

TELECOM REGULATORY AUTHORITY OF INDIA

RECOMMENDATIONS

ON

ESTABLISHMENT OF OFFICE OF OMBUDSMAN IN THE TELECOMMUNICATION INDUSTRY

1. **BACKGROUND**

1.1 Telecommunications had traditionally been a voice communication service, managed by government or Public Sector Enterprises. The dominant role acquired by telecommunications in the global business management and its effect on national economies has seen this service develop as a vital backbone and utility service for business and industry. In fact, this service itself now stands transformed into a full-fledged industry. The telecommunication business is, therefore, the world over, increasingly governed by industrial and competition norms. Free markets and open and fair competition are almost universally accepted as the ideal means to facilitate growth of communication services, with competition acting as a catalyst to bring down costs and improve efficiency and quality of service.

1.2 The National Telecom Policy of 1994 recognised the need for private investment and the association of the private sector to bridge the resource gap as also to meet the rapidly growing demand for telecommunication service. The policy also recognised that in order to implement the new telecom policy, suitable arrangements would have to be made to protect and promote the interests of consumers and ensure fair competition. The New Telecom Policy 1999 went further and provided a framework for increased competition.

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1.3 With the opening up of telecom sector to competition with licences for a number of services being granted, the telecommunication sector has seen a tremendous growth in the recent past both in terms of number of operators and subscriber base. Along with the growth, there are, of course, problems for the stakeholders, including the consumers.

1.4 The TRAI Act does not explicitly fix the responsibility to redress consumer grievances on TRAI. This responsibility naturally is that of consumer courts which have been set up by Government of India to look into consumer complaints against various service providers. The Act, however, provides that TRAI shall lay down standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers.

1.5 With a view to streamlining and improving the services in the telecommunication sector, TRAI notified a Regulation on Quality of Service of basic and cellular mobile services in July, 2000. Regulation on Quality of Service for VOIP was notified in July, 2002. Further in order to improve the consumer interface in January, 2001, the TRAI notified a Regulation on guidelines for registration of consumer organisations/non-government organisations (NGOs) and their interaction with TRAI. TRAI has registered a number of consumer organisations and NGOs from all over the country. The TRAI interacts with these organisations known as Consumer Advocacy Groups (CAGs) frequently. It has been brought to the notice of TRAI by CAGs, that most of the service providers do not care to redress the grievances of consumers. TRAI also receives a number of complaints from the consumers of telecommunication service on various problems faced by

them. However, there is no system in place in TRAI to redress individual consumer complaints (which are to be addressed by consumer courts/fora, or disputes between service providers and group of consumers (which are to be addressed by TDSAT).

1.6 It is, therefore, evident that, there is a need to establish an internal mechanism like in other sectors such as insurance and banking, to deal with the individual consumer grievances. One way of doing this is through establishment of an office of Ombudsman for the telecom sector. The consumer can of course, go to the consumer court if he is not satisfied by the redressal given by the Industry Ombudsman.

2. TRAI's CONSULTATION PAPER ON ESTABLISHMENT OF OFFICE OF OMBUDSMAN

2.1 With the above background, TRAI had issued a consultation paper on establishment of Office of Ombudsman in the telecommunication sector in January, 2004 inviting comments from all stakeholders. A copy of the consultation paper is attached at Appendix I. The Consultation Paper contained a chapter on constitution, powers and functions of Ombudsman in the telecommunication sector in some other countries and also in the banking and insurance sector in India. In the consultation paper, TRAI had posed the following questions soliciting comments from all stakeholders:

- (i) Is there a need for an Ombudsman in the telecom sector? Should the Ombudsman be only at the central level, or should it be at each circle level?
- (ii) Should the Ombudsman be created by an Act of Parliament or through a notification issued by the Government or through a decision taken by the telecommunication industry?

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- (iii) Should there be a Council to help and assist the Ombudsman in due discharge of his functions?
- (iv) What do you think would be the best way of funding of the Office of Ombudsman?
- (v) What should be the terms of reference i.e. types of complaints, which can be handled by Ombudsman?
- (vi) What should be the duties, responsibilities, functions and powers of the Ombudsman?

3. **RESPONSES RECEIVED ON THE RECOMMENDATIONS OF THE TRAI ON EACH OF THE QUESTIONS**

3.1 Written comments were received from several NGOs and consumer organisations, individual consumers, service providers and association of the service providers. Views expressed by the stakeholders through their written comments and the discussions in the Open Houses are summarised below:

A. **Response on Question (i)**

While most of the NGOs/consumer organisations and individual consumers were quite equivocal about the need of Ombudsman in the telecom sector, the service providers were not very convinced about the need for another institution like that of an Ombudsman in the telecommunication sector. They were of the view that the competitive scenario in the telecommunication sector would impose requisite pressure on the service providers to provide top quality service and highly efficient customer care and the market mechanism itself would ensure that the service providers take due care of the customers. It was felt that from time to time TRAI could advise the service providers to adopt suitable measures to redress consumer grievances.

The Consumer organisations did not agree with the views expressed by the service providers. They pointed out that the number of complaints were on the increase. The statistical data available with TRAI had also shown that the quantum of consumer complaints is on the rise.

