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Ref No: RP/ FY 19 - 20/ 062/ 619

Dated: April 12, 2019

To,

Shri. Amit Sharma,

Advisor (F&EA),

Telecom Regulatory Authority of India,

Mahanagar Door Sanchar Bhawan,

Jawahar Lal Nehru Marg, Old Minto Road,

New Delhi – 110002

Subject: Consultation Paper on 'Review of Per Port Transaction Charge and Other Related Charges for Mobile Number Portability'.

Dear Sir,

This is with reference to your above mentioned consultation paper. In this regard, please find enclosed our response for your kind consideration.

Thanking You,

Yours' Sincerely

For **Bharti Airtel Limited**

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', is written over a horizontal line.

Ravi P. Gandhi

Chief Regulatory Officer

Encl: a.a.

Bharti Airtel's Response to TRAI's Consultation Paper on "Review of Per Port Transaction Charge and Other Related Charges for Mobile Number Portability"

We thank the Authority for releasing consultation paper on important issues. The present consultation exercise in the paper assumes significance on account of the following:

1. Quashing of Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 by Division Bench of Delhi High Court
2. Changes in MNP process on account of 7th Amendment to the MNP regulations, 2009 issued on 13th December 2018:

Please find below our response to the questions raised in the consultation paper:

Q.1 Whether the 'Per Port Transaction Charges' should continue to be calculated based on the methodology adopted by TRAI during the review done in the past? If not, please suggest methodology and supplement it with the detailed calculations indicating costs of hardware, software and other resources etc.

Bharti Airtel's Response:

The Per Port Transaction Charge (PPTC) was determined on cost-plus basis, using the fully allocated cost (FAC) method, in the year 2009 at rupees 19 for each porting request vide TRAI's Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 dated 20.11.2009.

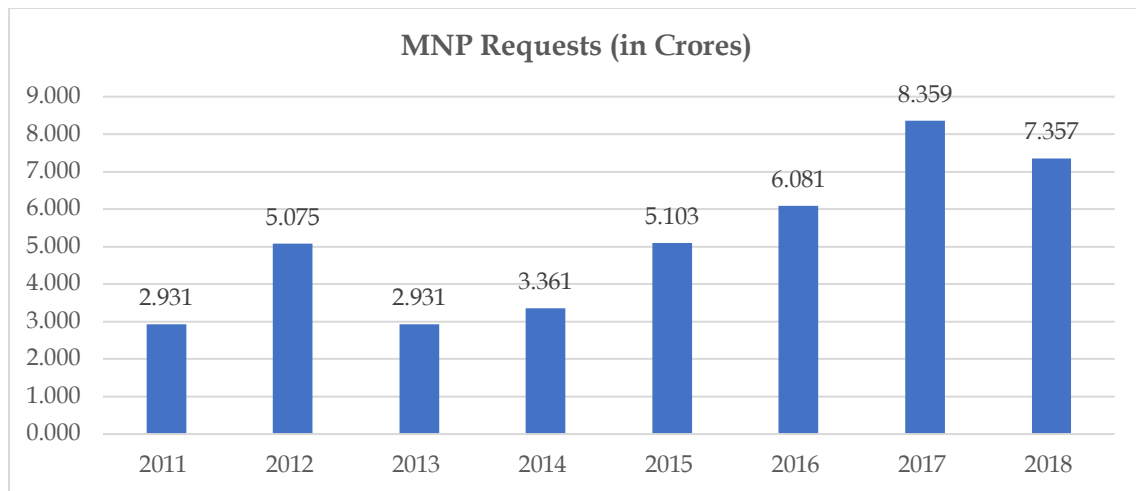
This was subsequently revised to rupees 4 per successful porting w.e.f. 31st January 2018 vide Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge [Amendment] Regulations, 2018.

