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Ref : 1180/TRAI-G/ISPAI/12

10 February, 2012

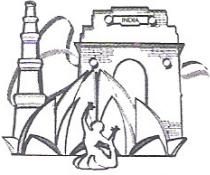
Mrs. Anuradha Mitra,  
Principal Advisor (FA&IFA)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg (Old Minto Road),  
New Delhi-110002.

Subject: Draft "The Reporting System on Accounting Separation Regulations, 2012" – Views /  
Suggestions regarding.

Respected Madam,

We welcome the effort of TRAI to review the long pending review of the Accounting Separation Regulations, 2004. We would like to submit after having detailed deliberations amongst our ISPs Members, we are submitting our views / suggestions, as per following for your kind perusal and needful action.:

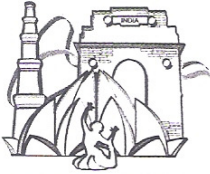
1. The System on Accounting Separation is a set of rules and procedures to ensure the attribution and allocation of revenues, costs, assets, liabilities and capital employed to individual activities and services, in particular considering direct and indirect operating costs.
2. The purpose of imposing an obligation regarding the Accounting Separation is to ensure that fair, pro-competitive and transparent criteria are followed by telecom service providers in allocating their costs to the services/ products. The major resulting benefit has a transparent illustration of the relation between costs and prices, as the Accounting separation system should be able to break costs down in order to ensure that costs allocated to services/products do not result in cross subsidies, excessive prices and, in general, that costs are efficiently incurred.
3. It is important to note that under the Accounting Separation System, the transfer charges of services and/or internal purchases need to be clearly identified on business activity level to fulfill compliance with non-discrimination obligations. Transfer charges shall be the same as the prices charged for services offered other telecom companies at the same conditions. The detail of information provided to the Regulator should serve to ensure that there has been no undue discrimination between the provisions of services internally and those provided externally and allow identification of the average cost of services and the method by which costs have been calculated.



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4. It has been observed that under the present accounting separation regulations, there is no system to ensure that the transfer charges are non discriminatory and the significant market powers / incumbents are not involved in anti-competitive, unfair and discriminatory behavior. It has also been noted that under the proposed ASR 2012, this issue has not been taken up very clearly. However, through proforma " 'H' – Statement of Related Party Transaction" an attempt has been made but there is no system to calculate the average cost of the product or network services provided internally or externally. As Accounting Separation is a common tool used by various telecom regulators to address the anti-competitive concerns, therefore, the proposed ASR should generally enable the monitoring a systematic division of costs between retail and wholesale (external and internal).
5. The proposed ASR, 2012 has indicated some important changes over the present established accounting separation regime/framework which was established over a period of time through a consultative process. For e.g. the present accounting separation reports are required to be prepared based on the Central Government Notification No. GSR 782(E) dated 27.11.2002, Notification / Order No. 7-4/2001-tariff dated 21stb October, 2003 and guidelines issued by TRAI on System on Accounting Separation in December, 2002 whereas in the proposed regulation there is no indication about the basis of books of accounts and guidelines on which accounting separation report shall be prepared by the service providers. We understand that same rules will also govern the proposed ASR 2012.
6. We would like to draw the attention of the Hon'ble Authority to the fact that International Telecom Union(ITU)'s Guidelines on the implementation of Regulatory Accounting in Telecommunications Sector of March, 2009 has recognized that accounting separation and cost accounting models are *ex-ante* obligations imposed on Significant Market Power (SMP) operators. Other available documents on the subject have also recognized that worldwide the Accounting Separation is generally applicable to incumbent / SMP telecom service providers. Therefore, we would once again like to submit that TRAI may also adopt the similar international best practices with regard to the applicability / ambit of the proposed ASR on the service providers.
7. The Authority has very rightly noted in para 1 of the letter NO.16-07/2010-FA dated 16<sup>th</sup> January, 2012 that ASR enables the authority to address anticompetitive behavior, discrimination and predatory pricing concerns and to facilitate fair competition. It is further substantiated by the fact as mentioned in para 4 of the said letter that "*Business models of service providers have also changed over time. Vertically integrated telecom, service providers provide retail telecom services and products as well as wholesale services within the same jurisdiction with substantial concentration of market power..... New and more complex forms of upstream and downstream market relationships have emerged*". We believe that small operators who are not integrated telecom service providers and not providing upstream and downstream telecom services would not be in a position to influence the competition. Therefore, we request that authority may



