TELECOM REGULATORY AUTHORITY OF INDIA

3rd July, 2001

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Subject : **Dispute relating to payment of termination(access) charges for calls originating in Private Operators (BSO/CMSO) and terminating in BSNL Network, when the distance of carriage is equal to or less than 200 kms & related matters**

I. Background.

1. Vide letters No.3-5/2000-R&C dated 29.12.2000 and No.3-5/2000-R&C(Pt) dated 18.01.2001, BSNL forwarded to the Authority copies of tariff circulars seeking to reduce STD call charge from 26th January, 2001 by extending the duration of peak pulse rates for distance categories falling within 50 to 200 kms from what had been specified in the TRAI standard tariff package for Basic Services in the Telecommunication Tariff Order 1999 (TTO'99). The revised pulse rates based on which tariffs were to be reduced, however, were made applicable to only "Intra-Circle calls originated by the telephone subscribers of BSNL, and terminating in the Basic Service Network".

2. Subsequent to the issue of the above tariff circulars (calling it an ‘Order’, although they have no authority to issue tariff orders), the Authority received representations from COAI and ABTO seeking Authority’s intervention to review the scope of BSNL’s proposal in respect of Inter-Network calls also. They sought the Authority’s intervention and requested that in the interest of level playing field; the following should be applicable in respect of Inter-Network calls.

a) The revised pulse rates (or tariffs) should also apply to calls from Fixed Network to Cellular Mobile, as far as it related to the fixed leg of the call;

b) The revised pulse rates should also apply for calculating the charges to be paid by Cellular Mobile Network to the Fixed Network, in respect of the fixed leg from the Point of Interconnect (POI) onwards.

c) The revised pulse rates should apply to the payment of terminating (access) charges for calls originating in a Basic Service Operator’s (BSO’s) Network and terminating in BSNL Network, when the distance of carriage is equal to or less than 200 kms.

3. The Authority examined the submissions of the COAI/ ABTO with reference to the License Agreement, Interconnect Agreement and its Interconnection Regulation of May’99, specifically in respect of the points enumerated at (a), (b) and (c) above. After detailed examination and

due deliberations, it came to the conclusion that to ensure 'non-discrimination' and a 'level playing field', BSNL's revised pulse rates should also apply to the Inter-Network calls in interconnect scenarios indicated at (a), (b) and (c) above. The Authority, accordingly issued Direction to BSNL under section 13 of the TRAI Act. Copies of the Direction were endorsed to MTNL, ABTO and COAI. Further, on 25th January 2001, the Authority also notified the Telecommunication Tariff (Eleventh Amendment) Order, 2001 extending the application of BSNL's revised pulse rates to scenario described at (a) above.

4. The Direction & Order issued to BSNL on 25th January 2001 and BSNL's request dated 25th January 2001 for a review of the same, was discussed in a meeting chaired by Secretary TRAI on 30th January 2001, in which BSNL officers participated. Subsequent to the meeting, BSNL wrote to the Authority on 2nd February, 2001 requesting for a review of the Direction of 25th January 2001 citing, *inter-alia* a number of reasons based on which, according to BSNL, it was not 'technically feasible' to implement the Direction. The Authority took note of the points made by BSNL in their letter of 2nd February 2001. The Authority did not consider it necessary to modify its Direction/ Order and reiterated its earlier decision in its letter dated 7th February to CMD, BSNL. The Authority gave the following reasons for its intervention in the matter.

