



**Telecom Regulatory Authority of India**



## **Recommendations**

**on**

## **Complaints/ Grievance Redressal in the Telecom Sector**

**10<sup>th</sup> March 2017**

**Mahanagar Doorsanchar Bhawan**

**JawaharLal Nehru Marg,**

**New Delhi – 110002**

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# CHAPTER -1

## Introduction

1. The number of telecom subscribers in India has increased to more than a billion and continue to grow at a fast pace. Large majority of this subscriber base (>95%) are mobile users and on pre-paid mode. The monthly ARPU for mobile services is in the range of Rs.125 and that of prepaid segment is around Rs.110. As per the current trends, on an average around 10 million complaints are lodged with the TSPs each quarter. The complaints in the telecom sector are characterized by high volumes, low-value and from users in diverse geographic locations. This is a unique situation which calls for a need to look beyond traditional means to address the needs of such large number of subscribers and their problems in a cost effective and speedy manner. The Authority believes that technology driven systems and solutions should be the way forward. Technological means need to be explored both for controlling the factors contributing to complaints, thereby reducing its incidences also for efficient and speedy redressal of complaints.

2. Protection of consumer interests is a key objective for the Authority. The fact that around ten million complaints are logged with the TSPs every quarter points to the enormity of the problem at hand. TSPs may prefer to downplay these numbers contending that it is small proportion in comparison with overall subscriber base. TSPs contend that their systems established as per TRAI regulations effectively handle almost all of the complaints within the prescribed time frames. On the other hand, consumers and consumer organizations attribute the lower proportion of complaints to lack of consumer awareness and access to the TSP complaint redressal systems, apart from questioning the quality of resolution delivered. At this juncture when the face of telecom services is rapidly undergoing a transformation based on technological advancements, Authority, felt it appropriate to engage the stakeholders in a constructive dialogue with the objectives of improving the existing grievance redressal mechanism to make it feasible to address consumer complaints more efficiently and in a more cost effective manner making use of technology to the extent possible. This consultation process has been undertaken with this objective.

3. TRAI released a Consultation Paper on “Complaints/ Grievance Redressal in the Telecom Sector” on 28th July, 2016 keeping in view the phenomenal changes that the Indian telecom sector has undergone in the recent past. The changes have been remarkable not just in terms of the phenomenal growth in number of subscribers alone. The role and impact of telecommunication services has metamorphosed from being a communication tool to a critical instrument for the social and economic development of the country. The efficient and

satisfactory delivery of telecom services has become vital for the success of a number of recent Government initiatives like digital economy, financial inclusion and direct cash transfers etc. The impact and influence the telecom services have had on all walks of life and its emergence as a key infrastructure for economic activities has also meant rising expectations of consumers on quality of service and standards of such services. Addressing services related issues expeditiously and efficiently has emerged as a major business driver rather than merely support operations for the provision of telecom Services.

### **Existing Legal and Regulatory Framework relating to Grievance Redressal in Telecom Sector**

4. Telecom Regulatory Authority of India Act, 1997 (TRAI Act) presently does not empower TRAI to look into and resolve the individual grievances of telecom subscribers. The conditions of the license issued under the Indian Telegraph Act, 1885 (Telegraph Act), require that the providers must respond to the complaints raised by their subscribers, particularly in the context of quality of service, regular itemized billing and records and repair and rectification of faults.

#### Licensing Conditions

5. The following are the relevant extracts from the Unified Licensing Agreement:

*29.3 The LICENSEE shall be responsive to the complaints lodged by his subscribers. The LICENSEE shall rectify the anomalies within the MTTR (mean time to restore) specified and maintain the history sheets for each installation, statistics and analysis on the overall maintenance status.*

*30.6 All complaints of subscribers in this regard will be addressed/handled as per the orders or regulations or directions issued by the Licensor or TRAI from time to time.*

*30.9 The LICENSEE shall notify in writing all the policy and arrangements with respect to repair, fault rectification, compensation or refunds. All complaints in this regard will be addressed/handled as per the guidelines, order or regulation or direction issued by the Licensor or TRAI from time to time.*

6. The present framework, therefore, envisages that TRAI lay down regulations for quality of service and framework for redress of consumer grievances and complaints and the Department of Telecommunications (DoT)

through licensing conditions enjoin upon the TSPs to adhere to these regulations.

7. In accordance with the TRAI Act and the Licensing framework, the Authority has from time to time issued Regulations specifying the broad framework of the complaint redressal mechanism that all the TSPs should establish and maintain within their organizations. The first such Regulations were issued in 2007. It specified a 3-tier grievance redressal system. In 2012, those Regulations were reviewed and replaced by Telecom Consumers Complaint Redressal Regulations, 2012. These Regulations, currently in operation, provide for a two-tiered grievance redress mechanism. The first tier consists of a complaint center housed within each TSP, which must resolve complaints within the time frame specified by TRAI. Consumers can contact the TSP's complaint center on a toll free number to register their complaints. If a consumer is not satisfied with the service provider's redress or the issue is not addressed within the specified time limit, the consumer may refer an appeal to the appellate authority required to be established by the TSP in each licensed service area. The appellate authority is aided by a two member advisory committee, with representation from the TSP and a CAG registered with TRAI.

