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Dated: 21<sup>st</sup> April 2017

To,  
**Advisor (F&EA-II),**  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
J.L. Nehru Marg, Old Minto Road  
New Delhi - 110002

**Subject: Consultation Paper on Regulatory Principles of Tariff Assessment**

**Reference: Consultation Paper No.3/2017 dated 17<sup>th</sup> February 2017**

**Kind Attention: Shri Kaushal Kishore**

Dear Sir

This is with reference to the above mentioned Consultation Paper on Regulatory Principles of Tariff Assessment. In this regard, please find enclosed our response for your kind consideration.

Thanking you

Yours sincerely

**For Bharti Airtel Limited**

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', with a horizontal line underneath.

**Ravi P. Gandhi**  
**Chief Regulatory Officer**

**Enclosed: As mentioned above**

## **Bharti Airtel Limited's Response to TRAI's Consultation Paper on "Regulatory Principles of Tariff Assessment"**

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At the outset, we would like to thank the Authority for providing us with an opportunity to submit our response to this Consultation Paper. We hope that TRAI will consider our submissions favourably.

### **A. Cardinal principles of tariffs to be followed in the CPP regime:**

With more than a billion customers, India has the second-largest telecom sector in the world. In 2003, TRAI introduced the CPP regime, which laid the foundation for the astonishing growth that the telecom sector witnessed for the following decade. At the time of the introduction of the CPP regime, all issues related to IUC and its linkage with retail tariffs were deliberated upon in detail. Only after taking into account all the relevant concerns and facts, an appropriate policy framework was framed by TRAI, which is still in effect.

In this context, TRAI stipulated that retail tariffs must be subjected to the following principles:

1. **IUC-compliance:** In its tariff order and amendments thereof, TRAI explicitly affirmed that the tariffs offered by a telecom service provider (TSP) must not be below the floor, and that IUC will serve as the floor. IUC must be recovered from the subscriber and it is not up to any TSP to exempt its subscribers from paying the IUC. TRAI also stated that the IUC consistency of tariffs implies that TSPs should be able to meet the IUC expenses on a weighted average basis. The relevant weighted average should be of the concerned service segment (i.e., within voice or data, but not between voice and data).
2. **Non-predation:** TRAI maintained that all tariffs need to be non-predatory, i.e., no TSP (big or small, old or new) should offer a 'below-cost' tariff to its customers. The issue of non-predatory pricing is linked with the ability of the originating TSP to pay the IUC expenses to the terminating TSP while covering its own costs. TRAI has explicitly asserted that this principle would apply to the tariff plans/offers of all TSPs (and not just to those that have Significant Market Power).
3. **Non-discrimination:** TRAI also maintained that all tariffs should be non-discriminatory, i.e., TSPs should not discriminate between subscribers of the same class, and that such classification should not be arbitrary.

## **B. Why are these cardinal principles critical to a CPP regime?**

Unlike other sectors of the economy, the telecom sector is an interconnected world where even the smallest of operators is interconnected with other operators, giving it access to its competitors' entire network and customer base. In a CPP regime, the said operator can use its competitors' networks to skew the competition through predatory/below-cost/below-IUC tariff pricing.

For example, if a TSP implements a strategy to provide aggressive tariff plans such as free/bundle/low-cost minutes, it leads to more minutes terminating in the other operators' networks. Such arbitrage in a competitive market allows that TSP to exploit the situation and acquire new customers at the expense of the terminating operator(s), without any real reduction in cost.

Such market behaviour becomes fatal in a regime where the termination charges are already 'below cost' and allow only partial cost recovery for the terminating operator. As a result, the TSP is left with no choice but to recover the remaining cost from its outgoing minutes. If a TSP starts offering tariffs that are lower than the IUC, it results in an imbalance of traffic, wherein the terminating operator ends up handling more and more incoming minutes and it becomes increasingly difficult for it to recover the cost.

