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EXTRAORDINARY PART III SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA  
NOTIFICATION

New Delhi, the 19<sup>th</sup> September, 2012

THE TELECOMMUNICATION TARIFF (FIFTY SECOND AMENDMENT) ORDER,  
2012

No. 4 of 2012

No. 301-41/2012-F&EA — In exercise of the powers conferred upon it under sub-section (2) of section 11, read with sub-clause (i) of clause (b) of sub-section (1) of the said section, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication Tariff Order, 1999, namely: -

**1.** (1) This Order may be called the Telecommunication Tariff (Fifty Second Amendment) Order, 2012.

(2) This Order shall come into force from the date of its publication in the Official Gazette.

**2.** In clause 2 of the Telecommunication Tariff Order, 1999 (hereinafter referred to as the principal tariff order), in sub-clause (l), for the words “within SEVEN days”, the words “within seven working days” shall be substituted.

**3.** In clause 7 of the principal tariff order, ----

(a) after sub-clause (ii), the following sub-clause shall be inserted, namely:-

“(iii) if any service provider fails to comply with the Reporting Requirement, it shall, without prejudice to the terms and conditions of its licence, or the provisions of the Act or rules or regulations or orders made, or directions issued, thereunder, be liable to pay five thousand

rupees, by way of financial disincentive, for every day of delay subject to maximum of two lakh rupees as the Authority may by order direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the service provider has been given a reasonable opportunity of representing against the contravention of the tariff order observed by the Authority.”

(b) sub-clause (v) shall be omitted.

(c) sub-clause (vi) shall be omitted.

(d) for sub-clause (vii), the following sub-clause shall be substituted, namely:-

“(vii) No service provider shall terminate any existing tariff plan without giving a notice of not less than thirty days to the subscriber of its intention to terminate the tariff plan.”

**4.** After clause 7 of the principal tariff order, the following clause shall be inserted, namely:-

**“7A. Consequences for levy of excess charge by the service provider.-**

If the Authority finds that a service provider has collected from its subscribers any amount in violation of the provisions of this tariff order, the Authority may, by order, direct such service provider to refund such amount to the subscribers and also to pay, by way of financial disincentive, an amount not exceeding the amount collected from the subscribers:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the service provider has been given a reasonable opportunity of representing against the contravention of the tariff order observed by the Authority.”

(Raj Pal)  
Advisor (F&EA)

Note.1. – The Telecommunication Tariff Order, 1999 was published in the Gazette of India, Extraordinary, Part III, Section 4 under notification No.99/3 dated 9<sup>th</sup> March, 1999, and subsequently amended as given below:-

Amendment No.	Notification No. and Date
1 <sup>st</sup>	301-4/99-TRAI (Econ) dated 30.3.1999
2 <sup>nd</sup>	301-4/99-TRAI(Econ) dated 31.5.1999
3 <sup>rd</sup>	301-4/99-TRAI(Econ) dated 31.5.1999
4 <sup>th</sup>	301-4/99-TRAI(Econ) dated 28.7.1999
5 <sup>th</sup>	301-4/99-TRAI(Econ) dated 17.9.1999
6 <sup>th</sup>	301-4/99-TRAI(Econ) dated 30.9.1999
7 <sup>th</sup>	301-8/2000-TRAI(Econ) dated 30.3.2000
8 <sup>th</sup>	301-8/2000-TRAI(Econ) dated 31.7.2000
9 <sup>th</sup>	301-8/2000-TRAI(Econ) dated 28.8.2000
10 <sup>th</sup>	306-1/99-TRAI(Econ) dated 9.11.2000
11 <sup>th</sup>	310-1(5)/TRAI-2000 dated 25.1.2001
12 <sup>th</sup>	301-9/2000-TRAI(Econ) dated 25.1.2001
13 <sup>th</sup>	303-4/TRAI-2001 dated 1.5.2001
14 <sup>th</sup>	306-2/TRAI-2001 dated 24.5.2001
15 <sup>th</sup>	310-1(5)/TRAI-2000 dated 20.7.2001
16 <sup>th</sup>	310-5(17)/2001-TRAI(Econ) dated 14.8.2001
17 <sup>th</sup>	301/2/2002-TRAI(Econ) dated 22.1.2002
18 <sup>th</sup>	303/3/2002-TRAI(Econ) dated 30.1.2002
19 <sup>th</sup>	303/3/2002-TRAI(Econ) dated 28.2.2002
20 <sup>th</sup>	312-7/2001-TRAI(Econ) 14.3.2002
21 <sup>st</sup>	301-6/2002-TRAI(Econ) dated 13.6.2002
22 <sup>nd</sup>	312-5/2002-TRAI(Eco) dated 4.7.2002
23 <sup>rd</sup>	303/8/2002-TRAI(Econ) dated 6.9.2002
24 <sup>th</sup>	306-2/2003-Econ dated 24.1.2003
25 <sup>th</sup>	306-2/2003-Econ dated 12.3.2003
26 <sup>th</sup>	306-2/2003-Econ dated 27.3.2003

