

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 18th September, 2012

**THE TELECOMMUNICATION INTERCONNECTION (PORT CHARGES)
(SECOND AMENDMENT) REGULATIONS, 2012
(No. 18 of 2012)**

File No. 409-3/2011-I&FN.----- In exercise of the powers conferred upon it under section 36, read with sub-clauses (ii), (iii) and (iv) 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 to further amend the Telecommunication Interconnection (Port Charges) Regulation, 2001 (6 of 2001), namely :-

1. (1) These regulations may be called the Telecommunication Interconnection (Port Charges) (Second Amendment) Regulations, 2012.

(2) These regulations shall come into force on the first day of October, 2012.

2. In the Telecommunication Interconnection (Port Charges) Regulation, 2001 (6 of 2001), after regulation 2A, the following regulation shall be inserted, namely:-

“2B. Port charges on or after the 1st October, 2012. - -

(1) Every interconnection seeker shall, on or after the 1st day of October, 2012, make his demand, for every Point of Interconnection for the total number of Ports required by him on or after the said date to the interconnection provider.

(2) Every interconnection seeker shall make demand under sub-regulation (1) on the basis of traffic projection (in Erlangs) on half yearly basis.

- (3) Every interconnection provider shall charge, on or after the 1st day of October, 2012, the Port charges in accordance with the Port charges specified in Schedule III to these regulations and raise the demand note or the invoice, as the case may be, for the Ports demanded on or after the said date by the interconnection seeker under sub-regulation (1) and (2).
- (4) The Port charges for every Port demanded, allotted and provided before the 1st day of October, 2012 shall be charged on or after the said date in accordance with the Port charges specified in Schedule III to these regulations and the interconnection provider shall raise the demand note or the invoice, as the case may be, for such Ports provided by him before the aforesaid date accordingly.
- (5) Nothing contained in the Schedule III to these regulations shall apply in case the interconnection provider and the interconnection seeker mutually agree to charge and pay charges lower than those specified in the Schedule III to these regulations.

3. After the Schedule II to the Telecommunication Interconnection (Port Charges) Regulation, 2001, the following Schedule III shall be inserted, namely:-

SCHEDULE III {See regulation 2B}

PORT CHARGES

Item	Port Charges	
(1) Date of implementation	1 st October, 2012	
(2) Coverage	Charges for 'Ports' (other than the Port charges for internet, which are specified in Schedule VI of the Telecommunication Tariff order 1999)	
(3) Port Charges	Port Charges (in Rs.) per port per annum for providing port in MSC	Port Charges (in Rs.) per port per annum for providing port in Tandem/TAX Switch
	4,000	10,000

Rajeev Agrawal
Secretary

Note 1: The principal regulations were published vide notification dated 28th December 2001 (6 of 2001).

Note 2: The Telecommunication Interconnection (Port Charges) Amendment Regulations, 2007 (1 of 2007) were notified on 02.02.2007 to be effective from 01.04.2007

Explanatory Memorandum

A- Port Charges

1. A 'port' means a place of termination on a switch/distribution frame to provide a point of access or interconnection for ingress and egress of traffic between the two interconnecting networks. The bandwidth of the port is 2.048 Megabits per second. The 'port charges' are payable by the interconnection seeker to the interconnection provider for terminating the interconnection links on the network interface of the interconnection provider.

B- Background

2. The Authority notified 'The Telecommunication Interconnection (Port Charges) Regulation 2001' on 28.12.2001. The regulation, inter alia specifies the port charges payable by the interconnection seeker to the interconnection provider as below:

Table 1

S.No.	No. of Ports	'Port' charges (Ceiling of Rs. per port)
1	1 to 16 PCMs	$N * 55,000$
2	17 to 32 PCMs	$8,80,000 + (N-16) * 30,000$
3	33 to 64 PCMs	$13,60,000 + (N-32) * 20,000$
4	65 to 128 PCMs	$20,00,000 + (N-64) * 15,000$
5	129 to 256 PCMS	$29,60,000 + (N-128) * 14,000$

Where 'N' refers to the number of ports demanded by the interconnection seeker within the capacity ranges under the column 'No. of ports'.

3. Section IV of 'The Telecommunication Interconnection (Port Charges) Regulation 2001', provides that the Authority may, from time to time, review and modify port charges. The Authority may also at any time, on reference from an affected party, and for good and sufficient reasons, review and modify the port charges.

