



Cellular Operators Association of India

RSM/COAI/209
September 25, 2012

The Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Old Minto Road,
New Delhi 110002

Subject: COAI response to the draft second amendment to the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) on financial disincentives

Dear Sirs/Madam,

This is with reference to the TRAI's draft second amendment to the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) on financial disincentives.

At the outset, we would like to submit that the proposed **measure of imposing 'financial disincentive' on the service providers for not meeting the Quality of Service (QoS) benchmarks as prescribed by the TRAI is in the nature of a penalty. We believe that the provisions of the TRAI Act 1997 (amended 2000) does not empower the Authority to impose a penalty.**

Moreover in February 2009, we had made a joint industry submission highlighting the fact that neither the statutory framework of the TRAI Act nor the provisions of UASL License provide for the imposition of such penalties /financial disincentives as are being contemplated by the Authority for enforcement of its Regulations. We are also enclosing our Joint Industry letter dated 17th February, 2012 as Annex.1.

Without prejudice to the above, our detailed response to the draft QoS regulation is enclosed as Annexure – 2 for your kind perusal.

Vide our said response we have suggested **an alternate escalation process** for the kind consideration of the Authority. We believe that the suggested approach would encourage operators to comply with the QoS norms prescribed by the TRAI but will also provide protection against the un-avoidable external factors causing delay in the processes.

Further, we would also like to highlight that COAI vide its response to the draft amendment to the MNP Regulation and to the draft fifty second amendment to the Telecom Tariff Order, 1999, had requested that TRAI hold a meeting with stakeholders before finalizing/notifying the same. However, TRAI has not considered COAI request and has notified the MNP Regulation and the TTO without such a meeting.

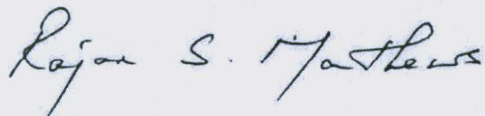
With regards to the draft QoS Regulation we again request TRAI to kindly hold a meeting with the stakeholder's before finalizing/notifying the said Regulation.

We request TRAI to kindly finalize/notify the Regulation only after granting us an opportunity of a discussion with the Authority.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,



R. S Mathews
Director General

Encl: as above

Distribution : Dr. Rahul Khullar, Chairman, TRAI
: Shri R. Ashok, Member, TRAI
: Shri R. K. Arnold, Member, TRAI
: Shri Rajeev Agrawal, Secretary, TRAI
: Shri N Parmeswaran, Principal Advisor (CA & QOS), TRAI
: Shri Sudhir Gupta, Principal Advisor (NSL), TRAI
: Smt. Anuradha Mitra, Principal Advisor (F &EA), TRAI
: Shri A. Robert Ravi, Advisor (CA & QoS), TRAI



Association of Unified Telecom Service
Providers of India
B-601 Gauri Sadan, 5 Hailey Road
New Delhi - 110001

Cellular Operators Association of
India
14, Bhai Veer Singh Marg
New Delhi - 110001

17 February 2009

Shri Nripendra Misra
Chairman
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sir,

**Review of Quality of Service (QOS) Performance Parameters of Basic Service
(Wireline) and Cellular Mobile Telephone Service**

1. This is with regard to the Consultation Paper issued by the Authority on 18.12.2008 on the above subject, wherein the Authority had raised a query as to whether a scheme of financial disincentive needs to be introduced for effective enforcement of quality of service regulations.
2. In Chapter 7 of the said Consultation Paper, it has been stated, inter-alia, that:
 - (a) For non-compliance with the Quality of Service standards, one option is to take penal action against the Service Providers under Section 29, 30 and 34 of the TRAI Act, 1997.
 - (b) As per License conditions, the service providers have to meet the quality of service standards laid down by TRAI or DoT and any failure to meet the benchmarks laid down by TRAI for various quality of service parameters amounts to violation of license conditions and that DoT has powers to impose penalty. DoT has power to impose penalty.
 - (c) It has been clarified by the Hon'ble Supreme Court in one of its Orders that contravention of directions of TRAI also include contravention of provisions of the regulations and orders of TRAI.
 - (d) From the experience of TRAI, the process of imposing penalty for violation of its directions / orders / regulations takes considerable time.
 - (e) In case of Basic Service (Wireline), TRAI has provided specific monetary compensation to subscribers, such as rent rebate in case of delayed repair of faults, interest on delayed payment of security deposit. However, in case of

Cellular Mobile Telephone Service (CMTS), direct compensation to consumers is not a workable proposition.

