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AGNSI/TRAI/I&FN/CLS-CP-CC/2012-13
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Shri Arvind Kumar
Advisor (I&FN)
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg,
<u>New Delhi – 110 002</u>

Subject: **Filing of Counter Comments - TRAI Consultation Paper No. 08/2012 dated 22nd March 2012 on "Access Facilitation Charges and Co-location Charges at Cable Landing Stations"**

Ref.: TRAI letter No. 416-3/2010-I&FN dated April 4, 2012
TRAI letter No. 416-3/2010-I&FN dated June 22, 2011
TRAI letter No. 416-3/2010-I&FN dated July 8, 2011
Our response / letter No. AGNSI/CLS/2011-12 dated August 16, 2011

Respected Sir,

This is with reference to the captioned consultation paper (No. 08/2012) released by Hon'ble Authority and our detailed response submitted vide letter No. AGNSI/TRAI/I&FN/CLS-CP/2012-13 dated 19th April 2012.

We are thankful to the Hon'ble Authority for the opportunity provided to submit counter comments on the responses received by stakeholders on the captioned consultation paper.

AT&T Global Network Services India Private Limited ("AT&T") is pleased to submit these counter comments on the TRAI Consultation Paper on Access Facilitation Charges and Co-location Charges at Cable Landing Stations, issued on March 22, 2012 (the "Consultation Paper") enclosed herewith.

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We trust that you will find our counter comments in order and will duly consider the same (including our response filed on 19th April 2012) while finalizing and determining the AFC and CLC charges.

Thanking you,

Respectfully submitted,
for **AT&T Global Network Services India Private Limited**

Naveen Tandon

Naveen Tandon
Authorised Signatory

Encl.: As above

Counter Comments of AT&T: TRAI Consultation Paper (No. 08/2012) on Access Facilitation Charges and Co-location Charges at Cable Landing Stations, dated March 22, 2012

AT&T Global Network Services India Private Limited ("AT&T") respectfully submits these counter comments on the TRAI Consultation Paper on Access Facilitation Charges and Co-location Charges at Cable Landing Stations, issued on March 22, 2012 (the "Consultation Paper").

AT&T's comments filed in this proceeding on April 19, 2012 note that while the TRAI has made important progress in reducing access barriers to submarine Cable Landing Stations (CLS) in recent years, CLS access charges continue to be unreasonably high and result in artificially inflated prices for international services provided by ILDOs to their customers in India. AT&T urged the TRAI to address these important concerns by requiring access facilitation charges (AFC), operations and maintenance charges (O&M) and co-location charges (CLC) to be established by the Authority on the basis of long-run incremental cost (LRIC) methodology under open and transparent procedures allowing all stakeholders to review and comment on all submissions and supporting evidence. The comments filed by other parties in the proceeding, which include owners of cable landing stations as well as service providers and other interested parties, provide strong support for these recommendations.

In particular, Bharti and Tata, the two largest OCLS, provide no cost support or justification for the very high level of the current AFC, O&M and CLC and fail to show that these are not reasonably compared to the much lower charges in other countries, as shown by Tables 3.1 and 3.2 of the Consultation Paper. Moreover, the two smaller OCLS, BSNL and Reliance agree with virtually all other parties commenting in this proceeding that these charges are much too high and must be reduced. To address these concerns, as urged by most parties, including BSNL and Reliance, the AFC, CLC and O&M charges should be established by the TRAI, rather than being left for mutual negotiation. A number of parties also emphasize the importance of the TRAI adopting transparent procedures that allow all interested parties to review proposed charges and supporting information and to submit comments for consideration by the TRAI in making its determination.

By adopting these recommended approaches and reducing these charges to reasonable and cost-based levels, the TRAI will benefit all users of international bandwidth and encourage the more rapid growth of the information society in India.

