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April 23rd 2012

The Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg (Old Minto Road),
New Delhi: 110 002

Re: SEACOM Comments on Consultation Paper on "Access Facilitation Charges and Co-location Charges at Cable Landing Stations (CLS)"

Dear Sir,

This is with reference to the above mentioned Consultation Paper issued by the TRAI on 22nd March 2012.

1. SEACOM is an entity incorporated in Mauritius and is in the business of financing, developing, constructing, owning, and operating subsea fibre optic cable. SEACOM has financed and developed submarine cable system; and has secured landing rights and executed partnership agreements in several jurisdictions in Africa, India and Europe.
2. SEACOM's market strategy is epitomized by a desire to complement the business of national carriers, broadcasters and education and research networks by providing a comprehensive wholesale solution for international bandwidth to be connected to and sold by national carriers including Tata Communications through their established channels.
3. To this end, SEACOM recognizes that access to subsea CLS and onward domestic connectivity constitutes an essential input into the cost of providing of international connectivity via subsea cables. In Africa, specifically, and developing countries in general, there is a direct correlation between high telecommunications costs and high Access Facilities Costs ("AFC") stemming from Significant Market Power or monopoly

power exercised by incumbents over CLS.¹ The same can be said about high Colocation Charges ("CLC") at CLS. Under such market conditions the purpose of regulators is to prevent the exercise of market power in an anti-competitive manner by fostering a price regime that is reasonable, equitable and reflective of the underlying cost structure while ensuring a high quality of service.

4. It is in this light, that SEACOM takes interest in the TRAI's Consultation Paper on Access Facilitation Charges and Co-location Charges at Cable Landing Stations which seeks to review the AFC and CLC regime TRAI put in place in 2007², which regulatory intervention has resulted in a remarkable reduction of international bandwidth prices. However, a cursory comparison of the AFC to international subsea cable capacity cost ratio in India today, suggests that AFC in some CLS in India have become the bottleneck in the reduction of international connectivity to India. We note with concern that the AFC today in India is between 100% and 300% of the cost of subsea capacity. This effectively means that AFC are higher than the cost of international capacity and Internet ports and a review by TRAI is therefore warranted.
5. The shape that such intervention should take need not result in prescriptive guidelines for regulating AFC and CLC in India but in SEACOM's opinion at the very least the **AFC costing methodology must**, in addition to being applied uniformly and reviewed often enough to keep pace in a fast-moving market:
 - a. **be cost-oriented;**
 - b. **take into account costs at CLS that are paid or reimbursed by Consortium/Cable Owners** (*e.g., in the case of capacity owners, the fees charged to purchase capacity from a cable system owner who also owns the CLS, which commercial charges should take into account all capital costs in building the CLS and cable system; in the case of private ownership hybrids or consortium cables, the fees charged to land a cable system in a CLS in India and therefore use the underlying facilities, which charges also take into account the relevant portion of the capital costs of the CLS; and in either case, the fees charged to operate and maintain the system and to man the CLS*);
 - c. **exclude network elements which are not directly relevant for**

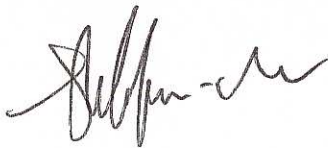
¹ The Regulation of Undersea Cable and Landing Stations, Esselaar, Gillwald and Sutherland.

² International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations 2007

accessing/interconnecting bandwidth (examples of network elements at a CLS directly relevant for AFC are ports on Optical/Digital Distribution Frames; cabling costs; manpower required to patch and test the interconnection; and possibly the costs of breaking out capacity where those costs are not captured in other commercial arrangements – but any such charges should be purely on a “cost plus” basis); and

- d. **be independent of circuit capacity (STM-1, STM-4 or STM-16, etc.)** as these costs are irrelevant to interconnection costs such as cabling costs or manpower. The current practice in India of basing AFC on circuit capacity multiplied by fixed levy per circuit results in an effective double reimbursement of CLS costs to the CLS owner in light of the commercial arrangements highlighted in clause 5.b. above. This effective double reimbursement of costs deemed recoverable from non-CLS owners/capacity owners under the mandate of TRAI to dominant CLS Owners is not only discriminatory but has prevented true price competition thereby keeping international connectivity artificially high in India.
6. Thank you for affording us the opportunity to participate and make a small contribution in this process. We remain at your disposal to meet, at reasonable notice, should TRAI require further enunciation on our comments herein.

Faithfully yours,



John Mathwasa
Head Of Regulatory
SEACOM Ltd.