

भारत सरकार / Government of India
संचार मंत्रालय / Ministry of Communications
दूरसंचार विभाग / Department of Telecommunications
बेतार योजना तथा समन्वय स्तंभ / Wireless Planning & Coordination Wing

No. L-14040/01/2019-NTG

Dated: 01.05.2019

To,
All e-commerce companies.

Subject: - Illegal facilitation, sale of unauthorised mobile signal boosters/ repeaters - r.g.

Sir,

I am directed to inform your firm that it has been brought to the notice of this Department that your online e-commerce firm is facilitating and is thereby acting as a party to the illegal sale of unauthorised mobile signal boosters/ repeaters which are capable of radiating in the frequency bands which are assigned to the licensed Telecom Service Providers (TSPs) and other licensed agencies/users.

2. In this regard the following facts are brought to your notice for your kind information and immediate necessary action.

- i. As per the provisions of the Indian Telegraph Act 1885, only the Central Government shall have exclusive privilege of establishing, maintaining and working telegraphs, provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of [India]

["telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means. Explanation. "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide;]

- ii. As per the provisions of the Indian Wireless Telegraph Act, 1933, the possession of Wireless Telegraphy Equipment's is restricted and save as provided by Section 4 of the act, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

iii. Section 4 and 5 of this act further states that,

[Section 4]: The Central Government may by rules made under this Act exempt any person or any class of persons from the provisions of this Act either generally or subject to prescribed conditions, or in respect of specified wireless telegraphy apparatus.

[Section 5]: The telegraphy authority constituted under the Indian Telegraph Act, 1885, shall be the authority competent to issue licences to possess wireless telegraphy apparatus under this Act, and may issue licences in such manner, on such conditions and subject to such payments, as may be prescribed.

iv. In this regard it is further mentioned that the provisions of the Indian Telegraph Act (ITA), 1885 and the Indian Wireless Telegraphy Act (IWTA), 1933 strictly forbids the possession, establishing, maintaining or working of unauthorized telegraph

The penal provisions of ITA, 1885 and IWTA, 1933 are also reproduced below for information and cognisance.

[Section 20] of ITA 1885: Establishing, maintaining or working unauthorized telegraph

- a. If any person establishes, maintains or works a telegraph within [India] in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and in any other case, with a fine which may extend to one thousand rupees.
- b. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.
- c. When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to Government.]

[Section 6] of IWTA 1933: Offence and Penalty

- a. Whoever possesses any wireless telegraphy apparatus, other than a wireless transmitter, in contravention of the provisions of Section 3 shall be punished, in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees.

- b. (1A) Whoever possesses any wireless transmitter in contravention of the provisions of Section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees or with both.
 - c. For the purposes of this section a Court may presume that a person possesses wireless telegraphy apparatus if such apparatus is under his ostensible charge, or is located in any premises or place over which he has effective control.
 - d. If in the trial of an offence under this section the accused is convicted the Court shall decide whether any apparatus in respect of which an offence has been committed should be confiscated, and, if it so decides, may order confiscation accordingly.
- v. In addition to the above the Wireless Planning and Coordination (WPC) Wing vide its order dated 15.05.2015 had informed the ecommerce sites that as per the Indian Wireless Telegraphy(Possession) Rules, 1965, no person or dealer shall sell or hire a wireless set/equipment to any person, unless such person/dealers hold a valid Dealers Possession License (DPL). The DPL holder can also sell wireless sets/equipment only to such persons/entity that hold an authorization issued by this Ministry to establish a wireless telegraph under Indian Telegraph Act 1885.
- vi. In response to a statement that that the role of ecommerce websites is that of an intermediary only and they do not require holding or possessing a DPL (Dealer Possession License), further clarifications were also issued vide WPC orders dated 10.05.2016 and 26.04.2017 (<http://wpc.dot.gov.in/ViewAllOrders.aspx>), through which it unequivocally clarified that: -

E-commerce portals are operating as "online market place" and hence are covered under the purview of Information Technology Act 2000 as intermediaries. Hence, Section 79 of the IT Act and Information Technology (Intermediaries guidelines) Rules, 2011 are applicable in this case.

