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EXTRAORDINARY, PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

NEW DELHI, THE 8TH NOVEMBER, 2012

F. NO. 305-8/2012-QOS.----- In exercise of the powers conferred upon it under section 36, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Standards of Quality of Service of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009), namely:-

**THE STANDARDS OF QUALITY OF SERVICE OF BASIC
TELEPHONE SERVICE (WIRELINER) AND CELLULAR MOBILE
TELEPHONE SERVICE (SECOND AMENDMENT)
REGULATIONS, 2012
(24 OF 2012)**

1. (1) These regulations may be called the Standards of Quality of Service of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service (Second Amendment) Regulations, 2012.

(2) They shall come into force with effect from 1st January 2013.

2. After regulation 3 of the Standards of Quality of Service of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service Regulations, 2009 (hereinafter referred to as the principal regulations), the following regulation shall be inserted namely:-

“3A : Consequences for failure of basic service providers to meet the Quality of Service benchmarks.- (1) If a basic telephone service

provider fails to meet the Quality of Service benchmarks specified under sub-regulation (1) of regulation 3, it shall, without prejudice to the terms and conditions of its licence, or the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees fifty thousand per parameter, as the Authority may, by order, direct :

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the basic telephone service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

- (2) If the compliance report furnished by a basic telephone service provider under sub-regulation (2) of regulation 3 is false and which such service provider knows or believes to be false or does not believe to be true, it shall, without prejudice to the terms and condition of its licence, or the Act or rules or regulations or orders made, or, directions issued thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees ten lakh per parameter for which such false report has been furnished, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the basic telephone service provider has been given a reasonable opportunity of representing against the contravention of the regulation, observed by the Authority.

- (3) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.”

3. After regulation 5 of the principal regulations, the following regulation shall be inserted, namely:-

“5A. Consequences for failure of cellular mobile telephone service providers to meet the Quality of Service benchmarks.- (1)

If a cellular mobile telephone service provider fails to meet the benchmark of parameter specified under serial number **A** of sub-regulation (1) of regulation (5), it shall, without prejudice to the terms and conditions of its licence, or the Act or rules or regulations or orders made, or directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees fifty thousand per parameter and in case of second or subsequent such contravention, to pay an amount not exceeding rupees one lakh per parameter for each contravention, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the cellular mobile telephone service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

(2) If a cellular mobile telephone service provider fails to meet the benchmark of parameter specified under serial number **B** of sub-regulation (1) of regulation (5), it shall, without prejudice to the terms and conditions of its licence, or the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees fifty thousand per parameter, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the cellular

mobile telephone service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

- (3) If the compliance report furnished by a cellular mobile telephone service provider under sub-regulations (2) of regulation 5 is false and which such service provider knows or believes to be false or does not believe to be true, it shall, without prejudice to the terms and conditions of its license, or the Act or rules or regulations or orders made, or, directions issued thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees ten lakh per parameter for which such false report has been furnished, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the cellular mobile telephone service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

- (4) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.”

4. After regulation 9 of the principal regulations, the following regulation shall be inserted, namely:-

“9A. Consequences for failure of the service providers to submit compliance report.-(1) If a service provider contravenes the provisions of regulation 9, 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, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees five thousand for every day during which the default continues, as the Authority may, by order, direct:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

- (2) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.”

(Rajeev Agrawal)
Secretary

Note.1.--- The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 dated the 20th March, 2009 vide notification number No. 305-25/2008-QoS dated the 20th March, 2009.

Note.2.--- The principal regulations were amended by issuing the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone service (Amendment) Regulations, 2012 (10 of 2012) dated the 7th May, 2012.

Note.3.--- The Explanatory Memorandum explains the objects and reasons of the Standards of Quality of Service of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service (Second Amendment) Regulations, 2012 (24 of 2012).

Explanatory Memorandum

TRAI has laid down the Quality of Service standards for Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service through the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) dated the 20th March 2009. These regulations were amended by issuing the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone service (Amendment) Regulations, 2012 (10 of 2012) dated the 7th May, 2012. As part of compliance to these regulations the Monthly/Quarterly Performance Monitoring Reports are received from service providers. TRAI also conducts periodic survey through independent agencies across the country, to monitor the compliance of prescribed standards/benchmarks. Analysis of these reports of several past quarters reveals that some of the service providers are repeatedly not meeting the quality of service benchmarks for some of the prescribed parameters and no consistent improvement is noticed in spite of the measures taken by TRAI. Therefore, there is a need to provide for financial disincentives for failure to meet the Quality of Service benchmarks.

