



Cellular Operators Association of India

RSM/COAI/ 006
January 21, 2011

The Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
Next to Zakir Hussain College
New Delhi – 110 002

Re: TRAI Pre-Consultation Paper on “Review of Interconnection Usage Charge (IUC)”

Dear Sirs,

This is with reference to the TRAI Pre-Consultation Paper on “Review of Interconnection Usage Charge (IUC)”.

COAI response to the pre-consultation paper is enclosed for your kind perusal.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,

R. S Mathews
Director General

Encl: as above

Distribution : Dr J.S. Sarma, Chairman, TRAI
: Shri R. Ashok, Member, TRAI
: Shri R. K. Arnold, Secretary, TRAI
: Shri Lav Gupta, Pr. Advisor (I & FN), TRAI
: Shri N. Parameswaran, Pr. Advisor (RE& IR) & (B&CS), TRAI
: Shri Sudhir Gupta, Pr. Advisor (MN), TRAI
: Shri Raj pal, Advisor (ER), TRAI
: Shri S. K. Gupta, Advisor (CN & I.T) & (QoS), TRAI

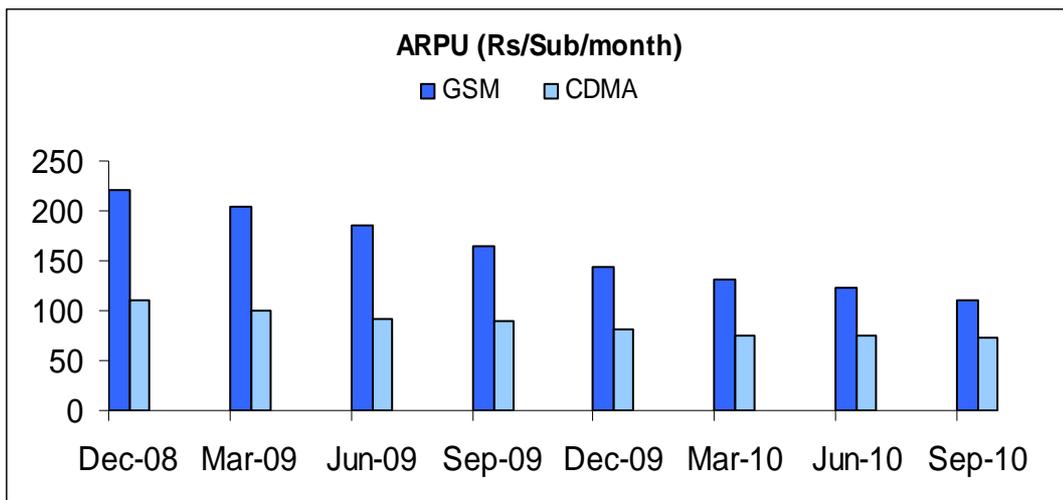
COAI RESPONSE TO THE TRAI PRE CONSULTATION PAPER ON REVIEW OF INTERCONNECTION USAGE CHARGES

At the outset we would like to submit that while reviewing the IUC Regulations the following important considerations should be kept in mind:

- a) As the Authority is aware there has been a significant increase in levies and Regulatory Costs in recent times due to a number of factors as listed below:
- Implementation of Mobile Number Portability (MNP)
 - Implementation of TRAI Regulations on UCC
 - Security related issues
 - Subscriber verification
 - Increase in spectrum charge
 - Increase in levies on towers and
 - EMF related issues; Self-Certification for each BTS to be complaint with radiation levels
- b) Besides the above, the operators have invested significant amount for acquiring the 3G spectrum and for network deployment & roll out of 3G service.
- c) As a result of the above, it is likely that the total cost of provision of mobile telecom service has gone up significantly since the last review by the Authority.
- d) Also, the level of competition in the mobile space has become even more intense. Price wars in the recent months have led to a significant decline in tariffs/ ARPU over the last two years.

AVERAGE REVENUE PER USER (ARPU)