4. After following a consultation process, the Authority notified 'The Telecommunication Interconnection (Port Charges) Amendment Regulation 2007' on 02.02.2007 to be effective from 01.04.2007, vide which, the revised port charges are as below:

Table 2

S. No.	No. of Ports	'Port' charges (in Rs.) per annum
1	1 to 16 PCMs	$N * 39,000$
2	17 to 32 PCMs	$6,24,000 + (N-16) * 22,500$
3	33 to 64 PCMs	$9,84,000 + (N-32) * 14,500$
4	65 to 128 PCMs	$14,48,000 + (N-64) * 11,500$
5	129 to 256 PCMs	$21,84,000 + (N-128) * 10,500$

Where 'N' refers to the number of 'ports' within the capacity ranges under the column 'No. of Ports.

5. BSNL challenged the abovementioned regulation in Hon'ble TDSAT, mainly on the ground that TRAI has, vide its regulation, overridden its agreement with private service providers and that TRAI does not have power to override interconnect agreement between the service providers. BSNL also contended that lowering the port charges was wrong, illegal and incorrect as the cost of main equipment and total expenses were not taken into account by the TRAI. AUSPI also filed an appeal in TDSAT, requesting to consider inclusion of costs at interconnection seekers network while deciding port charges.
6. Hon'ble TDSAT passed the judgment on 28.05.2010, wherein appeal filed by BSNL was allowed. Hon'ble TDSAT observed that TRAI indisputably can make, modify or alter the Port charges in exercise of its power under Section 11 (1) (b) of the Act. Appeal of AUSPI was dismissed vide Hon'ble TDSAT's judgment dated 24.05.2010.

7. In its appeal, BSNL also raised an issue pertaining to Gateway Switch. On this issue, it is mentioned that Gateway Exchange or Interconnect exchange is one of the way of interconnecting various networks. Establishment of Interconnect Gateway Switch does not obviate the need for port and, therefore, their charges. The earlier exercise initiated by TRAI through issue of Consultation paper on Interconnect Exchange cum Inter-carrier Billing Clearing House for Multi-Operator Multi-Service Scenario on 13th April 2004, could not be concluded as there was no consensus within the stakeholders. The Authority decided to set up an Expert Group to give comprehensive recommendations on all the aspects and issues connected with Interconnect Exchange cum Inter-Carrier Billing System. As per the Terms of Reference of the Expert Group, apart from TRAI other members of the Group were from DOT, TEC,C-DOT, BSNL, Reliance, Bharti, MTNL, Tata, Hutch, Idea, VSNL & Data Access.
8. In a meeting of the Expert group held on 13th January 2006, BSNL informed that they have submitted its Interconnect Exchange Model to DOT, as DOT was also working on the subject. Subsequently, in the meeting held on 6th September 2006, it emerged that an industry committee has been constituted under the chairmanship of Director BSNL. It was concluded in the meeting of expert group in TRAI that once the committee set up under the chairmanship of Director BSNL finalises the various issues under its purview, some result would come out and the same can act as an input for the Expert Group. After receiving the report of this Committee, if required, Expert Group can look into Interconnect Exchange taking into account the trends towards NGN, need for optimum utilization of infrastructure etc.
9. TRAI has followed up the issue with the industry committee through Director (Operations), BSNL as its Chairman. However, no report has been received by TRAI till date.

10. Now, migration to Next Generation Networks (NGN) has started and the major telecommunication operators in India have already implemented IP based core transport network for carrying voice and data traffic. In some cases IP/Ethernet elements have extended into access and aggregation networks. In the changed circumstances, instead of reviewing TDM switch based interconnect exchange concept, in view of the advancement in technology, extension of networks, entry of various new operators, TRAI is in process of studying that whether peer-to-peer interconnection, IP based interconnection exchange or a combination would be preferable. A comprehensive consultation paper in this regard would be issued, separately.
11. Against the TDSAT's judgment dated 28.05.2010, civil appeal no. 6068 has been filed by TRAI before Hon'ble Supreme Court, inter-alia, on the grounds that TDSAT has no jurisdiction to look into the validity of regulations made by TRAI, the same being sub-ordinate legislation. On merit of prescribing port charges, Civil appeals have also been filed by COAI, AUSPI and Sistema Shyam. BSNL in its appeal has challenged the direction of the Hon'ble TDSAT contained in judgement dated 28.05.2010 which does not allow BSNL to charge Port charge at higher rate for interregnum period.

