# Counter Comments of AT&T on the Consultation Paper on Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations

AT&T Global Network Services India Private Limited ("AT&T") respectfully submits these counter comments on the TRAI Consultation Paper on Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations, issued on October 19, 2012 (the "Consultation Paper").

The comments filed on the Consultation Paper filed on November 6, 2012 show strong support for the Authority's efforts to reduce the access charges at India's cable landing stations (CLS) to more reasonable and cost-based levels. The more than twenty parties filing comments include international long distance operators, service providers, associations and four owners of cable landing stations (OCLS). Except for the two largest OCLS, TCL and Bharti Airtel, none of these parties seek to justify the present level of these charges, and virtually all parties other than the two largest OCLS support the Authority's proposed methodology to reduce these charges.[1] As stated by Idea Cellular (p. 1), the proposed methodology and cost data are "aligned with the global market realities" and "appropriate for the purpose of calculating fair AFC and co-location charges." In contrast, the two largest OCLS fail to show any impropriety in the Authority's decision to establish these charges or that the Authority's methodology is improperly designed or implemented. The comments therefore strongly endorse this important regulatory initiative by the Authority to reduce the high access facilitation charges (AFC) that artificially inflate international bandwidth prices in India.

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[1] *See* AT&T at 1; ACTO at I; ISPAI at 1; Equant at 1; Telstra at 3; BSNL at 1-2; BT at 1; C&W at 8; IBSL at 1-2; Pacnet at 1; Citycom at 1; SpectraISP at 1; Verizon at 1-6; APCC at 2; EBG at 1; Idea Cellular at 1; Powergrid at 1.

Most parties filing comments express concern, however, that the Authority's proposed methodology should be amended to ensure that the AFC charges do not include costs for unnecessary Digital Cross Connection (DXC) and other equipment. This equipment is not required as a technical matter for most access arrangements, but accounts for substantial shares of the access costs identified in the Consultation Paper. AT&T and other commenters also show that the OPEX charges proposed by the Consultation Paper far exceed industry norms. In accordance with its regulation requiring that the AFC shall be "determined on the basis of the cost of the network elements involved in the provision of access," the Authority should amend its proposed methodology to exclude all such unnecessary or inflated costs. (*Access to Essential Facilities at Cable Landing Stations Regulations, 2007* (5 of 2007), Chapter II, Paragraph 10(1)(b).).

**1. The Comments Confirm that the Authority's Methodology Should Exclude the Costs of DXCs and Other Unnecessary Equipment**

As AT&T describes (pp. 4-5), much of the international submarine cable capacity landing in India uses Direct Wavelength Access (DWA) that is specifically designed to access the Submarine Line Terminating Equipment (SLTE) directly without passing the signal through any Digital Cross Connect (DXC) equipment at the cable station in order to ensure that mesh network nodes function efficiently. This capacity requires no use of any DXC equipment at the cable station or any alternate co-location site, or of any optical distribution frame (ODF) equipment associated with the DXC. Accordingly, consistent with the Authority's regulation requiring that the AFC is based on the cost of the network elements used to provide cable station access services, the costs of this equipment should not be included in the AFC for all access

arrangements. Instead, only those limited access arrangements that require the use of this equipment should be subject to these charges.[2]

Many commenters similarly urge that the cost of DXC equipment should be excluded from the Authority's cost model.[3] Reliance, for example, emphasizes (p. 4) that in most instances, and especially for 10G circuits and above, the SLTE "can be directly connected to the terrestrial access POP equipment at the CLS via simple optical fiber cross-connects." Therefore, the "DXC is absolutely redundant." Verizon similarly states (pp. 3-4) that the network elements used for the Authority's proposed cost model are "inconsistent with actual practice," that access requires only a "passive fiber connection" rather than a DXC, and that "Verizon does not include any type of DXC network element in any Verizon cable station" and is "not aware of any other operator providing DXC network element unless specifically requested to do so by the cable capacity owner."

AT&T operates sixteen cable stations in the United States and its territories, including in Puerto Rico, the U.S. Virgin Islands and Guam, owns capacity on cable systems that land in all regions of the world, and concurs with these statements. AT&T is aware of no required use of DXC equipment where it is not required to provide access at sub-10G levels.

The two largest OCLS, Bharti Airtel and TCL, fail to justify the inclusion of charges for the use of DXC equipment in the AFC. Neither Bharti nor TCL offers any evidence that this equipment is required for 10G circuits and above, while Bharti's claim (p. 12) that it is used for "controlling and monitoring" purposes also fails to withstand scrutiny. On most modern consortium cable systems, the controlling and monitoring function is exercised by the

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[2] *See* AT&T at 5.