i) The objective behind TRAI's intervention is to enlarge the scope of the tariff concession for promoting 'community of interest' announced by the Hon'ble Minister of Communications, irrespective of whether their calls are carried entirely on BSNL facilities or on facilities of two Operators e.g. BSNL/ BSO in a Circle. It is in line with the stipulations contained at clauses 1.7.6.5. to 1.7.6.7. on 'Interconnectivity for STD/ISD' calls and Clause 1.7.7 on 'Numbering Plan' of the License Agreement. It is to be noted that clause 1.7.2.3. of the License Agreement stipulates, inter alia, that "in Order to ensure a cost-effective seamless National Network, the Licensee's Network shall follow DOT's Technical/ Engineering Plans". Sub-Clause (b) and (c) of clause 1.7.2.3. mandate all BSOs to adopt an integrated Charging and Numbering Plan in regard to PSTN calls within their service areas. Further, in the context of interconnectivity for STD/ISD calls, the last sentence of para 1.7.6.7 states that : "The Numbering and Charging Plans shall always be adhered to by both DOT (now BSNL) as well as the Licensee"

ii) As regards application of pulse rate, both the License Agreement (Clause 1.7.8.2.) and the Interconnect Agreement (Clause 6.4.3) are quite clear and state that : "The traffic delivered on any DOT LDCC TAX from Licensee's LDCC TAX/ SDCC Tandem/ local exchange will be measured on the incoming junctions of the DOT's LDCC TAX at the destination wise pulse rates applicable to the calls generated locally at the same station where DOT's LDCC TAX is located". As clearly brought out in the Interconnect Agreement, the pulse rate at the Point of Interconnect (POI) will have to be determined by the analysis of SDCA code and not by the exchange code. SDCA codes are same for all Basic Service Operators. Similarly, in the case of calls from Cellular Mobile to PSTN, this stipulation about the pulse rate would apply to the PSTN leg of the call i.e. from the charging area in which POI is situated to the destination SDCA as per the Interconnection Regulation of TRAI issued in May'99.

5. However, BSNL did not implement the Direction and the Order of the Authority and filed an appeal with the Telecom Disputes Settlement & Appellate Tribunal (TDSAT). TDSAT passed an interim Order on 22nd February, 2001 staying the implementation of the Order/ Direction of TRAI. On 24th April 2001, TDSAT passed its final Order in this matter. While setting aside the Direction/ Order of TRAI dated 25th January and 7th February 2001, the Tribunal observed that adequate opportunity had not been given to BSNL to present their case. While passing the Order, the Hon'ble Tribunal further observed that 'TRAI will be at liberty to pass fresh Order and/or Directions in accordance with law after giving all the parties a fresh hearing'.

6. In accordance with TDSAT's Order, the Authority invited representatives of BSNL, MTNL, COAI and ABTO for a fresh hearing on 16th May, 2001.

II. Summary of the points made by the contending parties during the hearing.

Summary of points made by COAI during the hearing.

7. According to COAI, BSNL's revised tariffs were anti-consumer, anti-competitive and discriminatory if they were not applied to calls made to/ from Cellular Mobile.

(a) The tariffs were anti-consumer because they did not allow a BSNL/MTNL subscriber to obtain the revised lower STD charges if he calls a Cellular Mobile number. BSNL thus discourages his own subscriber from calling a mobile subscriber.

(b) The tariffs were anti-competitive because a Cellular subscriber will be deprived of the lower tariffs if he chooses to use the STD facility from his mobile phone. This is despite the fact that Cellular Operators function as mere collectors of STD tariff from their subscribers and pass on the same to the BSNL. This will discourage subscribers from using their mobile phones to make STD calls involving carriage on BSNL Network.

(c) BSNL's revised tariffs were discriminatory because these were not applied by BSNL to the fixed leg of the call made by Cellular subscribers. According to COAI, the Cellular mobile subscribers were in effect BSNL subscribers, for the STD leg when they made a STD call to a BSNL fixed phone, since the Cellular Operators merely collected the retail tariff for the STD leg, and passed it on to the BSNL.

(d) The COAI also claimed that the BSNL revised tariff is not an 'alternative tariff' package as claimed by the BSNL, since any alternative package offered by service providers is in addition to the standard tariff package and that the subscriber should have the option to choose amongst the various tariff offers available. BSNL subscribers did not a have such a choice and had to necessarily accept the single revised tariff, involving increase in rental, which may not be acceptable to a subscriber whose community of interest is only the local area i.e. within a SDCA.