#### Role of DoT

8. The DoT currently maintains a Public Grievances Cell with HQs in New Delhi and presence in 11 States. DoT also has 34 Telecom Enforcement, Resources and Monitoring (TERM) Cells across the country, which receive public grievances. However, these cells are not actively engaged in the resolution of consumer grievances. Their function is in the nature of a facilitator that forwards the complaints to the concerned service provider with advice to take appropriate action and to inform the complainant of the action taken. Therefore, these cells also link back to the service provider's internal grievance redress mechanism.

#### Jurisdiction of TDSAT

9. As per the provisions of TRAI Act, redressal of individual grievances of consumers of telecommunications services is also not within the mandate of Telecom Disputes Settlement and Appellate Tribunal (TDSAT), the specialized judicial body set up under the Act. Though, Section 14 of the TRAI Act confers TDSAT with the power to adjudicate any dispute between a service provider and a group of consumers, any complaint of an individual consumer that is maintainable before the consumer forums created under the Consumer Protection Act, 1986 is outside the purview of the tribunal's jurisdiction.

## **Other Forums for Redressal of Individual Telecom Grievances**

### (i) Arbitration under Section 7B of the Indian Telegraph Act

10. Section 7B of the Telegraph Act states that any dispute arising between "*the telegraph authority*" and consumers of "*any telegraph line, appliance of apparatus*" provided by such authority, shall be determined by arbitration. As per Section 3(6) of the Telegraph Act, a "telegraph authority" is defined to mean the Director General of Posts and Telegraphs, including any officer empowered by him to perform all or any of the functions of the telegraph authority under the Act. Vide an order dated 30th July, 1993, the DoT notified that all of the powers of the Telegraph Authority will be performed by the Secretary, DoT. Section 7B therefore relates to the resolution of disputes between consumers and the DoT, which is the telegraph authority, in connection with the services being provided by the authority.

11. As far back as 1989, the DoT acknowledged that this provision was a potentially burdensome remedy for consumers and DoT. They issued a Circular (No.12-324/Arb.88-TR) stating that this provision would lead to a tremendous overflow of arbitration applications. To control this they decided that "*as a matter of policy, that arbitrator will be appointed only in such cases where the subscriber approaches the Court with a request to appoint an arbitrator, and the Court orders for the same*".

12. This position has however undergone a change pursuant to the liberalization of the telecom sector. The Government, as the telecom authority, is no longer involved in the provision of telecom services to consumers. Accordingly, arbitration under the Telegraph Act is not available as an option for individual consumers who seek redress against a deficiency in the services provided by a TSP. This was clarified by the DoT in a memorandum issued on 4 February, 2014 (No. 2-17/2013-Policy-I), which stated as follows:

*"Powers of the telegraph authority have neither been vested nor are available to private telecom service providers and BSNL. Therefore, recourse to Section 7B in case of disputes between consumers and private service providers and BSNL would not be available"*.

### (ii) Consumer Forums

13. The channel available for a consumer, not satisfied with the resolution provided by his TSP has been the consumer forums created under the Consumer Protection Act, 1986 (CP Act). However, it has been brought to the notice of the Authority that doubts are being expressed over jurisdiction of consumer fora in disputes between telecom consumers and TSPs, subsequent to a decision by the Hon'ble Supreme Court [in the matter of General Manager, Telecom Vs.

M.Krishnan & Anr]. Considering the consumer interest involved this issue is being separately taken up by TRAI with DoT.

TRAI's prior consultation process and developments

14. The Authority had in 2004 released a "Consultation Paper on Establishment of the Office of Ombudsman in the Telecommunication Sector". Followed by a consultation process, the Authority came to the conclusion that the then existing framework was inadequate to address the needs of telecom consumers. It accordingly made the following recommendations to the Government:

- a. Establishment of an Ombudsman would be a desirable development and such an institution needs to be established;
- b. Ombudsman should handle and investigate all unresolved complaints within a time frame. The Ombudsman would facilitate through its mediation, the terms for the resolution, settlement and/or withdrawal of the complaints. The unresolved complaints will inevitably go to the Consumer Courts.
- c. Ombudsman can be established by amending the terms of the license agreement.
- d. Funding of the Office of Ombudsman may be provided from the license fee collected annually from the telecom sector. A very negligible percentage of the revenue of the service providers (for less than 0.01%) will be sufficient to meet the expenses;
- e. Once the proposal is accepted in principle, the locations and staffing pattern etc. of the Ombudsman can be finalized by the Government, in consultation with the Authority;

**The Government, however, did not agree with this proposal at that point of time.**

15. Subsequently, in May 2007, the Authority issued the Telecom Consumer Protection and Redressal Grievances Regulation to put in place a defined institutional framework to replace the then existing self-regulatory mechanisms for redress operated by TSPs. It consisted of a three-tier mechanism consisting of a call centre, a nodal officer and an appellate authority.