[3] *See* ISPAI at 1; C&W at 8; Citycom at 1; Spectra at 1; Equant at 1; Reliance at 3; Verizon at 3; ACTO at 4; Vodafone at 2-3; NGN Forum at 1.

consortium party that operates the Network Operations Center (NOC) through consortium-funded equipment such as Submarine Line Termination Equipment (SLTE) and SDH System Interface Equipment (SIE), and *not* through DXC or other equipment funded by cable station access charges. In fact, Bharti itself is the consortium party that operates the NOC, and therefore exercises the controlling and monitoring function, for the entire Europe-India Gateway (EIG) consortium submarine cable linking India with various European countries. Importantly, Bharti exercises this controlling and monitoring function at EIG cable landing stations outside India without making any use of DXC equipment funded through cable station access charges. There is therefore no need to require the use of DXC equipment for this purpose in India.

The Authority therefore should establish different fees based on the use or non-use of DXC equipment, as AT&T has proposed (p. 10). For the same reasons, as noted by AT&T (p. 6), and Equant (p. 5), the Authority should not automatically include the cost of Dense Wave Division Multiplexing (DWDM) equipment in the AFC for all alternate co-location sites, as this equipment is not required where the alternate site is 2 kilometers or less from the CLS.

Further, as noted by EBG (p. 1), since access costs are dependent on links rather than units of capacity, the Authority should establish access costs on a per link basis rather than per unit of capacity. However, as shown above, the costs of DXC equipment should be included only for links for capacity levels below those supported directly by the consortium-provided and funded SLTE or SIE equipment, for example at STM-1 or STM-4 levels when the SIE is not able to support these interface rates.

**2. The Methodology Should be Amended In Other Ways to Ensure That Charges Are Established at Reasonable and Cost-Based Levels**

Further refinements in the Authority's proposed methodology also should be adopted to comply with the Authority's regulation requiring that the AFC is based on the cost of the network elements used to provide cable station access services.

As AT&T describes (p. 8), the proposal to set operations and maintenance (OPEX) costs at the level of 30 percent of the capital costs of the network elements used to provide access facilitation (CAPEX) does not reflect industry norms for operations and maintenance costs, which are around 7 percent of the capital value for active equipment while no fees are generally charged for passive equipment. This percentage amount therefore should be reduced to 7 percent of CAPEX for complex active equipment and OPEX charges for passive equipment should not exceed 2 percent of the CAPEX for this equipment. Other parties likewise emphasize that there is no justification for the high level of these proposed charges and request significant reductions.[4] Bharti (p. 13) and TCL (p. 3), however, put forward no specific evidence to support their claims that the Authority's approach is misplaced.

As AT&T has described (p. 4), the Authority's proposed capacity utilization factor of 70% is conservative and provides more than adequate buffer capacity to meet unexpected near term increases in demand. EBG (p. 2) confirms that this utilization factor is consistent with industry practice. The Authority's use of this capacity utilization factor also belies the claim by Bharti (p. 12) that the Authority's methodology improperly uses "the entire unutilized capacity

[4] *See* IBSL at 2; Reliance at 5; Vodafone at 3. *See also*, ACTO at 11& C&W at 13 (the O&M charge is "not in line with industry practice" and should be reduced); EBG at 2 (the O&M charge "may not be more than 10% of the equipment allocated capital costs (CAPEX)").

for the purpose of cost estimation." But as noted by C&W (p. 13), this capacity utilization factor is not relevant to charges for co-location and should not be used in calculating those charges.

Additionally, as proposed by BSNL (p. 2), to promote competition and lower charges, the AFC charges established by the Authority should be the maximum charges to be applied and the OCLS should always be allowed to charge below this level.

### 3. The Two Largest Incumbent OCLS Fail to Show That the Proposed Charges Should Not be Applied

The only opposition to the Authority's proposed charges is expressed by the two largest OCLS, TCL and Bharti Airtel, which nonetheless fail to show any impropriety in the Authority's decision to establish these charges or in the design or implementation of the Authority's methodology. Far from being "very competitive" as Bharti contends (p. 4), the CLS market in India maintains unreasonably high AFC charges that are as much as *five hundred times* higher than comparable charges elsewhere in the world.[5] As the Authority states in this Consultation Paper (¶ 9), the "majority of the stakeholders" – including two smaller OCLS – "were of the view that there is an urgent need to reduce the AFC and CLS to reasonable and comparable level in order to ensure continued growth in India's international telecommunications market." In response to this urgent need, the Authority has properly decided to establish these charges itself.[6]

There is also no basis to Bharti's claim (pp. 6-7) that the Authority's regulation of these charges will disadvantage Indian operators in negotiating similar charges elsewhere in the world.

