



Telecom Regulatory Authority of India



**Authority's Response to
Department of Telecommunications' Reference dated 5th April, 2017
on
the Authority's Recommendations dated 21st October, 2016 on
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**

New Delhi, 24th May 2017

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Chapter-I: Introduction

1. The Authority made its recommendations to the Department of Telecommunications (DoT) on the 21st October 2016 on "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".
2. These recommendations have been referred back by the DoT through its letter dated the 5th April 2017 to the Authority to provide its reconsidered opinion in the light of comments/ observations of the DoT.
3. As per the TRAI Act 1997, DoT is required to send back the recommendations to the Authority for its reconsideration, however in this case, DoT has sent its view on each and every paragraph of the analysis and facts of the case which has never been the practice till date. However, the Authority has decided to overlook this aberration and has given its response to the relevant comments of the DoT. The Authority's earlier recommendations, the views of the DoT thereon, and the response of the Authority are given in the **Chapter- II**.
4. Apart from the above, DoT has also requested the Authority to provide information on certain points. The response of the Authority against each point is given below:
 - (i) **DoT's query (a):** "Number of subscribers on the date of launch of service by M/s RJIL i.e. the number of subscribers acquired by it during beta testing phase"

The Authority's Response: No. of subscribers on the date of launch of service (i.e. 5th September, 2016) by RJIL, as communicated by RJIL, was around 6.21 Million.

(ii) DoT's query (b): "basis on which amount of penalty is recommended"

(iii) DoT's query (c): "provisions of law under which penalty has been recommended."

The Authority's Response: The license agreement clearly provides that the licensee will be bound by the terms and conditions of the license as well as orders/ directions/ regulations/ orders of the TRAI and provisions of the TRAI Act, 1997. Furthermore, the License provides that the licensee will be responsible for maintaining Quality of Service as mandated by the licensor/ TRAI and a breach thereof is liable to be treated as breach of terms and conditions of the license.

As per the Section 11(1)(b)(i)(iii)&(v) of the TRAI Act, 1997, the Authority is mandated to ensure compliance of licence conditions, effective interconnection and quality of service to the consumers. In fact, in recognition of the afore-mentioned position, the DoT by its communication dated 6th September, 2016, had informed RJIL with a copy to the Authority that the matter related to interconnectivity between service providers is within the purview of the Authority.

Even otherwise the Section 11 of the TRAI, Act 1997 clearly empowers the Authority to make recommendations to the DoT for compliance of terms and conditions of the license as well as for promotion in the efficiency in the operation of telecommunication services and any other matters relatable to the telecommunication industry.

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 was 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 recommended a penal action of Rs. 50 crore per LSA. The License Agreement envisages the imposition of this lesser penalty under Clause 10.1 by the DoT.

As regards the basis for this recommendation, please refer to the communication dated 21.10.2016 and the detailed reasons mentioned therein in Paras 15 to 23 in support of the said recommendation.

Chapter-II: Para-wise Response

A. The Authority's earlier recommendations (Para No. 1 to 4):

Para No.1: *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).*

Para No.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).*

Para No.3: *The Authority received a letter No. RP/FY 16-17/122/004, dated the 3^d August, 2016 from Airtel in response to the Authority's letter mentioned in Para 2 above (a copy of the letter dated the 3^d August, 2016 is annexed as Annexure-III).*

Para No.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).*

B. DOT's View on Para No. 1 to 4 of the Authority's recommendations:

In the paragraphs 1 to 4, TRAI has mentioned about receipt of letter dated 14th July, 2016 from RJIL, TRAI asking Airtel to do needful and furnish response on

the issues raised by RJIL vide its letter dated 19th July, 2016, and TRAI receiving a letter dated 3rd August from Airtel in response to TRAI's letter dated 19th July, 2016 as well as receipt of letter dated 4th August, 2016 from RJIL, hence no comments.

However, on perusal of Annexure-I, II and III as mentioned in the paragraphs 1 to 3, it has been observed that:

- (a) RJIL sought immediate intervention of TRAI on the issue of denial of augmentation of POIs by the operators on the basis of its forecast and firm demand during the test phase of its services i.e. before commercial launch of services.
- (b) There was a dispute/ disagreement between the operators, which related to the following points:
 - (i) Augmentation of existing POIs to be undertaken as per the process;
 - (ii) Capacity can be enhanced when the traffic picks up;
 - (iii) Refusal to issue demand notes for augmenting POIs as per RJIL projections;
 - (iv) Test traffic being disproportionate to any test use i.e. the test traffic is not only high but is abysmally imbalanced;
 - (v) Abnormal traffic utilization on account of free voice offerings by RJIL during test phase;
 - (vi) Traffic trends highly skewed with almost 90% of the total traffic terminating into Airtel network while merely 10% is being directed towards RJIL network;
 - (vii) Calculations and provisioning of E1 links required at POIs on the basis of subscriber base vis-à-vis other operators to bring the utilization to around 40% to 50%;
 - (viii) Further augmentations of POIs to be undertaken as per terms of Interconnect Agreement; etc.

Further, on perusal of Annexure-IV as mentioned in the para 4 of TRAI recommendations, it has been observed that RJIL raised a concern on the terms of Interconnect Agreement as being coercive and unilateral and said that it is based upon the provisions of Telecommunication Interconnection (Reference Interconnect offer) Regulation 2002. They also alleged interconnect agreements being virtually forced upon them. RJIL also expressed that TRAI direction as well as clause in Interconnect Agreement providing 90 days' time frame for augmentation as being not able to serve the purpose. RJIL did not mention any launch date of its services but requested for augmentation to be completed within 7 days of receipt of requisite charges.

