

**044/TRAI/2012-13/ACTO**

**Date: 14<sup>th</sup> November 2012**

**Shri Arvind Kumar**  
**Advisor (NSL-I)**  
**Telecom Regulatory Authority of India**  
**Mahanagar Door Sanchar Bhawan**  
**Jawahar Lal Nehru Marg,**  
**New Delhi – 110 002**

**Subject: TRAI Consultation Paper no. 14 /2012 on “Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations” dated 19<sup>th</sup> Oct, 2012 – Counter Comments.**

**Ref.:** ACTO’s response / letter No. 043/TRAI/2012-2013/ACTO dated 6<sup>th</sup> November 2012

Respected Sir,

This is with reference to the captioned consultation paper (No. 14/2012) released by Hon’ble Authority and our detailed response submitted vide letter dated 6<sup>th</sup> November 2012.

We are thankful to the Hon’ble Authority for placing the responses in the public domain which will allow stakeholders to provide further comments / counter comments/ analysis on the responses received on the captioned consultation paper.

On behalf of its members, the Association of Competitive Telecom Operators (ACTO) would like to file **counter comments** on the response(s) filed by the two OCLs (Bharti Airtel Limited and Tata Communications Limited).

**In summary, we would like to respectfully submit the following counter comments for consideration of the Hon'ble Authority, these are;**

- We do not agree with M/S Bharti comments that charges in the Cable landing station (CLS) segment should be left to market forces. We are also not in agreement with various rationales given by Bharti that the ILD market is a perfectly competitive market and hence the AFC at CLS need not be regulated by TRAI.
- M/S Bharti has provided international experience of de-regulation. However, they have ignored the basic point that such measures were taken when the charges drastically came down. In fact in some cases even the AFC charges were removed completely. No such steps have been taken by them to reduce the charges.
- The present cable landing station segment is highly concentrated and Bharti & Tata together have a market share more than 95% and these are dominant operators in this segment controlling essential/ bottleneck facility to access the international bandwidth under consortium system in India. Therefore, regulations of this segment (including charges) need to be continued. Furthermore, they are providing wholesale & Retail 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.
- We also do not agree with the claims of M/S TCL to allow the network elements already provided in the cable landing stations for the purpose of determining the Access Facilitation Charges because of the fact that the major costs are already reimbursed by the Consortiums and expenditures that have already been reimbursed by any means shall not be part of the calculation of access facility charges.
- The claim of M/S TCL that the methodology for working out the Access Facilitation Charges and the cost numbers taken in the consultation paper are not in line with their discussions held with TRAI. We believe that the methodology adopted by TRAI is robust and is well supported by majority of the stakeholders.

- 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 and Tata). Therefore, it is false submission of incumbent OLCs that cable landing station (CLS) cannot be treated as bottleneck facility. We are of very strong view that CLS is still an essential / bottleneck facility for other operators who have capacities at 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 establishes that there is a market failure in the cable landing station segment. Hence, TRAI is requested to issue the necessary determinations towards the downward revision of CLS access charges without further delay to offer the competitive services to the end users.
- Except for the two largest OCLS (Bharti and Tata), all stakeholder support the Authority's efforts to determine more reasonable and cost-based CLS access facilitation charges. These two OCLs have somehow failed to demonstrate that the methodology adopted by TRAI has resulted in the under-recovery of costs.
- We further suggest that TRAI'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.
- There is no basis to Bharti's claim that TRAI's regulation of these charges will disadvantage Indian operators in negotiating similar charges elsewhere in the world. As is quite evident in the 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. 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.

- We would like humbly submit to TRAI to establish revised charges based on its proposed methodology, to be applied to all access arrangements at India's cable stations.
- Bharti Airtel and TCL, have not been able 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 comments that the same is used for "controlling and monitoring" purposes also fails to withstand scrutiny. In most of the modern consortium cable systems, the controlling and monitoring function is exercised by the 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. The same can be checked from the EIG consortium arrangement where, Bharti itself is one of the party that operates the NOC. 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. Similarly in view of the same reasons, TRAI should not by default include the cost of DWDM equipment in the AFC for all alternate co-location sites, as this equipment is not required where the alternate site is significantly less from the CLS.

We trust that the Hon'ble Authority would find our counter comments in order and will duly consider the same including our response filed on 6<sup>th</sup> November 2012 while finalizing and determining the AFC and CLC charges.

Thanking you,

Respectfully submitted,

for **Association of Competitive Telecom Operators**



**S C Saxena**  
**Director**  
**011-43575353**

**ACTO's Counter Comments on responses of Bharti and Tata on specific issues are summarized below;**

**Section -A**

**Specific Counter Comments to Bharti's responses**

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 ACTO 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.*

**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, we are 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?**

### **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.*

**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 whenever the members of consortia have asked the Bharti to align the charges with international market, Bharti has given the reply that CLS access charges cannot 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 OCLs.

#### **F. CLS is not a matter of Interconnection:**

##### **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.

## Section B

### (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.

### 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 20 km. 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 consider the most efficient network architecture for determination of access charges for facilities at cable landing stations.

\*\*\*\*\*