

**Consultation Paper on Establishment of the Office of
Ombudsman in the Telecommunication Sector
(Consultation Paper No. 1/2004 dated 07.01.2004)**

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PREFACE

1. Telecommunications had traditionally been a voice communication service, managed by government or Public Sector Enterprises. The dominant role acquired by telecommunications in the global business management and its effect on national economies has seen this service develop as a vital backbone and utility service for business and industry. In fact, this service itself now stands transformed into a full-fledged industry. The telecommunication business is, therefore, the world over, increasingly governed by industrial and competition norms. Free markets and open and fair competition are almost universally accepted as the ideal means to facilitate growth of communication services, with competition acting as a catalyst to bring down costs and improve efficiency and quality of service.

2. The National Telecom Policy of 1994 recognised the need for private investment and the association of the private sector to bridge the resource gap as also to meet the rapidly growing demand for telecommunication service. The policy also recognised that in order to implement the new telecom policy, suitable arrangements would have to be made to protect and promote the interests of consumers and ensure fair competition. The New Telecom Policy 1999 went further and provided a framework for increased competition.

3. With the opening up of telecom sector to competition with licences for a number of services being granted, the telecommunication sector has seen a tremendous growth in the recent past both in terms of number of operators and subscriber base. Alongwith the growth, there are, of course, problems for the stakeholders, including the consumers.

4. The TRAI Act does not explicitly fix the responsibility to redress consumer grievances on TRAI. The Act, however, provides that TRAI shall lay down standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers. Though there is no system in place in TRAI to redress individual consumer complaints (which are to be addressed by consumer courts/ fora), or disputes between service providers and group of consumers (which are to be addressed by TDSAT), TRAI keeps on receiving complaints from the general public both pertaining to the problems of individuals as well as of generic nature. It is, therefore, evident that, there is a need to establish an internal mechanism like in other sectors such as insurance and banking, to deal with individual consumer grievances. One way of doing this is through establishment of an office of Ombudsman for the telecom sector.

5. I am quite hopeful that this paper would provide the necessary platform for discussing this important issue and would enable us to make significant improvement in the orderly growth of telecommunication sector taking account of the interests of both service providers as well as consumers of telecommunication services, as envisaged in the TRAI Act of 1997. The consultation paper has already been placed on TRAI's website (www.traigov.in).

6. I request that written comments on this consultation paper please be furnished to Secretary, TRAI by 30th January, 2004. For any further clarification on the matter, Secretary, TRAI or Advisor (A&L) may be contacted at traio7@bol.net.in (Ph. No. (0) 11-26167448) or traidel2@vsnl.net.in (Ph. No. (0) 11-26101852) respectively.

New Delhi.
Dated 7th January, 2004.

Sd/-
(Pradip Baijal)
Chairman, TRAI

CHAPTER 1

INTRODUCTION

In the early 90s there was a shift in the economic policy of the Government of India. One of the initiatives under the new economic policy was to improve India's competitiveness in the global market and rapid growth of exports. Another element of the new economic policy was to attract foreign direct investment and also to stimulate domestic investment. During the same period it was also felt that telecommunication services of world class quality was of utmost necessity for the success of new economic policy and that it should be accorded high degree of priority in the Government. With this aim in view, the sector was liberalised and private companies were allowed to enter this service sector. This entry also facilitated increase in the level of investment in the sector; and such an increase was badly needed. This became possible only with the participation of private companies in the sector.

1.2 With the private companies and Government companies sharing markets of various services in the telecom sector, necessity of an independent regulator to regulate the activities of this sector was felt. Accordingly, Telecom Regulatory Authority of India (TRAI) came into existence in the year 1997 through an Act of Parliament, which was subsequently amended in the year 2000. Under the provisions of this Act, the TRAI is vested with certain powers and functions. By virtue of the provisions of sub-clause (v) of Clause(b) of Sub-Section (1) of Section 11 of TRAI Act, 1997, TRAI is supposed to:

“(v) lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;”

