

Consultation Paper No.12/2010



Telecom Regulatory Authority of India

Consultation Paper

on

Certain Issues relating to Telecom Tariffs

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PREFACE

Service providers periodically publish different tariff offers with the objective of both customer acquisition and customer retention. Transparency in the provision of telecommunication services and tariff offers has always been and continues to be of prime concern to the Authority. TRAI has in the past taken several steps to enhance transparency in tariff offers.

The Authority, however, is receiving several complaints and representations from consumers and their representatives seeking further effective transparency measures. In view of the increased competition as well as the spread of telecom activity to rural areas, the relevance of having a more transparent regime for tariff offerings cannot be overemphasised. At the same time, service providers and their associations have also raised certain concerns.

This consultation paper brings out various issues that have a bearing on telecom tariff offers. In line with established practice, the Authority seeks the views of all stakeholders by 15th November, 2010. Comments will be posted on TRAI's website. Counter comments, if any, on the comments may be sent by 25th November, 2010.

The consultation paper is available on TRAI website – www.trai.gov.in. For any clarification/information, Sh. Raj Pal, Advisor (ER), TRAI, may be contacted at Tel.No. +91-11-23230752, Fax: +91-11-23236650 or email at raj.pal@nic.in or eco@traigov.in.

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INTRODUCTION

A. Evolution of telecom tariff regulation in India

- I. Telecom Regulatory Authority of India is empowered to fix tariffs for telecommunication services under Section 11(2) of TRAI Act, 1997. Tariff regulation on Telecom Service in India was initiated with the notification of Telecom Tariff Order 1999 (TTO 1999). This order provided a broad and long term policy framework for telecommunications services in the country. It also provided clear signals to the investors on the direction of telecom pricing reform which included rebalancing of tariffs. While emphasizing the social objective of encouraging low users of telecom to get connected, the TTO, at the same time provided flexibility to the service providers for pricing and offering alternative tariff. So far, 49 Amendments have been made in the Telecom Tariff Order 1999 reflecting various developments in Telecom.

- II. The TTO 1999 aimed to achieve tariff rebalancing in a phased manner and specified tariffs for basic, National Long Distance (NLD) and International Long Distance (ILD) services. For basic and cellular services, the order specified a Standard Tariff Package (STP) consisting, inter alia, of monthly rental and call charges. The service providers were mandated to offer STP prescribed by the TRAI. Apart from that STP, the operators were provided the flexibility to offer Alternate Tariff Packages (ATP) to the customers subject to the ceiling rates specified. Though national roaming services in cellular mobile services were initially forborne under the 1999 Order, it was brought under tariff regulation in January 2002, by fixing ceiling tariff for that service.

Cellular Mobile services - Phases of Tariff Regulation

- III. Three years after the implementation of the first tariff order, the tariffs for cellular mobile services were reviewed by the Authority in the year 2002. The Authority carried out a consultation process to decide whether there was a need to regulate the cellular market in respect of tariff or market forces should be allowed to operate. The Authority found that there had been considerable increase in the level of competition in a number of service areas. With the entry of the PSU as third operator and a private operator as the fourth one in each service area, the degree of competition was expected to become much more intense. Taking note of emerging market scenario, the Authority came to the conclusion that a stage had been reached when market forces could effectively take care of cellular tariff and the regulator will keep a close watch on the developments in the market. Accordingly the Authority forbore the tariffs for cellular mobile services vide 23rd Amendment to TTO dated 6/9/02.

Basic Services Phases of Tariff Regulation

- IV. In the case of Basic Services, TTO, 1999 had specified availability of standard tariff package which inter alia comprises of rental, call charges, free calls etc. along with all other tariff plans on offer by the Service Providers in the market. The basic services had been facing intense competition both among Basic Service Providers as well from Cellular Mobile Service Providers, which resulted in drastic fall in tariff especially for the long distance calls. Since all subscribers were enrolled in alternative packages and in effect the standard tariff package had become redundant, the Authority decided that mandating a standard package was no longer necessary for Urban Basic Service Subscribers. In view of the

overall competition and the implementation of ADC Regime, the Authority decided to forbear with respect to Basic Services except for Rural Subscribers where a standard tariff package was prescribed. The Service Providers were free to offer alternative tariff packages in addition to the standard tariff package. (24th Amendment to TTO dated 24th January, 2003 & 28th Amendment to TTO dated 05.11.2003).

Existing Tariff Regime

- V. As per the existing tariff regulatory framework the tariffs per se for telecommunication services are forborne except for:
 - i) Rural Fixed Line Services.
 - ii) National Roaming Services.
 - iii) Leased Circuits.
- VI. TRAI has specified a standard tariff package for Rural Fixed Line Services which the service providers are mandated to offer to the customers in addition to any alternate tariff packages. Ceiling tariff have been fixed by the TRAI for the other two services and the service providers are required to offer these services at or below the tariffs fixed by TRAI.
- VII. The telecom service providers have been mandated to report tariffs to the Authority within 7 days from the date of implementation of the said tariff for information and record of the Authority after conducting a self-check to ensure consistency of the tariff plan(s) is/are consistent with the relevant regulatory principles in all respects which inter-alia include IUC Compliance, Non-discrimination & Non-predation.

Scope of forbearance

- VIII. The forbearance of tariff for a service, as per the provisions of TTO 1999, denotes that the Authority has not, for the time being, notified any tariff for that particular telecommunication service and the service provider is free to fix tariff for such service. Therefore, the 23rd amendment to TTO provided operators the flexibility to fix tariffs for cellular mobile services except for national roaming which continues to be under regulation. Similarly, the 24th & 28th Amendment of TTO provided flexibility to Operators in respect of Basic Services except for Wire Line Services of Rural customers.
- IX. Tariff forbearance for a service does not mean end of regulation for that particular service. Even after forbearing tariffs for any particular service, TRAI continues to monitor the tariffs for that service, as the service providers are mandated to file the tariffs with TRAI within 7 days of implementation of the said tariff. All tariffs filed with TRAI under this requirement are examined and if necessary, due intervention is effected. TRAI has taken several regulatory measures even after forbearing the cellular tariffs in September 2002. Some of the important measures are - implementations of Calling Party Pays (CPP) Regime vide 24th amendment to TTO; protection of subscribers against hike in tariffs (mandated through 31st & 43rd amendments to TTO); reduction in tariffs for national roaming services (through 44th Amendment to TTO); Directions dated 2nd May, 2005 and 16th September, 2005, relating to disclosure of full details of the tariffs and transparency in service provision; incoming connectivity in prepaid services, even if the talk time value has exhausted (through 30th amendment to TTO). Further, the 48th Amendment of TTO and also the Direction of 1st September 2008 have mandated several

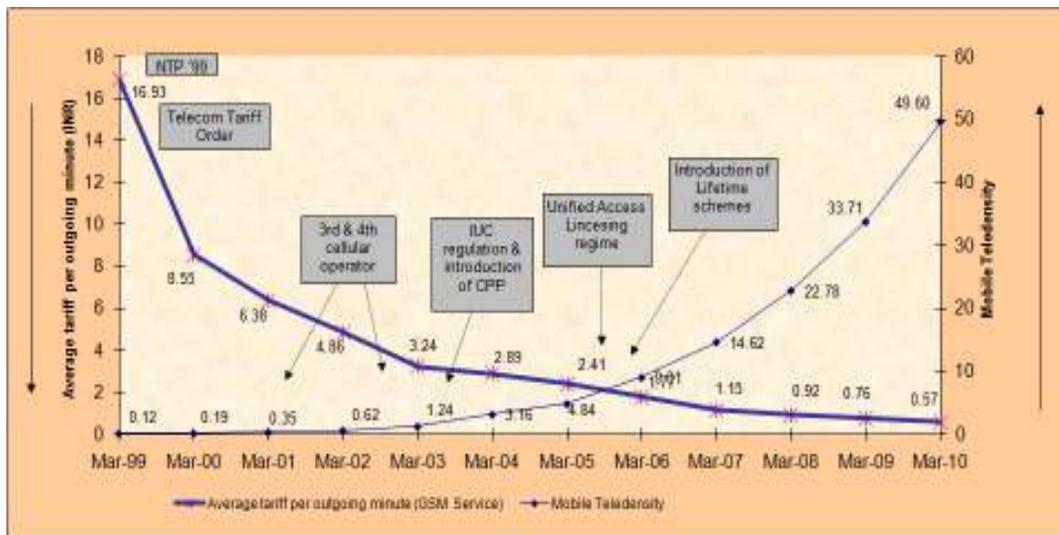
measures with the focus on consumer transparency. Details on these measures are given in Chapter I of this consultation paper.

B. Impact of Regulation on Indian Telecommunication Services

- X. The impact of various regulatory measures is very much visible in the Indian telecommunication sector. TRAI through appropriate regulatory policies and measures facilitating competition has succeeded in achieving affordable tariffs and also putting in place a transparent mechanism for implementation of policies to meet social objectives. The policy has succeeded in providing the financial sustainability of the operators, promoting the efficiency in the sector and meeting the social objectives. The results are evident from the phenomenal growth in subscriber base and the decline in tariffs for various telecommunication services.
- XI. Telecom sector in India has witnessed the highest growth rate in the world. From a level of about 1.2 million in end March 1999, the mobile subscribers reached a level of over 670 million in end August, 2010. The sharp decline in tariffs has contributed in a big way in achieving high growth rate of telecommunication subscriber base. The tariff level for voice telephony in India is among the lowest in the world which enabled to achieve tele-density targets exceeding expectations. There has been substantial decline in tariffs ever since TRAI started regulating tariff. A one minute call between Delhi and Mumbai that cost ₹37.50 in pre-TTO 1999 period can be currently made for almost at the price of a local call, i.e., ₹0.60/-. Similarly, the tariff for a call to American continent from India has come down from ₹75/- per minute to ₹6.67 per minute within the same span of time. There are large number of options available for the subscribers to choose from the market depending upon their usage profile. There are schemes

offered by most operators wherein the subscriber is assured of lifetime connectivity without having to pay any fixed recurring charge. These measures have resulted in overall growth of telecom sector in terms of subscriber base, number of service providers and growth of vast network of telecom services across the length and breadth of the country. The trend in mobile tariffs and mobile teledensity is depicted in a chart given below.

