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TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, the 30th September 2019

**TELECOMMUNICATION MOBILE NUMBER PORTABILITY PER PORT TRANSACTION
CHARGE AND DIPPING CHARGE (SECOND AMENDMENT) REGULATIONS, 2019
(04 OF 2019)**

File No. 15-01/2019-F&EA ----- In exercise of the powers conferred upon it under section 36, read with sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations further to amend the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 (9 of 2009), namely:-

1. (1) These regulations may be called the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Second Amendment) Regulations, 2019 (04 of 2019).

(2) They shall come into force from the 11th November, 2019.

2. For regulation 3 of the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009, the following regulation shall be substituted, namely: -

“3. **Per Port Transaction charge:** - The Per Port Transaction charge for each porting request shall be rupees six and paise forty-six only”

(S. K. Gupta)
Secretary

Note 1. The principal regulations were published *vide* No. 116-5/2009-MN dated 20th November 2009 (9 of 2009).

Note 2. The principal regulations were amended by Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018

(03 of 2018) published vide File No. 15-01/2016-F&EA in the Gazette of India, Extraordinary, Part III, Section 4, dated 31st January, 2018

Note 3. The Explanatory Memorandum explains the objects and reasons of The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Second Amendment) Regulations, 2019 (04 of 2019).

EXPLANATORY MEMORANDUM

1. A subscriber can retain his existing mobile telephone number when he wishes to switch from one service provider to another or from one technology to another of the same service provider using Mobile Number Portability service within the same Licensed Service Area (LSA) as well as Pan India in any LSA. The Mobile Number Portability is operational in India since 2009, when MNP service licences were issued to two Mobile Number Portability Service Providers (MNPSPs) by DoT. DoT mandated MNP service licensees to follow the regulations/orders made or directions issued by Telecom Regulatory Authority of India (TRAI/Authority) under TRAI Act, 1997 or any instructions issued by the DoT (licensor) from time to time through amendments in licenses.
2. For the purpose of laying down the basic business process framework for implementation of MNP services in India, the Authority issued *Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009)* dated 23rd September, 2009 (MNP Regulations). These regulations have been amended from time to time, latest being in 2018.
3. By notifying *The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009* dated 20th November, 2009 (MNP Charges Regulations), the Authority determined the *Per Port Transaction Charge* (PPTC) as Rs. 19/- to be paid by the Recipient Operator (RO) to the concerned MNPSP. In absence of actual historical data, this exercise was done based on estimated financial data and other information submitted by the two MNPSPs. The per port transaction charge was computed by taking the estimated total cost to the MNPSP and the estimated number of porting subscribers, over a period of 5 years. The Authority also considered the lower of the cost of the two MNPSPs for computing PPTC.
4. Further, through notification of the Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009, the Authority prescribed the Per Port Transaction charge of Rs. 19/- as ceiling for the tariff that could be charged from subscriber by the recipient operator. The 'Dipping charge' was kept under forbearance.
5. Regulation 6(2) of the MNP Charges Regulations provides that "the Authority may review and modify the Per Port Transaction Charge and Dipping Charge at the end of one year from the date of these regulations coming into force".
6. In 2018, 'Per Port Transaction Charge' was reviewed based on the actual financial and non-financial data of both the MNPSPs as available for the financial year 2016-17.

Accordingly, the Authority issued the *Telecommunications Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018* on 31st January, 2018 whereby per port transaction charge was reduced from Rs. 19/- to Rs. 4/- for each successful porting. However, this amendment regulation was quashed by Hon'ble High Court of Delhi *vide* its Judgement dated 8th March, 2019.

7. Subsequently, the Authority had undertaken a detailed public consultation to review the MNP process itself. The Authority issued Telecommunication Mobile Number Portability (Seventh Amendment) Regulations, 2018 on 13th December, 2018 (7th Amendment) introducing certain changes in the MNP process to ensure better services to subscribers. These primarily involve shifting responsibility of generation of Unique Porting Code (UPC) from Donor Operator (DO) to MNPSF after making real time query with database of DO and sending of SMSs to the subscriber by the MNPSF for letting the subscriber know of her/his status in the various stages of the process. The regulation also delineated the various ancillary services¹ that are already being provided by the MNPSF, namely, Number return charge, Database download charge, Port cancellation charge, Subscriber reconnection charge and Non-payment disconnect charge.
8. In view of the above, the Authority initiated a public consultation process for review of the existing MNP Charges Regulations by issuing a consultation paper on 22nd February, 2019 (subsequently updated on 1st April, 2019 in view of the judgement of the Hon'ble High Court of Delhi, as mentioned above). The last date for receiving comments and counter comments from stakeholders originally was 15th March, 2019 and 22nd March, 2019, respectively. However, considering the requests of stakeholders, the last date for receiving comments and counter comments was extended up to 12th April, 2019 and 19th April, 2019 respectively. An Open House Discussion in this regard was also held on 27th May, 2019. MNPSFs and TSPs have also submitted additional comments after the open house discussion.
9. *Vide* letter dated 7th May, 2019 and subsequent reminders, the two MNPSFs were asked to provide details of capital expenditure (CAPEX) and operating expenditure (OPEX) along with copies of audited annual accounts for the financial year 2018-19. The audited financial results for the FY 2018-19 were submitted by M/s Syniverse on 22nd July, 2019. M/s MNP Interconnection Telecom Solutions India Pvt. Ltd. (MITS) submitted the audited financial results for the FY 2018-19 for MNP business on 28th June, 2019.
10. The major telecom service providers (TSPs) were also called upon to provide cost inputs for hardware and software requirement for the additional work involved due to changes

¹ Details of these ancillary charges are available in subsequent paras of the Explanatory Memorandum, where the issue of ancillary charges has been dealt with.

introduced by 7th Amendment and probable expenditure *vide* letter dated 25th June, 2019, the responses to which were also considered by the Authority.

