

VIL/LT/16-17/416
07th October 2016

WITHOUT PREJUDICE

The Advisor (BB & PA)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002

Kind Attn. : Shri Arvind Kumar

Subject : Show Cause Notice under QoS Regulations for CMTS parameters
Reference : TRAI Show Cause No.10-6/2016-BB&PA dated 27.09.2016

Dear Sir,

We are in receipt of Show Cause Notice ("SCN") dated 27.09.2016 alleging violation of the standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations 2009 (QoS Regulations 2009) and provisions of License Agreement as mentioned therein.

At the outset, we submit that Vodafone is compliant to all regulations, directions of TRAI and all licensing conditions. We deny the allegations contained in the SCN for reasons explained herein below:

1. TRAI has ignored the directly applicable and relevant Directions of TRAI and provisions of the Interconnection Agreement between the Parties:

In the SCN, the TRAI has relied upon License Conditions and QoS Regulations 2009, however, if it would have considered its own Directions dated 07.06.2005 and 28.07.2005 under Section 11(1)(b)(i), 11(1)(b)(ii), 11(1)(b)(iii), **11(1)(b)(v)** and **11(1)(b)(vi)** then this SCN could not have been issued. These Directions (Copy enclosed as ANNEX-1) are for provision of interconnection and they provide that "*.....in order to ensure compliance of terms and conditions of license and effective interconnection between service providers and to protect consumer interest, the Authority hereby directs all service providers to provide interconnection on the request of the interconnection seeker within 90 days of the applicable payments made by the interconnection seeker.....*"

This 90 days' timeframe (i.e. 90 days from the applicable payments having been made) which has been prescribed by TRAI for the purpose of provision of interconnection and which is directly applicable in the present facts of the case has been ignored by TRAI in the SCN and if such Directions are met by Vodafone then Vodafone cannot be held to be in default of any License Conditions or QoS Regulations 2009.

Clause 9.1 and 9.2 of the Interconnection Agreement between Vodafone and RJIL provides that:

- (i) Minimum 4 weeks advance notice, in writing, for augmentation
- (ii) Augmentation to be completed within 90 days of receipt of requisite charges

A copy of the said Interconnection Agreement was filed with TRAI on 22.04.2014 and TRAI is fully aware of these provisions. RJIL has also acknowledged in its letter dated 04.08.2016 to TRAI that a timeframe of

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90 days' post payment has been prescribed by TRAI and this is also stipulated in the Interconnection Agreement between the Parties.

Thus, even under normal circumstances, considering 4 weeks' advance notice plus 90 days' post payment time frame for augmentation, a time period of at least 118 days is available with the Interconnection Provider to enhance capacity at a PoI, even if one excludes the time taken for issue and payment of Demand Note for Interconnection Charges by the Seeker.

There are other material facts in our favour which we would deal with later in this response. However, at this stage, assuming but without admitting that there are no other facts, it can be clearly seen that as RJIL requested for augmentation only on 21.06.2016, this 118 days period, has not yet elapsed and will elapse on 17.10.2016. **Thus any allegation of violation of any provisions of the regulations/ directions/ license conditions /interconnection agreement to provide the requisite number of E1s on/before 17.10.2016, is in any case premature and invalid being contrary to TRAI's Directions dated 07.06.2005 and 28.07.2005 on provision of interconnection.** As Vodafone is compliant with the aforementioned Directions, any allegation of non-compliance to either the license or QoS Regulation is automatically precluded. The aforesaid Directions were issued by TRAI taking into account its responsibilities / functions under section 11(1)(b)(v) of the Act and now cannot be over-looked by it. Thus the QoS Regulations have to be read harmoniously with the other prescribed conditions under such TRAI's Directions. The issue of non-compliance under QoS Regulations 2009 does not arise in so far as Vodafone is compliant with the aforesaid Directions. Hence for this reason only the SCN deserves to be withdrawn.

Further, if RJIL was contemplating launch of its service on 05.09.2016, it ought to have given capacity forecast adequately in advance, since it was in full knowledge of the terms of the TRAI's Directions and Interconnection Agreement dated 14.04.2014 regarding time-frame for augmentation. It is therefore our submission that in view of the delay on the part of RJIL itself, in applying for augmentation, RJIL is responsible for such failed call attempts during busy hours since it has not met the conditions of the TRAI direction as well as the Interconnection Agreement. Thus, TRAI cannot hold Vodafone responsible for the delay on part of RJIL.

This is without prejudice to our contentions further below in this response, which will show that the conduct of RJIL was not reasonable on many counts and it violated license conditions, TRAI's own Tariff Orders, which aspects have been brought to the knowledge of TRAI by us. Therefore, TRAI cannot hold Vodafone responsible for any such violation until and unless all such issues are first addressed by TRAI. We would clarify that this submission cannot therefore mean that 17.10.2016 is an admitted date for augmentation by us.

