



Comments on

**The Telecommunication Mobile Number
Portability (Fourth Amendment) Regulations, 2012**

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1. Reliance Communications Ltd(RCOM) welcomes the opportunity to comment on Review of The Telecommunication Mobile Number Portability (Fourth Amendment) Regulations, 2012.
2. TRAI is proposing that Telecom Service Providers(TSPs) pay 'financial disincentive' for each wrong rejection of porting request and every deviation in adhering to the timelines prescribed in the MNP Regulations. It seems the Authority is proposing financial disincentive in lieu of the process of prosecution. **Thus 'financial disincentive' seems to be similar to the compounding of charges. The compounding of an offence is a settlement mechanism, by which, one is given an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation.**
3. The provision of compounding provides flexibility in enforcement and remedial actions. It not may acts as deterrence as well as provides an option to avoid lengthy prosecution proceedings.
4. RCOM notes that procedure of financial disincentive/compounding of charges is being followed by other regulators like SEBI. However SEBI Act clearly provides SEBI with powers to pass an order with consent of the parties and compounding of offence. The relevant Section 15T of the SEBI Act 1992. Section 15T(2) of the SEBI Act reads as under:

"15T (2) No appeal shall lie to the Securities Appellate Tribunal from an order made

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer, with the Consent of the parties."

*24A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, **be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.***

5. It may be noted above that the Parliament in its wisdom has recognized that SEBI should have powers to pass consent orders as well as compounding of proceedings.
6. RCOM also notes that when the proposal of settlement through consent/compounding is received, the same is examined by a High Powered Committee headed by a retired high court judge.
7. The compounding of charges have also been notified by Central Excise and Customs related offences as Central Excise (Compounding of offences) Rules, 2005 and Customs (Compounding of Offences) Rules, 2005. The "Settlement Commission" has been introduced for Customs and Central Excise, which is vested with the powers of granting immunity from prosecution, waiver of interest and penalties.
8. RCOM notes that powers of compounding/consent are not available with the TRAI under the TRAI Act, 1997. RCOM also notes that the issue of financial disincentive/compounding charges should be initiated on the request of TSPs and should not to be imposed as default by the TRAI for any wrongful rejection of MNP request or on every event of deviation of timelines by TSPs.
9. RCOM also notes that the TRAI has not proposed setting up of any independent committee as in SEBI for examination of requests for imposing financial disincentive/compounding of charges.
10. Although compounding and consent orders may be desirable in certain events but at this stage the power of imposing financial disincentive/compounding of charges is not part of the TRAI Act.
11. **In view of the above it is requested that the proposed provision for 'financial disincentive' should not be notified at this stage. The TRAI may consider get these provisions when same the provisions of financial disincentive/compounding of charges have been approved by the Parliament through an Amendment of TRAI Act, 1997.**
12. We also request the TRAI that whenever these provisions on financial disincentive/compounding of charges are notified, an independent committee should also be setup which looks issues of requests of financial disincentive/compounding of charges.

13. Further, any imposition of financial disincentive should be taken into consideration the following 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.
14. **RCOM's comments on The Telecommunication Mobile Number Portability (Fourth Amendment) Regulations, 2012:**

TRAI's proposed Amendment

*If any service provider contravenes the provisions of sub-regulation (6) of regulation 8 or regulation 10 or sub-regulation (4) of regulation 11 or subregulation(6) of regulation 11, it shall, without prejudice to the terms and conditions of its licence or the provisions of the Act or rules or regulations or orders made, or, directions issued, there under, be liable to pay an amount, by way of financial disincentive, not exceeding **five thousand rupees** for each contravention, as the Authority may, by order direct:*

Or

*If any service provider contravenes the provisions of regulation 12, it shall, without prejudice to the terms and conditions of its licence or the provisions of the Act or rules or regulations or orders made, or, direction issued, there under, be liable to pay amount, by way of financial disincentive not exceeding **ten thousand rupees** for each wrongful rejection of the request for porting, as the Authority may, by order direct:*

RCOM Comments

1. **RCOM does not support TRAI's proposed amendments that if any TSP wrongly rejects MNP request or fails to meet the specified timelines then it shall be liable to pay ten thousand rupees/ five**

thousand rupees, by way of financial disincentive, for each rejection/contravention.

2. Financial incentive/compounding charges are imposed depending on the gravity of charge i.e. charge like fraud, misrepresentation, non-transparency etc. In case TSP has a good track record of processing MNP requests, there should not be any financial disincentive. Minor delay in MNP port outs is violation of only technical and minor in nature and should not call for any prosecution and also imposition of compounding fee. The issue of imposing financial disincentive arises only when economic benefits accrue to a party from delayed/large number of wrongful rejections. It will be very de-motivating for TSPs in case TRAI starts imposing financial disincentive for violations which are only of technical nature.
3. Any case of imposing financial disincentive should be considered by an independent committee as is the case in SEBI.
4. **RCOM has submitted above that the provisions of financial disincentive should not be notified at this stage for legal position mentioned above.**
5. **In view of the above RCOM suggests that the provision mentioned above should not be notified.**

RCOM's request to review timelines mentioned in Regulation 11 Sub-regulation 4 and 6 mentioned below

“ (4) At the date and time of porting fixed by the MNPS shall communicate to the DO instructions for disconnection of the mobile number and the DO shall, immediately and in any case within one hour of receipt of such instructions comply with such instructions;”

&

“ (6) Upon receipt of the instructions for activation of the mobile number the RO shall, immediately and in any case within one hour of receipt of such instructions comply with such instructions;”

RCOM's Request

1. TSPs 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. On many occasions the requests exceed the system capacity thereby causing delays.

2. MNP 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.
3. Another reason is the complexity of MNP systems and its dependency on various internal network & IT systems such as HLR, IN, etc. Owing to the continuous updation in technical systems to improve performance or due to network latency issues, etc., occasionally downtime of such systems is taken which results into delay in activation in that time period.
4. Based on the practical experience, we believe that the benchmark for both disconnection and activation should **be minimum of “2 hours for 90% of the Porting cases excluding network downtime/latency related issues”**. **Since, the porting activity is scheduled during the night; customers will not face any difficulties despite the porting timelines increasing to 4 hours (2 hours for disconnection and another 2 hours for activation)**.
5. With a more practical benchmark, the chances of fulfilling the time commitment to the subscriber increase, thus bringing in consumer delight with the porting process.
6. **In light of the same, we request the Authority to review this sub-regulation thus paving the way for a more practical and achievable benchmark.**

Summary of comments

- **TRAI should review timelines specified in Regulation 11 (4) and 11 (6)**
- **Financial Disincentives for wrongful rejection of MNP Requests or Missing the timelines should not be notified**