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TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

NEW DELHI, 25th March 2013

F. NO. 305-8/2012-QOS.----- In exercise of the powers conferred by section 36, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations to amend the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006 (5 of 2006), namely:-

QUALITY OF SERVICE (CODE OF PRACTICE FOR METERING AND BILLING ACCURACY) (AMENDMENT) REGULATIONS, 2013 (4 OF 2013)

1.(1) These regulations may be called the Quality of Service (Code of Practice for Metering and Billing Accuracy) (Amendment) Regulations, 2013.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In regulation 2---

(a) after clause (iv), the following clauses shall be inserted, namely:-

“(iva) “Quarter” means a period of three consecutive months ending on the 30th June, the 30th September, the 31st December and the 31st March of the financial year;

(ivb) “year” means the financial year;

3. For regulation 6 of the principal regulations, the following regulations shall be substituted, namely:-

“6. Audit of Metering and Billing System----(1) The Authority may, from time to time, notify the panel of auditors, who meet the eligibility conditions specified by the Authority in this regard, to audit the metering and billing system of the service providers.

(2) Every service provider shall, by the 30th April of every year, appoint an auditor from the panel of auditors notified by the Authority under sub-regulation (1) to audit at its cost, its metering and billing system of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service on annual basis:

Provided that the Authority may, on receipt of request from the service provider, extend the time for appointment of the auditor and the service provider shall appoint the auditor within such extended time:

Provided further that the service provider may appoint an auditor for one or more services:

Provided also that the service provider shall not appoint an auditor-

- (a) consecutively for more than two years;
- (b) who is its internal auditor; and
- (c) with whom it has business relationship during the last one year.

Explanation: For the purpose of this regulation, audit of the metering and billing system under these regulations shall not be treated as business relationship.

(3) The Authority may, from time to time, issue such guidelines and checklist, as it may deem fit for audit of the metering and billing system of the service provider and every service provider shall arrange audit of their metering and billing system in accordance with such guidelines and checklist.

4. After regulation 6 of the principal regulations, the following regulations shall be inserted, namely----

"6A. Procedure for auditing of call data records.----(1) The call data records of one month generated under different tariff plans shall be audited in each Quarter in a manner so as to include.---

- (a) three prepaid plans that have the maximum number of customers at the beginning of the Quarter;
- (b) two new prepaid tariff plans launched during the Quarter;
- (c) two Special Tariff Vouchers having maximum number of customers at the beginning of the Quarter;
- (d) two prepaid data plans having maximum number of customers at the beginning of the Quarter;
- (e) two post paid plans having maximum number of customers at the beginning of the Quarter;
- (f) two new post paid tariff plans launched during the Quarter; and
- (g) two new post paid data plans having maximum number of customers at the beginning of the Quarter:

Provided that tariff plans shall not include corporate tariff plans, not offered to all the consumers:

Provided further that in case the new tariff plans launched during the Quarter is less than the number of tariff plans specified under this regulation for audit, other tariff plans of the service provider having maximum number of customers shall be audited.

(2) Every service provider shall provide to the auditor, within thirty days of receipt of request, the call data records and other documents, as may be required by the auditor, for conduct of audit.

(3) If the auditor notices the instance of overcharging, he shall report the instance of overcharging to the service provider, who shall, within fifteen days of receipt of such report, conduct an analysis to verify whether the observation of the auditor is correct and in case, the observation of the auditor is found to be correct, the amount overcharged from the customers shall be refunded to such customers within two months of the receipt of the report and an intimation to this effect shall be sent to the auditor and in case the observation of the auditor is found to be incorrect, the reasons for the same shall be communicated forthwith to the auditor.

(4) Every service provider shall analyse the audit observations and provide to the auditor, for recording in the audit report, detailed comments thereon including--

- (a) reasons for occurrence of the problem;
- (b) date of occurrence of the problem; and
- (c) date of rectification of the problem.

