

**F.No. 303-1/2006-QOS**  
**Telecom Regulatory Authority of India**  
**Mahanagar Doorsanchar Bhavan,**  
**Jawaharlal Nehru Marg, Next to Zakir Hussain College,**  
**New Delhi – 110 002**

.....

Dated 30<sup>th</sup> October, 2007

**DIRECTION**

**Subject: Direction to M/s Idea Cellular Ltd. under section 13, 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) and clause 11 of the Telecom Tariff Order, 1999, on provision of value added services to customers.**

**F.No.303-1/2006-QOS**-----Whereas, the Telecom Regulatory Authority of India(hereinafter referred to as the Authority ) established under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) [hereinafter referred to as the said Act] has been conferred power under sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the said Act to discharge certain functions specified in said clause (b), which inter alia, include to ensure the compliance of the terms and conditions of the licence and lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect the interest of the consumers of telecommunications service;

**2.** And whereas, the Authority issued, under section 13 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, a Direction vide number F. No. 305-8/2004-QOS dated the 3<sup>rd</sup> May, 2005 (annexed as Annexure A to this Direction) directing the service providers, being the Cellular Mobile Service Providers and Unified Access Service Providers that no chargeable value added service shall be provided to a customer without his explicit consent and that any valued added service, which was earlier being provided free of charge, shall not be made chargeable without the explicit consent of the customer;

**3.** And whereas, the Authority had forwarded, vide letter No.303-1/2006-QoS (Idea) on the dates indicated below, the following complaints received from various persons regarding the activation of Value Added Services, without their explicit consent, as reported by such persons, to M/s Idea Cellular Ltd., 810, Kailash Building, 26, K.G. Marg, New Delhi- 110 001 (hereinafter referred to as the M/s Idea Cellular Ltd.), being the service provider, namely;-

Serial Number	Name of the complainant	Telephone number	Date of forwarding letter to the M/s. Idea Cellular Ltd, Service Provider by the Authority	Date of reminders
1.	Ms. Punam Behari	9891638408	08.08.06	21.09.06, 17.10.06, 13.11.06
2.	Priyabrat Tripathy	9891128919	21.09.06	17.10.06, 13.11.06
3.	Vasireddy Chander Sekhar	9848637791	21.09.06	17.10.06, 13.11.06
4.	Y.K. Sharma	9891537720	06.10.06	13.11.06

4. And whereas, M/s Idea Cellular Ltd. failed to respond to the complaints forwarded to them as mentioned in the preceding paragraph and the Authority had, in the mean time received another complaint from Ms. Punam Behari, 26, Miranda House, Teachers Flats, Chhatra Marg, Delhi-110007 enclosing therewith a copy of a reply of the M/s Idea Cellular Ltd., being the service provider, dated the 24<sup>th</sup> November, 2006 received by the said Ms. Punam Behari from the M/s Idea Cellular Ltd. and, accordingly, the Authority issued a Show Cause Notice vide No. 303-1/2006-QOS(Idea) dated the 17<sup>th</sup> January, 2007 requiring the M/s Idea Cellular Ltd. to submit, within ten days from the date of issue of the said Show Cause Notice, to the Telecom Regulatory Authority of India, -----

- (i) the circumstances under which the deduction of rupees thirty for once and rupees seven per day on account of Value Added Service, was made from the pre-paid Mobile connection number 9891638408 belonging to Ms. Punam Behari, without her explicit consent as alleged by her in her complaint; and
- (ii) the circumstances under which M/s Idea Cellular Ltd. failed to respond to the Telecom Regulatory Authority of India's letters requiring effective redressal to the complaints of the customers mentioned in paragraph 3 above; and
- (iii) as to why, acquiescence by M/s. Idea Cellular Ltd., service provider on the complaints referred to in the paragraph 3 above should not be taken as violation of direction on Value Added Services referred to in paragraph 2 above;

5. And whereas, M/s Idea Cellular Ltd., in response to the show cause notice dated the 17<sup>th</sup> January, 2007, as referred to in the preceding paragraph, informed the Authority, vide their reply dated the 30<sup>th</sup> January, 2007, *inter alia*, that in all the four cases, the customers had provided their consent first and later changed their minds;

6. And whereas, in their said response dated the 30<sup>th</sup> January, 2007, as referred to in the preceding paragraph 5, -----

- (a) the M/s Idea Cellular Ltd. has further stated that in the case of one of the complainants, namely, Ms. Punam Behari, the M/s Idea Cellular had sent to the subscriber, an SMS stating that "Validity will be extended by 1 day & Rs 7 will be deducted, the day you enter in grace. If not interested, send NO to 5903. To know more send AUTO to 6543"; and
- (b) in the other three cases, the M/s Idea Cellular Ltd., being the service provider, has not produced any evidence to show that the customers had given their explicit consent for subscribing to the ring tone services offered to them by M/s Idea Cellular Ltd through tele-calling;

7. And whereas, the Authority had forwarded two more complaints from consumers regarding the provision of Value Added Services, without their explicit consent, as reported by such persons, to the M/s Idea Cellular Ltd. vide its letters dated the 20<sup>th</sup> December, 2006 and the 01<sup>st</sup> March, 2007 and M/s Idea Cellular Ltd. has failed to respond to the said complaints;

8. And whereas, upon consideration of the contents of all the complaints and the explanation offered by the M/s Idea Cellular Ltd. in response to the show cause notice dated the 17<sup>th</sup> January, 2007 as referred to in the preceding paragraph 4, the Authority is of the view that -----

