Vodafone Counter Response to TRAI Consultation Paper on Review of Interconnection Usage Charges dated 5 August 2016 (No.17/2016)

At the outset, we reiterate our submissions and request that the same be read as a part of this counter. In respect of the specific comments of various stakeholders, we have the following counter comments:

1. We do not agree with comments by stakeholders supporting the implementation of Bill and Keep Regime (BAK).

2. We note that one of the stakeholders has been repeatedly relying on **TRAI's report,** which was **submitted with Hon'ble Supreme Court in 2011, to advocate the case for Bill & Keep.** In this regard, it may first be noted that the **Hon'ble Supreme Court rejected TRAI's prayer for grant of permission to notify the same**. Copy of the order of Hon'ble Supreme Court dated 13.04.2011 is attached as Annexure-1 for ready reference.

3. It is also submitted that the TRAI's report had many errors, which were highlighted by us to the Hon'ble Supreme Court. Specifically, it may be noted that the **views of the European Commission relied upon by the said stakeholder is, in fact, a misquote by the TRAI** with respect to Bill & Keep, to give the incorrect impression that mandated regulated Bill & Keep is a system supported by the European Commission; the statement referred to by TRAI and relied upon by the said stakeholder, is in fact, an argument put forward by a stakeholder and is not the view of the European Commission. The full para in the European Commission document is reproduced below:

   "***It is argued that*** *Bill and Keep obviates the need for regulatory intervention and resolves the termination bottleneck. Moreover, it is further argued that Bill and Keep leads to lower retail prices for call origination and appears to increase usage due to the price elasticity of demand. Furthermore, proponents of Bill and Keep consider that it facilitates development of innovative offers, e.g. flat-rate offers promoting increased usage. It also brings immediate benefits by decreasing transaction and measurement costs. Finally, Bill and Keep takes account of the call externality."*

4. Further, the **TRAI itself, in 2015, had rejected its 2011 Report,** stating, as below:

   "31. In the report filed by the Authority in the Hon'ble Supreme Court on 29.10.2011, it was stated that it would take another two years for the asymmetries in the traffic flows to converge to some form of equilibrium between the new and old TSPs and it was opined that the BAK

arrangement may, therefore, be implemented after two years. However, as can be seen from the above figure, ***traffic flows remain vastly asymmetric even as recently as 2013-14.***

32. International experience shows that ***not many countries have adopted the BAK arrangement. BAK has not yet been mandated by regulatory fiat even in those jurisdictions which have matured telecom networks.*** *In countries* ***where the BAK arrangement has been adopted, it has, generally, happened not by a regulatory action but through voluntary action*** *of the TSPs themselves.* ***BAK regime has been implemented in some countries where the CPP regime has not been put in place****; instead, a Mobile-Party-Pays (MPP) regime (in which both calling party and receiving party pay for the call) is in force in such geographies.* ***In view of the fact that the CPP regime is the prevailing regime in India since 2003 and a significant asymmetry in traffic flows between the TSPs still exists, the case for implementation of the BAK regime remains weak even in the present day conditions of the telecom market."***

5. **We are not aware of any country where CPP regime is in place in the retail market, that a BAK regime is applied for MTC**. We are also **not aware that any country which has moved to BAK from CPP**. Rather, there are several examples to the contrary. In fact in 2010, one of the largest telecommunications network country i.e. China has switched from BAK to CPP regime (Please refer to Annexure –2).

6. We note that the stakeholder advocating BAK on the ground that Global Trends support moving to Bill and Keep has, in fact, tabled evidence of the MTC applicable in the highly developed European countries. We note that even the **average MTC in Europe was 1.41[1] eurocents/minute, i.e. INR 1.035[2]/minute, which is 7.40 times higher than the rate prescribed in India**. It is further submitted that Indian MTC is one of the lowest in the world , please refer to table below

Statement of Comparison of recent determination of MTC			
Sl.No	Name of the Country	Date of determination	Mobile Termination Charges (USD)
1	Australia	Aug-15	0.0130
2	Norway	Jan-15	0.0120

[1] RJio (Page no 17-European MTRs Trends (Simple Average)
[2] 1Euro=73.39INR

3	Portugal	Aug-15	0.0090
4	South Africa	Sep-14	0.0140
5	Saudi Arabia	Feb-15	0.0400
6	United Kingdom	Mar-15	0.0052
7	Simple Average		0.0155
8	India	15-Feb	0.0021
9	Indian MTC as % of average of 6 countries		13%
10	OECD Average-MTC	Nov-14	0.0197
11	Indian MTC as % of OECD average -MTC		11%
Source: TRAI and Vodafone-India Analysis			

