Subject: TRAI recommendations dated 21.10.2016 on violation of the provisions of License Agreements and Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 by M/s Bharti Airtel Limited.

This has reference to TRAI recommendations vide letter no. 10-6/2016-BB&TRA dated 21.10.2016 regarding above subject.

2. The said recommendations have been examined in the Department. In terms of fifth proviso of section 11(1)(d) of the Telecom Regulatory Authority of India Act, 1997 (as amended), the said recommendations is being referred back to TRAI to provide its reconsidered opinion in the light of comments/observations of the Department annexed herewith (Annexure). While forwarding reconsidered opinion, TRAI is requested to also provide the following information:

   (a) number of subscribers on the date of launch of service by M/s RJI, i.e. the number of subscribers acquired by it during beta testing phase;
   (b) basis on which amount of penalty is recommended; and
   (c) provisions of law under which penalty has been recommended.

3. This has the approval of Competent Authority.

Encl. – As above.

(Urvashi Sangwan)
ADG(AS-IV)
Tele.: 23320168

To,

Secretary
Telecom Regulatory Authority of India
Mahanagar Doorgsanchar Bhawan (next to Zakir Hussain College)
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi: 110 002
Para-wise comments on TRAI recommendations vide letter No. 10-6/2016-BB&PA dated 21.10.2016 in respect of violation of the provisions of license agreements and the standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 by M/s Bharti Airtel Ltd.

<table>
<thead>
<tr>
<th>Para No.</th>
<th>TRAI’s recommendations</th>
<th>Comments/observations of the Department</th>
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<tbody>
<tr>
<td>Para 1</td>
<td>The Authority received a letter No. RJIL/TRAI/2016-17/230, dated the 14th July, 2016 from M/s Reliance Jio Infocomm Limited (hereinafter referred to as RJIL) providing details of inadequacy of E1s with M/s Bharti Airtel Limited (hereinafter, referred to as Airtel) (a copy of the letter dated the 14th July, 2016 is annexed as Annexure-I).</td>
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<td>In the paragraphs 1 to 4, TRAI has mentioned about receipt of letter dated 14th July, 2016 from RJIL, TRAI asking Airtel to do needful and furnish response on the issues raised by RJIL vide its letter dated 19th July, 2016, and TRAI receiving a letter dated 3rd August from Airtel in response to TRAI’s letter dated 19th July, 2016 as well as receipt of letter dated 4th August, 2016 from RJIL, hence no comments.</td>
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<td>However, on perusal of Annexure-I, II and III as mentioned in the paragraphs 1 to 3, it has been observed that:</td>
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<td>(a) RJIL sought immediate intervention of TRAI on the issue of denial of augmentation of POIs by the operators on the basis of its forecast and firm demand during the test phase of its services i.e. before commercial launch of services.</td>
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<td>(b) There was a dispute/disagreement between the operators, which related to the following points:</td>
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<td>(i) Augmentation of existing POIs to be undertaken as per the process;</td>
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<td>(ii) Capacity can be enhanced when the traffic picks up;</td>
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<td>(iii) Refusal to issue demand notes for augmenting POIs as per RJIL projections;</td>
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<td>(iv) Test traffic being disproportionate to any test use i.e. the test traffic is not only high but is abysmally imbalanced;</td>
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<td>(v) Abnormal traffic utilization on account of free voice offerings by RJIL during test phase;</td>
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<td>(vi) Traffic trends highly skewed with almost 90% of the total traffic terminating into Airtel network while merely 10% is being directed towards RJIL network;</td>
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<td>(vii) Calculations and provisioning of E1 links required at POIs on the basis of subscriber base vis-à-vis other operators to bring the utilization to around 40% to 50%;</td>
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<td>(viii) Further augmentations of POIs to be undertaken as per terms of Interconnect Agreement; etc.</td>
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<td>Para 2</td>
<td>The Authority, vide letter No. 10-6/2016-BB&amp;PA, dated the 19th July, 2016 asked Airtel to do the needful and furnish their response on the issues raised by RJIL (a copy of the letter dated 19th July, 2016 is annexed as Annexure-II).</td>
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<td>Para 3</td>
<td>The Authority received a letter No. RP/FY 16-17/122/004, dated the 3rd August, 2016 from Airtel in response to the Authority’s letter mentioned in Para 2 above (a copy of the letter dated the 3rd August, 2016 is annexed as Annexure-III).</td>
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<td>Para 4</td>
<td>The Authority received a letter No. RJIL/TRAI/2016-17/341, dated the 4th August, 2016 from RJIL requesting the Authority to direct Airtel to provide requisite number of additional E1s to remove congestion at inter-operator Points of Interconnection (hereinafter, referred to as POIs), which is severely hampering the ongoing test trial of RJIL’s services (a copy of the letter dated the 4th August, 2016 is annexed as Annexure-IV).</td>
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Further, on perusal of Annexure-IV as mentioned in the para 4 of TRAI recommendations, it has been observed that RJIL raised a concern on the terms of Interconnect Agreement as being coercive and unilateral and said that it is based
Para 5: The Authority received a letter No. RJIL/TRAII/2016-17/411 dated the 12th August, 2016 from RJIL requesting the Authority to immediately direct the telecom service providers to provide PoIs to RJIL without any dimmer or delay, per capacities indented by RJIL in its letter dated the 21st June, 2016 addressed to respective telecom service providers. (A copy of letter dated the 12th August, 2016 is enclosed as Annexure-V).

