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April 13, 2016, New Delhi, INDIA

**TRAI'S REGULATIONS FOR
COMPENSATION TO CONSUMERS
FOR CALL DROPS UPHELD**

If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

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Call drops can be simply explained as the service provider's ineptitude in maintaining a call between users and providing continued service once a call has been correctly established. Inadequate infrastructure, overloaded networks and fast paced expansion with poor investment by Telecom Service Providers ("TSPs") to match the expansion are some of the reasons behind this occurrence. With the Indian Prime Minister stepping in last year and demanding that a solution be found, the Delhi High Court has expressed agreement with the Telecom Regulatory Authority of India ("TRAI") for allowing compensation for call drops.

A. THE REGULATIONS

In our previous news update on the issue we had covered that TRAI had issued Telecom Consumers Protection (Ninth Amendment) Regulations ("**Regulations**") dated October 16, 2015, whereby it prescribed an imposition of a financial disincentive on TSPs for failure to meet quality of service benchmarks. *Vide* these Regulations, telecom operators were ordered to pay a compensation of Rs.1 to their subscribers for each call drop subject to a maximum of three dropped calls per day with effect from January 1, 2016. By way of implementation, the TSPs were to send a message to the subscriber within four hours of a dropped call with details of the amount credit to their account.

B. THE UPROAR THAT FOLLOWED

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The TSPs and the Cellular Operators Association of India (“**Petitioners**”) approached the Hon’ble High Court of Delhi with a Writ Petition challenging the validity of the Regulations claiming that the same were arbitrary and without any basis. The Petitioners took the stand, *inter alia*, that the Telecom Regulatory Authority of India Act, 1997 (“**the Act**”) does not empower TRAI to impose compensation and that the same was an extraction of a tax/cess/penalty without any legislative sanction and therefore violates Article 265 of the Constitution of India. The Petitioners further contended that the preamble to the Act further requires TRAI to protect the interest of the TSPs and since the penalty was being levied without ascertaining the reasons for call drops or whether the same was due to the fault of the service provider, the penalty was unreasonable. It was argued that the compensation granted had no nexus with the prevention of call drops.

C. TRAI’S STAND

TRAI contended that it was well within its statutory power to regulate the issue of call drops by way of the impugned regulations and that it was statutorily responsible to protect the interests of the consumers of the telecom sector and the financial disincentive was only a notional compensation/relief. It stated that the entire objective of the impugned regulations, which had been framed after considerable deliberation and after seeking comments from various stakeholders, was to provide relief to the consumers by suitably compensating them by imposing a financial liability on the TSPs for poor quality of service.

D. DELHI HIGH COURT’S CONCLUSION

The Delhi High Court succinctly summarized the dispute into two main issues:

- (i) Whether the impugned regulations are beyond the scope of the regulation making power conferred on TRAI and thus ultra vires the Act.
- (ii) Whether the mandate under the impugned regulations that the service provider shall compensate the consumer for three call drops per day is manifestly arbitrary and is liable to be quashed.

Relying on the observations of the Hon’ble Supreme Court in *PTC India Ltd. v. CERC (2010) 4 SCC 603*, the High Court concluded that the power to regulate and the power to make regulations by the regulator under a statute co-exist and that the regulation making power is in no way limited by the administrative powers. The

High Court also recorded there is a presumption in favour of the constitutional validity of a subordinate legislation and that it found “*absolutely no case made out by the Petitioners to rebut the presumption that the impugned regulations are intra vires*”.

Accordingly, *vide* its order dated February 29, 2016, the Hon’ble High Court upheld the validity of the impugned regulations and recorded that the since the same had not been stayed by the Court during the pendency of the proceedings, the Petitioners were bound to comply with the same w.e.f. January 1, 2016 and TRAI was at liberty to take appropriate steps towards its compliance.

E. THE TSP’S APPEAL BEFORE THE SUPREME COURT AND WAY FORWARD

The Petitioners appealed to the Hon’ble Supreme Court in March and sought a stay on the call drop Regulations. They further urged the Supreme Court to prevent TRAI from implementing the Regulations till the conclusion of the proceedings before the Apex Court. Although the Supreme Court issued notice to TRAI and directed it to respond to the Special Leave Petition filed by the Petitioners, it declined to grant interim stay on the Regulations.

Subsequently, the Supreme Court asked TRAI to reconsider the penalty imposed on telecom companies for call drops after an observation from a senior counsel that a technical paper circulated by TRAI subsequent to the Regulations endorsed the TSPs’ arguments that various other indeterminable factors were also responsible for call drops.

The matter is now listed for further arguments and it remains to be seen whether the Hon’ble Supreme Court will take the same stand as the Hon’ble High Court. The decision will be a significant one for TSPs as it is estimated that the Regulations may result in TSPs paying out an approximate Rs.150 crores every day as compensation towards call drops.

Feedback

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