

Call Drops in India - A Menace

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BACKGROUND

In the backdrop of deteriorating quality of voice calls and frequent call drops, the Government had been debating steps for improving quality of service being provided by the Telecom Service Providers ('TSPs').

To address the aforementioned problems, the Telecom Regulatory Authority of India ('TRAI') in September 2015 came out with a consultation paper on 'Compensation to the Consumers in the Event of Dropped Calls'. After considering the comments and counter comments of various stakeholders and conducting an 'open house discussion', TRAI notified the Telecom Consumers Protection (9th Amendment) Regulations ('Regulation') on 16 October 2015. The Regulation was to come into effect from 1 January 2016.

Under the Regulation, every originating TSP, providing Cellular Mobile Telephone Service ('CMTS') shall for each call drop within its network, credit the account of the calling consumer by Re. 1. However, the credits were limited to 3 call drops in a day.

REASONS FOR CALL DROP

While the consumers have been complaining that their experience of making the calls has deteriorated and they are unable to complete their conversation without their call getting dropped, the TSPs are also not incorrect in contending that they face major hurdles on account of spectrum crunch and resistance of Resident Welfare Associations ('RWAs') against installation of towers in residential colonies,

getting permissions for Right of Way ('RoW') for expanding network and sealing/closing down of existing tower sites.

TSPs have filed numerous petitions across various High Courts for grant of RoW or charging of exorbitant amounts for RoW. Various petitions are also filed challenging the action by municipal authorities of sealing telecom towers and in some instances without any prior show cause notice.

With regard to spectrum related issues, Idea Cellular, Bharti Airtel, Vodafone and Dishnet have filed petitions before the Telecom Dispute Settlement & Appellate Tribunal¹ ('TDSAT') contending there is severe interference in their allotted up-linking frequencies in the respective service areas and as a result, the services to the consumers are badly disrupted. It has been contended that extent of interference is such that the allocated frequencies are practically rendered unworkable.² The TDSAT in the order dated 21 September 2015 passed in the abovementioned petitions observed that TSPs and the consumers are acutely suffering due to the problem of interference in the spectrum.

TRAI in the Consultation Paper had brushed aside the problems cited by TSPs and stated that:

"2.11 So far as the spectrum issue is concerned, the allocation of spectrum is guided by the rules of the Government. On the other hand, resistance of the RWAs is a matter to be resolved by the TSPs with the involvement of the concerned stakeholders."³



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¹Petition No. 91 of 2015 along with connected petitions

²Order dated 12 March 2015 passed by TDSAT in Petition No. 91 of 2015

³TRAI consultation paper on 'Compensation to the consumers in the event of dropped calls' dated 4 September 2015



PROBLEM WITH THE REGULATION

As per the Regulation every 'originating' TSP shall compensate the calling subscriber for each call drop. However, there was no clarity on whether compensation has to be made in case the call drop is due to poor quality of 'terminating' TSP's network.

In fact the definition of 'Call drop' lacked clarity. The Regulation defined 'Call drop' as "a voice call which, after being successfully established, is interrupted prior to its normal completion; the cause of early termination is within the network of the service provider".

Nothing was stated in the Regulations as to what would constitute as normal completion and ways to detect whether the call was terminated because the caller intended to terminate the same or

whether it was due to poor network of the originating TSP. Secondly, it is practically impossible to prove in every case whether the termination occurred due to poor network of the originating TSP.

In fact the Regulation ran contrary to the 'Quality of Service' Regulations by TRAI, where the benchmark for call drop is $\leq 2\%$ of the total calls in a month on any network.

It is interesting to note that TRAI pursuant to the Regulation issued Technical Paper on Call Drop in Cellular Networks in November 2016 stating that 36.9% of the call drops occur on account of irregular user behavior.