(e) COAI further submitted that BSNL's contention that interconnection charges and subscriber's tariff are independent of each other is incorrect as TRAI's TTO 99 itself mandates that the applicable tariff for calls from Mobile to PSTN must comprise airtime and also PSTN charges for local or long distance as applicable from time to time to the Fixed Network. Therefore, separate tariffs had been specified for both the mobile leg and fixed leg of a call to fixed line subscriber. The former is the airtime charge and the latter local, STD or ISD call charges, as the case may be.

Summary of points made by ABTO during the hearing.

8. ABTO made a number of points, including:

a. While the declared objective of BSNL's revised tariff is to promote 'community of interest', BSNL had admitted in its Appeal (Appeal No.1 of 2001) filed before the TDSAT that "the entire object of introduction of the new Tariffs was to extend benefits to the Appellant's customers and thereby encourage more and more people to subscribe to the services of Appellant (BSNL) as against competing services…"

b. BSNL had admitted before TDSAT that the tariffs were below cost. These tariffs were, thus, predatory and would affect the ability of the Private Basic Service Operators to compete with BSNL on the basis of a level playing field. Reduction in tariffs by a player with Significant Market Power can only mean that the dominant Player is out to destroy competition by willingly suffering short run losses, so as to capture the market in the long run. These low tariffs were detrimental to the viability of the Private sector Service Provider, because these Service Providers had no option but to lower their own tariffs to equivalent levels in response to BSNL tariffs.

c. While reporting to the TRAI as a change in tariff, under Section III of the TTO'99, BSNL had not disclosed the vital fact that the access charge for Private Service Providers would be based on the 'Standard' tariff pulse rates and not 'Applicable' pulse rate. This violates provisions of the Telecommunications Interconnection (Charges and Revenue Sharing) Regulation, 1999. The mandatory notice period prescribed in this regulation is 45 working days and not five days provided under Section III for reporting tariff changes.

d. Provisions of paragraph 25 of the Explanatory Memorandum of the Interconnection Regulation read with Item 4 of Schedule I of the Interconnection Regulation, provided that the charges on a Metered Call Unit are to be measured from the Point of Interconnection to destination, based on the STD pulse rate. In the present case, under the concessional tariff, between a distance slab of 50 to 100 kms and 100 to 200 kms, for measuring the Metered Call Unit (MCU), the charges based on the applicable pulse rate would have to be taken into consideration for determining appropriate Revenue Sharing.

e. BSNL's grant of similar benefits as its revised tariffs to MTNL and MTNL subscribers, is discriminatory. Under non-discriminatory interconnection principles, it was incumbent on BSNL to charge the same access charges (both origination and termination) when handling an Inter-Network call, whether from MTNL or from any other Fixed Service Providers.

f. BSNL cannot hold that for the purposes of Revenue sharing with other BSOs, the higher Tariff would continue to be applicable between these distance slabs. If the BSNL's views were to prevail, every single Basic Service Operator would be out of pocket by Rs.2.64 for each call in the respective distance slabs of 50 to 100 kms and would be likewise affected in other slabs.

g. BSNL's apprehension that the Private Basic Service Operators would take advantage of the BSNL's concessional tariff and abuse the same by offering to their own Subscriber's Long Distance calls at much lower tariff by riding on BSNL's Network in these concessional slabs, is not well founded. ABTO felt that it was technically possible to address this problem with the use of available equipment and mandatory facilities like CLI.