16. In 2010 the Authority conducted another detailed consultation on "Review of measures to protect interest of consumers in the telecom Sector", following which, the Authority repealed the 2007 regulations and adopted a new set of regulations on the redressal of telecom consumers' complaints in 2012. The changes included the adoption of the two-tier mechanism and addition of a two-

member advisory committee consisting of one representative of a consumer organisation registered with TRAI and one member from the service provider, to render advice to the appellate authority.

### TRAI's Present Consultation Process

17. In its consultation paper released in July, 2016, TRAI had invited stakeholders to present detailed and reasoned comments on the following issues:

- a) Is the complaint redressal mechanism, as presently existing, adequate or is there a need to strengthen it?
- b) Are there any specific changes that can be made to the existing system to improve it?
- c) Should a separate - independent and appropriately empowered - structure to resolve telecom sector complaints and grievances be established?
- d) If yes, please comment with regard to the organization; its structure; kinds of complaints to be handled and its powers?
- e) Is establishing an Office of Telecom Ombudsman an option that should be revisited, especially given the experience of the past few years of increasing numbers of complaints?
- f) If yes, how should it be created – the legal framework? What should be its structure? How should it be funded? What types of complaints should it handle? What should be its powers, functions, duties and responsibilities?

18. The Authority received responses representing a diverse set of viewpoints from consumers, telecom service providers, consumer groups, other associations and research institutions. This was followed by an open house discussion conducted on 26 October, 2016. The following section summarizes the responses received from stakeholders in the course of this consultation process.

## **Stakeholders' Views**

### *Adequacy of the present mechanism*

19. Telecom operators across the board are of the view that the existing mechanisms are sufficient, and effective in ensuring grievance redressal. They stated that the 2012 regulations, which lay down the 2-tier process for redress, are being strictly adhered to. In case customers are not satisfied at the first level, they state that the Appellate Authority provides an adequate forum for appeal, with representation of a consumer group. In addition to the formal redress mechanism, the subscribers have other avenues to register and resolve their complaints like customer care helpline, social media, DoT PG Cell, Consumer Forums etc.

20. Consumer groups, research institutions and individual consumers have, however, noted that the present mechanism is inadequate and needs major changes. Complaints are often closed by the service provider to satisfy the regulatory requirements, without addressing the underlying problem. Consumer groups have also pointed to a lack of clarity in the appeals process. Complaints forwarded to the appellate authority are often not registered or responded to and many service providers not convening regular meetings of the advisory committee in the manner stipulated in TRAI's regulations. It has been suggested by few organisations that TRAI and DoT should be vested with statutory powers to resolve complaints. Penalties should be levied for service deficiencies and enforcement power should be given to TRAI.

21. Other suggestions received to improve the current mechanism include (a) the creation of an online complaint filing and tracking system with consumer friendly user interface through which the complainant will be able to track complaints at all stages. Unresolved complaints will directly be forwarded to the concerned appellate authority after a fixed period and from the appellate authority to an independent redress authority; (b) strengthening of PG units of DoT; (c) proper system of monitoring/audit and analysis of the complaints to assess the performance of service providers; (d) multiple options like app, email, phone, online chat etc. should be provided for complaint filing in order to make complaint filing easier for customers; (e) having a mechanism along the lines of the National and State Consumer Help lines operated by the Ministry of Consumer Affairs. Time limit to dispose off a complaint before the AA should be reduced and a consumer should be compensated for any delay beyond the time limit.

22. Respondents have also suggested that the existing grievance redress mechanisms need to be strengthened, particularly in terms of transparency and accountability. While some respondents have acknowledged that the first tier redress mechanism has been somewhat effective, there seems to be a consensus that the appellate mechanisms have not been effective for a multitude of reasons, including lack of awareness about the appellate mechanism and lack of

transparency in the process, which appears to have eroded consumer confidence in the mechanism. In this regard, there have been some suggestions of auditing the TSPs complaint dockets on a real-time basis. Others respondents have suggested de-coupling the appellate mechanism from the first tier mechanism, and establishing an independent appellate authority outside the TSP.

#### Desirability of a separate structure

23. All TSPs take the view that there is no need for a separate institutional grievance redress mechanism. They differentiate themselves from the banking or electricity sectors, which provide for an ombudsman, on the ground that they deal with financial transactions of very small values. They argue that a majority of complaints handled by them relate to technical issues with no monetary sums involved, which makes it ill-suited to be addressed by an adjudicatory process. They also stated that huge investments have already been made to establish the present system which is running well and there is no apparent need to dismantle it.

24. Other stakeholders however agree, almost unanimously, on the need for a redress mechanism that is independent of the service provider. They expressed the view that fair resolution of grievances cannot be expected in a system where TSPs themselves are the decision makers. It is suggested that the functioning of this office and exercise of its powers should be independent of the TSPs. It should be adequately empowered to impose penalties, award compensation and enforce them.

25. Another structure that has been suggested by a consumer organisation is one where a consumer redress body should be established in each licensing area by the TSPs. It may consist of a representative from the TSP and a renowned consumer or social activist / representative of a leading consumer organization. This body should be empowered to initiate mediation, conciliation, adjudication and pass an award. This award should be binding only on the TSP. Disputes over a certain amount and appeals from consumer redress bodies would be referred to the Telecom Ombudsman.