1. The Comments Confirm that the AFC, O&M and CLC Are Far Too High and Must be Reduced

As shown by the comparative pricing data set forth in the Consultation Paper, India's cable landing station access charges are many times higher than corresponding charges elsewhere in the world – as much as *five hundred times* higher in some instances.[1] Virtually all parties, including two owners of cable landing stations, agree that the CLS access charges are far too high and must be reduced.[2] Reliance, which owns and operates two CLS in India, states (at page 4) that India's fees are "astronomically high." BSNL, which owns and operates one CLS, states (at page 3) that "the AFC are very high and form a large % of the bandwidth price."

The efforts by two OCLS, Bharti and Tata, to rebut these conclusions are notably unsuccessful. Bharti contends (at page 8) that the charges for other countries listed in Table 3.2 of the Consultation Paper are "not relevant" as "standalone co-location facilities are not available" in those other countries. But this operator puts forward no alternative comparison with other countries' charges to support any different conclusion.[3]

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[1] *See* AT&T at 10.

[2] *See* ACTO at 4;APCC at 2; AT&T at 2-3; BSNL at 2-4; C&W at 4-8; IBSL at 1-2; Idea at 1; Reliance at 2-4; Spectranet at 3; Vodafone at 1-2.

[3] Additional comparisons further underscore the unreasonably high level of Bharti's charges. Bharti levies annual AFC and O&M charges of US$687,200 for 10 Gbps. of bandwidth on the EIG cable at the Mumbai cable landing

Tata similarly contends (at page 18) that its annual CLS access and O&M charges at the LVSB Mumbai cable landing station for 10 Gbps. of bandwidth on the SMW-4 cable of *US$628,100* are not properly compared to the charges at the Tuas, Singapore cable landing station for 10 Gbps. of bandwidth on the SMW-4 cable of *less than US$1210*.[4] According to Tata, this comparison fails to recognize that connectivity at Mumbai requires the use of SDH/DWDM multiplexing equipment and involves linking with a "meet me room" at Fort Mumbai. However, Tata fails to show how the use of this equipment and a longer circuit would account for an annual price difference of US$626,890, and thus provides no justification for its present charges. To be given any decisional weight, Tata's contention would need to be supported with detailed cost data for the network elements they cite. Absent such facts, the argument should be given no weight.

The comments of the two smaller OCLS also underscore the wide gulf between India's current cable landing station access charges and similar charges in other countries. Reliance states that India's charges "should be in line with the international charges and *not more than 2-3% of the prevailing charges*."[5] BSNL similarly notes (at page 6) that these charges "are many times higher than what they are in other countries," despite all relevant equipment being available globally at similar prices, and that the TRAI therefore should "fix cost based tariffs in line with international trends." BSNL also presents a cost model in Annex II of its comments showing annual access facilitation costs per STM-1 on an IRU basis of INR 13,102 (approximately US$16,000 per 10 Gbps.) and annual O&M charges for the same capacity of INR 5523 (approximately US$7070 per 10 Gbps).[6] However, Table 3.1 of the Consultation

station, where the physical connection requires an intra-building cross-connect. *See* Consultation Paper, Table 3.1. At two different cable landing stations in Hong Kong, AT&T pays total annual charges of under US$5000 to connect 10 Gbps. of bandwidth within the same building.

[4] *See* Consultation Paper, Tables 3.1 & 3.2.

[5] Reliance at 4 (emphasis added).

[6] BSNL's model incorrectly assumes that all capacity uses digital cross-connect (DXC) equipment and thus allocates DXC costs to all capacity. As noted in AT&T's comments (at pages 22-23) direct access capacity does not use DXC equipment and should not bear these costs. The elimination of these costs reduces the access facilitation costs

Paper shows BSNL's current cable landing station charges (lease and O&M) as being US$256,900 per 10Gbps. – which exceeds the AFC and O&M costs listed in BSNL's cost model by over 1000 per cent. Thus, these two cable landing station operators indicate that their current charges are more than ten times too high. In itself, this is compelling proof of the need to reduce the charges significantly.

