenced.

I returned to India in 1991 just when the word ‘economic liberalization’ was entering the Indian lexicon. Therefore, I have been fortunate to have been a participant in the late 80s and early 90s - as part of the 486 and Pentium Architecture teams at Intel - in Silicon Valley – when the building blocks of today’s tech world were being built out – The internet, the workstation, windows, client-server, routers, low power computing platforms, high speed processors, multi-thread processing etc. Similarly and as fortunately, I have been a participant and witness to building blocks of the current India being laid – and two decades on, I can say I have been a participant, observer, victim and beneficiary of the Indian economic progress story - 10 years as an entrepreneur in the fabulous telecom success story of India, and the last 4 years in Public life.

Two decades ago, the Indian Economic story was a very difficult and complex one to understand even for Indians. The Economy was a controlled economy – controlled by the Public Sector and a few Indian Business families – limited entry opportunities for new names, limited competition. Public spending with limited corporate investment remained the only growth drivers and hence the reason for years and years of anemic growth, low liquidity and high costs of capital – risk or otherwise.

Today, The India Economic story is a far simpler and more exiting proposition to explain–

There are two parts to it – The Indian Consumer expansion story - Pent up Consumer demand, growth in the consumer demand with increased consumerization of Indian society, and the second piece is the Infrastructure and Technology deficit, and therefore, demand for them and the connected investments in them.

There are two other real additions to this already interesting proposition - The Indian Demographic of one of the youngest

population mixes in the world in such large numbers is one – The other is the coming of age of Indian private sector and entrepreneurship. I know for a fact that when I started 15 years ago, there was not even a fraction of the energy, determination, confidence and innovation that I see and experience in today's Indian entrepreneurs.

India has managed, as you all know, a pretty stellar economic performance track record as an economy since 2003-2004 and across different political regimes. This political commitment to economic growth is centered around a consensus amongst all the many political parties including the Left – that economic growth is the panacea to cure the country's challenges of poverty and deprivation – which afflict the lives of 450 Million Indians even today.

The last decade of sustained growth and its visible benefits has also seen an awakening of aspirations and a continued increase of those aspirations – the rural and poor increasingly are demanding entitlements of and access to Education, Health, Justice, Security - The urban city citizen wants modern cities and a standard of living at par with his peers in other Asian cities.

These aspirations are the reason for this new push towards evolving an economic growth model – that takes the benefit of this growth faster to the deprived than the conventional trickle down economics. This is what we call inclusive growth, and this is increasingly and visibly driving Government Public policy and spending. Inclusive growth is aimed at bringing more and more Indians out of the poverty zone into the mainstream and expanding the coverage of access of Health, Education, Justice, Security and the pressure is now to achieve this in an accelerated manner in the shortest possible time.

The dramatic increase in Government spending and the increasing use of Private Public Partnerships are evidence of political responses

to these aspirations and demands. Government outlays for the social sector have doubled in the last 3 years alone to almost \$40 billion.

That, in a nutshell, is where we are. But to understand India's progress is also to understand how we have reached here, and this is where I start differing from the conventional wisdom of the many pundits who have already pre-ordained India's Economic Superpower-dom.

This last decade or so of India's solid growth out of six decades of socialist rut has been because of one phenomenon – the breakout of Indian entrepreneurship and Private sector and innovation. Innovation has been recognized as the only way to sustainably grow and thrive. While this is worth celebrating, this hides an important problem – which is, that as Indian private sector has grown, thrived and strived to be at par with its global peers – the Indian State and institutions of Governance have declined dramatically - Where innovation is still an exception, where spending is the rule, and outcomes are the exception. This is the half empty cup I was referring to.

The signs of this are very visible to those who look. The evidence ranges from the Commonwealth Games, poor delivery of services and subsidies, tremendous leakages in public spending (politically correct way of saying corruption), a bureaucratic structure (a colonial relic from the British days) of generalists managing the many of the specialist growth challenges, inefficient electricity infrastructure, creaky legal system etc.etc.

There is also this trend of Kleptocracy and Crony Capitalism that has created many billionaires – a consequence of the ease with which public policy or regulatory capture can be affected. There's also the connected social disquiet arising out instances of blatant crony capitalism in sectors like mining, real estate etc with its consequent security implications.

Now this may seem like bad news to some and faint hearted. And indeed it would be if we left it unaddressed.

There is a very simple reason why this is now starting to get addressed. It's the issue of aspirations and entitlements. For many decades, the problems that our governance or lack of it represented was not a visibly debated national priority - because the poor and deprived who are the only ones to be really affected by this governance deficit didn't really have a voice that was heard. But with the increasing visibility of the benefits of growth – there is real pressure on governments and an urgency to deliver on this inclusive growth faster - and to reach a larger and larger population faster.

This desire for inclusive growth is, of course, now facing up to reality of finiteness of resources, and hence, the need for alternate models for achieving this faster and better coverage and therefore for modernizing and reforming Government.

And that search for new models is also the opportunity.

As I said, the current strategy of inclusive growth being addressed only by profligate spending by Government has a limited shelf life and has almost run its course. The twin alarm bells of fiscal responsibility and inflation pressures are creating a serious motivation in Government to look for alternate models to simply spending by leveraging its balance sheet. As aspirations continue to increase, and the uncovered continue to press for access to social services, the coming decade will see a significant and fresh push to reforming and modernizing Government and Government institutions – with the objective of achieving accelerated Inclusive growth even with the finite direct financial headroom, resulting from the pressures of fiscal consolidation and deleveraging. So this reform of Government is aimed at what Anand Patwardhan of IIT Mumbai refers to as “market expansion” or “market creation,” which is the provision of goods and services to the unserved, or the

so-called “bottom of the pyramid.” If one were to think of some of the innovations in India of significance for growth and development outcomes, these might include, for example, dairy cooperatives in the dairy sector, public call offices where Government ownership of the product was replaced by access to the service, and more recently, examples such as the Mumbai dabbawallas (where two hundred thousand lunch boxes are delivered daily by about five thousand people with an error rate of less than one in six million deliveries), the Aravind eye care system (where doctors perform two thousand eye surgeries a year), the Tata Nano or the one rupee shampoo sachet from Hindustan Lever and I am even including the new Airports and similar PPP infrastructure projects like that. There is quite a range of innovations; technology-based and business model-based, both in products and in services, and coming from the private sector, the non-profit sector and the public sector. So innovation, Technology and Private Public Partnerships will find a big place in what the Government does to reinvent itself, to sustain the Indian Economic growth model.

Don't misunderstand me, the change will start slowly as is the case with everything in India, but as you have seen in Telecom and other PPP projects, it will gather rapid momentum as the case is made in many parts of India over and over again.

Given that you are investors in a technology company, let me give you a few examples of how this may play out with technology and Private- Public Partnerships.

Take education for example – The demand–supply gap that exists today is in my opinion unbridgeable for the next two decades if we adopt conventional models of brick and mortar schools with teachers as the only solution that's on offer. The reason is simple, even if the financial resources within the government can be found to build the infrastructure of the school – the softer but more critical issues of building the capacity of Teaching faculty and building

excellence in education within the Government system are two very non-trivial challenges to solve. Therefore, the solution will be much more rapid proliferation and deployment of Distance/Remote/Virtual School models – the kind that Cisco is building in Raichur Distt in my state. I believe strongly that this model is key to rapidly rolling out access to Education. I will go further to say that this model is relevant not just in remote villages but also in City schools, especially Government schools, where good teachers are in short supply – and this, in a way, provides for utilizing the scarce teaching resource in the best way. For many years, pundits argued that Education in India can't be a profitable enterprise – with a win-win for investors and Government. There are many companies that have proved them wrong. These are companies in soft space of skills, curriculum and teaching. There is space for investors and companies in the teaching infrastructure space as well.

It is a similar situation in Health – while primary level health care access is available, the secondary level and other levels of diagnosis and talents are clustered around pockets around the country. A similar Cisco project in Raichur is, in my opinion, a potential model for rapidly rolling out access to health and doctors.

Take our cities – Most of our cities are chaotic pockets of energy and action. Chaos because the growth that these cities have been subjected to and have had to handle have far outstripped the planned capacities. While there are some examples of fresh new greenfield cities being planned, especially in states like Gujarat, the challenge for almost all existing cities is to evolve a more connected, intelligent and sustainable blueprint – allowing it to house more and more without the connected infrastructure spends and loss of heritage and environment. Technology and PPPs will be key to managing the growth of all our cities in the next decade.

I can tell you about electricity, homeland security and so many

other aspects of government and governance that are going to need restructuring, reform or modernization. But in summary, almost the entire spectrum of Government/State institutions and services need modernization, reform and made more outcome oriented. Heavy use of PPPs and reliance of technology will be core to this effort at filling this half empty cup and truly place India on its path of its economic potential!

Let me end by saying this from my personal experience – the last two decades saw some pretty interesting action and innovations in the private sector; the coming decades will see action and innovation in the Government/State space – slowly at first, but surely, and just as you saw new Entrepreneurs in new areas last decade, you will see new ventures and enterprises and investments from the private sector in the conventional state space in the future as well.

Thank you.

# 15

## Parliamentary Discussion on The Securities and Insurance Laws (Amendment) Bill, 2010

9th August, 2010

### Death of Independent Regulation in the Financial Sector?

The financial markets and financial sectors of our country are today valued at tens of thousands of crores and have shown systematic and solid growth over the past two decades – But more than the size growth, the markets have grown in terms of its transparency, governance and regulation – making it one of the best regulated markets in this part of the world.

As we enter this debate, we must not forget what made this possible – It was the independent regulation of the financial markets and the independence and capability demonstrated by RBI and SEBI over these years and the men who lead these regulators like YV Reddy, Damodaran etc. And as we all know, India escaped most of the trauma of the recent 2008 global economic reset because

our regulators managed our financial markets well and sensibly – resisting populist and fashionable trends and bureaucratic pressures that were constantly proposed in the guise of reforms.

It is precisely this orderly transformation of our markets into a transparent and well regulated market that we are going to throw into question with this back door intrusion of the political and bureaucratic executive into the realm of independent regulation.

Sir, as a proponent of Independent Regulation and of the institution of Independent Regulators, I can say this bill sets a very bad precedent. The problem that the bill is attempting to solve is neither a unique problem nor is it new. The so-called ULIP crisis seems to have been a deliberately created crisis. As a matter of fact, as more and more independent regulators are introduced into our scheme of governance, the problems and therefore the challenges of regulatory overlap and regulatory disputes will increase. We must realize that.

If a sectoral regulator like IRDA or TRAI attempts to regulate a sectoral entity and a functional regulator like a markets regulator like SEBI or competition regulator like CCI attempts to regulates that entities activities qua markets or competition – there will be potential regulatory conflict.

However, the solution cannot to this cannot be and must not the type suggested by this bill. Regulatory disputes and regulatory adjudication cannot compromise the concept of Independent regulation of the sector or the function, as this bill ends up doing. Sir, lets acknowledge it openly, this bill brings in a bureaucratic and political oversight into a critical and sensitive area of regulatory dispute adjudication – which is undesirable and retrograde.

Sir, let me give you an example of what will happen in the future, if this precedent is followed and becomes the norm

The TRAI is the Telecom regulator – is tasked with managing

competition as well. If it regulates competition and Competition commission also intervenes on the issue of competition in the telecom sector – and these two conflict – is it the case of the Government that the Department of Telecom or Minister of Telecom will adjudicate the dispute?

Its similar in the case of ULIPS – ULIPS should be regulated as my friend Piyush Goyal said – on issues of insurance component by IRDA but when it comes to market and investments it cannot but be regulated by the markets regulator. If there is a dispute arising – real or imaginary – this kind of dispute must be still settled through an appropriate independent body – with no bureaucratic interference and involvement.

If the government is averse to courts resolving this disputes – then the solution should be an independent appellate body – or whatever type or form – but without any compromise on the independence.

Bringing the bureaucracy into this sensitive area of financial sector regulation is contrary to the Government's own stated objective of strengthening independent regulation.

I request the Finance Minister to look at this Bill again. The creeping influence of the Government is bad news for the future of independent regulation in our country. I am sure he does not want this as part of his legacy and hope that he does look at creating an Independent Regulatory Disputes Appellate Tribunal, instead of the current structure.

Thank you. Jai Hind.

# 16

## Parliamentary Discussion on the Bhopal Gas Tragedy

Rajya Sabha

11th August, 2010

Sir,

There is a common theme to these tragedies like Bhopal, which are often described as ‘incidents’ in bureaucratise. In so many cases where mass loss of life was involved, no significant person of stature has been held responsible and punished, while thousands of Indians have suffered the loss of their loved ones. And through this, most of us have remained mute spectators, with an occasional rant or lament at these obvious miscarriages of justice.

The recent judgement on the Bhopal case can almost be thought of the straw that is finally breaking the camel’s back – the outrage a result of the waking up to the fact that there must be something

very wrong with us as a nation, people, government, judicial system – where an obvious act of negligence by a corporation that has resulted in so many deaths – visible to us all – can go unpunished, be manipulated and almost swept under the carpet – with no one held accountable – a pittance being paid out as penalty, and most importantly, not enough done to treat, rehabilitate and restore the community that was ravaged. We must have all been in collective amnesia if it has taken 26 years for us to finally form a Group of Ministers to look into Rehabilitation efforts for a community that was ravaged by this tragedy!!

Through all the debate, I hope we can all be clear about one objective - We must not let up or compromise on the need to fix accountability for the Bhopal Crime and punish the guilty. Democracies such as ours can only function if there are rules and laws that are applicable equally to the common citizen, the rich and the corporates. Democracy, Governance and Media in our country are already under the extraordinary influence of Corporates and Big money. That is an inarguable fact and an increasingly obvious fallout of the last two decades of Economic liberalization. But like the other advanced Democracies of the world, India too must send out a message to all – “We are a nation of laws, Break the law and you shall have to face the consequences, regardless of who you are.” Look at the example of the US Government in the recent case of BP’s oil spill negligence.

We need to ensure that Bhopal isn’t another case of sweeping corporate crime under the Carpet. The thousands of shattered families in Bhopal deserve to get justice and closure.

I request the Home Minister to give us an unambiguous assurance that he will not rest till the guilty are brought to book.

Let me warn him that there will be some effort at soft peddling his efforts here as well. An example is the statement by a senior

banker – Deepak Parekh - who is quoted as saying “I agree Bhopal is our worst tragedy. But we can’t get emotional about it. Just by putting a Chairman and CEO in Jail is not going to solve the problem!”

This is an amazing statement – showing just how compromised and lopsided our system is. The hypothesis that is being advanced here, of course, is that we should forget that there was someone culpable and responsible for this negligence – simply because he was a Chairman or CEO. In effect, he is suggesting a double standard in how we enforce the laws of our land. We cannot allow this double standard on respect for law to continue anymore. This is the only way our system of law can send a message to other lawbreakers. Break the law and you will be punished.

We owe that to the thousands of shattered families of Bhopal.

Thank you. Jai Hind.

## “Financial Oversight by Parliament: Institutional Capacity and Challenges”

PRS Annual Conference on  
Effective Legislatures, New Delhi

01 December, 2010

Let me keep this very simple – The Parliament and the MPs who represent the people of India in Parliament have two solemn obligations as envisaged by the Constitution.

The first is, of course, legislation – characterized by debates, negotiations and discussions – the objective here is that Government and Executive proposes laws – the Parliament debates it – it’s often referred to the Standing Committee of Parliament for closer examination and detailed scrutiny, and through this process of discussion and debate would emerge a stronger and more effective legislation. I have some views on this, but will save that for another day since the focus of this discussion is something else.

The second duty of a Parliamentarian and Parliament is oversight of the Executive and Government – This is a much

less understood, less scrutinized function of the Parliament. The general understanding is that Parliament and legislature is all about legislating – but, of course, our Constitution and founding fathers were far ahead of the curve and also envisaged an oversight role – to keep Governments honest and on the straight path.

This function of oversight can be discharged from the Question hour in Parliament and other forms of interventions, including the potentially powerful Standing Committees of Parliament. Oversight of Government and Executive can be of various forms - administrative, outcomes, status and, of course, in my 2 opinion the most important - the financial oversight. But the discharge of this oversight function of Parliament has been weak or non-existent or ineffective.

This is an area that has had very little focus in civil society and so I am thankful for PRS to initiate this discussion.

The Central Government this year has a spending budget of Rs 10,00,000 Crores – The number is mind boggling. It becomes even more mind boggling when you realize that there is almost no oversight of this spending. I know political leaders and bureaucrats will bristle at that statement. But pushing a lot of paper and getting a lot of signatures isn't the oversight I talk about. I mean oversight and accountability to the people and citizens of India.

Why is there a need for people to be aware of and involved with Government spending? Simple – It is their money. There is a simple but solid truth that gets lost in Delhi – There is no such thing as Government money. The Government is only a trustee of Taxpayers' money and assets. But you wouldn't know that, when you see Politicians and Bureaucrats treat spending and contracting assets – as if it was their money and assets. It is not. The only institution and people who can enforce that truth that this is peoples' money and assets, is the Parliament. And unfortunately, we don't do that effectively.

If you scrutinize Parliamentary proceedings, you will see that the percentage of time spent on discussing spending and spending effectiveness is abysmally low – which should worry us. If the most important area of money – we spend so little time in overseeing – what do you get? Well... you get CWG, 2G scams and God knows how many more that are still under the surface waiting for some smart, enterprising journalist to stumble on them. Because Parliament will not be the one to stumble on these.

You can ask why is there so little parliamentary oversight on spending and finances? There are many reasons, but a principle reason is the way Governments maintain and present budgets. For example, Parliament will be presented with essentially accounting statements – with reams of numbers. Trust me, even to a trained forensic accountant, those numbers will not mean anything, because there is almost always no outcome against the spending. Eg : the Railways budget will have bland political objectives that will say things like - we will have safer railways and make railways the Pride of India etc etc., and then have a series of spending heads that have no logical correlation to the objectives. So MPs are left with limited headroom for debate – and so, the budget and grants discussions degenerates into things like ‘Why not an additional train from a to b’ or ‘why can’t station c be modernized faster’ etc.

You can’t blame the MP, the decks are stacked against even the most financially knowledgeable MP to influence spending. It is similar even for the main Union Budget or demands for Individual ministries. Let’s take this current JPC standoff. I believe the JPC is a legitimate tool of Parliamentary oversight. Given the background of the need for better Parliamentary oversight on Government, a JPC demand is legitimate and justified given the magnitude of the losses arising out of this particular Scam.

Let me end by reiterating – Given the propensity of current Governments to reduce Governance to a form of legislating and

spending – i.e., to have big sounding legislations and programs with little or no outcome definition but big budgetary allocations and secondly to enter into very valuable PPP contracts where public assets are in play for private interests - sound financial oversight of the Executive and Government is critical – not just by Parliament but by media and civil society. Government spending and contracts today are black holes into which taxpayer money/assets is shoved with little or no outcome accountability. This kind of outcomeless and unaccountable spending/contracts is the breeding ground for corruption and nepotism. Better and more effective Oversight of Government finances/Contracts by Parliament will also create a ‘value for money’ and ‘we are trustees of public money/assets’ cultures within the Government. It is critical for credibility of Parliament and Parliamentarian.

There are many detailed solutions available to improve Parliamentary oversight.

In summary, these are :

- (a) Making Standing Committees have, as their principle mandate, oversight of spending and contracts.
- (b) New, extensive Government disclosure norms for spending and contracts.
- (c) Reform in the budget presentation process with explicit spending linkages to outcomes.

Thank you.

Jai Hind.

# 18

## Parliamentary Debate on the Growing Incidence of Corruption in the Country

Rajya Sabha

24th August, 2011

Thank you very much for allowing me to speak on this important debate. As you are aware, India is witnessing an unprecedented mobilization of people and minds on the issue of Governance and Corruption, and more specifically, about the Lokpal institution which is being seen increasingly as a centerpiece of the architecture of a more transparent and accountable form of Government.

This movement which we are seeing outside Parliament today – and some have criticized it in and outside the House - comprises of millions of Indians all over the country, and is remarkable for its non-violent and apolitical nature – and, most importantly, is the most visible proof of the people’s participation and vibrant democracy since Independence.

Sir, I believe, and I speak for myself as a representative of the people within Parliament, it is the beholden duty of MPs to respond to this outpouring of views and concerns – voiced by our fellow citizens, but do so in a responsible manner.

Sir, let's be clear that corruption, which is the focus of our debate today, is a consequence of poor or absent governance. The Supreme Court has said that "Corruption is the worst form of human rights violation"; and corruption affects the poor and the rich equally, and in most cases, the poor suffer the consequences of corruption even more than the rich. Poor governance combined with profligate spending and welfare scheme after welfare scheme, without even the faintest effort at linking spending to outcomes and objectives has created a thriving ecosystem of vested interests and corruption.

Sir, the focus, therefore, needs to be on a holistic plan for Governance reforms and changing the way our Government functions – to bring in more accountability and a culture of value and respect for public money and assets.

Most of our institutions of Government have long since been corroded through political interference and exploitation – These institutions need to be rebuilt and credibility re-established. Like the judiciary and CAG have made the country proud, we need all the other institutions to make the people of India confident and trust its Government. In Weber's memorable words, "Building public institutions is like slow boring of hard boards."

Sir, the Lokpal that we are discussing is such an institution that we need to build to increase the credibility within our people.

I believe, Sir, instead of having a debate on the Government Lokpal versus Jan Lokpal Bill, we should be discussing what are the requirements of the Lokpal institution to be effective and give people confidence. Let me lay out what I believe are the requirements for a credible Lokpal institution:

1. The Lokpal should be independent. It should be independent from the Government and should not be interfered by the Government.
2. The Lokpal should have adequate investigative powers.
3. The Lokpal should have adequate financial resources and must not depend on the Government for finances.
4. The Lokpal should be able to investigate in confidentiality so that people who are accused of crimes have the opportunity to prove their innocence before they are indicted.
5. The Lokpal should be manned by professional, well-trained and proper investigators so that there is no opportunity for misuse of the institution.
6. The Lokpal should be constitutionally compatible.

Let me end by simply saying this – if you apply these six criteria – the Jan Lokpal Bill is closer to what the people would be more confident in. I do not subscribe to the Jan Lokpal Bill completely and I accept the argument being made by many wise Members of this House that the Jan Lokpal Bill is constitutionally incompatible in many ways. Sir, let us be very clear – A strong Lokpal Bill and a strong law is the biggest deterrent to corruption. Of course, there are some areas of Jan Lokpal Bill that need to be examined from a constitutional compatibility point of view. This is an unprecedented opportunity for the Parliament to establish that it hears and is responding to the voices and concerns of the people by having a debate on the Lokpal Bill and a Lokpal institution that gives them the confidence that corruption and governance shall be reformed.

Thank you.

# 19

## Speech to Commemorate the 60th Anniversary of the Indian Parliament

Rajya Sabha

13th May, 2012

Sir,

Thank you for allowing me this opportunity and honor to speak today – marking the 60th anniversary of the first sitting of our Parliament.

Sir, many of my senior colleagues have spoken about the history of our Parliament through the last six decades, and indeed, it reminds us about the idealism and strong sense of duty, service and commitment to the Idea of India that was the hallmark and signature of our early Parliamentarians.

When Nehruji and other founding fathers referred to the Majesty of the Parliament, they were no doubt referring to the moral authority of Parliament based on this idealism and commitment to the country of its MPs.

Sir, while I share the view of many that Indian Parliamentary democracy has, no doubt, been a success and a beacon to countries and people all over the world, it should be our endeavor on this day, and indeed in coming days, to introspect on the functioning and efficacy of Parliament as an institution.

Sir, let us start by acknowledging that while our Parliamentary democracy is vibrant and well as free and fair elections bear out – the cynicism of our Parliament and Parliamentarians is at an all-time high. Our usual response to this is that it is media driven or middle class angst driven, or we use some other alibi to move the focus away from the message to the messenger who is delivering this message. But sir, there are reasons for this decline in credibility - that go beyond corruption and insensitivity. It is the almost absolute disappearance of idealism to be replaced by a strange form of Political pragmatism that is inconsistent with the thoughts, beliefs and views of our founding fathers. A classic example of the disconnect between Parliament and people is the recent debate about ‘Parliament is supreme’ vs ‘People who elect Parliament are supreme’!

Sir, we all know Parliament has two very important functions – Firstly, to deliberate and legislate, and Secondly, to ensure oversight of the executive, and its accountability and transparency in Governance.

Let me quote from a paper by Pratap Bhanu Mehta and Devesh Kapur:

“The idealized view of Parliament, as a deliberative body, where all of the considerations relevant to legislation are aired and discussed and outcomes reflect the weight of the stronger arguments, is a far cry from reality in any setting. However, in the Indian case, the problem is more acute and has worsened in recent years. Parliament in the public mind is essentially a site for adversarial

combat rather than of deliberative clarity. It is for this reason, that disruptive adjournments have become main tools of parliamentary opposition rather than reasoned argument.”

So, this perception of Parliament in the minds of the people needs changing – and can be changed if we can have a few Special Sessions of Parliament every year that are dedicated to deliberations on national priority issues that are bipartisan in nature – security, poverty, institutional performance – where Parliamentarians are seen being earnestly involved in discussing solutions to some of these common challenges. Such sessions will serve to get the attention of the media and the people of India to focus on the real challenges facing us, and reassure them that we are sincerely engaged in this process of finding solutions and a way. I and a few of my colleagues in Parliament like Naresh Gujralji have already written to the Prime Minister and Hon’ble Chairman suggesting this. I hope some consideration will be given to this issue.

Similarly, Parliament can do a lot more on the issue of Oversight and accountability of the executive. Let me quote Pratap Bhanu Mehta and Devesh Kapur again:

“In one sense, the incentives for monitoring and oversight of the executive simply do not exist. The effort is high and the potential pay-off limited. Opposition MPs are likely, therefore, to focus more of their attention on political scandals such as financial scams and corruption cases, where they can attack individuals, rather than try to force institutional and systemic changes. During the 1999-2004 NDA government, the then opposition Congress used all of its might to stall proceedings on various corruption scandals, but did very little to protest against systemic and governance weaknesses. Post 2004, the BJP in opposition has acted very similarly. Even with opposition focused on corruption scams, almost all of the Parliamentary probes into these scandals have led nowhere. In some cases, it likely reflects collusion within the political class to avoid institutional changes. “

Sir, I am not necessarily agreeing or disagreeing with what is being said – but we cannot avoid the fact that this is the popular perception about Parliament.

To address this, one solution is that the current form of oversight through Parliament and Standing Committees be given more respect and space. Let Governments of today and tomorrow not continue this strange tradition of ignoring the Standing Committees when they choose to do so. Let Standing Committee reports and deliberations be made available to the public as written or video transcripts. That will give people confidence that Parliament is indeed playing a role in keeping Governments honest and accountable.

In addition, Parliament should meet more often. This current trend of declining days of sittings needs reversing. My erstwhile colleague, Shri Mahendra Mohanji even moved a Private Members' Bill in this connection. He withdrew the bill reportedly after the Government gave him an assurance that the number of sittings would be increased. I look forward to the Government fulfilling its assurance.

Sir, I wish to draw your kind attention to another worrying aspect – which is about the rights of Private members to move legislation. Private Members' Legislative Business used to have its own importance in the past, which saw 14 Private Members' Bills becoming Acts of Parliament. However, the last Private Bill which became an Act was in the year 1970. The last Private Bill passed by this House was the Aligarh Muslim University (Amendment) Bill, 1977 by Shri Triloki Singh, MP on 2nd March, 1979, but this could not be passed by the Lok Sabha as it was dissolved. So, during the last 42 years, no Private Members' Bill has found a place in the Statute Book in India. In contrast, in the UK, half the Legislative Business is done through Private Members. It is a matter of concern that these days, Private Members' Business

has become a casualty in the House. If the House has to discuss another issue, the Private Members' Legislative Business or Private Members' Resolutions are postponed or even cancelled without any hesitation. The Members who wait for the introduction of their Bills or the moving of their Bills for consideration or their Private Resolutions, are not even consulted, even as a matter of courtesy. The Government also does not take Private Members' Bills seriously. The Bills are taken routinely and an assurance to take up the issue is given and the Member is asked to withdraw his Bill.

Sir, lastly, the issue of Parliament House – Sir, this building is the repository of the history of our democracy and Republic. Great men and women have walked here and great thoughts and ideas have been debated here. But in recent times, the building and complex has become a far cry from what it should be – Instead of representing the majesty of Parliament, it is beginning to resemble, feel and smell like many other Government offices that are all over Delhi. The incident of a few days ago, should trigger us into taking action to bring back our Parliament House to its past glory and dignity from its current decaying state. Thousands of young Indians visit Parliament House. Let them go inspired by the building, instead of holding their nose and underwhelmed by the papers and rubbish strewn, and chaos all over the building. Please Sir, I request you and the Hon'ble Parliamentary Affairs Minister - let us treat this building as a monument to our democracy and start a programme of refurbishing and restoring it to its pristine historical state.

Sir, I conclude by wishing the people of India, my state Karnataka and city Bangalore, and all my colleagues in Parliament the very best on this 60th anniversary of Parliament, and to all my seniors my respects, and my most grateful thanks to Shri H. D. Deve Gowda and the leadership of the Congress and BJP who gave me

the opportunity to be a part of this House for the last six years and coming six years. It is my privilege to serve and to be here.

Thank you.

Jai Hind.

## Parliamentary Debate on FDI in Multi-Brand Retail

Rajya Sabha

6th December, 2012

Thank you, sir, for giving me this opportunity to speak. Sir, several of my colleagues in this House have already spoken and laid out several perspectives on this policy of the Government to permit FDI into the retail sector. Sir, let me start by being unambiguously clear that I support any policy of the Government that aims at increasing investment flows and creating new capacities – be it in Infrastructure or any other sector. Sir, I firmly believe that investment (both private domestic and foreign) should be allowed in as many sectors, with the exception of sensitive sectors in our country – with the explicit objective of creating competition and choice for consumers, and that is the only way for our Indian consumers to benefit as well as create a more efficient and competitive economy.

I reiterate - creating competition and choice, and not being disruptive - These are the objectives of any public policy leading to investments including FDI. But sir, it is in this context that we must understand three issues that I want to flag to the Government vis-à-vis its approach to allowing FDI in retail. Firstly, Sir, unlike many countries in Asia which are being trotted out as examples, our country has a long history of retail and trade, and therefore, a larger part of our population is deeply engaged in organized and unorganized retail for their livelihood. ICRIER and other studies estimate that while census numbers point to about 78-80 million, the number could be about closer to double i.e., 150 million or 15 crores.

The impact of FDI in retail, i.e., a proliferation of well capitalized companies, on the livelihood of this large population and existing segment of our economy has to be understood and adequate safeguards put into place. I fully accept that there is a real justification to grow organised retail from its small size today, but we are not starting ab-initio. Sir, there are large numbers of real people and real lives, who are already involved in domestic retail, and not abstract statistics on an econometric model. I would request that the Government address this squarely and that they would put into place, along with State Governments, an incentive package of concessional credit to the small retailers and also a social safety package to provide soft landing for those small businesses that get negatively impacted due to the entry of these big companies.

These packages could potentially be funded by a cess on each of these foreign companies. If the Government's contention that no one will be impacted is true, then there will be no costs that it will have to bear and it will be a 'win-win'. But such a safety net and incentive package is important to make this non-disruptive. Apart from the need for this safety net, there are two other fundamental

issues that remain unaddressed and needs looking at, along with introduction of FDI in retail, if the government is serious about making its decision pro-consumer and pro-competition.

The fundamental concerns arising out of big retail are the issues of Consumer protection and anti-competitive behavior. Both these issues are at the heart of protecting Indian consumers. Our institutional capacities, and indeed, the legal basis to ensure this, are weak presently. The scenario, however Orwellian it may seem now, of having large foreign retailers in a few years, cleaning out competition with predatory pricing, and then setting the price and forcing customers into a no-choice situation, needs examining and has to be protected against. Look around us today, anticompetitive and cartelized business practices thrive all around us – i.e., Air tickets, telecom prices, cement – with inadequate institutional responses. Further, consumers in India have a very torturous process of getting protection, in the event of being mis-sold products or services.

All this becomes potentially more ominous if the market is going to be dominated by a few companies in areas like food and day-to-day retail. We are already aware of the increasing power of large corporates to subvert our institutions. We already know one large foreign company in the retail trade is already being investigated in the US for having paid bribes in India.

That's why it's important for the Government to have mooted, as part of this FDI in retail proposal, significant additions and amendments of both the consumer protection laws and competition laws, which many studies have pointed out, have many weaknesses in terms of regulating this type of retail. The Government must give more teeth to Competition commission to intervene suo motu or in response to individual complaints and have punitive powers, including penalties and cancellation of licenses in cases of predatory pricing. This framework of protection is critical

to address the concerns of market and financial power of these large MNCs. I would request the Minister to seriously examine this issue of consumer interest, instead of leaving it simply to the current laws and systems. Sir, I end by reiterating, FDI is good for the country because it represents investments.

Our economy needs investments and investments are good for our economy, especially in new areas, where capacity, competition and choice needs to be created. But investments in existing segments of our economy which employ so many crores of people must, in its design, avoid pain and disruption. We must be smart about attracting the investments in a way to ensure that all Indians benefit. Where investments are potentially disruptive of an entrenched model, a framework of safeguards is required for any such policy, especially given the known business practices of big retail.

Thank you sir.

Jai Hind.

## 21

# ‘What Inspires the Inspirational’: TEDxMAIS

Mallya Aditi International School  
Bengaluru

15th December, 2012

Thanks for having me here this evening to speak with you.

I’ve just gotten back to Bangalore after a week of Parliament - where I had to speak on 5 occasions this week. So this is a nice way to finish off this week, being amongst smart young students.

I find it difficult to explain what makes me tick or what inspires me specifically. I have asked myself that. Sometimes out of frustration my family and friends ask me that as well - in a different context of why I don’t slow down or why I keep seeking out new things to do.

Let me try and explain this in a different way. I don’t know how many of you have seen a Steven Spielberg/Tom Hanks movie called “Saving Private Ryan”. The movie starts with a scene where

the old Matt Damon playing the character of Private Ryan walks through the World War 2 war cemeteries at Normandy beach, up to the tombstones of the soldiers who had rescued him, and after saluting, addressing Capt. Miller's grave - "My family is with me today. They wanted to come with me. To be honest with you, I wasn't sure how I'd feel coming back here. Every day I think about what you said to me that day on the bridge. I tried to live my life the best that I could. I hope that was enough. I hope that, at least in your eyes, I've earned what all of you have done for me. He then turns to his wife and asks, "Tell me I have led a good life; Tell me I'm a good man". And she says, "You are!"

This in a lot of ways sums it up for me. The purpose of life should be, to be seen as doing good or leading a good life in the eyes of those who you respect and love. You live one life, Live it as if you have to answer that same question at some point in your life.

To the question of who or what inspires me, I can only answer by saying at different stages of my life different things have motivated and inspired me. I say things because, more than specific people - its specific actions, thoughts or values that have inspired me.

I've sometimes tried to analyze this myself and find a common thread - for me this common thread has been the values of idealism, courage and kindness.

I am a big believer that your experiences as a child or a young person growing up and absorbing, shape and define you as a person. Your values and beliefs gravitate you to the right icons and role models and give you the confidence to be passionate and believe in your goals. Being inspired is really important if you want to exceed your own limits or if you are straying off the beaten path. But be inspired not just by names or big achievements or loud talk but by actions, beliefs and ideals. Like the famous Formula1 driver Ayrton Senna said "I have no idols. I admire work, dedication and competence".

Since you've asked me about my life and its inspirations, I move into that territory now. It's not something I've spoken about before. So here's my first shot at it.

I've been a nomadic air force kid living all over India, I've been an average student, then a patch where I excelled academically, became a full blown nerd with a insatiable appetite for churning out voluminous lines of code, then an entrepreneur, then an investor, and now a politician. All seemingly unconnected and different, but through all the ups and downs in each of these periods in my life, I have always loved what I did. My life was never anything but normal and average in many ways, but different in that one way - that fate or some other force has always posed interesting and challenging opportunities. And I have gone down each of the forks in the road whole hog - with enthusiasm and energy than plan and strategy, with inspirations to guide me more than management books or manuals. And so like I said, being inspired is really really important if you want to do well or if you are straying off the beaten path. As Steve jobs said "you've got to find what you love".

From my childhood to today, I have always been inspired by the sense of duty and commitment to our country of our uniformed armed forces. In my office in Delhi, I surround myself with pictures of every Param Vir Chakra recipient from names like Major Shaitan Singh to Havaladar Yogendra Yadav. At a time when our definition of icons range from cricketers to movie stars, each of these men and their stories remind me of courage and determination and most importantly about serving the nation, even more important to me as I keep company of politicians and other notables who run our capital city and our nation.

A recent posthumous gallantry award citation described the officer as, "he was a true soldier who was dedicated to his country". I can't think of one politician that would be worthy of that description today.

In the days when i was pursuing my studies in Chicago and worked as a design engineer and CPU architect at Intel, I became a major league geek – churning out hundreds of thousands of lines of code - Richard Stallman now a legend as founder of free software foundation was my inspiration. He was the first one to really make it easy for all of us to experiment and write our own language compilers, parsers, translators and even the whole UNIX operating system. I was at Intel at a time when most of the technologies that you take for granted today internet, client server models, database computing, laptops, high speed microprocessors, graphics engines - were being built out in various shops around the valley. As a young engineer working directly with people like John Crawford the father of the Intel microprocessor and interacting with legendary Andy Grove, the first CEO Intel who made famous the quote “only the paranoid survive” shaped me forever.

My first experience in entrepreneurship was in telecom in the early 1990s.

As fate would have it, one of the first people I met was the legendary Craig McCaw. In the history and narrative of contemporary history of technology, Craig doesn't get enough due. But he is the man who created from scratch an almost nationwide consumer cellular product and experience in the US. Being copied and replicated subsequently throughout the globe creating the technology, business and financing models that has made cellular the ubiquitous consumer product all of us use today. He was an energetic risk taker who was for some time a partner and investor in the first cellular business I built in Mumbai, before he sold his company McCaw cellular to AT&T which then became what is today known as AT&T wireless. Steve Jobs was yet another inspiration - not so much for his slick products but rather for representing the greatest second act in history of business. After being thrown out of Apple in the late 80s for the disastrous products like Lisa,

coming back almost two decades later to create a new Apple and Pixar and becoming the largest shareholder of Disney is awe-inspiring. For those who are interested in reading about them, two books 'Money out of thin air' and 'Icon' are the books describing these two. Steve jobs also defined for me the essence of life and work when he said you've got to find what you love.

My earliest political contacts were with Rajesh Pilot - the late Congress leader. He was a man who represented contemporary idealism and political conviction. When I was first elected to Parliament in 2006, I started reading the early constituent assembly debates and speeches that led to the creation of our constitution and us becoming a republic. The speeches by Sardar Patel, Zakir Husein, Ambedkar, Nehru etc are amazing testaments to the idealism on which the idea of India was founded. It's tragic that many generations of Politicians have reduced this idea to a distortion. Another great piece of inspiring political reading for me the famous JFK "ask not what your country can do for u"

Then there are personal heroes like first man on the moon Neil Armstrong, the first open heart surgeon Dr Christian Bernard both of whom I've been fortunate to meet. Pure perseverance of Mary Kom and Debendro Singh and Sushil Kumar who have attained success and excellence despite all odds musicians Stevie ray Vaughan, buddy guy, Robert Johnson, Eminem etc.

Every day I see things, hear words and meet people who inspire me - make me feel small and want to do more. Look at the recipients ever year in our city of the Namma Bangalore Awards or the people that Aamir khan's program 'Satyameva Jayate' spotlights. Just a month ago I was judge in a debate with young students of Delhi schools and colleges about Freedom vs. Regulation of the Internet. Over 30 youngsters participated and I witnessed a debate about the future of the Internet, the quality of which was outstanding.

Let me end by saying that being inspired is a process. It should be continuous, It should be always about the deeds, thoughts and ideals of a person and not the person per say. They should make you think, smile and make you try to exceed your expectations. In the report card of life, inspirations get you a goal for leading a good life. And as Private Ryan said in the movie, “It’s about being able to say we have led a good life”.

Thank you again for having me here this evening. Jai Hind

Thank You,

22

## Parliamentary Debate on The Constitution (118th Amendment) Bill, 2012

Rajya Sabha

19th December, 2012

Today is a historic day for my state, and more so, for the people of Hyderabad-Karnataka region of my state, the 6 districts of Gulbarga, Bidar, Raichur, Koppala, Yadgir and Bellary. For nearly three decades, Governments of Karnataka, and indeed, many all party parliamentary delegations have urged the Centre to accord special status for Hyderabad-Karnataka region. I have myself urged the Government to accord special status during my intervention in this House in March 2008, and so today, I on behalf of the people of Hyderabad-Karnataka region of my state, thank the Union Government as also all the political leaders of my state cutting across party lines who have consistently supported this call for the last three decades.

The Hyderabad-Karnataka region is in dire need of investments, infrastructure and employment - all of these I am hopeful that this Bill will help achieve, as the region will receive special attention, and funds for development of the state will be shared equitably with these six districts of this region. Most importantly, this Bill – besides ushering an overall development of the region – will pave way for emotional integration of the region with the rest of Karnataka.

This is only a vital but first step in the transformation of the region and its people. I am hopeful a comprehensive and time bound investment and development plan - for each of the districts, since they have different development opportunities, focused on creating economic opportunities for the people - is formulated soon, to allow the region, and each district - to catch up with other parts of the state. 17th September is celebrated by the Karnataka government as the HyderabadKarnataka liberation day, since that day in 1948, the region was liberated. I urge the House to unanimously pass this Bill, so that this day will also go down as the region's economic liberation day.

Thank you sir.

Jai hind. Jai Karnataka

## 23

# Speech at The Entrepreneur - An Initiative by YouthNet and the Government of Nagaland

Kohima

08th October, 2013

Chief Minister Rio, Ministers, dignitaries, Hekani and her team at Youthnet, the 18 entrepreneurs, ladies and gentlemen,

I was here last exactly a year ago, and so, I am glad to be back here in Kohima. Thank you for your warm welcome and for having me back.

I am even happier that I am back for this program - this unique effort by the government in partnership with YouthNet - at identifying and enabling 5000 entrepreneurs from the state. This is, as far as I can recollect, a unique program - the first of its kind anywhere in India. So, Congratulations to the government and YouthNet.

Encouraging Entrepreneurship being embedded in Government policy is a decision that far thinking Governments and leaders are increasingly recognizing in countries around the world. As technology and capital become more accessible, the traditional barriers to aspirations and dreams are falling - young Indians are adopting a new path to success - that is of being entrepreneurs. The long-term success of any economy and state is hinged to the spirit of enterprise and Entrepreneurship.

I am an example of what this country can do to an Engineer from a middle-class background but who dared to dream. I went from being a technology geek churning out volumes of code to helping architect the 32-bit microprocessors of Intel to being an accidental entrepreneur who helped build the Cellular business. While in hindsight everything in narration sounds like a smooth series of events and milestones - it was definitely not! Ups and downs, pitfalls and challenges are part of what Entrepreneurs have to deal with. But these challenges do shape you as a person regardless of the result of your venture. Because many entrepreneurs fail as many succeed.

Entrepreneurship is about the power of ideas and perseverance about realizing those ideas, and to use a powerful quote from Thomas Edison - “the value of an idea lies in the using of it”. Successful Entrepreneurs challenge the status quo and challenge it relentlessly. They respect ideas and initiative that make positive changes. They have very little patience for platitudes and moaning. They believe firmly in the dictum that a person’s future and fate is what he or she works towards. I believe that this is true for countries, states and communities! My life’s story is about that - twists of fate and opportunities that came my way, but I worked hard on everything that came my way. Some I succeeded at, and some I failed.

I have always had this deep conviction that it is Entrepreneurship that will shape the future of Nagaland and in India in general. Creating these opportunities and enabling youngsters to pursue them with confidence and determination to succeed. It's a simple equation really for your math or physics buffs. It is a function of opportunities, determination and capital equals success! Nagaland represents many opportunities, but the biggest one is its young people and their creativity and talent. The future is about thousands of entrepreneurs determining the destiny of this state. The much-needed private capital will flow on the back on these entrepreneurs.

And while this is primarily about the spirit of enterprise and confidence amongst youngsters - governments and leaders also have a role and stake in this. They must realize that this is the new normal for the young generations. Governments must change its role to being strong, credible enablers of dreams - put entrepreneurship at the core of its economic strategy to build the brand of Nagaland and invest in enabling infrastructure. Brand - designed in Nagaland or made in Nagaland - creates a certain intrinsic equity in the products and services innovated by the entrepreneurial spirit of these 18 men and women and the 5000 more to come. The enabling infrastructure that is required is internet and transportation connectivity. These will act as force multipliers and catalysts to the spirit of Entrepreneurship that is being built.

Let me end by talking about these 18 fine men and women - I have confidence that most, if not all, will go on with their ideas and dreams and become successful. I have enjoyed meeting, interacting with them and challenging them. They cover the spectrum of tourism, supply chain, fashion, technology, content, food, education, furniture etc. - and I was very impressed with the quality of their ideas, their clarity, determination and their

preparation. So, you should be proud of them. And I thank you for being here and supporting them. On my part, I am open to working with YouthNet and exploring investing and/or making other investors connect with them.

To all of them, I say this. You are embarking on an exciting journey, but let it not be felt that building a successful business is easy. It's hard work! A challenging mix of luck, intelligence and perseverance. Entrepreneurship is like a workout - it's painful and a struggle while you are doing it... You question yourself sometimes but after you do it and look good - that's when you feel that the pain and struggle was worth it. It's always about focusing on your goals and believing that you will succeed and acting like you will and you will. You are raising the bar for yourself and your communities and your state. And as Steve Jobs said famously - "Your time is limited so don't waste it living someone else's life. Don't let the noise of others' opinions drown out your inner voice. Have the courage to follow your heart and intuition. They already know what you truly want to become. Everything else is secondary." And so, go ahead and do your thing!

I end with the difficult task of having to choose one from the five finalists for the Rs. 5 lakhs prize, and that person is Inoto Nawang Khulu.

Thank you again for having me here and God bless all of you.

## Parliamentary Debate on The Lokpal and Lokayuktas Bill, 2011

Rajya Sabha

17th December, 2013

Sir,

I rise today to speak in support of this historic legislation which our nation deserves, our nation has waited for, and which it now demands as their right. A legislation which is undoubtedly the first serious attempt at directly countering the menace of corruption that has made the Indian nation weak and hollow at its core. To quote the Hon'ble Leader of the Opposition - "We need to restore faith amongst our people in Public life and create an effective mechanism to deal with corruption."

Sir, Parliament, Parliamentarians and indeed political parties have travelled a long distance from those early days in 2011 – when the popular people’s Jan Lokpal movement was treated with scorn and scepticism. The most often used phrase in those days was that this was ‘temporary’ or an ‘elitist’ phenomenon. The last two years have proved that the desire amongst all Indians for a change in our governance is a sustained and unrelenting one, and our response to them as Parliament has been belated, but worth congratulating.

Sir, I had introduced, in the face of such scepticism, as a Private Members Bill, the Jan Lokpal Bill, 2011 in August 2011. I too faced some derision and scorn from media and friends alike. But I am proud of the stand that I took and prouder of my fellow Members of this near unanimous move by our House in debating and passing of this historical legislation. It is this House that stopped the passage of the weak bill that was passed in the other House and that further strengthens the prestige of this House and indeed all its members.

Sir, I will not discuss details of the Bill since the Hon’ble Leader of the Opposition and other Members have done so. But there are some who argue that this Bill does not go far enough and have unfortunately characterized it as ‘Jokepal’. To them, I say this, please appreciate how far we have come – This Bill lays the basis of a strong institution. Institutions must be given time to take birth, grow and evolve to the needs of the times. To them, and indeed, civil society and media at large, I also say this – please now move the spotlight to the setting up and functioning of this institution of Lokpal. This is just the beginning of a process of reforms and changes in Governance that our country is embarking on, for the first time since Independence. Instead of being cynical, I would request them to stay engaged and focus on the many steps required in the coming months and years.

This is a historical day. This is probably the single most important legislation that we are passing post-Independence on the issue of Governance. Let's understand that we are giving the nation and our people what it seeks from us. Future and current generations will thank us for our near unanimous support for this Bill and our efforts at cleaning up governance.

Thank you and Jai Hind

25

## Manipal University Alumni Meet 2013 at Manipal, Karnataka

21st December, 2013 Bengaluru

Dr. Ramdas M Pai, Chancellor of Manipal University, Dr. H S Ballal, Pro Chancellor, Dr. K Ramnarayan, Vice-chancellor; Manipal University, other distinguished guests, my fellow course mates, and ladies and gentlemen, a very good evening.

Let me begin by saying ‘Thank you’, to Manipal University for bestowing on me this honour.

Over the years I have been fortunate enough to have been honored at various points on my journey, but this honour is special. Coming as it does from the institution that I believe played quite a significant role in shaping me.

Manipal is barely recognizable from what it was back then, but the sprawling campus it has transitioned into, a destination for

world class education, is a matter of immense personal pride and am sure for all of you as well.

“Life isn’t a matter of milestones, but moments” - Rose Kennedy and so is it is that The last few days between being invited to the Alumni Meet and actually addressing you today have helped me refresh myriad memories of times and those many moments spent here at Manipal, all of which have played an indispensable role in shaping the individual I am today.

My father was an Officer with the Air Force and life was always a constant move around the country, with transfers to numerous remote and not so remote places. Having spent a majority of my school years in various Schools all over the country and the sometimes distant but simple life of many cantonments, my four years here at MIT was longest I had spent in one educational Institution.

I came here as yet another non descript wannabe Engineer after a 3 day train journey from Delhi and left four years later armed with BE and a collection of experiences and an outlook towards life and ambition, that I never thought I possessed.

My time here at Manipal spent as a scrawny thick rimmed glasses and an unmistakable afro and destined it seemed to a life of geek-hood, .not only gave me an undergraduate degree in Electrical Engg, but also introduced me things that I would remain passionate about till this day!

As most of u know, most of my professional and entrepreneurial successes were in technology. My connection to technology started in the 1st floor computer center at MIT. Those were the days when a DCM spectrum 7 machine running CP/M was the holy grail of computing. MIT was one of the first places to have that machine and I do recall having to book time on that machine on a register and jostling for time to program in Fortran and basic.

That bug, to use a pun, launched me into a whole new world of technology and innovation and took my life and career into a whole new unexpected directions post my studies here at Manipal. with stops at Illinois Institute of Technology for my masters in computer science and an amazing time in the Silicon Valley at Intel, becoming witness and participant to the design and building out of most of the technologies that you take for granted today - the internet, distributed network computing, multi thread processors, high performance graphics and math engines, computing power on the desktop that wiped out legendary names like Wang, Digital and replaced them with names that Are ubiquitous today - Oracle, Apple, Microsoft etc. as first a design engineer at Intel and then CPU architect, I met with and broke bread with names that are legends Andy Moore, Steve Jobs, Bill Gates, John Crawford, Larry Ellison to name a few - all remarkable men who taught me the satisfaction of accomplishment and innovation. To most of them, it wasn't ever about money, but always about achieving the next breakthrough, and that shaped my world view and my future. So regardless of where I was on my journey over the several years, I was always grateful to that DCM Spectrum7 experience here at MIT.

I didn't come to Manipal a great student, but found my footing here. I remember the Chief Guest on my Graduation day, from whom I received my rank certificate, was Dr M R Srinivasan, the then head of Atomic Energy commission. I have had the pleasure of meeting him several times since then, including during the Nuclear Bill when we were on opposite sides on the issue. But amazingly recently when the Visvesvaraya Technological University honored me with a doctorate in science, I had the honor of receiving it from Dr Srinivasan again. It was almost like I had come full circle back to 1985.

College has an inextricable way of shaping adult life. There are far too many experiences too elaborate all. But some stay indelibly in

memory - for example as an air force officers son living all over the country, I had never identified myself as anything but being Indian and so it was the first day in campus I had to decide whether I was a keralite or bihari or local etc to partake the unique ragging of each state or community! Being from Delhi and with a slightly unique name, I escaped the otherwise unpleasant attentions of the Kerala seniors!

Another memory was that of the warden of our hostels, our math professor - Prof Kamalaksha or KK as he was called! I will never forget his guts and perseverance as he took on with a torch and stick the unruly seniors.

It was during my life as a student here at Manipal that I was first exposed to politics too. My friend and I were roped in for some good, old-fashioned campaigning, driving around the interiors of Karnataka in a green matador, drawing support for Oscar Fernandes who was standing as Mp in the post Indira Gandhi 84' elections. That was my first experience with politics, and an experience I remembered on the very first day I entered the Rajya Sabha. I may not have understood too much about politics in my brief stint roaming around Karnataka in a matador, but again I'm sure that coming into Parliament was a coming full circle of that experience.

My passion for music and all things musical took root here in Manipal. I remember there used to be a shop here at valley view that we used to buy latest music cassettes from and putting up posters for various rock concerts and even struggling to Bangalore with little money but much enthusiasm to watch concerts. The time in Manipal was also about long lines for the one phone, waiting for actual letters from home in that era before email, extra helpings in the mess and the almost infinite number of egg based dishes between Shanthala and the carts.

I sometimes like to think that my starting the cellular telephony business in India may have had something to do with experiences of waiting for hours for trunk calls to go through.

As for me today, some two and half decades on from my Manipal days, I don't make great speeches nor can I give you inspiring visions of the future. But what I do is challenge the status-quo and challenge it relentlessly. I have very little patience for platitudes and moaning. I believe firmly in the dictum that a person's future and fate is what he or she works towards. I believe that this is true for countries, states and communities! My life's story is about that - twists of fate and opportunities that came my way, but I worked hard on everything that came my way. Some I succeeded at and some I failed.

“Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did do.” Mark Twain

I find it difficult to explain what makes me tick or what inspires me specifically. I have asked myself that. Sometimes out of frustration my family and friends ask me that as well - in a different context of why I don't slow down or why I keep seeking out new things to do.

Let me try and explain this in a different way - I don't know how many of you have seen a Steven Spielberg/Tom Hanks movie called “Saving Private Ryan”. The movie starts with a scene where the old Matt Damon playing the character of Private Ryan walks through the World war 2 war cemeteries at Normandy beach, up to the tombstones of the soldiers who had rescued him , and after saluting , addressing Capt. Miller's grave -” My family is with me today. They wanted to come with me. To be honest with you, I wasn't sure how I'd feel coming back here. Every day I think about what you said to me that day on the bridge. I tried to live my life

the best that I could. I hope that was enough. I hope that, at least in your eyes, I've earned what all of you have done for me;

He then turns to his wife and asks

Tell me I have led a good life.

Tell me I'm a good man

And she says, You are!

This in a lot of ways sums it up for me. The purpose of life should be to be seen as doing good or leading a good life in the eyes of those who respect and love. You live one life. Live it as if you have to answer that same question at some point in your life.

To the question of who or what inspires me, I can only answer by saying at different stages of my life; different things have motivated and inspired me. I say things because, more than specific people - its specific actions, thoughts or values that have inspired me.

I've sometimes try to analyse this myself and find a common thread - for me this common thread has been the values of idealism , courage and kindness - some of which I discovered here.

So that's my thing - real practical ideas and solutions backed by relentless effort despite failure - to the real concerns and challenges we face today or will face tomorrow.

In ending let me say this, the opportunities Manipal provides to its students, I wish they can be multiplied to reach thousands of others across the country. In my opinion, that's the direction our country must take - creating these opportunities and enabling youngsters to pursue them with the confidence and determination to succeed. It's a simple equation really for you maths or physics buffs. It's a function of opportunities, determination and capital equals success!

India represents many opportunities, but the biggest one is its young people and their creativity and talent. The future is about

thousands of youngsters determining the destiny of our country. I am honored and privileged to have my life been catalyzed by my stay here.

I would like to end by saying thank you once again, for honouring me. Thank you for the opportunities to revisit memories of days spent here and most importantly Dr Ramdas Pai and all others associated with this great institution for impacting my life and millions of others.

Thank you,

Jai Hind

Jai Karnataka

## 26

# Parliamentary Discussion on Price Rise and Inflation

Rajya Sabha

7th July, 2014

Economy needs fixing – This needs deep Reforms; This needs time Sir, Many have spoken on this issue. Before we allow politics to derail the real focus on this issue, it is important to understand the real reasons for price rise and where we are as an Economy. The situation with the economy and the perilous fiscal health of the Government is - more than anything else - driving this phenomenon of unrelenting inflation and price rise – that is, in turn, making the lives of poor and middle class intolerable, and adding miseries to already difficult standards of living. Sir, the economic situation we face today is most challenging – there’s no avoiding this. In the reply to the President’s address, I referred to our economy as being on a fiscal precipice and left hanging there only because of some adept fiddling with numbers! In any corporate, this kind of

number management would be seen as a violation of disclosures and transparent Governance. Sir, we must understand the real story of Inflation! Inflation and price rise has been on the increase for almost 24 successive quarters, accompanied by GDP declines for last 12 quarters. While inflation based on wholesale prices averaged 6.1% during UPA-1 (2004-2009), it was a percentage point higher at 7.1% in UPA-2 (2009-14). In the case of food inflation, the acceleration has been more pronounced, rising from 6.74% to 12.2% over the same period. And throughout this period, various functionaries of the UPA would famously predict an imminent inflation moderation - to be proved wrong again and again. So to the critics of the new Government, I would humbly point out that the number of promises made and broken by the previous Government on this issue are too many to 2 enumerate and describe; and I wouldn't want to embarrass them by quoting any or all of them. Sir, the problems for this trend of price rise are the structural issues with our economy that have been created over these 4-5 years. The economy has become stuck in a low growth and high inflation mode for several years now causing many connected problems. Most of the reasons for this situation can be attributed to the out-of-control profligacy that has been unmatched in its size and scope. Sir, even to many of those who aren't expert economists, the problem has always been supply side constraints. This has been known for several years, but with hardly any real effort to solve it as can be seen by lakhs of crores of projects that have been blocked. Pronab Sen, Chairman of the National Statistical Commission, said the main reason for mounting inflation was the then government's failure to roll back the 2008 fiscal stimulus in time. This had led to the economy overheating and prices firming up even as the UPA failed to balance the food economy. The Economic Survey by the then Chief Economic Advisor Raghuram Rajan who was PM's Economic Advisor and now the RBI Governor, clearly pointed out the mistakes in the then Government's stimulus policy

in 2008. The easy strategy of creating more consumer demand, rather than equally driving investments to create supply, had further accentuated the already deep demand-supply gaps that had been created by encouraging the easier economic strategy of fueling a consumption economy without tackling the more difficult regulatory and policy issues required for a sustainable investment-based economy. Sir, there is no alternative to bringing fiscal responsibility and a value for money culture back into the Government. The current model of borrowing now at Rs.50,000 crores/month is unsustainable and is placing liabilities of our future generations' heads. Public spending is notoriously leaky and fosters corruption, and worst, only a small percentage of spending is reaching people. Fundamental reforms in this area are necessary and long overdue and a new Approach to Government Spending is needed. Only then can government borrowing be moderated. Poor regulation of Commodity exchanges and poor enforcement of laws against speculators is another reason why prices are being fixed. 3 Deep structural reforms are required in the agricultural and food economy. Apart from ideas that are already with the Government, set up special courts to stop hoarding and black marketing; create a price stabilization fund; make FCI more efficient by unbundling its operations into procurement, storage and distribution; a single "National Agriculture Market" and promoting and supporting area-specific crops & vegetables linked to the food habits of locals; and creating the concept of Farmers' markets where farmers can sell directly to consumers. Sir, so as you can see from what I just described, the structural imbalances and problems created in our economy are deep and significant. These will take time to unwind with reforms and a more effective economic strategy – a strategy of smarter, more effective Government spending to replace the profligacy of the last 10 years, a focus on consumers and the poor, rather than business and friends and crony fraudsters. Time is required for this Government to get the economy back

in shape and implement the required reforms. I end with this one suggestion for the Government - You must reach out to the people and communicate the reality to them. Make the rationale and reasons for the difficult decisions that are being imposed on people known transparently. As my friend, Derek has said and my senior colleague, Sitaram has said on repeated occasions, it would be difficult to blandly accept that PSUs and Railways are losing money, and so, people must accept hardship. This Economic Survey and the Budget must make it clear to the people about the extent of economic problems we are in and fiscal legacy that has been inherited by the new Government. If people are to bear hardship, they must know the reasons and for how long.

Thank you Sir.

Jai Hind.

27

## “Embedding Technology in Governance”

FICCI

22nd July, 2014

Good Morning,

Thank you for having me here this morning – to speak about an Idea that excites me as it does many of you I am sure – It is an idea I have engaged closely with over the last few decades – on “Integrated Digital Solutions for a Smarter India”

As a Technology entrepreneur, I have always been a big and untiring and relentless evangelist of all things Digital and as a MP, all things to do with cleaning and reforming Governance. I have been witness to and an active participant in the evolution of operating systems, microprocessors, internet and cellular for two decades, and also a witness to mal-governance, scams and misuse

of Government for several years. I assure you, therefore, that I am qualified to speak on this subject.

Steve Ballmer, the once mighty director of Microsoft – who of course also presided over its unseemly and sharp slide into irrelevance once said, “The number one benefit of information technology is that it empowers people to do what they want to do. It lets people be creative. It lets people be productive. It lets people learn things they didn’t think they could learn before, and so in a sense it is all about potential.”

The realization of the transformational power of technology in democracy and governance was felt first way back in 2008/2009 – not just in India but around the world as people started coalescing around technology enabled platforms in Tahrir Square, Tunisia and even here at Jantar Mantar. The discourse and involvement of a whole new generation of citizens hitherto disconnected was purely on account of the growing proliferation and access to technology and the internet.

The latest political and policy announcements of the Government indicates that our government has realized this amazing transformational potential of technology. And has in fact laid out a road-map to embed technology into governance - About a fortnight ago, the Prime Minister formally launched the Digital India program – that proposes to “transform India into a digitally empowered society and knowledge economy” This has unequivocally established, if nothing else, the fact that this is the most pro-technology Government our country has ever seen. To me, this program and its various initiatives point to the fact that we finally have a Government that has taken it upon itself to fast-track India’s progress using digital solutions.

Over the coming decade in India, 10 transformational technologies could contribute three-five times the current economic impact of

the IT/ITeS sector to the economy. Together, they can transform health care, education, financial services, citizen services, energy, Black money and corruption and agriculture. These technologies are ubiquitous connectivity, the internet of things, cloud technology, digital payments, universal biometric identity, automation of knowledge work, renewable energy, advanced oil and gas, advanced energy storage and next-generation genomics.

Technology, therefore, can be the prime mover to making a reality of this government's promise of Maximum Governance, Minimum Government. Such a transformation, however, requires technology to be firmly embedded into government.

Embedding technology into governance processes will do three things: one, transform government and make it more transparent and efficient; two, transform the lives of citizens, especially those at the bottom of proverbial pyramid; three, make our economy more efficient and competitive.

Over the decades, with the increasing proliferation of technology, three scenarios or themes have emerged:

1. Technology is constantly evolving with more and more computing and logic in smaller devices
2. An internet and connectivity growing rapidly that is connecting those devices and people behind the devices
3. Our democracy evolving where people are more aware of their individual rights and obligations of govt. People want to assess, be informed, connect with and influence Government - in effect be the real oversight of govt. People wanting directly to deal, to dis-intermediate.

These seemingly separate movements have begun to combine in a fusion that rivals the other symbol of fusion the H- bomb, with disruptive but positive effects.

Before I go further, let's be clear that the discussion on technology to transform government or e-governance isn't new. But in its current form it has failed to make any dent on corruption, government efficiency or citizen-government interaction. Hundreds of crores of contracts have been awarded in the name of e-governance, but without clear definition of outcomes. I think the operative word for any future discussion on e-governance and technology in the coming decade is, as your seminar title rightly states it, is "integrated digital solutions". The failings of our e-governance schemes over the last decade are to some extent, defined by their dispersed and ad-hoc design.

This is because the process of embedding technology in government has so far been a bottom-up process. Individual departments and offices are undertaking this independent of each other. Thus, crores are being spent in systems and projects that are incompatible and don't work with each other, defeating the purpose of e-governance.

Take the huge data collection exercises and databases. The Aadhaar database on bio-metrics has a different architecture and hardware from other similar large databases overseen by the finance and home ministries. Or the case of data servers and networks which have different security and architecture specifications in different departments leaving government agencies with differing levels of vulnerability to cyber-attacks.

Further, embedding technology into limited silos makes data-driven, real-time analysis of governance and policy action impossible or, at best, inaccurate. This approach is also expensive and inefficient in terms of costs associated with procurement, obsolescence and administration. This silo-based or bottom-up approach to embedding tech also has another big failing: it doesn't create the process reforms and efficiencies at the top-most levels of government decision-making where it is most required.

This is why I'd like to make the case here today, for the need for our Government, which has so far shown itself to be so forward thinking, to create an overall technology strategy and architecture – for which it must appoint a Chief Technology Officer – to both design and embed a virtually integrated platform for the governance machinery.

More mature democracies such as the US have beaten India in recognizing the need for this architecture. President Barack Obama made this appointment a centre-point of his 2007 electoral campaign. Obama conceptualized the role of the CTO to be someone that would “focus on transparency” and ensure “that each arm of the federal government makes its records open and accessible as the e-Government Act requires”. India needs to take a similar approach and use this as a precedent while rolling out Digital India.

Government is a sum of various parts. Currently, some of these parts are efficient and technology-enabled while others are sub-optimally enabled or technologically bereft. So government's efficiency as a whole is measured by its least efficient or least responsive departments, just as governments are known by their worst ministers and not their best.

A good Tech Architecture is essential to make the government function as a unified machinery that operates with consistent standards of efficiency, transparency and responsiveness. That is key to realizing maximum governance, minimum government.

The focus should be to design an architecture that achieves three broad goals:

- 1) enable easy, transparent access for citizens and business to and from government, 2) enable government departments to operate transparently and efficiently, 3) connect various departments to ensure that government and policymakers operate in a seamless, transparent, responsive and data-driven manner.

For this, there is a need to re-wire the government's existing technology investment, connectivity and access mechanisms. This can then help embed layers of applications, including security measures into the ecosystem that ensures that the government applies the same standards of responsiveness, transparency and access regardless of department, hierarchy or region. Creating such a standardized architecture will also save thousands of crores in procurement and administrative inefficiencies.

I read a McKinsey Global Institute report that says the large scale adoption of technology positions our country with the biggest opportunity yet to accelerate economic growth. In the next 10 years, leveraging technology in India through Digital India could pump in anywhere between USD 500 billion and USD 1 trillion into the economy – which represents anywhere between 20% to 30% of the current GDP of India, and is as much as the share that the manufacturing sector currently makes to the Indian GDP.

There is much reason for cheer for the Tech community, and what now the need is for the Government and Private sector to come together to design and execute a detailed and investment backed roll out plan.

It is clear that the next phase of the growth of our economy and democracy will be driven to a large extent by how we roll-out, harness and execute the rich power of technology. The pieces are all there including the Government's stated will – all it requires is smart and creative architecture of the different pieces by the Government and to create a partnership with private sector innovators and investors to help execute this vision.

## Parliamentary Debate on Union Budget 2014-15

Rajya Sabha

24th July, 2014

Sir, I rise to support the Budget. Sir, the Finance Minister starts with an economy that has been left very weak and vulnerable by a scorched earth management of the economy (words not mine, but that of a former Chief Economic Advisor) with 12 quarters of successive GDP declines and 24 quarters of inflation growth; Gross Capital formation declining in the last two years to falling below 30% for the first time in many years; and a unprecedented Trust deficit between Government and investors - with investors having lost Rs.6,80,00 crores in last 3 years in PSU stocks alone. Sir, this Budget is really the first step in the difficult process of rebuilding the economy.