11. The two MNPSPs also submitted their “estimates” for the additional work required due to the 7th Amendment. The two MNPSPs were called upon to make a presentation on the architectural framework and additional hardware/software required to implement the changes in the MNP process along with the justification for the additional expenditure, which was made by both the MNPSPs on 24th July, 2019. During the presentation, it was highlighted by both the MNPSPs that the additional cost estimates given for implementation of 7th Amendment includes costs to be incurred for supporting ongoing/existing operations as well as changes envisaged under 7th Amendment. Accordingly, both were asked to segregate the two cost components. One of the MNPSPs submitted revised cost estimates after splitting cost between current operations and 7th Amendment requirements on 28th July, 2019. The other MNPSP *vide* letter dated 2nd August, 2019 informed that such segregation is not possible.
12. Based on the comments and counter comments received during the consultation process, the deliberations of open house discussion and comments received afterwards from MNPSPs and other stakeholders, the Authority issued draft “*Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2019*” on 16th August, 2019 (Draft Regulations). The stakeholders were requested to submit their comments on the Draft Regulations by 23rd August, 2019. However, considering the requests of stakeholders (MNPSPs), the last date for receiving comments was extended up to 28th August, 2019.
13. In paras 14 to 46, basic rationale for arriving at the Draft Regulations and the questions raised in the consultation paper have been discussed. Thereafter, in para 47, inputs received pursuant to issue of Draft Regulations (*i.e.* after 16th August, 2019) have been discussed.

Issues raised in the consultation paper and the analysis of the inputs for the consideration of decision by Authority

14. In view of the foregoing, following questions were raised in order to obtain the views of the stakeholders on review of Mobile Number Portability Per Port Transaction Charge and other charges. Written comments and counter comments of stakeholders are available at www.trai.gov.in along with the consultation paper. The subsequent paras illustrate the issues raised in the consultation paper along with the rationale for conclusion and decision of the Authority.

Whether the 'Per Port Transaction Charges' should continue to be calculated based on the methodology adopted by TRAI during the review done in the past? If not, please suggest methodology and supplement it with the detailed calculations indicating costs of hardware, software and other resources etc.

15. Few stakeholders have submitted that existing methodology should be continued whereas few others have suggested certain modifications. One MNPSP has *inter alia* suggested that tariff review should happen on a 5-year basis instead of an annual basis whereas the other MNPSP has suggested to review the same every three years. It has been argued by them that volume of the Mobile Number Portability used for tariff calculation should be based on sufficiently longer period after adjusting non-recurring porting volume changes, working capital requirement to be changed to 3 months from 1 month to factor in late payments by TSPs, return on capital employed should be higher than 15%, *etc.* It has also been submitted by MNPSPs that all costs incurred by them should be considered and genuine business cost for which evidence is on record should not be disallowed. Further, for calculating PPTC, one of the MNPSPs mentioned that the average of both MNPSPs' (operations & business) costs should be considered instead of lower of two because both the MNPSPs operate under different environment and average of two would be best and appropriate method to adopt. They have suggested that PPTC should be stable over a period of time and review should be done after 3 years with a 6-month price implementation period. One MNPSP has submitted that "Cherry Picking" of lower costs between the two MNPSPs should not be done and costs of one MNPSP should be taken as a whole.
16. In this regard, another stakeholder has submitted that TRAI should base the PPTC on '*lower of the two*' MNPSPs' costs, as averaging the costs of two MNPSPs would not reflect the cost of an efficient MNPSP thereby penalizing the Mobile Network Operators (MNOs) by supporting inefficient MNPSP. Further, provision of bad debts in the cost calculations would result in imposition of penalty on the MNOs who make timely payments to MNPSPs. Such issues of non-payment/late payment by MNOs should be resolved between MNPSPs and MNOs under the legal framework. It has also been submitted by few stakeholders that cost of royalty/ consultancy/ licensing cannot be recovered from the MNOs for perpetuity.
17. Another stakeholder has commented that both MNPSPs are rendering their services in a monopolistic market, as there is no other supplier of MNP services in their respective zones. In such a scenario, it is essential that the charges are fixed on cost plus basis so that no undue advantage is bestowed to the MNPSPs.

18. Few stakeholders have submitted that due to substantial increase in the port volume in recent years without any significant increase in costs, the MNPSPs have already earned an excess amount after covering all the costs. They have suggested that excess recovery by MNPSPs should be adjusted in future calculations of PPTC.
19. One stakeholder has commented that cost incurred by MNPSPs for implementation of the 7th Amendment will not materially change as MNPSPs will largely be utilizing the existing network of the MNOs to cater to changed processes with marginal hardware, software and operational costs at their end. It has been submitted that additional cost would be around 1-3% of the MNPSP's present cost. In this regard, one MNPSP has commented that the assumption of 1-3% is premature and beyond the scope of the TSPs to accurately estimate these costs.
20. Another stakeholder has commented that the review should be carried out based on actual audited data of the MNPSPs and estimates on the cost to be borne under revised process. However, the Authority should keep a provision for further review after one year when the actual audited financial and non-financial data would be available. It has also been submitted that separate exercise should be done for both the MNPSPs to arrive at per port transaction considering all porting requests processed. This number should be marked up on the basis of the percentage of cancelled or rejected requests. Thereafter, a charge for ancillary services may be added to derive a per port transaction charge for both MNPSPs. It has also been suggested that the lower of these numbers should be fixed as the per port transaction charge, as Indian consumers should not suffer for inefficiencies of one MNPSP. With regard to this point, one MNPSP has commented that this approach of marking up for unsuccessful ports would reward operators which submit frivolous ports that lead to large number of errors. The cost of these failed ports will then be paid by other operators with better processes and control. Further, this approach is stated to assume that ratio of failed to successful ports is constant which is not true.
21. One stakeholder has submitted that the Authority should share the financial and non-financial data of the MNPSPs including for the years 2017-18 and 2018-19 and their projected costs for detailed consultation with other stakeholders. Both the incumbent MNPSPs contested this assertion in OHD and said that it should not be done.
22. One stakeholder has stated that there should be separate charges for UPC Request Generation in addition to the Per Port Transaction Charge as there are significant and incremental costs to comply with the 7th Amendment by the MNPSPs to receive a UPC request, query the donor operator, generate the UPC or rejection reason, send that UPC or rejection reason. In this regard, another stakeholder has commented that all costs

