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Respected Prime Minister

16 August, 2011

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 Lol 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 Lols 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 Serve definition priority from "date of application" to "date of compliance of Lol / 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

Enclosed :

1. My letter to you dated 12 May, 2007
2. My letter to you dated 14 May, 2007
3. Shri A. Raja's letter to me dated 21 November, 2007
4. My response to Shri A. Raja dated 26 November, 2007
5. Letter from TRAI Chairman, Shri Nripendra Mishra to Shri D. S. Mathur, Secretary - DoT objecting to Government's cherry-picking strategy and illegal deviations from his recommendations dated 19.10.2007 on the very same day that Shri Raja issued the dual technology press release while violating multiple provisions of the TRAI Act.