It is not clear as to whether TRAI has responded to any of RJIL concerns on the clauses and coercive execution of interconnect agreement or denied or qualified its direction dated 7th June 2005 specifying 90 days as not being applicable for maintaining QoS.

TRAI may please clarify and reconsider.

C. Response of the Authority on DOT's View regarding Para No. 1 to 4:

These paras record the communications exchanged between the Authority, RJIL and Airtel over a period of three weeks. From the letters received in TRAI, the Authority had noticed that there were issues between Airtel and RJIL pertaining to provisioning of POIs. However, at this stage, the Authority limited itself to seeking their response.

DoT may appreciate the fact that Airtel was intentionally denying and delaying the provision/ augmentation of POIs to RJIL, only to restrict a new entrant thus violating the terms and conditions of license and regulations/ directions of the Authority which also caused a lot of inconvenience to consumers. After intervention of the Authority, Airtel has provided POI capacity at much shorter notices (in some

instances within 2-3 days) implying that it was capable of providing such POIs without any delay. In this context, the denial and delay in providing POIs when the QoS parameters were not being met cannot be explained in any other manner but wilful.

RJIL had raised firm demand with all operators including Airtel on the 21st June, 2016 and expressed its willingness to pay all demand notes issued by operators. DOT would appreciate the fact that the Authority recommended penalty after four months of the demand raised by RJIL.

DoT has mentioned the points of dispute/ disagreement between the operators (points number (i) to (viii)). Having clarified that the provisioning of POIs is an absolute obligation, and any disagreement between operators cannot substitute or in manner, dilute the obligations for provision of POIs and the consequent adherence to QoS, the Authority is of the opinion that these points are not relevant in the current case. The regulation is clear that it is the duty and obligation of both parties to provide sufficient POIs. If the parties have any other disagreements, these must be resolved, however the QoS parameters must not suffer at any point of time.

It is worth pointing out that the Authority has taken note of the issues raised by RJIL such as unilateral terms and conditions of interconnection agreement being forced on them, difficulty in timely augmentation of POIs, suitability of 90 days' time frame for augmentation etc. In this regard, the Authority has initiated a stakeholder consultation process for review of interconnection framework by way of issuing a consultation paper on 21.10.2016.

Thus, the Authority does not deem it appropriate to reconsider its views on the matter.

D. The Authority's earlier recommendations (Para No. 5 and 6):

Para No.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 demer 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).*

Para No.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).*

E. DOT's View on Para No. 5 and 6 of the Authority's recommendations:

In the paragraphs 5 and 6, TRAI has mentioned about receipt of letter dated 12th August, 2016 from RJIL and letter dated 2nd September, 2016 from COAI, hence no comments. However, on perusal of Annexure-V and VI as mentioned in these paragraphs, it has been observed that:

- (a) RJIL in its letter cited COAI communication dated 8th August 2016 which stated that its member operators are not expected to provide POI's to RJIL during the test trials. RJIL demanded TRAI intervention to direct operators to provide POIs to RJIL without any demer or delay and take action against the errant TSPs for continued denial/delay in provisioning of POI's and subsequent breach of respective Licenses.
- (b) Though RJIL has attached copies of its letter dated 21st June 2016; however, the COAI's captioned letter dated 8th August 2016 is not

available in the Annexes attached with the Recommendations, as such, it is not clear as to whether TRAI took cognizance of the said letter of COAI.

- (c) Vide letter dated 2nd September, 2016, COAI had also sought TRAI intervention to restore fair competition. From perusal of para 6 of TRAI Recommendations, it appears that TRAI has relied upon only some of the contents of COAI letter ignoring the points made in respect of RJIL test launch being conducted for some months; pseudo and abnormal asymmetric traffic patterns caused through unlimited free usage of voice and data; unfair competition; unlimited free voice services by RJIL and its negative impact on the other operators; abuse of IUC regime, etc.

On scrutiny of RJIL's letter dated 21st June 2016, it has been observed that on the one hand M/s RJIL mentions that it expects over 100 million subscriber in the first year post launch of services; whereas on the other hand it says that RJIL customer base of 22 million and future projections should be taken from the date of this letter. It is not clear from the contents of the letter as to whether RJIL had launched its services on the said date i.e. 21st June 2016. If not, how RJIL can claim a customer base of 22 million on the said date.

Further, as brought out in sub-para (c) above, reliance/ response on some of the contents of same letter of COAI while ignoring the rest of the contents. It is noted that during test phase, generally, operators provide minimum POIs for testing of call flow to other networks.

TRAI may please clarify and reconsider.

F. Response of the Authority on DoT's view on Para No. 5 and 6:

(a) & (b) At the outset, the Authority would like to assert that COAI does not have any *locus-standi* on the issue of interconnection matters. It is an issue between operators and association has no role to play. Nonetheless, the COAI letter dated 08 August 2016 was duly taken note of by the Authority. In this letter COAI had primarily raised two issues. One related with the testing of the network by

RJIL with subscription of more than 1.5 million consumers and other related to the call termination charge under the present IUC regime. The issue of IUC is being addressed in the para 7 of the response.

