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26<sup>th</sup> December 2016

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Telecom Regulatory Authority of India  
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New Delhi-110002

Dear Sir,

**Sub: Vodafone Counter to TRAI Consultation Paper on Review of the Regulatory Framework for Interconnection dated 21 October 2016**

Please find attached Vodafone's Counter to the Authority's Consultation Paper on Review of the Regulatory Framework for Interconnection dated 21 October 2016.

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

Warm regards

**P. Balaji**  
**Director – Regulatory, External Affairs & CSR**  
**Vodafone India Ltd**

Encl:

Copy to;

1. Sh. R S Sharma, Chairman, TRAI
2. Sh. Anil Kaushal, Member , TRAI
3. Sh. Sudhir Gupta , Secretary ,TRAI

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## Vodafone Counter to TRAI Consultation Paper on Review of the Regulatory Framework for Interconnection dated 21 October 2016

This is with respect to the comments submitted by various stakeholders in response to the TRAI's Consultation on the review of the Interconnection framework. In this regard, we would like to submit the following counter comments:

1. It may first be reiterated that since we have approached the TDSAT against the unilateral and one sided interconnection agreements with BSNL/MTNL [in our expiry Circles], our submissions and counter-response to this consultation **are without prejudice to our pending legal challenge.**
2. We note that **both BSNL and MTNL have rejected this review** & BSNL has noted that the issues are sub-judice both in Hon'ble Supreme Court of India as well as Hon'ble TDSAT, and that the present consultation, amounts to derailing the judicial processes and causing irreparable damage to fairness and justice. As already submitted in our response it is imperative that **consensus of all stakeholders** (including BSNL and MTNL) **is a pre-requisite** for any review; we again emphasize that the **TRAI should ensure that any review** should not **adversely impact our effort** so far to achieve reciprocity and fair and equal terms through existing legal action against BSNL and MTNL or **create another set of challenges** or become ineffective due to existing sub-judice matters.
3. We do not agree with stakeholders who have suggested that there should be a **standard default interconnect agreement** that should be prescribed by TRAI. In this context, it may be noted that the DoT in a recent letter to one of the TSPs has highlighted that :

*"2. .... as per Section 11(1)(b)(ii) & (iii) of TRAI Act, 1997, the matter related to interconnectivity between Service Providers is within the purview of TRAI. Further, as per provisions contained in the Unified Licence, the interconnection shall be subject to mutual agreement of the concerned parties & may be dealt with accordingly."* [emphasis supplied]

**A standard agreement undermines any mutual discussions** and agreement that is provided for under license. As noted in one of the submissions, **a one size fit all' approach** to interconnection will **reduce the efficiency of the interconnection framework** and that mutual agreement, technical feasibility, economic reasonableness, etc are all essential for an efficient interconnection framework

4. Existing interconnect agreements are in the nature of contracts; there can be **no 'mandatory' migration to any new agreement** as suggested by some stakeholders. Any migration must be based on mutual agreement between contracting parties.
5. We **do not agree** with statements of some stakeholders that **the top 3 operators are SMPs** – it is submitted that **SMP as a concept is applicable to an individual operator** and not a



group of operators; further as noted in a report attached by one stakeholders, in the **European Union, market share is accompanied by 17 further criteria for SMP**. In any event, we have already submitted that the requirement to publish an RIO on the concept of SMP may not be practical and that rather, every operator may be required to publish a generic RIO in conformance with the principles and elements of the regulatory framework laid out by TRAI.