<u>Summary of points made by BSNL during the hearing.</u>

9. BSNL in their submission before the Authority stated that TTO 99 permits Service Provider to offer alternative combination of tariff to different classes of subscribers in a non-discriminatory manner. Many types of alternate tariffs were already being offered by Private Operators. Accordingly, BSNL was justified in offering alternate tariff package to a particular class of its

customers, and felt that private Operators were not required to match the alternate tariff of BSNL. In addition, BSNL submitted that :

a) Interconnection charge and subscriber tariffs were independent of each other. Interconnection charges were determined on cost based principles and the cost of Network elements of BSNL between 50-200 kms remained un-changed.

b) The charge for carriage of call at Rs. 1.20 for three minutes up to 50 kms was below cost and was subsidized from Long Distance call charges.

c) Concessional tariffs for certain distances under an alternate tariff package scheme had no relation with the cost of particular Network elements. Charging of subscribers should be independent of both the routing of the call, as well as the interconnection arrangement between the Service Providers. The TRAI Direction/ Order dated 25th January 2001 did not allow such independence to be maintained.

d) The 'Standard STD' pulse rates in TTO'99 were based on certain principles, and it was therefore logical and justifiable to use them for calculating the interconnection charges payable by one Operator to other Operator.

e) TRAI's Order of 25th January 2001 extends the scope of concessional tariffs to beyond 200 kms and beyond Intra-Circle calls because it is technically not feasible to distinguish at the POI whether the end to end distance of the call originated from other Networks falls within the prescribed concessional slabs made available to BSNL subscribers. This would also adversely affect BSNL's ability to offer competitive alternative tariff packages to its subscribers.

f) Access/ interconnection charges have a different basis from tariffs. Pulses forming basis for determination of carriage charge are generated locally at POI, whereas, pulses for determining the subscriber tariff are determined by the Basic Service provider in the Exchange/ TAX to which the subscriber is parented. If there is a certain alternate tariff package with free calls, then BSNL may have to charge nothing from other Service Providers for carriage of calls if the TRAI Order is implemented. Likewise, under certain schemes like club membership etc., NLDOs may offer free calls up to certain limits for an upfront onetime payment. The Basic Service Operators whose revenue share will be determined based upon metered pulses at the POIs will get no revenue for such calls. Thus competition in National Long Distance shall adversely affect the revenues of Basic Service providers and their viability.

g) There is no mechanism to ensure that the charges paid by the subscriber of Cellular or Basic Service Operators are the amounts paid to BSNL for use of its Network. Therefore either the subscriber will not get any benefit or different subscribers may get different bills for the calls between the same two stations, which is arbitrary and discriminatory.

h) Other service providers and the subscribers of a service provider can never be put in the same class of users.

i) The intent of the Licensor is clear that the pulse rate and charge per pulse applicable for calculation of the access charges paid by one operator to another, are the highest and the standard rates and not the one prescribed under any concessional scheme or the Alternate package.

According to BSNL, therefore, the applicable pulse rate for interconnection revenue sharing between the Service Providers should be based only on the Standard tariff/ pulse rate as prescribed in TTO'99.

III. Determination by the Authority:

10. From the submissions made by the parties it is evident that the dispute mainly relates to the payment of Access (terminating access) charges for calls originating in Private Operator's (BSOs/ CMSOs) Network and terminating in BSNL's Network when the distance of carriage is equal to or less than 200 Kms. Whereas, BSNL's contention is that calculation for the Interconnection charges (terminating access) should be based on 'Standard' pulse rate specified in the Telecommunication Tariff Order issued by the Authority in March 99, the Private BSOs/ CMPSs contend that the charges should be computed based on the 'Applicable' pulse rate. On this issue, the Authority's view is that as far as calls originating

in Cellular Mobile Networks and terminating in BSNL's Fixed Network are concerned, BSNL has to be paid Rs.1.20 per metered call, with the number of metered calls measured at the pulse rate applicable to STD calls originating at the point of interconnection and terminating in the destination Short Distance Charging Area. The pulse rate is the STD pulse rate for identical carriage on the BSNL's Fixed Network (PSTN). The Authority would like to reiterate that in none of the documents which are relevant to the case such as License Agreement, the Interconnect Agreement and the TRAI's Interconnection Regulation of May, 1999, there is any mention of a 'Standard' pulse rate. The pulse rate for the purpose of computing the MCUs (Metered Call Units) has to be the equivalent 'STD' pulse rate from the point of interconnection to destination as clearly brought out in Schedule II of May 1999 Interconnection Regulation of TRAI.