It must be seen in that context. For most part of the last decade, the focus has been on growth through consumption economy

with investments being a lower priority. The poor investment performance is evidenced by the Rs.7,95,000 crores worth of projects and investments stuck. The then Chief Economic Advisor, Mr. Raghuram Rajan said in last year's Economic Survey what many of us had been arguing – that the 2008 stimulus was flawed and aimed at the easy solution of a consumption economy, rather than the more difficult model of spurring growth through investments. That's where we are today – at the bottom of a mountain that looks daunting, but that needs to be climbed and conquered.

This Budget is like a base camp for mountain climbing – low on theatrics and more about fundamental and structural issues of organizing and planning the real climb!. I have no hesitation in endorsing this Budget as a good first step. Sir, let me congratulate the Finance Minister for saying in the other House that he is pro-business and pro-poor. There is no economic contradiction in this. That is really what this country needs. A steadfast commitment to 2 investments and growth. A break from politicking of the poor and dividing the same small pie into thinner and thinner slices to make it go around, to a strategy of growing the size of the pie so that there are more slices and bigger slices to distribute to those who need help and support out of their deprivation and poverty. I congratulate him for saying that he doesn't believe in creating liabilities on future generations. That is an important statement for the youth and future generations of the country.

Sir, my colleagues have spoken at length about the positives of the Budget and I will restrict myself to two issues of public investments and role of private capital / Entrepreneurship. Sir, let me first bring the issue of Public investments to the Finance Minister's attention. Sir, there is a total of 15 lakh crores of public money invested in 277 Central Public Sector Enterprises (CPSEs). For years, many of these PSEs have been mismanaged and the public equity invested in these put to losses. There is very little public discussion about

the performance of the public's money that has been invested into these companies. For eg.: A company like BSNL which was valued at over Rs.50,000 crores just 5 or 6 years ago has been run into huge losses. There are several like this. This is where the Finance Minister needs to clearly depart from the UPA in its approach of blindly investing more and more taxpayer and public money without fundamental restructuring of these companies and managements. Because at a time of limited money, the money must be best used and not frittered away without clear objectives.

Sir, I would urge that Government develop a new paradigm for how PSEs are managed and how public money invested in these PSEs deliver sufficient returns. The returns of these investments through dividends, market sales should be used for priority areas of the Government in Social spending and Security etc. I would request him to publish in every Budget henceforth a separate report about the performance of these PSE investments. This will ensure that the people and taxpayers, who are the real owners of these companies, get more visibility into these investments, and PSEs don't remain private preserves of some Politicians and bureaucrats. For too long, the cycle was one to put public money into PSEs, mismanage, loot and lose money, put more public money and this cycle of infamy would continue.

You, the Finance Minister, can break this cycle once and for all. 3  
Sir, the other area I want to talk about is PSBs – the public sector banks. My colleagues Naresh Agarwal, Vijay Goel and others have referred to this issue. In recent times, the financial sector, and in particular, the Banking sector in India, has begun to resemble something from Alice in Wonderland with the banks in particular looking like Piggy Banks for the rich and powerful. The sharp rise in NPAs and fall in their profitability has not been challenged or questioned enough. The NPAs have gone up alarmingly in the last 2-3 years and there is a direct loss in value of public equity of these

Banks. The move to capitalize the PSBs with Rs.2.4 lakh crores is a significant investment of public money. This capitalization must be accompanied with significant restructuring and reorganizing of these banks and how they are managed, especially in areas of risk and credit assessment. In some cases, PSBs are now holding the can for flawed government sectoral policies because they are directed to lend in the name of infrastructure development and coerced to give the go-by to normal prudent lending norms. Most importantly, we have a strange situation in India today where the top 10 Industrial groups have borrowed up to 95% of the banking system's net worth, creating for themselves a comfortable, too-big-to-fail situation – in an unprecedented concentration of risk. This creates two serious situations: Firstly, and at a time when we need to create hundreds and thousands of new entrepreneurs, the same groups seem to be cornering all the capital and opportunities.

Second, the phenomenon of big businessmen glibly escaping the responsibility of repaying personally guaranteed loans while banks pounce on small and middle income families and SMEs defaulting on home, car, 2-wheeler, farming education loans and other loans – exposes the double standards in Public Sector Banking. This is neither tenable nor acceptable, and constitutes a moral hazard of the worst kind, made even worse when some of these businessmen are in Parliament. The Public Sector Banking system needs reforms, and I hope the Finance Minister addresses this before committing further amounts of precious public money to it. 4 Sir, let me come to the issue of Private capital and PPPs. Sir, I am amongst those who believe that Private capital has a big role to play in the growth of our economy and country.

Here is another area where the Finance Minister needs to make some significant changes from the UPA. Most of the PPPs seem to be one-sided deals that have resulted in windfall gains to the private investor. The CAG Reports on PPPs in Petroleum, Gas,

Airports, Railways and Telecom – have all raised serious questions of transparency, fairness, propriety, and in several cases, questions of outright manipulation and corruption. Just a reading of one of these reports is enough to make you wonder about how people are getting away with brazen violations at the cost of the Government and taxpayer, and creating a culture of crony capitalism that has been spoken about in this House and written about.

There are two important effects of this kind of PPP approach - one is that public and government side of the PPP always loses, and so, public opinion will start opposing PPPs, and the other is that genuine investors will stay away, given the taint and lack of transparency of doing business through PPPs in India and that will reinforce the crony capitalist culture. These kind of regulatory and policy risks associated with PPPs have been covered up so far because Public sector Banks have been directed to lend in the name of priority projects. So my suggestion to the Finance Minister would be to focus on making projects investment grade – where equity and debt flow into these projects naturally because of their viability and risk mitigated nature, and not by directing PSBs to lend. Because directed lending may create an asset in the short term, but it will only create a problem later on down the road in the Banking sector.

The Finance Minister is both the joint custodian of the economy and the sole custodian of the financial sector. The Chinese wall between these, to use an unfortunate phrase, needs to be managed, if you are not to hurt the PSB banking system. The UPA approach to PPPs must be shelved and a new approach to PPPs that encourage risk taking and rewards, discourages crony capitalists, but ensures consistent policy and regulation, with little or no ad-hocness or discretion post the investment to change policies or rules for the investors.

I quote from the BJP's manifesto - "PPPs should be encouraged – An institutional network will be established, while Regulators will be given 5 autonomy and accountability". The Finance Minister is already aware of my strong views on the need to create Independent and competent Regulatory Institutions to make investors confident of investing in long-term projects, and so I will not say too much about it. Sir, over the last decade, the joke was that in India, to create wealth, there are two easy ways – (Hindi) – "Paisa banana hai to, ya to Public sector bank se muh tod borrowing karo or vaapas mat do! Ya government ke saath PPP karo!", i.e., 'Borrow a lot of money from a Public sector Bank and don't repay it! Or get into a PPP with Government!' Entrepreneurship and wealth creation is important for our economy, but the policies must be reoriented to ensure that success is a result of hard work, innovation and creativity, rather than contacts and connections in Delhi or any other state capital that have spawned so many scams. Sir, in ending, let me say transforming our economy into an Investment based economy will be real hard work. It involves formulating good, credible, fair, long-term policies, credible regulatory frameworks and a Government that investors find easy to work and partner with.

That's why the phrase 'Maximum Governance' resonates so much amongst so many, including me – the expectation is that of a Government that will do things right even if it's the harder way. Let me end with a message for the Finance Minister modifying a Bill Clinton quote - "No generation has had the opportunity that you have to build an economy that leaves no one behind. It is a wonderful opportunity, but also a profound responsibility." I wish him all the best.

Thank you.

Jai Hind

## Parliamentary Discussion on The Securities Laws (Amendment) Bill, 2014

Rajya Sabha

12th August, 2014

Sir,

Thank you for permitting me to speak on the Securities Laws (Amendment) Bill, 2014.

Our economy is only beginning to recover from several years' decline and drift. As the Finance Minister is aware, I have repeatedly argued in Parliament and outside that our economy and government needs significant reforms and changes - for a transformation and for it to recover and grow sustainably - and having well-regulated, free and competitive financial markets is one part of that.

I had last spoken about this subject in 2010 on the Securities and Insurance Laws (Amendment and Validation) Bill where I had raised the issue of decline of Independent Regulation in the financial sector.

Over the last few years, we have witnessed a spate of scams and crises that have their roots in Regulatory failure or incapacity. These have, in turn, caused serious setbacks to investor and consumer confidence in many areas that still need investments and growth.

So, this Bill that strengthens the Securities regulator, SEBI, is welcome.

I hope this Bill is the first step of a review and strengthening of the complete spectrum of Independent Economic regulators. These institutions, more than any other single governance action, will impact the ability of our country to attract long term investments. The current trend of these economic regulators becoming parking spots for retired bureaucrats should be replaced with getting talented technocrats from the bureaucracy or elsewhere with the aim of creating capacity and talent in these institutions. The second is that regulators must have enough powers to punish those who violate the law and policies. The final connected issue is that of accountability of regulators and autonomous institutions to address both their performance and provide checks on misuse of their powers. Unfortunately, the Parliament has not spent enough time reviewing the Acts and laws that are the basis of these regulators.

The issue of accountability is an important one where powers are being granted. The Banking regulator, for example, needs to explain why it blindly oversaw the unprecedented concentration of risk - where 9-10 Industrial groups account for 95% of the banking system's net-worth - creating a too-large-to-fail situation

and putting taxpayers on the hook and at risk for the performance of these ten groups.

The stock market is also increasingly becoming a playground for laundering money and is reportedly seeing many insider trading linked transactions linked to takeovers and M&As. It is in this background that we are discussing strengthening the stock market and Securities regulator SEBI.

Coming to this Bill, the SEBI in recent times has redeemed itself with assertive action on Insider trading and Collective Investment Schemes (CISs). This amendment is primarily to cover the regulatory gap or vacuum that exists vis-à-vis CISs. There was a deficit in the regulatory structure and the enforcement mechanisms for the financial products managed by SEBI, which includes mutual funds, security exchanges, stock markets and CISs. There have been recent instances where it is alleged that investment schemes have managed investors' funds without the supervision of SEBI or any other regulator. There has been a call to strengthen the investigative and prosecutorial powers of SEBI, and hence this Bill.

Under Clause 3, SEBI would regulate all schemes with a corpus of Rs. 100 crore or more. Hitherto, chit funds, Nidhi etc. have come within the state government's remit. The new law states that the CIS should not cross Rs. 100 crore. I believe this Clause should be amended to include the number of investors. E.g.:- Rs. 100 Crores or say 500 investors. SEBI's oversight should kick in wherever more than, say, 500 persons are enrolled. In the past, entities regularly pooled money under investment contracts, but claimed exemption from SEBI oversight by pleading that their structure was not a 'company' and not under CIS. What SEBI is attempting to do via the Amendment is to broaden the scope of CIS definition, and thereby, include all smaller money pooling, including possible scams, under its scrutiny.

Of course, there is some concern that the new definition of CIS can lead to some confusion on what comes under the purview of SEBI. Schemes which are not conventionally considered a CIS will also be included under this definition. This may lead to undue harassment as well. This could extend the law to cover a wide range of business activity that do not contain any of the four elements of CIS specified in clause 11AA(2) within the ambit of CIS, requiring registration from SEBI. This provision should be considered in light of the fact that only one CIS has been registered with SEBI since the CIS Regulations were brought into force in 1999, and that CIS is also yet to launch a scheme.

I would like the government to clarify this issue, even though I do believe that it is better to over-regulate on behalf of investors, rather than not have any protection for them, as many investors have been exploited by unscrupulous people, as we have seen in recent times.

Sir, in the process of giving powers to regulators to prosecute the criminal elements within the financial markets, we must not create a contra movement that ignores the right to due process and also disruption of existing enterprise and jobs. This is a 'must have' requirement. There are many cases of unfettered power being misused for extortion or often disrupting going businesses and jobs. This concentration of power in the SEBI is neither desirable nor necessary. The Bill proposed by the UPA, which I opposed along with many others in the Finance Standing Committee, was onerous and had no checks on the powers and its potential misuse.

This Bill makes significant structural changes on the concept of checks and balances and due process. It allows SEBI search and seizure powers and seeks information and call records from even those not directly related to securities market. However, these powers have been kept subject to some checks - SEBI will need approval of a designated court in Mumbai, so that there is no abuse of power.

I believe this principle must extend to the power of attachment that is being granted to SEBI under this Act. I believe that the power to attach that SEBI has in this Act must be moderated through a Magistrate, just as in search. I propose that Government amends both Clauses 21 and 35 relating to attachment, to permit attachment after being permitted in a Special Designated court - The whole issue of attachment in pursuing the dues tends to impact the enterprises and businesses linked to the charged individual or entity, and ends up with highly disruptive exits for investments, creating business and job losses and other stakeholders getting impacted in the process.

I welcome that this Bill has given SEBI statutory backing to engage with similar Boards abroad to bring scamsters to book. This is important as many Ponzi schemes are investing their moneys in overseas jurisdiction and countries. As law breakers don't respect national boundaries, we must equip and empower our Regulators to effectively share information and bring people to justice.

Sir, Clause 15 in the original Act, and sub-Clauses 6 to 15 in this Bill really need a relook. The penalties for crimes against investors – which is what this Clause is - has traditionally never been strong enough. SEBI's record against widespread manipulation and insider trading has been weak. I have seen the changes being proposed in Clause 15. To make the market clean and operate with integrity, the financial and criminal penalties for crimes listed under Clause 15 have to be punitive. Penalties are not adequate - 1 lakh a day for investor grievances, mutual fund defaults, asset management companies and stock brokers - 15(c), 15(d), 15(e), 15(f) - are too low. These penalties are seen as cost of arbitrage or low cost of risk taking. May I recommend a penalty of Rs.5 lakhs per day subject to Rs.5 crores. These may sound punitive but they must seem to be. 15(d) is the Clause that deals with penalties for CIS. 15H insider trading at Rs. 25 crores is laughable - considering the

gains that these kind of trading results in, and that most of the profits and gains are in cash and in black economy.

The creation of a special court to try all the criminal cases arising out of violation of securities laws is very welcome and a strong signal to those that are playing and gaming the Indian investors and markets. Currently, criminal trials relating to securities cases take decades to adjudicate and guilty to be punished and innocent to regain his or her reputation. Take the case of Bernie Madoff's Ponzi scheme and how his trials including appeals were complete in less than a year, and he is now spending his sentence in jail. In India, cases that were detected at the same time like the Satyam case, are still in Trial stage.

Finally, I come to the issue of transparency in functioning of SEBI. Regulators like SEBI are being granted increasing powers by Parliament assuming that these powers would be exercised in and only in the interest of investors and economy. But there will always be temptation to misuse and corruption. Power corrupts; Absolute power corrupts absolutely. This is not desirable. I would urge the Finance Minister and Government to amend Clause 17 or indeed have a new clause in the SEBI Act to ensure all consent agreements and cases are transparently disclosed, along with SCORES, on the SEBI website. This must be made legal and binding on SEBI as a part of its obligation to be transparent.

Sir, I hope these amendments would be considered by the Government to make the Bill and SEBI more effective as well as accountable. This, I am sure, would go a long way to making our financial markets better regulated and fair for both the small as well as big, and change the perception that small investors have no protection from the various sharks that exist in our markets.

Thank you, Jai Hind.

## 30

# Address Welcoming His Holiness The 14th Dalai Lama

India Habitat Centre,  
New Delhi

22nd September, 2014

His Holiness, my colleagues from Parliament, ladies and Gentlemen:

A very good morning to all of you and thank you for being here this morning.

We are all very fortunate to be gathered here today, to hear without doubt one of the giants of our times - not just spiritual leader for the 800 million Buddhist world-wide but also to rest of the world as well. A leader who espouses peace and co-existence when most world leaders talk a contrarian language.

His Holiness had very kindly accepted my invitation that I had made in Bangalore, about a year ago and, I feel privileged to introduce and welcome him this morning. I have had the good fortune of hosting many great achievers over the years, but this occasion today tops them all.

I am sure all of you will join me in welcoming him this morning and thank him for taking the time and sharing his thoughts with us. Please join me in welcoming him!

Thank you!

His address today is in the backdrop of two very worrying trends - A growing sense of intolerance and conflicts around the world and the other the growing pressures on traditional culture and values by the unrelenting demands of economic and developmental expediency!

I along with many of you I'm sure, are amongst those that believe that these aren't necessarily zero sum equations. That peace and tolerance can thrive amongst diversity; tradition and culture can flourish with economic growth and development. I reject the notion as do many others, that for one, we have to necessarily compromise on the other.

There are very few Global leaders who believe in and articulate the possibilities of these seeming contradictions being made non-contradictory! His Holiness is clearly one of those that credibly believes, lives and speaks to this and teaches this.

I hope many in the audience who range from MPs, bureaucrats, Students, Media, Intellectuals who have the ability to impact the course of our future will enjoy today's address and no doubt be inspired by the idea of creating a conflict less country, region and world - where different cultures and traditional values can coexist peacefully and do so along with economic progress. I hope too that we (all of us) will continue to work to strengthening the already strong traditional and historical relations between the Indian and Tibetan cultures and peoples; And amplify the message of dignity, mutual respect, co-existence, Nonviolence and harmony that His holiness speaks of, represents and teaches.

I thank you all for making it this Monday morning. I thank his Holiness for his time today and invite him now to speak to all of us

## Parliamentary Debate on The Insurance Laws (Amendment) Bill, 2015

Rajya Sabha

12th March, 2015

Mr. Vice-Chairman Sir, I rise to speak in support of this Bill. Sir, this bill will positively impact insurance consumers of our country in particular and the economy in general. I speak here in support of this today. Insurance penetration in India is at 3.9% is below the world average of 6.3%, as per the figures in 2013 and is a very low 17th out of 62 nations. After almost 70 years of Independence, 800 millions of Indian remain uninsured. Many more in health, livelihoods and assets remain uncovered by Insurance. This low Insurance density needs to be urgently addressed and this can be only be done rapidly by more introducing more insurance companies and more Investment. Sir, more players means more investment and also more competition.

As my colleague Mr. Praful Patel, the availability of many companies is the only sustainable way for the Indian Consumer to get easy access to affordable insurance. Sir, there are discussions about why FDI and why not domestic sources? And my friend Derek had raised it. The question can be posed to all sectors that attract FDI today. Why FDI in telecom, why FDI in infrastructure, why FDI in services, why FDI in airlines, and Why FDI at all? Sir, This question really is quite simple to answer. It is that while our economy is a growth economy. Just like any other economy we have finite resources and these need to be prioritized. We need our domestic resources for areas where private capital will not go.

We need those resources in social sector programmes, Poverty-alleviation programmes of the Government, Rural infrastructure etc. If we can raise additional resources from external sources, it is good economics and politics to do so. Even a country like China economic playbook has FDI at its core. Now the only country that has very little FDI in its economy and I don't think my friend Derek has any vision of wanting India to be like that, is North Korea.

We don't clearly want to become North Korea. That is the reason we want FDI in large amounts in this country. Let me touch a bit upon the opposition to FDI from my friends in the left. I respect their views and many of them are my personal friends. I appreciate their ideological opposition to private capital – but what is not reconcilable is that they support private participation in Insurance but not foreign private participation in it. Foreign equity is in insurance and every other sector through the FII route anyway. FDI is actually better for the country's economy, since its more long term and creates tangible assets as opposed to FII which are speculative and short term in nature.

So while I respect their views but humbly submit that it's a flawed and contradictory position and inconsistent with demands of

today's consumers that want choice and competition as their right. Sir, there have been some concern raised about foreigners running away with the premiums. I am sure the Finance Minister will explain this, but the IRDA and law prohibit the utilization of premiums by any of these companies, including the joint ventures, expressly except for laid down by the IRDA. So, there is no question of any foreign company or joint venture running away with the premiums from the country. So, that is again a red herring that I just want to dispel. Sir, the dynamics of a well insured society are transformational. We must understand and embrace these. High insurance densities have huge impacts on societal well-being, health, family standards of living one end of the spectrum of benefits. Sir, creates an economy of high savings rates, improved long term capital availability to the financial sector which in turn makes long term infrastructure financing easier etc.

So, in a nutshell, catalyzing the insurance sector and regulating it well is good for consumer and the economy. Sir, before I end, let me raise three specific issues that I believe should be brought to the attention of the Government and the Finance Minister. Sir, there is some talk about issue of Indian control.

It could be misunderstood to imply that it creates two classes of investorsthat you are a creating a situation of rent seeking amongst some private companies will still be in force. So, I would like to seek from him a clarification that the Indian Company Law is what will really prevail on the issue of Management and control, that there is no contradiction in this bill. Sir, the bill misses a big opportunity to create a reinsurance hub and thousands of jobs associated with it in India.

With Dubai and Singapore fast emerging reinsurance hubs that are moving markets away from traditional Europe and North America, we could have created a reinsurance hub in India, but this would require more capital and more FDI limits. Sir, in ending I would

like the Govt. and Finance Minister to commit that they will work to making Insurance PSUs even more competitive and strong. By re-architecting how they are managed and run. PSUs must be investment assets for the Government, but not by preserving their monopolies but by transforming them to market share leaders and world beaters, even as the insurance market grows. Countries like Singapore has shown how Govt. linked companies can perform well and that vision must be unveiled here as well. Sir, The Insurance Laws (Amendment) Bill is pro-competition and pro-consumer. It is proinvestment and pro-economy and I fully reiterate my support to the Bill and I hope this house will pass it unanimously.

Thank you

Jai Hind

Parliamentary Discussion  
on Commitment to India's  
Constitution as Part of the 125th  
Birth Anniversary of  
Dr. B.R. Ambedkar

Rajya Sabha

30th November, 2015

“Rights for citizens are only real, if they are accompanied by remedies” – Dr. Ambedkar. Constitution needs to be reviewed. Government needs to re-architected to serve people! Thank you Sir for letting me speak today to commemorate the 125th Birth anniversary of Dr. Ambedkar. By naming 26th November Constitution day, the Government has rightfully put the spotlight on both the constitution of our country as well the architect of India as a nation built on a constitution of rights.

I think Sir, many of my colleagues with more knowledge and experience have no doubt enlightened us about constitution and history and one thing is irrefutable. Our constitution is one of the

finest pieces of democratic guarantors that the world has seen and indeed unlike the US constitution, it is one where the entire debate that went into its creation is also documented.

So that we not just a constitution, but also the constituent assembly debates that capture the rationale and reasoning behind every part of our constitution So while we must be proud of our constitution and thankful to our founding fathers for it, it's also important that we cherish its values and principles and live by it. And that we also review the impact of decades of sometimes politically motivated amendments of our constitution. Sir, the debate on the constitution must move beyond the preamble.

The constitution envisaged a nation that lived by the rule of law, justice for all, freedom of expression, equal rights and justice with no discrimination and property rights etc. But let's frankly admit that Governments and Parliament have let down the constitution and country repeatedly. Take the rule of law for example – it's inconsistently applied and seems to not apply to those who are powerful or rich or are politically connected. This repeated violation of rule of law destroys the core values of our constitutional democracy and often directly threatens the constitutional guarantee to life under article 21.

Take the issue of justice - justice is often so delayed that justice is denied – threatening the whole idea of citizenship. Freedom of expression under Article 19 has been curtailed repeatedly starting from the emergency to recent UPAs IT act with its draconian sec66A which remained on the books despite widespread protests and misuse and was struck down only by the Supreme Court. Other challenges like Right to privacy as part of liberty and life Article 21 are also under challenge in the new digital age Sir, I welcome Political parties joining in this debate even if it's very ironical in many cases – even those Parties that have presided over the chopping and dicing of our constitutional rights through various

amendments over the years. Even those political parties that have belatedly woken up to the mistake of ‘banning books’ and deporting those with politically uncomfortable views. Parties that have abused constitutional authorities like CAG when corruption was exposed. Also those parties that have passed laws like the IT and used power 2 of arrest to attack fundamental rights of expression and privacy. Sir, I also welcome those Parties that have used violence repeatedly as a political tool for several decades. It’s good that all of them are today engaged in a reaffirmation of our constitutional values and indeed a debate on tolerance and equity. I welcome this sir. Even after 65 years Dr. Ambedkar is uniting us around the constitution. Sir, I welcome this debate –as an opportunity for the country to start a conversation about how our constitution and vision of founding fathers continues to be violated and vitiated in states, Institutions, and around the country. I think it’s necessary for us to do that instead of only basking in the great work done in past and selective narration of history. There is a lot that is wrong with our Institutions of Government and laws.

As Dr. Ambedkar himself said when asked about his statement about burning the constitution “We built a temple for God to come in and reside and before God could be installed, if the Devil had taken possession of it, what else could we do? We didn’t intend that it should be occupied by asuras. We intended it to be occupied by Devas.”

Sir, I end by saying this – the original constitution intended for citizens to have rights and follow a rule of law; and Parliament and Government to be agents for citizens. But somewhere in the last 70 years, Governments all over have become masters and citizens the slaves and rule of law ignored. I hope that with increasing debate and scrutiny that we transform back to the original vision of Dr. Ambedkar and founding fathers.

As Dr. Ambedkar himself said “Rights are only real if they are accompanied by remedies”. We are struggling to deal with base issues of poverty and justice even after almost 70 years of Independence. Our constitution and laws must ensure real remedies to ensure Development/Prosperity/Equity/Justice for all Indians which we should introspect if we are really doing this. Our debate must go into why it is so easy for political and Government institutions to violate the constitution and law with no consequences. That in itself is justification for us to review our constitution and introspect I hope Parliament and people they represent can start this dialogue around this. I hope Sir that we do more than make flowery speeches today and stay engaged on the need to transform our country, polity and economy into one leaves no one behind. This, Sir, is our profound responsibility.

Thank you Sir,

Jai Hind

## Parliamentary Discussion on The Real Estate (Regulation And Development) Bill, 2015

Rajya Sabha

10th March, 2016

Thank you for allowing me to speak on the Real Estate (Regulation and Development) Bill, 2015. This Bill is probably the most important pro-consumer legislation that the Government has brought into Parliament, and seeks to protect thousands and millions of homeowner consumers in the real estate sector. It is a Bill that has been opposed tooth and nail by some builders and real estate companies, and so, I congratulate the Minister and the Government for standing firm and solidly on this. By creating a much needed regulator for the sector at the state and central levels, this Government has initiated the crucial first step to protect consumers from the prevalent opaque and fraudulent practices that have so far characterized this sector in India. This Bill formally enshrines consumer rights and builder obligations in law and also boosts the industry by creating a framework of competition, efficiency and investments for the sector.

Sir, I was privileged to serve in the Select Committee under the Chairmanship of Shri Anil Dave, which examined and worked on this Bill – through most of the summer vacation period last year – the consultations were extensive with several groups of stakeholders, including consumer organizations, real estate developers and banks amongst others, across several cities in the country, and it was clear from them, that real estate consumers of the country were getting a raw deal, and in a large number of cases, were helpless victims of builders. Victims of delayed delivery, poor quality, illegal constructions, fraud etc. Consumers were having to organize themselves into societies and groups to get any kind of justice or response or go through expensive, time consuming litigation to get any relief at all – even there being outgunned by lawyers and tactics of big builders. It was a David vs Goliath story everywhere with Goliath winning every time. 2 It is this Bill, Sir, that will change the balance from Goliaths to a more even one – where the small Davids and small consumers have a better chance at holding builders accountable to their contractual commitments and promises.

Sir, I will not go into the minutiae of the Bill – The Bill creates rights for consumers, obligations for builders, Penalties for those who violate their obligations and creates a new independent, institutional framework of a Real Estate Regulatory Authority and an Appellate Tribunal that can fast track any dispute that arises between consumers and builders. Sir, this Bill is also good for investors because it brings order and rules to the chaotic real estate sector which has many fly-by-night operators. It also ensures that builders have to now focus on quality, customer loyalty as attributes around which their business is built, not just fixing local authorities and getting plan approvals by bribes. It also puts the onus on builders to only start marketing projects after all approvals are received, reducing the volatility and risk to consumers. Let us examine some of the pro-consumer provisions provided for in the Bill:

First, the Bill ensures the timely completion and delivery of flats to the consumer. Currently, when a consumer buys a property that is under construction, he is promised the delivery of the flat within one to two years after registration. In practice, however, the delivery of the flat is almost never made within the agreed upon timeline. This Bill solves this problem - it ensures that strict regulations will be imposed on developers to ensure timely construction and delivery. It further provides that consumers are entitled to a full refund with interest, if there has been a long delay in the delivery of a flat.

Second, this Bill has put in place a robust mechanism for the publication of accurate project details and disclosures. No one can deny that in the past, there have been myriad instances in which developers have put out misleading promotional material with regard to amenities provided by projects at an under construction stage, for consumers to discover that none of these have been provided for in the final product. Section 11(3)(a) of the Bill mandates that developers need to share final project plans as part of their disclosure terms, with no room for iterations. Further, Chapter VIII of the Bill also imposes a 10% project cost penalty and upto 3 years in jail. These add a much needed degree of accountability and also protects consumers from this highly prevalent malpractice.

Third, this Bill provides that developers must mandatorily mention the actual carpet area of projects to the consumers. Thus far, developers have typically sold properties by citing super built area. This includes common passage area, stairs and other areas which make up to 30% of the actual area of the property being sold. Consumers are not usually informed about the actual carpet area of the flat. By mandating that the carpet area be explicitly mentioned through section 4, this Bill is ensuring that even the most undiscerning consumers are thoroughly informed.

Fourth, this Bill ensures that all clearances are completed before the launch of a project. Sections of the Bill mandate that developers have to receive all clearances before issuing their properties for sale. Most builders offer flats at huge discounts at the pre-launch stage to attract buyers - but without informing consumers about the status of clearances and potential delays in delivery.

Fifth, this Bill mandates that developers are bound to provide after sales service for properties found to have structural defects, at no extra cost to the consumer. Under the Bill, buyers are simply required to inform the developers of the deficiency within one year of purchase. Sir, the Bill is a good beginning to reforms in the real estate sector. I personally would have not liked so many details to be hard coded into the law, and left to the regulator and regulations. But the lack of credibility of our regulatory institutions are clearly causing a trust deficit in lawmakers that embedding details into law.

This Bill is a first step in what will be an evolving process where investors and consumers have to have balanced rights and obligations, an essential for cleaning up and sustainable growth for the sector. I hope that State Governments start reforming and making simpler and more transparent, the process of building planning approvals, land concession and that whole process that is currently so complex and corrupt. I hope the Government appoints good, clean regulators and puts the focus on building good effective institution and capacity building in this area. I would urge the Minister to pay attention to this area in the immediate aftermath of passing the Bill. Let's not legislate and forget, as is the case with most laws. On behalf of the lakhs of helpless real estate consumers nationwide, I thank you Venkaiahji, and the Government, for this Bill.

Jai Hind.

## Parliamentary Discussion on The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Bill, 2016

Rajya Sabha

16th March, 2016

Sir, this discussion is thousands of crores and six years overdue. This government's determined effort to reform public subsidy spending is unprecedented, and I support this completely. The focus on delivering cash subsidies to bank accounts of the needy with over Rs.36000 crores deposited in 22 crore accounts is testimony to the focus on execution and getting things done by this Government. I also welcome the statement by the Hon'ble Finance Minister that privacy is a fundamental right.

Sir, while I say that, I must say that I find the recent opposition to Aadhaar by my friends in the opposition amusing and perplexing. Neither the Left nor the Congress raised a murmur when Aadhaar was being rolled out from 2010 violating everything that they are complaining about – Privacy, lack of debate, lack of legislation

etc. While there were a few like me who kept raising this issue, I did not find any voices from that side. The irony is that the only opposition to Aadhaar came from the then Home Minister P. Chidambaram, who of course, was also at the same time presiding over re-editing some petitions also.

Sir, as you are aware, I am a big supporter and advocate of embedding Technology into Governance, and so, have always supported the creation of the National ID platform, which the UPA called Aadhaar. But Aadhaar has been mythologized during the previous Government by its creators into some technology super force that will transform Governance in a miraculous manner. It has been backed up more by PR and spin than substantive examination. I even read an article recently that compared Aadhaar to some revolution and quoted a 1930s historian Will Durant. I congratulate the Government for doing what the UPA Government didn't do – to have a debate that will cut through all this hyperbole, and for a calm, reasoned analysis of what have we got for these thousands of crores spent.

Aadhaar is simply a biometric database that contains ONLY three pieces of information of the person - Name, Age and Address along with his/her biometrics. The country must know that this UPA-initiated database, ostensibly for the purpose of Identification, doesn't have even the basic citizenship information. Let it be known to all Sir that several thousand crores were spent compiling a database that will not even identify a person as a citizen or a non-citizen. This question needs to be answered by those in the UPA who sanctioned this expenditure. Was it their contention that these taxpayer-funded subsidies will be spent on people who aren't citizens?

So, some discussion and testing of these claims and hyperbole was overdue as also a debate to ensure it is not wasted and dumped because of its design flaws and limitations. That this debate

has been successfully stymied by some people for so long while thousands of crores of taxpayer money were being spent without a challenge or debate is, of course, a tragic post script, and I hope this is the last time this kind of thing is allowed.

The UPA Government should have brought this Bill into Parliament before crores of taxpayer money were shovelled into this project. Perhaps, they didn't want a debate or discussion, or perhaps they were chasing numbers to show and talk about, rather than creating a substantive functional platform.

But Sir, now that we are discussing this new Bill, let me say this.

I welcome the fact that the Bill is no longer called National Identification Bill, and rather is limited to only delivering subsidies. This is a good response to a fundamental problem with Aadhaar that this Government inherited.

The whole database is a poorly verified database that needs slow and steady cleaning up. The process of using small enrolment agencies has created countless fake entries in this database. Getting an Aadhaar enrolment in a fake name had become as simple as getting a fake BPL card, and so attempts to make it a National Identification platform would have been dangerous. I am glad the FM in his Budget Speech said that it cannot be used as citizenship proof, because simply it failed to capture this information during enrolment.

Sir, but despite the few changes in this Bill from the original UPA Bill – many questions remain. I would urge the government to carefully examine the points I am raising.

Why is the bill allowing subsidies to all residents? Is it the government's contention that non-citizens should get Taxpayer-funded subsidies and benefits? I would like the Government to clarify that this is not their intention, but rather forced on them due to how Aadhaar was built.

Sir, Clause 4(3) suggests that the government intends to allow Aadhaar as Identify proof. Sir, I firmly and will steadfastly oppose this. The Government must realize the dangers of using an unverified or poorly verified database as Identity proof. Sir, let me explain – Person X crosses over the border into, say, Assam, takes on an Indian name and easily enrolls himself in Aadhaar with little verification. This is made easy because the Aadhaar enrolment process does very little verification and absolutely no verification of citizenship. If Aadhaar is then used as Identify proof, for say, Passports or Voter IDs or Tax PAN Cards – you create a dangerous situation of easy Identity conversion. It is a trapdoor for infiltration into formal identity processes like Passports, Voter IDs, and becomes an Identity Laundering Platform. There is nothing to prevent David Headley from getting Aadhaar, and if Aadhaar is used as identity proof for getting an Indian passport, many such friends of David Headley. So, Sir, I firmly oppose Section 4(3) or any implication of Aadhaar being used as an identity proof for non-subsidy related functions. The only way 4(3) can survive, Sir, is with an express prohibition on use of Aadhaar in all non-subsidy related Identify proofs. As I have written in 2014 and 2015 to the Government, the Aadhaar database needs a significant audit and clean-up over time before it can be used for anything else. I am aware that this Government isn't responsible for this messy situation, but it is definitely responsible to ensure protection against improper use of this. The language needs change and it needs to be explicit, and not ambiguous.

Sir, apart from this long delayed scrutiny and debate about Aadhaar, the other strange thing about Aadhaar is the total lack of accountability of any entity on the verification of the data. I believe the Bill must cast the obligation of this aspect of Data integrity – of verification on the Authority.

I also believe the Bill currently completely leaves the Authority without any obligations to the enrollee on the critical issues of

Data security, Integrity and Privacy, and hence I would suggest amending Clauses 11, 23, 28 and 29.

Sir, this Government has substantively expanded the privacy and protection of information section. I congratulate the Government for recognizing the importance of this. The issue of consumer and citizen rights was something that was missing from all UPA legislations, including their National ID bill and also examples of Section 66A. This is a good, wellconstructed section and puts paid to the defence put out there by the UPA's architects of Aadhaar that there was no need for privacy rights for enrollees. There is protection under Section 43 A of the IT Act, and that is good. The Finance Minister himself remembers how easy it is for people to get personal data out from entities that have no liabilities arising out of such an Act. For example, call records from Telcos.

But Sir, is that adequate given the dangers of a centralized repository? The cyber tribunals under the IT Act are hardly active, and capacity doesn't exist for these kind of disputes. I believe amending this section to create express obligations that can be agitated under the provisions of this Act may be considered to strengthen the privacy rights of the enrollees. Sir, I leave another thought with you – since Aadhaar in itself is useless for any subsidy delivery and has to work with other databases – is there any way that the Government can use this legislation to also bring those databases like JDY in the ambit of privacy clause of this law, and also possibly to bring to Parliament an overarching privacy legislation?

There are other changes that I would suggest in the Bill – that powers of adding additional information to the Aadhaar database can be only if it's transparently done with Parliament sanction.

Sir, Clause 33 deals with data interception/inspection rights and conditions – I propose that under Clause 33(2), the oversight

committee be expanded to include elements of legal oversight, and I propose that the oversight committee have the Attorney General and a Retired Judge.

Clauses 47 and 50 are ones that the Government may explain – Why is there a need for sanction for prosecution by the Authority in the event of a complaint or breach? The principle of accountability and citizen rights is a theme that has been played out by the Government in other bills like the Real Estate bill. Why not here? And how can Clause 50 seek to give powers to Government to supersede the Authority, when Parliament enacted law is giving the powers to the Authority?

Sir, I understand this is a money bill. But I would request the Government to listen carefully to what is being asked to improve the Bill. Otherwise, we will have a repeat of the IT Act and Section 66A, which is what becomes of hastily passed Bills that create more problems than they solve.

I reaffirm that I am supportive of the Government's brave decision to go ahead with this very flawed platform that they inherited. But let's do so in a manner where the flaws are recognized and acknowledged, and so, Aadhaar's use is limited and cautiously directed in areas where they don't cause any other damage. In the future, a repaired and cleaned up Aadhaar has to be integrated to work with other databases like JDY, LPG, Mobile to direct public spending more effectively and with less leakage and corruption.

I thank you Sir for giving me the opportunity to speak on this – I have been waiting for many years for this. I hope the Government pays heed to my suggestions and gives the country a repaired version of Aadhaar – that we deserve!

Thank you.

Jai Hind.

## Parliamentary Discussion on Demonetisation of Currency

Rajya Sabha

17th November, 2016

Thank you very much for allowing me to speak on this issue today Sir and I rise in support of the Government's recent decision to demonetize high value currency notes. Sir, History tells us that most reforms are met with political opposition and so I have read and heard the criticism of many in the opposition with interest. Sir, lets start with a few clear facts on which I believe most of us here and most in this country are in agreement.

1. Black money and Corruption is the biggest threat to our nation and our democracy – with its tentacles having spread to Politics, Government and Government Institutions, Democracy, Judiciary, Media, Crime and Terrorism
2. Black money and the attendant corruption has spread its tentacles into all areas and has corroded and continues to

corrode our Politics, Government, Democracy, Judiciary, Media and is fuel for criminal enterprise and Terrorism.

3. This black economy fuelled by Black money has only grown and grown and depending various estimates is almost 20-30% of the size of our GDP – which could be between 30 Lac crores and 50 Lac Crores which means our Black economy is larger than the real economies of many nations like Argentina and Thailand etc.
4. That almost to a man and woman – Indians want to rid us of this shameful legacy of corruption and Black money.

On these four issues there cant be any disagreement – I believe that Congress and other leaders will agree with me on this. I heard Anand Sharma ji say about how he and his party are also opposed to Black money, counterfeiting and terror etc. But Sir, its one thing to just say it, and another to have the courage and determination to do something about it and that Sir is the crux of the issue, because everyone knows governments in the past have made little or no effort at addressing this issue at all – as a matter of fact there is ample evidence that during the UPA governments tenure, the black economy expanded significantly and 500/1000 Rupee notes in circulation increased. So when the former FM Shri Chidambaram says he opposes demonetization because there was no economic gains - it highlights the fundamental differences in approach to black money by UPA and NDA. UPA believed in a status quo/tokenist to Black money and the NDA Government believes in doing something about it. Ridding black money is not about measuring gains or losses. Its like a disease that just needs to be removed. The argument that a festering disease will be allowed to grow and spread because some economists are quibbling about the cost of surgery is to put it respectfully to miss the point. That is probably the reason why black money has been allowed to grow like this, because it was seen through these years through a distorted

prism of so-called pragmatism instead of a more clear distortion free right and wrong. I also heard with interest yesterday him say he believed how Raghu Rajan our former RBI governor wasn't in favour of demonetization. With greatest of respects to Raghu Rajan and his impressive international credentials – Black money is more than a issue for an economist – It is as much an issue of morality and soul of our democracy than academic economics. It touches on criminality, national security, corporate and political corruption etc. Raghu Rajan has demonstrated with his supervision of Banks which has since morphed into a fullblown banking crisis – that he didn't quite stray from the narrow focus of monetary economics. That fairly simply disqualifies from commenting on the issue of fight against black money and so using him that as an endorsement of your political position also fails. Sir, this Black economy uses three asset classes of Cash, Land and Gold as havens. Sir, there are various estimates on how much of the currency in circulation of 16 odd lac crores is really in the black, regardless of the quantum of cash that is most important catalyst because it is the raw material/fuel of illegal economy that helps translate it assets of land and bullion. That is why any serious fight against Black money had to start with cutting off the domestic Black money. For those that are complaining that overseas cash are being let off, even for this channel of hawala etc – cutting off and compressing our local cash economy is a first step and so Demonetization at this time is a significant follow on step, to the September 30 disclosure window offered by the Government to those with undeclared Income. Sir, demonetization is never an easy process especially when it comes to voiding 86% of circulated currency by value and disruptions in the short term were to be expected, which is why the Prime Minister has requested citizens to bear with inconvenience for the sake of larger reform. The secrecy and confidentiality requirements also made sure that no advance preparations could be done because it would have meant involving more people. The mismatch of our banking

infrastructure and the scale of withdrawing 86% of our currencies was always going to be under challenge. That the Government was concerned that this should be a soft landing is evidenced by the currency swap windows, the easy deposits of upto 10 lacs etc. But the disruptions are clearly worse for those in the small and informal sector, poor and those that remain unbanked or live in underbanked regions. As we know Sir, 50% of our GDP and 90% of employment is provided by this country's informal sector. The informal sector has for decades been shut out of the organized formal sector. Sir, I say with this all responsibility – the disruption and problems that they suffer today are to a large respect a direct consequence of both - the years of neglect of the informal sector and allowing black money to expand by successive Governments and RBI governors. Sir, I am aware the Government is walking a fine line between minimizing problems for common man and plugging loopholes that can be exploited. But I would suggest to the Government to consider following suggestions

1. Allow regular receipted transactions in our trade and services like Health, Schools, Food, Transport sector where payers are identified and allow this till 15th Dec. Move the burden on IT and Government to scrutinize the deposits rather than the poor. This will ease the pressure around the informal sector.
2. To direct all Government departments and PSUs to give salaries in cash for next two – three months to their employees to ensure that lines in ATMs and banks by Government employees are reduced.
3. I also urge government and RBI to communicate better and more frequently during this process to ensure that political and vested interest rumor mongering do not create panic and make a difficult situation worse.
4. Sir, I would urge the Government to clarify the issue of taxation and penalties on deposits that my friend Naresh also

raised. Many tax lawyers are opining that there is no case for penalties under IT act for disclosed income. Regardless of if its true or not, what surely must not happen is increased litigation due to ambiguities. That's not a desirable situation

5. The armed forces and Paramilitary forces that are serving in far off places may require special attention and dispensation. I have written to the FM already and I urge him to look into this.

Sir, unfortunately the discussion so far has been focussed on the short term disruptions. In reality, demonetization is also a big structural step for our economy that is part of a larger process of transforming our economy into one that is growing, efficient, transparent and clean. The next steps to move the Black economy to the formal real economy must be to target benami land and assets like bullion. Reduction in Direct tax rates is almost a must as follow up to this to prevent fresh black money by incentivize Tax compliance. There will be significant benefits to Economy and indeed to the poor and middle classes that have not been discussed or explained. Government will benefit significantly both from the taxation on the deposits that are and also the a monetary surplus in the RBI that would then reach the Government. We are talking of a one-time gain for the Government of 4-6 Lac crores. This additional spending of the Government must and can be directed at investments, jobs and expand welfare spending for the poor and needy. Banks will benefit from this surge of deposits and from the progressive formalization of transactions. Increased deposits will moderate Interest rates as a direct benefit – with added indirect benefit from businesses restarting investment cycle. Other definite benefits will be the price correction and reforms in the real Estate sector. Along with RERA, the sector will now be under additional pressure to change its cash-based business model and move to a more transparent , consumer friendly system like in other

businesses. This along with lower Interest rates can potentially restart the home buying. Sir, let me end with another important fallout of this demonetization – the continued impetus to the formalization of the informal sector. Formalizing the informal sector has widespread positive implications for country, people and economy. This Government has made a step with Mudra Bank. Demonetization and attacking black money will mean that Informal sector will be nudged into the formal sector and be allowed to avail formal sources of money – almost always at easier rates than the cut throat rates and risks associated with informal economy. Sir, this Government had a mandate to change the status-quo. The fight against Black money is a decisive serious kind of change. Change is never smooth or orderly despite the best of intentions and those that are heavily invested in the status quo will expectedly be shrill in their opposition. But most Indians desire this clean up and so I support this fully, strongly and urge the Government to take all steps necessary to ensure a softer and more sensitive landing for the poor and middle class. Sir, I also want to on behalf of this house and all of us, thank the many thousands of bank employees for their service during this period.

Thank you Sir.

Jai Hind

## Parliamentary Discussion on The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014

Rajya Sabha

17th November, 2016

Sir,

I Thank you for giving me the opportunity to speak at this historic Constitution (Amendment) Bill.

Sir, we are all agreed in this House that our country's challenges of poverty and equitable development can only be addressed through sustained high economic growth creating for the government the necessary economic headroom to expand and direct its welfare spending for those who truly need it.

Sir, it is to this objective of growing our economy that reforms become important. Sir, GST is independent India's biggest indirect taxation reforms, and, as my senior colleague mentioned in his speech, indirect taxes impact every Indian rich or poor and every

business, big and small. Indirect taxes Sir, forms the backbone of our economic model given the low direct taxes coverage. I disagree with him, Sir, when he says that indirect taxes are regressive taxes. He knows Sir, India is an outlier nation amongst other nations in terms of taxation. Given our low tax-GDP ratio and the low direct tax coverage, so indirect taxes become very important Sir, and reforming and simplifying indirect taxes, therefore, becomes very important to making the lives of consumers, citizens and businesses easier.

Sir, let me just quickly make four points in support of GST. Many of my colleagues have already mentioned this but let me repeat them anyway Sir, GST, without any doubt, is a significant reform. It results firstly Sir in a large Indian common market. There is enough evidence to show that a large common market creates economic growth, more jobs, wider choices of products and services for consumer, less corruption and red-tape. There is enough empirical evidence from the economists and studies, that show that the GST reform would expand our economy by 1-2 percent.

Sir, the second point is that apart from creating transparency and ease to consumers GST and the creation of this large Indian common market makes it much easier for small businesses in terms of complying on inter-State trade.

The intimidating task of complying with and paying 14 to 16 different taxes which will now stand reduced to a State GST and a Central GST. This reduction in the cost of compliance will also bring down the cost and increase the ease of doing business, directly benefiting small and business business.

Sir, thirdly, most importantly, GST will bring significant benefits to the consumers. By reducing the cascading effects of taxes, it also reduces directly cost to consumers and producers. With reduced costs and easier compliance will also come expansion of the tax

base. With expansion of the tax base in turn will come increased revenues to Government for its welfare and social spending needs. All these things finally contributing to transforming the economy to one that more efficient, more competitive—an important criterion in a world of increasingly competitive economies. Sir, so that is why I don't quite get this point when the whole objective of the GST is to make it pro-consumer, this fear of having a high GST as GST expands its coverage, in my opinion Sir, respectfully to the Former Finance Minister, is misplaced.

Fourthly, Sir, the GST is also a consumer and business friendly taxation regime because it invests heavily in technology and it addresses the core issues of corruption and evasion that has plagued taxation and tax administration for decades in our country. So, these are the four points Sir that make GST a truly transformational reform. So, before I end Sir, I must admit I am a bit mystified by this recent cry of perfection and the bill being imperfect. It is ironical and without basis for two broad reasons. Firstly, it is less than perfect admittedly, but that is because it has origins as a Bill that came out of the consensus with States that are truly fearful of losing their revenues and taxation powers. It is a consensus that has driven this bill and, therefore, it has some of that fear built into the Bill. GST too, Sir, will evolve, as most taxation laws have evolved, as it lays roots and expands its coverage Sir, Secondly, Sir, this recently discovered virtue of perfection is bit ironical and abit rich because I can point out in painful, embarrassing detail about the real imperfections over the last decade in legislation and policies that Parliament and the Governments have passed, but, Sir, I will resist the temptation to do so to preserve the spirit of bipartisanship we have in the House today. So, Sir, in my opinion, a less than perfect GST is better than no GST.

Sir, we have already missed the deadline of 1st April 2016 for implementing the GST because of the political football of the last

three Sessions. I hope now Sir, with this consensus, the focus will move to executing well so the April 1, 2017 deadline may be met.

Let me end, Sir. I can see you pointing at me, so let me end.

This year, 2016, Sir, marks 25 years of economic liberalization, a milestone in India's economic history. The process of unshackling our economy and benefiting consumers remains incomplete. It can only be completed with taxation reforms. Questions need to be asked and answered. Where does the future lie - in a higher direct taxation and moderate indirection taxation model or the other way around? There is much work to be done in reforming tax administration and use of technology to make it simpler, easier and friendly taxation. Today Sir, we stand ready to take first step in these reforms and changes by undertaking the biggest, most significant, indirect tax reforms since India's Independence. I congratulate all my colleagues for supporting this.

Thank you,

Jai Hind.



# Transform India

## Letters



# 1

## Letter to the Home Minister on Land Buying by Foreigners

5th February 2007

Dear Hon'ble Home Minister

**Subject: Land buying by Foreigners**

I had asked unstarred question on this issue on 19/07/2007. Despite repeated follow-ups from my office and staff, this question remained unanswered.

As you are aware, the Outlook Magazine has covered in its cover story dated 29/01/2007 an article about the same issue, which goes to expose the same issue.

I would like to understand why my question remains unanswered and what steps the government is taking to address this serious

issue, which has implications both in terms of security and money laundering.

I would also urge you to ensure that questions from MPs even those recently elected new MPs like me are taken seriously. These questions are being asked in genuine public interest and concern.

I would request you to keep me informed on this issue and all steps being taken by government to handle this very crucial issue.

Respectfully,

Rajeev Chandrasekhar

Shri Shivraj V Patil

Hon'ble Minister of Home Affairs

New Delhi

## 2

# Letter to the Prime Minister on FEMA Violations by Investors

29th March, 2007

Respected Prime Minister,

I write to you to draw your attention to the reported violation of FEMA by certain foreign investors through their proxies in India. A copy of the article in Business Standard is attached.

Whilst you are no doubt aware of the intricacies of this latest controversy, I draw your attention to basic issues of principle that the government needs to examine and respond to - regarding our approach to foreign investments and controlling of “sensitive” sectors and the whole issue of sectoral caps in these sectors.

- a. **Is it the case of the government that where there are sectoral caps, any Indian citizen (or entity) standing proxy for a foreign**

**source of capital is enough to satisfy our requirement of being an Indian investor?**

- *It not, why are there so many entities that are being allowed to do this in so many different sectors?*
- *What is the reason for the lack of enforcement of the letter and spirit of sectoral caps?*
- *If unenforceable why not do away with these caps openly and transparently without continuing this false illusion of security or other rationale driven sectoral caps.*
- *The only operative law here seems to be FEMA and if that's the case it clearly requires either stronger enforcement or amendments/enforcement to give the policies of sectoral caps more teeth.*

**b. Are there Indian financial institutions and/or foreign institutions licensed to operate in India that are aiding and abetting these complex multi layer financing transactions with the sole inter Ion of circumventing the spirit of sectoral caps?**

- *Has this been comprehensively investigated?*
- *Have these rogue financial institutions been identified?*
- *If so what steps is the Government, MoF, and RBI taking to ensure these institutions are 'actively discouraged and disincentivized from doing so and their managements held accountable?*

As you are already aware, the Government's National Security Advisor has reportedly already mentioned the growing need to regulate/scrutinize investments and investors given the overall security challenges that we face. It is obvious that such an enforcement cant be selective and can only work if there is a comprehensive framework of policy, law and spirit of enforcement in the government vis-a-vis the investor and the rogue elements it

the domestic financial sector. The not so distant examples of the infamous BCCI Bank etc. should cause us enough concern about certain financial institutions and investors doing similar kinds of activities in our country.

I am confident and sure that most investors and financial institutions are law abiding and respectful of laws of our country and follow the 'right way'.

At the same time, it is obvious that it is a matter of concern for all of us in Parliament and government that a cowboy culture is emerging in some financial institutions and investors who seem to have a contemptuous disregard of laws and policies of our country - laws enacted by Parliament .

In recent sessions of Parliament, I have asked a series of questions (that remain unanswered) about the approach of the Government to this issue of sectoral caps and foreign investments in sectors with sectoral caps. I had also issued a Press Statement about this which I am attaching for your information.

I plan to raise this issue strongly in the coming session and hope to start a debate on this so that our country has a less ambiguous and ad hoc approach to foreign investment in sensitive sectors.

I am sure you will agree that, while we all agree on the need for large and sustained foreign capital flows to drive our economic growth, these law breaking investors and institutions don't have a place in the vision of the India that we are working to build. **You as Prime Minister have articulated a vision of good governance and integrity for our country. Our objectives of investments and growth for India can be and should be consistent with these values.**

With Regards,

Yours Sincerely,

Rajeev Chandrasekhar

Shri Manmohan Singh  
Hon'ble Prime Minister,  
Government of India.

Copy: Thiru P Chidambaram,  
Hon'ble Minister of Finance.

Shri Ananth Kumar, M.P,  
Chairman,  
Parliamentary Standing Committee on Finance

### 3

## Letter to the Prime Minister on Regulation of Loan Recovery

26th June 2007

Respected Prime Minister,

I draw your attention to the disturbing and saddening news which has appeared in News Papers dated 24th June 2007 (clippings attached). The news refers to the death of an Andhra Pradesh Government employee at the hands of persons employed by a branch of an Indian Bank namely ICICI bank.

According to media reports the agents of the bank had manhandled the deceased. *It is all the more tragic when we learn that the loan amount is about Rs. 15,000/-.*

I had drawn the attention of the Government to these kind of conduct by the Banks vide my R.S. Question 2613 answered on

22nd August 2006. A copy of reply by the Hon'ble Minister of State is enclosed for your kind perusal.

Your reply in 2006 essentially said that this issue was being addressed by RBI's regulation and 'guidelines' and self regulation by IBA. Clearly both the RBI's role in this is inadequate and further this is clearly not a matter for self regulation by the Banks.

There is a reference in the Finance Ministry's answer to penalties for defaulting Banks. I would be interested in knowing what penalties the RBI has levied for this incident and how many incidents have they penalized and/or prosecuted in the past one year.

This whole area of Banks' conduct of loan recoveries is very poorly regulated or not regulated at all. It is obvious that Banks such as ICICI and others are continuing to use elements that have links to the criminal underground to undertake this loan collection activity. It is further obvious that wittingly or unwittingly these Banks are funding the criminal elements in our Society.

I urge you again in the context of this death to review this issue and initiate changes in the law to ensure that lenders are obliged to operate under a framework of laws. Press reports are also suggesting that given the recent trend of reckless consumer lending and credit growth, there is a growing and inevitable consequence of increase in consumer delinquency. This in turn will lead to many more repeats of similar incidents if not checked now. This cannot be allowed to happen by any government, especially a government that has invested in a stated position of protecting the common man aka aam aadmi.

The solution to this problem is straightforward. The current Securitization Act needs to be plugged with suitable amendments that regulate the conduct of Banks in areas of loan collection and specifically prevent coercion and thuggery of the kind witnessed in Andhra Pradesh. Banks and their management that use these

methods should be subject to the full force and power of the Indian Penal Code to discourage them from doing this in the future.

I had strongly urged this in August 2006, and urge you again now to take necessary steps. This tragedy must at the very least spur the Government into action in addressing this problem. Monetary compensation of the kind offered by the Bank concerned is no solution as you will agree that no amount of money will bring back a father for the family.

Thanking You

With warm regards,  
Rajeev Chandrashekar

Shri Manmohan Singh  
Hon'ble Prime Minister,  
Government of India,  
New Delhi.

4

## Letter to the Finance Minister on Disparity of Per Capita Income

27th November, 2007

Dear Hon'ble Finance Minister,

**Subject: Disparity in Per Capita Income**

This is with reference to Starred Question No. 162 of 27th November, 2007

I believe it may be more accurate to report the rural per capita income as a number that grosses up and includes the rural per capita subsidy spends. That would be a better representation of what is happening in rural India and would also be a better way to communicate the actual economic progress of rural India.

I hope you will look into this suggestion.

Very truly yours,

Rajeev Chandrasekhar

Thiru P. Chidambaram

Minister of Finance,

Government of India,

New Delhi.

5

## Letter to the UIDAI Chairman

2nd July, 2009

Dear Nandan,

**Subject: Unique ID Project**

Congratulations on this new assignment that you have taken up!

The National ID project is an idea whose time is long overdue and in my opinion one of the most important and transformational projects that this country is embarking on post independence!

I would like to suggest the following as you plan out your approach towards this project -

1. The architecture of this project/platform must be an open one — into which various applications/engines can plug in and use. This will reinforce the idea of this National ID/Database being eventually used by many user ministries and agencies of the Government.
2. The architecture must not be vendor specific — and indeed the implementation of this over several years should plan for and allow multiple Systems Integrators and Solution Providers to work simultaneously as part of the construction of this, i.e. platform openness and extensibility should be a key architecture objective.
3. The early version of your proposed architecture should be made available for consultation openly and transparently with industry, vendors and user agencies —thus addressing any future concerns and questions of vendor bias/or incompatibility etc.
4. The commercial contours should be a ‘pay as you use’ model, where the Government benefits from the vendors investing in the infrastructure and being paid out over the long term (akin to other infrastructure financing models like NHAI etc). This will also put less direct budgetary pressure on the Government in terms of the financing needs for this important and critical project.

I trust that these suggestions could form a set of first principles for this project and look forward to engaging with you about the progress of the same.

Wishing you a very successful tenure.

Very truly yours,

Rajeev Chandrasekhar

Shri Nandan Nilekani  
Chairman, National Authority for Unique Identity,  
Government of India,  
New Delhi.

## 6

# Letter to the Home Minister on the Drug Menace

22nd July, 2009

Hon'ble Home Minister,

This is further to the response from Shri Mullappally Ramachandran, Hon'ble Minister of State in the Ministry of Home Affairs, to my Unstarred Question No. 1234 of 15th July, 2009 relating to "Smuggling and Consumption of Drugs in the Country." A copy of the same is enclosed for your ready reference.

While I realize that it may be difficult to track the consumption of drugs in the country, I would like to request for data / details relating to illegal drug seizures, city-wise in the last one year, which could, in turn, be correlated to drug consumption.

This information would be vital for me to understand the seriousness of the menace of drugs in my city of Bangalore, and enable me to work with local authorities to develop stricter norms to combat and curb this menace, including providing counselling/education for such potential consumers of drugs.

Thanking you,  
Very truly yours,  
Rajeev Chandrasekhar

Thiru P. Chidambaram  
Hon'ble Minister for Home Affairs,  
Government of India,  
New Delhi,

7

## Letter to the Finance Minister on Disbursement of Credit to the Private Sector

30th July, 2010

Dear Pranabda

Thank you for your response to my Starred Question No.23 of 27 July, 2010 relating to “Disbursement of Credit to Private and Public Sector Undertakings”.

A copy of the same is enclosed for your ready reference. In your response, you had mentioned that “the data reporting system of the RBI does not capture credit to the private sector linked to Government or PSU risk/contracts.”

Since the revival and performance of the private sector is key to the broad-based revival of the economy, I believe it is appropriate that credit offtake of private sectors is categorized into two baskets – ‘credit to pure private sector’ and ‘credit to private sector that has

a significant risk/exposure/backstop to Government/public sector' - since these represent two very different types of credit and risk. The growth in the private sector should not be restricted only to the second basket – as is the case now, I believe.

This will not represent true private sector growth, and hence, the need to track credit flow into these two categories of private companies independently is important.

I hope you will give the necessary instructions in this regard.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Pranab Mukherjee  
Hon'ble Minister of Finance,  
Government of India,  
New Delhi.

## 8

# Letter to the Finance Minister on Stock Market Reforms

26th August, 2010

Dear Finance Minister,

**Sub: Shallow Indian Stock Market?**

As you would no doubt agree, the healthy, orderly growth of our stock markets and the expansion of reach of the financial sector into as large a part of the Indian economy and population – are the two critical objectives in developing a sustainable economic growth model in our country.

Against this, it is startling to note that despite the perception of a healthy stock market in our country, the market remains narrow, shallow, illiquid and concentrated in the hands of a few individuals

located in a few centres, even 20 years after India embarked on financial liberalization and ostensibly unleashed a boom in stock investing and spreading the equity cult.

In response to a question raised in Parliament, Shri Namo Narain Meena, Hon'ble Minister of State for Finance had stated – “Only 30.90 lakh investors traded on the NSE's cash market in April-June 2010. Of these 52% were retail, High Net-Worth Individuals (HNIs) and corporate customers. Institutional investors and proprietary traders accounted for 48% of all trading (24% each).”

The Minister further said that 90% of trading in the April-June 2010 period came from just 192,200 investors and 80% of turnover came from just 41,656 investors. In other words, 1,50,546 investors (78%) accounted for just 10% of trading turnover. Further, just 8,727 investors accounted for 70% of turnover, among which 413 were proprietary traders, mainly brokerage houses. 60% of trading came from a mere 1,563 traders and 50% of the trading turnover came from 451 traders of which 156 were proprietary traders.

I am sure these figures would be extremely worrisome for the Government and yourself.

I strongly believe that reforms and further deepening of our stock market is an important policy objective for the Government to focus on and address.

I look forward to your response in this regard.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Pranab Mukherjee  
Hon'ble Minister of Finance,  
Government of India,  
New Delhi.

# 9

## Letter to the Defence Minister on the Adarsh Housing Scam

30th October, 2010

Dear Sir,

**Sub: Adarsh Cooperative Housing Society Scam**

As you are aware, the Adarsh Cooperative Housing Society scam has been in the public domain since the past week and has attracted a great deal of media coverage and been a subject of vociferous debate among the people and media – about the role of the Maharashtra government officials and some retired Armed Forces officers.

This intense public debate, if allowed to continue at its present pitch, is bound to affect the goodwill and reputation enjoyed by our Armed Forces among the citizens. Our Armed Forces have

a well-earned reputation for being professional, patriotic and selfless in their services to the nation and all these are now being questioned. The wrong acts of a few should not be allowed to sully the image of the Armed Forces and take the focus away from the good work they have been rendering to the nation.

Therefore, it is necessary to urgently determine and punish the guilty according to law, and I urge you to immediately intervene in the matter and order a high-level probe to enquire and determine the truth about the involvement of officers from the Armed Forces in this scam. The immediate ordering of a thorough and high-level probe, including identifying the perpetrators who have misused the name of the Kargil war heroes and their families, will signal the seriousness of the Government and its zero tolerance to even these rare acts of corruption in the Armed Forces. The Government must make the probe findings public and take serious action if any officer is found guilty.

I request your immediate action in this regard.

Yours sincerely,

Rajeev Chandrasekhar

Shri A. K. Antony

Hon'ble Minister of Defence,

Government of India,

New Delhi.

10

## Letter to the Petroleum Minister on ONGC's Unfair Royalty Burden

20th January, 2011

Dear Jaipal Reddy garu,

At the outset, please accept my heartiest Congratulations on your appointment as the Minister of Petroleum & Natural Gas.

I draw your attention to the proposed Acquisition by Vedanta of Cairn India's Rajasthan oil blocks – which is currently under consideration by your Ministry.

As you are no doubt aware, these oil blocks which were opened up for private investments in exploration many years ago, have an unequal financial royalty commitment between the private sector and the Government entity ONGC, who are the partners in this venture – with ONGC bearing a disproportionate part of the

Royalty outflow. I understand that ONGC has been expecting that the Government of India will reimburse it for this loss, which to date has not happened.

Regardless of whether that happens or not, you will appreciate that this additional outflow is essentially being borne by the Indian taxpayer / Exchequer. The justification for this disproportionate sharing of Royalty in the earlier years was, no doubt, the need to promote private investment. **However, you would agree that since these are now fully producing blocks and highly profitable for the private investor, there is no need for the Government to continue this unequal royalty model.**

I would, therefore, urge that you use this request for approval as an opportunity to renegotiate the royalty structure to ensure equal sharing between the private investor and the public sector partners going forward, and not accord any approval unless this current unfair royalty burden on ONGC, a Navratna PSU, is removed.

This will save ONGC and the people of India thousands of crores of rupees over the period of the concession which can then be reinvested into further exploration and other pressing areas of Energy Security which need funding.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Jaipal Reddy

Hon'ble Minister of Petroleum & Natural Gas,

Government of India,

New Delhi.

# 11

## Letter to the Prime Minister on Issues Raised by Anna Hazare

7th April, 2011

Respected Prime Minister

I write to you in connection with the fast unto death begun on 5th April, 2011 by the venerable and respected Shri Anna Hazare. Anna Hazare has fought wars for and defended this nation against its enemies and is now leading another war against another enemy – that of Political and bureaucratic corruption. As you are aware, hundreds of thousands of Indians have come out in support of his leadership on the critical issue of Corruption in Government and the need for an institutional mechanism to oversee Government and weed out the Corrupt.

The issues that are being raised by him needs to be addressed by you personally to prevent a further escalation of the issue with potentially disastrous consequences. I feel that time is fast running out and unless urgent measures are taken to stem the tide, things could well get out of control. I strongly urge your immediate intervention as only that will cause the 73-year old Gandhian to end his fast.

The importance of including representatives of the civil society in the Group announced to draft the Jan Lokpal Bill is obvious because of the complete lack of credibility of the political system that is supposed to be representative of and representing the civil society. Given the loss of credibility with the recent scams, the demand for civil society involvement in the drafting of this legislation – which is meant to be the principal weapon in the fight against corruption – is both inevitable and desirable.

I earnestly request you to urgently reconstitute the Group to make it truly national and representative by giving equal representation to the government and the civil society leaders. The political side should be representative of both the ruling and opposition sides to ensure maximum consensus. In my view, a positive gesture from the government would be to accept the draft bill prepared under the guidance of Anna Hazare as a starting point.

An immediate announcement by the government on the reconstitution of the Group would undoubtedly diffuse the current tension and pave the way for a more measured consideration of the vicious problem. I keenly look forward to your immediate intervention on this issue.

Yours Sincerely,

Rajeev Chandrasekhar

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

Copy to: Shri Anna Hazare

# 12

## Letter to the Prime Minister on Resolving the Lokpal Impasse

23rd August, 2011

Respected Prime Minister,

As you are aware, India is witnessing an unprecedented mobilization of people and minds on the issue of Governance and Corruption, and more specifically, about the Jan Lokpal Bill – a legislation which is being discussed as a centerpiece of the architecture of a more transparent and accountable form of Government.

This movement comprising of millions of Indians all over the country is remarkable for its non-violent and apolitical nature – and is the most visible proof of the people’s participation and vibrant democracy since Independence.

