

**TVR/COAI/368**  
**August 11, 2000**

**Shri M S Verma**  
**Chairman**  
**Telecom Regulatory Authority of India**  
**Jawahar Vyapar Bhawan**  
**Tolstoy Marg**  
**New Delhi 110 001**

Dear Sir,

**Re : Provision of Mobile Public Telephones (PCOs) by Cellular Mobile Telephone Service Providers (CMSPs)**

COAI would like to express its deep distress and concern on the DoT Order No. 842-302/99-VAS dated July 25, 2000 and subsequent Letter No. 800-302/99-VAS dated August 7, 2000 on the subject. In its Order of July 25, 2000, DoT has prohibited the use of mobile telephones as Public Telephones at fixed locations and stated that cellular operators only be permitted to "provide mobile PCOs in situations of inherent mobility like trains, buses, running taxis, etc."

The COAI have the following submissions to make on the DoT Order :

1. The Order is against Public Interest and the Objectives of NTP 99

COAI submits that the sudden issuance of this Order is anti-consumer in nature as it goes against the spirit of reaching telephones to largest possible numbers at affordable prices and seeks to deny the immense contributions that can be made by the cellular industry in providing "access to telecommunications" for the common man as envisioned in NTP 99.

a) The first and foremost objective of NTP 99 states that "Access to telecommunications is of utmost importance for achievement of the country's social and economic goals. Availability of affordable and effective communications for all citizens is at the core of the vision and goal of the telecom policy."

b) The DoT Order strikes at the very heart of this core objective, by directly seeking to deny the less advantaged sections of society who cannot afford personal telephones and are dependent on public phones to meet their communication needs at affordable prices.

c) The Order is anti-competitive insofar as it seeks to restrict availability of alternative channels of service. Implementation of the DoT Order would lead

to a monopoly of DTS in offering PCO services through fixed landline by throttling competition from Mobile PCOs.

d) The Order is retrograde as the public is being denied the benefits of a progressive technological alternative than the traditional and conventional methods of making calls through fixed landlines. Mobile phones score over traditional landline phones on connectivity, voice clarity, availability, accessibility and reliability.

e) The availability of mobile PCO services to the less advantaged sections of society is a great boon, especially for the sick and aged as the facility can be made available to them in their homes. A mobile PCO service also serves the traditional women who do not go to a public booth.

f) Further, in the rural areas, more often than not, the landline phones are out of order for inordinately long periods of time. Under such circumstances, a mobile PCO service is an important and significant alternative for continued connectivity and availability of service in areas, which would otherwise be completely cut off from the rest of the world.

g) In fact the above views of COAI on the advantages of mobile PCO services have also found voice in an independent study on the "Socio-Economic Impact of Rural Telecom : Implications for Policy" that was undertaken by the Indian Institute of Management.

h) COAI would also like to point out to the Authority that Cellular Operators have been providing such services to general public now for more than 4 years. In fact, Mobile PCOs have reached many more locations and persons in urban, semi-urban and rural areas including interior villages where fixed PCOs have not reached and have thus contributed significantly towards the key Government objective of providing increased access to telephone services.

## 2. The Order is Violative of the Licence Agreement

COAI submits that the Licences issued to the Cellular Operators neither contain any such provision nor does it empower the DoT to impose any such prohibitions.

a) Clause 1(e) of Part-I of Schedule-'B' of the Circle Licence defines the Cellular Mobile Telephone Service as "telecommunication service provided by means of a telecommunication system for the conveyance of Messages through the agency of wireless telegraphy where every Message that is conveyed thereby has been, or is to be, conveyed by means of a telecommunication system which is designed or adapted to be capable of being used while in motion;"

COAI submits that this Clause does not restrict the provision of service to a manner so that the service is used only while in motion. Only that telecommunication system should be designed in a manner that it should be capable of providing the services while in motion.

b) Clause 1(q) of the said Licence defines "Mobile Station" as a "station in the mobile service intended to be used while in motion or during halts at unspecified points."

The mobile station is the terminal equipment and is also called handset. This handset is capable of being used in both situations i.e. when the handset is being moved from one place to another as also when the person using the handset is stationary or halts at any location. Thus, the Licence clearly contemplates provisions of the cellular service, which is intended to be used both while in motion as also during halts in stationery conditions.

c) Clause 6 of Section IV of the Tender Document provides that "the ultimate objective is to provide hand-held portable service inside a building within the whole service area."

Naturally, a person using the Mobile Handset inside the building is not necessarily in motion.

d) Clause 1(x) of Part - I of Schedule - 'B' of the Licence Agreement defines "Service Area" as "the geographical limits within which the Licensee may operate and offer the services."

COAI submits that the Cellular Operators have been granted the Licences for specified areas the geographical limits of which service area, has been specifically determined and the Cellular Operators are entitled to operate and offer the services within the whole of the said service area without any restriction or limitation.

Consequently, the Government is neither entitled or empowered under the Licence Agreement to limit the provision of Mobile Telephone Services to any locations or areas within the geographical limits of a Service Area nor to make any distinction between the provision of PCO services in situations of inherent mobility and use of mobile telephones as PCO at fixed locations. COAI submits that the said Order is illogical, devoid of reason and leads to absurdity.

e) Clause 1(w) of Part I, Schedule 'B' of the Licence Agreement defines the "Relevant Connectable System" as "a Connectable System which is authorised to run under a Licence which authorizes the provision by means of that System of Connection Services for reward to the public, or any class of the public, not being a system;

- (i) authorised to be run under a Licence granted to all persons or persons of any class; and
- (ii) for the connection of which, and for the provision of matters necessary for such connection, the Licensee offers standard terms and conditions which satisfy the requirements of Condition 9; Part II of this Schedule."

