

Consultation Paper No. 01/2012



Telecom Regulatory Authority of India

Consultation Paper

on

**Review of Policy of Forbearance in Telecom
Tariff**

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PREFACE

Telecom Regulatory Authority of India (TRAI) is empowered to fix tariff for telecommunication services under Section 11(2) of TRAI Act, 1997. Tariff regulation for telecommunication services in India was initiated by TRAI with the notification of Telecom Tariff Order, 1999. As per the existing regulatory framework, tariff for telecommunication services are under forbearance except for Rural Fixed Line Services, National Roaming Services and Leased Circuits.

Forbearance of tariff for a service denotes that TRAI has not, for the time being, notified any tariff for that particular telecommunication service and the service providers are free to fix tariff for such service. Tariff forbearance has never been and is not a permanent Policy followed by TRAI. It is always open to the Authority to withdraw, wholly or partly, from the forbearance regime, if the situation so demands. There are already precedents wherein the Authority had stepped in to determine tariff in respect of services, which were initially kept under forbearance, e.g. tariff for National Roaming Services fixed in 2002.

Some of the recent developments indicate that there is perhaps a need to review the policy of forbearance in telecom tariffs. This consultation paper, accordingly, seeks the comments of the stakeholders on review of the existing regime of tariff forbearance and the desirable tariff regime for data services. Stakeholders are requested to send their comments by 24th February, 2012 and counter comments by 2nd March, 2012.

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Chairman, TRAI

Stakeholders are requested to send their comments preferably in electronic form by 24th February, 2012 on email Id raj.pal@nic.in or eco@traigov.in. Counter comments, if any, can be sent by 2nd March, 2012. For any clarification / information, Shri Raj Pal, Advisor (ER) may be contacted at Tel. No. +91-11-23230752, Fax: +91-11-23236650.

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Chapter - 1

Economic Regulation and Forbearance

Introduction

- 1.1 Economic regulation is generally used to promote prices that reflect efficient costs and promote universal access to basic services. An efficient regulatory framework assists in the development of a telecommunication infrastructure that allows the consumers of telecommunication services, ubiquitous and affordable access to an increasing range of competitively provided basic and advanced products and services. Telecommunication services are vital for overall economic development. The sector has significance both as a direct independent economic activity in itself and also as a major means of facilitating and enhancing the activities in almost all other economic and social sectors. The cost of telecommunication services is an input for other economic activities. It therefore, holds a significance for all consumers, individual or collective.
- 1.2 Effective regulation results in many benefits, such as greater economic and technological growth, increased investment in the sector, cost reduction with improved efficiency, better quality of service, improved customer satisfaction, affordable prices delivering better value for money and improved access and availability of services. The level of regulatory intervention varies from country to country, and depends on several factors.

Evolution of Telecommunication Tariff Regulation by TRAI

- 1.3 Telecommunication tariff affects consumer interests, cost of other economic activities and the profitability of telecommunication enterprises.

- 1.4 The Telecom Regulatory Authority of India (TRAI) is empowered to fix tariffs for telecommunication services under Section 11(2) of TRAI Act of 1997 as amended in the year 2000. The relevant section is reproduced below:

Section 11(2)-“Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;

PROVIDED that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor”.

- 1.5 A perusal of above provision shows that a discretionary power has been conferred upon TRAI. Forbearance or regulatory forbearance is consistent with the tariff regulation under TRAI Act. Therefore, jurisdiction of TRAI under the Statute includes as what to regulate and how to regulate.
- 1.6 The tariff regulation for the telecommunication services in India was initiated with the notification of Telecommunication Tariff Order 1999 (TTO 1999). This order provided the broad and long term policy framework for telecommunication services in the country. In 1999, basic service was a monopoly market served by the Government Department, other than in Delhi and Bombay which were served by Mahanagar Telephone Nigam Ltd. Cellular service was marked by duopoly with only two private operators in each service area. The tariff reforms initiated vide TTO 1999, aimed to provide a consistent and transparent framework for regulating tariffs in order to, *inter alia*, achieve affordable prices through regulation and/or competition; enhance transparency of subsidies and provide a basis for better targeting *the policies* to

achieve social objectives; and improve the availability of services to the customer.