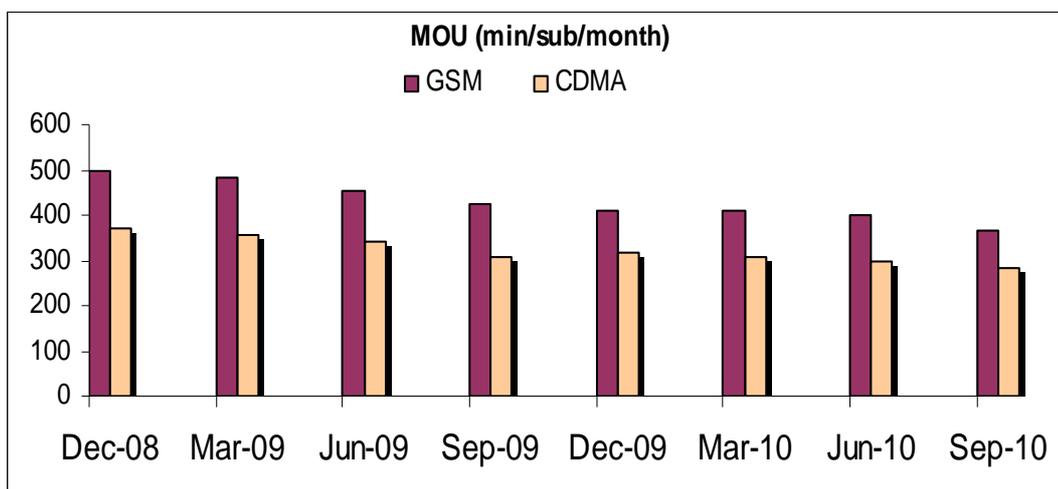
	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10	Sep-10
GSM	220	205	185	164	144	131	122	110
CDMA	111	99	92	89	82	76	74	73



- e) Even the Minutes of Use (MOU) per subscriber per month have come down drastically for both GSM as well as CDMA.

MINUTES of USAGE (MoU)

	Dec-08	Mar-09	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10	Sep-10
GSM	496	484	454	423	411	410	401	368
CDMA	371	357	342	308	318	307	299	283



- f) Against this backdrop of increasing cost burden and declining tariffs, operators are finding it hard to expand service to rural areas, and much needs to be done to cover the far flung areas of the country, particularly the rural and hilly areas. IUC, particularly termination charges are of critical importance to the incentives of operators to expand into rural areas and serve poorer customers since those areas/customers tend to receive more call than they make.
- g) The Hon'ble Tribunal too, in its judgment dated 29 September 2010, has noted that the Authority's jurisdiction in relation to IUC rates is limited to the principles of cost basis and work done and the interest of rural and hilly areas.
- h) Hence, it is important that the Interconnection Usage Charges (IUC) should be determined keeping the above parameters in mind and **the design of IUC regime should be such so that it is based on cost based and work done principles** and also encourages investment for expansion of service, particularly the rural and hilly areas.

COAI response to the questions raised by the Authority in the Pre-consultation paper on IUC is as follows:

Issue (i) - What should be the framework of Interconnection Usage Charges that meets the requirement of today as well as takes care of future developments like deployment of Wi-Max, High Speed Packet Access (HSPA), Fixed Mobile Convergence (FMC) and Next Generation Network (NGN)?

- a) At present both circuit & IP based access networks are being deployed/ used by the service providers and hence It may not be appropriate to arrive at an IUC regime taking into account the IP based network elements only.

- b) With regards to the new technologies like Wi-Max, High Speed Packet Access (HSPA) the issues of IUC does not arise at present. However in case of Fixed Mobile Convergence (FMC) and Next Generation Network (NGN), it is pertinent to keep in mind that these will further complicate the termination scenario as it will bring the multi-operator multi-service scenario into picture, which will give new dimensions to the interconnection issues among the operators.
- c) Also, due to the advent of these technologies the inter-operator charging would become a function of a) Grade of service, and b) network elements being used while carrying the traffic, thereby making the interconnection & charging issues even more complex. Hence, it will be very difficult to predict the level of complexities due to advent of these technologies.
- d) That said, we would like to submit that any costing methodology with well-established principles of cost allocation can accommodate these factors. There is no requirement to adopt a separate or different framework for IUC to take care of these new technologies /developments.

Issue (ii) - What components of IUC for voice, SMS and any other Value Added Services should be reviewed? What should be the level of charge for each component that requires review? Please give detailed justification / reasons to support your view point.

- a) As stated in para 2 of the TRAI letter No. 409-9/2010-I&FN, dated 24th December, 2010, the present IUC Regulation covers the following :
 - origination charge
 - transit charge
 - transit carriage charge
 - termination charge and
 - carriage charge.

At present the origination charge is under forbearance and all the other components listed above are governed by the IUC regime.

Our submissions on the various components of IUC are as below:

Termination Charge

- b) It is submitted that termination be set at a level that is cost-based and reflects the work done. It is further submitted that international best practices should be adopted by the Authority for determining the level of termination charges. Well established costing methodologies (including capital costs and operating costs) are widely accepted to be more economically efficient because they accurately reflect the true underlying cost of providing interconnection services.
- c) It is also submitted that the level of termination charges set by the Authority must not provide cross subsidy for urban-only operators or discourage investment in rural and hilly areas. COAI requests that the Authority ensures that its adopted approach to termination reflects the above principles.

