

Bharti Airtel's Response to TRAI Consultation Paper on Estimation of Access Facilitation charges and Co-location charges at Cable Landing Stations

A. Background:

- The ILD Sector is now a perfectly competitive sector with 27 ILD licenses issued.
- The ILD sector was opened for private players in year 2002 vide DoT's guidelines for issue of License for International Long Distance Services dated 15th January, 2002.
- As per ILD License Guidelines issued on **14 December 2005** by Department of Telecommunications ("DoT") each applicant and license holder has similar benefits with respect to allowances to create infrastructure to offer services including setting up of Gateway stations viz. Cable landing stations.
- Licenses issued before the year 2005 were acquired at a high Entry fee of 25 Crores while post 2005 ILD licenses were given at a drastically low entry fee of 2.5 Cores. Resultantly, no competing ILD licensee is disadvantaged to do business in India.
- As per the License agreement, in its scope of services, ILD Service is basically a **network carriage service** (also called bearer) providing International Connectivity to the network operated by foreign carriers. The ILD service provider is permitted **full flexibility** to offer all types of bearer service **from an integrated platform**. And it's the responsibility of the ILD license to set and install their own systems to offer such services The said Clauses is reproduced hereunder for ready reference;

"2.2 (a) The ILD Service is basically a network carriage service (also called Bearer) providing International connectivity to the Network operated by foreign carriers. The ILD service provider is permitted full flexibility to offer all types of bearer services from an integrated platform. ILD service providers will provide bearer services so that end-to-end tele-services such as voice, data, fax, video and multi-media etc. can be provided by Access Providers to the customers. Except "Global Mobile Personal Communication Service (GMPCS) including through INMARSAT" for which a separate licence is required, other listed services at Appendix are permitted to the LICENSEE. ILD service providers are permitted to offer international bandwidth on lease to other operators. ILD service provider shall not access the subscribers directly (except for Leased Circuits/CUG) which should be through NLD service provider or Access Provider. . . ."

- Clause 9.1 providing for delivery of service reads as under:

"9.1 LICENSEE shall be solely responsible for installation, networking and operation of necessary equipment and systems for provision of SERVICE, treatment of SUBSCRIBER complaints, issue of bills to its subscribers, collection of its component of revenue, attending to claims and damages arising out of his operations."

- As stated above the ILD market is a perfectly competitive market which has very low entry costs and there is no barrier to entry in this sector. Similarly under the ILD license there is no entry barrier to set up cable landing stations; one needs only an ILD license or even an ISP license. In

other words there is no separate License Category for a Cable Landing Station. This is an integral requirement to set up Gateway Station to operate services under an ILD License. The transmission systems set up by different ILD service providers may or may not incorporate a cable landing station connecting directly to undersea cables, which is a pure business decision of an ILD licensee and not a licensing compulsion.

- It is pertinent to mention that there are no exclusive rights granted to any one ILD operator or a few ILD operators to set up cable landing stations. Setting up of the CLS is a pure business decision of the ILD operators that have invested in CLS.
- Moreover, despite Liberalization of the ILD License, 4 OCLS have set up the CLS and the balance 23 ILD Operators (Total 27 ILD as on 22.2.2012) have taken a commercial call not to set up an integrated platform viz. investing on a CLS and instead have chosen to take the said facility on payment of certain charges namely AFC, CLC, Restoration and Cancellation Charges etc.

B. Whether CLS is still An Essential Facility in India?

- In the past VSNL, was the only ILD operator prior to the issue of DoT guidelines dated 15 Jan 2002. Therefore, the submarine Cable Landing Station (CLS) and the associated international cable landing in to India were considered to be essential and a bottleneck facility at that time and thus equal access to these facilities to the new ILD licenses were mandated by DoT

However, after the liberalization of ILD sector license in 2002, and more so after 2006 when entry norms were reduced drastically 27 ILD Operators exist. 4 of them Own Cable Landing Stations (OCLS) namely Tata Communications Limited, Bharti Airtel Limited, Reliance Communications Limited and Bharat Sanchar Nigam Limited who have set up 15 CLS facilitating access to 12 Cables in India, the market and the facility may not be treated as an essential facility anymore. Especially, since these the CLS have been set up with the private investment of these operators without any public funds support from the Government. It is also learned that one more ILD operators is likely to commission its Cable Landing Station shortly.