- 1.7 The TTO 1999 specified Standard Tariff Package (STP) consisting, *inter alia*, of monthly rental and call charges, for basic and cellular services. The service providers were required to offer STP as mandated by TRAI. The STP for cellular mobile telecom service contained two charging components namely security deposit and installation charges specified as ceiling. It also specified the monthly rental, airtime charge and pulse rate applicable for the STP. Apart from the STP, the service providers were allowed flexibility to offer Alternate Tariff Packages (ATP) subject to the ceiling rates specified in STP. Though national roaming service in cellular mobile was initially forborne in TTO 1999, it was brought under tariff regulation in January 2002 by fixing ceiling tariff for that service.
- 1.8 First structural review of cellular mobile tariff was done three years after the implementation of the above tariff order by TRAI in the year 2002. Taking note of the emerging market scenario, the Authority came to the conclusion that a stage had been reached when market forces could effectively regulate cellular tariff. Accordingly, TRAI forbore the tariffs for cellular mobile services vide 23rd Amendment to TTO dated 6th September, 2002.
- 1.9 In the case of basic services, the TTO 1999 had specified availability of STP, which *inter alia*, comprises of rental, call charges, free calls etc. along with all other ATPs on offer by the service providers in the market. However, in the year 2003, TRAI decided that mandating a standard package was no longer necessary for urban basic service subscribers. In view of the overall competition and the implementation of ADC Regime, TRAI decided to forbear with respect to basic services except for rural subscribers where the STP was continued. The service providers

were free to offer ATPs in addition to the STP (28th Amendment to TTO dated 5th November 2003).

- 1.10 Thus, as per the existing tariff regulatory framework, tariffs for telecommunication services are forborne except for: (i) Rural fixed line services; (ii) National roaming services; and (iii) Leased circuits.

Regulatory Forbearance

- 1.11 “Regulatory forbearance” is about enforcing regulation where it is needed, and withdrawing from those parts of the market where it is no longer necessary. In simple words, regulatory forbearance means the ability of a regulator to forgo direct action at any point of time on the basis that the desired outcomes are already being achieved.
- 1.12 “Regulatory forbearance” should not be understood to be a synonym for deregulation. Though, both result in greater freedom from regulatory intervention, it is the means by which this freedom is conferred that distinguishes forbearance from deregulation. Forbearance needs to be distinguished from deregulation to the extent that forbearance involves discretionary refrain from exercise of power at any point of time.
- 1.13 Forbearance, however, does not imply “No Regulation” or “Nil Regulation”. Tariff forbearance for a service does not mean end of regulation for that particular service; it is simply the application of the economic rationale that price regulation is not necessary when the markets are functioning in a competitive manner. However, even under forbearance, tariff for the service continues to be monitored and appropriate regulatory measures are put in place so that the interests of consumers are protected.

- 1.14 There are two other important aspects or features of forbearance. First, the power to forbear may be exercised in whole or in part. Second, the decision to forbear does not prevent the regulatory agency from exercising its jurisdiction under different circumstances. That is, the exercise of forbearance is not irreversible.
- 1.15 Notwithstanding the forbearance, TRAI has taken regulatory measures for protection of subscribers against hike in tariffs. In this regard, TRAI issued 31st amendment (7th July 2004) to TTO 1999 granting protection for a subscriber against hike in tariffs for a minimum period of six months. The order mandated that (i) a tariff plan once offered by a service provider shall be available to a subscriber for a minimum period of six months from the date of enrolment of the subscriber to that tariff plan; and (ii) no increase in any item of tariff is permitted within the six months period. However the operator is free to reduce tariffs at any time. TRAI further extended the scope of the above order vide 43rd amendment (21st March 2006) to the TTO. The six months period was extended to the entire period of validity the service provider offered to customer. For example if lifetime validity was offered to the customer, the plan shall continue to be available to the subscriber as long as the service provider is permitted to provide such telecom service under the current license or renewed license and no increase in any item of tariff is permitted within the entire period.
- 1.16 As per Clause 2(g) of the Telecommunication Tariff Order (TTO) 1999 "Forbearance" denotes that the Authority has not, for the time being, notified any tariff for a particular telecommunication service and the service provider is free to fix any tariff for such service. Further, in Clause 4 of the TTO, under the heading "Forbearance" it is stated that where the Authority has, for the time being, forborne from fixing tariff for any telecommunication service or part thereof, a service provider shall be at liberty to fix

any tariff for such telecommunication services; provided that the service provider shall comply with the reporting requirements in respect of such tariff.