## **C. The adverse impact of a recent entrant's non-compliance with these cardinal principles:**

The sector has recently witnessed the violation of these cardinal principles by a new entrant that has been providing free services and generating a tsunami of incoming voice traffic on its competitors' networks, (to the extent of 93%). Such services are clearly non-IUC compliant (the realized rate for voice traffic is less than 14 paisa) and predatory (the TSP is unable to recover the IUC and its own cost for the provision of services).

Such asymmetric traffic has destabilized the IUC framework for the entire Indian telecom industry. The IUC Regulation of 2015 does not address traffic asymmetry of such magnitude as it assumes a variation within the range of 4-14% only. Therefore, the extreme traffic asymmetry has resulted in huge revenue losses for all TSPs.

## **D. Cost-based tariffs are essential to protect investments:**

Currently, the telecom industry's financial health is at its weakest ever, with a massive debt burden that exceeds Rs. 4.50 lac crore. The Indian telecom industry is subjected to one of the highest taxes and levies in the world. It is making a Return on Capital Employed (ROCE) of only 1%.

On one hand, the industry is struggling to sustain itself, while on the other, it requires investments of more than Rs. 5 lac crores in the coming years to accomplish the government's vision of 'Digital India' and 'Broadband Highways'.

The industry needs to be financially stable and self-sustainable in order to garner those investments. Therefore, the way forward lies in having retail tariffs based on sound economic principles. It is in this context that the cardinal principles mentioned above assume critical importance in offering sustainability to the industry.

**E. Our request:**

As explained above, the CPP regime, IUC regime and tariff regulations are intricately interlinked and should not be considered in isolation. To ensure the sustainability of the sector, we request TRAI for the following:

1. TRAI should implement a cost-based IUC to prevent TSPs from causing traffic asymmetry through their tariff plans<sup>1</sup>. Alternatively, TSPs should be allowed to have operator-specific tariff plans (different termination charges for different operators based on traffic pattern).
2. The compliance requirements for the existing cardinal principles governing tariffs, i.e., IUC-compliance, non-predation, etc., should be made more stringent to ensure that the tariffs offered by the TSPs to their customers do not adversely affect competition.

With this, we submit our question-wise detailed response as follows:

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<sup>1</sup> Our response to TRAI's Consultation Paper on Review of Interconnection Usage Charges dated 5<sup>th</sup> August 2016 may be considered along with this response for the purpose of framing the rules related to tariff.

**Question 1: Do you think that the measures prescribed currently are adequate to ensure transparency in the tariff offers made by TSPs? If not, then, what additional measures should be prescribed by the TRAI in this regard? Kindly support your response with justification.**

**Bharti Airtel's response:**

1. We believe that the current measures prescribed by TRAI are adequate to ensure transparency, enable customers to take informed decisions about telecom services and protect their interests. TRAI has developed an evolved regulatory framework in the form of the Telecommunication Tariff Order, 1999 (with more than 60 amendments), Telecommunication Consumer Protection Regulation, 2012 (with several amendments) and various other directions and guidelines issued from time to time.
2. Currently, all TSPs are striving to attract customers through innovative offers. Customers are free to switch from one TSP to another using mobile number portability (MNP), if they are not satisfied with their telecom service provider. Therefore, TSPs are going above and beyond the prescribed norms by adopting several initiatives to enhance transparency while providing services to the customers. For example, through the My Airtel app, our customers can easily access details regarding the tariff plans they have subscribed to, their usage pattern for voice and data, their billed/unbilled amounts and the tariff plans offered in their service area, as well as opt for any change in their tariff plan as per their requirements. For customers with feature phones, such facilities are available on the "self-care" menu designed for them.
3. In view of the above, we feel that the existing measures prescribed by TRAI are adequate and sufficient to protect the consumers' interests. Nevertheless, we support the introduction of any additional initiatives to enhance transparency if TRAI so desires, as long as they are based on economically sound, rational principles and prescribed in a transparent manner.