- The year 2005 onwards, cable owners, by and large, continued to prefer establishing new CLS for their upcoming/ planned cables in spite of the availability of choice of landing at existing CLS which clearly indicate that Cable Landing Station facility is no longer a bottleneck facility as envisaged by TRAI.
- **Status of Cable Landing Stations and Cable Systems in India:**

Currently, India has 12 submarine cables landing in to India at 15 CLS locations. The table below shows the details of the Owner of Cable Landing Stations along with the Submarine Cable and CLS Locations:

S. No.	OCLS	Submarine Cable Name	CLS Location
1	Bharti Airtel Limited	i2i, SEA-ME-WE-4, IMEWE, EIG	Chennai(2), Mumbai(2)
2	Tata Communications Limited	SEA-ME-WE 4, SEA-ME-WE 3, SAFE, FLAG, TIC, SEACOM, IMEWE	Cochin(2), Mumbai (4), Chennai(1)
3	Reliance Communications Limited	FLAG, FALCON	Mumbai (1), Chennai (1)
4	Bharat Sanchar Nigam Limited	Indo-Srilanka	Tuticorin (1)

It is learnt that Sify, another ILDO in India, is also investing in the submarine cable connectivity and infrastructure and will commission an international submarine cable, Gulf Bridge International (GBI) submarine cable system, during this financial year with its landing station at Mumbai. BSNL also has plans to commission an international submarine cable system during next two years with two CLSs. Thus, it is expected that India would have at least five owners of Cable Landing Stations (OCLSs) during this financial year itself with about fifteen international submarine cables landing on sixteen CLSs in the country in next two years.

- **2005 Recommendations as a basis to regulate CLS charges**

Till the year 2005 there were few ILDO operators due to higher entry costs. This was the impetus at that time for an intervention of the Authority. TRAI in its December, 2005 Regulation had raised two issues regarding access to bottleneck / essential facilities at a cable landing station. *One was denial of access to the international capacity of a Consortium cable by a CLS owner and the other was denial of landing facility to a third party who possess the requisite license desirous of landing new cable at the CLS of a carrier.* The purpose of the regulatory action was to remove these bottlenecks. As on date, there is neither a case of denial of access to the international capacity of a Consortium cable by the CLS owner nor any third party has sought landing of a new cable at any of the existing CLSs.

Thereafter, the ILDO market was sufficiently opened up to the extent that there exist 27 ILDO licensees now. ILDOs that have set up CLS have not denied entry to other ILDOs to set up CLS nor have they denied access to the CLS.

Therefore, we request the Authority to re-calibrate the existing market conditions before arriving at a Regulation that may delve into dis-incentivising ILDOs to set up and create their own infrastructure to offer services.

- **Status of Competition for ITEs intending to buy International Bandwidth:**

There is ample competition in the market and the ITEs have adequate choices with regards to availability of International Bandwidth to a particular location abroad.

For example an ITE intending to take international bandwidth from India to a location in Europe may approach Bharti, Reliance or TCL for end to end international Bandwidth. SMW 4 (Bharti/TCL), EIG (Bharti), IMEWE (Bharti/ TCL), SMW 3 (TCL), SEACOM (TCL) and FLAG (Reliance) are major cables from India that carry traffic towards Europe. TCL, Bharti and Reliance land these cables in India and compete with each other for connectivity to Europe. Since, different landing points in Europe (Palermo, Catania, Mazara, Monaco, Marseilles, Gibraltar, Seisembra, Bude) are also equally placed w.r.t. connectivity with in Europe and therefore the customer in India has free choice w.r.t. cable to carry its traffic on, and is not compelled to carry traffic on a particular cable for a particular location in Europe.

