

No.701-1/2012-CW/TRAI

Dated 6th November, 2012.

Shri Arvind Kumar,
Advisor (NSL-I),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg,
New Delhi-110002.

Subject: Comments on TRAI's Consultation paper on "Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations" dated 19.10.2012

Ref: (i) CWW's letter No. 12/08/11-C&WW dated 16th August, 2011.
(ii) CWW's comments vide letter no. 701/1/2012-CW/TRAI dated 19th April 2012.
(iii) CWW's counter comments vide letter no. 701/1/2012-CW/TRAI dated 26th April 2012.

Dear Sir,

1. Cable & Wireless Networks India Pvt. Ltd ("CWW") welcomes TRAI's consultation paper on "Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations". We are thankful to the Authority for addressing some of the important issues raised by the (CWW) in response to its earlier consultation paper dated 22nd March, 2012.
2. We are grateful to the Authority for the transparency adopted by them in the estimation of the access charges as depicted in various tables and figures of the consultation paper. And for bringing out transparently some of the notable variations observed by the Authority in the data submitted by the incumbent OCLSs which substantiate our stand that the access charges are not cost based. Of course, we have some reservations on the cost estimation of TRAI for arriving at access charges at CLS and at alternate co-location (MMR) which we have indicated in our response to various issues in the consultation paper.

3. Therefore, we would like to reemphasize the fact that Access Facilitation charges payable to the OCLS should be cost based and it may be aligned with other competitive comparable jurisdiction.
4. The charges in India are high and this fact has also been recognized by TRAI vide para 2.19 of its Consultation Paper dated 22nd March, 2012 wherein it has been quoted from the report of M/s Plum Consulting, London. The report emphasizes that the cable landing station market in India is highly concentrated. In this consultation Paper(14/2012), TRAI vide para 14 has also stated that Tata and Bharti have 12 out of 15 cable landing stations for various cables and have majority share in provisioning of access facilitation in the country.
5. The Authority will appreciate the fact that the non integrated stand along ILDO like (CWW) has already been suffering a lot due to exorbitantly high access / co-location charges for the past 5 years and are in dire need of immediate relief. We sincerely hope that the determination of AFC/CLC at cable landing stations will be issued by TRAI at the earliest.
6. We are please to submit our comments on the consultation paper which are enclosed with this letter as **Annexure-I**. Additionally, through our industry association ACTO we have also submitted detailed inputs on the said consultation paper.

Yours faithfully,

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Enclosures: As above.

Cable & Wireless Worldwide (CWW)'s comments on the Issues raised in the Consultation Paper no.14/2012 dated 19th October 2012 on "Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations"

Introduction and analysis of present CLS segment

1. "Cable Landing Station" means the location, (i) at which the international submarine cable capacity is connectable to the backhaul circuit; and (ii) at which International submarine cables are available on shore, for accessing international submarine cable capacity; and such location includes buildings containing the onshore end of the submarine cable and equipment for connecting to backhaul circuits.
2. Access to facilities at submarine cable landing stations (CLS) is an essential input for many telecom services. Any unnecessary access restrictions in any form tend to limit an operator's competitive scope to provide international telecom services at an affordable rate to end users/ customers.
3. The current CLS access charges approved by the TRAI in October 2007. These charges were calculated based on the then prevailing utilization of international capacity and cost elements at the respective CLS. Since that time, there has been a major increase in capacity utilization on submarine cable systems. The review of CLS access charges is due since October, 2010.
4. The present regulations on CLS access charges and co-location charges do not provide any regulatory safeguards to prevent anticompetitive

conduct by the incumbent operators who are responsible for managing the cable landing stations.

5. Presently CLS Access charges are extremely high when compared with similar competitive telecom market in other jurisdictions. For example the RIO access charges for SMW4 in India is high by 251 times for 10G /STM64 if compared with South East Asian Countries (India's SMW4 Access charges = US\$ 6,28,100 Vs. South east Asian countries' SMW4 Access charges =US\$2500).
6. The present charges for access facilities at cable landing stations are not cost based. If these are determined based on cost oriented principle, these charges can be reduced by 98% from the present prices of 10G/ STM-64.
7. The cost of building a cable landing station is a fraction of the cost required to build the international submarine cable system. Therefore, the charges for access facilities at cable landing station should also be in the same proportion. The industry information on international cable system suggest that the cost of building of a complete international submarine cable system between Asian countries to European countries are generally ranging from US\$700 Mn to US\$1000 Mn and cost of building a cable landing station (CLS) is ranging from US\$4 Mn to US\$ 5 Mn.
8. The incumbent operators viz. M/s Tata Communications Ltd (TCL) and M/s Bharti Airtel Limited (Bharti) are having more that 98% of the market share of Cable landing station segment and both have equal market share in the CLS segment. In such situation these two operators shall be considered as dominant / significant market power (SMP) in this segment.

