



सत्यमेव जयते

भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA
भारत सरकार /Government of India



No.108-8/2006-NSL-II (Part) (Vol.II)

Date: 24th August 2017.

Subject: Direction under Section 13 of the TRAI Act 1997 on Calls between Mumbai Metro & Maharashtra Telecom Circle, Chennai Metro & Tamil Nadu Telecom Circle, Kolkata Metro & West Bengal Telecom Circle and UP (East) & UP (West) Telecom Circle Service Areas – Compliance with Licence Conditions notified by DoT vide letter No. 842- 503/2004-VAS dated 20th May 2005.

Whereas, the Department of Telecommunication (DoT) vide its letter dated 20th May 2005 had amended licences of CMTS/UAS/Basic and NLD Services permitting inter-service area connectivity between access providers within the four States viz; Maharashtra, West Bengal, Tamil Nadu and UP. As per the amended licence conditions, calls within each of the aforesaid four States were treated as intra-service area calls for the purpose of call routing and levy of ADC. DoT in a subsequent communication No. 842-503/2004-VAS/52 dated 16/6/2005 further clarified that the Interconnection Usage Charges (IUC) and ADC shall be applicable as per the prevailing Regulation/Determination/Direction/Order of Telecom Regulatory Authority of India (TRAI) and the tariff shall be as per applicable TRAI's Tariff Order. As per the amended licence conditions, for the purpose of inter-service area connectivity, access providers have the option to take leased lines to establish such connectivity or to continue with the existing interconnect arrangement for routing all calls in these service areas;

2. And whereas, subsequent to the aforesaid amendment of licence conditions, the access providers in the respective service areas restructured their tariff plans and filed them with TRAI. It was noted that several private GSM licencees operating in the aforementioned four States

had specified a higher tariff for calls terminating in the mobile networks of BSNL/MTNL from one service area to other service area vis-a-vis calls terminating in the networks of other private operators, falling within the geographical boundary of the same State;

3. And whereas, TRAI also received complaints from subscribers regarding the differential higher tariffs being levied by private GSM operators for calls from one service area to another service area within the same State terminating in BSNL/MTNL network;

4. And whereas, after examination of the differential tariff in the light of the comments of GSM operators and their representative association COAI, TRAI concluded that differential tariff levied by private GSM operators operating in the four States of Maharashtra, Tamil Nadu, West Bengal and UP is discriminatory and inconsistent with the amended License conditions notified by DoT on 20th May 2005 and therefore, in exercise of powers conferred upon it under Section 13 read with Section 11(1)(b)(i) & 11(2) of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act, 1997) and the provisions of Telecommunications Tariff Order, 1999, through its Direction dated 27th February 2006, directed Mobile Service Providers operating in the aforesaid four states to immediately discontinue differential tariff and report compliance of the same to TRAI;

5. And whereas, COAI and some of the TSPs challenged the said Direction by preferring an appeal before the Hon'ble TDSAT and kept charging differential (higher) tariff for calls to BSNL/MTNL in paired circles;

6. And whereas, the Hon'ble TDSAT vide its Order dated 22nd December, 2006 dismissed the appeal of COAI;

7. And whereas, consequent to the dismissal of the appeal by the Hon'ble TDSAT, TRAI vide its Order dated 15th January 2007 sought compliance of its earlier Direction dated 27th February, 2006 as well as the date from which M/s Idea has been complying with the Direction;

8. And whereas, in pursuance of the Order dated 15th January 2007, M/s Idea, vide its letter dated 6th February 2007 reported that in UP(W) service area they have complied with the TRAI Direction dated

27th February 2006 with effect from 29th January 2007. Further, M/s Idea vide its letter dated 30th January 2007 reported that uniform tariff has been in effect from 1st November 2006 which is the date of commercial launch of their services in UP (East) service area;

9. And whereas, in exercise of the powers conferred upon it under Section 13 read with Section 11(1)(b) of the TRAI Act, 1997, vide its Direction dated 22nd March 2007, TRAI directed M/s Idea in UP (West) service area to-

- (a) furnish the number of subscribers adversely affected by charging differential tariff w.e.f. 20th May, 2005, being the date from which the respective Telecom Service (CMTS/UAS/Basic Service/NLD Service) stood amended accordingly, within 15 days of the Direction;
- (b) assess the total excess amount charged from the subscribers along with the manner of calculating such amount and intimate the same to TRAI within 15 days of the Direction;
- (c) Keep the entire excess amount charged from the subscribers in a separate bank account and intimate the name and address of the bank to TRAI;
- (d) Not utilize the excess amount charged from the subscribers for any other purpose other than refunding the same to the consumers until further directions by the Authority;