C- The Present Exercise to Review Port Charges

(i) Letter dated 18.08.2011 to service providers to furnish relevant information:

12. In view of the various representations received from the industry associations' viz. Cellular Operators Association of India (COAI) and Association of Unified Telecom Service Providers of India (AUSPI) and the Court's order, the Authority decided to review the port charges in order to align the port charges with the prevalent costs of the relevant equipment. To provide fair opportunity and to maintain transparency in the review of the port charges, letters were sent to the service providers and their industry associations on 18.08.2011 requesting them to furnish the following information by 19.09.2011:

- (a) What interfaces/ network elements/ equipment shall be taken into consideration for determining port charges? Please explain with the detailed note, justification and diagram, clearly indicating cost recovery mechanism for each element involved.
- (b) Explain the approach/ model/ costing methodology to be adopted for determination of port charges. Give justification for adopting the proposed approach, model or methodology and also provide details of the assumptions used in the model, if any.
- (c) Provide list of interfaces/ network elements/ equipment required for expansion of switch/ exchange for provisioning of additional ports. Separate list should be provided for each category of switch used for Fixed Line Service/ GSM Mobile Service/ CDMA Mobile Service/ NLD service/ ILD service.
- (d) Provide costs and capacity of each interfaces/ network elements/ equipment listed above.
- (e) Provide cost model in excel sheet to calculate port charges along with adjustments and justification for all assumptions used.
- (f) Whether port charges are specified by the regulator in other countries? If yes, what is the approach/ methodology being followed by the regulator in determining these charges?
- (g) Any other relevant information related to subject along with all necessary details.

(ii) Consultation Paper dated 09.05.2012 on 'Review of the Telecommunication Interconnection (Port Charges):

13. In response to TRAI's letter dated 18.08.2011, the service providers and their industry associations submitted the desired information to TRAI. Due cognizance has been given to the inputs received from the service providers and a Consultation paper dated 09.05.2012 was issued on 'Review of the Telecommunications Interconnection (Port Charges). In the consultation paper, comments received from the service providers and their industry association on TRAI's letter dated 18.08.2011 have been described briefly and on the basis of the cost

inputs received from the service providers the telecommunication interconnection (port charges) have been estimated. Keeping in view the current CAPEX costs of an E1 port in GMSC and TAX exchanges, consultation paper proposed that the ceiling of annual port Charges, as specified in The Telecommunication Interconnection (Port Charges) Regulation, 2001 may be revised as per the following Table:

Table- 2.7 of the Consultation Paper
Proposed Revised Ceiling of Annual Port Charges for
MSC and Tandem/ TAX Exchanges

S. No.	Type of Switch	Port Charges (Ceiling of Rs. Per Port)
1	MSC	4,000
2	Tandem/ TAX Exchange	10,000

The above proposal was presented for the comments of the stakeholders. The last date for comments and counter comments of the stakeholders was 08.06.2012 and 18.06.2012 respectively.

(iii) Comments received from stakeholders on the Consultation paper:

14. On the Consultation Paper dated 09.05.2012, 14 stakeholders including 9 service providers, 2 associations, 1 consulting firms and 2 consumer groups sent written comments that were uploaded on TRAI's website. Counter comments were received from one service providers' association.

D- Examination of the main comments/ issues raised by the stakeholders: Some of the main Comments received from the stakeholders on the specific issues are summarized under the respective issue and dealt with in the paragraphs following thereafter.

15. Ceiling of Annual Port Charges for Tandem/ TAX Exchanges

15.1 In response to TRAI's letter dated 18.08.2011, six service providers have submitted current CAPEX for E1 ports for TAX exchanges, ranging from Rs. 24,000 to Rs. 46,430. The same have been provided in Table 2.2 of the consultation paper. For ready reference Table 2.2 of the consultation paper is reproduced below:

**Table 2.2 of the Consultation Paper dated 09.05.2012
Current CAPEX of an E1 Port for TAX exchanges**

S. No	Service provider/ Industry association	Current CAPEX of an E1 port (Rs.)	Name of switch	Remarks
1	Service provider-2	46,430	Mix of DTAX and IP TAX switches	Costing methodology is weighted average CAPEX. Per circuit cost of main/expansion TAX equipment (TDM/IP-TAX) procured for the last five tenders have been taken into consideration. The service provider-2 has not provided the costs of individual network elements required for expansion of the switch.
2	Service provider-3	44,145	NSN make	The cost has been considered on the basis minimum configuration of the switch.
3	Service provider-4	45,000	OCB Switch	The cost per E1 (allocated cost) is calculated by dividing the cost of the individual element by its capacity. The summation of these costs provides the allocated cost per E1.
4	Service provider-5	40,450	OCB Switch	Based on 128 E1s configuration
5	Service provider-6	24,000	IP TAX	Per line price of IP TAX is Rs. 800.
6	Service provider-7	45,000	-	The cost per E1 (allocated cost) is calculated by dividing the cost of the individual element by its capacity. The summation of these costs provides the allocated cost per E1.

