

NO.701-1/2012/CW/TRAI

Dated 14th November, 2012

Shri Arvind Kumar,
Advisor (NSL),
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Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi – 110 002

Subject: TRAI's Consultation Paper (14 of 2012) on "Estimation of Access Facilitation Charges and Collocation Charges at Cable Landing Stations" dated 19.10.2012

Dear Sir,

This is with reference to the TRAI's Consultation Paper on "Estimation of Access Facilitation Charges and Collocation Charges at Cable Landing Stations" dated 19.10.2012.

The Authority has placed the comments of various stakeholders on the said consultation paper on TRAI's website. While we welcome and support this consultation process initiated by the Hon'ble Authority, we would like to offer our counter comments on the response filed by M/s Bharti Airtel Ltd. / M/s Tata Communications Ltd. The detailed counter comments are attached as Annexure "A".

With kind regards,

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Enclosure: A/A

Section I

(General Counter comments)

We do not agree with M/s Bharti Airtel Ltd (Bharti)’s comments that Cable landing station (CLS) segment should be left to market forces. We are also not in agreement with various rationales given by Bharti for de-regulation of charges for access facilities at cable landing stations in India, due to the following reasons;

1. The ILD license’s terms & conditions mandate that the owner of Cable Landing Stations (OCLS) must provide equal access to bottleneck facilities at the cable landing stations (CLS) on the basis of non discrimination with the prior approval of TRAI and the charges for access provision should be governed by the regulations/orders as made by the TRAI from time to time. The relevant portion of clause 2.2 (c) under the “scope of the license” of ILD license is reproduced below;

“Equal access to bottleneck facilities at the Cable Landing Stations (CLS) including landing facilities for submarine cables for licensed operators on the basis of non discrimination shall be mandatory. The terms and conditions for such access provision shall be published with prior approval of the TRAI, by the Licensee owning the cable landing station. The charges for such access provision shall be governed the regulations / orders as may be made by the TRAI/DoT from time to time.”

2. Presently, two operators(Bharti/TCL) together having market share 98% of Cable landing station(CLS) 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).

3. 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.
4. 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 International 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 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.
5. 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 comparable charges applicable in the competitive telecom market in other jurisdictions.

6. 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.
7. As these two operators 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, the present demand for deregulation and that the price determination may be left on market forces, very clearly indicate the typical incumbent' behavior in CLS segment.
8. It is important to mention that under the consortium system generally local 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 including RoCE and OPEX) of construction and management of cable landing stations are being reimbursed by the consortia. Therefore, the question of investment by foreign operators/ individual ILD operators in that terrestrial& cable system does not arise as it will not be cost effective.

9. The arguments of Incumbent operators with respect to investment by foreign operators/ individual ILD operators in CLS segment are not tenable in view of above, as it is generally accepted practice in consortium system that local Incumbent 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 including RoCE +Opex) shall be reimbursed by the consortia.
10. 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 OCLSs (Bharti/ Tata), as shown by them in their responses to consultation papers that they have made alone investment for these cable system in India .

Section II

(Specific Counter Comments to Bharti's responses)

Before submitting its reply to the issues raised in the consultation paper M/s Bharti has elaborated its reply on some of the issues vide para A, B C, D, E, F. The title of the para and comments of C&WW thereupon are summarized below:

A. Background (in brief):

The ILD Sector is now a perfectly competitive sector with 27 ILD licenses issued. Moreover, despite Liberalization of the ILD License, 4 OCLS have set up the CLS and the balance 23 ILD Operators (Total 27 ILD as on 22.2.2012) have taken a commercial call not to set up an integrated platform viz. investing on a CLS and instead have chosen to take the said facility on payment of certain charges namely AFC, CLC, Restoration and Cancellation Charges etc.

CWW's Counter Comments –

Presently, two operators control 80% of the Cable Landing stations and its resources. When we analyze the LIT/Activated Bandwidth Capacity on the Submarine Cables terminating in India, this fact gets further ratified that two operators(Bharti& Tata) control about 95% of the Activated Bandwidth Capacity and hence have "Significant Market Power" to influence the bandwidth pricing.