With regard to the test subscribers, the Authority wrote to DoT through its letter dated 08 June 2016 requesting it to examine whether over 5 lakh SIMs issued by RJIL were in compliance of its licensing terms & conditions. DoT after a lapse of two months, in its reply dated 10.08.2016, sent a letter to the Authority to examine whereas this was an issue to be addressed by the Licensor. In its reply dated 17.08.2016, the Authority requested DoT that if it wants the Authority to examine this issue, it should send a reference to the Authority as per the TRAI Act, 1997. It was only after this letter of the Authority, that DoT made a reference to the Authority on 09.09.2016 (after 3 months) to examine the issue of enrolment of customers for testing purposes before commercial launch of services.

(c) It is incorrect to say that the Authority has relied upon only on some of the contents of the COAI letter ignoring the points made in respect of RJIL test launch. Further to the COAI's letter dated 02.09.2016, the Authority held a meeting on 09.09.2016 with representatives of Airtel, Vodafone, Idea and RJIL where all the operators presented their views on these matters. Ample opportunity was provided to Airtel to express its views and concerns in this regard.

As already mentioned in response to Sr. No. 1 above, the provision of POI is an independent and absolute obligation. The Authority had clearly informed all the operators that denial of provision of interconnection for any reason would not be acceptable and that all the operators have to provide requisite POIs to maintain QoS in the interest of customers. If the parties have any other disagreements,

these must be resolved following the due process, however the QoS parameters must not suffer at any point of time.

It may be noted that the rest of the contents of the said COAI's letter are not relevant when it comes to provisioning of adequate POIs.

It must be noted that there is no provision in the license or TRAI Regulation to deny/delay provisioning of POIs during the test phase. On the contrary, the testing cannot be completed unless sufficient POIs are provided.

It is surprising that DoT, as the licensor, is not aware of the date of launch of commercial service by RJIL. The Authority observed that DoT, vide letter dated 03.08.2016 has amended Condition No. 7 – Provision of Service of the Unified License Agreement, as under:

".... Any service, permitted under the scope of this License Agreement, shall be commenced by the Licensee after giving an intimation to do so to the Licensor. However, the compliance to the scope of the License and requisite monitoring facilities will be demonstrated within 90 days from the date of receipt of such intimation from the Licensee....."

Clearly, as per the Condition No. 7, intimation for commencement of service is to be given by the Licensee to DoT and not to TRAI.

In any case, as per the information available with TRAI, the commercial launch of service by RJIL took place on 05.09.2016.

In view of the above clarification, there is no case for re-consideration.

G. The Authority's earlier recommendations (Para No. 7):

Para No. 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).

H. DOT's View on Para No. 7 of the Authority's recommendations:

In this para TRAI has mentioned about a meeting with TSPs on 9th September, 2016 wherein, TRAI categorically conveyed to the three TSPs namely Airtel, Vodafone India Limited and M/s Idea Cellular Limited that the consumers do not suffer because of the inadequacy of the POIs.

From the perusal of minutes of the meeting annexed as Annexure-VII, it is evident that the above mentioned TSPs have also raised several issues against RJIL; however, TRAI does not seem to have responded or looked into all of them for amicable resolution.

It has been observed that M/s RJIL had been approaching TRAI from July 2016 for its urgent intervention to remove congestion at inter-operator POIs. Though, TRAI has sought explanation from Airtel and its reply was available with TRAI in first week of August 2016, however, TRAI conducted the first meeting on the issue on 9th September 2016.

TRAI may be in a better position to clarify and reconsider as to whether (i) TSPs took any action for mutual resolution of disputes/ differences on the issues raised by them; (ii) TRAI's intervention was timely and the same was legally tenable only post the launch of RJIL commercial operations, which was on 5th September 2016 as per DOT records.

I. Response of the Authority on DoT's view on Para No. 7:

Through its letter dated 2nd September, 2016, COAI stated that its member operators are in no position, by way of network resources or

financial resources to terminate the traffic coming from RJIL. COAI also mentioned that the issues and views indicated are the views of the majority members of COAI, and relate to the issue of financial impact on majority incumbent operators. It was also mentioned that the views of minority members have not been solicited on this issue. From the content of the aforementioned letter, the Authority observed that mutual resolution attempts which it was trying for the last 3 months might have failed between the TSPs leading to hardship for customers of all the operators and therefore a meeting may be required to ensure effective interconnection between the TSPs. The Authority could not have waited for mutual resolution of issues at the cost of poor service experience for millions of customers. In the Authority's meeting with the TSPs on 9th September, 2016, Airtel alongwith Vodafone India Limited and Idea Cellular Limited, raised, *inter-alia*, the following issues: (i) the termination charge of 14 paise per minute for mobile to mobile calls prescribed through the Telecommunication IUC (11th Amendment) Regulations, 2015 is below cost and therefore, owing to the significant asymmetry in the traffic with RJIL, they would incur huge losses; and (ii) RJIL's free tariff offer is in violation of the Telecommunication Tariff (30th Amendment) Order, 2004 which requires IUC compliance. In this regard, the following may be noted:

The present termination charge of 14 paise per minute has been prescribed on the basis of work-done principle after following a comprehensive consultation process. It fully recovers the cost incurred by the terminating service provider. Therefore, there is no question of loss to terminating service providers due to asymmetry in traffic with RJIL. In fact, basic objective of prescribing the termination charges is to take care of asymmetry of the traffic between interconnecting operators. If the traffic is symmetric, there is a no need to prescribe termination charges. This issue was clarified

by the Secretary, TRAI during the meeting with the operators on 09.09.2016 itself, as recorded in para 12 of the minutes of meeting.

