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PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, the 19th September, 2012

TELECOMMUNICATION MOBILE NUMBER PORTABILITY
(FOURTH AMENDMENT) REGULATIONS, 2012

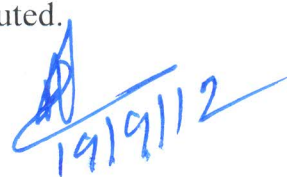
(19 of 2012)

No. 116-15/2012-MN----- In exercise of the powers conferred by sub-section (1) of section 36, read with sub-clauses (i), (iii) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009), namely:-

1. (1) These regulations may be called the Telecommunication Mobile Number Portability (Fourth Amendment) Regulations, 2012.

(2) They shall come into force sixty days from the date of publication in the Official Gazette.

2. In regulation 11 of the Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009) (herein after referred to as the principal regulations), in sub-regulation (4) and sub-regulation (6), for the words "one hour" wherever occurring, the words "two hours" shall be substituted.


19/9/12

3. After chapter III of the principal regulations, the following chapter shall be inserted, namely;-

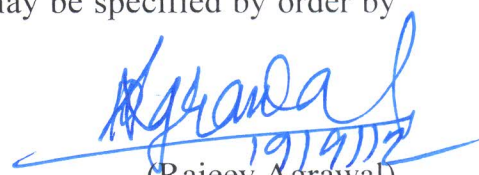
**“CHAPTER III A
FINANCIAL DISINCENTIVES FOR CONTRAVENTION OF THE
PROVISIONS OF THE REGULATIONS**

17A – Consequence for contravention of the provisions of regulation 8 or regulation 10 or regulation 11 or regulation 12 .— (1) If any service provider contravenes the provisions of sub-regulation (6) of regulation 8 or regulation 10 or sub-regulation (4) of regulation 11 or sub-regulation(6) of regulation 11, it shall, without prejudice to the terms and conditions of its licence or the provisions of the Act or rules or regulations or orders made, or, directions issued, thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding five thousand rupees for each contravention, as the Authority may, by order direct.

(2) If any service provider contravenes the provisions of regulation 12, it shall, without prejudice to the terms and conditions of its licence or the provisions of the Act or rules or regulations or orders made, or, direction issued, thereunder, be liable to pay an amount, by way of financial disincentive not exceeding ten thousand rupees for each wrongful rejection of the request for porting, as the Authority may, by order direct.

(3) No order for payment of an amount by way of financial disincentive under sub-regulation (1) and sub-regulation (2) shall be made by the Authority unless the service provider has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

17B – Deposit of amount payable by way of financial disincentive under these regulations.— The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by order by the Authority.”

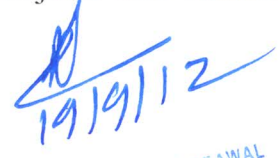

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Note 1: The principal regulations were published in the Gazette of India, Extraordinary, part III, section 4 vide notification No. 116-4/2009-MN (Vol.II) dated 23rd Sept. 2009 and amended vide:

- a) Notification no. 116-1/2010 dated 28th January, 2010 (1 of 2010)
- b) Notification no. 116-1/2010 dated 24th November, 2010 (5 of 2010)
- c) Notification no. 116-5/2012 dated 8th June, 2012 (16 of 2012)

Note 2: The Explanatory Memorandum explains the objects and reasons of these regulations.


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Explanatory Memorandum

The Telecom Regulatory Authority of India issued the Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009) dated 23rd September, 2009 laying down the basic business process framework for implementation of mobile number portability in the country. The regulation 6,7,8,9,10,11,12 and 13 of the regulations came into effect in all telecom service areas in the country from 20th January 2011 through the Authority's direction dated 18th January, 2011.

2. In the aforesaid regulations, provisions have been made for a Service Provider, acting as a Donor Operator, to reject a porting request under the grounds mentioned in regulation 12 of the regulations.
3. After implementation of the MNP Regulations, the Authority had received a number of complaints wherein the subscribers have reported that their porting requests have been rejected by the donor operators on frivolous grounds. In order to ascertain whether the porting requests being rejected are as per the provisions of regulation 12 of the regulations, the Authority sought supporting documents from the concerned Service Providers who have rejected porting requests under categories such as 'UPC mis-match', 'contractual obligation', 'less than 90 days from the date of activation of new connection' and 'outstanding payment due'. In a number of cases, the Authority noted that the Donor Operator, could not furnish satisfactory evidence to establish that the rejection of the porting requests of the subscribers done by them were in accordance with the regulation 12.
4. Further, in the regulations, the Authority specified timelines for various activities for the porting process. While reviewing the progress of MNP, the Authority noted that deviations are also taking place in the timelines specified by the Authority in the regulation.
5. In order to discourage the operators for wrongly rejecting the porting requests and to encourage them to meet the time lines specified in the MNP regulations, the Authority decided to seek comments from the stakeholders on introduction of