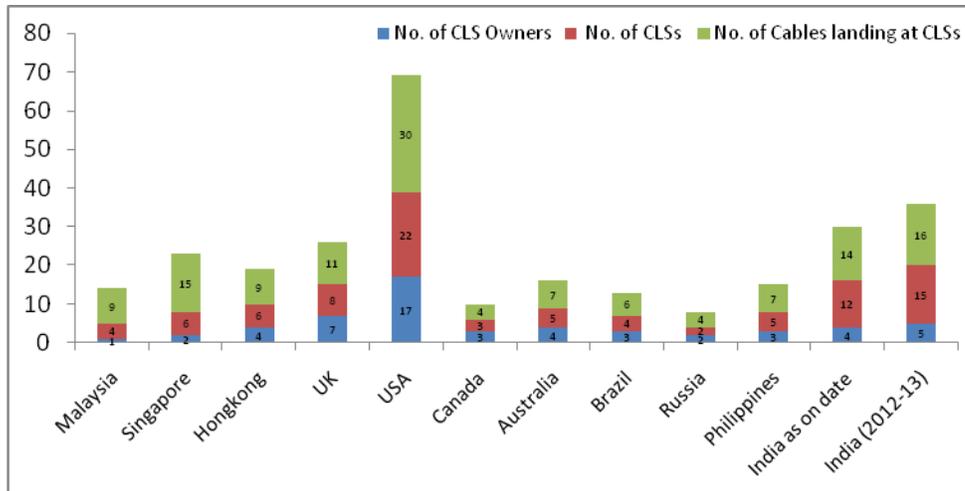
Similarly an ITE intending to take international bandwidth from India to Singapore or Asia/ USA via Singapore has multiple choices available. TIC (TCL), I2I (Bharti), SMW4 (Bharti/ TCL), SMW3 (TCL) and FLAG (Reliance) cables compete with each other, whereby they land at different CLSs in Singapore and also have connectivity to other cables from Singapore for other parts of Asia and to the USA. Thus, for traffic to Asia and USA via Singapore, the customers have enough choices of cables to choose from in India as well as the choice of cable landing in Singapore.

Multiple choices of CLSs as well as submarine cables from different OCLSs resulting in multiple choices for the eligible ITEs, is a clear sign of evolution and maturity of the competition and maturing of the market in India over a period.

In view of the above, we believe that the CLS market in India is very competitive and at a maturity stage. The CLS is no longer a essential/ bottleneck facility and hence there is no justification to continue treating CLS as a bottleneck/ essential facility

C. Global trends in CLS Regulation:

The status of Indian CLS and Cable systems vis-a- vis the International data available as of Dec 2011 regarding access to essential facilities as under:



Source: www.submarinenetworks.com

India has much greater competition as compared to countries like Australia, UK, Brazil, Philippines, Canada where the CLS access are not regulated. It may be noted from examination of global practices that even in countries where CLS access was historically regulated, the regulation have been withdrawn at a time when these countries had even much lesser number of Cables, OCLSs and CLSs as compared to India.

On the examination of the global practices and the current figures for India, a clear case is made out for withdrawal of regulation in respect of access to the CLS in favour of market forces taking over.

The country specific scenario in terms of regulatory practices on CLS regulation is as below:

- ❖ **Market Governed:** In most European countries, North America, South Africa, South Korea, Thailand, Hongkong etc. the telecom operators are charging access facilitation charges/ collocation for Cable Landing station (CLS) based on market determined pricing model.
- ❖ **Single operator system:** In countries, like Saudi Arabia, Qatar, UAE, Egypt, Tunisia, China etc. the incumbent operators (who are also the CLS owners), the access facilitation charges are completely governed by the single operator. Italy is one of the examples wherein Telecom Italia is charging very high (arbitrary) access facilitation charges.
- ❖ **Regulatory Framework:** As per our information, the Regulatory governed access facilitation charges are only prevalent in India and Singapore.

It can also be inferred from above that majorly the access to Cable Landing Station is either market governed in case of multi operator scenario or self governed in case of single operator.

D. Whether CLS is an Essential/ Bottleneck facility as per its definition:

The ITU /WTO definition¹ of Essential facilities as under:

“Essential facilities mean facilities of a public telecommunications transport network or service that

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service.”

The test of being essential/ bottleneck facility as per the above definition is not easily passed. The facility cannot be something that gives only a small or a short term advantage, it has to be a substantial and long term benefit. Alternative facilities would have to be such poor substitutes that they would not allow rivals to compete. The test is the ability to duplicate the input. In the case of a submarine cable landing station clearly there are alternatives. In the countries where there are large number of international submarine cables landing at a number of CLSs owned by various OCLSs, the test for CLS being essential or bottleneck facility would fail. This would be more so since the DoT and TRAI have already taken steps long back to remove legal barriers to the entry in the market of international telecommunication services for any number of operators and also allowed the international carriers to own 74% equity which allowed the global carriers to construct infrastructure in the country.

