

No. 7-1/2016-AS-IV
Government of India
Ministry of Communications
Department of Telecommunications
(Access Services Wing)

Sanchar Bhawan
20 Ashoka Road, New Delhi

05th April 2017

Subject: TRAI recommendations dated 21.10.2016 on violation of the provisions of License Agreements and Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 by M/s Bharti Airtel Limited.

This has reference to TRAI recommendations vide letter no. 10-6/2016-BB&PA dated 21.10.2016 regarding above subject.

2. The said recommendations have been examined in the Department. In terms of fifth proviso of section 11(1)(d) of the Telecom Regulatory Authority of India Act, 1997 (as amended), the said recommendations is being referred back to TRAI to provide its reconsidered opinion in the light of comments/ observations of the Department annexed herewith (Annexure). While forwarding reconsidered opinion, TRAI is requested to also provide the following information:

- (a) number of subscribers on the date of launch of service by M/s RIL i.e. the number of subscribers acquired by it during beta testing phase;
- (b) basis on which amount of penalty is recommended; and
- (c) provisions of law under which penalty has been recommended.

3. This has the approval of Competent Authority.

Encl. – As above.

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05/04/17
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To,

Secretary
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ANNEXURE

Para-wise comments on TRAI recommendations vide letter No. 10-6/2016-BB&PA dated 21.10.2016 in respect of violation of the provisions of license agreements and the standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 by M/s Bharti Airtel Ltd.

Para No.	TRAI's recommendations	Comments/ observations of the Department
Para 1	The Authority received a letter No. RJIL/TRAI/2016-17/230, dated the 14 th July, 2016 from M/s Reliance Jio Infocomm Limited (hereinafter referred to as RJIL) providing details of inadequacy of E1s with M/s Bharti Airtel Limited (hereinafter, referred to as Airtel) (a copy of the letter dated the 14 th July, 2016 is annexed as Annexure-I).	In the paragraphs 1 to 4, TRAI has mentioned about receipt of letter dated 14 th July, 2016 from RJIL, TRAI asking Airtel to do needful and furnish response on the issues raised by RJIL vide its letter dated 19 th July, 2016, and TRAI receiving a letter dated 3 rd August from Airtel in response to TRAI's letter dated 19 th July, 2016 as well as receipt of letter dated 4 th August, 2016 from RJIL, hence no comments.
Para 2	The Authority, vide letter No. 10-6/2016-BB&PA, dated the 19 th July, 2016 asked Airtel to do the needful and furnish their response on the issues raised by RJIL (a copy of the letter dated 19 th July, 2016 is annexed as Annexure-II).	However, on perusal of Annexure-I, II and III as mentioned in the paragraphs 1 to 3, it has been observed that:
Para 3	The Authority received a letter No. RP/FY 16-17/122/004, dated the 3 rd August, 2016 from Airtel in response to the Authority's letter mentioned in Para 2 above (a copy of the letter dated the 3 rd August, 2016 is annexed as Annexure-III).	(a) RJIL sought immediate intervention of TRAI on the issue of denial of augmentation of POIs by the operators on the basis of its forecast and firm demand during the test phase of its services i.e. before commercial launch of services.
Para 4	The Authority received a letter No. RJIL/TRAI/2016-17/341, dated the 4 th August, 2016 from RJIL requesting the Authority to direct Airtel to provide requisite number of additional E1s to remove congestion at inter-operator Points of Interconnection (hereinafter, referred to as POIs), which is severely hampering the ongoing test trial of RJIL's services (a copy of the letter dated the 4 th August, 2016 is annexed as Annexure-IV).	(b) There was a dispute/ disagreement between the operators, which related to the following points: (i) Augmentation of existing POIs to be undertaken as per the process; (ii) Capacity can be enhanced when the traffic picks up; (iii) Refusal to issue demand notes for augmenting POIs as per RJIL projections; (iv) Test traffic being disproportionate to any test use i.e. the test traffic is not only high but is abysmally imbalanced; (v) Abnormal traffic utilization on account of free voice offerings by RJIL during test phase; (vi) Traffic trends highly skewed with almost 90% of the total traffic terminating into Airtel network while merely 10% is being directed towards RJIL network; (vii) Calculations and provisioning of E1 links required at POIs on the basis of subscriber base vis-à-vis other operators to bring the utilization to around 40% to 50%; (viii) Further augmentations of POIs to be undertaken as per terms of Interconnect Agreement; etc.