**Question 2: Whether current definition relating to "non-discrimination" is adequate? If no, then please suggest additional measures/features to ensure "non-discrimination".**

**Bharti Airtel's response:**

1. We submit that the principle of "non-discrimination" has been well-defined in the TTO, 1999, which mandates that "service providers shall not, in the matter of

application of tariffs, discriminate between subscribers of the same class, and that such classification of subscribers shall not be arbitrary”.

2. In this consultation paper, TRAI has asked whether any specific offer being made only to new subscribers should be treated as a valid classification or not, since such offers are not applicable for existing customers. We believe that TSPs have a legitimate right to attract more customers through introductory offers. There should be no concerns raised as long as the offers are in compliance with the aforementioned cardinal principles and any other regulations or applicable laws. In fact, attracting new customers through legitimate practices such as providing special offers is widely prevalent across all industries. Similarly, service providers offer loyalty-based benefits and special offers to their existing customers as a retention tool. Therefore, providing introductory offers to only new customers or any other offers only to existing customers is not an arbitrary classification. In fact, new customers vs. old customers is one of the most common classifications and is easily understood by the customers.
3. The classification of customers has enabled service providers to retain and attract more customers, increase the usage of telecom services and provide better services to end customers. For example, service providers offer additional data benefits to 4G customers, keeping in mind that 4G handset subscribers are heavy data users. This also incentivizes the adoption of 4G handsets.
4. Moreover, telecom operators also offers discounts to individual customers or sets of customers (also known as segmented/discount offers), based on various factors such as usage pattern, age on network, ARPU, loyalty, grievance, and QoS being offered to the customer. These discounts are based on the customer’s profile and usage pattern (known through Big Data analysis), and are aimed at enhancing the usage of services. Customers are transparently informed about such offers through personalized channels such as SMS, IVR, in-app messages and USSD. We are sure that it cannot be TRAI’s intention to prohibit TSPs from offering discounts, as it would violate the fundamental right of TSPs to conduct business/trade, granted to each citizen of India under Article 19(1) (g) of the Constitution.
5. After all, discounts, waivers, rebates, concessions, and other gestures of goodwill are normal business practices prevalent across all industries, and not specific to the telecom industry. These measures help in customer retention and increased customer satisfaction, leading to an upsurge in the usage of products and services. They also provide more value for money to the customer. All industries, be it the hospitality industry, airline industry, banking industry, insurance industry or any

other service industry, provide such benefits to end customers based on their user profile. Hence, such offers to individual customers should not be viewed as being discriminatory in any manner. A uniform discount offered to all customers would, in effect, be seen as a tariff plan, and not a discount. Any interpretation that equates discounts with a change in tariff plan or a component of existing tariff plans, would deny service providers the right to provide discounts to their customers.

6. Therefore, we believe that there is no requirement for prescribing any additional measures with respect to non-discrimination. Nevertheless, TRAI always has the right to intervene in any tariff plan, if any specific classification is found to be arbitrary and non-transparent to the customers.

**Question 3: Which tariff offers should qualify as promotional offers? What should be the features of a promotional offer? Is there a need to restrict the number of promotional offers that can be launched by a TSP, in a calendar year one after another and/or concurrently?**

**Bharti Airtel's response:**

1. We believe that the existing regime of promotional offers should continue. As per the existing guidelines, for any offer to qualify as a 'promotional offer', the following criteria should be met:
  - a. It should not be offered for a duration of more than 90 days.
  - b. The benefits of such an offer should not last for more than 90 days.
2. Therefore, all operators and their promotional offers should be in strict compliance with the principles, in both letter and spirit.
3. It is to be noted that today, there are various categories of promotional offers and bulk tariffs being offered by service providers. However, all these offers are required to be in compliance with TRAI's various regulations, including the cardinal principles of IUC-compliance, non-discrimination and non-predation, as illustrated below:
  - a. For example, as per its letter titled "Compliance with the Provisions of reporting requirement specified by Telecommunication Tariff Order" dated 12<sup>th</sup> October 2004, TRAI directed all operators to file tariff plans only after conducting a self-check to ensure that the tariff plan(s) is/are consistent with the regulatory principles in all respects which, inter-alia, include IUC-compliance, non-discriminatory and non-predation. Since telecom

operators are required to file their promotional tariffs/plans, they are required to ensure that they comply with the regulatory principles of tariff.