B. Response on Question (ii)

The next question is how the Office of Ombudsman should be created . Some of the consumer advocacy groups expressed the view that it should be created through an act of Parliament. Another view expressed was that it should be established through a Notification issued by the Government of India. Whatever be the mode of its establishment, majority of the consumers expressed the view that there is an urgent need for establishment of a grievance redressal machinery to bring about resolution of consumer complaints through mediation of an independent body. This body should not be treated as a substitute for any other legal machinery available for consumers under the Consumer Protection Act.

C. Response on Question (iii)

On Question (iii) regarding Council to help and assist the Ombudsman, most of the consumer organisations agreed with the idea of having a council to help and assist the Ombudsman. BSNL was also of the opinion that there should be a council with members having sufficient experience in operation and maintenance of telecom services, regulatory matters etc. Another service provider, namely, Reliance Infocomm, expressed the view that Ombudsman should be the sole authority and for his assistance, secretariat staff is to be provided.

D. Response on Question (iv)

On the Question of funding the office of Ombudsman, the majority opinion both from the consumer groups as well as from the service providers was that it must be funded through grants and/or through levy of fees for each case of complaint handled by the Ombudsman.

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E. Response on Question (v)

As regards terms of reference and types of complaints which can be handled by the Ombudsman, there were several suggestions from the consumer advocacy groups and individual consumers as well as service providers.

F. Response on Question (vi)

On the last Question regarding the duties/responsibilities and functions and powers of the Ombudsman, several suggestions have been received. Resolution of complaints not settled by service providers in a reasonable time frame and transparent manner, deficiency in the service, delay in provision of service, periodic survey for ensuring quality of services, impartial investigations to determine the fairness of the service providers, etc. were some of the duties and responsibilities of Ombudsman, suggested by both the consumer organisations and service providers.

4. RECOMMENDATIONS OF TRAI

4.1 Based on the extensive deliberations in the Authority, the Authority makes the following recommendations to the Government on establishment of Office of Ombudsman in the telecommunication sector.

4.2 In the present set up, the individual consumer complaints are beyond the scope of TRAI or TDSAT and approaching the consumer courts is the only recourse available. Since the consumer courts are not dedicated to telecom related problems, following this recourse only is a time consuming affair for the consumer. An intra-sector arrangement would be more responsive to consumer complaints in the telecom sector. The TRAI has therefore, noted that establishment of an Ombudsman would be a desirable development and recommends to the Government that such an institution needs to be established.

Of course, the consumer would be free to exercise the legal remedy of approaching consumer court at any time.

4.3 For creation of the Office of Ombudsman, the Authority has noted that it can be done either (a) by an amendment in Law; (b) by an amendment in the licence; and/or (c) by concurrence of the operator.

(i) As regards (a), the amendment in law would imply the passing of the legislation through an Act of Parliament which is not necessary since the legal remedy of Consumer Courts exists. Ombudsman is only being proposed as an internal arrangement in the sector, where complaints could be handled in the form of an arbitration.

(ii) As regards (b), we reproduce hereunder the relevant provisions of the License Agreement:

“ The LICENSOR reserves the right to modify at any time the terms and conditions of the LICENCE, if in the opinion of the LICENSOR it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the service. The decision of the LICENSOR shall be final and binding in this regard.”

The unified licence agreement provides as under:

“ The LICENSOR reserves the right to modify at any time the terms and conditions of the LICENCE, if in the opinion of the LICENSOR it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the telegraphs. The decision of the LICENSOR shall be final and binding in this regard.”

It is therefore apparent that the Licensor has full power and authority to make an amendment in the license provided it is in public interest. It may be appreciated that the establishment of Office of Ombudsman is, in fact, a device to redress the grievances of the telecom consumers and help them in getting the necessary relief at the quickest possible time and without there being financial implications as such. As already stated earlier, the other remedies available to consumer through legal process, are time consuming and expensive proposition besides there being technicalities involved. Our experience has been that the redressal through such processes have not been very effective and has never served the required purpose. The above suggestion therefore appears to be the best available course under the circumstance. Once this is done, the other question which would warrant to be addressed is the financial implications in establishment of Office of Ombudsman and its subsequent sustenance. The Authority had consultations with several stakeholders including the service providers and it has been found that the service providers are not very enthusiastic in providing all facilities and financial assistance in the proposal. The reasons for such an approach are obvious and do not warrant any explanation. It is therefore necessary that in order to establish and sustain the Office of Ombudsman, the relevant amount may be provided from the licence fee collected annually from the telecom sector. Our suggestion, therefore, is that a very negligible percentage of the revenue of the service providers (for less than 0.01%) will be sufficient to meet the expenses and it would not cause any undue burden on the service providers.

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(iii) As regards (c), the prospect of the agreement is very bleak in view of the inputs received from the service providers and they are not at all enthusiastic about having an industry ombudsman financed by the industry. Otherwise also, this may not be a sustainable proposition and suffers from various infirmities and as it would not be preferable course.

5. CONCLUSION

4.4 In view of the discussions as above, the best available would be to adopt the course as stated in para 4.3.(ii). As regards terms of reference and types of complaints which can be handled by the Ombudsman, TRAI feels that the 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.

4.5 For the purpose of discharging its duties, responsibilities and functions, TRAI is of the opinion that once the proposal is accepted in principle, the locations and staffing pattern etc. of the Ombudsman can be finalised by the Government, in consultation with the Authority.