11. The Authority finds merit in the contention of the COAI that the Cellular Mobile subscribers are in fact BSNL's subscribers when they make a STD call from their mobile phone to a fixed phone connected to the BSNL's PSTN. This is so in terms of the License Agreement as the Cellular Operator is only required to collect STD charge from his subscriber at the BSNL's prescribed rates, and handover the same in its entirety to the latter. Denial of this facility of making STD calls at the reduced rate which is available to the subscribers of BSNL would amount to a discrimination against the cellular subscriber.

12. It has also been reported that BSNL is not extending the reduced rate to their own subscribers when they make a call to a mobile phone. The Authority is of the view that by not extending the facility of reduced tariff, as reflected in the new pulse rate for distance slabs up-to 200 kms for the fixed leg of an Inter-Network call involving a calling BSNL subscriber and a called mobile subscriber, BSNL is denying

the advantage of a cheaper calling rate to their own subscribers, which is clearly anti-consumer. Such PSTN - PLMN Inter-Network calls have two distinct tariff elements i.e. one for the PSTN leg and another for PLMN leg, called 'airtime'. They are quite independent of each other. For the PSTN leg, the tariff has to be identical as for an Intra-Network PSTN call of identical carriage.

13. As far as calls originating in the BSO's Network and terminating in the BSNL's are concerned, the carriage charge regime applicable to such calls is clearly specified by Schedule I of Authority's Interconnection Regulation of May 1999 which is as under:

"The originating/ transit Service Provider to pay Rs.0.48 per unit of measured call for traffic delivered from its network to the network of the transit/ terminating service provider for the call units measured at the point of interconnection for its further carriage from the point of interconnection to destination, based on the STD pulse rate."

This STD pulse rate has got to be the one applicable for the distance category, for an Intra Network call originating at the POI and terminating at the same destination This view is supported by clause 6.4.3 of the Interconnect Agreement signed by the DOT (now BSNL) and the BSOs. This clause (6.4.3) stipulates that : "The traffic delivered on any DOT LDCC TAX from Licensee's LDCC TAX/ SDCC tandem/ local exchange will be measured on the incoming junctions of the DOT's LDCC TAX at the destination wise pulse rates <u>applicable</u> to the calls generated locally at the same station where DOT's LDCC TAX is located".

14. It would appear from the submissions of the BSNL that they are reluctant to apply the new pulse rate, corresponding to the reduced tariff up-to 200 kms, because of reduced settlement charge and a higher retention by the BSOs and would like to unilaterally modify the settlement charge regime. However, the Authority is of the view that it would not be legally tenable to modify the Interconnection Agreement and the embedded settlement (access) charge regime. The Authority intends to review the existing access charge regime in the context of the opening up of the NLD market, which will bring in a multi-Operators environment, involving the facilities of more than two Operators to carry a call from its origination to its destination. However, till such time a new regime is put in place, the existing TRAI Interconnect Regulation should govern the payment of access charge by one Operator to another.

15. The Authority does not agree with the contention of the BSNL that a 'Standard' pulse rate was stipulated in TTO'99 to reflect cost based tariffs. It would like to clarify that contrary to the contention of the BSNL, the existing STD tariff structure is cost plus and the access charge regime is also not based on unbundling of Network elements and their costing. It is an *ad-hoc* arrangement, based on revenue share percentage of about 60 : 40 in case of Near End handover and 100 : 0 in case of Far End handover when the tariff for a Metered Call Unit is Rs. 1.20. Only these two types of handovers are stipulated as per License Agreement/ Interconnect Agreement, which has basically been negotiated commercially by the concerned parties.