Further, on perusal of **Annexure-IV** as mentioned in the para 4 of TRAI recommendations, it has been observed that RJIL raised a concern on the terms of Interconnect Agreement as being coercive and unilateral and said that it is based

	<p>upon the provisions of Telecommunication Interconnection (Reference Interconnect offer) Regulation 2002. They also alleged interconnect agreements being virtually forced upon them. RJIL also expressed that TRAI direction as well as clause in Interconnect Agreement providing 90 days' time frame for augmentation as being not able to serve the purpose. RJIL did not mention any launch date of its services but requested for augmentation to be completed within 7 days of receipt of requisite charges.</p> <p>It is not clear as to whether TRAI has responded to any of RJIL concerns on the clauses and coercive execution of interconnect agreement or denied or qualified its direction dated 7th June 2005 specifying 90 days as not being applicable for maintaining QoS.</p> <p>TRAI may please clarify and reconsider.</p>	<p>In the paragraphs 5 and 6, TRAI has mentioned about receipt of letter dated 12th August, 2016 from RJIL and letter dated 2nd September, 2016 from COAI, hence no comments. However, on perusal of Annexure-V and VI as mentioned in these paragraphs, it has been observed that:</p> <p>(a) RJIL in its letter cited COAI communication dated 8th August 2016 which stated that its member operators are not expected to provide POI's to RJIL during the test trials. RJIL demanded TRAI intervention to direct operators to provide POIs to RJIL without any demur or delay and take action against the errant TSPs for continued denial/delay in provisioning of POI's and subsequent breach of respective Licenses.</p> <p>(b) Though RJIL has attached copies of its letter dated 21st June 2016; however, the COAI's captioned letter dated 8th August 2016 is not available in the Annexes attached with the Recommendations, as such, it is not clear as to whether TRAI took cognizance of the said letter of COAI.</p> <p>(c) Vide letter dated 2nd September, 2016, COAI had also sought TRAI intervention to restore fair competition. From perusal of para 6 of TRAI Recommendations, it appears that TRAI has relied upon only some of the contents of COAI letter ignoring the points made in respect of RJIL test launch being conducted for some months; pseudo and abnormal asymmetric traffic patterns caused through unlimited free usage of voice and data; unfair competition; unlimited free voice services by RJIL and its negative impact on the other operators; abuse of IUC regime, etc.</p> <p>On scrutiny of RJIL's letter dated 21st June 2016, it has been observed that on the one hand M/s RJIL mentions that it expects over 100 million subscriber in the</p>
Para 5	<p>The Authority received a letter No. RJIL/TRAI/2016-17/411 dated the 12th August, 2016 from RJIL requesting the Authority to immediately direct the telecom service providers to provide PIs to RJIL without any dimmer or delay, per capacities indented by RJIL in its letter dated the 21st June, 2016 addressed to respective telecom service providers. (A copy of letter dated the 12th August, 2016 is enclosed as Annexure-V).</p>	
Para 6	<p>The Authority received a letter No. RSM/COAI/2016/183 dated the 2nd September, 2016 from COAI wherein it was mentioned that they are in no position, by way of network resources, or financial resources, to terminate volumes of traffic of RJIL which are markedly asymmetric. It was also mentioned that their members are not obliged to entertain interconnect requests which are derived from abnormal induced traffic patterns that game the IUC regime and are anti-competitive (a copy of the letter dated 2nd September, 2016 is annexed as Annexure-VI).</p>	

