COAI Response - TRAI Consultation Paper on Review of Tariff for Domestic leased Circuit

25th April 2014

I. **Preamble:**

1. At the outset, we would like to request the Authority to kindly consider following principles regarding regulatory economics before intervening with any Tariff Regulation for the Domestic Leased Circuit (DLC):

   a. **Need of Regulation:** We believe that the Authority needs to only intervene via regulation in order to :

      i. Avoid Market failure
      ii. Safeguard to create effective competition
      iii. Prevent anti-competitive practices
      iv. Ensure that consumer interests are protected.

   b. **The Regulation needs to be reviewed periodically:**

      i. COAI believes that any static regulation may stifle innovation and investment. The Authority must periodically revisit and review its earlier regulation to take note of market developments and in case it finds that competition is working effectively, it must review the very need for a regulation and put in place a policy of forbearance.

2. **Background for the Tariff Regulation for the Domestic Leased Circuit (DLC) in India:**

   a. In 1999 DLC was brought under Tariff Regulation as the Authority had opined that leaving the tariff for DLCs under **forbearance might lead to distortions in the telecom market and had therefore prescribed cost-based ceiling tariffs for DLCs in order to enhance demand for DLCs.**

   b. In its 2005 review, the Authority had decided to continue its tariff Regulation on the DLC services with an **intention to achieve adequate and effective competition in DLC market.**

   c. In 2007 the Authority had observed that since at that stage it was not mandated for one Operator to provide DLC to other operators, the same was resulting in:
      - **Insufficient competition in all segments of DLC**
      - **Limited choice to the end customer for end to end connectivity**
      - **Unreasonable terms and conditions in the case of provision of DLC by one Operator to another operator**.

      Thus a regulatory framework for the provision of DLCs was laid down in 2007 through which the Authority imposed obligations on service providers having DLC capacity to share it with other service providers**.**

3. **Current DLC Market scenario:**

   The market scenario has changed significantly since 2005 and market for DLC has become very competitive. As highlighted by the Authority in its consultation paper, the following depicts the current status of the DLC market in India:

a. **Prevailing Tariff is significantly below the ceiling tariff prescribed by the Authority, particularly on the dense routes:** Authority has tabulated the price discounts available from 9 service providers. These discounts are often above 60% and are almost 80% in some cases.

b. **Reduction in Cost:** Per unit cost of providing DLC has reduced owing to advancements in the transmission technologies. **The same has been passed on to buyers in the form of discounts on the ceiling tariffs.**

c. **Competition in the DLC sector:** Apart from 7 to 10 ASPs, which are present in each licensed service area (LSA), there are 31 licensed NLDOs who can offer DLCs in the entire country to the end users. Thus, there are multiple suppliers of trunk and local capacity with evidence of continued investment in fiber rollout.

d. **Customers are seeking higher bandwidths**

e. **New Technological Developments**: New methods of provisioning DLCs viz. MPLS-VPN3 have emerged. **Increased Innovation in DLC sector.**

f. **Disparity among Routes and Geographical Areas:** In the remote and hilly areas such as North East, Assam and J&K service areas, demand for DLCs is relatively low and competition is less vigorous.

4. **COAI Submission:**

a. As highlighted above, we are of the view that the Authority should only intervene through a Regulation in case there is evidence of “Market failure” or in case of inadequate competition in the market place resulting in high tariffs.

b. Considering the current status of the DLC market in India as highlighted in the Consultation Paper, it is clearly evident that **DLC market in the country is working very well, having adequate competition resulting in discounts of above 60% below the ceiling rates prescribed by the regulator. Thus, we are of the view that the Authority should review the need for regulation and go in for a policy of forbearance.**

c. We are of the view that if the Authority continues with the ceiling in these highly competitive areas (dense areas), the same may stifle innovation and investment in this sector. Inappropriate price controls can fundamentally dis-incentivize telecom operators from investing in upgrading and expanding its DLC network, as it will increase the cost of raising capital, and reduce the commercial returns necessary to justify the risks involved in this type of investment. **Thus, we reiterate that given that the market and competition is working effectively, the Authority should go in for a policy of forbearance.**

d. **International Practice:** We would like to highlight examples of some of the countries wherein regulator has abolished its regulation on DLC citing that the DLC sector has become competitive: .

   i. **JAPAN:** All Regulations in DPLC market were abolished in April 2004 as the regulator determined that the market was now competitive.

ii. **IRELAND**: In 2004, ComReg conducted the detailed study of the leased line market in the Country and concluded with the removal of all regulation in DPLC market.

iii. **South Korea:** Domestic leased lines were completely deregulated in South Korea in 1990, and further steps towards liberalization followed in 1991. This resulted in increased competition, and international recognition of the South Korean telecommunications market as one of the most mature telecom markets.

iv. **U.K:** In February 2013, OFCOM, while lowering the prices of high speed data links in most of the United Kingdom, recognized the increased competition within and around the London area, and proposed the imposition of lighter regulation in the case of products up to and including 1 Gbit/S, and no regulation on very high bandwidth products where there is effective competition. OFCOM, at the same time also proposed to deregulate the market for long distance legacy leased lines.

e. **Geographical Monopolistic situation:**

i. The Authority in its Consultation Paper has stated that the price of DLCs in the remote and hilly areas such as North East, Assam and J&K service areas "*remain near the ceiling tariffs prescribed by the Authority*". **We are of the view that in case, there is evidence that competition is not working effectively in these areas the Authority may consider reviewing of ceilings for these service areas only.**

ii. However, we reiterate that setting the ceiling too low in these areas might hamper investment in building infrastructure in these areas.

iii. **International Practice:** We would like to highlight some of the regulators who have adopted a regulation based on geography:

- **Malaysia:** The Malaysian Communications and Multimedia Commission observed that the characteristics of competition in the provision of leased line service vary on a route-by-route basis and decided that competition needs to be assessed on a case-by-case basis, taking into consideration the specific characteristics of the given leased line route.

