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

Sanchar Bhawan
20 Ashoka Road, New Delhi

05th April 2017

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

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

2. The said recommendations have been examined in the Department. In terms of fifth proviso of section 11(1)(d) of the Telecom Regulatory Authority of India Act, 1997 (as amended), the said recommendations is being referred back to TRAI to provide its reconsidered opinion in the light of comments/ observations of the Department annexed herewith (Annexure). While forwarding reconsidered opinion, TRAI is requested to also provide the following information:
   (a) number of subscribers on the date of launch of service by M/s RJIL i.e. the number of subscribers acquired by it during beta testing phase;
   (b) basis on which amount of penalty is recommended; and
   (c) provisions of law under which penalty has been recommended.

3. This has the approval of Competent Authority.

Encl. – As above.

(Urvashi Sangwan)
ADG(AS-IV)
Tele.: 23320168

To,

Secretary
Telecom Regulatory Authority of India
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<table>
<thead>
<tr>
<th>Para No.</th>
<th>TRAI’s recommendations</th>
<th>Comments/ observations of the Department</th>
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<tr>
<td>Para 1</td>
<td>The Authority received a letter No. RJIL/TRAI/2016-17/230, dated the 14th July, 2016 from M/s Reliance Jio Infocomm Limited (hereinafter referred to as RJIL) providing details of inadequacy of E1s with M/s Vodafone India Limited (hereinafter, referred to as Vodafone) (a copy of the letter dated the 14th July, 2016 is annexed as Annexure-I).</td>
<td>In the paragraphs 1 to 4, TRAI has mentioned about receipt of letter dated 14th July, 2016 from RJIL, TRAI asking Vodafone to do needful and furnish response on the issues raised by RJIL vide its letter dated 19th July, 2016, and TRAI receiving a letter dated 19th August from Vodafone in response to TRAI’s letter dated 19th July, 2016 as well as receipt of letter dated 4th August, 2016 from RJIL, hence no comments.</td>
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<td>Para 2</td>
<td>The Authority, vide letter No. 10-6/ 2016-BB&amp;PA, dated the 19th July, 2016 asked Vodafone to do the needful and furnish their response on the issues raised by RJIL (a copy of the letter dated 19th July, 2016 is annexed as Annexure-II).</td>
<td>However, on perusal of Annexure-I, II and III as mentioned in these paragraphs, it has been observed that:</td>
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<td>Para 3</td>
<td>The Authority received a letter No. RJIL/TRAI/2016-17/341, dated the 4th August, 2016 from RJIL requesting the Authority to direct Vodafone to provide requisite number of additional E1s to remove congestion at inter-operator Points of Interconnection (hereinafter, referred to as POIs), which is severely hampering the ongoing test trial of RJIL’s services (a copy of letter dated the 4th August, 2016 is annexed as Annexure-III).</td>
<td>(a) RJIL sought immediate intervention of TRAI on the issue of denial of augmentation of POIs by the operators on the basis of its forecast and firm demand during the test phase of its services i.e. before commercial launch of services.</td>
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<td>Para 4</td>
<td>The Authority received a letter No. VII/LT/2016-17/331, dated the 19th August, 2016 from Vodafone in response to the Authority’s letter mentioned in the para 2 above (a copy of the letter dated the 19th August, 2016 is annexed as Annexure-IV).</td>
<td>(b) There was a dispute/disagreement between the operators, which related to the following points:</td>
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Further, on perusal of Annexure-III as mentioned in the para 3 of TRAI recommendations, it has been observed that RJIL raised a concern on the terms of Interconnect Agreement as being coercive and unilateral and said that it is based upon the provisions of Telecommunication Interconnection (Reference
Para 5

The Authority received a letter No. RJIL/TRAi/2016-17/411 dated the 12th August, 2016 from RJIL requesting the Authority to immediately direct the telecom service providers to provide PoIs to RJIL without any dimmer or delay, per capacities indented by RJIL in its letter dated the 21st June, 2016 addressed to respective telecom service providers. (A copy of letter dated the 12th August, 2016 is enclosed as Annexure-V).