9. It is important to note that as per TRAI's published data, 85% India's LIT capacity are landing on those cable landing stations(under consortium system) which are managed & Controlled by these two operators (Bharti/ TCL). Therefore, cable landing station (CLS) is still essential / bottleneck facility for other operators who have capacities in these landing stations.
10. As, over the period of time, percentage of CLS access charges/ charges for facilities available at cable landing stations have increased from 2~5% to 60%~80% of the bandwidth charges. Such upward increase in the percentage of share of CLS access charges to total cost of bandwidth, undoubtedly established that there is market failure in the cable landing station segment. Therefore, it is necessary for Regulator (TRAI) to continue with the present regulation/ regulatory framework and CLS access charges should be aligned on cost oriented principles so that anti competitive behaviors of the dominant/ SMP operators can be stopped and benefit can be pass on to the end users which would ensure further growth in the international bandwidth/ broadband segment.
11. It is well known fact that the cost of cable landing station to total cost of international cable system is a fraction. Therefore, as per generally accepted costing principle, the costs/ charges of access facilities at cable landing station should also be in same proportion/ratio. It should not be in any case 60~80% of bandwidth cost. In such situation it is necessary that TRAI may align the present charges to cost oriented principle and present charges may be reduced by at least 98%. It is also submitted that CLS access charges may be aligned with the charges applicable in the competitive telecom market in other jurisdictions.
12. it is important to note that in other products of ILD business, the charges for Data & Voice services (i.e. IPLC/ ILD calls) have significantly

declined (by more than 70% some cases) over the period of time, whereas in case of CLS segment, no price reductions have been noticed. There is strong possibility that the CLS access charges have been kept at very high side by these two owner of cable landing station to prevent the competition in the international bandwidth segment. It can be seen from data published by TRAI that the capacity utilization of consortium cable systems are very less if compared with private cable systems.

13. As these two operators (Tata & Bharti) are also providing services in both Up & down stream markets and having Significant Market Power (SMP) in these segments i.e. whole sale and retail segment of International bandwidth in India, their present demand for deregulation and that the price determination may be left on market forces, very clearly indicate the typical incumbent/ dominant / SMP behaviors of these two operators in CLS segment.
14. it is important to mention that under the consortium system generally local incumbent telecom service providers (who are also member of consortium) are given preference and responsibility for construction and management of cable landing stations in their terrestrial and the costs (CAPEX and OPEX) of construction and management of cable landing stations are being reimbursed by the consortia. Therefore, the question of investment by foreign operators/standalone operators in that terrestrial does not arise as it will not be cost effective.
15. The arguments of incumbent operators as indicated in previous responses with respect to investment by foreign operators in CLS segment are not tenable in view of above, as it is generally accepted practice in consortium system that local telecom operator will take the responsibility for construction & management of cable landing station in its country. There is no significant investment required from the

operators (who have been nominated / designated by the consortia) for management of cable landing station as the costs (Capex +Opex) shall be reimbursed by the consortia. it is also important to mentioned that those cable systems who are landing in India under consortium system, all investments with respect to these systems have been made by the consortia and not by the TCL / Bharti, as shown by them in their responses to previous consultation paper that they have made alone investment for these cable system in India .

16. We are unable to appreciate & accept the responses of incumbent operators to previous consultation paper dated 22nd March 2012 that none of the cost Components at the CLS which is part of the Consortium system are considered in the calculation of the AFA. If that is case why the present CLS access charges in India are not comparable with competitive telecom market in other jurisdictions. Tata itself has indicated that cost of building cable landing station is fraction of cost required for International cable system. So, why the present CLS access charges are not in the same proportion / ratio of costs. Presently CLS access charges constitute 60~80% to total bandwidth cost in India, whereas as per industry norms in this segment, it should be in the proportion of investment in CLS to total investment in international cable system or as a bench mark it should be less than 2~5% of total international bandwidth cost.

**Issue-wise comments of Cable & Wireless Worldwide (CWW)'s
comments on the Issues raised in the Consultation Paper
no.14/2012 dated 19th October 2012**

Questions

Q1. Cost data and costing methodology used for estimating the access facilitation charges and co-location charges in this consultation paper. In case of a different proposal, kindly support your submission with all relevant information including cost and preferred costing methodology.