(5) Every service provider shall submit to the Authority by the 31st July of every year in which audit of their metering and billing system is completed, an audit report certified by the auditor separately, for Basic Telephone Service (wireline) and Cellular Mobile Telephone Service, for each service area, in such format as the Authority may specify, from time to time, by an order.

(6) Every service provider shall submit to the Authority by the 15th November of every year, an action taken report on each audit observation containing therein the details of the action taken on such observations, in such format, as may be specified by the Authority, from time to time, by an order and such details shall include----

- (a) reasons for occurrence of the problem;
- (b) date of occurrence of the problem;
- (c) date of rectification of the problem;
- (d) action taken to address the problem;
- (e) number of customers affected in respect of cases where overcharging was observed by the auditor and total amount involved;
- (f) number of customers under item (e) to whom refunds were made within the time limit specified under sub-regulation (3) and total amount so refunded;
- (g) number of customers to whom refunds were made beyond the time limit specified under sub-regulation (3) and the total amount so refunded; and
- (h) number of customers to whom refunds could not be made and total amount which could not be refunded.

6B. Obligations of auditor---(1) Every auditor shall----

- (a) undertake audit of the metering and billing system of a service provider in accordance with the guidelines and checklist issued by the Authority

under these regulations and it shall not undertake audit of a service provider consecutively for more than two years;

(b) comply with the provisions of the regulations, directions, orders and instructions issued by the Authority, from time to time.

(2) Every auditor shall----

(a) ensure that the audit is conducted in fair and transparent manner;

(b) ensure that the confidential data collected during the conduct of audit of a service provider is not shared with any person except in the manner provided under these regulations;

(c) submit to the Authority report on progress of audit in such format and at such intervals as the Authority may specify from time to time;

(d) report immediately to the service provider instances of overcharging noted by it during the conduct of audit;

(e) examine on receipt from the service provider, under regulation 6A, the reasons for non-acceptance of the audit observation on overcharging in excess of the applicable tariff, whether such reasons are acceptable or not and, in case the auditor does not accept reasons furnished by the service provider, he shall report such cases in the audit report along with his observations thereon;

(f) submit to the Authority, a monthly progress report on action taken by the service provider on instances of overcharging reported under regulation 6A, in such format, as may be specified by the Authority, from time to time;

(g) verify the action taken by the service provider on instances of overcharging reported under regulation 6A and shall include the findings thereof in the audit report;

(h) be responsible for completing the audit within the time limit to enable the service provider to submit the audit report to the Authority within the time limit specified under regulation 6A;

(i) check, while auditing the metering and billing system of a service provider, compliances of the service provider to the Code of Practice for Metering and Billing Accuracy laid down in the regulation and, based on his assessment, he shall prepare an audit report containing ----

- (i) separate audit report for each licensed service area audited by him;
- (ii) the methodology adopted for carrying out the audit;
- (iii) details of tariff plans audited;
- (iv) deficiency noted by him with respect to each of the code or quality parameter laid down in the Code for Practice for Metering and Billing accuracy and his comments on compliance reported by the service provider;
- (v) certificate that he has received all information and explanation from the service provider necessary for the

conduct of audit;

- (vi) comments on the authenticity of the information received from the service provider for the purpose of the audit;
- (vii) details of test calls, sample analysis made and the results thereof, separately for each audit observations;
- (viii) analysis of the complaints lodged in the records of the service provider to identify whether the service provider had undertaken root cause analysis of such complaints; and
- (ix) verification of action taken on the audit observations in the preceding year; and

(j) include in the audit report all the comments received from the service provider under regulation 6A against each audit observation.

(3) The Authority may refer complaints relating to billing, value added services and other complaints for verification or investigation by the auditor and every auditor, to whom such complaints have been referred by the Authority, shall verify and investigate such complaints and furnish report thereon to the Authority within such time as the Authority may specify, from time to time.