Para 6: The Authority received a letter No. RSM/COAI/2016/183 dated the 2nd September, 2016 from COAI wherein it was mentioned that they are in no position, by way of network resources, or financial resources, to terminate volumes of traffic of RJIL which are markedly asymmetric. It was also mentioned that their members are not obliged to entertain interconnect requests which are derived from abnormal induced traffic patterns that game the IUC regime and are anti-competitive (a copy of the letter dated 2nd September, 2016 is annexed as Annexure-VI).

In the paragraphs 5 and 6, TRAI has mentioned about receipt of letter dated 12th August, 2016 from RJIL and letter dated 2nd September, 2016 from COAI, hence no comments. However, on perusal of Annexure-V and VI as mentioned in these paragraphs, it has been observed that:

(a) RJIL in its letter cited COAI communication dated 8th August 2016 which stated that its member operators are not expected to provide POI’s to RJIL during the test trials. RJIL demanded TRAI intervention to direct operators to provide POIs to RJIL without any demur or delay and take action against the errant TSPs for continued denial/delay in provisioning of POI’s and subsequent breach of respective Licenses.

(b) Though RJIL has attached copies of its letter dated 21st June 2016; however, the COAI’s captioned letter dated 8th August 2016 is not available in the Annexes attached with the Recommendations, as such, it is not clear as to whether TRAI took cognizance of the said letter of COAI.

(c) Vide letter dated 2nd September, 2016, COAI had also sought TRAI intervention to restore fair competition. From perusal of para 6 of TRAI Recommendations, it appears that TRAI has relied upon only some of the contents of COAI letter ignoring the points made in respect of RJIL test launch being conducted for some months; pseudo and abnormal asymmetric traffic patterns caused through unlimited free usage of voice and data; unfair competition; unlimited free voice services by RJIL and its negative impact on the other operators; abuse of IUC regime, etc.

On scrutiny of RJIL’s letter dated 21st June 2016, it has been observed that on the one hand M/s RJIL mentions that it expects over 100 million subscriber in the...
Para 7
In view of the COAI's letter referred above, a meeting was held with telecom service providers including Airtel on the 9th September, 2016 wherein Airtel along with Vodafone India Limited and Idea Cellular Limited confirmed that they agree with all the letters of COAI including letter under reference. It was categorically conveyed to these telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs (a copy of the minutes of the meeting is annexed as Annexure-VII).

In this para TRAI has mentioned about a meeting with TSPs on 9th September, 2016 wherein, TRAI categorically conveyed to the three TSPs namely Airtel, Vodafone India Limited and M/s Idea Cellular Limited that the consumers do not suffer because of the inadequacy of the POIs.