2. Compliance with the relevant conditions of License Agreement by Vodafone and TRAI ignoring non-compliances by RJIL of License Conditions and TRAI's own Orders:

We are surprised to see this SCN by TRAI, alleging violation of license conditions by us, without evaluating our submissions that such interconnection is sought by RJIL, a licensee, who is in violation of various license conditions and TRAI's own Orders. This is a serious issue and we seek action from TRAI against RJIL as required under the TRAI Act for ensuring compliance to terms and conditions of the license.

Further, omission of these linked matters, make the SCN arbitrary and bad in law. The key issues that have a bearing on this matter are explained below and we rely on all our written submissions on these issues addressed to TRAI, which should be considered as part of our response:

(i) **Commercial Service Run as a Test Service by RJIL disregarded by TRAI**

It is submitted that prior to 05.09.2016 (which is the date of commercial launch of service as per RJIL's own admission), no allegation of delays in augmentation can be leveled against Vodafone. In so far as the Service being operated by RJIL was only test service, the purpose of which is to test the interface between the networks of the interconnected parties, the capacity already provided by Vodafone to RJIL was more than sufficient. The anomalous situation that arose on account of the nature of test service being operated by RJIL was brought to the notice of both DoT and TRAI by us. Some of the aspects of such so called test service include –

- a) Allotment of MSISDNs as test numbers to persons other than employees / distributors / other operators
- b) Offer of Service free of charge without any end-date for such promotional offer
- c) Highly skewed traffic ratio to the tune of 10:90
- d) Amassing more than 1.5million "subscribers" in the garb of test users even before launch
- e) Converting all such test users to "Preview Offer" and then to "Welcome offer" by RJIL post 5.9.2016
- f) No tariff filing by RJIL for this de-facto launch
- g) No QoS applicability on RJIL for such "test users"
- h) No subscriber reporting filing for such "test users"

We had expressed concern on the commercial services being offered under the garb of 'testing' by RJIL. It was submitted that RJIL was disregarding all compliance to license conditions and regulations, by running the service as a 'test' service. We had pointed out that as per DoT's Circular dated 29.08.2005, test cards can be issued only to distributors, employees, roaming partners, etc and that RJIL by openly 'selling the service' to the general public was flouting the norms, which issue has been disregarded by TRAI.

These so called 'test subscribers' have subsequently been migrated by RJIL once it declared launch of commercial services. It is respectfully submitted that capacity augmentation for 'testing' is not provided either under license or under the interconnection agreement and thus Vodafone was within its rights to question the huge demands being made by RJIL for its so called test subscribers.

Further the fact of commercial launch on 05.09.2016 was clarified by RJIL only in the meeting on 09.09.2016, where-after, the entire subscriber base gathered as 'test subscribers' was declared as regular customers requiring compliance to QoS norms, etc. which is most surprising as a test user base transformed into subscriber base of ~6-7 million in a week's time. TRAI should seek explanation from RJIL on the nature of such high number of test users and respond to our submissions, which has not been done so far.

It is submitted that all such findings, which were brought to the notice of the Authority vide our various representations required consideration before any discussion of POI issue. **The instant SCN ignores these material facts which have been shared by us with TRAI vide several letters as listed in ANNEX-2 hereto.** It is submitted that any allegations against Vodafone, without considering these key factors and surrounding circumstances, which have been shared by us with TRAI time and again, tantamount to the issue not being considered in a fair and transparent manner and are therefore arbitrary. It is respectfully submitted that the SCN has also been issued in haste without taking into consideration and ignoring the key material facts, thus, the SCN is *per se* bad in law.

We submit that compliance to prevailing regulations and directions is a pre-requisite for interconnection as per the License Conditions. If there is such a blatant violation of TRAI's own reporting requirements and customers were being actually acquired before launch of service as "test users" and based on those test users a case was being presented to TRAI on call failures by RJIL, we respectfully submit that in such case we were within our rights to even terminate the interconnection agreement due to false and invalid aspersions caused on us when RJIL itself was at fault. In such case no allegation can be made against us of violation of license. Moreover, TRAI is expected to get such acquisitions as test cards/trial runs, made before the launch, suspended or de-activated.

(ii) **Free Service – contrary to 30th Amendment of TTO-1999 – Show Cause Notice disregards violation of regulatory principles:**

The SCN quotes clause 27.4 of the Unified License, which is excerpted below:

*27.4 Licensee shall interconnect with other Telecom Service Providers at the Points of Interconnection (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.

