Bharti Airtel's response to TRAI Consultation Paper on Review of the Telecommunication Interconnection (Port Charges)

The review of Telecommunication Interconnection (Port Charges) has been due since long and the consultation paper on the subject is a welcome step to rationalize the charges which are presently exorbitant considering the current costs. Before deliberating on the cost data and the costing methodology, we would like to submit before the Authority, a brief historical preview and the non-level playing field accruing on account of port charges.

A. Telecommunications Interconnection (Port Charges) Regulation 2001:

The Telecommunications Interconnection (Port Charges) Regulation 2001 (6 of 2001) was issued by the Authority on 28.12.2001 which inter-alia prescribed the slab wise port charges payable by the Interconnection Seeker to the Provider.

B. Telecommunication Interconnection (Reference Interconnect Offer) Regulation 2002

The Telecommunication Interconnection (Reference Interconnect Offer) Regulation 2002 was notified by the Authority on 12.7.2002 ('RIO Regulation') and made it mandatory for service providers holding significant market power to publish RIO on the basis of Model RIO issued by the Authority.

The Authority in the Model RIO also touched the issue of deciding Port charges on the basis of usage by the respective interconnecting parties wherein it specified that to meet the Quantity Control standards ("QCS"), two years after initial interconnection, the issue as to who bears the cost of additional resources shall be negotiated between service providers and the guiding principle in this regard shall be the "outgoing traffic" of the party providing interconnection. The relevant portion of the model RIO issued along with the RIO Regulation is reproduced below for ready reference:

Article 12- Commercial Terms and Conditions

"12.3 Costs of interconnection.

12.3.1 The cost of upgradation/modifying interconnecting networks to meet the service requirements of the service shall be met by the party seeking interconnection. However, mutually negotiated sharing arrangements for cost of upgrading/modifying interconnecting networks between the service providers shall be permitted.

12.3.2 <u>Two years after the initial interconnection is established, the issue as to who bears the cost of additional resources</u> required shall be negotiated between the service providers. The general principle followed in these negotiations is that <u>each party should bear the incremental costs incurrent for the additional ports required for meeting the QoS standards relating to its outgoing traffic to the other party.</u>

The Authority having recommended the above, therefore, accepted the principle that after two years of establishing the initial interconnection, port charges should be shared between interconnecting parties on the basis of outgoing traffic i.e. usage by respective interconnecting parties.

However BSNL/MTNL do not follow the laid down principle and are charging the port charges perpetually year on year which is against the level playing field. The interconnection seeker therefore ends up bearing the costs of ports used for carrying the outgoing traffic of BSNL/ MTNL.

Over the period of time, the market scenario has changed whereby the status of the PSU operators has changed from being a dominant player to one with equal market power as compared to the private operators. The balance of traffic has also been changed and BSNL/MTNL tends to handover more outgoing traffic to the private operators. But, the PSU operators continue to be benefitted from one-sided port charges even for their outgoing traffic, which is discriminatory and needs to be corrected urgently.

C. Mandatory transit carriage by BSNL:

BSNL has declared their L-II TAX as the terminating point for the calls originating from the mobile network of the private operators for termination to their fixed line network. Having declared L-II TAX as the terminating point, ideally, it should be the responsibility of BSNL to carry the call further to the terminating SDCA without any additional charges. However, BSNL had been consistently charging it under the disguise of transit carriage charge, which is grossly wrong because of the following reasons:

- ✓ They do not provide POI at SDCA and declare their LDCC TAX (L2 TAX) as the only point of termination of calls from mobile networks to their fixed line network;
- ✓ The originating operator i.e. the Mobile operator is denied the rightful flexibility to choose the carrier, which leads to mandatory carriage charges payable to BSNL.

In case the Authority's proposal of having differential port charges for GSMC and TAX switches is implemented, it would result in double whammy for the private operators, where;

a. The private operators are required to pay mandatory transit carriage charges.
b. They would also be paying higher port charges for connecting to L2 TAX despite the cost of connecting to both type of switches (i.e. GMSC and TAX) being same.
c. The port charges are also paid for the outgoing traffic of BSNL/MTNL.

D. Subsume Telecommunication Interconnection (Port Charges) in Interconnection Usage Charges

The Hon'ble TDSAT in its Judgment dated 29th Sep 2010 had clearly directed that IUC/MTC should be cost based and include all costs – CAPEX, OPEX and depreciation.

"*It is not in controversy that cost would include CAPEX/OPEX and depreciation*". 114(12)

It is therefore submitted that the Port Charges are the CAPEX Cost associated with the Interconnection Usage Charge. While taking the CAPEX cost in the termination charge, there is also a need to mandate that no extra charges be paid on account of the port charges as the costs accruing to the same would have already been subsumed in the Interconnection Usage Charges determined by the Authority. The same had also been urged in our response to the Consultation Paper on Review of Interconnection Usage Charges dated April 27, 2011 and subsequent presentation dated June 15, 2011 to TRAI on IUC Costing Model. Where we also presented that the impact of discriminatory port charges is as high as 2.4 paisa per minute between a private TSP and MTNL/BSNL.

We therefore recommend that the charges corresponding to the Port, be merged in the Termination Charge (IUC) as these are already included in the Capital Expenditure. This will not only simplify the entire interconnection regime but shall also ensure level playing field between various operators. We also propose that it shall be the responsibility of each operator to bear the costs in proportion to their outgoing traffic.

However, if the Authority still desires to consider the costing methodology for port charges determination, **we would recommend that the same should be non-discriminatory and payable on a reciprocal basis in proportion to the Outgoing traffic**.

Keeping in view of the above and without prejudice to our submission in Hon'ble TDSAT and Hon'ble Supreme Court of India on IUC matter, our detailed response to the question raised by the Authority is as below:

Question: The stakeholders are requested to send their comments on the cost data and costing methodology used for estimating the port charges in this consultation paper. The stakeholders may also send their comments on the period for which these charges should remain operative.

Bharti Airtel's Response:

The Authority has proposed the ceiling of Port charges as Rs 4000 and Rs 10000 per port for MSC and Tandem/TAX respectively. In this regard, it is submitted that, historically there has been a common port charges for both MSC as well as Tandem/ TAX Exchange. Also the consultation paper does not provide any justification/explanation for considering different CAPEX for these two switches.

It is pertinent to mention here that the CAPEX for connectivity to both these types of switches is the same as no extra equipment is required for TAX exchanges/Long distance exchanges of either BSNL/MTNL or private TSP (as far as E1 connectivity is concerned), thus there is no reason to shift from the past precedence of uniform port charges .

We further submit that prescribing different port charges for MSC and Tandem/ TAX Exchange switch is discriminatory as it will lead to higher payment to one operator and lower payment to other operators for the same equipment.

In light of the above, we recommend that the port charges should be <u>fixed at a uniform rate for both MSC and Tandem/TAX Exchange.</u>

In a falling price regime, we also request TRAI to use the lower CAPEX value of Rs. 17996 per E1 port for deriving the Port charges, this will result in to the uniform rate of **<u>Rs. 3613 per port per annum for both MSC and TAX Exchanges.</u>**

Given the dynamic nature of the telecom industry, we recommend that the port charges may be reviewed every 3 years.