d) **Incoming ILD**

- At present the Indian Access Providers are at significant disadvantage vis-à-vis the foreign operators due to the fact that the foreign operators charges almost 8-10 times higher than the Indian termination charges of Rs. 0.40/- fixed by TRAI during the last review of IUC.
 - At present India is a net importer of international traffic, with an Incoming to Outgoing ratio of which is as high as 4 to 1. That is for every minute of an outgoing call, we receive 4 minutes of incoming call. **With such a high ratio in the favor of India, the country should earn precious foreign exchange from other countries for incoming ILD traffic. However, on the contrary the Indian Operators are net payers of foreign exchange.** This is because while the average cost of sending the traffic ranges between 8 - 10 US cents, on the contrary our termination charge for incoming ILD calls has been fixed by the Authority at only 0.9 US cents (Rs. 0.40) and settlement price is approximately 1.3 - 1.4 US Cent. As a result, India is a net payer in term of actual flow of money even though we receive more traffic.
 - Thus, the increase in Termination Charges on incoming international calls in line with the charges payable for termination in foreign countries is highly warranted. **In light of the above, we request the Authority fix higher termination rates for incoming international calls in line with the charges payable for termination in foreign countries.**
- e) With regard to **SMS**, COAI wishes to submit that the same may be reviewed. Our members however are split according to two views of the appropriate approach to price regulation. While some of our members are of the view that SMS termination charges should be regulated on cost basis, others are of the view that the issue of telemarketing SMS/ Bulk SMS should also be kept in mind. While cost-based pricing on the work done principle should be the standard approach to pricing termination services, cost based prices may not present an appropriate deterrent to abuse of networks and annoyance of customers. Those members are of the view that the degree of disruption caused by telemarketing SMS would justify a case for regulating SMS termination charge on a cost plus basis.

Carriage Charge

- f) Some members of COAI are of the view that the ceiling carriage charge should be revised downwards. However some other members of COAI are of the view that the prevailing Carriage Charge rates are below ceiling of Rs 0.65 per minute prescribed by the Authority. This itself establishes the fact that there is sufficient competition in the NLD carriage market and the market forces are working well. Hence there is no need to review Carriage Charge.

TAX Transit Charge

- g) There may be case wherein a new entrant may not be in a position to establish direct interconnection in one go with all service providers and therefore there may be a need to allow transit connectivity in the interim. It must however be emphasized that such facility **should be time bound and should be cost based** so that burden

of the transit charge does not get transferred in the form of higher tariff to the consumers.

- h) Also in this context, it may be noted that the Authority's direction dated 7 June 2005 provides that in order to ensure compliance of terms and conditions of license and effective interconnection between service providers and to protect consumer interest, all service providers to provide Interconnection on the request of the interconnection seeker within 90 days of the applicable payments made by the interconnection seeker. The above direction of the Authority may be kept in mind whilst deciding on the time bound provision of TAX transit facilities by service providers.
- i) Further, so as to ensure parity, private operators should also be allowed to provide the transit services inclusive of termination to BSNL's network. This will bring competition between BSNL and other NLD/Access Provider by providing a free choice to the originating operator to either use BSNL L-I TAX or alternatively choose other operator to terminate the call on BSNL Mobile/ Fixed network.
- j) **Keeping the above issues in mind we believe that there is a sufficient case for a review of the TAX Transit charge and making it cost based and time bound.**

Transit carriage charge

- k) With regard to the Transit Carriage Charge we would like to submit that though the licenses of the access providers permit and the licenses of the NLD operators have been amended to permit them to carry intra circle long distance calls, the private cellular operators have not yet been able to take advantage of this facility and are constrained to continue to handover their traffic to PSU Operator at Level-II TAX. Consequently the private operators have to pay a high monopolistic transit charge for the same even though the private NLDOs are willing to carry the same at a fraction of the price. **This is not only making this segment non-competitive but is also against the consumer interest.**
- l) We believe that there is an urgent need for an increased competition in the intra-circle carriage segment which would thereby lead to lower cost for access providers and hence more affordable tariffs for consumers.
- m) COAI has already made detailed submissions to the Authority on this issue. A copy of the same is attached once again for the ready reference of the Authority (our earlier submission dated 13 July, 2009 is enclosed as Annex 1).
- n) It is thus strongly urged that the Authority may ensure increased competition in this segment by allowing the access providers to use private NLDOs for their intra-circle long distance calls terminating on the BSNL fixed line network and also review the transit carriage charges on cost basis.
- o) **In light of the above we believe that the Transit Carriage Charge may be reviewed.**

Origination Charge

- p) Presently the Origination Charge is under forbearance allowing flexibility to the operators to roll out different tariffs to attract diverse segments of the subscriber

base. Since the market forces are working well. We are of the view that there is not need of regulating the Origination charge.

Port Charges

- q) COAI would also like to submit **that the Authority may kindly initiate a review of port charges that addresses the aspects of :**
- The charging principles of imposition of port charges
 - The current provisioning of E1s
 - **Integrating port charges into the IUC Regime**

Our earlier submission dated 13 July 2009 is enclosed as Annex 1.