Vodafone, however, provides evidence that the difference between the current AFC and CLC and cost-based levels is much greater than these OCLS acknowledge. Vodafone shows, based on the forward-looking cost model submitted with its comments, that annual cost-based cable access charges are US$911 per link for AFC and US$6001 per co-location cabinet for CLC.

2. Reductions in These Charges Are Necessary to Provide Affordable Internet Bandwidth

The harm caused by India's excessively high cable access charges is amply demonstrated by the comments. With the decline of submarine bandwidth costs due to new technology and competition, CLS access facilitation charges now account of approximately 50 percent of international private line prices in India.[7] Further, as noted by Reliance (at pages 2-3), access facilitation charges comprise more than 50 percent of Layer 1 Internet service prices in India, and are a significant contributor to the much higher Internet bandwidth costs in India than in U.S. and EU markets. The result is the "slower growth of internet/broadband penetration and Internet based service industry in India."[8] For example, current users in India "find it more cost effective to host content in other major hubs like USA/EU."[9] As noted by the Consultation Paper (Section 2.24.), remedying this situation is essential to India's economic

shown by the BSNL model from approximately US$16,000 per 10 Gbps. to approximately US$4300 per 10 Gbps. A comparable reduction would also be in order for the O&M component of a direct access facility.

[7] *See, e.g.*, AT&T at 4.

[8] Reliance at 2.

[9] *Id.* at 3. *See also*, Vodafone at 1 (warning of "an adverse impact on the offshore business process sourcing industry").

development, with "affordable international bandwidth" being "an important driver for bridging the digital divide in India."

These far-reaching adverse effects in India contradict the assertions by Bharti (at page 6) that regulation of CLS access charges merely benefits foreign carriers that are partners in consortium cables landing in India. Reducing these charges to the reasonable levels paid in the rest of the world will benefit all users of international bandwidth in India. Equally misplaced is the claim by Bharti (*id.*) that India's regulation of CLS access charges disadvantages Bharti and Tata in negotiating cable landing station access or backhaul arrangements in Europe or elsewhere. As shown by Tables 3.2 and 3.3 of the Consultation Paper, 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.

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. Those much lower foreign cable landing station access and backhaul charges are available to Bharti, Tata and other Indian operators on the same basis that they are available to everyone else.[10]

3. The TRAI Should Establish the AFC, O&M and CLC Using Fully Transparent Procedures Following the Submission of Proposed Charges by the OCLS

The comments show a strong consensus in favor of changing the current method of establishing the AFC and CLC under which the OCLS submits proposed charges which are approved by the TRAI after scrutiny. No party requests the continuation of this approach. Instead, most parties, including two OCLS, support the use of either or both of methods (b) and (c) as

[10] There also is no basis to the suggestion by Bharti (p. 6) 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.

proposed by Question 1 of the Consultation Paper.[11] While these parties differ on whether the AFC and CLS should be proposed in the first instance by the OCLS, all of these parties state that the AFC, CLC and O&M charges should be established by the TRAI, rather than being left for mutual negotiation, and further emphasize that the TRAI's regulatory scrutiny should be significantly increased in order to reduce the current high level of these charges. BSNL requests (at page 4) "a stronger and continuous regulation till such time [as] competition takes care of these charges and the [bandwidth] prices along with AFC and CLC align themselves with the international prices."

There is certainly no basis for the deregulatory approach requested by Bharti (at pages 3-6) and Tata (at pages 2-15), the two largest OCLS, which control the large majority of the CLS capacity in India. These operators seek the removal of all TRAI involvement in establishing these rates and the adoption of method (d) – which would require Indian International Telecommunication Entities (ITEs) seeking access to cable landing stations to negotiate rates with the OCLS. However, these two operators fail to demonstrate the existence of competitive conditions that would prevent cable landing station access prices rising to even higher levels if they were established through negotiation. Contrary to their assertions, the CLS market in India is neither "very competitive" as asserted by Bharti (at page 4) nor in a state of "robust" competition as claimed by Tata (at page 13).