- (g) A combination of financial disincentive and penalty could act as a deterrent against poor quality of service.
 - (h) There is an issue of time period after which recommendations to the Licensor can be made for non-compliance with the quality of service benchmarks as each time case cannot be referred to Licensor for non-compliance.
 - (i) Therefore, TRAI is of the view that wherever the service providers fail to meet the Quality of Service benchmarks for certain critical parameters, a framework for imposing financial disincentive for continuous failure to meet the benchmarks for a long period should be there, in addition to provision of penalty in extreme cases.
 - (j) There have been judicial pronouncements that regulation of a particular matter embraces within its fold the power to do all those things necessary and incidental for regulating the matter - U.P. Cooperative C U Federation versus U.P. Sugar Mills Association (2004) 5 SCC 430. Therefore, TRAI's regulatory powers include all acts necessary to ensure quality of service and that the ambit of the said provisions is very wide and enables TRAI to take all possible steps to ensure quality of service in the interest of the consumers.
 - (k) Already provision for financial disincentive have been provided for contravention of the provisions of Regulation 15, 16 or 17 of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007).
3. We believe that in the context of the Authority's powers to impose disincentives or penalty to enforce quality of service parameters, it may be relevant to first examine the provisions of the TRAI Act and the provisions under License:

A. Relevant Provisions under TRAI Act

- 11 (1) *Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to-*
- (a)
 - (b) *discharge the following functions, namely:-*
 - (i) *ensure compliance of terms and conditions of license;*
 - (ii)
 - (iii)
 - (iv)
 - (v) *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 interest of the consumers of telecommunication services;*
- 29 *If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.*

34 (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Act.

B. Relevant Provisions under UAS Licence

28.1 The LICENSEE shall ensure the Quality of Service (QoS) as prescribed by the LICENSOR or TRAI.....

10.2(ii) The Licensor may also impose a financial penalty not exceeding Rs. 50 crores for violation of terms and conditions of licence agreement.

4. It is clear from the above provisions that the Authority has the power to ensure compliance of terms and conditions of license, lay down the standards of Quality of Service to be provided by the Service Providers, issue directions to Service Providers on the above matters. Penalty for violation thereof is prescribed in Section 29 and the manner of taking cognizance of offences is prescribed in Section 34.
5. It is submitted that it is established law that statutory authorities must act within the four corners of the statute that has created them.
 - It has been held in *State of Bihar and Others versus Industrial Corporation (P) Limited and Others* (2003) 11 SCC 465 at 473 para 17 that the statutory authorities must act within four corners of the statute. They could take the recourse to the proceeding for the levy of penalty and recovery thereof only in the event there existed any agreement or statutory provision thereof.
 - In *K.K. Bhalla v. State of M.P.*, (2006) 3 SCC 581, at page 592 para 38 the Supreme Court has held, inter alia, that "The State and JDA being creatures of the statute were bound to act within the four corners thereof. Procedures for disposal of land having been laid down in the Rules, power in that behalf was required to be exercised strictly in conformity therewith and not dehors the same."
6. Section 29 of the TRAI Act provides, inter-alia, for punishment with fine if a person violates the directions of TRAI. However, cognizance of such offence can be taken only upon a complaint made by TRAI and only by a Court not inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class under Section 34 of the Act.
7. It is clear from the above provisions that a procedure is already prescribed for levy of fine for violation of the Authority's directions. It is correct that TRAI's directions take within its fold directory orders and regulations made by TRAI, which has been held so by the Hon'ble Supreme Court in its Order dated 28.03.2006 in *Telecom Regulatory Authority of India v. BPL Mobile Cellular Limited and Ors.* – Civil Appeal No. 6743 of 2003.
8. Further, it may be noted that while Section 29 uses the word 'directions' alone, Section 34 uses the word "any offence punishable under this Act or the rules or regulation made thereunder". Thus, Section 34 contemplates that cognizance of an offence can be taken not only of such offences as are prescribed under the Act but also offences punishable

under the Rules / Regulations made under the Act. In other words, under a Regulation made by TRAI, TRAI can be said to be empowered to stipulate an obligation, violation whereof may be treated as an offence. However, when it comes to the levy of penalty, quantum thereof and procedure for levying the said penalty, is already expressly prescribed in the Act and therefore, we believe that even though the Authority can stipulate an obligation i.e. a new obligation under its powers under section 11 (1) (b), it being a creature of statute, has to act within the four corners of the provisions of the Act and therefore cannot prescribe financial penalties but can only implement the penalties already prescribed under Section 29 and that too through the procedure already prescribed under Section 34.