From the perusal of minutes of the meeting annexed as Annexure-VII, it is evident that the above mentioned TSPs have also raised several issues against RJIL; however, TRAI does not seem to have responded or looked into all of them for amicable resolution.

It has been observed that M/s RJIL had been approaching TRAI from July 2016 for its urgent intervention to remove congestion at inter-operator POIs. Though, TRAI has sought explanation from Airtel and its reply was available with TRAI in first week of August 2016, however, TRAI conducted the first meeting on the issue on 9th September 2016.

TRAI may be in a better position to clarify and reconsider as to whether (i) TSPs took any action for mutual resolution of disputes/differences on the issues raised by them; (ii) TRAI’s intervention was timely and the same was legally tenable only post the launch of RJIL commercial operations, which was made on 5th September 2016 as per DOT records.

Para 8
The Authority received a letter No. RJIL/TRAI/2016-17/630, dated the 15th September, 2016 from RJIL providing details of call failure with Airtel and seeking the Authority's intervention to resolve the matter in order to protect the interests of the Indian customers (a copy of the letter dated the 15th September, 2016 is annexed as Annexure-VIII).

In this para TRAI has mentioned about receipt of letter dated 15th September, 2016 from RJIL providing details of call failures with Airtel and seeking TRAI's intervention, hence no comments. However, on perusal of Annexure-VIII as mentioned in the para, it has been observed that RJIL letter dated 15th September 2016 was issued within a week of TRAI’s meeting held on 9th September 2016.

Since, RJIL had announced its commercial launch on 5th September 2016, the
Para 9
The Authority, vide letter No. 10-6/2016-BB&PA dated the 19th September, 2016 asked Airtel to furnish information on the steps taken by them after the aforementioned meeting of the 9th September, 2016 and to furnish information on traffic on POIs with RJIL during busy hour in a prescribed format (a copy of the letter dated the 19th September, 2016 is annexed as Annexure-IX).

Para 10
The Authority received an email dated the 23rd September, 2016 from Airtel in response to the afore-mentioned letter dated the 19th September, 2016, providing the information on traffic on POIs with RJIL during busy hour (a copy of the email dated the 23rd September, 2016 is annexed as Annexure-X).

Para 11
On perusal of the information furnished by Airtel, the Authority, prima-facie, noted that in most of the Licensed Service Areas (LSAs), the percentage of failed call attempts during busy hour with RJIL is exorbitantly high, thus Airtel has failed to meet the benchmarks for POI congestion prescribed in the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 at the POIs with RJIL and relevant provisions of the license. The Authority also noted that RJIL has been sending requests for enhancement of capacity on regular basis to Airtel under intimation to TRAI.

Para 12
In view of the above, a Show Cause Notice dated the 27th September, 2016 was issued to Airtel asking as to why action under the provisions of the TRAI Act should not be initiated against them for violation of the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the provisions of Unified License and Unified Access Service ' License (a copy of the Show Cause Notice dated the 27th September, 2016 is annexed as operators might have provisioned augmentation of POIs as per demand of RJIL after the said meeting with TRAI. In terms of interconnect agreement as well as TRAI direction, 90 days period is the permissible and agreed period for augmentation. However, it is not clear as to whether TRAI took into consideration the TSP's action and the outcome of ongoing augmentation activities at that point in time while issuing its recommendation dated 21.10.2016.

TRAI may please clarify and reconsider.

In the paragraphs 9 to 11, TRAI has mentioned about its letter dated 19th September, 2016 asking Airtel to furnish information on the steps taken by them after the meeting of 9th September, 2016 and on traffic on POIs with RJIL as well as about the response of Airtel vide e-mail dated 23rd September, 2016, hence no comments.

However, scrutiny of Annexure-IX as mentioned in the para 9 of TRAI recommendations reveals that TRAI had sought traffic data from 15th September 2016 to 19th September 2016. To the extent of TRAI seeking information from operators on the steps taken after the meeting held on 9th September 2016 is concerned, the same may seem justified as a means to monitor the situation.