1.3 In view of this mandate and in exercise of powers conferred upon it, under Sub-Section(1) of Section 36 read alongwith Sub-Section (v) of Clause (b) of Sub-Section (1) of Section 11 of TRAI Act, 1997 as amended in the year 2000, the TRAI came out with two Regulations namely,

- (i) Regulation on Quality of Service of Basic and Cellular Mobile Telephone Service, 2000 (2 of 2000) on 5th of July, 2000;
- (ii) Regulation on Guidelines for Registration of Consumer Organisations/ Non-Government Organisations (NGOs) and their interaction with TRAI, 20001 (1 of 2001)

1.4 As per the Act, Telecom Disputes Settlement and Appellate Tribunal (TDSAT) has been given the responsibility of dispute resolution. Section 14 of the Act reads as follows:

“14. Establishment of Appellate Tribunal

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to –

(a) adjudicate any dispute -

- (i) between a licensor and a licensee;
- (ii) between two or more service providers;
- (iii) between a service provider and a group of consumers;

PROVIDED that nothing in this clause shall apply in respect of matters relating to –

- (A) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969);
- (B) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Redressal Commission or the -National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986);
- (C) the dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885 (13 of 1885).

(b) hear and dispose of appeal against any direction, decision or order of the authority under this Act.”

It will be clear from the proviso above that individual complaints are addressable to the consumer dispute machinery set up under the Consumer Protection Act, 1986. Under the Act, TRAI is supposed to lay down quality of service standards and TDSAT is supposed to adjudicate disputes between a service provider and a group of consumers.

1.5 Under the Regulation on Quality of Service of Basic and Cellular Mobile Telephone Service, 2000, various parameters to achieve high quality of basic and mobile services were defined. Even the benchmarks for various parameters defined under this Regulation were also prescribed in the Regulation. By virtue of these parameters and benchmarks, service providers in the telecom sector were expected to achieve certain levels of performance within the prescribed time frame. In order to ensure that service providers are really achieving these levels of performance, M/s International Market Research Bureau (IMRB), an independent survey agency was appointed by TRAI. The basic task assigned to this agency was to audit the data furnished by the service providers to TRAI and also to conduct survey of the levels of performance of the service providers on the date of survey. Under these directions from TRAI, this agency continued its work for a period of one year and furnished reports on quality of service on a quarterly basis. The reports of the agency were published from time to time by TRAI in order to create quality consciousness amongst the service providers as well as the consumers of telecommunication services. This survey also promoted encouraging levels of competitiveness and consciousness amongst the service providers for achieving a high level of performance for the ultimate benefit of the consumers. Recently M/s IMRB has been hired again by TRAI to conduct another round of survey. However, this time some of the parameters have been re-defined and some new parameters have been added to the list of already existing parameters. Some further benchmarking within these parameters was also done in order to effectively measure the quality of service. This round of survey is currently on.

1.6 By virtue of the Section 11 of the TRAI Act and the 'Regulation on Guidelines for Registration of Consumer Organisations/ Non-Government

Organisations (NGOs) and their interaction with TRAI, 2001', certain consumer organisations/NGOs were registered with TRAI on the basis of certain rules governing the registration. By and large, consumer organisations/NGOs with sufficiently long background in the telecom sector, were permitted to be registered with TRAI. The Authority (TRAI) interacts with these organisations on regular basis and at least twice in a year. In the past, during nearly 3 years of the existence of this Regulation, a number of workshops, seminars and interactions have been organised for building up the capacity of these organisations. This was done with a view to creating awareness of the intricacies of the telecom sector amongst the consumers. During this process some information was also shared with these organisations so that they become worthwhile partners in our drive to provide high quality telecom services in the country.

1.7 With the mandate available under the TRAI Act, so far the Authority has been able to put in place the Regulations referred to in para 1 above. However, these Regulations are of no help either to the regulator or to the Department concerned for addressing the individual complaints of the consumers. Under provisions of TRAI Act, neither the Telecom Regulatory Authority of India (TRAI) nor the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) have the powers to adjudicate/address individual consumer complaints. The fora available for redressal of the grievances and settlement of complaints of individuals are :

- (i) The Indian Telegraph Act, 1885, which provides for appointment of arbitrators to go into complaints and grievances;
- (ii) The Consumer Protection Act, 1986, which was enacted to look into complaints from consumers.