6. We once again suggest that the **TRAI, should lay down/reiterate the key principles [reciprocity, transparency, reasonableness, fairness, non-discrimination, etc]** and leave the agreements to be negotiated amongst interconnecting parties within the framework of the enunciated principles.
7. We do not agree with view of some stakeholders that they have been coerced into signing one-sided interconnect agreements. We would like to categorically state that no such allegation/concern has been expressed against us by any party with whom we have entered into an agreement as an interconnect provider and the agreements have been signed on mutually agreed terms based on the RIO principles directions, etc laid down by TRAI.
8. We do note that one stakeholder who is now raising **allegations of coercion** in the present consultation and also in other correspondences with TRAI, **expressed no such view at the time that that the agreements were being entered** into with us and is making these allegations now, two years after the agreements have been signed. If indeed the stakeholder was being subject to such purported coercion, as is now being alleged, it is surprising that it did not raise the issue to TRAI. It may also be noted that the said **stakeholder acknowledges that the agreements/clauses are based on the TRAI's Regulation and broad principles**.
9. With regard to the **90 day period** that has been provided by TRAI for augmentation of interconnect, we **strongly disagree** with the views of some stakeholders that such **augmentation can be done in 5-7 days** or that the various steps required for augmentation can be taken on the same day or in 1-2 days!. It is submitted that the 90 day period has been opined to be required and reasonable by almost all stakeholders as there are several steps that may be required to be taken before proceeding with the augmentation, including assessment for technical feasibility, availability of existing capacity, need for hardware upgrades, etc. In fact one of the said stakeholders also recognizes that in case of hardware upgrade, time taken for augmentation will be higher. We believe that if the capacity is available, speedier augmentation can be provided however, **TRAI must take into account all aspects and provide an upper limit, and not try and lay down a prescriptive approach** that can lead to **difficulties in implementation and consequent disputes**. We believe that the **solution lies in proper planning and forecasts** to ensure that all demands can be met in a timely manner, rather than trying to prescribe impractical time limits to meet any ad hoc demands that can be made by parties.



10. The suggestion made by one stakeholder that augmentation should be initiated at 40-50% congestion is again impractical and arises from the inability of the said stakeholder to accurately predict its traffic and demand forecasts and thereby seeking a regulatory refuge to address its own deficiencies. **Our interconnect agreements** provide for **augmentation to be initiated at 70%** traffic, which we have found to be **reasonable and sufficient in all our other agreements**. We would caution TRAI on reviewing this issue from the lens of one particular operator that has admittedly been unable to get its demand forecasts right, primarily on account of a problem of its own making [free service].
11. The suggestion that there should be separate timelines for initial/additional augmentation for fixed and mobile ports is not based in facts as the time taken for augmentation is the same, irrespective of whether it is a fixed or a mobile port. We believe that such suggestion is anchored in trying to create a carve-out for the public sector operators, which is not acceptable. The Government has promised level playing field amongst all operators including specifically with the public sector operators in 1999 and the same must be honoured. The TRAI's mandate under the Act is all to ensure fair competition and therefore also rules should not be laid down that benefit/advantage one set of operators over another.
12. We note that the **views of some stakeholders that current framework of interconnection does not support converged services and all types of converged traffic should be permitted** by TRAI/under the Interconnect agreement is a **tacit admission that internet telephony cannot be offered** in the existing regime/agreements. The TRAI is aware that:
  - a. We have highlighted our apprehensions with regard to possible internet telephony services being offered by the said stakeholder /new entrant. It may be appreciated that any such services offered without the directions of DoT on conversion [of IANA to E.164 and vice versa] is tantamount to call tampering, which is a very serious offence under license.
  - b. We have been resisting signing an interconnection agreement with a recent new entrant that has set up no network and has openly conveyed its intent to offer internet telephony as an OTT service, riding on other TSPs access network and using the fixed line number series allocated to it. We have highlighted the irregularities and illegalities of this proposal to the TRAI vide our Letter No. VIL/LT/16-17 /424 dated 13 October 2016 and we request that the same may kindly be read as a part of our submissions to the present consultation.
13. The view of one stakeholder that UL has liberalized the licensing regime and that previous interconnection agreements were executed before the UL Regime fails to appreciate that **UL continues to provide for separate service authorizations and separate interconnection provisions for each authorization**.