7. As submitted above, TRAI in 2015, had also stated that *"International experience shows that not many countries have adopted the BAK arrangement. BAK has not yet been mandated by regulatory fiat even in those jurisdictions which have matured telecom networks"*

8. We also note that the stakeholder has enclosed a Consultant report to urge the case for Bill & Keep. We first note that the consultant company, **Detecon is a subsidiary of Deutsche Telecom** (DT), Germany and it is **important to highlight that the German Regulator itself has not yet agreed to implement even Pure-LRIC in the German market.**

9. We also note that the said consultant has based its recommendations citing countries such as USA, Singapore and Canada, where an RPP regime is in vogue and by-default there would be BAK charging for termination rate. The said example is not relevant for markets such as India that follow a CPP regime. We again draw attention to the TRAI statement in 2015 that "*BAK regime has been implemented in some countries where the CPP regime has not been put in place; instead, a Mobile-Party-Pays (MPP) regime (in which both calling party and receiving party pay for the call) is in force in such geographies."*

10. It is also noted the **even in Australia, a well-developed and mature telecoms, market, the Australian Regulator, ACCC[3] opined that a BAK arrangement may not be ideal.** The relevant portion is reproduced below;

    "The ACCC also notes that even if traffic is balanced, a BAK arrangement may not be ideal. This is because termination rates reflect the perceived marginal cost to an MNO of providing off-

[3] ACCC Mobile termination access service Final access determination discussion paper, August 2014

net mobile calls and SMS to its retail customers. A termination rate of zero would mean that the perceived marginal cost to the MNO would be lower than the actual cost of providing the termination services. In such a case, the MNO may set retail prices that are inefficiently low …."

11. As regards the contention that TRAI has already recognized the need to move to Bill & Keep and implemented for all segments, except for wireless to wireless, it is first submitted that the **TRAI had, in 2015, after giving detailed reasons** [See Paras 25 to 33 of the IUC Regulations dated 23rd March 2015], **clearly and unambiguously stated that "the Authority has decided to continue to prescribe a cost-oriented MTC in the country**".

12. We would also like to reiterate that the **TRAI's decision to prescribe nil termination charges for calls to/from fixed lines is an aberration, in violation of the cost based and work done principles** of interconnection and is also in **violation of the provisions and purposes of the TRAI Act**. The TRAI is aware that we have challenged this decision and the matter is presently sub –judice in various High Courts.

13. The stakeholder has also referred to and relied on an ITU Report ["ITU, Trends in Telecommunication reform: Special Edition, 2014"] to support its case for BAK. In this regard, it is submitted **that the Report[4] is regarding the Interconnection Charging models in a National Broadband Network Environment** envisaging a *fusion of Internet and telecommunication regulation, which is not the case, in India at present. The said Report also recommends retaining an ex-ante cost-based regulation for wholesale broadband access (and backhaul in remote and rural areas) to ensure that there are sufficient investment incentives for next-generation access technologies, as well as open access to infrastructure for competing service providers. It is evident from the above, that the need to ensure cost based access is seen as fundamental for providing investment incentives – which continues to be the key requirement in the Indian market.*

14. It is submitted that the said **stakeholder is most incorrectly terming cost based IUC regime as rewarding the legacy networks and preventing moving to newer and more efficient technologies** which can bring down the cost to the consumer. It is submitted that the **most clear and irrefutable evidence of consumer benefits came with the introduction of the cost based IUC regime in 2003** that both brought affordability of services for the consumers and led to the sharp and sustained growth in the telecommunication market. It is also **incorrect to say that an IUC regime prevents moving to newer and more efficient technologies. The evidence of the European markets which continue to follow an MTC regime, clearly belies**

[4] Interconnection charging models in a National Broadband Network Environment" by David Rogerson: Director, Incyte Consulting, ITU, Trends in Telecommunication Reform: Special Edition, 2014 (http://www.itu.int/dms_pub/itu-d/opb/pref/D-PREF-TTR.15-2014-PDF-E.pdf)

and contradicts the submissions made by the said stakeholder. In fact, the TRAI, itself, in 2015 noted that **MTC continues to be applicable even in advanced and mature telecom markets.**