The issue raised by Airtel alongwith Vodafone India Limited and Idea Cellular Limited that RJIL's free offer is in violation of the Telecommunication Tariff (30th Amendment) Order, 2004 was examined in the Authority and the view of the Authority in this regard was communicated to the service providers.

From the above, it is clear that the incumbents TSPs were not willing to provide adequate POIs to RJIL to provide a satisfactorily service to its customers on launch of its commercial service.

J. The Authority's earlier recommendations (Para No. 8):

Para No. 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).*

K. DOT's View on Para No. 8 of the Authority's recommendations:

In this para, TRAI has mentioned about receipt of letter dated 15th September, 2016 from RJIL providing details of call failures with Airtel and seeking TRAI's intervention, hence no comments. However, on perusal of Annexure-VIII as mentioned in the para, it has been observed that RJIL letter dated 15th September 2016 was issued within a week of TRAI's meeting held on 9th September 2016.

Since, RJIL had announced its commercial launch on 5th September 2016, the operators might have provisioned augmentation of POIs as per demand of RJIL after the said meeting with TRAI. In terms of interconnect agreement as well as TRAI direction, 90 days period is the permissible and agreed period for augmentation. However, it is not clear as to whether TRAI took into

consideration the TSP's action and the outcome of ongoing augmentation activities at that point in time while issuing its recommendation dated 21.10.2016.

TRAI may please clarify and reconsider.

L. Response of the Authority on DoT's view on Para No. 8:

The Authority took into consideration the efforts made by the incumbent operators in providing sufficient number of POIs to RJIL to provide satisfactory QoS to its customers. However, on finding that the incumbent operators are not willing to provide adequate POIs to RJIL as per its projections and demand, the Authority had to issue show cause notices to the TSPs.

In the period between 19th July 2016 i.e. when the Authority wrote to Airtel to provide sufficient POIs so as to adhere to the QoS parameters, to 21st October, 2016 (the date of recommendation), the Authority consistently monitored the congestion on the POIs of RJIL with Airtel. Though Airtel provisioned certain number of E1s on the POIs with RJIL, these were found not sufficient to maintain the POI congestion below 0.5%.

The Authority has already explained that its action was to ensure compliance of the licence conditions and the QoS parameters to be met in the interest of customers.

The Authority has recorded in para 15 of its Recommendations dated 21.10.2016 that the Show Cause notice (SCN) was issued after providing sufficient time to Airtel to comply with the QoS parameters and the provisions of the license agreement. The Authority took into consideration Airtel's action and the outcome of ongoing augmentation activities.

The Authority does not agree with DoT's contention that there was a need to wait when the QoS parameters were so bad and millions of consumers were suffering due to blatant and wilful violation of the licence conditions and TRAI's Regulations by Airtel.

M. The Authority's earlier recommendations (Para No. 9 to 11):

Para No. 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).*

Para No. 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).*

Para No. 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.*

N. DOT's View on Para No. 9 to 11 of the Authority's recommendations:

In the paragraphs 9 to 11, TRAI has mentioned about its letter dated 19th September, 2016 asking Airtel to furnish information on the steps taken by them after the meeting of 9th September, 2016 and on traffic on POIs with RJIL as well as about the response of Airtel vide e-mail dated 23rd September, 2016, hence no comments.

However, scrutiny of Annexure-IX as mentioned in the para 9 of TRAI recommendations reveals that TRAI had sought traffic data from 15th September 2016 to 19th September 2016. To the extent of TRAI seeking information from operators on the steps taken after the meeting held on 9th September 2016 is concerned, the same may seem justified as a means to monitor the situation.

Though in the e-mail dated 23rd September, 2016 (Annexure-X), Airtel has also intimated about augmentation of E1s and their operationalization, however, the same has not been captured in para 10 & 11 of the TRAI's recommendations; as such it is not clear as to whether TRAI has taken cognizance of the said steps taken by Airtel, while finalizing its recommendations.

It is also observed that though the TRAI's QoS Regulations regarding POI congestion prescribe a benchmark of less than or equal to 0.5% averaged over a period of one month; however, TRAI has taken traffic data of only few days to arrive at its conclusion while finalizing its recommendations, which is a deviation from the provision of the Regulation that POI congestion to be averaged over a period of one month for the purpose of examining QoS benchmarks.

TRAI may clarify and reconsider.

O. Response of the Authority on DoT's view on Para No. 9 to 11:

From the communications received from RJIL and Airtel, it was clear that while RJIL was placing demands to Airtel for augmentation of E1s at POIs, those were not being met adequately. From the information received from the RJIL and Airtel, the Authority noticed a significantly high rate of failure of call attempts during busy hour on POIs with RJIL in most of the LSAs. Clearly the steps taken by Airtel were not sufficient to bring down the POI congestion to the desired level of 0.5% in most of the LSAs.

The Authority, through a letter dated 19.09.2016 sought data for traffic and congestion on POIs from concerned TSPs including Airtel

for five days from 15.09.2016 to 19.09.2016. Subsequently through a letter dated 03.10.2016, it asked the concerned TSPs including Airtel to furnish information on traffic and congestion on daily basis. Thus on 21.10.2016 while making recommendations to the Government, the Authority had collected information on the POI congestion of Airtel with RJIL for several days. As the POI congestion in most of the LSAs was significantly higher than 0.5%, POI congestion averaged over a period of one month would certainly be much higher than the permissible level of 0.5%. For example, if the POI congestion during busy hour on a single day is greater than 15%, the average POI congestion during busy hours in a month would still be higher than the benchmark for POI congestion (i.e. 0.5%).