Para 6

The Authority received a letter No. RSM/COAI/2016/183 dated the 2nd September, 2016 from COAI wherein it was mentioned that they are in no position, by way of network resources, or financial resources, to terminate volumes of traffic of RJIL which are markedly asymmetric. It was also mentioned that their members are not obliged to entertain interconnect requests which are derived from abnormal induced traffic patterns that game the IUC regime and are anti-competitive (a copy of the letter dated 2nd September, 2016 is annexed as Annexure-VI).

Interconnect offer) Regulation 2002. They also alleged interconnect agreements being virtually forced upon them. RJIL also expressed that TRAI direction as well as clause in Interconnect Agreement providing 90 days’ time frame for augmentation as being not able to serve the purpose. RJIL did not mention any launch date of its services but requested for augmentation to be completed within 7 days of receipt of requisite charges.

It is not clear as to whether TRAI has responded to any of RJIL concerns on the clauses and coercive execution of interconnect agreement or denied or qualified its direction dated 7th June 2005 specifying 90 days as not being applicable for maintaining QoS.

TRAi may please clarify and reconsider.

In the paragraphs 5 and 6, TRAI has mentioned about receipt of letter dated 12th August, 2016 from RJIL and letter dated 2nd September, 2016 from COAI, hence no comments. However, on perusal of Annexure-V and VI as mentioned in these paragraphs, it has been observed that:

(a) RJIL in its letter cited COAI communication dated 8th August 2016 which stated that its member operators are not expected to provide POI’s to RJIL during the test trials. RJIL demanded TRAI intervention to direct operators to provide POIs to RJIL without any demur or delay and take action against the errant TSPs for continued denial/delay in provisioning of POI’s and subsequent breach of respective Licenses.

(b) Though RJIL has attached copies of its letter dated 21st June 2016; however, the COAI’s captioned letter dated 8th August 2016 is not available in the Annexes attached with the Recommendations, as such, it is not clear as to whether TRAI took cognizance of the said letter of COAI.

(c) Vide letter dated 2nd September, 2016, COAI had also sought TRAI intervention to restore fair competition. From perusal of para 6 of TRAI Recommendations, it appears that TRAI has relied upon only some of the contents of COAI letter ignoring the points made in respect of RJIL test launch being conducted for some months; pseudo and abnormal asymmetric traffic patterns caused through unlimited free usage of voice and data; unfair competition; unlimited free voice services by RJIL and its negative impact on the other operators; abuse of IUC regime, etc.

On scrutiny of RJIL’s letter dated 21st June 2016, it has been observed that at the one hand M/s RJIL mentions that it expects over 100 million subscriber in the first year post launch of services; whereas on the other hand it says that RJIL
In view of the COAI's letter referred above, a meeting was held with telecom service providers including Vodafone on the 9th September, 2016 wherein Vodafone along with Bharti Airtel Limited and Idea Cellular Limited confirmed that they agree with all the letters of COAI including letter under reference. It was categorically conveyed to these telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs (a copy of the minutes of the meeting is annexed as Annexure-VII).

In this para TRAI has mentioned about a meeting with TSPs on 9th September, 2016 wherein, TRAI categorically conveyed to the three TSPs namely Vodafone, Bharti Airtel Limited and M/s Idea Cellular Limited that the consumers do not suffer because of the inadequacy of the POIs.

From the perusal of minutes of the meeting annexed as Annexure-VII, it is evident that the above mentioned TSPs have also raised several issues against RJIL; however, TRAI does not seem to have responded or looked into all of them for amicable resolution.

It has been observed that M/s RJIL had been approaching TRAI from July 2016 for its urgent intervention to remove congestion at inter-operator POIs. Though, TRAI has sought explanation from Vodafone and its reply was available with TRAI in first week of August 2016, however, TRAI conducted the first meeting on the issue on 9th September 2016.

TRAI may be in a better position to clarify and reconsider as to whether (i) TSPs took any action for mutual resolution of disputes/ differences on the issues raised by them; (ii) TRAI’s intervention was timely and the same was legally tenable only post the launch of RJIL commercial operations, which was made on 5th September 2016 as per DOT records.

The Authority received a letter No. RJIL/TRAI/2016-17/630, dated the 15th September, 2016 from RJIL providing details of call failure with Vodafone and seeking the Authority's intervention to resolve the matter in order to protect the interests of the Indian customers (a copy of the letter dated the 15th September, 2016 is annexed as Annexure-VIII).