1.8 The process laid down in the Indian Telegraph Act, 1885 is quite an involved one and there is a long period of wait before a decision is handed down to the consumer. The appointment of an arbitrator gets delayed and this puts off many a consumer from seeking redressal. While Consumer Courts set up under the Consumer Protection Act, 1986

are vested with powers to hear consumer complaints and settle disputes, but it is advisable to create a machinery in the multi-operator environment, that complaints can be redressed without approaching the Consumer Court. If, however, a subscriber is not satisfied with the redressal, he can always approach the Consumer Court.

- 1.9 It would not be wholly correct to say that a mechanism for redressal of consumer grievances within the telecom sector is wholly missing. As per the instructions of the Ministry of Telecommunications and IT, the Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) have formed Telephone Adalats in Telecom Circles and Districts as an internal arrangement for settling the customers' grievances. The scope of Telecom Adalats cover all telecom services provided and billed by the respective Telecom Circles / Districts. The Telecom Adalats at the Circle level are headed by the Chief General Manager (CGM) and that at the District level are headed by the concerned Secondary Switching Area (SSA) head. The Adalats headed by CGMs can also consider the cases of appeals against the decisions of Adalats chaired by SSA head and the cases, which are not individual but have a repercussion in whole of the Circle. CGMs are to hold Adalats once in three months and the SSA heads, once in two months. The information of holding Adalats by CGM and SSA head are to be given wide publicity through local newspapers and electronic media. The concerned MP and MLAs are also to be intimated in advance. The decision of Adalat is to be a speaking order. The Adalat conducted by the CGM should also evaluate the quality of Adalats conducted by his subordinates. But this is an internal arrangement of a public sector operator. Similar arrangements do not exist for private sector operators and there appears to be a need of such Adalats for private sector operators also, particularly in view of the fast growing telecom base.

CHAPTER 2

OMBUDSMAN IN THE TELECOMMUNICATION INDUSTRY IN AUSTRALIA AND U.K. AND IN THE BANKING AND INSURANCE SECTORS IN INDIA

2.1 It would be of relevance to examine the manner of constitution, the powers and functions of the Ombudsman as it exists in the telecom sector in some other countries and in other sectors in India.

Australia:

2.1.1 The Australian Government had appointed the Telecommunications Industry Ombudsman (TIO) in 1993 as a body independent of the industry, the Government and the consumer organizations. The TIO is governed by a Council and a Board of Directors and is managed by an independent Ombudsman appointed by the Board on the recommendation of the Council. The Council comprise five TIO Member Representatives and five Consumer Representatives, with an independent Chairman. While the Ombudsman has responsibility for the day-to-day operations of the scheme, the Council provide advice to the Ombudsman on policy and procedural matters. The TIO is an industry-funded scheme, deriving its income solely from the members who are charged fees for complaint resolution services provided by the TIO. Members consist of telecommunications carriers, telephone carriage providers and internet service providers. A member is charged complaint handling fees if the TIO receives a complaint from one of its customers. Therefore, the funding system acts as an incentive for members to keep TIO investigations to a minimum by developing and maintaining effective complaint handling and customer service procedures.

2.1.2 The TIO provides a free and independent dispute resolution service to consumers with complaints about their telephones or internet service. The complainant should first try to get the complaint heard and disposed of by the Service Provider, failing which, he can approach the Ombudsman.

2.1.3. The role and powers of the TIO are included in the Telecommunications (Consumer Protection and Service Standards) Act, 1999.

The TIO has the authority to make binding decisions up to the level of \$10,000 and these decisions are legally binding upon the telecommunications company.