Chart 1: Mobile Tariff Trends Vs. Growth in Mobile Teledensity



XII. The tariff plans offered by the service providers have different component of rent and call charges, processing fee / talk time / value added services etc. Given the competition among the service providers, tariff for fixed and mobile services vary across service providers and across service areas. Since a typical tariff plan incorporates items such as rental, call charges, SMS etc., the service providers create different packages based on various combinations of these items with a view to serve varying needs of customers. It is also an accepted practice that the price of each

component can vary from plan to plan and operators cross subsidize various segments of the plan. Thus, there are a large numbers of tariff plans available in the market which has varying combinations of monthly fixed charges, call charges, free call allowance etc.

- XIII. While forbearance of tariff has positive impact on subscriber growth and reduction of call charges, subscribers are concerned about multiplicity of tariff plans, complexity, and non-transparency of tariff offers. The mobile growth increasingly covers a large number of persons from rural areas and also low income groups in its fold. Therefore, the need for transparency and ease to clearly understand the tariff plans is being increasingly articulated.

C. Need for transparency in tariff offers

- XIV. Adequate price transparency is crucial for the correct operation of an efficient and competitive market. In typical consumer markets the suppliers of goods and services are obliged to indicate the price of each item (product or service) in a clear, simple and transparent manner, which can be easily accessed and understood. There is a feeling among some of the consumer groups that in provision of telecom services, consumers are provided with very limited pricing information. Moreover, the situation is exacerbated by the complex and varied bundled tariffs, thereby making it difficult to compare the tariffs on offer.
- XV. Sometimes it becomes difficult for consumers to find, understand and use the information available on the market in order to make decisions on the choice of service provider and/or tariff packages that best meet their needs. Regulatory intervention may therefore be appropriate to address the issue of deficient consumer information in its various forms including lack of information,

unclear or hard to find information, misleading information or the “bounded rationality” of consumer decision-making¹.

XVI. Over the years the telecommunications markets have grown and competition has developed, accordingly the need to directly protect and empower the users of telecom services has been increasingly perceived and recognised. According to a recent OECD report² informed consumers who are prepared to exert an ability to choose between competing suppliers are necessary to stimulate firms to innovate, improve quality and compete in terms of price. In making well-informed choices between suppliers, consumers not only benefit from competition, but they initiate and sustain it. Conversely, where consumers have too little information, poor quality information, or mis-information, they may end up misled and confused by the choices on offer, may pay too much or buy the wrong service. This may, in turn, inhibit and dampen the competitive process.

XVII. Regulators around the world have become more and more concerned with the issue of deficient consumer information under its various aspects - lack of information, unclear or hard to find information, misleading information or what has been called the “bounded rationality” of consumer decision-making³.

XVIII. Lack of transparency may mean that end-users cannot easily make informed decisions and compare services. This may be because the information does not exist or is deceptive. It might also be because

¹ ERG (The European Regulators Group) Report on Transparency in Tariff Information (March 2009)

² OECD (Organization for Economic Co-operation and Development) (2008), “Enhancing Competition in telecommunications: protecting and empowering consumer” – Ministerial Background Report.

³ OECD (2008)

the information made available to the consumers is presented in such a way that renders it difficult to interpret or compare.

- XIX. Increasing number and diversity of offers due to increased competition and innovation in the telecommunications sector, while delivering considerable benefits to consumers, is also bringing more service offers into the market, with new and diverse features. This increases the complexity of the marketplace for consumers and makes it difficult for them to compare and decide.
- XX. A recent workshop on “How can we help consumers to choose the right service provider?” was held at European Commission Consumer Summit on 18th March 2010. The purpose of this workshop was to identify main solutions to the challenges consumers face when trying to choose the right service provider. In particular, the workshop was aimed at bringing to the surface main challenges, to share best practices and possible solutions and to determine how the European Commission can support participants in providing guidance to consumers choosing a service provider. It was informed at the workshop that the recent liberalization in some service markets and creativity in the sector created new challenges for consumers in choosing the right service provider. The workshop attempted to understand the main challenges consumers face, when choosing a service provider, and investigate on possible solutions.
- XXI. The main challenges faced by the consumers while comparing offers of service providers and choosing the right one, highlighted during the course of the workshop, were as under:
- Trustworthiness of source of information.
 - Information is unclear or not available.

- Consumers are not critical enough.
- Consumers are not sufficiently engaged.

XXII. A fundamental challenge for consumers is that of understanding the nature of telecom services offerings. The difficulty that average consumers have in comparing such offers limits head-to-head price competition. Comparisons become even more difficult when telecom services are sold in bundles.

XXIII. The above analysis suggests the need for policies and other interventions to help consumers to make better decisions. A guarantee of transparent tariffs and up-to-date information on standard terms and conditions is one of the cornerstones of the consumer protection measures. Consumers need access to up-to-date information on tariffs of telecom services in making intelligent choices about the options available to them in the market.

XXIV. One attractive policy alternative in this context is to seek to improve the quality of competition by ensuring that consumers get better information about their choices, so that they can compare offers and select the telecom service (tariff plan) that best suits their needs.

XXV. TRAI has in the past taken several steps with a view to enhance transparency in tariff offers. Details of measures taken towards this end have been discussed in **Chapter 1** of this paper. Despite existence of several regulatory guidelines, the Authority continues to get complaints and representations from consumers and their representatives alleging lack of effective transparency and resultant confusion for subscribers. The areas of concern expressed by the Consumer Groups include multiplicity of tariff offers leading to confusion, presenting/ advertising tariff offers in misleading manner etc. The Authority has attempted to analyse and address

these specific concerns in the different chapters of this consultation paper.

XXVI. The transparency of tariff in telecom sector is necessary to protect interests of consumers and to facilitate further growth of telecom services in India. The mobile telecom penetration is expanding in rural and remote areas, which is changing profile of telecom subscribers with new subscribers being enrolled from ordinary socio-economic background and low income category. The scheme of tariff offers has been changing drastically and leading to a situation where a large number of add-on packs with complex features flooding the markets. The marketing strategies adopted by various operators to augment /retain their customer base, to encourage network usage, to achieve specific revenue targets etc. are making the nature and scope of such offers further complex. The above mentioned developments augur well for a need to further improve transparency in tariffs offer. TRAI has time and again revisited the issue of transparency of tariff offers in the past, and it has been a continuous ongoing process keeping in view the fast changing market dynamics.

XXVII. Based on the comments and inputs that may be received from stakeholders the Authority would, if felt necessary, mandate further measures.

CHAPTER 1

MULTIPLICITY OF TARIFF PLANS AND TRANSPARENCY

Background

1.1 The mobile telephony segment is the fastest growing market in India today and is characterized by intense competition. The service providers are coming out with innovative tariff plans, which are designed to suit the needs of various market segments with a view to acquire new customers as well as to retain the existing ones. Further, the focus of the activities in the telecom sector is increasing in the semi urban and rural areas. The Authority has been receiving representations from consumers and the consumer's organizations indicating that the tariffs offered by the service providers are offered in such manner that they are complex and confusing which makes it difficult for the telecom consumers to make an informed choice. In this chapter two issues relating to number of tariff plans and facilitating the consumers to choose among the tariff plans are discussed.

A. Multiplicity of tariff plans

1.2 There are a large number of tariff plans on offer both in postpaid and prepaid segments. It is observed that a large proportion of subscribers are being acquired in a few plans only. The subscription is very minimal in the rest of the plans, and in many cases negligible. Despite availability of large number of tariff plans, it is noteworthy that lifetime tariff plans, which are simple and easy to understand, continue to attract large number of subscribers.

1.3 By virtue of the provisions of 21st amendment to TTO, dated 13th July, 2002 the number of plans that can be offered by an access

provider in each licensed service area is subject to a cap of 25 plans. The TFO specifies that “At any given point of time not more than 25 plans shall be on offer by a service provider. This includes both post paid and pre paid tariff plans.” The above cap of 25 plans on offer was reviewed in the year 2004 and 2008 after going through the process of consultation. Consultation Papers titled “Limiting the number of tariff plans by the Access Providers” was issued on 8th March 2004 and another on “Issues arising out of Plethora of Tariff Offers in Access Service Provision” was issued on 29th January, 2008. On both the occasions, divergent views were received, both for and against regulating the number of tariff offers in the market. The latter view was predominantly shared by the stakeholders. The Authority after examining the views had decided to continue with the cap of 25 tariff plans on offer.

- 1.4 In the intervening period the telecom access market has grown phenomenally with the entry of new operators thereby increasing the number of tariff plans on offer for subscription. One of the important developments in the mobile telephony in the recent past is the introduction of second based charging system by most telecom service providers. With separate tariff schemes in the second based billing, total number of tariff plans / schemes also increased. Further, the new subscribers are being enrolled from semi urban and rural areas which are generally low income/ARPU subscribers. Through this consultation process, the Authority seeks the views of stakeholders, inter-alia, on the desirability of further limiting the number of tariff plans offered by a service provider in a service area.
- 1.5 One of the main issues raised in the earlier consultation papers, on this subject, was the existence of large number of tariff plans and the widespread concern that too many tariff plans confuse the

subscribers and render informed choice very difficult. Too many plans affect the ability of a customer to identify the ideal tariff package to suit his/her requirements and affordability. Nearly 2 years down the line, the situation in the access segment has not changed much. Rather, with the entry of new operators the number of tariff plans on offer has in fact gone up. Details of operators-wise and service area-wise tariff plans on offer for the customers are given in Table No. 1. In addition, a compilation of total number of tariff plans available for subscription in different service areas is given in Table No. 2.

Table No. 1 : Service Provider-wise and service area-wise number of tariff plans as on 31st March, 2010

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
AP	Bharti	5	16	21			
AP	BSNL	10	8	18	3	-	3
AP	Reliance Comm	1	7	8	1	12	13
AP	Tata	2	4	6	9	12	21
AP	Etisalat	1	-	1			
AP	Aircel Ltd	2	9	11			
AP	Uninor	2	-	2			
AP	Idea	4	13	17			
AP	Vodafone	2	23	25			
		29	80	109	13	24	37
Assam	BSNL	7	8	15	3	6	9
Assam	Tata	-	-		5	11	16
Assam	Bharti	2	19	21			
Assam	Reliance Telcom	1	9	10			
Assam	Aircel Ltd	4	16	20			
Assam	Idea	3	6	9			
Assam	Vodafone	2	9	11			
		19	67	86	8	17	25
Bihar	Reliance Telcom	1	11	12			
Bihar	BSNL	8	6	14	2	7	9
Bihar	Reliance Comm				1	11	12
Bihar	Sistema						
Bihar	Tata	1	4	5	8	12	20
Bihar	Bharti	7	10	17			
Bihar	S Tel	6	0	6			
Bihar	Dishnet	8	7	15			
Bihar	Uninor	2	-	2			
Bihar	Idea	5	5	10			
Bihar	Vodafone	1	3	4			
		39	46	85	11	30	41

Table No. 1 : (contd.)