In this regard, we would like to further submit as below:

1. It is known that both MNP service providers are rendering their services in a monopolistic market, as there is no other supplier of MNP services in their respective zones. In such a scenario, it is essential that the charges are fixed on cost plus basis so that no undue advantage is bestowed to the MNPSs.
2. TRAI being privy to this fact had fixed the per port transaction charges at Rs. 19 vide its Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 dated 20.11.2009. The charges were based on the following assumptions for total cost and porting requests for MNPSs over a five-year period:

Particulars	Unit	Amount
Total estimated cost for 5 Years	Rs in Crores	232.047
Estimated porting for 5 years	in Crores	12.326
Per port transaction cost	in Rs	18.83
License fee @1%	in Rs	0.19
Per Port Transaction Charge	in Rs	19.02
Rounded off	in Rs	19

3. The chart below gives a snapshot of yearly MNP requests received by the MNSPs on a year-on-year basis:



4. Over the years, since the inception of MNP in Jan 2011, the number of MNP requests has increased significantly from 2.931 Crores in calendar year 2011 to more than 7.357 Crores in calendar year 2018. This is significantly higher than average of 2.465 Crores porting requests per year (12.326 Crores requests, cumulatively over a 5-year period), as assumed by TRAI while framing the regulation in 2009.
5. **Excess Revenues earned by the MNPSs in the first 5 years:**

During the period of Jan 2011 to Dec 2015, the actual revenues viz-a-viz the TRAI estimated cost for MNPSs have been captured as below:

Revenue and Cost Estimates : Jan 2011 to Dec 2015		
MNP Requests - Zone 1 (in Crores)*	A	9.73
MNP Requests - Zone 2 (in Crores)*	B	9.67
Total MNP Requests (in Crores)	C = A + B	19.40
Total revenue from porting (in Rs. Crores)	D = C x Rs. 19/ port request	368.61
Total Cost estimation by TRAI including ROCE @15% (in Rs. Crores)	E#	232.05
Excess Recovery in 5 years (in Rs. Crores)	F = D - E	136.572

*Requests data is total requests during the period

#As per TRAI's regulation dated 20.11.2009

As shown in the table above, the two MNPSs earned revenues in excess by Rs. 136 Crores in the said 5 year period i.e. 59% over the estimated cost plus recovery envisaged by TRAI.

6. Rs. 19 continued even beyond initial 5 years as per port transaction charge in 2016 & 2017 and consequent excess revenues earned by the MNPSs in 2016 & 2017:

While the costs have reduced in comparison to 2011, the MNPSs continued to get porting charges @ Rs. 19. The impact of continuing with Rs. 19 per port charges in 2016 & 2017 is shown as below:

Revenue and Cost Estimates : Jan 2016 to Dec 2017		
MNP Requests - Zone 1 (in Crores)	A	7.44
MNP Requests - Zone 2 (in Crores)	B	7.00
Total MNP Requests (in Crores)	C = A+B	14.44
Total revenue from porting (in Rs. Crores)	D = C x Rs. 19/ port	274.35
Total Cost for two years as per cost estimation by TRAI including ROCE @15% (in Rs. Crores) vide regulation dated 20.11.2019	E#	92.82
Excess Recovery in 2 years (i.e. 2016 & 2017) (in Rs. Crores)	F = D - E	181.54

*Requests data is total requests during the period

#As per TRAI's regulation dated 20.11.2009 i.e. $232.05 \times 2/5$

Even if it is assumed that the costs estimated by TRAI in 2011 continued to remain relevant in 2016, there has been an excess recovery of Rs. 181 Crores in 2 years (i.e. 2016 & 2017).

7. It is evident, therefore, that the MNPSs have already earned an excess amount after covering all the costs. Hence, we recommend that going forward, the Per Port Transaction Charge (PPTC) should be determined strictly on cost-plus basis and excess recovery is adjusted in future calculations.

8. While the 2009 regulations had a clause wherein a review of the said charges at the end of one year was prescribed, no such review has been conducted.

9. In December 2017, TRAI came up with draft regulations for revision to per port transaction charge based on the latest costs. Vide the draft, the per port transaction charge was proposed to be made Rs. 4 per porting request as shown below:

Particulars	Unit	Amount
Total Cost per year	Rs. in Crores	12.296
No. of porting requests received per year	In Crores	3.105
Per Port Transaction Cost	in Rs.	3.96
Licence Fee @1%	in Rs.	0.04
Per Port Transaction Charge	in Rs.	4.00

10. Subsequently, after due consultation, TRAI vide Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 dated 31st January 2018 prescribed the charges at **Rs. 4 per successful porting request** as against the per porting request.