(4) If an auditor fails to comply with the provisions of these regulations, he shall be liable to be removed from the panel of the auditors:

Provided that reasonable opportunity shall be given to the auditor to explain the non-compliance observed by the Authority.

6C. Consequence for failure of the service providers to submit audit report and action taken report-----

(1) If a service provider contravenes the provisions of sub-regulation (5) and sub-regulation (6) of regulation 6A, it shall, without prejudice to the terms and conditions of its licence, or the provisions of the Act or rules or regulations or orders made, or, directions issued, there under, be liable to pay an amount, by way of financial disincentive, not exceeding rupees one lakh per report for every week or part thereof during which the default continues, as the Authority may, by order, direct:

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

(2) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.

6D. Consequence for failure of the service providers to refund overcharged amounts to customers-----

(1) If a service provider contravenes the provisions of sub-regulation (3) of regulation 6A, it shall,

without prejudice to the terms and conditions of its licence, or the provisions of the Act or rules or regulations or orders made, or, directions issued, there under, be liable to pay an amount, by way of financial disincentive, equivalent to the amount overcharged which was not refunded, as the Authority may, by order, direct:

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

Provided further that no financial disincentive shall be levied under this regulation for failure to refund the excess charges if financial disincentive for such overcharging has been levied for violation of the provisions of the Telecommunication Tariff Order, 1999.

(2) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.

6E. Consequence for failure to provide comments on audit observations in the Action taken report-----

(1) If a service provider fails to provide details of the action taken on the audit observations under sub-regulation (6) of regulation 6A or it has submitted details of action taken which it knows or believes to be false or does not believe to be true, it shall, without prejudice to the terms and conditions of its licence, or the provisions of the Act or rules or regulations or orders made, or, directions issued, there under, be liable to pay an amount, by way of financial disincentive, not exceeding rupees ten lakhs per action taken report, as the Authority may, by order, direct:

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

(2) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority."

5. In the Code of Practice for metering and billing accuracy,-----

(a) for clause 1.1, the following clause shall be substituted, namely:-

"1.1 Before a customer is enrolled for any telecommunication service, he shall be provided the detailed information relating to the tariff applicable for that service."

(b) for clause 1.2, the following clause shall be substituted, namely---

"1.2 The customer shall be provided a copy of the Customer Acquisition Form at the time of enrollment and shall also be informed in writing, in accordance with the regulations, directions and orders issued by the Authority, not later than one week after the activation of service, about ----

- (i) the tariff plan subscribed by him;
- (ii) quantity related charges such as the charge for each SMS message, or kilobyte of data etc.;
- (iii) accuracy of measurement of time, duration and of quantity, and also the resolution and rounding rules, including the underlying units, used when calculating the charges for an individual event or an aggregation of event; and
- (iv) contractual terms and conditions for provision, restriction and termination of service:
- (c) after clause 1.3, the following clause shall be inserted, namely:-
- "1.4 The information about the tariff plans, Plan Vouchers, Top Up Vouchers, Special Tariff Vouchers and Combo Vouchers on offer shall be available on the website of the service provider in accordance with the regulations, directions and orders issued by the Authority, from time to time."
- (d) for clause 3.1, the following clause shall be substituted, namely:-
- "3.1 All charges levied for telecommunication services levied on the customer shall be consistent with the tariff applicable to the customer."

(Rajeev Agrawal)
Secretary

Note.1.--- The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, No.42, dated the 22ndMarch, 2006 vide notification number No. 305-8/2004-(QoS) dated the 21stMarch, 2006.

Note.2.--- The Explanatory Memorandum explain the objects and reasons of the Quality of Service (Code of Practice for Metering and Billing Accuracy)(Amendment) Regulations, 2013.