Though in the e-mail dated 23rd September, 2016 (Annexure-X), Airtel has also intimated about augmentation of EIs and their operationalization, however, the same has not been captured in para 10 & 11 of the TRAI's recommendations; as such it is not clear as to whether TRAI has taken cognizance of the said steps taken by Airtel, while finalizing its recommendations.

It is also observed that though the TRAI's QoS Regulations regarding POI congestion prescribe a benchmark of less than or equal to 0.5% averaged over a period of one month; however, TRAI has taken traffic data of only few days to arrive at its conclusion while finalizing its recommendations, which is a deviation from the provision of the Regulation that POI congestion to be averaged over a period of one month for the purpose of examining QoS benchmarks.

TRAI may clarify and reconsider.

In the paragraphs 12 to 14, TRAI has mentioned about issue of Show Cause Notice (SCN) dated 27th September, 2016 to Airtel for violation of QoS regulations and provision of license agreement, meeting with CEO of Airtel and TRAI dated 30th September, 2016 and seeking of information on traffic and congestion on POIs with RJIL vide letter dated 3rd October, 2016 as well as Response of Airtel vide letter dated 7th October, 2016 to the Show Cause Notice of TRAI dated 27th September, 2016, hence no comments.
<table>
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<tr>
<th>Paragraph</th>
<th>Text</th>
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<tr>
<td>Para 13</td>
<td>A meeting was held by the Authority on the 30&lt;sup&gt;th&lt;/sup&gt; September, 2016 with the CEO of Airtel. In the meeting, Airtel was requested to furnish information regarding congestion on the POIs with RJIL on daily basis to the Authority. Subsequently, through a letter dated the 3&lt;sup&gt;rd&lt;/sup&gt; October, 2016, Airtel was requested to furnish the information on traffic and congestion on POIs with RJIL in a prescribed format on daily basis (a copy of the Authority's letter dated the 3&lt;sup&gt;rd&lt;/sup&gt; October, 2016 is annexed as Annexure-XII). However, on perusal of Annexure-XI as mentioned in para 12 of TRAI’s recommendations, it has been observed that TRAI’s SCN only alleged QoS and non-compliance of License conditions and did not mention penalty outcome of 50 crores for Licensing non-compliance while seeking Airtel’s explanation. Further, it is observed that though in para 14 of the recommendations TRAI has captured the points made by Airtel in response to the SCN, however, it has responded to some of the grounds and has remained silent on other grounds viz. claim of Airtel such as efforts made by Airtel in augmenting the POIs; delay by RJIL in the operationalization of capacities. Also from perusal of recommendations it appears that TRAI did not provide any hearing to Airtel post submission of response to show cause notice. Therefore, TRAI may like to examine as to whether the recommendations will stand a legal scrutiny and may not be quashed on the ground of non-adherence to principles of natural justice. TRAI may please clarify and reconsider.</td>
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<td>Para 14</td>
<td>In response to the Show Cause Notice as mentioned in para 12 above, the Authority received a letter no. RP/FY/16-17/122/29, dated 7&lt;sup&gt;th&lt;/sup&gt; October, 2016 from Airtel wherein Airtel provided the following grounds broadly as to why no action should be taken against them: (i) Provisioning of interconnection capacities is required only post the commercial launch of services; (ii) Issuance of Show Cause Notice is premature as the same has ignored the persistent and ongoing efforts made by Airtel in augmenting the POIs; (iii) Show Cause Notice issued prematurely without waiting for the outcome of current augmentation in process i.e. till commissioning of all E1s; (iv) The premise of Show Cause Notice rests on insufficient data, in contradiction to TRAI’s own Regulations - ‘The Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009’ dated the 20&lt;sup&gt;th&lt;/sup&gt; March, 2009; (v) RJIL was itself not prepared for the operationalization of capacities; (vi) TRAI’s Direction dated the 7&lt;sup&gt;th&lt;/sup&gt; June, 2005 and Interconnect agreements provide for the capacities to be augmented within a period of 90 days; (vii) The show cause notice is based on a single days’ assessment of traffic and the Regulation requires the benchmark for point of interconnecting congestion to be considered over a period of one month. (A copy of the letter no. RP/FY/16-17/122/29, dated 7&lt;sup&gt;th&lt;/sup&gt; October, 2016 is annexed as Annexure-XIII.)</td>
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<td>Para 15</td>
<td>The Authority examined the grounds taken by TSPs, in the light of the fact that in the meeting held on the 9&lt;sup&gt;th&lt;/sup&gt; September, 2016, it was conveyed to the telecom service providers that they should ensure that the consumers do not suffer because of the inadequacy of POIs. Accordingly, the Authority is of the view that the arguments made by Airtel are not tenable as the Show Cause Notice was issued after providing sufficient time to Airtel to comply with the Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20&lt;sup&gt;th&lt;/sup&gt; March, In the paragraphs 15 to 19, TRAI has mentioned about examination of the grounds taken by Airtel and TRAI’s decision thereupon. TRAI has indicated that arguments made by Airtel are not tenable. However, it has been noticed that though analysis of the reply against some argument and view of TRAI thereon is available in the recommendations, many of the points have remained unaddressed. Further, it is noted that as per interconnect agreement between M/s RJIL &amp; M/s</td>
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The Authority further noted that interconnect agreement between Airtel and RJIL also provides that each party shall ensure the services it provides to the other party are of the quality and comparable to what it provides itself and shall maintain the same degree of efficiency in maintaining and repairing faults in the same manner as it maintains and repairs similar faults within its networks. By way of segregating E1s into outgoing and incoming E1s, Airtel has failed to provide same quality to RJIL as it provides to itself.