As representatives of the people within Parliament, it is the beholden duty of MPs to respond to this outpouring of views and concerns – voiced by our fellow citizens, and I suggest the following for the Government to resolve the current impasse:

- a. The Government introduces both the Lokpal Bill and Jan Lokpal Bill as two separate bills simultaneously.
- b. Both these Bills are debated in Parliament and not referred to a Standing Committee. This is important because the people of India must see this debate and discussion openly. The Parliament Committee proceedings remain secret and in-camera, thus preventing people from actually being part of this debate.
- c. The current Parliament session be extended by four weeks to enable the Parliament to debate and pass the Bill in this session itself.
- d. No whips should be issued by any political party so that Members are free to vote according to the dictates of their conscience.

This is an unprecedented opportunity for the Parliament to establish that it hears and is responding to the voices and concerns of the people that we represent.

Yours Sincerely,

Rajeev Chandrasekhar

Dr. Manmohan Singh

Hon'ble Prime Minister,

Government of India,

New Delhi

# 13

## Letter to the Finance Minister on Pre-Budget Consultations on the Economy

30th January, 2012

Respected Shri Mukherjee,

This is with reference to the Meeting of the Consultative Committee for the Ministry of Finance on 19 January, 2012, on the subject “Pre-Budget Consultations”.

Owing to a sudden family emergency, I had to travel back to Bangalore that day, and therefore, regret that I couldn't attend the meeting in person and share my views and ideas with you.

Sir, there are various scenarios about our economy – some of which are on balance troubling. The next few years are critical for our economy and country. It will require real political leadership to ensure the economy remains stable, strong and offers opportunity to more and more of our countrymen/women.

I enclose herewith for your perusal, a brief note and annexure which could form a part of the deliberations leading up to the finalization of the Union Budget 2012-13.

I hope you will look into this.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Pranab Mukherjee

Hon'ble Minister of Finance,

Government of India,

New Delhi.

## POINTS FOR CONSIDERATION FOR UNION BUDGET 2012-

### 13

#### A. Boost Government Revenue

##### 1. Gold Monetization

The Indian economy is currently witnessing a slowdown as a result of global and domestic factors, and needs a powerful stimulus to regain confidence and growth, which can come from domestic reserve energies, to regain confidence and growth. Gold is an invaluable asset which can be used by the Government to stem the external stress and also reboot the hanging domestic growth, as it has the potential to release equal amount of investible resources for domestic economy. Despite India being the biggest gold buyer and importer, it has not been able to influence or control the global gold prices because its import is not strategized by a national policy.

This can be achieved by transforming idle gold into a strategic forex asset and active capital, as elucidated in the attached note and paper (Annexure I).

## **2. Taxation on Derivatives**

The idea of taxing derivatives is completely unexplored in India. Introduction of transaction taxes on all equity, forex and commodity derivatives would be an innovative and bold measure, which has the potential of raising thousands of crores of revenue for the Government, and also contain speculation which destabilizes the financial market.

## **3. Windfall Taxes for Windfall Gains for Private Investors in recent Telecom Licenses**

The Government should recover the money swindled in the recent 2G spectrum scam, by imposing windfall taxes on companies who have gained by resale of their licenses / spectrum - since these licenses were obtained cheaply in 2008 at 2001 prices, and without auctions for spectrum (and therefore foregoing potential revenue for the Government). Also, the rules and percentage on how the windfall gains will be divided between the Exchequer and operator / investor should be clearly articulated.

## **4. Long Term Stability in Taxation Policy**

There is a need for a more stable and long-term taxation policy to achieve higher economic growth and stability, efficient resource allocation and equitable distribution of income.

## **B. Boost in Investments**

Our Economy can only grow on a sustained basis, IF there is a CONSISTENT AND SUSTAINED FLOW OF

INVESTMENT CAPITAL (both Foreign and Domestic) into ALL sectors of our economy. This potential for significant investment flows is being held back by several structural impediments in our Public policy and approach.

The suggested solution set to unleash investment flows is as follows:

1. The Government must have a renewed focus on FDI to increase strategic capital flows into our economy in all sectors.
2. Failure/compromise of institutions like independent regulators are leading to repeated instances of public policy and regulatory capture of vested interests – in turn, leading to a perception amongst investors that our country is fraught with policy volatility and unpredictability and therefore high risk for investors. Reforms of the Independent regulatory framework are needed to ensure long term public policy stability and consistency and give confidence to investors.
3. The Government must also strengthen the Competition Commission of India (CCI) to ensure that monopolies or cartels are not created in Indian economy, either foreign or domestic.

#### **C. Reforms in Government spending – Creating a Value for Money Culture within the Government**

Public spending in our country is notoriously leaky and fosters corruption / nepotism, with only a small percentage of spending reaching the targeted audience. Fundamental reforms in this area are necessary and long overdue. To address this, a value for money culture / fiscal responsibility needs to be ushered into the Government – a culture that reinforces the truth that the Government is only a trustee

of public money and assets. The spending of this money and the handling of public assets must always pass the test of national good. This can be done through the following measures:

1. The Budget should ensure detailed statutory disclosures of public spending through increased use of technology. Fiscal transparency generates significant benefits, as it is an important precondition for better governance, improved economic performance and prudent fiscal policy, resulting in lower deficits and debt accumulation.
2. Make citizens more involved in their national budget by simplifying the budget document and making it more readable with simple summaries etc.
3. Introduce into the budget a discipline and rigor of ensuring that all spending / programs are linked to clear outcomes.
4. Unveil and roll-out multi-year subsidy delivery reform architecture.
5. A new effective oversight and monitoring mechanism of all decisions relating to big-spending Government programs, contracts and public assets.
6. A completely from basics re-look at Central spending programs with a move to restructure central programs, remove overlap to make this form of spending more efficient.

A bi-annual report card of all public spending programs to be introduced.

7. Introduce a six-month plan to trim all wasteful Government plans and expenditure.

## Open Letter: My Choice for Prime Minister of India

27th March, 2014

### Elections 2014: My Choice for Prime Minister of India

I believe that Elections 2014 - just a few weeks away, are the most important elections in Independent India's history. More than any time in our contemporary history, these elections represent an inflexion point in our politics and Governance. Look around us, we are witness to brazen corruption, a decline in Governance standards, sharp slide of our economy, attack on Governance Institutions, and a kind of CYNICAL POLITICS that CORRODES FAITH IN DEMOCRACY.

I was given an opportunity to be a MP first in 2006, and then for a second term in 2012. In my second term, my candidature was unopposed, and hence, supported by all the political parties. Though sitting in Opposition, I have always been and continue to be an Independent MP unaffiliated to any political party or leader.

Even then, I have differed with the Opposition and supported the Government on issues where I believed that the Opposition was wrong – Eg, FDI in retail.

**My endorsements and support have always been based on principles, ideals and a rational analysis:**

1. In the 2009 Lok Sabha elections, I endorsed specific candidates in both Congress and BJP; In Bangalore, I had endorsed Ananth Kumar, having had an opportunity to work closely with him on the ABIDe plan for Bangalore, and saw him as an accessible leader and a man of commitment, hard work and substance.
2. In the 2013 Karnataka State Elections, I encouraged voters to push for change in Government from the incumbent BJP government, by voting responsibly.
3. In the 2013 Delhi elections, I had supported the Aam Aadmi Party and endorsed them - the first MP to do so.

**INDIA IN 2014**

These forthcoming elections and our vote are critical. This is why!

1. **These elections are a referendum on the performance of the UPA. The country is going through unprecedented challenges and perils.**

On one hand, we have the almost total decline in Governance standards with relentless and brazen corruption, reinforcing the perception that Government and politics have been captured by vested Interests. On the other hand, we have a diffused economic and development policy that has created structural issues in the country's finances, our economy, investment flows and jobs. A government dominated by a handful of leaders weaving confused, bumbling visions and rhetoric - high on hype with little or no hard work on the ground. With taxpayer

moneys and assets being frittered away on whims and fancies of individuals, on ineffective programmes.

**2. We need more choices and options as citizens**

For too long, fear and propaganda have been used to restrict voters to the Congress option. Through a combination of myth and hazy facts, our democracy has been reduced to a single party option. It is not in our interest to have that. Voters need to develop more than one option and make politics competitive around Governance and development. It is depressing to see so called 'new' and young leaders rely on the same old tactics of scaremongering and demonizing, rather than an alternate new discourse of governance and development befitting the times.

**3. We must know who will lead our country out of the current crisis - leadership with authority as well as accountability, to the people of this country.**

One of the most important decisions that we need to make in these elections is the issue of leadership. This issue of leadership is made even more significant, given that in the last 10 years of the UPA rule, it was never very clear who was in charge of Governing the country. Questions about who is really responsible for all the cases of Government failure (including scams) remain unanswered even today.

It is in this context that I believe these elections are clearly about making a choice about who will lead the nation. Because as citizens and voters, we owe it to ourselves to establish the concept of leadership with authority as well as accountability to the people of this country for vision, performance and results.

**RAJEEV FOR NAMO**

It is with this background, that I have decided to support the candidature of NDA's Narendra Modi as Prime Minister of India.

I endorse him as a leader, who has both the ability and determination to take India out of the current morass with clear, decisive policies and governance action.

He is a doer, and has shown a willingness to take ownership of challenges AND a commitment to Governance, development and Security with equal opportunities to ALL citizens - regardless of caste, religion or gender.

For almost 60 years, and more recently, for the last 10 years, we have given the Congress opportunities to Govern. We deserve a new alternative, and so, let's give Narendra Modi an opportunity to govern for the next 5 years, and do so by voting for all his candidates.

Let's move away from Despair and Disgust to Hope and Pride. From announcements and tokenism to getting real work and progress for all.

**I believe these elections are not a time to be a fence sitter. I think it's time to give ourselves the change that we deserve! Vote! Vote Responsibly!**

15

## Letter to the Finance Minister on Performance of Public Sector Banks

9th June, 2014

Dear Arunji,

**Sub: Concern over the Decline in Financial Performance of Public Sector Banks and Need for additional equity from Taxpayers of the Country**

I refer to the increase in Non-Performing Assets (NPAs) of the Public Sector Unit (PSU) banks which have worsened significantly in the last one year, hurting their profitability. In fact, the rise in NPAs of PSU banks is disproportionately higher as compared to private sector banks. According to the reports, the gross NPAs of PSU banks, which were at Rs.71,080 crores in March 2011,

increased to Rs.1,12,489 crores in March 2012, Rs.1,55,890 crores in March 2013, and to Rs.2.03 lakh crore at the end of September 2013 – indicating that the growth in NPAs of PSU banks has not just persisted, but more than doubled in the last three years. A Credit Suisse report of May 2012 also highlighted that only 10 groups in India account for Rs.5,50,000 crores of debt – which is 98% of the entire banking system net worth - an unprecedented concentration of risk not seen in any other country.

Reports suggest that a significant amount of this debt and more is sought to be restructured. The debt levels of these companies have further increased over the last year. What is further acerbating the situation is that 40-70% of the debt is forex-denominated. Thus, the downward spiral of the Indian rupee is having a further detrimental effect on the larger economy and performance of our banks. 2 In a Question raised by me in Parliament in 2012, I had brought to light the impact that this practice of loan restructuring has on the health of the PSU Banks (which are taxpayer-owned) and on imminent capital calls on the Government and the taxpayers. However, the Government stated that although the Gross Non-Performing Assets and restructuring of loans of PSU Banks have shown an increasing trend, they do not indicate any systemic vulnerability.

The Corporate Debt Restructuring (CDR) mechanism was originated for companies to refinance their expensive debt when interest rate regimes shift dramatically. Instead, it has morphed into something very arbitrary and loss-making for PSU banks especially. Media reports suggest that while Indian Banks have restructured Rs. 2.5 Trillion of loans under this till date, the actual amount would be much higher and closer to Rs. 4 Trillion, and analysts are expecting that 25-30% of these loans will turn bad. I am sure you are aware of instances that are already in the public domain of PSU banks converting debt into equity at high prices, and then seeing significant losses to these equity investments.

The NPA situation of our PSU Banks is a serious issue since it involves taxpayers' money, and, therefore, requires a joint effort by the Government, RBI and the boards and management of the Banks. With increasing awareness amongst taxpayers and citizens about how their money is utilized by Government & Government Agencies, questions will be asked - today and in the future - about the performance of taxpayers' equity in PSU banks. I, therefore, urge the Government to take immediate remedial measures and ensure that these banks recover money due from promoters, and that taxpayers are not burdened further. As a part of the solution to this mismanagement of PSU Banks & Taxpayer funds, the holdings of PSU banks must be restructured with Management & Board oversight to ensure accountability and to halt this trend of politically directed lending by these Banks.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Arun Jaitley

Hon'ble Miniister of Finance,

Government of India,

New Delhi

16

## Letter to the Prime Minister on Amendments to NIAI Bill

8th July, 2014

Respected Prime Minister

**Sub. : Amendments to the National Identification Authority of  
India Bill, 2010**

I have read recent media reports about your decision to move forward with Aadhaar, and revive & reintroduce the National Identification Authority of India Bill, 2010 in Parliament. In this regard, I am enclosing herewith some amendments that I had introduced in Parliament to this Bill in February 2014, during the 230 Session of the Rajya Sabha, for your information.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Narendra Modi

Hon'ble Prime Minister,

Government of India,

New Delhi.

17

## Letter to the Water Minister on Drinking Water Policy

19th August, 2014

Dear Nitinji

**Sub.: Policy on Drinking Water**

This is with reference to my Starred Question No. 2 of 7th July, 2014 on 'Per Capita Availability of Drinking Water', which, unfortunately, could not come up due to suspension of Question Hour in Parliament, on that day.

I hope you have read the recent UNICEF Report titled "Water in India: Situation and Prospects" of 2013, which points towards India's dismal record in managing our water. The problems are

going to get worse with challenges of climate change in the coming years.

Water Storage infrastructure in India remains the lowest in the world and the Ministry's National Rural Drinking Water Programme (NRDWP) Report itself shows the increasing reliance of drilling for ground water for drinking water supply. As water tables lower, this kind of drilling is causing ailments and diseases like fluorosis etc.

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

1. A new Water Policy to be formulated which will make increasing water storage infrastructure development a priority in the policy, and as a priority in the Government's overall infrastructure spending boost plan.
2. The Ministry of Drinking Water & Sanitation must work with Urban and Rural Development programmes, where the new Urban Renewal Programme and Rural Job Guarantee programmes integrate water storage infrastructure creation as a part of their scheme objectives.

I would be available to meet you and discuss this further, if you so desire.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Nitin Gadkari

Hon'ble Minister of Drinking Water & Sanitation,

Government of India,

New Delhi.

18

## Letter to the Urban Development Minister on Smart Cities

19th August, 2014

Dear Venkaiahji

I write to you with regard to the launch of your government's new urban modernization programme - The "100 Smart Cities Project" that will replace the UPA Government's Jawaharlal Nehru National Urban Renewal Mission (JNNURM).

I would like to take this opportunity to introduce to you, Mr R. K. Misra, the Founder of SAHYOG-Indian Council for Public Partnership. Mr. Misra is known to me since he worked along with me as an active participant in the forming of a planning blueprint for Bangalore, called Plan Bengaluru 2020 – as a member of the Agenda for Bengaluru Infrastructure & Development (ABIDe) Task Force.

Mr. Misra has had years of expertise in the field of Urban Governance, with special focus on “Sustainable Public Infrastructure in Urban India”. He is keen to be a part of the 100 Smart Cities project under your Ministry. A graduate from IIT Kanpur, he was one of the 25 students chosen from 18 countries to pursue his Masters in Engineering from Tokyo University, Japan with specialization in Urban Infrastructure & Transport.

Mr. Misra’s education and expertise on issues of urban development will be invaluable in the implementation of the Government’s proposed Smart Cities initiative, and I would, therefore, like to recommend him as a key resource in this regard. I am available to discuss this further, in case you so desire.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Venkaiah Naidu

Hon’ble Minister of Urban Development,

Government of India,

New Delhi.

19

## Letter to the Coal Minister on The Coal Ordinance 2014

10th February, 2015

Dear Piyush,

I write to you about the Coal Ordinance 2014.

I draw your attention to the recent remarks of the Delhi High Court, which described the ordinance as “totally unclear”.

If you recall, I had discussed similar views of mine with you, when the bill was being introduced in the Rajya Sabha and expressed my reservations around some critical aspects of the bill and its drafting. Regrettably you chose to ignore the same.

You are no doubt aware, the country and people are very aware of the several controversies and scams in previous governments dealing with Natural resources like 2G, Coal, Iron ore etc. I have

personally intervened in and out of Parliament bringing previous Governments to account on several of the above.

It is precisely to address this public perception of misuse of Public assets and Natural resources that the BJP Manifesto had expressly stated that this government would “*set in place national policies on critical natural resources including coal. - spelling out in black and white how much should be utilized at what time and pace; how this should be strategically phased out to ensure sustainability; who should be allotted what responsibility of extraction and at what cost.*” The Manifesto further resolved, “*We will implement auction of precious resources through efficient mechanisms including e- auction.*”

At a fundamental level, this bill – represents the Prime Minister Narendra Modi Governments first statement of policy and thinking on the critical issue of dealing with Natural resources. Instead of being a milestone and benchmark in how Government must deal with Natural resources, it is being widely perceived as a compromise including on the issue of fair auctions. There is also a perception that instead of developing a full fair Natural resource regime, the coal ordinance is a hastily drafted legislation to get the current stalled power projects going in the short term without even considering the long term vision of a new regime of Natural resource management as envisaged by the Manifesto, or addressing the legal issues fully.

The points that I have discussed with you about the ordinance include the absence of the issue of Independent Regulation of coal sector, True free and fair Auctions for price discovery, Obligations of mines on issues of environment and citizens living in vicinity and several obvious drafting errors.

The Ordinance and Bill had presented this government with a unique opportunity to set a new benchmark for the management of public assets and resources – that could have been a sharp

departure from the UPA's corrupt mishandling of these same assets. This bill could be an example of a new form of Governance driven legislations. But whilst it does represent a change from the UPA's approach, it doesn't go far enough to represent that completely.

Yours sincerely,

Rajeev Chandrasekhar

Shri Piyush Goyal

Hon'ble Minister of Coal,

Government of India,

New Delhi.

Copy to: Hon'ble Prime Minister, Government of India

Hon'ble Finance Minister, Government of India

20

## Letter to the Water Minister on Need for National Water Management Strategy

23rd May, 2016

Dear Madam,

**Sub: Need for a National Water Management Strategy**

I write to you with reference to the need for a comprehensive strategy for improved management of drought through a National Water Management Strategy.

I had written a letter to the former Minister of Drinking Water & Sanitation, Shri Nitin Gadkari, dated 10th July, 2014, on the issue, highlighting India's dismal record in managing our water. I am attaching herewith a copy of the same for your reference.

I also raised the issue of proactively dealing with water management and drought across the country recently in Parliament. In a country where over 330 million Indians are affected by drought and 76 million Indians do not have access to safe water, there is a need for such a long term strategy, coupled with a medium term strategy, to deal with future and the current water crises.

In my previous letter, I had requested the Government to consider the following:

1. A new Water Policy to be formulated which will make increasing water storage infrastructure development a priority in the policy, and as a priority in the Government's overall infrastructure spending boost plan.
2. The Ministry of Drinking Water & Sanitation must work with Urban and Rural Development programmes, where the new Renewal Programme and Rural Job Guarantee programmes integrate water storage infrastructure creation as a part of their scheme objectives.

I urge you to address this urgent crisis at the earliest, at a time when the entire country is looking to us in their time of utmost need.

Sincerely,

Rajeev Chandrasekhar

Sushri Uma Bharati

Hon'ble Minister for Water Resources, River Development and Ganga Rejuvenation,

Governement of India,

New Delhi

# DIGITAL INDIA

## Introduction

As a Member of Parliament and Technology Entrepreneur I have had the privilege of featuring prominently as one of the country's foremost advocates of Digital India and all issues relating to it, including promoting innovation and entrepreneurship, and the government's role in Internet Freedom and Technology Policy reform.

My technology credentials range from spending years as a Design Engineer at Intel in Silicon Valley, to playing a pioneering role as an entrepreneur and Industry leader, in the development and evolution of the successful cellular sector in India. More recently, as an MP, I have been driving the debate on a range of issues relevant to technology and internet policy in India.

Way back in 2006, I advocated for the widespread use of technology to bring in a more transparent, efficient and accountable governance regimen in India. In my two terms as a Member of Parliament, I have persistently raised crucial concerns shaping the internet and technology environment in India with the government. ‘

My most notable interventions in Parliament have included:

1. **Leading the Fight for a Neutral Internet:** I took centre stage in the debate for a Neutral internet and held the distinction of being the only Member of Parliament to make detailed and substantive submissions to the Telecom Regulator on the issue.

- 2. Public Interest Litigation against Section 66A of the IT Act 2000 and the Intermediary Guideline Rules, 2011:** I filed a Writ Petition at the Supreme Court in January 2013 opposing section 66A of the Information Technology Act 2000, and the Intermediary Guideline Rules 2011, on grounds that the restrictions placed on free speech by the section are unconstitutional. My arguments submitted to the Supreme Court pleaded that the section, through its undefined and overbroad terms such as “grossly offensive” and “menacing character” is subject to discretionary interpretations and abuse. As a result of this, the Supreme Court finally struck down in its entirety, the unconstitutional Section 66A in March 2015.
- 3. Speaking out in Parliament against the Government’s support to the Multilateral Model for Internet Governance:** In October 2011, at the 66th Session of the UN General Assembly, the Indian Government proposed control over the internet through the formation of the Committee on Internet Related Policies (UNCIRP). This model promoted a multilateral, government model for Internet Governance and is a policy against the open, democratic, inclusive and unhindered growth of the internet. I slammed the then Government for hurting the reputation of the country as a “multi-ethnic, multicultural and democratic society with an abiding culture of pluralism” by supporting the UNCIRP. In several letters addressed to the PM and Minister for Information and Communication Technology, I criticised the government for taking unitary action without public consultations with multi stakeholder groups involved in Internet Governance. This ensured that the government backed away from its proposal to support the UNCIRP.
- 4. Leading the 2G Scam Debate:** Calling for greater Transparency and Accountability within the Telecommunications Sector. When the 2G scam broke out in 2008, I strongly took on the

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government for pursuing opaque, non-transparent rules in the allocation of spectrum to private telecom operators. I argued that the only way to bring back credibility for the telecom sector in the short term was to hold the 2G auctions on the basis of a completely transparent procedure, and a multi-stakeholder deliberation that allowed all players a chance to present their views, and contest those of others. The NDA government has implemented many of my recommendations with regard to transforming auction processes for the allocation of natural resources such as coal and spectrum, and introduced e-auctions as a process to bring in greater transparency and accountability into these crucial governance processes.



# DIGITAL INDIA

## Speeches



# 1

## FICCI Workshop on Spectrum Management

FICCI

12th November, 2007

Mr. Nripendra Mishra, Chairman TRAI, Ladies and Gentlemen,  
Good morning and welcome to this FICCI workshop on the important issue of Spectrum.

Let me move straight into the issue. Whilst we have a robust telecom sector with significant consumer, revenues and market capitalization growth, the resurfacing of controversies and debates on some very fundamental issues like licensing, shows that we still seem to lack some of the basic requirements that go to characterizing a 'truly robust' sector.

The current controversy of companies lining up for spectrum or license allotment is needless and requires to be addressed cleanly and transparently. FICCI has in the past played a significant role

through its Secretary General in helping the government evolve a healthy and robust policy of spot frequency allotment/sale to Radio FM operators and so it is appropriate that they again play the role of a facilitator for evolving of a sustainable approach to this issue of spectrum and/or licenses.

There is always a lot of rhetoric, noise, sloganeering and letter writing that gets triggered in Delhi every time there is such an issue that involves assets of such significance. So instead of adding to it I will lay out five points that could be the background/framework of issues that could help today's discussions and thoughts.

Firstly, the telecom sector is guided by a clear set of laws and policy. These are the TRAI Act as law, the NTP 99 as amended in 2003 as policy. In addition the two recent recommendations of the Regulator in 2007 accepted by the DoT that relate to tighter spectrum norms for existing licensees and no auctions for 2G spectrum where incremental spectrum to existing operators is concerned. This is in contrast to TRAI's 3G recommendations which seek auctions but limited only to existing operators forms the legal framework under which today's discussions need to happen.

In 2003, by accepting the Universal Access Licensing Policy of the Government that migrated the WLL operators into the Unified Access Regime, the Telecom sector and all its players have willfully accepted an industry model of high competition and I think there is a general political consensus that there should be more competition. Since spectrum is the fuel for all operators, to sustain a high competition model requires wider distribution of this spectrum to many more players and this necessarily requires a tighter and more robust spectrum efficiency model to be adopted by the government which the operators will have to learn to live with and adapt to. The recent recommendations of the TRAI and the study by the TEC are in that direction. That's therefore the first part.

The second leg of this relates to how to introduce new competition by allotting new spectrum or licenses bearing spectrum for each distinct circle. I think we all agree that this should be a transparent and equitable process. There has been some recent press reports indicating that the Department or the Government or both believe that the process of allotting spectrum is first come first served. This would be comical if it wasn't so serious. Using the date of mailing a letter to DoT as the criterion of awarding new licenses both for new entrants and existing operators is indefensible and in my view contrary to the TRAI Act and the Telecom policy NTP 99 as amended in 2003 which in turn resulted from the October 2003 recommendations of the Regulator that were accepted by the Government and remains unchallenged by the Government till date. It says that future licenses will be awarded through a multi stage bidding process. In fact this recommendation of bidding by the then Regulator was in response to the requests of the various GSM operators who seem to be today opposing auctions. The current approach of the DoT seems to be relying on the TRAI recommendations made in Aug 2007 that 2G spectrum need not be auctioned to existing operators. But the funny thing here is the definition of operators. It seems clear that what the regulator meant is allocation of spectrum to an existing licensee in that market and clearly did not include if that existing operator seeks to acquire a license in some other market or circle. From press reports it seems to be that DoT is attempting to imply that if Operator A has licenses for circles X,Y, Z , he can get additional spectrum for these circles (consistent with the tighter spectrum norms by TEC) but also he can get new spectrum for new circles without going through a bidding process. This is a breathtakingly novel interpretation of new licensing! There is no mention of first come-first served anywhere in the policy in force, the TRAI Act or the recommendations of the TRAI. Where does this come from?

In terms of a process, there is absolutely no need for us to try and reinvent the wheel, there are tried and tested models for this both internationally and domestically. We have had three rounds of license bidding in telecom which has participation from existing Indian telcos as well as new Foreign and Indian companies and there has also been the multi-stage FM auctions under this very same government that also was very successful and transparent and at the same time achieved the twin objectives of monetizing the asset for the Government as well create a vibrant industry. Both fourth round of bidding for cellular licenses and the second round of FM licenses were not only classic successes but are virtually the only allocations that remain untouched by legal challenges. That tells you something about the power of open, transparent bidding process.

I am very sure that if this so called first come first served approach is adopted the way its been reported in media, that it will face opposition and challenge in both the Parliament and judicial forums.

The third point is about the pricing of spectrum - spectrum is scarce and limited in its availability and a valuable national asset. Therefore it should be treated in that way. It therefore would seem obvious that the terms of allotment or sale of this asset must be market determined and must be looked at as a monetizing process by the country and not as a give away. This is an important point because there is a perception that issues of spectrum can be a matter of a private discussion between the Department of Telecom and the Industry. This is a clearly delusional approach, because the stakeholders that have an interest in ensuring that this spectrum is allocated at correct terms include the people of India to whom this asset belongs. Let there be no doubt around this basic and fundamental fact. For example, prescribing a price of Rs 1500 crores for nationwide spectrum is indefensible – a price discovered

in 2001, six years ago and in circumstances that were even then far from an ideal market scenario. There is no asset class in India that has not appreciated in value manifold in the last few years and its quite quixotic to believe a scarce and valuable asset like spectrum will be sold at those historic prices today without any transparent price discovery mechanism. Even going by TRAI's and TEC's rationale – which if I may add the government has already accepted – it is now believed that spectrum efficiency through technology development can serve 4 to 5 times the number of subscribers it was originally envisaged in 2001 – it would then make eminent sense in economic terms to value the same spectrum in 2007 at minimally four times the value that if fetched in 2001 – if not more.

The fourth point is that of the development and role of the critical institutional pillars like the TRAI – This is an underrated but vital piece of this equation. As we all know the Telecom sector has been haunted by worrying and unwarranted political interference and distortions. I don't believe political interference of these kinds will stop any time soon because as long as there are politicians there will be this kind of thing, but the protection from all is in the form of the TRAI Act and the institutions that Parliament has created and their ability to stand up and do the right thing. We must encourage the Regulator to do this. I hope they can and will play a more forceful, assertive and clear role in all issues including the issues of spectrum and licensing.

The fifth point is this - The Telecom Industry today is robust and well capitalized and financially strong – Unlike the past, investors are today very bullish on the sector, growth is strong, revenues are robust and all telecom companies that are present have significant amounts of equity and capital backing it. Further the new players from India and abroad that have shown interest in fresh licenses are backed by big money – in a nutshell – the Government and the

country can now afford a policy that's more commercial and not a only developmental role as in the past. Just as developmental banks have evolved their roles into profit seeking institutions, the government can and must evolve into a role in monetizing from Telecom so that this capital can be invested into other pressing developmental areas like rural telephony at affordable tariffs. As far as tariffs are concerned India is guaranteed low tariffs in a seven operator regime notwithstanding the price paid during bidding. Arguers against auctions who believe that the new entrant can force customers to pay the price of auctions should look at the example of a company like Vodafone, which after paying US\$ 11 billion actually has to reduce tariffs rather than increase them. Thankfully the most strategic public policy goals are best protected by competitive forces both where pricing and rural telephony are concerned.

In ending let me say this, there are many reasons for us to be proud of the Telecom sector. It has truly touched millions of Indians in ways that no other infrastructure sector in India has. We owe it to the sector and the consumers to make sure we progress this sector the right way and in a sustainable way. I would caution the Government against trying to do this in any other way but the most open and transparent way. I am hopeful that this FICCI led initiative will lead to a good sound and sustainable approach to the critical issue of spectrum and its sale/lease and that FICCI will surely take this up with the Government and the Regulators.

I thank you for your presence and participation today.

Jai Hind.

## 2

# “India Telecom 2008 – Connecting Rural India”

FICCI

11th December, 2008

Dr. Manmohan Singh, Hon’ble Prime Minister of India,

Thiru A. Raja, Hon’ble Minister for Communications and Information Technology,

Shri Jyotiraditya M. Scindia, Hon’ble Minister of State for Communications and Information Technology,

Ladies and Gentlemen,

Good afternoon!

I would like to extend a very warm welcome to all of you to ‘India Telecom 2008’. It is indeed a testimony to the confidence in India, that we have a strong participation from a large number

of International countries, despite the recent attacks on India. I particularly thank all those who have travelled from outside India for standing by India at this time.

I welcome our Prime Minister, Dr. Manmohan Singh who, as most of us know, was the catalyst of India's wireless revolution, when he first opened up the sector to Private Participation in 1991, and thank him for being here this afternoon.

I would also like to welcome the Hon'ble Minister for Communications and IT, Thiru Raja and Hon'ble Minister of State, Shri Jyotiraditya Scindia and I thank them for their presence this afternoon.

India's telecommunication sector has been a remarkable success story. As someone who has been a participant and observer, and now a public policy advocate, I can say its performance is something to be proud about for all its participants. Tele-density has increased from 5% in March 2003 to 32% currently, with a good mix of private and public investment and capital. Indian Telecom has grown from serving a mere 0.3 million subscribers in 1997, to serving over 325 million subscribers at the end of October 2008. India today has the world's second largest wireless consumer base.

While these macro numbers do represent a form of success for the sector and the public policy governing it, its important to recognize that the next stage of growth will require some public policy reviews and restructuring. So let me discuss at least two them since we have the government leadership and other stakeholders here at this summit.

First is the issue of serving more rural Indians - successive governments have accepted that in a sector that has performed remarkably well, rural India has been an area of serious challenge. Even today, while three out of every four urban Indians have access

to a phone – mostly a mobile phone – in rural India, the number drops to slightly over one out of every ten. This digital divide has a serious multiplier effect in holding back socioeconomic growth, especially as nearly 67% of India still resides in the rural heartland. Lack of connectivity and affordable options are both major deterrents for rural India to catch up with the progress that you see in urban, and in some cases, semi-urban cities. India has a unique opportunity to dramatically grow and connect a large majority of rural Indians and do so rapidly. I would urge a focused strategy of incentives and SOPs to accelerate investments into rural markets, combined with a more aggressive use of the Universal Service Obligation Fund.

Second is the issue of sustained affordability - One of the most important aspects of our public policy has been the focus on affordability and consumer benefit and indeed consumers have benefitted. Actually, affordability and consumer benefit has been the principle justification of the Regulator and the government on more than one occasion to introduce new wireless licenses.

One technology that can revolutionize low cost connectivity for rural India is Voice over Internet Protocol (VoIP). Even though the TRAI has made its recommendations in this regard quite a few months ago, the government is yet to act. I understand existing Telcos are opposing this. This isn't unusual. This type of opposition has been played out in various markets world wide. But the acceptance of this opposition by the government is surprising, given the government's stated position on consumer benefit and cheaper services taking precedence over incumbent commercial interests. It will be difficult to justify why the commercial interests of some of the richest companies in the country would come in the way of implementing a policy decision that is universally known to reduce tariffs and especially benefit the rural heartland.

TRAI's VoIP recommendations have received universal appreciation across all stakeholders, media and users. Any delay in this decision will be a serious lapse as it has tremendous opportunity of reducing tariffs, ushering in new technology, but most importantly, revolutionizing rural connectivity and tariffs in a significant manner. India is currently at the similar situation in the early 1990s when the incumbent operators were opposing the expansion of wireless operators. As then, the government must take the strategic positive step by introducing VoIP into the affordability equation.

Third – the issue of institutional and regulatory performance - as someone who has intimately lived the highs and lows of the Telecom sector from the day it was first opened to private capital, I must say that one of the big disappointments around the sector is continued ambiguity on what should be a relatively straight forward process of licensing and allocation of spectrum. When the TRAI Act was enacted in 1997 and amended in 1998 by Parliament, it was done to assure an era of transparency and accountability. Sadly, the performance has been patchy and highly inconsistent, and dare I say, sometimes very questionable. I believe it is time for a complete review of the TRAI Act and associated government policies.

There are some interpretative lacunae and lack of sufficient enforcement powers in the act. These need addressing and there must be an increased culture of holding regulators and departments to account for their decisions.

These policy moves, coupled with the significant headroom for growth will make India the most vibrant and exciting Telecom opportunity in the world for Investors, Vendors and Consumers.

Let me end by drawing the attention of everyone present here to the recent Terror attacks in Mumbai. This was an attack on India, and as our PM and other political leaders have said, our Nation is

firm in its resolve that it will fight back and prevail in this war that was launched on us.

Unlike many of the other industries, the telecom sector has played an important role in helping law enforcement agencies combat terrorism. The Mumbai attacks have shown us that the terrorists are using the available latest consumer technologies and therefore there is a need for a very serious upgrade in the Government's thinking on the level of cooperation that it is currently engaging in with the telecom industry to counter terrorism. The telecom industry currently provides real time support through legal intercept and monitoring mechanism. But given the expertise in this area largely resides outside the government, I strongly urge the Government to develop an institutional framework where the technology, services of the Indian telecom sector is available to the entire range of government agencies engaged in this war, including creating standing advisory councils as in other countries that are engaged in this kind of effort against terror. FICCI would be pleased to offer all assistance to the government on this vital issue.

Again, let me welcome all of you to this India Telecom summit and I wish you a successful summit of discussions, debate and interactions.

Good afternoon,

Thank you and Jai Hind.

# 3

## Parliamentary Debate on Resolution to Amend Section 66A of The IT Act, 2000

Rajya Sabha

14th December 2012

Sir, let me thank my colleague P. Rajeev for introducing this resolution, and thus initiating a debate on this critical issue.

Let me start with a quote from Voltaire - “I disapprove of what you say, but I will defend to the death your right to say it” – Sir, this summarizes the essence of our democracy.

Sir, let us clearly understand the background to today’s debate.

Despite being the largest democracy in the world, India currently ranks thirty-ninth globally in terms of free speech over the internet and has reported a negative trajectory in terms of internet freedom over the years (Source: 2012 Report on Freedom on the Net which reviews country-wise laws that may negatively affect free speech online, violate users’ privacy, or punish individuals who post

certain types of content). CNN ran a report two weeks ago on 28th November, titled “India a Democracy sans Freedom”. It has a detailed description of Section 66A, calling it archaic, draconian and absurd.

In March, India was added to the list of countries “under surveillance” by Reporters without Borders in its latest Annual Report on “Enemies of the Internet”.

The misuse of Section 66A of Information Technology Act, 2000 (introduced by the 2008 amendment) has been raised at various instances. There is overwhelming evidence that there is misuse and discretionary interpretation, parts of which the Hon’ble Minister admitted earlier today. A Public Interest Litigation has been filed recently by petitioner Ms. Shreya Singhal before the Supreme Court and there are fasts/protests by citizens.

Sir, that is the background against which this resolution is being discussed.

Sir, The IT (Amendment) Act was passed on 23rd December 2008, the last day of the winter session of the 14th Lok Sabha, in seven minutes flat - without any discussion.

While the Hon’ble Supreme Court may be inclined to look at devising possible procedural solutions/guidelines, it is incumbent on the Parliamentary representatives of the citizens to seek immediate legislative intervention; the defence by the Hon’ble minister that the Parliamentary Committee recommended this is, respectfully I say, facetious, because he is aware of the many cases where Government ignores the Committee, and in any event, the issue is of the law and its impact on citizens, and its weakness and its implications vis-à-vis our constitutional guarantee of freedom to express, and not about the interpretations of the Standing Committee.

In fact, the learned Attorney General's admission in the Court of the potential misuse and the fact that the Government now has to issue guidelines is testament to the large scale abuse.

Guidelines is not an answer when the content of the law is bad: Issuance of procedural guidelines (raising the level of officers from an Inspector) does not remedy fundamental flaws within Section 66A of the IT Act. To say that it is only a law enforcement implementation problem is mis-characterizing the problem. Of course, there is the issue of abuse by agencies, as recent incidents have shown. The police machinery is not equipped with legal tools to interpret the statutes in online speech cases, and cave in to political pressure.

The recent step of raising the level of officers who can invoke a law tells us that officers who have constitutional authority of making arrests under all other laws may even be misled or misinterpret the law. There can be no better admission of infirmity in the law than this self admission which the Hon'ble Minister had to resort to recently. Further, guidelines also cannot be a substitute to a review of the Act, to prevent encroachment of fundamental freedoms.

Added to this, the section itself is bad law. Hence, this Resolution in the House to bring amendments to 66A.

sir, I will lay out my reasoning on why a review of this Act and Section is required, in addition to what my colleague Mr. P. Rajeeve has laid out.

Restrictions on free speech, such as under Section 66A must pass the muster of 'reasonableness'. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness unless it strikes a proper balance between the freedom guaranteed in Art.19 (1) and the social control permitted by clause (2) of Art. 19, it must be held to be wanting in that quality (*Chintaman Rao v. State of M.P.*, AIR 1951 SC 118). Undefined

and overbroad words such as ‘grossly offensive’ and ‘menacing character’ in clause (a) are subject to discretionary interpretations and abuse.

This presents a danger to free speech under Article 19(1)(a). The danger is amplified when even law enforcement officers at the district level can impose the provision.

Reliance on import of provisions from other countries does not assist. The Indian Constitution is stronger on free speech grounds than the unwritten UK Constitution, and the judiciary has wide powers of judicial review of statutes.

The Supreme Court observed in *Union of India v. Assn. for Democratic Reforms* - ‘One sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions’ ((2002) 5 SCC 294).

The term “grossly offensive” will have to be read in such a heightened manner as to not include merely causing offence. The one other place where this phrase is used in Indian law is in Section 20(b) of the Indian Post Office Act (prohibiting the sending by post materials of an indecent, obscene, seditious, scurrilous, threatening, or grossly offensive character). The big difference between Section 20(b) of the IPO Act and Section 66A of the IT Act is that the former is clearly restricted to one-to-one communication, as is the case of almost all the international precedents being referred to by the Hon’ble Minister. Reducing the scope of Section 66A to direct communications would make it less prone to misuse.

Redundancy in wake of other statutes in India must be seen. Criminal statutes have undergone judicial scrutiny and implementation of robust procedures to prevent possible encroachment on to personal

freedom. “Annoyance” and “inconvenience”, “insult”, “ill will” and “hatred” are very different from “injury”, “danger”, and “criminal intimidation”. The question arises whether you need a separate provision in the IT Act for that. Criminal intimidation is already covered by Sections 503 and 506 of the IPC. Similarly, different kinds of causing danger are taken care of in Sections 188, 268, 283, 285, 289, and other provisions.

Similarly with the other “purposes” listed there, if, for instance, a provision is needed to penalize hoax bomb threats, then the provision clearly should not be mentioning words like “annoyance”, and should not be made “persistent”.

The purportedly anti-spam provision under clause (c) does not cover spam. It does not have the two core characteristics of spam: that it is unsolicited and that it is sent in bulk. The definitional problems extend to “electronic mail” and “electronic mail message” in the ‘explanation’ that are vast to cover anything communicated electronically, including forms of communication that aren’t aimed at particular recipients the way e-mail is.

On the procedural front, Section 66A punishes the same actions in a stricter matter than the treatment the actions would have received under penal laws in India (IPC and Criminal Code). Further, making it a cognizable offence means a police officer can arrest without a warrant. In combination with the above deficiencies, this exponentially increases the threat to free speech under Section 66A.

Sir, sometimes 66A seems like a solution looking for a problem, especially when the father of a girl receiving a cake from a boy files a case under 66A, as is the case a few days ago.

Considering the potential and recently demonstrated abuse of Section 66A in contravention of freedom of speech, it may be worthwhile to explore a judicial review before arrests under

Section 66A can be made. The UN Special Rapporteur's report last year on Internet Freedom and Hate speech detailed the tests and procedures for implementing reasonable restrictions on online speech to be applied only in emergency situations for a limited duration. While doing so, the report specifically mentioned that:

“Any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.”

Sir, a free and open Internet is important for innovation, connection and economic growth. Therefore, there is a need to review Section 66A holistically, keeping in mind the constitutional tenets and international conventions that we are a signatory to.

To those in government who raise national security or law and order as justification, let me quote President Obama - “We reject as false the choice between National security and our ideals of democracy”. We can meet both these goals.

Sir, there is a clear case for proactive intervention on this by the Government.

Little progress has been made by the Government to act on these apparent and widely reported abuse issues. There have been proposals, on two occasions, from the Hon'ble Minister to constitute an Empowered Group to discuss all issues on the table and look at alternative formulations.

The Minister made this commitment when the First Open House was held in August this year and then again on 29th November where I understand from press reports that he met representatives from civil society, Intermediaries and industry. I attended the Open House in August and it seems nothing has been done in these five

months. What has got done between these two meetings? Why has the Government allowed issues to come to a boiling point? Sir, there should be no ego involved here.

Let's frankly accept that there is a problem with the Act, its clauses and the rules. I do not propose my specific interpretation of constitutional guarantee of free speech nor should the Hon'ble Minister expect us to blandly accept his.

Let's accept the Hon'ble Chairman, Rajya Sabha's view earlier today that this is an evolving issue.

So Sir, let the law evolve. Let the Government constitute a Drafting Committee immediately with a multi-stakeholder representation (including civil society) to address these issues and arrive at a sustainable framework, as in the case of RTI and several other statutes earlier. Sir, that is what is expected from a government that represents a great democracy like our country.

Sir, let me end by sharing a quote with this House - John Milton's - "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."

I support this resolution.

Jai Hind.

## 4

# How Technology will Transform Governance

Indian Express Tech Sabha

19th June 2015

Good Morning,

I am glad to be here today at the Express Technology Sabha, to speak about an issue that I feel very passionate about – the use of ICTs to make government services more transparent and efficient. As a tech entrepreneur, I'm a big fan of all things technology and Internet and as a representative of the people and legislator, all things Good Governance. As someone who has been witness and active participant in evolution of operating systems, microprocessors, internet and cellular for two decades, and an active witness to mal-governance, scams and misuse of Government in the last nine years, I assure you I am qualified and very happy to speak on e-governance and governance reforms through deployment of technology.

Two scenarios or themes have emerged:

1. Technology evolving with more and more computing and logic in smaller devices and internet connectivity growing rapidly that is connecting those devices and people behind the devices
2. Our democracy evolving where people are more aware of their individual rights and obligations of government. People want to assess, be informed, connect with and influence government - in effect be the real oversight of government. People wanting directly to deal - disintermediate.

These two seemingly separate movements have begun to combine in a fusion that rivals the other symbol of fusion the H- bomb, with disruptive but positive effects.

Steve Ballmer, the director of Microsoft once very rightly said, “The number one benefit of information technology is that it empowers people to do what they want to do. It lets people be creative. It lets people be productive. It lets people learn things they didn’t think they could learn before, and so in a sense it is all about potential.”

Speaking of potential, I’d like to start off this speech by stating that we have today in India, through the present Government, the un-paralleled opportunity of working in the most supportive Digital Policy ecosystem yet. This is by far the most pro-technology government the country has seen, and this is made amply evident in the PM’s Digital India vision, which seeks to transform India into a Digitally Empowered Society and Knowledge Economy.

Only yesterday the Narendra Modi Government has announced the “Innovate for Digital India” campaign on Twitter, which aims to foster innovation that would benefit the nation’s technological endeavours as well as the economy. To me, this indicates that we finally have a Government that has taken it upon itself to fast-track India’s progress using digital. Over the coming decade in India, 10 transformational technologies could contribute three-five times

the current economic impact of the IT/ITeS sector to the economy.

Together, they can transform health care, education, financial services, citizen services, energy and agriculture. These technologies are ubiquitous connectivity, the internet of things, cloud technology, digital payments, universal biometric identity, automation of knowledge work, renewable energy, advanced oil and gas, advanced energy storage and next-generation genomics.

Before I go further, let's be clear that the discussion on e-governance isn't new. But in its current form it has failed to make any dent on corruption, government efficiency or citizen-government interaction. Hundreds of crores of contracts have been awarded in the name of e-governance, but without clear definition of outcomes. I am hoping meetings such as this would reinforce clarity in our expectations of e-governance and Digital India.

In my view, the integrated and efficient use of technology and e-governance shall do three things:

1. It will transform Government and make it more transparent and efficient.
2. It shall transform the lives of citizens, especially those who we commonly refer to as the "Bottom of Pyramid".
3. It will accrue host of benefits to our country's economy.

Let us first try to understand How Technology Will Transform Government:

Technology bears a direct relationship with bringing in effect a more efficient, transparent and accountable government. Creating a technological platform for administrative and decision making processes moves governments to a new form of responsiveness and transparency. Transparency in turn means less corruption and crony capitalism. Responsiveness means less red tape and more efficient environment and life for citizens.

A host of other allied benefits would be accrued including reducing expenditure, enabling real time data analysis, and ensuring a faster movement of information and intelligence to key players in the bureaucracy. Each of these will in turn result in swifter, informed and more accurate decisions and policy making being taken by the government machinery. A big deal when policies are usually made by vested interests and lobbies in absence of data and facts.

Amongst the budget's many structural reforms is the focus on technology based targeting of subsidies through the Jan-Dhan, Aadhar and Mobile triumvirate. This JAM effort is probably the best thought through effort during the last six decades to tackle the scourge of leakage and corruption in subsidies.

In the Budget session of Parliament this year, the Finance Minister also announced that efforts would be made by this Government towards the transformation of our economy into a cashless economy. By the use of Technology. A good example of a well-executed technologically enabled governance service of the government is the Pradhan Mantri Jan Dhan Yojana. The National Payment Corporation of India (NPCI) has built a platform that, reportedly, connects all banks and telecom operators in the country. In 2014, 26 public sector banks and 3 private sector banks joined this platform that enables customers of any bank access their accounts, check balance, perform money transfers, among others through even basic feature phones. This is one of the many measures undertaken by the NPCI to make India into a cashless economy, and once well entrenched, will transform the way Indians bank, makes significant savings for the exchequer while improving end line service delivery. The priorities mentioned by the Prime Minister in his electoral manifesto spoke of a "People oriented system to be put in place" and "stress on addressing people's problems". Nothing would serve that cause better than technology for service delivery and grievance redressal. It cuts

down on bureaucratic procedures, and provides citizens access to information, along with expectations of a meaningful response.

#### How Technology will Transform the Lives of Citizens:

There is a remarkable story I never tire of telling - of a 69 years old farmer from Dharwad district of my home state Karnataka called BM Hanasi. Hanasi is the owner of a seven-acre plot of land, and I know off him because a few months ago, he left the Karnataka cabinet completely mystified and bewildered after he wrote Chief Minister Siddaramaiah a letter which pointedly asked him why his Government was not using Google Earth's latitude and longitude coordinates and WhatsApp to verify and expedite crop insurance claims! Hanasi claimed that assessing crop damage in his district involved an elaborate and avoidable bureaucratic rigmarole - agents and officials have to harvest damaged crop at six different fields, take note of the last seven-year yield for the same crop and then calculate the damage. The process for awarding compensation is also protracted - the amount is first sent to the insurance company, which in turn sends it to the deputy commissioner who then remits it to the beneficiary.

By simply being technologically enabled, citizens such as Hanasi can be saved of the mire of government bureaucracy and political corruption. A painful process for a citizen, that would otherwise take up to six months, could be transformed in to a real time process through the use of simple, affordable and easily accessible technologies. This is the real opportunity and potential of Digital India – the benefits it brings to the end line service user - and the government needs to do all that it takes to harness it.

Take the recent debate on net neutrality by our infamous Telecom regulator. Technology allowed 12 lakhs citizens to vocally participate in formulation of a policy that was being hijacked by some business interests. The days of policy making excluding

citizens have been finished off by technology and corporate and governments are struggling to come to terms with it.

How Technology shall benefit the Indian Economy:

The biggest challenge to India's growth is that India's policy and regulatory system represents to big investors. In May I was invited to speak to two groups of large investors - the message from them is clear! India represents great potential but unless its governance and regulatory and policy frameworks become less foggy and more transparent, investors will remain potential investors. Take the example of Nestle and Maggi - Independent institutions and transparency are benefits of E-governance.

India's prowess is a defining element of its global brand image. The information technology (IT) and IT-enabled services sector generated \$100 billion in revenue in 2012, even as India's internet user base, currently third-largest globally, is set to become the world's second-largest.

I read a McKinsey Global Institute report last year that made some pretty astounding forecasts. The Institute stated that the large scale adaptation of technology through Digital India positions our country with the biggest opportunity yet to accelerate economic growth. In the next 10 years, leveraging technology in India through Digital India could pump in anywhere between USD 500 billion and USD 1 trillion into the economy – which represents anywhere between 20% to 30% of the current GDP of India, and is as much as the share that the manufacturing sector currently makes to the Indian GDP.

There is much reason for cheer for the Tech community, and what now need is for the Government and Private sector to come together to design and execute a detailed and investment backed roll out plan.

The challenge for Digital India is to provide last mile connectivity to Phase 3 and 4 areas – which are India’s smallest towns and villages. Digitising these inhabitations require massive investments. It is clear that while Government has a role in making investments, bulk of this investment and innovation must come from a Public-Private partnership that brings in the strong technological and entrepreneurial eco system of India fully into this.

It is clear that the success of Digital India’ depends on the innovative policy and enabling framework that government creates – and it is equally important that apart from being an investor, the government assigns to itself a role of being an innovation and investment enabler and plays that role well.

Thank you, Jai Hind

# 5

## Innovation in Government

T-Hub, Andhra Pradesh

5th March, 2016

Good Morning,

I am glad to be here today at the T-Hub, to speak about an issue that I feel very passionate about – the use of Innovation to Transform Government. As a tech entrepreneur, I'm a big fan of all things technology and innovation, and as a representative of the people and legislator, all things Good Governance. As someone who has been witness to and an active participant in the evolution of operating systems, microprocessors, internet and cellular for two decades, and an active witness to mal-governance, scams and misuse of Government in the last nine years, I assure you I am qualified and very happy to speak on e-governance and governance reforms through the deployment of technological innovations:

In the last five years, two scenarios or themes have emerged:

1. Technology evolving with more and more computing and logic in smaller devices. A fast proliferating internet and connectivity growing rapidly, which is, in turn, connecting those devices and people behind the devices.
2. Our democracy evolving where people are more aware of their individual rights and obligations of Government. People want to assess, be informed, connect with and influence Government - in effect, be the real oversight of Government. People wanting directly to deal – disintermediate.

These two seemingly separate movements have begun to combine in a fusion that rivals the other symbol of fusion - the H-bomb - with disruptive but positive effects.

Steve Ballmer, the director of Microsoft once very rightly said, “The number one benefit of information technology is that it empowers people to do what they want to do. It lets people be creative. It lets people be productive. It lets people learn things they didn’t think they could learn before, and so in a sense it is all about potential.”

Speaking of potential, I’d like to start off this speech by stating that we have today in India, through the present Government, the unparalleled opportunity of working in the most supportive Digital Policy ecosystem yet. This is by far the most pro-technology government the country has seen, and this is made amply evident in the PM’s Digital India vision, which seeks to transform India into a Digitally Empowered Society and Knowledge Economy.

It is amply clear that we finally have a Government that has taken upon itself to fast-track India’s progress using technological innovations. Over the coming decade in India, 10 transformational technologies could contribute 3-5 times the current economic impact of the IT/ITeS sector to the economy. Together, they can transform health care, education, financial services, citizen

services, energy and agriculture. These technologies are ubiquitous connectivity, the internet of things, cloud technology, digital payments, universal biometric identity, automation of knowledge work, renewable energy, advanced oil and gas, advanced energy storage and next-generation genomics.

Before I go further, let's be clear that the discussion on e-governance isn't new. But in its current form, it has failed to make any dent on corruption, government efficiency or citizen-government interaction. Hundreds of crores of contracts have been awarded in the name of e-governance, but without clear definition of outcomes. I am hoping meetings such as this would reinforce clarity in our expectations of e-governance and Digital India.

In my view, the embedding technological innovations in Government shall do three

1. It will transform Government and make it more transparent and efficient.
2. It shall transform the lives of citizens, especially those who we commonly refer to as the "Bottom of Pyramid".
3. It shall benefit the Indian Economy.

Let us first try to understand How Technology Will Transform Government:

Technology bears a direct relationship with bringing, in effect, a more efficient, transparent and accountable government. Creating a technological platform for administrative and decision making processes moves governments to a new form of responsiveness and transparency. Transparency in turn means less corruption and crony capitalism. Responsiveness means less red tape and more efficient environment and life for citizens.

A host of other allied benefits would be accrued including reducing expenditure, enabling real time data analysis, and ensuring a faster

movement of information and intelligence to key players in the bureaucracy. Each of these will in turn result in swifter, informed and more accurate decisions and policy making being taken by the government machinery. A big deal when policies are usually made by vested interests and lobbies in absence of data and facts.

Amongst the Budget's many structural reforms is the focus on technology based targeting of subsidies through the Jan-Dhan, Aadhaar and Mobile triumvirate. This JAM effort is probably the best thought through effort during the last six decades to tackle the scourge of leakage and corruption in subsidies.

In the Budget session of Parliament this year, the Finance Minister also announced that efforts would be made by this Government towards the transformation of our economy into a cashless economy, by the use of Technology. A good example of a well-executed, technologically enabled governance service of the government is the Pradhan Mantri Jan Dhan Yojana, which as we know, has accelerated the pace of financial inclusion in India.

The National Payment Corporation of India (NPCI) has built a platform that, reportedly, connects all banks and telecom operators in the country. In 2014, 26 public sector banks and 3 private sector banks joined this platform that enables customers of any bank access their accounts, check balance, perform money transfers, among others through even basic feature phones. This is one of the many measures undertaken by the NPCI to make India into a cashless economy, and once well entrenched, will transform the way Indians bank, makes significant savings for the exchequer while improving end line service delivery. The priorities mentioned by the Prime Minister in his electoral manifesto spoke of a "People oriented system to be put in place" and "stress on addressing people's problems". Nothing would serve that cause better than technology for service delivery and grievance redressal. It cuts down on bureaucratic procedures, and provides citizens access to information, along with expectations of a meaningful response.

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By simply being technologically enabled, citizens such as Hanasi can be saved of the mire of government bureaucracy and political corruption. A painful process for a citizen, that would otherwise take up to six months, could be transformed in to a real time process through the use of simple, affordable and easily accessible technologies. This is the real opportunity and potential of Digital India – the benefits it brings to the end line service user - and the government needs to do all that it takes to harness it.

Take the recent debate on net neutrality by our infamous Telecom regulator. Technology allowed 12 lakhs citizens to vocally participate in formulation of a policy that was being hijacked by some business interests. The days of policy making excluding citizens have been finished off by technology and corporate and governments are struggling to come to terms with it.

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The biggest challenge to India's growth is that India's policy and regulatory system represents to big investors. In May, I was invited to speak to two groups of large investors - the message from them is clear! India represents great potential, but unless its governance and regulatory and policy frameworks become less foggy and more transparent, investors will remain potential investors. Take

the example of Nestle and Maggi. Independent institutions and transparency are benefits of E-governance.

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There is, therefore, much reason for cheer for the Tech community, and what now need is for the Government and Private sector to come together to ensure efficient, razor sharp execution.

Thank you, Jai Hind.



# DIGITAL INDIA

## Letters



# 1

## Letter to the Prime Minister on Global Auction of Spectrum

12th May, 2007

Respected Prime Minister,

I write to you in connection with the recent Announcement of a Global Auction of spectrum for 3G services by the Department of Telecommunications and a subsequent article in Economic Times dated 10' May 2007 in that connection. (A copy of the Article is attached).

Firstly, I must congratulate you and the Government in taking the decision for a global auction of spectrum. I believe that is in the best National interests.

The article attached quoting one of the corporate currently in the Telecom sector is trying to make out a tenuous case of restricting

bidders: for 3G on some frivolous grounds. As someone who has personal experience of various forms of arguments and logic that have been used in the past to distort what is the correct thing to do, I would like to make some points so that such lobbying does not derail the government from the right path.

That 3G is a separate service is a principle accepted all over the world. The regulator and the government here have also agreed to this principle. Therefore there seems to be no dispute that these should be separate licenses. The key issue seems to be the commercial terms of allocating Spectrum.

It is true that in the early 90s when the Government was actively trying to encourage investors and helping build out the telecom sector, the terms of spectrum were far kinder and gentler. Even there in the mid 90s and subsequently spectrum allocation or license allocation was through a global auction without any restrictions on new players.

Spectrum is clearly a valuable natural resource of the Government and people of India. When spectrum is being allocated in present day, when the telecom sector is well developed and valuable (Note the current valuations of Hutch sale to Vodafone), there is clearly no justification in allotting spectrum in any way but a transparent auction. An auction process has been used in the Telecom sector before for the 4th round of cellular licenses and as well more recently very successfully by the I&B Ministry for FM licenses.

Given that there can't be any argument against auction, a case is now sought to be made by this corporate, that the bidders must be restricted through some arbitrary criterion — in this case Indian companies or existing operators or both. This is quite ridiculous and goes against the objectives of an auction. There were no such restrictions on the 4th round of cellular licenses nor were there any restrictions like this in the recent FM licenses. Which would lead

one to believe, that the only objective of the restricting bidders would be to depress the real price of spectrum being allotted.

This argument being made must be rejected with the contempt it deserves notwithstanding the fact that it comes from a so-called reputed Indian corporate. It is against national interest and against every precedence and practice of exacting maximum value for spectrum. This suggestion is even more ironical given the almost opposite view taken by the same company when it was trying to get into Cellular through the WLL route in the whole WLL scam not many years ago.

In short, I wish to reiterate that the decision of the Government to actively seek out through the process of a Global transparent Auction with no restrictions on participants, the best price for 3G spectrum/licenses - is the correct one for the country and its people. This is consistent with practices in the past and in other sectors like FM. Resources raised through such a process can be invaluable in addressing rural tele-density and other investment requirements of the government in rural and urban infrastructure. The government must not allow lobbying of the kind in this reported letter to compromise this approach and to perpetuate oligopolies of the kind that you recently referred to in a speech.

I am sure given my history of association of Telecom, there will be some accusations of me having some agenda or the other. I have none, except to make sure the wrongs that so characterized the conduct of Telecom policy in the past years are not repeated today or ever again in the future.

Thanking you

Very Truly Yours

Rajeev Chandrasekhar

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

Copy to:

- 1) Thiru Dayanidhi Maran,  
Hon'ble Minister of Telecommunications and IT
- 2) Thiru P. Chidambaram,  
Hon'ble Minister of Finance

## 2

# Letter to the Prime Minister on Spectrum Allocation

14th November, 2007

Respected Prime Minister,

This has regards to the release of Spectrum by Defence Ministry to DoT, and the planned sale of the Spectrum by DoT to Private Telecom Companies.

Although I have written to you earlier on this issue, I am reiterating through this letter again that all decisions relating to Spectrum allocation must pass the twin tests of public interest and transparency to the fullest.

Though there has been considerable rhetoric, noise and letter writing on this subject, I believe the issue can be narrowed down to two simple questions and I wish to bring them to your

attention as the issues that your government and the Minister of Communications will have to explain and defend-

- a. What is the commercial value of this spectrum TODAY as estimated by the Government (that is being recovered from the Defence Ministry) and why is it that the Government and Ministry is levying charges for spectrum that were discovered through a tender process 6 years ago in 2001? Is it not commonsense that these prices are not relevant today when almost all asset classes have appreciated significantly in value and cost over the last 6 years?
- b. Why are license or Spectrum award process not following a tender route - a route adopted for all previous licenses and as well for FM license under this very government?

Unless the Government, Ministry of Communications and/or DoT have clear and defensible answers to these two questions, it would be easy for anyone to conclude that the process and terms being followed by the Government for the sale of spectrum are against the best interests of the country.

I have further researched this subject in detail in anticipation of a debate in Parliament and have detected many serious deviations in the working of the DoT vis-a-vis the Law and Policy. I will separately seek out answers for these as well.

I would urge you to seek answers for the two questions raised above urgently and I look forward to your response.

Yours Truly,

Rajeev Chandrasekhar

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

# 3

## Letter to the Minister of Communications & IT on 2G Spectrum Allocation and Review of the TRAI Act

26th November, 2007

Dear Thiru Raja,

Thank you very much for the letter No. 219/M (C&IT) VIP/2007 dated 21st November, 2007 and your efforts at clarifying the position of the DoT and your Ministry.

Firstly let me thank you for reaffirming your commitment to transparency and an equitable approach ‘to the issue of allocating spectrum. I believe this is an important meeting of minds.

Firstly, I unreservedly endorse your efforts at increasing competition — which is clearly a desirable public policy objective because it delivers significant consumer benefit and I further, support your Ministry’s views on the need for an open and unfettered approach

to auctions for 3G licenses and spectrum, despite the TRAI's obviously flawed approach of restricted auctions.

As you are aware, I have been advocating the need for such an auction even for the 2G spectrum that the Defence Ministry is releasing. It is now clear to me, however that -given the December 2005 guidelines for UASL and its clause 11 and more specifically the critical fact that the DoT has entered into contracts with a large number of licensees by accepting fees from them — that it may be impractical to introduce auctions for these licensees and applicants, therefore I will agree with your view that introducing auctions at this stage may lead to a breach of contract by DoT and consequential litigations —both of which are not desirable outcomes.

I therefore would be willing to dilute my demand for auctions and be supportive of the Ministry's efforts at using the December 2005 guidelines at allotting spectrum to licensees/applicants with the following conditions;

- a. That the DoT will immediately amend the existing Policy and the 2005 guidelines to ensure that all future licenses/spectrum (after this round of licensing) shall only be through an open, transparent multi-round bidding process.
- b. That additional licenses are issued for new licensees are issued without delay so that the competitive landscape is increased and consumers start benefiting from this with minimum delay.

Let me also through this letter urge you also to commence a comprehensive review of the TRAI Act. As you are aware, I have urged in Parliament that such a review is long overdue, because of the number of areas of weakness in the current act, both in terms of accountability of the TRAI to Parliament and its independence from the DoT. I hope you will agree to the request and initiate the same

Very truly yours,  
Rajeev Chandrasekhar

Thiru. A Raja,  
Minister of Communications and Information Technology,  
Government of India,  
New Delhi.

Copy to:

Hon'ble Prime Minister of India

This refers to my letter dated 14th November 2007 on the subject.

## 4

# Letter to the Chairman, TRAI on Competition in the Telecom Sector

19th February, 2008

Dear Shri Mishra,

I am writing with some concern about a press article in the Times of India dated 14th February 2008, copy attached.

The article quotes one of the large incumbent GSM Cellular operator, who is quoted as predicting that all the new Telecom operators/investments will ‘collapse’ in 3 years.

This is clearly a serious situation if true. The entire objective of the Telecom Policy of the Government is geared at delivering consumer benefit through increased competition and speeding up the teledensity through new investments. That competition is the only way to sustainably ensure consumer benefit and increase

teledensity and affordability widely accepted by MPs, Civil Society and Media and of course the Government.

As you are aware and I have raised with you, the current landscape of competition is not enough to prevent co-ordinated 'price movements' by operators on more than one occasion, which the Regulator has expressed unwillingness to intervene in. Therefore the only way that consumers can be assured benefits of competition is through 'real and sustainable' competition. If as is claimed, competition can be made to collapse in 3 years, this then will potentially create a scenario of further price cartels leading to prejudice to consumer interest.

Given this clear admission by an incumbent market power, it is even more critical the Regulator plays its primary role of custodian of consumer interest and makes it its responsibility to ensure the viability and sustainability of competition.

I would request you through this letter to examine the issue of competitiveness of new operators and to ensure that there is a more than a fair chance for new operators to grow and be viable and incumbent market Operators conduct in this scenario are strictly monitored to ensure they do not use market power to destroy competition.

Thanking you,

Very truly yours,

Rajeev Chandrasekhar

Shri Nripendra Miisra

Chairman,

Telecom Regulatory Authority of India, New Delhi

## 5

# Letter to the Prime Minister on Competition in the Telecom Sector

19th February, 2008

Respected Prime Minister,

I am enclosing a letter written to Thiru A Raja, Hon'ble Minister of Telecommunications.

The issue raised is that of sustainable competition and use/abuse of Market power by incumbents to destroy competition. That is a highly undesirable result of any Policy and clearly contrary to your own stated views on improving competition and efficiency in our economy.

I have urged him to ensure that any competitive framework is designed to ensure competition can thrive since as you yourself have said on many occasions, competition is the only real sustainable

solution to consumers of India and efficiency in the economy, and competition is the only way to ensure oligopolies do not replace monopolies.

Thanking you,

Very truly yours,

Rajeev Chandrasekhar

Dr. Manmohan Singh

Hon'ble Prime Minister,

Government of India,

New Delhi.

## 6

# Letter to the Minister of Communications & IT on Competition in the Telecom Sector

19th February, 2008

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at delivering consumer benefit through increased competition and speeding up the teledensity through new

investments. That competition is the only way to sustainably ensure consumer benefit and increase teledensity and affordability widely accepted by MPs, Civil Society and Media and of course the Government.

In the face of these objectives — a scenario where the market power of incumbent operators can be used to destroy competition is indeed very disturbing. This Claim if true , makes a mockery of our regulatory and policy framework in addition to being reckless and dangerous and unacceptable as a consequence of any Government Policy,

I would urge you to examine this issue of competitiveness of new operators and ensure that there is more than a fair opportunity for new operators to grow and be viable. This is the only way that consumers today and in the future can avail of the benefits of competition and be beneficiaries of the Government Policies. As the Prime Minister, Dr Singh himself has said on more than one occasion, liberalization of the economy should not mean that Oligopolies replace Monopolies.

I look forward to your urgent action and response.

Thanking you,

Very truly yours,

Rajeev Chandrasekhar

Thiru A Raja

Hon'ble Minister for Communications & Information Technology,

South Block,

New Delhi.