As emphasized by many other parties in this proceeding, including the two smaller OCLS, the CLS market in India maintains some of the *least* competitive cable landing station access prices in the world. It is also noteworthy that cable landing station access prices in India have remained at the same high and non-competitive levels since 2007, notwithstanding the increase in the number of cable landing stations from nine when the 2007 regulation was adopted to twelve today, and the very significant decrease in the cost of other components of ILD service

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[11] *See* ACTO at 14-15(supporting a combination of methods a, b, and c); APCC at 4; AT&T at 6-9; BSNL at 3-4; C&W at 11 (supporting a combination of methods a, b, and c) ; IBSL at 3; Idea at 1-2; Reliance at 5; Verizon at 1; Vodafone at 5.

(such as submarine bandwidth) in this period. Indeed, Vodafone notes (at page 3) that new proposed CLS access charges by Bharti would *double* the existing high charges.

In these circumstances, increased regulation by the TRAI is required, as requested by most parties in this proceeding, including the two smaller OCLS. Until cable landing station access prices in India are reduced to, and maintained at, reasonable and cost-based levels comparable to those in competitive countries, the TRAI must play a central role in determining these rates to allow users to have access to the low-priced international connectivity that is essential for India's future economic development and growth.

A number of parties also emphasize the importance of the TRAI adopting transparent procedures that allow all interested parties to review proposed CLC, O&M charges, AFC and supporting information and to submit comments for consideration by the TRAI in making its determination.[12] As recommended by AT&T (at pages 6-7) and ACTO (at pages 11-13), the TRAI should require each OCLS to submit its proposed AFC, O&M and CLC charges to the TRAI, together with information demonstrating that the proposed charges are determined on the basis of the methodology established by the TRAI (which should be LRIC, as described below).

Other stakeholders should be allowed to review and comment on the submission, and the TRAI should then determine whether the OCLS-proposed AFC, O&M charges and CLC are in compliance with LRIC, based on all information in the record, including the comments and information provided by the OCLS and other stakeholders. The TRAI should set forth its conclusions and supporting reasoning in a published decision. Additionally, any party to the proceeding should be able to request the TRAI to reconsider its decision as not being supported by the relevant facts or legal principles, and the TRAI should reconsider its decision on the submission of such a request.

Most parties emphasize that the TRAI should apply strict causation principles in determining cost-based AFC, O&M charges and CLC, and consider only the long-run incremental costs of

[12] *See* ACTO at 11-14; APCC at 4; AT&T at 5; C&W at 11; Idea at 1-2. *See also*, Spectranet at 1 (emphasizing the need for transparency).

providing interconnection to non-OCLSs.[13] In this regard, as noted by AT&T (at page 13), the relevant direct network cost elements of access facilitation are readily identifiable and comprise the cost of basic cabling and (potentially) equipment with the labor necessary for installation. However, care should be taken that the OCLS does not recover costs through the AFC, CLC and O&M charges that are already fully paid under consortium cable arrangements, or that are not incurred by the relevant cable capacity access arrangement.[14]

For example, Annexes III through V indicate that charges currently are being levied for the use of optical distribution frame (ODF) equipment associated with the submarine cable termination equipment that is already paid for by consortia owners.[15] Also, there is no basis for imposing charges reflecting the recovery of costs for the use of digital cross-connect (DXC) equipment on direct access capacity that does not use such DXC equipment.[16]

Most parties support the use of LRIC methodology, and Vodafone submits a cost model based on this approach.[17] Unlike the fully allocated cost approach advocated by two parties, LRIC is generally preferred by most regulators as more reflecting the prices that would prevail in a competitive marketplace. As recommended by AT&T (at page 23), the TRAI should require the OCLS to provide a cost model for AFC, O&M charges and CLC based on the LRIC methodology and should also require the OCLS to provide all inputs to the model and other supporting information. The TRAI should make this information available for comment by other

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[13] *See* ACTO at 19-29; AT&T at 13; BSNL at 5-6; C&W at 14-17; IBSL at 4-5; Verizon at 3; Vodafone at 4.