15. The stakeholder's opinion that "Reasons of asymmetry in traffic as a justification for levy of IUC is flawed; even if assumed right , situation does not exist anymore "is completely flawed and belied by the TRAI's own position, taken consistently since 2009, that in a situation of traffic asymmetry, a BAK regime cannot be justified. The situation of asymmetry continues even till date, and has, in fact, become even more stark with the entry of the new entrant stakeholder into the market, who, because of hugely asymmetric traffic volumes, is a net payer of MTC and thus has a clear commercial interest in mooting a regime to terminate its calls on the networks of other operators without compensation.

16. In respect of the suggestion by some stakeholders for implementation of a Pure-LRIC regime, it is submitted that Pure LRIC cannot be justified in a market, where the telecom infrastructure is yet to be rolled out in deep rural and remote areas. India as a market, has not yet completed its core cycle of investments in telecom infrastructure and the need for a fully cost compensatory approach is absolutely fundamental to achieving this end objective. The need for a cost based MTC regime to achieve this end objective was recognized by the TRAI itself in 2015. It is submitted that Pure-LRIC if applied in India will be counterproductive and will dis-incentivise future investments and thus impact national connectivity and broadband objectives.

17. In this regard, we would like to draw the attention of TRAI to the approach taken by the Malaysian telecom regulator, SKMM, who did not accept the Pure-LRIC approach[5] opining that

    "The SKMM considers that the Malaysian market is still developing in terms of mobile coverage levels, that <u>interconnection traffic is a significant proportion of total traffic,</u> <u>and increased coverage provides benefits to the originating subscribers terminating on mobile subscribers</u>. In addition, increasing coverage is an important component in the provision of telecommunications services to rural and underserved communities. [Emphasis supplied]

    The SKMM's final view remains that a pure LRIC approach is not an appropriate choice for mobile termination costing in Malaysia for the current regulatory review period."

18. In fact we believe that telecom experts and regulators in APAC region are of the view that Pure-LRIC is generally suited to highly penetrated, mature mobile market and it is not suitable for developing countries.

[5] SKMM Public Enquiry Report Review of Access Pricing, December 2012

19. We further submit that **stakeholders advocating pure-LRIC in India have failed to appreciate the Indian telecom market dynamics and socio-economic factors are very different from many advanced countries**, which have high levels of fixed line penetration, mature telecom markets, high urbanization and teledensity, with high levels of postpaid subscriptions, etc. The underlying dynamics in these markets are fundamentally different and cannot be compared to the current situation of the Indian market.

20. The above **stakeholders have failed to put forward any evidence of market failure under the CPP- IUC regime in India**. We are surprised at such recommendations/ suggestions, when the world and Indian consumer have witnessed the success of the CPP-IUC regime post migration from RPP regime to CPP in 2003.

21. We strongly believe that the CPP- IUC Regime (i.e. the cost based approach on work done principle) is most appropriate to achieve the stated policy objectives of the Government of India within the framework provided under the preamble of TRAI Act.

22. We do not agree with the assertion made by a few stakeholders that cost of spectrum should not be part of MTC. It is submitted that investments in spectrum and in infrastructure are, in fact inter-linked; non-inclusion of spectrum costs would lead to an anomalous and contradictory approach. We note that the **TRAI too, has recognized spectrum costs as an important capex item and included the same** [albeit not at full cost of spectrum as discovered in the 2015 auctions] in the estimation of MTC **in 2015**.

23. We would like to highlight that India is home to highest rural population (in absolute terms), and in terms of telecom, one of the highest wireless subscription, dominated by prepaid (>90% prepaid), with negligible fixed penetration. With significant marginal/rural population dependent upon incoming calls than outgoing calls, MTR is crucial to sustain connectivity for such rural areas.

24. **Any move towards BAK would likely to have significant impact on further investments, particularly into rural India**, as it would force Telcos to relook at their business models and concentrate on areas where there would be assured of business viability. Telcos will be reluctant to invest in any area where their business model depends on incoming termination revenues.

25. Hence we strongly believe that BAK may have reverse consequence than intended, dampening the rural coverage, usage of rural and marginal consumer and undoing the welfare gains accrued from a progressive CPP-IUC regime over the last decade.