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
Chennai	Reliance Comm				1	12	13
Chennai	Tata						
Chennai	Aircel Cellular Ltd.	4	13	17			
Chennai	Vodafone	6	3	9			
		10	16	26	1	12	13
Delhi	Tata	-	-		9	15	24
Delhi	Bharti	6	19	25			
Delhi	MTNL	6	13	19	4	5	9
Delhi	Reliance Comm	1	9	10	1	12	13
Delhi	Etisalat	1	-	1			
Delhi	Aircel Ltd	6	12	18			
Delhi	Idea	7	14	21			
Delhi	Vodafone	6	14	20			
		33	81	114	14	32	46
Gujarat	Bharti	4	11	15			
Gujarat	BSNL	8	7	15	4	6	10
Gujarat	Reliance Comm	1	7	8	1	11	12
Gujarat	Tata	1	-	1	9	15	24
Gujarat	Etisalat	1	0	1			
Gujarat	Idea	2	6	8			
Gujarat	Vodafone	5	18	23			
		22	49	71	14	32	46
Haryana	Bharti	5	15	20			
Haryana	BSNL	7	8	15	2	7	9
Haryana	Reliance Comm	1	10	11	1	11	12
Haryana	Tata	1	4	5	9	12	21
Haryana	Videocon	1	-	1			
Haryana	Idea	5	12	17			
Haryana	Vodafone	-	9	9			
		20	58	78	12	30	42
HP	Reliance Telcom	1	10	11			
HP	BSNL	7	6	13	1	-	1
HP	Reliance Comm				1	9	10
HP	Tata	1	-	1	7	15	22
HP	Bharti	6	17	23			
HP	S Tel	10	-	10			
HP	Aircel Ltd	4	6	10			
HP	Idea	2	5	7			
HP	Vodafone	2	5	7			
		33	49	82	9	24	33

Table No. 1 : (contd.)

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
J&K	Reliance Comm	1	8	9			
J&K	Idea	1	9	10			
J&K	BSNL	4	9	13	3	6	9
J&K	Tata	-	-		5	12	17
J&K	Bharti	1	9	10			
J&K	Aircel Ltd	-	9	9			
J&K	Vodafone	2	11	13			
		9	55	64	8	18	26
Karnataka	Bharti	4	19	23			
Karnataka	BSNL	8	7	15	3	6	9
Karnataka	Reliance Comm	1	7	8	1	11	12
Karnataka	Tata	2	4	6	11	13	24
Karnataka	Etisalat	1	-	1			
Karnataka	Aircel Ltd	5	12	17			
Karnataka	Uninor	2	-	2			
Karnataka	Vodafone	3	13	16			
		26	62	88	15	30	45
Kerala	Bharti	5	10	15			
Kerala	BSNL	12	6	18	-	-	0
Kerala	Reliance Comm	1	8	9	1	14	15
Kerala	Sistema						
Kerala	Tata	2	4	6	10	12	22
Kerala	Etisalat	1	-	1			
Kerala	Aircel Ltd	4	4	8			
Kerala	Uninor	2	-	2			
Kerala	Idea	7	5	12			
Kerala	Vodafone	2	23	25			
		36	60	96	11	26	37
Kolkata	Reliance Telcom	1	10	11			
Kolkata	Bharti	4	19	23			
Kolkata	BSNL	2	6	8	-	1	1
Kolkata	Reliance Comm				1	12	13
Kolkata	Tata	1	4	5	12	11	23
Kolkata	Aircel Ltd	1	9	10			
Kolkata	Vodafone	8	16	24			
		17	64	81	13	24	37

Table No. 1 : (contd.)

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
MH	Bharti	5	14	19			
MH	BSNL	6	6	12	2	7	9
MH	Reliance Comm	1	7	8	1	9	10
MH	Tata	2	5	7	10	14	24
MH	Etisalat	1	-	1			
MH	Aircel Ltd	5	8	13			
MH	Idea	4	8	12			
MH	Vodafone	-	13	13			
		24	61	85	13	30	43
MP	Reliance Telcom	1	10	11			
MP	BSNL	12	6	18	8	6	14
MP	Reliance Comm				1	12	13
MP	Tata	1	4	5	9	11	20
MP & CG	Bharti	5	16	21			
MP & CG	Idea	6	13	19			
MP & CG	Vodafone	3	14	17			
		28	63	91	18	29	47
Mumbai	Bharti	3	15	18			
Mumbai	MTNL	9	16	25	4	7	11
Mumbai	Reliance Comm	1	7	8	1	11	12
Mumbai	Sistema						
Mumbai	Tata	2	5	7	11	13	24
Mumbai	Loop	7	7	14			
Mumbai	Aircel Ltd	5	9	14			
Mumbai	Idea	3	20	23			
Mumbai	Vodafone	9	16	25			
		39	95	134	16	31	47
NE	Tata	-	-		5	11	16
NE 1	BSNL	7	9	16	1	6	7
NE 2	BSNL	4	6	10	4	4	8
NE	Reliance Telcom	1	9	10			
NE	Bharti	2	19	21			
NE	Dishnet	5	14	19			
NE	Idea	3	6	9			
NE	Vodafone	2	9	11			
		24	72	96	10	21	31

Table No. 1 : (contd.)

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
Orissa	Reliance Telcom	1	10	11			
Orissa	BSNL	5	6	11	3	6	9
Orissa	Reliance Comm				1	11	12
Orissa	Tata	2	4	6	9	13	22
Orissa	Bharti	5	14	19			
Orissa	S Tel	6	-	6			
Orissa	Aircel Ltd	2	9	11			
Orissa	Uninor	2	-	2			
Orissa	Idea	4	6	10			
Orissa	Vodafone	2	18	20			
		29	67	96	13	30	43
Punjab	Bharti	6	15	21			
Punjab	BSNL	6	5	11			
Punjab	HFCL	-	-	0	8	13	21
Punjab	Reliance Comm	1	11	12	1	11	12
Punjab	Tata	1	-	1	9	14	23
Punjab	Etisalat	1	0	1			
Punjab	Vodafone	3	17	20			
		18	48	66	18	38	56
Rajasthan	Bharti	2	17	19			
Rajasthan	BSNL	9	7	16	-	-	0
Rajasthan	Reliance Comm	1	7	8	1	12	13
Rajasthan	Sistema						
Rajasthan	Tata	-	-		10	14	24
Rajasthan	Etisalat	1	-	1			
Rajasthan	Idea	15	6	21			
Rajasthan	Vodafone	1	15	16			
		29	52	81	11	26	37
TN	Bharti	3	15	18			
TN	BSNL	9	6	15	-	2	2
TN	Reliance Comm	1	8	9	1	13	14
TN	Sistema						
TN	Tata	2	4	6	9	15	24
TN	Aircel Ltd	5	13	18			
TN	Uninor	2	-	2			
TN & Chennai	Idea	5	13	18			
TN & Chennai	Videocon	1	-	1			
TN	Vodafone	6	3	9			
		34	62	96	10	30	40

Table No. 1 : (contd.)

Service Area	Service Provider	GSM Mobile			CDMA Mobile		
		Prepaid	Postpaid	Total	Prepaid	Postpaid	Total
UP (E)	Dishnet	4	2	6			
UP (E)	Uninor	2	-	2			
UP(E)	Bharti	6	14	20			
UP(E)	BSNL	7	8	15	3	6	9
UP(E)	Reliance Comm	1	6	7	1	12	13
UP(E)	Tata	1	4	5	8	15	23
UP(E)	Etisalat	1	-	1			
UP(E)	Idea	2	16	18			
UP(E)	Vodafone	8	17	25			
		32	67	99	12	33	45
UP(W)	Bharti	6	16	22			
UP(W)	BSNL	8	6	14			
UP(W)	Reliance Comm	1	8	9	1	11	12
UP(W)	Tata	1	4	5	8	12	20
UP(W)	Uninor	2	-	2			
UP(W)	Idea	8	11	19			
UP(W)	Dishnet	3	2	5			
UP(W)	Vodafone	8	17	25			
		37	64	101	9	23	32
WB	BSNL	8	6	14	6	12	18
WB	Reliance Comm				1	11	12
WB	Reliance Telecom	1	10	11			
WB	Sistema						
WB	Tata	1	-	1	9	12	21
WB & KK	Idea	7	10	17			
WB	Bharti	6	18	24			
WB	Dishnet	4	8	12			
WB	Vodafone	5	4	9			
		32	56	88	16	35	51
Grand Total		619	1394	2013	275	625	900

Source: Information received from the Service Providers.

Table No.2.Number of plans available for subscription as on 31.03.10

Sl. No.	Service Area	Number of Plans on offer (as on 31.03.10)										
		GSM			CDMA			Fixed Wireless			Wireline	Total Plans
		Pre paid	Postpaid	Total	Pre paid	Postpaid	Total	Pre paid	Postpaid	Total	Post paid	
1	AP	29	80	109	13	24	37	7	43	50	56	252
2	Gujarat	22	49	71	14	32	46	8	32	40	53	210
3	Karnataka	26	62	88	15	30	45	7	46	53	70	256
4	Maharashtra	24	61	85	13	30	43	5	39	44	72	244
5	Tamil Nadu	34	62	96	10	30	40	10	43	53	76	265
6	Haryana	20	58	78	12	30	42	6	47	53	63	236
7	Kerala	36	60	96	11	26	37	5	41	46	69	248
8	MP & CG	28	63	91	18	29	47	8	46	54	40	232
9	Punjab	18	48	66	18	38	56	5	35	40	77	239
10	Rajasthan	29	52	81	11	26	37	8	46	54	49	221
11	UP(E)	32	67	99	12	33	45	8	45	53	68	265
12	UP(W)	37	64	101	9	23	32	5	26	31	44	208
13	West Bengal	32	56	88	16	35	51	5	26	31	32	202
14	Assam	19	67	86	8	17	25	10	25	35	15	161
15	Bihar	39	46	85	11	30	41	8	45	53	46	225
16	HP	33	49	82	9	24	33	6	43	49	36	200
17	J & K	9	55	64	8	18	26	5	36	41	23	154
18	North East	24	72	96	10	21	31	9	33	42	14	183
19	Orissa	29	67	96	13	30	43	8	46	54	48	241
20	Chennai	10	16	26	1	12	13	2	5	7	15	61
21	Delhi	33	81	114	14	32	46	5	34	39	77	276
22	Kolkata	17	64	81	13	24	37	6	27	33	52	203
23	Mumbai	39	95	134	16	31	47	5	26	31	80	292
	TOTAL			2013			900			986	1175	5074

Source: Information received from the Service Providers.