16. BSNL's contention that the TTO'99 permits Service Providers to offer any type of combination of tariff to different classes of subscribers in a non-discriminatory manner, as an Alternate Tariff, is not

tenable. Their circular advising the changed tariff bundles Long Distance STD service with Rental. This has been claimed to be an Alternate Tariff. The Authority is of the view that an 'Alternate Tariff' package should consist of tariff elements belonging to the same service. Since rental and local call charge comprise the local service, an Alternate Tariff in case of local service should comprise of only these two elements. Bundling the rental with Long Distance charge, and calling it an Alternate Tariff Package, has the potential to disturb the economic level playing field. This is because of the fact that only BSNL is permitted to have a vertically integrated Network offering Local, Circle level Long Distance, and National level Long Distance (NLD) services, derived from the same Network, thereby giving them tremendous economies of scale and scope, which is not available to its competitors i.e. BSOs. Since the tariff for NLD service is much above cost, so as to cross subsidise the access deficit of the BSNL, surplus from NLD service could easily be used to subsidise the Circle level long distance service as well.

17. While Authority has addressed the two main points made by BSNL in their submission namely, that 'Standard' pulse rate instead of 'Applicable' pulse rate should apply at the Point of Interconnect (POI) for computing the Terminating Access (or Settlement) charges and that they should be allowed total flexibility to offer any type of combination of tariff as an Alternate Tariff, the other points made by them are briefly addressed in the following sub paras.

a. Their contention that interconnection charges were determined by cost based principles is not correct. An adhoc revenue share of about 60 : 40 was agreed for Near End handover, and 100 : 0 for Far End handover, when the tariff for a Metered Call Unit is Rs. 1.20. A higher share seems to have been allowed to the BSOs, to take care of their Access Deficit (Point made by BSNL in sub para 9(a)).

b. BSNL contends that charging of subscribers should be independent of both the routing of the call, as well as the Interconnection arrangement between the Service Providers, and that the 'TRAI Order did not allow such independence to be maintained". In this connection, the Authority would like to clarify that its Order does not prescribe any new routing/ charging discipline. The Order merely reiterates the provisions of the Interconnect Agreement/ TRAI's Interconnection Regulation of May, 1999. As per Interconnect Agreement, both the parties are to adhere to the National Routing and Charging Plans which make charging independent of routing of the call (Point made by BSNL in sub para 9(b)).

c. BSNL's contention that TRAI Order of 25th January, 2001 extends the scope of concessional tariffs to beyond 200 kms and beyond Intra-Circle calls because it is technically not feasible to distinguish at the POI, whether the end to end distance of the call originated from other Networks falls within the prescribed concessional slabs made available to BSNL subscribers, is not correct. The tariff or the collection charges whether concessional or otherwise, have no co-relation with the access charges for arriving at the settlement between the two Operators. It would appear that BSNL is concerned that private BSOs will make an intermediate handover and will collect the tariff on higher STD rates for distance slabs greater than 200 kms, but pay settlement based on the applicable pulse rate for less than 200 kms carriage in the BSNL's Network, thus retaining a higher percentage of the collection charge. This concern of BSNL is largely addressed by the stipulation in the Interconnect Agreement which allows only Near and Far End handovers and not intermediate handovers. In this connection, the Authority's Determination of 15th June 2001 on POIs and handovers between BSOs and BSNL may be referred to.

d. BSNL's contention that the intent of the Licensor is clear that the pulse rate and charge per pulse applicable for calculation of the access charges paid by one operator to another, are the highest and the standard rates and not the one prescribed under any concessional scheme or the Alternate package, is not tenable. The Interconnect Agreement clearly specifies that for calculation of the access charge payable the applicable pulse rate for STD calls from the Point of Interconnect to the destination is to be used, whatever that pulse rate may be, concessional or otherwise.

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IV. Decision of the Authority

18. After due deliberation and in the light of the discussion/ examinations of the various issues as brought out in preparas, the Authority has reached the conclusion that its earlier Directions and order issued under the Telecom Regulatory Authority of India (Amendment) Act 2000, do not warrant any alteration. The Authority's decision is based on the contract executed between the contending parties, and the terms embodied in the License Agreement/ Interconnect Agreement. It is also in accordance with the stipulations of the Interconnection Regulation issued by the Authority in May'99. The Authority directs accordingly.