14. We **do not agree** with the views of one stakeholder that **both way E-1s should be made mandatory**. Our contracts/interconnect agreements provide for converting two way E-1s into one way E-1s at the end of two years. We believe that this is the correct approach as both parties should be responsible for their own outgoing traffic. A two way E-1 allows one party to pump in exorbitant traffic and deteriorate the QOS for the subscribers of the other TSP, which is not permissible.
15. Regarding the suggestions of some stakeholders with regard to **interconnection at the STM-1** level instead of E-1, we submit that this can be done **based on mutual agreement** between parties and **cannot be mandated**.
16. We **strongly disagree** with the view of a stakeholder that **IP interconnection should be mandated** and that the **costs** for the same **should be borne by the second party**. It is emphasized that even now, the license [amended after receiving the recommendations of TRAI] permits but does not mandate IP interconnection. The reference to TEC GR is irrelevant as it pre-dates the license amendment. In any event, the GR clearly states that it does not [and cannot] override the terms of license.
17. We **do not agree** with any suggestion that there should be an **Interconnect desk /Coordination Committee at TRAI** to address all interconnection issues goes against the framework of the Act as TRAI cannot adjudicate on interconnect agreements between operators, which falls squarely within the domain of TDSAT. The TRAI ambit will extend to ensuring compliance of all TSPs with its QOS regulation. This has also been recognized by TRAI in a recent meeting with TSPs on 9 September 2016, where it was clearly stated by TRAI that it would not want to get into the dispute about the number of POIs which each operator should provide and what should be the criteria for determining the requisite number of POIs; however, TRAI would like to ensure that the consumers of the TSPs should not suffer because of inadequacy of POIs.
18. We **do not agree** with the views of some stakeholders are suggesting that **there should be no bank guarantees**. It is submitted that such BGs are very important for TSPs to secure their financial dues and TSPs are within their rights to ask for the same.
19. In respect of **POI disconnection**, we believe that **conditions** for the same **must be a part of the interconnect agreement** and public interest will be duly served by providing for proper notice to be given with to the TSP as well as to TRAI.
20. We have also gone through the issue wise **response/report of an expert consultant** that is annexed to the response of one stakeholder and would like to submit as below:
  - a. The report mistakenly proceeds on the assumption that voice and data is now entirely transmitted as packets, variously routed over a single IP network. The TRAI is



aware that this is not the case and the bulk of the voice traffic continues to be on traditional 2G/GSM networks.

- b. The view that interconnection should be technology and application agnostic fails to appreciate that TRAI itself treats fixed and mobile services different [from the point of termination charges]; that interconnection for Internet telephony is not permissible in the existing regime; rather the license clearly states that this can happen only on the instructions of the Licensor
- c. The seeker-provider concept continues to be as relevant today as it was 20 years ago as a new entrant while interconnecting with a larger player Further, this concept as per TRAI and also in the private interconnect agreements is only applicable for two years after which it does become an equal relationship as mentioned in the report. We note that the report acknowledges that a two year period for Interconnection seeker as enunciated by TRAI in 2002, is standard international practice
- d. The report mistakenly presumes that the current regime provides for anticompetitive filibustering. It is submit that both the time and the cost for interconnection have been laid down by TRAI in its various orders/directives, which are followed by the TSPs; the allegation appears to be against the TRAI directives.
- e. We also note that the report while responding to the issues raised in the consultation in several places, appears to be mirroring the responses of the said stakeholder without providing any international evidence or context to support its statements.
- f. We further note that the report has opined that it is not necessary or appropriate for TRAI to be micro-managing the provisioning and augmentation process, however having so stated, goes on to suggest timelines for various steps!!
- g. We would also like to highlight the following comments /submissions in the report as below:
  - i. The report recognizes that a 'one size fit all' approach to interconnection will reduce the efficiency of the interconnection framework and that mutual agreement, technical feasibility, economic reasonableness, etc are all essential for an efficient interconnection framework
  - ii. The report supports commercially negotiated Interconnect Agreements subject to broad principles laid down by TRAI.
  - iii. The report suggests that a forecast of 12-24 months should be given and updated quarterly by the TSP
  - iv. The report states that it is not aware of any international precedence of augmentation being done irrespective of volume of traffic
  - v. That there is no reason to distinguish between provisioning periods for the same interconnection service on fixed and mobile networks
  - vi. That Bank guarantees are justified in the circumstances of an asymmetric client-supplier relationship
  - vii. The one significant variation that continues to exist is that IUCs on mobile networks are higher than for fixed network



- viii. The report notes that interconnect exchanges if mandated may lead to inefficient traffic routing; other kinds of market distortion - tendency for concentration of market power in the supply of IXC facilities, it removes all the dynamic benefits of competition –little incentive for the IXCs to invest in new facilities or improved technology, etc.

**26 December 2016**  
**New Delhi**