provisions for levying of financial disincentives in the MNP regulations for non-compliance of regulations. Accordingly, TRAI placed the draft amendment in the regulations on the subject on its website on 3rd August 2012 for consultation with the stakeholders. The comments of the stake holders on the draft regulations were solicited by 13th August 2012. Further, on request of stakeholders the Authority had extended the last date for submission of comments by stake holders up to 3rd September 2012. In their response, the stakeholders had commented broadly on the Power of Authority for introducing financial disincentives in the regulations, financial disincentives on deviation from timelines & wrongful rejections in the regulations. The Authority has analysed these comments, which are given below:

6. Power of the Authority for introducing financial disincentives in the regulations:

The service providers and the Associations have in their comments, inter-alia, stated that the Authority lacks statutory mandate to impose financial disincentive on the service providers for non-compliance of the provisions of the regulations. The Authority has considered the points raised by the service providers and their associations and have been advised that it has power to impose financial disincentives on the service providers in order to regulate the telecom sector and to protect the interest of the consumers of the telecom sector. The TRAI Act confers power on the Authority not only to regulate but also the power to ensure the compliance of the provisions of the regulations. The word “ensure” has mandatory connotation, it means “make certain”. Furthermore, the Hon’ble Supreme Court, in its judgment dated the 17, Aug, 2007, in *Civil Appeal No. 2104/2006 (Central Power Distribution Co. & Ors Vs. CERC & Anr)*, inter-alia, held that “it is well settled that a power to regulate includes within it power to enforce”.

The main purposes for enactment of the TRAI Act, 1997, as discernable from the preamble thereof, and as applicable to TRAI are (a) **to regulate** telecommunication services : (b) **to protect the interest** of the service providers and **consumers** of telecommunication services; and (c) to ensure orderly growth of

telecom sector. From the reading of the various provisions of TRAI Act, it is clear that protection of the interest of the consumers has been given paramount importance by the legislature.

It will not be out of place to mention that there are a catena of judgments by the Supreme Court wherein the Hon'ble Court has repeatedly re-stated the proposition that legislation should be read and interpreted so as to further the purpose of its enactment and not in a manner that derogates from its main objectives. The Hon'ble Supreme Court in its judgment in the case of *State of Karnataka Vs. Vishwabharthi House Building Co-operative Societies and Ors.* [(2004) 5 SCC 430], quoted with approval the judgment of Hon'ble Guwahati High Court in the case of *Arbind Das Vs. State of Assam & Ors.* [AIR 1981 Gau 18 (FB)] wherein it was inter-alia, held that where a statute gives a power, such power implies that legitimate steps may be taken to exercise that power even though these steps may not be clearly spelled out in the statute. The Hon'ble Court further held that in determining whether a power claimed by a statutory authority can be held to be incidental or ancillary to the powers specially conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purposes of the provision of the statute which confers power on the Authority in exercise of such powers. The relevant part of said judgment reads as under:-

"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”

Apart from casting duty on the Authority to protect the interest of the consumer, TRAI Act under section 11 (1)(d) confers power on TRAI to perform such other functions including such administrative and financial functions as may be necessary to carry out the provisions of the Act. It is also worthwhile to mention over here the judgment of the Hon’ble Supreme Court in U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills Association & Ors. (AIR 2004 SC 3697) wherein the Hon’ble court, inter alia, held that the word to regulate is a phrase of broad impact having a wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it is being used and the purpose of the statute. The Hon’ble court held that even when the power to fix tariff was not expressly given in the Act, the power to regulate the price of Sugar Cane would include in itself the power to fix tariff. In other words, even a power not explicitly vested with the authority would be held so vested, if it was intrinsic to the exercise of larger, general power to regulate. The relevant part of the aforesaid judgment of the Hon’ble Supreme Court is as under :-

“20.....”Regulate” means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute.

