



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

ORDER NO. 1 OF 2012

An Order Pursuant to clause 8.6 of VIVA Bahrain's Mobile Telecommunications License Modification to VIVA Mobile Service Special Number Application Form

The Order

1. The Telecommunications Regulatory Authority ("the Authority") hereby issues this Order in the exercise of its powers under article 3(c)(1) of the Telecommunications Law and clause 8.6 of the Individual Mobile Telecommunications License ("License") granted to VIVA Bahrain by the Authority.
2. The Authority determines that the words "Special Number Fee BD 1,500" and the words "The Company shall be entitled to the above special number fee immediately upon expiry of this contract or termination of service for any reason" under point 4 (together referred to here as "the Unapproved Term") of the "VIVA Mobile Service Special Number Application Form" ("the Application Form") have not been approved by the Authority in accordance with clauses 8.5 or 8.6 of the License.
3. VIVA Bahrain must immediately cease the enforcement of the Unapproved Term.
4. In complying with this Order VIVA Bahrain must do the following:
 - a. By 4 pm on 7 February 2012 confirm in writing to the Authority that VIVA Bahrain has complied with paragraph 3 of this Order and will comply with the following paragraphs.
 - b. By 10 February 2012 issue a modification notice to all VIVA Bahrain customers who have signed the Application Form, which must state the following:
 - i. VIVA Bahrain removes the words "Special Number Fee BD 1,500" and the words "The Company shall be entitled to the above special number fee immediately upon expiry of this contract or termination of service for any reason" under point 4 of the Application Form; and
 - ii. Any related term referring to the Unapproved Term in any other agreement signed by VIVA Bahrain's customers shall be considered amended to the extent necessary to remove the reference to the Unapproved Term.



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- c. By 17 February 2012 ensure that the Unapproved Term is removed from any new copies of the Application Form.
 - d. Until such time as the Unapproved Term has been removed from the Application Form notify any new customers that the Unapproved Term does not apply.
 - e. By 8 March 2012 VIVA Bahrain shall submit to the Authority any other modifications made to its Standard Subscriber Agreements for all services provided under its Telecommunications Licenses.
 - f. VIVA Bahrain shall issue refunds to any customers who paid the sum of BD 1,500 in accordance with the Unapproved Term.
5. Failure to comply with this Order will result in the Authority taking further enforcement action for breaches of the Telecommunications Law and Licenses.

Reasons for Order

6. VIVA Bahrain's Standard Subscriber Agreements ("SSA") are subject to the provisions of clause 8.5¹ of VIVA Bahrain's License. A SSA is the standard agreement that a Subscriber signs with a Licensee in order to be provided with a telecommunication service from that Licensee. VIVA Bahrain has obtained TRA's approval for its SSA on 16 February 2010.

¹ "...At least two (2) months prior to the commercial launch date, the Licensee shall submit to the Regulator for its review a form of standard agreement containing the terms for the provision of licensed services to mobile subscribers (the "**standard subscriber agreement**"). The Licensee may submit a different standard subscriber agreement for use by similarly situated mobile subscribers of a specific category, provided that all such categories shall be objectively justified and do not result in undue discrimination. The Regulator may raise objections and require the introduction of such modifications as the Regulator deems necessary. If no objections are raised or modifications required by the Regulator within thirty (30) days of the submission of such form, such form may be used by the Licensee."



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7. Clause 8.6² of VIVA Bahrain's License states that any modification to the SSA shall be subject to the Authority's review and approval.
8. An application form often only records Subscriber details, however the Authority considers that an application form that contains specific terms and conditions also forms a substantive part of the SSA. This is because it seeks to impose a term and condition upon Subscribers, in this case in the form of the Unapproved Term. As such the Unapproved Term in Application Form is subject to approval by the Authority.
9. VIVA Bahrain has not submitted to the Authority any SSA for a new Special Number Service, nor a request to modify its approved SSA in relation to the Unapproved Term. VIVA Bahrain is therefore in breach of clause 8.5 and 8.6 of its License.
10. VIVA Bahrain remains free to submit an SSA for a Special Number Service to the Authority for its review after the issuance of this Order.

Effect upon interests of Subscribers, Competition and the Number Portability Regulation

11. The Unapproved Term states that VIVA Bahrain "...shall be entitled to the above special number fee (BD 1500) immediately upon expiry of this contract or termination of service for any reason".
12. The Authority notes that VIVA Bahrain has not defined "Special Number" in its Application Form. On 1 February 2012 the Authority requested VIVA Bahrain to provide it with a definition for "Special Number" however no contractual definition was provided in VIVA Bahrain's response. Although there is no legal definition, the Authority is aware that the terms "Nice Number", "Vanity Number" or "Special Number" within the telecommunications industry generally refer to easily memorable or otherwise desirable telephone numbers.
13. VIVA Bahrain notified the Authority that the special number fee also relates to certain other customer service features. As noted above VIVA Bahrain has not provided the Authority with the additional terms and conditions for the Authority's review and

² "...the Regulator may subsequently order the introduction of any modification to such an agreement after it becomes aware of any fact or circumstance which requires such modification in order to safeguard the interests of subscribers."



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approval. The only publicly available, and therefore certain, terms and conditions relating to the Special Number Services are the Unapproved Term on the Application Form.

14. Therefore on a plain reading this means that a "Special Number" appears to cost a Subscriber BD1500, as this figure must be paid by the Subscriber regardless of how the contract ends.
15. The Authority considers that the Unapproved Term, as it is currently drafted, restricts Subscribers' interests by discouraging their freedom of choice to terminate the contract early or to change Licensees and port the Special Number even at the end of the life of the contract.
16. By discouraging (or even preventing) Subscribers from terminating their service contracts early, the Unapproved Term also severely impedes the implementation of the Number Portability Regulation and its Specifications.
17. For these reasons, this Order is consistent with the Authority's duties in article 3(b)(1)³ and 3(b)(2)⁴ of the Telecommunications Law and its powers under clauses 8.5 and 8.6 of VIVA Bahrain's Mobile Telecommunications License.

Timeliness of this Order

18. Unlike an Order issued under article 35 of the Telecommunications Law, an order issued under clause 8.6 of the Mobile License does not require the Authority to provide the Licensee with an opportunity to review a Draft Order.
19. The Authority is also concerned that the Unapproved Term is of itself having an immediate adverse effect upon the interests of Subscribers and upon the implementation of the Number Portability Regulation, thus further impacting the interests of Subscribers and other Licensees.

³ "The Authority undertakes in carrying out its duties relating to Telecommunications services in the manner best calculated to protect the interests of Subscribers and Users in respect of: the tariffs charged for services; availability and provision of service."

⁴ "The Authority undertakes in carrying out its duties relating to Telecommunications services in the manner best calculated to promote effective and fair competition among new and existing Licensed Operators"



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20. Therefore for the reasons outlined above and after consideration of article 3(c)(1) of the Telecommunications Law and article 8.6 of VIVA Bahrain's Mobile Telecommunications Services License, the Authority hereby issues this Order with immediate effect.

Issued on 6 February 2012 by



Mohammed Hamed Bubashait
General Director

Manama, Kingdom of Bahrain