In this para TRAI has mentioned about receipt of letter dated 15th September, 2016 from RJIL providing details of call failures with Vodafone and seeking TRAI's intervention, hence no comments. However, on perusal of Annexure-VIII as mentioned in the para, it has been observed that RJIL letter dated 15th September 2016 was issued within a week of TRAI's meeting held on 9th September 2016.

Since, RJIL had announced its commercial launch on 5th September 2016; the
The Authority, vide letter No. 10-6/2016-BB&PA dated the 19th September, 2016 asked Vodafone to furnish information on the steps taken by them after the afore-mentioned meeting of the 9th September, 2016 and to furnish information on traffic on POIs with RJIL during busy hour in a prescribed format (a copy of the letter dated the 19th September, 2016 is annexed as Annexure-IX).

The Authority received a letter No. VIL/LT/16-17/400 dated the 23rd September, 2016 from Vodafone in response to the afore-mentioned letter dated the 19th September, 2016, providing the information on traffic on POIs with RJIL during busy hour (a copy of the letter dated the 23rd September, 2016 is annexed as Annexure-X).

On perusal of the information furnished by Vodafone, the Authority, prima-facie, noted that in most of the Licensed Service Areas (LSAs), the percentage of failed call attempts during busy hour with RJIL is exorbitantly high, thus Vodafone has failed to meet the benchmarks for POI congestion prescribed in the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 at the POIs with RJIL and relevant provisions of the license. The Authority also noted that RJIL has been sending requests for enhancement of capacity on regular basis to Vodafone under intimation to TRAI.

In view of the above, a Show Cause Notice dated the 27th September, 2016 was issued to Vodafone asking as to why action under the provisions of the TRAI Act should not be initiated against them for violation of the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the provisions of Unified License and Unified Access Service License (a copy of the Show Cause Notice dated the 27th September, 2016 is annexed as...
**Annexure-XI.**

Para 13

A meeting was held by the Authority on the 30th September, 2016 with the CEO of Vodafone. In the meeting, Vodafone was requested to furnish information regarding congestion on the POIs with RJIL on daily basis to the Authority. Subsequently, through a letter dated the 3rd October, 2016, Vodafone was requested to furnish the information on traffic and congestion on POIs with RJIL in a prescribed format on daily basis (a copy of the Authority's letter dated the 3rd October, 2016 is annexed as Annexure-XII).

Para 14

In response to the Show Cause Notice as mentioned in para 12 above, the Authority received a letter no. VIL/LT/16-17/416, dated 7th October, 2016 from Vodafone wherein Vodafone provided the following grounds broadly as to why no action should be taken against them:

(i) TRAI has ignored the directly applicable and relevant directions of TRAI and provisions of interconnect agreement between the parties;
(ii) Compliance with the relevant conditions of the license agreement by Vodafone and TRAI ignoring non-compliance by RJIL of license conditions and TRAI’s own orders;
(iii) Inconsistent basis of calculation of projected demand for capacity by RJIL/undue delay on its part/demand in violation of license agreement by RJIL in its letters beginning from 21st June, 2016 that immediate demand is 22 million when it had test users.

(A copy of the letter no. VIL/LT/16-17/416, dated 7th October, 2016 is annexed as Annexure-XIII.)

Para 15

The Authority examined the grounds taken by Vodafone, in the light of the fact that in the meeting held on the 9th September, 2016, it was conveyed to the telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs. Accordingly, the Authority is of the view that the arguments made by Vodafone are not tenable as the Show Cause Notice was issued after providing sufficient time to Vodafone to comply with the Standards of Quality Of Service Of Basic Telephome Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the provisions of Unified License and Unified Access Service License. The argument of Vodafone that Show cause Notice was issued on the basis of one day's traffic is not correct in view of the fact that though Vodafone has furnished the information on traffic on POI with RJIL for one day only, the Authority has been continuously monitoring the situation of congestion at POIs with RJIL and situation has not improved.