Issue (iii) - Which of the following approach / methodology should be used for estimating Interconnection Usage Charges:

- (a) Existing Fully Allocated Cost Methodology used by TRAI or any variation in it.
- (b) FLRIC or any other variant
- (c) Bill and Keep
- (d) Left to forbearance all components of Interconnection Usage Charges
- (e) Any other methodology

AND

Issue (iv) - Explain the approach / costing methodology adopted, provide the model, if any, developed for estimating the level of each component of IUC for voice, SMS & any other Value Added Services with all calculation sheets. Give justification for adopting the proposed approach / methodology. Also provide details of revenue, minutes of usage (off-net/on-net), CAPEX & OPEX corresponding to each network elements, cables, etc., separately for your network.

- a) COAI has always held the view that Interconnect pricing should be based on a robust cost based model, which includes all costs and justifies investment for expansion of service. The cost model/ approach adopted should be in line with international best practices.
- b) The two most commonly followed international practices or methodologies for determination of cost based IUC charge are Fully Allocated Costs (FAC) and Long Run Incremental Cost (LRIC).
- c) Fully Allocated Costs (FAC) involves the allocation of all historical costs incurred to date between individual services based on a set of criteria such as relative capacity utilisation, minutes of use or proportionate revenues generated. On the other hand, the Long Run Incremental Costs (LRIC) approach involves determining the incremental costs of providing an additional unit of a service over current levels and over a defined future period of time. Thus, it considers costs that are both forward-looking and incremental, which would generate credible charges that reflect real economic costs for providing interconnection.
- d) In view of the fact that FLLRIC builds in efficiency and leads to lowest cost based termination charge, many countries are gradually moving towards the FLLRIC

model. The approach of developing a Hybrid FLLRIC model for a hypothetical efficient operator is an international best practice.

- e) However, irrespective of the approach adopted, it is very critical that the cost model should take into account all the internationally accepted cost elements which are taken into consideration while preparing a cost based model for determination of termination charge.
- f) In fact the **accuracy of the model itself depends on the cost elements** which are taken into consideration. In case some cost elements which should be included are not taken into consideration the model can give inaccurate results which might be a disincentive for investment.

Issue (v) - Provide cost and revenue corresponding to each service like voice service, SMS, GPRS, EDGE, Roaming Services and any other Value Added Services. Also provide cost and revenue for interconnecting services like terminating call, originating call, terminating SMS & originating SMS. All cost and revenue data may be cross referenced with the Accounting Separation Report submitted to TRAI.

Each operator to provide their cost and revenue details individually to TRAI.

Issue (vi) - Justification as to why the model proposed by you should be used for determination of Interconnect Usage Charges for voice calls, SMSs and any other value added services.

- a) COAI would like to reiterate that, for the proposed cost model or the IUC determination to be robust, the cost methodology adopted by TRAI should take into account all the cost elements.
- b) The cost methodology and determination of IUC charge should be carried out in a consultative and transparent manner. All the stakeholders should have the details of the methodology/ cost model adopted by the Authority and cost items included in the model at the consultation stage itself and should be given full opportunity to review and comment upon the model proposed to be adopted by the Authority.



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13 July 2009

Dr. J. S. Sarma
Chairman
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
Next to Zakir Hussain College
New Delhi 110002

Dear Sir,

We would like to draw your kind attention to certain long standing issues /challenges confronting the mobile industry, viz.

- Carriage of Intra Circle Long Distance Calls
- Review of Port Charges

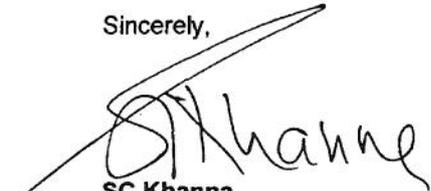
A detailed note of each of these issues is enclosed as Annexure-1.

We seek your kind support in addressing /resolving these issues in a timely manner. Resolution of these issues would go a long way in further enhancing affordability of services.

We would also be grateful if you could grant us the opportunity of a personal hearing on these issues, on any date/time of your convenience in the week beginning 20th July'2009, so that we are able to present and explain our case in person.

We look forward to your early positive response to our above request.

Sincerely,


SC Khanna
Secretary General - AUSPI


TV Ramachandran
Director General - COAI

Encl: **Annexure-1**



Copy to : Shri A. K. Sawhney, Member, TRAI
: Shri R. N. Prabhakar, Member, TRAI
: Prof. N. Balakrishnan, Member, TRAI
: Dr. Rajiv Kumar, Member, TRAI
: Shri R. K. Arnold, Secretary, TRAI
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: Shri Sudhir Gupta, Advisor (MN), TRAI
: Dr. M. Kannan, Advisor (Eco), TRAI
: Shri S. K. Gupta, Advisor (CN), TRAI
: Shri M. C. Chaube, Advisor (QOS), TRAI

CARRIAGE OF INTRA CIRCLE LONG DISTANCE CALLS

1. At present, intra circle mobile calls made to BSNL Fixed Line subscribers are handed over by Access Providers /CMSPs at Level 2 TAX, from where it is carried by BSNL to SDCA at 15 paise per minute.
2. Access Providers are permitted under their license to enter into mutual agreements with NLD Operators for carrying intra Circle Long Distance traffic. Clause 2.3 of UAS License states

“The LICENSEE can also enter into mutual agreements with National Long Distance Operators for carrying intra Circle Long Distance traffic”.