15.2 In the consultation paper, for estimation of ceiling rates of port charges, TRAI has taken the highest value of the CAPEX per E1 port as submitted by the service providers i.e. Rs. 46,430. In response to the consultation paper, some of the service providers commented that TRAI has not furnished any justification for picking up higher cost quote from the service providers as against the lowest quote. Some of them have suggested that a mean of the highest and lowest figure could have been more appropriate than using the highest figure.

Another suggestion was to consider cost of the most efficient operators so that inefficient cost of a service provider should not be loaded on the seeker.

15.3 In this regard, it is mentioned that the port charges specified in the “Telecommunication Interconnection (Port Charges) Regulation, 2001” are the ceiling rates and the service providers are permitted to charge alternative lower rates on the basis of their mutual agreement. Hence, for calculation of ceiling rates, it may be more appropriate to consider highest cost submitted by service providers as against the mean of the highest and lowest or lowest figure.

15.4 In its comments to the consultation paper, BSNL mentioned that they found that TRAI has calculated cost of providing one port E1 on the basis of cost data submitted by BSNL for latest IP TAXs i.e. Rs 46,430/- per port. In this regard BSNL mentioned that indicative cost of Rs 46,430/- provided by them is only the incremental cost of upgrading the TAX (not the network) required to provide 1 E1 connectivity. They submitted that the incremental cost of all network elements i.e. TAX, Media, Transmission Systems, Local switches and other supporting infrastructure need to be taken into account before arriving at fair cost of providing one E1 port to other service provider. Also, the incremental costs incurred in providing one E1 port varies and depend on number of ports being provided, as, after certain limit, Control part of switching equipments also need to be up-graded. Therefore incremental cost needs to be considered in different slabs as was done in Port Charges Regulation’2001 and even 2007.

15.5 It was also submitted by BSNL that Partial provision of IP TAX in their network has not resulted into any CAPEX saving for them as these IPTAX has replaced TDM TAXs who have not outlived their life and hence recovery of CAPEX done on TDM TAXs was not completed. Further, the number of IPTAXs and capacity is very less in comparison to overall network. Therefore, in real terms, there was not

reduction of incremental cost being incurred by them due to induction of IPTAXs.

15.6 The Authority has noted that while requesting the service providers to furnish relevant information, the Authority vide its letter dated 18.08.2011 has clearly asked the service providers as to what interfaces/ network elements/ equipment shall be taken into consideration for determining port charges. They were also asked to explain with the detailed note, justification and diagram, clearly indicating cost recovery mechanism for each element involved. In its response to the TRAI's letter, BSNL vide its letter No. 1-16/2011-Regln/243 dated 2.11.2011 furnished complete list of interfaces/network elements/equipments pertaining to IP TAX and TDM TAX to be considered for determination of port charges. Although BSNL has not provided the costs of individual network elements required for expansion of the switch, however, BSNL was completely aware with the network elements required for expansion of IP TAX/Switch/Exchange. The Authority has observed that cost of Rs. 46,430/- per port is not the indicative cost given on the basis of latest IP TAXs but it has been calculated by BSNL on the basis of overall weighted average per circuit cost considering Main/expansion TAX equipments (TDM/IP TAX) procured for BSNL network for last five tenders.

15.7 As regards the point regarding inclusion of incremental cost of all other network elements i.e. Media, Transmission Systems, Local switches and other supporting infrastructure in the port charges, the Authority has noted that this is already established principle that costs of Media, transmission systems, local exchanges and other network elements are not relevant towards port charges and these were left to be recovered through IUC. Inclusion of costs for other network elements towards ports would result in double recovery of these costs. The Authority's observation in this regard in

Interconnection Usage Charge (IUC) Regulation dated 29th October 2003 is reproduced below:

“63. The Authority also recalled that during the calculation of Port Charges, only the incremental CAPEX for provision of the port was considered although for providing ports, there is a need for not only augmenting the switch capacities but also other downstream parts of the network to handle the additional traffic entering the network through these ports. The costs required for augmentation of other downstream network elements to handle the additional traffic, were left to be recovered through the IUC.”