9. We believe that **this already prescribed procedure cannot be varied or violated or dispensed with by the Authority** and if the Authority prescribes for levy of any penalty dehors the said provisions, the same will be ultra vires.
10. **It is settled law that already prescribed procedure in the statute cannot be violated, changed or varied by the Statutory Authorities created under the Statute** and, therefore, it follows that **the procedure prescribed ought to be followed and no other procedure can be laid down.**
11. In this context, we would like to draw the Authority's attention to para 28 of its Explanatory Memorandum to Telecom Unsolicited Commercial Communications Regulation, 2007 (4 of 2007) dated 05.06.2007, wherein the Authority has itself clarified and stated that it did not have any power either to impose penalty or to adjudicate the complaints and that therefore it had decided to follow the route of levying higher tariffs on those telemarketers who violate the Do Not Call List. The relevant para 28 of the Explanatory Memorandum to UCC Regulation reads as under:

"28. *Originating Access Provider to whom the complaint has been forwarded will examine and warn the guilty telemarketer/ customer for the first time. If the UCC is repeated by the same customer for the second time the originating access provider can charge a higher tariff which is separately notified by TRAI in the Telecom Tariff Order, 1999. The Telecommunication Tariff (Forty fifth amendment) Order, 2007 specifies the tariffs for such unsolicited commercial communications to be charged from the sender by the Access Service Providers. If the customer sends the UCC for the third time, the access provider is empowered to disconnect the services of the guilty customer/telemarketer. Some views have been expressed that a tariff recovered by the service provider should be passed on to the affected subscriber. However, it is clarified that TRAI has neither any power to impose penalty nor power to adjudicate the complaints. (emphasis supplied). Therefore, it has decided to follow the route of levying higher tariff on those telemarketer who violates the do not call list. The higher tariff charged by the service provider will be counted in the Adjusted Gross Revenue (AGR) of the service providers for the purpose of license fee and spectrum charges.*"

However, this above view was subsequently changed by the Authority. In para 7 of the Explanatory Memorandum to its Telecom Unsolicited Commercial Communications (Amendment) Regulations, 2008, it is stated that:

"7. *The Authority has received several complaints with regard to the harassment of the consumers even after the notification of the Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007). In*

the said context, although it has been mentioned in the Explanatory Memorandum of the Telecom Unsolicited Commercial Communications Regulation 2007 dated the 5th June 2007 that the Authority has neither any power to impose penalty nor power to adjudicate the complaints, the matter was reconsidered in depth by the Authority. The Authority has revisited the matter and as advised now, the Telecom Regulatory Authority of India has sufficient powers, under sub-clause (i) and sub-clause (v) of clause (b) of sub-section (1) of section 11, read with section 13 and 36, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), to ensure the quality of service provided by the service providers and protect the interests of the consumers. There have been judicial pronouncements also that regulation of a particular matter embraces within its fold the power to do all those things necessary and incidental for regulating that matter. [UP Cooperative CU Federations Vs. UP Sugar Mills Association – AIR (2004) SC 3697]. Hence, under the Telecom Regulatory Authority of India Act, 1997, the regulatory power includes all acts necessary to ensure quality of service and to protect the consumer interest. The ambit of the above mentioned provisions of the Telecom Regulatory Authority of India Act, 1997 is very wide and enables the Authority to take all possible steps to ensure quality of service in the interest of the consumers."

As is evident from the above, even the Authority was originally of the view that it did not possess the power to levy penalty.