## Letter to the Prime Minister on Cyber Espionage

30th April, 2008

Respected Prime Minister,

I refer to the cover page story on ‘E-Spionage’ in the Business Week edition dated 21st April, 2008 (attached herewith). The article details the rising attacks on America’s most sensitive computer networks and uncovers startling security gaps at key US government agencies and critical government contractors, especially defense contractors.

Espionage is now being seen as a growing threat to governments all around the world. The covert and unauthorized acquisition of a country’s scientific research, industrial and computer technology harms a country’s defences, economic well-being and national

infrastructure. Left unchecked, such a situation could also greatly jeopardize national security.

Sir, I would like to draw your attention to this serious issue / threat, and suggest that government look urgently at formulating a policy, strategy and body to address the issue of cyber protection against these increasingly sophisticated forms of infiltration.

Thanking You,

Yours Sincerely,

Rajeev Chandrasekhar

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

8

## Letter to the Prime Minister on Cyber Security Strategy

13th August, 2008

Respected Prime Minister

**Sub: Cyber Security**

Further to our conversation yesterday and in Continuation to my letter dated 30th April 2008. I am enclosing a note on Proposed organization/Team structure to address Cyber Security Strategy, as desired by you.

Thanking you,

Yours sincerely,  
Rajeev Chandrasekhar

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

**Proposed organization/Team structure to address  
Cyber Security Strategy**

1. The Group could be called the Cyber Security Scenario & Strategy Planning Group (C3SPG). Will be under the PMO. The members of C3SPG could be from Private or Public and can consolidate all the various existing uncoordinated efforts within the government and plan for new cohesive strategy / effort.
  
2. The C3SPG scope will be:
  - I. Detection of threats and scenario planning
  - II. Hacking and counter-hacking
  - III. Cryptography Algorithm development
  - IV. Code cracking (the inverse problem in cryptography)
  - V. Information warfare model development
  
3. Linkages:
  - a. The C3SPG will have the first set of linkages to various organizations like:
    - I. Army
    - II. IAF

- III. Navy
  - IV. CBI
  - V. Bombay Stock Exchange/SEBI
  - VI. RBI
  - VII. ISRO
  - VIII. DRDO
  - IX. Think Tanks like IDSA.
- b. The C3SPG will have the second set of linkages to Private and Public Technology Solution Providers. Skill sets for I to V of scope will be obtained from these Technology Solution Providers.

# 9

## Letter on Need to Investigate the Loss of Rs. 44,000 crores to Exchequer on Account of 2G Spectrum Sale

24th September, 2008

Dear Sir,

**Sub.: Need to investigate the loss of Rs. 44,000 crores to exchequer on account of 2G spectrum sale – clearly established through the Swan-Etiscalat transaction**

I would like to bring to your kind attention the US\$ 2 billion / Rs. 9,000 crore valuation by Etiscalat – a UAE-based telecom company – of Swan Telecom, which holds 13 licenses in 13 circles (states) in India. This transaction clearly establishes a market based and irrefutable evidence that the Telecom Ministry's decision to allocate 4.4 MHz of startup spectrum to 2G operators in January 2008 at

2001 prices has caused massive loss to the exchequer. This figure could easily be in the range of Rs. 45,000 crores or US\$ 10 billion.

Swan Telecom only holds licenses for 13 of India's 22 pan India circles and has received startup 4.4 MHz in only 10 of those circles. It has no assets, no workforce, no infrastructure, customers, or revenue stream, to which this massive valuation could be attributed. It is purely and entirely linked to the value of spectrum – much of which it is yet to receive.

The Government had, in January, given away – on a first come first served basis – 120 licenses and collected a meager approximate figure of Rs. 9,000 crores. Going by Swan's valuation where they have paid Rs. 1,537.01 crores and sold for Rs. 9,000 cores, it is clear that the market value of spectrum is 9 times. Consequently, the actual revenue for the government should have been in the Rs. 54,000 crores range, pointing toward a loss of Rs. 44,000 crores on this account alone.

As you know, I have agitated this issue in front of you on many occasions and pointed out the need for an open, transparent, global spectrum auction which can yield the optimal revenue. The arguments of customer interest and keeping spectrum prices low are clearly no longer tolerated by the market. The Government is proceeding along the same lines - without thinking through its strategy for 3G auctions – which could be another source of worry and loss to the exchequer.

Sir, I sincerely request you to call for an investigation of this matter, including through the CVC, to understand the circumstances under which private operators had been given a massive government largesse and the Indian consumer had neither received the telecom service nor will it benefit from the subsidy that the Government has decided to give to some of the largest companies in India on account of spectrum allocation.

Thanking you,  
Very truly yours,  
Rajeev Chandrasekhar

Shri Nikhil Kumar,  
Chairman,  
Standing Committee on Information Technology,  
Government of India,  
New Delhi.

# 10

## Letter to the Prime Minister on Transparent Monetization of Spectrum

25th September, 2008

Respected Prime Minister,

**Sub: Transparent approach to monetization of public assets like Spectrum**

I have written to you earlier on the issue of the need to have an open, market based method to establish value of Spectrum that the Government, from time to time, gives to the private sector for operating various services.

Since spectrum is an asset of the Government and people of India, it follows logically that when this asset is being transferred to any non-government entity or company, that the government is

commercially compensated at the market value for that asset i.e. spectrum.

Recent news reports confirm that the arbitrage between the value that Government is receiving for spectrum and actual market value is to the tune of almost Rs 8000-9000 Crores. On a base price of nationwide spectrum at Rs 1540 Crores appx (for all 23 circles), this is an appreciation in the hands of private sector of almost 600% in a few months.

I am basing this conclusion on recently published reports of a private company (Swan Telecom) which holds 13 licenses in 13 circles (states) in India (and paid less than Rs 1500 Crores) and has been valued at \$2Billion (Rs 9400 Crores). Given that company has no operations, no infrastructure yet and no customers or revenues — it is safe to conclude that this value of Rs 9400 Crores is for the spectrum that the company owns/will own.

This transaction clearly establishes a market based and irrefutable evidence that the Governments pricing for spectrum of 4.4 MHz is far lower than actual market values for the asset and is causing a situation where considerable moneys is being lost to the exchequer and people of India.

As you know, I have raised this issue with you on more than one occasion and believe there is a need for a comprehensive public policy when it comes to commercial terms of monetization of public assets like spectrum, minerals, natural resources etc — i.e. a public policy that should be based on a simple objective and test of ensuring maximum benefit to the exchequer and public.

I hope given the latest piece of information, you will have your Government initiate a new public policy for pricing National assets like spectrum, minerals, etc.

Thanking you,

Very truly yours,  
Rajeev Chandrasekhar

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

# 11

## Letter to the Chairman, TRAI on Review of SMS Tariffs

6th November, 2009

Dear Shri Sarma,

**Subject: Need for an immediate review of SMS tariffs / termination costs in consumer interest and to protect competition**

This is with regards to an article that recently appeared on the front page of The Times of India on Thursday, 5th November 2009, titled “After call rates, SMS charges may tumble” and on page 20, titled “Stop cartelization”. (Copies attached).

It seems from the article that the costs of terminating SMS on a network is in the range of 1 paise or thereabouts. It is also clear that the operators are charging from 50 paise to 1 rupee per SMS.

If this is true, then the current tariffs are 50 – 100 times higher than the cost of terminating the SMS.

Even if the cost of termination is higher than has been stated, it is clear that there is a very large margin that is available to operators. Equally, that in spite of 7 – 8 operators in each circle, there is a cartel-type behavior which prevents the consumer from getting the cost-based tariff for SMS.

Apart from the fact that this flies in the face of India's claims about having the world's lowest tariffs, it also shows that there is a very large fat that needs to be trimmed in consumer interest and with immediate effect. **It is not clear why TRAI continues to exercise forbearance where mobile tariffs are concerned, especially relating to SMS when your own cost data of August 2006 (IUC charge) represents that the cost of terminating SMS is a small fraction of what is being charged and in the face of clear evidence that SMS charges are not reducing despite the high margins.**

Moreover, the forbearance policy of TRAI is self-imposed, and it is under no obligation to continue with the policy if there is a clear demonstration that there is not only a market failure, but in fact, operators are working in concert to charge 50 – 100 times higher than the cost of delivering an SMS.

So on many accounts – consumer interest, need for cost based interconnection, need to make reasonable the high EBITDA margins, and to ensure that TRAI does not abdicate its responsibility towards the customer under section 11 of the TRAI Act – I urge you to immediately review the SMS cost and tariff and not wait for the next IUC review – since that can be 3 – 6 months away. The consumer deserves a lower tariff and from everything that is available, including TRAI's own data, there is sufficient evidence that the current SMS tariffs can go down by a very large magnitude.

In addition to consumer interest and the need for cost-based tariffs, the TRAI needs to intervene immediately since the new entrants are

faced with excessive market power and anti-competitive practices since as operators they have no choice but to negotiate “over the barrel” with entrenched incumbents. This disproportionate market power creates a monopoly-like situation since consumers of a new entrant have no choice but to pay an interconnection charge that is forced on their operator if they wish to send an SMS to a subscriber on the network of an existing, well-entrenched incumbent.

TRAI, under section 11 of the TRAI Act, is empowered to and must immediately set out terms of interconnection through a separate exercise so that new entrants and competition is allowed to flourish – which is consistent with the public position taken by TRAI, the Hon’ble Minister of Communications & Information Technology, and the Prime Minister in their various press releases, interviews and public appearances.

The TRAI has had a dismal track record in addressing the cartel like behavior on tariffs by Operators over the last many years and so, TRAI must immediately review its policy of forbearance on mobile tariffs in general and especially with regards to SMS charges – especially as SMS is already 5% – 7% of the total mobile sector revenue.

A response with regards to this specific action that TRAI needs to take along with timelines for such action would be much appreciated.

Very Truly Yours,

Rajeev Chandrasekhar

Dr. J. S. Sarma,  
Chairman,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg, Old Minto Road,  
New Delhi-110 002.

12

## Letter to the Prime Minister on Consolidation in the Telecom Sector

12th November, 2009

Respected Prime Minister

**Sub: Move to facilitate consolidation and M&As in the Telecom Sector**

I would like to draw your attention to the recent TRAI Consultation Paper on “Overall Spectrum Management and Review of License Terms and Conditions” dated 16 October, 2009.

This initiative by the telecom regulator to “facilitate easier consolidation and M&As in the telecom sector” clearly points towards a decision of allowing M&As across the board in telecom,

and it seems that the questions are framed to extract responses which will facilitate a decision favoring mergers and acquisitions, thereby reducing the number of telecom operators.

This move is in sharp contrast to everything that the DoT has said over the last two years while defending themselves against the allocation of spectrum to 120 LoI holders at 2001 prices on 10th January 2008. In multiple press releases, the DoT has justified the decision to give away these LoIs as late as 19th October 2007, and 10th January 2008. The TRAI decision for no cap (increasing competition) was the reason-behind its decision.

Moreover, the Hon'ble Minister of Communications and IT has said in multiple press conferences and interviews that he has given away 120 LoIs at 2001 prices to break cartels that existed, and that 7 — 8 operators per circle was not sufficient level of competition. He has also justified these actions by saying that the only way to bring down prices is to introduce more competition and therefore by giving away new licenses in 2008, he is doubling the level of competition, to reduce tariffs and ensure rural telephony objectives of country are met. In fact, he has done so to justify fragmenting for multiple operators.

Further, M&A guidelines were issued in April 2008 and note for Telecom Commission in November 2008 to prevent M&As and sale of promoters' equity — all ostensibly aimed at ensuring that competition is protected and that windfall gains are not attributed to licensees who received mobile licenses and spectrum in 2008 at 2001 prices.

I would also like to point out that not a single new GSM operator has launched service since the licenses were given. No price reduction has taken place on account of new competition. All existing price wars are being led by incumbents since the new entrants are yet to enter the market. So essentially, everything that

the Hon'ble Minister has stood for and used as an explanation for giving away cheap spectrum is being reversed under the garb of policy review.

If this occurs, then not only will it be a U-turn on policy but also a clear indication that any proposed M&A/Sale will in effect serve the purpose of helping these new companies to get windfall gains from sale of their licenses / promoters' equity.

Moreover, this will not only lead to reduction in the level of competition but will eventually increase prices, Several CEOs are already on record, saying that the prices will increase in the future. Further, with India looking to reach 1 b subscriber mark by 2014, this market can prima-facie support and be viable for at least 10 - 12 operators with 80 - 120 million subscribers each. Unlike other countries, India can easily afford to have 10 plus operators in every service area, and in fact, needs those many operators to promote robust competition, infrastructure investment etc. at least for the next 3 - 5 years.

I believe that in order to maintain consistency with the objectives of increased competition, consumer benefit and creating a healthy, transparent consolidation roadmap for the sector, the TRAI needs to do the following :

**a. Make Real consumer benefit the core principle of all its recommendations**

The TRAI must ensure that that no part of their recommendations impact adversely (even minimally) the basic principle of Consumer benefit and protection of consumer interest. The Regulator's role is NOT to maximize investor and promoter returns. TRAI must intervene in cases of tariff cartelization and not rely on forbearance as an excuse to abrogate its role in tariff reduction.

**b. Ensure that Consolidations, if permitted, still leave at least 9 to 10 operators per market**

Given the size of the Indian market (800 million - 1 billion by 2015), each of the 10 operators will have significant size and scale of almost 100 million each which, would put all 10 amongst the largest in the world.

**c. Windfall taxation on all sale of new licenses/spectrum**

If any of the new licensees are going to sell their licenses, the profits on the sale must be taxed at a special tax rate - a kind of windfall tax. Since these licenses were obtained cheaply and without auctions for spectrum (and therefore foregoing potential-revenue to Government) in the name of consumer interest, if some operator was going to exit the business without rolling out infrastructure and creating a substantial business, then it is only appropriate that the profits accruing should be to the account of the Government and people of India and not the operator/investor alone. More importantly, vast majority of this profit should accrue to the Exchequer in case of an M&A from the seller. Also, the rules and the percentage on how the windfall gains will be divided should be clearly articulated beforehand and take care of any attempt circumvent this by making payments using non-traditional means etc.

This is an extremely serious issue and the only way M&As can be justified to bring 14 operators down to 9 or 10 will be by making sure that the Exchequer and the people of India, and not companies, benefit. Please take into consideration that the Apex Court has ruled that spectrum is a scarce resource and belongs to the people, and so clearly the proceeds from its sale must be received by the State and redistributed for appropriate social and infrastructure investments.

In summary, the issues are as follows

- The TRAI recommendations of 28th August, 2007 - “no cap” on the number of Access Service Providers in a service area - was the basis of justifying government policy, announced by a press release on 19th October, 2007, and implemented through a press release on 10th January, 2008.
- The basis and rationale for removal of cap was to introduce more competition and reduce prices by increasing the number of operators. This was the subject matter of challenge and is, in fact, still pending in the Supreme Court (and I believe the First Come First Served issue is pending in the Delhi High Court). An enquiry is also ongoing by the CVC. The present Consultation Paper seeks to link spectrum management with change in M&A guidelines. This would provide an escape route to new licensees. The objectives of the Authority’s earlier recommendations and consequent government policy are yet to be realized.
- The tone, direction and philosophy of the current Consultation Paper (seeking changes), in fact, runs contrary to the earlier recommendations of the Authority and will be self defeating/self contradictory to the recommendations of August 2007 and multiple press releases of the government.
- The genesis of the consultation process, therefore, is fundamentally flawed and is fraught with serious consequences for a proper and orderly growth of the Telecom sector, apart from offering a financial bonanza to new companies who have failed to roll out services, thus rewarding the defaulters and hitting the government/consumer twice over. First, because they get .UAS license/

spectrum cheap, and second, they can sell without rolling out (which itself is contrary to the recommendations of TRAI, section 5.27 (iv) of August 2009).

- The Authority must therefore first examine whether its earlier recommendations have been complied and its beneficiaries have discharged their obligations to delink management (which is vital and necessary) from any change in the M&A guidelines. At any rate, the terms and conditions of license relating to transfer of license and merger and acquisition including lock-in provisions, offer a necessary safeguard in the present scenario.
- The Authority would be well advised to first ensure that these terms and conditions are being scrupulously adhered to and followed before embarking on any fresh consultation, The issue of consolidation should be considered only after the above exercise is completed and should await the final outcome of the Supreme Court (in the challenge to the 2G allocation process since it has a direct bearing on the new consultation process).
- The Consultation Paper therefore defies logic and is legally flawed as it would enable defaulting licensees (new service providers) from wriggling out of their contractual obligations which is not in public interest.

To conclude, any fears of duplication of infrastructure can be addressed through policies of infrastructure and spectrum sharing. But any attempt to force consolidation in the market will be a reversal of policy.

I urge you to kindly look into the matter.

Thanking you,

Very truly yours,  
Rajeev Chandrasekhar

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

# 13

## Letter to the Minister of State, Communications & IT on Losses Faced by BSNL

10th December, 2009

Dear Sachin,

I write this letter to draw your attention to the deteriorating financial situation and state of affairs of Bharat Sanchar Nigam Limited (BSNL), a navaratna PSU. Through this letter, I also seek your immediate intervention to save this company from collapse and causing losses to taxpayers and citizens of this country — the owners of this company. Further, this financial performance also reduces the value of the company, which in turn, is a loss to the country, exchequer and people of the country.

BSNL has, of late, been reeling under huge operational losses and is battling with falling revenues, profits and market share. This is

indeed surprising because there is hardly any incumbent Telecom company of this size anywhere in the world that is beset with losses.

At a time when the telecom sector is growing and many private Telecom companies post significant revenue and profit growths, BSNL has shown a sharp decline in profitability over the last two years. In the last three years, BSNL has grown slower than the industry average in the mobile segment and has lost market share, From a profit from operations to the tune of Rs.4,231 crores in 2005-06, it has reportedly incurred losses worth Rs.4,086 crores in 2008-09. The current trend points to BSNL becoming yet another PSU being driven into the ground and into a state of financial incapacity in the coming months and years.

While comparisons with Air-India may seem appropriate, unlike Air-India which is caught in a vicious downturn in the Aviation sector, BSNL is part of a robustly growing Telecom sector, and therefore, the causes of BSNL's problems are more of management and interference by the DoT. It is widely known and understood that part of the BSNL's problems are its inability to respond with speed on issues of Capital expenditure and purchasing and to do so without interference by the Ministry. This has the net effect of delaying network rollout and other expansion — that is critical in a competitive market and to retain the customers,

I would urge the Government to intervene now before it is too late - the steps and measures being taken at Air India like revamping management, boards etc. should be implemented in BSNL now!

May I suggest the following steps be taken immediately to curb any further decline of this prestigious national corporation and prevent it from going the Air India way:

1. Revamp the entire management structure of BSNL, including introducing a new professional Chief Operating Officer through a National/International search.

2. Revamp the Board of BSNL and bring in considerable talent and expertise on the board.
3. Remove DoT's approval requirements for capital expenditure and empower the BSNL Board to decide all matters of purchase and procurement.

There are many Telecom companies around the world that were/are Government owned and have grown to be competitive and best in class like Telecom Malaysia, Singapore Telecom, British Telecom, Telecom Norway etc . There is no reason why a country like ours that prides itself as a powerhouse in Technology cannot do the same with BSNL.

I hope and trust that you will take note of this letter and request. My best wishes to you.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Sachin Pilot

Hon'ble Minister of State for Communications & IT,

3, Safdarjung Road,

New Delhi.

14

## Letter to the Chairman, TRAI on Consumer Interest

17th December, 2009

Dear Dr. Sarma,

This is with regard to a recent article in Financial Express dated 15th December 2009, titled “TRAI moves to curb telecom tariff wars” – attached here for your ready reference.

At the outset, I am deeply concerned that the TRAI is intervening in a sector, at a time when the market forces are finally showing signs of working. If anything, the TRAI should have intervened years ago when it was clear that the voice and SMS tariffs offered by operators were way above the actual costs of providing such services. E.g. the TRAI should have proactively mandated a pay per second regime and lower tariffs for SMS (closer to the cost)

rather than waited for operators to do so. Now that competition is at work and companies are making enlightened choices about making tariff offers which, for the first time, reflect true costs and a vibrant market, it would be highly ill advised for the TRAI to intervene with a view to stopping further reduction in tariffs – both voice and SMS. In fact, any move by TRAI except to further reduce tariffs closer to cost would be anti-consumer and patently against its stated mandate and objectives as outlined in the TRAI Act 1997 (24 of 1997) and subsequent and well-thought out amendments carried out in 1999.

Here are some specific arguments that the TRAI must consider in view of its recent statements to intervene in a matter relating to tariffs, citing ‘long term health of telecom sector and to ensure that it remains attractive to investors’:

**1. The definition of predatory pricing is being distorted:**

The allegations made by certain private operators of predatory pricing are obviously false and misleading. To any informed observer, it is obvious that there are no predatory price offerings in the Indian telecom market. Contrary to the demands of well entrenched incumbent mobile operators for a review of tariffs (which may have presumably resulted in TRAI’s public statement to intervene), it should be clearly understood that India does not have any predatory pricing where telecom tariffs are concerned. This is because the economics and the market share of the sector prevent such an occurrence. For predatory pricing to occur, there has to be ‘abuse of dominant position’. That, in turn, requires an enterprise with a dominant position offering such tariffs. The fact is that the Indian market may have well entrenched operators but hardly anyone would qualify as a dominant operator, and consequently, there is no evidence

that a dominant position can be abused for predatory pricing. Predatory pricing doesn't mean selling services below cost with a view to reduce competition or eliminate competitors, unless it is proven that the enterprise offering such prices is abusing its dominant position. That is not the case in India. The market shares of the various telecom operators in India are attached herewith (Please see Annexure) for your reference and a simple glance will tell you that not one single operator at this time can be accused of having sufficient power in the market to be able to abuse that position.

Moreover, it is also clear that those who have led the innovative tariff offerings lag in the list of rankings where market share is concerned. Tatas, Reliance, Unitech Wireless, MNS and MTNL are the companies who have made the most aggressive tariff offerings. Not one of them even enjoys a premier ranking in terms of market share, leave alone signs of dominance. The charge relating to abuse of market power due to dominance is pure humbug and needs to be dismissed with the contempt that it deserves. You may also refer to the Competition Act 2002, Chapter 2, Section 4 (2) (a) (ii) to get a clear view of how predatory pricing is defined under Indian law by the Parliament.

## **2. Finally, Market Forces are at work and need TRAI's Further Support:**

The recent pay per second offers by companies which have been further improved by several smaller operators and new entrants is a clear sign of the market at work. In the SMS tariffs market, the pricing continues to be way above costs. By TRAI's own admission in 1996, it had determined that the cost of terminating an SMS is a fraction of a single paise. Even

though one company has made an offer of a single paise per SMS, the TRAI needs to carefully view the market. The only intervention TRAI can make is to reduce / announce a cap for SMSs. There is no scope whatsoever to either raise tariffs or halt competitive tariff offerings which are resulting in lower prices for the consumers. In that sense, TRAI's intervention should be exactly the reverse of what it has stated in the article attached here, i.e. to lower tariffs further or create an environment which will allow for the market to reflect true costs in the tariffs.

### **3. Consumer Interest is key to TRAI's existence:**

Please refer to my letters dated 06 November, 2009 and 12th November, 2009 where I had made a point that TRAI must ensure the basic principle of Consumer benefit and protection of consumer interest. A read of the TRAI Act's Statement of Object and Reasons makes it explicitly clear that the very existence of the TRAI is to ensure fair competition and protect consumer interest. While an orderly growth of the telecom sector is TRAI's mandate, it neither precedes consumer interest nor does it mean that the TRAI has to ensure ROIs or financial viability of operators.

Moreover, the issue about industry's financial health is one that results from TRAI's own regulations and orders. TRAI has to ensure that it does not force any unreasonable orders that adversely impact viability in a manner that could become irreversible. It is hardly TRAI's mandate to review what operators will do in the market place based on years of experience and their business case / marketing strategy to access market share. As long as the operator's actions are not anti-competitive, TRAI cannot be seen to intervene to improve operators' viability in a free market.

#### **4. Operators Know their Business / Viability well:**

The operators who are leading competitive tariff offerings, including Tatas, Reliance, Unitech / Telenor and MNS, are some of India's / the world's largest operators which will rank in the top 15 globally. It can hardly be TRAI's case that these operators who are investing thousands of crores in their businesses, including from international sources / expert foreign partners, do not know their business case and tariff strategies. On the contrary, the TRAI might have to ask itself the question on the expertise that it believes it has in reviewing business cases of such experienced operators. To the best of the public knowledge there are hardly any resources within the TRAI which have run businesses at this level of have any experience of building / commenting on business cases of the size and scale that these companies are implementing. In reality, these companies are sufficiently large, enlightened, and extremely well advised to know exactly what they are doing with tariff offerings. TRAI is neither qualified nor has the mandate to stop reduction in tariffs unless it can investigate and economically prove abuse of market power by those who are making such offers.

#### **5. Incumbents Cannot Complain About New Entrants' Pricing Strategy:**

The fact that charges of predatory pricing are being made by incumbent operators who currently enjoy the largest market share is the most unusual phenomenon in competition economics. If anything, it would be a new entrant making such a charge, and even that would be difficult to prove given the market shares described above. In fact, the manner in which the market share is divided in India makes it impossible for even

the largest operator (in terms of market share) to be accused of abusing market power through predatory pricing. It is worthwhile pointing out that even if the new entrants decided to offer their services nearly free, they cannot be accused of predatory pricing because they simply do not have any market power.

#### **6. Telecom Minister and TRAI at Variance with Each Other:**

TRAI's recent stance reverses everything that the Telecom Minister Raja has promised in the Parliament and in numerous press conferences – the need for more competition to reduce tariffs. In fact, this has been his primary justification for giving away additional 120 licenses in January 2008. Regrettably, it now seems there is an attempt to not only place a cap on the number of operators (consultation underway), but also seemingly halt further tariff reductions, which have been propelled by competitive and market forces.

These public statements are extremely worrying and I would request the TRAI to carefully review its stance in public, especially with regards to limiting competition and halting tariff reductions. It should certainly not give any indication of the fact that it is preparing to reduce the current levels of competition by placing caps, collapsing M&A restrictions and simultaneously fighting against market driven tariff reductions.

In view of the above, it is clear that unless very specific charges of predatory pricing arising out of abuse of dominant position can be proven, there is no scope whatsoever for an intervention by TRAI to stop the further reduction of tariffs. This act would certainly be anti-consumer and in addition, be clearly contradicting the government's stated policy of increasing competition and delivering sustainable consumer benefit. This would mark yet

another instance of the TRAI's actions seemingly contradicting public policy only to serve the interests of private operators and investors – a perception which I am sure you would agree would require to be questioned and challenged.

Very truly yours,  
Rajeev Chandrasekhar

Dr. J. S. Sarma,  
Chairman,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg,  
Old Minto Road,  
New Delhi-110 002.

# 15

## Letter to the Prime Minister on Investigation of 2G Spectrum Scam

11th May, 2010

Respected Prime Minister:

As you are aware, there has been much discussion on the irregularities in the Telecom sector – and I have drawn your attention to this on numerous occasions. I understand from news reports that the Government is finally contemplating some action now albeit belatedly. – its time now for some real response on part of the Government. i.e.

- a) To identify the culprits and wrongdoers and to punish them and
- b) to recover the money swindled from the Government

Scams like this cannot simply be the subject of Parliament debates

and disruptions and fodder for breaking news in media – Scams are visible signs of dysfunction and white collar crime; The focus now must be to treat this as a crime, identifying the culprits and ensuring that our system of checks and balances prosecutes them under the law. To make the rhetoric coming out of Delhi of being an Economic superpower a reality – we need to act like one and not a banana republic.

The background to this crime is pretty simple to understand. With the current set of 3G Cellular licenses tenders yielding the Government over Rs. 10,000 Crores each (and the bidding isn't done yet) amidst a general economic environment that isn't really still the best (ie if International economy was booming as in 2007 the proceeds and value would've been higher) – the big question that now needs to be asked is this – How did the 2G UASL (Cellular) licenses allotted from 2004 to 2007 onwards get the Government only Rs. 1500 Crores each? Is it because these licenses were not allotted through tender but through a more dubious route? The answer to that question is an obvious and resounding YES.

What is the loss to the Government? Assuming that these 2G licenses were to be valued at marginally less than 2G licenses at Rs. 10000 Crores each (there is no evidence pointing to a need to assume 2G as cheaper than 3G licenses and using the secondary transactions of Unitech and Swan as benchmarks), the loss to the Government is in the region of Rs. 50,000 Crores – That's a realistic estimate and doesn't include the spectrum given as follow-on spectrum to existing Telecom companies. This loss to the government is a direct gain to a handful of corporate. This is a swindle by any definition. That is why it's necessary to start referring to this as a crime and not a scam anymore. The word scam has been overused and increasingly sounds trivial and flippant.

The crime is clear – swindling the Government of Rs. 25,000 Crores or more. Now the question is who are the perpetrators of this

great swindle? The roles of all the people involved in this massive swindle including the roles of the the Independent Regulators TRAI and bureaucrats, must be completely investigated. While we are almost reconciled to the bureaucracy being party to this, the Independent regulators TRAI were created by a statute of Parliament precisely to create transparency in the Telecom sector and to protect the sector and all its participants from Political shenanigans that is almost natural to any lucrative contracting and licensing process in our system.

The current and previous Telecom ministers have repeatedly quoted the TRAI's recommendation as justifying his actions. In many many cases he has flouted the TRAI recommendations, but in this case he seems to have relied on the TRAI's recommendations. The investigation must examine the roles of the Regulator and Bureaucracies in this as well the roles of various Ministers.

If this government is serious about this being a crime then two things need to be done

- a) The swindled money must be recovered from the beneficiaries of the swindle. The significant monetary gains that have accrued to these few corporates must be recovered either through additional fees /levies or taxes.
- b) An investigation launched to identify ALL the culprits and process of law being launched on them.

This investigation will also be a much need review about the institution of the Independent Regulators. The practise of stuffing them with retired or serving bureaucrats has made them a second bureaucracy, with little or no will to establish and affirm their independence from politics And when the Regulator becomes the willing participant or silent observer to the fraud , then there is a very very serious problem. Its akin to the Police or a judge is party or silent observer to a crime, then the punishment that needs to be

meted out needs to be exemplary, to set an example and to send a message to the rest of the Regulators.

That is why a thorough investigation into this entire licensing crime and the role of the Regulator is justified and the Government must recover this swindled money and have perpetrators identified and brought to book.

Yours Sincerely

Rajeev Chandrasekhar

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

16

## Letter to the Minister of Communications and IT on Hoarding of Spectrum

29th July, 2010

Dear Thiru Raja,

This is further to your letter dated 06th July, 2010, in response to my letter dated 03rd March, 2010.

As is obvious from your response, there is a large amount of spectrum lying with private companies, specifically Internet Service Providers (ISPs), which is clearly being underutilized –since almost 554 MHz of spectrum is being used to serve less than 7-8 million wireless Internet subscribers.

Given that you and the Government of India have taken a policy decision on (a) preventing hoarding of spectrum, and (b) auctioning spectrum, I believe it would be appropriate Government policy

to take back these large amounts of spectrum from companies that are underutilizing/not utilizing/hoarding this spectrum, and auction the same with stricter rollout and investment criteria this time around, so that the twin policy objectives of subscriber addition as well as revenue to the Government, are achieved.

I look forward to your confirmation of the action taken in this regard.

Yours Sincerely,

Rajeev Chandrasekhar

Thiru A. Raja,

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

17

## Letter to the Chairperson on Standing Committee IT on Core Challenges of the Telecom Sector

20th October, 2010

Dear Rao Inderjit Singh ji,

**Sub.: Subjects for Standing Committee on Information  
Technology 2010-11**

There are many critical and structural issues facing the IT, Telecom and I&B sector – that have to do with roles and performance of Regulatory Institutions, Government Policy and the actual true performance of the sector. The Parliamentary Standing committee on IT has a unique opportunity to steer the Government towards ‘real’ solutions to these challenges and problems, and must do so under your Chairmanship.

I draw your attention to the following important facts :

- a) In the recently published report by the International Telecom Union (ITU), India's development index in ICT (Information and Communication Technologies) Development Index (IDI) has actually slipped two positions. In Asia and Pacific region, India has come down from a rank of 20 amongst 24 countries, to 22 between 2002 and 2008. During the same period, China's position has improved by three slots, moving from 15 to 12 and Pakistan has also improved by three positions, from 27 to 24. This data has been ratified by TRAI in its Consultation Paper on National Broadband dated 10 June, 2010.

This shows that in spite of net additions of mobile subscribers, India is doing poorly vis-à-vis developing economies, even in the Asia Pacific. This needs a serious review and understanding as the ICT Development Index represents a more holistic picture of inclusive growth, rather than just a sub-sector picture emphasizing on mobile subscribers increase.

- b) The Hon'ble Prime Minister's recent statement that the performance of Independent Regulators has not been satisfactory – and that being one of the causes of the controversies in the issue of spectrum and license allocation.
- c) The recent press statements by major Multinational investors in domestic and international media, openly criticizing India's regulatory environment. This has a deep impact on foreign investment, not just in telecom, but in other infrastructure areas as well. It seems specific complaints have been filed with the PMO in this regard. This matter needs to be examined.
- d) There are many controversies relation to spectrum and its allocation. Based on the 3G spectrum allocation valuations, the Government needs to specify a policy for valuing 2G spectrum, including the price to be charged for spectrum

already allocated. Additionally, a clear policy to revert the hundreds of MHz of unutilized or underutilized spectrum back to the government and its allocations through an open, transparent auction process – similar to the one adopted for 3G – needs to be initiated with immediate effect.

- e) 2010 was supposed to be the year of broadband. However, not only has India missed its 20 million broadband penetration target by 50%, but in fact, no policy measure has been announced even as the calendar year comes to an end. The issue of a proactive government policy / investments to foster broadband growth needs immediate attention.

Based on the above, I would suggest that the following new subjects be considered for examination:

- 1. Current Status of Indian Telecom development, growth and policy – including the status of Cellular, Broadband, Rural Telephony – and measures to accelerate penetration and availability of all three segments.**
- 2. Review of functioning, performance and accountability of the Independent Regulator and gaps in the TRAI Act.**

These two subjects address the core challenges of Telecom sector. The Standing Committee would be doing a tremendous service in examining these.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Rao Inderjit Singh,  
Member of Parliament and  
Chairman – Standing Committee on Information Technology,  
6, Lodhi Estate,  
New Delhi-110 003.

Copy: Members of Standing Committee on Information Technology

18

## Letter to the Prime Minister on the 2G Spectrum Scam

26th November 2010

Respected Prime Minister,

**Sub. : Huge 2G Spectrum Losses – Need for Urgent Government  
Action**

This is in continuation to my various letters addressed to you on the subject and particularly, the letter written to you dated 11 May 2010 (copy enclosed herewith).

You will agree that Governments and Parliaments have a moral duty to act in Public Interest, and for any Government that lives by this belief - as I am sure your Government does - it must be its

priority to identify the wrongdoers and recover the monies lost as a consequence of the cheap sale of spectrum.

There are many ways of recovering moneys from the different types of operators (new and old) relating to spectrum (new spectrum and additional spectrum). Some of the options available to the

Government are :

- a. Windfall taxes for those who have gained by resale of their cheap licenses.
- b. Cancellation of licenses and re-auction of spectrum for illegal licenses. An alternate to cancellation and re-auction is to give the licensees the opportunity to pay up the balance license fees (calculated as the difference between the 3G license fees and what they have paid for 2G).
- c. Existing operators to pay for extra spectrum at 3G benchmark rates or surrender them and buy them back through a re-auction of spectrum.

If the Government is serious about its obligations to public interest, then they would pursue the above instead of relying on arguments that are already being made expectedly to sweep this under the carpet.

The two arguments that are being used, i.e., investor interest and consumer interest, should not be allowed to come in the way of the action to achieve the twin objectives outlined above.

I would like to make the following points for your consideration:

#### **I. Argument of Investor Interest**

The argument of investor interest should not be used and has no place in whatever action is decided by the Government.

- (a) Telecom investors the world over and in India understand the need to currently pay market prices for spectrum – in a market

like India which has little or no market or sectoral risk, and is poised to become one of the largest in the world. Those investors that do not understand the need to pay the market price for spectrum must be asked to learn that it is the case. The Government, and indeed the taxpayer, is not obliged to provide backstops for investors who take investment decisions based on illegal licenses and spectrum giveaways. Maybe there is an argument to improve the quality of investors we are attracting to our country and a change in the perception that robber baron investors are the ones that succeed in India.

- (b) It is clear, according to the CAG report, that several of these companies have made false representations to acquire spectrum fraudulently. Clearly, those who made such false representations cannot be spared.
- (c) The CAG has also pointed out that many existing Operators also have excess spectrum. As you are aware, these are all highly profitable companies with significant market capitalizations and value. Paying for this extra spectrum will be insignificant for their economics and true investors understand the need to pay market value for Spectrum.
- (d) Moreover, any sector will do well to improve the quality of investors – especially from amongst those who have never been interested in investments. Majority of these new Telecom licensee companies had bought the license to sell it at a profitable value. Their interest is of no consequence since they would sell in any event. On the other hand, it is the buyer / operator whose interest is paramount, and under the circumstances, a cleaning up of the system and removal of such unwanted and undesirable elements would only add to the investor confidence – both Indian and global.

- (e) Also, since vast majority of these companies have not made any significant rollouts, they have no case for arguing that their licenses are kept intact. Apart from TRAI recommendations based on lack of rollout, there is clear evidence that several companies have merely met the rollout obligations on paper – thus fooling the Government with a view to sell the licenses on the completion of three years, as per the current merger guidelines. Most companies will reach that stage by January / February 2011.
- (f) Since the DoT has already circumvented TRAI's explicit recommendations that no M&As should take place till rollout obligations were met, by dropping the ban on acquisitions and modifying the merger guidelines to three years from date of license, rather than rollout – it is clear that these companies have, in collusion with officials in the Department, set out a dangerous plan which the Government must prevent with immediate effect.

## II. Argument of Consumer Interest

The argument of consumer interest is, in any event, a non-issue for multiple reasons including :

- (a) These companies hardly have any consumers in their circles. Their combined market share is in a lower single digit percentage.
- (b) Each of these circles has multiple operators, and therefore, consumers can easily switch between operators and will have plenty of choice even if all the fraudulently acquired licenses / spectrum are withdrawn.
- (c) With Mobile Number Portability on the anvil, every single subscriber with such dubious operators can simply change their operator with their current number intact, cost of such migration can be borne by the licensee.

So in conclusion, there is absolutely no case made out either for investor interest or consumer interest that will come in the way of the action that Government must take to recover the moneys and penalize the wrongdoers in this Spectrum Scam.

I hope that this communication will help forewarn the government of a second resultant scam, unless immediate steps are taken.

Yours Sincerely,

Rajeev Chandrasekhar

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

## Open Letter to Ratan Tata

8th December, 2010

Dear Mr. Tata,

It is with considerable concern and some confusion that I have watched your recent Television Interviews and press statements following the 2G scam and the exposure of the infamous Nira Radia Tapes.

I, as countless other Indians, have held the house of Tatas in great esteem and respect – have seen them as being different from so many other Indian corporates that play by a different set of rules and values. I, along with many Indians, consider JRD Tata as one of the true builders of modern India.

So, it is with considerable sadness and dismay that I am constrained to write this open letter to you. I trust you will not consider this as personal, since my letter has to do with issues of principle and conduct that are disturbing.

In your recent press interactions, you have made the point that the 2G scam needs to be investigated and have made several sub-points, including:

1. Out-of-turn allocation of spectrum;
2. Hoarding of spectrum by incumbent operators; and
3. Flip-flop of Policy

Let me wholeheartedly agree with you. Many in media and public life including me, have been saying this for several years now, so your belated realization of these critical issues is very welcome.

I sympathize with your concern about public-policy making in our country sometimes resembling that of a Banana Republic. But the forces behind this are helped considerably by the fact that people with power and influence remain silent and passive spectators to this. So many including I would have welcomed your intervention much earlier, as in the case of the alleged bribing offer 15 years ago, of Rs.15 Crores that you referred to only recently. You will agree that speaking out against corruption is most effective when it is happening and not decades or years later. Because then it becomes an intellectual post mortem, and not active resistance.

Since I was previously a telecom entrepreneur, there will be a temptation for those that advise you, to attribute agenda and motivations to this letter of mine. But I assure you that there are none. I write because I believe that there is a need to join you in this debate and necessarily bring to your attention the contradictions between your stand and the position of the Tata Telecom companies, that you may be unaware of, given your senior position in your organization.

## 1. Out-of-Turn Allocation of Spectrum

According to the CAG Report, the potential loss to the Exchequer on account of dual technology licenses at 3G rates is Rs. 37,154 crores. By virtue of dual technology - according to the CAG – your company has caused a loss to the Exchequer to the tune of approx. Rs. 19074.8 crores.

But it is not just this. It is a fact that the Tata Group is a beneficiary of out-of-turn spectrum. In fact, one of the biggest of them all.

It is a fact admitted by the Government on affidavit that 575 applications were received for 2G spectrum by 1st October, 2007. Using an illegal and arbitrary cutoff date, Mr. Raja processed only 122 applications received till 25th September, 2007. 110 were rejected and 343 applications were put in abeyance. Given the fact that there is no 2G spectrum available, these applications received till 1st October, 2007 (within the date represented by the Government) have now been put in the dustbin. In fact, the TRAI had already recommended on 11th May 2010 that no more UASL license with bundled spectrum can be given. This means that these 343 applications will never be processed and will never see spectrum.

**In the meantime, 19 days after these 575 applications were received, the dual technology policy was announced through a press release by Mr. Raja. The Tatas put in their dual technology applications around 22 October. So, in effect, their application went in three weeks after the 575 2G applications were received.**

Today, Tatas already have GSM spectrum allocated and GSM service launched in most of the circles – But the 343 applications submitted three weeks before the Tata Group have neither been processed nor have any chance of ever being processed – so much for First Come, First Served.

You will accept that this seems to be a case of arriving late, forming a new queue, jumping the priority and accusing others of getting priority on spectrum allocation and meets your point of out-of-turn allocation of spectrum. I am sure the 373 applicants who were rejected for no fault of theirs, will agree - while the Tata Group has sold its equity for billions of dollars to NTT Docomo based on its out-of-turn GSM allocation on dual technology policy.

**In my humble opinion, evidence suggests that the Tatas have benefited from out-of-turn spectrum allocation. The dispute between Tatas and Reliance Comm inter se on the allocation sequence cannot dilute the primary fact of bypassing other early applicants to this spectrum.**

## **2. Hoarding of spectrum by incumbent operators**

This is an important point you have raised. I concur with you that there is a need for Telcos, old or new, to pay market rates for spectrum. I also completely agree that the subscriber linked criteria allocation of spectrum is flawed and is encouraging fudging and false subscriber numbers. But I bring to your attention, that this is existing Government policy – flawed or unfortunate as it may be, and the only solution to this is to replace this with a new policy.

If by hoarding, you mean having more spectrum than number of subscribers that can be serviced – then please note that Tata holds spectrum both for GSM and CDMA. Based on the spectrum that Tata has, its average efficiency is perhaps the lowest amongst the large operators. Equally, that the CDMA spectrum that Tata holds is 3-4 times more efficient than the GSM operators – by its own admission, which I recall during the WLL scam. Moreover, Tata has received CDMA and GSM spectrum at 2001 rates. So even if the hoarding charge was to apply, it would also apply to the Tatas for having maximum cumulative efficiency (CDMA and GSM) to serve the least number of subscribers amongst the incumbents.

Again, I fully support the need to price spectrum beyond 6.2 MHz with incumbent operators at market rates. **But the charge of hoarding that you make applies equally to Tata Tele – whether it is total spectrum held, or subscribers served based on that spectrum, or price paid to acquire such spectrum, vis-à-vis the cumulative efficiency of CDMA and GSM.**

### **3. Flip-flop of Policy**

In your interview, you have pointed out that a lot of the current dysfunctionality in Telecom has arisen from Policy changes and flip-flops. You would recall that one of the most horrific distortions of Policy was the infamous WLL scam in 2001– where Telecom companies with Fixed service licenses managed to muscle their way into cellular with active support of Policy makers of that time – and not to forget that it was all done in the name of benefit to the common man! You will further recall that in 2003, a convenient set of recommendations by the TRAI and Government allowed this illegality to be regularized through the UASL policy, opening the gates to unprecedented and unique (and unheard of) First Come, First Served form of licensing - bypassing tenders (a form of auction) that were the norm for obtaining cellular licenses till then.

**Your company was the beneficiary of this ‘policy flip-flop’ and you chose to accept the benefits of this flip-flop at that time - despite this blatant violation and distortion. I am personally aware because I led the fight against it and remember being immensely disappointed at the Tata Group’s remarkably self-serving position. Further, in one of the most mysterious and indefensible acts, Tata Group took on board as a consultant, the very individual, who as the Chairman of TRAI was the architect of this UASL and other shames.**

So in summary and respectfully, your positions in the recent interviews seem to be in stark contrast with the actual conduct,

performance and position of Tatas' Telecom companies in each of the three points you have raised.

There are several other questions that deserve answers, including why a group like Tata with its sterling character and reputation requires outside lobbyists to lobby on their behalf! That, in itself, is enough to shatter one's confidence!

I reiterate that this letter is not meant to tarnish or disrespect or distract from the many achievements of the Tata Group including the acquisition of International Brands like Land Rover, Jaguar and its increasingly global footprint. But I believe, on behalf of many erstwhile supporters of the Tata group, that it is my duty to seek and spotlight the truth. The Tata Group has a responsibility, and indeed, owes it to its many admirers in India to actually live up to its image of ethical conduct, otherwise your statements and actions will seem to be hypocrisy – something that's already available in plenty in our public and corporate life.

Respectfully,

Rajeev Chandrasekhar

## Letter to the Finance Minister on Appointment of RBI Directors

8th December, 2010

Dear Finance Minister,

This is with reference to the response from Shri Namo Narain Meena, Hon'ble Minister of State in the Ministry of Finance, to my Unstarred Question No. 2193 of 30 November, 2010 relating to "Norms for Appointment of RBI Directors". A copy of the same is enclosed for your ready reference.

I believe that there is a need for a blanket ban on any borrower or creditor to the Indian banking system, being appointed to the Board of the Reserve Bank of India (RBI) – given the RBI's role as a regulator of Indian Banks, this represents a potential and serious conflict of interest which is extremely difficult to regulate.

I urge you to look into the matter at the earliest.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Pranab Mukherjee,

Hon'ble Minister of Finance,

Government of India,

New Delhi.

21

## Letter to the Chairman, Standing Committee IT on 2G Spectrum Scam

21st December, 2010

Dear Rao Inderjit Singh Ji,

As you are aware, the recent developments in the 2G spectrum scam have been engaging the attention of the whole country.

While the PAC is seized of the CAG Report, that is only a part of the overall issue. There are serious issues that relate directly and specifically to the role and performance of the Administrative Ministry, Independent Regulator and the larger issue of Telecom policy making.

Given the enormity of the issue and the fact that telecom policy is at the core of the matter, Parliamentary Oversight can only be provided through the Parliamentary Standing Committee on

Information Technology – which should not be seen as a mute spectator to policy distortions.

I, therefore, believe that it would be appropriate for the Standing Committee on Information Technology to also have hearings and depositions on the issue, study the matter and come up with its own recommendations on the required changes in the telecom sector - to prevent such scams in the future.

I request you to do the needful on the matter at the earliest.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Rao Inderjit Singh,

Member of Parliament and

Chairman – Standing Committee on Information Technology,

6, Lodhi Estate,

New Delhi-110 003.

Copy: Members of Standing Committee on Information Technology

## Letter to the CBI Director on 2G Scam Investigations

22nd December, 2010

Dear Shri A.P. Singh,

This is in furtherance of the judgment of the Hon'ble Supreme Court of India (arising out of SLP (C) No. 24873 of 2010) dated 16th December, 2010 in the matter of *CPIL & others* versus *Union of India & others*, delivered by Justice G. S. Singhvi and Justice Asok Kumar Ganguly.

**Summary and Relevance to the Hon'ble Supreme Court's Directions (specifically direction (iii))**

Directly flowing from Direction (iii) of the Hon'ble Supreme Court's Judgment to register FIRs and in the context of alleged irregularities committed in the grant of licenses from 2001 to

2006-07, you are now required to register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and the corresponding gains to licensees/service providers.

The telecom sector has seen many instances of scams over last several years. These 'scams' have clearly and obviously caused a loss to the exchequer and therefore the victims of these crimes are the people of India. These scams are also only possible because of the active involvement of people within Government and Government institutions.

Since the issues and evidence of wrong doing in this case are complex and can easily confuse even the most experienced Telecom expert, I am taking the liberty of submitting the following, with regards to the actions of the former TRAI Chairman, Mr. Pradip Baijal, during his tenure at TRAI between 2003 and 2006.

1. Mr. Baijal acted in the interest of private companies in violation of the TRAI Act (Section 11) to illegally allow cellular mobile licenses with scarce startup spectrum from 2003 onwards, under the garb of Unified Access Service License (UASL), by subverting an open, transparent auction process adopted by governments in 1995 and 2001. In doing so, he also violated specific provisions of the TRAI Act and prevailing Telecom Policy, NTP 1999.
2. 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.
3. 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 direct beneficiaries of the above Illegal actions of Mr. Baijal.

For clarification, the words tender and auction are used to mean the same thing ie a bidding process and a transparent auction process could mean for license (with spectrum attached) or for spectrum independently.

## 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 approximately 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 approximately 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***

*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;*
- 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)

#### **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 27th Oct 2003 :

*“Section 7.18*

*7.18 The 3rd 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 3rd 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. “*

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 5th and 6th 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 4th 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 5th and 6th mobile operator should come in through a multi stage bidding process of the kind adopted in 2001 for the 4th mobile operator.

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

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

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 4th cellular operator. BSOs would have to pay the difference between their entry fee and the 4th 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.

#### **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.

## 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 (5th and 6th) 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. Bajal'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?
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 5th and 6th operators, he recommended multi stage bidding of the kind adopted for the 4th cellular operator, but for UASL (which is nothing but cellular mobile licenses, with fixed line thrown in free), a fixed entry fee of 4th 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 5th and 6th 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. Bajjal 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. Bajjal still believed that the price should be the same not only for migrating operators (approved by GoM and the Union Cabinet), but also newentrants 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. Bajjal knew fully well that the exact same spectrum (quantity, quality, efficiency) would be given along with UASL licenses, as was given for the 4th cellular mobile ?
12. Who are the big gainers of this illegal clarification provided by Mr. Bajjal on 14 November, 2003 and repeated on 19 November, 2003?
13. What was Mr. Bajjal’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.

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

Yours Sincerely,

Rajeev Chandrasekhar

Shri A P Singh,

Director,

Central Bureau of Investigation (CBI),

New Delhi.

## Letter to the CVC on the 2G Scam Investigations

22nd 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, 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 approximately 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 approximately 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 approximately 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;*
  - 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)

## **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 27th Oct 2003 :

*“Section 7.18*

*7.18 The 3rd 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 3rd 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. “*

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 5th and 6th 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 4th 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 5th and 6th mobile operator should come in through a multi stage bidding process of the kind adopted in 2001 for the 4th mobile operator.

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

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

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

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- 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.

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**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?
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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.

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

Shri P J Thomas,  
Central Vigilance Commissioner,  
Central Vigilance Commission,  
Satarkata Bhavan,  
A-Block, GPO Complex, INA,  
New Delhi-110 023.

24

Letter to the Minister of  
Communications and IT on  
Reforms Suggested for the  
Telecom Sector:

22nd December, 2010

Dear Shri Sibal,

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, 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. DoT’s actions and responses to showcase notices must be in public domain and visible to all**

The DoT’s 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 DoT’s 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 the DoT's 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 your will agree with the principles that are enunciated here.

**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 KapilSibal,

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the CBI Director on actions of the TRAI Chairman between 2003 and 2006

10th January, 2011

Dear Shri A.P. Singh,

Further to my letter to you dated 22 December, 2010, I am forwarding you some additional information with regard to the very questionable actions of Mr. Pradip Baijal, former TRAI Chairman, during his tenure at TRAI between 2003 and 2006.

This is extremely relevant since it emerges directly from the CAG report where specific allegations have been made with regards to Mr. Baijal's actions during the issuance of UASL licenses in 2003. The CAG Report (copy enclosed herewith) on Page 14 specifically quotes:

*“3.1.6 ....The first phase was to be implemented immediately while the second phase was to commence*

*only after the receipt of fresh recommendations of TRAI within six months (Para 7.1 of TRAI recommendations of October 2003). Therefore the issue of non revision of entry fee for new licensees / operators was not discussed in any forum – Telecom Commission, TRAI, GOM or Cabinet. If the DoT needed more clarity in implementing recommendations of the TRAI, it should have written for clarifications from the TRAI on the specific issues. Raising / discussing the issues on telephone and getting clarification even in a letter from the Chairman TRAI on the same day in his individual capacity on such a critical issue shows undue haste and an avoidance for following the normal official procedures by the DoT. Further, the Chairman TRAI did not have the authority to issue a clarification on an issue which had not been discussed and deliberated upon in the Authority. The clarification was not in line with the recommendation of TRAI as Para 7.39 of the Report read that “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 fourth cellular operator.” Any such clarification, which altered the TRAI’s recommendations substantively, should have been taken to the GOM and Cabinet as their decision was based on the original TRAI’s recommendations.*

*3.1.7 The DoT’s action of applying the rates approved for the existing operators for migrating to UAS regime, to new applicants also by relying on the clarification of the Chairman TRAI in his individual capacity was inconsistent with the recommendations*

*of the TRAI (2003) and went beyond the authority given by the Cabinet. It also violated all canons of financial propriety. The DoT had to resort to informal clarifications from TRAI before concluding that new applications would also be at the entry fee of price determined for fourth CMSP in 2001 as against TRAI's recommendation of introducing new operators in the existing regime through a multi-stage, bidding process. Elimination of bidding process without delinking licensing from spectrum was not intended by TRAI."*

This, along with the previous information provided to you, should form additional grounds for investigating the matter, consistent with the Hon'ble Supreme Court's Judgment dated 16 December, 2010, specifically relating to:

*"(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."*

I would also like to draw your attention to Chapter 3 of the CAG Report titled "Implementation of Unified Licensing Regime", specifically Sections 3.1.1 to 3.1.7.

You are requested to do the needful in the matter.

Yours Sincerely,

Rajeev Chandrasekhar

Shri A P Singh,  
Director,  
Central Bureau of Investigation (CBI),  
New Delhi.

26

## Letter to the CVC on actions of the TRAI Chairman between 2003 and 2006

10th January, 2011

Dear Shri Thomas,

Further to my formal complaint to you dated 22 December, 2010, I am forwarding you some additional information with regard to the very questionable actions of Mr. Pradip Bajjal, former TRAI Chairman, during his tenure at TRAI between 2003 and 2006.

This is extremely relevant since it emerges directly from the CAG report where specific allegations have been made with regards to Mr. Bajjal's actions during the issuance of UASL licenses in 2003. The CAG Report (copy enclosed herewith) on Page 14 specifically quotes:

*“3.1.6 ....The first phase was to be implemented immediately while the second phase was to commence only after the receipt of fresh recommendations of TRAI within six months (Para 7.1 of TRAI recommendations of October 2003). Therefore the issue of non revision of entry fee for new licensees / operators was not discussed in any forum – Telecom Commission, TRAI, GOM or Cabinet. If the DoT needed more clarity in implementing recommendations of the TRAI, it should have written for clarifications from the TRAI on the specific issues. Raising / discussing the issues on telephone and getting clarification even in a letter from the Chairman TRAI on the same day in his individual capacity on such a critical issue shows undue haste and an avoidance for following the normal official procedures by the DoT. Further, the Chairman TRAI did not have the authority to issue a clarification on an issue which had not been discussed and deliberated upon in the Authority. The clarification was not in line with the recommendation of TRAI as Para 7.39 of the Report read that “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 fourth cellular operator.” Any such clarification, which altered the TRAI’s recommendations substantively, should have been taken to the GOM and Cabinet as their decision was based on the original TRAI’s recommendations.*

*3.1.7 The DoT’s action of applying the rates approved for the existing operators for migrating to UAS regime, to new applicants also by relying on the*

*clarification of the Chairman TRAI in his individual capacity was inconsistent with the recommendations of the TRAI (2003) and went beyond the authority given by the Cabinet. It also violated all canons of financial propriety. The DoT had to resort to informal clarifications from TRAI before concluding that new applications would also be at the entry fee of price determined for fourth CMSP in 2001 as against TRAI's recommendation of introducing new operators in the existing regime through a multi-stage, bidding process. Elimination of bidding process without delinking licensing from spectrum was not intended by TRAI."*

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*"(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."*

I would also like to draw your attention to Chapter 3 of the CAG Report titled "Implementation of Unified Licensing Regime", specifically Sections 3.1.1 to 3.1.7.

You are requested to do the needful in the matter.

Yours Sincerely,

Rajeev Chandrasekhar

Shri P. J. Thomas

Central Vigilance Commissioner,

Central Vigilance Commission,

Satarkata Bhavan,

A-Block, GPO Complex, INA,

New Delhi-110023.

## Letter to the Editor, Economic Times on ‘Sibal is Right on Numbers’

11th January, 2011

This refers to your edit yesterday titled “Sibal is right on numbers”.

While it is well known that Economic Times is the only newspaper that has argued against open, transparent auctions as a means to allocate scarce national resources – in this edit, you may have outdone yourself.

You argue that Sibal was right on numbers, but failed to substantiate why that was so. You also contradict yourself, since on one hand, you support Kapil Sibal’s calculations as “entirely right”, but admit, on the other hand, that there was a scam. You fail to explain that in a situation where the Exchequer didn’t lose a single rupee, and by consequence, private companies didn’t gain – why should changing the order of the spectrum queue be considered a scam? By Sibal and your analysis, there is no victim. Can there be a crime (in this case, scam) without a victim?

You also quote, like Mr. Sibal, the policy documents entirely out of context. Please read the Xth Plan and it will show you that it does not argue against open, transparent auctions at any stage. Neither does the XIth Plan (by the UPA) which Mr. Sibal never refers to. Equally, remember, the successful 2001 auctions for the 4th mobile operator were held after the NTP'99, so clearly, the "entirely sensible" NTP'99 did not prohibit auctions either. Your view - like Mr. Sibal's - that spectrum was allocated without charges, with license is flawed. The entry fee is nothing but a price for spectrum. Minus spectrum, the UASL could be given free, and there would be hardly any takers.

You are also wrong about no policy being in place to prevent companies from making undeserved gains by selling stake. An explicit recommendation prohibiting M&A was included in the same TRAI recommendations that Mr. Sibal cites every time, except it was manipulated in violation of the TRAI Act notwithstanding multiple protests by TRAI – allowing Unitech and Swan to sell stake, notwithstanding the prohibition. Raja messed around with the exact same recommendation that he vowed to implement.

Your view of increased tax revenues from Raja's illegal acts is equally weak. Remember, revenues are a consequence of subscribers using service. Most of the illegal beneficiaries have failed the rollout obligations which means no subscribers, no revenue, and therefore, no revenue share or taxes. The government got cheated twice – first on entry fee, and now on revenue share.

Your attempt to argue the case of those who have violated license is a brave one, except they have nothing to show by way of performance, network or subscribers, to support your theory of "promote telecom use by larger and larger sections of population, greater economic efficiency" or "tax revenues far in excess of what any auction would have generated".

I can provide you chapter on verse on why Mr. Sibal's arithmetic is wrong, but your assumption that taxes have come in from those who haven't rolled out service is far more bizarre than Mr. Sibal's clever, though unsubstantiated, arguments. Mr. Sibal's numbers are questionable, but yours are plain, simple, wrong.

Rajeev Chandrasekhar

Member of Parliament

## Letter to the Prime Minister on Shri Kapil Sibal's Statements on the 2G Scam

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 advise 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.

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 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.

### **Annexure**

#### **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 irregularities .....and 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.1.7 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.

## Letter to the Prime Minister on the Zero Loss Theory: Facts v. Claims

24th January, 2011

Respected Prime Minister,

This is further to my letter to you dated 11 January, 2011 regarding the Press Conference held by Shri Kapil Sibal, Hon'ble Minister of Communications & IT.

As I had mentioned in that letter, the Minister's Press Conference had far ranging implications, including that of undermining the investigation under progress. The Supreme Court has also since commented similarly.

I would not have considered challenging the claims of Mr. Sibal and Mr. Ahluwalia, except for the fact they chose to undermine the CAG, knowing fully well that the CAG cannot respond with

a detailed Public defense and also making arguments that have already been made in the Supreme Court. The country deserves to know the truth and not get misled by smooth talking and articulate spin.

So, I have chosen to research and analyze Mr. Sibal's contentions and the subsequent statements by the Dy. Chairman of the Planning Commission. After detailed research and reading of over 1600 pages of various documents, I have prepared a presentation that analyzes Mr. Sibal's claims in his Press conference,

The conclusion, purely based on evidence, is clear for all to see. It lays bare the claims

- a) That the DoT has followed the TRAI Recommendations (a claim made to me in Parliament by the then Minister as well)
- b) That the CAG report is based on assumptions - There are no assumptions used by the CAG. Only evidence.

I have shared this with the media, and in the interests of transparency, also with the Minister himself, Petitioners of the PILs in court, and political leaders in Parliament, including leaders of the Opposition.

I am enclosing herewith the detailed analysis and annexures for your action, As always, I am available for any further discussions or explanations that you might seek emerging out these documents.

Sincerely,

Rajeev Chandrasekhar

Dr. Manmohan Singh

Hon'ble Prime Minister, Government of India, New Delhi.

30

## Letter to the Minister of Communications & IT on the Zero Loss Theory: Facts v. Claims

24th January, 2011

Dear Shri Sibal,

This is with regard to the recent statements made by you and Shri Montek Singh Ahluwalia, Dy. Chairman, Planning Commission, with regards to the fact that the 2G spectrum scam has resulted in zero loss to the Exchequer, that DoT has followed TRAI Recommendations and that consumer interest is more important than Exchequer revenue and development of the telecom sector.

In this regard, each of the claims made have been duly evaluated and found wanting, and in fact, contradict TRAI Recommendations, UASL license, Government policy and the Tenth Five Year Plan.

I would not have considered challenging your claims and that of Mr. Ahluwalia, except for the fact these claims undermined the

CAG, knowing fully well that the CAG cannot respond with a detailed Public defense, and also that these claims have already been made in the Supreme Court. The country deserves to know the truth and not get misled.

So, I have chosen to research and analyze your/DoT's contentions and those of the Dy. Chairman, Planning commission. After detailed research and reading of over 1600 pages of various documents, I have prepared a presentation that analyzes your Press Conference claims.

The conclusion purely based on evidence is clear for all to see. It lays bare the claims:

- a) That the DoT has followed the TRAI recommendations (a claim made to me in Parliament by the then Minister as well)
- b) That the CAG report is based on assumptions - There are no assumptions used by the CAG. Only evidence.

I am enclosing herewith the detailed analysis and annexures for your action. I hope you will choose to retract your press statement and claim of zero loss.

As always, I am available for any further discussions or explanations that you might seek emerging out these documents.

Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India, New Delhi.

Copy : Shri Montek Singh Ahluwalia, Dy. Chairman, Planning Commission

## Letter to the Chairman, Public Accounts Committee on the Zero Loss Theory: Facts v. Claims

24th January, 2011

Dear Dr. Joshi,

This is with regard to the recent statements by Shri Kapil Sibal, Honible Minister of Communications & IT and Shri Montek Singh Ahluwalia, Dy. Chairman, Planning Commission, with regards to the fact that the 2G spectrum scam has resulted in zero loss to the Exchequer, that DoT has followed TRAI Recommendations, and that consumer interest is more important than Exchequer revenue and development of the telecom sector.

In this regard, each of the claims made by both these gentlemen have been duly evaluated and found wanting, and in fact, contradict TRAI Recommendations, UASL license, Government policy and the Tenth Five Year Plan.

I had written a letter to PM on 11 January 2011, following Mr. Sibal's press conference, cautioning him on the implications of this press conference, including that of undermining the investigation under progress. The Supreme Court has also since commented similarly.

I would not have considered challenging the claims of Mr. Sibal and Mr. Ahluwalia, except for the fact that they chose to undermine the CAG, knowing fully well that the CAG cannot respond with a detailed Public defense, and also making arguments that have already been made in the Supreme Court. The country deserves to know the truth and not get misled by smooth talking and articulate spin.

So, I have chosen to research and analyze Mr. Sibal's contentions and the subsequent statements by the Dy. Chairman of Planning Commission. After detailed research and reading of over 1600 pages of various documents, I have prepared a presentation that analyzes Mr. Sibal's claims in his Press Conference.

The conclusion purely based on evidence is clear for all to see. It lays bare the claims

- a) That the DoT has followed the TRAI Recommendations (a claim made to me in Parliament by the then Minister as well)
- b) That the CAG report is based on assumptions - There are no assumptions used by the CAG. Only evidence.

I am enclosing herewith the detailed analysis and annexures for your action. I am available for any further discussions or explanations that you might seek emerging out these documents. if you so desire, I would also be happy to depose before the PAC in this regard.

Sincerely,

Rajeev Chandrasekhar

Dr. M. M. Joshi

Member of Parliament &

Chairman — Public Accounts Committee,

6, Raisina Road,

New Delhi.

32

## Letter to the Minister of Communications & IT on the Release of TRAI Letters of 2007

28th January, 2011

Dear Shri Sibal,

This is further to your Press Conference dated 07 January, 2011 wherein inter alia, you have repeatedly announced that the TRAI has not recommended auctions for 2G spectrum since 2003 – which, in turn, has led to the DoT decision of allotting Universal Access Service (UAS) licenses / bundled 2G spectrum without a fair, transparent auction process. Regrettably, the Deputy Chairman of Planning Commission has held out the exact same view in his media interviews in Delhi, and more recently in Davos.

In my detailed presentation / annexures (a copy of which has already been sent to you), this point regarding TRAI's

recommendations stands comprehensively rebutted - owing to specific recommendations of TRAI dated 28 October, 2003 (Section 7.37, read with Section 7.39 ) - recommending auctions for introduction of new service providers, and again in TRAI Recommendations dated 28 August, 2007 (Section 2.73) - wherein it specifically recommended reassessing the entry fee through a market mechanism. This, in turn, would imply either an auction or benchmarking (also recommended by the Hon'ble Prime Minister on 02 November, 2007 in his letter to Shri A. Raja).

Quite apart from the above, the claim that TRAI Recommendations have been followed is in complete contrast to the gross illegalities committed by the DoT in manipulating TRAI Recommendations, specifically with regards to its Recommendations dated 28 August, 2007 – which was a single comprehensive set of interlinked recommendations (by TRAI's own admission, vide its letter dated 14 January, 2008). These Recommendations which stand illegally violated, include:

1. No cap on the number of service providers, Section 6.1
2. M&A norms, Section 5.27
3. Rollout obligations, Section 5.41 read with Section 5.2

Finally, there is also substantial evidence that the TRAI itself disagreed with the manner in which its recommendations were being implemented or the claim that its recommendations had been accepted. In this regard, the TRAI wrote two letters, before the 2G spectrum scam was perpetrated, on 15 October, 2007 and 19 October, 2007. It wrote a third letter on 14 January, 2008 – three days after the LoIs were given, but nearly three weeks before the licenses were issued. All of these letters were aimed at cautioning the Government to not misrepresent its recommendations, but more importantly, pointing towards legal provisions of implementing TRAI Recommendations – which were interlinked

- and the need to consult TRAI before deviating from any of the recommendations. All of these letters were ignored.

Therefore, I urge you to kindly release the two letters of TRAI, dated 15 October, 2007 and 19 October, 2007 – as that will throw light on whether or not TRAI (the author of the Recommendations dated 28 August, 2007) agrees with the Government version that its Recommendations had been followed.