should be subsumed under the PPTC as a separate charge for UPC Request Generation would imply that the Donor Operators will need to charge the subscribers for UPC generation activity in order to make payments to the MNPSPs, which will be detrimental to the interests of subscribers

23. Many stakeholders have also recommended the exclusion of royalty and consultancy charges from the cost calculations by TRAI. Another stakeholder submitted that cost related to licensing and royalty should be discounted, as the same should not be applicable on a simple regulatory process for such a long duration. Stakeholders also commented on such costs being incurred in perpetuity despite the MNPSPs having gained enough expertise.

Analysis

24. The Authority analysed the submissions made and the issues involved. It decided to consider the following while arriving at the mobile number per port portability charges:
 - 24.1 Unlike the year 2009 when the PPTC were initially computed in the absence of historical cost data, presently sufficient information on previous years' audited historical cost data is available with the Authority. Accordingly, the Authority decided to use audited historical cost data as the base for computing PPTC for the existing MNP process. Further, the 7th Amendment introduced certain changes in the MNP process for which the MNPSPs may have to make some modifications in the existing setup. Accordingly, the Authority sought the cost estimate from the stakeholders in relation to additional work involved for implementation of 7th Amendment so that the same can be appropriately considered while calculating PPTC. The responses received from all the stakeholders have been considered for computing incremental cost component of PPTC on account of additional work involved for implementation of 7th Amendment by MNPSPs.
 - 24.2 In relation to the cost and port volume data to be considered for computing PPTC, one of the MNPSP suggested to use three-year cost and port volume data to determine PPTC. The other MNPSP has suggested to consider port volume of last five financial years. In this regard, the Authority observed that the port volume has seen some volatility in the past few years. The porting volumes have varied from 636 lakhs in 2016-17 to 981 lakhs in 2017-18 to 576 lakhs in 2018-19. As such, the Authority decided that to get a reasonable estimate of the porting volumes and costs, it may be necessary to have an average of sufficient number of years, so that the highs and lows of particular years may not distort the results. Besides, full mobile number portability was introduced in India in July, 2015. Therefore, it would be logical to compare the

porting volumes thereafter, as they would give a more reasonable and accurate estimate than comparing with the volumes earlier, when only intra-circle MNP was in place. This has also been suggested by one of the MNPSPs. As such, the Authority decided to take the average of the costs and porting volumes of a three-year period, from 2016-17 to 2018-19, into account for arriving at the Per Port Transaction Charge (PPTC).

- 24.3 The MNPSPs have also submitted that total and actual costs of each of the MNPSPs should be considered as a whole for determining PPTC. In view of this submission and in line with TRAI's standard practise of determining tariff on the basis of costs of the economically most efficient operator, the Authority decided to take the 'lower' of the two MNPSPs' *total* costs (including royalty/license fee and depreciation, as indicated in the audited annual financial statements) and the associated port volume of the same MNPS, for determining the PPTC. In this regard, the MNPSPs have contended that average of both MNPSPs' costs should be considered instead of lower of two as they operate in different environment. However, the Authority is of the view that an inefficient operator (with a relatively higher cost structure for same services as those provided by an efficient player with lower cost structure) should not be rewarded for its inefficiency by a higher tariff determination based on its higher cost structure. A reasonable tariff determination based on the cost structure of the efficient player would compel the inefficient player to achieve efficiency in its operations by reducing its cost. Moreover, deciding a higher tariff would be detrimental to the interest of the recipient operator/subscriber and the telecom sector as a whole.
- 24.4 One of the MNPSPs has also submitted that bad debts incurred by MNPSPs as a result of non-payment or delayed payment by the operators should also be considered as a cost component while computing PPTC. The Authority has carefully considered the issue and determines that non-payment or delayed payment between the MNPSPs and the operators is a commercial dispute between the two and same should not be a cost component for computing PPTC. Absorption of bad debts in computation of PPTC would dis-incentivise the MNPSPs to take good faith efforts to recover outstanding debt. Moreover, as commented by other stakeholders, provisioning of bad debts in the cost would inflate PPTC which would be akin to imposition of penalty on the MNOs who make timely payments to MNPSPs in the form of inflated PPTC. As such, the Authority decided to exclude Bad Debts as a cost component for the purpose of calculating PPTC.
- 24.5 The Authority also decided to take the audited financial statements of the two MNPSPs into account for determining the costs involved. This ensures that the costs

are not based on estimation but are actual costs incurred by the MNPSPs in providing their services.

24.6 From the analysis of the inputs provided by the MNPSPs in the last three years, it is observed that the costs on account of consultancy and related charges for one MNPSP is almost 80%, which is substantial.