11. **Quashing of Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 by Delhi High Court:**

The amendment to the regulations was challenged by the two MNSPs in High Court of Delhi. The Hon'ble High Court of Delhi delivered its judgment on the Writ Petition(C) 1507/2018 and 1508/2018 filed by M/s Syniverse Technologies (India) Pvt. Ltd. and M/s MNP Interconnection Telecom Solutions India Pvt. Ltd. respectively, which inter alia quashed the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 on the following grounds:

- a. *Lack of transparency, inasmuch as, the consultation paper issued by TRAI did not indicate that porting charges would be payable only for successful transactions.*
- b. *The Explanatory Memorandum to the impugned Amendment Regulations does not reveal adequate consideration of the comments submitted by the MNP service providers in response to the consultation paper.*
- c. *Limiting the entitlement of the MNP service providers to situations of successful porting is not only contrary to the statutory scheme, but also penalizes them for failures which may not be attributable to them at all.*
- d. *The impugned Amendment is also ex facie arbitrary and unreasonable as the per-port transaction charge of ₹4/- has been computed on the basis of the number of porting requests received but the same charge has ultimately been granted only for "each successful porting".*

A bare perusal of the same clearly indicated two glaring issues:

- **Calculation Error** whereby the total cost has been divided by the number of porting requests to arrive at per port charges for MNP but limiting the charges to be paid to MNSP by the TSPs to each successful porting.

- Limiting the entitlement of MNPS to **successful porting requests** without duly deliberating on the same.

Therefore, we assume that the Authority will take cognizance of these observations of the court and will do a thorough due diligence of cost and MNP numbers so that these are stable and not intervened like above mentioned orders.

12. Capex and Royalty Charges that need to be omitted from overall costs of MNPSs:

In Regulation 2018, TRAI has considered Rs 12.29 Cr as total cost for FY 2016-17. Since, capex is already recovered, the capex amount of Rs 2.72 Cr (22.15% of total cost) [as per the percentage assumed in 2009 regulations] needs to be deducted as excess recovery. In addition, the royalty cost of Rs 3.09 Cr should not be charged since software support and maintenance cost has also been charged. Thus, a revised cost of Rs 6.48 Cr is arrived below by deduction of these cost elements.

Description	Unit	Derivation	Amount
Per annum cost FY 16-17	Rs. In Crores	A	12.29
Less royalty cost, FY 16-17	Rs. In Crores	B	3.09
Less capex @22.15%	Rs. In Crores	C	2.72
Revised cost	Rs. In Crores	D=A-B-C	6.48

Carrying forward last year's cost for next year.

Considering the revised cost, the per port transaction charge comes out to be :

Particulars	Unit	Amount
Total Cost per year	Rs. in Crores	6.48
No. of porting requests received per year	In Crores	3.11
Per Port Transaction Cost	in Rs.	2.09
Licence Fee @1%	in Rs.	0.02
Per Port Transaction Charge	in Rs.	2.11

13. Additional Cost due to change in MNP Process as per 7th Amendment:

Further, as stated previously, there has been a change in MNP process whereby responsibility of UPC generation has been transferred from Donor Operator (DO) to MNPS after making real time query with the database of the Donor Operator. This entails some additional investment for procuring servers and software for the intended purpose. As per our estimates, this cost will be around 1-3% of the MNPS's present cost.

14. **Per Post Transaction Charge for each porting request considering additional costs due to change in MNP Process:** The per post transaction charge for each porting requests considering increase in additional cost due to change in MNP process is estimated to be between **Rs. 2.13 to Rs. 2.17 on cost plus basis**

15. Charges earned by MNPSPs due to ongoing Mergers & Acquisitions:

In the recent past, there have been mergers and acquisitions which entail integration of the networks of two entities. It also involves migration of subscriber from one entity to another entity which require corresponding changes to be done at the end of MNPSPs.

No charges have been defined for the same by the Authority and the MNPSPs have demanded significant charges for carrying out the activity. Since, the MNPSPs are also earning significant revenues out of this activity, it is essential that both revenues as well as cost accruing to these activities be declared transparently by the MNPSPs to the Authority.