Therefore even by the interpretation of the definition of essential/bottleneck facility, the CLSs in India (with 5 OCLS, 15 CLS and 16 Cables by 2012-13) cannot be treated as a bottleneck facility.

E. Does the regulation only benefit the foreign carriers who are partners in Consortium Cable?

The proposed regulation tends to tilt the balance in favour of those foreign carriers that enjoy complete price flexibility in their own countries. The ITEs have adequate choice with regards to end to end International bandwidth. However, the regulation of the access facilitation charges and co-location charges impact the owner of Cable Landing station in India as it limits their capability to negotiate with the consortium members who are also the CLS owners in their respective countries. Due to regulation, the owner of CLS in India loses its flexibility to negotiate with other partners who own CLS in other countries.

One example which exemplifies the non-negotiating power of Indian OCLS is the case of SMW4 and IMEWE cable where Bharti and TCL are the only two consortium members whose rates for Cable Landing Stations in India are being published and offered transparently. The other members of the consortium who are also the CLS owners in Europe are charging different backhaul rates for capacities landing on SMW4 and IMEWE (backhauls for IMEWE are double of those for SMW4 on identical destinations and routes). Thus, it is important that the Owner of CLS should not be regulated in India when the CLS charges in other countries are not being regulated. Any regulation of

¹ Definition of Essential facility taken from Telecommunications Regulation Handbook:
ITU website: http://www.itu.int/ITU-D/treg/Documentation/Infodev_handbook/5_Competition.pdf

CLS charges in isolation, only in India, seriously impact the negotiating power of the Indian operators with the CLS owners in other countries.

We would also like to bring to the notice of Authority that the Consortium itself has a governing council and the issues arising within the Consortium can be dealt with in the framework of the consortium itself.

The ITEs on the other side have sufficient options available to them for end to end international bandwidth. Hence, the need for regulating the Access Facilitation charges and Co-location charges at CLS does not exist.

F. CLS is not a matter of Interconnection:

- AFC for Cable Landing Stations do not fall within the purview of interconnection. The same is not contemplated even by the TRAI Regulation dated 07.06.2007. Furthermore, Interconnection is based on an element of reciprocity wherein services are mutually provided and availed by the seeker as well as the provider. No mutual reciprocity exists in CLS as the access and co-location services are Telecommunication Infrastructure Facilities unilaterally provided by the OCLS to the Indian International Telecommunication Entities as per the regulation for which a charge is paid by the latter. Such services do not qualify as 'interconnection'.
- Even assuming without admitting that the same is treated as Interconnection, even then it has to be by and on mutual agreement as per the License terms subject to restrictions of TRAI. This in any event cannot be extended to mean that TRAI can regulate these mutually agreed charges for CLS by way of fixing the same. The Clause 17.9 of the License reads as under:

"17.9 The charges for access or interconnection with other networks shall be based on mutual agreements between the service providers subject to the restrictions issued from time to time by TRAI under TRAI Act, 1997."

- The Interconnection in the context of License is provided in Clause 17.1 which reads as under:

17. NETWORK INTERCONNECTION

17.1 It shall be mandatory for all NLD service providers and all ILD Service providers to provide interconnection to each other whereby the subscribers could have a free choice to make international long distance calls through any ILD service provider. International Long Distance traffic should be routed through network of NLD service providers, to the ILD service providers gateways for onward transmission to international networks. However, the access provider shall not refuse to interconnect with the LICENSEE directly in situations where POP of ILD service licensee and Switches of Access Provider's (GMSC/Transit Switch) are located at the same station of Level -I TAX .

- From above it can be seen that Interconnectivity under the License is with respect to interconnectivity between an ILDO and other NLDO and Access Providers for the purpose of providing end to end Telecommunication Services such as voice, SMS, Leased Line etc. and not for provisioning of the infrastructure services such as AFC, Co-location at CLS which the concerned ILD operator can create of its own.