Even otherwise, any correspondence between TRAI and DoT, especially with regard to licensing issues, should be on TRAI and DoT websites. The question of confidential exchange between a regulator and the government is entirely unacceptable in view of the preamble of the TRAI Act, and specifically, its obligation to act in a transparent manner under Section 11(4) of the Act, which states :

*“The Authority shall ensure transparency while exercising its powers and discharging its functions.”*

Given the fact that these letters were written with regards to recommendations that were sought by the DoT on 13.04.2007 under Section 11(1)(a) - Functions of the Authority - it is clear that these letters are covered under Section 11(4) of the TRAI Act, and should be released immediately. Any attempt to continue to keep these letters from public domain is against public interest and confirms the impression that the Government is covering up and hiding facts.

In conclusion, whether it is the question of statutory compliance to transparent functioning under Section 11(4) of the TRAI Act, or the need to make all correspondence between the regulator and government public and available for scrutiny, and most importantly, to check the claims that the government followed TRAI Recommendations – you are requested to kindly ensure that the said letters are made public without any further delay.

I keenly await your response in this regard.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the Prime Minister on the TRAI Report on Spectrum Pricing

10th February, 2011

Respected Prime Minister,

**Sub.: TRAI's 2G Report of 30.01.2011 confirms Spectrum Scam, losses and raises serious questions about administrative failure and wilful illegalities committed by MoCIT in 2008**

This is with further to my various letters to you on the issue of valuable 2G spectrum that has been given in 2008 without auctions at 2001 prices – thus causing a massive loss to the National Exchequer. Today's letter is with reference to the TRAI's latest Report on the 2010 Value of Spectrum in the 1800 MHz Band dated 30 January, 2011.

This Report obviously seems far more detailed in its calculations regarding the technical and economic values to be assigned for 2G spectrum vis-a-vis 3G auction prices. Even by this Report, it is clear that 2G spectrum up to 6.2 MHz is pegged at 53% of the 3G spectrum value and beyond 6.2 MHz, at 136%.

Consequent upon this detailed finding and based on the methodology used by the CAG, the loss to the Exchequer arising out of 6.2 MHz spectrum contracted (though only 4.4 MHz have been given till now) and spectrum held by operators beyond 6.2 MHz would still be pegged at upwards of Rs.1.2 lakh crores.

Further, the Report also conceals the fact that auctions must be held for spectrum that is returned from approx. 74 licenses that may be liable for cancellation, based on failure to meet license conditions.

While I welcome TRAI's view that 2G spectrum reverted back to the DoT in case of cancellation of licenses of defaulting companies can be placed for auction, it raises serious questions relating to the following:

1. What stopped the Government from resorting to auctions in 2008 – since similar level playing field considerations would have existed as they exist in 2011?
2. The accountability and rigour of TRAI's Recommendations which seems to have given conflicting views on auctions in 2008 and 2010, but supports auctions when new 2G spectrum becomes available.
3. Why was your letter of 02 November, 2007 to the then MoCIT, specifically seeking consideration of "spectrum auctions" or "revision of entry fee", ignored, since you had appropriately pointed towards recovering the "correct price of spectrum" – which is now been reaffirmed in no uncertain terms, by the TRAI's Report of 30 January, 2011?

All of these necessitate serious administrative review of the manner in which TRAI is functioning and MoCIT is handling direct correspondence from your office.

There is also a striking similarity between the announcements made by the Hon'ble MoCIT, Shri Kapil Sibal on 07 January, 2011 and TRAI's Report of 30 January, 2011, both on account of :

- Value of 2G spectrum vis-a-vis 3G auction price; and
- The decision to oppose auctions for 2G in general, but auction new spectrum which comes back to DoT as a result of license cancellations.

Unless this is purely coincidental, the TRAI Report would seem like a “command performance”, even though it still reaffirms the massive loss caused to the Exchequer on account of the 2G spectrum scam.

Finally, with this report in hand and evidence of serious wrongdoing during 2008 (in spite of your letter dated 02 November, 2007 to the then MoCIT), may I please request you to have the Government accept its mistake and start the process of cleanup by cancelling licenses given illegally, and recovering the value of spectrum either through re-auctions of spectrum or benchmark pricing, where appropriate – consistent with your letter of 02 November, 2007. It will also be greatly helpful if the Hon'ble MoCIT can stop managing the optics of this huge loss and defending the indefensible acts of the then MoCIT.

While I have decided to oppose and expose any cover-up attempts, I am equally available to discuss constructively the best possible way forward to resolve the issues at hand, and move forward - but not without identifying and penalizing the perpetrators of the 2G spectrum scam, ensuring recovery of lost revenue and on the back of a policy decision to auction all scarce, national resources in an open, transparent manner.

Yours Sincerely,  
Rajeev Chandrasekhar

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

34

## Letter to the Chairman, TRAI on the 2G Scam Losses

21st February, 2011

Dear Dr. Sarma,

**Sub. : CBI's Proposed Request to TRAI to ascertain losses on account of 2G spectrum since 2001**

This is with regards to the article in the Times of India today titled "CBI seeks TRAI help on 2G loss figure" (copy enclosed).

As you are aware, this is an extremely difficult and complicated exercise because TRAI will have to reproduce the results of the spectrum pricing in an auction, without the actual auctions being held. In this regard, please consider the following:

1. TRAI already has a view of 2G spectrum pricing vis-à-vis 3G in its Recommendations of 11 May, 2010. These must be accounted for.
2. TRAI has also presented a view of 2G spectrum value in 2010 in its Report of 09 February, 2011. This must also be taken into consideration.
3. With regards to the pricing of 2G spectrum allocated to 121 applicants through LoIs given on 10 January, 2008, and to 35 dual technology operators – the CAG has calculated the cumulative loss as Rs.1,39,652 crores. This calculation by the CAG is accurately based on TRAI Recommendations of 11 May, 2010.
4. In January 2008, the addressable market (unserved) with a teledensity of 249 million, was nearly 750 million – a huge attraction for companies placing bids, which would have certainly pushed the value of bids high.
5. The stock market was at its highest ever, which would have ensured easy money supply and buoyancy in the bidding.
6. Foreign Direct Investment during this period peaked in the history of India, including in the telecom sector, which would also be another cause for extremely high bids in January 2008.
7. The government allocated approx.  $4.4 \text{ MHz} \times 157 = 690 \text{ MHz}$  of spectrum, or approx. 31 MHz per circle. In an ideal situation, part of this should have been auctioned to existing operators, and since there were 6-7 operators already existing, another 3 or 4 could have been brought in.

Considering that existing operators were sitting at approx. 5.7 MHz of spectrum at that time and 203 MHz was

auctioned per operator, approx. 20 MHz could have been given to the existing operators and the remaining 2 / 3 slots could have been allocated to new entrants at 6.2 MHz – startup spectrum consistent with TRAI Recommendations of 11 May, 2010.

The above scenario would have meant that the list of bidders would have included existing operators and new entrants, many of who were included in the list of 575 applications.

All in all, it would have been a combination of companies who paid over Rs.1 lakh crores for 3G/BWA in 2010 when the addressable market was down to 400 million and the spectrum needed additional investments for getting 3G operational on one hand, and some of the world's largest telecom companies, on the other. All of this combined with the acute shortage of spectrum (average holding of 5.7 MHz) at that time would have sky-rocketed the prices of 2G spectrum in an auction.

8. Amongst the Indian bidders, since there would have been no cutoff date of 01.10.2007, the number of companies interested would have been far higher than 575. Admittedly, many of them would not have pushed the bidding high, but several first time entrants with their international partners could have provided additional impetus to the auctions.
9. In January 2008 – there was no line of sight into 3G auctions or spectrum availability, which was another reason why spectrum auctions in 2008 would have been extremely precious - in fact, far higher than the prices received by Swan and Unitech as valuations due to their deals with Etisalat and Telenor on 23.09.2008 and 29.10.2008, respectively. Please take into consideration that when

these deals were struck, the stock market had crashed, Lehman Brothers and several other US institutions were already moving into bankruptcy and huge tightening of credit / flow of funds from US / Europe.

The Unitech and Swan deals are not completely representative of the actual 2G spectrum value for the following reasons:

- One-on-one negotiated deals never fetch the same price as an open auction.
- Since the spectrum was received at low 2001 prices by both companies, they would settle for any profit over and above what they had paid. There was no compulsion for either Swan or Unitech to draw a market price, but instead close a deal at the earliest before the MoCIT moved to ban sale of promoters' equity via a note for Telecom Commission dated 07.11.2008.
- There is also no way to ascertain that the value that is being declared by these companies is the real value, given the fact that both deals are under CBI investigation and the money trail could lead to "other payments" - which may or may not have shown up in the books.

Having regard for all the above and several other issues which would have pushed the auction receipts for spectrum in that extremely buoyant era of telecom in India – it is critical that the TRAI and its experts conduct a detailed exercise which does not, in any way, look at underplaying the value that the Government would have received from a spectrum auction in January 2008.

You are requested to also consult experts outside the TRAI, including representatives of companies who were expected to bid (and not just existing operators) to understand their sentiment of auctions at that time.

Finally, since your submissions will become a part of the CBI investigation, court records and eventually play a role in the charge sheet, it is critical that this exercise be carried out with extreme prudence and caution, without any allegations of an attempt to help manage the “optics of the loss” – as has been attempted in the last few weeks.

In conclusion, I would also request that during this assessment exercise, please feel free to have your experts meet with me so that I can provide them detailed inputs consistent with this letter. You are also requested to confirm whether you are already in receipt of such a request from CBI or at any time in the future when you do get such a request – since this should all be in the public domain and done in a transparent manner - consistent with the TRAI Act, Section 11(4).

Yours sincerely,

Rajeev Chandrasekhar

Dr. J. S. Sarma

Chairman,

Telecom Regulatory Authority of India (TRAI),

Mahanagar Doorsanchar Bhawan,

Jawaharlal Nehru Marg,

Old Minto Road,

New Delhi 110 002.

35

## Letter to the Minister of Communications & IT on Missing OMC Report Annexure

25th February, 2011

Dear Shri Sibal,

This is with reference to the Justice Shivraj V. Patil Committee Report, along with its annexures, which have now been made available in public domain, on the DoT website.

In this regard, I would like to draw your attention to the fact that a significant part of the document, i.e., Annexure 90 of the Report, dealing with dual technology licensing, is missing.

I request that the same be uploaded immediately on the DoT website to prevent any impression that this information is being suppressed.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

36

Letter to the Minister of  
Communications & IT on  
Parliament Question on  
UAS Licensees

16th March, 2011

Dear Shri Sibal,

This is with reference to your response to my Starred Question No. 228 of 11 March, 2011 relating to “Violation of Rollout Obligations by UAS licensees”. A copy of the same is enclosed for your ready reference.

The Statement laid on the table of the House with respect to parts (a) to (d) raises serious concerns - both in terms of the facts it reveals and the claims that it makes. In fact, the Statement raises even more questions about the violation of the TRAI Act by the Telecom Ministry, which are directly related to the 2G spectrum scam.

In this regard:

1. The Statement laid on the table of the House states that startup spectrum to UAS licensees in the year 2008 was allocated between April 2008 and May 2009. It also states that there have been no delays in issuance of Show Cause Notices with regard to the violation of rollout obligations by UAS licensees since 2008. This would imply that not a single licensee from the 121 UAS plus 35 dual technology licensees was issued SACFA clearance till October / November 2009, which would have resulted in the one-year period for rollout being October / November 2010 - since the Show Cause Notices were sent only in December 2010.

If true, this would seem most unusual and a serious abdication of duty since this would translate into a nearly 20-month delay in the grant of SACFA clearances to the 12 licensees who were issued licenses for Tamil Nadu and Orissa on 22nd April 2008 and 24th April 2008, respectively.

2. It is unclear how the average delay in SACFA clearance was included in computing the rollout obligation dates since this is in gross violation of TRAI recommendations dated 28th August 2007, Section 6.27 which states - *“The present provision of rollout obligations should not be changed for all the access providers”*.

The TRAI had reached this conclusion and recommendation after a detailed analysis on the issue of rollout obligations in Chapter 5 of its recommendations, wherein it specifically considered all aspects relating to level playing field, non-discriminatory treatment, cost implications, technical and financial considerations, need to discourage non-serious players, promotion of well dispersed efficient usage of spectrum, methods to avoid cherry-picking, ensure faster

- spread of telecom and discourage concentration in lucrative pockets, in order to bridge the digital divide. In essence, this condition was not only to ensure fair competition, but also to benefit the “*aam aadmi*”.
3. It is unclear how this recommendation, which is linked to the effective date of license, and not the effective date of spectrum allocation, was modified to include delays for SACFA clearance.
  4. Moreover, this is in sharp contrast to the claim that the Government has followed TRAI recommendations. As you are aware, the TRAI, on 19th October 2007, cautioned the DoT to not deviate from its recommendations without formally consulting it.
  5. It is also unclear if apart from formally consulting the TRAI, whether the DoT, in deviation from the TRAI recommendations, followed the statutory process laid down under Section 11(1) (a), Fifth Proviso, which mandates the DoT to re-refer the matter back to the TRAI before any modification is conducted.
  6. It is also unclear how such a modification was initiated, given the fact that Annexure 39 (Page 600) of the Justice Shivraj Patil Committee Report shows that Section 6.27 of Chapter 6 of the Recommendations was “accepted” by the Government. When and how such a deviation could take place by itself is questionable and how does the DoT reconcile the procedural violation at one level and violation of the TRAI Act as above, at another level?
  7. The Ministry’s response to my Parliamentary Question also self-indicts the Government in a very serious manner since it admits that no delays have been caused in rollout of networks, which is consequent upon the admission that there has been no delay by the DoT in issuing show cause notices. If that is the case, then the entire blame lies on the DoT for not having

issued SACFA clearances on time – which, again, is against TRAI recommendations dated 28th August 2007 where it has, in Chapter 5, strongly recommended in Section 5.21 that “SACFA clearance should be given in a stipulated period of 60 days”. It is unclear why this statement, reiterated by the TRAI, remains neglected, especially since the DoT is statutorily bound to either follow or modify recommendations only, under the preview of the TRAI Act and not as a nicety.

8. Further, it is my understanding that the TRAI has recommended the cancellation of 69 licenses, vide its letter No. 102-6/2009-MN(Vol.II)/126 dated 18th November 2010, of which 38 licenses were to be cancelled since no networks had been rolled out for over 52 weeks, and the remaining 31, which were also serious enough to attract recommendation of license cancellation. Further, the annexure to the said letter clearly lays out “date of application of spectrum” and “due date of compliance for rollout” along with specific remarks circle-wise, operator-wise. This data does not seem to support the contention (in your response to my Parliamentary Question) that no delays have occurred in issuing Show Cause Notices, since that would imply that TRAI’s evaluation of the due date of compliance for rollout obligations is erroneous. Further, in view of such detailed evidence on violation across such large number of operators, including recommendations for cancellation - it is unclear, then, as to why the Ministry of Telecom is only pursuing two cases out of the 69 recommended for Show Cause Notices for termination of licenses due to rollout obligation violation – as stated in your response to my Parliamentary Question.
9. Is the Telecom Ministry in disagreement with the TRAI? And if that is the case, then in the interests of transparency and probity, it must provide a detailed reply in the public domain

on a license-by-license basis since this either raises questions about the competence of TRAI in making such dangerous recommendations (which the Ministry of Communications obviously finds invalid) or collusion between private operators and officials of the DoT which has already been substantiated by charges of insider information, both in the CAG Report and in the Justice Shivraj Patil Committee Report regarding the 2G spectrum scam. Please clarify which of these is true and why there is such a huge difference in the understanding of the TRAI vis-a-vis the Ministry of Communications & IT regarding licenses which deserve to be cancelled on this account.

10. Additionally, it is surprising to note from your response to my Parliamentary Question that rollout obligation compliance is being examined after collecting data from licensees, TERM Cells and WPC. In fact, the process is exactly the reverse. TERM Cells file the status report with the DoT and are very much a part of the DoT. The Show Cause Notices and actions against violators should have gone out immediately on filing of such data from the DoT – as it did when the TRAI was forced to act on 18th November 2010. It is unclear why the TRAI, which receives this data much after the TERM Cell filed the data, was able to indicate cancellation of 69 licenses, but the DoT, which is the primary source of all such information, storage and investigation, refused to act till December 2010, and that too, only when publicly forced to do so after the contents of the TRAI letter became public.

As you can see from the above, the Statement that you have provided in response to my Parliamentary Question by itself needs to be rechecked for accuracy, especially on whether the DoT has delayed the issuance of Show Cause Notices - since it would seem virtually impossible that all violations

came to a single bulk set of Show Cause Notices in December 2010, rather than in a chronological order – as and when the violations occurred, especially since, by your own admission, spectrum was given across a 14-month period from April 2008 to May 2009. If, however, you insist that your Statement is accurate, then it seems serious violations of law (TRAI Act, Section 11 (1) (a), Fifth Proviso) and procedure (changing TRAI recommendations post an acceptance by DoT committee etc.) need to be investigated.

In the interest of transparency and since DoT's issuance of Show Cause Notices is primarily based on TRAI's letter dated 18 November, 2010, I am marking a copy of my letter to the Chairman – TRAI, Dr. J. S. Sarma.

I request that a detailed reply on all the questions above be given to me at the earliest, but not later than a week, failing which, I am sure you would appreciate that it would be my responsibility to bring these additional violations of law and seeming acts of collusion between the DoT and licensees (for not issuing Show Cause Notices on time) to the attention of the various Parliamentary Committees as well as investigating agencies and the Hon'ble Supreme Court.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal,

Hon'ble Minister of Communications & IT.

Government of India,

New Delhi.

Copy : Dr. J. S. Sarma, Chairman, TRAI

37

## Letter to the Minister of Communications & IT on NTP 2011

30th March, 2011

Dear Shri Sibal,

**Sub.: Inputs Relating to Approach, Consultation and Sequence in Formulating NTP'2011, Unified License Regime, and Delivery of Broadband Connectivity across the nation in MoCIT's 100-Day Programme**

Some significant issues have been raised with regard to the National Telecom Policy (NTP) 2011 and unified licensing – and subsequent consultations held by you and other officials of the DoT with the industry on this matter, including the one held on Tuesday, 8th March 2011. The detailed verbatim notes, including your multiple

statements during that Open House, have been brought to my attention.

In this regard, my comments and inputs, including requests for changing the current process of evolving policy are underlined below:

**General Comments:**

As you are aware, NTP'1994 was primarily about liberalization and introduction of competition to break the state-owned monopoly in the telecommunications sector. It laid the roadmap for introduction of competition into fixed and mobile telephony, including allowing FDI at 49%. NTP'1999 was related to second generation reforms, which involved reviewing the sector's viability, enhancing competition from the duopoly that existed in fixed and mobile to an increased number of operators and also adopted concepts such as technology neutrality while moving license fee structures closer to the revenue earning potential of telecom businesses. The migration of licenses under NTP'94 to NTP'99 also marked a settlement of disputes between Government and industry, and recognized the need to strengthen the TRAI and the establishment of an independent dispute settlement tribunal – the TDSAT.

Given this background, NTP'2011 and unified licensing regime should most likely be about third generation reforms. Both concepts are inter-related but different in that the first is about policy direction and the second results in a license agreement. The new emerging theme for the third generation reforms would be:

- a) Significant shift in focus from voice telephony to the emergence of data – both at the enterprise level and for use by the “aam aadmi”, including improving access to public information through e-Governance.

- b) Emergence of a suite of new services which could propel the Indian industry's competitiveness on a global scale.
- c) Address the issue of very low broadband penetration and slow pace of investments and growth in high speed connectivity which is critical to the competitiveness of the country in coming years.

From the public discourse thus far – including your consultation meetings – it seems that the above aspects of keeping the emergence of data, new technologies and services have not been adequately addressed in the discussions. The agenda, to a very large extent, unfortunately seems to engage in a policy and licensing dialogue in the shadow of the 2G spectrum scam crisis, in an attempt to find a way out of the impasse, including existing and expected orders of the Hon'ble Supreme Court. This entire approach requires a fundamental review to ensure that the attempts to find face savers (such as delinking spectrum from license – which was easily achievable in 2007 itself) do not become the focus and the key deliverables of the current initiative. The current items on the agenda, regrettably, seem to altogether miss out the opportunity of transforming India's telecom sector into a forward-looking regime which will deliver state-of-the-art networks with the latest data services for enterprise users on one hand and affordable access to voice services and platforms for e-Governance for the "aam aadmi".

Specific comments relating to NTP'2011, unified license and some other related subjects are provided below:

**NTP'2011:**

1. The current framework and structure defined by the Ministry of Communications & IT / DoT on the formulation of NTP'2011 from the release of 1st January 2011 seems extremely limited in its scope, both with

regard to the issues at hand and the manner in which the consultation has been held since.

2. It is clear from the proceedings that a vast majority of the issues that are being addressed under the aegis of NTP'2011 relate to sorting out the existing problems that the Government is faced with, either due to procedural violations, legal infirmities, or errors in judgment. This is also clear from the 15-point agenda circulated for the meeting of 8th March 2011 – which regrettably confines itself, for the most part, to controversial issues, rather than forward-looking matters which deserve to be included in any consultation for a new policy document. You are requested to kindly expand the discussion regarding NTP'2011 to include:
  - i) License-based reforms propelled by technologies, services and consumer expectations rather than an attempt to get out of the current impasse.
  - ii) Critical issues such as cloud computing and machine-to-machine transactions as a part of the policy dialogue which will dominate the telecom environment over the next decade.
  - iii) Matters which relate to enhancing the level of competition, access, teledensity, affordability – and use those to determine policy rather than engage on issues such as M&As without taking into consideration, competition and consumer issues.
  - iv) Involve the TRAI to the extent possible given its statutory mandate under Section 11, wherein TRAI has the authority and statutory mandate to provide recommendations on a host of issues through a public, transparent consultation process, consistent with

Section 11(4) of the TRAI Act, rather than reinvent the wheel of consultation using the DoT machinery. The DoT must not be seen as usurping the powers and functions of the TRAI, including and especially those to make recommendations through public consultation.

- v) Enhance immediately, preferably through the TRAI, the consultation process to include non-industry stakeholders. The Telecom Ministry's current focus to invite only industry with vested interests to such consultation, leaving out NGOs, media, Members of Parliament, and most importantly, consumer groups, is a dangerous trend. Such consultations should be undertaken by the TRAI before the Ministry of Communications and the Telecom Commission should carry out its role as stipulated under the rules and functions of the Telecom Commission highlighted in the Justice Patil One Man Committee Report, Section 2.3 – 2.11. I have already written detailed letters to involve non-industry stakeholders in policy discussions on 22nd December, 2010 and 24th March, 2011.
- vi) All consultations, whether by the TRAI or the DoT, must happen in the public domain and in full presence of the media. It is insufficient that verbatim notes are put out on the DoT's website since that is "after the fact" and denies the media – which is an equal stakeholder in assessing, reviewing and commenting (if appropriate) during the consultation process. The media has played a long-standing and positive role in taking India's telecom achievements into the global arena, and will prove to be a source of valuable

inputs as many of the journalists have covered the sector longer than some of the veterans in the telecom business.

- vii) An expanded list (as above) of forward-looking themes must be placed on the DoT website and detailed comments invited from the public in general, rather than restricting the same to a set of invitees. The consultations have to be much wider, and for that purpose the TRAI is far better equipped and appropriately empowered statutorily, to hold such consultations. Moreover, it is most unusual for the DoT to hold consultations to discuss recommendations of the TRAI, which in turn, have come through consultations. In the event that the DoT's consultation does not include issues on which the TRAI has made recommendations after due consultation – they deserve to be sent back to the TRAI, consistent with Section 11(1), Fifth Proviso of the TRAI Act.
- viii) The verbatim notes of the meeting held on 8th March 2011 also reveal that 7–8 of the 15 issues that you chose to put up for debate had either not been recommended by the TRAI or had been recommended by the TRAI without a transparent process of consultation, mandatory under Section 11(4). This would seem inappropriate since the process of consultation, at least where recommendations are concerned, must lie within the domain of the TRAI. Moreover, it seems to point towards a bigger challenge relating to the TRAI's functioning, rigor and accountability.
- ix) With regard to the TRAI and based on the comments made at the said Open House as well as some of the controversies that have arisen from its

recommendations of 27th October 2003 (new unified licenses without Cabinet approval), 28th August 2007 (dual technology and new licenses – without auctions – currently under Supreme Court supervised CBI investigation) and 10th May 2010 (leading to the CAG estimate of loss of Rs. 1.76 lakh crores) - it is strongly recommended that a serious discussion with a wide-ranging set of stakeholders be undertaken on the appropriate legislative amendments as well as financial assistance that needs to be given to the TRAI as a part of NTP'2011. The DoT must also consider the TRAI's comprehensive proposals for amendment to the TRAI Act 1997 dated 28th March 2008, which regrettably have remained unattended to by the Government for nearly three years. The dialogue must discuss comprehensive amendments to further strengthen the powers and independence of the TRAI, especially in the areas of licensing, competition management, spectrum utilization and interconnection etc. Equally, the discussion must also review TRAI's funding and service terms to enable it to attract best in class talent, including from within the ranks of Government employees.

Finally, it must also discuss its accountability to the Parliament since the current structure of working with or through the MoCIT poses a conflict of interest and influences the TRAI's ability, independence and willingness to set and meet measurable results. Its accountability must include for an appropriate review of its outcomes based on rigor of process, legality, economic accuracy and propriety. There will be no better opportunity than the NTP'2011 for such a change. However, this is virtually impossible unless

Parliamentarians, media and the TRAI itself is engaged in the consultation, apart from telecom analysts and industry stakeholders.

### **Unified Licensing:**

From your comments in the opening and the closing of the meeting of 8th March 2011, now available on the DoT's website, it seems that the Government is strongly inclined to move in the direction of unified license. While the direction by itself may be consistent with international norms, the manner in which this policy move is being contemplated is a worrying trend and needs to be reviewed keeping in mind the following issues:

1. Unified license is far more a matter relating to license and contractual agreement which will be legally binding on operators than it is a policy matter. Under the circumstances, it is far better to have the TRAI make specific recommendations on the detailed unified licensing regime after holding appropriate consultations before the DoT takes a policy decision.
2. From the verbatim record of the meeting of 8th March 2011, it is clear that a vast majority of the invitees who spoke and presented their views were representing the UAS, GSM or CDMA license community. Please be advised that these companies, most of who are vertically integrated, either already have in their possession all the licenses that would constitute the so-called unified license or can get them without any restriction. Consequently, their interest and input into the unified licensing regime as a forward-looking policy is somewhat limited. While their views must be considered, the unified licensing regime will really impact consumers through new service providers who are currently not in the mobile telephony business - since the

unified license, by consequence, will delink spectrum from licenses. Therefore, the Government needs to ascertain the views of those who will seek such licenses, rather than those who are least affected, i.e. UASL and mobile operators. Since the affected parties were neither invited to nor participated in this consultation, any views ascertained will, by consequence, reflect a certain homogeneity which is unhealthy for drawing policy conclusions. For this reason, in addition to others, the TRAI may be much better suited to have a broader consultation rather than the DoT. This consultation needs public notices, multi-city engagement, and ability to receive and interpret multilingual comments - the scope for which goes way beyond what the MoCIT is currently attempting.

3. Deciding to move towards unified licensing without discussing the details is the equivalent of putting the cart before the horse. This is also at variance with the process followed in the implementation of the UASL regime wherein the TRAI, based on a consultation, provided its recommendations of 27th October 2003, which were then approved by the GoM on 30th October 2003, followed by an approval of the Cabinet on 31st October 2003, resulting in UASL guidelines on 11th November 2003 and the simultaneous amendment of NTP'99 on the same day. In short, the recommendations of the TRAI led to a decision by the Cabinet, leading to a policy amendment. In the current case, the Telecom Ministry seems to be following the reverse process where policy direction is being discussed without any details on what the unified license would look like.
4. The TRAI's recommendations on Unified Licensing regime dated 13th January 2005 were rejected by the

UPA Government vide a decision of the former MoCIT, Shri A. Raja made on 10th July 2007 (Justice Shivraj Patil Committee Report, Section 2.50). So in effect, the Government does not have before it any recommendations which deal with the details of unified licensing and its framework, leave alone terms and conditions, which are critical before making a licensing decision. It would be unwise for the Telecom Commission to approve a concept which follows a process which is the reverse of one that has been an established precedent.

5. The TRAI's only recommendations that deal with the concept of unified licensing dated 10th May 2010 were based on a consultation paper of October 2009 and Open House Discussions in November / December 2009. Neither the consultation paper nor the Open House Discussions have had any dialogue or consultation on the issue of "unified license". So in effect, this matter has not been considered by the TRAI nor has the DoT re-referred its recommendations of 13th January 2005 in case it plans to modify the same back to the TRAI – which is mandatory under Section 11(1), Fifth Proviso. Consequently, after rejecting the unified license recommendations of the TRAI, to make a decision approving the same without following the due process under the TRAI Act itself would constitute an illegality.
6. Also, please take into consideration the wide difference in the license fee, for example, that has been prescribed in the TRAI's recommendations of 11th May 2010, Page ix, Section 16 at Rs. 20 crores and the same at Rs. 107 crores in its recommendations of 13th January 2005. Needless to say, the TRAI Recommendations of 11th May 2010 of Rs. 20 crores are not based on any consultation or inputs from stakeholders.

7. Further, please take into consideration Section 2.50 – 2.52, which is the only mention of unified licensing regime in the TRAI's recommendations of 11th May 2010. It is clear from a reading of Section 11.52 that unified license is being suggested as a way out of the impasse in the Hon'ble Supreme Court wherein the Government faces the embarrassment of seeing the decision of the Hon'ble Delhi High Court declaring the advancement of the cut-off date illegal, and the Press Release of 10th January 2008 being quashed (Delhi High Court Order, 1st January 2009, Section 38). This proves in no uncertain terms that this last minute inclusion of unified license is a way to bail the Government out of a legal embarrassment by desperately linking unified license to the issue of de-linking access licenses from spectrum – when in reality this should have been done as per the TRAI's recommendations of October 2003 – within six months or as soon as the UPA Government came into power in May 2004.
8. Moreover, except the above two paragraphs (Section 16 on Page ix and Section 2.52 on Page 82 / 83), there is nothing that the Telecom Commission can consider, leave alone approve, by way of recommendations before finalizing the UASL regime.
9. Even if the Government did make a decision of finalizing a policy sans the details (which in itself is wrong and should be avoided at all costs), the final outcome will have to be a license document – which will be contractually binding on operators. For that, the Government is duty bound to mandatorily seek recommendations from the TRAI under Section 11(1)(a)(i) and (ii), Second Proviso. So in effect, the DoT can neither introduce a regime nor finalize license, least of all introduce new licensees, in this new category of “unified license” without specific and detailed

recommendations of the TRAI. Having consideration for the above, legal procedure, statutory directions, specific provisions of the TRAI Act, and existing precedent (UASL in 2003), it is critical that the DoT sends a fresh reference to the TRAI or re-refers its recommendations dated 13th January 2005 (seeking modifications) after which the TRAI can engage in consultation and make recommendations which can be considered by the Telecom Commission and the Cabinet as appropriate under the Government of India (Transaction of Business) Rules.

10. Further, the unified licensing regime is much more of a licensing decision than it is a policy direction. That, by itself, requires the engagement not only of the Regulator, but also of multiple stakeholders, especially consumer groups, media, Members of Parliament as well as the Parliamentary Standing Committee on Information Technology before the final policy direction is announced – preferably based on specific recommendations of the TRAI on the need and timing of the introduction of new service providers as well as detailed terms and conditions of such a license.

### **Delivery of Broadband Connectivity Across the Nation:**

As you are already aware, this is one of the areas where the Indian telecom sector's performance and the Government's delivery have been abysmal. Notwithstanding the progress made in the area of mobile telephony – propelled to a very large extent by technology, private sector initiative and forces of competition – the broadband penetration as per DoT's latest reply to the PAC Questionnaire dated 04.03.2011 is indicated at a mere 1,07,38,254 subscribers as of 30.11.2010. While there has been talk about delivering an optical fibre to address this issue, there are various shortcomings in the manner in which this entire initiative is being approached.

To begin with, it is crucial that the fibre optic infrastructure is built in the most cost-efficient manner where competitive bidding for laying the fibre is undertaken to ensure that the most efficient providers get to complete the task in the shortest possible time.

There is a need to have a holistic approach which parallelly thinks through the manner in which this fibre will be put to use. It needs to combine Government's efforts on e-Governance, language translations and access, along with coaching for citizens who are the intended beneficiaries of this huge anticipated infrastructure expense. Then there is the question of supply site restrictions in the delivery of broadband – where with the current prices of laptops and other access equipment, there continues to loom a threat which will challenge the Government's plans on enhancing broadband penetration. Unless the Government engages in a serious dialogue, preferably with technology innovators, to find ways to produce laptops or PCs whose pricing is substantially lower than the current range, it would be virtually impossible to convert the benefits of this proposed infrastructure investment into real use by the “aam aadmi”.

Unfortunately, the complexities and the inter-dependencies, coupled with the inordinate delay in executing a broadband plan, require the Government to address these issues contemporaneously and simultaneously rather than in a step-wise manner.

You are also requested to please publicly declare a timeline with regard to the project relating to connecting the approximately two lakh fifty thousand villages that has been discussed at various forums by the DoT and Shri Sam Pitroda. The absence of declared timelines leaves tremendous scope for project and cost overruns. Kindly consider publishing project details along with cost and milestones, inviting comments and incorporating those before launching this project. The moneys that are proposed to be used are not only part of the corpus available for public funding of

welfare projects, but to the extent it comes out of the USO, is money that belongs to subscribers who contribute to it every single month and are therefore entitled to know its appropriate and judicious end use.

I trust you will find the above suggestions, with regard to the scope of the discussions of NTP'2011, unified license regime, as well as broadband connectivity helpful and constructive. As earlier, I would like to reiterate not only the need to broaden the consultation beyond industry – preferably through the TRAI (rather than the DoT) – but also offer my time and availability to discuss this issue to provide further inputs on the matter.

I look forward to a detailed response on these matters, including specific comments where the suggestions made above are acceptable, along with appropriate reasons in the event the Telecom Ministry is unable to implement or incorporate such inputs.

Warm personal regards

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi

Copy: Dr. Manmohan Singh, Hon'ble Prime Minister of India

38

Letter to the Minister of  
Communications & IT on  
UAS Licenses

8th April, 2011

Dear Shri Sibal,

This is further to my letter dated 16 March, 2011 with reference to your response to my Starred Question No. 228 of 11 March, 2011 relating to “Violation of Rollout Obligations by UAS licensees”. A copy of the same is enclosed for your ready reference.

The Statement laid on the table of the House in response to my Starred Question stated that there have been no delays in issuance of Show Cause Notices with regard to the violation of rollout obligations by UAS licensees since 2008. In response to this contention, I had written the above-mentioned letter requesting you to review your statement to the Parliament – as it would seem

virtually impossible that all violations had occurred on a single date, resulting in issuance of a single bulk set of Show Cause Notices in December 2010, especially since, by your own admission, spectrum was given across a 14-month period from April 2008 to May 2009. Further, Section 4.11 of the CAG Report (enclosed herewith for ready reference), which was tabled in Parliament on 16 November, 2010, presents evidence which directly contradicts the Statement laid on the table of the House in response to my Parliamentary Question. It states :

***“Non fulfillment of the Roll out obligations by the New Telecom Licensees***

*Out of 122 UAS Licenses awarded in 2008, 85 Licenses were awarded to the six new entrants (Unitech brand name Uninor, Swan name changed to Etisalat, Allianz since merged with Etisalat, Shipping Stop DoT Com name changed to Loop Telecom, Datacom name changed to Videocon and S Tel) to the telecom sector. As per the conditions of the UAS Licenses, these licensees were required to roll out the services in the 90% service area in Metros and 10% District headquarters (DHQ) in other service areas within 12 months of the date of award of Licenses. Audit found that though these 6 new operators obtained the initial 4.4 MHz spectrum in 81 service areas during the period April 2008 to January 2009, none of them had rolled out their services as per the provisions of the UAS Licenses in any service area till 31 December 2009. Since there were many existing telecom UAS Licensees in dire need of this scarce national resource, it resulted effectively into hoarding of the finite natural resources of the Nation by these operators. Thus DoT did not earn any revenue from this natural resource during 2008-09 and 2009-10 due to inordinate delay in the commencement of services by these operators. Further, DoT also failed to recover Liquidated Damages and penalty of RS. 679 crore from these 6 operators for inordinate delay in the rolling out their services till 31 December 2009.”*

Clearly, the CAG could not have been at fault in reaching at the above conclusion, including the fact that the “*DoT has failed to recover Liquidated Damages and penalty of Rs.679 crores from these 6 operators for inordinate delay in rolling out their services till 31 December, 2009*”.

In addition to the above period is the period from 01 January 2010 to November 2010 – post which the DoT issued the Show Cause Notices in December 2010. This cumulative period read along with the CAG finding surely hints toward flaws regarding ‘no delay in issuance of Show Cause Notices’ in the Statement that you have provided in response to my Parliamentary Question.

While you are drafting a response to my letter of 16 March, 2011, I also request you to take this additional evidence into consideration as to how the claim in the Statement is justified in face of this conclusion, which is purely within the domain of the CAG.

I await your response on this important issue.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal,

Hon’ble Minister of Communications & IT,

Government of India,

New Delhi.

Copy : Dr. J. S. Sarma, Chairman, TRAI

## Letter to the Chairman, Standing Committee IT on Performance of TRAI as a Regulator

6th May, 2011

Dear Shri Rao Inderjit Singh ji,

I am in receipt of your notice for the next Sitting of the Standing Committee on IT on the subject **‘Review of functioning and performance of TRAI and gaps in the TRAI Act’** on 18 May, 2011 in New Delhi.

The timing of this meeting could not have been better. The TRAI Act was formulated when India’s telecom sector was at a nascent stage – in 1997. Due to an adverse judgment in 1998 which severely compromised the TRAI’s functioning, an amendment to the TRAI Act was carried out in 1999, which was facilitated via the new National Telecom Policy ‘99. Since then, the Act has

served its purpose well in earlier years, but is beginning to look severely compromised since 2003. There is certainly a need for a comprehensive review of the TRAI Act, its functioning and conventions.

The current discussions around losses arising from the 2G spectrum allocations have pointed to, amongst others, many lacunae in not only the powers and functioning of the TRAI, but more importantly, to the rigor and quality of its recommendations, the lack of accountability and oversight, the compromises it faces due to the DoT's ability to routinely cherry-pick or manipulate its recommendations, and finally, the lack of any obligatory timeline upon the DoT in which to implement the TRAI's recommendations.

Owing to certain prior commitments, I will be travelling away from the country on 18th May, and therefore, regret my inability to attend the sitting. However, I enclose herewith a brief note for your perusal which can assist in the deliberations/objectives of this meeting.

If required, I will also be able to provide detailed instances supporting each of the sections below – which describe a specific need for such a change. For the sake of brevity, I am limiting this note to the issues, potential remedies, and suggestions on the stakeholders who should be consulted – for the consideration of the Hon'ble Members.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Rao Inderjit Singh,  
Member of Parliament and  
Chairman - Standing Committee on Information Technology,  
6, Lodhi Estate,  
New Delhi-110 003.

Copy: Members of Standing Committee on Information  
Technology

## FUNCTIONING/PERFORMANCE OF THE TRAI AND LACUNAE IN THE TRAI ACT

### 1 TRAI lacks adequate Accountability and Oversight

The functioning of the TRAI suffers greatly on many accounts. Firstly, it needs to be accountable and a fresh approach to its oversight by the public through the Parliament needs to be developed and articulated, The whole area of the TRAI's accountability to the Parliament is highly questionable, especially given the fact that its current relationship with the DoT and the MoCIT represents a conflict of interest, with retired DoT Secretaries invariably becoming TRAI Chairmen. Secondly, the TRAI lacks any form of annual planning that is available for scrutiny. The TRAI's performance during the year is not measured in any objective fashion. There is no accountability within the TRAI in terms of time taken once an issue is raised, except when it is a formal reference. 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 the TRAI's recommendations which may sometimes be against the interests of the Government

companies. The current structure of working with or through the MoCIT poses a conflict of interest and influences the TRAI's ability, independence and willingness to set and meet measurable results.

Therefore, the TRAI's accountability must be at a far higher level and certainly not to the MoCIT alone, and must provide for an appropriate review of its outcomes based on rigor of process, legality, economic accuracy and propriety.

### **Remedy:**

There is a need to amend the TRAI Act to provide for a proper oversight of the TRAI through the Parliamentary Committee. The current engagement with the Parliamentary Committee by way of deposition is weak and does not place the onus on the TRAI to be responsible in the fashion that it should be — so that there is some form of appropriate supervision, at least by the Parliament — through whose Act this statutory body has been created. The level and areas of accountability can be debated, but a structure in general for regulating the regulator must be in place.

For example, the TDSAT, which makes quasi-judicial decisions, falls directly under the Supreme Court by way of an appellate system. The TRAI, on the other hand, lacks accountability, unless its orders are appealed or recommendations questioned as a byproduct of a separate appeal filed against the Government's decision-making. Here too, the evaluation is on legal grounds, rather than economic, social, and competition and consumer issues, which are the key responsibility areas of the TRAI as stated in the preamble to the TRAI Act.

2. **TRAI's Independence stands compromised due to weaknesses in its Powers/Functions and Procedure for processing its Recommendations**

There is 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 the 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 that the provisions of the TRAI Act are being vitiated. This needs to be corrected and the TRAI must be guaranteed the independence — both financial and functional — 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 that the TRAI has the powers to enforce the provisions of the TRAI Act when it knows that its recommendations or functions/powers are being vitiated under the TRAI Act.

**Remedy:**

Specific provisions under Section 11 of the TRAI Act (Powers and Functions) must be added to ensure that the TRAI is minimally able to effectively and in a time-bound manner, enforce its own decisions. Parties should be able to appeal against the TRAI's decisions if found illegal, arbitrary or ad hoc. But unless these parties are able to secure a stay against the TRAI's decisions, the legislation must allow for the TRAI to police and enforce its own decisions on licensees, licensor and consumers. Appropriate legislative language needs to be included as the same is missing. This will increase the effectiveness of the TRAI and also increase its own need for writing orders which are implementable, as it will now become incumbent upon the TRAI to suggest orders which it can enforce through legislative powers.

The inclusion of such powers of enforcement should not in any way be construed as an absolute power or a power against which an appeal does not lie in the appropriate court / forum.

### 3. TRAI's Regulatory Function stands severely compromised due to DoT's repeated acts of Cherry-Picking and Manipulation of its Recommendations in violation of the TRAI Act

Recommendations made by the TRAI, either suo motu or on a reference to the Government under Section 11(1)(a)(i) and (ii) on Need and Timing and Terms and Conditions of License, are binding on the Government. If the Government wishes to modify, reject or change such recommendations, it must send the same back to the TRAI under Section 11, Fifth Proviso. The TRAI is mandated to provide a review within 15 days after which the Government's decision is final.

However, it has been seen in many cases that the Government simply cherry-picks sections of the TRAI's recommendations or interprets them differently or part-implements the TRAI's recommendations or simply ignores the recommendations, i.e., implements change without re-referring the matter back - depending upon its convenience and comfort. In doing this, it refuses to recognize the inter-linkages between a comprehensive set of recommendations, and may accept recommendations in part — which do not meet the policy objectives or transparency tests that are necessary for the functioning of the telecom sector and policy making.

This act of the Government means that notwithstanding the public consultation and detailed work done by the TRAI, the Government is able to alter, modify, ignore, or cherry-pick recommendations to suit their own understanding and/or needs. This not only renders the TRAI's function ineffective but also leaves the TRAI remediless as it can do nothing to prevent such situations, except write letters which have no legal bearing or impact on the Government's decision-making. The TRAI, for example, cannot take the licensor for violating Section 11, Fifth Proviso of the TRAI Act, or for cherry-picking its recommendations to the TDSAT.

**Remedy:**

Checks and balances need to be built in the system wherein the TRAI's recommendations are either accepted or rejected in totality or, if modified in part, then that should be done with the consent of the TRAI, rather than cherry-picking. Appropriate amendments in the TRAI Act need to be made to ensure that if and as soon as the TRAI feels that its recommendations are being manipulated, part-accepted or ignored — those which fall under Section 11(1)(a)(i) and (ii) or other recommendations that are being part-accepted — then the TRAI should have the right to stop the Government from making decisions without following the due process of re-reference laid out under Section 11, Fifth Proviso.

**4. TRAI's objects and effectiveness is compromised since MoC&IT/DoT have no obligation under the TRAI Act to act in a time-bound manner**

There is no time limit with regard to how long the Government can wait or delay implementing a set of recommendations by the TRAI. When the Government finds it appropriate, it implements recommendations within weeks. In other cases, recommendations have been pending for 2-3 years. The fact that the DoT is under no obligation to implement the TRAI's recommendations, even either suo motes or based on a reference, and in a time-bound manner, has the ability to paralyze the work of the regulator and its intentions — notwithstanding the powers and functions laid out under Section 11. This would mean that the DoT can not only choose to schedule later recommendations by implementing them earlier, but also hold off implementing some crucial recommendations through an inordinate delay without being obligated to provide any sound reasoning for such delays.

**Remedy:**

Just as the TRAI has been given a time limit within which it must provide a response to a reference (15 days under Section 11 , Fifth Proviso), the MoC&IT and the DoT should, through a legislative amendment, be given a prescribed time period — no more than 2 months — to respond to a TRAI recommendation by either accepting, rejecting, or modifying it. In the event that the DoT is unable to meet this deadline, it must provide in writing such reasons and be open to filing of cases (for non-implementation) against itself in the TD AT (Section 14 of the TRAI Act will need to be amended).

This will ensure that policy making is timely, that decisions are not caught up in bureaucratic delays and most importantly, that the relevance to the TRAI recommendations, which by itself is a time consuming process of consultation, open house discussions, etc, is not further delayed, which in turn, causes harm to consumer interests and national infrastructure, and delays the much needed investment in the country.

An amendment of the Act to bind the DoT on a timeline is extremely important to improve the efficiency, effectiveness and response of the regulatory infrastructure that the Parliament has created or intends to create.

**5. Parliamentary Standing Committee on IT needs to engage in Wide- Ranging Consultations leading to Legislative Amendments**

It is strongly recommended that a serious discussion with a wide-ranging set of stakeholders be undertaken on the appropriate legislative amendments as well as the financial assistance that needs to be given to the TRAI as a part of NTP 2011. For the purposes of consultation, it is recommended that

the following stakeholders be invited to depose and provide insights:

1. TRAI Chairman/Members on the challenges and changes, including legislative amendments that they need for a more effective functioning,
2. TDSAT Chairman/Members to understand their perspective on whether any amendments or changes in the TRAI Act, including and specifically Section 14, will enable their better functioning. Their views can also be invited through a written document.
3. The Hon'ble Justice Shivraj V. Patil who submitted the One Man Committee (OMC) Report dated 31st January 2011 with specific recommendations on spectrum issues — to understand his perspective and areas of improvement given the in-depth study and critique that he has provided in his study/analysis in the functioning of the TRAI, the DoT and their working relationship inter se.
4. Secretary - DoT for understanding the DoT's perspective for the better functioning of the TRAI and to understand why the DoT regularly resorts to cherry-picking/manipulating or causing inordinate delays in implementing the TRAI's recommendations.
5. Secretary Generals/Director Generals of key telecom industry associations such as COAT, AUSPI and ISPAI, to understand the industry's perspective on the shortcomings in the TRAI Act, its functioning and accountability.
6. Chairmen of the telecom committees of leading industry associations who deal with telecom matters such as the telecom committees at FICCI, CII and ASSOCHAM to understand their views and members' perspective — which will go beyond merely those of telecom service providers.

7. Regulatory specialists/consultants and heads of consumer bodies to get their perspective on how the TRAI's functioning can be improved to benefit and enhance consumer interest.

The Government must also consider the TRAI's comprehensive proposals for amendment to the TRAI Act 1997 dated 28th March 2008, which regrettably have remained unattended to by the Government for nearly three years. The dialogue must discuss its accountability to the Parliament, as well as comprehensive amendments to further strengthen the powers and independence of the TRAI, especially in the areas of licensing, competition management, spectrum utilization and interconnection etc.

Equally, the discussion must also review the TRAI's funding and service terms to enable it to attract and retain best-in-class talent, including from within the ranks of Government employees.

40

## RTI Appeal regarding Show Cause Notices Issued to any UAS Licensees

17th May, 2011

Dear Shri Mittal,

**Sub: An appeal under Section 19(1) of the Right to Information Act, 2005 for Non-Supply of Information/Grievance against Decision of CPIO in his reply dated 19th April, 2011 in response to my RTI application dated 30th March, 2011.**

This is on appeal against Shri R.K. Gupta's reply dated 19th April, 2011 to my RTI Application dated 30th March, 2011 . The concerned officer has failed to provide satisfactory replies and has taken false and unwarranted protection under Section 8(1)(h) of the RTI Act.

In this regard, you are requested to take suitable action against the concerned for failing to provide the requisite information under

appropriate sections of the RTI Act, including levying penalties for failure to provide information as per law, and forthwith provide the information.

**1. Description of Application:**

In accordance with the provisions of the RTI Act, 2005, the appellant, Rajeev Chandrasekhar, Member of Parliament, sought information as per the attached application from the CPIO.

**2. Name and Address of the CPIO:**

Shri R.K. Gupta, Director (AS-I) & CPIO, Room No. 1203, Sanchar Bhawan, Department of Telecommunications, New Delhi.

**3. Details of the Decision of the CPIO:**

Decision of the CPIO deemed a refusal as information sought has neither been provided nor refused outright through a well-reasoned reply.

**4. Grounds of Appeal:**

The appellant herein submits that the grounds for deemed refusal to provide the information is in violation of the provisions of the RTI Act, 2005, inter alio, on the following grounds

- i) Non furnishing of information sought - which has neither been provided nor refused outright.
- ii) The CPIO has failed to appreciate that it is in the public interest that the information sought by the appellant herein must be given to him as the enactment itself seeks to promote transparency, arrest corruption, ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities.

- iii) The CPIO ought to have granted information sought under Section 6 of the Act. By neither providing the information nor refusing it outright, the CPIO has acted not only contrary to the statute but failed to exercise powers and duties prescribed under the statute.
- iv) The CPIO has wrongly cited sections which are not applicable in the current instance to seek unlawful exemption from disclosure of information.
- v) The CPIO, notwithstanding the application of Section 8(1) (h) should have considered it with Section 8(2) which states, "*Any of the exemptions permissible in accordance with sub-section 1, a public authority may allow access to information if public interest in disclosure outweighs the harm to protect that interest*".
- vi) The CPIO did not consider all the facts of the case before arriving at his conclusions as has been presented here in Annexure I for your kind consideration.
- vii) The CPIO has failed to even provide the most basic response required to query no. 2 and query no. 3 of my RTI application dated 30th March, 2011. Instead, the CPIO has assumed that a generic response of transferring the application to an appropriate department - Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT - is sufficient. The CPIO's reply is crafted in a manner that can mislead any average citizen.
- viii) The CPIO has responded to query no. 1 of my RTI application dated 30th March, 2011 with a list of 85 licenses while the request was for copies of show cause notices. Clearly, since the query is easily understood, it is a deliberate attempt to withhold copies of show cause notices relating to these 85 cases even when an offer to pay

for such photocopies was explicitly made. The CPIO is misusing discretionary powers, which is a gross violation of the RTI Act.

- ix) The CPIO has committed that my application has been transferred to the appropriate department - Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT- under Section 6(3) of the RTI Act, 2005. Going by the RTI Act and given the time period of 5 days for transfer of application plus 30 days for reply, no reply has been forthcoming after 35 days of my application dated 30th March, 2011. This is clearly a gross violation of the RTI Act, either by the CPIO and/or by the CPIO concerned of a different department - both of whom fall under the Access Services division, for which, it is respectfully submitted, you are the appointed Appellate Authority.
- x) The CPIO has used Section 8(1)(h) almost as an excuse to deny information without explaining whether even the actions taken under the current MoCIT in December 2010 (show cause notices, copies of which have been demanded) are now under investigation and by which authority/whose order. This is certainly a misleading claim in an attempt to block a legitimate request for information under the statute.
- xi) The Appellate Authority under the RTI Act, 2005 is endowed with the duty of discharging his functions in a quasi-judicial manner and it is incumbent on his part to give a decision which is a well-reasoned one.

### **5. Relief Sought:**

In light of the above and reasons given in Annexure I, it is respectfully prayed that this Appellate Authority may be pleased to:

- i) Direct the CPIO to provide the information sought without any delay.
- ii) Levy a penalty under Section 20(1) at the rate of Rs. 250/- per day subject to a maximum of Rs. 25,000/- on the CPIO from the date of receipt of the RTI application till the date the information is actually given to the applicant.
- iii) Order a disciplinary action against the CPIO under Section 20(2) for not furnishing the information within the time specified and by denying the information sought under the Act.
- iv) Pass any such orders as this Appellate Authority may deem fit and proper in the interest of justice.

For a hearing, I wish to send my duly authorized representative as appropriate. This appeal has been preferred within the prescribed time frame under the RTI Act 2005.

In case I am required to pay for photocopy charges, kindly indicate the amount to Vidya Narayanan in my office, to enable me to deposit the requisite amount. Her contact details are provided below:

Name: Vidya Narayanan

Office Phone: 011 2309 4044

Email: vidya.narayanan@rajeev.in

Mobile: +91 9999967787

Address for Correspondence: 211, North Avenue,  
New Delhi - 110 001

Verification:

I hereby state that the information and particulars given above are true to the best of my knowledge and belief, and also declare that this matter is not previously filed with any appellate authority nor is it pending with any court or tribunal or authority.

Yours sincerely,

Rajeev Chandrasekhar

Shri AK.Mittal

DDG (AS) & Appellate Authority,  
Department of Telecommunications,  
Room No. 1004, Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.

Enclosures:

- i) Detailed argument against the reply of the CPIO (Annexure I)
- ii) Copy of reply received from the CPIO doted 19th April, 2011
- iii) Copy of the RTI application filed on 30th March,2011

**Detailed arguments to be considered by the Appellate Authority  
against the reply of the CPIO dated 19th April,2011 to my RTI  
application dated 30th March, 2011**

This is an appeal against Shri R.K. Gupta's reply dated 19th April, 2011 to my RTI Application dated 30th March, 2011. The concerned officer has failed to provide satisfactory replies and has taken false and unwarranted protection under Section 8(1)(h) of the RTI Act. This section is not applicable for the reasons given in each of the instances below. Moreover, the cause of public interest far outweighs the need to hide this information from the public domain. In fact, it goes to the heart

of the amendments carried out to the Freedom of Information Act 2002 which inter alia include “provisions to ensure maximum disclosure and minimum exemption, consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities etc.” received from the National Advisory Council. In this regard, you are requested to take suitable action against the officer who has failed to provide the requisite information under appropriate sections of the RTI Act, including levying penalties for failure to provide information as per law, and forthwith provide the information for the following reasons:

**1. My Query (Request to Furnish):**

Copies of all Show Cause Notices issued since 01.12.2010 by DoT to any UAS licensee.

**Your Reply:**

With reference to your above mentioned application under RTI Act, 2005, it is informed that based on the Report of Comptroller & Auditor General of India (CAG) on “Issue of Licenses and Allocation of 2G Spectrum by the Department of Telecommunications”, DoT, on 14.12.2010, has issued show cause notices to 13 companies for termination of the 85 Unified Access Service (UAS) licenses issued in the year 2008, which are stated to be ineligible on the date of their respective applications for grant of UAS licenses. The details of the 13 companies and 85 UAS licenses are as per list annexed. As far as the other information are concerned, it may be conveyed that the information sought are exempted from disclosure under section 8(1)(h) of RTI Act, 2005 as the replies received from the above said companies are under examination and the disclosure of information may impede the process of investigation/ examination.

### Objections to the Reply:

- i) First and foremost, my query does not relate to the list of companies alone. It specifically asks for copies of the show cause notices. There is nothing ambiguous about my request and consequently nothing should have been ambiguous about the reply. A list of 85 companies in no way can be seen as a substitute for 'copies of show cause notices'. This is a deliberate attempt to prevent placing information in the public domain - in gross violation of the RTI Act. This is especially true since unlike the rest of the show cause notices where the DoT has claimed protection under Section 8(1)(h), this is one where a list of 85 companies has been provided and therefore is clearly not a matter of investigation. So if the list can be provided, so can the list of show cause notices, especially as I have already committed to bearing the cost of all the photocopies.
- ii) You seek protection for show cause notices other than the 85 listed (by suggesting that these cannot be given due to the application of Section 8(1)(h)). This response is clearly insufficient since violation of rollout obligations and related show cause notices are not part of any known CBI investigation. Any internal query or investigation conducted by the DoT is not reason enough to take this excuse. Moreover, no such investigation has been ordered or publicly reported in any event. You are required to kindly either provide all copies of such show cause notices as requested in the query, including but not limited to the 85 for which you have given a list, or else provide a specific description as to what investigation is preventing the DoT from placing this information in the public domain.

- iii) Please also be reminded that rollout obligations go to the heart of providing teledensity, ensuring competition and by consequence affordability - all of which are intrinsically linked to consumer and public interest. To deliberately prevent such information - which the citizens must be able to monitor - goes against the very objects and reasons of the RTI Act in addition to violating several provisions of the RTI Act.
- iv) It is also unclear how show cause notices issued by the DoT can, in any way, impede the so-called investigation or apprehension or prosecution of offenders. The officers that were responsible for issuing show cause notices and monitoring rollout obligations from the AS Cell, with the exception of one, are active in duty and routinely appear in public meetings alongside the Hon'ble MoCIT. In fact, they are also active in responding to RTI applications. It cannot be your case that these officers might be under prosecution but have access to and are allowed to function with all data and files as routine.
- v) Kindly review your response very carefully in view of the judicial consequences of such a reply while considering this appeal .

## 2. My Query (Request to Furnish):

All file notings leading up to the decision for the issuance of such Show Cause Notices, including, but not limited to, the TRAI letter with annexures in this regard dated 18.11.2010.

**Your Reply:**

Further, in terms of Section 6(3) of the Right to Information Act, 2005, your application is being transferred to Director (AS-III) & CPIO, DoT and Director (AS IV) & CPIO, DoT for further necessary action.

**Objections to the Reply:**

- i) This query has not been responded to at all. My enquiry was dated 30th March 2011. Even if the DoT has (as it claims) sent this information to Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT, it was required to do so within 5 days of the date of receipt of the application, which means that under Section 6(3), this information should have been sent to Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT by 6th April 2011 (excluding Saturday/Sunday) and I should have been informed about such transfer immediately. Instead:

I was informed about such a transfer 'not immediately' as is provided under Section 6(3) of the RTI Act but on 19th April 2011.

Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT should have treated my application as of 6th April 2011 and responded to me within 30 days, i.e. by 6th May 2011 - which it has failed to do.

Since Shri R.K. Gupta, Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT report to you, please investigate as to why neither the information of such transfer was sent to me immediately (by Shri R.K. Gupta) nor have the Director (AS-III) & CPIO, DoT and Director (AS-IV) & CPIO, DoT responded to me within the stipulated timeline - by 6th May 2011.

- ii) Further, please be advised that show cause notices have been issued under the regime of the Hon'ble MoCIT, Shri Kapil Sibal after his public announcement in December 2011. Clearly, file notings leading up to that action are not a matter of any investigation etc. and therefore your department does not have any excuse to take false protection under Section 8(1)(h) as has been taken for Query No. 1 above. If such is the case, then please specify the nature of the investigation, including any actions taken by the current MoCIT that are also under investigation and by whom. If not, then kindly take action against the officers as appropriate under the RTI Act and provide me the information at the earliest and without any delay.

### 3. My Query (Request to Furnish):

Any additional correspondence that has occurred with any of the UAS licensees who have received such Show Cause Notices over and above the Show Cause Notice and its reply.

#### Your Reply:

No response provided.

#### Objection:

- i) Shockingly, this query has not even received a response and it seems that Shri R.K. Gupta believes that a general comment rather than a response to my query can be sent to an applicant of RTI - who should then be left with the task of deciphering how to apply which response to which query. Surely if the reply to Query No. 2 also applies to Query No. 3, then the same should have been stated.

In absence of such clarity, this is a gross violation of the RTI Act and appropriate action is due against the officer in question.

From the parcel reply of the DoT to this query around rollout obligations and copies of show cause notices, it seems clear that a desperate and deliberate attempt is being made to keep both the complete list (not just the ineligible 85 company) and copies of the show cause notices out of the public domain for some unknown but mystical reason. Apart from this being illegal (in violation of the RTI Act), it goes against the claims made by the Hon'ble MoCIT to bring greater transparency in the department. In fact, this is a good test since information relating to rollout obligations is linked closer to public interest than any other matter - as stated above.

Request you to immediately take appropriate action and provide me information on all of the queries submitted above at the earliest.

41

## RTI Appeal for the Disclosure of File Notings Regarding TRAI Recommendations on 'No Cap'

17th May, 2011

Dear Shri Mittal,

**Sub: An appeal under Section 19(1) of the Right to Information Act, 2005 for Non Supply of Information/Grievance against Decision of CPIO in his reply dated 19th April, 2011 in response to my RTI application dated 24th March, 2011.**

This is on appeal against Shri R.K. Gupta's reply dated 19th April, 2011 to my RTI Application dated 24th March, 2011. The concerned officer has failed to provide satisfactory replies and has taken false and unwarranted protection under Section 8(1)(h) of the RTI Act.

In this regard, you are requested to take suitable action against the concerned for failing to provide the requisite information under appropriate sections of the RTI Act, including levying penalties for failure to provide information as per law, and forthwith provide the information.

#### **1. Description of Application:**

In accordance with the provisions of the RTI Act, 2005, the appellant, Rajeev Chandrasekhar, Member of Parliament, sought information as per the attached application from the CPIO.

#### **2. Name and Address of the CPIO:**

Shri R.K. Gupta, Director (AS-I) & CPIO, Room No. 1203, Sanchar Bhawan, Department of Telecommunications, New Delhi.

#### **3. Details of the Decision of the CPIO:**

Decision of the CPIO deemed a refusal as information sought has neither been provided nor refused outright through a well-reasoned reply.

#### **4. Grounds of Appeal:**

The appellant herein submits that the grounds for deemed refusal to provide the information is in violation of the provisions of the RTI Act, 2005, inter alia, on the following grounds:

- i) Non furnishing of information sought - which has neither been provided nor refused outright.
- ii) The CPIO has failed to appreciate that it is in the public interest that the information sought by the appellant herein must be given to him as the enactment itself seeks to promote transparency, arrest corruption, ensure maximum disclosure, and minimum exemptions consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities.
- iii) The CPIO ought to have granted information sought under Section 6 of the Act. By neither providing the information nor refusing it outright, the CPIO has acted not only contrary to the statute but failed to exercise powers and duties prescribed under the statute.
- iv) The CPIO has wrongly cited sections which are not applicable in the current instance to seek unlawful exemption from disclosure of information.
- v) The CPIO, notwithstanding the application of Section 8(1)(h) should have considered it with Section 8(2) which states, *'Any of the exemptions permissible in accordance with sub-section 1, a public authority may allow access to information if public interest in disclosure outweighs the harm to protect that interest'*.
- vi) The CPIO did not consider all the facts of the case before arriving at his conclusions as has been presented here in Annexure I for your kind consideration.
- vii) The Appellate Authority under the RTI Act, 2005 is endowed with the duty of discharging his functions in a quasi-judicial manner and it is incumbent on his part to give a decision which is a well-reasoned one.

## 5. Relief Sought:

In light of the above and reasons given in Annexure I, it is respectfully prayed that this

Appellate Authority may be pleased to:

- i) Direct the CPIO to provide the information sought without any delay.
- ii) Levy a penalty under Section 20(1) at the rate of Rs. 250/- per day subject to a maximum of Rs. 25,000/- on the CPIO from the date of receipt of the RTI application till the date the information is actually given to the applicant.
- iii) Order a disciplinary action against the CPIO under Section 20(2) for not furnishing the information within the time specified and by denying the information sought under the Act.
- iv) Pass any such orders as this Appellate Authority may deem fit and proper in the interest of justice.

For a hearing, I wish to send my duly authorized representative as appropriate. This appeal has been preferred within the prescribed time frame under the RTI Act 2005.

In case I am required to pay for photocopy charges, kindly indicate the amount to Vidya Narayanan in my office, to enable me to deposit the requisite amount. Her contact details are provided below:

Name: Vidya Narayanan  
Office Phone: 011 2309 4044  
Email: vidya.narayanan@rajeev.in  
Mobile: +91 9999967787

Address for Correspondence: 211, North Avenue, New Delhi - 110 001

Verification:

I hereby state that the information and particulars given above are true to the best of my knowledge and belief, and also declare that this matter is not previously filed with any appellate authority nor is it pending with any court or tribunal or authority.

Yours sincerely,

Rajeev Chandrasekhar

Shri AK.Mittel

DOG (AS) & Appellate Authority  
Department of Telecommunications,  
Room No. 1004, Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.

Enclosures:

- i) Detailed arguments against the reply of the CPIO (Annexure I)
- ii) Copy of reply received from the CPIO dated 19th April, 2011
- iii) Copy of the RTI application filed on 24th March, 2011

**Detailed arguments to be considered by the Appellate Authority  
against the reply of the CPIO dated 19th April, 2011 to my  
RTI application dated 24th March, 2011**

This is an appeal against Shri R.K. Gupta's reply dated 19th April, 2011 to my RTI Application dated 24th March, 2011. The concerned officer has failed to provide satisfactory replies and has taken false and unwarranted protection under Section 8(1)(h) of the RTI Act. This section is not applicable for the reasons given in each of the instances below. Moreover, the cause of public interest far outweighs the need to hide this information from the public domain. In fact, it goes to the heart of the amendments carried out to the Freedom of Information Act 2002 which inter alia include "provisions to ensure maximum disclosure and minimum exemption, consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities etc." received from the National Advisory Council. In this regard, you are requested to take suitable action against the officer who has failed to provide the requisite information under appropriate sections of the RTI Act, including levying penalties for failure to provide information as per law, and forthwith provide the information for the following reasons:

- i) In every response, you seem to mention the 'original files' being with the CBI. That does not in any way mean that the DoT does not have a copy of those files or documents. If that is the case, then you must state so in your response. It is important that you clarify in no uncertain terms that the DoT is unable to provide such documents because they don't have such documents in their possession either in their 'original' form (as you claim) or even photocopies of these

- files - which is difficult to believe or accept since that would completely collapse the work of the department. To cite 'original files' being with the CBI is misleading since you have failed to disclose the fact that you might have copies of these. Kindly either clarify on both accounts or refrain from using such excuses in future.
- ii) Much of the information that has been sought will have to be in the possession of the DoT since these are ongoing court cases. For example, a copy of the affidavit that has been sought under query no. 3 below is part of the case file that is currently under appeal in the Hon'ble Supreme Court. Under the circumstances, to suggest that even a copy of this affidavit is in the 'original file' and therefore unavailable to the DoT seems impossible. If such is the case, then please clarify in no uncertain terms while responding to this appeal. Moreover, please be advised that the affidavit sought in query no. 3 below is a matter of public record and therefore whether or not there is an investigation on a copy of this affidavit must be provided in response to my application. Not providing a copy of said affidavit in response to my RTI application would be the equivalent of suggesting that even press releases which are part of an investigation by the CBI cannot be provided. Clearly, that is not the case.
- iii) The issues relating to dual technology do not seem to be a matter of the FIR filed in October 2009 against unknown officials of the DoT and private parties by the CBI. It is unclear then what investigation you are referring to and why the CBI should have exclusive possession of these files as your department seems to suggest. Moreover, it is disingenuous to use section 8(1)(h) in general terms without specifying the nature of the enquiry etc. since this can easily be misused for even the minutest question that may have been raised within

the department by terming it as 'enquiry'. Kindly clarify the nature of the enquiry or else this would seem like an attempt to exploit a loophole in the RTI Act, 2005 - which is surely unbecoming of the DoT.