It is further added that RJIL had been submitting daily data for traffic status, indicating severe congestion in the network due to shortage of POIs. The Authority has considered this data of more than a month while issuing SCN. In view of the above, it is incorrect to say that the Authority has taken traffic data of only a few days to arrive at its conclusion.

In any case, the Authority was concerned about the persistent call failure at POIs of RJIL with Airtel which was not improving even after consistent persuasion by way of meetings and, therefore, in view of the large public interest involved, the Authority recommended penalty to the erring TSPs.

For averaging the POI congestion over a month, para 15 of the recommendation may be referred: "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 call failure rates were so high that a simple mathematical calculation will show that there was no way the monthly percentage of GoS could have been lesser than the stipulated 0.5%, if it is assumed that traffic of each day is of same order.

Thus, the Authority does not deem it appropriate to reconsider its views on the matter.

P. The Authority's earlier recommendations (Para No. 12 to 14):

Para No. 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).*

Para No. 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).*

Para No. 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.)

Q. DOT's View on Para No. 12 to 14 of the Authority's recommendations:

In the paragraphs 12 to 14, TRAI has mentioned about issue of Show Cause Notice (SCN) dated 27th September, 2016 to Airtel for violation of QoS regulations and provision of license agreement, meeting with CEO of Airtel and TRAI dated 30th September, 2016 and seeking of information on traffic and congestion on POIs with RJIL vide letter dated 3rd October, 2016 as well as Response of Airtel vide letter dated 7th October, 2016 to the Show Cause Notice of TRAI dated 27th September, 2016, hence no comments.

However, on perusal of Annexure-XI as mentioned in para 12 of TRAI's recommendations, it has been observed that TRAI's SCN only alleged QoS and

non-compliance of License conditions and did not mention penalty outcome of 50 crores for Licensing non-compliance while seeking Airtel's explanation.

Further, it is observed that though in para 14 of the recommendations TRAI has captured the points made by Airtel in response to the SCN, however, it has responded to some of the grounds and has remained silent on other grounds viz. claim of Airtel such as efforts made by Airtel in augmenting the POIs; delay by RJIL in the operationalization of capacities.

Also from perusal of recommendations it appears that TRAI did not provide any hearing to Airtel post submission of response to show cause notice.

Therefore, TRAI may reconsider as to whether the recommendations will stand a legal scrutiny in the principles of natural justice.

R. Response of the Authority on DoT's view on Para No. 12 to 14:

DoT may take note of the following in the SCN issued by the Authority:

"Now, therefore, M/s Bharti Airtel Limited is hereby required to show cause, within 10 days from the date of receipt of this notice, 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 Services (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the provisions of Unified License and Unified Access Service License, as applicable and in case no written statement of explanation is received within the time so allowed, the matter shall be proceeded with the presumption that M/s Bharti Airtel Limited has nothing to state in their defence."

The Authority is of the view that non-mention of the potential penalty amount does not make the recommendations legally untenable in any manner.

The Authority took cognizance of all the submissions of Airtel including the efforts made by them. However, the Authority observed that not only the steps taken by Airtel were insufficient to bring down the POI congestion to the desired level of 0.5% in most of the LSAs but also that Airtel appeared to have ulterior motive to stifle competition.

It is not mandatory on the part of the Authority to provide a hearing to a TSP post submission of response to an SCN. The recommendations were framed only after observing a continued violation of QoS Regulations and license conditions by Airtel.

Further, Airtel did not raise any new issue in reply to SCN which required personal hearing.

S. The Authority's earlier recommendations (Para No. 15 to 19):

Para No. 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.

Para No. 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.*

Para No. 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 noncompliance of the terms and conditions of the License and Regulations issued by the Authority.*

Para No. 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.

Para No. 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.*

T. DOT's View on Para No. 15 to 19 of the Authority's recommendations:

In the paragraphs 15 to 19, TRAI has mentioned about examination of the grounds taken by Airtel and TRAI's decision there upon. TRAI has indicated that arguments made by Airtel are not tenable. However, it has been noticed that though analysis of the reply against some argument and view of TRAI thereon is available in the recommendations, many of the points have remained unaddressed.

Further, it is noted that as per interconnect agreement between M/s RJIL & M/s Bharti Airtel Limited (BAL), the time period prescribed for augmentation of POIs is 4 weeks' notice period plus 90 days on receipt of requisite charges (*Clause 9.1 & 9.2 of the interconnect agreement refers*). However, the analysis of delay

in providing POIs beyond 90 days on receipt of requisite charges by either party is not available in the recommendations.

It needs clarity whether QoS norms are examined based on average traffic of one month or any part thereof for imposition of financial disincentives for violation of QoS Benchmarks. In the situation, wherein Airtel has claimed that it has been taking action for provisioning of POIs and that there has been some delays on part of RJIL in commissioning those POIs, a fair analysis would indicate that for initial some days when the POI are not commissioned the POI congestion may be above the benchmark, however, as soon as the POIs are commissioned, the congestion comes down and may be within the benchmark for remaining period of the month. As such, the observations of few days during initial period may not hold good after averaging the result over a period of one month. Regulation on QoS has specified a methodology and the period over which the calculation of parameter congestion at POI has to be made to capture compliance to the prescribed benchmark. TRAI seems to ignore this aspect while finalizing its recommendations. Moreover, failure to meet QoS norms may be attributable to the TSP who is originating traffic, if all the POIs have been provisioned in the stipulated period in accordance with the interconnect agreement. TRAI may like to examine this aspect.