- 1.17 Tariff Forbearance followed by TRAI is not irreversible, as Authority had stepped in to determine ceiling tariff for national roaming services in the year 2002, which was initially kept under forbearance in the tariff determination of 1999. It is always open to the Authority to withdraw wholly or partly from the forbearance regime if the situation demands. For this purpose, the Authority closely watches the developments in the market. Since the time TRAI took up the responsibility of regulating tariff for telecommunication services, there was continuous downward trend in the tariff levels and therefore there was no compulsion for the Authority to revert back and forgo the principle of Forbearance. As and when substantial reversal in the trend of tariff takes place and/or there are evidences of inadequate competition in any segment leading to high prices, the Authority would be fully justified to intervene and even to set the prices for various telecommunication services.

Average Outgo Per Minute

- 1.18 The tariffs offered by mobile operators have different components of fixed charges and usage charges. Since a typical tariff plan incorporate several components like rental, processing fee, call charges, SMS, data usage charge, free calls, concessional rates etc., service providers create different packages with combinations of the above pricing components to serve varying needs of different customers. It is an accepted practice that the price of each component varies from plan to plan with the operators often cross subsidising various pricing segments. Since tariffs are of bundled nature and trade-off is generally between monthly fixed charges and variable (call) charges, the average outgo per outgoing minute

(Rental revenue + Airtime revenue per outgoing minute) is considered a realistic indicator of tariff levels.

1.19 The average outgo per outgoing minute (Rental / processing fee revenue + Airtime revenue per outgoing minute) for the Mobile (GSM) service from March 1999 to September 2011 is given below. It would be seen from the Table that while the average out go has been falling, the rate of decline appears to be levelling off.

Table: Average Outgo per Outgoing Minute from 1999 to 2011

Quarter	Average Outgo per Outgoing Minute (Rs.)
Mar-99	16.93
Mar-00	8.55
Mar-01	6.38
Mar-02	4.86
Mar-03	3.24
Mar-04	2.89
Mar-05	2.41
Mar-06	1.77
Mar-07	1.15
Mar-08	0.92
Mar-09	0.76
Mar-10	0.57
Mar-11	0.51
June-11	0.50
Sep -11	0.50

Recent Developments

- 1.20 After entry of new operators, in the year 2008, the market witnessed competition in the form of reduced tariff, including introduction of innovative tariff plans such as per second billing, both from new entrants and old operators; from the former with a view to attract customers including from the incumbent operators and from the latter to retain their customer base. This phenomenon continued for few years. However, despite existence of the new entrants, by the end of December 2011, it is seen that the subscriber base of new operators remains less than 7.5% and the top six incumbent operators enjoy the market share of more than 80% in terms of subscriber base. This indicates absence of effective competition despite presence of multiple operators in each service area. The Hon'ble Supreme Court in its judgement on 2nd February, 2012 has quashed 122 licenses issued on or after 10th January, 2008.
- 1.21 During the months of July and August, 2011, some of the telecom access service providers hiked prepaid tariff in many service areas. The nature of revision revealed that increase in tariff has taken place from 1 Paise per second to 1.2 Paise per second and from 50 Paise/minute to 60Paise per minute for mobile to mobile calls. Similarly, from 1.2 Paise per second to 1.5 Paise per second and from 60 paise per minute to 90 Paise per minute for mobile to fixed line calls. Further, tariff validity for concessional tariff rates, which was generally 12 months, has been reduced to 6 months.
- 1.22 On examination of tariff revision, it was observed that the increase in tariff by six service providers has been more or less uniform and almost simultaneous for all the tariff elements, across the service providers. The level of tariff increase affected by the telecom access providers as well as the timing of such hike points towards the possible prevalence of coordinated price activity behind the increase in tariffs.

- 1.23 In the months of December, 2011 and January, 2012 too, a few service providers have implemented a similar hike in respect of tariff plans offered to post-paid subscribers as well. Further, there have been continuous media reports including reports from various market analysts as well as indications from the industry about a further hike in mobile tariff.
- 1.24 The service providers have sought to justify the increase in tariffs on account of various factors including : (a) increase in operating costs due to inflationary trends and rising rate of interests, increase in network operating costs due to higher costs of power and fuel, decline in revenue and return on capital employed (ROCE) and higher cost of customer acquisition, etc.; (b) constraints in spectrum availability and higher Spectrum usage charge and Microwave charges levied by the Government; (c) roll out obligations for 3G services; (d) increase in cost of regulatory /security compliance, etc.
- 1.25 On the other hand, the customers of telecommunication services are concerned about hike in tariff. TRAI is mandated to promote and ensure the orderly growth of the telecom sector and to protect the interests of service providers and consumers. In order to ensure continued availability of telecom services at affordable price, TRAI seeks views of the stakeholders regarding the need for a review of the existing tariff regulatory regime. In this regard, the following specific issues are raised for consultation.