CWW Comments

1. We agree with the costing methodology/approach adopted by TRAI for estimating the access facilitation charges /Co-location charges as have been indicated in the various tables under the present circumstances. We believe that the costing methodology is robust.

2. However in relation to the cost data indicated in various tables we would like to submit that:-
 - a. Line items i and ii should be removed from Table 1 and Table 2(a), as both the DXC and ODFs required at the CLS have already been paid for by the consortium. We further believe that there is no need for an additional layer of DXC equipment simply to provide access to the cable system, and this is typically not provided in most CLSs. Additional DXC or DWDM equipment may be required for the provision of backhaul services, but this should be a component cost of the backhaul service, not the AFC.

 - b. In table 2(c),
 - i. Line item i should specify that this is only for one ODF, as only one is required.

- ii. Line item ii should be removed, as the DXC equipment at the cable station has been paid for by the consortium, and the connection between the CLS and alternate co-location site does not require DXC equipment on top of DWDM equipment. The DWDM equipment already contains the DXC functionality. Hence to use a DXC as well would involve duplication of this function, and add unnecessary risk to the performance of the circuits.
 - iii. We believe that the DWDM charge indicated in Table 4(a) and 4(c) is too high. Our fully allocated cost per 10G is around Rs.500k per 10G for each terminal, and we use relatively expensive equipment.
 - iv. The apportioned fibre cost at table 4(b) – can we know what distances were used to calculate these, and why they are so vastly different. We could accept the proposed cost from OCLS 1, although it is high for a high volume route. However, the cost from OCLS2 is much too high, bearing in mind that the MMR is typically only a few kilometres away from the CLS.
 - v. If above mentioned anomalies are corrected then revised estimated charges for access facilities at cable landing station (AFC/CLC) would be in line with comparable competitive telecom market in other jurisdictions.
3. We have noted that the issue of inclusion of DXC has also been examined by TRAI in para 13, 14 and 15 under the heading of **“Identification of network elements”** of its consultation Paper. In para 13, TRAI has noted that there is only one passive element i.e. Optical Distribution Frame (ODF) which is required for the provisioning of access facilitation at 10G level or any other level which is provided by the

consortium and two OCLSs i.e. BSNL and Reliance are also agree with this point of view . TRAI has further stated in para 14 of the Consultation Paper that TCL and Bharti are of the view that consortium does not provide all types of interfaces need by the ITE.

4. It is important to mention that in the case consortium system, **the C&MA agreements provide the all types of interfaces needed by the ITEs.** In fact, the consortium provides the interfaces for all levels of capacity available for purchase on these systems. If an ITE requires further multiplexing of their capacity it could be provided under terms of a separate arrangement with the OCLS or the ITEs designated local back hauler. In this regard all relevant extract of C&MA agreement have already been submitted with Hon'ble Authority vide letter no.12/08/11-C&WW dated 16th August 2011 in response to TRAI's letter No 416-3/2010-I&FN dated 22nd June 2011.
5. The analysis of information/data available in the consultation indicates that there is visible difference of opinion wherein majority of service providers including Reliance and BSNL are on one side and M/s TCL and Bharti are on the other side in favour of DXC. The rational given by TRAI for accepting the cost of DXC as both OCLSs are incumbent operators and having 12 out of 15 CLSs in India ,therefore, their costs / network elements have been accepted. We believe that such acceptance may be against the best regulatory practices where it is expected from the regulator that they should accept the most efficient cost/ network elements in to consideration at the time of fixation of charges of network services/products.
6. The view point of majority of service providers including BSNL and Reliance that only passive element i.e. Optical Distribution Frame (ODF) is required for provisioning of access facilitation, as state in para 13 of TRAI's Consultation paper dated 19th October, 2012 is also substantiated

by the fact mentioned in TRAI's consultation paper on "Access to Essential Facilities (including Landing Facilities for Submarine Cables) at Cable Landing Stations, dated 17th April, 2007 wherein in Figure 2 of Chapter 4, TRAI has not included DXC in its figure depicting Access Facilitation arrangement at Cable Landing Stations.