- (a) the said M/s Idea Cellular Ltd. has failed to submit any evidence to substantiate their claim of having obtained the consent of the customers for activation of value added services as stated in their response to the show cause notice dated the 17<sup>th</sup> January, 2007 as referred to in the preceding paragraphs 4 and 5;
- (b) even the text of the single SMS which has been quoted in the response of the M/s Idea Cellular Ltd. dated the 30<sup>th</sup> January, 2007 (in response to the show cause notice dated the 17<sup>th</sup> January, 2007), indicates about only validity being extended by one day and rupees seven being deducted and does not indicate about the consent taken from the consumer for provision of any value added service;
- (c) in the absence of satisfactory evidence of the offer made to the consumer through tele-calling and the consent obtained from the consumer, it cannot be concluded that the value added service was

provided with the explicit consent of the consumers, particularly when the consumers have denied having given any such explicit consent;

**9.** And whereas, the report of the Audit of the Metering and Billing System of M/s Idea Cellular Ltd. for Andhra Pradesh for the year 2006-07 submitted to the Authority by M/s Idea Cellular Ltd. in accordance with the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation 2006 (5 of 2006) contains the certain observations by the auditor who conducted the audit but M/s Idea Cellular Ltd. have neither furnished any comments on the said observations made by the auditor nor indicated any time frame for compliance of the said observations in the relevant column of the said audit report, and such observations of the auditor, *inter alia*, are as under:-

“Many instances of complaints have been observed where subscribers have been activated and charged for dialer tones without their express consent. Waivers/Adjustments have been given in cases where customers have complained. However, no action has been taken to address all affected customers who have not complained. Ring Back Tone & VAS Related Complaints constitute 35.86% (2254 out of 6285) of total complaints in January 2007 and is also the highest category of complaints in all three months of November, December & January 07. Activation of Dialer Tones without express consent of customers is not in consonance with TRAI’s direction dated 03.05.2005 and 12.9.2005 on Value Added Services”;

**10.** And whereas, the report of the Audit of the Metering and Billing System of M/s Idea Cellular Ltd. for its Gujarat circle for the year 2006-07 submitted to the Authority by M/s Idea Cellular Ltd. in accordance with the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation 2006 (5 of 2006) also records that there are many instances of complaints wherein subscribers have been charged for value added services (like Cricket Pack, Dialer Tones) activated without the express consent of the consumers;

**11.** And whereas, the Authority continues to receive complaints from consumers alleging that M/s Idea Cellular Ltd., being the service provider, had charged for value added services activated without the explicit consent of such consumers;

**12.** Now, therefore, in exercise of the powers conferred upon it under section 13, 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) and clause 11 of the Telecommunication Tariff Order 1999, and for the reasons mentioned in the preceding paragraphs 3 to 11, and to ensure compliance of terms and conditions of licence and to protect the interest of consumers, the Telecom Regulatory Authority of India hereby, without prejudice to its Order No.F.No.303-1/2006-QOS(Idea) dated the 30<sup>th</sup> October, 2007 and the Show Cause Notice No.F.No.303-1/2006 dated the 30<sup>th</sup>

October, 2007, directs that M/s Idea Cellular Ltd., being the service provider, shall, -----

(a) refund to all consumers, within fifteen days from the date of issue of this Direction, the charges levied by the M/s Idea Cellular Ltd. for value added services marketed through tele-calling, in all cases where the subscribers denied or disputed having given their consent for activation of such value added services or for continuation of such services which were initially offered free of charge;

(b) keep the entire amount charged from such customers referred to in sub-paragraph (a) above but which could not be refunded within fifteen days from the date of issue of this Direction, for any reason, to such customers, in a separate bank account and intimate to the Authority the name and address of the bank in which such amount has been kept;

(c) not utilize the amount, as referred to in sub-paragraph (b) above, for any purpose other than refunding the same to such customers, until further directions by the Authority.

(M.C. Chaube)  
Advisor(QOS)

To

M/s Idea Cellular Ltd.,  
810, Kailash Building,  
26, K.G. Marg,  
New Delhi – 110 001.

**F.No.305-8/2004-QOS  
Telecom Regulatory Authority of India  
A-2/14, Safdarjung Enclave, New Delhi – 110 029**

.....

Dated 3<sup>rd</sup> May, 2005

To

All Cellular Mobile Service Providers  
All Unified Access Service Providers

**Subject: Direction on Value Added Services.**

1. The Authority has noted a number of instances where consumers are charged value added services without explicit consent of the customer. One such instance is that at the time of launch of any new Value Added Service, the customer is given the service free during a certain trial period. Subsequently, after the expiry of the trial period, the consumer is informed usually by SMS, that if he does not want the service, he should "unsubscribe" by sending a SMS to the service provider.

2. Thus in such cases, the burden of informing the service provider, not to have that service once it has become chargeable, is put on the customer. There could be a possibility that in case the customer misses the SMS/ communication due to any reason, he starts getting charged without his knowledge and concurrence. This amounts to offering value added service without the explicit consent of the customer.

3. Keeping in view the above and in the interests of the consumers, the Authority in exercise of the power conferred upon it under Section 13 read with Section 11(1)(b)(i) and (v) of the Telecom Regulatory Authority of India Act, 1997 and clause 11 of the Telecommunication Tariff Order 1999 hereby directs all the Cellular Mobile Service Providers and Unified Access Service Providers that no chargeable value added service, shall be provided to a customer without his explicit consent. Any value added service, which was earlier being provided free of charge, shall not be made chargeable without the explicit consent of the customer.

This issues with the approval of the Authority.

**(Sudhir Gupta)**  
Advisor (QOS)