CHALLENGE TO REGULATION

In terms of provisions of Telecom

Regulatory Authority of India, Act 1997 ('the Act'), the Regulation was challenged by the Cellular Operators Association of India ('COAI') before the Delhi High Court.⁴

The TSPs during the consultation process and before the Delhi High Court although acknowledged the problem of call drops, but submitted that call drop is broadly due to (i) sealing/closing down of existing sites for towers by municipal authorities; (ii) difficulties in acquiring new sites for towers owing to consumer concerns relating to adverse effects of electro-magnetic radiations and (iii) spectrum related issues.⁵ The TSPs have alleged that large proportion of call drops are beyond their control as a call may get dropped due to problem in any of the three systems viz, originating network, terminating network or consumer's mobile handset.

⁴Writ Petition No. 11596 of 2015 — COAI Vs. TRAI

⁵Explanatory Memorandum of TRAI Regulation dated 16 October 2015

However, lack of investment in network infrastructure by the TSPs may also be one of the reasons for the problem of call drops. As per TRAI, investment made in network infrastructure (other than radio spectrum) in wireless access segment rose only by 4.6% from ₹ 2,02,366 crore in the Year 2012-2013 to ₹ 2,11,691 crore in the Year 2013-2014, whereas, during this period, the Minutes of Usage grew by 6.8% and the data usage grew by more than 100%. Thus, clearly the investment has not kept pace with the increase in the number of subscribers/traffic/usage.⁶

The Delhi High Court in the Judgment dated 29 February 2016, upheld the validity of the Regulation. The High Court was of the view that the Regulation is not beyond the scope of the regulation making power of TRAI⁷ and has been made in exercise of the power conferred under Section 36 of the Act, keeping in mind the paramount interest of the consumers and it is also evident that a transparent and consultative process was followed by TRAI in making the Regulation⁸. Thus the Court did not accept the allegations of the TSPs that the Regulation suffers from manifest arbitrariness or unreasonableness.

The High Court judgment was challenged by the TSPs before Supreme Court. The Supreme Court vide a judgment dated 11 May 2016 opined that, the Delhi High Court judgment was flawed for several reasons⁹ including the fact that the Regulation does not lay down any quality of service parameters, rather the Regulation penalizes the TSPs even if they conform to the 2% standard

laid down by the Quality of Service Regulation of 2009. The Supreme Court further opined that while it is true that all the stakeholders were consulted, unfortunately nothing was disclosed as to why TSPs were incorrect in contending that the call drops were due to various reasons, some of which cannot be said to be because of the fault of the TSPs. The Supreme Court held that the penalty imposed under the Regulation is manifestly arbitrary and not based on any factual data or reason¹⁰.

WAY FORWARD AND SUGGESTIONS

The Supreme Court has struck down the Regulation being ultra vires the TRAI Act and violative of the TSPs Fundamental Rights under Articles 14 and 19 (1) (g) of the Constitution of India. Thus, the Government will have to go back to the drawing board and adopt a more pragmatic approach to the issue. In addressing the issue, the Supreme Court has made a reference to the 'US Administrative Procedure Act, Section 553- Rule Making' lauding the procedure laid down to curb arbitrariness and has suggested that it could only exhort the parliament to take up the issue and frame a legislation wherein due consultations with all stakeholders are held, and the rule or regulation making power is exercised only after due consideration of all stakeholders' submissions.¹¹ The TRAI could take a cue from the suggestions made and follow a procedure that would lead to a more apodictic mechanism to address the issue.

It would be pertinent to note that amidst this predicament one TSP, Telenor

has been compensating its consumers in the event of a call drop. TRAI should take a cue from Telenor and formulate a model that would be amicably acceptable between the TSPs and the Government.

Going by the data in the Consultation Paper issued by the TRAI on 13 November 2015, one question arises as to who is accountable for 63.1% of call drops? As of now, TSPs are not accountable, but they should be. Though the Supreme Court has held the Regulation is ultra vires, but it has not held that the 2009 Regulation is bad, wherein the TSPs have to conform to the benchmark of up to 2% drops of the total calls in a month. One measure to improve the quality of service could be to review the benchmark under the 2009 Regulation and bring it down to between 0.5% - 1% and imposing higher penalties on violation of the said benchmarks. Strict measures could implore TSPs to upgrade their infrastructure. TRAI could even lay down minimum technological requirements for every Base Transceiver Station ('BST') to help improve the quality of service.

