



भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA

महानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग (पुराना मिनटो रोड),
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No: 10-6/2016-BB&PA

Date:21.10.2016

To,
The Secretary,
Department of Telecommunications,
Sanchar Bhawan,
20, Ashoka Road, New Delhi

Subject: Violation of the provisions of License Agreements and the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 by M/s Bharti Airtel Limited

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 Bharti Airtel Limited (hereinafter, referred to as Airtel) (a copy of the letter dated the 14th July, 2016 is annexed as **Annexure-I**).

2. The Authority, vide letter No. 10-6/2016-BB&PA, dated the 19th July, 2016 asked Airtel 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**).

3. The Authority received a letter No. RP/FY 16-17/122/004, dated the 3rd August, 2016 from Airtel in response to the Authority's letter mentioned in Para 2

above (a copy of the letter dated the 3rd August, 2016 is annexed as **Annexure-III**).

4. The Authority received a letter No. RJIL/TRAI/2016-17/341, dated the 4th August, 2016 from RJIL requesting the Authority to direct Airtel 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 the letter dated the 4th August, 2016 is annexed as **Annexure-IV**).

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**).

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**).

7. In view of the COAI's letter referred above, a meeting was held with telecom service providers including Airtel on the 9th September, 2016 wherein Airtel along with Vodafone India 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**).



8. The Authority received a letter No. RJIL/TRAI/2016-17/630, dated the 15th September, 2016 from RJIL providing details of call failure with Airtel 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**).

9. The Authority, vide letter No. 10-6/2016-BB&PA dated the 19th September, 2016 asked Airtel to furnish information on the steps taken by them after the aforementioned 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**).

10. The Authority received an email dated the 23rd September, 2016 from Airtel 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 email dated the 23rd September, 2016 is annexed as **Annexure-X**).

11. On perusal of the information furnished by Airtel, 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 Airtel 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 Airtel under intimation to TRAI.

12. In view of the above, a Show Cause Notice dated the 27th September, 2016 was issued to Airtel 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**).

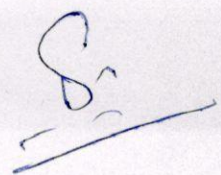


13. A meeting was held by the Authority on the 30th September, 2016 with the CEO of Airtel. In the meeting, Airtel was requested to furnish information regarding congestion on the POIs with RJIL on daily basis to the Authority. Subsequently, through a letter dated the 3rd October, 2016, Airtel was requested 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**).

14. In response to the Show Cause Notice as mentioned in para 12 above, the Authority received a letter no. RP/FY/16-17/122/29, dated 7th October, 2016 from Airtel wherein Airtel provided the following grounds broadly as to why no action should be taken against them:


- (i) Provisioning of interconnection capacities is required only post the commercial launch of services;
- (ii) Issuance of Show Cause Notice is premature as the same has ignored the persistent and ongoing efforts made by Airtel in augmenting the POIs;
- (iii) Show Cause Notice issued prematurely without waiting for the outcome of current augmentation in process i.e. till commissioning of all E1s;
- (iv) The premise of Show Cause Notice rests on insufficient data, in contradiction to TRAI's own Regulations – 'The Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009' dated the 20th March, 2009;
- (v) RJIL was itself not prepared for the operationalization of capacities;
- (vi) TRAI's Direction dated the 7th June, 2005 and Interconnect agreements provide for the capacities to be augmented within a period of 90 days;
- (vii) The show cause notice is based on a single days' assessment of traffic and the Regulation requires the benchmark for point of interconnecting congestion to be considered over a period of one month.

(A copy of the letter no. RP/FY/16-17/122/29, dated 7th October, 2016 is annexed as **Annexure-XIII**.)



15. The Authority examined the grounds taken by Airtel, 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 Airtel are not tenable as the Show Cause Notice was issued after providing sufficient time to Airtel 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 provisions of Unified License and Unified Access Service License. The argument of Airtel that Show cause Notice was issued on the basis of one day's traffic is not correct in view of the fact that though Airtel 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 significantly yet. The contention of Airtel 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 $\leq 0.5\%$ 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.

16. The Authority has further noted that Airtel has not denied the fact that congestion at POI with RJIL has exceeded the allowable limit of 0.5%. 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 Airtel 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.

17. The Authority has further noted that Airtel 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 Airtel 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 non-compliance of the terms and conditions of the License and Regulations issued by the Authority.

18. The Authority also noted that Airtel 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 Airtel 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, Airtel 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 LSAs (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 Airtel has not made serious efforts to comply with TRAI's Regulations and License conditions.

19. The Authority further noted that interconnect agreement between Airtel 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, Airtel has failed to provide same quality to RJIL as it provides to itself.

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, Airtel 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.

21. From the above examination, it emerges that:

(i) Airtel 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."

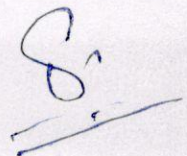
(ii) Airtel has failed to comply with Clause 16.1 of the Unified Access Service License which reads as under:

"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) Airtel 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."

(iv) Airtel 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 Inter-connection (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:-

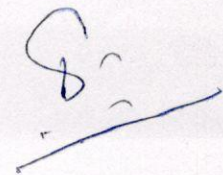
"26.2 The LICENSEE may enter into suitable arrangements with other service providers to negotiate Interconnection Agreements whereby the interconnected networks will provide the following:

- (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,



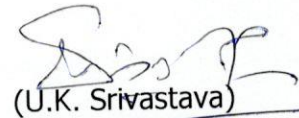
- (c) To connect, and keep connected, to their Applicable Systems.”;
- (vii) It is evident from the above Clauses that the licensees are mandated to provide interconnection to all eligible telecom service providers. However, as mentioned in Para 6 above Airtel along with other telecom service providers have, jointly through their association (COAI), declined Point of Interconnection to RJIL which is wilful violation of the above mentioned license conditions.
- (viii) Airtel 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 $\leq 0.5\%$ 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 Airtel in the meeting held on the 9th September, 2016 clearly indicates attempt by three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited to stifle competition in the market and to willfully violate the license conditions;

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 and conditions of their respective licenses.



23. While the Authority has been taking necessary steps to ensure effective interconnection between Airtel and RJIL, it is evident from Para 21 that Airtel 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 Airtel 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 therefore in view of the larger public interest involved, the Authority recommends a penal action of Rs. 50 crore per LSA for 21 LSAs (for all LSAs except for Jammu and Kashmir) where POI congestion exceeded the allowable limit of 0.5% as reported by Airtel through their email dated the 23rd September, 2016 (refer to para 10 above), may be initiated against M/s Bharti Airtel Limited.

Encl.: As above.



(U.K. Srivastava)

Principal Advisor (NSL)