27 <sup>th</sup>	303/6/2003-TRAI(Econ) dated 25.4.2003
28 <sup>th</sup>	301-51/2003-Econ dated 5.11.2003
29 <sup>th</sup>	301-56/2003-Econ dated 3.12.2003
30 <sup>th</sup>	301-4/2004(Econ) dated 16.1.2004
31 <sup>st</sup>	301-2/2004-Eco dated 7.7.2004
32 <sup>nd</sup>	301-37/2004-Eco dated 7.10.2004
33 <sup>rd</sup>	301-31/2004-Eco dated 8.12.2004
34 <sup>th</sup>	310-3(1)/2003-Eco dated 11.3.2005
35 <sup>th</sup>	310-3(1)/2003-Eco dated 31.3.2005
36 <sup>th</sup>	312-7/2003-Eco dated 21.4.2005
37 <sup>th</sup>	312-7/2003-Eco dated 2.5.2005
38 <sup>th</sup>	312-7/2003-Eco dated 2.6.2005
39 <sup>th</sup>	310-3(1)/2003-Eco dated 8.9.2005
40 <sup>th</sup>	310-3(1)/2003-Eco dated 16.9.2005
41 <sup>st</sup>	310-3(1)/2003-Eco dated 29.11.2005
42 <sup>nd</sup>	301-34/2005-Eco dated 7.3.2006
43 <sup>rd</sup>	301-2/2006-Eco dated 21.3.2006
44 <sup>th</sup>	301-34/2006-Eco dated 24.1.2007
45 <sup>th</sup>	301-18/2007-Eco dated 5.6.2007
46 <sup>th</sup>	301-36/2007-Eco dated 24.1.2008
47 <sup>th</sup>	301-14/2008-Eco dated 17.3.2008
48 <sup>th</sup>	301-31/2007-Eco dated 1.9.2008
49 <sup>th</sup>	301-25/2009-ER dated 20.11.2009
50 <sup>th</sup>	301-24/2012-ER dated 19.4.2012
51 <sup>st</sup>	301-26/2011-ER dated 20.4.2012

Note 2. – The Explanatory Memorandum explains the objects and reasons for the Telecommunication Tariff (Fifty Second Amendment) Order, 2012.

## EXPLANATORY MEMORANDUM

1. The TRAI Act confers power on the Authority not only to regulate but also to ensure the compliance of the provisions of the regulations and Tariff Orders. The word “ensure” has mandatory connotation, it means “make certain”. Furthermore, the Hon’ble Supreme Court, in its judgment dated the 17, Aug, 2007, in *Civil Appeal No. 2104/2006 (Central Power Distribution Co. & Ors Vs. CERC & Anr)*, inter-alia, held that “it is well settled that a power to regulate includes within it power to enforce”.

2. The main purposes for enactment of the TRAI Act, 1997, as discernable from the preamble thereof, and as applicable to TRAI are (a) **to regulate** telecommunication services : (b) **to protect** the **interest** of the service providers and **consumers** of telecommunication services; and (c) to ensure orderly growth of telecom sector. From the reading of the various provisions of TRAI Act, it is clear that protection of the interest of the consumers has been given paramount importance by the legislature.

3. It will not be out of place to mention that there are a catena of judgments by the Supreme Court wherein the Hon’ble Court has repeatedly re-stated the proposition that legislation should be read and interpreted so as to further the purpose of its enactment and not in a manner that derogates from its main objectives. The Hon’ble Supreme Court in its judgment in the case of *State of Karnataka Vs. Vishwabharthi House Building Co-operative Societies and Ors. [(2004) 5 SCC 430]*, quoted with approval the judgment of Hon’ble Guwahati High Court in the case of *Arbind Das Vs. State of Assam & Ors. [AIR 1981 Gau 18 (FB)]* wherein it was inter-alia, held that where a statute gives a power, such power implies that legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt out in the statute. The Hon’ble Court further held that in determining whether a power claimed by a statutory authority can be held to be incidental or ancillary to the powers specially conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but

also whether such powers are necessary for carrying out the purposes of the provision of the statute which confers power on the Authority in exercise of such powers. The relevant part of the said judgment reads as under :-

*“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.*

*In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”*

4. Apart from casting duty on the Authority to protect the interest of the consumer, TRAI Act under section 11 (1)(d) confers power on TRAI to perform such other functions including such administrative and financial functions as may be necessary to carry out the provisions of the Act. It is also worthwhile to mention over here the judgment of the Hon’ble Supreme Court in U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills Association & Ors. (AIR 2004 SC 3697) wherein the Hon’ble court, inter alia, held that the word to regulate is a phrase of broad impact having a wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it is being used and the purpose of the statute. The Hon’ble court held that even

when the power to fix tariff was not expressly given in the Act, the power to regulate the price of sugar cane would include in itself the power to fix tariff. In other words, even a power not explicitly vested with the Authority would be held so vested, if it was intrinsic to the exercise of larger, general power to regulate. The relevant part of the aforesaid judgment of the Hon'ble Supreme Court is as under :-