#### Establishing an Office of Telecom Ombudsman

26. Telecom operators submitted that there is no legislative provision in the TRAI Act for creation of an ombudsman, and therefore any attempt to do so within the TRAI's mandate would be ultra vires. As noted above, various other stakeholders strongly supported the idea of having a telecom ombudsman and some of them have suggested that in order for this system to be effective the powers should be vested upon this authority through an appropriate legal framework. Some of the consumer groups have however expressed the view that establishing an ombudsman for this sector is not appropriate in light of the fact that most complaints are of a minor monetary value and the consumer would

find it unfeasible to approach the ombudsman office for such small value complaints. Relative expenditure of establishing and running an ombudsman service may not be commensurate with the volume of complaints likely to be received. View was also expressed that the experience of Ombudsman existing in other Sectors does not support the idea of Ombudsman in Telecom Sector.

27. As regards, the jurisdiction of Ombudsman, it has been suggested that the ombudsman should only handle complaints regarding provision of telecom services and matters like administrative issues, matters of telecom policy, setting of tariff etc. should be outside the jurisdiction of the ombudsman. The following are some of the other key suggestions that have been made regarding the structure and functioning of the ombudsman's office: (a) the system should not be burdened by too many formalities - it should provide simple and quick redress; (b) it should be easily approachable - ombudsman office in every state/circle; (c) maximum time period should be set for the body to resolve the complaints and any delay due to lack of participation by a party should be addressed by passing an ex-parte order; (d) complaints should be categorised on the basis of their complexity in order to expedite the process; (e) no fee/minimum fee should be levied on the consumers for filing the complaints; (f) the ombudsman system should be supported by an office with appropriate material and human resources; (g) the authority should have the power to award compensation and pass penal orders and its decisions must be binding on service providers.

28. Several suggestions have been made for the funding of the office of ombudsman. These include funding through license fee collected from service providers and funding through the penalties collected from TSPs for deficiency in services, USO support, Government/TRAI Funding etc.

### **Analysis & Recommendations**

29. Authority has given careful consideration to the stakeholder's views, the feedback from consumers and consumer groups, other options available to consumers for grievance redressal, prevailing legal and regulatory framework, present working of the existing grievance redressal mechanism etc. Though there has been some dispersal of views, which is expected, considering the complexities and interests involved, the consultation process has brought out certain clear broad inferences.

30. Complaints in large numbers are being filed with the TSPs. TSPs have taken the position that they are able to redress almost all of them, within the specified time period through their internal mechanisms established under the TRAI regulations. However, Authority notes that there is a general sense of dissatisfaction among consumers about the TSP's established mechanisms and in particular about the quality of redressal offered by them. Main apprehension expressed by consumers is that they are unlikely to get a fair deal from the

system in which TSPs themselves are virtually the decision making authorities. TSPs have tried to counter this by pointing out that the Appellate Authority mechanism has adequate participation from CAGs and is therefore well placed to address such concerns.

31. However, the data furnished by the TSPs on the number of complaints/appeals handled by them does not support their claim on effective functioning of the Appellate Authority (AA) mechanism. The abysmally low number of appeals in relation to the number of complaints, even “nil” in some cases, belies the claim of the TSPs that AA mechanism has been effective to instill consumer confidence in their redressal systems. The wide disparity in the numbers across the TSPs also indicates that there has been no uniformity in the manner in which the TSPs have set up and operated the appellate mechanism.

**Table1: Complaints/Appeals handled by TSPs’ internal redressal mechanisms**

Sl. No.	Name of the TSP	Number of Complaints in Quarter Ending			Number of Appeals in Quarter Ending		
		Dec-15	Mar-16	Jun-16	Dec-15	Mar-16	Jun-16
1.	Airtel	3209450	3889799	3270310	162	604	746
2.	Aircel	1177682	751210	517395	422	316	174
3.	BSNL	1493333	1099758	1431108	22	0	0
4.	Idea	1077257	1062843	1001787	907	756	834
5.	MTNL	3748272	1471336	1653133	3	3	2
6.	MTS	166473	180045	160315	63	73	71
7.	Quadrant	4769	39700	33867	0	169	8
8.	Reliance	1655485	164494	146748	18026	21098	5697
9.	Tata	283323	302358	332879	2000	3656	3076
10	Vodafone	1801005	1078092	1044869	38	103	135
11.	Telenor	5606	195213	192948	0	62	8

32. There has been no counterview to the position that the primary responsibility of redressing the consumer grievances shall continue to rest with the TSPs and they cannot be discharged from that responsibility imposed by the licensing conditions. Aggrieved Consumers should at first instance file complaints with the TSPs, so that TSPs get an opportunity to resolve the grievances. However, the process of resolution shall not cease at the end of the TSP unless the consumer is satisfied with the resolution provided by the TSP. The Authority believes that for any consumer redressal mechanism to be successful, it should not only be fair and transparent; but also appear to be so. To assure and ensure credibility of the system it is essential that the basic principles of natural justice are followed. If the channels for grievance redressal are effectively ending with the systems dominated by the TSPs, as perceived in this case, it would violate one of the basic legal principles -“*Nemojudex in causa*

*sua*" that literally means, "no person can judge a case in which they have an interest "or "no-one should be a judge in his own cause."