It is the responsibility of these intermediaries to follow certain due diligence guidelines as stated in the Information Technology (Intermediaries guidelines) Rules,2011, which includes signing of "User Agreement" for access or usage of the intermediary's computer resource by any person (Sellers and Purchasers under the referred context). These IT rules clearly indicate the typical aspects this "User Agreement" should address including the need for compliance of any laws by these sellers and the purchasers.

In the instant case, there is a need for the Dealer Possession License (DPL) under the relevant provisions of the Indian Wireless Telegraphy Act 1933 by the seller for wireless equipment if it is in the licensed bands or "Equipment Type Approval (ETA)" if it is in the de-licensed band. The

purchaser needs to obtain "frequency authorization/agreement in principle letter" from WPC Wing, DoT under Indian Telegraph Act 1885, before purchasing any equipment in the licensed bands and subsequently wireless operating license for the same after submitting the required documents and spectrum charges/ fees. Therefore, the on-line intermediaries need to ensure that these statutory requirements are fulfilled.

In case a wireless apparatus/ transceiver is required to be imported from abroad, the importing entity needs to obtain an Import License, as required under relevant Customs' rules, from Regional Licensing Offices (RLOs) of this Ministry after submitting necessary fees and documents.

Therefore, it is reiterated that if there is any licensing/ statutory requirement on telecom equipment being sold or purchased, it will be the responsibility of those selling it or purchasing it, as well as of the online intermediaries facilitating such sale and purchase, that the relevant statutes of the Government are not violated.

vii. It is also brought to the notice that most of the equipment that are now available through the e-commerce website may not have passed the stringent quality tests as mandated by the Department of Telecommunications. Such equipment when deployed in the network will cause serious harmful interference to the existing licensed networks. Such cases of interference may affect the quality of service of the telecom services used by the general public and may even hamper the mission critical systems deployed by various government and security agencies thereby posing a serious threat to the life and security of the civilians.

3. Keeping in view of the provision of the existing acts, subordinate rules, orders and the other relevant facts mentioned in para 2 above, it is hereby informed that your firm may take immediate corrective measures to remove the display and sale of unauthorised boosters from your website and a compliance may be provided to this department immediately.

3.1 It is also mentioned that many of the e-commerce websites have failed to take necessary actions in removing such illegal and unauthorised equipments and have stated that their role is limited to that of a facilitator of the marketplace wherein the buyer and sellers use the platform to carry out the transactions. In this regard it is brought to light that the online e-commerce websites are equally responsible for facilitating such illegal transactions and must ensure that the sellers and buyers engaging in such transactions are in possession of the necessary licenses and approval as mandated by the Department.

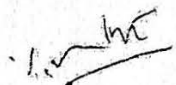
3.2 Also unlike the physical marketplaces it is practically impossible for the Department or its field offices to search and identify all such illegal telecom products listed in the website, since a

comprehensive list of all such telecom equipments are not available under a single link and the search results for these products and equipments are subjective and the results will vary based on the keywords used.

3.3 In such cases the e-commerce website being the place holder for the listing of such equipments must take every step to screen such illegal equipments sold by the sellers and the e-commerce websites may also carry out frequent audits of telecom products that are displayed in your website to ensure that the products displayed in the ecommerce website and are made available for purchase to the general public are not in contravention to the existing telecommunications rules and orders.

3.4 Any future violations found on the part of the ecommerce website will also be viewed very seriously and the penal provisions of the ITA - 1885, IWTA - 1933 and the Information Technology Act, 2000 and its subordinate regulations and rules shall be invoked against the errant party including the stakeholders of the e-commerce website who are acting as intermediaries to such violations.

3.5 A screenshot of the details of the equipment that has come to the notice of this office is also enclosed herewith for reference.