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26.....*The provisions of the Act referred to above also show that the legislature has made very elaborate provisions regarding supply of sugarcane by cane-growers, its purchase by the sugar factories and payment of price thereof. In fact, very detailed and exhaustive provisions have been made in the Rules and the 1954 Orders to ensure that at the time of delivery of sugarcane by the cane-growers, its weight and price is correctly recorded and the price is paid to them within 14 days, failing which the sugar factory is liable to pay interest. In such circumstances, the irresistible conclusion which can be drawn is that the regulatory power possessed by the State Government shall also include the power to fix the price of the sugarcane. If it is held that the State under its power of regulation cannot fix the price, then the statutory provision contained in the 1953 Act, the Rules and 1954 Order will become completely one sided, operating entirely for the benefit of sugar factories giving them many advantages with no corresponding obligations and leaving the cane grower in a lurch with a host of restrictions upon him. This can never be the intention of the Legislature. It will not be fair to read the Act and the Rules in such a restrictive manner, whereby the provisions made for the benefit of the cane growers become wholly illusory.... ”*

The Authority is, therefore, of the view that in order to effectively discharge its functions under TRAI Act and to protect the interest of the consumer of the telecom sector, it has power to impose financial disincentives on the service provider for non-compliance of the provisions of the regulations.

7. Financial disincentives for deviating from time lines prescribed in the MNP process:

a) Recipient operator to submit customer details to MNP service provider within 24 hours of receipt of porting request:-

Regarding the timelines for forwarding the porting requests by the recipient operator, few service providers stated that there is no provision for time stamp for the requests of porting made by the subscriber. Some of the stake holders suggested that TRAI should specify threshold for number of cases for not meeting the time lines. Stringent subscriber verification guidelines, was also mentioned as one of the constraints in meeting the timelines. The Authority is of the opinion that the service provider can comply with the regulations with date as a reference. Further, service provider is activating the subscriber in his network only at the end of porting period. Therefore, it has sufficient time to verify the subscriber.

b) Donor Operator to provide the clearance to the porting request only on the 4th working day:-

Stake holders expressed that there is no effect on the timelines of the MNP processes even if the Donor Operator takes more than four days. One of the stake holder suggested that threshold in such cases should be 98%. It has been observed by the Authority that the service providers have been clearing the porting request before 4th working day, which is against the instructions issued by the licensor. The Authority is of the view that clearance of the porting request should be done only on the 4th working day as it is the security requirement. Therefore, the Authority finds no reason for acceding to the request of the stakeholders and hence no relaxation is allowed.

c) Time lines for Deactivation and Activation:-

Some of the stake holders suggested for modification of time lines from 2 hours to 4 hours excluding network down time/latency related issues for deactivation and activation. One of the stakeholders suggested the threshold of 95% of the porting

requests within 2 hours averaged over one month. Having considered the comments of the stakeholders the Authority is of the view that the network downtime cannot be a reason for non compliance with the time lines. The operators should schedule their systems/processes so as the activations and deactivations are not disrupted. Considering the present status of the service providers in meeting these time lines, the Authority felt that they will be able to meet these timelines within 2 hours duration each for deactivation and activation of a mobile number. Therefore timelines for activation/deactivation, in sub-regulation (4) and (6) of Regulation 11 of principal regulations, has been modified from 1 hour to 2 hours. As this activity takes place during the night time, this increase in the timelines will not be inconvenient to the customers.

d) Financial disincentive in case of wrongful rejections and deviation in timelines in the MNP process

Some of the stakeholders suggested that wrongful rejections should have a QoS norm. Some of the stakeholders suggested benchmarks for invalid rejections also. However, the Authority is of the opinion that it will not be practical to prescribe wrongful rejection as QoS parameter, as wrongful rejections are known only after verification is carried out. Therefore, Authority is of the view that wrongful rejections need to be discouraged by levying financial disincentives on the concerned Donor Operator after verifying the correctness of rejection of porting requests on sample basis.

8. In view of the foregoing, the Authority has decided to amend the principal regulations by incorporating provisions for levying financial disincentives.

9. For the purpose of verification of correctness of rejection of porting requests by the Donor Operator or compliance to the timelines, the Authority may call for data from Access Providers or Mobile Number Portability Service providers or both from time to time. Based on the analysis of the data and supporting information provided by the

MNP service providers and Access Providers, the Authority shall levy financial disincentives on the concerned access provider as following:

(a) In the cases where deviation is noticed by the Authority in the timelines specified in regulation 8 (6), 10, 11(4) or 11(6), a financial disincentive of Rs.5,000/- will be levied for each contravention.

(b) In the cases where contravention is established in rejection of porting request for an Access Provider acting as Donor Operator, a financial disincentive of an amount of Rs. 10,000/- will be levied for each rejection.

10. Before reaching to a conclusion about contravention and imposing the financial disincentives, the Authority shall give a reasonable opportunity to the concerned Service Provider to represent before the Authority.