24.7 The two MNPSPs have suggested to increase return on capital employed (ROCE) (35% suggested by one MNPSP) as against present 15%. The MNPSPs have primarily cited tax rates, inflation, legal costs and currency fluctuation as reasons for increasing ROCE. These are discussed below:

- (a) Tax Rates: Historically, the ROCE @ 15% includes tax element at the applicable rates. Therefore, unless and until there is significant changes in the applicable tax rates, the Authority does not find any reason to adjust the ROCE rate.
- (b) Inflation: The inflation is reflected in the historical cost structure of the company which would change every year with prevailing rate of inflation in the economy. In the present case, the Authority has already considered the historical costs of the MNPSPs to determine tariff and therefore, there is no further need to adjust ROCE for inflation again. Further, the inflation is already represented in the existing ROCE.
- (c) Legal costs: These have already been considered as part of the historical cost of the MNPSPs and making another provision for the same in ROCE would result in double accounting of legal costs.
- (d) Currency fluctuation: The quantum of currency fluctuation loss, as reflected in the audited financial statement of the MNPSPs, is insignificant and therefore, it would not impact the overall ROCE determination. Further, currency fluctuations may result in loss as well as profit depending upon on the exchange rate movement and therefore, there is no merit in considering currency fluctuation in such exercises.

24.8 As such, the Authority determines that ROCE @ 35% is exorbitant and 15% is a reasonable return on the capital employed. Therefore, in line with the existing practice, the Authority has considered return on capital employed @ 15% for determining the total cost.

While calculating 'Per Port Transaction Charge', whether the total number of MNP requests received by MNPSP or successfully ported numbers be considered? Please justify your response.

25. In this regard, most of the stakeholders have commented that while calculating PPTC, total number of MNP requests received by MNPSP should be considered. Few other have commented that only successful porting requests should be considered for calculating PPTC. In this regard, one stakeholder has commented that with the implementation of the 7th Amendment, gap between porting requests and successful port would reduce and therefore the same will not have any substantial financial impact on the MNPSPs. Another stakeholder has commented that MNPSPs have to incur cost even in case of an unsuccessful porting which are generally more expensive than successful ones. It was also submitted that PPTC based on successful ports will be higher as compared to PPTC based on total port requests. Therefore, the customers who successfully port will end up subsidising and paying for the free porting attempts made by non-serious subscribers or subscribers who submit incorrect documents.

Analysis

26. In this relation, the Authority observed that the gap between total porting requests and successful porting has been reducing over the years and is likely to reduce further after the 7th Amendment comes into force. Besides, the MNPSP has to incur costs even on unsuccessful porting requests. Further, in many cases, the failure of a porting request could be due to reasons beyond the control of the MNPSP. As such, the Authority decided to take each porting request into consideration for determining the PPTC. As already mentioned, most of the stakeholders have also suggested to consider total number of port requests.

Determination of PPTC

27. Based on the above considerations, the Authority arrived at the following PPTC for the existing services provided by MNPSPs:

Particulars	Unit	Amount
Employee Cost [#]	Rs in Lacs	1318.37
Administration and other costs [#]		2452.93
Consultancy/ royalty charges [#]		1049.27
Depreciation & Amortisation [#]		94.09
RoCE @15% [#]		1096.53
Total Cost* for 3 years	Rs in Lacs	6011.19
Actual porting for 3 years	in Lacs	1102.08
Porting charges per port	in Rs	5.45

** Based on the total cost of the concerned MNPSP excluding bad debts/provision for bad debts and foreign exchange losses (Even if foreign exchange losses are considered, it would not impact the PPTC computation significantly). This also includes Return on Capital Employed (RoCE) @ 15%. Capital employed has been calculated as the sum of net*

book value of fixed assets, total capital work in progress and net working capital (current assets – current liabilities) as at the end of the financial year.

Aggregate value for three financial years (i.e. 2016-17, 2017-18 and 2018-19)

Incremental Component of PPTC

28. The 7th Amendment, as discussed earlier, provides for some changes in the flow of the MNP process like UPC generation by MNPSP instead of DO after real-time query from the DO database and the MNPSP sending status notifications to the subscriber. The MNPSPs may incur some CAPEX and OPEX to implement changes envisaged under 7th Amendment. Accordingly, for computation of incremental component of PPTC on account of additional work involved for implementation of 7th Amendment, the Authority sought cost estimates from MNPSPs as well as TSPs in relation to additional work involved for implementation of 7th Amendment. However, the cost estimate given by the MNPSP, whose total costs are lower, includes cost to be incurred for supporting ongoing/existing operations as well as additional work envisaged under 7th Amendment. Despite repeated requests, the segregation of the two cost components have not been provided to the Authority by the said MNPSP. Accordingly, the Authority has used the data provided by the stakeholders, including MNPSPs and TSPs (who are presently engaged in UPC generation and associated processes), for determining incremental component of PPTC on account of additional work involved for implementation of 7th Amendment.
29. The MNPSPs have submitted that they need to add personnel to address incremental responsibilities. However, the Authority determines that the additional work involved on account of 7th Amendment would largely be automated with no or minimal human intervention and the existing personnel deployed by MNPSPs in the current operations would be sufficient to undertake the additional work envisaged under 7th Amendment.
30. The MNPSPs may have to do some minor software and hardware modifications in their existing system. During the presentation mentioned above, one of the MNPSPs has even submitted that in the short-term, changes required for 7th Amendment will be made in the current system itself. This implies that software and hardware changes required to implement the changes should be minimal. Another MNPSP has submitted that for implementation of 7th Amendment, it would require total 4 units of hardware components (i.e. one storage unit, one tool for ITSM/network and system monitoring and 2 units of SMPP servers). Accordingly, the Authority finds that the additional work involved for implementation of 7th Amendment is not likely to result in substantial additional CAPEX and OPEX to be incurred by MNPSPs.
31. The cost should be minimal if the marginal capacity in the present hardware is utilised using open source software or existing licensed software to implement the changes

required as per the 7th Amendment. Even if it is allowed that new additional hardware and separate licensed software is used to implement the changes, the total cost on account of additional work involved for implementation of 7th Amendment would be approximately Rs. 87 lakhs per annum. In calculating this, the Authority has considered depreciation of the capital expenditure on hardware and software development/licensing as per the provisions of the Companies Act, 2013, along with related operating expenditure. Considering an average porting request volume of 367 lakhs per annum (*i.e.* average of last three financial years), the Authority determines that an additional cost of 23 paise per port request is sufficient to cover the additional requirements of hardware and software, if required by the MNPSs. This would also adequately cover the cost of handling UPC requests by the MNPSs under the 7th Amendment. Thus, the PPTC to cover the entire MNP process, as per the 7th Amendment to MNP regulations worked out to:

Particulars	Unit	Amount
Total Cost for 3 years	Rs. in Lakh	6011.19
No. of porting requests received	in Lakh	1102.08
Per Port Transaction Cost	in Rs.	5.45
Incremental component of PPTC	in Rs.	0.23
Total Per Port Transaction Cost	In Rs.	5.68
Licence Fee @1%	in Rs.	0.06
Per Port Transaction Charge	in Rs.	5.74

32. The MNPSs have also submitted that the Authority should review the tariff on a 3-year basis instead of an annual basis as it would provide stability and continuity to the business. The Authority has considered this and notes that for determining incremental component of PPTC, actual cost data related to software and hardware requirements is not available and the same would be available only after these changes are implemented and the Bills of Material generated/expenses incurred. One of the MNPSs has also submitted that all the costs of complying with 7th Amendment as well as UPC volume are not known at the time of launch. The other MNPS has also submitted that tariff can be reviewed in the intervening period in case of any exigency. As such, the Authority has decided to consider reviewing the PPTC after one year, if required.

Review of Ancillary Charges

33. During the consultation process preceding the 7th Amendment to MNP Regulations, issue of ancillary service charges was raised for the comments of the stakeholders. After examination of the comments of the stakeholders, the Authority noted that the provision for ancillary service charges shall remain in the regulations subject to consultation at the time of defining the actual amount of charges or otherwise will be subsumed in per port transaction charges.

34. Accordingly, following question was raised for comments of the stakeholders:

Should the charges for 'Per Port Transaction' and 'ancillary services' be determined separately or consolidated charges. Please justify your response along with detailed calculations indicating cost of hardware, software, other resources and overhead etc. in addition to the rationale for adoption of the method suggested by you.

35. The stakeholders were required to provide comments on the two options as described below for determining 'Per Port Transaction Charge' and other charges termed as ancillary charges: -

- (i) Based on the cost incurred, separate charges for 'Per Port Transaction Charge', 'Number Return Charge', 'Database download charge', 'Port cancellation charge', 'Subscriber Reconnection Charge' and 'Non-payment disconnect charge' may be determined; or alternatively,
- (ii) Only one charge *i.e.* 'Per Port Transaction Charge' may be made applicable and cost of all other charges termed as 'ancillary charges' may be subsumed in the 'Per Port Transaction Charge'.

36. In this regard, most of the stakeholders have submitted that there should be a consolidated per port transaction charge subsuming the charges for ancillary services also. One stakeholder has commented that Number Return, Subscriber Reconnection and Non-payment disconnection should be charged separately, whereas Port cancellation charge should be included in PPTC. Further, Database Download to be provided free of charge. One of the MNSPS also proposed to set a quota per operator for database download to avoid egregious abuse by frequent downloads.

Analysis

37. In the Telecommunication Mobile Number Portability (Seventh Amendment) Regulations, 2018, the provision of ancillary service charges payable to MNPS have been made in the regulation for the activities to be performed as mentioned below:

- (a) **Number Return Charge** for facilitation of returning the mobile number to Number Range Holder after disconnection due to any reason including non-payment.
- (b) **Database download charge** for downloading the Number Portability Database by the Access Provider.

- (c) **Port cancellation charge** for execution of 'Port withdrawal' request of the subscriber of Donor operator.
- (d) **Subscriber Reconnection Charge** for facilitation of reconnecting the ported subscriber of Recipient Operator in its network.
- (e) **Non-payment disconnect charge** for facilitation of disconnection of the mobile number of the postpaid subscriber who has not cleared the dues of the Donor Operator after porting his number.

38. In relation to separate charges for ancillary services, it is noted that PPTC has been determined on the 'cost-plus' basis. This implies that all the costs of the MNPSP in providing 'all' its services are taken into account while arriving at the PPTC. It may be noted that the ancillary services, as listed out in the 7th Amendment to the MNP Regulations, are already being provided by the MNPSPs as brought out in the following table:

Table: Information of ancillary activities for the period Jan-Dec 2018

MNPSP Zone	No. of Number Return requests received	Total instances of Database download	No. of Port cancellation requests received	No. of Subscriber Reconnection requests received	No. of NPD requests received
Zone I	9351497	954	107517	787266	1620505
Zone II	7691841	1499	14972	NIL ²	480104
Total	17043338	2453	122489	787266	2100609
Avg. per month	1420278	204	10207	65606	175051

39. The Authority has used a 'Cost Plus' approach in determining the PPTC. As such, while factoring in the total costs in providing services for previous three financial years, the costs of providing the ancillary services are also included. In considering the costs of previous three financial years, the costs of any software and hardware changes made by the MNPSPs has also been considered. The Authority, therefore, determines that separate charges for providing 'ancillary' services are not necessary as the costs for providing all the services have been considered in arriving at the PPTC. Further, considering the present volume of database download, the Authority decided that setting any quota for database download by the TSPs is not required.