- b. Thereafter, in its March 2006 tariff order, in the context of bulk customers – wherein telecom operators are neither required to file any tariff with TRAI nor to give any protection of six months – TRAI has clearly stated that such tariff plans should be consistent with the regulatory principles in all respect which, inter-alia, include IUC-compliance, non-discrimination and non-predation.
  - c. As per its 2014 tariff order, TRAI made these principles applicable not only to the tariffs offered by access providers (i.e., cellular and basic), but also to those offered by smaller ISP operators. Therefore, TRAI has made no exception with regard to the compliance with its various regulations/tariff orders for any type of tariff.
4. Promotional offers can be distinguished from special tariff vouchers (STVs), combo vouchers and regular tariff plans on the basis of the restrictions governing the duration of offers and benefits to customers. For example:
- a. In a regular tariff plan, the service provider is required to offer the same features and benefits for at least 6 months, whereas a promotional offer can be offered for a maximum duration of 90 days.
  - b. The validity of a regular tariff plan may be unlimited, whereas a promotional offer can only be offered up to 90 days.
  - c. While TSPs cannot offer any special benefits beyond a continuous period of 90 days, they are allowed to run the same STV for an unlimited duration. Hence, customers may be able to subscribe to the same STV even after 90 days have lapsed. However, the application of an STV shall not be considered to render any tariff plan non-IUC compliant or predatory.

**Question 4: What should be the different relevant markets - relevant product market & relevant geographic market - in telecom services? Please support your answer with justification.**

**Question 5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.**

**Question 6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?**



**Bharti Airtel's response:**

1. In this consultation paper, TRAI intends to deliberate upon the issue of different relevant markets for the purpose of determining dominance and whether an entity has Significant Market Power.
2. Dominance and abuse of market power in other industries is linked with the size and might of the service provider. However, in the telecom sector, even the smallest of operators is interconnected with other operators and, therefore, has access to the entire network and customer base of the competing operators. The said operator can easily use its competitors' network to skew the competition through non-IUC compliant and predatory pricing. Therefore, it is critical that the cardinal principles of any tariff are uniformly applicable to all telecom operators, irrespective of their size.
3. Therefore, we firmly believe that the issues related to relevant markets (products and geographic), dominance and Significant Market Power are irrelevant when it comes to defining the regulatory principles of tariff assessment. These issues are distinct from IUC and predatory tariffs as envisaged in the TTOs. Moreover, there is a competition regulator that is empowered to look at the issues arising out of competition in the telecom sector.
4. With respect to market analysis, we believe that TRAI should define the market on the basis of services such as Voice, SMS, Data, Internet Access, Carrier and Enterprise. For example, 4G is distinct from 2G and, hence, the two are not comparable. The data market could further be classified in terms of speed, instead of technology, as a wide variation in data speeds results in non-substitutability of services (say, between 2G and 4G).

**Question 7: What methods/processes should be applied by the Regulator to assess predatory pricing by a service provider in the relevant market?**

**Bharti Airtel's response:**

1. We believe that predatory pricing, as defined in the tariff orders, is directly related to the absolute cost of producing the service. Thus, predatory pricing can be defined as the offering of a service at a 'below cost' rate to end customers by a service provider, irrespective of its market share and size, or the technology used. IUC is an important component of the cost since the originating operator is required to pay the same to the terminating operator for call termination.

Therefore, IUC-compliance is important in the context of off-net calls. Thus, any non-IUC compliant off-net tariff is also a predatory tariff.