33. The Authority, therefore, holds the view that there is a need for an independent and appropriately empowered structure to be created for resolution of grievances of telecom consumers. Accordingly, the Authority recommends to the Government that an Office of Telecom Ombudsman needs to be established.

#### Legal framework

34. In its 2004 recommendation to the Government, TRAI had explored the following possibilities for giving effect to the suggestion of having an ombudsman: (a) by an amendment in law; (b) by an amendment in the license; and/or (c) by concurrence of the operator. Taking into account all the relevant circumstances, the Authority recommended that amending the licensing conditions to provide for an ombudsman was the best available course under the circumstance.

35. Another suggestion that has come up during the present consultation process is that the ombudsman can be established under rules framed by the Central Government, similar to the institution of the insurance ombudsman under the Redress of Public Grievances Rules, 1998 (RPG Rules). These Rules were framed by the Central Government under sub-section (1) of Section 114 of the Insurance Act, 1938.

36. Section 35(1) of the TRAI Act contains a similar provision, which states that "The Central Government may, by notification, make rules for carrying out the purposes of this Act". As per the preamble of the TRAI Act, 1997, the objectives of the Act include protecting the interests of consumers of the telecom sector and promoting and ensuring orderly growth of the telecom sector. Having in place a mechanism for the efficient redress of consumer grievances is crucial to the protection of consumer interests and orderly growth of the sector. The Government is therefore adequately empowered to make rules on this subject, for carrying out the purposes of the Act.

37. Alternatively, the Government can choose to create the ombudsman office through a legislation to be passed by the Parliament. The recommendations made by the Authority on the structure, process, funding, etc. of the ombudsman's office apply equally irrespective of whether the Government chooses to establish this agency through rules or by proposing a legislation on this subject.

#### New Grievance Redressal Mechanism

38. Based on the inputs received from the consultation process and deliberations, a three stage grievance redressal mechanism for telecom sector is proposed as follows:

- i. Resolution by TSPs
- ii. Resolution by Consumer Grievance Redressal Forum [CGRF]
- iii. Determination by Telecom Ombudsman

#### Resolution by TSPs

39. As stated above, there has been no counter view to the position that the primary responsibility to resolve service related consumer complaints should rest with the TSPs. In the event that a consumer is dissatisfied with the services provided by a TSP, the consumer should in the first instance approach the complaint center of the TSP to seek a solution. It will be the duty of the TSP to look into the request and address the consumer's concerns within the time frames stipulated by the Authority. At the same time Authority has also taken note of the TSPs request for allowing flexibility in designing and implementing their own internal mechanisms. Accordingly, TSPs will be allowed the discretion to structure their internal grievance management systems in the manner that they deem appropriate, subject to overall compliance with the prescribed regulatory framework. This may include escalation of the complaint to different levels within the operator's structure, depending on the complexity of the issues involved. Regulatory intervention will be limited to availability of Toll free access to complaint mechanisms, provision of unique compliant number and the resolution within the time limits specified by the Authority and communicating the resolution to the complainant.

40. In case the TSP fails to resolve the complaint in a manner that is satisfactory to the consumer; or does not provide a response; or fails to do so within the prescribed time lines laid down by TRAI the customer will have the option to seek further redress through an independent mechanism. This will consist of a process of a resolution based on fact finding by CGRF, followed by, if necessitated, determination by the telecom ombudsman. These independent processes will replace the existing appellate authority mechanisms being managed and operated by the TSPs. This recommendation finds its basis in the basic principles of natural justice as mentioned above, and to dispel the apprehensions of the consumers of any possible bias in the decision making or conflict of interests and instill greater confidence in the system.

#### Resolution by Consumer Grievance Redressal Forum [CGRF]

41. CGRF has been proposed to be set up with multiple objectives of bringing in technical expertise in resolution of complaints and also an element of mediation by facilitating settlement of the grievance, based on facts. CGRFs is proposed at LSA/State level by leveraging existing field formations of DoT like PG Cells, TERM Cells etc. that already have a reasonable presence across the

country. If needed, they could be adequately strengthened to cover all LSAs in the country. CGRF will hear both the complainant and TSP concerned, carry out technical analysis, if necessary, and settle the facts for facilitating a mediated settlement in the first instance. CGRF will also offer a solution if the parties are unable to arrive at a mutual settlement within a specified time period.

42. If the matter is settled between the parties or the solution offered by the CGRF is acceptable to the TSP and the complainant, matter will be treated as closed or else either party may choose to escalate it to the level of the Ombudsman. Setting up of CGRF with the involvement of field formations of DOT such as PG/TERM cells of DoT etc., has been proposed as the officers working in these field offices possess the technical expertise to understand and appreciate the type of issues that are typically raised by consumers in their complaints against TSPs. They also have access to the TSP's operating systems for fact finding/verification. It is possible that consumer's grievance may relate to a billing error that might require technical expertise in billing systems. It is therefore important to ensure that the persons in charge of addressing these issues have adequate technical expertise to properly guide the consumers and settling the facts in right perspective facilitating amicable settlement before the matter is escalated for an adjudication at the level of Ombudsman.