² Zone II has not provided any data related to subscriber reconnection requests received

Review of Dipping Charges

40. The following question was raised for the comments of the stakeholders:
Whether the Dipping charge, which is presently under forbearance, needs to be reviewed? If yes, suggest the methodology to determine the rate of dipping charge. Support your response with justification.
41. Most of the stakeholders have commented that Dipping charges should continue to be under forbearance and any service provider that requires the dipping services from the MNPSPs can avail the same on mutually agreed terms with the MNPSPs. One of the stakeholders has commented that till date, no operator has used this service and therefore, the MNPSPs should be allowed to remove the related infrastructure that adds to additional cost.
42. After analysing the comments and counter comments received from various stakeholders, the Authority decided that the Dipping charge will continue to be under forbearance. Dipping charges may be mutually decided by the MNPSP and the access provider or the ILDO who desires to utilise the query response system of the MNPSP.

Review of Porting charge payable by subscribers

43. The Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009 prescribed the Per Port Transaction Charge, as provided under the MNP Charges Regulations, as ceiling for the tariff that could be charged from subscriber by the recipient operator. Accordingly, following question was raised for the comments of the stakeholders:
Whether the porting charge payable by the subscriber to the recipient operator should continue to be prescribed as a ceiling charge as per the current practice. If no, please suggest methodology and various consideration for calculating porting charge payable by subscribers.
44. Almost all the stakeholders have suggested to continue the existing practice. In this regard, one of the stakeholders has commented that due to fierce competition in the telecom market, porting charges, which is payable by customer generating porting request, are being absorbed by the recipient operators.
45. Another stakeholder has commented that recently due to closure of few TSPs and ongoing consolidation in the sector, the subscribers had to resort to forced porting and therefore, in the interest of the subscribers, no charges should be payable for forced porting.

46. After analysing the issues at hand, the Authority determined that the existing practice of Per Port Transaction Charges shall continue to be the ceiling for the porting charges payable by the subscriber to the recipient operator.

Issues raised by stakeholders' post issue of Draft Regulations

47. The stakeholders have largely reiterated their previous submissions on various issues and a few new comments have also been submitted. Various issues raised and the deliberations on the same is as follows:
- 47.1 One of the MNPSPs has contended that whilst deciding on the total ongoing costs for existing operations as well as the changes envisaged under the 7th Amendment, the only appropriate stakeholders are the MNPSP's and not the Telecom Service Providers, who technically would lack the technical know-how to assess and/ or comment on the intricate and complex process involved in services being rendered by MNPSP's, let alone the costs. The Authority disagrees with the view taken by the said MNPSP as TSPs are also an equally important stakeholder of this entire consultation process. Besides, the primary additional work being assigned to the MNPSPs, that of UPC generation, is currently being handled by the TSPs. In any case, it would be fair to ask the TSPs to offer their comments on the price they are supposed to pay. The very basis of the consultation process is to seek comments from stakeholders at different ends of the issue.
- 47.2 The TSPs have reiterated that cost of royalty/consultancy/licensing cannot be recovered for perpetuity as the MNPSPs have gained substantial expertise in last 8-9 years. Accordingly, the TSPs have requested the Authority to exclude these costs from the calculation of PPTC and only cost of production/rendering services should be included such as hardware, software, operation and maintenance. However, the Authority decided to consider the historical audited cost data available from the annual accounts of the MNPSPs.
- 47.3 The MNPSPs have also reiterated that costs of carrying bad debt are real costs and they should be included in the overall costs. The MNPSPs are of the view that non-payment of dues by various TSPs is affecting their overall financial health. In this regard, the Authority notes that as per Regulation 15 of the MNP Regulations, the Recipient Operator (RO) is required to pay the billed PPTC amount to the MNPSPs within fifteen days of receipt of the bill or within such other time limit as may be mutually agreed upon. If the RO do not adhere to these regulations, it becomes a dispute between the two service providers and either of the party is free to approach the Hon'ble Telecom Dispute Settlement and Appellate Tribunal (TDSAT) seeking appropriate redressal. The Authority is therefore of the view that bad debts cannot be considered as a cost component while calculating PPTC.

- 47.4 One of the MNPSPs has also suggested that there should be severe penalty on late payments by TSPs to MNPSPs so that the impact of bad debt is minimized. The Authority has carefully considered the suggestion of the said MNPSP and is of the view that the same cannot be accepted primarily for two reasons *i.e. Firstly*, the imposition of penalty for non-payment or delayed payment is beyond the scope of present consultation process as the same cannot be covered under the MNP Charges Regulations, *Secondly*, as already stated in the previous paragraph, the MNPSPs while approaching the Hon'ble TDSAT may always seek appropriate remedy for non-payment or delayed payment by the TSPs. Another MNPSP has suggested to allow the MNPSPs to cease providing MNP services to the defaulting TSPs. The Authority has considered this suggestion and again cannot accept the same primarily for two reasons *i.e. Firstly*, allowing MNPSPs to cease providing MNP services to the defaulting TSPs is beyond the scope of present consultation process, *Secondly* and more importantly, it would harm the interest of the willing subscriber who wants to port his number to the said TSP.
- 47.5 The MNPSPs further submitted that the detailed breakup of total cost of Rs. 6011.19 Lacs was not provided in the Draft Regulations, however, the same is essential to know what all genuine costs have been omitted in computing PPTC. One MNPSP has stated that in the spirit of transparency, cost breakups considered by the Authority should be shared with the MNPSPs so that they are aware of the costs allowed and /or disallowed. It is however, noted that the said MNPSP during the open house consultation claimed that there are some costs which can be shared and some costs which cannot be shared publicly because of the fact that those are costs which are "commercially competitive" for them and it would hamper their principals to bid in other countries.
- 47.6 The said MNPSP has also submitted that despite several representations, the Authority has disallowed genuine costs negatively and unjustifiably. It has also recommended that the Authority should appoint a third-party international consultant who has domain expertise to review and ascertain costs, porting volume and the resultant tariff. It is reiterated that the Authority has considered total costs as available from the audited financial statements of the MNPSPs with few exclusions like bad debts/provision for bad debts and currency fluctuations loss (the reason for the same has been detailed sufficiently). Further, the Authority has considered total cost (including royalty/license fee and depreciation, as indicated in the audited financial statements) of the more economical of the two MNPSPs, for determining the PPTC. In other words, total cost and port volume data of the MNPSP with lower per port transaction cost has been considered for determining the PPTC.
- 47.7 A revised table showing detailed breakup of the costs (Rs. 6011.19 lacs) has also been added in the Explanatory Memorandum. It would be more appropriate if the