12. We believe that the justification of the Authority that the process of imposing penalty for violation of its directions / orders / regulations takes considerable time and that during this process the consumers get no relief, cannot be a tenable ground or reason for the Authority to introduce / stipulate penalty.
13. It is submitted that while the Authority is fully empowered to refer the matter of service providers failure to meet the laid down benchmarks to DoT, which failure, according to the Authority amounts to violation of license conditions, however, the licensory provisions empower only DoT and not the Authority to take penal action (within the parameters of law) for any violation under the license
14. Further, even while ensuring compliance of the terms of the license under Section 11(1)(b)(i), we believe that the Authority can at best issue directions, violation whereof will again be punishable under Section 29 read with Section 34, which will require complaints to be made by the Authority to the Competent Courts.
15. We also believe that the Authority cannot through its Regulations impose specified penalty for violation of its Quality of Service Regulation and also at the same time be entitled to invoke Section 29 read with Section 34. This will be violative of Article 21 of the Constitution of India as also be bad in law.
16. Further, in respect of the fact that in case of Basic Services, the Authority has provided specific monetary compensation to subscribers, such as rent rebate in case of delayed repair of faults, interest on delayed payment of security deposit, it is submitted that the Hon'ble Supreme Court has in *Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra, (1975) 2 SCC 22, at page 29 para 21*, distinguished between rebate and penalty and has observed that rebate is a concession whereas penalty is an imposition. It may be appreciated that a concession does not impose liability but a penalty does. What the Authority has provided in case of Basic Service (Wireline), is in the nature of

rebates, but what is being now proposed is in the nature of penalty. The two are on entirely different footing.

In light of the above, it is submitted that:

- Neither the statutory framework of TRAI Act nor the provisions of UAS License provide for the imposition of such penalties/ financial disincentives as are being contemplated by the Authority for enforcement of its Regulations.
- Statutory Authorities must act within four corners of the statute that has created them.
- Concerns regarding the time taken under the procedure presently prescribed cannot be a tenable ground or reason for the Authority to introduce / stipulate penalty.
- The Authority cannot impose specified penalty for violation of its Regulation and also at the same time be entitled to invoke Section 29 read with Section 34. This will be violative of Article 21 of the Constitution of India as also be bad in law.

We hope that our above submissions will merit the kind consideration and support of the Authority.

Kind regards,

Sincerely yours,



S.C. Khanna
Secretary General - AUSPI



T.V. Ramachandran
Director General - COAI

Copy to : Shri A. K. Sawhney, Member, TRAI
: Shri R. N. Prabhakar, Member, TRAI
: Prof. N. Balakrishnan, Member, TRAI
: Dr. Rajiv Kumar, Member, TRAI
: Shri R.K. Arnold, Secretary, TRAI
: Shri N. Parameswaran, Pr. Advisor (RE), TRAI
: Smt. Sadhana Dikshit, Pr. Advisor (IFA), TRAI
: Shri Lav Gupta, Pr. Advisor (FN)
: Shri Sudhir Gupta, Advisor (MN), TRAI
: Dr. M. Kannan, Advisor (Eco), TRAI
: Shri S.K. Gupta, Advisor (CN), TRAI
: Shri M. C. Chaube, Advisor (QOS), TRAI



COAI response to the draft second amendment to the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) on financial disincentives

Preamble:

- l) At the outset, we would like to submit that there should not be any financial disincentives, on our members. However, in situations where there is a large scale deviation from the prescribed QoS parameters, we request TRAI to adopt the following approach/steps:
- 1) If any operator fails to meet the specified benchmark for a quarter, justification should be sought from operators. Operators should be required to explain the reasons for failure.
 - 2) Operator should also be required to submit an action plan to meet the prescribed benchmarks of the parameters in next quarter's cycle.
 - 3) Following **escalation process** which was discussed and agreed to in part by Dr. Sarma, former chairman of TRAI, is suggested on the same:
 - a) In case of non-compliance or violation of TRAI Direction/ Regulation, TRAI would send letter to the nodal officers of the company and seek explanation on the same.
 - b) In case there is no response or the explanation provided by the company is found to be inadequate, TRAI would send letter to the Regulatory Heads of the company and seek explanation. TRAI may also have one to one discussion with the Regulatory Heads.
 - c) In case the explanation provided by the Regulatory Heads of the company is found to be inadequate, a show cause notice may be served to the CEO's of the companies.
 - d) The CEOs of the companies may then be summoned to provide a response to the show cause notice before the full Authority (Chairman, Members, and Secretary).
 - 4) Further, TRAI should consider the following before taking any action on operators:
 - a) Track record of the operator for the shortfalls i.e. repeated shortfalls of the operator towards benchmark parameters.
 - b) Explanation given by the operator for the non-compliance i.e. circumstances beyond the control of the operator.
 - c) Violation is due to unavoidable technical issue.
 - d) Impact on the subscribers and other stakeholders due to the alleged non-compliance.
 - e) Whether it is major or minor violation i.e. distinguish between fraud, non-transparency and non-compliance due to technical reasons
 - f) Economic benefits accruing to a party from delayed or avoided compliance.

g) Action Taken by the operator to reduce such violations.