- iv) While your department has decided to block such information on an RTI application in spite of the information being in public interest, it is clear that similar and related files were not only made available to the Hon'ble Justice Shivraj V. Patil One Man Committee (many of them marked 'secret') but in fact, the Hon'ble Justice Shivraj V. Patil has chosen to place that on record in the public domain (e.g. Annexure 47 - File No. 20-100/2007-AS-I - directly related to the 2G spectrum scam being investigated by the CBI). It is unclear what special authority overrides Section 8(1)(h) when it comes to providing such information to Justice Patil and putting it on the public domain on the website, but blocking it when a legitimate RTI is filed under law. Clearly, this is a case of discrimination and discretionary use of the DoT's powers in favour of one person who did not seek such information under the RTI Act (Justice Patil) and against another who is filing a legitimate application.

As you consider your replies to each of the sections given below, please carefully consider the above issues in dealing with this appeal:

### 1 . My Query:

All documents, papers and file notings since 28th August 2007 leading up to the Press Release of 19th October 2007 regarding Government's acceptance of TRAI's recommendations on 'no cap' and amendment of the dual technology policy, M&A norms and rollout obligations etc. This is not a request for the Press Release of 19th October 2007 alone - since the said Press

Release is already in the public domain and on Government's website- but in fact, for the file notings leading up to the Press Release.

**Your Reply:**

The original file where the recommendations dated 28.08.2007 of TRAI leading upto the press release of 19th October 2007 were processed, is presently with the CBI, investigating the 2G matter. As the matter is under investigation, this office is unable to provide the information sought as these are exempted under section 8(1) (h) of RTI Act as the same may impede the process of investigation.

**2. My Query:**

All documents, papers and file notings since 2nd November 2007 leading up to the letter by former Hon'ble MoCIT, Shri A Raja to the Hon'ble Prime Minister of India dated 26th December 2007 which conveyed his meetings with the Hon'ble Minister of External Affairs and the Solicitor General, including decisions taken by Shri A Raja which were enclosed as annexures. This is not a request for the letter/annexures of 26th December 2007 alone - since that letter is already in the public domain as Annexure 48 (Pages 672 - 677) accompanying the Hon'ble Justice Shivraj V Patil One Man Committee Report dated 31st January 2011 - but in fact for the file notings leading up to the letter.

**Your Reply:**

No such file notings leading to letter dated 26.12.2007 from the then Hon'ble MoCIT to Hon'ble Prime Minister available on record in this office as on date. However, a copy of letter dated 29.03.2011 received from the Office of Ld. Attorney General for India in a RTI matter is annexed.

### 3. My Query:

All file notings leading up to the Affidavit, including the Affidavit (as below), filed by the DoT in the TDSAT/Delhi High Court mentioned in Shri A. Raja's letter to the Hon'ble Prime Minister dated 26th December 2007 in the accompanying Annexure, Section 2 - which states, "Application of Tata Telecommunication will also be processed as per the policy and guidelines. **An affidavit to this effect will be filed in both TDSAT and Delhi High Court**". Please also include any official exchanges/file notings/memos in this regard between the Department of Telecom, the MoCIT and Law Officers of the Government, including references, case for opinion that may have been sent to or via the Ministry of Law & Justice to or for advice from the then Learned Solicitor General of India, including comments from him, other Law Officers or LA(T) before filing, in preparation of, and leading to the finalization of the said Affidavit. This is a request for both the file notings and a copy of the Affidavit as above.

### Your Reply:

The original file regarding the Petition No. 286 of 2007 before Hon'ble TDSAT in the matter of '*COAI & Ors. v. Union of India & Ors.*' and Writ Petition (Civil) No. 9654 of 2007 before Hon'ble High Court of Delhi in the matter of '*COAI & Ors. v. Union of India & Ors.*' inter alia challenging the decision of the Government announced through the press release dated 19.10.2007 including use of dual technology spectrum, were processed, is presently with the CBI, investigating the 2G matter. As the matter is under investigation, this office is unable to provide the information sought as these are exempted under section 8(1)(h) of the RTI Act as the same may impede the process of investigation.

42

## Letter to the CBI on Illegal Grant by DoT of GSM Startup Spectrum during 2007-08

20th June, 2011

Dear Shri Priyadarshi,

**Sub: Evidence with regard to illegal acts by DoT during 2007-08 (illegal grant of GSM Startup spectrum in violation of the TRAI Act and the First Come, First Served policy) – thus causing a loss to the Exchequer as articulated in the CAG Report of 16.11.2010, Chapters 5 and 6 (Rs. 37,154 crores loss attributable from dual technology alone).**

This is further to my meeting with you on 14.06.2011. This submission is specifically aimed at assisting the Hon'ble Supreme Court's direction to the CBI in its order dated 16.12.2010, Section

(i), which states:

*“The CBI shall conduct thorough investigation into various issues highlighted in the report of the Central Vigilance Commission, which was forwarded to the Director, CBI vide letter dated 12.10.2009 and the report of the CAG, who have prima facie found serious irregularities in the grant of licenses to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licenses and huge loss to the public exchequer running into several thousand crores. The CBI should also probe how licenses were granted to large number of ineligible applicants and who was responsible for the same and why the TRAI and the DoT did not take action against those licensees who sold their stakes/equities for many thousand crores and also against those who failed to fulfil rollout obligations and comply with other conditions of license”.*

This letter and the evidence I present does not cover the issue of grant of GSM spectrum to dual technology operators through DoT actions before 18.10.2007 – a day before dual technology policy was announced – because the Supreme Court has already ordered an independent investigation into this matter on 16.12.2010.

**2007-08 (illegal grant of GSM spectrum to the Tatas granted vide their application dated 22.10.2007 for 20 new circles):**

It seems that the prevailing view with regard to the issuance of GSM Startup spectrum to the Tatas under the dual technology policy is that it was in accordance with TRAI recommendations of 28.08.2007 on dual technology (Chapter 4 and Sections 6.20 – 6.27):

*“Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter*

*se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.*

*The licensee will maintain separate detail of the subscriber number data for the purposes of spectrum allocation but the AGR will be the combined AGR of both the technologies. It is the combined AGR which will determine the license fee.*

*In order to ensure that the additional spectrum is efficiently and properly utilized in a timely manner; the license should also be required to fulfil the contingent roll out obligation.*

*The present provisions of roll out obligations should not be changed for all the access service providers”.*

However, the reality is :

- 1) The contention that the policy of 19.10.2007 implemented the TRAI recommendations dated 28.08.2007 (Chapter 4 and Sections 6.20 – 6.27) is wrong and incorrect.
- 2) Further, that the inter se priority was granted to the Tatas based on the said TRAI recommendations, Section 6.23, is also entirely incorrect and being deliberately misinterpreted by ignoring the very language which guides the ‘purposive instruction’ of that section.

Before presenting brief arguments in favour of the above, it is crucial to highlight the following licensing/policy issues:

- i) For any applicant (existing, dual or new) to make claim to spectrum, it is critical that their license / policy regime meets the test of legal tenability. If dual technology policy fails such a test, then all other claims, including those of inter se victimization, are mere squabbles amongst wrongdoers. If the dual technology policy is in violation of TRAI Act, the policy is illegal and the licenses/spectrum granted under that policy is also illegal.

- a. For any licenses to be granted, the policy/guidelines issued have to meet the test of legality, and unless it passes that test, any other claim or consumer interest argument cannot make up for the lack of legality. There are several settled Supreme Court judgments in this regard.
- ii) Dual technology operators, especially Tatas, were seeking exactly the same startup GSM spectrum that was being sought by old operators, operators with pending licenses since 2006 and the 575 UASL applicants who had applied ahead of Tatas – on or before 01.10.2007.
    - a. The phrase ‘additional spectrum’ in the TRAI recommendations has to be seen in the context that it has been used. To state that ‘additional spectrum’ equals ‘startup spectrum’ in dual technology is incorrect because there had been distinct procedures/eligibilities laid down for each.
    - b. Any party, including Tatas, that stands aggrieved by any other company that may have received licenses before the announcement of the policy, does not necessarily make them a victim. They must, on their own, pass the test of legality and propriety. It is entirely possible that the Tatas may or may not be victims vis-a-vis other dual technology operators, but equally, they may have trampled over the rights of others who stood in queue ahead of them on an FCFS basis. A victim can also be a beneficiary – and both of those need to be dealt with separately.
    - c. The critical question is about the inter se priority decision of Tatas application dated 22.10.2007 vis-a-vis the 575 applications received on or before 01.10.2007, of which only 122 were granted licenses and the remaining 345 (beyond 26.09.2007) were rejected even though they had applied 21–25 days ahead of Tatas. This, in spite of no

recommendation from the TRAI or legal opinion in the DoT.

With the above background as a basis of evaluating the contention of the potential accused/involved parties, kindly evaluate the following evidence:

**I. Dual technology policy decision announced vide Press Release of 19.10.2007 was illegal since it violates the TRAI Act - because the DoT unilaterally modified TRAI's recommendations without any reference back to the TRAI**

**a. DoT Changed TRAI recommendations on rollout obligations for dual technology operators (Chapter 5 read with Chapter 4 and specifically Sections 6.26 and 6.27):**

The dual technology decision announced by the DoT on 19th October 2007 is illegal and void ab initio. This is clear from the fact that the policy has been announced in blatant violation of the TRAI Act, Section 11(1)(a)(ii), Fifth Proviso, which makes it mandatory for the DoT to re-refer the matter back to the TRAI in the event it plans to modify or deviate from the recommendations of the TRAI.

In the said instance, the TRAI, in its recommendations dated 28th August 2007, Section 6.26 read with Section 6.27, states in no uncertain terms that a dual technology licensee would be required to fulfil contingent rollout obligations and that such rollout obligations should not be changed for all access providers. However, in the policy announced on 19th October 2007, the DoT removed any provisions for rollout obligations without the mandatory compliance with Section 11(1)(a)(ii), Fifth Proviso of the TRAI Act.

It is pertinent to point out that the DoT's move to remove rollout obligations from dual technology operators

is strikingly consistent with Tata Tele's reply to the consultation process which eventually led to the TRAI recommendations of 28.08.2007 in which Tatas, in Question 18, stated that, "*There should be no rollout obligations specifically linked to alternate technology which existing operators have decided to use.*"

The DoT, in flagrant violation of law, announced the policy that was consistent with Tatas' submission on the rollout obligations, thus depriving the nation and its public of the very basic requirements of Government policy i.e., to ensure teledensity and access through network rollout which was the key reason for allowing dual technology policy in the first place.

- b. DoT modified the TRAI recommendations on calculation of spectrum charge license fee based on 'combined spectrum', and rather used 'separate streams' – thus unilaterally modifying TRAI's recommendations and by consequence causing a massive loss to the Exchequer:**

TRAI, in its recommendations of 28th August 2007, Section 6.24 (detailed in Section 4.30) clearly articulated that "the AGR will be the combined AGR of multiple technologies and it is the combined AGR which will become the basis of license fee" – which includes spectrum charge. The illegal dual technology decision announced on 19th October 2007, was in blatant violation of this recommendation and aimed at granting hundreds of crores of benefit to dual technology operators, such as Tatas, by changing the 'combined AGR' recommendation of the TRAI to a calculation based on 'separate streams' (press release of 19th October 2007, Para 4, last line), "For the purposes of payment of license fee and spectrum charge, the stream wise revenue of different technologies

shall be considered.” This was done without a mandatory re-reference to the TRAI under Section 11(1)(a)(ii), Fifth Proviso. The consequence of this is hundreds of crores of losses to the exchequer and corresponding gains to dual technology operators. The two parameters that especially impact increase in payment to the exchequer are:

- i) Spectrum allocated – which only increases through the term of the license, and
- ii) AGR – which also only increases during the term of the license

Based on the above violations alone, the entire decision of dual technology of 19th October 2007 is deemed illegal and void ab initio.

TRAI Vs. DoT	TRAI Recommendations Vs. Dot Decision	Compliance with Section 11(1)a(ii), Fifth Proviso
TRIA Recommendation, 28.08.2007, Section 6.24	<i>"The AGR will be the <b>combined</b> AGR of multiple technologies and it is the <b>combined</b> AGR which will become the basis of license fee"</i>	No
DoT Decision, 19.10.2007	<i>"For the purposes of payment of license fee and spectrum charge, the <b>stream wise revenue</b> of different technologies shall be considered"</i>	

- c. TRAI Chairman, Shri Nripendra Misra, objected to the press release of 19.10.2007 within hours on the same day: Sensing the fact that the DoT was in gross violation of

the TRAI Act and was unilaterally modifying and cherry-picking from TRAI's recommendations at will to benefit private operators, the TRAI Chairman, Shri N. Misra wrote a detailed letter, informing the DoT that its action was blatantly wrong. The letter specifically speaks about the need to study the inter-linkages between recommendations and to formally consult with the TRAI before deviating (TRAIA Act, Section 11(1)(a)(ii), Fifth Proviso). This in itself is sufficient evidence that the TRAI Chairman was aware of the blatant violations in the illegal implementation of dual technology policies.

**II. TRAI Recommendations, Section 6.23 is being wrongly interpreted to justify skipping over 575 applicants for same GSM startup spectrum, while ignoring not only the meaning and construction of the recommendation, but in fact, its context.**

**a. Additional spectrum is not GSM Startup spectrum**

Section 6.23 states:

*“Regarding inter se priority for spectrum allocation, when the existing licensee becomes eligible for allocation of additional spectrum specific to the new technology, such a licensee has to be treated like any other existing licensee in the queue and the inter se priority of allocation should be based on the criteria that may be determined by the Department of Telecommunications for the existing licensee.”*

In the Tata Tele case, for example, the company did not need additional spectrum in dual technology; instead they needed ‘startup GSM spectrum’. The use of the words ‘additional spectrum’ cannot relate to ‘startup spectrum’ in view of the construction of the sentence. Further, it is pertinent to note that no ‘existing licensee’ stands in a

queue for startup spectrum. So if the usage of ‘additional spectrum’ equals ‘startup spectrum’, then how is the phrase ‘in the queue’ to be given any rational meaning? There is no queue for existing operators where startup spectrum is concerned.

On the contrary, if ‘additional spectrum’ means spectrum beyond the contracted amount (which it should) then the phrase ‘in the queue’ can be given logical meaning. That’s because existing operators do stand in a queue for additional spectrum beyond contracted spectrum – 6.2 MHz at that stage.

Consequently, the only companies that stand in a queue for startup spectrum are new UASL applicants. The recommendation, when read in its totality, along with ‘*like any other existing licensee in the queue*’ is clearly not referring to startup spectrum for dual technology operators, since there is no queue for existing operators (Bharti, Vodafone, Idea) in the first place.

Further, the recommendation also states, “*the inter se priority of allocation should be based on a criteria that may be determined by DoT for the existing licensee.*” Clearly, this cannot refer to startup spectrum for the simple reason that the DoT does not have to determine the inter se priority for startup spectrum – since that (till the date of this recommendation) was based on the FCFS process. However, it is the ‘additional spectrum beyond the contracted amount’ for which the DoT was required to make a final decision on inter se priority/subscriber-based allocation etc.

In conclusion, Section 6.23 of the TRAI recommendation, in its entirety, **under no circumstances, can be read to mean**

that additional spectrum is the same as startup spectrum for dual technology operators such as Tatas. Finally, it is also clear from the TRAI recommendations that no criterion had been allocated in favour of Tatas to jump the queue of the waiting 575 applicants. In fact, it was not even dealt with – either in Chapter 4 or in Chapter 6 of the said recommendations. In fact, that is the only reason why the DoT had to seek a legal opinion on this matter (not vis-a-vis existing operators or licensees awaiting since 2006 but vis-a-vis the 575 applicants) vide their letter to the MLJ dated 26.11.2007.

- b. All DoT officials (relevant to the case) including members of the Telecom Commission, and the then MoC&IT, Shri A. Raja, agreed on 24.10.2007 that no priority for dual technology has been indicated by the TRAI in favour of Tatas (dual technology) vis-a-vis the 575 applications that were pending since 01.10.2007:

A reading of the notes in the Secret File No. 20-100/2007/AS-I shows clearly that neither Section 6.23 nor any other section of the TRAI's recommendations indicate any priority for dual technology applicants such as Tatas over the 575 waiting applicants for startup spectrum. This is clear from a note written by Shri Nitin Jain dated 24th October 2007, Section 3, which states:

*“Subsequently on 22.10.2007 M/s. TATA who are UASL operators in 20 service areas have also applied for Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). A decision is required to be taken in this case”.*

Further, it also states in Section 4:

*“You may request Ld. SG to provide his opinion on*

*methodology proposed by DoT with regard to grant of new UASL license and usage of dual technology spectrum, based on availability”.*

The note is approved by Shri A.K. Srivastava, DDG (AS), by Member (T), by Shri D.S. Mathur, Secretary (T) and by Shri A. Raja, the then MoC&IT, on 25 October 2007. This means that the then MoCIT was clear that there was no existing policy with regard to dual technology where allocation of spectrum was concerned and specifically with regard to Tatas who had applied after 19 October 2007. There was no priority since there was no policy/recommendation from the TRAI vis-à-vis the existing 575 applications.

This file was signed by DDG (AS), Member (Telecom) and Secretary (Telecom) on 24th October 2007, and by the then MoCIT, Shri A. Raja on 25th October 2007. Had the TRAI recommendations been explicit in favour of Tatas, this note would neither have been prepared nor approved nor signed by members of the Telecom Commission and the then MoCIT. Also, it shows no dissent amongst the current accused and witnesses as per the CBI charge sheet.

- c. **Justice Shivraj Patil OMC Report, Annexure 43 shows that in absence of TRAI recommendations on how to treat Tatas’ applications vis-a-vis the 575 applications, a case for legal opinion was prepared and sent by Shri K. Sridhara, Member (T) on 26.10.2007 which, inter alia, states the following:**

*“Sub: Seeking opinion of Learned Attorney General of India/Solicitor General of India on grant of new Unified Access Service (UAS) Licenses and approval for use of Dual Technology Spectrum by UAS Licensee(s).*

*“5. Subsequently on 22.10.2007 M/s. TATA who are UASL operators in 20 service areas have also applied for Dual Technology spectrum (i.e. for GSM in addition to CDMA technology). A decision is required to be taken in this case.*

*“10. M/s. TATA are existing operator using CDMA technology in 20 service areas and their request for alternate technology spectrum in GSM was received by DoT on 22.10.2007. The date of priority for spectrum allocation may be the date of payment of required fee for each service area. Their request for permission shall be taken up alongwith new applicants as in para 11 below.*

*“13. Issue of LoIs to M/s. TATA and others for usage of Dual Technology spectrum based on their applications received after 18-10-2007. Whether*

- (i) To treat their request prior to existing applicants; or*
- (ii) To treat their request after processing all 575 applications*

*“14. Opinion Sought: Opinion of Learned Attorney General of India/Solicitor General of India is solicited on different alternatives mentioned in para 10 to 13.”*

Clearly, if Section 6.23 was to be interpreted as giving Tatas priority over the pending 575 applications, then such a question would not be posed for a legal opinion as in Section 13 above. Moreover, like the file notings on 24.10.2007, the legal opinion was based on a note prepared by Shri A.K. Srivastava on 26.10.2007 which was approved by Member (T) and the then MoCIT, Shri A. Raja. So unless it is someone's contention that they were all conspiring, such a note could not have been written.

In any event, this proves beyond a doubt that no recommendation was received from the TRAI on how to prioritize dual technology operators where allocation of startup spectrum was concerned vis-a-vis the 575 waiting applicants.

Ideally, the DoT should have sent the matter back for re-reference to the TRAI since such a provision exists under the TRAI Act, Section 11(1)(a)(ii), Fifth Proviso. However, it instead sought a legal opinion which is the next best alternative. In any event, Section 6.23 cannot be used to justify Tatas' trampling over the rights of the 575 applicants, including the 345 whose applications have never received spectrum since they applied between 26.09.2007 and 01.10.2007, but ahead of Tatas by 21 – 25 days.

It is well known that on 01.11.2007, MLJ refused legal opinion and instead suggested that the matter be sent to an EGoM – a decision that was rejected by Shri A. Raja.

- d. **DoT file notings show that in absence of TRAI recommendations and rejection of a legal opinion by the MLJ, DoT officials/Shri A. Raja decided to await the TDSAT judgment on how to deal with Tata applications – file notings of 02.11.2007 and 07.11.2007 (also mentions RTL):**

Since there was no explicit recommendation from the TRAI nor was a legal opinion forthcoming on the matter, DoT officials, including Director (AS-I), DDG (AS), Member (T), Secretary (T) and the then MoCIT, Shri A. Raja, agreed that spectrum priority for Tatas can only be decided after the TDSAT judgment (this is confirmed on 02.11.2007 and then reconfirmed in a second note dated 07.11.2007 – Secret File No. 20-100/2007-AS-I, Annexure 47 of the OMC Report).

- e. DoT took a U-turn 5 days later, pretending to place dual technology operators such as Tatas etc. last in priority but surreptitiously destroying the FCFS to place them first and ahead of 575 applications, all of which were waiting ahead of the Tata applications:

On 12.11.2007, while rejecting the entire note on file to determine inter se priority between Tatas and the pending 575 applications, an affidavit was filed by the DoT (Section 4.1 (xii) – Notes 118 of OMC Report), in Petition No. 286/2007, where DoT pretended to give Tatas the last priority vis-a-vis old demand for spectrum and startup spectrum for December 2006 licenses, but surreptitiously, and in total violation of FCFS, gave them the first priority over the 575 waiting applicants – some of whom had applied up to a year before the Tata applications and all of whom had applied even before the dual technology policy was announced on 19.10.2007.

This affidavit, combined with the massive favours granted to dual technology operators (illegal removal of rollout obligations and change of revenue share AGR from ‘combined stream’ to ‘separate streams of spectrum’) was the equivalent of perpetrating multiple illegalities to favour a private company – all at the cost of causing a massive loss to the exchequer and consequent gain to the private companies while writing and approving one set of notes on the file, and taking actions which were exactly the reverse.

To re-emphasize, there is not a single word in the said TRAI Recommendations on the inter se priority between dual technology applications and 575 applications,

which in effect, were received ahead of dual technology applications, especially those filed by Tatas.

Since the TRAI Recommendations are silent on the issue of inter se priority between dual technology spectrum and new 575 waiting applicants, any DoT decision leading to the affidavit of 12.11.2007 should have been either supported by TRAI Recommendations or a sound legal opinion or a court order. This is important because spectrum was limited and the following people were demanding it (in the order of FCFS):

- Old operators demanding additional spectrum
- Licensees since December 2006 demanding startup spectrum
- UASL applicants since 2006 waiting for startup spectrum
- Dual technology operators awaiting startup spectrum.

**Note :** Some UASL applicants had applied even before the DoT reference of 13.04.2007 regarding inter alia the issue of dual technology was made to the TRAI, leave alone consultation or recommendations. Lastly, the executive decision announced vide Press Release of 19.10.2007. So inter se priority was not a simple matter of right for anyone if FCFS had to be followed, especially since allocation of spectrum is linked to processing of application – which is entirely discretionary, and therefore, subject to abuse.

To support a legally defensible decision on inter se spectrum priority between dual technology and 575 applications, at least one of the following would be mandatory, but none existed:

**i. No TRAI Recommendations**

There are no TRAI Recommendations to decide inter se priority for dual technology operators vis-à-vis 575 applicants, especially since the FCFS rule comes in the way of treating the applications of Tatas received on 22.10.2007 vis-à-vis the 575 received on or before 01.10.2007.

**ii. MLJ refused legal opinion**

There is no legal opinion on this matter even though one was sought on 26.10.2007. MLJ refused a legal opinion even though this issue was specifically poised as a question in Section 13 of the said case for opinion.

**iii. No court order**

In the said matter, there is no court order to support allocation of spectrum to dual technology operators ahead of 575 applicants, especially since the artificial advancement of cut-off date has already been declared illegal by the Hon'ble Delhi High Court and upheld by the Hon'ble Supreme Court in its Judgement of 12.03.2010. Moreover, the 575 applicants were not a party to the petition filed in the TDSAT, and therefore, TDSAT could not have decided against the interest of parties who were not even in the case. These companies are still not party to the case which is now pending in the Hon'ble Supreme Court.

The dual technology versus 575 inter se priority is also crucial since both recommendations came through on the same day, i.e., 28.08.2007, and were implemented on the same day i.e., 10.01.2008. Nothing separates these two except the presence of one of the above three.

In conclusion, DoT had no legal basis for making a decision that would at best be qualified as arbitrary, but circumstantial evidence would suggest it as malafide.

- f. **Chairman of Tata Group** writes a ‘thank you’ handwritten letter the very **next day to the Tamil Nadu Chief Minister:**

It is no coincidence that the exact next day, rather than being disappointed at being placed third in spectrum priority, Shri Ratan Tata (who knows that he had jumped ahead of 575 applications before the Tatas) writes a ‘thank you’ letter (now in the public domain), specifically complimenting ‘legal soundness, fairness and consistency’ of Shri A. Raja in a letter that was hand-carried by Ms. Niira Radia.

The only decisions taken till date in the dual technology areas were:

- Announcement of the illegal dual technology policy in violation of the TRAI Act.
  - Major benefit to Tatas by manipulating the definition of AGR/spectrum charges for revenue share.
  - Removal of rollout obligations, saving hundreds of crores of infrastructure investment.
  - Pretending to place the Tatas last in priority vide an affidavit dated 12.11.2007, but in fact letting them jump the queue of 575 applicants, notwithstanding the absence of any TRAI recommendations or legal opinion or TDSAT order in this matter.
- g. On 10.01.2008, **Tatas along with the other 122 applicants, were granted** a so-called ‘DoT response’:

Curiously, the press releases that were released on that day are silent about allotment of spectrum to the dual

technology operator – presumably to confuse the waiting 345 applicants who were the only ones who could have legally challenged such an allotment ahead of them.

**Note:**

Again, since CBI is independently investigating the case of other dual technology operators – this particular letter does not emphasize all such issues and passes no judgment on the legality or illegality of any operator(s). The case of Tatas has been highlighted since under the FCFS process, the date of application for GSM spectrum is also linked to payment etc. (mentioned in the DoT Press Release of 10.01.2008). Consequently, the FCFS process is certainly called into question, uniquely in case of Tatas as they were the very last application for the startup 2G GSM spectrum received till date. No company that filed such an application after them had been granted spectrum, or else, that company would have to be treated with the same lens as the Tatas. To a very significant extent, this submission argues the violation not just of the TRAI Act, but also the so-called FCFS policy which was implemented based on a priority assigned to “date of application.”

**Conclusion:**

The claim by some private companies that they have been victimized by other dual technology operators might well be true and that is a matter of an independent investigation. However, it is undeniable there is not a single word in any section of the TRAI recommendation of 28.08.2007 that sets out the inter se priority between them and the waiting 575 applications. This is the exact reason why all DoT officials, including the Minister, first sought legal opinions (24.10.2007 and 26.10.2007) and later when denied the opinion, agreed to await TDSAT’s judgment – file

notes of 02.11.2007 and 07.11.2007. The U-turn was suddenly taken within 5 days and while pretending to place the Tatas behind existing operators with old demand and awaiting licenses since December 2006 – in complete violation of all internal notes, Tatas jumped over the 575 applicants.

Please remember all 575 applicants qualified for UAS licenses/2G spectrum under a policy announced/amended on 11.11.2003 based on guidelines announced on 11.11.2003 and re-announced on 14.12.2005. In comparison, the dual technology policy itself was announced on 19.10.2007. It cannot be anybody's case that the company can get priority on startup spectrum ahead of those (575 applicants) who had applied even before the dual technology policy was conceived. It cannot be certainly the case that the TRAI's recommendation would have caused such a distortion of interests of fair play and natural justice and cause damage to the 345 applicants who should have received spectrum ahead of the Tatas under the FCFS policy, but couldn't because of this set of complex machinations to place one company ahead of them.

Copies of all relevant annexures are being attached herewith for your ready reference. I hope you will study and pursue this evidence to ensure that interests of justice and truth are served and all Illegal actions of the DoT and beneficiaries are identified without exception.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Vivek Priyadarshi

Superintendent of Police,

Central Bureau of Investigation,

CGO Complex, Lodi Road,

New Delhi.

## List of Annexures

- 1 DoT Reference dated 13.04.2007 on capping of service providers, dual technology and other issues such as rollout obligations etc.
- 2 TRAI Recommendations dated 28.08.2007 on “Review of license terms and conditions and capping of number of access providers” (including dual technology)
- 3 Press Note dated 24.09.2007 on “Cut-off Date for Applications for Unified Access Services Licenses”
- 4 DoT File Noting dated 24.09.2007 on “Cut off date for receiving applications for UAS Licenses”
- 5 Decision of the Government on TRAI’s Recommendation dated 28.08.2007
- 6 Letter from Shri N. Misra, Chairman – TRAI to Shri D.S. Mathur, Secretary – DoT dated 15.10.2007 on legal provisions in the TRAI Act for implementing TRAI Recommendations
- 7 DoT Press Release dated 19.10.2007 announcing the decision of the Government to issue spectrum under dual technology in violation of the TRAI Act
- 8 Letter by Shri N. Misra, Chairman – TRAI to Shri D.S. Mathur, Secretary – DoT objecting to the manner in which the DoT was implementing TRAI Recommendations on dual technology vide its Press Release of 19.10.2007
- 9 DoT’s Case for Opinion from AG/SG on legal issues inter alia how to treat Tata dual technology applications vis-à-vis the pending 575 UASL applications

- 10 Note / Memo from Hon'ble MLJ dated 01.11.2007 refusing legal opinion on DoT's request inter alia on Tata dual tech versus 575 applications
- 11 Copy of the Secret File No.20-100/2007-AS-I dated 24.10.2007 on grant of new UASL licenses and dual technology spectrum - Critical file notings on 24.10.2007, 26.10.2007, 02.11.2007 and 07.11.2007

Letter from Shri A. Raja's dated 26.12.2007 to the Hon'ble Prime Minister conveying spectrum priority for Tatas ahead of the waiting 575 UAS licensees while admitting that the dual technology decision was pending both in TDSAT and Delhi High Court

Press Release dated 10.01.2008 announcing allocation of UASL licenses (without any mention of dual technology spectrum)

Second Press Release dated 10.01.2008 issued hours before grant of LoIs only referring to dual technology by way of "DoT Response"

## Letter to the CBI on Illegalities in the Issuance of UASL Licenses

20th June, 2011

Dear Shri Priyadarshi,

**Sub: Evidence of Illegal acts and conspiracy for issuance of new UASL licenses without bidding in 2003-2004, in violation of the TRAI Act and Cabinet decision. Additional evidence also cited from the CAG Report of 16.11.2010 and the Justice Shivraj V. Patil One Man Committee (OMC) Report of 31.01.2011**

This is further to my letters dated 22.12.2010 and 10.01.2011, and my meeting with you on 14.06.2011.

There is conclusive and undeniable evidence that there were big beneficiaries of illegal acts by TRAI/DoT which caused a

corresponding loss to the Exchequer in violation of Cabinet decision of 31.10.2003, UASL guidelines of 11.11.2003, NTP'99 as amended on 11.11.2003, established procedure of multi-stage auctions, extant policy and the TRAI Act, Section 11(1)(a)(i), Second Proviso and Section 11(1)(a)(i), Fifth Proviso.

The events and actions leading to these issuance of licenses/spectrum in Telecom are often complex and it is easy for even the most informed to be mislead and confused. This letter attempts to clarify the real situation, in as simple a way as possible, to allow the process of investigation and justice to be pursued and ALL the illegal actions and wrong-doers to be identified.

**2003-04 (26 New UAS Licenses Granted illegally to 4 companies):**

It seems that the prevailing view with regard to the issuance of **new UAS licenses** (not migration) to private companies during this period is sought to be justified by the potential accused/involved parties by citing the 'Note for Cabinet' – F.No.808-26/2003-VAS, Section 2.4.6(i) and (ii), which state:

*“2.4.6 Based on the above the GoM has recommended the following course of action:*

- (i) The 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. Department of Telecommunications may be authorized to issue necessary addendum to NTP-99 to this effect.*
- (ii) The recommendations of TRAI with regard to implementation of the Unified Access Licensing Regime for basic and cellular services may be accepted.*

*DoT may be authorised to finalize the details of the implementation with the approval of the Minister of*

*Communications & IT in this regard including calculation of entry fee depending on the date of payment based on the principles given by the TRAI in its recommendations.”*

**The reality is this: The contention that there was a Cabinet decision which approved the grant of NEW UAS licenses is utterly, completely false and is an attempt to divert attention from the real perpetrators of this illegal act.**

To understand the scams in 2003-2004, it is most crucial to distinguish, in clear terms, between (a) an existing BSO/limited mobility operator and (b) a new UASL operator, specifically:

- i) *An existing BSO/limited mobility operator has to be viewed on a circle-wise basis only. An existing BSO/limited mobility operator operating in, say 6 circles (e.g. Tatas) as on 11.11.2003, does not qualify as an existing operator for the remaining circles where it did not have a BSO license. The status of existing versus new has to be evaluated on a circle-wise basis only.*
- ii) *TRAI recommendations of 27.10.2003, GoM approval of 30.10.2003, Cabinet decision of 31.10.2003 and UASL guidelines of 11.11.2003 – only pertain to migration for existing BSOs/limited mobility operators to the UASL regime. There is not a single word about new UASL operators in any of these four said documents/approvals.*
- iii) *As the CBI has cited in its charge sheet of 02.04.2011 (Page 16/17), under the TRAI Act, Section 11(1)(a)(i) and (ii), Second Proviso, the Central Government needs to mandatorily seek recommendations before “new license to be issued to a service provider”. This statutory provision cannot be overruled by any decision of GoM, Cabinet or MoCIT/DoT officials.*

With the above background as a basis of evaluating the contention of the potential accused/involved parties, kindly evaluate the following evidence:

- i) **The Cabinet approved the TRAI recommendations and TRAI recommendations approved migration of existing BSO/Limited mobility operators to UASL ONLY in CIRCLES where they were already licensed as BSOs. Cabinet note refers to “date of payment based on principles given by TRAI in its recommendations”. This only refers to existing BSOs and consequently excludes new UASL applicants:**

The authorization provided by the Cabinet is not unfettered. It can go neither beyond the subject of the TRAI recommendations (bound by TRAI Act, Section 11(1)(a)(i), Second Proviso) nor can it be in violation of the TRAI Act. If this authorization was meant for NEW UAS licenses, then there would be no need/meaning to the phrase “calculation of entry fee depending upon the date of payment based on the principles given by TRAI”. The concept of date of payment only arises with regard to existing licensees who migrate on a circle-wise basis, and not to new UAS licensees.

A plain reading of the TRAI recommendations of 27.10.2003, Page 42, Annexure III shows that the date of payment is critical and linked to the calculation of entry fee, but relates only to BSO operators with limited mobility pertaining to the circles where they seek migration, i.e. Reliance (18 circles), Tatas (6 circles), Bharti (6 circles), and Shyam and HFCL (1 circle each). NEW UAS licenses (i.e., UAS licenses for NEW circles), on the other hand, have no relevance to the phrase ‘date of payment’. Nor can this be calculated by the TRAI in

its recommendations since the TRAI would not have known on 27.10.2003 when which new entrant will pay for which circle or enter through which process – First Come, First serve (FCFS) or multi-stage bidding etc.

**In conclusion**, this section is entirely restricted to migrating licensees in those specific circles, and in case of Tatas, it is specifically limited to the 6 circles of Gujarat, Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu and Delhi only. The 12 NEW UAS licenses which they received in January/February 2004 are not covered by this authorization.

- ii) **TRAI recommendations only refer to ‘migration’ or ‘existing BSOs’. No mention of new UASL licenses for operators:**

A plain reading of the TRAI recommendations, which is the basis of the GoM and Cabinet approvals of 30.10.2003 and 31.10.2003 respectively, shows that the recommendations only use the words ‘migration’ or ‘migrating’ or ‘existing BSOs’ in all the relevant sections, including but not limited to Sections 7.4, 7.5, 7.7, 7.8, 7.12, 7.13, 7.14, 7.16, 7.17, 7.18, 7.19, 7.20, 7.21, 7.22, 7.23, 7.24, 7.26, 7.29, 7.30, 7.31 and 7.37. There is no use of the phrase ‘new unified access license’ anywhere and surely the GoM/Cabinet could not have approved (consequent upon the statutory restrictions) beyond what the TRAI had recommended for existing BSOs/CMSPs migrating to UASL.

- iii) **UASL guidelines dated 11.11.2003 issued by DoT make no mention of ‘new UAS licenses’. They neither provide the application format nor the process to grant new UAS licenses:**

The entire UASL guidelines of 11.11.2003 relate to migration for existing BSOs/limited mobility operators (which can only be on a circle-wise basis). It neither speaks about new UAS licenses nor does it prescribe a format for applying for such licenses. Most importantly, UASL guidelines of 11.11.2003 do not mention FCFS anywhere as a process for grant of new UAS licenses. That is because the guidelines were not meant to address new UAS licenses. It merely mentions that future applications will be received under the UASL regime without any hint of the format or the process/timing of allocation.

- iv) **The letter by Shri Pradip Baijal, former TRAI Chairman, dated 14.11.2003, which is the basis for 26 new UAS licenses – including 12 to the Tatas – granted between January and April 2004, is patently illegal:**

Under the TRAI Act, the Chairman has no authority whatsoever to clarify statutory recommendations through a personal letter – that too based on a telephonic conversation – written after GoM approval, Cabinet decision and issuance of UASL guidelines of 11.11.2003. The letter by itself is patently illegal. If it is treated as a fresh recommendation, then it violates Section 11(4) (Transparency) since neither can such recommendations be generated without public consultation nor can they be given without being placed in the public domain. In the current instance, there was no consultation for new UAS licenses or even UAS licenses in the first place. Moreover, the letter of 14.11.2003 has never been placed on the TRAI website and is in fact missing from the TRAI's files – as per their reply to an RTI enquiry. This was a surreptitious move by the Chairman to benefit companies such as Tatas who had already applied for 7 new UAS

licenses on 12.11.2003 in the BSO format. I am sure you are aware that the then TRAI Chairman went on to work with and consult for some of the beneficiaries of these licenses - this fact is already in the public domain.

For collaborative evidence, please see CAG Report of 16.11.2010, Sections 3.1.6 and 3.1.7 and the Justice Shivraj V. Patil OMC Report, Sections 2.51 – 2.55 and Section 3.2(iv).

- v) **The DoT accepts that Chairman TRAI's letter is over and beyond the TRAI Recommendations approved by the Cabinet on 31.10.2003:**

A reading of the file notings within the DoT beginning 20.11.2003 till 24.11.2003 clearly shows that senior-most members of the Telecom Commission and officials of the DoT, including legal advisors, do not agree with the contention that the Cabinet had authorized the grant of new UAS licenses with the approval of the then MoCIT.

The handwritten note on file dated 21.11.2003 by D(LF) (which remains uncontested on files till date) states:

*“The matter was discussed in a meeting with M(P), M(F), LA(T) and DDG(LF) in the chamber of M(F) today. It emerged in that:*

*In view of the letter dated 14th November 2003 from TRAI, it is to be presumed that the entry fee for new applicants would be equal to the entry fee paid by the fourth cellular operator and the entry fee of the existing BSO fixed by the Government (based on TRAI recommendations) where there is no cellular operator.*

*Further the new applications would submit PBG equivalent to fourth cellular operator (however the*

*quantum of PBG may need to be decided where there are no fourth cellular operator). The above is over and above the recommendations of TRAI on unified licensing which was approved by the Cabinet as the same was about migration of only existing, cellular and basic service licensees to the unified access service license.*

*2) It is presumed that such new licenses in the category of UASL would be on a first come, first served basis on basis of applications submitted for consideration.”*

**Important notes:**

- All the highlighted sections above show that the UASL guidelines did not prescribe even basic information such as PBG etc., and therefore, could not have been applied to new UASL operators.
- The basis of this note is the letter of 14.11.2003 and that leads to the presumption of entry fee.
- It clearly states that this is over and above the TRAI recommendations which were approved by the Cabinet as the same was about migration of existing CMSPs, BSOs to UASL only (not new UAS licensees).
- Even the process for grant of such licenses i.e. FCFS has to be presumed since nothing is stated in the UASL guidelines of 11.11.2003.
- This note is based on the meeting of member of the Telecom Commission and is signed by DDG (LF), senior DDG (VAS), Director AS (II), Member (P), Member (F), Chairman - Telecom Commission and eventually by the then MoCIT – between 21.1.2003 and 24.11.2003. Not one single signatory has contradicted the handwritten note which is the basis of originating the approval for grant of new UAS licenses.

- vi) **The decision to grant new UAS licenses in 2004 violates the TRAI Act, Section 11(1)(a)(i), Second Proviso:**

The TRAI Act, as cited by the CBI in its charge sheet of 02.04.2011, recognizes the need for mandatory recommendations to be sought by the Central Government from the TRAI while issuing licenses to new service providers. By example, since Tatas would be considered 'new service providers' in the 12 circles, as would others who received licenses in January/February 2004, a specific and separate set of recommendations would have to be received as per the statute - which in turn will have to follow a process of public consultation compliant with Section 4 of the TRAI Act. Since no such consultation ever took place and no such consequent recommendations were made/placed in the public domain, any grant of licenses to 'new service providers' or 'new UASL operators' is a blatant violation of the TRAI Act. This compliance should have been followed for all 26 licenses granted.

- vii) **Substantial evidence in the CAG Report which shows that the TRAI Chairman's letter was unauthorized, including that the TRAI recommendations of 2003 regarding bidding of fourth/fifth cellular operator were violated:**

As it is well known that the fourth/fifth cellular operator, as per the TRAI recommendations of 27.10.2003, was to enter through a process of multi-stage bidding (Section 7.37 and 7.39). As per the DoT's own admission (Justice Shivraj Patil OMC Report - Annexure 27, Page 313, Section 7), grant of new UAS license was nothing but the grant of new CMSP licenses.

Consequently, the then TRAI Chairman, Shri Pradip Baijal,

in conspiracy with the then DoT, allowed a backdoor entry into cellular mobile telephony (under the garb of UASL) to certain operators, bypassing the process of tendering and bidding that was the norm for new cellular licenses till that point. This was in violation of the TRAI Act and while deliberately delaying implementation of the bidding for the fourth and fifth cellular mobile operator or UASL operator. So in effect, the nomenclature was changed to grant spectrum without the auction process in blatant violation of TRAI's own recommendations and the Cabinet approval of 27.10.2003 and 31.10.2003 respectively.

Further collaborative evidence is available in the CAG Report, Chapter 3.

- viii) **The OMC Report provides collaborative evidence of the violation of the TRAI Act in the grant of new UAS licenses and the benefits that accrued to these private companies:**

Relevant sections of the Justice Shivraj Patil OMC Report include Sections 3.2(i)-(iv), Sections 2.51 – 2.55, and most importantly Section 6.1(i), which state:

*“This apart, the decision so taken was not notified to public for the benefit of all prospective applicants. Without there being any notified procedure to be followed for the grant of UASLs and without applications having been invited from all, the procedure thus formulated was applied to facilitate consideration of applications made by Tata Tele Services limited in the forms prescribed for grant of BSLs.”*

*“...said officials appear to be responsible for deviation brought out in formulation of the procedure.”*

**Conclusion:**

The only set of licensees who could have legally received UAS licenses as a consequence of the TRAI Recommendations of 27.10.2003, Cabinet decision of 31.10.2003 and UASL Guidelines of 11.11.2003, are the 31 migration licenses (7 licensees) that have been identified in Annexure III of TRAI Recommendations of 27.10.2003 and Annexure I of UASL Guidelines of 11.11.2003.

All other new UAS licenses (not migration) granted since January 2004 till the announcement of the new UASL Guidelines of 14.12.2005 (being investigated independently) are blatantly illegal, and explicitly violate TRAI Act, Section 11(1)(a)(i), Second and Fifth Proviso. If this was not the case, there was no need whatsoever for both the TRAI Recommendations and the UASL Guidelines to attach such detailed annexures identifying the date of payments and the additional entry fee that will need to be paid for migration to UASL in each of these 31 circles only.

In fact, the “date of payment” and resultant “calculation of entry fee” indicated in these annexures for migrating licenses directly identifies itself with the language used in the Cabinet approval of 31.10.2003, Section 2.4.6(ii) – which is being falsely cited by the potential accused to masquerade as a Cabinet approval for grant of new UAS licenses.

With all the evidence above, it is clear that in 2003-04, serious illegalities were committed to ensure UASL licenses were issued in 2004/2005 at 2001 prices – to benefit private companies, cause loss to exchequer and in contravention to the Cabinet approvals, Existing policy and TRAI Act.

Copy of all relevant annexures is being attached herewith for your ready reference.

I hope that the above-mentioned evidence and facts will lay to rest any impression that new UAS licenses in 2003-2004 were in accordance with Cabinet approval. Rather, they were issued in violation of Cabinet approval and law.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Vivek Priyadarshi

Superintendent of Police,

Central Bureau of Investigation,

CGO Complex,

Lodi Road,

New Delhi.

Encl. : List of Annexures and Actual Annexures

## List of Annexures

- 1 Letter from Shri M. S. Verma, Chairman TRAI to Shri Vinod Vaish, Secretary - DoT dated 20.02.2003 regarding issuance of licenses to additional cellular mobile operators
- 2 TRAI Recommendations on Unified Licensing (in reality, UASL) dated 27.10.2003
- 3 Cabinet Note dated 10.09.2003 for Constitution of GoM on Telecom Matters
- 4 Cabinet Approval dated 31.10.2003, of TRAI Recommendations of 27.10.2003 and other telecom issues
- 5 Note from Dr. Ashok Chandra, Deputy Wireless Advisor on the subject “Group of Ministers on telecom matters – Setting up the ‘Task Force’ on modalities for release of spectrum for growth of telecom services”
- 6 Office Memorandum dated 11.11.2003 from Shri A.S. Verma, Director (VAS-II) on “Addendum to the New Telecom Policy – 1999 (NTP-99)”
- 7 UASL Guidelines dated 11.11.2003 for migration of existing BSOs and CMSPs to the Universal Access Service regime
- 8 Letter from Shri Pradip Baijal, Chairman–TRAI to Shri Vinod Vaish, Secretary-DoT dated 14.11.2003 separating TRAI Recommendations of 27.10.2003 as applicable to new unified licenses also.
- 9 DoT File Notings regarding grant of new UASL license based on applications received after the announcement of UASL guidelines dated 11.11.2003

- 
- 10 DoT Internal Note on issuance of new cellular mobile licenses in face of new UASL guidelines of 11.11.2003 – equating UASL with CMSPs
  - 11 DoT Note dated 23.03.2001 by Shri Arvind Chawla, Director (BS-II) on the subject “Procedure for Allocation of Spectrum on First Come First Served Basis”
  - 12 Second letter from TRAI dated 19.11.2003 on the subject “Recommendation of the TRAI on Issues relating to Spectrum” - referring to Shri Pradip Baijal’s letter of 14.11.2003.

## Letter to the Minister of Communications & IT on Public Disclosure of TRAI Letters

4th August, 2011

Dear Shri Sibal

**Sub: Your response D.O. No. 10/12/2011-Restg. dated 24th June 2011 to my letter dated 28th January 2011 regarding the public disclosure of two TRAI letters – dated 15th October 2007 and 19th October 2007**

At the outset, I am deeply disappointed to receive your reply with regard to its content, its tone, and most importantly, your refusal to act in a transparent manner. While I am providing detailed responses to your letter of 24.06.2011 (enclosed herewith as an annexure) – affording you another chance to reconsider your views – here are some highlights for your consideration:

**1. Delay of almost five months in providing a response:**

It is unclear why there was a delay of almost five months in putting together this brief response to my letter.

**2. You state that “it is not appropriate for the Department of Telecommunications to make TRAI letters public”, forgetting the fact that you have already made the letters public:**

I would like to point out that between my letter dated 28 January and your response dated 24 June, 2011, you have, at a public press conference, released the Justice Shivraj Patil One-Man Committee report which includes as Annexures 40 and Annexure 41 the two TRAI letters of 15th October 2007 and 19th October 2007 - which you have now refused to disclose to me. This is a sad commentary on the approach and the quality of rigor that is being applied while responding to letters from Members of Parliament – whose responsibility it is to query the Government thus.

**3. Your contention that the release of such letters would amount to interference with the independent functioning of the TRAI is weak and, in fact, yields the exact reverse results:**

The scheme of the RTI Act and the transparency in releasing documents, especially which are on the DoT's files and impact its statutory functioning, is aimed at strengthening democratic and statutory institutions, and not weakening them or interfering with their functions.

**4. Your unsolicited advice to directly take the matter up with the TRAI is disingenuous, a failed attempt at distracting from your responsibilities, and a tad patronizing:**

The letters in question are on the DoT's files and were required to be acted upon by the DoT under the Statute – Section 11(1) (a), Fifth Proviso. You ought to have (having already released

the same) sent me copies of the letters and put them on your website. Requesting me to reach out to the TRAI seems to question my wisdom on whether such an approach can be followed, and certainly is a tad bit patronizing by a Union Minister.

5. **The TRAI letters dated 15th October 2007 and 19th October 2007 expose your misrepresentation, accusing the TRAI ‘for not recommending auctions’ thoroughly:**

The letters in question challenge all decisions made by Mr. A. Raja, and the letter of 19th October 2007 was written within hours of the press release that was released by Mr. A. Raja on 19th October 2007. It is easy to see why you would be so reluctant to give me copies of these letters given the fact that you have failed to justify your misguided attempt at the ‘zero loss from 2G’ theory by accusing the TRAI of not recommending auctions – in a desperate bid to save Mr. A. Raja, at least till the time of his arrest in February 2011 – and then by accusing his predecessors for his wrongdoings while releasing the Justice Shivraj Patil OMC report, without realizing that the exact same information is included in that report.

6. **If the TRAI had been formally consulted in response to its letter of 19th October 2007 and in pursuance of the Statute – Section 11(1)(a), Fifth Proviso – the 2G spectrum scam could have been avoided altogether:**

This is one of the primary reasons why you are reluctant to hand over these letters me. Regrettably for you, however, the letter is now in the public domain and further blows holes into your failed attempt at blaming the TRAI for not recommending auctions rather than blaming Mr. A. Raja for ignoring the said letters of the TRAI and violating the TRAI Act with impunity.

**7. The conclusions of the CAG are the reason why you refuse to release the TRAI letters:**

You realize well that the same CAG that you have chosen to publicly criticize not only disagrees with your contention, but with the public release of these said letters, it would become clear that the TRAI did, in fact, vehemently object to Mr. A. Raja's cherry-picking and manipulation of its recommendations without the formal process of consultation – which is a statutory requirement that your government chose to violate. Given your aggressive, improper and certainly unsubstantiated charge against the CAG, it is clear why the lawyer in you would prevent you from putting further evidence against yourself through me even if it comes at the cost of questioning your ministerial function to drive transparency and bringing the guilty to the book – as you have so often claimed publicly and through press releases.

**8. The conclusions of the Justice Shivraj Patil OMC is the reason why you refuse to release the TRAI letters:**

Contrary to your claims of the government having followed or needing to follow the so-called TRAI recommendations of 'no auctions for 2G', the Justice Shivraj Patil OMC that you yourself set up explains the scheme of the TRAI Act which, consistent with the said letters of the TRAI, make it not just possible but statutorily empower your department to modify the recommendations even if your claim (which is far from true) was along the lines that you have attempted to perpetrate.

**9. The conclusions and charges in the CBI charge sheet dated 2nd April 2011 with regard to the TRAI recommendations is the final nail in the coffin of lies and misrepresentation of accusing the TRAI of not recommending auctions, rather than blaming Mr. A. Raja for avoiding auctions:**

The CBI charge sheet concludes the exact reverse of what you have perpetrated so far – by accepting Section 2.73 as a clear and undisputed recommendation to follow a market based mechanism to determine entry fee (which includes the price of spectrum even if it were bundled) and while dismissing your ‘TRAI recommended no auctions’ theory, accuses Mr. A. Raja of dishonestly and deliberately avoiding auctions while citing the relevant extracts from the TRAI recommendations, and additionally the Prime Minister’s letter of 2nd November 2007 and the Finance Secretary’s letter of 22nd November 2007 – all three recommending/directing either auctions or a market based mechanism or revision of entry fee to reflect current prices.

- 10. You chose to hide these letters from me because you realize that it will further embarrass the Prime Minister, who, following your line, has been ill-advised, in spite of overwhelming evidence, to accuse the TRAI of not recommending auctions – something that is entirely avoidable and opens him to unnecessary scrutiny:**

These and several other reasons that I have stated in the annexure explain not just your reluctance to release the said letters of the TRAI, but also mark a sad commentary on the fact that you deny me these letters nearly three months after you have inadvertently released them in the public domain or simply don’t think that consistency should be one of the hallmarks in a department that hopes to drive transparency while dealing with India’s largest post-Independence scam and resulted in massive revenue losses to the exchequer.

I close by leaving you with another opportunity for introspection about the manner in which you are conducting the affairs of this department with regard to the 2G spectrum scam and the follow up actions.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal,

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the Prime Minister on the Consequences of Shri Kapil Sibal's Statements

4th August, 2011

Respected Prime Minister,

This is further to my letter dated 11th January 2011 with regard to the irresponsible and certainly unsubstantiated public statements by Mr. Kapil Sibal, Hon'ble Minister of Communications & IT—in his over-zealous attempt to defend the former MoCIT, Mr. A. Raja, by arguing that there was 'zero loss' from the 2G spectrum scam.

I had, in my letter, warned you of the serious consequences of Mr. Sibal's statements and the need for you to direct him to withdraw his statements immediately as it would impinge upon the independent investigation process as well as provide a safe

passage for those who are accused of perpetrating the largest ever financial scam in the history of independent India.

Regrettably, those predictions have come true. In the hearings earlier this week, Mr. S. Balwa's lawyer has argued - exactly as I had predicted - that there was no loss whatsoever from the 2G spectrum scam because the Hon'ble MoCIT, Mr. Sibal had said so. He went on to argue that given Mr. Sibal's position as the MoCIT and his in-depth knowledge of the sector, such a claim cannot be doubted, and therefore, the entire case made out against them is fictitious. This not only makes the task virtually impossible for the CBI, but now pitches the Hon'ble Judge hearing the matter against public statements made by a senior Cabinet Minister, Mr. Kapil Sibal.

You will see from Section 2 and 4 of the Annexure of my letter dated 11 January, 2011 (enclosed herewith) that I had predicted these arguments in the exact way that Mr. Balwa's lawyer has (press clips also attached herewith for reference).

It is a matter of great shame that while Congress spokespersons talk about supporting an independent investigation, your Cabinet colleague is constantly, directly and indirectly misusing his official position as the MoCIT to subvert and weaken the process of investigation on one hand, and constantly bat for the accused, providing them arguments and safe passage, on the other.

I have this and several other instances to show you Mr. Sibal's willingness to stand by the accused and protect their interest, rather than that of the exchequer, the citizens of this country and most certainly the 'aam aadmi'.

I request you, even at this stage, having regard for my letter and the regrettable self-fulfilling prophecy, to place Mr. Sibal under severe restraints from making irresponsible and indefensible statements where the 2G spectrum scam is concerned. His silence on the issue would actually be golden.

I trust you will understand the seriousness of this matter, including the fact that Mr. Sibal's statements have also been attributed to you by Mr. Balwa's lawyers – which leaves you in a vulnerable position as well. I urge you to please do everything in your power to rein in Mr. Sibal before he brings further disrepute to the role of a Cabinet Minister in an investigation, but even more so, the position of the Hon'ble MoCIT, and indeed, the Government itself.

Yours Sincerely,

Rajeev Chandrasekhar

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

Enclosed:

1. Press clips regarding statements made by Mr. Balwa's lawyers about Mr. Sibal
2. My letter dated 11th January 2011, predicting that the accused will use Mr. Sibal's statements in their defence. (Relevant sections – Section 2 and Section 4 of the Annexure to my letter)

46

## Letter to Sonia Gandhi and Rahul Gandhi on the Consequences of Shri Kapil Sibal's Statements on 2G Scam

4th August, 2011

I am enclosing herewith a letter that I have written to the Hon'ble Prime Minister today, pointing out that the actions / statements of Mr. Kapil Sibal, Hon'ble Minister of Communications & IT, are clearly impacting the credibility of the Government and the country.

Yours Sincerely,

Rajeev Chandrasekhar

Smt. Sonia Gandhi,  
Chairperson - UPA,  
10, Janpath,  
New Delhi.

Shri Rahul Gandhi,  
Hon'ble Member of Parliament,  
12, Tughlaq Lane,  
New Delhi.

## Letter to the Prime Minister on My Position on the 2G License Issue Since 2007

16th August, 2011

Respected Prime Minister,

This is with reference to my meeting with you on 11 August, 2011. During our discussions on the 2G spectrum issue, you had mentioned that I might have supported a decision made by Shri A. Raja, former MoCIT, with regard to 2G spectrum allocation. I was a bit taken aback by this contention and since you may have been incorrectly briefed about my letters, I am writing this letter to you to ensure that you have a proper insight into my position on the 2G spectrum issue, which has remained absolutely consistent since 2007 when I first started raising this issue, and specifically about my letter dated 26 November, 2007, that you had referred to.

**Brief Facts :**

1. **12 November, 2007:** As the Vice President of FICCI, I had given a strong and detailed speech about the need for the Government to adopt market-based spectrum pricing with immediate effect, consequent upon rumours that Shri A. Raja was planning to give away spectrum on a First Come, First Serve basis in spite of the fact that the TRAI, in its recommendations dated 28 August, 2007, Section 2.73, had recommended the need to reassess spectrum pricing based on market-based principles in no uncertain terms. It was beginning to emerge from Shri Raja's press release of 19.10.2007 which seemed to violate several provisions of the TRAI Act wherein he was illegally modifying TRAI recommendations. In fact, the TRAI Chairman is himself on record objecting to the decisions including in this Press Release vide his letter to Secretary DoT dated 19.10.2007.
2. **14 November, 2007:** Immediately after my speech at FICCI, I wrote a letter to you (enclosed herewith) seeking that all spectrum allocation must pass the twin tests of public interest and transparency to the fullest. In this letter, I had specifically brought your attention to the commercial value of spectrum as it stood then, including as to why the Government was planning to levy 2001 prices for spectrum to be allocated in 2007-08.

The letter also cites that all previous licenses have gone through a tender route, including FM licenses, so why a tender route was not being followed for allocation of spectrum to new applicants.

3. **21 November, 2007:** Shri A. Raja, former MoCIT, reached out to me in the Central Hall of the Parliament and sought to explain to me the following, in the context of my speech at FICCI:

- i. That he himself was in favor of allocating spectrum through an auction process for ensuring transparency.
- ii. Due to legalities involved, he was forced to give away spectrum to existing LoI holders as, according to him, the Government was under contractual obligation to give spectrum to those companies who had received licenses in December 2006.
- iii. Further, he informed me that these companies had issued a legal notice to the Department to go the court in case the Department does not honour the contract under which it had obviously encashed entry fee drafts since December 2006.
- iv. He also stated that future applicants had given a letter suggesting that auctions should not be held for spectrum as in the past, since it would be illegal and unconstitutional.

Shri Raja captured these points in his letter to me on the same day, i.e., 21 November, 2007, D.O.No.219/M (C&IT)/VIP/2007 (enclosed herewith).

4. **26 November, 2007:** In response to Shri Raja's letter of 21 November, 2007, I wrote a letter to him on 26 November, 2007 (enclosed herewith). I suppose this is letter you had mentioned during our discussion. I clarify below, in no uncertain terms, what my letter stated:
  - i. I certainly supported Shri Raja's stated affirmation to transparency and equitable approach for allocating spectrum.
  - ii. I endorsed his efforts at increasing competition, but stated, in no uncertain terms, that auctions must be held, including for 3G licenses / spectrum, notwithstanding TRAI's original 3G recommendations.

- iii. I endorsed his point regarding licenses and contractual obligations entered into by the DoT in accepting fees from these companies which have held licenses since 2006, but have not been given spectrum for over a year. Consequent upon his explanation that there were legal difficulties, I agreed to the fact that introducing auctions to license holders of 2006 whose entry fees had been encashed a year later, would lead to breach of contract by DoT and consequential litigations – both of which were not desirable outcomes. It is in this regard and only for licenses given in 2006 (which may have been entirely wrong) through a legally binding contract that I agreed that auctions could not be held for only such license holders who had been waiting for over a year.
- iv. Disregarding Shri Raja's statement about future spectrum being given without an auction, I made it clear in no uncertain terms in Section (a) of my letter that the DoT should immediately amend the existing policy and the 2005 guidelines to ensure that all future licenses / spectrum (after this round of licensing) should only be through an open, transparent, multi-round bidding process. Clearly, there is no question of a single license being given beyond my letter of 26 November, 2007 without an auction process. The letter is uncompromising with regards to spectrum auctions beyond November 2007.
- v. The letter concludes by suggesting that additional licenses must be issued without delay to increase the competitive landscape and benefit consumers, but it does not, in any way, dilute the demand for holding auctions for all future spectrum to be given beyond 2007.
- vi. The letter also seeks a comprehensive review of the TRAI Act and its accountability to Parliament – as it turns out,

Shri Raja has continuously accused (falsely) the TRAI for not recommending auctions, in spite of the fact that his contention has been comprehensively rejected in the CBI Charge Sheet of 02 April, 2011 in the 2G spectrum matter.

**Conclusion:**

My letter dated 26 November, 2007 to Shri A. Raja, former MoCIT, agrees with his contention that spectrum auctions cannot be forced on companies who have paid entry fees and held licenses since December 2006, a year later in 2007-08. There was no dilution whatsoever in my demand for spectrum auctions beyond November 2007 which is clear from Section (a) of my letter dated 26 November, 2007.

Please be advised that notwithstanding my vehement support for auctions for all licenses/spectrum beyond November 2007, the DoT /Government did exactly the reverse by :

- a) Giving away 121 LoIs and dual technology licenses with linked startup 2G spectrum without holding open, transparent auctions.
- b) Doing so by illegally modifying several recommendations of TRAI, including and especially Section 2.73 of the TRAI Recommendations dated 28 August, 2007, relating to the need for determining market-based entry fee for spectrum.
- c) Violating multiple sections of the TRAI Act including Section 11(1)(a), Second Proviso and Section 11(1), Fifth Proviso.
- d) Violating TRAI Recommendations with regard to M&A norms, refusal to take mandatory recommendations before introduction of new service providers, refusing to hold auctions in spite of TRAI, MoF and your own letter dated 02.11.2007 as well as my letter dated 26.11.2007.

- e) Violating TRAI Recommendations on rollout obligations and spectrum/AGR charge to be levied on combined spectrum streams of CDMA and GSM spectrum allocated to dual technology operators.
- f) Illegally advancing the cutoff date from 01 October, 2007 to 25 September, 2007.
- g) Modifying the First Come, First Served definition priority from “date of application” to “date of compliance of LoI / date of payment”.

You might also wish to refer to my letter to you dated 12 May, 2007 (enclosed herewith) where I have specifically opposed the notion where one company was restricting entry of foreign players into 3G, and even in this letter, I have strongly argued the case of global transparent auctions for 3G spectrum/licenses.

I trust this clarifies any confusion caused in your mind by an incorrect briefing on my position on spectrum pricing which has always supported open, transparent auctions - with the exception of the case made out by Shri Raja in favour of companies who had been given licenses in 2006 where auctions could not be applied retrospectively – the only case wherein I relented owing to legal arguments presented by him.

Yours Sincerely,

Rajeev Chandrasekhar

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

48

## Letter to the Minister of Communications & IT for a Meaningful Response

24th August, 2011

Dear Shri Sibal

Thank you very much for your letter DO No. 10/12/201 1-Restg. dated 06 August, 2011, I have noted its contents.

My comments are as below:

### **General Comments**

1. As a Member of Parliament, and more importantly, as a member of the Parliamentary Standing Committee on IT, you would respect that I am duty bound to question decisions of the Government and statements made by Ministers such as yourself, and point out inaccuracies,

contradictions and any other attempts which may lead to some suboptimal policy consequences. Failing to do so would be abdication of my duty. I have and will continue to keep such a vigil on the working of MoCIT, TRAI and all related institutions.

2. My letter does not make any allegations whatsoever. It places statements on facts quoting chapter and verse from your public announcements/press releases, and compares them with specific written text and content from letters and recommendations of TRAI. The fact that it throws up contradictions is indeed a worrying sign, but does not constitute an allegation, as you have attempted to put it. I stand by every single word written in my letter. I also notice that you have not responded to any substantive point raised in my letter. My previous letter offered you an opportunity to reconsider your stance, and given the lack of a meaningful response, I will leave that opportunity with you yet again. You certainly need to review the manner in which you are responding to detailed notes, letters and research presented by me and your peers in the Parliament. You will agree that any Minister owes these letters an explanation, rather than a brief (5-line) rebuff which you chose to write in your previous communication of 24 June, 2011.
3. I thank you for responding within two days of my letter. This also strengthens my belief in the need to place detailed facts in front of you, since my previous letter dated 28 January, 2011 undeservedly received a brief 5-line response after a delay of almost five months in which you chose to hide more and reveal less.
4. Unlike general stakeholders, including in the telecommunications sector, kindly be advised that

communication on the subject of telecom emerging from me is subject to detailed research and scrutiny and a test of fitness for accuracy. I can and will defend every single line written to you or any other official in the DoT. You are aware that I had comprehensively rebutted every single claim made by you in your five-part presentation on 07 January, 2011 in an attempt to propagate the ‘zero loss’ theory in the 2G spectrum scam. A copy of my presentation in this regard was also sent to you. I am yet to hear a word in reply, especially as I have stated in no uncertain terms that your claim was wrong and certainly unsubstantiated. As the Hon’ble Minister of Telecommunications whose public presentation has been refuted line-by-line, you owe it to your stakeholders to either withdraw your presentation or prove that what I had contended was wrong. Leaving it uncontested is a sign of weakness, and not magnanimity, especially since you have a formidable reputation of leaving nothing uncontested.

### Specific Comments

1. Apart from the fact that you have refused to respond to any single statement made in my letter dated 04 August, 2011, I believe that your claim that the DoT had no intention to withhold documents could be seen as an attempt to make a virtue of your own mistakes.

Your initial claim (in your letter dated 24 June, 2011) was that it would not be appropriate for the DoT to make TRAI letters public. While I have contested that, it is unclear why you should be given credit for making TRAI letters public as a part of the report presented by Justice Shivraj V Patil, but then it suddenly becomes inappropriate when a Member of Parliament asks for it. How does the same letter become appropriate for placing in public domain by

you in February 2011, but not in June 2011? Moreover, if the letter was in the public domain (by the time you wrote your reply), and if you knew about it, then you were duty bound to either attach those letters or point me to the fact that they are on the website. Unfortunately, you did no such thing. This could be interpreted as an attempt to hide those letters since they contradict every single statement that has been made in attempts to protect the former MoCIT/DoT repeatedly through press conferences and press interviews. Those letters mean in no uncertain terms the foundation of your argument which is to blame the TRAI for not recommending auctions, rather than accepting the fact that the former MoCIT, Shri A. Raja (as the TRAI letter of 19.10.2007 points out) was violating the TRAI Recommendations, and by consequence, the TRAI Act, with impunity.

2. You further refuse to refer to the fact that the CVV (which ordered the CBI FIR), the CBI (which registered the FIR in October 2009), CAG (2G Spectrum Scam Report of November 2010), the Hon'ble Supreme Court (through its Order of 16.12.2010), the PAC (in its two reports), and the CBI (again, in its Charge Sheet of 02.04.2011) has comprehensively rejected your arguments about 'zero loss' from the 20 spectrum scam; blaming TRAI for not recommending auctions; and the fact that Shri Raba followed the First Come, First Served policy of his predecessors. You choose to ignore every single evidence, report and charge sheet in hand, but for some reason are hopeful of the JPC giving a finding that would be at odds. Surely, there is something that you know about the JPC that we don't! It would have been admirable to see you repose the same faith in some of the other constitutional

bodies mentioned above as you hope to in the upcoming JPC Report in whose finality it seems you have great faith.