- 1.6 The highest number of tariff plans in a service area in respect of GSM prepaid category is 39 (Bihar and Mumbai) and the average number is 27. Whereas, in case of CDMA prepaid category, the

highest number of tariff plans is 18 (MP and Punjab) and the average number is 12. The above Tables show that the number of plans in the postpaid category is much higher than those in prepaid category. In respect of GSM postpaid, the highest number of tariff plans is 95 (Mumbai) and the average number is 61. In respect of CDMA postpaid, the highest number of tariff plans is 38 (Punjab) and the average number is 27.

- 1.7 The number of tariff plans on offer as on 31st March, 2010 is much higher compared to the position that prevailed when the Authority visited the matter in the year 2004 and 2008.
- 1.8 In the initial stages of telecom operations, service providers were offering tariff packages that were much simpler in nature. In postpaid, a comprehensive tariff package was offered. In prepaid, at the time of enrolment customers used to choose a tariff pack with items of tariffs specified and they continued to avail the service buying validity and talk time as per their requirement. The talk time was deducted from the account of the customer at rates set in the initial pack. However the scheme of tariff offers has since changed drastically with the intensified competitive activity with service providers striving to acquire new subscribers and also to prevent churn from their network. This has led to a situation where a large number of add-on packs have been flooding the markets, especially in the prepaid segment, which constitute more than 96% of the mobile subscriber base.
- 1.9 Further, several tariff packs are on offer and a large number of which virtually replicate the features of a full fledged tariff package making it difficult to distinguish the packs from normal tariff plan. The manner in which these packs are marketed also has become a major cause of discomfort among the consumers as the Authority

- is receiving representations that such tariff plans are misleading consumers.
- 1.10 The number of promotional offers has been on the rise constantly with the increased competitive activities witnessed by the market. The marketing strategies adopted by various operators to augment /retain their customer base, to encourage network usage, to achieve specific revenue targets etc. are making the nature and scope of such offers further complex. The segmentation of customer base is resorted according to a large number of criteria for the purpose of offering such schemes. Such criteria vary from usage profile, loyalty, to customary/religious days to non-descript occasions. The incentives offered under promotional offers do also vary, e.g. rebate in rental, reduced STD/ISD charges, free SMS, free pulses/talk time, waiver of activation fee/security deposit, free Internet access, VAS free or at concessional rate, free gifts, eligibility to win prizes either in the form of additional benefits in terms of talk time etc. or prizes from other industry.
- 1.11 The Authority has received representations from consumers against the multiplicity of plans in the market leading to confusion. The tariff plans offered by each service provider are so large in number that various customers have complained that even the marketing executives are not able to explain these tariff plans. Suggestions have also been received from consumer organizations that the pre-paid tariff plans are complex and creating confusion among the subscribers and that to overcome this, TRAI should look into the matter and bring transparency in prepaid mobile tariff by mandating “One Plan for All”.
- 1.12 There are equally counter views on the issue. It is argued by some that the number of options in the matter of tariff is a natural

outcome of the competitive activities and intervening in the matter is against the spirit and the policy of fostering competition in the market. The large number of plans/packs provides the consumer with more options and the opportunity to avail a better package suiting his requirements, if not, getting a package which is tailor-made to his usage profile.

- 1.13 It is also contended that the majority of the tariff plans are offered in the postpaid category. This set of customers are generally high value subscribers like corporate customers etc, who are capable of identifying their specific requirements and also tariff plans suiting them most. For these reasons, the inability in understanding and identifying suitable tariff plans, aired as a general concern emanating from the “too many tariff plans” argument, it is stated, is not of much relevance in respect of post paid subscribers. In so far as the vast majority of prepaid subscribers (above 96%) is concerned, it is argued that many of the plans offered by the operators are more or less identical offers with virtually no difference in the applicable tariffs (e.g. life time plans and per second billing plans etc). A similar view in respect of promotional offers is that they are in general beneficial to the consumers conferring them with free/concessional usage etc.

Existing regulatory measures relating to tariff offers and transparency

- 1.14 The Authority has issued several regulatory mandates from time to time in order to enhance transparency in provision of service and to protect the interests of the consumers of telecommunications services in the country.
- 1.15 As discussed in the first part of this chapter, regulatory mandates are already in place which bar a service provider from offering more than 25 tariff plans in a service area at any given point of

time. In addition, the Authority has in the past issued a number of Regulatory guidelines with a view to protect the interest of telecom consumers. While some of these guidelines have a direct link to the Tariff for various services, other guidelines are intended to enhance transparency in the service provision. Some of the initiatives taken by TRAI to enhance transparency in tariff issues are briefly mentioned below:-

a) Tariff related measures

- 1.16 *Charges for itemized bill relating to Long Distance Calls:* As per the provisions of Telecommunication Tariff (32nd Amendment) Order notified on 07.10.2004, if any postpaid customer requests for itemized bill relating to long distance call, it should be provided free of charge by the access providers.
- 1.17 *Hard copy of the bill to be provided free :* The 46th Amendment to TTO issued by the Authority on 24th January 2008 mandated that hard copy of the summary bill/printed copy of the bill to be supplied free of cost to all postpaid customers of telecom access service.
- 1.18 *Protection against hike in tariff:* The TTO 31st Amendment notified on 07.07.2004 and 43rd Amendment notified on 21.03.2006 provide for protection to telecom consumers against hike in tariff. Thus, no tariff item in a tariff plan shall be increased by the service provider-
- i) In respect of tariff plans with prescribed periods of validity of more than six months including tariff plans with lifetime or unlimited validity and also involving an upfront payment to be made by the subscriber towards such validity period, during the entire period of validity specified in the tariff plan;

- ii) In respect of other tariff plans, within six months from the date of enrolment of the subscriber; and,
- iii) In the case of recharge coupons with a validity of more than six months under any tariff plan, during the entire period of validity of such recharge coupon.

1.19 *Simplification of tariff structure for National Roaming Service:* The Authority on 24th January 2007 notified a Tariff Order (44th Amendment) specifying revised tariffs for national roaming service. This Amendment, apart from ordering substantial reduction in the then prevailing tariffs, also replaced the two part charging regime (a monthly fixed charge for access to the roaming facility + an airtime charge that depend on usage) with a composite roaming tariff. Besides the abolition of roaming rental, the Authority did away with the surcharge and the PSTN charges from the applicable roaming tariff structure so as to make the charging process simple and transparent.

b) Transparency related measures

1.20 *Publication/advertisement of tariff for consumer information:* The direction issued on 2nd May, 2005 inter-alia mandated that the websites of the service provider shall contain complete details of the tariff plans as well as financial implications for various usage slabs. Separate guidelines were also issued on 18th May, 2005 clarifying that the details of the tariff plans appearing in the website as mandated by the Direction dated 2nd May, 2005 should include domestic and international roaming charges. It also mandated that these tariff details shall be available with the Customer Support Service and should be up-dated as soon as there is a change.

- 1.21 *Provision of chargeable Value Added Services without explicit consent:* On 3rd May, 2005, the Authority issued a Direction that no chargeable Value Added Services shall be provided to a customer without his explicit consent and also mandated that any Value Added Services which was earlier provided free of charge shall not be made chargeable without the explicit consent. In continuation, the Authority issued directions on 30th October 2007 and on 27th April, 2009 further supplementing this measure by clarifying the manner of seeking explicit consent from the customers.
- 1.22 *Information to customers about complete details of the tariff plan:* The Authority issued a direction on 29th June 2005 directing the access service providers to inform the customer in writing, within a week of activation of service, the complete details of his tariff plan. In addition, as and when there are any changes in any aspect/item of tariff in the chosen package, the operator shall intimate, in writing, such changes to those subscribers whose tariff packages undergo a change.
- 1.23 *Tariff plans with misleading titles:* Another consumer interest matter, which entailed the attention of the Authority, was the practice of tariff plans being offered in the market with titles which lacked transparency and were misleading or had the potential to mislead the subscribers. In order to address this aspect, the Authority on 16th September, 2005 issued a Direction to Telecom Service Providers prohibiting them from offering tariff plans with misleading titles. This direction also requires that all monthly fixed recurring charges which are compulsory for a subscriber under any given plan shall be shown under one head. Through a separate direction dated 23.08.2007, it was mandated that charges for CLIP facility cannot be made a compulsory item of tariff for the

subscribers in any tariff plan and whenever CLIP charges are sought to be levied by Service Providers, this shall be optional for subscribers.

- 1.24 *Disclosure of tariff information:* Guidelines were issued to all service providers on 23rd May, 2006 requiring them to provide printed material of tariff information both in English and Vernacular Language at the time of enrolment. Such information shall inter-alia contain full and complete tariff information sheet, features of the service offered, terms and conditions including the exceptions, rights of the consumers emanating from the various decisions of the TRAI and the common charter of service agreed upon by the service providers.
- 1.25 *Provision of usage details to prepaid mobile customers:* The Telecom Consumers Protection and Redressal of Grievances Regulation, 2007 notified on 4th May, 2007 inter-alia specify that on request from any prepaid mobile customer, the information relating to usage details in terms of all call data records including value added services, premium rate services and roaming charges, and their monetary value shall be provided to him at a reasonable cost.
- 1.26 *Charging for SMS on Festival/customary days:* Several telecom operators were offering free/discounted SMS Schemes. Such free/discounted SMS under various plans/packs were not available to customers on certain specified days which happen to be social, cultural/ festival days. On 23rd May 2007, the Authority laid down guidelines to ensure transparency in the charging of SMS on such days, which are generally termed as 'SMS blackout' days. These guidelines have been further modified vide Direction dated 1st September, 2008.

1.27 The Telecommunication Tariff Order (48th Amendment) and Direction dated 1st September, 2008 mandated several transparency measures including the following:-

- (i) Tariff information to be provided in vernacular language also.
- (ii) Blackout days (customary/festival days on which free/concessional calls/SMS are not available) restricted to a maximum of 5 days in a calendar year. Such days to be pre-specified and no subsequent alteration or addition is permitted
- (iii) Straight tariff reductions are to be posted on to consumers without any precondition.
- (iv) The service providers shall not insist on recharge between periods lesser than six months in lifetime plans for remaining connected during the promised lifetime validity period.
- (v) Subscribers to get full talktime on talktime recharges barring an administrative fee, which shall not exceed ₹2/- per recharge and applicable taxes.