(emphasis supplied)

The above clause thus stipulates that the Licensee shall interconnect with other TSPs at POI subject to compliance of prevailing regulations/direction/ or issued by TRAI. In this context we wish to submit that **we have time and again highlighted the issue of non-compliance of TTO 30th amendment dated 16.01.2004 and TRAI's letter dated 20.05.2003 by RJIL since they are offering free voice service, thereby making their tariffs IUC non-compliant.** We had also raised this issue with TRAI in the meeting on 09.09.2016 and thereafter written to TRAI 12.09.2016, 16.09.2016 and 27.09.2016. It is emphasized that this is serious violation of well-defined regulatory principles and its **addressal is a pre-requisite for any enforcement on Interconnect under Clause 27.4 of licence agreement.**

We further submit that **in view of such violation by RJIL** and also in view of voice service being free, **any demand of POIs by RJIL cannot be said to be reasonable.**

Free calls are not only non-compliant with the TRAI's regulatory principles, but are leading to an abnormal asymmetry of traffic as well as abnormal volume of calls per user that will continue to choke networks even after augmentation of Poles.

We respectfully submit that **in a free service scenario where the revenue from connections is NIL, the real and actual assessment of traffic or number of subscribers cannot be done and hence QoS cannot be set or ensured.** This would also lead to a situation where revenue from service could be Nil but TSPs will be expected to invest to maintain networks only to terminate traffic, which is unreasonable an expectation.

Apart from other reasons, **it is practically impossible to provide any estimate of reasonable demand when the service is totally free of charge.** This is apparent from the projection made by RJIL on 14.07.2016 of 187 MOUs and their own statement on 09.09.2016 that the MOU are 485 per month. In such a situation, it is unreasonable to expect that sufficient capacity will be established and maintained for POIs.

Further, with such increasing numbers of MOUs due to free calls, we cannot be accused for POI congestion under QoS Regulations 2009, when the projections were given by RJIL on far lower MOUs. Any such congestion is therefore attributable to RJIL and to TRAI's non-intervention.

(iii) **Issues under Interconnection Agreement – not considered in SCN**

In addition to the above, we emphasize and state that **our Interconnection Agreement with RJIL does not provide at all for Internet Telephony.** In this respect, we have written to RJIL on several occasions but RJIL continues to maintain that Internet Telephony is permitted under the existing Interconnection agreement with Vodafone. All correspondence between the Parties on this subject has been marked to TRAI. We had also highlighted this issue to TRAI's kind attention during meeting on 09.09.2016.

Interconnection Agreement provides the framework within which Poles are established for exchange of traffic for the Services which have been agreed to between the Parties to the Agreement. The Agreement is the basis on which Poles are to be given, for the defined Services and **any traffic which is not permitted under the said Agreement cannot be transmitted through the POIs** or the POIs cannot be misused for handover of such traffic. **Such misuse of POI is a breach of Interconnection Agreement and we have put RJIL on notice regarding the same.**

We have **also noticed wrong routing of the calls through 2G/3G handsets using 4G SIM of RJIL through use of Mifi device.** The evidence of which has been shared with TRAI in the form of videos/CDRs vide our letter dated 23.09.2016. **TRAI should examine our contentions and ensure at least that there is no illegal routing** of the calls by a TSP. We respectfully submit

that a reasonable demand of PoI by RJIL cannot include any internet telephony traffic and any illegally routed traffic.

We reiterate that **as exchange of internet telephony traffic is not allowed** under interconnect agreement, **any projection that includes internet telephony traffic is incorrect.**

Since this SCN does not deal with these aspects, we respectfully submit that TRAI has not considered all the relevant aspects, and therefore this SCN is arbitrary and bad in law.

In such case RJIL is violating license conditions, which deal with Interconnection Agreement and which have been mentioned in the SCN.

It is humbly submitted that the TRAI, by disregarding RJIL's conduct and the larger and significant licensing and regulatory issues involved, has chosen to confine itself only to the issue of QoS / PoI congestion raised by RJIL, that too in an incorrect manner. It is expected that TRAI will look at the interests of all TSPs and overall long term interest of consumers. We submit that our concerns regarding test cards, free service, incorrect routing, Internet Telephony, etc, as highlighted above have not been considered or addressed by TRAI and the instant SCN without considering all aspects, is arbitrary and bad in law. We humbly submit that proper conduct of telegraph is essential and timely corrective actions must be taken to ensure proper competition and protect interest of service providers and consumers.

3) Inconsistent basis of calculation of projected demand for capacity by RJIL / undue delay on its part / demand in violation of license agreement by RJIL in its letters beginning from 21 June 2016 that immediate demand is 22mn when it had test users

Our submissions on some aspects of inconsistent projections by RJIL, for which RJIL is solely responsible, and complete threat to QoS due to free calls being offered by RJIL in violation of TRAI's own TTO orders and clarifications on Regulatory Principles of IUC Consistency of Tariffs have already been given hereinabove.