I am also thankful to you for allowing me the liberty to reach my own conclusions just based on the evidence above.

May I end by suggesting that your letter continues to be deeply patronizing. I am however hopeful that you will find the time to respond in a meaningful manner to my comprehensive rebuttal to your 'zero loss' press release/presentation of 07.01.2011 and all the points made in my letter of 04 August, 2011 - which remain untouched till date.

Yours Sincerely,

Rajeev Chandrasehar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

49

## Letter to the Minister of Communications & IT on Conflicts of Interest of DoT Officials

24th August, 2011

Dear Shri Sibal,

**Sub.: Response from Ministry of Communications & IT to my Unstarred Question No.1444 of 12 August, 2011 relating to “Findings of CAG Report”, and the serious impact of such revelation on the independent investigation process**

This is with reference to the response from the Ministry of Communications & IT to my Unstarred Question No. 1444 of 12 August, 2011 relating to “Findings of CAG Report”. A copy of the same is enclosed for your ready reference.

In response to part (c) of my question about whether or not DoT officials who cleared applications of the 85 companies that were found ineligible for grant of Unified Access Service (UAS) licenses and fraudulently accessing spectrum in the CAG Report of 16.11.2010, continue to function in their current roles/responsibilities and whether they have any role in the process of issuing Show Cause Notices for penalties or for termination of licenses in these cases or any other cases of license violation, I have been informed that:

*“Transfers and postings are routine matters in the Government. Officials posted in particular Wing/Division are supposed to do all kinds of work assigned to that particular Wing/Division which may include grant of licence as well as termination of licence etc.*

*Roles and Responsibilities of the most of the officers of various wings of DoT as mentioned above, who processed applications for grant of UAS licenses during 2007-08, have since changed due to routine transfers/postings/superannuation. Few of the officers in different wings who processed the applications for grant of UAS license are continuing in their respective wings.”*

This revelation that, officers who were responsible for processing such fraudulent applications continue to serve in the same wing as earlier – or could now be dealing with or have access to files/evidence that could materially impact the consequent and penal action that needs to be taken by the DoT in this regard - is both dangerous and shocking.

It is also unclear why one of India's largest and well-staffed Ministries cannot find competent officers to replace those who have had anything whatsoever to do with the processing of such files – even if from a distance.

Both as a Hon'ble Minister and as a leading lawyer, you do realize the dangerous consequences of leaving those who have a conflict of

interest in such a dangerous situation as it could adversely impact the corrective steps that now need to be taken, notwithstanding the final consequences of allowing such an environment itself, which is worrying and needs immediate correction.

Having had some experience at my command, may I also advise you that the same officers are obfuscating and responding to RTI applications by blocking information based on their subjective judgment of what they consider qualifies under certain sections of non-disclosure of the RTI Act. While that is a matter of an entirely separate discussion and appeal, I thought it would be appropriate to bring this to your attention, unless of course, you believe that this doesn't deserve the attention that my letter seeks to place on it.

I leave for your consideration a review of this issue and necessary action, as appropriate, in the hope that such officers continued in these roles, perhaps in absence of your otherwise active oversight.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

50

Letter to the Editor,  
The Times of India on BPL  
Benefitting from  
2G Spectrum Allocation

7th September, 2011

Dear Mr. Mahapatra,

This is regarding your article titled “Maran ministry delayed grant of spectrum to Siva, says CBI”, which appeared on page 7 in The Times of India, New Delhi edition, on 02 September, 2011.

It was surprising to note that you mentioned in para 5 about the CBI saying that BPL Telecom benefited from the allocation of spectrum under the NDA Government.

Usually, Times of India always reaches out and takes the opinion of companies or people who they have named in their articles, especially when they get verbal briefings (unless you have access to the sealed status reports submitted by the CBI to the Supreme

Court on 01 September, 2011) from third parties. The telecom reporting by you and your colleagues has been especially accurate in this regard. I wish I had received the same courtesy before you used the name of a company that I was associated with, and more importantly, my name, in that paragraph. Since you cover legal cases, my expectations of an even higher level of rigour and responsible reporting from you in the future remain intact.

Here are a few things you might wish to ponder about in the said article:

- In an article that is entirely about the CBI's report during the UPA regime/Shri Dayanidhi Maran's time, it is somewhat surprising that you would pick one company and one line and one name from the NDA Government. Surely, the CBI must have reported other information during the NDA regime, which didn't make it to your article. I can see why because the article is about UPA, followed by a comment about NDA on the status report. Is there a reason why you picked BPL for this special treatment?
- You state that BPL Telecom was "owned by Rajiv Chandrasekhar, MP." It is unclear why you chose to use my name given the fact that in your other telecom articles in general, you normally do not mention Anil Ambani owned Reliance, or Ratan Tata owned Tata Tele or Kumar Mangalam Birla owned Idea etc. The reason why you never do that is because none of these people, and nor do I, own these companies. There are many shareholders in each company and someone has to be the Managing Director. In BPL Mobile's case, it was me. Your emphasis to draw my name out is somewhat at variance with your normal style of writing. Is there a special reason for this deviation?

**Other points:****A. On the subject of startup spectrum, with some basic research from facts in the public domain, this is what you would have found:**

1. You will notice that I won all my licenses through an auction or tender process **and not one of them was granted during the NDA regime.**
2. Where spectrum is concerned, the Government of India had a policy then with regard to startup spectrum and additional doses of spectrum linked to subscriber base. That policy was deployed in a non-discriminatory and non-partisan manner based on companies meeting the subscriber base. BPL Mobile was one of the over 20 licensees that received additional spectrum during the NDA regime in January 2003. BPL Mobile neither received any advantages nor a discriminatory position nor did it jump any queue.
3. Of the four licenses that BPL Mobile operated, it received additional spectrum ONLY in one, i.e., Mumbai.
4. The subscriber linked criteria for Mumbai – the only circle in which BPL Mobile received an additional 1.8 MHz of spectrum on 13 January 2003 – was subject to a WPC Order No.L-14041/06/2000-NTG dated 01 February 2002, which specified that additional spectrum up to 1.8 MHz + 1.8 MHz to CMTS operators beyond 6.2 MHz + 6.2 MHz would be given after reaching a customer base of 400,000 or more. However, the actual allotment of spectrum was made subject to availability and coordination on a case-to-case basis after the base 500,000 was reached in the service area. Appropriate additional spectrum charge was levied and paid by BPL Mobile as per the order. The order was executed in a non-discriminatory manner across

all licensees. BPL Mobile was not the first to get additional spectrum – either at the national level or in Mumbai. BPL Mobile, by December 2002, already had 5,73,877 subscribers, and therefore, qualified in no uncertain terms for the additional allocation on 13 January 2003. The order is attached here for your ready reference.

5. In fact, there were only two operators in Mumbai – Hutchison (now Vodafone) and BPL Mobile. Hutchison received an additional 1.8 MHz of spectrum six months ahead of BPL Mobile – on 17 July 2002, with a subscriber base of only 5,03,558. Similarly, in other markets like Delhi, Bharti and Hutchison received additional spectrum on 17 July 2002.
6. So in effect, BPL Mobile was not the first to get additional spectrum in Mumbai and had more subscriber base than Hutchison by nearly 15% at the time of such allocation, but in fact, was well past the subscriber-linked criteria of 400,000 specified in the WPC order dated 01 February 2002. All of this information is available in the public domain. Please refer to the Justice Shivraj Patil One-Man Committee report, Annexure 79, page 881, read with the WPC order dated 01 February 2002, and the website of Cellular Operators Association of India (COAI) on which subscriber numbers were posted every month since 1996.

In summary, I have publicly stated that the policy of awarding spectrum based on subscriber base was wrong and prone to fudging numbers by operators, and that a market price should be charged for spectrum beyond startup spectrum. However, please be advised that this was the written policy of the Government and as an operator, BPL Mobile, like every other operator, received spectrum on a non-discriminatory basis without favour – after meeting (in fact, crossing) the benchmark by 43% (1,73,877 subscribers over the benchmark of 400,000) in its entirety.

**B. If the attempt in your article is to suggest that I was a beneficiary of any largesse from the NDA Government (in what appears to be a weak and desperate attempt to taint my criticism of the current Government's policies in my role as a Member of Parliament), please allow me to refresh your memory on the following:**

1. As Chairman of COAI, I fought the toughest legal cases in the TDSAT (2001 – when Shri Ram Vilas Paswan was the Minister), in Supreme Court (2002 – when the late Shri Pramod Mahajan was the Minister), and back in the TDSAT (2003 – when Shri Arun Shourie was the Minister). I was unrelenting and uncompromising till the Supreme Court ruled in our favour and remanded the baton back to the TRAI, after which the TDSAT ruled 2:1, holding that either the limited mobility (WLL) policy of the Government was illegal or it should be strictly limited to SDCA only – to get around which the then Regulator Shri Pradip Baijal brought in the UAS license regime – which I have also opposed chapter and verse in letters to the then Government.
2. I have filed written complaints to the CBI and the CVC on UASL policy and the beneficiaries of it who received new cellular licenses (renamed UASL) without bidding – in contravention to TRAI's recommendations of 27 October 2003 and Cabinet decision of 31 October 2003. Copies of the letters filed with the CBI and the CVC dated 22 December, 2010, and 10 January, 2011, as well as another letter to CBI dated 20 June 2011, are attached here for your ready reference.
3. I have also been highly critical and written on many occasions about the conduct of Shri Pradip Baijal, the then Chairman of the TRAI, whose recommendations and orders

in 2003, opened the doors to this bypassing of tenders for cellular licenses.

I hope that the above will satisfy you on the issues. BPL Mobile neither sought nor received any largesse from the NDA Government and could instead be characterized as one of victims of the Government's biased policies that favored some companies – though I loathe that characterization.

This should also help explain the fact that my opposition to former Telecom Minister Shri A. Raja's decisions and the current Government's mute acceptance of it – is purely on merits and has nothing to do with the fact that previous Ministers may also have committed wrong/illegal acts.

I hope that you have not unwittingly allowed yourself to be carried away by any attempt to attach motives to my actions to unearth the 2G spectrum scam by suggesting an association with the NDA. Hopefully, the above evidence is sufficient for you to conclude that this is furthest from the truth. I can assure you that I will resist any attempts at that vigorously and strongly.

For the record, I am an admirer of the Times of India's admirable and recent campaign against malgovernance and corruption in recent times, especially in telecom and its reporting on that.

Since I ceased to be associated with the company in 2005, I do not have any papers relating to BPL Mobile in my possession currently, and so, you are requested to kindly contact the current BPL Mobile (now renamed Loop Mobile) management if you plan to mention the company, or me, if you plan to mention my name, in any future article.

Warm regards,

Rajeev Chandrasekhar

Mr. Dhananjay Mahapatra,  
Senior Editor,  
Times of India,  
7, Bahadurshah Zafar Marg,  
New Delhi-110 002.

Encl.: List of Annexures and Actual Annexures

Copy to :

Mr. Arindam Sengupta, Executive Editor, Times of India

Mr. Jaideep Bose, Editorial Director, Times of India

51

## Letter to the Prime Minister on Reversal of Public Policy Objectives in Telecom Sector

22nd September, 2011

Respected Prime Minister,

**Sub:** Government's public policy objectives of Affordability, Teledensity and Competition which were used to justify giving away spectrum in 2008 at 2001 prices without auctions, are now being reversed.

Over the last several months, many members of the Government have used the public policy objectives of affordability, teledensity and competition as a justification to defend the indefensible act of giving away 2G spectrum in 2008 at 2001 prices, without going through the process of auctions.

Apart from the fact that the 2G spectrum scam has already resulted in a massive loss to the exchequer, involves allegations of criminal conspiracy between a Union Minister, Government bureaucracy and large businesses, and has shaken investor confidence and credibility of our country – it is now increasingly obvious that even the residual public welfare excuses put forth by members of the Government – such as the former Minister of Communications & IT, the current Minister of Communications & IT and the Chairman, Planning Commission – were false and a mere eyewash. In reality, no public interest has been served whatsoever.

**Ex- MoCIT's Press Release dated 31.10.2008 (Relevant Extracts):**

*“The basic aim and principles governing the sector is **proliferation** of telecom services in a **competitive** environment at **affordable** tariffs for the common people and specially the **rural masses**.”*

**Current MoCIT's Press Release dated 07.01.2011 (Relevant Extracts):**

*“Government policy is formulated with a view to maximize public welfare, and not merely to **maximize Government revenues**.”*

*“If at the time of issuing licenses, the Government charges a very high entry fee, it would reduce the resources available to the operators to undertake the necessary creation of infrastructure. It would also eventually **impact the prices** charged by the operators and thereby limit the services to those who can afford **higher services**.”*

*“It is important to emphasize that the Government's decision on spectrum pricing was not merely a mechanical continuation of the policies put in place by previous Governments. It is one that was felt on merits to provide a balance between multiple objectives,*

*namely, increasing tele-density, promoting competition, and ensuring a level playing field.”*

Even before three years are over, the three key arguments have already proved to be false and are being reversed. In fact, given the market share (below 5%) of the new entrants, it is clear that almost the entire increase in teledensity has come from incumbent operators and the new entrants have done little, if anything, to act as an effective competitive force in the telecom sector. Please review the following:

**1. Affordability is on the decline:**

Over the last two months, multiple operators have already announced a tariff hike of 20% and have issued open threats by taking refuge under the argument of serving rural consumers. This in spite of the fact that consumers already pay 5% of their total bill towards the USO Fund, aimed at serving the rural consumer. Given that the tariffs have been raised by operators who control nearly 60%-70% of the subscriber base, it is quite clear that neither the Government's claim of effective competition to lower prices nor that of sustained affordability holds true, and in fact, stands reversed.

**2. Teledensity increasing at a sharply declining rate:**

Teledensity is a factor of :

- Network rollout (69 of the 121 new licenses are under Show Cause); and
- Affordability (has been reversed as above)

The most important indication of increase in teledensity is the new subscriber additions on the mobile network. 69 of the 121 licenses issued by the former MoCIT have already been recommended for cancellation by the TRAI

in November 2010 due to violation of rollout obligations. Surely, the new entrants with less than 5% market share and under the threat of license cancellation for failing to roll out networks have contributed nothing significant to increasing teledensity.

An even more significant indication of the failure to advance teledensity is the declining subscriber addition numbers indicated by the TRAI during 2011. These have fallen steadily from over 18 million in January 2011 to 13 million in May 2011 and further down to a mere 6.67 million in July 2011. Clearly, teledensity is suffering as operators who have no networks and even those who have networks are making a conscious decision to not serve the most vulnerable section of consumers and have rapidly reduced their willingness to serve the unserved markets. Therefore, the loss to the Exchequer is now combined with a prolonged legal fight expected between the Government and defaulting operators, which will eventually hurt public interest.

3. **Expected Consolidation will sharply decline the level of Competition:**

While I am a firm supporter of enhanced competition and will continue to be so, it is clear that the Government's ploy to cite the excuse of enhancing competition from 7-8 operators per circle to 12-14 was a short-lived charade to counter the immediate criticism of the 2G scam. Surely, the same objective could have been met through auctions. It is now clear that the sector is headed towards consolidation.

In fact, the Hon'ble MoCIT has publicly gone on record stating, *"It's time for us to consolidate industry. We can't afford 12-13 players in a circle."* (The Financial

Express, 7th September 2011). This is a U-turn from the Government's own stated policy objectives of just three years ago.

Apart from the fact that this was an eyewash, it also falls upon the Government to explain as to why auctions could not have been used to enhance competition, or what has changed now for it to believe that the original level of competition was sufficient, especially since new entrants have hardly any networks, a handful of subscribers and no impact on holding down tariffs.

I am sure the Government will be tempted to find new arguments to justify the reversal of all its previous arguments, even though nothing in the marketplace justified its decisions of 2008. While I realize that you may have been repeatedly misled on various occasions by other members of your Government, I wish you had scrutinized these issues based on fundamental economic principles - and not technology or regulation.

In conclusion, with this undisputable evidence at hand, pointing to the fact that all gains cited by members of the Government have either come to a grinding halt (affordability, competition) or have no relationship to the new 121 licenses given by former MoCIT (teledensity), I urge you to comprehensively review the public statements and claims made by the Government in this regard.

Yours sincerely,

Rajeev Chandrasekhar

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

## Letter to the Prime Minister on Telecom Sector Policy Failures

14th November, 2011

Respected Prime Minister,

**Sub.:** Apart from a massive revenue loss owing to the 2G spectrum scam, the year 2011 has resulted in significant Public policy failures, adversely impacting public interest, consumers and investor / industry viability and performance.

I write to you as a member of the Parliamentary Standing Committee on Information Technology. This submission is based on a detailed evaluation of 26 parameters of telecom policy issues, executive decisions and claims made by the Hon'ble MoCIT during the last one year, while measuring these against actual

performance, formal reports, letters/DOs, recommendations of the TRAI, DoT documents, the CAG report, the Justice Shivraj Patil One Man Committee (OMC) report, the PAC report, CBI charge sheets, orders passed by the Hon'ble Supreme Court on 16th December 2010 as well as charges framed by the Hon'ble Justice of the Special CBI Court on 22nd October 2011.

The analysis shows that apart from the significant loss caused by the 2G scam – as documented by various independent authorities such as the CAG and the CBI – the telecom policy environment as well as the decisions/claims made in the last one year have had a severely adverse impact on citizens and consumers, investments, industry and growth in general, further damaging the overall credibility of public policy making and its implementation.

While it is well documented that the 2G spectrum scam is the single largest white collar crime in the history of independent India, the last one year since November 2010 - when the scam first broke - has shown that the sector is plunged into uncertainty and an almost-total policy failure across each of the 26 parameters, including in meeting public policy objectives of affordability; enhancing teledensity/competition; delivering broadband to benefit the 'aam aadmi'; or providing an investment-friendly environment by moving ahead with policies and executive decisions pending for the last 18 months.

The impact of this impasse goes much beyond the loss to the exchequer, and unless immediate, strategic and transparent executive decisions are made based on the principles of transparency, genuine public welfare and without compromising the Government's revenues in any manner, it could lead to a further deterioration of the sector's performance on one hand while hurting the poorest of the poor (half a billion unconnected rural Indian citizens) on the other.

I sincerely urge you and your Government to objectively review the attached 10-page analysis across 26 parameters, including inviting comments from the Department of Telecommunications, as appropriate, at the earliest.

In case you wish to discuss these further or seek a collaborative approach on how to move forward and address sectoral issues, restore investor confidence and yet ensure that no perpetrator of the 2G scam goes unpunished, I will be available for a discussion to provide suggestions for your consideration.

Yours sincerely,

Rajeev Chandrasekhar

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

## **PUBLIC POLICY FAILURES IN THE TELECOM SECTOR: NOVEMBER 2010-NOVEMBER 2011**

### **I. Public Policy failures adversely impacting 'aam aadmi' during 2011**

#### **1. Mobile tariffs have gone up during 2011:**

One of the main justifications used by the Government for giving away precious 2G spectrum in 2008 at 2001 prices

without going through the process of open, transparent auctions - thereby perpetrating the 2G scam in 2008 - was a reduction in mobile tariffs (affordability). TRAI data, however, shows that mobile tariffs came down from 80 paise per minute in 2008 to 60 paise per minute in 2009 – even before spectrum could be allocated or services launched by new entrants. The mobile tariff reduction had nothing to do with new entrants' tariff plans. Later, in 2010, when new entrants became operational, mobile tariffs reduced by only 10 paise per minute. However, it has become clear since May 2011, that since new entrants have no appreciable market share or network rollout, the dominant GSM operators were able to reverse mobile tariff reductions. They announced a 20% hike across several packages this year not just for 3G, but even for 2G voice. In fact, mobile operators threatened further hike in mobile tariffs for the first time in India's 16-year telecom history. (Source: Press releases and public announcements by private operators).

**2. Teledensity increasing at a much slower pace during 2011:**

Another justification for perpetrating the 2G scam, ignoring your letter dated 2nd November 2007 and the Finance Ministry's multiple letters/internal notes (as documented in the Department of Economic Affairs Office Memorandum dated 25th March 2011) was to increase teledensity. In the last one year, the increase in teledensity, for the first time, has slowed down substantially. For a ten month comparable period of November 2009 until August 2010, there were approximately 18.2 crore new net subscriber additions as opposed to the corresponding period of November 2010 to August 2011 which saw a reduced net addition of approximately 15.9 crore subscribers – a first

ever decline of 12.6%. For the financial year FY 2010, March-August 2010, compared with March-August 2011, the net additions went down from 10.65 crores to 7.43 crores or a sharp decline of 30%. Clearly, the pace of achieving teledensity has reduced substantially in the last one year. (Source: TRAI press releases).

**3. New entrants have failed to keep prices in check or improve the quality of service in the last one year, resulting in a massive market failure during 2011:**

The third justification for perpetrating the 2G scam was to increase the level of competition from 7-8 operators per circle to 13-14. However, an analysis based on TRAI's figures shows that new entrants given UAS licenses/2G spectrum by the Government have made no impact on consumer pricing or quality of service (already reversed as in 1 above) except causing a loss to the exchequer and hoarding of spectrum. As per TRAI data, the dominant operators held 97.27% market share at the end of August 2010. New entrants have made little or no dent, with the same dominant operators holding over 95% market share in August 2011. Further, Annexure II of TRAI's press release of 20th October 2011 shows that new entrants have the lowest proportion of VLR subscribers – which means that out of their approximate 5% market share, the real number of subscribers active on the mobile networks is perhaps 2-3% at best - a total of approximately 2.5 crore subscribers out of the total subscriber population. 2011 was the year when all new entrants were in their third/ fourth year of operation and had every reason to succeed, but in fact, they substantially failed. (Source: TRAI press releases and recommendations dated 3rd November 2011).

**4. Rollout of telecom networks slowed down substantially during 2011:**

TRAI data shows that contrary to the expectations of increase in network rollout, there has been a substantial slowdown which is indicated by the net subscriber additions during the last one year. In fact, for the first time in many years, owing to slowdown in network rollout, the net subscriber additions from May to August 2011 fell below 1.4 crores per month. In fact, for July and August, the additions were merely 0.66 and 0.73 crores, respectively – the lowest in nearly 4 years. This is further substantiated by TRAI's letter dated 18th November 2010, which recommended the cancellation of 69 licenses for non-rollout of networks. In spite of such recommendations, new entrants have made little or no progress. (Source: TRAI press releases).

**5. Rural teledensity has increased at a slower-than-expected pace during 2011:**

As per TRAI figures, the urban teledensity is already at 164.87%. The rural teledensity, on the other hand, is at 36.19%. Based on VLR data, the actual rural teledensity is merely 22% or approximately 20 crore subscribers out of the 70 crore rural population. This means over half a billion citizens in rural India still do not have access to their own mobile phone. Given that the growth is primarily coming from rural areas, the extreme slowdown in net additions means that the remaining half a billion will get access to mobile phones after a far longer period than was originally expected. This trend reared its ugly head for the first time in the last one year, and is beginning to seriously hurt public policy objectives and of providing telephony to the 'aam aadmi'. In fact, the TRAI has specifically

recognized this policy failure in its recommendations of 3rd November 2011. Further, the draft NTP'2011 has moved the 100% rural teledensity target to 2020, thus keeping millions of our citizens unconnected to the telecom reforms for another 5-8 years. (Source: TRAI press release and recommendations of 3rd November 2011).

**6. Broadband penetration continues to be abysmal:**

Policy relating to broadband penetration in general has been an abysmal failure, but particularly so during the last one year. There has been much discussion about laying the broadband-related fibre backbone, but very little action to show that any of this has begun to be implemented during 2011. There is a lack of a comprehensive, strategic plan which allows for genuine consultation and a mix of private and public infrastructure for delivering broadband connectivity. Regrettably, the broadband penetration remains way below the original targets and during the last one year (based on official figures available from the TRAI), the broadband subscriber base increased from 10.29 million in September 2010 to 12.69 million in August 2011 – a growth of merely 23% percent. (Source: TRAI Telecom Subscription Data on the TRAI website)

**7. 'Do Not Disturb' (DND) failed to deter pesky SMSs/ unsolicited commercial calls during 2011:**

The problem of unwanted commercial calls and pesky SMSs continue to be a challenge. They reached an all time peak during the last one year, and all attempts to protect consumer interest from such pesky calls and SMSs failed during the last one year. (Source: Newspaper reports, publicly admitted position by TRAI officials).

**8. Mobile number portability (MNP) proved largely ineffective during 2011:**

MNP, launched with great fanfare in November 2010 beginning with Haryana, according to the TRAI, has only received 1.8 crore requests (not actual transfers) for porting their mobile number. These requests (not transfers) make up approximately 2% of the total mobile subscriber base and much lower than the global average. All claims that the introduction of MNP will help consumer interest, lower tariffs and improve the quality of service came crashing during the last one year. Quality of service declined, call drops increased, and notwithstanding the introduction of MNP, operators were able to hike tariffs 20%, rather than decrease them under the threat of losing customers due to MNP. 'C' category circle consumers received the least of the benefits arising out of MNP, i.e. J&K, Assam, North East, etc. MNP has been a failure in absolute and relative terms during 2011. (Source: TRAI press release dated 20th October 2011).

**9. The DoT, in failing to implement the TRAI recommendations of 8th February 2011, has caused a further loss to the exchequer during 2011:**

On 'current pricing' of spectrum and calculations to charge existing operators market price for spectrum beyond contracted amount, the TRAI recommendations have been pending for over nine months since 8th February 2011. During the year, no action was taken to implement these recommendations and collect the monies that were due to the exchequer. If collected, this could have resulted in an additional income of approximately Rs. 10,000 crores to the exchequer for FY 2011-12. The DoT has let go of this opportunity, causing a further loss to the exchequer

(principal and interest) by refusing to act on the TRAI's recommendations during the last one year. Additional income which belongs to the Consolidated Fund of India would have further augmented development initiatives contributing to inclusive growth, which it failed to do. (Source: DoT's letter dated 10th October 2011 and TRAI's recommendations dated 3rd November 2011).

## **II. Public Policy failures impacting industry viability and investments during 2011**

### **10. Investments and FDI have declined sharply during 2011:**

As per the COAI PWC report, there is expected to be a sharp decline in capital investments and telecom infrastructure investments during 2011. In fact, where FDI is concerned, the report expects a decline of 35% from US\$2.6 billion in FY 2010 to US\$1.7 billion in FY 2011. (Source: COAI-PWC Report, August 2011).

### **11. The telecom industry's viability on a sharp decline during 2011:**

According to the COAI PWC report, every single key operating matrix of the telecom sector is expected to deteriorate during 2011. This includes average revenue per minute, minutes of usage, and ARPU. Sector revenues, even though growing in absolute terms, were stagnating in nominal terms after adjusting for inflation. Operating and network expenses were up in most cases. Indebtedness remains high, net profit margins are down, and returns on capital employed is dangerously low. Most of these parameters deteriorated further during the last one year. (Source: COAI-PWC Report, August 2011).

### III. Public Policy failures leading to delays / lack of decision-making/implementation

#### 12. Following the CAG report of November 2010 against 85 licenses fraudulently accessing spectrum, not a single license has been cancelled during 2011:

The CAG report had indicated, after a one year detailed audit study, that 85 licensees had misrepresented facts on applications and fraudulently accessed spectrum. One year after the report was tabled in the Parliament on 16th November 2010, not a single license has been cancelled by the DoT based on the CAG report. These illegal applicants (now service providers) continue to hoard massive amounts of precious 2G spectrum, without any contribution to increasing teledensity, investment in rollout of networks or the ability to influence market pricing. Meanwhile, the DoT refuses to place its notices or replies received from the erring service providers in the public domain in spite of multiple RTI applications filed. (Source: DoT replies to Parliamentary Questions, CAG report on 2G scam dated 16th November 2010 and newspaper reports).

#### 13. Following the TRAI recommendations for cancellation on account of failure to roll out networks, not a single license has been cancelled in 2011:

The TRAI, vide its letter dated 18th November, 2010, recommended cancellation of about 70 licenses (half with absolute certainty). Now, a year later, not a single one of those licenses stand cancelled. In fact, the termination notices themselves took more than 8 months since the DoT and the TRAI could not even come to a single definition of 'rollout obligations'. It is only after severe media pressure that notice for cancellation of licenses was issued recently, though no licenses have been cancelled yet. Meanwhile,

the DoT refuses to place its notices or replies received from the erring service providers in the public domain in spite of multiple RTI applications filed. (Source: DoT replies to Parliamentary Questions and newspaper reports, TRAI letter dated 18th November 2010).

**14. Proposed NTP 2011 delayed nearly a year. May not be announced in 2011:**

The Hon'ble MoCIT had announced on 01 January 2011 that NTP 2011 will be announced within 100 days. The draft NTP itself came with a delay of nearly 200 days – in October 2011 – and seems a near impossible task for the government to announce the new telecom policy during 2011, unless it seriously compromises on the period required for genuine and widespread consultation. The final policy could be delayed by nearly a year, which in turn will hamper many other related decisions that need to be made. (Source: Hon'ble MoCIT's public announcement dated 1st January 2011 and 4th October 2011, and PTI report dated 4th November 2011).

**15. The DoT failed to implement the TRAI recommendations pending since May 2010 during 2011:**

Crucial recommendations of the TRAI on spectrum, M&A and licensing have been pending for over 18 months. Even now, based on the TRAI recommendations received on 3rd November 2011, the DoT cannot implement exit policy, unified licensing regime, reforming of spectrum, or begin identifying new additional spectrum in use by other government agencies. This will need at least 6-8 months' additional time, if not more. (Source: DoT's letter dated 10th October 2011 and TRAI's recommendations dated 3rd November 2011).

**16. DoT failed to implement a M&A policy during 2011:**

Even though the Hon'ble MoCIT has reversed every single logic of the former MoCIT by now publicly seeking consolidation of the sector in spite of the fact that the competition fraudulently introduced by the former MoCIT has made no impact on pricing, rollout, or teledensity - the DoT has failed, during the last one year, to implement a M&A policy that is crucial to cleaning up the sector from the current stress and ensuring that no further loss is caused to the exchequer when 'spectrum transfer charges' are paid as part of the M&A transactions. This inaction by the DoT continues to plague the sector, slow down growth and investments on one hand, while depriving the exchequer of additional revenue that would accrue as part of spectrum transfer charge and other methods to tax windfall gains resulting from M&As. This, in spite of the fact that the TRAI had already made M&A-related recommendations in May 2010. (Source: TRAI recommendations of May 2010, DoT letter of 10th October 2011, TRAI letter of 3rd November 2011).

**17. The DoT has failed to implement the unified license regime or delink spectrum from licenses during 2011:**

In spite of explicit recommendations to delink spectrum from licenses and proceed with unified licensing, the government has failed to do so during the last one year. All it has done is reiterate the TRAI's recommendations of delinking licenses and spectrum without any effective or substantive meaningful move on the ground. Unified licensing is still not a reality nor can operators seek licenses which are delinked from spectrum in the access category – this in spite of an explicit recommendation pending for over 18 months. (Source: TRAI recommendations of May 2010, letter of 3rd November 2011).

**18. The DoT has substantially increased the confusion on whether 4.4 MHz or 6.2 MHz constitutes contracted spectrum during 2011:**

Whether the Unified Access Service (UAS) license allows contracted spectrum upto 4.4 MHz or 6.2 MHz has not only remained a mystery, but the confusion has increased substantially during the last one year. The press release of the Hon'ble MoCIT dated 29th January 2011 seems to convey that market price will be charged beyond 4.4 MHz in case of new entrants. This contradicts the TRAI's recommendations of May 2010 which determines contracted spectrum at 6.2 MHz. Further, it is unclear whether the same contracted spectrum limit will be applied to incumbent operators (4.4 MHz) as has been applied to new entrants. The difference between 4.4 MHz and 6.2 MHz, i.e. 1.8 MHz, when applied to approximately 279 UAS/CMTS licenses equals approximately 500 MHz of scarce GSM spectrum. This spectrum, if subjected to 'current price' or market price, through auction, will be a massive source of additional revenue (over and above the Rs. 10,000 crores) to the exchequer. Rather than clarifying the issues and charging a market price for all operators beyond 4.4 MHz, the confusion and related uncertainty have been substantially increased during the last one year. (Source: TRAI recommendations of May 2010, DoT press release of 29th January 2011).

**19. BSNL and MTNL market share declined further during 2011:**

According to TRAI data upto August 2011, BSNL's and MTNL's market share in the profitable mobile telephony segment declined from August 2010 to August 2011 from a cumulative of 12.13% down to 11.66% - a further decline

of approximately 4%. BSNL and MTNL also failed in keeping their wireline customers – as the numbers continue to decline, including during the last one year. Since these PSUs are directly accountable to the Hon'ble MoCIT, their commercial performance and well being are entirely his responsibility, especially BSNL – since its existence and well being are critical both for the purposes of serving rural subscribers and for meeting national security needs by keeping the government as a viable service provider in the telecom sector. (Source: TRAI press releases).

**20. Issues of encryption, lawful intercept and centralized monitoring remain unresolved during 2011:**

In spite of leaking of tapes, private conversations, and grave threat to network security/data on account of archaic rules governing encryption and opaque guidelines for lawful interception and monitoring, no progress was made whatsoever to either enhance encryption levels to secure networks or move towards a central monitoring system/announce clear guidelines for lawful intercept and monitoring – which currently occurs from nearly 300 different facilities, risking a massive leakage of top secret information, as was the case noticed in the 2G scam. No corrective action has been taken whatsoever in this regard during 2011. (Source: Newspaper reports).

**21. Officials guilty of malpractice/abdication of duty Identified in the Justice Shivraj Patil OMC Report remained unaffected during 2011:**

The Hon'ble MoCIT had announced the Justice Shivraj Patil OMC Report nearly one year ago to review processes and procedures relating to spectrum allocation since 2001. The OMC has provided a detailed report, identifying

guilty officials and related actions as of 31st January 2011. Ten months after the submission of the report, no departmental action has been taken against any official whatsoever. Merely handing the report over to the CBI is a gross abdication of duty on the part of the Hon'ble MoCIT since regardless of whether or not the CBI can frame such officers based on its FIR or the orders of the Supreme Court dated 16th December 2010, the Ministry is duty bound to implement the report and seek explanations as well as take appropriate disciplinary action against erring officials. Instead, a vast majority of his officers continue in their current positions and in some cases even handling the files and documents relating to the 2G scam/responding to RTI enquiries, including those where they themselves are witnesses or could be found guilty of malpractice. (Source: Multiple RTI applications, the Justice Shivraj Patil OMC report dated 31st January 2011).

**IV. Government's justifications for not holding auctions were rejected by judicial forums, media and other stakeholders during 2011:**

**22. Multiple requests with the DoT for RTI declined during 2011:**

Multiple requests filed for documents with the DoT under the RTI Act by various citizens, including me, were declined during the last one year, citing one excuse or another by loosely using the term 'examination' in place of 'investigations' under Section 8(1)(h) of the RTI Act. Surprisingly, while these documents were denied to citizens, they were conveniently handed over to Hon'ble Justice Shivraj Patil One Man Committee, who chose to put them in the public domain. So while the DoT was steadfast in refusing to comply with requests for information under

the RTI Act, it inadvertently placed the same documents in the public domain, accompanied by the Justice Shivraj Patil OMC Report on the 2G spectrum scam. Clearly, the denial of information was not based on merits but purely the misuse of discretionary powers. The DoT also revealed during a response to an RTI application that it had no formal procedure or schedule of authority to decide which files, notings and documents were subject to exemption when information was sought under the RTI Act. (Source: RTI applications filed by self and others).

**23. Several claims of the Hon'ble MoCIT shown to be false during 2011:**

Apart from the Hon'ble MoCIT's statements about announcing the NTP'2011 by April 2011 and the effectiveness of MNP – none of which were consistent with his claims, other serious statements impacting the judicial process/investigations were made by him– all of which have been rejected by multiple judicial forums. The Hon'ble MoCIT's claim that there was 'zero loss' on account of the 2G spectrum scam, contrary to CAG's calculations, was not only rejected outright by political parties, the media and citizens across the board, but in fact, the Hon'ble Supreme Court (16th December 2010), the CAG (16th November 2010), the PAC, the CBI (2nd April 2011) and eventually, the Hon'ble Judge of the Special CBI Court in the 2G matter (22nd October 2011) – all rejected this contention in varying degrees, but with no lack of certainty. (Source: Supreme Court ruling dated 16th December 2010, CAG report dated 16th November 2010, CBI charge sheet dated 2nd April 2011 and CBI Order dated 22nd October 2011).

**24. The government's contention that it failed to hold 2G auctions because the TRAI did not make such recommendations was rejected during 2011:**

The Government's justification for not holding auctions for 2G spectrum, i.e., that the TRAI did not make such recommendations (suppressing the fact that you had yourself on 2nd November 2007 and the Finance Secretary in his multiple letters sought either auctions or indexation of entry fee) was rejected during the year. The CBI, in its charge sheet dated 2nd April 2011 and the Hon'ble Judge of the Special CBI Court, while framing charges on 22nd October 2011, concluded that the former MoCIT and his accomplices had, contrary to the government's claim, violated multiple recommendations of the TRAI and 'dishonestly and deliberately avoided auctions'. The order additionally emphasized that the TRAI recommendations were not binding on the government. (Source: Press statements by Cabinet Ministers during 2011, CBI charge sheet of 2nd April 2011 and CBI Special Court's order of 22nd October 2011).

**25. The government's contention that Swan/Unitech transactions represented 'equity infusion and not windfall gains' was rejected during 2011:**

The multiple attempts to justify windfall gains by Swan and Unitech vide their transactions with Etisalat and Telenor, respectively, as mere equity infusions rather than illegal windfall gains which correspond to an illegal loss to the exchequer, failed during the year. The CBI Special Judge, while framing charges on 22nd October 2011, concluded that "the two companies obtained wrongful pecuniary advantage to the extent of Rs. 7,105 crores and in furtherance to the said conspiracy and in consideration

of grant of UAS license.” This attempt to distract from assisting the process of justice rather than admitting to the loss and finding ways to recover such losses was a public policy failure during the year. (Source: Press statements by Cabinet Ministers during 2011, CBI charge sheet of 2nd April 2011 and CBI Special Court’s order of 22nd October 2011).

**26. The government’s contention that it followed the First Come, First Served (FCFS) policy of 2003 in 2008 was rejected during the year:**

The contention that the UPA government in 2008 merely followed an existing FCFS policy formed by the NDA government in 2003 was comprehensively rejected during the last one year. Apart from the CAG and the Hon’ble Supreme Court (which ordered investigations extending upto 2001) the CBI, in its charge sheet dated 2nd April 2011 and the Hon’ble Judge of the Special CBI Court in the 2G scam on 22nd October 2011, concluded that FCFS had been illegally manipulated along with multiple violations of the TRAI Act, including redefining FCFS on the afternoon of the scam, and parallelly leaking insider information through a criminal conspiracy to place favoured companies illegally ahead in the queue with an aim to fraudulently granting them spectrum. The charges framed by the Hon’ble Special Judge of the CBI Special Court show that the contrast between the policy followed in 2003 and that in 2008 could not have been further apart. This attempt to distract from owning up to the illegal acts of the former MoCIT, and rather blaming the Cabinet decision of 2003 (which is not binding on the UPA government in any event) and attempting to discredit the entire regime was a public policy failure during 2011.

(Source: Press statements by Cabinet Ministers during 2011, CBI charge sheet of 2nd April 2011 and CBI Special Court's order of 22nd October 2011).

## Letter to the Prime Minister on Flawed Proposal for Control of the Internet

1st June, 2012

Respected Prime Minister,

Thank you for your letter dated 19th May, 2012 (received in my office on 23rd May, 2012), in response to my letter dated 15th May, 2012, regarding the Government of India's proposal to the United Nations (UN) for control of the internet through a 50-member, inter-governmental body.

However, I regret to inform you that between my letter and the receipt of your reply, the actual meetings in Geneva – under the aegis of the World Summit on the Information Society (WSIS) held on 18th May, 2012 and the Commission on Science and Technology for Development (CSTD) held from 21-25 May, 2012

– did not see India withdraw its flawed proposal.

Instead, new verbiage and spin were added to the statement made at the Geneva meetings to camouflage India's proposal as one that *“may be seen in the light of the mandate enshrined within the Tunis Agenda”*. Additionally, that India supports *“creating a democratic internet governance structure will ensure a balance between private commercial and public policy interests and adjust developmental concerns”*. Further, it provides a background wherein the statement describes the **joint statement made by India, Brazil and South Africa (IBSA)** on enhanced cooperation on 14th December, 2010.

India's refusal to withdraw its statement of October 2011 was not only disappointing, but yielded the worst possible results wherein countries with dubious record on human rights and democracy have publicly aligned their positions to that of India during the review of the implementation of the outcome of WSIS in Geneva last week.

It is unclear whether this rather opaque and dangerous initiative, which has the potential of permanently altering the internet as we currently know it, is being led by the Ministry of External Affairs or the Department of Information Technology. However, it is clear that they are leading India into a position that we will regret deeply. Not only does it surrender the future of the next generation internet into the hands of governments, but also ties our hands and aligns us with countries with the worst possible track record of internet and media censorship, democracy, free speech, freedom of expression and privacy.

In continuation of my previous letter and in view of India's decision to reiterate its October 2011 stance in Geneva last week, I would like to correct any misleading impression that you may have received from those who are briefing you / leading India into this worrisome position. Specifically:

- A. Contrary to India's statement in the UN (October 2011) and at WSIS, Geneva (May 2012), India's proposal for inter-governmental oversight of the internet is against the letter and spirit of the Tunis Agenda, 2005:

The Tunis Agenda in 2005 - far from supporting a 50-member, inter-governmental body manned by bureaucrats/politicians, serviced by the UN Secretariat and reporting directly to the UN General Assembly - neither envisages a separate entity such as CIRP nor a superior role for governments in the governance of the internet.

Contrary to India's stance, the Tunis Agenda defines internet governance in para 34 as:

*"The development and application by governments, the private sector and civil society, in their respective roles of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the internet."*

Additionally, paras 34, 35, 56, 58, 59, 61 and 69 – invoked in India's proposal – do not provide for any role for inter-governmental oversight/control, etc. In fact, para 69 only envisages government to cooperate *"on an equal footing, to carry out their roles and responsibilities,"* and later prohibits such a role to interfere *"in the day to day technical and operational matters, that do not impact on international public policy issues."* Additionally, paras 52, 55, 65 and 68 further mitigate India's interpretation of an inter-governmental body controlling the internet. Specifically:

- i) Para 52 requires that stakeholders, particularly from developing countries, have an opportunity to participate in the policy decision-making related to internet

governance, and the agenda calls upon governments to promote and facilitate such participation.

- ii) Further, para 68 states that the government should have an equal role and responsibility in the governance of the internet, and further that even the need for the development of public policy by governments should be in consultation with all stakeholders.

Clearly, the Indian government has violated these sections by advancing a proposal in October 2011 without any consultation with the multi-stakeholder groups in the country. In sharp contrast to the ‘mandate enshrined’ in the Tunis Agenda, if India’s proposal is accepted, civil society, academia, engineers, private sector and international organizations by design will be relegated to the fringes of an advisory role.

Additionally, you will recall that the then UN Secretary General, Mr. Kofi A. Annan, had, on the eve of the Tunis meetings, clarified while discussing options for government involvement, that *“none says that the UN should take over from the technical bodies now running the internet; none proposes to create a new UN agency; and some suggest no UN role at all”*.

Further, the speech delivered by Mr. Dayanidhi Maran, the then Minister of Communications & IT (MoCIT), in Tunis on 16th November 2005, did not make any mention of a new entity or the need to control the internet through an inter-governmental body.

Finally, the Indian leadership, the UN leadership, or the Tunis Agenda, 2005 do not support India’s proposal for a 50-member, inter-governmental body. And since the Tunis Agenda has repeatedly been offered as a prime justification

by India for the creation of CIRP, the evidence at hand should by itself be sufficient to withdraw India's proposal immediately.

**B. Brazil has abandoned IBSA's original position on internet governance. India left with South Africa.**

The last four months, and especially the meetings held in May, 2012, saw Brazil take a far more enlightened stance than India and South Africa, who jointly issued the statement as a part of IBSA on 14th December, 2010. Essentially, Brazil has steered clear from its IBSA partners. It is now being recognized as a country with evolved views and an enlightened solution to strengthening the multi-stakeholder regime for governing the internet. Unlike India, Brazil has made a savvy and progressive move by abandoning its original position on internet governance as a part of IBSA.

Notwithstanding our economic ties with South Africa, India must distinguish itself from South Africa's desire for governmental control over the internet. IBSA is neither relevant nor appropriate where India's partnership of internet governance is concerned.

**C. India's proposal for inter-governmental oversight over the internet was supported by nations with dubious track record in human rights and democracy.**

In what could perhaps be the worst consequence of India's proposal at the 66th UN General Assembly for the creation of an inter-governmental entity to control the internet, India's position found support in Geneva last week, mostly from nations with dubious track record in human rights and democracy.

The actual conduct of some of these countries supporting India's proposal would be nightmarish, to say the least, on issues such as free speech, freedom of expression and privacy, which Indians take for granted while using the internet. Reporters Sans Frontières (RSF), in its latest report released in March 2012, based on detailed analyses, labelled some of these supporting countries as '*enemies of the internet*'.

Imagine a situation where India's demand gets transformed into a 50-member inter-governmental body which then forces us to participate in international treaties and laws that will have to achieve common ground on such matters that are regarded as 'fundamental rights' in India's constitution, but as 'crimes against the nation' in these and other countries such as Cuba, China, Burma, Belarus, Bahrain, Tunisia, Russia, Uzbekistan, and Kazakhstan etc.

With this letter, I am providing you detailed evidence (as annexures) of the various documents that the Indian government officers may not have informed you about. Not one single evidence points to the need for India to continue its stance of demanding CIRP under the garb of democratizing the internet. Democracy of the internet is not about moving it from the influence of one government to the control of 50 governments, but in fact, by strengthening the multi-stakeholder arrangement where, as enshrined in the Tunis Agenda, the government has an equal and important role.

I trust you will find this additional information useful and, based on this, will direct your officers/ministerial colleagues to immediately withdraw India's excessive posturing that regrettably continued in Geneva in May 2012.

Please let me know in case you need any further information.

Yours Sincerely,

Rajeev Chandrasekhar

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

## Letter to the Prime Minister on Review of the TRAI Act

4th July, 2012

Respected Prime Minister,

**Sub.: Need for a review of the TRAI Act to address the regulatory inadequacies and impediments in effective discharge of the TRAI's functions**

This is with reference to my several discussions with you on the above issue, as well as Section 13 – '*Role of Regulator, Changes in Legislation*' - specifically enshrined in the National Telecom Policy 2012 (NTP 2012) announced recently.

As you are already aware, the telecommunications sector has suffered greatly on account of lack of governance, faulty procedure

and oversight – causing serious regulatory uncertainty for investors – which has become the biggest hurdle to sustained investment flows into the sector, and works against the interests of telecom and Internet users as well as the general citizens of India. One of the key issues which underpins the current chaos in the telecom sector is the manner in which the TRAI functions, and more significantly, the treatment that it (including its recommendations and directions) receives at the hands of the political leadership and bureaucracy, specifically in the Department of Telecommunications (DoT), and by the Government in general.

The main reason for such regulatory failure and uncertainty has been on account of a weak legislation and a regulator whose authority and credibility stands eroded over time. Thankfully, the NTP 2012 recognizes this challenge, but provides no timetable or specifics – both of which are critical to rebuild investor confidence and protect public interest.

In this regard, may I urge you to please direct immediate action, including through wide public consultations involving citizens, industry, regulatory specialists, media, Parliamentarians, DoT and other relevant Ministries, but most importantly, the TRAI itself, to enable specific inputs and improvements into the existing TRAI Act with a view to strengthen inter alia the following areas :

1. TRAI's powers with regard to licensing which currently resides with the DoT.
2. An enhanced role for TRAI in management, allocation and pricing of spectrum.
3. An accountable and transparent process within the DoT/ Government for receiving, processing and implementing recommendations made by TRAI under Section 11 of the TRAI Act, including the need to improve the process for modifying or rejecting its recommendations, and especially, a strict avoidance of cherry-picking TRAI's recommendations or using them out of context.

4. Strengthening the procedure under Section 11 of the TRAI Act of re-referring recommendations back to the TRAI in case of disagreement, or in the event that the Government feels that there is a need to modify / reject such recommendations.
5. Enhancing the accountability of TRAI to the Parliament and the citizens of the country, especially reviewing the current structure of the TRAI being answerable to the Parliament through the Telecom Ministry. This presents an unhealthy environment and multiple conflicts of interest, which is both undesirable and easily avoidable. Reviewing whether a greater role for an institutional body, such as the Parliamentary Standing Committee on IT, will be more adequate as a pilot for regulatory authorities – beginning with the TRAI.
6. Strengthening the regulatory capacity within the TRAI by reviewing its structure and providing a much higher level of funding from the massive revenues collected on account of telecom services, revenue share, USO Fund and spectrum usage charges. A fraction of these funds need to be earmarked for strengthening the TRAI's capacity building.
7. Providing TRAI the appropriate enforcement powers vis-à-vis telecom operators and Government.
8. Reviewing the Perquisites & Benefits as well as general salary structure etc. of the staff within the TRAI. The current salaries and other benefits effectively prevent the TRAI from hiring the best-in-class talent that is extremely critical to the success of this sector.
9. Improving the consultation process and competition management function of the TRAI as currently mentioned under Section 11 of the TRAI Act, or establishing a formal relationship for advise and evaluation of all competition-

related decisions between the TRAI and the Competition Commission of India (CCI). Currently, the TRAI's capacity and legislative strength on competition is negligible, and CCI has been prevented from playing an active role where competition in telecom or M&As is concerned.

I am sure during the consultation, other important views will emerge on improving the functioning and effectiveness of the TRAI to enable it regain the pride that it commanded when it was first set up between 1997-1999.

Dr. Rahul Khullar's appointment as the Chairman TRAI, as a trained economist, is a welcome move and perhaps, exactly the time for the Government to act on its long pending promise and now specific NTP 2012 objective of improving TRAI's functions, including by considering whether several of the functions that are currently handled within the DoT deserve to be moved over to an independent regulatory structure - to avoid duplication, delays and interference in the work of an expert body.

In case you want me to explain these issues in greater detail, I am available personally to provide more information, including on ideas on how to begin the process of consultation with stakeholders before arriving at the specific areas which need improvement.

Yours Sincerely,

Rajeev Chandrasekhar

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

Letter to the Chairman,  
Empowered Group of Ministers  
on Spectrum Reserve Price

17th July, 2012

Dear Thiru Chidambaram,

**Sub. Need for strengthening the independent regulatory institution and framework by upholding TRAI's latest Recommendations on 'Analysis of Effects on Costs, Tariffs and Financial Returns' dated 21 June, 2012**

This is further to my letter dated 11 July, 2012 on the issue of upholding the TRAI's recommendations on the reserve price for the upcoming 2G spectrum auctions.

With the TRAI having submitted its fresh response to the DoT Reference dated 29.05.2012, providing specific analysis of its

original recommendations about reserve price for auction of 2G spectrum, it is further well established that the original reserve price of Rs.3,622 crores per MHz of pan India 2G spectrum recommended by the TRAI was accurate, well-analyzed, and deserves to be accepted.

I have argued on several occasions before, and here yet again, that the Government needs to strengthen the independent regulator and provide TRAI the respect its work deserves to re-establish its credibility. After a long time, the TRAI has done detailed work, including handling original and additional data provided by the industry (which has been included as annexures in its latest recommendations on “Analysis of Effects on Costs, Tariffs and Financial Returns” dated 21 June, 2012). It is, therefore, incumbent upon the Government to uphold TRAI’s Recommendations and support its decision transparently with the detailed explanations – without prejudice or any fear of the same being overturned as a result of any legal action.

New opposition to the reserve price recommended by the TRAI is expected yet again from the telecom industry, which is acting in its self interest to ensure that the reserve price is reduced to a bare minimum. In this regard, they would provide several reasons, which in my submission, now need to be discarded in face of such overwhelming evidence supporting the original TRAI recommendations.

Further, please consider the following:

**1. Tariff hike due to high reserve price is a myth**

Apart from the fact that it is well established that the auction price paid by the operator is, and should be based on the benchmark value of the last auctions as well as its scarcity quotient – both the experience in the marketplace and TRAI’s latest impact analysis titled “Analysis of Effects

on Costs, Tariffs and Financial Returns” of 21 June, 2012 show that consumer tariffs will not increase in face of the reserve price suggested by TRAI. We already have the case of Vodafone who paid approx. US\$12 billion to purchase the Hutch stake, and yet, kept tariffs competitive since 2006. More recently, in the case of 3G auctions, after paying ten times the price of 2G spectrum, each of the companies has launched voice services at a tariff which is equal to or lower than the prevalent 2G voice tariffs. This, coupled with the projected hike of 5-10 paise based on the new reserve price – provides conclusive evidence that tariff hike is not linked to the reserve price that has been recommended by the TRAI.

**2. TRAI has been consistent in its reserve price recommendations**

Unlike in the past, the TRAI has refused to buckle to industry lobbying or even political pressure by not only keeping the reserve price at the same level across two different sets of recommendations and in response to a re-reference, but in fact, its impact analysis of 21 June, 2012 show that regardless of which view is taken, the reserve price deserves to be fixed at the level that has been originally recommended by TRAI. TRAI has also explained the distinction between the first exercise, which did not determine possible increase in tariffs, and this one, which focuses on the issue of tariffs by taking into consideration the representations of telecom industry associations that the reserve price was set too high and would, therefore, adversely impact tariffs. Further, the TRAI has also distinguished between the cost aspect and the tariff aspect in its current and latest set of recommendations.

**3. Industry viability will not be impacted with the TRAI-recommended reserve price**

In its latest Impact Analysis of 21 June, 2012, the TRAI has done elaborate and detailed analysis on the issue of industry viability – an exercise that it admits was specifically left out of the previous recommendations. In contrast, the current recommendations specifically evaluate “profitability of operations”, where revenue projections have been based on subscribers, minutes of usage and changing composition of voice and non-voice revenues to yield projections for system wide revenues. It has conducted analysis across tariff increases of 5 paise and 10 paise across the industry and included in it the analysis for return on capital employed, license fee and spectrum usage charge and tariffs collectable from outgoing minutes. It has finally concluded that a 5 paise per minute increase in tariff leads to a higher EBITDA and EBITDA margins post impact. Further, that the PBIT too is higher than in the base case.

**4. There will be sufficient bidders, or else spectrum should be held back**

To the ongoing threat that there may not be sufficient bidders at the current reserve price, there is a simple solution for the Government to restrict the number of slots further. India has 7-8 existing operators, and the task of managing competition and its impact on the consumers should be left to TRAI. Since spectrum is a valuable, scarce natural resource that belongs to the nation, it is entirely acceptable that all spectrum does not have to be auctioned at this stage – just as DDA would never auction all land in Delhi in one day. Government should assess the demand based on its rollout of auction details and restrict the number of

slots further to ensure that demand always exceeds supply, and therefore, the reserve price is appropriately applied by way of valuable government revenue.

**5. TRAI should regulate tariffs**

The Government must ensure that the spectrum reserve price and auction proceeds are linked to the scarcity of spectrum, and in fact, the tariffs should be market determined only if there is no unusual hike. The TRAI should be given appropriate policy directions (for which there is sufficient scope within the TRAI Act) to ensure that it exits the ‘forbearance’ mode and regulates tariffs, especially if the tariffs increase higher than the pre-auction levels. There is

absolutely no merit in the TRAI continuing with its ‘forbearance’ plan in case of a tariff hike beyond TRAI’s own analysis of a minimal tariff hike of 5-10 paise per minute. The stature has sufficient scope for protecting consumer interest and keeping tariffs low, which should be put to good use at this time.

**6. International precedent shows that reserve price can well be equal to the auction price**

TRAI’s Impact Analysis of 21 June, 2012 exhibit through a 19-country data, that in several instances, the reserve price becomes the actual auction price (6 countries out of 19, or 30%). This would mean that if the price was lower than the reserve price, then that would become the final auction price. In effect, once the TRAI has determined the value of spectrum based on advance analysis, the Government may well have to settle for the reserve price becoming the final auction price, and for that reason alone, lowering the reserve price would be grossly against the Exchequer’s

interest. In the worst case scenario, if fewer bids are received, the Government can reduce either the number of slots, or reject the bids and hold auctions yet again. The Hon'ble Supreme Court has advised that the Government hold auctions, but has given no instructions wherein spectrum needs to be given away at a price lower than what the market can determine – as has been indicated by the TRAI in its multiple recommendations since April 2012.

7. **Liberalized spectrum is far more valuable, justifying the reserve price**

Finally, a crucial element linked to spectrum pricing, and by consequence, reserve price, is the significant policy shift wherein spectrum has been liberalized, and therefore, can be used by several different operators using multiple technologies to provide a range of services that was impossible hitherto. Such an increase in the possibilities and business generation from the next round of 2G spectrum must be seen as different from all other spectrum that has been allocated in the past, including 3G spectrum in 2010. Consequently, this is an additional and critical reason why the reserve price recommended by the TRAI needs to be upheld.

Finally, I am sure the EGoM is ably assisted and will consider the appropriate steps as it concludes on the reserve price – keeping in mind the need to uphold the recommendations of the TRAI, and re-establishing its credibility by supporting wholly its excellent and well-argued analysis. In fact, this might be the Government's first big opportunity, after the 2G scam, to move away from arbitrary decision making by supporting the fact-based, scientifically analyzed and economically well-argued positions of the TRAI. Building strong, credible, independent institutions must be an absolutely critical objective for the Government.

Yours Sincerely,  
Rajeev Chandrasekhar

Thiru P. Chidambaram  
Hon'ble Minister of Home Affairs and  
Chairman - Empowered Group of Ministers (EGoM) on Telecom,  
Government of India,  
New Delhi.

Copy to Hon'ble Members of EGoM on Telecom :

1. Shri A. K. Antony, Hon'ble Minister of Defence
2. Shri Sharad Pawar, Hon'ble Minister of Agriculture
3. Shri Kapil Sibal, Hon'ble Minister of Communications & IT and HRD
4. Smt. Ambika Soni, Hon'ble Minister of Information & Broadcasting
5. Shri Salman Khurshid, Hon'ble Minister of Law Affairs
6. Shri V. Narayanaswamy, Hon'ble Minister of State in the Prime Minister's Office
7. Shri Montek Singh Ahluwalia, Deputy Chairman, Planning Commission

## Letter to the Minister of External Affairs and the NSA on Internet Governance

24th July, 2012

**Sub: India's statement in the UN in October 2011 regarding government control through a United Nations Committee on Internet Related Policies (CIRP) over the internet is inherently against the open, democratic, inclusive and unhindered growth of the internet. It harms India's reputation, has been submitted without a prior public consultation with multi-stakeholder groups, and therefore needs to be withdrawn.**

I have already written two detailed letters dated 15 May, 2012 and 01 June, 2012 to the Hon'ble Prime Minister on the above subject (enclosed herewith), pointing out the need for an immediate reversal of India's position at the 66th UN General Assembly in New York on 26 October, 2011. I have pointed to the many flaws

and dangers arising out of India's position in my first letter, and rebutted claims made by the Indian Government regarding IBSA and the Tunis Agenda in its various statements in the second letter. However, the Government has refused to take back or reverse its position as it currently stands.

Subsequently, I filed RTI applications on this issue on 13 June, 2012. A detailed note with regard to the findings from the RTI application is attached herewith for your perusal, with some questions on which I request responses from the Ministry of External Affairs as early as possible.

In the meantime, the following issues emerge and need immediate attention:

- i) India's claim that its statement on internet governance in the UN is consistent with the IBSA statement is factually incorrect and is a gross misrepresentation. The officers in charge should be asked to explain – based on my note.
- ii) India's claim that its statement on internet governance is based on the Tunis Agenda (paras 35, 65, 68, 69, and 71) is also a gross misrepresentation. It now seems that this position was taken by officials at the Permanent Mission of India (PMI) in Geneva. Based on their detailed letters, they should now explain how they derived these positions – in view of my letter. The PMI's interpretation of the Tunis Agenda is a gross misrepresentation.
- iii) As indicated in my second letter to the Hon'ble Prime Minister dated 01 June, 2012, the RTI has now revealed that far from India's position in the UN being based on an IBSA statement, both Brazil and South Africa have refused to participate or own up to India's statement. They specifically sought more time before India submitted its statement on the very issue of the roles of the multi-

stakeholder community that is under question. This fact was known to the Ministry of External Affairs (MEA), in spite of which a pretence was made that India's position was extrapolated in some ways from the IBSA discussions in Rio in September 2011 and in South Africa in October 2011.

- iv) Inexplicably, the statements by India at the 66th UN General Assembly in New York on 26 October, 2011 have been drafted by the PMI in Geneva as per the drafts available in the RTI documents and emails dated 5 October, 2011 (Ms. K. Nandini) and 21 October, 2011 (Shri A. Gopinathan). This is most unfortunate and shows that the MEA has taken over the roles and functions of the Department of Information Technology. Apart from being in violation of the Government of India (Transaction of Business) Rules, 1961, it is entirely inappropriate for diplomats to take a position on which the nodal ministry has not produced any draft or position. This over zealotry of MEA officials is entirely unexplained and has a dangerous legacy in times to come.
- v) It is also clear from the RTI revelations that officials of the PMI in Geneva knew that India's position has been supported by or is aligned with countries such as Honduras, Cuba, Saudi Arabia, Iran, and Venezuela. The officials have thereby knowingly put us in a dangerous position wherein the global media is now accusing us of aligning with countries whose track record on issues of free speech, freedom of expression and right to privacy is highly questionable. Rather than cautioning us and distancing from such countries, that RTI reveals that the MEA officials have constantly used their support as a need to promote at first a body within the UN, and later, their own

concept of CIRP, supported, funded and reporting to the UN with multi-stakeholders on the side and governments front and centre.

- vi) Overall, it is a very worrying sign of the manner in which MEA officials – who are already short-staffed to carry out their essential functions – are usurping the functions of other ministries and taking positions in international forums based on global and diplomatic considerations, rather than by enlisting the views of Indian stakeholders. The positions have been taken without any public consultation with any of the stakeholders at any stage within India.
- vii) Finally, at least from the RTI revelations, there does not seem to be any ministerial approval specifically for the draft of India's position taken at the 66th UN General Assembly in New York on 26 October, 2011. This is a gross oversight – a costly mistake that goes against the spirit of our Constitution and the interest of nearly one billion mobile and internet users in India.

I request you to review the background document, the facts mentioned (chronologically) and the questions that have been posed, and to take immediate corrective action by:

1. Suggesting a reversal of India's position publicly
2. Correcting the impression that India's position is either based on or supported by IBSA countries
3. Change from here on, the role of the MEA, PMI, and Multilateral Economic Relations (MER) Division to that of coordinating the position on behalf of the nodal ministry, rather than taking lead by drafting and deciding unilaterally about India's internet governance position at the various global platforms.

I look forward to your early response.

Yours Sincerely,

Rajeev Chandrasekhar

Shri S. M. Krishna

Hon'ble Minister of External Affairs,

Ministry of External Affairs,

Government of India,

New Delhi.

Shri Shivshankar Menon

National Security Advisor,

Prime Minister's Office

Government of India,

New Delhi.

## Letter to the Prime Minister on Apology from the Minister of Communications & IT to the CAG and the Nation

8th August, 2012

Respected Prime Minister,

**Sub: CAG and the nation deserve an apology from the Minister of Communications & IT, post the Cabinet decision on reserve price for 2G pan-India spectrum**

This is with regard to my letters dated 11 January, 2011, 24 January, 2011 and 04 August, 2011 with regard to the press conference headed by Shri Kapil Sibal, Hon'ble Minister of Communications & IT (MoCIT) on 07 January, 2011, publicly ridiculing the CAG for indicating a loss to the national exchequer arising out of the 2G spectrum scam – whose highest estimate, based on 3G auctions, was fixed at Rs.1.76 lakh crores.

With the Union Cabinet deciding a Rs. 14,000 reserve (base) price for 5 MHz of 2G spectrum in the 1800 MHz band on 03 August, 2012, it has become clear that the MoCIT had misled the nation and, notwithstanding the then proceedings of the PAC, went ahead and made derogatory comments in violation of Rule 1.12 of the Parliamentary Procedures and Practices which prohibits any official or any Member of Parliament to comment on any subject which is under the consideration of the PAC, not only about the findings of the CAG, but also the methodology that they had adopted in arriving at the loss estimates.

As you are aware, I had provided a detailed rebuttal of the MoCIT's contentions and statements in his Press Conference on 07 January 2011, made in a bid to demolish the CAG's painstaking calculations. I had invited him to respond to that presentation in the copy that was sent to you, but am yet to hear from him on the issue. Quite apart from the fact that the value of the 2G spectrum is firmly established by the Cabinet, it is clear that every claim that the MoCIT had made in his much criticized and certainly unsubstantiated press release of 07 January, 2011 has come to naught, and in fact, the series of events since then prove that the CAG, and those who stood up to defend the CAG, were on the right side of the arguments.

Specifically:

**1. Public policy objective of affordability used as an alibi**

The MoCIT had claimed during his 'zero loss' press conference of 07 January, 2011 that consumer affordability through low tariffs and a bid to maximize public welfare was the primary driving factor behind allocating 2G spectrum in 2008 at 2001 prices. He said, "*If the objective of the Government were only to maximize revenues, much higher price would be charged, but there are good*

*reasons why this is not done.*” He further claimed that these measures have helped increase teledensity and reduce prices of mobile services for the ‘aam aadmi’.

Clearly, his statements are not borne out by the facts. Apart from the fact that the companies which had entered into a criminal conspiracy with the former MoCIT have been accused of violating rollout obligations in their licenses (negligible increase in teledensity wherein the 122 licensees are concerned), nothing has changed for the Government to have now altered its logic. In fact, the teledensity is increasing at the pace of a trickle. It now has to reach the lowest end of the pyramid. The ARPUs are down from nearly Rs. 260 at that time to a fraction today. Under the circumstances, and if the MoCIT’s logic were to be applied, then the Cabinet would have decided otherwise. Clearly, both the TRAI and the Cabinet, in its wisdom, have rejected the proposition made by the MoCIT – linking spectrum auction / bid price to affordability. Even where the TRAI is concerned, its repeated analysis has shown a 5-10 paise impact on tariffs even at the Rs. 18,100 crore reserve price recommended by it. Clearly, this has been accepted by the Cabinet.

**2. The 3G alibi collapses. The Rs.14,000 crore reserve price is for the exact same 2G spectrum.**

The other argument that was advanced by the MoCIT in defending the indefensible 2G scam related to the fact that the CAG had erred by comparing 3G spectrum with 2G. He drew a distinction between the allocation process of 3G and 2G spectrum and claimed - *“3G is typically used for providing value added services, such as video and large amount of data. These services are primarily availed by companies and individuals who have large*

*paying capacity.*” To distinguish between the two types of spectrum, he compared 3G to highways and 2G to the rural roads.

Clearly, this flawed reasoning has also fallen flat. Not only is the current reserve price decided by the Cabinet for 2G spectrum (and not 3G), but is in fact for the exact same spectrum that will now be reallocated through a transparent auction process under the guidance and directions of the Hon’ble Supreme Court. Furthermore, even the start-up spectrum size of 4.4 MHz then and 5 MHz now are comparable in nearly absolute terms. Needless to emphasize, even where 3G spectrum is concerned, companies are using it for the most part to provide voice services – contrary to the MoCIT’s claims – and have recently slashed tariffs up to 70% in many cases. In effect, the spectrum pricing is decided by its scarcity value, and not the distinction that the MoCIT had sought to make, notwithstanding the liberalization of spectrum announced recently by the Government.

