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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 ARPU is 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 sensex 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

Enclosed:

1. Copy of my letter to you dated 11 January, 2011
2. Copy of my letter to you dated 24 January, 2011
3. Copy of my letter to you dated 04 August, 2011