1.28 Despite the existence of a number of regulatory guidelines intended to ensure transparency and protect interest of subscribers as discussed above, there are still demands from different sections to further simplify and streamline the tariff offers. It is a fact that due to increase in the number of service providers and aggressive price competition, the number of offers in the market is constantly on the rise. While some may argue that increase in the number of offers provide more choice to the subscribers and address the requirement of each categories of subscribers, others argue that too many plans and offers are sure to confuse the subscribers. Some consumer organisations have

even gone to the extent of demanding a regulatory mandate on “One Plan for all” for prepaid segment so that the subscribers are not confused with the multiplicity of offers.

B. Facilitating the consumers to choose among tariff plans

- 1.29 European Regulatory Group (ERG) Report on Transparency on Tariff Information has concluded that tariff transparency is mentioned as an area of concern in a significant number of countries. In particular, the difficulties experienced by end-users in comparing tariffs seem to be a matter of concern shared by most of the National Regulatory Authorities (NRAs).
- 1.30 In several countries, regulatory authorities have begun to address consumer information concerns. Some Member States in European Union, having recognized the need for measures to improve transparency of tariffs, have developed various web-based price comparison tools. An alternative to an NRA running an interactive price calculator website is where the NRA establishes a system for the accreditation of such websites maintained by third parties. Ofcom in the UK runs the Accreditation Scheme for Price Comparison Services (PASS) scheme which enables them to accredit websites which compare prices of different providers.
- 1.31 In addition to service providers, NRAs and other public bodies, many other private/non-government organizations like consumer organizations and service providers associations are also in the area of consumer education and facilitating transparency of tariff information.
- 1.32 ERG Report on transparency of tariff information has highlighted the following challenges in developing and maintaining the comparison websites:

- One of the main prerequisite for developing and maintaining comparison websites is working closely with the market players in developing the detailed website specifications, in defining the data formats and in devising the content update procedures.
- Another challenge faced by some of the NRAs relates to the instances where certain service providers did not keep their information updated on a regular basis.
- The very different formats of price lists used by operators made the work particularly cumbersome for the NRA in some cases. Furthermore, the structure of the price comparison website generally requires substantial work to accommodate even very little changes due to the links existing between several different items.
- The choice of the algorithms that would deliver the most accurate results is considered an important challenge. There have been instances of operators complaining against low ranking on account of an unfair treatment or that distorted results were generated by limitations in the calculator.
- Choosing the most important parameters while keeping user friendliness is seen as a real challenge when developing the website.
- Building public visibility for the website and making users aware of the practical relevance of this tool is generally considered a challenging task.
- A persistent problem is how to include all price schemes that the service providers offer.

1.33 The problems and challenges experienced by European countries listed above could be universally applicable to any telecom market

- including Indian telecom sector. But what makes things extremely different and difficult in the Indian context, is the gigantic size of the Indian telecom market, its unique licensing/regulatory regime and the innovative tariff plans/packages offered by the Indian telecom operators.
- 1.34 In India, within the mobile segment itself, there are services based on different technologies (GSM/CDMA) and different services (Fully Mobile/Limited Mobile/Fixed Wireless). Thus there would be a large number of operators and tariff plans/schemes to be covered under any model as compared to the handful operators and their offers as in the case of ERG countries.
 - 1.35 The basic components of tariff plans in India differ and are more in comparison. The service area-wise license regime results into intra-circle and inter-circle traffic, national roaming service, etc.
 - 1.36 Furthermore, majority of the Indian telecom subscribers (currently 96%) are prepaid subscribers. A prepaid subscriber at the time of enrolment subscribes to a base plan, which can be valid from a few days to the entire license period of the service providers. Accordingly, a prepaid subscriber has the option of choosing any tariff vouchers or add-on packs according to his requirements and the actual financial implications in his case are governed by such options exercised by him without having much relevance to his base tariff plan.
 - 1.37 In order to facilitate the consumers in choosing among the tariff plans by understanding the financial implications depending upon their usage pattern, TRAI has been, from time to time, issuing guidelines/directions regarding publication of tariff plans. In addition, TRAI has from time to time initiated various measures in order to improve transparency in tariff offers, the details in respect

of these measures have already been indicated in first part of this chapter.

Issues for consultation

- 1. What, according to you, are the challenges which Indian telecom subscribers face while understanding and choosing the tariff offers?**
- 2. What according to you are the required measures to further improve transparency in tariff offers and facilitate subscribers to choose a suitable tariff plan?**
- 3. Do you think mandating “One Standard Plan for All Service Providers” particularly for the prepaid subscribers as suggested by some consumer organizations would be relevant in the present scenario of Indian telecom market?**
- 4. Do you think the existence of large number of tariff plans and offers in the market are beneficial for the subscribers?**
- 5. In your opinion is it necessary to revise or reduce the existing cap of 25 on the number of tariff plans on offer? If so, what would be the appropriate number?**

CHAPTER 2

MISCELLANEOUS TARIFF RELATED ISSUES

2.1 In this chapter, certain tariff related issues which have a bearing on the transparency as well as on the protection against tariff hike available for telecom subscribers in the existing tariff framework, have been discussed.

A. Premium rate calls and SMSs

2.2 Premium rate services generally offer some form of content that is charged to subscriber's phone bill or his prepaid phone account. Typical premium rate services include helpline services, competition, voting, information, etc. Calls made or SMS sent to the premium rate numbers are charged higher than the normal rates. The revenue generated as a result of premium rate services (calls/SMS) is shared between the network provider and the content provider.

2.3 The market for services provided through high tariff (premium) numbers has been growing rapidly. In the present multi-operator and multi-service scenario, such premium rate services have increased considerably. It has been observed that a large number of operators and also some independent agencies have been providing value added services, like quiz, ringtones, tele-voting, etc. through SMS.

2.4 In case of premium rate services, the charges are more than normal published tariffs. The service provider is aware of the pulse rate for these services as the service is either provided by the operator concerned or through an agreement with the provider of such premium services. The cost for such premium rate services

is generally known to the customer only after the service has been utilized.

2.5 The complexity in the product chain of premium rate services arises on account of involvement of different parties and their specific role as under:

- The originating operator i.e. the access provider, who contracts the subscriber for access and billing.
- The terminating operator.
- The called party i.e. the premium rate service provider.
- Possibly other intermediate parties.

2.6 According to recommendation (07)02 of Electronic Communications Committee (ECC)⁴ on consumer protection against abuse of high tariff services, there have been increasing instances of misuse of high tariff services. The underlying cause of the misuse is that the product chain through which high tariff services are offered, has some specific vulnerabilities to disadvantage of the consumer. The position of the consumer with respect to provider of these services is weak as the consumer only has a direct contractual relationship with his access provider. It is often difficult for consumer to approach the premium rate service provider in the event of disputes. Further, revenues to the premium rate service providers are often guaranteed by the access provider and paid out to them before payments are received from the calling subscriber. Some examples in this regard are:

- Cases in which the user is not aware of the tariff applied.

⁴ ECC is a Committee of European Conference of Postal and Telecommunications Administrations

- Cases where consumers are attracted to dial numbers where the services are not actually available or are of low quality.
- Artificial call duration lengthening by increasing waiting times.
- The use of high tariff numbers for customer care where the customer has no alternative to reach the service.
- The use of high tariff numbers for services such as TV games with unclear call prices and procedures.

2.7 Considering the above facts, the ECC inter-alia recommended as under:

- The high tariff services should only be allowed in appropriate numbering ranges that are exclusively or non-exclusively allocated for these services to facilitate tariff transparency and call barring.
- The consumers should be well informed by the premium rate service provider about the tariffs and content of high tariff services by clear and unambiguous announcements of tariffs at the beginning of the calls in order to allow the user to cancel the call before the charging starts.
- Where technically possible, the tariff rates, the duration of the call or the total cost of a call or the total amount of the telephone bill should be subject to limitations according to consumer preferences.
- Consumers are enabled to block number ranges in order to prevent usage of high tariff services in appropriate cases.
- There should be a rapid response mechanism to suspend payment or to block access to numbers while problems and abuses are investigated.

- Appropriate means should be established to provide refunds and compensation for consumers who suffer from abuses and unauthorized calls.

2.8 In UK, PhonepayPlus regulates phone-paid services with focus on pre-empting and preventing problems for consumer protection. PhonepayPlus publishes and enforces a Code of Practice which contains the rules governing the content and promotion of premium rate services. Under the communications Act 2003, Ofcom has responsibility for regulating the premium rate services and PhonepayPlus acts as an agency to carry out day to day regulation of the premium rate services (PRS) market on Ofcom's behalf. In October 2009 Ofcom published its statement on the scope of PRS regulation which included recommendations grouped around three themes:

- Making sure consumers are able to make informed decisions.
- The need to provide consumers with effective redress when things go wrong; and
- Helping providers act more responsibly and so prevent consumer harm.

2.9 In Singapore, under the Telecommunications Act, the Infocommunications Development Authority (IDA) of Singapore is implementing a code of practice for provision of PRS. This code aims to protect interest of public in general and the interests of consumers of PRS in particular by specifying the duties to be observed by PRS providers in their promotion and provision of PRS. It also specifies the duties to be observed by the billing network operators. Every PRS provider and billing network operator is required to comply with this code.

- 2.10 In Ireland, from July, 2010 the responsibility for regulation of PRS has been transferred to the Commission for Communications Regulation (ComReg), from the Regulator of the Premium Rate Telecommunications Services Ltd. (Reg Tel) pursuant to the enactment of the Communications Regulations (Premium Rate Services and Electronics Communications Infrastructure) Act 2010. The licensing of PRS is governed by the Communications Regulation (Licensing of PRS) Regulations 2010. The regulations detail amongst other things the terms and conditions under which a license is granted. A PRS license is required for promotion and operation of specified PRS.
- 2.11 In India, TRAI through Direction dated 3rd May, 2005 directed all the Cellular Mobile Service Providers and Unified Access Service Providers to publish in all communications / advertisements relating to PRS the pulse rate / tariff for the service. Further, Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation 2006 inter-alia provides that where a value added service (e.g. download of content, such as film clip or ringtone) or entry to an interactive service (such as a game) can be selected through a choice of the service user (e.g. by dialing a specific number) then the charge for the service must be provided to him before he commits to use the service.
- 2.12 Recently, some consumer organisations have represented to TRAI against misuse/lack of transparency in provision of premium SMS and premium calls. Attention of the Authority has been drawn to the problems caused by mushrooming growth of “Pull SMS” and “Pull Calls” in the recent past. It has been represented that the premium SMS is charged in the range of ₹3-5. A mention has also been made about FM radios, TV channels, newspapers and other organisations making attractive announcements to pull SMS/calls.