However, on perusal of Annexure-XI as mentioned in para 12 of TRAI’s recommendations, it has been observed that TRAI’s SCN only alleged QoS and non-compliance of License conditions and did not mention penalty outcome of 50 crores for Licensing non-compliance while seeking Vodafone’s explanation.

Further, it is observed that though in para 14 of the recommendations TRAI has captured the points made by Vodafone in response to the SCN, however, it has responded to some of the grounds and has remained silent on other grounds viz. claim of Vodafone such as efforts made by Vodafone in augmenting the POIs; delay by RJIL in the operationalization of capacities.

Also from perusal of recommendations it appears that TRAI did not provide any hearing to Vodafone post submission of response to show cause notice.

Therefore, TRAI may like to clarify as to whether the recommendations will stand a legal scrutiny and may not be quashed on the ground of non-adherence to principles of natural justice.

TRAI may please clarify and reconsider.

In the paragraphs 15 to 19, TRAI has mentioned about examination of the grounds taken by Vodafone and TRAI’s decision thereupon. TRAI has indicated that arguments made by Vodafone are not tenable. However, it has been noticed that though analysis of the reply against some argument and view of TRAI thereon is available in the recommendations, many of the points have remained unaddressed.

Further, it is noted that as per interconnect agreement between M/s RJIL & M/s Vodafone India Limited (VIL), the time period prescribed for augmentation of POIs is 4 weeks’ notice period plus 90 days on receipt of requisite charges (Clause 9.1 & 9.2 of the interconnect agreement refers). However, the analysis of delay in providing POIs beyond 90 days on receipt of requisite charges by either party is not available in the recommendations.
significantly yet. The contention of Vodafone that POI congestion should be considered over a period of one month (average one month period) cannot be accepted as it would be unreasonable to assume that POI congestion averaged over one month would be within the benchmark of <= 0.5% when the POI congestion for each day separately is exceeding the benchmark. The argument of provisioning of interconnection capacities is required only post the commercial launch of services is also not tenable as RJIL had informed their requirement well before commercial launch as mentioned in para 5 above and telecom service providers are required to comply with the existing Regulations related to Quality of Service.

Para 16

The Authority is of the view that citing provisions of Direction no. 409-9/2005-FN dated the 7th June, 2005 for provision of interconnection within 90 days for delaying interconnection to RJIL by Vodafone or any reference to interconnection agreement is not tenable if a telecom service provider is not meeting QoS benchmark for POI congestion mandated through the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009.

Para 17

The Authority has further noted that Vodafone have not specifically replied to the violation of Clause 6.2 of the Unified license condition as mentioned in the Show Cause Notice dated 27th September, 2016. Moreover, the arguments cited by Vodafone with regard to non-intimation of the date of commercial launch etc. are primarily commercial and inter-operator issues and these grounds cannot be used for noncompliance of the terms and conditions of the License and Regulations issued by the Authority.

Para 18

The Authority also noted that Vodafone has created two separate trunk groups for outgoing and incoming calls from RJIL to circumvent the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 in spite of the fact that the existing interconnect agreement between Vodafone and RJIL clearly spell out that the process of converting total E1s existing at the POIs into one way E1s for the outgoing traffic of each party will take place at the end of two years. By creating separate trunk groups, Vodafone has effectively masked the actual position of congestion at POIs with RJIL and therefore the Authority is constrained to accept the congestion data furnished by RJIL. According to the recent congestion data furnished by RJIL vide letter no. RJIL/TRAI/2016-17/879, dated the 18th October, 2016, heavy congestion has been noticed at several POIs in various LSAAs (a copy of the RJIL’s letter dated the 18th October, 2016 is annexed as Annexure-XIV). Heavy congestion even after such a long period clearly reflects that Vodafone has not made serious efforts to comply with TRAI’s Regulations and License.