As is evident from the above, the access provider has the freedom under its license to choose his NLD operator for carrying intra circle traffic, who can then hand over the call to the terminating operator. This NLD operator can either be BSNL or any private NLDO depending upon mutual agreement and commercial negotiations.

3. Private NLDOs are permitted under their license to carry intra circle long distance calls. Clause 2.2(a) of NLD License, amended on 14.12.2005, clarified and confirmed that

“ ... NLD Service Licensee will have a right to carry inter-circle traffic excluding intra-circle traffic except where **such carriage is with mutual agreement with originating service provider**”

As is evident from the amendment, the NLDOs can carry intra circle traffic with mutual agreement of the originating operator. Carriage of intra circle traffic by an NLDO cannot and does not require the “prior” consent of the “terminating” operator.

4. Clause 2.3 of UAS License and Clause 2.2(a) of the NLDO License are in consonance with each other where the originating access provider and the NLDO can mutually agree on the carriage of intra circle long distance traffic.
5. Thus, in the case of say, a call from the subscriber of a mobile operator to a BSNL fixed line subscriber, the mobile operator (originator) is permitted to enter into a mutual agreement with NLDO (including BSNL as an NLD operator) to carry his intra circle traffic. BSNL as an NLDO cannot usurp the sole and exclusive right to carry intra circle long distance traffic terminating on its fixed line network. In the case of a intra circle mobile to BSNL fixed line call, BSNL is the terminating operator and its consent is not required either under the license of the access provider or the NLDO.
6. Further, the NLDOs have rolled out their networks upto SDCA level and are equally capable of carrying such calls, which can then be handed over to BSNL in respective SDCA for termination.
7. Private NLDOs are willing to carry such calls at a fraction of the charges being imposed by BSNL and therefore there is a commercial and competitive incentive for access providers and their consumers to have the option to choose their NLDO for carrying the intra circle traffic.
8. However despite the above enabling provisions in the licenses of both the Access providers and the NLD operators, the same has not been implemented till date because of the refusal of BSNL to accept intra circle long distance calls to its fixed line subscriber, except at Level 2 TAX.

9. In response to a clarification sought by BSNL on this subject, DoT on 27.03.2006, wrote to CMD, BSNL, reiterating

“...the NLD service providers are allowed to carry intra-circle traffic if there is a mutual agreement between NLD service provider and originating service provider. Interconnection agreements can be amended to be in line with the licence agreement”

Thus it can be seen that the DoT categorically clarified that the license permits NLDOs to carry intra circle traffic and that, if required, the interconnection agreements have to be amended to be in line with the license. It is submitted that the jurisdiction on all issues related to interconnection lies with the TRAI.

10. in yet another clarification in February 2007, DoT stated

“...It is hereby clarified that the **handover, takeover, termination etc. of the intra-circle traffic shall continue to be governed by the terms and conditions of the licence agreement of the originating service provider** irrespective of whether the traffic is carried by the originating service provider itself or through NLDOs..”

As mentioned above, the License of originating service provider (UASL), clearly provides that UASL can enter into mutual arrangements with NLDOs for carrying intra-circle long distance traffic.

Further, Clause 2.2 (a) of NLD Licence Agreement states that NLDO can carry intra -circle traffic with mutual agreement with originating service provider.

Thus, there is no ambiguity that under insofar as the Licenses are concerned that originating service provider can authorize NLDOs to carry its intra-circle long distance calls. Further DoT has also earlier clarified that if there is any disconnect between the interconnection arrangements and the License, it is the license terms that will prevail and if necessary, the interconnect agreements will have to be modified to be in consonance with the license conditions.

11. In July 2007, DoT issued another clarification stating that

“...provision for carriage of intra circle traffic under Clause 2.2(a) of the NLD licence is barely to enable the access provider to use the network of NLDOs, if they so require, for carriage of their traffic in their network from one station to another. This clause does not confer any right on the NLDOs to carry any intra-circle long distance traffic.”

It is submitted that all the license terms and clarifications make it amply clear that the carriage of intra circle traffic by an NLDO is not as a matter of right but with the mutual agreement with the originating operator. Thus, clearly even BSNL as an NLDO cannot claim to have the “right” to carry intra circle long distance traffic and this carriage should be only if there is a mutual agreement with the originating access providers. This however, is not the case in the present instance, as BSNL is claiming that it alone has the sole and exclusive right to carry intra NLD traffic terminating on its fixed line network.