Explanatory Memorandum

TRAI has laid down the Code of Practice for Metering and Billing Accuracy through the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation, 2006 (5 of 2006) dated the 21st March 2006. These regulations contain a Code of Practice for Metering and Billing Accuracy that has to be complied by every Basic Service Provider and Cellular Mobile Service Provider. These regulations also provides for TRAI to notify a panel of auditors to audit the Metering and Billing System of service providers to ensure that the service providers comply with the Code. The service providers have to appoint one of the auditor from the panel notified by TRAI and has to submit an audit report by 30th June every year. The service providers shall take corrective action on the inadequacies, if any, pointed out by the auditor in the audit report and an action taken report thereon shall be filed with TRAI not later than 30th September every year.

2. The audit of the metering and billing system of service providers has been under implementation since the year 2006-07. Recently, it is observed that the service providers are submitting audit reports late, in a number of cases. From the discussions with the Auditors on delayed submission of audit reports, it emerged that the main reasons for such delays are on account of delays on the part of service providers in providing the required CDRs for the selected plans, supporting documents required and comments on audit observations. In a number of cases the service providers have also submitted the Action Taken Reports late. Hence financial disincentives for such delay in submitting audit reports and Action Taken Reports need to be in place, to strengthen the effectiveness and compliance of the said regulations.

3. To ensure that the service providers take corrective action on the audit observations, including refund of excess charges to affected customers, suitable financial disincentives need to be in place.

4. A Consultation Paper was issued on 27th November, 2012, seeking the comments of stakeholders on the following proposed measures for addressing the above issues in the implementation of the regulations:

- a. Financial disincentive at the rate of Rs.50,000/- per day for delay in submission of audit reports and action taken reports by the service providers.
- b. Financial disincentive not exceeding Rs.10,00,000/- per action taken report for false or incomplete information in the action taken report.
- c. Increase in the frequency of audit of Call Data Records to twice in a year, one in each half year, as against the present audit of once a year.
- d. Simultaneous reporting of instances of overcharging to TRAI by the auditor and monthly progress report on the action taken by service providers on such audit reports so as to ensure that wherever overcharging has been observed by the auditor all the affected customers are refunded expeditiously.

- e. In case the refund to affected customers is not made within one month of the audit observations, financial disincentive equivalent to the amount of overcharged amount to be deposited with TRAI.
- f. Financial disincentives of Rs.10 lakhs per audit report on service providers for giving incomplete audit report without adequate comments.
- g. Service providers to appoint auditor based on nomination by TRAI at audit fees fixed by TRAI.

5. Comments received from various stakeholders were uploaded in the TRAI website. An Open House Discussion on the consultation paper was held on 09th January 2013.

6. Regarding the proposals to impose financial disincentives for (i) delay in filing the audit reports and action taken reports; (ii) giving false or incomplete information in the action taken report; (iii) giving incomplete audit report without adequate comments and (iv) delay in refunding the excess charges levied to affected consumers, one of the industry associations and some of the service providers have stated that Telecom Regulatory Authority of India Act, 1997 does not confer upon the Authority power to impose penalty in the form of financial disincentives. In this context, it is stated that the TRAI Act confers power on the Authority not only to regulate but also to ensure the compliance of the provisions of the regulations. The word "ensure" has mandatory connotation, it means "make certain". Furthermore, the Hon'ble Supreme Court, in its judgment dated the 17, Aug, 2007, in Civil Appeal No. 2104/2006 (Central Power Distribution Co. &Ors Vs. CERC &Anr), inter-alia, held that "it is well settled that a power to regulate includes within it power to enforce". It will not be out of place to mention that there are a catena of judgments by the Supreme Court wherein the Hon'ble Court has repeatedly re-stated the proposition that legislation should be read and interpreted so as to further the purpose of its enactment and not in a manner that derogates from its main objectives. The Hon'ble Supreme Court in its judgment in the case of State of Karnataka Vs. Vishwabharthi House Building Co-operative Societies and Ors. [(2004) 5 SCC 430], quoted with approval the judgment of Hon'ble Guwahati High Court in the case of Arbind Das Vs. State of Assam &Ors. [AIR 1981 Gau 18 (FB)] wherein it was inter-alia, held that where a statute gives a power, such power implies that legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt out in the statute. The Hon'ble Court further held that in determining whether a power claimed by a statutory authority can be held to be incidental or ancillary to the powers specially conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purposes of the provision of the statute which confers power on the Authority in exercise of such powers. The relevant part of the said judgment reads as under:-

"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power"

even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority. In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power."