It needs clarity whether QoS norms are examined based on average traffic of one month or any part thereof for imposition of financial disincentives for violation of QoS Benchmarks. In the situation, wherein Vodafone has claimed that it has been taking action for provisioning of POIs and that there has been some delays on part of RJIL in commissioning those POIs, a fair analysis would indicate that for initial some days when the POI are not commissioning the POI congestion may be above the benchmark, however, as soon as the POIs are commissioned, the congestion comes down and may be within the benchmark for remaining period of the month. As such, the observations of few days during initial period may not hold good after averaging the result over a period of one month. Regulation on QoS has specified a methodology and the period over which the calculation of parameter congestion at POI has to be made to capture compliance to the prescribed benchmark. TRAI seems to ignore this aspect while finalizing its recommendations. Moreover, failure to meet QoS norms may be attributable to the TSP who is originating traffic, if all the POIs have been provisioned in the stipulated period in accordance with the interconnect agreement. TRAI may like to examine this aspect.

There is no specific mention in the interconnect agreement between MIs RJIL and Vodafone whether POIs demanded for catering to the requirement of customers are to be provisioned after launch of service or pre-launch also. During pre-launch, a TSP is not expected to acquire customers and testing with other operators is supposed to be for ensuring call flow. TRAI may like to examine this issue.

TRAI has claimed that they have been continuously monitoring the situation of congestion at POIs and situation has not improved significantly yet. However, there is no evidence on record, which shows the basis of such observation of TRAI. Further there is no evidence in the recommendation which shows that TRAI has taken into account the submissions of all TSPs during this period.

Vodafone through its various letters and data submitted to DOT has claimed that (i) it has provided more than required numbers of POIs to RJIL, (ii) pointed out that the congestion data sent by RJIL is wrong, inconsistence and devoid of merits. Similar letters might have been received by TRAI; however, from the recommendations, it seems that these points have not been taken into consideration, which TRAI may like to examine.

Though the reasons for delay in provision of POI by either party is not available in TRAI recommendations, it is not clear as to whether TRAI has examined the reasons for delay in provisioning of POI beyond the stipulated period of 90 days attributable to either party. Managing the POIs for the outgoing traffic is the prime responsibility of the operator, who originated the traffic. Whether any
The Authority further noted that interconnect agreement between Vodafone and RJIL also provides that each party shall ensure the services it provides to the other party are of the quality and comparable to what it provides itself and shall maintain the same degree of efficiency in maintaining and repairing faults in the same manner as it maintains and repairs similar faults within its networks. By way of segregating E1s into outgoing and incoming E1s, Vodafone has failed to provide same quality to RJIL as it provides to itself.

failure to meet the QoS benchmark of POI congestion before completion of 90 days period specified in TRAI direction/ Interconnect Agreement is to be taken cognizance, if yes, then what is the sanctity of prescribing 90 days' time limit? TRAI may like to examine and clarify this aspect in the recommendations.

It has been observed that RJIL sought intervention of TRAI for ensuring adequate POIs before launch of services.

Further, from the plain reading of clause 6.2 of Unified License it is evident that the TSP has to meet the requirement; however, there is no clarity as to whether this has to be met forthwith or within the stipulated time limit for providing the interconnection as specified by TRAI in its Direction dated 7th June 2005.

TSPs have to comply with the provisions of License as well as Regulations/ Directions/ Order of TRAI from time to time. The interconnect agreement entered into by both M/s RJIL and M/s VIL must have been filed in TRAI in pursuance of extant TRAI Regulations. Whether, TRAI had examined the interconnect agreement filed by the parties and struck down any of its clauses or the agreement as a whole is not clear. If not, in such situation, the parties are bound by the terms of interconnect agreement between them. Whether M/s RJIL had provided a forecast in writing in advance for its requirements of port capacity for telephony traffic to enable the other party to dimension the required capacity in its network in pursuance of clause 9.5 of the interconnect agreement is not clear. Further, there is no clarity as to when M/s RJIL intimated other operators about the date of launch of its services. In addition, whether M/s RJIL has taken suitable action as provided in the interconnect agreement on dispute resolution with M/s VIL is also not clear. The Department also noted that the trunk groups are created with the consent of both the parties for effective implementation. In such a scenario, segregation of trunk groups in outgoing and incoming might have been done with the consent of the other party i.e., M/s RJIL in the case. It is not clear as to whether TRAI had ascertained from the submission of both the parties that they had agreed for creation of trunk groups in the manner it was created.

It appears that opportunity has not been given to M/s Vodafone to explain the points raised in para 18 of the recommendations. This appears to be against principles of natural justice.