It is recommended that the one-time charges earned by the MNPSPs from the merging entities be also included as an offset while determining per port transaction charges.

In view of the aforesaid submissions, the per port transaction charge should be determined on cost plus basis at the earliest and it should be less than Rs. 2 per porting request.

Q.2 While calculating 'Per Port Transaction Charge', whether the total number of MNP requests received by MNPSP or successfully ported numbers be considered? Please justify your response.

Bharti Airtel's Response:

As per 2009 regulations, the per port transaction charge was payable with respect of porting requests.

Vide the 2018 amendment, the per port transaction charge was made applicable w.r.t successful porting requests. The same has been quashed by the Division Bench of Delhi High Court as one the ground.

It is further submitted that the success of a porting request depends upon several factors, which are not within the control of an MNP service provider, such as the eligibility of the subscriber, and the fulfillment of statutory obligations by both the subscriber and the concerned TSP under the MNP Regulations.

Therefore, we are of the view that 'Per Port Transaction Charge' should be applicable in respect of porting requests received by the MNP service provider.

Q.3 Should the charges for 'Per Port Transaction' and 'ancillary services' be determined separately or consolidated charges. Please justify your response along with detailed calculations indicating cost of hardware, software, other resources and overhead etc. in addition to the rationale for adoption of the method suggested by you.

Bharti Airtel's Response:

The Ancillary services include:

- a) Number Return
- b) Download of Number Portability Database
- c) Port cancellation
- d) Subscriber Reconnection
- e) Non-Payment Disconnection

Table 3.5 of the consultation paper as indicated below gives the quantum of ancillary requests received by the MNPSPs:

MNPSP Zone	No. of Number Return requests Received	Total instances of Database download	No. of Port cancellation requests received	Subscriber Reconnection requests received	No. of NPD requests received
Zone I	9351497	954	107517	787266	1620505
Zone II	7691841	1499	14972	Data not available	480104
Total	17043338	2453	122489	787266	2100609

It can be seen that the number of requests for ancillary services is miniscule as compared to the porting requests received. Further, all such services are intrinsically linked to porting requests as deliberated below:

- a) **Number Return:** Returning the mobile number to Number Range Holder after disconnection due to any reason including non-payment. In such cases, once the MNPSP has already received the PPTC for porting, it can simply return the disconnected number and update its database without any requirement for additional broadcasting and thus, no additional cost is incurred.
- b) **Download of Number Portability Database:** The core objective of MNPSP is to maintain the updated database of Number Portability. This activity is undertaken as a part of License requirement to update the record and sync-up of all TSPs' database. The download of this data by the TSPs only involve a secure connectivity for which the TSP is already paying. No additional cost is incurred by the MNPSP in this activity Database by the Access Provider.
- c) **Port cancellation:** Execution of 'Port withdrawal' request of the subscriber of Donor operator by the MNPSP. In these cases, customers withdraw their porting request within 24 hours of submission of request by RO, the MNPSP simply cancels the request without any additional activity related to port broadcast. The port cancellation charge only becomes applicable in case per port transaction charge is made applicable per successful transaction. If the per port transaction charge is paid upon all porting requests, then no additional charge is applicable.

- d) **Subscriber Reconnection:** It involves reconnecting the ported subscriber of Recipient Operator in its network. Reconnection of the subscriber at the same RO means there is no change in the LRN and no additional broadcast is being sent to the TSPs. The MNPSPs only update their database in this case for customers who are tagged as non-payment disconnections.
- e) **Non Payment Disconnection:** It involves disconnection of the mobile number of the postpaid subscriber who has not cleared the dues of the Donor Operator after porting his number. In this scenario, MNPSP only forwards the NPD service request raised by DO without any additional effort and the PPTC is already paid to the MNPSP by the RO when a subscriber is ported.

As indicated above, all the ancillary services are intrinsically linked to the porting requests and therefore cannot be charged separately.

As per the current practice, the Authority has used Fully Allocated Cost (FAC) methodology to arrive at Per Port Transaction Charge in 2009 as well as in 2018. All costs incurred by the MNPSPs have been included/attributed to porting while the MNPSPs had been carrying various ancillary services. Thereby, implying that the cost of those activities is already built into the per port transaction charge and MNPSPs have been duly recovering the same.