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[5] See TRAI Consultation Paper No. 08/2012, dated March 22, 2012, Tables 3.1, 3.2 & 3.3; AT&T Comments on Consultation Paper No. 08/2012, filed April 19, 2012, at 10; AT&T Counter Comments on Consultation Paper No. 08/2012, filed April 26, 2012, at 4.

[6] *See Notification, International Telecommunication Access to Essential Facilities at Cable Landing Stations*, (Amendment) Regulations, 2012 (No. 21 of 2012), October 19, 2012. There is accordingly no basis to the claim by Bharti (p. 7) that the TRAI cannot regulate these charges.

As shown by Tables 3.2 and 3.3 of the Consultation Paper No. 08/2012, foreign country charges for cable landing station access are a fraction of those charged in India, and significant discrepancies also exist between the backhaul prices that are charged in India and Europe.[7] Those much lower foreign cable landing station access and backhaul charges are available to Bharti, TCL and other Indian operators on the same basis that they are available to everyone else.[8]

The efforts by Bharti and TCL to challenge the Authority's methodology and to show that DXC charges are properly included in the AFC are equally misplaced, as described above. In addition, Bharti repeatedly claims (pp. 11, 12 & 13) that the Authority should include items in determining AFC and co-location charges such as CAPEX elements like "Land & Building, various equipment items such as DXC and ODF, various "Utility CAPEX" items, "Access Network: Duct, Fiber etc", and various OPEX items related to the operation of the CLS. Bharti once again fails to acknowledge, however, that all these items related to the building and operation of a consortium cable station are in fact paid for by the consortium.[9] There is therefore no basis for any OCLS to obtain a double recovery of the charges for these items through the AFC.

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[7] For example, backhaul rates for SMW-4 capacity landed in Chennai and Mumbai, India are approximately 400 percent higher than backhaul rates for SMW-4 capacity landed in Marseille, France, and backhaul prices for EIG capacity landed in India and France show similar differences.

[8] There also is no substance to the suggestion by Bharti (p. 7) that regulation of cable landing station access charges is unnecessary because this issue may be addressed through consortium frameworks or governing councils. Although some consortium agreements require cost-based access to cable landing stations, those requirements generally do not apply where higher rates are required by local law or regulation, as in India.

[9] *See, e.g.*, ACTO Comments on Consultation Paper No. 08/2012, filed April 19, 2012, at 19-25.

A further concern is that Bharti and TCL have previously submitted CLS access cost data that was not included in the their public comments on Consultation Paper No. 08/12, and that is known to other parties in this proceeding only from the information provided in the Consultation Paper.[10] TCL, for example, refers (p. 1) to a "comprehensive presentation," a letter dated August 24, 2012, and computations submitted to the Authority in September 2012, none of which has been available to other parties. As AT&T has previously noted (p. 7), all parties should have access to the cost data submitted by the OCLS and the opportunity to submit comments on this evidence for consideration by the Authority.

TCL now asks (p. 2) the Authority to provide "clarifications" on various matters that are "not in line with discussions held with the TRAI in the month of August & September 2012." Any such clarifications should be provided in the form of a publicly available written decision so that other parties may have full knowledge of, and the opportunity to comment on, the Authority's views on these important matters.

**In conclusion:**

- Except for the two largest OCLS, all parties support the Authority's efforts to establish more reasonable and cost-based CLS access charges and support many aspects of the Authority's proposed approach. The two largest OCLS fail to show that the Authority's methodology results in the under-recovery of costs.
- The Authority's proposed methodology should be amended to ensure that the AFC charges do not require the inclusion of costs for Digital Cross Connection (DXC) and other equipment that is not required for most access arrangements.

[10] *See* AT&T Comments at 7.

- The proposed OPEX charges should be reduced to 7 percent of CAPEX for complex active equipment and 2 percent of CAPEX for passive equipment.
- AT&T respectfully requests the Authority to establish revised rates based on its proposed methodology with the above revisions and the other changes proposed in AT&T's comments and counter comments, to be applied to all access arrangements at India's cable stations from the effective date of its final order.

AT&T would be pleased to answer any questions concerning these comments.

Respectfully submitted,

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14 November, 2012