

Telecom Regulatory Authority of India

Notification

New Delhi, the 21st day of March, 2006

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

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

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

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

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

3. General: -

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

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

By Order

(M. Kannan)
Advisor(Eco)

Annexure-A

EXPLANATORY MEMORANDUM

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

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

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

4. The concept of lifetime validity may mean that there is no restriction in terms of time during which the talk time could be utilized and also that the subscriber would continue to get incoming calls for an indefinite period i.e. lifetime. Since these schemes are declared and marketed as having lifetime validity, and an upfront payment is taken from the subscriber on this ground, it is mandatory for the service providers to continue to extend the validity as long as they have the permission to provide telecom service under the current license or

renewed license. This amendment to the TTO seeks to bring clarity to the obligation of the service providers to continue to provide such validity to subscribers of lifetime tariff schemes. In this context, the Authority recalled its Direction dated 16.9.2005 wherein it mandated all telecom service providers that no tariff plan shall be offered, presented, marketed and advertised in a manner that is likely to mislead the subscribers. The Authority continues to hold the view that titles of tariff plans which are of misleading nature or having the potential to mislead the subscribers will be considered as lacking in transparency. Further, the Authority also mandates that any tariff plan with a specified validity period shall continue to be available to the subscriber during the entire promised validity period.

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

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

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

8. The provisions of TTO envisages that any subscriber (including subscribers of lifetime packages) can move to any other plan on offer without having to pay migration charges. However, since the packages implemented by the operators do not provide for refund of the upfront payment in cases of exit, the flexibility available for the subscriber of such schemes to freely choose any plan gets restricted. Such restriction on flexibility for subscribers to freely choose any other plan offer also exists in cases where subscriber makes an upfront payment for a longer validity. The forfeiture of the upfront payment while moving to other plans can in some sense be interpreted as a barrier to exit. Subscribers of lifetime tariff packages and other schemes having longer validity deserve protection beyond the six months period envisaged in 31st Amendment for the reason that they make an upfront payment on the understanding of some basic considerations, which include the facility of

incoming calls for an indefinite period, the call charges and other features presented to him at the time of subscription. The Authority is, therefore, of the view that there is a need to protect the interest of subscribers in case the tariff and other declared features of the tariff plans with longer validity period including lifetime plans are changed to the disadvantage of the subscribers during the promised validity period.