2. We firmly believe that the definitions of predatory tariff, Significant Market Power, and relevant markets as given in the Competition Act for determining the dominance of any operator, are not relevant for prescribing the regulatory principles of tariff assessment. The rules pertaining to tariffs are, and should continue to be, equally applicable to all telecom companies, irrespective of their status in the market. Due to the interconnected nature of the telecom industry, a service provider, irrespective of its size, could end up wreaking havoc on the entire industry. Therefore, the principles of tariff should be equally applicable to each player, irrespective of its size.
3. For example, the free tariffs offered by a new entrant for more than 6 months, generated a tsunami of incoming voice traffic on our network. The huge asymmetry in traffic has led to the complete failure of the present IUC regime, which assumes nearly symmetric traffic while fixing the below cost termination charge.
4. The per-minute cost of half the leg of the call, whether outgoing or incoming, is approx. 35 paisa/minute for Airtel's network. Due to TRAI's fixation of the termination charge for an incoming call at 14 paisa/minute, Airtel incurs a loss of 21 paisa/minute for each incoming call. The traffic trend for the last few months indicates that the imbalance between Airtel and the new entrant was in the ratio of 93:7, i.e., 86% of the calls handled by Airtel allowed for only partial recovery of costs. Therefore, an asymmetry of such enormous magnitude is causing huge losses for Airtel.
5. To avoid such scenarios in the future, we recommend the following:
  - a) TRAI should fix a cost-based termination charge based on the FAC model;
  - or
  - b) TSPs should be allowed to charge differential termination charges from different operators (in the absence of a full cost-based termination charge based on the FAC model) with the termination charges increasing with the increase in traffic asymmetry. Such a regime is essential as it will reduce the arbitrage between the "full cost" and "below cost" termination charge. Since all tariff plans are filed with TRAI, any differential retail tariff offered by a TSP can always be evaluated by TRAI.

**Question 8: Any other issue relevant to the subject discussed in the consultation paper may be highlighted?**

**Bharti Airtel's response:**

1. In India, there are a large number of TSPs, operating with a wide variance in their network coverage and capacities. Any skewed and imbalanced traffic between operators can completely distort TRAI's own basic premise while framing the IUC regulation, wherein the termination charge has been fixed considering only 30% off-net traffic, with the level of imbalance limited to 15%. Further, India is already witnessing the phenomenon of multi-SIM phones. Below-cost termination charges promote peculiarities in customer behaviour, i.e., TSPs with inferior network coverage would try to incentivize customers to use their services for outgoing calls by having below-cost tariffs at the expense of the terminating operator, while the networks with better coverage would tend to be preferred for receiving incoming calls.
2. This upsets the delicate balance that the operators have between off-net incoming and off-net outgoing traffic. The losses incurred on account of the termination charge for off-net incoming calls being below cost are compensated for by the terminating operator in the form of higher origination charges levied on its customers. With an increase in asymmetry due to low/free tariffs being offered by an originating operator, the quantum of incoming calls to the terminating operator also increases, which further increases the losses incurred by the terminating operator. In order to offset these losses, the terminating operator is required to further increase its tariffs for outgoing calls which, in a highly competitive market, is hardly a possibility. Therefore, the terminating operator is doubly affected on account of the below-cost tariffs offered by the originating operator:
  - Increase in losses on account of increased off-net incoming calls
  - Decrease in revenue from outgoing calls due to the conversion of its outgoing calls to incoming calls
3. At the time of the introduction of the CPP regime, all issues related to IUC and its linkage with the retail regime were deliberated upon. The Authority, vide its letter dated 20<sup>th</sup> May 2003, stipulated that tariffs must be non-predatory and IUC-compliant. The relevant extract of the said letter states as under:

*"With regard to the relevant regulatory principles, the Authority would like to clarify that:*

***IUC consistency of tariffs implies that the service provider should be able to meet the IUC expenses on a weighted average basis.*** *The relevant weighted average should*

be of the service segment concerned. For example, if we consider a WLL-M tariff package, the weighted average tariffs for the service should be adequate to meet the weighted average IUC expenses for that service.

