

New Delhi, the 2nd February, 2007

DIRECTION

Sub : Direction under section 13 of the Telecom Regulatory Authority of India Act, 1997 to deposit in a separate bank account the excess amount charged from the consumers and refundable to them

F.NO. No.310-8(3)/2005 .----- Whereas the Telecom Regulatory Authority of India established under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) [hereinafter referred to as the Authority] had, in exercise of powers conferred upon it under sub-section(2) of section 11 of the said Act, made the Telecommunication Tariff Order 1999 [hereinafter referred to as the principal Tariff Order] notifying the tariffs at which Telecommunication Services within India and outside India shall be provided;

2.And whereas the principal Tariff Order had been amended by the Telecommunication Tariff (Thirty first Amendment) Order, 2004 published under notification of the Telecom Regulatory Authority of India No. 310-8(2)/2005 dated the 7th July,2004 in the Gazette of India, Extraordinary, Part III, Section 4;

3. And whereas the Telecommunication Tariff (Thirty first Amendment) Order, 2004, *inter alia*, inserted sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order providing that 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 and the Access provider shall be free to reduce tariffs at any time provided that no tariff item in that plan shall be increased within said six months;

4. And whereas the Authority in its communication No.406-2/2004-FN dated the 4th March, 2005, directed all the Access Providers to strictly ensure that

the terminal used for fixed wireless services should be strictly confined to the premises of the subscriber and it is licensee's responsibility to ensure that the subscriber terminal is operated in accordance with the terms of the licence for fixed lines;

5. And whereas the Government of India, Department of Telecommunication, Licensing Cell (Basic Services Group) in its communication No.10-10/03-BS-II/Vol.VI dated the 23rd March, 2005 addressed to all the UASL Licensees, BSNL and MTNL, *inter alia*, clarified that the terminal used for fixed wireless services should be strictly confined to the premises of the subscribers where the telephone connection is registered;

6. And whereas the TATA Teleservices Limited, 2 –A , Old Ishwar Nagar, Main Mathura Road, New Delhi-110065, having its registered office at 10th floor, Tower 1 ,Jeeven Bharati, 124 Connaught Circus, New Delhi -- 110001 and Maharashtra Tata Teleservices Limited, Ispat House, BG Kher Marg, Worli, Mumbai-18, service provider [hereinafter referred to as the TATA Teleservices Limited,] filed on the 3rd May, 2005 a petition before the Telecom Disputes Settlement & Appellate Tribunal, New Delhi (hereinafter referred to as the TDSAT) challenging the action of M/s. Bharat Sanchar Nigam Limited (BSNL) whereby the Fixed Wireless Phones of the Petitioners, branded as 'WALKY' have been treated as Limited Mobility Phones;

7. And whereas the Hon'ble TDSAT in its judgment dated the 9th September, 2005 in the case referred to in the preceding paragraph, *inter alia*, held that the 'Walky' service of the petitioners could not be regarded as anything else than WLL(M) and the TATA Teleservices Limited have admitted on more than one occasion that their "Walky" service is capable of operating outside the subscribers premises and can only be restricted to a "Restriction Zone" within the SDCA (Short Distance Charging Area – the area within which a WLL(M) is supposed to operate) and further on going through the language of the above two communications referred to in paragraph 4 and 5 above, the Hon'ble TDSAT had no hesitation in concluding that these are intended to bring out clearly the existing licensing/regulatory position in regard to the WLL(F) service and cannot be regarded as laying down any new regulations/licensing conditions and did not find any merit in the contention of the TATA Teleservices Limited and disallowed the petition filed by them;

8. And whereas the TATA Teleservices Limited modified, *inter alia*, the tariff plans of Fixed Wireless Services for existing subscribers, as confirmed

in their letter No.TTSL\TRAI/New tariff-1\549 dated the 4th July,2006[hereinafter referred to as the said letter) offered by the TATA Teleservices Limited and TATA Teleservices (Maharashtra) Limited;