Though the reasons for delay in provision of POI by either party is not available in TRAI recommendations, it is not clear as to whether TRAI has examined the reasons for delay in provisioning of POI beyond the stipulated period of 90 days attributable to either party. Managing the POIs for the outgoing traffic is the prime responsibility of the operator, who originated the traffic. Whether any failure to meet the QoS benchmark of POI congestion before completion of 90 days period specified in TRAI direction/Interconnect Agreement is to be taken cognizance, if yes, then what is the sanctity of prescribing 90 days’ time limit? TRAI may like to examine and clarify this aspect in the recommendations.

It has been observed that RJIL sought intervention of TRAI for ensuring adequate POIs before launch of services.

Further, from the plain reading of clause 6.2 of Unified License it is evident that the TSP has to meet the requirement; however, there is no clarity as to whether this has to be met forthwith or within the stipulated time limit for providing the interconnection as specified by TRAI in its direction dated 7th June 2003.

TSPs have to comply with the provisions of License as well as Regulations/Directions/Order of TRAI from time to time. The interconnect agreement entered into by both M/s RJIL and M/s BAL must have been filed in TRAI in pursuance of extant TRAI Regulations. Whether, TRAI had examined the interconnect agreement filed by the parties and struck down any of its clauses or the agreement as a whole is not clear. If not, in such situation, the parties are bound by the terms of interconnect agreement between them. Whether M/s RJIL had provided a forecast in writing in advance for its requirements of port capacity for telephony traffic to enable the other party to dimension the required capacity in its network in pursuance of clause 9.5 of the interconnect agreement is not clear. Further, there is no clarity as to when M/s RJIL intimated other operators about the date of launch of its services. In addition, whether M/s RJIL has taken suitable action as provided in the interconnect agreement on dispute resolution with M/s BAL is also not clear. The Department also noted that the trunk groups are created with the consent of both the parties for effective implementation. In such a scenario, segregation of trunk groups in outgoing and incoming might have been done with the consent of the other party i.e., M/s RJIL in this case. It is not clear as to whether TRAI had ascertained from the submission of both the parties that they had agreed for creation of trunk groups in the manner it was created.

It appears that opportunity has not been given to M/s Airtel to explain the points raised in para 18 of the recommendations. This appears to be against principles of natural justice.