7. Therefore, the inclusion / non inclusion of DXC in the cost model is very important factor. In view of facts mentioned above, majority of service providers and TRAI, are not in favour of inclusion of DXC in the cost model. This may be the one of the reason why the CLS charges are not coming to the level of comparable competitive international markets. In case, as per TRAI's own analysis expressed in the consultation paper dated 17th April, 2007 and Consultation paper dated 19th October, 2012 referred above, **if the cost of DXC is excluded from the cost model, then the access charges are expected to come down to the comparable international levels.**
8. We have also noted in the study paper of M/s Venture Consulting of April, 2012 filed by M/s Vodafone during its response to the consultation paper on CLS dated 22.3.2012 which also confirms that there is no need for DXC to provide the access facilitation at cable landing station .
9. We have noted that there are considerable variations in the cost data submitted by the two OCLs to TRAI, for example in the case of "Inter Floor cabling and tray work" it is more than 233% and in the case of "ODF" it is 47% and further in the case of "DWDM equipment" it is about 14%. Moreover it is also noted that in the table 4(b) "fiber between CLS and MMR" the variation is about 313%. In such cases it is suggested that most cost efficient telecom service provider's cost may be considered for estimation of final CLS access charges.

10. we believe that this present estimation of charges for access facilities at cable landing stations have been arrived by TRAI by following the forward looking costing methodology .

11. **In view of above, we support the TRAI's costing methodology for estimation of AFC and further strongly recommend that the DXC and its cost should be excluded from the cost model and our international experience suggest that the access facilities charges (AFC) at the CLS should not exceed US\$5,000 per annum and US\$20,000 per annum in the case of the remote MMR.**

Q2. On the power requirement of the transmission equipment i.e. DWDM, DXC equipped with different capacities, supplied by different equipment manufacturers.

CWW Comments

1. We believe that a rack full of DWDM equipment uses an average of 4 KVA per rack. However, in some cases, up-to 6 KVA is acceptable for a DWDM node.

Q3. Percentage used for OPEX and capacity utilization factor with supporting data on each OPEX item specially on space and power consumption of various equipments.

CWW Comments

Percentage for OPEX

1. It is submitted that the cost items indicated in Table 6 have already been paid by the consortia, therefore, **the percentage (30%) used for OPEX for this segment for estimation of charges of access facilities at**

cable landing stations is not in line with industry practice of this segment, it should be less than 30% .

Capacity utilization factor

2. We have noted that capacity utilization factor taken by TRAI is in line with best international regulatory practices and costing principles, **therefore we support the capacity utilization factor of 70% for estimation of AFC.**
3. It is important to mention that as per costing principles, the capacity utilization factor is generally applicable for machine/network elements / equipments and it is not applicable for estimation of charges for co-location and space. **Therefore it is suggested that the charges estimated under Table 9(b) for co-location charges per annum may be suitably revised.**
4. Notwithstanding above, some specific observations are as follows:-
 - I. We believe that most of the costs referred to in table 6 have already been paid by the consortium for the CLS. The power for the international circuit is already paid for by the consortium, and connecting the international circuit from the ODF in the CLS draws no additional power whatsoever.
 - II. Paragraph 31 states the cost per unit Rs. 15 per unit. We believe that this should not be more than Rs. 8.
 - III. Regarding the space, a pair of patch cords occupies only a few millimetres of space in a cable tray, either above or below the rest of the equipment in the CLS – i.e. an incidental amount.

Q4. Whether ceiling of uniform Access Facilitation Charges may be prescribed for all Cable Landing Stations in two categories i.e. AFC at CLS and AFC at alternate Co-location, or these charges should be dependent on submarine cable system or location of cable landing stations?

CWW Comments

1. TRAI has very rightly noted in Para 22 of the consultation paper that “work done for access facilitation at cable landing station is the same for all cable landing stations. Therefore, it may not be required to estimate the cost based charges separately for each cable landing stations. The only variation could be due to space and electricity charges if the cable landing stations are located at two different cities, which may be a small portion of total costs. In case of access facilitation at Meet Me Room (MMR) the difference could also be because of length of optical fiber link between CLS and MMR”.
2. Keeping in view the monopolistic behaviour of the incumbent OCLSs and exorbitantly prevailing high access charges for the past 5 years, as has been rightly observed by TRAI in its consultation papers, we believe that unless and until the market of CLS Access Charges / co-location charges matures and the access charges are brought to the level of charges prevailing in the comparable competitive international telecom market, TRAI should prescribe ceiling for uniform Access Facilitation charges at CLS and alternate Co-location and continue to prescribe the same.
3. **We support the TRAI’s view noted in Para 22 and recommend that the ceiling of uniform cost based access facilitation charges should be prescribed by TRAI for AFC at CLS and alternate collocation.**

4. **However, we further suggest an alternative access methodology – i.e. the in-span access methodology (fibre connectivity in a junction box outside the CLS). This would remove the need for accessing via a remote MMR in most cases**

Q5. Whether prescribing the access facilitation charges on IRU basis is required?