9. And whereas the TATA Teleservices Limited ,*inter alia*, modified their tariff plan referred to in the preceding paragraph for the existing subscribers —

- (a) increasing the rental amount of Plan 150 from rupees one hundred and fifty to rupees one hundred and ninety nine;
- (b) increasing the rental amount of Plan 149 from rupees one hundred and forty nine to rupees one hundred and ninety nine;
- (c) increasing the rental amount of Plan SRP 240 from rupees two hundred and forty to rupees two hundred and ninety;
- (d) reducing free call value by rupees twenty five only,

thereby adversely affecting the existing subscribers of the plan referred to in the preceding paragraph and also violating the provisions contained in sub-clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004;

10. And whereas the TATA Teleservices Limited was asked by the Authority in para (iii) of its letter 310-8(3)/2005-Eco. dated the 25th January, 2006 to clarify whether changes in tariff , as mentioned in the preceding paragraph are consistent with the provisions contained in sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004;

11. And whereas the Tata Teleservices Ltd. informed vide its letter dated the 2nd February, 2006 that due to reclassification of fixed wireless service from fixed category to WLL (M) category, the tariff may not be IUC compliant and the changes in the tariff are involuntary and they have been forced to increase the tariffs due to changed Regulatory / Licensee conditions to sustain and compete in the market and requested to allow the said modifications in the tariff plan;

12. And whereas the Authority, vide its communication No.310-8(3)/2005-Eco. dated the 5th April, 2006, observed that the increase in the tariff referred to in paragraph 9 above, is in contravention of the provisions contained in sub-

clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004 and directed to submit the justification/reasons as to how the hike in tariff in violation of Tariff orders is related to IUC compliance and to substantiate the explanation by detailed data / calculations;

13. And whereas the Tata Teleservices Limited submitted their reply vide its letter dated the 8th May, 2006 wherein they reiterated that the increase was due to the reclassification of service and there is no change in call charges and this does not amount to increase in tariff and further reiterated that the subscribers have also been provided with free on-net talk time worth Rs.25 per month for 3 months as well as reduction by 50% in local and national SMS charges so that the impact to the customer is only meager;

14. And whereas the Tata Teleservices Limited was asked by the Authority vide its letter dated the 5th September, 2006 to furnish the number of subscribers who have been affected due to the increase in tariff and the amount which is likely to become due to be refunded to them and as to why the increase in the tariff referred to at paragraph 9 above, may not be treated as violation of the provisions contained in sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004;

15. And whereas the Tata Teleservices Limited had not submitted till date to the Authority the details of the number of subscribers who have been affected due to the increase in tariff and the amount which is likely to become due to be refunded to them;

16. And whereas the Tata Teleservices Limited in its letter dated the 11th September, 2006, *inter alia*, submitted that they have complied with the order of the Hon'ble Telecom Disputes Settlement and Appellate Tribunal and DoT's reclassification of Walky service, IUC order and to sustain and compete in the telecom market place was forced to adjust the regulatory/policy driven incremental cost of services while ensuring the impact to the customer was only marginal and the increase in tariffs by other operators providing basic services had not been taken as a violation of the sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by Telecommunication Tariff (Thirty first Amendment) Order, 2004;

17. And whereas the Authority has considered the clarifications given by the Tata Teleservices Limited which have not been found to be satisfactory for the following reasons, namely:-

