Cable&Wireless Worldwide

NO.701-1/2012/CW/TRAI

Dated 26th April, 2012

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New Delhi – 110 002

Subject: Counter Comments on some of the views of the stakeholders on TRAI Consultation Paper (No 8/2012) on Access Facilitation Charges and Co-location Charges at Cable Landing Station.

Dear Sir,

This is with reference to the TRAI Consultation Paper on "Access Facilitation Charges and Co-location Charges at Cable Landing Station dated 22nd March, 2012,

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

We hope that our submissions/ counter comments will merit your kind consideration and support.

With kind regards,

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Annexure “A”

Section I
(General Counter comments)

We do not agree with M/s Bharti Airtel Ltd (Bharti) & M/s Tata communications Ltd (TCL)’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 these two companies for de-regulation of charges for access facilities at cable landing stations in India due to the following reasons;

1. These 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).

2. 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.

3. 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 50%~60% 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.

4. 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 50~60% 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 95%. It is also submitted that CLS access charges may be aligned with the charges applicable in the competitive telecom market in other jurisdictions.

5. 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.

6. 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, 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.

7. 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 and OPEX) of construction and management of cable landing stations are being reimbursed by the consortia. Therefore, the question of investment by foreign operators in that terrestrial does not arise as it will not be cost effective.

8. The arguments of Bharti and TCL 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.

9. 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 consultation paper that they have made alone investment for these cable system in India .

10. We are unable to appreciate & accept the responses of TCL 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. TCL 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 50~60% 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.

Section II

(Specific Counter Comments)

Q.1. M/s Bharti /TCL have elaborated its reply to Q.1 in various sub paras. The title of the para and comments of CWW thereupon are summarized below.

A. Brief Background:

CWW's Counter Comments – No specific Comments please refer to general comments.

B. Whether CLS is still a Bottleneck Facility in India?

CWW's Counter Comments –

M/s Bharti and M/s TCL are trying to make a non issue an issue and their respective comments are out of context. 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.

The main bottleneck now is that of prevailing exorbitant CLS access charges which are due to concentration of significant market power of around 98% with only two CLS owners viz. M/s TCL and M/s Bharti. The consultation paper is discussing the exorbitant prevailing AFC / CLC at CLS which the access seekers are facing over a period of time.

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 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/TCL 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 in India are also concerned about aims and objective 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 have 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/TCL are 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.

Bharti and TCL have charged very similar, very high RIO rates for the last 5 years, which are much higher than in countries where a free market operates effectively. This demonstrates that a free market in CLS segment is unlikely to lead to effective competition, at least until new operators built competing systems to Europe and Asia.

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 other jurisdiction. 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.

Q.2 M/s Bharti /M/s TCL have stated that the charges for the Access Facilitation (AFC) and Co-Location (CLC) should not be regulated and should be left to the market forces. M/s Bharti has recommended that these charges should be cost based and are derived using Fully Allocated Cost (FAC) principle. M/s TCL has recommended that there should be no guidelines.

CWW's Counter Comments

The prevailing AFC and CLC are very high not only from the standpoint of international pricing for such facilities but also because of the fact that they constitute about 50~60% of the bandwidth charges. As submitted earlier, it is essential that cost based AFC and CLC are fixed by the Authority to promote competition in the international bandwidth market which will enable fast proliferation of the broadband services. The Long Run Incremental Cost (LRIC), being used by the Regulators world over for determining interconnection charges/ whole sale prices, will be the most appropriate method for fixing the cost based AFC and CLC. LRIC methods provide enough compensation for the incumbent to provide the necessary inputs to the entrant, including a fair return on common costs.

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 50~60% 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 95%. It is also submitted that CLS access charges may also be aligned with the charges applicable in the competitive telecom market in other jurisdictions.

Q.3 In reply to Q.3, M/s Bharti has requested the Authority to consider a WACC of at least 20% for the purpose of calculation of RIO charges. M/s TCL has recommended WACC of 23.9%.

CWW's Counter comments

The WACC suggested by Bharti/ TCL is not acceptable for CLS segment due to the following reasons;

1. Cost of equity is very high it is not comparable with industry norms and cost of equity decided by TRAI in past
2. Gearing / Debi-equity ratio is also not efficient , it is not as per industry norms
3. Beta has taken in higher side
4. If these are corrected the WACC should be about 15%.

It is important to mention that since 2002 to till date, TRAI has taken Pre-tax WACC in the range of 12.21%~15%. Therefore proposed WACC of Bhart/TCL is very high.

Q.4 M/s Bharti has highlighted that the AFC/ Cross Connect/ Connection service charges at Other International Cable Landing mentioned by the TRAI in the Table 3.2 of the consultation paper are for those countries where the standalone co-location facilities are not available. Hence, the charges quoted in the consultation paper are not relevant in the present context.

CWW's Counter Comments

Bharti has not indicated any specific relevant information/data and prices available for these same products in other competitive telecom market on other jurisdictions when compared with present/proposed charges Bharti.

Q.5 & 6

CWW's Counter Comments- No specific comments please refer to general comments

Q.7 & 8 M/s Bharti has recommended that the charging should be capacity based and linearly proportionate to the capacity for the sake of simplicity. However, the CLS owner shall be allowed to provide discounts on higher capacities. M/s TCL have also stated that in most of the countries where access facilitation charges are regulated the access facilitation charges are dependent on the capacity being activated. Even in a regulated market like Singapore the access facilitation charges are dependent on the capacity being activated

CWW's Counter Comments:
No specific comments please refer to general comments and detailed reasons have already submitted on 19th April with Authority.

Q.No.9

CWW's Counter Comments: No Specific counter comments

Q.10 The AFC and CLC for CLS should not be regulated and should be left to the market forces. It is therefore recommended that the sub clause (3) of clause 3 may be deleted along with suitable modifications in other clauses in the „International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulation 2007".

CWW's Counter Comments –

In view of above stated facts and the analysis/ facts mentioned in our response dated 19th April 2012 to the consultation paper, the AFC / CLC need to be regulated till the time they come at a level comparable with similarly placed telecom market in other jurisdictions. We believe that in case it is deregulated, on the one hand the government's objective to bridge the gap of digital divide between rural and urban India would never be achieved and on the other hand standalone non integrated operators would not be able to sustain as they will not be able to compete with the Integrated operators having cable landing stations keeping in view the monopolistic practices in pricing of AFC / CLC adopted by the OCLSs.

Summing up-

- We do not agree with Bharti & TCL'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 these two companies 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, present regulations may be continued. Furthermore, they are providing wholesale & Retails services in the same market, therefore there is strong possibility to misuse of dominant positions and further cross subsidization between wholesale and retail services, to stop the effective competition in the international bandwidth segment.

- 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 50%~60% 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 present regulation/ 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.

- Any further delay in the downward revision of CLS access charges would have very serious financial implications on ILDOs and those operators having capacities in these CLSs. The ILDOs are unable to offer the competitive services to end users due to very high CLS access charges, when compared with TCL/ Bharti.
- From the analysis of data and responses of other stakeholders, it appears that CLS access charges are not cost based and are not reflecting the true costs for providing access facilities at cable landing station. It is requested that CLS access charges may be reduced by at least 95% keeping in view the facts indicated in our response to the consultation paper.

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