10. And whereas, COAI and some of the Service Providers filed a Civil Appeal before the Hon'ble Supreme Court challenging the order dated 22nd December, 2006 passed by the Hon'ble TDSAT and also requested the Authority to keep in abeyance the compliance of the Direction dated 22nd March, 2007 until the appeal is heard by the Hon'ble Supreme Court;

11. And whereas, vide its order dated 5th April, 2007, the Hon'ble Supreme Court stayed the refund;

12. And whereas, TRAI in the meanwhile did not insist upon submission of further details as per its Direction of 22nd March 2007 by the TSPs as the matter was pending in the Hon'ble Supreme Court;

13. And whereas, the Hon'ble Supreme Court vide its judgment dated the 30th January, 2015, dismissed the aforesaid Civil Appeal;

14. And whereas, vide its letter dated 2nd February 2016, TRAI asked the TSPs to comply with the Direction dated 22nd March, 2007;

15. And whereas, vide its letter No. IDEA/RCA/RV/2016-17/Feb/92 dated 27th February 2017, M/s Idea, *inter-alia*, submitted as follows:

(a) The Authority should at best seek refunds only w.e.f. 27th Feb. 2006, which is the date on which the first TRAI Direction on the issue of refunds was notified by the Authority, citing that establishing direct connectivity with BSNL was biggest challenge;

(b) Computation of excess amount charged along with the methodology used for computations as:

- for the period from May 2005 to January 2007 as Rs. 2,97,90,173/-
- for the period from February 2006 to January 2007 as Rs. 2,01,71,783/-;

16. And whereas, after examination of the submission of M/s Idea at (a) above, the Authority noted that similar submissions were made by the TSPs at the time of offering differential tariffs in paired circles and after examination of the rationale given by the TSPs, the Authority had issued its Direction dated 27th February 2006, the relevant portion of the Direction is reproduced below:

"WHEREAS, the Authority has carefully considered the rationale given above and found it not acceptable for the following reasons:-

a) If a private mobile operator has connected his MSC to the MSC of the other private mobile operator in the other service area within the State, then there is no reason why the operator cannot establish similar connectivity with BSNL/MTNL in that particular service area. If there is a problem in getting lease line from BSNL to establish such

connectivity, the private GSM licensee could have explored alternative arrangements like obtaining the leased line from other NLDOs.

b) If the problem is on account of BSNL/MTNL refusing or delaying additional port for effective interconnection, then the operator could have sought legal remedies within the framework of TRAI Act, 1997.

AND WHEREAS, the Authority has come to the conclusion that the differential tariffs levied by private GSM operators operating in the aforesaid four States of Maharashtra, West Bengal, Tamilnadu and UP for calls terminating in the network of BSNL/MTNL from one service area to other service area within the same State, is discriminatory and inconsistent with the amended licence conditions notified by DoT on 20/5/2005. The Authority has also noted that the said action of the operators is preventing the consumers from getting full advantage of the Government decision to allow inter-service area connectivity within the aforesaid four States.”

17. And whereas the Hon'ble Supreme Court in para 23 of its Order dated 30th January 2015 has inter-alia observed as under:-

“...The access providers have the option to continue with the existing inter-connected routing of the class of service areas but that cannot be a ground to discriminate, in any manner, between the subscribers of the same class...”

18. And whereas, in view of the above, the Authority decided that the excess amount charged w.e.f 20th May 2005, being the date from which the respective Telecom Service (CMTS/UAS/Basic Service/NLD Service) stood amended, should be refunded by M/s Idea;

19. And whereas, after examination of the computation submitted by M/s Idea, the Authority has decided that since the amount cannot be refunded to the subscribers by M/s Idea due to non-availability of rated CDRs, the excess amount charged by M/s Idea be deposited in Telecom Consumers Education and Protection Fund (TCEPF);

20. AND THEREFORE, in exercise of powers conferred upon it under Section 13 read with clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997, the Authority hereby directs M/s Idea to deposit the amount of Rs. 2,97,90,173/- (Rupees two crore ninety seven lakh ninety thousand one hundred seventy three), charged in excess from its subscribers during the period from May 2005 to

January 2007, as computed by M/s Idea, in TCEPF and report compliance within 15 days of issue of this Direction.


24.08.2017
(S.T. Abbas)

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To

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