2.1.4. Jurisdiction of the TIO

The TIO can only investigate a complaint if:

- a) The consumer has given the service provider a reasonable opportunity to address the complaint;
- b) The complaint is made within 12 months of the consumer becoming aware of the circumstances surrounding the complaint. The time limit may be extended by a further 12 months in certain cases;
- c) Legal proceedings have not commenced;
- d) The complaint is made in good faith; and
- e) The complaint type is within the TIO's jurisdiction

2.1.5. The TIO has jurisdiction to investigate complaints about:

- a) The standard telephone service
- b) Mobile services;
- c) Internet access;
- d) Pay-phones
- e) Delays in telephone connections;
- f) Printed and electronic White pages;
- g) Fault repair
- h) Privacy
- i) Land access; and
- j) Breaches of the Customer Service Guarantee and Industry Codes of Practice.

2.1.6 The TIO cannot handle complaints concerning:

- a) The setting of tariffs and charges;
- b) Privately-owned telecommunications equipment, other than the rented handset supplied with a basic phone service and mobile handsets sold as a part of a bundled contract;
- c) Cabling, except cabling up to the rented handset;
- d) Business directories;
- e) The 000 emergency service;
- f) Anti-competitive behaviour or restrictive business practices; or
- g) The content of 'information services', eg. 1900 numbers and Internet content.

2.2 United Kingdom:

2.2.1. In U.K., the Communications Act, 2003 sets out the powers of the regulator, **Ofcom** (Office of Communications). It also places a number of duties on public communications providers. One of these duties is the requirement to

have a procedure which is easy to use and free of charge, for sorting out any complaints that may be made against them. It must also be independent of the regulator and the communications industry. The Ombudsman service in UK have been given the seal of approval by Oftel, the UK regulator and the Government as a fair and speedy service for settling consumer complaints. The Telecom Ombudsman, known as **Otelo** has been operating since January 2003. Otelo is independent of the communications industry and the regulator. It is managed by a Council, which comprise people who, in most cases are not from the communications industry. The Council's job is to appoint the Ombudsman, keep the service independent, review its performance and recommend any changes that might need to be made in the way the Ombudsman operate. It is funded by its member-companies. It has a member board made up of member companies and independent representatives. The member board makes sure that Otelo is appropriately funded and approves the annual budget.

2.2.2. The Otelo has been offering a first class service since it was launched and has already achieved a number of successes for the consumers

2.2.3. One of the objectives, of establishing the office of Telecommunications ombudsman was to build and maintain the trust of consumers and small businesses by helping them to resolve any disputes with communications providers, which they have not been able to resolve through the provider's normal complaints procedures.

2.3. **The Ombudsman in the Indian Scenario**

2.3.1 In India also Ombudsmen have been appointed for several sectors. A proposal for appointment of Ombudsman for Income-Tax sector is under consideration in the Department of Revenue, Ministry of Finance. The Ministry of Finance has appointed an Ombudsman for the Insurance sector. The Reserve Bank of India has also appointed 15 Ombudsmen for the banking sector.

Insurance Sector:

2.3.2. In exercise of the powers conferred by Sub-Section (1) of the Section 114 of the Insurance Act, 1938, the Department of Economic Affairs, Ministry of Finance, has notified the Rules, viz. the Redressal of Public Grievances Rules, 1998. These Rules provide for constitution of a Governing Body (GB) of the Insurance Council, which shall consist of one representative from each of the insurance companies, to be represented by Chairman or MD or any one of the Directors of the company. The GB is to formulate its own procedure for conducting its business including the election of the Chairman. The GB is to appoint one or more persons as Ombudsman. The Ombudsman is to be selected from a wider circle including those who have experience or have been exposed to the industry, Civil Service, Administrative Service, etc. in addition to those drawn from the Judicial Service. The Ombudsman is to be appointed by the GB from a panel prepared by a Committee consisting of Chairman of IRDA, two representatives of the Insurance Council and one representative of the Central Government. The territorial jurisdiction of Ombudsman is to be specified by GB. The Ombudsman will have secretarial staff as provided to him by the Insurance Council after consultations with him.