In addition, it has been represented that a consumer is required to send SMS (charged at premium rate) in order to buy a DTH service or to lodge a service complaint in respect of DTH. Further, the instances of artificial call duration lengthening by increasing waiting times, relating to pull calls have also been brought to the notice of the Authority.

B. Flexibility in implementing ISD tariff for lifetime subscribers – in the light of the provisions of 43rd amendment to TTO

2.13 The Telecommunication Tariff (43rd Amendment) Order contains regulatory guidelines on tariff plans with longer validity including lifetime validity. As per these guidelines no tariff item in such plans can be hiked during the entire validity period. By virtue of these guidelines, the service providers are debarred from effecting changes in any tariff component to the disadvantage of an existing lifetime subscriber. A copy of the TTO 43rd Amendment is placed at **Annexure.**

2.14 In arriving at the decision to have a separate tariff regulatory regime for lifetime validity plans vis-à-vis other tariff plans, the Authority was influenced by the following facts and features of the lifetime validity plans that were on offer:

- (a) An upfront payment of substantial amount, which was in the region of ₹1000/-, was payable by the subscribers for getting enrolled into the plan.
- (b) No fair exit options were provided for the customers thereby restricting their ability of free choice of the plans on offer.
- (c) The call charges applicable in lifetime plans were higher compared with the normal prepaid plans.

(d) Initially various optional packs/top-ups were not offered to the lifetime customers by many operators.

2.15 In the recent past the Authority has received several representations from individual service providers as well as their Associations (COAI - Cellular Operators Association of India and AUSPI - Association of Unified Telecom Service Providers of India) seeking review of the provisions of 43rd Amendment to TTO, so as to implement revision of ISD rates for all subscribers, including the existing lifetime subscribers.

2.16 In their submissions to the Authority, it has been explained that traffic to certain special numbers (chat site, gaming etc.) to some countries has increased several times. Termination charges to such special numbers are much higher (₹17/- to ₹45/- per minute) than the normal prevailing termination charges. This meant that the pay out to the ILD operators on account of traffic to such special numbers exceeded far beyond the tariffs realized from the subscribers in India which is generally in the range of ₹6.40 per minute to ₹9.20 per minute. It was also contended that the tariff protection to the lifetime subscribers enforced through 43rd amendment to TTO does not take care of unforeseen circumstances or factors outside the control of the regulators and therefore, no specific ISD rate can be committed to the subscribers for lifetime.

2.17 Summary of the submissions of the Operators/Associations

- (i) Termination charges to several countries have been increased in the recent past.
- (ii) There has been a 25% increase in foreign exchange rate resulting in higher payout in rupee terms, affecting the revenues from ILD business.

- (iii) In some of the countries the payout is more than what the service providers get from the subscriber.
- (iv) Recently higher termination charges are being levied by some service providers (near monopolies in some gulf countries which control the international gateways).
- (v) Just like in the case of international roaming tariff, the factors relevant for deciding ISD tariffs are also outside the control of Regulatory Authorities in India.
- (vi) The price freeze on all tariff items for lifetime customers without providing a corresponding guarantee that there shall be no increase in the input costs is unfair.
- (vii) A large percentage of subscriber base (65-70%) is in the lifetime prepaid category and the provisions of 43rd amendment to TTO prohibit them from increasing tariff for this category of subscribers creating difficulties in recovering the cost of ILD business.
- (viii) The termination charges for incoming international calls are specified in the IUC Regulation and the Indian service providers do not possess the equal opportunity to negotiate bilateral agreements on a reciprocal basis with their overseas counter parts.
- (ix) The limitations on increasing tariff were introduced by the Authority to provide some insulation to the customers from arbitrary increases in tariff. However, in the instant case of ISD tariffs, the revision in tariffs are necessitated by commercial and financial reasons affecting sustainable business

- 2.18 Recently most service providers have realigned the ISD rates for subscribers of all plans except that of the protected categories. The issue that is required to be addressed is whether the service providers can be permitted to apply the realigned ISD tariff structure to the existing lifetime subscribers as well. The lifetime validity plans have been in the market for about five years after its first launch in December, 2005. The features of the lifetime plans have under gone substantial changes with the passage of time due to intense competitive activity in the mobile market. At present, the upfront payment applicable in lifetime schemes has come down to a negligible level of ₹25/-, with many operators providing SIMs with lifetime validity free of charge. The call charges applicable in the lifetime schemes are also at par with standard applicable rates. The lifetime customers get an equal consideration in matter of subscription to various add-on/top-up vouchers. These developments seem imply that the factors which guided the Authority while framing the 43rd Amendment to TTO, have been considerably taken care of by the market forces.
- 2.19 The basis for the demand for review of 43rd Amendment is the need for flexibility to Operators in designing and revising ILD rates as per the market conditions. What the TTO 43rd Amendment seeks to protect are the features of the lifetime scheme including tariff as declared/promised at the time of enrolment of a subscriber. The tariff order does not specify the components of the promised lifetime package. As a practice however, all the operators were till recently specifying specific ISD rates as a feature of the lifetime plans. Of late, some service providers have already implemented new lifetime plans wherein the ISD tariffs offered at the time of enrolment of subscriber under the such tariff plans are stated to be subject to changes in future under intimation to subscribers.

However, even after introduction of new life time validity plans by keeping ISD calls rate outside the scope of protected tariff, the service providers are not able to realign the ISD tariffs in respect of the subscribers already enrolled under such plans who constitute a major portion of existing telecom subscribers.

- 2.20 The main argument contained in the submissions made by service providers/their associations is that the factors governing the cost of ISD tariffs, like that of international roaming tariffs are beyond their control. They have also mentioned about increase in termination charges in respect of ISD calls to several destinations resulting in higher pay out and negative revenues on account of freeze in the ISD tariffs offered under lifetime plans.
- 2.21 The service providers had also raised concerns against permanent freezing of the tariffs offered to lifetime subscribers during the process of consultation leading to notification of 43rd amendment to TTO. According to them, the then existing protection for a period of six months as contained in 31st Amendment to TTO was sufficient.
- 2.22 The Explanatory Memorandum to 43rd amendment to TTO reads as follows:

“ Further, it is important to realize that the cost of providing telecommunication services is on the decline and thus the apprehensions raised in this regard of a possible hike in cost of providing services in future are untenable. The Authority is also of the view that in event of the apprehensions pointed out by the industry association becoming true, the provisions of this Amendment can be reviewed.”

C. Cross restrictions on recharge packs

- 2.23 One issue pertaining to recharges which came to the notice of the Authority is about the cross restrictions imposed by service

providers on recharges which are not properly communicated to the subscribers and lack of information about the features / benefits available with the recharge vouchers. Few examples in this regard are given below:-

- a) Subscriber in a particular plan cannot have the benefit of reduced tariff offered through a special pack.
- b) Subscriber can have the benefit of only one pack at a time.
- c) Recharge vouchers applicable to only subscribers enrolled in specific plans.
- d) Subscriber having lifetime validity recharges with a voucher which inter alia provides validity.

2.24 In all such cases mentioned above due to lack of proper information if the subscriber recharges with a wrong voucher, he does not get the intended benefit. This has led to customer complaints and consequent refunds. To avoid the instances of subscribers paying charges for un-intended recharges, there is a need to ensure that the restrictions / features / benefits of the recharge vouchers are transparently conveyed to the subscribers. The service provider will also need to develop appropriate system so as to reject a recharge when an in-eligible subscriber recharges with a particular recharge voucher.

Issues for consultation

- 1. Should there any limit be prescribed on the rates for premium rate SMS and calls? If so, what should be the norms for prescribing such limit?**
- 2. If not, what further measures do you suggest to improve transparency in provision of the premium rate services to**

- prevent the instances of subscribers availing such services without understanding financial implications thereof?**
- 3. Do you think there is sufficient justification to allow the service providers to realign the ISD tariff in respect of existing lifetime subscribers in view of the grounds mentioned in their representations?**
 - 4. What measures do you think are necessary to improve transparency and to prevent instances of un-intended recharges by subscribers in situations of cross-restrictions of recharges?**

CHAPTER 3

MISLEADING TARIFF ADVERTISEMENTS

A. Introduction

- 3.1 Advertisement acts as a communicating bridge between the producers/service providers and consumers. With industrialization and expansion of market access, importance of advertising is steadily increasing. However, sometimes, it goes beyond the traditional role of 'fair and truthful' information/disclosure. Deceptive advertising and marketing practices have been around since the beginning of time and are still prevalent today. Sometimes it is done unknowingly by an advertiser, however, it can also be an intent to mislead the consumer.
- 3.2 Deceptive advertising is the use of false or misleading statements in advertising. As advertising has the potential to persuade people into commercial transactions that they might otherwise avoid, many governments around the world use regulations to control false, deceptive or misleading advertising. False advertising, in the most blatant of contexts, is illegal in most countries.
- 3.3 In most of the countries, authorities have found it necessary to impose some form of regulation over advertising. It is believed that the principle of *caveat emptor* is no longer appropriate in today's market place.
- 3.4 In European Union, European legislation regulates comparative advertising and protects consumers and those involved in commercial, industrial, craft or professional activity, and the public interest in general, against misleading advertising and its

unfair consequences. In formulation of the directive for regulation of misleading advertising, the Council of EU have accepted that advertising, whether or not it induces a contract, effects the economic welfare of consumers. Further, the EU Council has found it desirable in certain cases, to prohibit misleading advertising even before it is published.

- 3.5 In Canada, the misleading advertising and labeling provisions enforced by the Competition Bureau prohibit making any deceptive representations for the purpose of promoting a product or a business interest, and encourage the provision of sufficient information to allow consumers to make informed choices. The false or misleading representations and deceptive marketing practices provisions of the Competition Act contain a general prohibition against all materially false or misleading representations.
- 3.6 In United States, Advertising is regulated by the authority of the Federal Trade Commission, a United States administrative agency, to prohibit "unfair and deceptive acts or practices in commerce.
- 3.7 In India, Advertising Standards Council of India (ASCI) is a voluntary self regulatory organisation of the advertising industry. The ASCI has Code for Self Regulation in the advertising, which covers the following principles:
- i) To ensure the truthfulness and honesty of representations and claims made by advertisements and to safeguard against misleading advertisements.
 - ii) To ensure that advertisements are not offensive to generally accepted standards of public decency.
 - iii) To safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to

society or to individuals to a degree or of a type which is unacceptable to society at large?