2. TRAI had earlier considered the issue of imposing financial disincentives for ensuring Quality of Service, in pursuance of the Consultation Paper issued on 18th December, 2008. It was decided that the Authority may consider issuing regulation, separately, similar to the Telecom Unsolicited Commercial Communication Regulations, 2007 (4 of 2007), for imposing financial disincentives to ensure the compliance of quality of service regulations, after detailed analysis of the performance of service providers once the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 are implemented.

3. Keeping in view the above provisions in para 9.4 of the Explanatory Memorandum to the above Quality of Service Regulations, the need to ensure the quality of service provided by the service providers and to protect the interests of the consumers by making these regulations more effective, it is felt

that there is a need to amend the Standards of Quality of Service of Basic Telephone Service (wireline) and Cellular Mobile Telephone Service Regulations, 2009 (7 of 2009) dated the 20th March, 2009 to introduce financial disincentive in relation to the performance of service providers with regard to the Quality of Service benchmarks so as to strengthen the effectiveness and compliance of the said regulations.

4. The draft second amendments 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 were released on 27.08.2012, seeking the comments of the stakeholders. Some of the stakeholders have stated that Telecom Regulatory Authority of India Act, 1997 does not confer upon the Authority power to impose penalty in the form of financial disincentives. In this context, it is stated that the TRAI Act confers power on the Authority not only to regulate but also to ensure the compliance of the provisions of the regulations. The word “ensure” has mandatory connotation, it means “make certain”. Furthermore, the Hon’ble Supreme Court, in its judgment dated the 17, Aug, 2007, in Civil Appeal No. 2104/2006 (Central Power Distribution Co. & Ors Vs. CERC & Anr), inter-alia, held that “it is well settled that a power to regulate includes within it power to enforce”. It will not be out of place to mention that there are a catena of judgments by the Supreme Court wherein the Hon’ble Court has repeatedly re-stated the proposition that legislation should be read and interpreted so as to further the purpose of its enactment and not in a manner that derogates from its main objectives. The Hon’ble Supreme Court in its judgment in the case of State of Karnataka Vs. Vishwabharthi House Building Co-operative Societies and Ors. [(2004) 5 SCC 430], quoted with approval the judgment of Hon’ble Guwahati High Court in the case of Arbind Das Vs. State of Assam & Ors. [AIR 1981 Gau 18 (FB)] wherein it was inter-alia, held that where a statute gives a power, such power implies that legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt out in the statute. The Hon’ble

Court further held that in determining whether a power claimed by a statutory authority can be held to be incidental or ancillary to the powers specially conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purposes of the provision of the statute which confers power on the Authority in exercise of such powers. The relevant part of the said judgment reads as under:-

“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”

In view of the above, the Authority has power to impose financial disincentives on the service providers for non-compliance of the provisions of the Regulations. Keeping in view the comments received from the stakeholders, the meeting held with the service providers on their request and the need to ensure compliance with the Quality of Service regulations, these regulations have been formulated.

5. The Authority will monitor the Quality of Service reported by service providers subsequent to the coming into force of these regulations from the

point of view of non-compliance with the benchmarks and accordingly impose financial disincentive. In case the benchmark for any of the network quality of service parameter for Cellular Mobile Telephone Service e.g. call drop rate benchmark $\leq 2\%$, is not met by an operator in the first quarter after coming into force of these regulations financial disincentive not exceeding Rs.50000/- shall be imposed. In case in any of the subsequent quarters the benchmark for the same parameter i.e. call drop rate benchmark $\leq 2\%$ is not met, financial disincentive not exceeding Rs.1 lakh will be imposed by the Authority.

6. Similarly, in case the benchmark for any of the Basic Telephone Service (Wireline) or customer service quality parameter for Cellular Mobile Telephone Service e.g. termination/closure of service benchmark ≤ 7 days, is not met by an operator in any quarter after coming into force of these regulations financial disincentive not exceeding Rs.50000/- shall be imposed on each instance of non-compliance with the benchmark.

7. In order to deter service providers from giving deliberate false reports to TRAI, financial disincentive, not exceeding rupees ten lakh per parameter for such false report has been provided in the regulations. Also, to ensure that the service providers submit the report in time, financial disincentive has been prescribed.