- MNPSPs were to review its cost structure and identify the areas of improvement to achieve cost efficiency.
- 47.8 The MNPSPs have again contended that return on capital employed @ 15% is not sufficient and the same must be measured after taxes to grant a sufficient return on capital employed. One of the MNPSP has suggested to use mark up on costs @ 25%. This issue was already adequately addressed in the Draft Regulations and has been elaborated in the Explanatory Memorandum. The Authority reiterates that the MNPSPs have not furnished any compelling reason for reconsideration of the ROCE rate. Therefore, in line with the existing practice, return on capital employed @ 15% has been considered for determining the total cost. Another MNPSP has suggested to provide the basis of computation of capital employed. Accordingly, it is clarified that capital employed has been calculated as the sum of net book value of fixed assets, total capital work in progress and net working capital as at the end of the financial year.
- 47.9 The MNPSPs have further submitted that reduction in PPTC would render providing ancillary services free of cost. Further, database download rate should be fixed at Rs. 15000/- for each download after 2 free downloads every month. In this regard, the Authority determines that the concerned MNPSP has made contradictory submissions. On the one hand the said MNPSP admitted that costs of these services were already included in the historical costs whereas on the other, it claimed that reduction in PPTC would effectively render such services free of cost. This is not true as the Authority has considered all the relevant costs incurred by the MNPSPs (except few heads as already explained earlier) to determine PPTC which include costs for providing 'ancillary' services. Therefore, the Authority does not find any reason to change the Draft Regulations in this respect.
- 47.10 It has also been contended by the MNPSPs that the Authority has arbitrarily taken a figure of Rs. 87 lacs as cost of 7th Amendment completely ignoring actuals being incurred towards capital costs for Hardware and Software development. The MNPSPs have further contended that the Authority has not given a rationale for its assumption that substantial addition of CAPEX and OPEX is not required by MNPSPs. On the other hand, few TSPs are of the view that additional cost/investment would not be more than 1-3% of the MNPSPs present costs. One of the TSP has suggested that with open source software this cost of Rs. 87 lakhs will be reduced to 25%. The rationale and basis of computation of incremental component of PPTC on account of implementation of 7th Amendment was elaborated in detail in the Draft Regulations. In this regard, it is reiterated that the additional work involved on account of 7th Amendment would largely be automated with no or minimal human intervention and the existing personnel deployed by MNPSPs in the current operations would be sufficient to undertake the additional work envisaged under 7th Amendment. As elaborated above, the data provided by the stakeholders,

- including MNPSPs and TSPs (who are presently engaged in UPC generation and associated processes), for determining incremental component of PPTC on account of additional work involved for implementation of 7th Amendment has been used. Further, in relation to the contention of the concerned MNPSP that actual data has not been considered, it is stated that none of the MNPSP has provided data related to actual expenditure (software and hardware requirements) incurred on account of additional work envisaged under 7th Amendment. Therefore, the Authority has decided to review the PPTC and other charges after one year when audited historical data would be available.
- 47.11 One of the MNPSP has submitted that the Authority has not considered the need of separate charges for UPC generation from the PPTC. It has also been submitted that apart from UPC generation and SMS processing, there are certain other changes to the porting process to be catered to under the 7th Amendment, which will also drive up costs and the same have not been considered (*e.g.* non-payment suspension and reconnection). In this relation, it is noted that the computation of incremental component of PPTC as proposed in the Draft Regulations covered the estimated cost towards all the additional work associated with the implementation of 7th Amendment including handling UPC requests and therefore, the amended tariff of PPTC under these regulations adequately covers these costs to be incurred by the MNPSPs under the 7th Amendment. In any case, the Authority has decided to review the PPTC after one year when audited historical cost data would be available for the additional work performed by the MNPSPs.
- 47.12 One of the MNPSP has submitted that considering the significant reduction in the porting revenue, the Authority should enable the MNPSPs to obtain data from both MNP zones and provide dipping services to 3rd parties under commercial terms mutually agreeable between the MNPSP and 3rd parties. The said MNPSP has submitted that this may allow the MNPSPs to share certain assets and resources across multiple services. While the cost of the MNPSP will not change, the allocation of some of those costs can be reduced by allocating a portion of them to dipping. In this regard, the Authority determines that the tariff related to Dipping charges is under forbearance and the present issue raised by the MNPSP is beyond the scope of this consultation process.
- 47.13 One of the MNPSP has requested to delay the implementation of the new PPTC tariff till 1st January, 2020. It has been further submitted that the new tariff should be implemented on the 1st of the month following implementation of the 7th Amendment by all stakeholders. The Authority has considered the difficulty expressed by the MNPSPs in the billing system due to changes in tariff during the month. However, the Authority determines that the amended tariff specifically covers the incremental component for implementation of 7th Amendment and therefore, the 7th Amendment and the amended tariff should come into force

simultaneously. The difficulty expressed by MNPSPs can be addressed easily in their billing systems.