Fault report of the circuits in the trunk groups is not available in the
Para 20
The Authority has observed that in Bharti Airtel vs UOI in Civil Appeal no. 2803 of 2014, the Supreme Court of India observed that the telecom licenses are in the nature of largesse from the State. Therefore, Airtel as a licensee, should operate in a consumer friendly manner, should not indulge in anti-consumer behavior and should have provided sufficient number of E1s at POIs for ensuring that calls from consumers of either parties are successful.

In this para, TRAI has quoted observations of Hon'ble Supreme Court and justified that Licensees are required to operate in a consumer friendly manner and desist from anti-consumer behaviour and linked the same to provisioning of POIs, however, the said principle applies to both the parties keeping in view the timeframe stipulated in TRAI directions / Interconnect Agreement for augmentation of POIs.

It may be noted that Clause 29.4 of Unified License provide for carrying out performance tests on TSP's network to evaluate Quality of Service parameters prior to grant of permission for commercial launch of the service. After successful completion of interconnection tests to ascertain that the network meets the specified standards on Quality of Service (QoS), the TSP is supposed to launch its services. However, it appears that RJIL has not completed such tests before seeking permission for commercial launch and launched its services on 5th September 2016 without resolving the issues with other operators amicably within the existing regulatory framework and taken their customers to task by providing poor services. If that is so, whether TRAI took cognizance of this fact before finalizing its recommendations is not clear.

TRAI may please clarify and reconsider.

Para 21
From the above examination, it emerges that:
(i) Airtel has failed to comply with Clause 3 of the Unified License which reads as under:
"The Licensee hereby agrees and unequivocally undertakes to fully comply with all terms and conditions stipulated in this License Agreement and without any deviation or reservations of any kind."

(ii) Airtel has failed to comply with Clause 16.1 of the Unified Access Service License which reads as under:
"The LICENSEE shall be bound by the terms and conditions of this Licence Agreement as well as by such orders/ directions/ regulations of TRAI as per provisions of the TRAI Act, 1997 as amended from time to time and instructions as are issued by the Licensor/TRAI."

(iii) Airtel has failed to comply with Clause 16.1 of the Unified Service

In the paragraphs 21 to 23, TRAI has concluded its findings in respect of non-compliance to various license conditions, QoS Regulations, it’s Direction dated 7th October 2016 by Airtel and finally summarised its recommendations.

On examination of these paragraphs, the Department observed that in sub-para (i) to (iii) of para 21 of the recommendations, no specific details for violation of the clauses of License Agreement has been mentioned by TRAI. Further, these clauses are general clauses seeking compliance of terms and conditions of the License Agreement in general.

In sub-para (iv) of para 21 of the recommendations, TRAI has concluded that Airtel has failed to provide E1s at the POIs of RJIL to ensure that calls to all destinations are completed; however, based on the available records, the Department noted that Airtel and RJIL has entered into mutually agreed interconnect agreement in March 2014/ January 2015. The said interconnect
License which reads as under:
"The Licensee shall be bound by the terms and conditions of this License Agreement as well as instructions as are issued by the Licensor and by such orders/ directions/ regulations of TRAI as per provisions of the TRAI Act, 1997 as amended from time to time."

(iv) Airtel has failed to provide E1s at the POIs of RJIL to ensure that calls to all destinations are completed. Clause 6.2 of the Unified License in this regard reads as under:
"It shall be mandatory for the LICENSEE to interconnect to/ provide interconnection to all eligible Telecom Service Providers (eligibility shall be determined as per the service provider's License Agreement and TRAI's determinations/orders/regulations issued from time to time) to ensure that the calls are completed to all destinations"

(v) The sub-clause 27.4 of Clause 27 on "Network Interconnection" of the Part-I of Unified license reads as under:
"27.4 Licensee shall interconnect with other Telecom Service Providers at the Points of Inter-connection (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/ Licensee 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."