AWA(V Group)

Enclosure:

1. The screenshot of the details of the equipment's.
2. WPC wing order dated 10.05.2016 and 26.04.2017.

Copy to:

1. COAI
2. PS to Secretary (T)
3. Director WMO, with a request to inform its field units to constantly monitor such e-commerce website and issue infringement to such errant parties and ensure that the sale and purchase of such unauthorised equipment's are discontinued.
4. Secretary, Ministry of Commerce, with a request to disseminate the information mentioned in the letter to all related parties and e-commerce sites and online sellers.
5. Secretary, Ministry of Information Technology, with a request to take necessary action against websites that are hosted outside Indian territory and which provides the facility to deliver such unauthorised boosters/repeaters and other telecom equipments to India.
6. Ecommerce websites / companies
 - a. Amazon :Country Manager, Amazon India, 26/1 , Brigade Gateway, 10th Floor, World Trade Center, Dr. Rajkumar Road, Bangalore - 560055

- b. Flipkart: Flipkart Internet Pvt. Ltd, Vaishnavi Summit Ground Floor, 7th Main, 80 Feet Road, 3rd Block, Koramangala, Bangalore - 560034
- c. Snapdeal: 246, 1st Floor, Okhla Industrial Area, Phase - III, Delhi - 110020
- d. Shopclues : CEO, Clues Network Pvt. Ltd, Building No. 112, Sector -44, Gurgaon, 122001, Haryana, India
- e. Rediff : CEO, Rediff India Limited, Mahalaxmi Engineering Estate, L.J First Crosss Road, Mahim (West), Mumbai - 400016
- f. Indiamart: IndiaMART Inter:MESH Ltd.7th Floor, Advant-Navis Business Park, Plot No-7, Sector-142, Noida,Uttar Pradesh, Pin - 201 305, India
- g. Alibaba: Head of Office , Unit No. 101A,1st Floor, Platina Building,Plot No. C-59, G Block,Bandra Kurla Complex,Bandra East,Mumbai 400051, India
- h. Aliexpress:
Premises No. 201-203, 2nd floor, Palai Plaza Building Shankar Mottam Road, Dadar (East), Mumbai 400 014, India
- i. Ebay: CEO, eBay India Private Limited, 14th Floor, North Block, R-TECH Park, Western Express Highway, Goregaon (East), Mumbai 400063, Maharashtra, India.
- j. Other retail suppliers of Boosters

Government of India
Ministry of Communications & IT
Sanchar Bhawan, New Delhi-110001

No. P-11014/04/2013-PP

Dated: 10th May, 2018

Subject: On line sale/purchase of wireless sets/equipments.

It was conveyed to the online/ e-commerce companies vide this Ministry's letter of even No. dated 15.05.2015 that as per the Indian Wireless Telegraphy (Possession) Rules, 1965, no person/dealer shall sell or hire a wireless set/equipment to any person, unless such person /dealers hold a valid Dealer Possession License (DPL). The DPL holder can sell wireless sets/equipments only to such person/ entity that hold an authorization issued by this Ministry to establish a wireless telegraph under Indian Telegraph Act 1885.

2. In response to above, some of the online companies have stated that their role is of an intermediary only and they do not require holding or possessing a DPL (Dealer Possession License).

3. In this regard, the on-line/ e-commerce companies may further note the following:

i) e-commerce portals are operating as "online market place" and hence are covered under the purview of Information Technology Act 2000 as intermediaries. Hence, Section 72 of the IT Act and Information Technology (Intermediaries guidelines) Rules, 2011 are applicable in this case.

ii) It is the responsibility of these intermediaries to follow certain due diligence guidelines as stated in the Information Technology (Intermediaries guidelines) Rules, 2011, which includes signing of "User Agreement" for access or usage of the intermediary's computer resource by any person (Sellers and Purchasers under the referred context). These IT rules clearly indicate the typical aspects this "User Agreement" should address including the need for compliance of any laws by these sellers and the purchasers.

iii) In the instant case, there is a need for the Dealer Possession License (DPL) under the relevant provisions of the Indian Wireless Telegraphy Act 1933 by the seller for wireless equipment if it is in the licensed bands or "Equipment Type Approval (ETA)" if it is in the de-licensed band. The purchaser needs to obtain "frequency authorization/agreement in principle letter" from WPC Wing, DoT under Indian Telegraph Act 1885 before purchasing any equipment in the licensed bands and subsequently wireless operating license for the same after submitting required documents and spectrum charges/ fees. Therefore, the on-line intermediaries need to ensure that these statutory requirements are fulfilled.

iv) In case a wireless apparatus/ transceiver is required to be imported from abroad, the importing entity needs to obtain an *Import License*, as required under relevant

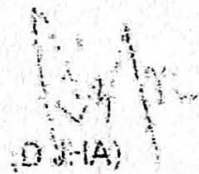
TC

Customs' rules, from Regional Licensing Offices (RLOs) of this Ministry after submitting necessary fees and documents.