3. **The Cabinet decision of Rs.14,000 crore reserve price at variance with TRAI recommendations shows that Government’s sovereign decision-making power is not bound by TRAI recommendations.**

The MoCIT’s third claim to defend the former MoCIT’s illegal actions was that the Government had followed the TRAI’s recommendations, by stating - “The recommendations of the independent regulator are a very high, important factor in deciding these matters.” He did so by knowing full well as a lawyer that the TRAI’s recommendations are not binding on the Government.

Now, in a twist of fate, not only has the Government reduced Rs. 4,100 crores per 5 MHz slot vis-à-vis the

TRAI's recommendations, but has, in fact, done so without giving any explanation for their reasons. The exact same sovereign right of the Government could have been invoked and the TRAI's recommendations referred back for reconsideration – consistent with multiple letters from the TRAI in this regard, and the 2G spectrum scam could have been avoided. The Cabinet's actions to deviate from the TRAI's recommendations show that the MoCIT's attempt to hide behind the TRAI rings hollow. I must, however, put on record that varying from the TRAI's recommendations without providing detailed reasoning is an unhealthy practice and must be curbed.

4. **A reserve price of Rs.14,000 crores five years after the 2G spectrum scam shows that the 2G to 3G time gap argument was invalid.**

The MoCIT had additionally attempted to question the CAG's rigour by highlighting the time gap between 3G spectrum auctions and the 2G allocation by the former MoCIT, thereby challenging the methodology adopted by the CAG.

Today, the Cabinet has shown that for approximately the exact same amount, band, and use of spectrum – nearly five years later – the base price has been set up at Rs.14,000 crores. Further, even if a penny is not paid over the reserve price, the Government would recover – five years later – for the amount of spectrum allocated by the former MoCIT, a sum of Rs. 1.47 lakh crores. Chances are (as the MoCIT himself has stated) that the bids will be higher. So in effect, his 'time lag' argument to attack the CAG has failed to pass muster as it stands rejected both by the TRAI and the Union Cabinet.

5. **The financial environment, addressable market, and scarcity quotient all point in favour of 2008 over 2012.**

The Cabinet decision has not only vindicated the CAG, but a review of key bid-related parameters shows that the CAG might have been moderate in their calculation of the loss. The addressable market at the time of the illegal allocation by the former MoCIT in 2008 was nearly 960 million, with only approximately 240 million wireless connections till January 2008. In a reversal of scenarios, by the time the 2G auctions occur, India will have, by the TRAI's own estimates, approximately 960 million subscribers, with an addressable market of nearly 240 million. The new add-on subscribers is less than a third of the 2008 figures, and the ARPUs a fraction of the Rs. 260 prevailing in January 2008.

Additionally, the investment capital flows were aplenty, and global as well as Indian stock markets at an all time high, and on January 2008, just two days before the 2G scam was perpetrated, the sensx had clocked an all time high of 21078 before it settled at 20873. Further, there were 575 new applicants waiting for 121 licenses, scoring a far higher scarcity quotient than the new entrants expected to join the bids for the 2 slots of 5 MHz that the Cabinet has cleared for the next round of 2G auctions. Every single crucial parameter which fundamentally impacts the bids shows that if the Cabinet believes, under the current circumstances, that Rs. 14,000 crores can be the base price for starting the auction for the same 2G spectrum, then clearly, the CAG was entirely justified in using the TRAI-recommended comparison between 2G spectrum and 3G prices vide its recommendation of 11 May, 2010.

**6. CAG maintained its dignity in face of undeserved and unwarranted attacks questioning its credibility.**

At the time the MoCIT had launched his attack at the CAG which stunned the nation, he had used very strong language. To be precise, he had said, *“We are also extremely pained by the methodology adopted by the CAG in coming to a figure which has no basis whatsoever... The figure of Rs. 1.76 lakh crores, with the greatest respect to the CAG, is so utterly erroneous that a complicated and complex issue like this, should not have led to a presumptive loss of this magnitude... It has embarrassed the Government, and embarrassed the nation.”*

In spite of this shocking lack of respect against the haloed institution, the CAG kept its dignity intact. Showing courage and calm under the most undeserved assault, it had merely said, *“Making public comments on a matter that is being considered by a Parliament Committee is highly improper and may amount to contempt of the House.”* But refusing to be bullied by such attempts, the CAG had clarified in no uncertain terms that, *“It stands by its audit report on 2G spectrum one hundred percent.”*

**7. This is the right time for introspection and corrective action.**

The events since the MoCIT's unfortunate attack on the CAG, especially the Cabinet decision on reserve price, shows that the CAG could have been faulted for nothing. Much water has flowed under this bridge, and it's time to show the courage of introspection and accept mistakes.

Unless the MoCIT is in a position to find new arguments to explain these detailed inconsistencies and reversals of his arguments, you might consider requesting him to

respectfully accept his mistake and apologise to CAG and to the nation. Such an apology will restore the public's confidence in the fact that the unprecedented attacks on one of our greatest institutions were an exception to the rule – an aberration – which is duly regretted.

In case you wish me to meet with you and explain any of these points in detail, please do let me know – since they prove beyond any reasonable doubt that the attacks on the CAG were unwarranted, unsubstantiated and highly avoidable.

Yours Sincerely,

Rajeev Chandrasekhar

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

58

## Letter to the Minister of Communications & IT on ITU Regulations

10th December, 2012

Dear Shri Sibal,

**Sub.: Deep concern on India's stance with regard to International Telecom Regulations (ITRs) at the ongoing WCIT 2012 Conference organized by the International Telecommunication Union (ITU) in Dubai from 03-14 December, 2012**

This is with reference to my previous three letters dated 18 October, 20 November and 28 September, 2012. In those letters, I have specifically requested for the Government to hold multi-stakeholder consultations and incorporate inputs received by various stakeholders into India's final proposal which, it is now

clear, was submitted on 03 November, 2012, without incorporating most inputs from the industry and no meeting with civil society. Even later when this meeting was held by you on 27 November, 2012 – detailed inputs were provided, but vast majority of them have neither been incorporated in a revised document, nor have come through when Indian officials are taking the floor at the various plenary and drafting sessions in Dubai. This is a matter of serious concern, especially given the binding nature of the ITRs and the fact that its effect would transverse across several governments and over a billion stakeholders in India.

1. Specifically, my feedback from the webcast sessions being telecast live from Dubai shows that India has placed on record language, both in the written proposal and the oral submissions, which has not only been opposed by the industry and civil society, but in many cases, the TRAI. Even when TRAI has warned against including language which infringes upon sovereign rights of the Government - placed within the jurisdiction of the TRAI by virtue of the TRAI Act – such suggestions have been ignored.
2. Further, I am informed that in spite of the fact that DeIT, which has specific responsibilities for internet governance, has opposed or requested re-examination of the inclusion of terms such as ICT, processing, international naming, numbering and addresses, and raised concerns in several sections of Article 5 related to cyber security etc. - the same have been rejected by the DoT.
3. Even specific inputs from associations such as NASSCOM and Data Security Council of India (DSCI) on terms such as ICT, processing etc. - which bear the threat of bringing in the BPO and ITeS industry under the fold of ITU regulation - have been rejected in India's final proposal.

4. Inputs provided by the Cellular Operators Association of India (COAI), on articles related to cost-based tariffs and roaming - which affects not just industry viability, but also the cost of local calls by virtue of the adverse impact such a step will have on large earnings from international roaming / foreign exchange etc. - have been rejected in DoT's final submission. Even TRAI's specific recommendations that such matters fall under sovereign jurisdiction by way of the TRAI Act have not been accepted.
5. I also notice a large gap between inputs from other industry associations and those made by civil society accompanied by detailed arguments, which have been ignored both in the final submission, and in many cases, the verbal submissions on the floor.
6. The last week has shown that countries such as China, UAE (Arab States), Russia, Sudan, Algeria, Iraq – either entirely, or to a large extent, authoritarian states - wish to bring in Internet, Internet governance, traffic and content within the realm of inter-governmental jurisdiction by the UN. In case they are unable to push through the internet related language directly, they are willing to enter content regulation and surveillance through the back door by placing wide interpretations on terms such as “spam” or “ICTs”, and certainly under Article 5, cyber security. It is entirely possible that western nations have their own commercial agenda, and we should not fall prey to that. However, it is clear that those pretending to revise ITRs under the pretence of changing the technology and communications landscape, have an unambiguous and clear design to enter areas of internet governance, traffic and content regulation / surveillance through the ITRs.

7. Finally, I am also at pain to note feedback regarding a divergence of views, not only across ministries, but even with the DoT's senior bureaucracy and those who authored India's inputs.

I have sufficient documents to substantiate each of the issues mentioned above, including the fact that India's position on cyber security, ICTs and spam was not only opposed nearly across the board, but was not even a consequence of specific inputs in that regard by the MEA or the NSA. In summary, the Indian proposal consists of language that has been formulated entirely within the DoT without any agreement with senior bureaucracy, and in majority of the cases, against specific inputs provided by industry and civil society.

It is now too late and the negotiations are underway. It would serve no purpose for me to labor this issue any further, except to request you to arrest any further damage that such dissonance would cause, not just to India's reputation, but also by way of the long term impact on India's telecommunications, internet and broadband sectors. I request you to urgently look into these issues to take immediate, mid-course correction, even though ideally, like in the case of several other democracies, a Cabinet approval and parliamentary dialogue/resolution would have been a better route before finalizing such submissions.

I trust you will receive this letter in the spirit of cooperation and evaluate the inputs based on their merits.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Kapil Sibal

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the Prime Minister on the Central Monitoring System

13th September, 2013

Respected Prime Minister,

This is with regard to the Government's decision to set up a surveillance system - Central Monitoring System (CMS) – in the country, for monitoring exchange of communication in real time.

With this move, the government will be able to access voice calls, fax messages, SMSes, email and internet activity – encrypted or otherwise - of our 900 million landline and mobile users and 125 million Internet users across the country - pushing us one step closer to the Big Brother State, described by George Orwell.

Media reports suggest that the Directorate of Forensics Sciences in the Ministry of Home Affairs is already set to acquire a range of equipment and software that will allow it to conduct

this surveillance and monitoring of voice calls, internet, email, video, browsing, skype calls, webmail applications etc. on an unprecedented scale. Their capabilities will also include the ability to search for key words in the suspected media and to acquire data over a network.

A legal surveillance program of this magnitude will undoubtedly collect and store vast amounts of information concerning the activities of ordinary citizens in the country. This would mean blind, across-the-board monitoring and surveillance of mass data of citizens, rather than targeted surveillance directed at potentially dangerous individuals or groups.

However, India currently lacks formal privacy and data retention laws to prohibit arbitrary monitoring and protect citizens from potential abuse. This means that there is no clarity over the information that is collected, how, where and under what conditions it is stored, who it is shared with (including local and potentially international law enforcement agencies and governments), and how long such data is retained.

Further, since there is no Parliamentary oversight or requirement for law enforcement agencies to report to an oversight committee on ongoing surveillance targeting Indian citizens – the CMS will provide the government and law enforcement agencies unbridled power over the collection, use and control of information. This violates the fundamental constitutional rights of citizens to freedom of speech and expression. One of the revelations during the recent Edward Snowden encounter has shown what little we know about the nature of data gathered by intelligence agencies. There is also no clarity on the safeguards to citizens' privacy or the recourse/legal protection available to those citizens against whom there is unwarranted surveillance or misuse/abuse of power.

According to media reports, the CMS program is being implemented ostensibly to promote national security. However, in the process of collecting data to monitor criminal activity, the data itself may become a target for terrorists and criminals.

Further, this surveillance program is being implemented by the Government without engaging in any multi-stakeholder discussion or any clarity on its jurisdiction or the checks and balances in its scope of operations to protect the civil liberties of citizens.

While the Government does need to undertake targeted-monitoring operations, such an inherently pervasive and intrusive program like the CMS cannot be deployed in a liberal democracy such as ours without balancing national interest with protecting privacy of individuals and a transparent process and privacy laws.

Therefore, it is necessary for the Government to enact legislation to ensure that privacy standards are maintained prior to the implementation of the CMS. This legislation should clearly outline an effective redressal mechanism, information as to who can access the data, and under what conditions, and what is the time period for which data can be stored by the Agency. The Government should also implement effective Parliamentary oversight over agencies with access to CMS data.

I urge the government to institute a strong judicial process as oversight, and to regulate and control the access and usage of the CMS, in order to safeguard the civil liberties of the citizens of India.

Yours Sincerely,

Rajeev Chandrasekhar

Dr. Manmohan Singh

Hon'ble Prime Minister,

Government of India,

New Delhi.

## Letter to the Prime Minister on Review of Independent Regulators

13th September, 2013

Respected Prime Minister,

The country is witnessing a spate of scams and crises that have their roots in either Regulatory failure or Public policy capture – both fallouts of failure of regulatory institutions. These have, in turn, caused serious setbacks to investor and consumer confidence in many areas that still need investments and growth, and are holding back the growth of various sectors such as telecom, transportation, Energy, Finance etc – all critical to establishing India on a path of sustainable growth.

The recent payment crisis at the National Spot Exchange Limited (NSEL) is yet another example of poor oversight and regulation,

adding to the already severely impaired and adversely affected credibility of the Indian finance sector – on the back of recent allegations of money laundering by public and private banks in the country, and the depreciation of the rupee.

These incidents underline the urgent need for significant reforms in governance and building/rebuilding credible and performing regulatory institutions that are capable of handling challenges of economic regulation in today's India.

When first introduced in India, Independent regulators were envisioned as strong and credible institutions that safeguard consumer interest and act as catalysts for investments by ensuring a predictable set of ground rules. Instead, they have declined and morphed, in most cases, into a second bureaucracy – indistinguishable in conduct, will and performance from the regular bureaucracy.

We have a situation where Regulators have failed deliberately or through incompetence, but are still not held accountable. There are instances of mala-fide conduct on part of Regulators that are obvious and known, but no action has been possible because of ambiguity of oversight of these regulators. Hundreds and thousands of crores of Taxpayer money has been impacted by Regulatory orders and decisions, and there has been unfortunately little or no debate or review of these decisions.

More importantly, the roles and responsibilities of Independent Regulators are not clearly defined. Instead of clear and transparent regulatory objectives, Regulators are being used for advisory/housekeeping activities. For example, Regulators are being asked to intervene in issues like determining sectoral FDI – issues that are in the domain of the political and executive, and not for independent regulation.

Therefore, there is an urgent need for a review of existing regulatory bodies, with a focus on the following areas, namely :

1. Criteria and process to ensure all Regulators are independent – which should cover the process of selection and members. A modern, competitive set of commercial terms of employment and perquisites for members of these regulatory bodies.
2. Process of ensuring Accountability of Regulators and their transparent and unbiased functioning.
3. Giving them Financial Independence and budgeting – a non-lapsable budget for the duration of a plan period.
4. Defining precise relationship between the administrative Ministry and the sectoral regulator.

I request that the Government undertake a comprehensive review of independent regulators, through a wide, multi-stakeholder consultation, including amendments of Laws/Statutes and creating more independence and development of a new cadre of regulators – that are distinguished by their independence, integrity and competence.

These independent regulators must be made to depose compulsorily before the Parliament and the depositions made public to the media and civil society. The Government must also consider implementing the recommendations of the Administrative Reforms Commission to make bureaucrats more accountable and responsive.

Yours Sincerely,

Rajeev Chandrasekhar

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

61

## Letter to the Minister of Communications & IT on Issues Facing the Telecom and IT Sector

13th June, 2014

Dear Ravi Shankarji,

**Sub.: Need for a resolution of various issues facing the Telecom and IT sector**

Congratulations on your appointment as the Minister of Communications & IT.

As you are aware, the telecommunications sector has suffered greatly on account of excessive litigation arising out of poor policies, lack of governance, faulty procedure and oversight by the UPA Government – causing serious regulatory uncertainty for investors – which has become the biggest hurdle to sustained

investment flows into the sector, and works against the interests of telecom & Internet users as well as the general citizens of India. It is essential that the Government implements measures to revive investor confidence by making the sector more viable, through a range of measures.

As you may be aware, I have been at the forefront of raising several issues pertaining to the telecom sector, through letters to the UPA Government, as well as within the Parliament through debates and questions. Through this letter, I would like to draw your attention to some of the important issues facing the Telecom & IT sector, which need to be addressed at the earliest:

1. **Need for enhancement of the TRAI Act to address the Regulatory Inadequacies and Impediments in the effective discharge of TRAI's Functions**

One of the key issues which underpins the current situation in the telecom sector is the lacunae in the powers and functioning of the telecom regulator, TRAI. The main reason for such regulatory failure and uncertainty has been on account of a weak legislation and a regulator whose authority and credibility stands eroded over time. The National Telecom Policy 2012 (NTP 2012) recognises this challenge, but provides no timeline or specifics - both of which are critical to rebuild investor confidence and protect public interest.

Therefore, there is an urgent need for a review of the existing TRAI Act with a view to strengthen the following areas, namely:

- a) TRAI's powers of licensing which currently reside with DoT.
- b) Enhancing the role of TRAI in management, allocation and pricing of spectrum.

- c) Instituting an accountable and transparent process for receiving, processing and implementing recommendations made by TRAI under Section 11 of the TRAI Act. Also to improve the process for modifying or rejecting TRAI recommendations, and avoidance of cherry-picking its recommendations or using them out of context.
- d) Strengthening the procedure of re-referring recommendations back to TRAI in case of disagreement etc.
- e) Enhancing the accountability of TRAI to Parliament and citizens of the nation.
- f) Strengthening the regulatory capacity within TRAI by reviewing its structure and providing a much higher level of funding from the massive revenues collected.
- g) Providing TRAI the appropriate enforcement powers vis-à-vis telecom operators and Government.
- h) Reviewing the salary structure of the staff in TRAI with the objective of hiring the best-in-class talent that is extremely critical to the success of this sector.
- i) Improving the consultation process and competition management function of TRAI as currently mentioned under Section 11 of the TRAI Act, or establishing a formal relationship for advice and evaluation of all competition-related decisions between the TRAI and CCI.

I urge the government to take immediate action through

wide consultation with stakeholders, industry, regulatory specialists, media, representatives of the people etc. and, in a time bound manner, introduce an amending Bill in Parliament.

## **2. Urgent Need to address the Deteriorating Financial Situation of BSNL and MTNL**

You are already aware of the deteriorating financial situation and management of the two Navratna PSUs - Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL). From being profitable companies in the telecom sector with a total valuation of over Rs.50,000 crores at one point in time - both these companies have been reeling under huge losses and battling with falling revenues, profits and market share over the last few years.

For the year ended March 2013, MTNL and BSNL together posted losses to the tune of approx. Rs.13,500 crores. Further, reports indicate that MTNL has suffered significantly higher losses during FY 2012-13, as compared to FY 2011-12.

The current trend points to these companies becoming yet another example of PSUs transforming into a state of financial incapacity in the near future. These Navratna companies are strong public sector assets, owned by taxpayers, and therefore, their revival is essential.

In order to curb any further decline of these prestigious national corporations, it is essential that the entire management structure and Boards of these companies be revamped to bring in considerable talent and expertise on board. The Government must take the necessary steps at the earliest, to improve their financial performance and save

them from collapse and causing losses to taxpayers and citizens of this country – the owners of these companies. Further, this financial performance also reduces their value, which in turn, is a loss to the exchequer and people of the country.

### 3. **India should take the lead in the Global Debate on Internet Governance**

- a) India can emerge as one of the world's largest Internet user bases. However, Indian Internet penetration and growth lags behind Asian peers. With approx. 200 million Internet users, which corresponds to 16% Internet penetration, India, by May 2014, had an Internet penetration lower than Africa (at 20%) and Asia Pacific (at 34%) and an average of 32% penetration in developing countries (*Source - ITU 2014 ICT figures*).
- b) The UPA Government had taken a badly thought-of position of intergovernmental control (rejecting the multi-stakeholder model) – which, in turn, is being rejected by most democracies and India's largest ICT investors as well as the largest markets for India's IT and ITeS revenues (EU, Americas, South Korea, Japan & Australia). This position needs to be changed. The world is looking at India to take the lead in the current debate on Global Internet Governance - and therefore, the Government should take the necessary steps to strengthen and enhance existing mechanisms, and take a new enlightened position on this issue that is consistent with our democratic values & commitment to free speech, through an open, transparent & truly multi-stakeholder process.

- c) Such a position by India will also create diplomatic alliances and bridges with people of Western Europe/Americas and Korea/Japan.
- d) The current laws on Internet regulation in India have alienated youth and business alike, and have too much administrative discretion. The Internet regulation rules should be annulled and a new set of rules framed through a public, multi-stakeholder consultation.

In case you want me to explain these issues in greater detail, I am available personally to provide more information, including on ideas on how to begin the process of consultation with stakeholders before arriving at the specific areas which need improvement.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

62

## Letter to the NSA on Cyber Security

14th July, 2014

Dear Shri Doval,

**Sub.: Cyber Security**

**I refer to the large number of cyber attacks on Indian Assets over the last few years and the threat it poses to our national security.**

With over a billion citizens and the ease of online banking and transactions coupled with the increase in the number of users of smartphones – there has been a significant increase in malicious attacks on digital devices and software systems. According to media reports, there has been a 136% increase in cyber threats and attacks against government organizations, and a 126%

increase in attacks targeting financial services organizations in India. As many as 34% of Indian financial companies and 43% Government organizations reported cyber threats and attacks in 2013 — up from 15% and 19%, respectively, in 2012. According to Symantec's 2013 Norton Report, by July 2013, sophisticated cyber assaults like ransomware and spear-phishing has cost Indian individuals and companies approx. US\$4 billion.

Recently, there have been several instances and attempts to attack the Defence systems in India, as well as the civilian departments. This calls for an urgent need to counter cyber crime and secure the country from it. I have raised this issue earlier in Parliament and also through letters to the previous Government, emphasizing the need for a policy, strategy and body to address the issue of cyber protection.

Though the previous Government had announced a National Cyber Security Policy (NCSP), in July 2013, it does not have any accompanying action plan and specific strategies to counter this threat. It fails to detail specific parameters for effective implementation and also does not mention the Information Technology Act of 2000 which is significant in the event of a conflict. The policy also has no details about the parameters of privacy in the context of cyber security. Cyber security, privacy and civil rights or liberties constitute the three components of the triangle that is integral to the subject at hand.

Further, the policy does not give clarity about how the data will be collected, where and under what conditions it would be stored, and how it will be used. It has no checks and balances to ensure that activities meant for protecting online information are not abused, and does not explain how the Government will safeguard the civil liberties of the citizens.

Other developing countries like Malaysia are implementing their cyber security apparatus at a rapid pace. For example, the

government of Malaysia has introduced strict new compliance requirements in the form of Malaysia's Personal Data Protection Act 2013.

Cyber espionage is a very clear and real threat to our nation and will only grow in terms of the threat it represents. As technology more and more pervasive in the country and various organizations, we become more vulnerable to this threat of cyber espionage and cyber attacks. Therefore, I urge you to make this an important priority, and an effective capacity and solution to manage the same be created within the Government, so that we are a cyber secure nation.

I look forward to meeting with you and discussing this further at your convenience.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Ajit Doval  
National Security Advisor,  
Prime Minister's Office,  
South Block,  
New Delhi 110 001.

## Letter to the Minister of Communications & IT on Internet Governance

11th June, 2015

Dear Shri Ravi Shankar ji,

This is with regards to the broader issue of Internet Governance and more specifically Net Neutrality, which has been dominating the discussions across stakeholders for nearly 3 months in India.

I have written detailed representations in this regard to you predecessors several times since as early as 2012 and to you in a letter dated 13th June 2014. In these letters I had highlighted repeatedly, the need for India to substantively, firmly and consciously adopt multistakeholder “procedures for consultation and decision making”, where issues related to internet governance (including Net Neutrality) are concerned. India’s continued stance emerging out of UPA’s UN-CIRP proposal at the UNGA, of November 2011, favoring a multilateral decision making process,

is both impractical where internet governance is concerned, and unlikely to emerge as either a consensus or majority view. Refusal to take a firm stance continues to be a source of embarrassment for us at international fora.

Furthermore, the lack of consultation amongst multistakeholder groups within the country has resulted in “sudden and extreme” views being presented by stakeholders on the issue of Net Neutrality. This has placed the Government and Parliamentarians in an unnecessary and avoidable situation. Such an impasse could have been avoided if multistakeholder consultations on wider issues of Internet Governance, including Net Neutrality, to seek all views and converge on “common ground”, had been attempted over the last 2 years.

I fully understand the government’s need to keep issues of national security arising from cybersecurity within its purview and remain supportive of that approach. However, even there we need to adopt a policy that exhibits “cooperation” with multistakeholder groups to develop a regime that is both flexible and proportionate, while ensuring investments on one hand and protecting privacy on the other.

I urge you to reconsider India’s approach and use this opportunity to position India firmly on the global map by leading the global dialogue on internet governance, taking advantage off our position within the developing countries and leading democracies of the world.

If you need any further information I will be pleased to assist.

Yours sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad  
Hon'ble Minister of Communications & IT,  
Government of India,  
New Delhi.

## Letter to the Minister of Communications & IT on Data Privacy Violations by Telcos

16th June, 2015

Dear Ravi Shankar ji,

I write to you to bring to your attention recent reports in the media which suggest that Telecom Operators are indulging in practices that amount to a serious breach of privacy of their customers.

These reports suggest that a leading cellular company is surreptitiously injecting JavaScripts into its users' browsing sessions, without seeking user consent. The said JavaScript, developed by an Israel based programming company called Flash Networks, allegedly tracks and collates the browsing data and personal data of the user. This, if found to be true, is a very serious charge – and amounts to a gross and deliberate violation of user privacy.

Reportedly, these surreptitiously injected codes also insert advertisement like assets into the browser and thereby changes the user experience based on operator service used. In some ways, this could be seen as a violation of Net Neutrality principles.

After a young Bengaluru based programmer exposed this alleged malpractice through a GitHub thread, further reports have emerged in the press which indicate that many other prominent telecom operators, have also indulged in similar practices.

In the light of these news reports, I urge your Ministry to promptly undertake the following:

- i. Conduct a thorough and exhaustive enquiry into these allegations which suggest that telecom operators are tracking and collating personal data of Indian internet users.
- ii. Take strong action against telecom operators that are found to be guilty of violating the privacy of citizens.
- iii. Draft a robust and comprehensive Internet Privacy legislation that shall prevent telecom operators, Government or any other parties from prying on the private details of citizens through surreptitious means and clearly define the privacy rights of Indian netizens.

I may also add that the Israeli firm Flash Networks has since issued a Cease and Desist Notice to the young programmer, and followed this up with a Takedown Notice. If true, this is a clear case of a private corporation resorting to intimidation tactics against an individual, and should not be tolerated. It is unfortunate that the telecom operator in question has chosen to wash its hands off the issue and has not extended any support to their customer in this regard. This incident has reinforced the perception that telecom operators in India are indifferent to rights of consumers – especially with regard to privacy and data protection, thereby creating a public policy focus for you and your Ministry.

This episode has also thrown light upon crucial gaps that exist in the Indian internet and technology landscape - that shall have a direct, negative bearing on the very DNA of our country's future technological imprint, and your Ministry's laudable Digital India objectives. I urge you to take stock of these and ensure that prompt action is taken to correct these anomalies in a time bound and concerted manner.

Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the Minister of Communications & IT on the DoT Report on Net Neutrality

28th July, 2015

Dear Ravi Shankar ji,

I write to you to express my concerns regarding the report on Net Neutrality that was released by the Department of Telecommunication on the 16th of July.

I am dismayed to state that the report's contents was indicative of how far behind the curve the DoT is. Indian consumers were certainly expecting a more technically sound report from the DoT, which is famously equipped with 13 floors of technical expertise at the Sanchar Bhavan.

You will appreciate, that what Indian consumers expected from the DoT was a clear, concise, technology led laying down of principles,

definition and rules about net neutrality. Instead what we have been handed is a document full of quotes and contradictory suggestions.

I have also noted that some crucial sections and recommendations of the report are identical to the submissions made by Telcos to the TRAI consultation paper. The attempt to regulate domestic VOIP applications, for instance, blandly accepts the Telcos repeated assertion of ‘level playing field’ and ‘loss of revenues’. I had in my counter submissions to TRAI rebutted this assertion, and am disturbed to note that the DoT is ignoring the robust data revenue growth of the Telcos. In legitimizing the “level playing field assertion”, the DoT has failed to understand the basic distinction between a circuit switched Public Land Mobile Telephony network (PLMN) and an Application on the Internet.

I must also highlight to you that it is technically almost impossible to distinguish between domestic and international VOIP, and in that sense, the distinction between the two, made in the report is artificial and technically flawed. Further, the distinction between even voice and non-voice content cannot be made without going into deep packet inspection, which in turn flags off privacy concerns. This suggestion is therefore both impractical and unviable, and surprising since it has come from the technical experts at the DoT. As a result of the report, there are concerns being raised in several quarters about the DoT’s independence and commitment to internet consumer rights – and indeed why it has avoided setting the rules for Telcos to protect against gatekeeping.

The DoT has also addressed the issue of zero rating in an ambiguous manner - while it has come down hard on the Facebook run internet.org, it has suggested that similar zero rating products offered by telecom operators should be dealt with on a case by case basis by TRAI.

Further, I was disappointed to note that the DoT has not ventured into hard coding a definition of Net Neutrality. At the very least, the DoT should have hard coded exceptions that would not be permitted. Instead, the report consistently states that “*core principles of Net Neutrality must be upheld*” – while elaborating on the principles only in an annexure, as opposed to the main body of the report.

Another important technical examination related to the claims of the Telcos that a majority 2G network and lack of spectrum has serious implications on the implementation of Net Neutrality. Further they claim that the principles of Net Neutrality practiced in Europe and the United States are mostly related to fixed line network. While I reject these claims, it is the duty of DoT to examine this representation on its merits, especially since DoT is best equipped to handle such technical claims. I see this very vital aspect missing from the report.

This report, unfortunately, is a classic bureaucratic attempt to walk a middle path and reads like a compromised effort on the issue of net neutrality. It reinforces the perception that the TRAI and the DoT are complicit in the compromising of consumer interests, scams and attempts at policy capture that have ridden the Telecom sector over decades – issues that I had brought to your attention through a letter in July last year. I further note that DoTs consultations excluded consumer groups and Internet activists. I would recommend that all future consultations include these groups to truly represent Multistakeholderism.

I would urge you to expedite the process of taking a decision on the issue of Net

Neutrality. Since the TRAI's recommendations on the same are awaited, the Ministry must issue a directive to TRAI, ensuring that the regulator completes its report in a time bound manner.

Warm personal regards

Yours sincerely

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

## Letter to the Minister of Communications & IT on the Right to Privacy

25th August, 2015

Dear Ravi Shankarji,

I write to you with regard to a most important issue – the issue of Individual privacy and the need for the Government to enact a legislation to guarantee the Right to Privacy for all Indians.

This issue takes on added significance as the country moves towards Digital India – and Personal data and information of countless Indians will be available/stored in Databases and online, in Government or Private hands.

As you will be aware, it is an issue I have pressed for before – as part of a necessary evolution of our Constitution’s commitment to Individual rights.

I would like to bring to your attention the response I received from your Ministry to unstarred Parliamentary Question no. 1347 answered on 31st July 2015 - on the “*enactment of a Privacy Legislation*”. I have enclosed a copy of the response with this letter for your perusal.

As you will see, section “c” of the question makes a pointed enquiry of your Ministry, on “*Whether the Ministry believes that there is an urgent need to enact a privacy legislation to protect the rights of citizens vis-a-vis the various official databases of Government which collates information about citizens?*”

The Ministry’s response states that “*Department of Telecommunications has already mandated all the Telecom Service Providers as part of license conditions that licensee shall take all necessary steps to safeguard the privacy and confidentiality of any information about a third party and its business to whom it provides the Service and from whom it has acquired such information by virtue of the Service provided and shall use its best endeavors to secure that.*”

Further, the Ministry quotes sections 43, 43A and Section 72A of the Information Technology Act and asserts that these “*provide (a) comprehensive legal framework for privacy and Security of data in digital form.*”

I am concerned by this assertion made by your Ministry on the floor of Parliament, as it is both inaccurate and misleading. Several leading experts have contended that the IT Act, with its limited data protection and privacy related provisions does not provide for all encompassing, comprehensive legal framework for privacy and data security. To this extent, this response of the Ministry, unfortunately, exposes its inadequate technical understanding on the need, scope and application of a privacy legislation.

For your benefit, I am listing the gaps in the current legal data privacy protection framework as envisaged under IT Act:

- a) **Expansion of the Definition of Sensitive Personal Data under rule 3 of Rule 3 of the Sensitive Personal Data Rules:** The categories of sensitive personal information, as identified in Rule 3 Privacy Rules (passwords, financial information, sexual orientation etc.) are inadequate as we move towards convergence of communications. So other categories of information like mobile big data, M2M data, user behavior, etc. should also fall within the ambit of Sensitive Personal Data. Emails and chat logs as well as records of internet activity including online search histories are particularly vulnerable to abuse and misuse and should be accorded privileged protection. To this extent, the Ministry needs to hold a consultation on the subject with experts, and widen the ambit of the definition of Sensitive Personal Data.
- b) **Data Protection Provisions to extend to Government Agencies, Not-for Profits and Others:** Section 43A of Act, which was quoted by the Ministry as a “protective provision” only covers the narrowly-defined ‘body corporates’ engaged in ‘commercial or professional activities’. Thus government agencies and non-profit organizations are entirely excluded from the ambit of this section. In the light of the Government’s attempts at collating sensitive personal data of citizens through a variety of databases, including the Aadhar, and the proposed DNA profiling Bill, the need for government agencies and others to guarantee data protection to individuals is of utmost importance.
- c) **Flaws in the drafting of Section 72A:** Section 72A, another provision quoted in the Ministry’s response is a

problematically worded provision – it requires that third parties or intermediaries can only be held liable if it is proven that they have made a violation “*with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract.*”

As the Airtel-FlashNetworks case and the MTNL case has shown us, this is exactly the defence that most errant parties have invoked in order to escape punishment or any form of liability. As you are aware, I had made this very assertion to you in a letter dated June 16th 2015, which you are yet to acknowledge the receipt of.

- d) **Re-issue affordable standards that are equivalent to ISO/IEC 27001:** The current standard prescribed by rule 8 (2) of the IT Rules, is the IS/ISO/IEC 27001 on “*Information Technology - Security Techniques - Information Security Management System – Requirements.*”

To achieve ISO/IEC 27001 compliance and certification, the implementing body, must have access to the copy of the standard, which accrues a cost. The cost of implementing this prescribed standard are further inflated by the involved costs of literature and training, external assistance, technology, employees’ time and certification. This makes it beyond the reach of small and medium-sized Indian bodies corporates. In order to ensure adequate implementation of this, the Ministry should along with the BIS, re-issue affordable standards that are equivalent to ISO/IEC 27001.

Apart from these very specific concerns, there are several other issues that indicate that India is yet to place the necessary safeguards to protect the privacy rights of Indian citizens. In the light of these facts, you will agree that the Ministry’s statement on the floor of

the House circumvents the legitimate question regarding the need for a legislation to guarantee the privacy rights of Indian citizens.

As you will be aware, the Supreme Court has constituted a five member bench to examine the validity of the assertion that the Right to Privacy is a Constitutional Right under Article 21. The introduction of the Human DNA Profiling Bill in Parliament, which seeks to create a databank of DNA data of citizens is also an indication, that the MoCIT needs to immediately and urgently review the need for a legislation guaranteeing Privacy of data to citizens.

Significantly, the Minister of State for Personnel, Public Grievances and Pensions made a statement last week, indicating that the Government is drafting a legislation that seeks to provide protection to individuals against breach of privacy through unlawful means. (copy enclosed). This, in my views, provides the MoCIT with the invaluable opportunity of collaborating with the Ministry of Personnel, Public Grievances and Pensions to draft a holistic, all-encompassing Privacy Legislation that covers all aspects of Privacy – individual privacy, as well as data/digital privacy.

Such a legislation shall only fortify the Government's Digital India vision – which amongst other notable goals, seeks to create universal access to broadband for Indian citizens.

This letter contains only my preliminary views and there is much more to be understood about this important issue. I would recommend that the MoCIT take cognizance of this issue in a pro-active manner and begin a multi-stakeholder consultation on the subject, aiming to draft and enact a legislation that will effect in a robust protective architecture that shall protect Indian citizens from incursions on their privacy. Doing so pro-actively is

important for the Government to demonstrate that it is ahead of the curve on understanding the issues that are critical to the people of this country.

Yours Sincerely,

Rajeev Chandrasekhar

Copy to:

Dr. Jitendra Singh, Minister of Personnel, Public Grievances and Pensions, Government of India.

67

## Letter to the Minister of Communications & IT on Child Pornography

4th September, 2015

Dear Ravi Shankar Ji,

I write to you to bring your attention to the issue of child pornography — a widely prevalent malaise that merits a closer examination by your Ministry and the Government of India.

I bring to your attention facts cited by a Dutch Charity, Terres De Hommes in 2013, which through an online sting operation of sorts created a life-like, computer-generated 10-year-old girl on a website. It attracted tens of thousands of viewers who made approaches to the ‘girl’. The charity was able to identify 1,000 people during the sting operation: 999 men and 1 woman from 71 nationalities. Of these, India came third as the country with the

highest number of approaches, with 103 people willing to pay for the digitally created image of a girl child performing sex acts.

This information is indicative of a far more insidious preponderance of child pornography in India - and is a highly disconcerting realisation, in light of the fact that every single such image or video involved the commission of an actual physical offence against a child. My interactions with personnel from the Bangalore police have further corroborated this fact — where thousands of pornographic images featuring Indian children were seized from perpetrators of abuse.

Further, research suggests that people who seek child pornography online could eventually go on to harm a child in real life, therein making the transition from a ‘content offence’ to a ‘contact offence’. In light of these facts, it is crucial that the Government take cognisance of this problem, and put an end to this horrific threat that India’s 400 million children are faced with.

I have attempted to question the Government on the issue of child pornography in the last 3 sessions of Parliament, but these, unfortunately, did not make it to the ballot. I have learnt however, that in response to a question in the Lok Sabha last year, the Women and Child Development Minister has resorted to the familiar trope of “no such data is maintained centrally” when asked about child pornography. This response, you will agree, underscores the indifference and apathy of the Government towards child sexual abuse — a form of terrorism perpetrated against young children.

It must be said that the Ministry of Communication and IT’s order in August this year, directing Internet Service Providers to ban 857 websites that were allegedly hosting pornographic content was a move that unfortunately, only exposed the MoCIT’s lack of understanding of the technical capacity, resources and infrastructure required to tackle a crime as well-entrenched as

child pornography. I am happy that the MoCIT retracted this ban subsequently.

It is now time for the Government to make a concerted attempt at addressing the problem. This is a complex issue that requires enlisting the competencies of the WCD, Home and Communications and IT Ministries. It also requires investing in the resources and capital that will make identifying and arresting abusers a swift, real-time process.

I suggest the following actions for the Government to urgently undertake, with a view to address the problem of child pornography in India:

1. **Constitute an Inter-Ministerial Group on Child Pornography:** The government must constitute an inter-ministerial group comprising of representatives from the Home Affairs, Women and Child Development and Communication and IT Ministries to arrive at a technology based solution to the problem of child pornography. This group must hold extensive consultations with all stakeholders and draft well-crafted roles for each group — including ISPs, the police, parents etc.
2. **Fact Finding Study on Child Pornography:** The absence of data on child pornography greatly disadvantages the Government with regard to assessing the extent and magnitude of the problem. The Government must therefore commission an exhaustive data reconnaissance through experts to get a thorough understanding of the issue.
3. **Deploy Cutting-Edge Technology:** Cutting edge child porn tracking technologies are already widely in use in countries such as the United Kingdom, USA and Germany. One such technology is the Microsoft developed PhotoDNA software that Facebook uses to track illegal images among

the several million images uploaded to the social network every day. Google too, is reportedly working to evolve a new technology which will, for the first time, allow internet search engines and other web firms to swap information about images of children being raped and abused.

4. Amending IPC provisions to include child pornography under its purview: Currently, the Indian Penal Code does not allow for filming children for pornographic purposes to be covered under its provisions. This needs a re-look.

I have made these very points in an opinion column for NDTV, a copy of which is attached with this letter for your perusal.

It is lamentable that 60 years on since Independence, no Government so far has taken the actions necessary to Protect Our Children. It is my hope that the NDA Government, adopts a Maximum Governance driven strategy to ensure the safety, well-being and development of our children.

Yours sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communication & IT,

Government of India,

New Delhi.

## Letter to the Minister of Communications & IT on purchase of SIM Cards by Terrorists

28th December, 2015

Dear Ravi Shankar Ji,

I write to you with reference to the response received to my Parliamentary Question No. 2287 from your Ministry, on the subject "*Purchase of SIM cards by terrorists*" (copy enclosed).

The question, which was answered on 18th December 2015, made a pointed enquiry of the Ministry with regard to the Telecom Regulatory Authority of India's (TRAI) submission to the Hon'ble Supreme Court, that Aadhaar was necessary in order to avoid the issuance of SIM cards to terrorists. It also sought the details of the evidence held by TRAI to substantiate this claim.

The response of the Ministry to my question simply states that

TRAI has “*not filed such an affidavit in the Hon’ble Supreme Court.*”

I am attaching herewith various Press articles that reported on TRAI’s claims to the Hon’ble Supreme Court on the same, which contradict your Ministry’s reply to my Parliamentary Question. I would like you to explain this at the earliest, because if this is an attempt to deliberately mislead me and/or the House, this amounts to serious breaches. If true, this could also be pursued by me as a matter of breach of privilege under the appropriate rules.

I am frankly shocked and surprised at the Ministry’s response since I am a petitioner in the matter *Aruna Roy and Others v. Union of India*. In a hearing on this matter held in October this year, TRAI had explicitly submitted that terrorists were able to procure sim cards easily as currently, *Aadhaar* enabled verification for SIM cards was not mandatory - as the attached articles also bear out. In the face of this, you will agree that your Ministry’s response is wrong.

The issue that my Parliamentary Question was raising was the claim made by the TRAI and the need to question and challenge it. Regulators are expected to conduct themselves in the realm of facts, data and rationale, and not manufactured claims and rhetoric to further a cause, however important they believe the cause to be. The assertions made by the TRAI to the Court have significant implications on a legitimate debate and discussion on privacy and related matters.

I would request you to urgently clarify your Ministry’s response and its contradiction with the facts, failing which I will bring this to the attention of the Government/House/Parliament through a breach of privilege motion, under appropriate rules of the Rajya Sabha.

I also take this opportunity to wish you and your family best wishes for the season and a happy New Year.

Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

69

Letter to the Minister of  
Communications & IT on  
Submission to TRAI on  
Differential Pricing

5th January, 2016

Dear Ravi Shankar ji,

**Sub. : Submission on TRAI Consultation Paper on “Differential Pricing for Data Services” dated 09 December, 2015**

Greetings of the Season.

Please find attached a copy of my submission on the TRAI Consultation Paper on “*Differential Pricing for Data Services*” dated 09 December, 2015. As you are aware, I have engaged on the issue of Net Neutrality with your Ministry since January last year. In April 2015, I had made a detailed submission on TRAI’s previous Consultation Paper on “Regulatory Framework for Over

the Top Services”, a copy of which I had forwarded to your office.

This submission, which details my views on the specific issue of Differential Pricing, may be considered by your Ministry and the TRAI whilst formulating its position and policy on Net Neutrality, and the future of Technology, Internet, and indeed, Digital India.

Indian consumers await the final recommendations of the Government on this important and vital issue which relates to them, and I would advise you to arrive at these at the earliest, after giving due consideration to my submissions.

Best Wishes for the New Year!

Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

Encl. : Copy of my submission on the TRAI Consultation Paper on “Differential Pricing for Data Services” dated 09 December, 2015

70

## Letter to the Minister of Communications & IT on Net Neutrality

10th February, 2016

Dear Ravi Shankar ji,

**Sub. : Net Neutrality - Further Steps Required**

I write to you further to the Telecom Regulatory Authority of India's (TRAI's) regulation on "*Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*" dated 08 February, 2016 which was an outcome of the Consultation Paper on "Differential Pricing of Data Services" issued by the regulator in December last year.

At the very outset, I must congratulate the TRAI for an efficient consultation process and for taking a prompt decision on the issue of Discriminatory Pricing – an important piece of Net Neutrality.

Through this decision, the TRAI has moved the pendulum of regulations to where it ought to be, i.e. the consumer - reversing a long period of extraordinary regulatory influence of Telcos.

However, it is unfortunate that you have characterized this order of TRAI as “*a reflection of popular will*”. TRAI is an independent regulator – an institution that is supposed to exclusively work on the basis of evidence, data, economic and regulatory rationale to arrive at its conclusions, uninfluenced by public pressure or any shrill public discourse. It is this kind of approach by TRAI that is required to make it an independent, credible institution. You will agree that if it is only about public opinion, then Parliament and Parliamentary Standing Committees could well fulfill that role.

Most importantly, while discriminatory pricing is an important part of the overall definition of Net Neutrality, this TRAI Order still leaves critical issues such as throttling, slow/fast lanes, sponsored prioritization etc. unaddressed, thus leaving open the real possibility of Telcos to continue to cabelize the internet and discriminate in non-tariff ways.

However, given the shortcomings in the TRAI Act, it is possible that the TRAI may not have the powers to regulate these areas. The Government, therefore, has the responsibility to address these remaining critical issues of Net Neutrality through one or both the following steps:

- a) **Urgently amend the TRAI Act:** To give the TRAI the required powers to intervene and regulate on these issues.
- b) **Enact a Net Neutrality regulation:** Pass a law to ensure that the above issues are mandated through legislation.

Given the overwhelming political consensus around the need for Net Neutrality, I have no doubt that Parliament will strongly support either or both the above steps required to give Indian consumers a fully net neutral internet.

Many other issues relating to consumer rights in the telecom and internet space remain to be addressed, like privacy, Quality of Service norms, choice and competition etc. I hope that you will start addressing these as well, at the earliest.

Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

Copy to: Hon'ble Prime Minister

71

## Letter to the Chairman, TRAI on Discriminatory Tariffs

18th February, 2016

Dear Shri Sharma,

**Sub. : TRAI's Regulation on Discriminatory Tariffs – My  
Comments**

I write to you further to the Telecom Regulatory Authority of India's (TRAI) regulation on "*Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*" dated 08 February, 2016– which was an outcome of the Consultation Paper on "Differential Pricing of Data Services" issued by the regulator in December last year.

At the very outset, I must congratulate you for a transparent and speedy consultation process and for the TRAI's prompt order on Discriminatory Pricing – an important part of the Net Neutrality framework of law and regulation. Through this decision, the TRAI has moved the pendulum of regulations to where it ought to be, i.e. the consumer, reversing a long period of extraordinary regulatory influence of Telcos.

While there is no doubt that Indian consumers have welcomed this Order, there are serious questions that emerge from TRAI choosing an ex-Ante ban on differential pricing, rather than a more alert surveillance/interventionist role that could have been adopted. I am also deeply concerned that while the Net Neutrality proceedings and consultation is pending and remains incomplete, the perception is that TRAI has side-stepped some of the main issues by taking a subset of the questions, and attempting to solve those, without settling on a definition or principles of Net Neutrality in the Indian context.

And so, please find enclosed some comments that may be seen as constructive inputs, basis my analysis of your Order - attached as Annexure 1.

In summary, while I join Indian consumers in welcoming and congratulating you in taking this decision, these questions do point to the significant travel still required for TRAI to emerge as a regulator of Global standards – important for us to, in turn, attract the big Marquee investors into the Telecom and Internet space. I am enclosing herewith my recent edit piece in Economic Times for your review.

I would urge you to review the attached points that I have culled out after multiple reads of the Order. It is crucial that the TRAI, in the years to come, steps up to the challenge of delivering world-class regulations that will enable the Government's Digital India

vision, and to accelerate the process of connecting the 800 million unconnected Indians to the internet.

Sincerely,

Rajeev Chandrasekhar

Shri R. S. Sharma

Chairman,

Telecom Regulatory Authority of India,

Mahanagar Doorsanchar Bhawan,

Jawaharlal Nehru Marg,

New Delhi 110 002.

Copy to:

1. Shri Narendra Modi, Hon'ble Prime Minister
2. Shri Ravi Shankar Prasad, Hon'ble Minister of Communications & IT

## Annexure 1

There are issues of robustness/completeness in the Order that stand out. This makes the Order vulnerable to legal challenges. Such wide gaps, mostly based on assumptions, even when making the right decision, can be faulted for citing wrong facts. In particular:

### General Comments:

1. The Order should have laid out explicitly the principles of Net Neutrality and discrimination – based on which this ban on Differential Pricing stands.
2. The breadth of the Order now encompasses not only programs like Airtel Zero, FreeBasics, but also prohibit temporary promotions, such as a month's access to Wikipedia, WhatsApp, Snapchat, or other popular services. This might be an undesirable consequence of a broadly written Order.
3. In general, the Order makes multiple assumptions about the harm that might be caused in the future. It provides little or no evidence of any such harm having been caused currently. Under the circumstances, rather than engage in careful regulation based on evidence, TRAI chose a lazy route of applying a “ban”. *Ex ante* regulation is best applied when serious evidence of harm is already available, rather than in anticipation of such harm based on appeals being made by one of the two parties engaged in what is now becoming a commercial dispute, between ISPs and content providers.

**More specifically:**

- a) TRAI has grounded its Order in some of the “key relevant features that form its structural underpinnings”. Virtually, all of those are non-controversial. However, TRAI’s assertion that data charging schemes are linked to the interoperability of Internet’s component networks, is a subject on which it has provided no supporting evidence.
- b) Using the above assertion, TRAI proceeded to conclude that price differentiation and discounting were the equivalent of denying access to certain sites or services. It then built upon this theory that “discounting discretion affects the internet access experience”, by claiming that such conduct would be particularly harmful in India.
- c) In doing so, TRAI made the *sub silentio* judgment that depriving the poor/unconnected of all internet (until they could afford and find a reason to spend money on such connectivity) was better than offering a limited range of internet experiences for free. Further, TRAI put forth an unsupported market based rationale for its decision.
- d) TRAI ignored the US FCC’s open internet docket which shows substantial economic evidence that differential pricing would be used by small content players to acquire an audience, on which they could build an advertising and subscription base; the large incumbent content sites would hesitate to implement such a program due to the high cost of supporting the usage of the existing base and relatively small increment of new users attracted.
- e) Further, TRAI’s description of the current market ignores the advantages large companies such as Google, and now Netflix (who recently entered India), already possess, by being able to build/ lease data center and content delivery

networks that startups cannot afford. An incumbency advantage that would be overcome by startups if the new provider could offer a price differentiated product.

- f) TRAI has put a 3rd rationale for its decision based on the novel concept of customers' economic decision making, serving as an "indirect restriction", and a new interpretation of the term "discrimination".
- g) Its arguments seem to ignore both i) the economic decisions that consumers make daily in choosing the internet sites they choose to visit and, ii) that every subscriber would be able to access every site on the same terms as every other subscriber, and that all content providers could (assuming a tariff program), take advantage of an offered Zero or discount rated program from the carrier/ISP.
- h) In effect, TRAI has banned certain carrier/ISP practices, based upon definitions of "restrictions" and "discrimination" that never existed before, namely ones based on subscriber decision making and operating methods, and business models selected by a content provider.
- i) Having found that Zero and discount rating plans were discriminatory in theory, the decision discussed TRAI's choice to engage in ex ante regulation as opposed to monitoring the market to identify and correct any harms resulting from such plans. While acknowledging that United States and European Union have elected to take a case by case approach by allowing such program such as T-Mobile's "Binge On", AT&T's "Sponsored data" and Vodafone Italy's "Spotify" program, TRAI concluded that an immediate ban on the differential pricing plan would be best for India, not by citing a consumer harm or interest

proposition, but instead quoting the virtue of regulatory certainty and avoiding costly legal and regulatory proceedings.

- j) In choosing an outright ban over a more diligent case-by-case of offerings, TRAI could only cite two – Chile and Netherlands - as case studies from amongst 195 UN member states, without any analysis that both Chile and Netherlands were dramatically different vis-à-vis India in population size, network type and internet access/penetration. In effect, it can be argued that in absence of facts and evidence, the decision was to make things easier for the Regulator.
- k) Finally, perhaps the weakest aspect of the TRAI Order remains the absence of any discussions regarding technical implications of a wireless-only network. Additionally, section 17 makes patently unsubstantiated assumptions in favour of a ban over a diligent approach of case-by-case regulation. Contrary to the assertions of TRAI, it is obvious from vast majority of the countries – with a varying range of teledensity and internet connectivity, where “differential pricing” has not been outrightly banned - that “openness of the internet as we know it” has neither been altered nor affected in any manner.

## Letter to the Prime Minister on Privacy Rights for All Indians

18th March, 2016

Respected Prime Minister,

**Sub.: Privacy Rights for All Indians**

At the outset, I thank and congratulate the Government for recognizing that privacy is a fundamental right - a significant departure from the position that the UPA Government had taken all these years.

While I welcome the significantly expanded rights to privacy and protection of information in the NDA's new Aadhaar Bill, I had, during the debate in Parliament on this Bill, suggested that there is a need for an overarching privacy legislation - given that there

are many other databases, like Jan Dhan Yojana, BPL, LPG etc. that are out of the purview of the Aadhaar Bill, but are significant parts of the subsidy delivery mechanism of the Government that also need to be covered under the Citizens' Rights to Privacy and Protection of Information.

As you are aware, I have been consistently pursuing the need for recognition of Privacy as a fundamental right for several years, starting with the Aadhaar effort, during the UPA Government. I had raised the issue of privacy on several occasions with the UPA Government, and consequent to the lack of sensitivity and response, the matter of UID/privacy ended up being heard in front of the Constitutional Bench of the Hon'ble Supreme Court, where I am also an impleading petitioner.

You will agree that it is, therefore, ironic and amusing to read and hear about the belated awakening of the Congress party and the architects of Aadhaar, to this real issue of privacy and the need for protection of information.

As you are aware, I have spoken extensively about this in Parliament and written to you after the NDA Government was formed (copies of my letters and Parliamentary Question are enclosed herewith).

The Hon'ble Finance Minister was gracious enough to respond to me in Parliament, and with a promise that the Government would look into this need for privacy legislation after the Hon'ble Supreme Court's decision. However, I would urge that the Government proactively explore the possibility of either a new Privacy legislation, or review and amend the existing IT Act, Section 43 A and other applicable sections at the earliest. I would also recommend that a multi-stakeholder consultation be initiated so that the views of various stakeholders, including security agencies, are taken into account while this legislation is being conceived and architected.

Sincerely,

Rajeev Chandrasekhar

Shri Narendra Modi

Hon'ble Prime Minister,

Government of India,

New Delhi.

Copy to :

1. Shri Arun Jaitley, Hon'ble Minister of Finance
2. Shri Ravi Shankar Prasad, Hon'ble Minister of Communications & IT

## Letter to the Chairman, Rajya Sabha on Privilege Motion

4th April, 2016

Sir,

I write to seek your consent under Rule 187 of the Rules of Procedure and Conduct of Business in the Council of States ('Rules') to raise a question involving a breach of privilege of the Council.

The Hon'ble Supreme Court of India has been considering a bunch of public interest litigations challenging the constitutionality and validity of Aadhaar. I have intervened in those matters as an Impleading Applicant and I am being heard in court. During the hearings in the Supreme Court, the Telecom Regulatory Authority of India (TRAI) through its counsel submitted that Aadhaar was

necessary in order to avoid the issuance of mobile SIM cards to terrorists. TRAI's position before the Supreme Court was widely reported in the media, and I am attaching herewith various press articles in that regard.

I raised a Parliamentary Question No. 2287 on the subject 'Purchase of SIM Cards by terrorists', in which I specifically questioned the Government on: (a) whether it has taken cognizance of TRAI's submissions in the Supreme Court which suggested that terrorists are able to purchase SIM cards with ease due to absence of Aadhaar; (b) whether TRAI has provided any evidence or data in that regard and if so, the details thereof; and (c) the specific action taken by the Government to ensure that terrorists are not able to procure SIM cards, in light of TRAI's submissions.

The question was answered on the floor of the House by the Hon'ble Minister of Communications and Information Technology on 18th December, 2015. The response of the Hon'ble Minister to my question was simply that "*TRAI has not filed such an affidavit in the Supreme Court*".

My Parliamentary Question No. 2287 specifically related to TRAI's position and submissions in the Supreme Court and did not aver to any affidavit filed before the court. TRAI's submissions in court have been widely reported in the press. Further, I am also aware of such submissions given that I am an intervener in the public interest litigations that are pending consideration before the Hon'ble Supreme Court. It may also be noted, that subsequent to the receipt of this answer, I wrote a detailed letter to the Hon'ble Minister of Communications and Information Technology on December 28th 2015, seeking an explanation on this matter (copy enclosed). I have however, not received a response from the Hon'ble Minister in this regard.

The Hon'ble Minister's response to my Parliamentary Question is prima facie in contradiction with the facts. That apart, the Hon'ble

Minister's response skirts the issue and constitutes *suppressio veri suggestio falsi*. In particular, his response constitutes suppression of truth which he is bound to disclose, and as a consequence thereof, renders his suggestion on the floor of the House false.

The issue that I have raised herein is restricted to a specific matter of recent occurrence and the matter requires the intervention of the Council. It therefore satisfies the conditions of admissibility under Rule 189 of the Rules.

I, therefore, request you to consider my right to raise this question of privilege and grant me consent under Rule 187; and leave to raise the question under Rule 190 of the Rules, and initiate such action as you deem appropriate in this regard.

Sincerely,

Rajeev Chandrasekhar

Shri M. Hamid Ansari

Hon'ble Chairman, Rajya Sabha,

Parliament of India,

New Delhi.

## Letter to the Minister of Communications & IT on Protection of Consumer Interest and Enhancing Investor Confidence

26th May, 2016

Dear Ravi Shankar ji,

**Sub.: Need for Immediate Government Intervention in ICT Space  
to protect Consumer Interest and Enhance Investor Confidence**

Congratulations on completing 2 years as the Minister of Communications & IT. Congratulations on the progress made by you in the improved functioning of MTNL/BSNL and also on assuming a multi-stakeholder approach to Internet Governance.

However, as discussed during our Telecon recently, I wish to bring to your kind attention the fact that two years on, consumers are at the same place on a number of key issues concerning their welfare,

albeit due to TRAI's problems and despite the Government's good intentions and objectives.

### **1. No Relief on Call Drops**

The recent Judgment of the Hon'ble Supreme Court which has set aside TRAI's regulations on a serious public interest issue impacting several States and pockets across the country, leaves the consumers at the mercy of mobile operators. It also points to serious lacunae, both with regards to the procedural rigour and capacity / expertise that the TRAI possesses in matters of consumer interest.

This situation needs to be remedied urgently, with Government stepping in and addressing this.

### **2. No Movement on Net Neutrality**

As you are aware, I first brought this to your attention in late 2014/early 2015. While the discussion on Net Neutrality across media, consumer groups and especially in Parliament is nearly 18 months old, there is no roadmap or timelines in place on how to deal with this situation. TRAI had launched a Consultation Paper on Regulatory Framework for OTT Services dated 27 March, 2015. Regrettably, that proceeding lies incomplete even after 15 months. The DoT Committee's Report on Net Neutrality dated May 2015 is also one year old, and no further steps have been taken. I have now learnt from media reports that DoT had sent a reference with regard to Net Neutrality to the TRAI. However, while that Reference is pending, it is unclear as to when this Consultation will begin and towards what end. Yet again, the interest of consumers, but equally uncertainty amongst investors – both telcos and content providers – remains unaddressed.

### 3. Differential Pricing

On the issue of Differential Pricing, while the TRAI took steps in the right direction, its Order on “Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016” dated 08 February, 2016, suffers from serious technical and implementation flaws in addition to making inferior regulatory choices of outright “ban”. I had pointed these lacunae in detail to the TRAI vide my letter dated 18 February, 2016 (enclosed herewith). No surprise then that the TRAI, in less than four months, has come up with a second Consultation Paper on Free Data dated 19 May, 2016, on the exact same issues, which is merely 7 pages and three questions - in an attempt to find a face saver for its decision to “ban” differential pricing. In the second Consultation Paper, TRAI seek exemptions to its own ruling which is less than six months old. This, again, exhibits lack of capacity, accountability and a cavalier attitude towards consumer interest. Further, such sharp U-turns and reviews can trigger off deep concern and even panic amongst investors, who are unsure of TRAI’s approach or direction.

It is clear from the above that both on areas of consumer interest and investor confidence, TRAI’s recent performance needs examination, and steps need to be taken to improve its capability and powers.

In continuation of my previous requests, I would urge you to kindly evaluate, on an immediate basis:

- (a) Government stepping in on the issue of Call Drops. Where appropriate, the Government could step in with executive action to ensure that consumer interest and investor confidence does not become hostage to the current prevailing uncertainties.

- (b) Amending the TRAI Act to give it appropriate powers where issues of consumer interest are concerned.
- (c) Amending the TRAI Act to increase accountability of the TRAI to Parliament. TRAI's performance must come under direct Parliamentary scrutiny.

As always, in case you wish to discuss this any further, I will be available for a detailed discussion.

Sincerely,

Rajeev Chandrasekhar

Shri Ravi Shankar Prasad

Hon'ble Minister of Communications & IT,

Government of India,

New Delhi.

Copy to : Hon'ble Prime Minister, Government of India

75

## Letter to the Minister of Communications & IT on Understatement of Revenues by Telecom Companies

24th August, 2016

Dear Manoj Sinha ji,

I write to you regarding my Unstarred question No. 2190 (enclosed) to the Ministry of Communications, dated 5th August 2016, regarding the CAG report on understatement of Revenue by telecom operators between 2006-2010. According to the CAG report and as is confirmed by your response, the government faced a loss of Rs 12,488.93 crore between 2006-2010 due to the understating of gross revenue by six leading telecom operators. In your response to my question, in point (a) you mention -

*“As per CAG report No. 4 of 2076 of Comptroller and Auditor General of India,- six telecom operators understated revenue by*

*Rs. 46045 75 crores, for four financial years i.e. 2006-07; 2007-08; 2008-09 and 2009-10. As per the report the short fall in License fee amounts to Rs. 3752.37 crores, in Spectrum usage charges amounts to Rs. 1460.23 crores and interest on short fall upto 31.03.2015 amounts to Rs. 7276.33 crores. The department has issued regular demands for all the four financial years and Special Audit demands for two financial years 2006-07 and 2007-06. These demands overlap the short falls pointed out in the CAG report. In the case of Financial years 2006-07 and 2007-08; CAG had pointed out a short fall of License fees amounting to Rs. 1269.36 crores. Department of telecom had already issued demands for License fees amounting to Rs. 896.07 crores in 2012 itself based upon the report of Special auditors”.*

This response by the DoT raises several concerns and a discrepancy. The DoT had issued demands for the license fees amounting to Rs 896.07 crores in 2012 pertaining to the shod fall in the financial years 2006-07 and 2007-08. The CAG for the same financial years has pointed to the shortfall in the license fees amounting to Rs 1269.36 crores. This means there is a difference of Rs 373.29 in the calculations of shortfall pointed out by the DoT and the CAG report. This difference has not been explained.

This points to a discrepancy in the way the CsCA in the DoT has carried out the audits of the telecom companies. The CAG report No.4. in paragraph 9.3 says paragraph-

*“As brought out in the earlier paragraphs, verification of deduction claims at CsCA level was not done uniformly and CsCA have taken different approach in allowing/disallowing deduction claims submitted by the PSPs. During the course of audit of records maintained by CsCA for verification of deduction claims, discrepancies on various issues were noticed among different CsCA. Also within the same CsCA, different yard sticks were adopted for different operators due to lack of co-ordination within*

*the CsCA. The main reason for these discrepancies was the lack of proper monitoring of CsCA by DoT”.*

The above paragraph points to three worrying observations-

- 1) There was no uniformity in the approach within the CsCA on deciding on the deduction claims submitted by the Private Service Providers.
- 2) Within the CsCA different yardsticks were adopted for different telecom operators.
- 3) There was no accountability of the CsCA to the DoT, or oversight of the CsCA by the DoT.

These observations raise some serious questions on the functioning of the DoT. It points to the possibility that the CsCA is either inept to carry out its duty as the Controllers of Communication accounts or some officials within the CsCA were colluding with the telecom companies.

Owing to the observations and discrepancies pointed out in this letter, I would urge you to kindly-

- a) Investigate whether the officials in DoT were colluding with the telecom operators from the period of 2006-2010
- b) Investigate why there is a lack of oversight on the CsCA by the DoT and what are the steps that can be taken to address this lack of oversight.

This is in interest of the nation, and the NDA Government's commitment to the values of transparency and accountability to citizens as a Government.

Yours Sincerely,

Rajeev Chandrasekhar

Shri Manoj Sinha

Hon'ble Minister of State (IC) for Communications

Government of India,

New Delhi.

Copy to: Hon'ble Prime Minister of India

## Letter to the Prime Minister on Continuing Arrests under Section 66A, IT Act

8th September, 2016

Respected Prime Minister,

I write to you to draw your attention to the worrying point that thousands of arrests continue to be made under the draconian Section 66A of the IT Act by police in various states and ironically also some courts. This despite the fact that Section 66A was struck down by the Supreme Court in March 2015. As one of the petitioners who impleaded the court in the matter, I am obviously deeply disturbed at this

Data reported by the National Crime Records Bureau (annexed with this letter for your perusal) suggest that over 4154 cases have been registered under the infamous Section 66A of the IT Act, which

the Supreme Court had rightly deemed as “arbitrarily, excessively, and disproportionately invading the right to free speech” and “upsetting the balance between such right and reasonable restrictions that may be imposed on such right”. Further, in 2015, 1510 charge sheets were issued against 2105 persons. I was also troubled to note that as of January 1st this year, as many as 575 individuals continue to languish in jails, after being convicted under a section that was struck down by the Highest Court of the Land. These arrests, you will appreciate, are illegal and void.

What especially concerns me as a representative of the people who has been persistently advocating for the Freedom of Speech over the Internet, is that the police forces across the country have not taken cognizance of this important legal development, and instead appear to be on an overdrive to file charge sheets against people under section 66A —as evidenced by the fact that the 1,500 charge sheets filed in 2015, being nearly double the figure for 2014.

I have been amongst the most vocal proponents of your vision for Digital India, but must bring to your attention the fact that these illegal arrests are sending a completely contrary message to India’s citizens. If we are indeed serious about transforming India into a ‘*Digitally Empowered Society and Knowledge Economy*’, then our institutions and policies must back this intent by aligning to this goal. The current data, however, points to a disconnect between the verdict of the Apex Court, the police and the lower courts, and may give citizens the impression that this Government too, like the UPA, is keen on playing Big Brother.

In the light of the above, I would urge to you to direct the Home Ministry and Law Ministry to immediately call for a cancellation of all matters pertaining to Section 66A, and ensure that the police forces and courts in all states/UTs are informed about the March 2015 Verdict of the Supreme Court, and thus prevent arrests and prosecutions under this section.

The fight for repealing Section 66A, which saw its genesis during the UPA's flawed drafting of the IT Rules in 2011, has been a long and arduous battle. After multiple interventions in Parliament and letters to the then Government failed, I had joined the petition in the Supreme Court 2013. I am certain, that the community of Digital Indians join me in expressing my anguish against this current situation — which indicates that despite our unrelenting efforts, the draconian and unconstitutional Section 66A continues to impede citizen's right to Freedom of Expression.

I am confident that you will address this issue at the earliest and thank you in anticipation.

Yours sincerely,

Rajeev Chandrasekhar

Shri Narendra Modi  
Hon'ble Prime Minister,  
Government of India,  
New Delhi.









