

No. 303-1/2004-TRAI-Econ
26th October 2004

Dated:

To,

Mr. Rajat Mukarji,

Vice-President (Corporate Affairs)

M/s Idea cellular Ltd.

810, Kailash, 26,

K.G.Marg, New Delhi – 110 001

Subject: - Directive under Section 13 read with Section 11(1)(b) of the TRAI Act, 1997 - Levy of migration fee by M/s Idea Cellular Ltd –(Gujrat Circle) in contravention of the provisions of Telecommunication Tariff Order,1999

The Telecommunication Tariff (4th Amendment) Order dated 28.07.1999 [para 3(ii)(b) of the order and paras 6, 8 and 9 of the Explanatory Memorandum to the said order], inter-alia, provides that no installation charge shall be imposed when a subscriber moves from one package to another offered by a particular service provider. In view of this the Service Providers cannot levy installation or any such charge when a subscriber moves from one tariff package to another.

2. The above regulatory principle was again reiterated in the TRAI's Directive dated 15.03.2001 (paras 1 and 4) issued under Section 13 of the TRAI Act. The Authority vide this directive had clarified that levy of any fee for moving a subscriber from one tariff package to another constitutes a contravention of the provisions of the TTO, 1999 and further the Authority had also ordered refund to the subscribers of any such amounts, if charged, by the Service Providers at any time effective from 1st May 1999.

3. The Telecommunication Tariff (Thirtieth Amendment) Order dated 16.1.04 has laid down (refer para 2.1 and 2.2 of Section II and para 5 of the Explanatory Memorandum to that order), inter-alia, that it was obligatory on the part of the service provider to report to the Authority any new tariff for telecommunication services under this order and/or any changes therein within seven days from the date of implementation of the said tariff after conducting a self-check to ensure that the tariff plans are consistent with the regulatory principles in all respects. Further, Telecommunication Tariff Order (TTO), 1999 has defined tariff [para 2 (r) of Section II] as rates and related conditions at which telecommunication services within India and outside India may be provided including rates and related conditions at which messages shall be transmitted to any country outside India, deposits, installation fees, rentals, free calls, usage charges and any other related fees or service charge.

4. Shri Rajesh Modi on behalf of one Ms. Sonal Modi, a mobile subscriber of M/s Idea Cellular Ltd – Gujrat Circle on 13th August 2004 made a complaint to TRAI stating that M/s. Idea Cellular was imposing migration charge and pleaded for the intervention of TRAI. In his complaint he had alleged that subscribers of Plan **Buzz 99** were forcefully migrated to Plan **Buzz 199** and a sum of Rs.249/- was also charged from these subscribers as migration charges (copy at Annexure-I).

5. The levy of Rs.249/- for migrating the subscribers from one tariff plan to another tariff plan prima facie appeared to be a violation of the aforesaid Order(s)/Directive(s) of the Authority explicitly prohibiting levy of any charge when a subscriber moves from one plan to another: Explanation was, therefore, sought from M/s Idea Cellular Ltd on the conformity of the one-time fee with the provisions of Telecommunication Tariff Order (TTO) and also that of the directive dated 15.3.01 (copy at Annexure-II).

6. M/s Idea Cellular Ltd submitted the following in its explanation vide letter dated 23rd August, 2004 (copy at Annexure-III) and 31st August, 2004 (copy at Annexure-IV)

- i) The new plan Buzz 199 was reported to TRAI on 12.2.04.
- ii) Owing to the migration, the existing subscribers migrating from Buzz 99 to Buzz 199 enjoy a lower call charge of Rs.1.99 per minute viz-a-viz Rs.2.49 paid by them under the earlier plan.
- iii) The existing subscribers who had opted for plan Buzz 199 were to pay a one-time charge of Rs.249/- if they were to enjoy the benefits of the new plan

i.e. rental waiver of Rs.100/- for a period of twelve months and lower call charges.

iv) That the existing subscriber can migrate to the new plan without one time payment of Rs.249/- in which case the rental waiver would be restricted to 6 months instead of 12 months.

v) The SP has denied the charge that any subscriber was forced to migrate to the new plan i.e Buzz 199 and provided a copy of the letter dated 15.3.04 which was sent to subscribers (copy at Annexure-V) and a copy of the letter dated 29.4.04 which had been sent to the complainant (copy at Annexure-VI) to support his argument.

