



Association of Unified Telecom Service Providers of India

AUSPI/12/2012/144

31st August, 2012

Shri Rahul Khullar,
Chairperson
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi - 110 002

Sub: AUSPI's Response to TRAI's Draft Regulations on "Telecommunications Mobile Number Portability (Fourth Amendment) Regulations 2009"

Dear Sir,

We are pleased to enclose herewith AUSPI's Response to TRAI's Draft Regulations on "Telecommunications Mobile Number Portability (Fourth Amendment) Regulations 2009"

AUSPI requests the Authority to take its views into consideration while coming out with the final regulations on the subject.

Thanking you,

Yours faithfully,


S.C. KHANNA
SECRETARY GENERAL

Encl: As above

Copy to :

- 1) Shri R Ashok, Member, TRAI
- 2) Shri R K Arnold, Member, TRAI
- 3) Prof. H S Jamadagni, Member, TRAI
- 4) Prof. Pankaj Chandra, Member, TRAI
- 5) Shri Rajeev Agrawal, Secretary, TRAI
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AUSPI'S RESPONSE TO TRAI ON DRAFT NOTIFICATION ON MOBILE NUMBER PORTABILITY (FOURTH AMENDMENT) REGULATION, 2012

1) Re: Financial Disincentives

- i. TRAI has proposed financial disincentive in the draft regulation for Wrongful rejection of porting request and delay in process related timelines in MNP apparently in lieu of court proceedings, which is similar to the compounding charges. The provision of compounding provides flexibility in enforcement and remedial action. The proposal may not only acts as deterrence but also avoid lengthy proceedings.
- ii. The procedure for compounding offense is being followed by SEBI through relevant statutory provisions. There is a process in SEBI for settlement through examination by the high powered committee headed by a retired High Court Judge.
- iii. Department of Central Excise and Customs through statutory notification have also introduced "Settlement Commission" which is vested with the power of granting immunity from prosecution, waiver of interest and penalties. Similarly courts also have well recognized inherent powers to settle a case before them on an application made by the parties.
- iv. AUSPI notes that TRAI Act 1997 has no provision of compounding / consent like Section 24A of SEBI Act. We feel it is not in order to impose financial disincentives as a routine of every deviation from TRAI Regulations. The issue of financial disincentive/compounding charges should be initiated on the request by TSPs for compounding administrative action or prosecution in courts.

Compounding and consent orders may be desirable but the same powers are not vested with the TRAI. **In view of that, it is suggested that the proposed provision for 'financial disincentive' should not be**



notified at this stage. The TRAI may get these provisions notified only when same have been approved by the Parliament through an Amendment of TRAI Act, 1997.

- v. We suggest that while imposition of financial disincentive, the following should be considered for the purpose of passing compounding charges:
- a. Whether violation is intentional
 - b. Gravity of charge i.e. charge like fraud, misrepresentation, non-transparency etc.
 - c. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.
 - d. Whether there were circumstances beyond the control of the party
 - e. Violation is technical and/or minor in nature and whether violation warrants penalty.
 - f. Consideration of the amount of subscribers' harm or service providers gain.
 - g. Processes which have been introduced since the violation to minimize future violations/lapses.
 - h. Economic benefits accruing to a party from delayed or avoided compliance.
 - i. Any other factors necessary in the facts and circumstances of the case.

Wrongful unintentional rejection of porting request and delay in process related timelines in MNP is minor/technical violation in nature and warrants no financial disincentive. The case for penalty arises only when any harm has been caused to subscribers due to willful violation by telecom service providers. We firmly believe that it is always better to have self discipline rather than stringent Regulations for every process.



- 2) We would like to suggest that wrongful rejection of porting request and process related timelimes in MNP should be part of existing QoS regulation of CMTS/UASL license, wherein the thresholds/parameter are defined and operator's performance is monitored against the same. Greater than 95% (>95%) should be the QoS norm for wrongful rejection of porting request and process related timelimes in MNP.

In this respect, quarterly QoS trends for each operator should be analyzed by TRAI and justification should be sought from operators who are not meeting the norm.

3) Provisions in the existing MNP Regulations

- i. As per the existing MNP Regulation 11 Sub-regulation 4 & Regulation 11 Sub-regulation 6 we would like to state that instead of 2 hours (1 hour for disconnection and another 1 hour for activation) it should be of "4 hours (2 hours for disconnection and another 2 hours for activation) due to following practical reasons:
 - a. It has been observed that while operators porting systems have been designed to meet the one hour window, however there are various external factors due to which there may be delay in the clearance of porting requests as frequency of porting requests received is varying.
 - b. Mobile Number Portability Service Providers tend to push most of the porting requests within the first few hours of the total daily transaction timeframe thereby choking the system capacities while for the rest of the period there are very few requests.
 - c. Delay in activation in time period is also seen due to downtime of the systems, network latency issues.
- ii. As per the existing MNP Regulation 8 Sub regulation 6, there is no provision of putting a Time stamp for the request of Porting made by the subscriber. Therefore, there is no way to establish contravention of the 24hour window for forwarding the Porting request by the Recipient Operator.