[14] The concerns regarding the unjustified over-recoveries that result from failing to account for costs that are reimbursed through consortium arrangements applies in equal measure to the O&M charges, which account for approximately half of the total cable landing station access charges, although little if any maintenance is required for the cabling and equipment used for cable landing station access. The TRAI therefore should undertake careful analysis of proposed O&M charges in establishing cost-based rates to ensure that these are fully warranted and in compliance with cost causation and LRIC principles.

[15] *See* AT&T at 15; ACTO at 27.

[16] *See* ACTO at 26; AT&T at 14; Vodafone at 15.

[17] *See* ACTO at 32; APCC at 5; AT&T at 5; C&W at 19; IBSL at 6; Idea at 3; Spectranet at 2; Verizon at 4; Vodafone at 11 & Attachment.

stakeholders and should consider any comments submitted in its decision-making concerning the model.

Most parties, including two OCLS, also make clear that the AFC, O&M charges and CLC should not be dependent on capacity, because costs are not incurred on this basis.[18] As stated by Reliance (at page 9), "[t]he cost for accessing bandwidth is not linear to the capacity." Indeed, BSNL (at page 10) describes the current capacity-based charges as "ridiculous," and states that the "TRAI should not allow OCLS to levy AFC on [a] capacity dependent basis." The current capacity-based charges therefore should be replaced by a link-based approach with additional non-linear charges for any digital cross-connect (DXC) equipment that is required for non-direct access capacity.

Significantly, Bharti and Tata put forward no evidence that costs increase on a linear basis with higher capacity to support their assertions that charges should be "linearly proportionate" to activated capacity.[19] Further, contrary to the claim by Bharti (at page 9), charges that are independent of capacity do not "subsidize" larger capacity operators at the expense of smaller capacity operators. Where larger capacity does not result in any higher costs, larger capacity operators do not incur any higher costs than low capacity operators and should not pay higher access rates. Any different approach merely results in a huge and unjustified over-recovery by the OCLS.

On other issues raised by the Consultation Paper, virtually all commenting parties support the application of the procedures for establishing cost-based charges to all cable landing stations in India,[20] and many parties ask that these charges be reviewed every two years or more frequently

[18] *See* ACTO at 34-36; AT&T at 22-23; APCC at 5-6; BSNL at 10-11; C&W at 21-22; IBSL at 6-7; Idea at 3-4; Reliance at 8-9; Spectranet at 2; Verizon at 4-5; Vodafone at 12-13;

[19] *See* Bharti at 9; Tata at 21.

[20] *See, e.g.*, APCC at 6; AT&T at 23; ACTO at 36; BSNL at 11; C&W at 22-23; Idea at 4; Reliance at 10; Spectranet at 3.

to ensure the continuing accuracy of the facts and assumptions relied upon in establishing these rates.[21]

In conclusion:

- There is wide agreement, including by two OCLS, that the current cable landing station access charges are excessively high and must be reduced to the levels paid in other competitive countries in order to provide the low-priced international connectivity that is essential for India's future economic development.
- There is also wide agreement, including by two OCLS, that these charges should be determined by the TRAI, rather than being left for mutual negotiation, and that increased regulation is necessary to reduce the charges to reasonable and cost-based levels. In particular, there is no justification – or support – for the deregulatory approach requested by Bharti and Tata, which would likely result in these charges increasing to even higher levels.
- Most parties support the use of LRIC methodology, which is generally preferred by most regulators, and the replacement of the current capacity-based charges, which fail to reflect costs, with a link-based approach. There is also wide support for the use of strict cost causation principles to exclude costs that are reimbursed through consortium arrangements, and transparent procedures to allow other stakeholders to review all proposed charges and supporting data and to submit comments for consideration by the TRAI in its determinations.

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

Respectfully submitted,

Naveen Tandon
Authorised Signatory

[21] *See* AT&T at 17-18; ACTO at 30-32; C&W at 18; IBSL at 5-6; Idea at 3; Verizon at 4.