15.8 Regarding the point that port charges should be on the basis of slabs, the Authority has noted that the cost inputs have been provided by all the service providers on per E1 basis and not on the slab basis. Even in response to the consultation paper, BSNL has not submitted any slab wise data. The Authority has also observed that the cost data submitted by BSNL, shows that procurement in the last five tenders have been done by BSNL for large capacities of main/expansion TAX equipments (TDM/IP TAX) and not for small quantities of E1s. In view of the above, the Authority finds that prescribing ceiling for per E1 Port Charges is appropriate as compared to ceiling for slab wise charges.

15.9 For estimation of Port Charges, the calculations in the consultation paper have been made considering the following:

- (a) CAPEX per E1 port = Rs. 46,430
- (b) Useful life of the equipment = 10 years
- (c) Method of depreciation – Straight line method
- (d) Rate of Return (Pre-tax Weighted average cost of capital) =15%
- (e) Overhead on CAPEX recovery = 10%

On the basis of above, the average annual cost (averaged over 10 years) per E1 port for TAX Exchange was estimated as Rs. 9,321. Majority of the service providers, in their submissions, have taken useful life of the equipment to be 10 years. However, M/s BSNL, in their calculation for TAX Exchange, have assumed the

useful life of equipment to be eight (8) years. Accordingly they have taken depreciation of 12.5% per annum for eight years using straight line method of depreciation. In the consultation paper, the Authority has also estimated port charges considering the useful life of the equipment, as submitted by BSNL i.e. eight years and accordingly the annual depreciation as 12.5% per annum. The average annual cost (averaged over eight years) per E1 port for TAX Exchange comes out to be Rs. 10,693. Giving due weight to the comments of BSNL as well as other service providers, the Authority reconfirms its proposal as given in the consultation paper and decided to prescribe the revised Ceiling of Annual Port Charges for Tandem/ TAX Exchanges as Rs. 10,000 per port.

16 Differential port charges for GMSC and TAX switch:

- 16.1 In response to consultation paper, some of the service providers submitted that prescribing different port charges for MSC and Tandem/ TAX Exchange switch is discriminatory as it will lead to higher payment to one operator and lower payment to other operators for the same equipment. It was also mentioned by them that the consultation paper does not provide any justification/explanation for considering different CAPEX for these two switches. They submitted that the CAPEX for connectivity to both these types of switch is same as no extra equipment is required for TAX exchanges/ Long distance exchanges and therefore there is no reason to shift from past precedence of uniform port charges.
- 16.2 The Authority has noted that in their response to TRAI's letter dated 18.08.2011, some of the service providers have submitted that TRAI should determine a separate charge for mobile port interconnections by taking cognizance of the relevant traffic, flow balance between the interconnection provider and interconnection seeker. They have also submitted the cost of provisioning of ports in their Gateway Mobile Switching Center (GMSCs).

16.3 The Authority has also noted that in the 'The Telecommunication Interconnection (Port Charges) Regulations, 2001', it has prescribed ceilings for port charges on the basis of calculations for Tandem/TAX switch. However, at that time the fixed network was predominant. Most of the cellular operators are not having direct connectivity and they are routing their traffic through TAX. In contrast, the present situation is completely different. As on 30th June,2012 the subscriber base of wireline services is only 3.26 % of total subscriber base and almost all mobile service providers have direct connectivity amongst them, hence, they need not route their traffic through TAX switches. In view of the above, in the present review exercise, the Authority find it more logical and appropriate to estimate port charges for GMSC and Tandem/ Trunk Automatic Exchange (TAX), separately, on the basis of respective costs.

16.4 Current CAPEX of E1 Port for GMSC, as provided by the service provider/association was given in Table 2.1 of the consultation paper. For estimating the port charges, TRAI has taken into account the highest value of the CAPEX i.e. Rs.19,182 per E1 port as submitted by the service providers for Gateway Mobile Switching Center (GMSC).

16.5 For estimation of Port Charges for GMSC, the calculations in the consultation paper have been made considering the following:

- (a) CAPEX per E1 port for GMSC = Rs. 19,182
- (b) Useful life of the equipment = 10 years
- (c) Method of depreciation – Straight line method
- (d) Rate of Return (Pre-tax Weighted average cost of capital) =15%
- (e) Overhead on CAPEX recovery = 10%

On the basis of above, the average annual cost (averaged over 10 years) per E1 port for GMSC was estimated as Rs. 3,851. The Authority reconfirms its proposal as given in the consultation paper and decided to prescribe the revised Ceiling of Annual Port Charges for providing port in MSC as Rs. 4,000 per port.