We would like to highlight that RJIL's letter dated 21.6.2016 to us; read with its letters dated 14.7.2016 and 4.8.2016 to TRAI; and its other correspondence; mentioned the following –

- Immediate demand of POIs for 22mn for its ongoing test trials
- Congestion which is severely impacting its test trials
- therefore immediate augmentation

In this regard it is pertinent to note that even RJIL was fully aware of TRAI's directions regarding 90 day period from date of payment. This is clear from its letter dated 04.8.2016 to TRAI, where it had taken up this issue with TRAI. RJIL admitted that this is the applicable provision but still it left no stone unturned to show to TRAI, DoT and external world as if it's our fault and we are delaying POI augmentation from 21.6.2016. We reiterate that we were and are very much within our rights under TRAI's directions, license agreement and interconnection agreement to assess all relevant aspects and are under no obligation to augment even now as per the Directions and the Interconnection Agreement.

We would also like to state the following to show that RJIL is solely responsible for this state of affairs -

- a) We can only assess the requirement of reasonable capacity at Pols for test trials – no test trial is required on hundreds of E1s and RJIL was trying to take undue advantage to get subscribers through trial route. This approach of *test trials* instead of *service launch* shows that RJIL was also fully aware of the regulatory requirements under TTO-99 and principles of *IUC consistency* and it, therefore, wanted to acquire subscribers before launch of service, which necessitated tariff filings as per TRAI's reporting requirements which would have to pass TRAI's scrutiny, which RJIL could not meet. Hence allegation of congestion etc. cannot be raised during trial period.
 - b) Such wrong demand by RJIL of 22mn at trial stage on 21.06.2016, therefore, could not have resulted in any consideration or assessment by us since it was not reasonable. RJIL assumed that it can justify such high number of trial users and it kept on writing to us mechanical letters not realizing that even TRAI will not support it for POIs or congestion unless they launch service. However, instead of rectifying and instead of transparently giving a firm demand for prospective launch of service on reasonable basis, RJIL kept on writing mechanical letters ignoring the Directions, Interconnection Agreement and even its own requirements at the launch of service.
 - c) RJIL entered into interconnection agreement with us in April 2014 and it is unfair to assume that we would be aware of their Launch Date or we will consider trial runs as service launch for Pols.
 - d) To us this 22mn figure given by RJIL was at best an estimated figure of subscribers which RJIL will acquire in some time frame after the launch of its service but certainly its demand on 21.6.2016 was not a reasonable demand for reasons mentioned above. **On 21.06.2016, it was unimaginable for anyone that at launch RJIL will have few million subscribers, which we reiterate is per-se illegal, since customer acquisition can only start after launch.**
 - e) RJIL did not hold any meetings but kept on writing mechanical letters and believed in escalation to DoT and TRAI, without realizing that it needs to take reasonable steps as per the license conditions and show eligibility.
 - f) Thus for the situation of POIs on the date of launch of 5.9.2016, RJIL was solely responsible for the congestion as it never raised a firm demand on reasonable basis and had all the focus on acquiring customers on trial basis before launch.
 - g) Actually speaking, the period of 90 days for any augmentation for Pols should be counted from 09.09.2016 when for the first time everyone was clear that the service has been launched as clarified in meeting convened by TRAI. Prior to that, the E1s demand was to achieve subscriber numbers in garb of trial run. This is without prejudice to our contentions that even now there are violations which are continuing and thus we are not under obligation to give any capacity.
- 4) Without prejudice, we submit that SCN is premature because the QoS Regulations 2009 can only be invoked on data averaged over a month and in this case TRAI has issued SCN even before a month was completed. We most respectfully submit that we have included this argument, being aggrieved that our submissions on the linked issues have not even been taken up by TRAI in such a serious matter.
- 5) We also would like to submit that we are very conscious on QoS aspects to differentiate our services and to delight our consumers. However, TRAI should balance the interests of service providers and consumers as required by the Preamble to TRAI Act. Further, orderly growth of the telecom sector would also be adversely affected if all such issues as being raised by us since long, are not addressed immediately at this stage itself.


- 6) We respectfully submit that only in deference to the Authority and to meet larger interest of consumers, we have, in a spirit of collaboration and cooperation, augmented capacities in two tranches as per our communication dated 20.09.2016, 21.09.2016 and 05.10.2016 (ANNEX - 3) and so far more than 1300 E1s are already augmented which should go up to 3399 E1s in next few days. It is however our contention that the continuing congestion at POIs, apart from being self-invited by RJIL, is due to the delays and actions on their part and free voice service given by them.

We sincerely hope that you will appreciate our contentions and withdraw the SCN. In unlikely case you have a different view, we should be given an opportunity of personal hearing before any further steps are initiated at your end.

We reserve our right to make additions/modifications to this reply at a later date.

Thanking you,

For **Vodafone India Limited and
Vodafone Mobile Services Limited**


**Sundeep Kathuria
Authorised Signatory**

ENCL: ANNEX 1,2,3