		<p>first year post launch of services; whereas on the other hand it says that RJIL customer base of 22 million and future projections should be taken from the date of this letter. It is not clear from the contents of the letter as to whether RJIL had launched its services on the said date i.e. 21st June 2016. If not, how RJIL can claim a customer base of 22 million on the said date.</p> <p>Further, as brought out in sub-para (c) above, reliance/ response on some of the contents of same letter of COAI while ignoring the rest of the contents may be termed as a selective approach on the part of TRAI. It is noted that during test phase, generally, operators provide minimum POIs for testing of call flow to other networks.</p> <p>TRAI may please clarify and reconsider.</p>
<p>Para 7</p>	<p>In view of the COAI's letter referred above, a meeting was held with telecom service providers including Airtel on the 9th September, 2016 wherein Airtel along with Vodafone India Limited and Idea Cellular Limited confirmed that they agree with all the letters of COAI including letter under reference. It was categorically conveyed to these telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs (a copy of the minutes of the meeting is annexed as Annexure-VII).</p>	<p>In this para TRAI has mentioned about a meeting with TSPs on 9th September, 2016 wherein, TRAI categorically conveyed to the three TSPs namely Airtel, Vodafone India Limited and M/s Idea Cellular Limited that the consumers do not suffer because of the inadequacy of the POIs.</p> <p>From the perusal of minutes of the meeting annexed as Annexure-VII, it is evident that the above mentioned TSPs have also raised several issues against RJIL; however, TRAI does not seem to have responded or looked into all of them for amicable resolution.</p> <p>It has been observed that M/s RJIL had been approaching TRAI from July 2016 for its urgent intervention to remove congestion at inter-operator POIs. Though, TRAI has sought explanation from Airtel and its reply was available with TRAI in first week of August 2016, however, TRAI conducted the first meeting on the issue on 9th September 2016.</p> <p>TRAI may be in a better position to clarify and reconsider as to whether (i) TSPs took any action for mutual resolution of disputes/ differences on the issues raised by them; (ii) TRAI's intervention was timely and the same was legally tenable only post the launch of RJIL commercial operations, which was made on 5th September 2016 as per DOT records.</p>
<p>Para 8</p>	<p>The Authority received a letter No. RJIL/TRAI/2016-17/630, dated the 15th September, 2016 from RJIL providing details of call failure with Airtel and seeking the Authority's intervention to resolve the matter in order to protect the interests of the Indian customers (a copy of the letter dated the 15th September, 2016 is annexed as Annexure-VIII).</p>	<p>In this para TRAI has mentioned about receipt of letter dated 15th September, 2016 from RJIL providing details of call failures with Airtel and seeking TRAI's intervention, hence no comments. However, on perusal of Annexure-VIII as mentioned in the para, it has been observed that RJIL letter dated 15th September 2016 was issued within a week of TRAI's meeting held on 9th September 2016.</p> <p>Since, RJIL had announced its commercial launch on 5th September 2016, the</p>

		<p>operators might have provisioned augmentation of POIs as per demand of RJIL after the said meeting with TRAI. In terms of interconnect agreement as well as TRAI direction, 90 days period is the permissible and agreed period for augmentation. However, it is not clear as to whether TRAI took into consideration the TSP's action and the outcome of ongoing augmentation activities at that point in time while issuing its recommendation dated 21.10.2016.</p> <p>TRAI may please clarify and reconsider.</p>
Para 9	<p>The Authority, vide letter No. 10-6/2016-BB&PA dated the 19th September, 2016 asked Airtel to furnish information on the steps taken by them after the aforementioned meeting of the 9th September, 2016 and to furnish information on traffic on POIs with RJIL during busy hour in a prescribed format (a copy of the letter dated the 19th September, 2016 is annexed as Annexure-IX).</p>	<p>In the paragraphs 9 to 11, TRAI has mentioned about its letter dated 19th September, 2016 asking Airtel to furnish information on the steps taken by them after the meeting of 9th September, 2016 and on traffic on POIs with RJIL as well as about the response of Airtel vide e-mail dated 23rd September, 2016, hence no comments.</p>
Para 10	<p>The Authority received an email dated the 23rd September, 2016 from Airtel in response to the afore-mentioned letter dated the 19th September, 2016, providing the information on traffic on POIs with RJIL during busy hour (a copy of the email dated the 23rd September, 2016 is annexed as Annexure-X).</p>	<p>However, scrutiny of Annexure-IX as mentioned in the para 9 of TRAI recommendations reveals that TRAI had sought traffic data from 15th September 2016 to 19th September 2016. To the extent of TRAI seeking information from operators on the steps taken after the meeting held on 9th September 2016 is concerned, the same may seem justified as a means to monitor the situation.</p>
Para 11	<p>On perusal of the information furnished by Airtel, the Authority, <i>prima-facie</i>, noted that in most of the Licensed Service Areas (LSAs), the percentage of failed call attempts during busy hour with RJIL is exorbitantly high, thus Airtel has failed to meet the benchmarks for POI congestion prescribed in the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 at the POIs with RJIL and relevant provisions of the license. The Authority also noted that RJIL has been sending requests for enhancement of capacity on regular basis to Airtel under intimation to TRAI.</p>	<p>Though in the e-mail dated 23rd September, 2016 (Annexure-X), Airtel has also intimated about augmentation of EIs and their operationalization, however, the same has not been captured in para 10 & 11 of the TRAI's recommendations; as such it is not clear as to whether TRAI has taken cognizance of the said steps taken by Airtel, while finalizing its recommendations.</p> <p>It is also observed that though the TRAI's QoS Regulations regarding POI congestion prescribe a benchmark of less than or equal to 0.5% averaged over a period of one month; however, TRAI has taken traffic data of only few days to arrive at its conclusion while finalizing its recommendations, which is a deviation from the provision of the Regulation that POI congestion to be averaged over a period of one month for the purpose of examining QoS benchmarks.</p> <p>TRAI may please clarify and reconsider.</p>
Para 12	<p>In view of the above, a Show Cause Notice dated the 27th September, 2016 was issued to Airtel asking as to why action under the provisions of the TRAI Act should not be initiated against them for violation of the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the provisions of Unified License and Unified Access Service License (a copy of the Show Cause Notice dated the 27th September, 2016 is annexed as</p>	<p>In the paragraphs 12 to 14, TRAI has mentioned about issue of Show Cause Notice (SCN) dated 27th September, 2016 to Airtel for violation of QoS regulations and provision of license agreement, meeting with CEO of Airtel and TRAI dated 30th September, 2016 and seeking of information on traffic and congestion on POIs with RJIL vide letter dated 3rd October, 2016 as well as Response of Airtel vide letter dated 7th October, 2016 to the Show Cause Notice of TRAI dated 27th September, 2016, hence no comments.</p>

