

The Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016

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The Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016¹

In exercise of the powers conferred upon it under sub-section (1) of Section 36, read with sub-clause (i) of clause (b) of sub-section (1) and sub-section (2) 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, namely—

CHAPTER I PRELIMINARY

1. Short title and commencement.—(1) These regulations may be called the Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 (2 of 2016).

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these regulations, unless the context otherwise requires,—

- (a) “Act” means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);
- (b) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of Section 3 of the Act;
- (c) “closed electronic communications network” means a communications network where data is neither received nor transmitted over the internet;
- (d) “consumer” means a consumer of a service provider and includes its customers and subscribers;
- (e) “content” includes all content, applications, services and any other data, including its end-point information, that can be accessed or transmitted over the internet;
- (f) “data services” means services offered or provided to a consumer using any equipment, technology or medium, including wireless and wireline technologies, to access or transmit data over the internet;
- (g) “discriminatory tariffs for data services” means charging of different tariffs by a service provider for data services based on the content accessed, transmitted or received by the consumer;
- (h) “internet” means a global information system that is:

1. TRAI, Noti. No. 301-5/2016-F&EA, dated February 8, 2016, published in the Gazette of India, Extra., Part III, Section 4, dated 8th February, 2016, pp. 8-10, No. 57.

- (i) logically linked together by a globally unique address, based on Internet Protocol (IP) or its subsequent enhancements or upgradations;
- (ii) able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent enhancements or upgradations, or other IP compatible protocols;
- (i) "licence" means a licence granted or having effect as if granted under Section 4 of the Indian Telegraph Act, 1885 (13 of 1885);
- (j) "licensee" means any person licensed under sub-section (1) of Section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;
- (k) "regulations" means the Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016;
- (l) "service provider" means the Government as a service provider and includes a licensee;
- (m) "tariff" means the rates and related conditions at which data services are offered or provided by the service provider, including free data, usage charges, refunds, installation fees, deposits, rentals, and any other related fees or service charges.

(2) All other words and expressions used in these regulations but not defined, and defined in the Act or rules, regulations and orders made thereunder, shall have the meanings respectively assigned to them in the Act or such rules, regulations or orders, as the case may be.

CHAPTER II

PROHIBITION OF DISCRIMINATORY TARIFFS FOR DATA SERVICES

3. Prohibition of discriminatory tariffs.—(1) No service provider shall offer or charge discriminatory tariffs for data services on the basis of content.

(2) No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory tariffs for data services being offered or charged to the consumer on the basis of content:

Provided that this regulation shall not apply to tariffs for data services over closed electronic communications networks, unless such tariffs are offered or charged by the service provider for the purpose of evading the prohibition in this regulation.

(3) The decision of the Authority as to whether a service provider is in contravention of this regulation shall be final and binding.

4. Exemption for certain content.—Notwithstanding anything contained in Regulation 3, a service provider may reduce tariff for accessing or providing emergency services, or at times of grave public emergency:

Provided that such tariff shall be reported to the Authority within seven working days from the date of implementation of the reduced tariff and the decision of the Authority as to whether such reduced tariff qualifies under this regulation shall be final and binding.

CHAPTER III MISCELLANEOUS

5. Consequences of contravention of these regulations.—(1) If a service provider is in contravention of these regulations, the Authority may, without prejudice to the terms and conditions of licence, or the Act or rules or regulations or orders made, or directions issued, thereunder, direct the service provider to withdraw such tariff and also order such service provider to pay, by way of financial disincentive, an amount of Rupees Fifty thousand for each day of contravention, subject to a maximum of Rupees Fifty lakh:

Provided that no order for payment of any amount by way of financial disincentive shall be made by the Authority unless the service provider has been given a reasonable opportunity of representing against the contravention of the regulation.

(2) The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by the Authority.

6. Review.—The Authority may review these regulations after the expiry of a period of two years from the date on which these regulations come into effect, or on any earlier date as it may deem fit.

7. Interpretation.—In case of any doubt regarding interpretation of any of the provisions of these regulations, the decision of the Authority shall be final and binding.

8. Savings.—Nothing contained in these regulations shall affect any packs, plans or vouchers with unexpired validity subscribed by a consumer before the date of commencement of these regulations:

Provided that no such pack, plan or voucher shall be valid beyond a period of six months from the date of commencement of these regulations.