Notwithstanding above, if the Authority decide to prescribe separate charge for these activities then the revenue from the same need to be accounted for while calculating per port transaction charge. Determination of the cost for ancillary service would require segregation /apportionment of costs pertaining to different ancillary services. This would be essentially required in determining the cost of individual item and consequential reduction of per port transaction charge. Any attempt to determine charges for the ancillary services will be a cumbersome task as it will involve a detailed activity-based costing.

Since, the MNPSP is being fully compensated for all the charges via per port transaction charge, we believe that any such exercise to determine separate charges for ancillary services will only increase the complexity.

In view of above submissions, it is recommended that there should be a consolidated per port transaction charge.

Q.4 Whether the Dipping charge, which is presently under forbearance, needs to be reviewed? If yes, suggest the methodology to determine the rate of dipping charge. Support your response with justification.

Bharti Airtel's Response:

Currently, the dipping is carried out offline by users, based on ad hoc requests. We must continue with the same process without any charges as it is simply dipping into MNPSP database for operator validation of certain fields, which is just a GUI.

It is further submitted that the dipping charges should be continued under forbearance and any service provider that requires the dipping services from the MNPSPs can avail the same on mutually agreed terms with the MNPSPs.

Q.5 Whether the porting charge payable by the subscriber to the recipient operator should continue to be prescribed as a ceiling charge as per the current practice. If no, please suggest methodology and various consideration for calculating porting charge payable by subscribers.

Bharti Airtel's Response:

The porting charge payable by the subscriber to the recipient operator should continue to be prescribed as a ceiling charge as per the current practice.

Q.6 Any other relevant issue that you would like to highlight on the MNP related charges?

Bharti Airtel's Response:

We have the following additional submissions on the issue:

1. Quashing of Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 by Delhi High Court

TRAI had issued the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment Regulation, 2018 (Amendment Regulations) issued by the Telecom Regulation Authority of India (TRAI), the Per Port Transaction Charge (PPTC) was reduced from Rs.19 per porting to Rs.4 for each successful porting. However, the same was challenged before the Division Bench of the Delhi High Court and no interim relief/stay was granted by the Division Bench of the Delhi High Court till the final outcome of the Judgment.

The Division Bench of the Delhi High Court vide its final judgment dated 8th March, 2019 has quashed the Amendment Regulation which had prescribed the Per Porting Transaction Charges (PPTC) at rupees 4 per successful MNP requests.

Since, no interim relief/stay was granted by the Division Bench of the Delhi High Court till the final outcome of the Judgment, the regulation was in force and we in compliance thereof have been collecting the MNP porting charges from the subscribers at rupees 4 after it came into force. It is submitted that the Hon'ble Division Bench of Delhi High Court dated 8th March, 2019 does not recommend to pay the differential porting charges from retrospective date from the date Rs. 4 was enforced i.e. 31.01.2018. As a consequence, any demand for differential porting charges payable should be applicable only from the date of the Hon'ble High Court of Delhi judgment i.e. 08.03.2019.

In this reference, it is requested that TRAI should immediately determine price for the existing process (till the newly prescribed MNP process comes into effect) so that TSPs can pay as per the same to the MNPSP.

2. MNP per Port Transaction Charge as Pass through Charge:

While MNPSPs have been allowed to make higher than normal profits, TSPs are not even allowed to claim deduction of PPTC paid to MNP service providers, from their Gross revenues, to arrive at AGR for payment of the license fee and Spectrum usage charges.

Per port transaction charges are paid by recipient TSP to an MNPSP. These charges should be allowed to be deducted from Gross revenue of the TSP, since the MNPSP pays the license fee on the per port transaction charge, which it receives from the Recipient Operator. The levy of license fee on per port transaction charge for both the service providers i.e. TSP and MNPSP, amounts to a dual levy of license fee and the same is not justified.

In light of the above, we request TRAI to consider our submission and issue recommendation to DoT to allow the deduction of Per Port Transaction Charge paid by the Recipient Operator from its Gross Revenue for calculating AGR for the purpose of payment of license fee and SUC.