43. Accordingly, it is recommended that the CGRF shall be primarily responsible for settling the facts, facilitating mediation and will also offer a solution if the parties themselves cannot arrive at a settlement. However, depending on the complexity, facts and circumstances of any particular case, CGRF may choose to seek assistance or guidance from other groups or institutions or independent experts who are well placed to represent consumer interests. This may include CAGs empanelled by TRAI, Central/State Government Departments, legal aid centers, national and state consumer helpline centers, premier institutes in the field of law like National School of Law, and various other bodies that may be identified by the Central or the State Governments for this purpose. A list of such institutions can be declared by the DoT in respect of each CGRF. Either the CGRF itself or any consumer that approaches a CGRF seeking a remedy may seek assistance from these institutions/experts.

44. In the course of the process, the CGRF will gather all necessary facts relating to the complaint made by the consumer, the TSPs response to it and any technical aspects that may be relevant to the settlement process or subsequent determination of the case by an ombudsman. These facts will be recorded by the CGRF. If the consumer and TSP manage to arrive at a mutually agreeable solution at this stage, this will be recorded in its report and the matter will be closed. However, if the parties fail to reach a settlement within the time frame specified in the rules or if either party indicates that it is not willing to reach a settlement/agree to the solution offered by the CGRF, this will also be recorded in its report, along with the other findings on the facts relating to the complaints.

### Determination by the Telecom Ombudsman

45. If not satisfied with the process at the level of CGRF, the consumer may choose to proceed for determination by the Ombudsman. In such a case the report prepared by the CGRF and all other documents relating to the case will be automatically transferred from the CGRF to the ombudsman's office and the consumer or TSP will not be required to refurnish any information that they have already submitted. The ombudsman will look into the CGRF's report, the relevant documents, seek any further inputs from the parties, preferably through electronic means, and then pass a final determination order. Ombudsman will be required to act in accordance with the principles of natural justice. It will have the power to award compensation to the consumer, award costs and issue directions to the TSP for the performance of specific obligations. The decision of the Ombudsman will be final and binding on the parties. In order to function as an effective Body, Authority also recommends that, the ombudsman should have the power to levy penalties on the TSPs.

### Complaints under the Ombudsman's Jurisdiction

46. Telecom Subscription in the country is more than a billion and is growing. As per information made available by the TSPs, on an average around 10 million complaints are filed with them in a quarter on a wide variety of issues directly or indirectly related to the services offered by the TSPs. Consumers may continue to have this option and it is open for the TSPs to render suitable assistance and solutions to the problems. However, when it comes to a formal mediation and adjudication process based on records, proven facts and legal principles, individual grievances of not all genres can qualify for determination by the CGRF and the office of Ombudsman. Typically only such complaints that relate to clearly identifiable and measurable rights vested with the individual subscriber flowing out of the contract of service with the TSP, Rules/Regulations/Requirements laid down by the Authority or the Licensor, which have a bearing on the relationship between the TSP and the individual consumer may qualify. Examples of such complaints may include:

**Table 2: Examples of complaint type to be handled by CGRF**

<b>Complaint Area</b>	<b>Specific Nature</b>
<b>Billing Related Complaints</b>	<ul style="list-style-type: none"> <li>• Excess/ Inaccurate billing</li> <li>• Billing post termination of service or beyond period for disconnection of service</li> <li>• Wrong application of tariff</li> <li>• Delay in activation of tariff cutters/packs</li> <li>• Change in Tariff Plan without Consent</li> <li>• Denial of Migration or levy of migration charge</li> <li>• Non-refund of Security Deposit within specified time limit</li> </ul>
<b>Mobile Number Portability</b>	<ul style="list-style-type: none"> <li>• Non generation of UPC</li> <li>• Rejection of Porting request without valid grounds</li> <li>• Non-porting within the specified period</li> </ul>
<b>Fault Repair</b>	<ul style="list-style-type: none"> <li>• Failure Repair faults within the specified time limits</li> <li>• Provision of Rent Rebates for fault repair beyond specified time limits</li> </ul>
<b>Connection/ Disconnection of Services</b>	<ul style="list-style-type: none"> <li>• Subscriber verification within time</li> <li>• Activation of services within time on successful completion of subscriber verification</li> <li>• Refusal to accept request for disconnection of service</li> <li>• Non-disconnection within the prescribed time limit</li> </ul>
<b>VAS/UCC</b>	<ul style="list-style-type: none"> <li>• Activation of VAS services without explicit consent</li> <li>• Inaction on UCC related complaints</li> </ul>
<b>Broadband Speed</b>	<ul style="list-style-type: none"> <li>• Contracted Speed in Wired Broadband Services</li> </ul>

47. Some categories of grievances that may not qualify as complaints to be taken up before the CGRF and the Ombudsman shall be:

- a) Grievances in the nature of perceptions, policy issues, administrative matters etc.
- b) Any service requirement or parameter that has to be met by the TSP for network as a whole, geographical area and not on individual subscriber wise [e.g.: call drop, low or inconsistent data speeds in relation to an individual subscriber location in wireless service etc.]
- c) Unsubstantiated or non-verified offers made by retailers. However TSPs will be responsible for recharges/payments of bills made their channel

partners appointed by them as laid down by the TRAI guidelines dated 14<sup>th</sup> October 2016.