There is no specific mention in the interconnect agreement between M/s RJIL and Airtel whether POIs demanded for catering to the requirement of customers are to be provisioned after launch of service or pre-launch also. During pre-launch, a TSP is not expected to acquire customers and testing with other operators is supposed to be for ensuring call flow. TRAI may like to examine this issue.

TRAI has claimed that they have been continuously monitoring the situation of congestion at POIs and situation has not improved significantly yet. However, there is no evidence on record, which shows the basis of such observation of TRAI. Further there is no evidence in the recommendation which shows that TRAI has taken into account the submissions of all TSPs during this period.

Airtel through its various letters and data submitted to DOT has claimed that (i) it has provided more than required numbers of POIs to RJIL, (ii) pointed out that the congestion data sent by RJIL is wrong, inconsistency and devoid of merits. Similar letters might have been received by TRAI; however, from the recommendations, it seems that these points have not been taken into consideration, which TRAI may like to examine.

Though the reasons for delay in provision of POI by either party is not available in TRAI recommendations, it is not clear as to whether TRAI has examined the reasons for delay in provisioning of POI beyond the stipulated period of 90 days attributable to either party. Managing the POIs for the outgoing traffic is the prime responsibility of the operator, who originated the traffic. Whether any failure to meet the QoS benchmark of POI congestion before completion of 90 days period specified in TRAI direction/ Interconnect Agreement is to be taken cognizance, if yes, then what is the sanctity of prescribing 90 days' time limit? TRAI may like to examine and reconsider this aspect in the recommendations.

It has been observed that RJIL sought intervention of TRAI for ensuring adequate POIs before launch of services.

Further, from the plain reading of clause 6.2 of Unified License it is evident that the TSP has to meet the requirement.

TSPs have to comply with the provisions of License as well as Regulations/ Directions/ Order of TRAI from time to time. The interconnect agreement entered into by both M/s RJIL and M/s BAL must have been filed in TRAI in pursuance of extant TRAI Regulations. Whether, TRAI had examined the interconnect agreement filed by the parties and struck down any of its clauses or the agreement as a whole is not clear. If not, in such situation, the parties are bound by the terms of interconnect agreement between them. Whether M/s RJIL had provided a forecast in writing in advance for its requirements of port capacity for telephony traffic to enable the other party to dimension the required capacity in its network in pursuance of clause 9.5 of the interconnect agreement is not clear. Further, there is no clarity as to when M/s RJIL

intimated other operators about the date of launch of its services. In addition, whether M/s RJIL has taken suitable action as provided in the interconnect agreement on dispute resolution with M/s BAL is also not clear. The Department also noted that the trunk groups are created with the consent of both the parties for effective implementation. In such a scenario, segregation of trunk groups in outgoing and incoming might have been done with the consent of the other party i.e., M/s RJIL in this case. It is not clear as to whether TRAI had ascertained from the submission of both the parties that they had agreed for creation of trunk groups in the manner it was created.

It appears that opportunity has not been given to M/s Airtel to explain the points raised in para 18 of the recommendations. This appears to be against principles of natural justice.

Fault report of the circuits in the trunk groups is not available in the recommendations. Also, it is not clear as to how TRAI has concluded (in para 19 of the recommendations) that by segregating trunk groups in outgoing and incoming Airtel failed to provide same degree of efficiency and same quality in maintaining and repairing faults.

TRAI may please clarify and reconsider.

U. Response of the Authority on DoT's view on Para No. 15 to 19:

With regard to time period for augmentation of POI and QoS benchmark, the comments against earlier paras may please be referred to.

The Authority does not approve interconnect agreements between TSPs. However, the TSPs are expected to ensure that their agreements are in compliance with the Authority's regulations/directions/orders and the terms and conditions of their licenses.

As stated against observations on Para 9-11, the Authority's recommendations were based on monitoring of traffic and congestion reports from TSPs received since 15.09.2016. A copy of RJIL's letter dated 18.10.2016 has been annexed to the recommendations as evidence. It has also been noted in the recommendations that Airtel has not denied the fact that congestion at POI with RJIL has exceeded the allowable limit of 0.5%. The Authority reiterates that it has relied on the traffic data submitted by RJIL as Airtel had created separate trunk groups for incoming and outgoing traffic to circumvent the QoS regulations.

The Authority had been monitoring the POI congestion and call failure data for over 3 months. It had frequently obtained the POI congestion data from all operators and RJIL was in any case submitting daily data for POI congestion and call failures to the Authority.

DoT would appreciate that while POI congestion data would be available from both the operators, the call failure data would only come from the operator at whose end calls would be failing. The Authority took into account the submission of all TSPs during this period. The Authority monitored such data and checked frequently and then arrived at its conclusion.

The obligation of the licensee to provide interconnection to all eligible TSPs to ensure that the calls are completed to all destinations is an absolute obligation and has to be complied with. Further, the condition has to be viewed together with the obligation of all licensees to meet QoS parameters at all times. The Authority reiterates that there is no time limit prescribed for meeting the QoS benchmarks.