- iv) To ensure that advertisements observe fairness in competition so that the consumer's need to be informed on choices in the market-place and the canons of generally accepted competitive behaviour in business are both served.

3.8 There have been instances in many countries about penalising the guilty of misleading/deceptive advertising, which also includes some of the telecom service providers.

B. Misleading advertisement and regulators – Indian context

3.9 The regulatory agencies established under different statutes have formulated rules, regulations and codes to ensure that advertisers do not mislead consumers through their publicity material including advertisements, as discussed below.

(a) Insurance Regulatory and Development Authority (IRDA)

3.10 Insurance Regulatory and Development Authority (Insurance Advertisements and Disclosure) Regulations 2000 lay down strict guidelines not only on the content of the advertisements issued by insurers and their intermediaries, but also on their compliance. Further, IRDA has issued guidelines on Advertisements, Promotion & Publicity of Insurance Companies and Insurance Intermediaries on 14th May, 2007. These guidelines are intended to protect the interests of insuring public, enhance their level of confidence on the nature of sales material used and ultimately encourage fair business practices. They are to be considered as the minimum standards to be adhered to, in addition to compliance with IRDA (Insurance Advertisements and Disclosure) Regulations 2000 and the code of conduct prescribed by ASCI and any other regulations as applicable.

(b) Securities and Exchange Board of India (SEBI)

3.11 Chapter IX of the (Disclosure and Investor : Protection) Guidelines, 2000 of SEBI provides specific guidelines on advertisements. In addition, SEBI has also drawn up exclusive advertising code for mutual funds under the SEBI (Mutual Funds) Regulations 1996 and as a supplement to the code, it has also published detailed guidelines for advertisement on mutual funds.

(c) Reserve Bank of India (RBI)

3.12 As a regulator and supervisor of the financial system, RBI also exercises powers to curb false and misleading advertisements by various financial institutions. The RBI has notified detailed directions on advertisements issued by non-banking financial companies, miscellaneous non-banking companies and residuary non-banking companies.

(d) Telecom Regulatory Authority of India

3.13 In exercise of powers conferred upon it under Sub-section 2 of Section 11 of the TRAI Act, 1997 read with clauses 7 and 9 of the Telecommunications Tariff Order, 1999, TRAI issued the Telecommunications Tariff (Publication and Reporting) Requirements on 8th April, 1999. In order to facilitate the consumers in choosing among the tariff plans by understanding the financial implications depending upon their usage pattern, TRAI has been, from time to time, issuing guidelines/directions regarding publication of tariff plans. Through its guidelines dated 1st August, 2003, TRAI prescribed formats for publication of advertisement of tariffs. These guidelines were reiterated/elaborated through Directions dated 23rd September, 2003 and 24th May, 2004.

C A Review of the existing Regulatory Measures by TRAI on Publication/Advertisement of Tariff

- 3.14 TRAI's Direction dated 2nd May 2005 regarding publication/advertisement of tariff for consumer information inter-alia prescribed certain formats containing minimum essential information for advertisement of tariff. The Direction emphasized the need for transparency in communicating tariff offers to the subscribers so that the tariff-advertisements do not mislead them.
- 3.15 It is pertinent to mention that the tariff structure at that point of time, when the above mentioned direction was issued, was more complex than that is today. In the then prevailing tariff structure, long distance calls within service area and outside service area were charged under various distance slabs. Differentiation between peak & off-peak, on-net & off-net calling etc were generally part of the tariff plans. Differential tariffs between calls terminating in GSM and CDMA were not prohibited and were in vogue. Security deposit and other entry fees were significant.
- 3.16 Further, the structure of tariff offers available in the market in the year 2005 has since undergone considerable changes due to increased competition and changes in the tariff regulatory framework. The changes have led to simplification of the structure of tariff plans offered by the operators and also made the need for and the utility of the formats mandated in the year 2005 more or less redundant.
- 3.17 In view of the above, it is felt that there is a need to review the applicability of the above mentioned direction, particularly the provisions specifying formats for publication of tariff. It is important that the information on tariff given to the subscribers

through publications and advertisements shall be such as to facilitate informed choice and not misleading in any manner.

D. Need to prohibit ‘Misleading Advertisements’ to ensure transparency in tariff offerings

3.18 The Authority has in the past issued several Regulatory guidelines to bring in transparency in tariff offerings. Apart from the Direction dated 2nd May, 2005 on Publication/ Advertisement of tariffs for Consumers, a separate Direction was issued on 16th September, 2005 prohibiting tariff plans with ‘Misleading Titles’.

3.19 By definition, an advertisement can be considered as misleading, if the truthfulness and honesty of its claims are doubtful, that gives wrong impression or idea, lead someone to wrong direction, is tending to confuse and designated to deceive or mislead the customer either deliberately or inadvertently.

3.20 The major modes of advertising tariff by a service provider are print media (newspapers, magazines, periodicals etc.); point of sale (PoS), web-sites; outdoor hoardings (including walls, buses, trams, metros etc.) and the electronic media. Irrespective of the medium chosen for advertisements, it is essential that the advertisements should not be misleading in any sense, whether directly or by means of implication or omission. There is a need to restrict presentation of the facts in a manner that could be prone to ambiguity and likely to be interpreted by customers of different backgrounds differently.

3.21 The focus of the advertisement could change with the place/spot where it is displayed. For example, the advertisement on the website may be guided by the mandatory regulatory provisions and thus would be comprehensive, but at the PoS, in addition to the above consideration, informing the probable customers about

special features of a scheme could be the main focus of the contents of advertising material. Space constraint limits the size of advertisement to make it more precise in the case of print media. Sloganeering and resorting to the brand-image is a common practice in print media advertisements. The brand-ambassador's face finds a prominent place here than the mandatory tariff information. This aspect is even more significant in outdoor hoardings where space constraint is even bigger and visual impact becomes prime focus of advertising. The danger of omission increases immensely on outdoor hoardings as normally the 'catch-word' coined to attract customers does not speak the full truth, and the space constraint limits display of more facts.

3.22 The Authority has received representations regarding lack of some vital information on tariff in an advertisement on a hoarding of one of the major service providers. The vital information alleged to be missing on the said hoarding was as under:

- The rate advertised does not indicate the fact that it is available only for on-net calls.
- The advertisement does not indicate the requirement of having a special tariff voucher to avail the discounted rates.
- No website link or contact no. has been given in the advertisement.

3.23 The above example points out that apart from omission of vital information, facts can also be displayed in different ways to mislead. An advertisement may create confusion in the mind of a customer if he is not familiar with the practice adopted in a presentation of facts. When a new concept is launched, different sellers using the concept may advertise it in different manners. For example with advent of per-second billing system, the customers

familiar with the practice of uniform pulse-rates may get confused by two operators advertising as per two different granularity(1paise/2 seconds and $\frac{1}{2}$ paisa/second). Therefore, uniformity in presentation of such facts needs to be ensured.

3.24 The Authority feels that there is a need to prevent misleading advertisements and to ensure adequate disclosure/display of essential elements of tariffs in advertisements. For the purpose of better understanding of the intent of the proposed regulatory mandate, a detailed list of illustrative examples of misleading tariff advertisement is given below:

- (i) Advertising a particular call rate as 'Per Second' or 'Per Minute' would be misleading in cases where the pulse rate is higher than 'One Second' or 'One Minute'. Thus, declaration of call rate as ' $\frac{1}{2}$ paisa or $\frac{1}{4}$ paisa per second' would mislead if the actual rate is 1 paisa per two seconds or 1 paisa per four seconds. Similarly, to present a call rate as '40 paise per minute', would be misleading if the actual call rate is ₹1.20 per 3 minutes.
- (ii) Advertising a reduced call rate as invitational call rate would be misleading if it involves a 'start-up charge' or call set-up charge' in addition to the declared rate or if the first minute usage attracts a higher charge than the stated rate. For example, presenting the call rate '**@ 29 paise per minute**' in situations where there is a call set-up charge of 39 paise would be misleading because the first minute usage would attract 68 paise and not the declared 29 paise per minute.
- (iii) Advertisement of a specific reduced call rate/SMS charge would be misleading if such reduced rate is applicable only after the first minute usage or first SMS everyday. For

example, **'1 paisa per SMS'**, would be misleading if 1 paisa per SMS becomes applicable only after the first SMS which is charged at the base rate/higher rate.

- (iv) Advertising or presenting a tariff plan under a title which suggests absence of rental would be misleading if the tariff plan has recurring mandatory fixed charge in one form or other. Tariff plans with titles **'Zero Rental'**, **'Rental Free'** etc. come under this category.
- (v) Advertising a specific call rate or SMS charge would be misleading if such rates are applicable to only on-network usage and such vital restrictions are not conveyed explicitly in the advertisement. For example, **'Call @ 50 Paise Per Minute'** without mentioning that the rate is applicable only for calls within the network of the service provider, would be misleading.
- (vi) Advertising the titles of the tariff plans or other packages/schemes, which suggest unlimited usage will be treated as misleading in situations where the features of such plan/scheme/package put restrictions on the quantum of usage in any manner including by way of Fair Usage Policy etc. on the usage. Thus, a plan advertised, as **'unlimited free calls'** would mislead if there is daily limit or ceiling on the total minute of usage either by way of fair usage policy or otherwise. For a common man the term 'unlimited' would only mean without any limit whatsoever.
- (vii) Advertising a discounted call rate/SMS charge would be misleading if such discounted rate is applicable only during specific duration of time/ period. For example, **'Call @ 10**

- Paise'** in situations where this rate is valid for off-peak /night, would be misleading.
- (viii) Advertising a tariff plan as 'Per Second Plan', if the per second based tariff is valid for some particular duration only. For example, plans with per second billing for initial one year after which the subscribers would be moved to the base per minute bill plan.
 - (ix) Advertising a discounted rate without mentioning the fixed fee component to be paid by the subscriber for availing such discounted rate would be misleading in situations where such conditions are not explicitly stated in the advertisement. For example, '**call @ 30 paise per minute for six months**', would be a misleading advertisement if a recurring fixed charge is compulsory to avail the benefit.
 - (x) Advertising a scheme/pack as 'Free' would be misleading if there is a cap on the daily usage and such cap is not conveyed in the advertisement. For example, '**5000 Free SMS**' but with a daily limit of 500 SMS.
 - (xi) Advertising a broadband plan for higher download speed (e.g. 3 to 4 times faster than the original plan) by paying fixed monthly charges. If it fails to disclose that once the customer exceeds a particular data download limit, the broadband speed would be restricted as per the original plan.
 - (xii) Advertising a specific discounted STD/ISD as general rate would be misleading if such STD/ISD rates are applicable only in respect of calls to specific regions/countries. For example, '**STD calls @ 40 paisa per minute**', if the rates are applicable only for southern states. Similarly, a '**gulf-pack**

offering ISD calls @ ₹2/-, but the rates are only valid for UAE would be misleading if the factual position is not clearly conveyed in the Advertisement.

