



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
RAJYA SABHA

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

24 March, 2011

Dear Shri Sebal,

I am in receipt of your letter dated 18th March 2011. With reference to that and some new emerging issues, I request your attention on the following:

1. **On Multi-Stakeholder Consultation (Point No. 2 of my letter dated 22nd December 2010):**

The consultation process that you have suggested needs to be multi-stakeholder simultaneously. It may not be prudent to hold meetings with one set of stakeholders and then call a different meeting with another set of stakeholders – since each of them is unable to appreciate what has been said in the past. Even if the DoT were to place the verbatim comments of such meetings on its website (as it has) – it would be insufficient since that would then lead to a contradiction of views, which just become data points on which the DoT will need to enforce its decision, rather than allow stakeholders to seek reconciliation during the discussion and evolve a consensus. To that extent, your attempts to meet with the industry is understandable. However, it is clearly insufficient since the industry has enormous commercial interest and will be primarily driven by their profit motives. As you are aware, it is the industry who opposed the holding of auctions in 2008, as has been articulated by former MoCIT, Shri A. Raja in his letter to the Prime Minister dated 2nd November 2007. The DoT did not seek alternate views and the consequences of that to the national exchequer is well known.

2. **On the Issue of Show Cause Notices regarding Rollout Obligations (Point No. 4 of my letter dated 22nd December 2010):**

With regard to the issue of Show Cause Notices, my request was to place the same in the public domain in the interest of transparency. Regrettably, the brief reference to this in your response does not address the basic request or even examine the merits of the need to put such information in the public domain. My letter provides detailed reasons why these Show Cause Notices should not be issued or dealt with behind closed doors. I expected that you would volunteer to place such Show



Cause Notices in the public domain or else deal with them in a detailed and meaningful manner.

Further, on the issue of rollout obligations, the information provided here and previously in your response to my Parliamentary Question No. 228 dated 11th March, 2011 is not entirely satisfactory. I have written a detailed letter dated 16th March 2011 with regard to the rollout obligations issue, especially with regards to your claim relating to no delays in the issuance of Show Cause Notices in December 2010. I hope that your office is in receipt of that letter and will provide complete details within a short period of time.

3. Issue Relating to Spectrum and M&As:

On the issue of spectrum consolidation and M&As, the Government needs to be exercise caution since the TRAI Recommendations of 11th May 2010 reverse everything that former MoCIT, Shri A. Raja stood for while allocating the 121 new UAS licenses / 35 dual technology licenses in 2008. He cited lack of competition and the existence of a cartel to enhance competition from 7-8 operators per circle to 14 operators per circle, and thus deliberately fragmented spectrum that was already in short supply. Now, the TRAI is recommending consolidation and seems to suggest that 6-7 operators per circle are sufficient. This entire decision-making exhibits lack of vision with regard to sensitive issues of M&A in spite of the fact that India now has an independent Competition Commission who should ideally be dealing with this issue, rather than the bureaucracy and the DoT or the TRAI alone. Moreover, the issue of spectrum availability, as per your own announcement of 29th January 2011, is linked to its availability, including from those licenses that might be cancelled. These cancellations will come from two different sources – those which are currently under consideration by the Hon'ble Supreme Court subject to the PIL, and others in which you have issued Show Cause Notices on account of various violations including rollout obligations.

Therefore, till such time that these decisions are made and the total quantum of spectrum is ascertained, any directional policy will merely be on paper. By way of example, your announcement to now allocate 2G spectrum through auctions on a going-forward basis is handicapped by the non-availability of 2G spectrum in 11 of the 22 circles, as per TRAI's records and recommendations dated 11th May 2010. It would, therefore, be prudent to wait for the Hon'ble Supreme Court's decision, the CBI investigation and the DoT's final analysis of the violations before finalizing which and how much spectrum is available and when such spectrum can be allocated. This also has a direct bearing on M&As – since the only real reason operators will engage in M&A will be to acquire spectrum. In that sense, ignoring



the legal environment that currently casts a shadow on these crucial issues could result in a policy that is virtually impossible to implement.

Of course, if you have a better insight into this or believe that such M&As are possible, then I request you to ensure that the interest of the Government is not compromised in any manner by allowing deals similar to those of Unitech and Swan being struck under the garb of M&A. Any profit arising out of the transfer of spectrum must be properly attributed to the Exchequer. In reaching a policy relating to M&A, the most crucial aspects will be:

- i) Level of appropriate competition – and in this regard, it is preferable to send a reference to or seek advice from the CCI – as is mandated under the statute.
- ii) Spectrum accompanying M&As is not allowed to be transferred without ensuring that revenues arising out of such windfall gains are recovered by the Government at the time of any such transaction. In this regard, an appropriate reference to the Finance Ministry as well as an approval from the Cabinet, consistent with the Government of India (Transaction of Business) Rules should be strictly adhered to – as outlined in the Justice Shivraj Patil OMC Report.

Further, your letter does not respond to some crucial issues raised in my letter dated 22nd December 2010 (enclosed herewith), which I am reiterating again, for your reconsideration:

- a) 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.
- b) Your letter does not provide any detail with regard to the steps being taken to strengthen the TRAI with regard to its capacity and making it more accountable. Mere consideration of amendments is insufficient till such time a detailed list of shortcomings is drawn, based on wide consultation, which goes beyond the DoT and the corporates. It will necessarily need to invite comments from consumer groups, media and the Parliamentary Standing Committee on Information Technology. You may also wish to consider an independent committee of experts to handle this matter since currently the TRAI's close



proximity with the Telecom Ministry and its inherent conflict of interest requires this matter to be reviewed dispassionately. This has become additionally clear from the latest TRAI Affidavit in the Hon'ble Supreme Court where it has accused the MoCIT/DoT of violating the TRAI Act. This has also been confirmed in various shades by the CAG Report dated 16th November 2010 and the Justice Shivraj Patil OMC Report dated 31st January 2011. Since the issue has not been adequately addressed in your letter, I repeat my request yet again for your consideration:

- 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 are 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-a-vis the TRAI and the practice of cherry-picking/selective interpretation of the TRAI's recommendation is stopped.
- The functioning of the TRAI also suffers greatly on many accounts. Firstly, it needs to be accountable and a fresh approach to its oversight by the 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 the DoT and the MoCIT smacks of a conflict of interest, with retired DoT secretaries invariably becoming TRAI chairmen. Also as pointed above, it is unable to check the Government when the TRAI Act is being violated by the DoT. Secondly, the 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 the TRAI in terms of time taken once an issue is raised, except when it is a formal reference. With respect, the MoCIT is responsible for the financial well being of BSNL and MTNL on one hand, and the rest of the telecom sector on the other. It also sits in judgment of TRAI recommendations which may sometimes be against the interests of the Government companies. Equally, TRAI's independence is greatly curtailed if the DoT becomes the sole decision maker within the ambit of such conflict of interest.

It is important, therefore, that the accountability of the TRAI to the Parliament is re-evaluated within the scheme of the TRAI Act and



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

I request you to consider the above and provide a detailed reply, including on matters where no reply was forthcoming.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Shri Kapil Sibal

Hon'ble Minister of Communications & IT
Government of India
New Delhi