



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

Member of Standing Committee on Urban Development
Member of Consultative Committee on Finance
Member of Parliamentary Forum on Youth
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District

04 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.

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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.

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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