- **U.K:** In the UK, Ofcom has found that SMP varies by circuit type (trunk versus others) and geographically, i.e. regulation is confined to certain types of links in particular geographic areas.

5. **Summary Submission:**

a. **The Authority should not prescribe any ceiling tariff for the DLC services in India and should go in for a policy of forbearance.**

b. **The ceiling should only be prescribed for the areas where there is no adequate competition and wherein the operators are providing the services at the ceiling rate or without any discount for e.g. in areas of North East, Assam and J&K service areas.**

c. **The Authority should determine the ceilings in these areas based on fully allocated cost methodology.**

II. Issue Wise Response:

Q1: Should TRAI continue to use the bottom-up fully allocated cost method for computation of the cost-based ceiling tariffs for point-to-point DLCs (P2P-DLCs)?

COAI Comments:

a. As stated in our response above, we would like to submit that TRAI should follow the policy of forbearance for the DLC services.

b. Only in places such as J&K and N.E, where competition is inadequate, the Authority may consider imposing a ceiling. TRAI may adopt bottom-up fully allocated cost methodology for calculation of the ceiling.

Q2: In case your response to the Q1 is in the affirmative, what values of the following items should be used for estimation of ceiling tariffs for P2P-DLCs:

(i) Return on Capital Employed (ROCE)
(ii) Useful lives of transmission equipment and Optical Fiber Cable (OFC) separately
(iii) Average no. of fiber pairs lit in OFC in trunk segment and local lead segment separately
(iv) Utilization factor of the OFC system in trunk segment and local lead segment separately?

COAI Comments:

a. No Comments

Q3: In case your response to the Q1 is in the negative, what should be the alternative approach for determining tariffs for P2P-DLCs of various bandwidth capacities? Please support your view with a detailed methodology along with supporting data and assumptions, if any.

COAI Comments:

a. We believe that the market for all types of capacity and circuit length is competitive and that no intervention on the part of TRAI is required.

Q4: In your opinion, what are the bandwidth capacities of P2P-DLCs for which ceiling tariffs need to be prescribed?

COAI Comments:

a. Approach of forbearance should be adopted for all bandwidth capacity.

Q5: In your opinion, is there a need for prescribing separate ceiling tariffs for local lead and trunk segment?

COAI Comments:

a. TRAI should adopt the approach of forbearance and we believe that there is **no need to prescribe separate ceiling for local lead and trunk segment.** The cost of local lead may be different in different geographies depending on local Right of Way (RoW) costs in the respective city. It would, therefore, be impractical to assign a nationwide tariff ceiling on local lead.

Q6: In your opinion, is there a need for prescribing separate ceiling tariffs for remote and hilly areas?

COAI Comments:

a. TRAI may prescribe a ceiling for remote and hilly areas, keeping in mind the ground realities.

Q7: In your opinion, what are the distances of

(i) Trunk segment and
(ii) Local lead segment (separately)
of P2P-DLCs for which ceiling tariffs need to be prescribed?

Q8: In your opinion, is the distance interval of 5 km still relevant for prescribing distance-based ceiling tariffs for P2P-DLCs?

Q9: In case your response to the Q8 is in the negative, what distance interval should be used for prescribing distance-based ceiling tariffs for P2P-DLCs?

COAI Comments:

a. No Comments

Q10: What equipped capacities of trunk segment and local lead of P2P-DLC should be used for computation of ceiling tariffs of various bandwidth capacities?

COAI Comments:

a. No Comments

Q11: Should VPNs such as MPLS-VPNs also be brought under tariff regulations for DLC?

COAI Comments:

a. We are of the view that MPLS-VPNs should not be brought under the tariff regulations for DLCs due to following reason:

i. As highlighted in the preamble, we are of the view that TRAI should only regulate the service in case there is clear evidence of a failure in the market.

ii. As highlighted by TRAI in its consultation paper MPLS- VPN services are being provided at the highly discounted rate (almost 90% discount in some cases)

iii. All of the constituent parts of the VPN service can be bought at competitive prices and services are provided by a number of operators.

iv. The whole framework of MPLS varies from one customer to another.

v. Determining optimum cost based price controls for MPLS VPN is a complex exercise, due to both technical and commercial reasons that vary from one operator to another.

vi. Regulating tariff for these services will undermine innovation in the provision of these services.

Q12: In case your response to Q11 is in the affirmative, what method should be used for computation of cost based ceiling tariffs for VPNs?

COAI Comments:

a. **Not Applicable**

Q13: In your opinion, is there still a need for prescribing separate ceiling tariffs for DLCs which are provided on the Managed Leased Line Network (MLLN) Technology?

COAI Comments:

a. We would like to submit that MLLN is a form of DLC and need not to be regulated.

Q14: Is there any other relevant issue related to tariff for DLCs which the Authority should keep in mind while carrying out the present review exercise?

COAI Comments:

a. DLC services to be included as essential services under State IT/ITES acts and ROW permission need to be made simple . Further, cost charged by local authorities should be very low and cost based to prevent a setback to new OFC infrastructure planned by operators.