

Telecom Regulatory Authority of India

Notification

New Delhi, the 27th March 2006

No.: 16-31/2004-FA: In exercise of the powers conferred upon it under Section 36 read with para (i) of clause (b), sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and Other Documents) Rules, 2002 and the order/notification issued thereunder, the Telecom Regulatory Authority of India hereby makes the following Regulation namely:

1. Short title, extent and commencement: -
 - (i). This Regulation shall be called “The Reporting System on Accounting Separation (Forth Amendment) Regulation, 2006 (4 of 2006)”.
 - (ii) The Regulation shall come into force on the date of its publication in the Official Gazette.
2. In regulation 1 under Section I of the Reporting System on Accounting Separation Regulation, 2004, for clause (2) and contents thereof, the following shall be substituted, namely:

“(2) This Regulation shall apply to every service provider, which is engaged in any one or more of the following telecommunication activities, namely: -

- (i) Basic Telephone Service;*
- (ii) National Long Distance Service;*
- (iii) International Long Distance Service;*
- (iv) Cellular Mobile Telephone Service;*
- (v) Very Small Aperture Terminal Service (VSAT);*
- (vi) Radio Paging Service;*
- (vii) Public Mobile Radio Trunk Service;*
- (viii) Global Mobile Personal Communication Service; and*
- (ix) Internet Service_*

and having an aggregate turnover of Rupees twenty five crore or more, made from the sale or supply of all its products or activities during the preceding financial year.”

3. In regulation 4 under Section II of the Reporting System on Accounting Separation Regulation, 2004, for clause (2) the following shall be substituted, namely:

“(2) (a) The service providers to whom this Regulation applies shall every year prepare Reports mentioned in Regulation 4 (1) on the basis of historical cost accounting.

(b) The service providers to whom this Regulation applies shall also prepare reports every second year on the basis of replacement cost accounting if they are providing any one or more of the following services, namely:-

- (i) Basic Telephone Service;*
- (ii) National Long Distance Service;*
- (iii) International Long Distance Service; and*
- (iv) Cellular Mobile Telephone Service.*

Provided that if less than three years have elapsed since issue of the license to a service provider to provide a particular service from amongst the services mentioned above, the financial reports based on replacement cost accounting may not be prepared for that service.”

4. In regulation 5 under Section II of the Reporting System on Accounting Separation Regulation, 2004, for clause (2), the following shall be substituted, namely:

“(2) The service providers who are required to prepare reports on the basis of replacement cost accounting in accordance with the provisions of sub-clause (b) of clause (2) of regulation 4 shall also submit reports based on the replacement cost accounting every second year within six months of the end of the accounting year to the Authority.”

5. This Regulation contains an explanatory memorandum to provide clarity to matters covered under the Regulation.

(Indu Liberhan)
Principal Advisor (FA&IFA)
F.No 16-31/2005-FA

Explanatory Memorandum

1. The Reporting System on Accounting Separation Regulations, 2004 is applicable to all service providers providing any of the nine specified telecom services in the existing regulation (1). Every year these service providers are required to prepare accounting separation reports on the basis historical cost accounting and every second year on the basis of replacement cost accounting.

Applicability of the Regulation

2. This year many service providers, mainly ISPs with a small subscriber base, PMRTS operators, Radio Paging Operators failed to file accounting separation reports with the Authority. The Authority had issued show cause notices to all service providers who failed to submit accounting separation reports in time and therefore comply with the requirements of the regulation. The service providers like PMRTS have written in their replies to the show cause notice that PMRTS operators have small turnovers and therefore Accounting Separation Regulation is a burden on the PMRTS industry. Moreover most PMRTS operators are standalone operators providing single products and therefore accounting separation of their accounts may not serve any useful purpose. On the other hand most Radio Paging Operators have surrendered license. Many small ISPs have also written about their inability to prepare accounting separation reports. The Authority has very carefully examined various responses to the show cause notices and is of the view that accounting separation may be causing undue burden on service providers having small turnovers and decided that the accounting separation shall be applicable to only those companies which had a turnover of a minimum of Rs 25 crores for the preceding financial year.

3. The Authority also recalled that the main objectives of the Accounting Separation Regulation was to examine and check anti-competitive practices like cross subsidy, predatory pricing etc. Telecom companies having low turnovers are generally not in a position to practice such anti competitive behaviour and therefore found it fit to exempt all telecom service providers having turnover of Rs 25 crores or below from preparing and filing accounting separation reports.

4. The other main objective of the Accounting separation reports was to provide audited cost figures for tariff setting. Since, most service providers with turnover of Rs 25 crores or below are providing service like PMRTS, Internet, Radio paging etc and for which tariffs are forborne, their accounting separation reports may not be required. Moreover low turnover generally represents under utilization of network or smaller

nature of the operation itself. The cost figures for such companies may not be very useful for tariff setting

5. While deciding limits for exemption on applicability of the accounting separation regulation, Authority considered various options. The Authority also took note that the Cost Accounting Telecom Rules notified by the Ministry of Finance has a similar provisions on applicability of the Rules for only those companies having a minimum turnover of Rs 10 crores or less for the previous year. Fixation of a higher ceiling of around Rs 100 crores would have exempted many standalone operators having significant market shares in services like VSAT. A lower ceiling of around Rs 10 crores may have resulted in applicability of the regulation on operators providing standalone service like PMRTS or on standalone operators having insignificant market share when compared to its competitors. The Authority therefore found that a ceiling of Rs 25 crores turnover is appropriate for exempting service providers from the applicability of the Accounting Separation Regulation.

6. The Authority while considering applicability of the Accounting Separation Regulation also considered other option of exempting all standalone service providers, providing single service. The Authority noted that many standalone operators are dominant and have captured major market share in areas or markets in which they are operating. Such operators are in a position to take advantage of their market leadership and scuttle competition. The Authority has therefore decided against exempting all standalone telecom operators from accounting separation.

Exemption from filing Accounting Separation reports on the basis of Replacement Cost Accounting.

7. As per the Accounting Separation Regulation, every second year, the replacement cost accounting separation reports are to be prepared and filed with the Authority. The financial year, 2004-05 was the second year of implementation of the Regulation and therefore many service providers were required to file the replacement cost accounting separation reports with the Authority. Many service providers especially ISPs, PMRTS operators expressed inabilities to prepare reports on the basis of the replacement costs and stated that preparation of such reports are burden on small operators. The Internet Service Provider Association also requested to exempt ISPs from preparation of the replacement cost accounting separation reports.

8. In the telecom sector technological changes and declining costs are common. The costing of services based on historical accounts at times give very different results from those based on the current costs. The costing of interconnection usage, Ports etc based on replacement/current costs by various telecom regulators is common. The Authority also had framed Accounting Separation Regulation keeping in mind the importance of the replacement cost in costing of telecom services. However, over these years competition in many areas have matured and the Authority has stopped regulating tariffs for most of the services. The Authority is presently regulating only IUC and few tariffs like IPLC and DLC. The Authority, therefore, considers that replacement cost accounts for many services may not be needed in the near future and therefore decided that except Access Providers, NLDOs and ILDOs, others may be exempted from the requirement of preparing replacement cost reports. However shall the need arise, the Authority may review the applicability of replacement cost accounting on other service providers.