This definition of connectable system clearly stipulates that the service is to be provided to the public or to any class of public. In other words, there is no restriction in the provision of telecommunication services to general public at any and all locations and places, by the Cellular Operators.

f) Clause 1.1.1 of Annexure-III of Tender Document provides "The general objectives of a digital cellular Mobile system are to give users a wide range of services and facilities, both voice and non-voice, that are compatible with those offered by fixed network (PSTN and PSPDN) through standardized access to these networks."

It is clear from the above that the objective of providing mobile services is neither locational nor limited. On the contrary, it is submitted that the Cellular Operators are entitled to provide the voice services to any class of persons at any location within the service area without any limitation or restriction. The general public using mobile phones as public telephones whether in trains or at fixed locations are both using voice services. Both are equally placed and there is no distinction between the two.

COAI submits that all the above clauses in the Cellular Operators' Licence Agreement, clearly go to show that there is no requirement in the Licence Agreement that mobile telephone services must be provided only while the handset or the person holding the mobile phones is in motion. On the contrary, these provisions clearly stipulate that the handset can be used and mobile services can be used even while a person is stationary. Further, these services can be provided from any location within the Service Area without any limitation or restriction.

### 3. The Order is Violative of the Provisions of NTP 99.

COAI submits that NTP 99, confirms that cellular operators are fully empowered to offer "all types of mobile services including ... PCOs."

a) Clause 3.1.1 of NTP 99 clearly states that "The CMSP shall be free to provide, in its service area of operation, all types of mobile services including voice and non-voice messages, data services and PCOs utilizing any type of network equipment, including circuit and/or packet switches, that meet the relevant International Telecommunication Union (ITU)/ Telecommunication Engineering Center (TEC) standards."

b) Thus, NTP-99 has only re-confirmed the right of the Cellular Operators to provide PCO services.

c) However, despite the above, the cellular industry has been facing extreme difficulties from the DoT field staff as regards the provision of Mobile PCO services. In fact, COAI has since March of this year been requesting the Government, through a series of representations, to intercede on behalf of the cellular industry and clarify to all the field units that the highlights of NTP-99 do apply to all Cellular Mobile Service Providers.

#### 4. The Order represents a Turnaround in the DoT Stance

a) In its Letter No. 842-61(B)/98-VAS dated 28.09.1998 addressed to COAI, DoT objected to the provision of Mobile PCOs on the grounds that franchising of a Cellular PCO by the Cellular Operators by means of a sub-licence was violative of Clause 10 of the Licence Agreement, where creation of a sub-licence was expressly prohibited.

Clause 10 of the Licence agreement states that "The Licensee shall not, assign or transfer the licensing rights in any manner whatsoever under the licence to a third party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the licence to any third party either in whole or in part i.e. no sub-leasing /partnership/third party interest shall be created. Provided that the licensee can always employ or appoint agents and servants."

b) COAI, responded vide letter No. TVR/COAI/445 dated 12.10.1998, stating that the Cellular Operators were within their rights in offering Cellular PCO Service and the same did not contravene any rules or Licence conditions as the operation of PCOs by the Cellular Operators was not in the nature of sub-licensing but the same was being carried out through the agents of the Cellular Operators which was expressly permitted by Clause 10 of the Licence Agreement.

COAI also furnished the DoT with several expert legal opinions in this matter, which endorsed the views of COAI.

c) Despite the above clarifications, DoT responded vide their letter No. 842-61(B)/98-VAS dated 01.02.1999 reiterating that the cellular operators could not franchise / sub-licence their services as PCOs and that they should refrain from providing any PCO service in the service areas licensed to them.

In other words, the Government at no point of time distinguished between provision of PCO services in situations of inherent mobility like trains, buses and running taxies etc. and the use of mobile telephones as public telephone at fixed locations. No such distinction was drawn by the Government at any stage, except suddenly in the recent Order of July 25, 2000.

COAI thus submits that :

i. There is no restriction, whatsoever, in the Licence Agreement prohibiting Cellular Operators from providing PCO services to general public.

ii. Once a Licence had been issued by the Government to the Cellular Operators, the Government cannot by way of any subsequent decision, restrict or prohibit the provision of any service by the Cellular Operators in contravention of the terms of the Licence Agreement and law.

To sum up, the sudden issuance of the DoT Order not only violates the provisions of NTP 99, conflicts with the terms of the Cellular Licences but also goes against the spirit and vision of the Government of reaching telephony services to the largest possible numbers at affordable prices. Further, the Order represents a volte face in the DoT's own stance on Mobile PCOs.

COAI submitted a representation to DoT vide Letter No. TVR/COAI/343 on August 1, 2000 requesting them to withdraw the above Order.

We therefore pray that the TRAI ensures that the terms of the Licence are enforced in letter and spirit by virtue of its powers under Section 11(1)(b)(i) of the TRAI (Amendment) Act 2000.

We also simultaneously request you to make appropriate future recommendations on the subject keeping in view the NTP 99 vision of "availability of affordable and effective communications for all citizens ....."

We would appreciate if you could give us an opportunity of an early personal hearing in this matter.

Sincerely,

T V Ramachandran  
Director General

Encl :

Copy to : Members, TRAI  
Secretary, TRAI