- 47.14 A TSP has sought clarification from the Authority in relation to the applicable PPTC rate during the period from 31st January, 2018 (*i.e.* when the previous amendment to MNP Charges Regulations were notified) to the date when the present amendment would come into force due to subsequent quashing of the said amendment by the Hon'ble High Court of Delhi. In this regard, the Authority is of the view that the claims and liabilities of the parties depend upon the findings/ observations given by the Hon'ble High Court of Delhi *vide* its judgement dated 8th March 2019. In case of any dispute between the parties, arising due to difference of opinion on the issue, the aggrieved party may approach the appropriate forum for redressal of its grievances.
- 47.15 The TSPs have also requested the Authority to address the issue of competition in the MNP services by ending lack of choice to TSPs as well as subscribers in choosing its MNPSP by opening entire 22 service areas to both the MNPSPs. Another stakeholder has advocated the adoption of Blockchain to create more efficient processes and lower the cost of operation. The Authority has considered these submissions and agrees that promoting competition in MNP services would improve efficiency and innovation in the MNP services. However, these suggestions cannot be addressed in the present consultation process. However, the Authority would continue to take measures for facilitating competition and promoting efficiency in the telecom services in general and MNP services in particular.
- 47.16 The MNPSPs have submitted that the port volume considered by the Authority for computing PPTC is not representative of current volumes or volumes estimated for the future on which PPTC would be applied. The MNPSPs have reiterated to 'normalize' the port volume data for one-time spikes on account of closure/merger of the operations by the TSPs, as the one-time spikes are unlikely to be repeated in the future. One of the MNPSP also suggested a tiered pricing structure to minimize risk of using a high or low number for deriving PPTC.
- 47.17 The Authority examined the suggestions about tiered pricing structure. Such approach would involve many subjective assumptions and would be difficult to implement both for MNPSPs and TSPs, hence is not a practical option. The Authority also considered the representation of the MNPSPs and decided that the one-time exceptional porting due to closure/merger of TSPs needs to be taken into consideration for the porting volumes to be a fair reflection of the normal porting that is likely to happen in the absence of such 'forced portings'. The market has stabilized between the major players to some extent and abnormal spikes due to closures and mergers are unlikely to happen in the near future. As such, the porting volume being crucial in determining PPTC, it is essential that the porting volumes being considered are as 'normal' as possible. The Authority had

- 'normalized' the porting volumes to an extent in the Draft Regulations by taking an average of three years to smoothen the spikes in particular years, but present trend in porting volumes is indicated better by excluding the 'forced portings', especially as the relevant information/data is available with TRAI.
- 47.18 The two MNPSPs submitted their own estimates of the one-time spikes due to closure/merger of TSPs. The relevant MNPSP has projected 190.76 lakh ports as 'extraordinary' *i.e.* due to closure/merger of TSPs during the period, based on the criteria that the spikes were greater than the average trend. However, it would be too simplistic to assume all the spikes in porting to be due to 'forced portings', arising out of closure/merger of TSPs. More than 95% of the mobile connections in India are pre-paid connections with a balance in the account, which the subscriber would like to utilize before porting the number. Further, some of these port requests would be due to factors other than closure /merger of the TSPs e.g. bad quality of service, better tariff/service offered by other TSPs, *etc.* As such, the Authority decided to arrive at a relatively more objective criteria of arriving at the 'forced porting' volume, based on the information/data submitted by the MNPSPs and TSPs to TRAI during the relevant months. The TSPs reported to TRAI about the date of closure/merger of operations in the relevant LSAs. The MNPSPs also reported to TRAI about the porting volumes TSP-wise and LSA-wise. As such, the authority has decided that the port-out volumes of a TSP happening from the month of closure of operations (as reported to TRAI) in the relevant LSAs till the month that TRAI directed the TSPs and MNPSPs to complete the porting of subscribers, will be considered as 'forced portings', and the porting volumes shall be 'normalized' to that extent.
- 47.19 Upon considering the above-mentioned criteria, it is found that out of total port volume of 1102.08 lakhs considered by the Authority for the relevant MNPSP in the Draft Regulations, 120.60 lakh is on account of one-time spikes due to closure/merger of TSPs. Thus, the 'normalized' port volume for the MNPSP is 981.48 lakhs (*i.e.* 327.16 lakhs in a year). Comparing the 'normalized' port volume with the present volume of porting (the Authority has considered the port volume from January to July' 2019, which is available as of now), it is observed that the annualized port volume based on the porting data since January' 2019 for the concerned MNPSP is 313 Lakhs. As such, the 'normalized' port volume as arrived at by the Authority fairly represents the prevailing port volume. Therefore, the Authority decided to consider the 'normalized' port volume for the calculation of PPTC.
- 47.20 Based on the above, the revised calculation of PPTC is as follows:

S.No	Particulars	Unit	Amount
A	Total Cost for 3 years	Rs. in Lakh	6011.19
B	No. of porting requests for 3 years	in Lakh	1102.08
C	No. of exceptional porting (<i>i.e.</i> due to closure/merger of TSPs) for 3 years		120.60
D	Normalized port volume for 3 years (B-C)		981.48
E	Per Port Transaction Cost (A/D)	in Rs.	6.125
F	Additional cost per annum due to implementation of functionalities prescribed by 7 th Amendment	Rs. in Lakh	87.00
G	Additional per port cost to implement the functionalities prescribed by 7 th Amendment ((F*3)/D)	in Rs.	0.27
H	Total Per Port Transaction Cost (E+G)		6.395
I	Licence Fee @1%		0.064
J	Per Port Transaction Charge (H+I)	in Rs.	6.46

Effective date for new PPTC

48. During the consultation process, one stakeholder submitted that the new tariff should be implemented with retrospective effect *i.e.* 31st January, 2018. In this regard, the MNPSPs have submitted that the new tariff should not be implemented with retrospective effect and any changes in PPTC pursuant to 7th Amendment should be made effective at the same date as the obligations of the MNPSPs under the 7th Amendment becomes effective. The Authority has decided that the present amendment to the PPTC would come into effect from 11th November, 2019.