*“20.....”Regulate” means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute.*

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*26.....The provisions of the Act referred to above also show that the legislature has made very elaborate provisions regarding supply of sugarcane by cane-growers, its purchase by the sugar factories and payment of price thereof. In fact, very detailed and exhaustive provisions have been made in the Rules and the 1954 Orders to ensure that at the time of delivery of sugarcane by the cane-growers, its weight and price is correctly recorded and the price is paid to them within 14 days, failing which the sugar factory is liable to pay interest. In such circumstances, the irresistible conclusion which can be drawn is that the regulatory power possessed by the State Government shall also include the power to fix the price of the sugarcane. If it is held that the State under its power of regulation cannot fix the price, then the statutory provision contained in the 1953 Act, the Rules and 1954 Order will become completely one sided, operating entirely for the benefit of sugar factories giving them many advantages with no corresponding obligations and leaving the cane grower*

*in a lurch with a host of restrictions upon him. This can never be the intention of the Legislature. It will not be fair to read the Act and the Rules in such a restrictive manner, whereby the provisions made for the benefit of the cane growers become wholly illusory....”*

5. In view of the above, the Authority has power to impose financial disincentives on the service provider for non-compliance of the provisions of the regulations and tariff orders.

### **Financial Disincentives on delay in reporting Tariff**

6. The Telecommunication Tariff (30<sup>th</sup> Amendment) Order, dated 16.01.2004 had done away with the stipulation that all service providers shall file their tariff plans at least FIVE working days prior to its launch in the market. The amendment instead provided that that the service providers shall report tariff to the Authority within SEVEN days from the date of implementation after conducting a self-check to ensure consistency of the tariff with regulatory guidelines. With this change in reporting requirement, sub-clause (v) and (vi) of Clause 7 have become redundant and are, therefore, being deleted. In sub-clause (vii), the provision for advance notice to the Authority before terminating an existing tariff plan has also become redundant for the same reason and the sub-clause is being modified to that extent.

7. It is observed that the prescribed timelines for reporting tariff are not being taken very seriously by the service providers and are to the prejudice of those service providers who regularly file their tariff plans on time. The non-adherence of timelines in tariff reporting deprives the Authority of the timely opportunity to intervene in case the tariff in question is found to be inconsistent with regulatory guidelines and/ or adversely affect the interest of consumers. The Authority, therefore, has decided to introduce a financial disincentive for each day of delay of a tariff report subject to a cap of Rs 2 lakhs for each instance of delay. The new sub-clause (iii) in Clause 7 has been inserted for this purpose.

8. To make the timelines for tariff reporting more clear and to avoid the chances of delay due to holidays, it has been decided to amend the definition of 'Reporting Requirement' in sub-clause (l) of Clause 2 by replacing 'SEVEN days' with 'seven working days'. In addition, both the days on which the tariff is reported and implemented shall be excluded while calculating the seven working days. Thus, service providers will get seven clear working days for reporting an implemented tariff. This will give some additional time to the service providers for reporting tariff and will also enable the Authority to apply the new provisions relating to financial disincentives in a uniform manner across all service providers.

#### **Financial Disincentives for Levy of excess Charges from consumers**

9. Instances of levy of excess charges in violation of provisions of TTO and other regulatory guidelines have come to the notice of the Authority on several occasions in the past. In such cases, the course of action normally adopted by the Authority has been to order refunds of excess amounts charged to the affected subscribers. The service providers do make necessary refunds as per the directions of the Authority and provide compliance reports along with details of refunds. If any amount remains unrefunded due to subscriber being untraceable etc. the same is deposited in Telecommunication Consumers Education and Protection Fund. Since the refund made is only the amount that has been levied illegally and detected by the Authority, there is no compulsion for service providers to confine the charging to the permitted level. The Authority feels that there has to be some financial disincentive for service providers in addition to the actual refunds, so as to act as a deterrent against such illegal charging and also to avoid instances of excess charging. Keeping in view these factors, it has been decided that in cases where it comes to the notice of the Authority that excess charges have been levied in violation of the provisions of this Order and the same is ordered to be refunded to the affected subscribers, the service providers shall, in addition to such refund, remit to

TRAI an amount not exceeding the total of such excess amount charged from subscribers.

**Action on violations of Regulatory mandates**

10. The amendments made through the Tariff Order are without prejudice to the action that may be taken against the service providers in accordance with the provisions of TRAI Act for violations of regulatory mandates. The Authority wants to make it clear that the prescribed financial disincentives are only to enhance the compliance level and it shall be open to the Authority to take action separately for violation of any Regulation, Order and Direction as provided in the Act.

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