- d) Disputes relating third party payment made using sources provided by TSPs [Credit card payments, airline booking, Bank transfers etc.],
- e) Email frauds, Tower Frauds, Phishing etc.

[These lists are just illustrative in nature and the rules notified by the Government should identify the types of complaints in respect of which an independent remedy under the rules may be made available]

48. In terms of process, when a complaint is forwarded by a consumer to CGRF, it will first undertake a preliminary screening process to assess whether the complaint is of a nature that qualifies for mediation and determination by CGRF or ombudsman, within the framework of the grievance redress rules laid down by the Government. The onus of establishing that his grievance falls under the qualified category of complaints shall be on the individual consumer.

49. Further, if a complaint pertains to the same subject matter for which any proceedings before any court, authority or any other forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum or is prima facie frivolous or vexatious in nature, such a complaint should also be excluded.

#### Overall Design features for the new Grievance Redressal Mechanism

50. Complaints from individual telecom consumers will generally be in the nature of high-volume, low-value complaints from users in diverse geographic locations. The office of the ombudsman will therefore need to be designed in a manner that is appropriate to suit these requirements. The following design features can be adopted in this regard:

- a) It may be endeavored to reduce the instance of generation of consumer grievances in the first place itself. Since this presents a win-win situation for both the industry and consumers, technology based initiatives to strengthen transparency and innovative measures for empowering the consumer with information regarding services would go a long way in reducing consumer grievances. Innovative App based solutions may be developed by TSPs or as an Industry led initiative, which could provide consumers with information related to VAS, activation of packs, service requests etc.
- b) Each complaint should be allotted a unique number by the TSP at the time of initial registration with them, which will remain the same through the life-cycle of the case. This will allow for easier tracking and monitoring. A

centralized web monitoring system should allow the consumer to track the developments of the case.

- c) In case of non-resolution or non-satisfactory resolution of the complaint by the TSP, the Consumer should be able to register his complaint with CGRF through post, email or a web-portal or through local facilitation centers of the TSPs. TSPs shall acknowledge the complaint received at their centers and forward it to the CGRF along with relevant information, documents within the 7 working days.
- d) It should be technology-driven solution that can provide redress remotely to consumers using their phones, Internet etc. TSPs will be required to maintain video calling facilities at their local offices, which can be used by the consumer to interact with the CGRF or Ombudsman's office, in case it is required. Only in exceptional cases should there be a need for a consumer to visit a physical location.
- e) The centralized web based system will allow flow of information from each level of the grievance redressal mechanism to the Ombudsman, thereby obviating the need for the same information to be provided again at various stages.
- f) The CGRF will be based in each LSA and can be manned by field formations of DoT, like PG Cells and TERM Cells. They may be adequately strengthened in this regard, to address the large volumes of complaints likely to flow to each such office. The CGRF in each LSA must be manned by technically qualified personnel who may offer effective mediation towards resolving consumer complaints.
- g) The ombudsman will have offices at national levels and sub-national levels covering each State. Each office should be supported by a secretariat that takes care of all administrative functions so that the officers in charge of decision-making process do not have to spend time on ancillary activities.

### Funding

51. A portion of the existing, not in addition, license fee, is recommended as the funding mechanism for the CGRF and Ombudsman. In addition to this fixed fee there will be a variable component payable by each TSP depending on the volume of complaints being filed against it and admitted before the ombudsman's office. This will act as an incentive to motivate TSPs to resolve a major portion of complaints at the first level itself and will ensure that the office of the ombudsman is not unduly burdened with routine matters.

52. No additional separate levy is recommended for two reasons. Firstly the funding requirement may not be huge to resort to an additional levy. Secondly introduction of a new levy will involve costs of collection, accounting, auditing

which will disproportionate to the amount of levy itself. CGRF, which is a part of the Ombudsman scheme, is proposed to be set up by leveraging the field units of DoT like PG Cells, TERM Cells etc, which exists in most of the States.

53. Authority is of the view that the funding requirements of the proposed grievance redressal mechanism (CGRF and Ombudsman) would be adequately met by the combination of the fixed portion of license fee and a variable fee from TSPs as proposed.

54. The Authority at the outset of these recommendations has cleared the intent of this consultation process. The Authority is not for creating procedure oriented cost structures or hierarchies; but believes in a collaborative effort to improve the telecom services in the country which is not possible without improved consumer satisfaction and perception. It acknowledges that the Industry too shares this intent and expects that the industry would initiate innovative measures for empowering the consumer with more information regarding the services offered. For example the TSPs or the Industry as a whole may develop app based solutions that can provide consumers with logs relating to requests for VAS, activation of packs, service requests etc. Improved transparency levels will lead to better information flow, which eventually would minimize the incidence of complaints. The Ombudsman with its experience and insight gained from the redressal process could play the role of a mentor for the TSPs in the matter of improving their existing systems and building up new solution. Ombudsman can also share/refer systemic issues to DoT/TRAI for necessary action.