7. In view of the above, the Authority has power to impose financial disincentives on the service providers for non-compliance of the provisions of the Regulations. Keeping in view the comments received from the stakeholders and the need to ensure compliance with the Quality of Service regulations, these regulations have been formulated.

8. There were suggestions from industry association and some of the service providers that there should be provision for extension of time for submission of audit reports and action taken reports on genuine grounds. The Authority felt that the prevailing system of audit, such as late appointment of auditor and CDR audit of the last quarter etc. were contributing to delay. Hence, the Authority has prescribed for sample CDR audit for a month in every quarter, which will be representative of the whole year. Further, the regulations also mandate appointment of auditor by 30th April of every year. The Authority feels that because of these new provisions in the regulations the possibility of delay in submission of audit report and action taken report could be dismal. However, since provisions have been made for financial disincentives for delayed submission of audit report and action taken report and in order to have the service provider sufficient time to cover up for unavoidable delays, if any, the Authority has decided to revise the date for submission of audit report to 31st July and action taken report to 15th November of every year.

9. The Authority will be issuing, from time to time, the Guidelines for Audit and Checklist for Audit of the Metering and Billing System. The audit of the metering and billing system has to be undertaken strictly in accordance with these Guidelines for Audit and Checklist for Audit of the Metering and Billing System.

10. The audit of the Metering and Billing System shall be done annually i.e. only once a year. However, during this audit, the audit of the CDRs shall be done throughout the year in such a way that in every quarter one month CDRs of the selected plans/Special Tariff Vouchers are audited. The service providers and their associations have raised concerns about more than one CDR audit mainly on the ground of more resources and manpower.

However, the Authority has prescribed CDR audit every quarter on account of the fact that CDR audit is the most important part of the metering and billing audit. The service providers are launching new plans quite frequently and from the experience of the auditors it has come to know that problems are more often found in new plans. The Authority feels that CDR audit should be representative of the whole year rather than for a particular period. Also this frequency will be easy for the service providers to extract the CDRs when it is live in the system.

11. In these regulations, considering complaints being received about data usage and large number of Special Tariff Vouchers being offered in the market, the Authority has included in the CDR audit, data plans and Special Tariff Vouchers.

12. In case the audit observations find excess charging, the service provider shall refund the overcharged amounts to affected customers within two months. The Authority is of the view that two months time period is sufficient to effect refunds in all cases. In case of violation, the service provider is liable to pay financial disincentive.

13. In these regulations, the Authority has laid down the obligations of the auditor clearly so that there is transparency in the functioning of the auditor. This will also help TRAI in getting timely information about the audit from the auditor and the progress of refunds, if any.

14. To ensure that the auditors function independently without any influence from the service providers, TRAI had taken certain steps in the past, like restriction in the number of service providers an auditor can take work from, restriction on working with a service provider for not more than two years consecutively. But there were still concerns about the quality of metering and billing audit and the auditors had suggested that TRAI may fix the remuneration for the auditor and nominate the auditor for a service provider. During consultation process the service providers and their associations had opposed this proposal. Presently, the panel of auditors is notified by TRAI and metering and billing audit requires considerable expertise in audit of online charging. The Authority will explore the possibility of enlarging this panel. Once this panel is further enlarged, the Authority may consider further restrictions in the appointment of auditor. The Authority has considered the possibility of fixing the audit fees. However, in the absence of data for fixing audit fee, the Authority has decided not to fix the audit fee for the present. At the same time, the Authority expects that with closer monitoring of the audit and provisions for removal from the panel, provided in these regulations, the quality of the audit could be improved significantly.