Since only two operators control majority of the CLSs & its activated bandwidth capacities, it appears to be a clear case of “Vertical Price Squeeze” as both these players are providers of Internet, Broadband and Wireless/Wire line data services and control the International Bandwidth which is an essential input to the retail product pricing. This price squeeze has an effect similar to a refusal to supply an essential facility. This can turn out to be a major issue in proliferation of internet and broadband services as operators, not having access or access at higher price, can be out priced by the operators having cheaper access to these resources which can distort competition in the market and disturb the level playing field. Therefore, CWW is of the view that AFC / CLC at Cable landing stations are not at all competitive due to monopolistic behaviors of the two incumbent OCLSs.

It is also submitted that as per clause 2.2(c) of the terms & conditions of ILD license agreement, it has been mandated that OCLS must provide equal access to bottleneck facilities at the cable landing stations (CLS) on the basis of non discrimination with the prior approval of TRAI and the charges for access provision should be governed by the regulations as made by the TRAI from time to time. The relevant portion of clause 2.2 (c) under the scope of the license is reproduced below;

“Equal access to bottleneck facilities at the Cable Landing Stations (CLS) including landing facilities for submarine cables for licensed operators on the basis of non discrimination shall be mandatory. The terms and conditions for such access provision shall be published with prior approval of the TRAI, by the Licensee owning the cable landing station. The charges for such access provision shall be governed the regulations / orders as may be made by the TRAI/DoT from time to time.”

B. Whether CLS is still An Essential Facility in India?

CWW's Counter Comments –

We strongly believe that CLS is yet an essential facility in India due to prevailing exorbitant access charges which are due to concentration of significant market power with only two CLS owners viz. M/s TCL and M/s Bharti. Presently, CLS Access charges are extremely high when compared with similar competitive telecom market in other jurisdictions.

M/s Bharti is trying to make a non issue an issue and its respective comments are out of context in the present scenarios. The problem is not that of traditional bottleneck in access to submarine cables at cable landing stations those were discussed way back in the TRAI's recommendations of 2005 and due to which Clause 2.2(a) of the ILD Licence was suitably amended.

When we analyze the Bandwidth Capacity on the Submarine Cables terminating in India, this fact gets further ratified that two operators control about 98% of the LIT Bandwidth Capacity and having equal market share (49% Bharti/ TCL respectively). Hence these are "Dominant /Significant Market Powers" to influence the International bandwidth pricing.

C. Global trends in CLS Regulation:

D. Whether CLS is an Essential/ Bottleneck facility as per its definition:

E. Does the regulation only benefit the foreign carriers who are partners in consortium Cable?

M/s Bharti has given following arguments in case of consortium cable as to why these should not be regulated:

One example which exemplifies the non-negotiating power of Indian OCLS is the case of SMW4 and IMEWE cable where Bharti and TCL are the only two consortium members whose rates for Cable Landing Stations in India are being published and offered transparently. The other members of the consortium who are also the CLS owners in Europe are charging different backhaul rates for capacities landing on SMW4 and IMEWE (backhauls for IMEWE are double of those for SMW4 on identical destinations and routes). Thus, it is important that the Owner of CLS should not be regulated in India when the CLS charges in other countries are not being regulated. Any regulation of CLS charges in isolation, only in India, seriously impact the negotiating power of the Indian operators with the CLS owners in other countries. We would also like to bring to the notice of Authority that the Consortium itself has a governing council and the issues arising within the Consortium can be dealt with in the framework of the consortium itself. The ITEs on the other side have sufficient options available to them for end to end international bandwidth. Hence, the need for regulating the Access Facilitation charges and Co-location charges at CLS does not exist.

CWW's Counter Comments

The contention of M/s Bharti that the other members of the consortium who are also the CLS owners in Europe are charging different backhaul rates for capacities landing on SMW4 and IMEWE (backhauls for IMEWE are double of those for SMW4 on identical destinations and routes) has no relevance in India as the things are governed by the prevailing law of the land in that country. If they are aggrieved party then their local entity should approach the local telecom regulatory authority. The arguments given by Bhati are contradicting themselves as they have given examples of these markets to de-regulate the Cable landing station segment in India.

Secondly, besides business, we are also concerned about aims and objectives of bridging the urban rural digital divide which has virtually become impossible due to very high AFC / CLC. The concern is also of our contribution in achieving national objectives in which the high prevailing prices in India which are as much as 251 times as compared with other jurisdictions is a big bottleneck.