55. Authority is making these recommendations to the Government out of its firm conviction that establishing an independent mechanism for grievance redressal would be a small, but gainful effort for all stakeholders of the Telecom Sector, especially at a time when the industry is playing a defining role in shaping the development of the country.

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## CHAPTER -2

### SUMMARY OF RECOMMENDATIONS

(1) There is a need for an independent and appropriately empowered structure to be created for resolution of grievances of telecom consumers. Accordingly, the Authority recommends to the Government that an Office of Telecom Ombudsman needs to be established **[Para 33 of the Recommendations]**

(2) The ombudsman can be established under rules framed by the Central Government, similar to the institution of the insurance ombudsman under the Redress of Public Grievances Rules, 1998 (RPG Rules). These Rules were framed by the Central Government under sub-section (1) of Section 114 of the Insurance Act, 1938. Section 35(1) of the TRAI Act contains a similar provision, which states that "The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Alternatively, the Government can choose to create the ombudsman office through a legislation to be passed by the Parliament. The recommendations made by the Authority on the structure, process, funding, etc. of the ombudsman's office apply equally irrespective of whether the Government chooses to establish this agency through rules or by proposing a legislation on this subject. **[Para 34-37 of the Recommendations]**

(3) A three stage grievance redressal mechanism for telecom sector is proposed as follows:

- i. Resolution by TSPs
- ii. Resolution by Consumer Grievance Redressal Forum [CGRF]
- iii. Determination by Telecom Ombudsman **[Para 38 of the Recommendations]**

(4) The consumer should in the first instance approach the complaint center of the TSP to seek a solution. It will be the duty of the TSP to look into the request and address the consumer's concerns within the time frames stipulated by the Authority.

In case the TSP fails to resolve the complaint in a manner that is satisfactory to the consumer; or does not provide a response; or fails to do so within the prescribed time lines laid down by TRAI, the customer will have the option to seek further redress through an independent mechanism. This will consist of a process of a resolution based on fact

finding by CGRF, followed by, if necessitated, determination by the telecom ombudsman. **[Para 39-40 of the Recommendations]**

- (5) CGRFs are proposed at LSA/State level by leveraging existing field formations of DoT like PG Cells, TERM Cells etc. that already has a reasonable presence across the country. The CGRF shall be primarily responsible for settling the facts, facilitating mediation and will also offer a solution if the parties themselves cannot arrive at a settlement.

Depending on the complexity, facts and circumstances of any particular case, CGRF may choose to seek assistance or guidance from other groups or institutions or independent experts who are well placed to represent consumer interests. This may include CAGs empanelled by TRAI, Central/State Government Departments, legal aid centers, national and state consumer helpline centers, premier institutes in the field of law like National School of Law, and various other bodies that may be identified by the Central or the State Governments for this purpose **[Para 41-43 of the Recommendations]**

- (6) If not satisfied with the process at the level of CGRF, the consumer may choose to proceed for determination by the Ombudsman. Ombudsman will be required to act in accordance with the principles of natural justice.

It will have the power to award compensation to the consumer, award costs and issue directions to the TSP for the performance of specific obligations. The decision of the Ombudsman will be final and binding on the parties. In order to function as an effective Body, Authority also recommends that, the ombudsman should have the power to levy penalties on the TSPs. **[Para 45 of the Recommendations]**

- (7) Only such complaints that relate to clearly identifiable and measurable rights vested with the individual subscriber flowing out of the contract of service with the TSP, Rules/Regulations/Requirements laid down by the Authority or the Licensor, which have a bearing on the relationship between the TSP and the individual consumer may qualify.

When a complaint is forwarded by a consumer to CGRF, it will first undertake a preliminary screening process to assess whether the complaint is of a nature that qualifies for mediation and determination by CGRF or ombudsman, within the framework of the grievance redress rules laid down by the Government. **[Para 46-49 of the Recommendations]**

- (8) The ombudsman will have offices at national levels and sub-national levels covering each State.

It should be technology-driven solution that can provide redress remotely to consumers using their phones, Internet etc. Consumers should be able to access local facilitation centers to register their complaints, from where the information would be fed into a centralized database. TSPs will be required to maintain video calling facilities at their local offices, which can be used by the consumer to interact with the CGRF or Ombudsman's office, in case it is required.

The centralized web based system will allow flow of information from each level of the grievance redressal mechanism to the Ombudsman, thereby obviating the need for the same information to be provided again at various stages. **[Para 50 of the Recommendations]**

- (9)** A portion of the existing, not in addition, license fee, is recommended as the funding mechanism for the CGRF and Ombudsman. In addition to this fixed fee there will be a variable component payable by each TSP depending on the volume of complaints being filed against it and admitted before the ombudsman's office. **[Para 51-53 of the Recommendations]**