(vi) The sub-clause 26.2 of Clause 26 on "Network Interconnection" of Unified Access Service License reads as under:
"26.2 The LICENSEE may enter into suitable arrangements with other service providers to negotiate Interconnection Agreements whereby the interconnected networks will 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 numbers to enable transmission and reception of the

agreement was filed in TRAI and if any of the provisions of the said interconnect agreement was against the conditions of License Agreement or TRAI's determinations/orders/regulations, the same should have been set aside by TRAI. Further, Airtel has provided POIs to RJIL for testing purpose and it is RJIL, who has to ensure that the originating calls from its network are completed to all destinations through these POIs. Congestion on any POI cannot be taken to mean that calls from a network are not being completed to all destinations as far as call flow is concerned. Moreover, as per reports from RJIL, POIs have been provided by Airtel within the stipulated timeframe in terms of interconnect agreement.

Further, from plain reading of clause 6.2 of Unified License it is noted that the Licensee has to meet the requirement; however, nowhere it is mentioned that this requirement is to be met by the Licensee forthwith or within the stipulated time limit for providing the interconnection as per TRAI regulations/ directions/orders. Therefore, the Department is of the opinion that this clause needs to be read with other clauses of the license as well as regulations/ directions/ orders of TRAI in this regard as well as provisions of interconnect agreement.

In sub-para (v) & (vi) of para 21 of the recommendations, TRAI has quoted clauses of Unified license/ Unified Access Service License, which are related to entering into interconnection agreement by the licensee within the extant regulatory framework. Since, Airtel and RJIL have already signed interconnect agreement as stated above and no evidence is available that TRAI has set aside the said agreement; therefore, the Department is of the view that this clause may not be attracted in this case.

In sub-para (vii) of para 21 of the recommendations, TRAI has concluded wilful violation of the license conditions by Airtel taking cognizance of COAI's letter. In this respect, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over statement of the operator or their association. In para 14 (ii) & (iii) of recommendations, it has been captured by TRAI that Airtel has made consistent efforts in resolving the issue of provision of POIs within the frame work of interconnect agreement. Therefore, the above statement does not match with the action & conduct of Airtel and as such use of the said statement for imposition of penalty may not be appropriate.

In sub-para (viii) of para 21 of the recommendations, TRAI has concluded that Airtel has failed to meet QoS benchmarks. However, the QoS parameters are to be met by both the parties and they are responsible for their originating traffic, if the POIs have been provisioned within the stipulated period of 90 days, otherwise the originating operator should have projected demand for POIs well in time keeping in view the provision of interconnect agreement. TRAI appears to have
messages by means of the Applicable Systems,

(c) To connect, and keep connected, to their Applicable Systems.”;

(vii) It is evident from the above Clauses that the licensees are mandated to provide interconnection to all eligible telecom service providers. However, as mentioned in Para 6 above Airtel along with other telecom service providers have, jointly through their association (COAI), declined Point of Interconnection to RJIL which is wilful violation of the above mentioned license conditions.

(viii) Airtel has failed to comply with "The Standards of Quality Of Service Of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009" dated the 20th March, 2009, which prescribe a parameter for congestion of ≤0.5% on individual POI.

(ix) Due to non-provision of sufficient number of E1s, a large number of consumers of RJIO are continuously suffering;

(x) COAI’s letter dated the 2nd September, 2016 which was confirmed by Airtel in the meeting held on the 9th September, 2016 clearly indicates attempt by three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited to stifle competition in the market and to willfully violate the license conditions;

Para 22
Interconnection is extremely important from a consumer perspective. Telecom users cannot communicate with each other or connect with services they demand unless necessary interconnection arrangements are in place. Ensuring the effective interconnection is one of the important functions, as bestowed upon the Authority under TRAI Act, 1997, and accordingly the Authority has been constantly monitoring the situation of congestion on points of interconnection and has also issued a Direction No. 10-6/2016-BB&PA dated 7th October, 2016 to all telecom service providers holding Unified License (with Access Service authorization), Universal Access Service License, Cellular Mobile Telephone Service License and Basic Service License to comply with the Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service Regulations, 2009 dated the 20th March, 2009 and the terms and conditions of their respective licenses.