12. Further, despite an express clarification by DoT in March 2006, no attempt has been made by BSNL till date, to amend the Interconnection agreement to be in line with the License.
13. As submitted above, post amendment of the TRAI Act, TRAI has absolute powers to fix the terms and conditions of interconnection.

14. The **powers /jurisdiction of TRAI on interconnection has also been upheld by the Delhi High Court in its Order dated July 7, 2007** in Star India vs. TRAI & Ors, where the Hon'ble Court noted that Section 11 of the TRAI Act had been amended after pronouncement of the judgment by the Division Bench in MTNL vs. TRAI. The Hon'ble Court also noted that a perusal of the Statement of Objects and Reasons of the TRAI Amendment Ordinance of 2000 disclosed that the President had stated in October, 1999 that the TRAI requires to be strengthened by making suitable amendments to the Act. The Hon'ble Court further noted that the salient features of the Amendment were (a) to bring into being a clear distinction between the recommendatory/advisory and the regulatory functions of the Authority as envisaged under sub-section (1) of Section 11 of the Act, inter alia, empowering the TRAI to fix terms and conditions of interconnectivity between service providers. Accordingly, in light of the above, the Hon'ble Court held that:

“We cannot accept the argument that the law does not empower TRAI to fix terms of interconnection.”

15. Further, the licenses of the UASL as well as the NLDOs uniformly **recognize the right of TRAI to decide the rules of interconnectivity**

UASL / NLD Agreement :

“INTERCONNECTION” is as defined by the TRAI vide its regulations issued in this respect.

UASL/CMTS Agreement (Clause No.26.1 / 27.1)

*Interconnection between the networks of different Service Providers shall be
.....within the overall framework of interconnection regulations issued by the TRAI from time to time.*

NLD /Basic Licence Agreement (Clause No. 17.6 / 17.8)

The LICENCEE shall comply with any order or direction or regulation on interconnection issued by the TRAI under TRAI Act, 1997.....

16. As is evident from the above, the license gives flexibility to service providers to choose their NLDO for intra circle long distance calls. The license also recognizes the right of TRAI to determine the terms and conditions of interconnectivity. Further, the TRAI Act mandates TRAI to ensure compliance with the terms and conditions of license and further also gives TRAI the powers to determine the terms and conditions of interconnectivity. **It is thus statutorily incumbent upon TRAI to fix terms of interconnection that are in compliance with license conditions.**
17. The fact that the interconnect agreements need to be modified /clarified to give effect to this license provision on carriage of intra circle NLD traffic was once again reiterated by DoT in 2008. In a meeting with Secretary, DoT and his senior colleagues on March 14, 2008, Industry sought the intervention of DoT for resolution of this issue; DoT stated that as interconnection issues lie within the jurisdiction of TRAI the matter would have to be addressed by TRAI. The minutes of the meeting of march 14, 2008 circulated by DoT record:

*“...After deliberations, it was clarified that interconnection being **a matter within the jurisdiction of TRAI** and that the issue basically related to level of handling of cellular to basic intra-circle traffic, it would be **more appropriate if COAI may approach TRAI for the same”.***

DoT has thus again clarified and confirmed that in this regard, only the interconnection issues need to be clarified and resolved. It is clear from the above that that implementation of amendment now lies in the jurisdiction of the Regulator.

18. Pursuant to the above meeting the industry approached the Authority for a resolution of this issue. A meeting was held in TRAI on April 17, 2008, where a view was erroneously taken by the Authority that the problems were arising due to multiple licenses and different licensing conditions. As pointed out above, the license conditions of both the access providers and NLDOs are in complete harmony and consonance with each other. The issue that now remains to be addressed in a clarification on the interconnection aspect, which lies solely within the jurisdiction of the Authority.
19. Further, a detailed presentation was also made to the Authority jointly under the aegis of COAI and AUSPI on June 12, 2008 wherein all the above. However despite the above, the Authority is yet to intervene to give effect to the license amendment.
20. It may be appreciated that in the absence of a clarification/amendment by the Authority, BSNL continues to insist on handover of calls at Level II TAX as a result of which access providers are not able to exercise the right under the license to enter into a mutual agreement with any other NLDO to carry the intra circle traffic which is meant for termination on BSNL's fixed line network.
21. Of the total fixed line subscribers in India, 80% are BSNL subscribers, as a result of which in case of all calls made to the fixed line subscribers of BSNL, BSNL alone will be able to carry the call and charge a monopoly rate of 15 paise per minute
22. In the process,
 - Customers being deprived of huge advantage that access providers could have delivered by being able to negotiate lower intra circle carriage rates with the private NLDOs & choosing the best option to terminate their calls at the SDCA level
 - Infrastructure of private NLDOs not being optimally utilized
 - BSNL Network is over-congested leading to issues of QOS
23. The paramount objective of Licensing / Regulatory Regime has always been to ensure the interest of the end customer by ensuring that enough competition is made available in each segment of the telecom services.
24. There is no doubt that the availability of competition in LDCA-SDCA segment will result in a reduction of the present charges of 15 paise per minute being charged by BSNL thereby reduction in the cost of the telecom services for the end customer.
25. Allowing access providers to choose their NLDOs to carry intra circle NLD traffic will result in
 - Increased competition in intra circle carriage segment will lead to lower costs for access providers & more affordable tariffs for consumers.
 - Reduced congestion on BSNL networks i.e. easing out congestion between LDCA exchange and SDCA exchange that a call may encounter.
 - Optimal utilization of telecom network of all stakeholders.