- 5) **The above suggested approach would encourage operators to comply with the timelines prescribed by the TRAI but will also provide protection against the unavoidable external factors causing delay in the processes.**

We would further like to make the following submission on this issue:

II) TRAI powers to levy financial disincentives:

- 1) **The Authority vide this amendment to QoS Regulation proposes to levy financial disincentives on Service providers for ‘failing to comply, false reporting, and delay in reporting’.** The original QoS Regulation, 2009 was made in pursuance to the powers conferred upon TRAI under subsection (1) of Section 11 of the TRAI Act 1997. **This measure of imposing ‘financial disincentive’ is in the nature of a penalty. We believe, the provisions of the TRAI Act 1997 (amended 2000) does not empower the Authority to impose penalty and the Authority may only through an Amendment in the TRAI Act, seek to include necessary powers to levy financial disincentive / penalty on service providers for any violation under the license.**
- 2) **Section 11 (1) (b) (v) of TRAI Act states that “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 interest of the consumers of telecommunication services”. In this context we would like to submit that the terms “ensure” implies that it would be the Regulator’s role to ensure that there exists a conducive environment for the licensees to be able to achieve the QoS Benchmarks. It does not mean levying a deterrent. Thus we would like to submit that Section 11 (1)(b)(v) does not mean levying of financial disincentives.**

III) Operators are striving to meet the QoS Benchmarks:

- 1) At the outset, we would like to state that our member operator’s accord the highest importance to the compliance of Regulations, Directions and Instructions issued by TRAI from time to time and continuously strive to meet Quality of Service benchmarks prescribed by TRAI.
- 2) TRAI would appreciate the consistent improvement shown by our member operators in meeting the QoS parameters. This is evident from TRAI’s own published audit data on assessment of QoS performance for QE Mar’12. There is improvement in all parameters as compared to March 2011.

IV) There is already a disincentive for the operators for not meeting the benchmarks of the QoS Parameters:

- 1) TRAI is continuously conducting independent audits to monitor QoS performance, the reports of which get separately published by TRAI. Both these activities ensure that service providers meet the quality of service benchmarks prescribed as this is also considered an important differentiator in today’s hyper competitive market. Thus there is a self-regulation mechanism that the industry follows to meet the stringent QoS benchmarks and hence there is no need to put any additional burden on the industry through increased regulation.

- 2) Also, Quality of Service performance monitoring report with comparative data for all Service providers highlighting the non-compliant parameters is published by TRAI. This has a negative impact on the brand image of the company leading to damaging market consequences.
- 3) The Mobile subscriber now has the option of changing the service provider by retaining the same number through MNP which compels the Service providers to provide the best service in order to retain their existing subscribers.
- 4) **Thus, the need to provide best in class services to the customers arises out of market compulsion rather than a regulatory mandate and therefore, it should be left to self-discipline /self-regulation.**

V) Challenges being faced by the operators in meeting the benchmarks on the QoS Parameters:

- 1) Scarcity of the spectrum is a major challenge for the operators to meet the QoS parameters. The improvement by our member operators as highlighted above is despite not getting adequate spectrum which is imperative to provide best quality of network to the customers. Our members are able to provide service levels as per Quality of service benchmarks by continuously optimizing their network in terms of enhancing capacity with the installation of additional BTS sites.
- 2) Same frequencies are being used by neighboring country (Pakistan) which is leading to interference and hence poor call quality and call drop in case of Border States such as J&K. This has already been brought to the notice of WPC wing of DoT many times.
- 3) Further as highlighted above **Authority should ensure that the environment is conducive for the operators to meet the QoS Benchmark** and help our members to tackle following challenges faced by them in order to meet the QoS Benchmarks:
 - a) Law & order situation – bandh/strike/curfew,
 - b) Natural calamities hampering the operations and delays rectifications of site outages.
 - c) Infrastructure issues in security sensitive areas - site access issues due to limited or non-availability of road network in remote locations,
 - d) Site acquisition issues in some specific areas like Delhi's Lutyen's zone, Cantonment areas, Hilly areas, areas under the control of railways, areas where people protesting against radiation hazards etc. which could – lead to poor coverage,
 - e) ROW issues
 - f) Electricity related issues – non EB sites in remote and rural areas, availability of electricity for limited hours leading to site outages,
 - g) POI issues with BSNL / Pvt. operators,