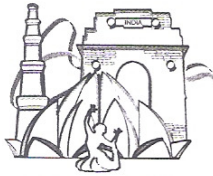


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reconsider the applicability of accounting separation regulation to all service providers and revised the threshold limit from INR 100 crores to INR 1000 crores and including continuation of license specific ASR requirements. This will be helpful in achieving the objective of ASR perspective. If total revenue is still considered important then the same should be applicable to vertically integrated telecom operators. For standalone / vertically non-integrated operators the present regime of license specific ASR should continue.

8. It is humbly submitted that if TRAI is keen to implement the ASR in general we would like to request that the reporting requirements should be divided into two separate set of formats for two levels of operators :
  - a. One for those who are vertically integrated operators providing up and downstream telecom services and
  - b. the other for non-integrated / standalone telecom service providers like our members.
9. The proposed regulation is required that with a view to assess the performance of new accounting separation statement, the service providers would be expected to provide the data for the last accounting year (2010-11) in soft copy in revised Proformae as prescribed in Schedule-III to the draft Regulations. Such new provision under the proposed ASR, besides being a time consuming exercise, will increase the cost of implementation cost of accounting separation system.
10. As per Regulation 3 on Manual & Reports Service Providers are required to submit a copy of the Manual within one month from the date of commencement of new Regulation whereas Accounting Separation Manual has already been submitted by the service providers. Since there is no change in the items / information sought of the manual of the proposed ASR and the existing ASR, we request that there should not be any duplication of the information which has already been submitted to the Authority and accordingly the service providers who have already submitted the manual to TRAI should not be asked to submit it again unless there is any change.
11. It is also requested that non integrated operators may be exempted from the auditing as the auditor is not verifying any cost allocation / attribution parameters notified / approved by the TRAI. The Auditor is verifying only those parameters that have been filed by the telecom service provider under the accounting separation manual. Over and above, since the preparation and allocation of cost, revenue and capital employed is the responsibility of the management / company, therefore, merely verification of the data / arithmetic calculation in the prescribed format by the auditor for the sake of formality will not provide any fruitful results to TRAI and Telecom Service Providers.

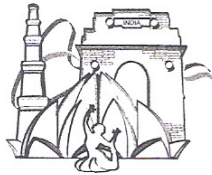


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12. With respect to auditing & Audit Report, our suggestion is that since as per the TRAI Act, management or officers of the company would be held responsible for any incorrect data submitted to the Authority, we would like to suggest that instead of asking for the auditor's opinion/certificate, if it is certified by the member of the Institute of Chartered Accountant of India (ICAI) or Institute of Cost and Works Accountants of India (ICWAI), whether member is in service / service in the same company or in practice, the same should be considered as a compliance of audit formalities under the proposed regulations. This would help to reduce the cost of the concerned service provider.
13. It is important to note that under the proposed regulations, TRAI has not prescribed as to which books of accounts should be the basis for preparation of accounting separation reports. Whether statutory financial statement prepared under Section 211 of the companies act 1956 or books of accounts prescribed under DOT's notification No. GSR 782(E) dated 27.11.2002 on "The Telecom Authority of India, Service Providers (Maintenance of Books of Accounts and other Documents) Rules, 2002 to specify books of accounts which are to be maintained and notification / order No. 7-4/2001-Tariff dated 21<sup>st</sup> October, 2003 in the Gazette of India to specify the manner in which books of accounts / other documents are to be maintained. We understand that telecom service providers under the proposed ASR, 2012 will continue to maintain books of accounts as done presently.
14. In Schedule IV of the Regulation TRAI has mandated for a certificate under which auditor has been asked to comment / opinion observation with respect to keeping of books of accounts in compliance of standard / costing principles issued by ICWAI. The relevant portion of the report as indicated in para 3(b) is reproduced below:
- i. *"In my / our opinion proper book of accounts have been kept by the company in compliance of cost accounting standards issued by Institute of Cost & Works Accountants of India and generally accepted cost accounting principles so far as appears from my / our examination of those books to enable the preparation of complete and proper accounting separation reports in accordance with the regulations"*
  - ii. With respect to above provision it may be mentioned that in the main draft regulations, there is no specific provision to the effect that books of accounts will be maintained as per the standard issued by the ICWAI. Even as per our information, till date ICWAI has not issued any standards or principal *per se* applicable for Indian Telecom Industry. Therefore, this very specific clause will be in contradiction of TRAI's own guidelines on system on accounting separation which has been considered as a guiding factor for preparation of TRAI's ASR Reports till now.