It is requested that the Authority may kindly clarify the interconnection arrangements and confirm that call originating access providers can choose their NLDO to carry their intra circle traffic and that intra circle mobile calls terminating in the BSNL fixed line network can be handed over at the SDCA level

REVIEW OF PORT CHARGES

1. Interconnection is a commercial and technical arrangement under which service providers connect their equipment, networks and services to enable their customers to have access to the customers, services and networks of other service providers. Both the interconnecting parties benefit from interconnection and it is incorrect, unjust and unfair for Regulation to provide that the charges for interconnection are to be borne by only one party.
2. A port is a place of termination or) a switch/distribution frame to provide a point of access or interconnection for ingress and egress of traffic between the interconnecting networks. A 'port' is essential for establishment of interconnection between two networks.
3. It is submitted that a port is an essential part of terminating equipment and its cost, should in fact, be taken into consideration for working out the termination charges along with the cost of other terminating equipment.
4. However, despite the above, port charges are separately regulated and prescribed by TRAI.
5. Port charges were first prescribed by TRAI in 1999 vide the Telecommunication Interconnection (Charges and Revenue Sharing) Regulation, 1999, dated 28.5.1999. The said regulation defined

'Port Charges' mean charges payable by the interconnection seeker to the interconnection provider for terminating the interconnection links on the network interface of the interconnection provider. (Clause 2. xix)

6. The period /tenure of the seeker /provider relationship was laid down by TRAI in its Model RIO notified in 2002, in which TRAI specified that in order to meet the Quantity Control Standards ("QCS"), two years after initial interconnection, the issue as to who bears the cost of additional resources shall be negotiated between service providers and the guiding principle in this regard shall be the outgoing traffic of the party providing Interconnection. The relevant portion of the model RIO is reproduced below:

Article 12 -Commercial Terms and Conditions

"12.3 Costs of Interconnection

12.3.1 The cost of upgradation/modifying interconnecting networks to meet the service requirements of the service shall be met by the Party seeking Interconnection. However, mutually negotiated sharing arrangements for cost of upgrading/modifying interconnecting networks between the service providers shall be permitted.

12.3.2 Two years after the initial interconnection is established, the issue as to who bears the cost of additional resources required shall be negotiated between the service providers. The general principle followed in these negotiations is that each party should bear the incremental costs incurred for the additional ports required for meeting the QOS standards relating to its outgoing traffic to the other Party".

7. Thus clearly it was intended and envisaged that two years after the initial interconnection is established, the cost of augmentation of interconnection would be borne by both the interconnecting parties in the proportion of their usage/outgoing traffic.
8. The License also provides that the cost of upgrading/modifying interconnecting networks will be done keeping in view the orders and regulations issued by the TRAI from time to time. Clause 27.3 of the UAS License states as below:

27.3 The network resources including the cost of upgrading/ modifying interconnecting networks to meet the service requirements of the LICENSEE will be mutually negotiated keeping in view the orders and regulations issued by the TRAI from time to time.

9. It may not be out of place to point out that even BSNL in its RIO (as approved by the TDSAT) issued in June 2005 provided that :

“12.3.2 Five years after the initial interconnection is established at a POI in the BSNL premises, the issue as to who bears the cost of additional ports required at the POI may be reviewed by the parties to this agreement.”

10. However, despite the above, when the private operators approached BSNL to migrate to their RIO, BSNL rejected their overtures by claiming that the offer was no longer open.
11. As a result, over 15 years have elapsed since the first CMSP networks were set up and the private CMSPs continue to be “interconnection seekers” paying for the total cost of augmentation of interconnection with BSNL. The charges for the ports set up at the cost of private operators have been recovered many times over by BSNL.
12. The continuation of this one-sided interconnection arrangement in perpetuity is incorrect, unjust and unfair and against all principles of reciprocity, fair play and level playing field.
13. The present situation is also contrary to the various costing principles enunciated /adopted by the Authority, inasmuch as:

- TRAI has repeatedly maintained that **interconnection should be cost based**. However, since the capital expenditure towards setting up of ports is not apportioned on the basis of usage to interconnecting party while estimating the port cost, the charges so determined and specified are not cost based.
- TRAI has repeatedly advocated the **principle of cost causation**, i.e. the service provider shall not pay /be charged for any interconnection facility that it does not seek or require.
 - a. Regulation 5 of the Telecommunication Interconnection (Charges and Revenue Sharing) Regulation, 2001 reads as follows:

(iv) No service provider shall be charged for any interconnection facility it does not seek or require”.
 - b. As per the Accounting Standards/Principles advocated /adopted by the Authority:

Causation - Revenues and costs should be allocated to those services or products/network services that cause the cost or revenue to arise.