Para 23
While the Authority has been taking necessary steps to ensure effective interconnection between Airtel and RJIL, it is evident from Para 21 that Airtel is in non-compliance of the terms and conditions of license and denial of Interconnection to RJIL appears to be with ulterior motive to stifle competition and is anti-consumer. The act of Airtel is against public interest.

not assessed the responsibility of congestion attributable to either Airtel or RJIL in view of above and reflected the same in the recommendations.

In sub-para (ix) of para 21 of the recommendations, TRAI has stated a factual situation; however, the department is of the opinion that both RJIL and Airtel are responsible for this situation.

In sub-para (x) of para 21 of the recommendations, TRAI has concluded that the three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited by confirming the contents of COAI’ letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions; however, the Department is of the opinion that the action & conduct of individual operator needs to be looked into, which generally prevails over statement of the operator or their association and the same may be given due consideration as mentioned in preceding paragraphs.

The Department noted that the core dispute is that RJIL launched their services on 5th September, 2016 without arranging/activating the adequate POIs, which were commensurate to terminate traffic in the network of the TSPs. As per terms & conditions of the license agreement, it is the obligation of RJIL to arrange adequate POIs before the launch/provisioning of its services to the consumers. But RJIL has claimed that they could not arrange this because it was denied by the TSPs. Even if it is assumed that the POIs were denied by the TSPs, it is inappropriate for RJIO to launch the services without arranging POIs or without settling the dispute, if any, which has led to failure of calls and inconveniences to the consumers. No evidence has been recorded by TRAI or submitted by RJIL that it has exhausted all legally available means within the extant regulatory framework or as per conditions of interconnect agreement to get those POIs. This needs further examination.

As TRAI has relied on COAI’s letter dated 2nd September, 2016 for concluding that the three service providers namely Airtel, Vodafone India Limited and Idea Cellular Limited by confirming the contents of COAI’ letter dated 2nd September, 2016 have attempted to stifle competition in the market and to willfully violate the license conditions, it was prudent for the Department to examine the contents of the COAI’s letter dated 2nd September, 2016. The Department observed that the said letter of COAI is generic in nature and raises various issues such as asymmetric traffic, IUC and other issues on account of free services and in the background of these issues COAI mentioned that due to such abnormalities the member operators are not obliged to provide POIs for RJIL’s free traffic. This letter of COAI and confirmation by operators as well as individual action & conduct of operators needs further examination.
Non-compliance of terms and conditions of the license, under Section of 11(1)(a)(iii) of the TRAI Act, 1997 warrants recommendations for the revocation of the license. However, the Authority is mindful of the fact that revocation of the license will entail significant consumer inconvenience and therefore in view of the larger public interest involved, the Authority recommends a penal action of Rs. 50 crore per LSA for 21 LSAs (for all LSAs except for Jammu and Kashmir) where POI congestion exceeded the allowable limit of 0.5% as reported by Airtel through their email dated the 23rd September, 2016 (refer to para 10 above), may be initiated against M/s Bharti Airtel Limited.

From the recommendations, it is not clear that what methodology has been adopted by TRAI to verify the claims made by RJIL or the TSPs or to reconcile the data submitted by RJIL and the TSPs. It appears that TRAI has stretched the QoS issues to Licensing compliance without sufficient evidence or without substantiating the issues.

In addition to the above, the Department also noted that Section 11(1)(a) (iii) of TRAI Act, 1997 provides that TRAI has the function of making recommendations for revocation of licence for non-compliance of terms and conditions of licence; however, in the para 23 of the recommendations, TRAI has recommended a penal action, which is not covered under the TRAI Act.

Further, TRAI’s “Standards of Quality of Service of Basic Telephone Service (Wireline) and Cellular Mobile Telephone Service (Fourth Amendment) Regulations, 2015” dated 15th October 2015 provide for financial disincentive in case of non-compliance of QoS benchmarks; however, TRAI has not invoked the said provisions in the instant case and went beyond the mandate given to it under the TRAI Act.

TRAI may please clarify and reconsider.