In order to be an effective sector Regulator, recently TRAI has approached the Government to amend the Section 29 of the TRAI Act to enforce its direction, orders, regulations as well as terms and conditions of license issued to service providers through imposition of penalties for contravention of its regulations or directions.¹² Section 29 may be substituted with;

"If a person violates direction of the authority, such personnel shall be punishable with imprisonment for a term

⁶Counter Affidavit filed by TRAI in W.P. (C) No. 11596 of 2015 – COAI Vs. TRAI

⁷Cellular Operators Association of India & Ors vs. Telecom Regulatory Authority of India, W.P (C) 11596/2015

⁸Ibid

⁹Civil Appeal No. 5017 of 2016

¹⁰Ibid

¹¹Ibid, at page 4

¹²<http://indianexpress.com/article/technology/tech-news-technology/call-drops-tra-ai-seeks-power-to-imprison-fine-violators-up-to-rs-10-cr-2842781/>

which may be extended to two years and shall be liable to fine which may be extended to ₹ 15 lakh”

In case the violation continues there would be a provision of additional fine that can be extended to ₹ 15 lakh for every day till the time default continues,¹³ TRAI stated. At present, TRAI can impose fine of up to ₹ 2 lakh for a violation and in case default continues penalty of ₹ 2 lakh can be imposed till the time of breach of rules.

Among other reasons, technically a call drops because of poor infrastructure, which causes congestion in the Cellular Network, which is a network distributed across the geography called cells and each cell is serviced by a station called Base Station. A user might cross several cells during a call, which is transferred from one cell to another to achieve the call continuation¹⁴. This seamless transfer can only happen if there is enough space on the Base Station cell through a process called Handoff.¹⁵ The TSPs should adopt technologies which optimize the spectrum usage for optimal quality of service.

The efficiency of maintaining calls could be done by:

- i) Allocating multiple backhaul routes for the same call, wherein TSPs can allocate multiple routes for specific flows thereby bypassing any congestion in a particular route;
- ii) Use of signal boosters specifically tuned as per the frequencies of different TSPs;
- iii) Hybrid Channel Allocation (HCA), which considers new calls in Fixed Channel Allocation (FCA) method and handoff calls in Dynamic Channel Allocation (DCA) method to reduce call blocking and call dropping probabilities.

Other suggestions to increase the quality

of service could be splitting of cells into smaller cells so that the management of calls are done in a better way and bringing in the Prioritization Schemes of handoff calls over new calls, since it is desirable to complete an ongoing call rather than accepting a new one.

It would also be germane to mention that on 6 June 2016, TRAI issued a Consultation Paper on “In-Building Access by Telecom Service Providers”, highlighting the issue of network problems within the buildings and floated a couple of ideas to counter it, such as:

- i) Sharing of telecom infrastructure;
- ii) TSPs be disallowed to enter into exclusivity contracts with builders;
- iii) Mandatory provisions for new buildings.

The aforementioned ideas can also be taken into consideration while countering the issue of calls drops. For example, sharing of the telecom infrastructure can lead to more efficient handling of the ever growing user base.

It would be pertinent to mention that the TSPs had failed miserably in the recently concluded Drive Tests conducted by the TRAI in Delhi and Hyderabad. The Drive Tests should be a wake-up call to TSPs to safeguard the interests of its consumers and they should take up the technological upgradations as their responsibility towards providing world-class quality of service to the consumers.

To conclude, one may admit that the contentions of the TSPs may have some force, but on the other hand the grievances of the consumers are also true, which have to be resolved. It is the duty of the Government, to balance the interest of the consumers and the TSPs. Till then, there is uncertainty for the consumers, as they wait and watch for the new set of Regulations to be framed by TRAI and if the new Regulation would stand the test of legality. 



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¹³Ibid

¹⁴Decreasing Call Blocking Rate by Using Optimization Technique.- Vinay Prakash Sriwastava, Jalneesh Singh, Vinay Kumar Verma.

¹⁵Transferring the active call from one cell to another without disturbing the call is called as the process of handoff.