CWW Comments

1. We believe that AFC on IRU basis is desirable under the present circumstances. This allows access seekers to match the contracts looking for IRU Contract term.

Q6. Whether uniform co-location charges may be prescribed or such charges should be location dependent?

CWW Comments

1. We believe that here the issue is as to what measures can be taken to ensure transparent and non-discriminatory treatment in pricing and provisioning of collocation facility? In this regard, it is pertinent to quote from TDSAT Order, in Petition No.148 of 2005, dated 19th March 2007 as under:

“In order to ensure that there is a semblance of fairness and reasonability and Respondent is not tempted to adopt an arbitrary approach in this regard as it has done in the matter presently before us, we request TRAI who at one point of time had intervened in this matter to lay down guidelines at the earliest to ensure that the fixation of such charges by service providers including MTNL is not done arbitrarily and is based on use of sound criteria and reasonable rationale.....”

2. Therefore, in order to ensure transparency in pricing and provisioning of Collocation facility, TRAI must prescribe the range or a band for the Collocation charges based on the actual cost. This range or band for Collocation charges could be based on the cost involved on the basis of classification of cities.
3. **We recommend that TRAI must prescribe the location based range or band for the collocation charges based on cost oriented principle.**

Q7. Whether the restoration and cancellation charges should be either a fixed charge or based on a percentage of the AFC. In case of fixed charge, should the present charges be continued or need revision?

CWW Comments

1. Presentably the restoration and cancellation charges are in the range of Rs. 1, 00,000 to Rs 1,10,000. We believe that these charges are on higher side. We understand that restoration / cancellation is equivalent to plug-in or plug-out for connection or disconnection for any circuit. Therefore, we suggest that the present charges should be revised to the tune of Rs. 10.000/- per instance of restoration / cancellation.

Q8. Any other comment related to Access Facilitation Charges, Collocation charges and other related charges like cancellation charges, restoration charges along with all necessary details.

CWW Comments

1. **Applicability** – As per the CLS Regulations, 2007 the review of access / co-location was due in the year 2010. We have been contesting since 2010 through facts and figures that these charges may be reviewed immediately and should be brought down to the level of charges

prevailing in other jurisdictions. These charges have not been reviewed and finalized in 2010 itself and the standalone ILDO like CWW would have been forced to pay the high charges to the OCLSs till date. It can be well understood through Table 7(a) and 7(b) of the consultation paper which shows the annual CLS / Co-location charges at merely 2~5% of the existing prevailing charges. Keeping in view above, TRAI may consider retrospective implementation of the CLS / Co-location charges.

2. **Compensation thru revising existing RIOs by OCLSs** - In case retrospective implementation of CLS Access charges is not possible TRAI may take suitable steps to compensate the seekers by mandating the OCLSs to offer revised charges immediately for all contracts entered before finalization this consultation process for access facilities at cable landing stations. Therefore, suitable **provision in the regulation to the effect that the existing agreements between the access provider and seekers would also stand amended to incorporate the revised charges specified by TRAI with immediate effect.**
3. We are not aware as to how the existing OCLSs, especially incumbent operators, being integrated operators, are charging AFC/CLC from their own access services/inter related party transactions. **Therefore, we recommend that with a view to ensure level playing field in a transparent and non discriminatory manner, the AFC / CLC prescribed should also be charged by these OCLSs from their own access services/inter related party transactions. A reporting requirement to this effect may also please be mandated for the OCLSs, as been prescribed by TRAI in case of SMS and Carriage charges in the IUC Regulations.**
4. During the consultation process, the stakeholders also commented in favour of review of the charges between every 1-2 years. But an amendment to this effect is not visible in the amendment to the CLS

regulations, 2012. We **strongly recommend that a suitable provision may be made in the CLS regulations, 2012 for periodic review of AFC/CLS at least once in every two years.**

5. The amendment to the CLS regulation, 2012 is silent on insertion of a suitable provision in the regulation to the effect that the existing agreements between the access provider and seekers would also stand amended to incorporate the revised charges specified by TRAI with immediate effect. **Therefore, we recommend that TRAI should insert a suitable provision in the CLS regulation, 2012 to the effect that the existing agreements between the access provider and seekers would also stand amended to incorporate the revised charges specified by TRAI with immediate effect.**

6. We would like to submit that the AFC should not apply to the traffic that simply transits between two cable systems and does not touch the domestic Indian network. We believe that AFC is not justifiable on transit traffic as it is not accessed locally and the only network involved for transit is a cross –connect for interconnecting different submarine cables at the landing station. Therefore, the Authority is requested to regulate the prices for transit capacity along with the capacity being accessed in the country.