- Further, there is neither any element of revenue sharing nor any provision of telecommunication service but it is an Infrastructure Facility. It is also not a matter of revenue sharing as it would arise only when the end customer was to buy the AFC/CLC at Cable Landing Station and it was provided jointly by ILDOs. However, in this case, the other ILDO requires the AFC/CLC only from the OCLS to create its own telecommunication network which can be further used to provide the telecommunication services such as voice, internet, leased line, SMS etc. to its customers.
- Moreover, AFC and CLC are in no way related to interconnection between any ILDO and OCLS for the purpose of exchange of Telecommunication Services such as Voice, SMS, MMS etc. Therefore, charging of this facility cannot result in any kind of denial of interconnection of Telecommunication Services by OCLS to any other Service Provider.
- Further, the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 (5 of 2007) defines Cable Landing Station as follows:

“2(f) cable landing station means the location,

(i) at which the international submarine cable capacity is connectable to the back haul circuit;

*(ii) at which International submarine cables are available on shore, for accessing international submarine cable capacity; and such location includes **buildings containing the onshore end of the submarine cable and equipment** for connecting the backhaul circuits;”*

- Currently, we have 4 CLS in India, namely two at Chennai and two at Mumbai. The Cable Landing Stations is an Infrastructure built at a huge cost and expense to enable the carriage of voice and data traffic to and fro multiple international locations for the arrangements it has got with different Access Providers. The investments made for creation of these facilities would need to provide a reasonable return.

We further wish to summarize our above submission as below:

- ❖ AFC & other charges are not only a means to recover CAPEX and OPEX incurred by the OCLS but for a fair and adequate return on investment. This is vital to build capacity / infrastructure.
- ❖ All ILD Operators are free to set up the same infrastructure at their own cost without being dependent on the OCLS infrastructure, especially when there are no entry barriers to set up Cable Landing Stations and there are no public funds invested in them.
- ❖ There is no disadvantage to any ILD License holders by way of establishing Gateway Stations vis Cable Landing Stations by only a few as creation of infrastructure is a business decision of the licensee. However, this Regulation will inadvertently penalize licensees, who have created infrastructure for cable landing stations. More than 6 years have elapsed since the entry fee for ILD license, allowing setting up of Cable Landing Station, was substantially reduced to Rs 2.5 crore and more than 15 licenses were granted in the year 2006-2008 (27 have

been granted till date) who were allowed to setup the Cable Landing Station. None of them have so far made any investment in this vital infrastructure. The Regulation will impose an undue burden upon those ILDOs who have created infrastructure, while it will only benefit foreign carriers which no stake in India and are free to levy charges in their own country. Therefore this regulation will only benefit those operators that have not created infrastructure appropriately to offer these services in India.

- ❖ Out of a total of 15 Cable Landing Stations, 8 Cable Landing Stations have been built only after 2006 when a majority of new licensees had the opportunity to invest and build cable landing stations.
- ❖ In the years 2010 and 2011 TRAI had issued recommendations to the licensor to cancel licenses of access service providers to non creation of sufficient infrastructure to offer commercial services. While the Authority has recommended cancellation of licenses for non creation of infrastructure, it seems to now propose to impose restrictions on licenses that have actually created infrastructure in the country to offer world class services by way of the Regulation.
- ❖ An essential facility / bottleneck facility is not static phenomena which changes and we request the Authority to consider the present market dynamics vis a vis ILDOs and CLS.

In light of the above it is urged that:

- ❖ **The charges for AFC and CLC should not be fixed or regulated. The Access Facilitation Charges and Co-Location charges for Cable Landing Stations should be left to the market forces.**
- ❖ **ILD sector is perfectly competitive. Setting up a CLS is the free choice of an ILDO.**
- ❖ **Cable Landing Stations are not an Essential / Bottleneck facility anymore.**
- ❖ **Access to CLS is not an interconnection.**

Notwithstanding our stated position above, our response to the specific queries sought by the Authority is as below:

- 1. Cost data and costing methodology used for estimating the access facilitation charges and co-location charges in this consultation paper. In case of a different proposal, kindly support your submission with all relevant information including cost and preferred costing methodology.**

Bharti Airtel's Comments:

- Cable Landing Stations have been set up by the OCLS at huge capital cost (being a capital intensive activity) and is entitled to enjoy returns on its investment.
- Also, the Indian International Telecommunication Entities are allowed to create their own Cable Landing Station under the terms and conditions of their License. However if any entity, due to its own business decision decides not to set up a Cable Landing Station, it should not get this facility from its competing operator at a regulated rate but at a market determined rate.
- Therefore, allowing any regulated price to such entities who have not created any infrastructure due to their business decision will only incentivize such operators not to create any infrastructure even after obtaining the license and will dis-incentivize the operators from investing in creation of the National infrastructure such as Cable Landing Station.
- Access Facilitation and Co-location is required by each member of the consortium building the Undersea cable, in the countries where they sell their share of capacity in the undersea cable, any such regulation charges will greatly reduce the OCLS's capability, as a member of consortium owning the undersea cable, to bilaterally negotiate the charges for the AFC and Co location charges in those countries where it wants to sell its capacity. The Authority's Regulation to specify the charges decision will have a direct bearing on the negotiating power with Cable Landing Station owners in other countries.
- Hon'ble TDSAT by a judgment dated 29.9.2010 (in a challenge to TRAI's Regulation dated 9.3.2009, particularly with reference to Mobile Termination Charges) held that a service provider is entitled to adequate return on investment. This is necessary to create infrastructure. The Hon'ble Tribunal held thus:

"It was also required to bear in mind that the operators are required to make more investments. A charge should not be based on some premise which would not be investment friendly. Even otherwise, the experience of the TRAI itself is that the established operators are not very much willing to spread their network in rural and far flung areas. If that be so, it was necessary to have a more detailed and elaborate discussions. The TRAI as an expert body should have a vision, what can happen in future keeping in view the experience of other countries may be borne in mind."
- Herein also, the OCLS has created infrastructure by setting up Cable Landing Station and is entitled to an adequate return on investment.
- International practices and current regulatory trends clearly show that the CLS charges should be left to the market forces and TRAI decision to regulate the prices is not in sync with best Regulatory practices. In countries like Australia, UK, Brazil, Philippines, Canada etc., Cable Landing Station is not regulated. In countries where initially Cable Landing Station were regulated, these have been withdrawn overtime. This is the regulatory trend worldwide. However, the Authority's decision is a step in the reverse direction as it will fully regulate the AFC and Co-location charges.

- The costing data and methodology applied to arrive at proposed charges are not very clearly understood. There are items not considered in arriving at the costs. However, we have submitted in our earlier submissions the cost elements that form a part of arriving at costs which should be considered fully. The factor of investment risk taken by OCLS should be compensated adequately. Regulating the price at such costs serves as a disincentive and discouragement to build infrastructure or maintain it having invested in such an infrastructure already.

In light of the above it is requested that:

- ❖ OCLS should have flexibility to get the return on the investment made in building the cable landing station.
- ❖ The charges for the Access Facilitation Charges (AFC) and Co-Location Charges (CLC) should not be regulated and should be left to the market forces. However, if TRAI decides to continue regulating the AFC and CLC charges then these charges should be cost based and are derived using **Fully Allocated Cost (FAC) principle**. Bharti has already submitted its costing based on FAC to the Authority.

The following elements of CAPEX and OPEX should be taken into consideration for determining the access facilitation charges/collocations charges:

CAPEX:

- ✓ Land & Building
- ✓ Equipments like **DXC, ODF, DWDM, fiber patch cord, power cord, Tools, testers etc.**
- ✓ Utility Capex like False flooring, cabling, Air Conditioners, UPS, Battery, Electrical Works etc.
- ✓ Access Network: Duct, Fiber etc.

OPEX:

- ✓ Electricity charges for Air-conditioning, lightning, equipment etc.
- ✓ Shared Manpower Cost (Finance, Billing, RA, SMG, Management, Technical Support e.g. NMS etc.)
- ✓ Annual Maintenance Cost, Repair and Maintenance and Insurance Charges
- ✓ Security & Housekeeping (Admin Cost)
- ✓ Project Management Fees
- ✓ IT cost.

In case of space constraint at the CLS site an alternate location may be offered for the access which may involve connectivity from the main CLS building to an alternate location. The cost of the connectivity also needs to be considered in such a scenario. Industry WACC @ 20% & License fee should also be considered.