- (a) the assertion by the Tata Teleservices Limited that they were driven by the reclassification of regulatory and policy provisions of “Walky services” and IUC compliance, to increase tariffs in order to sustain and compete in the market, contradicts their contention that it was involuntarily effected by the company because the decision for increasing tariffs unilaterally in order to sustain and compete in the market, cannot be construed as an involuntary action;
- (b) the increase in tariff, admittedly by the Tata Teleservices Limited, was driven by an assessment of the change in classification, as mentioned by it, and its impact on its revenues/ADC liabilities and thus, the decision to increase tariffs to sustain themselves and to compete in the market had to be necessarily a conscious decision and therefore, the contention of the Tata Teleservices Limited that it was an involuntary decision is self-contradicting and thus totally unacceptable;
- (c) the Tata Teleservices Limited were served upon the communication of the Authority and the Government of India, Department of Telecommunication, Licensing Cell (Basic Services Group) referred to in paragraph 4 and 5 above which clarified that the terminal used for fixed wireless services should be strictly confined to the premises of the subscribers where the telephone connection is registered but they launched the service “Walky” in violation of the said clarification fully knowing that the said service is capable of operating outside the subscribers premises and can only be restricted to a restriction zone as admitted before the Hon’ble TDSAT;
- (d) the Hon’ble TDSAT having, disallowed the petition of the Tata Teleservices Limited referred to in paragraph 6 above, and, held that the communications of the Authority and the Government of India, Department of Telecommunication Licensing Cell (Basic Services Group) referred to in paragraph 4 and 5 are intended to bring out clearly the existing licensing/regulatory position in regard to the WLL(F) service and cannot be regarded as having laid out any new regulation / licensing conditions;

- (e) that para 3.2 of the Telecommunication Interconnection Usage Charges Regulation, 2003 [as substituted by the Telecommunication Interconnection Usage Charges (Fourth Amendment) Regulation, 2005 (1 of 2005)] contains provisions for collection and distribution of amount of ADC specified in Table-III of the said regulation which, *inter alia*, provide that (i) for all Intra-Circle calls from Cellular Mobile/WLL(M) to fixed line, BSNL to be paid the access deficit amount, (ii) for all Intra-Circle calls from fixed to Cellular Mobile / WLL(M), the originating service provider to retain the access deficit amount and such provisions relate to collection and retention of ADC among the service providers and without having any impact of such collection and retention of amount of ADC upon the consumers;
- (f) the clarification by the Government (Department of Telecommunications) that such services offered by the Tata Teleservices Limited are to be treated as limited mobile service within the scope of licence does not alter the provisions relating to ADC mentioned in the preceding sub-paragraph (e) above;
- (g) sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order as inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004, *inter alia*, provide that 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 and the said sub-clause does not provide for any exceptions for the purpose of increasing the tariff and any increase in tariff during the six months of offering a tariff plan by an Access Provider is violation of the said sub-clauses (v) and (vii) of clause 6 ;
- (h) the unilateral increase in the tariff as referred to in paragraph 9 above has adversely affected the consumers and the Authority has been entrusted to protect the interest of the consumers;
- (i) there is no discrimination among the service providers who increase the tariff in violation of the provisions contained in sub- clauses (v) and (vii) in clause 6 of the principal Tariff Order inserted by the Telecommunication Tariff (Thirty first Amendment) Order, 2004;

18. Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India under section 13, read with clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act,

1997 (24 of 1997) and for the reasons mentioned in the preceding paragraph, the Telecom Regulatory Authority of India hereby directs that the Tata Teleservices Limited shall ---

- (a) furnish to the Authority the number of subscribers adversely affected by the increase in its tariff plan referred to in paragraph 9 above; and
- (b) assess the total excess amount charged from the subscribers referred to in (a) above and intimate the same to the Authority;
- (c) submit the information required by (a) and (b) above to the Authority within fifteen days from the date of this direction;
- (d) keep the entire excess amount charged from the subscribers, referred to in (a) above, in a separate bank account and intimate to the Authority the name and address of the bank in which such amount has been kept;
- (e) not utilize the excess amount, charged from the subscribers as referred to in (a) above, for any purpose other than refunding the same to the consumers, until further directions by the Authority.

Yours faithfully,

(M. Kannan)
Advisor(Eco.)

To

Shri. Rakesh Mehrotra
The Chief Officer- Corporate Regulatory,
Tata Teleservices Ltd.,
2- A, Old Ishwar Nagar,
Main Mathura Road,
New Delhi – 110065.