**The issue of non-predation is linked to the ability to pay the IUC expenses while covering own costs."**

4. Keeping in mind the importance of the termination charge in a CPP regime, TRAI has prescribed that the tariffs need to be compliant with the IUC regime. The 27<sup>th</sup> Amendment to the TTO, dated 25<sup>th</sup> April 2003, mandates that all tariffs should be compliant with IUC Regulations. The relevant portion of the said TTO is as below:

*".....Meanwhile with the issue of the 24<sup>th</sup> Amendment Order dated 24<sup>th</sup> January 2003 and the IUC Regulation dated 24<sup>th</sup> January 2003, the Authority observed that ensuring **compliance of tariffs with IUC Regulation, 2003 is of cardinal importance. In addition, the compliance to regulatory principles of non-discrimination and predatory pricing is also of utmost importance."***

5. The TTO, 30<sup>th</sup> Amendment dated 16<sup>th</sup> January 2004, requires the licensee to ensure that the tariff plans are consistent with the regulatory principles in all respects which, inter-alia, include IUC-compliance and non-predation. Further, the IUC charges, as specified, act as a floor to the retail tariffs. Thus, any tariff where the realized rate for voice traffic is less than 14 paisa is non-IUC compliant. The relevant portion of the said TTO is as under:

*"(l) "Reporting Requirement" means the obligation of a service provider to report to the Authority any new tariff for telecommunication services under this Order and/or any changes therein within SEVEN days from the date of implementation of the said tariff for information **and record of the Authority after conducting a self-check to ensure that the tariff plan(s) is/are consistent with the regulatory principles in all respects which inter-alia include IUC Compliance, Non-discrimination & Non-predation."***

The explanatory memorandum to the said TTO is further clarified below:

*"The Authority has now notified revised IUC Regulation, 2003 dated 29.10.2003 stipulating cost-based Interconnect usage charges. Furthermore, the price developments of Voice-telephony show that there is intense competition. With a high degree of competition, prior approval of tariffs may not be required as competition replaces regulation by the regulator. The Authority is of the view that current declining tariff environment is an ideal time to switch over from an ex-ante tariff regulation to ex-post tariff regulation meaning thereby, complete freedom would be given to operators in the matter of offering tariff plans in the market within the framework of the existing TTO. The Authority has already laid*

*down broad regulatory principles to determine as to whether a particular manner of pricing service is anti-competitive / discriminatory etc. Further the Authority has forborne with the main tariff items in Cellular and Basic services (except rural subscribers' tariff & roaming tariffs). The IUC regime specified by the Authority reflects the underlying costs providing the service. Also the IUC charges as specified will implicitly function as a floor to the retail tariffs and thereby scope for predatory pricing or cross-subsidization is limited."*

6. The Telecommunication Tariff Order (59<sup>th</sup> Amendment) No. 8, dated 21<sup>st</sup> November 2014, further reaffirmed that the cardinal principles are applicable to all telecom operators, including smaller ISPs. The relevant extracts of the order are as under:

*The main objective intended to be achieved through the process of tariff reporting is to have a check on the tariff schemes from the point of view of their being consistent with the regulatory principles in all respects including IUC compliance, non-discrimination and non-predation.*

*Exemption from tariff reporting requirement granted to these small ISPs does not mean that the regulatory principles, guidelines, etc. would not apply to these small ISPs.*

*Keeping in view the small size of operations and resultant turnover of these small ISPs, the Authority feels that such exemption would help them in reducing their compliance costs and once they achieve a subscriber base of 10,000 they will come under the ambit of tariff reporting requirement.*

7. In a predominantly prepaid market such as India, where there is no scope of charging rentals, any instance of a non-IUC compliant and predatory tariff significantly hampers the growth, viability and sustainability of the entire industry, paving the way for complete market failure. This may inhibit investments in the telecom sector and might even jeopardise the broadband roll-out.

8. To summarise:

- a. The regulatory framework should ensure that the tariffs of all TSPs are IUC-compliant, non-predatory and non-discriminatory.
- b. Termination charges should be on a full-cost basis so that an originating operator is not able to manipulate the system through arbitrage or other means.