Fault report of the circuits in the trunk groups is not available in the recommendations. Also, it is not clear as to how TRAI has concluded (in para 19 of the recommendations) that by segregating trunk groups in outgoing and incoming Vodafone failed to provide same in degree of efficiency and same quality in maintaining and repairing faults.
| Para 20 | The Authority has observed that in Bharti Airtel v/s UOI in Civil Appeal no. 2803 of 2014, the Supreme Court of India observed that the telecom licenses are in the nature of largesse from the State. Therefore, Vodafone as a licensee, should operate in a consumer friendly manner, should not indulge in anti consumer behavior and should have provided sufficient number of E1s at POIs for ensuring that calls from consumers of either parties are successful. |
| TRAI may please clarify and reconsider. | In this para, TRAI has quoted observations of Hon’ble Supreme Court and justified that Licensees are required to operate in a consumer friendly manner and desist from anti-consumer behaviour and linked the same to provisioning of POIs, however, the said principle applies to both the parties keeping in view the timeframe stipulated in TRAI directions / Interconnect Agreement for augmentation of POIs. It may be noted that Clause 29.4 of Unified License provide for carrying out performance tests on TSP’s network to evaluate Quality of Service parameters prior to grant of permission for commercial launch of the service. After successful completion of interconnection tests to ascertain that the network meets the specified standards on Quality of Service (QoS), the TSP is supposed to launch its services. However, it appears that RJIL has not completed such tests before seeking permission for commercial launch and launched its services on 5th September 2016 without resolving the issues with other operators amicably within the existing regulatory framework and taken their customers to task by providing poor services. If that is so, whether TRAI took cognizance of this fact before finalizing its recommendations is not clear. |
| Para 21 | From the above examination, it emerges that: |
| (i) Vodafone has failed to comply with Clause 3 of the Unified License which reads as under: "The Licensee hereby agrees and unequivocally undertakes to fully comply with all terms and conditions stipulated in this License Agreement and without any deviation or reservations of any kind." |
| (ii) Vodafone has failed to comply with Clause 16.1 of the Unified Access Service License which reads as under: "The LICENSEE shall be bound by the terms and conditions of this Licence Agreement as well as by such orders/ directions/ regulations of TRAI as per provisions of the TRAI Act, 1997 as amended from time to time and instructions as are issued by the Licensor/TRAI." |
| (iii) Vodafone has failed to comply with Clause 16.1 of the Unified Service License which reads as under: "The Licensee shall be bound by the terms and conditions of this License Agreement as well as instructions as are issued by the Licensor and by such orders/ directions/ regulations of TRAI as per provisions of the TRAI Act, 1997 as amended from time to time." |
| In the paragraphs 21 to 23, TRAI has concluded its findings in respect of non-compliance to various license conditions, QoS Regulations, it’s Direction dated 7th October 2016 by Vodafone and finally summarised its recommendations. |
| On examination of these paragraphs, the Department observed that in sub-para (i) to (ii) of para 21 of the recommendations, no specific details for violation of the clauses of License Agreement has been mentioned by TRAI. Further, these clauses are general clauses seeking compliance of terms and conditions of the License Agreement in general. |
| In sub-para (iv) of para 21 of the recommendations, TRAI has concluded that Vodafone has failed to provide E1s at the POIs of RJIL to ensure that calls to all destinations are completed; however, based on the available records, the Department noted that Vodafone and RJIL has entered into mutually agreed interconnect agreement in March 2014/ January 2015. The said interconnect agreement was filed in TRAI and if any of the provisions of the said interconnect agreement was against the conditions of License Agreement or TRAI’s determinations/orders/regulations, the same should have been set aside by TRAI. Further, Vodafone has provided POIs to RJIL for testing purpose and it is RJIL, who has to ensure that the calls from its network are completed to all destinations |
(iv) Vodafone has failed to provide E1s at the POIs of RJIL to ensure that calls to all destinations are completed. Clause 6.2 of the Unified License in this regard reads as under:

"It shall be mandatory for the LICENSEE to interconnect to/ provide interconnection to all eligible Telecom Service Providers (eligibility shall be determined as per the service provider's License Agreement and TRAI's determinations/orders/regulations issued from time to time) to ensure that the calls are completed to all destinations"

