

No. 310-7(2) 2004-

Eco.

Dated: 26<sup>th</sup> October 20

By Courier & Fax

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**Subject: - Directive under Section 13 read with Section 11(1)(b) of the TRAI Act,1997 - L of migration fee by Bharti Cellular Limited (Airtel) in contravention of the provisions Telecommunication Tariff Order,1999.**

M/s. Bharti Cellular Limited (Airtel) revised its pre-paid tariff w.e.f.25<sup>th</sup> August 2004 across all

16 licensed areas. It also introduced a new post-paid plan with revised airtime tariffs w. 26.8.04.

said revised tariffs filed by Airtel with TRAI on 31.08.04 and 02.09.04 respectively (copy Annexure-I)

contained the following notes:

Prepaid Tariff:

"Rs.50/- one time membership fee will be charged from existing subscribers (who activated before 25<sup>th</sup> August 2004) and they will get Rs.50 worth Airtel to Airtel local SMS free to be used within 30 days as special promo offer. As a special introductory offer this charge is waived off for new subscribers till 30.09.04".

Postpaid Tariff:

"All existing customers will be charged a one time membership fee of Rs.200/- to avail this new bill plan. As a special promo offer this is being waived off for new subscribers till 30.9.2004".

2. The one time entry fee charged from existing customers, i.e., Rs.50/- in prepaid and Rs.200/- in postpaid, for moving into the new tariff plan with revised airtime rates prima facie

appeared to be a violation of the following Order(s)/Directive(s) of the Authority explicitly prohibiting levy of any charge when a subscriber moves from one plan to another:

- a) **Fourth Amendment to TTO notified on 28.07.1999** which inter-alia states that installation charge shall be imposed when a subscriber moves from one package another offered by a particular service provider. Vide this Amendment [para 3(ii)(b) of order and paras 6, 8 and 9 of the Explanatory Memorandum to the said order], Authority had decided in consumer interest not to accede to the proposal of the service providers to allow a fee for migration when the subscriber moves from one tariff package to another. This Amendment thus clarifies that a service provider shall not levy a charge when a subscriber moves from one tariff package to another.

b) **Directive dated 15.03.2001 issued under Section 13 of the TRAI Act.**

The Authority vide this directive (paras 1 and 4) had clarified that levy of any fee moving a subscriber from one tariff package to another constitute a contravention of provisions of the TTO, 1999 and further the Authority had ordered refund to the subscribers any such amounts, if charged since the implementation of TTO (Fourth Amendment) dated 28.07.1999.

3. Explanation was, therefore, sought from Airtel vide TRAI's letter No.310-7(2)/2004-E dated 6.9.2004 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).

4. Airtel in its explanation vide letter dated 8<sup>th</sup> September 2004 submitted that the charges levied from existing subscribers are not migration fees, but these are membership charges to exclusive club created by Airtel. Airtel further stated that they are in the process of introducing several benefits to members of such clubs and that membership to these clubs is optional (copy of Airtel's letter dated 8.9.2004 is at Annexure-III).

5. A close scrutiny of the said tariff reports filed by M/s. Bharti Cellular Ltd. (see Annexure I), the complaints pertaining to migration levy received from the subscribers and the explanation provided by the said service provider in this regard, go to prove conclusively that the Service provider has levied and collected migration charge from the subscribers in moving them from one tariff package to another. These are explained in detail in the following paragraphs.

First of all, the prepaid tariff filed on 31.8.04 states that Rs.50/- as one-time membership fee would be charged from existing subscribers who would get Rs.50/- worth Airtel to Airtel IC SMS free to be used within 30 days. Here there was no provision for option to the subscriber to remain in the existing plan. Therefore, it was mandatory for existing subscribers to not only move to the new plan but also pay the one-time

time-charge

for the migration. This is violative of the provisions of Fourth Amendment to TTO and directive 15.3.01 issued under Section 13 of the TRAI Act.

Secondly, the post paid tariff plan filed on 2.9.04, with the Authority clearly states that one-time membership fee of Rs. 200/- will be charged for availing this new bill plan. Note that, other purpose was mentioned for levy of this charge.

Thirdly, the explanation given by the service provider says that the charges of Rs.50/- ; Rs.200/- respectively for prepaid and post paid subscribers are being levied as members charges to an exclus club created by Airtel. This explanation is inconsistent with the tariff report itself because in tariff rep for the pre-paid plan filed with the Authority, there was a mention of free SMS worth Rs. 50 to used Airtel to Airtel within 30 days. There was no mention of any benefits for a club being created they have claimed in their reply to the Authority later.

Fourthly, there is evidence to show that even in the bills issued to the subscriber by Air they have deliberately avoided any mention of the purpose for which the one-time levy is made. As a case in poi a post paid bill dated 3.10.04 received by a subscriber Shri S.B. Singh residing at Noida, (Mobile No.9818592999) clearly shows that Rs.200/- has been levied in the name of "one-time charges". It does not say anything about the purpose for which this "one-time charges" are levied (copy of the bill is Annexure-IV)

. No prior written communication was received by this subscriber from the service provider about the proposed 'one-time charge'.