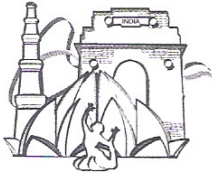


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iii.

In view of above facts instead of referring the standards/principles issued by the ICWAI, TRAI may update / revise its own present guidelines on "system on accounting separations" which shall be referred as underline principle / standards for preparation of proposed accounting separation reports as the prevailing practice is ASR are prepared based on guidelines issued by TRAI.

**In conclusion thereof, we would like to sum up the following:**

- The proposed ASR may be aligned with the international best practices / guidelines issued by the ITU. It should be applicable only to incumbents and SMP telecom service providers and not to vertically non-integrated / stand alone telecom operators like our members
- The proposed ASR should have a system to examine the issue of anti-competitive behavior of telecom service providers. Therefore, the proposed proforma of A should be aligned in such a manner that it may provide the relevant information on the face of Proforma 'B' (Profit & Loss Statement for each product as prescribed in Schedule-I of the proposed regulation) and Proforma 'H' (Statement of related party transactions) to show the average cost per unit of services as well as revenue realized against it. The proposed ASR does not provide any relief to the standalone non-integrated telecom service provider.
- TRAI may consider two separate set of formats for two levels of operators, i.e. one for those who are vertically integrated operators providing up and downstream telecom services and the other for non-integrated telecom service providers.
- Collective revenue threshold limit of Rs. 100 crore for all licenses of an entity is not adequate. TRAI should continue with license specific ASR and individual threshold limit for ISP licensees should be raised to Rs. 100 crore from the existing Rs. 25 crore.
- Adoption of Accounting Separation by Board of Directors should not be mandated.
- TRAI should withdraw the "Replacement of Cost Accounting" as it is not yielding any result and should adopt a consistent standard.
- Requirement of Report Cost for various support functions should not be mandated.
- With respect to auditing & Audit Report, we would like to suggest that instead of asking for the auditor's opinion/certificate, if it is certified by the member of the ICAI or ICWAI, the same should be considered as a compliance of audit formalities under the proposed regulations. This would help to reduce the cost of the concerned service provider.
- A careful glance at the paper reveals that there are no major changes in the regulations and the formats have not been simplified or renewed as per the requirement of time and the same are as cumbersome as the existing ones.



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- Further we have noted that in various regulations / Tariff orders / Guidelines, TRAI has proposed to switch over to forward looking costing allocation principles i.e. from FAC to Long Run Incremental Cost (LRIC) etc. Perhaps, the LRIC and its variants have not been indicated in the proposed ASR.
- We request to consider reframing of the draft ASR in a way to address the concerns of the competition, which are taking place / will take place in the near future.
- Before finalizing proposed ASR, TRAI may update / revise its own existing guidelines on "system on accounting separations" which shall be referred as underline principle / standards for preparation of proposed accounting separation reports.
- Implementation of ASR should be start from fiscal year 2012-13 or anytime thereafter.

We sincerely believe that the Authority would consider our response in positive perspective and expect a forward-looking recommendations incorporating ISPs' concerns on the subject matter.

Thanking you,

Yours truly,  
for **Internet Service Providers Association of India**

S. P. Jerath  
Secretary

# Telecom Regulatory Authority of India

(IS / ISO 9001:2008 Certified Organisation)

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① letter

## ACKNOWLEDGEMENT

No. 13134

Date : 19/2/12

Received letter No. 1180/TRAI - G/ISPAI/12 Dated 10/2/2012

From ISPAI, 43, Nehru place, ND

addressed to pr. Adv. (FA & IFA)

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19/2/2012  
For TRAI