(v) The sub-clause 27.4 of Clause 27 on "Network Interconnection" of the Part-I of Unified license reads as under:

"27.4 Licensee shall interconnect with other Telecom Service Providers at the Points of Interconnection (POI) subject to compliance of prevailing regulations, directions or determinations issued by TRAI. The charges for accessing other networks for inter-network calls shall conform to the Orders/Regulations/ Guidelines issued by the TRAI/ Licensor from time to time. The Interconnection Agreements will, inter-alia, provide the following:

(a) To meet all reasonable demand for the transmission and reception of messages between the interconnected systems.
(b) To establish and maintain such one or more Points of Interconnect as are reasonably required and are of sufficient capacity and in sufficient number to enable transmission and reception of the messages by means of the Applicable Systems,
(c) To connect, and keep connected, to their Applicable Systems;"

(vi) The sub-clause 26.2 of Clause 26 on "Network Interconnection" of Unified Access Service License reads as under:

"26.2 The LICENSEE may enter into suitable arrangements with other service providers to negotiate Interconnection Agreements whereby the interconnected networks will provide the following:

(a) To meet all reasonable demand for the transmission and reception of messages between the interconnected systems.
(b) To establish and maintain such one or more Points of Interconnect as are reasonably required and are of sufficient capacity and in sufficient numbers to enable transmission and reception of the messages by means of the Applicable Systems,
(c) To connect, and keep connected, to their Applicable Systems;"

(vii) It is evident from the above Clauses that the licensees are mandated to provide interconnection to all eligible telecom service providers. through these POIs. Congestion on any POI cannot be taken to mean that calls from a network are not being completed to all destinations. Moreover, as per reports from RJIL, POIs have been provided by Vodafone within the stipulated timeframe in terms of interconnect agreement.

Further, from plain reading of clause 6.2 of Unified License it is noted that the Licensee has to meet the requirement; however, nowhere it is mentioned that this requirement is to be met by the Licensee forthwith or within the stipulated time limit for providing the interconnection as per TRAI regulations/ directions/ orders. Therefore, the Department is of the opinion that this clause needs to be read with other clauses of the license as well as regulations/ directions/ orders of TRAI in this regard as well as provisions of interconnect agreement.

In sub-para (v) & (vi) of para 21 of the recommendations, TRAI has quoted clauses of Unified license/ Unified Access Service License, which are related to entering into interconnection agreement by the licensee within the extant regulatory framework. Since, Vodafone and RJIL has already signed interconnect agreement as stated above and no evidence is available that TRAI has set aside the said agreement; therefore, the Department is of the view that this clause may not be attracted in this case.

In sub-para (vii) of para 21 of the recommendations, TRAI has concluded wilful violation of the license conditions by Vodafone taking cognizance of COAI's letter. In this respect, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over statement of the operator or their association. In para 14 (ii) & (iii) of recommendations, it has been captured by TRAI that Vodafone has made consistent efforts in resolving the issue of provision of POIs within the framework of interconnect agreement. Therefore, the above statement does not match with the action & conduct of Vodafone and as such use of the said statement for imposition of penalty may not be appropriate.

In sub-para (viii) of para 21 of the recommendations, TRAI has concluded that Vodafone has failed to meet QoS benchmarks. However, the QoS parameters are to be met by both the parties and they are responsible for their originating traffic, if the POIs have been provisioned within the stipulated period of 90 days, otherwise the originating operator should have projected demand for POIs well in time keeping in view the provision of interconnect agreement. TRAI appears to have not assessed the responsibility of congestion attributable to either Vodafone or RJIL in view of above and reflected the same in the recommendations.

In sub-para (ix) of para 21 of the recommendations, TRAI has stated a factual situation; however, the department is of the opinion that both RJIL and Vodafone
However, as mentioned in Para 6 above Vodafone along with other telecom service providers have, jointly through their association (COAI), declined Point of Interconnection to RJIL which is wilful violation of the above mentioned license conditions.

(viii) Vodafone has failed to comply with "The Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009" dated the 20th March, 2009, which prescribe a parameter for congestion of ≤0.5% on individual POI.

(ix) Due to non-provision of sufficient number of E1s, a large number of consumers of RJIO are continuously suffering.

