



MTNL/RA/TRAI Consultation Paper (10/2012)/ 2012
Dated 08.06.2012

To,

The Advisor (I & FN)
TRAI, New Delhi

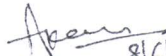
Sub. : Comments on TRAI consultation paper (10/2012) on "Review of Telecommunication Interconnection (Port Charges)".

The TRAI issued consultation paper No. 10/2012 on 09.05.2012 on the aforesaid subject and asked the various stakeholders to comment on the issues mentioned in the consultation paper. The following comments are made for consideration & submission to TRAI:

1. The commercial terms already entered into between the port provider i.e. MTNL and receivers i.e. inter-connection seekers or to be entered into may not be remotely regulated by TRAI and it has been contended in Hon'ble Supreme court by MTNL (CA No.- D28298/2010) that TRAI can not frame regulations, which would overpass the agreements entered into between MTNL and private telecom operators, which had agreed to pay the PSU as per the terms of agreement. The case is pending before Hon'ble Supreme Court and the matter is subjudice. Besides Supreme court also observed that the tribunal had also directed TRAI to start afresh the process of fixing the port charges and made an obiter dictum as "Whether the delegated legislations can be ruled upon (by) TDSAT... We would have to decide. This question would reoccur and would come again and again," Therefore ab initio the consultation process initiated by TRAI on the plea that the court ordered it to do so in para1.5 of chapter- 1 is not correct and at this stage there should be no attempt to determine the matter which is sub judice. However the comments being furnished by MTNL in order to preempt the regulation on this, are without prejudice to the pending litigation on the very issue of authority of TRAI to regulate the same.
2. The costing methodology adopted by TRAI is the same which is being followed since 2001 and only difference is the focus has been shifted from slab wise capex to per E-1 Port. The costing itself is not acceptable to MTNL and it raised its issues before the Courts and all the points raised in the litigation as regards the costing part viz. Overheads due to staff related legacy costs, like OPEX on power, maintenance of ports and insurance, costs due to the need to maintain spare capacity etc cost of spectrum charges, BTS commercial charges paid to concerned local authorities, are to be taken by TRAI in the calculation of the inputs for estimation of port charges. Therefore the consultation process in this regards needs to be held in abeyance till the out come of court case or the revised paper taking all inputs as sought to be included by MTNL in its plea

before court has to be got issued , which is further subject to the out come of court case in any case.

3. For determination of the Port charges, the returns (Pre-tax Weighted Average Cost of Capital) @ 14% per annum on the capital employed (net block only) has been considered after providing depreciation @10% per annum based on Straight Line Method of depreciation. Additionally, overheads @ 10% on capex recovery has been added. This procedure obviously is against the concept of FAC (Fully Allocated Cost) method to be adopted taking into account the redundancy and other costs and therefore MTNL is going to suffer loss in providing the interconnection. Besides adopting the costing method of CAPEX on above basis without taking FAC method, TRAI also negated the ARE (Annual Recurring Expenditure) in taking into account which makes the methodology ignore the elements of costing of PSUs. And this methodology was adopted earlier also by TRAI by professing that the same is done with the view to pass on the benefit of reduced costing to subscribers and in the present context of abysmally low level telecom tariffs, there is no issue of passing on any further unintended and commercially non viable benefit to subscribers and thereby forcing the PSU to accept lower charges for the ports provided by it. The avowed purpose of passing the benefit without taking the full costing has neither social interest nor in the interest of the interconnection providers who developed infrastructure over a period of time the telecom network with associated historical costing.
4. After hearing the basic contention of MTNL in the litigation on the applicability of the new rates for ports on the basis of consultation process , court intervened and issued an interim order that the new rates shall be made applicable only to the new ports applied and provided after the date of application and not to override the earlier mutually agreed rates between interconnection providers and receivers against undertaking and Bank guarantees for the difference amounts. However this point on applicability is also not finding any place in the consultation paper which inevitably leads to continuation of litigation.
5. The costing model in the consultation paper takes the spread of CAPEX to a period of 10 years whereas the review of port charges is being done after every 5 years. Besides the capital recovery is also aimed at 10 years on the basis of life of assets whereas there is no guarantee that the ports are not surrendered before that period and there is no stipulation to ask the operators to compensate the premature surrender of ports . There is no mention about the costs on shifting of ports from one switch to other or from one place to another and these contingencies are not provided as a percentage of the total recoverable cost that should include the CAPEX and OPEX/ARE etc. As such it is requested that TRAI may take these aspects also into consideration.


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