The Authority also said in its Recommendations that *"By way of segregating E1s into outgoing and incoming E1s, Airtel has failed to provide same quality to RJIL as it provides to itself."*

In conclusion, there are no issues to be reconsidered under these queries.

V. The Authority's earlier recommendations (Para No. 20):

Para No. 20: *The Authority has observed that in Bharti Airtel vs 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.*

W. DOT's View on Para No. 20 of the Authority's recommendations:

In this para, TRAI has quoted observations of Hon'ble Supreme Court and justified that Licensees are required to operate in a consumer friendly manner and desist from anti-consumer behaviour and linked the same to provisioning of POIs, however, the said principle applies to both the parties keeping in view the timeframe stipulated in TRAI directions / Interconnect Agreement for augmentation of POIs.

It may be noted that Clause 29.4 of Unified License provide for carrying out performance tests on TSP's network to evaluate Quality of Service parameters prior to grant of permission for commercial launch of the service. After successful completion of interconnection tests to ascertain that the network meets the specified standards on Quality of Service (QoS), the TSP is supposed to launch its services. However, it appears that RJIL has not completed such tests before seeking permission for commercial launch and launched its services on 5th September 2016 without resolving the issues with other operators

amicably within the existing regulatory framework and taken their customers to task by providing poor services. If that is so, whether TRAI took cognizance of this fact before finalizing its recommendations is not clear.

TRAI may please clarify and reconsider.

X. Response of the Authority on DoT's view on Para No. 20:

The Clause 29.4 of the Unified License provides the following:

"29.4 The Licensor or TRAI may carry out performance tests on Licensee's network and also evaluate Quality of Service parameters prior to grant of permission for commercial launch of the service, after successful completion of interconnection tests and/ or at any time during the currency of the LICENSE to ascertain that the network meets the specified standards on Quality Of Service (QoS). The LICENSEE shall provide ingress and other support including instruments, equipment etc., for such tests."

Further, DoT, vide letter dated 03.08.2016 has amended Condition No. 7 – Provision of Service of the Unified License Agreement, as under:

".... Any service, permitted under the scope of this License Agreement, shall be commenced by the Licensee after giving an intimation to do so to the Licensor. However, the compliance to the scope of the License and requisite monitoring facilities will be demonstrated within 90 days from the date of receipt of such intimation from the Licensee....."

Clearly, as per the Condition No. 7, intimation for commencement of service is to be given by the Licensee to DoT and not to the Authority. Further in persuasion of the Clause 29.4 of the Unified License, DoT

might have also carried out performance tests on Licensee's network prior to grant of permission for commercial launch of the service.

There are no issues meriting reconsideration by the Authority.

Y. The Authority's earlier recommendations (Para No. 21 to 23):

Para No. 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 wilfully violate the license conditions;

Para No. 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.

Para No. 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.*

Z. DOT's View on Para No. 21 to 23 of the Authority's recommendations:

In the paragraphs 21 to 23, TRAI has concluded its findings in respect of non-compliance to various license conditions, QoS Regulations, it's Direction dated 7th October 2016 by Airtel and finally summarised its recommendations.

On examination of these paragraphs, the Department observed that in sub-para (i) to (iii) of para 21 of the recommendations, no specific details for violation of the clauses of License Agreement has been mentioned by TRAI. Further, these clauses are general clauses seeking compliance of terms and conditions of the License Agreement in general.

In sub-para (iv) of para 21 of the recommendations, TRAI has concluded that Airtel has failed to provide E1s at the POIs of RJIL to ensure that calls to all destinations are completed; however, based on the available records, the

Department noted that Airtel and RJIL has entered into mutually agreed interconnect agreement in March 2014/ January 2015. The said interconnect agreement was filed in TRAI and if any of the provisions of the said interconnect agreement was against the conditions of License Agreement or TRAI's determinations/ orders/ regulations, the same should have been set aside by TRAI. Further, Airtel has provided POIs to RJIL for testing purpose and it is RJIL, who has to ensure that the originating calls from its network are completed to all destinations through these POIs. Congestion on any POI cannot be taken to mean that calls from a network are not being completed to all destinations as far as call flow is concerned. Moreover, as per reports from RJIL, POIs have been provided by Airtel within the stipulated timeframe in terms of interconnect agreement.

Further, from plain reading of clause 6.2 of Unified License it is noted that the Licensee has to meet the requirement; however, nowhere it is mentioned that this requirement is to be met by the Licensee forthwith or within the stipulated time limit for providing the interconnection as per TRAI regulations/ directions/ orders. Therefore, the Department is of the opinion that this clause needs to be read with other clauses of the license as well as regulations/ directions/ orders of TRAI in this regard as well as provisions of interconnect agreement.

In sub-para (v) & (vi) of para 21 of the recommendations, TRAI has quoted clauses of Unified license/ Unified Access Service License, which are related to entering into interconnection agreement by the licensee within the extant regulatory framework. Since, Airtel and RJIL have already signed interconnect agreement as stated above and no evidence is available that TRAI has set aside the said agreement; therefore, the Department is of the view that this clause may not be attracted in this case.

In sub-para (vii) of para 21 of the recommendations, TRAI has concluded wilful violation of the license conditions by Airtel taking cognizance of COAI's letter. In this respect, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over

statement of the operator or their association. In para 14 (ii) & (iii) of recommendations, it has been captured by TRAI that Airtel has made consistent efforts in resolving the issue of provision of POIs within the framework of interconnect agreement. Therefore, the above statement does not match with the action & conduct of Airtel and as such use of the said statement for imposition of penalty may not be appropriate.