17 Applicability period for charges:

17.1 Regarding applicability/ time period for review of port charges, the service providers have submitted time period which is ranging from 6 months to 5 years. It may be mentioned here that various issues including Port charges relating to telecom sector are revisited by the Authority from time to time and there is already a provision in the Telecommunication Interconnection (Port Charges) Regulation 2001 that from time to time Authority may review and modify Port charges. Hence, the Authority will keep close watch and if requires, either suo-motu or on the basis of requests received from the service providers, it may review the port charges.

18 Sharing of cost by Provider's network and subsume Telecommunication Interconnection (Port Charges) in Interconnection Usage Charges.

18.1 Some of the service providers have submitted that the provider network should also bear a proportion of the costs of interconnect, commensurate with the flow of traffic. A few service providers were of the opinion that TRAI must align the port charges on the basis of usage by merging it with termination charges to maintain the level playing field between the operators. In this regard, it may be noted that as far as principle of payment of charges is concerned, this is not the subject matter of present consultation paper. This aspect has also been clearly brought out in the consultation paper itself. The present review exercise is limited to the revision of port charges which have been specified in 'The Telecommunication Interconnection (Port Charges) Regulations' and following the principles established in the principal Regulation. The seeker/ provider and related principals are governed by "The Telecommunication Interconnection (Reference Interconnection Offer) Regulation, 2002 dated 12th July 2002.

19. Other issues:

- 19.1 In response to the consultation paper it has been submitted by MTNL that the commercial terms already entered into between the port provider and inter-connection seekers or to be entered into may not be remotely regulated by TRAI. MTNL submitted that in CA No.- D28298/2010 in Hon'ble Supreme court they have contended that TRAI can not frame regulations , which would overpass the agreements entered into between telecom operators. The case is pending before Hon'ble Supreme Court and the matter is subjudice. Besides Hon'ble Supreme court also observed that the tribunal had also directed TRAI to start afresh the process of fixing the port charges and made an obiter dictum as "Whether the delegated legislations can be ruled upon (by) TDSAT... We would have to decide. This question would reoccur and would come again and again," Therefore ab initio the consultation process initiated by TRAI on the plea that the court ordered it to do so in para1.5 of chapter- 1 is not correct and at this stage there should be no attempt to determine the matter which is sub judice.
- 19.2 MTNL also commented that in the litigation, on the applicability of the new rates for ports on the basis of consultation process, court intervened and issued an interim order that the new rates shall be made applicable only to the new ports applied and provided after the date of application and not to override the earlier mutually agreed rates between interconnection providers and receivers against undertaking and Bank guarantees for the difference amounts. However this point on applicability is also not finding any place in the consultation paper which inevitably leads to continuation of litigation.
- 19.3 Regarding issues raised by MTNL in Para 19.1 and 19.2 above, it is mentioned that without prejudice to its rights and contentions, the Authority has, in exercise of its statutory functions, undertaken an exercise to determine the port charges. As on date there is no impediment to the statutory functions of TRAI to make regulations on

Port charges. On the contrary, in para 40 of the said judgment it was clearly held that “*TRAI indisputably can make, modify or alter the Port charges in exercise of its power under Section 11 (1) (b) of the Act*”. In para No. 63 of its judgment, Hon’ble TDSAT has in fact directed the TRAI to give a fresh look to the matter. The aforesaid judgment of Hon’ble Tribunal has been challenged by different service providers and by the Authority before the Hon’ble Supreme Court on different grounds and interim relief was also prayed for but no interim stay of the judgment dated the 28th May, 2010 was granted by the Hon’ble Supreme Court. The interim orders passed do not prevent the TRAI from conducting the fresh exercise for reviewing the Port Charges.

19.4 BSNL/ MTNL have also referred to judgment of TDSAT dated 27/04/2005 and the pendency of C.A. No. 3298/2005 before the Hon’ble Supreme Court. As Hon’ble TDSAT has expressly ruled that TRAI has power to make, modify or alter the Port Charges under Section 11(1)(b) of the TRAI Act, the judgment of Hon’ble TDSAT in RIO matter has no bearing. The appeal in that matter pending in Apex Court also. Thus, there is no restrain order which prevents TRAI from exercising its statutory powers and the TRAI is competent to proceed with the review exercise in pursuance of consultation paper issued on 09/05/2012.