2.3.3. All the expenses on the establishment of Ombudsman and his staff is to be met by the insurance companies who are members of the Insurance Council, in such proportion as may be decided by the GB from time to time. The powers of the Ombudsman include receiving complaints, repudiation of claims by an insurer, any dispute in regard to premium paid or payable in terms of the insurance policy, dispute on legal construction of the policies in-so-far as such dispute relate to claims, delay in settlement of claims, non-issue of insurance document to customers after receipt of premium, etc. The recommendations made by the Ombudsman on settlement of complaints through mediation are sent in writing to the complainant and insurer. If the complainant accepts the recommendation, then it is conveyed to the insurance company to comply with the terms of recommendations within 15 days. Where the complaint is not settled by agreement, the Ombudsman passes an award, which he thinks fair in the facts and circumstances of a claim, within a period

of three months of the receipt of the complaint. If the complainant accepts the award, the insurance company has to comply with it within 15 days.

2.3.4 Powers of Ombudsman

- (i) The ombudsman may receive and consider:-
 - a) Complaints
 - b) Any partial or total repudiation of claims by an insurer;
 - c) Any dispute in regard to premium paid or payable in terms of the policy;
 - d) Any dispute on the legal construction of the policies in so far as such disputes relate to claims;
 - e) Delay in settlement of claims
 - f) Non-issue of any insurance document to customers after receipt of premium
- (ii) The Ombudsman also acts as counsellor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company
- (iii) The ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.

Banking Sector:

2.3.5. In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has formulated "The Banking Ombudsman Scheme 2002" for the banking sector. The Scheme provides that the Reserve Bank of India (RBI), on the recommendations of a Selection Committee of four persons constituted by its Governor, appoint one or more persons as Banking Ombudsman (BO). The Selection Committee comprise all the three Deputy Governors of RBI and the Additional Secretary (Financial Sector), Department of Economic Affairs. The remuneration and other perquisites payable to a BO is to be determined by RBI from time to time and is to be borne by the banks in such proportion and in such manner as may be determined by RBI. Complaints on matters relating to deficiency in banking service, loans and advances, etc. may be filed with the BO having the jurisdiction. The BO may require the bank named in the complaint to furnish the factual information of the documents, issue notices to the concerned

parties and promote settlement of the complaint by following such procedures as he may consider appropriate and he shall not be bound by any legal rule of evidence in this aspect. If a complaint is not settled by agreement within a period of one month, the BO may pass an award after affording the parties reasonable opportunities to present their cases. If the complainant and the bank accept the award, it is implemented. If either of them do not agree to it, then an appeal may be filed before the Review Authority (RA). If the RA is of the opinion that no revision of award is required, then it will issue its directions to the Bank for implementation of the award within six weeks. However, if RA feels that the revision of the award is necessary, it may again refer it to BO for reviewing it in the light of the observations of RA.

2.3.6 The BO scheme indicates the procedure for redressal of grievances like grounds of complaints, procedure for filing the complaint, power of the Ombudsman to call for information, settlement of complaint by agreement and award by the BO.

CHAPTER 3

Issues and questions for consultation

3.1 Since individual complaints are not explicitly covered by the bodies under TRAI Act, 1997 and that for reasons already stated in paragraph 1.8, internal complaint redressal system is required for the telecom sector, particularly for the private sector operators, there is a plausible case of an institution like that of an Ombudsman in telecom sector and the purpose of bringing out this Consultation Paper is to have the matter discussed in details with the stakeholders. The following questions in this regard need to be addressed:

- (i) Is there a need for an Ombudsman in the telecom sector? Should the Ombudsman be only at the central level, or should it be at each circle level?
- (ii) Should the Ombudsman be created by an Act of Parliament or through a notification issued by the Government or through a decision taken by the telecommunication industry?
- (iii) Should there be a Council to help and assist the Ombudsman in due discharge of his functions?
- (iv) What do you think would be the best way of funding of the Office of Ombudsman?
- (v) What should be the terms of reference i.e. types of complaints, which can be handled by Ombudsman?
- (vi) What should be the duties, responsibilities, functions and powers of the Ombudsman?



TELECOM REGULATORY AUTHORITY OF INDIA

Consultation Paper

on

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