1 Do you perceive any need for a change in present regulatory framework for telecom tariff fixation?

2 Should TRAI withdraw from the policy of forbearance?

- 3 If yes, what should be the basis of tariff regulation? Should it be by way of specifying a standard tariff package or by way of fixing tariff as a ceiling for individual charging components such as calls, SMS, etc? Please also suggest the methodology.**
- 4 Would tariff regulation affect the ability of the telecom service providers to introduce innovative tariff plans?**
- 5 What would be the best method of managing the telecom tariffs so as to protect consumer interest even while affording the telecom service providers the necessary flexibility?**

Chapter - 2

Tariff for Data Services

- 2.1 With introduction of low cost handsets having capabilities of enabling the telecom subscribers to use data services, there is increasing trend in usage of data services. Furthermore, increasing proliferation of mobile applications in terms of m-education, m-health, m-commerce, m-banking, m-governance, etc. will lead to increase in usage of data services not only by the subscribers from the higher income groups in urban areas but also by subscribers across various social strata including from semi-urban and rural areas. In such a scenario, data services will no longer be perceived as a service meant for high-end subscribers, rather it will be viewed as a basic service.
- 2.2 Under the present regulatory framework, service providers have the flexibility to determine tariff for the data services. Service providers have prepaid as well as post plans offering standalone data service plans as well combo plans where data service is available along with other services. Data service plans are available in terms of *pay as you go*, *usage based tariff*, *default tariff after free usage* of certain data, etc.
- 2.3 The service providers have introduced several tariff plans consisting of free data usage up to a limit, including unlimited usage against fixed monthly charges. There are also specific tariff packs giving limited or unlimited data services for a specified duration. Notwithstanding certain variations across all the service providers, it is observed that tariff for data service is very high. In almost all the cases, it is observed that the default tariff for data services post free usage as high as Rs.10485 per GB, on the basis of pulse rate of 10kb per 10p. There are, however, two service providers providing data services at comparatively lower rates. One is providing @ Rs.256/GB and the other is providing @ Rs.1048/GB. Such a high variation in tariff for data services cannot be justified on the basis of underlying cost for provision of these services.

2.4 In a number of cases, after the free data usage is over, the default rates for data services are extremely high vis-à-vis the per GB rate for such services up to a pre-specified usage of data services. Since a consumer does not know when exactly he has crossed the usage limit, this can lead to billing shocks to the subscribers in case they breach the usage limit provided under the tariff plan/package adopted by them.

2.5 Increase in the use of data services by the people at large is essential for improved reach of services related to m-health, m-education, m-commerce, m-banking, m-governance and also for proliferation of knowledge based services. Availability of data services at affordable and reasonable tariff is an important factor for growth of the sector as well as for positive impact on the economy as a whole. Keeping in view the increasing usage of data services by the telecom subscribers and also to protect the interest of subscribers against billing shocks, the Authority seeks the views of stakeholders on desirability of regulating the tariff for data services. In this regard, the following issues are raised for consultation.

1 Is tariff for data services offered by the service providers competitive and reasonable?

2 What are the factors that impact competition in data service in the market?

3 What can be the possible measures by the regulator for facilitating enhanced competition for availability of data services at affordable tariff?

4 Should TRAI regulate tariff for data services by way of fixing ceiling tariff to protect the interest of the consumers? If yes, what should be the basis and justification for tariff fixation?

Chapter - 3

Issues for Consultation

Note: A. *You are requested to give full justification with your responses for individual questions.*

B. *You may feel free to raise any other related issue and offer your comments thereon.*

- 1 Do you perceive any need for a change in present regulatory framework for telecom tariff fixation?**
- 2 Should TRAI withdraw from the policy of forbearance?**
- 3 If yes, what should be the basis of tariff regulation? Should it be by way of specifying a standard tariff package or by way of fixing tariff as a ceiling for individual charging components such as calls, SMS, etc? Please also suggest the methodology.**
- 4 Would tariff regulation affect the ability of the telecom service providers to introduce innovative tariff plans?**
- 5 What would be the best method of managing the telecom tariffs so as to protect consumer interest even while affording the telecom service providers the necessary flexibility?**
- 6 Is tariff for data services offered by the service providers competitive and reasonable?**
- 7 What are the factors that impact competition in data service in the market?**
- 8 What can be the possible measures by the regulator for facilitating enhanced competition for availability of data services at affordable tariff?**
- 9. Should TRAI regulate tariff for data services by way of fixing ceiling tariff to protect the interest of the consumers? If yes, what should be the basis and justification for tariff fixation?**