However, by making the private operators pay for the total cost of augmentation, the private operators are paying for the interconnection costs which are attributable to BSNL, i.e. a facility that the private operators neither seek nor require and are incurring a cost that is not allocatable to the service being provided by them.

14. The **Hon’ble TDSAT has, in many orders upheld the principles of reciprocity and sharing of the costs of interconnection.**

- The Ld. Tribunal in its orders dated 19.03.2007 in Petition No. 148 of 2005 in the case of BPL Vs MTNL and Petition No. 218 of 2006 in the case of Reliance Infocomm Ltd Vs MTNL has observed that to the extent that this infrastructure is also utilized by the Respondent for its outgoing traffic, TRAI may also see to what extent the costs need to be shared by the Respondent.
- Hon'ble Tribunal has observed in its Order and Judgment dated 03.05.2005 in Appeal No. 31 of 2003 – BBSNL vs TRAI that the provision of ports should be on the principle of non charging as each party incurs the costs at its own end and the charges for connecting the link should be divided up between both parties. The relevant extract from the Order of TDSAT is as below:

*"It is logical that the **media use/infrastructure created for interconnection in accordance with the IUC Regulation of Interconnection entail some expenditure. This should be shared between the two operators who by mutual agreement are going to have direct connectivity.** We do not want to give any directions on the interconnection which has already been created between the operators, which have been arrived at by signing MOUs / agreements between them. Wherever, till the date of this order, infrastructure has been created for connections from the Cellular Operators to Level-1 TAX the same will be used for the termination of calls to the PSTN subscribers as well as to CellOne subscribers. In the near future since both the CMSPs and BSNL CellOne are likely to enhance their capacities manifold, the present connectivity will fall short of the requirements. In the interest of level playing field, direct connectivity between the CMSPs and the BSNL CellOne may be encouraged in the future by mutual agreement **on the basis of costs being shared between the CMSP and BSNL CellOne.**" (emphasis supplied)*

15. It is submitted that infrastructure for Interconnection (including ports) is used for ingress and egress of traffic of interconnecting parties. The cost of setting up and running this infrastructure ought to be shared by the interconnecting parties on the basis of their outgoing traffic and operators should be pay only for the portion of facility used by them.
16. As per data submitted to the Authority, the traffic trends show that in many ports, the usage of the port by BSNL for its outgoing traffic is far higher than that by the private operators, in fact, in many cases as high as 75%. It may be appreciated that in such cases the major part of the port capacity is used by BSNL, but the complete cost is borne by the private operator. Thus, the private operator is effectively subsidizing the costs of its competitor for carrying its calling traffic.
17. The Telecommunication Interconnection (Charges and Revenue Sharing) Regulation 1999 dated May 28, 1999 which **inter-alia states** that:

*"..... . (ii) The Authority **may also at any time, on reference from any affected party, and for good and sufficient reasons, review and modify any interconnection charge or revenue sharing arrangement..... "***
18. It is submitted that whilst the Authority did modestly reduce the port charges from Rs. 55,000 to Rs. 39,000 per E1 in 2007, the reduction was more by way of aligning the costing methodology rather than by taking into account the sharply falling costs of providing E1s.
19. COAI and AUSPI in a joint presentation to the Authority in 2007 had demonstrated that by **proper allocation** of costs for actual service provided from Pol, the average price per E1 for 64 E1 expansion for an average DTAX was around **Rs 31,250** the average price per E1 for 128 E1s for an average L1 TAX was around **Rs 23,125**. **It is submitted that even this cost would have gone down further by now.**

20. Accordingly, we would like to urge the Authority to undertake a fresh review of port charges taking into account the actual costs of providing E1 ports.

21. It is also submitted that a **port is an integral component of the interconnection** that takes place between two parties. The costs of interconnection are determined by the Authority in the IUC regime that prescribes interconnect usage charges. **Under these circumstances, it may be desirable for the Authority to deal with port charges as a part of the overall IUC regime rather than address it separately as a distinct element of interconnection.**

It is requested that the Authority may kindly initiate a fresh review of port charges that addresses the aspects of

- **the charging principles for imposition of port charges**
- **The current cost of providing E1s**
- **Integrating port charges into the IUC Regime**