



MTNL/RA/TRAI Consultation Paper (10/2012)/ 2012  
Dated 08.06.2012

To,

The Advisor (I & FN)  
TRAI, New Delhi

**Sub. : Comments on TRAI consultation paper (10/2012) on "Review of Telecommunication Interconnection (Port Charges)".**

The TRAI issued consultation paper No. 10/2012 on 09.05.2012 on the aforesaid subject and asked the various stakeholders to comment on the issues mentioned in the consultation paper. The following comments are made for consideration & submission to TRAI:

1. The commercial terms already entered into between the port provider i.e. MTNL and receivers i.e. inter-connection seekers or to be entered into may not be remotely regulated by TRAI and it has been contended in Hon'ble Supreme court by MTNL (CA No.- D28298/2010) that TRAI can not frame regulations, which would overpass the agreements entered into between MTNL and private telecom operators, which had agreed to pay the PSU as per the terms of agreement. The case is pending before Hon'ble Supreme Court and the matter is subjudice. Besides 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. However the comments being furnished by MTNL in order to preempt the regulation on this, are without prejudice to the pending litigation on the very issue of authority of TRAI to regulate the same.
2. The costing methodology adopted by TRAI is the same which is being followed since 2001 and only difference is the focus has been shifted from slab wise capex to per E-1 Port. The costing itself is not acceptable to MTNL and it raised its issues before the Courts and all the points raised in the litigation as regards the costing part viz. Overheads due to staff related legacy costs, like OPEX on power, maintenance of ports and insurance, costs due to the need to maintain spare capacity etc cost of spectrum charges, BTS commercial charges paid to concerned local authorities, are to be taken by TRAI in the calculation of the inputs for estimation of port charges. Therefore the consultation process in this regards needs to be held in abeyance till the out come of court case or the revised paper taking all inputs as sought to be included by MTNL in its plea