4. Therefore, it is reiterated that if there is any licensing/ statutory requirement on telecom equipment being sold or purchased, it will be the responsibility of those selling it or purchasing it, as well as of the online intermediaries facilitating such sale and purchase, that the relevant statutes of the Government are not violated.

5. The processes involved in obtaining DPL, frequency authorization /agreement in principle letter, Equipment Type Approval (ETA) certificate and import license are available on the website www.wpc.gov.in.

6. All concerned may ensure the compliance in this regard.


(D JHA)

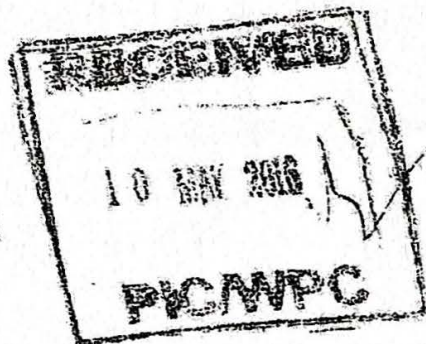
Senior Deputy Wireless Adviser

To

1. M/s eBay India Pvt. Ltd., 14th floor, North Block, R-Tech Park, Western Express Highway, Goregaon (E), Mumbai-400063.
2. M/s Flipkart Internet Pvt. Ltd. Vaishnavi Summit, Ground Floor, 7th Main, 80 feet Road, 3rd Block, Koramangla, Bangalore-560034.

Copy to:

1. M/s eBay India, Ashoka Estates, Barakhamba Road, New Delhi-110001.
2. M/s Flipkart Shop No. 310/311, C Wing Classic CENTRE, Curve Road, Andheri (E), Mumbai-400055
3. M/s Snap deal, 246 1st floor, Okhla Industrial Area, Phase-III, Delhi-110020
4. M/s Amazon.in, Brigade Gateway, 8th Floor, 26/1 Dr. Rajkumar Road, Malleswarera (W), Bangalore-560055
5. All the online/ e-commerce intermediaries.
6. Sr DWA (ASMS), to upload on the website.



Government of India
Ministry of Communications
Department of Telecommunications
Wireless Planning and Co-ordination Wing
8th Floor, Sanchar Bhawan, New Delhi-110001

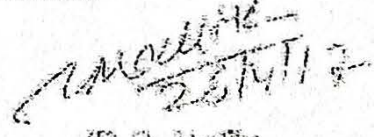
No. P-11014/04/2013-PP

Dated: 26th April, 2017

Subject: On line sale/purchase of wireless equipments.

It has been brought to the notice of this Ministry that wireless equipments are being sold on-line by you through your e-commerce platform in violation of instructions in this regard issued vide this Ministry letter of even No. dated 15.05.2016 to all e-commerce intermediaries concerned. Your attention is also drawn to WPC website <http://wpc.gov.in/WriteReadData/Orders/Online%20Sale%20or%20%20Purchase%20of%20Wireless%20Sets%20and%20Equipments.pdf> from where a copy of the said instruction may be downloaded; however a copy of the same is enclosed for ready reference.

You are hereby directed to stop on-line selling and purchase of wireless equipments, directly or indirectly, through your e-commerce platform with immediate effect and report back compliance, failing which stern action will be initiated.


(R.C. Malik)
Assistant Wireless Adviser

To

1. M/s Tolexo Online Private Limited, 1st floor, 29-Daryaganj, Netaji Subhas Marg, New Delhi-110002.
2. M/s Cart2India Online Retail Pvt Limited, 76, Victoria Road, Bangalore-560047.
3. M/s Grabmore Internet Pvt Ltd, Old No. 45, New No. 61, Secretariat Colony, 2nd street, Kellys, Chennai-600010
4. M/s Fab.to.Lab, 300, 17th E Main, 3rd Cross KHB Colony, Koramangala 5th Block, Bengaluru-560095
5. All other on-line/E-commerce intermediaries.
6. ✓ Sr DWA(ASMS), to upload on the website.