- Notwithstanding the above, our response/comments on TRAI cost model are as below:

Calculation of Access Facilitation Charge (AFC):

- a. Our calculations are based on designed capacity and estimated demand, whereas TRAI has considered fully loaded DXC thereby reducing the cost (CAPEX) drastically. The CLS is built solely on estimated demand and limited capacity that is lit should be considered for the costing exercise since neither is the facility built on public contribution nor to cater to minimum committed business by any party. Hence, estimating the entire unutilized capacity for the purposes of cost estimation, which may not have the promise to be utilized fully in the near future only shows purpose to reduce the cost rather than assigning its real value. There is no consideration applied to estimating the CAPEX in the eventuality when all the capacity of DXC is not sold. The Authority may consider that CLS infrastructure built is not on public funds but a pure private investment in hope of return. Moreover, We request the Authority to consider the that the capital already invested especially for infrastructure, and the proposed regulation promises to disadvantage an ILDO with OCLS by fixing its price a good 5 years after it was established when the investment has not been recovered. Additionally, neither is this facility exclusively in the domain of some ILDOs nor is there any promise for utilization of all capacity deployed hence factoring it basis the fully loaded capacity/higher designed capacity.
- b. TRAI has considered that the capacity at CLS e.g. capacity of DXC, Co-location space and other infrastructure such as NoC, IT systems etc are designed and deployed on the basis of ILDOs assessment of the business potential. The charging/costing of any components is consequent to the costs already incurred by Airtel. However the costing methodology, followed by TRAI, disallowing certain network capacities/cost components suggest as if the network should have been designed on the basis of cost/charge determined by TRAI irrespective of the market potential and Quality of Service required in our network. Such a determination will take away the freedom of determining the network design/capacity as envisaged in the ILD License.
- c. TRAI has reduced the price of DXC equipment and DWDM equipments against the actual invoice prices as submitted by us. TRAI has not revealed the actual capacity used for determining the CAPEX. Thus, the assumption of taking fully loaded capacity at day one may be incorrect. Moreover, TRAI has considered the cost of only one DXC while determining the AFC charges. In this regard, it is submitted that DXC is a key equipment of CLS facility is not only used for providing different capacities but also for controlling and monitoring purpose. Thus DXC including redundancy should be considered as a part of AFC costing.
- d. The land and building cost while calculating the CAPEX has not been considered thereby totally overlooks the investment made in setting up a building and purchase of Land by OCLS.

- e. Moreover, the proportion fixing of 30% of CAPEX (only equipment cost) as OPEX is based on very little data submission, not only is it far below the actual OPEX submitted by us earlier, it also fixing the limit beyond which variable costs will not be allowed to rise to the detriment of the facility so set up. Variable costs would increase substantially when and if the capacity utilized increases in future. OPEX submitted were on Actuals, i.e. cost of accommodating racks with a power usage of 2KW each. Thus, TRAI assumption of determining CAPEX and OPEX do not consider all factors of the CLS costs and deny us the ability to recover the investments already made with a suitable return it.
- f. The assumption of determining OPEX as a percentage of CAPEX is misleading and unfair as OPEX cannot be a fixed item which varies based on market dynamics and pricing. eg. Price of a diesel, electricity itself changes etc. Fixing the OPEX charge as a percentage also tends to fix a charge for a service where the input prices are not controlled by telecom regulations. Additionally, postulation of considering all cost items such as IT cost, admin cost, security , space charges, AMC etc under OPEX overlooks the fact that already a major portion of CAPEX has been reduced by ignoring land and building charges. OPEX charges should be left to be purview of operators owning the CLS.
- g. TRAI has taken AMC (Annual maintenance cost) of OFC at 2% as against the actual value of 4% submitted by Airtel. This again is a recurring cost and operators do not have a control over the maintenance charges. Moreover, assuming this charge will lower the quality of preserving the equipment and the facility of CLS. Maintenance contracts are signed in advance which have to be honoured in fact a CLS owner will have to bear costs higher than those considered further reducing the returns on investment already made.
- h. TRAI has used a WACC rate of 15% instead 20% considered by us. By doing so, TRAI has overlooked the characteristics of the Cable Landing Station business which requires high investments, has high risk and long gestation period and also has limited market. It has also overlooked the fact that the WACC represents the expected return by the shareholder/investor in any business. If the regulator, while deciding/regulating any charge, makes provisions for a lower WACC then it will force the investor to reconsider their investment decision in that business and would lead to either withdrawal of current investments or will result in lower/no further investments.
- i. Such specified limited components for cost recovery, would further dis-incentivise any new CLS to be set up moreover, it even discourages any business continuity future planning and building of capacity at such costs would not be lucrative or return based investments.