- h) Non-availability of resources/support from Government/Agencies: The commissioning of new network sites involves completion of various procedural formalities which are dependent on various approvals, permissions from the local government agencies which to inordinate delay in commissioning of new capacities.
 - i) Anti-radiation activism instigated by vested interests resulting in tower shut down due lack of awareness with no support from the governments for the operators.
 - j) Delay/denial of tower clearance to large number of sites by Army Authorities impacts tower expansion plans.
 - k) RF jammers installed in various sensitive locations like jails, etc., as enforced by law enforcement agencies, resulting into high TCH drop, poor voice quality and customer dissatisfaction in surrounding areas.
 - l) Increase in traffic at call centers on account of subscriber re-verification, linked to IP related problems, launch of new services – like MNP, 3G, imposition of instructions like bulk SMS/MMS ban due to security reasons, competitive pressures – launch of different tariffs / VASs, etc.
- 3) In light of the above, it is submitted that **in this competitive and self-regulated era, TRAI should progressively move towards a regime of light touch regulation for quality of service benchmarks rather than introducing financial disincentives on the service providers for not meeting the benchmarks of various QoS parameters – many a times it is seen that these are for reasons which are beyond service providers' control.**

VI) Our regulation wise response is as below:

Without prejudice to the above, our regulation wise response is as below:

Proposed Amendment-1: *Financial disincentive on Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service operators for non-compliance with the benchmark for the Network Service Quality Parameters at a rate not exceeding **Rs 50,000 per parameter** for the first non-compliance and **Rs 1,00,000 per parameter** for subsequent noncompliance of the benchmarks.*

Proposed Amendment-2: *Financial disincentive on Cellular Mobile Telephone Service operators for non-compliance with the benchmark for the Customer Service Quality Parameters at a rate not exceeding **Rs 50,000 per parameter for the non-compliance** of the benchmarks*

COAI Response:

- 1) **As highlighted in the preamble, we believe that there is no need to impose any financial disincentive on service providers for failure to meet specified QoS benchmarks as there are heavy market oriented, competitive disadvantages of this.**

Proposed Amendment-3: *If the compliance report furnished by a Basic/cellular mobile **telephone operator is false then operator will be liable to pay an amount, by way of financial disincentive, not exceeding rupees 10 lakh per parameter** for which such false report has been furnished.*

COAI Response:

- 1) With regards to the submission of the false report by our members operators we would like to submit that:
 - a) The QoS Regulation'2009 describing calculation methodology for some of the parameters are not completely clear which may lead to variance in the performance of the parameter reported by service providers vis-à-vis understanding of the regulations by independent auditors while carrying out the audit. In recent past, several such instances have been reported to TRAI requesting that the matter be taken up with Auditor responsible for conducting the audit and request a correct calculation methodology.
 - b) TRAI conducts customer satisfaction survey to assess the customer perception of the services provided by the service provider on a quarterly basis. This survey is done on a limited sample and is not a reflection of the quality of service maintained by the service providers. Further, service providers do not receive feedback from the results of such surveys' published by TRAI so as to enable them to take corrective actions, if required for any process improvements.
- 2) In view of above submission, we recommend that TRAI should provide clear detailed definitions of each parameter, review the calculation methodology of these parameters in order to ensure standard reporting and comparability across the Service providers. Further necessary instructions should be issued to the Auditors to carry out the audit as per the methodology specified in the Regulation.
- 3) **We would also like to submit that in light of the change being proposed in the QoS regulation, TRAI should undertake a detailed consultation process prior to make any amendments in the regulation.**

Proposed Amendment-4: In case of the failure of the service providers to submit compliance report, service provider shall be liable to pay an amount, by way of financial disincentive, not exceeding rupees five thousand for every day during which the default continues.

COAI Response:

- 1) We appreciate the concerns regarding delay in reporting beyond the specified timelines. However, we would like to submit that our members always strive to meet the reporting timelines as specified by the Authority.
- 2) We would further like to submit that there may be few incidences wherein the timelines regarding the said reporting requirements are not met. These few incidences should not be treated as a case for levy of financial disincentive.
- 3) **In order to improve these few incidences wherein our members are unable to meet the reporting timelines, we suggest following:**
 - a) TRAI to study the quarterly trends for each operator in this respect.
 - b) In case a operators defaults on reporting timelines for two consecutive quarters TRAI should seek justification from the operator and in case the justification provided by the operator for the same is inadequate, suitable action may be considered by the Authority against that operator.