Fifthly, even at the time of providing explanation to TRAI (i.e. 8.9.04) in response TRAI's query in this regard, Airtel could not submit the details of the benefits of the so-called exclusive club for which the 'one-time charge' had been levied.

Sixthly, it is possible that during this process of migration of subscribers from one plan to another, there may have been subscribers who have enrolled recently and were not given opportunity to continue in the same plan for six months period which has been mandated by the Authority. In that sense, this could also be construed as violation of clause 2(v), (vi) and (vii) of Section II of Telecommunication Tariff (Thirty First Amendment) Order, 2004 and paras 8 and 9 of Explanatory Memorandum annexed thereto which inter-alia states that a tariff plan once offered by an access provider shall be available to a subscriber for a minimum period of six months for

the date of enrolment of the subscriber to that tariff plan. Further no tariff item in that plan is to be increased within the said six months period.

Finally, TRAI had issued a directive dated 3.3.04 in which the manner in which explicit consent of the subscriber is to be obtained has been clearly laid down (copy enclosed Annexure-V). The operative portion of the said directive is reproduced below:

"Informing subscriber about the message retrieval charges through SMS or the facility given to subscriber to deactivate the voicemail service does not mean that subscriber's consent has been obtained for offering this service."

Seen in the backdrop of this directive of the Authority, it is clear that explicit consent has to be obtained in a clear and transparent manner taking the subscriber into confidence.

6. Having regard to the facts of the case, the Authority is of the view that the levy/collect of the 'one time charge' by M/s Bharti Cellular Ltd from the existing subscribers – both pre-paid and post paid – amounts to violation of the provisions of the Telecommunication Tariff Order, 1999 and the Directive of TRAI dated 15.3.2001 prohibiting such a levy. Further, the Authority has also concluded that in collecting 'one-time fee' from the subscribers, the said service provider has acted in a totally non-transparent manner, without informing the full facts to the subscribers and also without seeking their explicit concurrence. The Authority has also taken note of the deceptive manner in which the tariffs were devised, reported to the Authority and implemented in the market to circumvent the Orders / Directive of the TRAI prohibiting migration fee and thus to avoid regulatory intervention. The service provider has built up an additional fee on the existing customers under the guise of "membership fee to an exclusive club" and waiving the charges for new customers as promotional offer. The total amount that would be collected by Airtel from the subscribers who existed on the network on the date of revision of the tariffs would be in crores of rupees.

7. This finding has further been substantiated by the spate of complaints received from Airtel's Pre-paid subscribers from all parts of the country against the deduction of Rs.50/- from their account in an arbitrary manner. Post-paid subscribers of Airtel have also complained to the Authority about a similar levy of Rs.200/-. These complaints further reveal that the deduction has been made without any reference to membership to an exclusive club etc. as claimed by the operator in its correspondence with the Authority. **Clearly, this is an afterthought on part of the service provider and a belated attempt to 'cover-up' the lapse**

**complying with regulatory principles.**

8. TRAI's decision relating to migration fee is one of the well established regulatory principles intended to protect the interests of the consumers. M/s Bharti Cellular Ltd, in particular was reminded of these principles vide TRAI's letter no.303-15/2003-Eco dated 01.01.04 at the time of their earlier failure to adhere to the Authority's orders/directive on charging of migration fee (Annexure-VI).

9. On a careful and objective consideration of all the facts, the Authority has arrived at a conclusion that the one-time fee of Rs.50/- in pre-paid and Rs.200/- in post-paid levied by M/s Bharti Cellular Ltd from the existing customers without their consent is nothing but migration charges under the guise of a "club membership fee" and the action of M/s Bharti Cellular Ltd has, therefore, violated provisions of the 4<sup>th</sup> amendment to TTO and TRAI's directive dated 15.3.2001 & 31<sup>st</sup> Amendment to TTO.

10. Therefore, the Authority in exercise of the powers conferred upon it under Section 11(1)(b) of the TRAI (Amendment) Act 2000 hereby directs M/s. Bharti Cellular Limited that:

- a) It shall stop the levy of Rs.50/- and Rs.200/- in the case of pre-paid and post-paid customers respectively as reported to TRAI vide their letters dated 31.08.04 & 01.09.04; and
- b) It shall refund the said one time charge levied from the existing customers since launch of the new tariff plans by M/s Bharti Cellular Ltd and report compliance to the Authority within 15 days from the issue of this directive; and
- c) In the process of refund M/s. Bharti Cellular Limited shall give wide publicity in media-newspapers and its own websites- so as to enable all the customers to take the benefit of refund ordered by the TRAI.

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

12. 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.

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