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Annexure-XI).	<p>A meeting was held by the Authority on the 30th September, 2016 with the CEO of Airtel. In the meeting, Airtel was requested to furnish information regarding congestion on the POIs with RJIL on daily basis to the Authority. Subsequently, through a letter dated the 3rd October, 2016, Airtel was requested to furnish the information on traffic and congestion on POIs with RJIL in a prescribed format on daily basis (a copy of the Authority's letter dated the 3rd October, 2016 is annexed as Annexure-XII).</p>	<p>However, on perusal of Annexure-XI as mentioned in para 12 of TRAI's recommendations, it has been observed that TRAI's SCN only alleged QoS and non-compliance of License conditions and did not mention penalty outcome of 50 crores for Licensing non-compliance while seeking Airtel's explanation.</p> <p>Further, it is observed that though in para 14 of the recommendations TRAI has captured the points made by Airtel in response to the SCN, however, it has responded to some of the grounds and has remained silent on other grounds viz. claim of Airtel such as efforts made by Airtel in augmenting the POIs; delay by RJIL in the operationalization of capacities.</p>
Para 13	<p>In response to the Show Cause Notice as mentioned in para 12 above, the Authority received a letter no. RP/FY/16-17/122/29, dated 7th October, 2016 from Airtel wherein Airtel provided the following grounds broadly as to why no action should be taken against them:</p> <ul style="list-style-type: none"> (i) Provisioning of interconnection capacities is required only post the commercial launch of services; (ii) Issuance of Show Cause Notice is premature as the same has ignored the persistent and ongoing efforts made by Airtel in augmenting the POIs; (iii) Show Cause Notice issued prematurely without waiting for the outcome of current augmentation in process i.e. till commissioning of all E1s; (iv) The premise of Show Cause Notice rests on insufficient data, in contradiction to TRAI's own Regulations - 'The Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009' dated the 20th March, 2009; (v) RJIL was itself not prepared for the operationalization of capacities; (vi) TRAI's Direction dated the 7th June, 2005 and Interconnect agreements provide for the capacities to be augmented within a period of 90 days; (vii) The show cause notice is based on a single days' assessment of traffic and the Regulation requires the benchmark for point of interconnecting congestion to be considered over a period of one month. <p>(A copy of the letter no. RP/FY/16-17/122/29, dated 7th October, 2016 is annexed as Annexure-XIII.)</p>	<p>Also from perusal of recommendations it appears that TRAI did not provide any hearing to Airtel post submission of response to show cause notice.</p> <p>Therefore, TRAI may like to ^{reconsider} examine as to whether the recommendations will stand a legal scrutiny and may not be quashed on the ground of non-adherence to principles of natural justice.</p> <p>TRAI may please clarify and reconsider.</p>
Para 14	<p>The Authority examined the grounds taken by TSPs, in the light of the fact that in the meeting held on the 9th September, 2016, it was conveyed to the telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs. Accordingly, the Authority is of the view that the arguments made by Airtel are not tenable as the Show Cause Notice was issued after providing sufficient time to Airtel to comply with the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March,</p>	<p>In the paragraphs 15 to 19, TRAI has mentioned about examination of the grounds taken by Airtel and TRAI's decision there upon. TRAI has indicated that arguments made by Airtel are not tenable. However, it has been noticed that though analysis of the reply against some argument and view of TRAI thereon is available in the recommendations, many of the points have remained unaddressed.</p> <p>Further, it is noted that as per interconnect agreement between M/s RJIL & M/s</p>
Para 15		