7. The explanation and other documents – letter dated 29.4.04 addressed to Ms. Modi by Idea Cellular (see Annexure-VI), letter dated 15.3.04 said to have been addressed to all existing subscribers by Idea Cellular (see Annexure-V) and letters dated 23rd August 2004 and 31st August 2004 addressed to TRAI (see Annexure-III & IV) – furnished by M/s Idea Cellular Ltd have been considered by the Authority.

8. First of all, the letter dated 15.3.04 said to have been sent to its subscribers (Annexure-V) by Idea Cellular states the following:

'We have arranged to migrate you to our new plan Buzz 199 w.e.f. April

This is a clear admission of the fact that migration had indeed been arranged for the post-paid subscribers of plan Buzz 99 and a charge of Rs.249/- had been levied for the said migration.

Secondly, in the letter dated 23.8.04 (Annexure-III) addressed to TRAI by Idea Cellular explaining their position in the matter, they have stated that the levy of Rs.249/- was one time enrolment charge and not the migration charge. Whatever be the nomenclature for the levy, the case falls within the scope of migration charge because such a levy has been resorted to at the time of moving the subscriber from one plan to another.

Thirdly, the tariff reports filed on 12.2.04 (Annexure-VII) reveal that the plan Buzz 99 ceased to exist w.e.f. 6.2.04. Therefore, it is clear that the option to continue in the plan i.e Buzz 99 was not given to the subscriber when Buzz 199 was launched. It is further clear from the letter dated 15.3.04 (Annexure-V) said to have been sent to the subscribers of Buzz 99 that no such option to continue in the plan was envisaged.

9. Another important issue in the matter is, as to why the tariff report filed with TRAI by the SP did not contain the offer of rental waiver for six months to those who do not wish to migrate to the new plan. Only when TRAI asked, the SP produces this clause [i.e. (iv) of para 6 above] which is said to be part of the tariff plan. **Available evidence enumerated below suggest that it is an afterthought on the part of the SP to incorporate this proviso to wriggle out the regulatory ruling that may follow.**

- The letter-dated 29.4.04 addressed to Ms. Modi by Idea Cellular (see Annexure-VI) does not contain the said offer referred to in sub-para (iv) of para 6 above.
- The letter-dated 15.3.04 (see Annexure-V) purported to have been addressed to all the existing subscribers does not contain the said offer referred to in sub-para (iv) of para 6 above.
- The tariff reported to the Authority vide letter dated 12.2.04 also does not contain the said offer referred to in sub-para (iv) of para 6 above (copy at Annexure-VII).

8. The above clearly reveals that the SP has imposed a fee of Rs.249/- for shifting the existing subscribers of Plan Buzz-99 to the new plan Buzz-199. This fee clearly amounts to migration charges in contravention of the provisions of the TTO, 1999 and the Directive dated 15.3.2001.

9. After due examination of the facts of the case, the Authority has reached the conclusion that M/s Idea Cellular Ltd has levied Rs.249/- as Migration Charge from the subscribers of Plan “Buzz-99” for migrating them to Plan “Buzz-199” which is a clear violation of the provisions of the 4th Amendment to TTO, 1999 and the directive dated 15.03.2001. M/s Idea Cellular Ltd has also violated the provisions of reporting requirements envisaged under TTO, 1999.

10. In view of the above, the Authority in exercise of the powers conferred upon it under Section 13 read with section 11(1)(b) of the TRAI Act, 1997 hereby direct M/s. Idea Cellular Ltd that:

- a) It shall Immediately stop the levy of one time (Migration) fee of Rs.249/- from existing subscribers of Plan Buzz-99 for migrating them to the new Plan "Buzz-199",
- b) It shall refund the Migration Charge of Rs.249/- levied from the subscribers of Plan "Buzz 99' while migrating them to Plan "Buzz-199" within 15 days from the date of this directive,
- c) In the process of refund M/s. Idea Cellular Ltd shall give wide publicity in the media- news papers and its own websites so as to enable all the subscribers to avail the benefit of refund ordered by the TRAI.

11. M/s Idea Cellular Ltd is further directed to report compliance on the above within 20 days from the date of receipt of this directive.

12. This directive is being put on TRAI's website www.trai.gov.in/directive.htm.

13. While issuing these orders, the Authority notes its distress in having to censure the service providers. The Authority has moved from a highly regulated tariff regime to a deregulated environment in which the onus of complying with the regulatory principles is reposed with the service provider. The regime that operates today is one of self-check regulatory wherein even the reporting requirements have been considerably relaxed to provide flexibility to the operators. In such a situation, the Authority expects service providers to comply with the broad principles and reiterates its commitment to protect consumer interests.

(M. Kannan)

Advisor (Economic)