

Dated the 26th February, 2010

Subject: Direction under section 13, read with sub-clauses (i) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) to ensure compliance of the terms and conditions of the licence by the service providers regarding confidentiality of information of subscribers and privacy of communications.

No. 105-13 /2009-MN----- Whereas the Telecom Regulatory Authority of India [hereinafter referred to as the Authority], established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as the TRAI Act, 1997), has been entrusted with discharge of certain functions, *inter alia*, to ensure compliance of terms and conditions of license, regulate the telecommunication services, protect the interests of consumers of the telecom sector, ensure technical compatibility and effective inter-connection between different service providers etc.

2. And whereas in exercise of power under sub-clause (iii) of clause (a) of sub-section (1) of section 11 of the TRAI Act, 1997, the Authority may make recommendations, either *suo motu* or on a request from the licensor for revocation of licence for non-compliance of terms and conditions of licence;

3. And whereas clause 10.2(i) of the Unified Access Service Licence (hereinafter referred to as UASL) and clause 10.2 of the Cellular Mobile

Telephone Service licence, *inter alia*, provide that the Licensor may, without prejudice to any other remedy available for the breach of any conditions of licence, by a written notice of sixty calendar days from the date of issue of such notice to the licensee at its registered office, terminate the licence on the recommendation of TRAI for non-compliance of the terms and conditions of the licence;

4. And whereas clause 39.2 of UASL and clause 42.2 of the Cellular Mobile Telephone Service licence provide that subject to conditions contained therein, the licensee shall take all necessary steps to safeguard the privacy and confidentiality of any information about a third party and its business to whom it provides the service and from whom it has acquired such information by virtue of the service provided and shall use its best endeavors to secure that no person acting on behalf of the licensee or the licensee divulges or uses any such information except as may be necessary in the course of providing such service to the third party;

5. And whereas clause 39.3 of UASL and clause 42.3 of the Cellular Mobile Telephone Service licence provide that the licensee shall take necessary steps to ensure that the licensee and any person(s) acting on its behalf observe confidentiality of customer information;

6. And whereas clause 41.4 of UASL and clause 44.4 of the Cellular Mobile Telephone Service licence provide that the licensee shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place;

7. And whereas as per clause 41.10 of UASL and 44.9 of the Cellular Mobile Telephone Service licence, the designated person of the Central/State Government in addition to the licensor or its nominee shall

have right to monitor the telecommunications traffic in every MSC/Exchange or any other technically feasible point in the network set up by the licensee and the licensee is required to provide call data records of the specified calls as and when required by the security agencies;

8. And whereas clause 42.2 of UASL and 45.2 of the Cellular Mobile Telephone Service licence provide that the licensee will provide necessary facilities to the designated authorities of Central/State Government as conveyed by the licensor from time to time for interception of the messages passing through its network;

9. And whereas under the licence conditions as mentioned in the preceding paragraphs, it is the responsibility of the licensee to maintain the confidentiality of information of the customers and this responsibility is subject only to the provisions contained in the terms and conditions of the respective licence agreements (as regards monitoring of security agencies etc.) and, therefore, the service providers are bound to ensure confidentiality of customer information and protection of privacy of communications;

10. And whereas it has been noticed by the Authority that allegations of breach of confidentiality of information of the subscribers and privacy of communications are being raised by the customers before different courts and consumer fora and also before the Authority by some consumers and consumers groups which indicate that the service providers have not taken adequate steps to put in place a foolproof mechanism for ensuring confidentiality of information of the subscribers and privacy of communications;

11. And whereas it is one of the functions of the Authority under the TRAI Act, 1997 to ensure compliance of the terms and conditions of the licence by the service providers;

12. Now therefore, the Authority, in exercise of the powers conferred by section 13, read with sub-clause (i) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997(24 of 1997), for ensuring compliance with the terms and conditions of the licence and for protecting the interest of the consumers of the telecom sector, hereby directs the Cellular Mobile Telephone Service Providers and Unified Access Service Providers:-

- (i) to ensure confidentiality of information as provided in the license conditions;
- (ii) to put in place an appropriate mechanisms so as to prevent breach of confidentiality of information of the subscribers and privacy of communication, and
- (iii) to furnish to the Authority, within fifteen days of issuance of this Direction, the details of steps taken by the service provider to safeguard the confidentiality of information of subscribers and privacy of communications.

(Sudhir Gupta)
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To

All Cellular Mobile Service Providers
All Unified Access Service Providers.