- (xiii) Advertisement that omits certain vital terms and conditions attached to a set of tariff such as the 'validity period' would be misleading in situations where such declared tariff benefit is available only for a specific period. For example, **'for ₹20/- make all local calls @ 10 paise per minute and STD @ 20 paise per minute'**, in situations where the validity of the said concessional offer is limited to a period of 5 days only and this fact is not clearly reflected in the advertisement.

Issues for consultation

- 1. Considering the nature and structure of the prevailing tariff offerings in the market and advertisements thereof, do you think there is a need for TRAI to issue fresh regulatory guidelines to prevent misleading tariff advertisements?**
- 2. Do you agree that the instances of 'misleading' tariff advertisements listed in this paper adequately capture the actual scenario in the market? If not, provide specific details.**

CHAPTER 4

ISSUES FOR CONSULTATION

1. **What, according to you, are the challenges which Indian telecom subscribers face while understanding and choosing the tariff offers?**
2. **What according to you are the required measures to further improve transparency in tariff offers and facilitate subscribers to choose a suitable tariff plan?**
3. **Do you think mandating “One Standard Plan for All Service Providers” particularly for the prepaid subscribers as suggested by some consumer organizations would be relevant in the present scenario of Indian telecom market?**
4. **Do you think the existence of large number of tariff plans and offers in the market are beneficial for the subscribers?**
5. **In your opinion is it necessary to revise or reduce the existing cap of 25 on the number of tariff plans on offer? If so, what would be the appropriate number?**
6. **Should there any limit be prescribed on the rates for premium rate SMS and calls? If so, what should be the norms for prescribing such limit?**
7. **If not, what further measures do you suggest to improve transparency in provision of the premium rate services to prevent the instances of subscribers availing such services without understanding financial implications thereof?**

- 8. Do you think there is sufficient justification to allow the service providers to realign the ISD tariff in respect of existing lifetime subscribers in view of the grounds mentioned in their representations?**
- 9. What measures do you think are necessary to improve transparency and to prevent instances of un-intended recharges by subscribers in situations of cross-restrictions of recharges?**
- 10. Considering the nature and structure of the prevailing tariff offerings in the market and advertisements thereof, do you think there is a need for TRAI to issue fresh regulatory guidelines to prevent misleading tariff advertisements?**
- 11. Do you agree that the instances of ‘misleading’ tariff advertisements listed in this paper adequately capture the actual scenario in the market? If not, provide specific details.**

Stakeholders are free to raise any other issue that they feel is relevant to the consultation and give their comments thereon.

(Stakeholders are requested to send their comments preferably in electronic form by 15th November, 2010 and counter comments, if any, by 25th November, 2010.)

Telecom Regulatory Authority of India

Notification

New Delhi, the 21st day of March, 2006

No. 301-2/2006- Eco. — In exercise of the powers conferred upon it under sub-section (2) of section 11 read with section 11(1)(b)(i) of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India (TRAI) hereby further amends the Telecommunication Tariff Order, 1999 as under, namely: -

1. Short title, extent and commencement: -
 - (i) This Order shall be called “The Telecommunication Tariff (Forty third Amendment) Order, 2006” (3 of 2006).
 - (ii) This Order shall come into force from the date of its publication in the Official Gazette.

2 Under Section III, in clause 6 (Flexibility and Packages) of the Telecommunication Tariff Order, 1999, hereinafter referred to as TTO, the contents of sub-clauses (v) to (vii) thereof shall be substituted by the following: -

- “(v) A tariff plan once offered by an Access Provider shall be available to a subscriber for a minimum period of SIX MONTHS from the date of enrolment of the subscriber to that tariff plan. However, any tariff plan presented, marketed or offered as valid for any prescribed period exceeding six months or as having lifetime or unlimited validity in lieu of an upfront payment shall continue to be available to the subscriber for the duration of the period as prescribed in the plan and in the case of lifetime or unlimited validity plans, as long as the Service Provider is permitted to provide such telecom service under the current license or renewed license. In the case of plans with lifetime validity or unlimited validity, the service provider shall also inform the subscribers of the month and year of expiry of his current license.
- (vi) The subscriber in the said tariff plan shall be free to choose any other tariff plan, even during the said SIX MONTHS

period or the specified validity period. All requests for change of plan shall be accepted and implemented immediately or from the start of next billing cycle.

- (vii) For any tariff plan, the Access Provider shall be free to reduce tariffs at any time. However, no tariff item in a tariff plan shall be increased by the access provider -
 - (a) In respect of tariff plans with prescribed periods of validity of more than six months including tariff plans with lifetime or unlimited validity and also involving an upfront payment to be made by the subscriber towards such validity period, during the entire period of validity specified in the tariff plan;
 - (b) In respect of other tariff plans, within six months from the date of enrolment of the subscriber; and,
 - (c) In the case of recharge coupons with a validity of more than six months under any tariff plan, during the entire period of validity of such recharge coupon.

3. **General: -**

In case of any doubt with regard to the interpretation of any provisions of this Order, the decision of the Authority shall be final.

This Order contains at Annexure A an Explanatory Memorandum which explains the reasons for this amendment to the TTO.

By Order

(M. Kannan)
Advisor (Eco)

Annexure-A

EXPLANATORY MEMORANDUM

In the month of December 2005/January 2006 most of the mobile operators launched tariff schemes with lifetime validity. These schemes entitled the subscribers to receive incoming calls for an indefinite period.

2. The Authority had undertaken a consultation process, which has since been concluded. The Consumer Organizations have emphasized the need for clarity on the term 'lifetime validity' since there is lot of confusion in the minds of subscribers. The Service Providers are almost unanimous in their view that 'lifetime' cannot exceed beyond the license period. However, few operators have suggested that the services under lifetime validity schemes can be extended beyond the current term provided the licenses are renewed.

3. The Authority has noted that no service provider has explicitly conveyed to the subscribers the specific year by which their current license expires. Many of the operators have also not given any indication to the effect that the lifetime schemes would be limited to their current license period. The impression in the minds of the common subscriber is that the scheme would have indefinite/unlimited validity without any restriction in terms of time. In order to maintain transparency for the subscribers it is necessary for the Service Providers to indicate the month and year of expiry of current license in all their promotional literature/advertisements.

4. The concept of lifetime validity may mean that there is no restriction in terms of time during which the talk time could be utilized and also that the subscriber would continue to get incoming calls for an indefinite period i.e. lifetime. Since these schemes are declared and marketed as having lifetime validity, and an upfront payment is taken from the subscriber on this ground, it is mandatory for the service providers to continue to extend the validity as long as they have the permission to provide telecom service under the current license or renewed license. This amendment to the TTO seeks to bring clarity to the obligation of the service providers to continue to provide such validity to subscribers of lifetime tariff schemes. In this context, the Authority recalled its Direction dated 16.9.2005 wherein it mandated all telecom service providers that no tariff plan shall be offered, presented, marketed and advertised in a manner that is likely to mislead the subscribers. The Authority continues to hold the view that titles of tariff plans which are of misleading nature or having the potential to mislead the subscribers will

be considered as lacking in transparency. Further, the Authority also mandates that any tariff plan with a specified validity period shall continue to be available to the subscriber during the entire promised validity period.

5. As per the Telecommunication Tariff (31st Amendment) Order, 2004 notified on 7th July, 2004, no tariff item in a plan shall be increased at least for a period of six months from the date of enrolment of the subscriber to that plan. This amendment order also reiterates the right of a subscriber to choose any tariff plan at any time. These provisions are applicable for normal tariff plans offered by an operator. Because of the fact that operators have subsequently introduced tariff plans with specified longer period of validity including life time validity / unlimited validity, etc., it has become necessary to protect the interest of consumers against any hike in the tariff items during the period of validity of such plans particularly considering that such plans involve an upfront payment by the subscribers in lieu of longer period of validity. Since these schemes involve an upfront payment, the right of the subscriber to move to any other plan of his choice gets restricted to the extent that he has to forfeit the upfront payment made, unless appropriate exit options are provided. In this situation it is essential that the interests of subscribers are not adversely affected by any action of the service provider while the subscriber remains under any such tariff scheme.

6. One industry association has represented to the Authority that the provisions of TTO (31st Amendment) provides that the service providers are only required to ensure that no tariff item in a plan shall be increased at least for a period of six months from the enrolment of the subscriber to that plan. Therefore, they are of the view that it would be incorrect, improper and undesirable on the part of the Authority to suggest that any tariff plan once introduced by the service providers can never be varied in any aspect. This industry association has urged the Authority to refrain from modifying the TTO (31st Amendment).

7. The Authority has considered the opinion of the industry association and is of the view that the life time tariff plans with its declared features were offered by various operators taking into account various factors. Further, it is important to realize that the cost of providing telecommunication services is on the decline and thus the apprehensions raised in this regard of a possible hike in cost of providing services in future are untenable. The Authority is also of the view that in event of the apprehensions pointed out by the industry association becoming true, the provisions of this Amendment can be reviewed.

8. The provisions of TTO envisages that any subscriber (including subscribers of lifetime packages) can move to any other plan on offer without having to pay migration charges. However, since the packages implemented by the operators do not provide for refund of the upfront payment in cases of exit, the flexibility available for the subscriber of such schemes to freely choose any plan gets restricted. Such restriction on flexibility for subscribers to freely choose any other plan offer also exists in cases where subscriber makes an upfront payment for a longer validity. The forfeiture of the upfront payment while moving to other plans can in some sense be interpreted as a barrier to exit. Subscribers of lifetime tariff packages and other schemes having longer validity deserve protection beyond the six months period envisaged in 31st Amendment for the reason that they make an upfront payment on the understanding of some basic considerations, which include the facility of incoming calls for an indefinite period, the call charges and other features presented to him at the time of subscription. The Authority is, therefore, of the view that there is a need to protect the interest of subscribers in case the tariff and other declared features of the tariff plans with longer validity period including lifetime plans are changed to the disadvantage of the subscribers during the promised validity period.