(x) COAI’s letter dated the 2nd September, 2016 which was confirmed by Vodafone in the meeting held on the 9th September, 2016 clearly indicates attempt by three service providers namely Vodafone, Vodafone India Limited and Idea Cellular Limited to stifle competition in the market and to willfully violate the license conditions;

Para 22 Interconnection is extremely important from a consumer perspective. Telecom users cannot communicate with each other or connect with services they demand unless necessary interconnection arrangements are in place. Ensuring the effective interconnection is one of the important functions, as bestowed upon the Authority under TRAI Act, 1997, and accordingly the Authority has been constantly monitoring the situation of congestion on points of interconnection and has also issued a Direction No. 10-6/2016-BB&PA dated 7th October, 2016 to all telecom service providers holding Unified License (with Access Service authorization), Universal Access Service License, Cellular Mobile Telephone Service License and Basic Service License to comply with the Standards of Quality Of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the terms of conditions of their respective licenses.

Para 23 While the Authority has been taking necessary steps to ensure effective interconnection between Vodafone and RJIL, it is evident from Para 21 that Vodafone is in non-compliance of the terms and conditions of license and denial of Interconnection to RJIL appears to be with ulterior motive to stifle competition and is anti-consumer. The act of Vodafone is against public interest. Non-compliance of terms and conditions of the license, under Section of 11(1)(a)(iii) of the TRAI Act, 1997 warrants recommendations for the revocation of the license. However, the Authority is mindful of the fact that revocation of the license will entail significant consumer inconvenience and are responsible for this situation.

In sub-para (x) of para 21 of the recommendations, TRAI has concluded that the three service providers namely Airtel, Idea Cellular Limited and Vodafone India Limited by confirming the contents of COAI’s letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions; however, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over statement of the operator or their association and the same should have been given due consideration as mentioned in preceding paragraphs.

The Department noted that the core dispute is that RJIL launched their services on 5th September, 2016 without arranging/activating the adequate POIs, which were commensurate to terminate traffic in the network of the TSPs. As per terms & conditions of the license agreement, it is the obligation of RJIL to arrange adequate POIs before the launch/provisioning of its services to the consumers. But RJIL has claimed that they could not arrange this because it was denied by the TSPs. Even if it is assumed that the POIs were denied by the TSPs, it is inappropriate for RJIO to launch the services without arranging POIs or without settling the dispute, if any, which has led to failure of calls and inconveniences to the consumers. No evidence has been recorded by TRAI or submitted by RJIL that it has exhausted all legally available means within the extant regulatory framework or as per conditions of interconnect agreement to get those POIs. This needs further examination.

As TRAI has relied on COAI’s letter dated 2nd September, 2016 for concluding that the three service providers namely Airtel, Idea Cellular Limited and Vodafone India Limited by confirming the contents of COAI’s letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions, it was prudent for the Department to examine the contents of the COAI’s letter dated 2nd September, 2016. The Department observed that the said letter of COAI is generic in nature and raises various issues such as asymmetric traffic, IUC and other issues on account of free services and in the background of these issues COAI mentioned that due to such abnormalities the member operators are not obliged to provide POIs for RJIL’s free traffic. This letter of COAI and confirmation by operators as well as individual action & conduct of operators needs further examination.

From the recommendations, it is also not visible if TRAI conducted any on site audit to verify the claims made by RJIL or the TSPs or to reconcile the data submitted by RJIL and the TSPs. It appears that TRAI has stretched the QoS issues to Licensing compliance without sufficient evidence or without substantiating the issues.
In addition to the above, the Department also noted that Section 11(1)(a) (iii) of TRAI Act, 1997 provides that TRAI has the function of making recommendations for revocation of licence for non-compliance of terms and conditions of licence; however, in the para 23 of the recommendations, TRAI has recommended a penal action, which is not covered under the TRAI Act.

Further, TRAI’s “Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service (Fourth Amendment) Regulations, 2015” dated 15th October 2015 provide for financial disincentive in case of non-compliance of QoS benchmarks; however, TRAI has not invoked the said provisions in the instant case and went beyond the mandate given to it under the TRAI Act.

TRAI may please clarify and reconsider.