Calculation of Co-Location Charges(CLC):

- a. Land and Building cost as submitted should be considered in CAPEX and OPEX.
- b. An industry WACC rate of 20% should be applied instead of 15%.
- c. Only DXC capacity utilized should be considered.
- d. Administrative costs incurred by Airtel in providing the Access and co-location services.

- e. OPEX as a percentage of CAPEX is misleading at arriving at the costs being incurred. OPEX should not be fixed and OCLS should be allowed to recover all OPEX.
- f. Cost of IT infrastructure needs to be included as CAPEX and OPEX since they form a support infrastructure and are substantial part of providing services vis CLS.

2. On the power requirement of the transmission equipment i.e. DWDM, DXC equipped with different capacities, supplied by different equipment manufacturers.

Bharti Airtel's Comments:

Power requirement for the transmission equipment should be taken as below:

DXC per sub rack: 3 KW

DWDM per sub rack : 1.25 KW.

3. Percentage used for OPEX and capacity utilisation factor with supporting data on each OPEX item specially on space and power consumption of various equipments.

- a. TRAI has not considered the land and building cost while calculating the CAPEX thereby an investment made by OCLS in setting up a building and purchase of Land has been overlooked which has reduced the CAPEX substantially. Moreover, only 30% of this already reduced CAPEX (only equipment cost) has been taken as OPEX , which is far below the actual OPEX submitted by us. We had submitted the OPEX based on the actuals, i.e. cost of accommodating racks with a power usage of 2KW each. Thus, TRAI assumption of determining CAPEX and OPEX are wide of the mark and against the principle of costing.
- b. TRAI assumption of determining OPEX as a percentage of CAPEX is flawed as elucidated in this above. OPEX is the cost of variable factors and should not be a fixed item Since it will vary based on market dynamics, dependencies. eg. Price of a diesel, electricity, real estate rentals and cost of acquisition, escalation in equipment costs, currency fluctuations etc.

4. Whether ceiling of uniform Access Facilitation Charges may be prescribed for all Cable Landing Stations in two categories i.e. AFC at CLS and AFC at alternate Co-location, or these charges should be dependent on submarine cable system or location of cable landing stations?

- a. AFC should be different for the two categories i.e. AFC at CLS and AFC at alternate colocation and should be location dependent. In this regard, Authority would appreciate the fact that the facility for providing the co-location services at alternate location requires additional efforts in terms of land building, OFC, RoW charges etc which the OCLS incurs for providing alternate facility. Moreover, charges such as land, building, space, electricity , RoW etc are location dependent and vary for two different locations viz Chennai and Mumbai.
- b. Thus , it is submitted that TRAI while calculating the cost of AF at alternate location should take all these factors in to consideration.

5. Whether prescribing the access facilitation charges on IRU basis is required?

We don't support the fixation of CLS charges by the Authority. Notwithstanding which we request the Authority to not prescribe AFC basis contract life e.g, IRU etc.

6. Whether uniform co-location charges may be prescribed or such charges should be location dependent?

There cannot be a uniform co-location charges for the different locations as the factors determining the co-location charges are location dependent for eg. Electricity, land charges, infrastructure charges of Mumbai and Chennai location are totally different.

7. Whether the restoration and cancellation charges should be either a fixed charge or based on a percentage of the AFC. In case of fixed charge, should the present charges be continued or need revision?

It is submitted that the Restoration and cancellation charges should be fixed in nature as the efforts required for restoring and cancelling a connection will remain the same. Thus, we believe that the present practices of Restoration and cancellation charges should be continued with.

8. Any other comment related to Access Facilitation Charges, Co-location charges and other related charges like cancellation charges, restoration charges along with all necessary details.

No comments.