

भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA
भारत सरकार /Government of India



DIRECTION

Date: 30th November 2017

Subject: Direction under Section 13 of the Telecom Regulatory Authority of India Act, 1997 to deposit in TRAI Consumer Education and Protection Fund, the excess amount charged from the subscribers in violation of the licence conditions.

No.108-8/2006-NSL-II (Part) (Vol.II) --- Whereas the Telecom Regulatory Authority of India (hereinafter referred to as the Authority), established under sub-section (1) of section 3 of Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as TRAI Act), has been entrusted with discharge of certain functions, inter-alia, to regulate telecom services, ensure compliance of terms and conditions of licence, protect interests of the consumers of the telecom services;

2. And whereas the Department of Telecommunication, vide its letter dated 20th May, 2005 and subsequent clarification dated 16th June 2005, amended the licences issued to the Cellular Mobile Telephone Service Providers, Unified Access Service Provider, Basic Telephone Service Providers and National Long Distance Service Providers, inter-alia—

(a) permitting inter-service area connectivity between access service providers within the States of Maharashtra, West Bengal, Tamil Nadu and Uttar Pradesh treating the calls made within a State in the aforesaid four States as intra-service area calls for the purpose of routing of calls and levying of access deficit charge;

(b) clarifying that the Interconnection Usage Charges, the access deficit charge and the tariff shall be applicable as per the prevailing Regulation, Determination, Direction and Order of the Authority; and

(c) giving option to the access service providers to take lease lines to establish inter-service area connectivity or to continue with the existing interconnect arrangement for routing of calls in these service areas, however, the calls will be treated as intra-service area calls;

3. And whereas subsequent to the aforesaid amendment of licence conditions, the access service providers of the respective service areas restructured their tariff plans and filed with the Authority;

4. And whereas from tariff plans, referred to in the preceding para, the Authority noted that some private access service providers had specified a higher tariff for the calls terminating in the mobile network of Mahanagar Telephone Nigam Limited (hereinafter referred to as MTNL) and Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) in different service area located within the same State;

5. And whereas the Authority also received complaints from subscribers alleging levying of discriminatory charges by the private access service providers;

6. And whereas the Authority examined the tariff plans of the access service providers, referred to in para 4, and the complaints received from the consumers, referred to in the preceding para, and found that the private access service providers were levying differential tariff on the calls terminating in the mobile network of BSNL and MTNL and, vide its Direction dated 27th February 2006, directed mobile service providers operating in the aforesaid four states to immediately discontinue differential tariff and report compliance to the Authority;

7. And whereas the Cellular Operators Association of India (hereinafter referred to as COAI) and some access service providers challenged the Direction of the Authority, referred in the preceding para, before the Hon'ble Telecom Dispute Settlement and Appellate Tribunal (hereinafter referred to as TDSAT) and continued charging differential tariff for the calls terminating on the networks of BSNL and MTNL located in the same State;

8. And whereas the Hon'ble TDSAT, vide its Order dated 22nd December, 2006 dismissed the appeal referred to in the preceding para;



9. And whereas consequent to the dismissal of the appeal by the Hon'ble TDSAT, the Authority, vide its Order dated 15th January 2007, asked M/s Bharti Airtel Limited to furnish the compliance of its Direction dated 27th February, 2006 and also intimate the date from which it was complying with the said Direction dated 27th February, 2006;

10. And whereas M/s Bharti Airtel Limited, vide its letter dated 9th February 2007, reported that they have complied with the Direction dated 27th February 2006 in different service areas on the dates indicated below:-

Licensed Service Area	Date on which complied
Mumbai	23 rd January 2007 (prepaid) 3 rd February 2007 (postpaid)
Maharashtra	27 th January 2007 (prepaid) 24 th January 2007 (postpaid)
Tamil Nadu & Chennai Chennai	3 rd March 2006 (Prepaid & postpaid)
UP (West)	25 th January 2007 (prepaid & postpaid)
UP (East)	1 st February 2007 (Postpaid) 13 th September 2005 (prepaid)
West Bengal Kolkata	11 th December 2006 (prepaid & postpaid)

11. And whereas in exercise of the powers conferred upon it under section 13, read with clause (b) of sub-section (1) of section 11 of TRAI Act, the Authority, vide its Direction dated 22nd March 2007, directed M/s Bharti Airtel Limited in Mumbai, Maharashtra, Tamil Nadu, Chennai, West Bengal, Kolkata, Uttar Pradesh (East) and Uttar Pradesh (West) service areas to-

- (a) furnish the number of subscribers adversely affected by charging differential tariff w.e.f. 20th May, 2005, being the date from which the respective Telecom Service (CMTS/UAS/Basic Service/NLD Service) stood amended accordingly, within 15 days of the Direction;
- (b) assess the total excess amount charged from the subscribers along with the manner of calculating such amount and intimate the same to TRAI within 15 days of the Direction;



(c) Keep the entire excess amount charged from the subscribers in a separate bank account and intimate the name and address of the bank to TRAI;

(d) Not utilize the excess amount charged from the subscribers for any other purpose other than refunding the same to the consumers until further directions by the Authority;

12. And whereas COAI and some access service providers filed a Civil Appeal before the Hon'ble Supreme Court challenging the Order dated 22nd December, 2006 passed by the Hon'ble TDSAT and also requested the Authority to keep in abeyance its Direction dated 22nd March, 2007 until the appeal is heard by the Hon'ble Supreme Court;

13. And whereas the Hon'ble Supreme Court, vide its Order dated 5th April, 2007, stayed the refund of the excess amount charged by the access service providers from the subscribers;

14. And whereas the Authority, during the pendency of the appeal of COAI and some access service providers before the Hon'ble Supreme Court, did not seek the compliance of its Direction dated 22nd March 2007;

15. And whereas the Hon'ble Supreme Court, vide its judgment dated 30th January, 2015, dismissed the civil appeal filed by COAI and some access service providers;

16. And whereas the Authority, vide its letter dated 2nd February 2016, asked the access service providers to comply with the Direction dated 22nd March, 2007;


17. And whereas M/s Bharti Airtel Ltd, vide its letter No. RP/FY 17-18/040/173 dated 6th October 2017, submitted the details of the excess amount of Rupees eleven crores seventy nine lakhs seventy two thousand two hundred and forty nine charged from the subscribers along with the methodology used for such computations;

18. And whereas the Authority examined the computation of the excess amount submitted by M/s Bharti Airtel Limited, referred to in the preceding para, and found that due to non-availability of call data records,

the said amount cannot be refunded to the subscribers by the access service provider and, therefore, the same should be deposited in Telecom Consumers Education and Protection Fund (hereinafter referred to as TCEPF);

19. Now, therefore, in exercise of powers conferred upon it under section 13, read with clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997, the Authority hereby directs M/s Bharti Airtel Limited to deposit the amount of Rs. 11,79,72,249/- (Rupees eleven crores seventy nine lakhs seventy two thousand two hundred and forty nine only), charged in excess from its subscribers during the period from May 2005 to February 2007, as computed by M/s Bharti Airtel Limited, in TCEPF as per the bank details given below and report compliance within fifteen days of the date of issue of this Direction:

Account No.: 520101223026359
Bank & Branch: Corporation Bank, Asaf Ali Road, New Delhi
IFSC Code: CORP0000679


30.11.2017
(S.T. Abbas)
Advisor

(Networks, Spectrum & Licensing)

To

Shri Gopal Vittal,
Chief Executive Officer,
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