Thirdly, Bharti in its contention about the existence of governing council has stated that issues arising within the consortium can be dealt within its framework is out of context. The issue is that of high prevailing AFC/CLC in India that are required to be brought down to a level prevailing in other jurisdiction and for this purpose only TRAI has started the consultation Process. It is submitted that under the consortium model, there is general provisions that if in any country where the international cable is landing and there are local regulations by the government/ regulator to govern the charges that should be prevail on the decision of council. It is also important to mentioned that when ever the members of consortia have asked the Bharti to align the charges with international market, Bharti has given the reply that CLS access charges can not be negotiated or reduced as these charges have been decided by the regulator (TRAI) .

In this connection it is submitted that M/s Bharti is trying to side track the issues of high AFC / CLC, the Consultation Paper is dealing with. Access facilities at Cable Landing Station have become a bottleneck due to prevailing exorbitant access and co-location charges due to two SMPs viz. M/s Tata Communications Ltd and M/s Bharti Airtel Limited who are having more than 98% market share.

It is also submitted that As per TRAI's published data, 85% India's LIT capacity are landing on those cable landing stations 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.

Since only two operators control majority of the CLSs/Submarine Cables/Bandwidth Capacity, it appears to be a clear case of "Vertical Price Squeeze" as both these players are providers of Internet, Broadband and Wireless/Wire line data services and control the International Bandwidth which is an essential input to the retail product pricing. This price squeeze has an impact similar to a refusal to supply an essential facility. This can turn out to be a major issue in proliferation of internet and broadband services as operators, not having access or access at higher price, can be out priced by the operators having cheaper access to these resources which can distort competition in the market and disturb the level playing field.

In view of above, the AFC / CLC need to be regulated till the time they come at a level comparable with similarly placed telecom market in other jurisdictions. In case it is deregulated, the government's objective to bridge the gap of digital divide between rural and urban India would never be achieved keeping in view the monopolistic practices in pricing of AFC / CLC adopted by the OCLSs.

F. CLS is not a matter of Interconnection:

CWW's Counter Comments

We are surprised to learn from M/s Bharti that access facilitation at CLS is not a matter of Interconnection. M/s Bharti, after the notification of "International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 (5 of 2007) and in compliance of the regulation 3(1)(d) had submitted draft Cable Landing Station – Reference

Interconnect Offer) to TRAI for approval of the Access Facilitation and Collocation charges in part II to the Schedule of the Regulations. The charges proposed in the Reference **Interconnect** Offer (RIO) were approved by TRAI after examination and the charges so approved by TRAI are in force till date. That is to say that M/s Bharti accepted that it was an interconnect offer which was accepted by TRAI and the M/s Bharti is also complying with the same scrupulously. For continuously 5 years M/s Bharti has been enjoying and charging the AFC / CLC from the access seeker under the **interconnect agreement based on the reference interconnect offer of M/S Bharti** approved by TRAI and now all of a sudden, when TRAI has decided to review these charges and bring them down to the international level through its transparent consultation process, M/s Bharti has realized and reached to the conclusion that it is not a matter of interconnection.

Summing up-

- We do not agree with Bharti's comments that Cable landing station (CLS) segment should be left on market forces. We are also not in agreement with various rationales given by Bharti for de-regulation of charges for access facilities at cable landing stations in India due to the reasons indicated in the main responses and above detailed counter comments.
- The present cable landing station segment is highly concentrated and Bharti & TCL together have 98% market share and these are dominant operators in this segment and controlling essential/ bottleneck facility to access the international bandwidth under consortium system in India. Therefore, TRAI should continue to regulate the AFC/CLC at CLS.
- As per TRAI's published data , 85% India's LIT capacity are landing on those cable landing stations 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.

- 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 not only necessary for TRAI to continue with the regulatory framework, but also review these charges 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.

Section III

(Specific Counter Comments to Tata's responses)

Regarding “**Identification of network elements**” following are the stand of TCL on the points made in the consultation Paper:

DXC is an integral part of TCL architectural design. DXC introduction facilitates improved operation and maintenance of access capacity by-

- a. The distances to be covered between different floors of two equipment (which are dependent on SFPs) or different building become redundant when another DXC is near the Customer hand-off.

CWW's Counter Comments

We believe that the DXC is not necessary here, because, as a bear minimum, one can directly access the cable SLTE from 2 kilometers away, and in some cases this is as much as 20km. As per industry practices in this segment, certainly it is not necessary in the same building, or compound of buildings. Further ,we would like to suggest that TRAI should considered the most efficient network architecture for determination of access charges for facilities at cable landing stations .