26. A cost based interconnection charging regime is also in sync with majority of global interconnection regimes.

27. In view of above facts, we strongly believe that the Cost based approach on work done principle i.e. FAC /LR (A) IC+ Model is most appropriate under the present circumstances.

New Delhi
31 October 2016

ITEM NO.2 COURT NO.5 SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

749498

IA 23-33/2011 in CIVIL APPEAL NO. 271-281 OF 2011

TELECOM REGULATORY AUTH.OF INDIA Appellant (s)

VERSUS

B.S.N.L.& ORS. Respondent(s)

(With appln(s) for directions and office report))

Date: 13/04/2012 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Appellant(s)	Mr. R.F. Nariman, Sr. Adv. Mr. Sanjay Kapur, Adv Ms. Ashmi Mohan, Adv Mr. Anmol Chandan, Adv.
For Respondent(s) (Vodafone)	Mr. H.N. Salve, Sr. Adv. Mr. Gopal Jain, Adv. Mr. Navin Chawla, Adv.
for Bharti Airtel	Dr. A.M.Singhvi, Sr. Adv. Mr. Gopal Jain, Adv. Mr. Navin Chawla, Adv.
for BSNL	Mr.Gopal Subramanium, Sr. Adv. Ms. Maneesha Dhir, Adv. Mr.K.P.S. Kohli, Adv. Mr.Mayank Grover, Adv. Mr. Gagan Gupta, AOR
for AUSPI	Mr. Mukul Rohtagi, Sr. Adv. Mr. Rakesh Dwivedi, Sr. Adv. Mr. Ramji Srinivasan, Sr. Adv. Ms. Manali Singhal, Adv. Mr. Santosh Sachin, Adv. Mr. Abhijat P. Medh ,AOR
	Ms. Mukti Chowdhary ,AOR(Not present)

UPON hearing counsel the Court made the following

O R D E R

In these applications, the appellant has made a prayer for grant of permission to notify the regulation framed under Sections 11(1)(b)(i), (iii) and (iv) of the Telecom Regulatory Authority of India Act, 1997.

We have heard Shri R.F. Nariman, learned Solicitor General appearing for the appellant, Shri Harish N. Salve and Shri Gopal Subramanium, learned senior counsel appearing for the contesting respondents and perused the record.

In our considered view, having regard to orders dated 4.2.2011 and 15.7.2011 passed by this Court, there is no justification to entertain the prayer made in the applications, which are hereby dismissed.

The main appeals be listed for final disposal on 10.07.2012 along with Civil Appeal No.5253 of 2010 and connected appeals.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

Annexure-2

Statement of Charging Model in different countries

Statement of Charging Model in different countries		
CPP countries	**Switch from B&K to CPP**	**B&K and other Models**
Australia	Venezuela (1991)	Albania
Austria	Brazil (1994)	Barbados
Belgium	Colombia (1994)	Cameroon
Belize	Israel (1994)	Canada (MPP)
Denmark	Dominican Republic (1995)	Croatia
Estonia	Uruguay (1995)	Hong Kong, China
Finland	Costa Rica (1996)	Mauritius
Germany	Czech Republic (1996)	Russia
Greece	Mongolia (1996)	Singapore
Hungary	Peru (1996)	St. Kitts and Nevis
Iceland	Cambodia (1996)	Ukraine
Ireland	Panama (1997)	United States (CPNP/B&K)
Italy	Ecuador (1998)	
Japan	Romania (1998)	
Korea	Argentina (1999)	
Lithuania	Bolivia (1999)	
Luxembourg	Chile (1999)	
Madagascar	El Salvador (1999)	
Malaysia	Guatemala (1999)	
Malta	Mexico (1999)	
Moldova	Antigua and Barbados (2000)	
Netherlands	Honduras (2000)	
New Zealand	Jamaica (2000)	
Norway	Cayman Islands (2001)	
Philippines	Pakistan (2001)	
Poland	Trinidad and Tobago (2001)	
Portugal	Dominica (2002)	
Slovak Republic	Grenada (2002)	
Slovenia	Saint Lucia (2002)	
Spain	St. Vincent (Grenad.) (2002)	
Sweden	**India (2003)**	
Switzerland	**France (2004)**	
Turkey	**Sri Lanka (2010)**	
United Kingdom	**China (2010)**	
Source:OECD,28-Feb-2012 and Vodafone-India Analysis		