In sub-para (viii) of para 21 of the recommendations, TRAI has concluded that Airtel has failed to meet QoS benchmarks. However, the QoS parameters are to be met by both the parties and they are responsible for their originating traffic, if the POIs have been provisioned within the stipulated period of 90 days, otherwise the originating operator should have projected demand for POIs well in time keeping in view the provision of interconnect agreement. TRAI appears to have not assessed the responsibility of congestion attributable to either Airtel or RJIL in view of above and reflected the same in the recommendations.

In sub-para (ix) of para 21 of the recommendations, TRAI has stated a factual situation; however, the department is of the opinion that both RJIL and Airtel are responsible for this situation.

In sub-para (x) of para 21 of the recommendations, TRAI has concluded that the three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited by confirming the contents of COAI' letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions; however, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over statement of the operator or their association and the same may be given due consideration as mentioned in preceding paragraphs.

The Department noted that the core dispute is that RJIL launched their services on 5th September, 2016 without arranging/ activating the adequate POIs, which were commensurate to terminate traffic in the network of the TSPs. As per terms & conditions of the license agreement, it is the obligation of RJIL to arrange adequate POIs before the launch/ provisioning of its services to the

consumers. But RJIL has claimed that they could not arrange this because it was denied by the TSPs. Even if it is assumed that the POIs were denied by the TSPs, it is inappropriate for RJIO to launch the services without arranging POIs or without settling the dispute, if any, which has led to failure of calls and inconveniences to the consumers. No evidence has been recorded by TRAI or submitted by RJIL that it has exhausted all legally available means within the extant regulatory framework or as per conditions of interconnect agreement to get those POIs. This needs further examination.

As TRAI has relied on COAI's letter dated 2nd September, 2016 for concluding that the three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited by confirming the contents of COAI's letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions, it was prudent for the Department to examine the contents of the COAI's letter dated 2nd September, 2016. The Department observed that the said letter of COAI is generic in nature and raises various issues such as asymmetric traffic, IUC and other issues on account of free services and in the background of these issues COAI mentioned that due to such abnormalities the member operators are not obliged to provide POIs for RJIL's free traffic. This letter of COAI and confirmation by operators as well as individual action & conduct of operators needs further examination.

From the recommendations, it is not clear that what methodology has been adopted by TRAI to verify the claims made by RJIL or the TSPs or to reconcile the data submitted by RJIL and the TSPs. It appears that TRAI has stretched the QoS issues to Licensing compliance without sufficient evidence or without substantiating the issues.

In addition to the above, the Department also noted that Section 11(1)(a) (iii) of TRAI Act, 1997 provides that TRAI has the function of making recommendations for revocation of licence for non-compliance of terms and conditions of licence; however, in the para 23 of the recommendations, TRAI has recommended a penal action, which is not covered under the TRAI Act.

Further, TRAI's "Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service (Fourth Amendment) Regulations, 2015" dated 15th October 2015 provide for financial disincentive in case of non-compliance of QoS benchmarks; however, TRAI has not invoked the said provisions in the instant case and went beyond the mandate given to it under the TRAI Act.

TRAI may please clarify and reconsider.

AA. Response of the Authority on DoT's view on Para No. 21 to 23:

In the preceding paragraphs, the Authority has already established Airtel's failure to comply with the Authority's Regulations on QoS, the Authority's directions and License terms and conditions. The referred clauses of License Agreement need to be read in this context and not in isolation.

The Authority is of the view that after the launch of service on 5th September, 2016, the issue between RJIL and Airtel was limited to the aspect of providing sufficient number of E1s at POIs to ensure that grade of service (GoS) at POIs remains within the permissible limit of 0.5% so that the consumers of either operator continue to enjoy seamless, uninterrupted and congestion free service. The Authority observed that RJIL had placed its demand to Airtel based on subscriber and traffic projections well in advance with a view to ensure that its customers can successfully communicate with the customers of Airtel. However, by way of highlighting the tariff plan of RJIL as a potential detriment to their business interest, Airtel alongwith Vodafone India Limited and Idea Cellular Limited, through COAI's letter dated 2nd September, 2016, stated categorically that they are in no position, by way of network resources or financial resources, to terminate volumes of traffic which are markedly asymmetric. In view of the above, the Authority has stated in its recommendations that such actions on the part of Airtel appears to be

with ulterior motive to stifle competition and is anti-consumer in its approach.

The Authority in its Recommendations has noted that non-compliance of terms and conditions of the license warrants recommendations for the revocation of the license. However, the Authority considered the fact that revocation of the license will entail significant consumer inconvenience and, therefore, recommended a penal action of Rs. 50 crore per LSA where POI congestion exceeded the allowable limit of 0.5%. Clearly, penalty to a TSP amounts much less in severity than revocation of its license. It is well-established that a penal action which is lower than the stipulated action is *intra-vires*.

The Authority considered it appropriate to recommend penal action on Airtel in view of the large public interest involved. In any case, the provision of financial disincentive in the Authority's "Standards of Service of Basic Telephone Services (Wireline) and Cellular Mobile Telephone Service, Regulations 2009" does not prevent the Authority from exercising its mandate to make recommendations to the Government for wilful non-compliance of terms and conditions of license.