



Cellular Operators Association of India

FOR YOUR MOST URGENT KIND ATTENTION, PLEASE

TVR/COAI/041
March 6, 2009

Mr. Arvind Kumar
Joint Advisor (I & FN)
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Mr. Kumar

This is with reference to your letter No. 409-12/2008-FN dated March 3, 2009.

1. At the outset, it is most respectfully submitted that none of the issues and concerns raised by us have been addressed, whether at the Open House at Hyderabad or otherwise. This is evident from our submissions made to the Authority subsequent to the OHD at Hyderabad, vide our letters No. TVR/COAI/037 dated 3rd March'09 and TVR/COAI/039 dated 4th March'09 respectively.

2. It is also submitted that the reasoning contained in the IUC Regulation and Explanatory memorandum of 2003 does not in any way enlighten us on how the MTC of 30 paise per minute has been determined.

3. The view that different countries have adopted different approaches for determining the value of MTC or that the methodology adopted depend upon various factors does not clarify how the cost model used for determination of MTC is justified on the basis of these factors.

Rather, we believe that the factors highlighted in the letter favour the adoption of a cost plus MTC model that will encourage rollout in rural and remote areas and ensure more balanced telecom growth and penetration to bridge the fast increasing digital divide, a concern that has also been noted by the Authority in its recent Draft recommendation on rural telephony.

4. It is once again reiterated that in a cost model, it is imperative that the mobile termination charge should be fully reflective of all the cost elements involved in terminating a call and to that extent, it is principally incorrect for the revenues earned by one service provider to be set off against the costs incurred by it for terminating the call of another service provider. Such an approach is also against public interest as it encourages the operators to charge from the consumers what should rightly be paid by interconnecting operators.

5. It is also most respectfully submitted that the objective of the interconnection usage charge is not to afford operators the ability to offer innovative tariff plans but rather to fairly compensate/charge interconnecting operators for the costs involved in terminating of a mobile call. This can only be achieved through a cost based model which uses the correct yardstick of costs.

Such an approach will also encourage investment, promote the growth of the sector and encourage new technologies. Furthermore this approach assumes even greater importance and relevance in view of the Authority's recent recommendations on rural telephony and its concerns on the growing digital divide.

As regards the Authority view that the idea of "sharing" data from accounting separation reports was not favoured in Hyderabad, it is first most respectfully submitted that what was suggested by the Authority in Hyderabad was making the data "public", which it is assumed meant putting the data in the public domain. It was this suggestion that was not favoured by the service providers.

It is submitted that the industry has no objection if the data is shared within the confines of a joint industry working group that could be set up by the Authority or is made available in a coded form, etc.

In fact, in the ongoing Appeal No. 4 of 2006 (in respect of transparency in the setting of MTC charges) that was being heard by the Hon'ble TDSAT, the Ld. Counsel for TRAI informed the Court that TRAI is considering disclosures based on averaging whilst maintaining operator confidentiality. Thus the position taken by the Authority in Court indicates that it is in favour of transparent disclosures but is considering evolution of a method on how the same can be achieved to the satisfaction of all stakeholders.

6. We are pleased to note that the letter dated March 3, 2009, also commits that the Authority will strive to maintain the utmost transparency in the decisions arrived at for benefit of the service providers, consumers and the telecom sector at large.

It is submitted that the above commitment is in consonance with the provisions of 11(4) of the TRAI Act and also the statements made before the Hon'ble TDSAT on March 4, 2009.

Our detailed para wise submissions on the Authority's letter dated March 3, 2009, is given in Annexure-1.

Sincerely,



TV Ramachandran
Director General

Copy to : Shri Nripendra Misra, Chairman, TRAI
: 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
: Shri Lav Gupta, Pr. Advisor (FN), TRAI
: Smt. Sadhana Dikshit, Pr. Advisor (IFA), TRAI
: Shri N. Parameswaran, Pr. Advisor (RE), TRAI
: 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

COAI PARA WISE RESPONSE TO TRAI
LETTER NO. 409-12/2008-FN DATED MARCH 3, 2009.

1. In response to the views of the Authority contained in Para 1, we would like to first submit that none of the issues and concerns that are being raised by us have been addressed, whether at the Open House at Hyderabad or otherwise.

As you are aware, the OHD at Hyderabad raised fresh issues for consultation instead of engaging in a discussion on the issues already raised in the Consultation Paper and responded to by all stakeholders. This was a significant departure from all earlier OHDs held by the Authority and that too, without prior intimation.

We have already written to the Authority in this regard vide our letter No. TVR/COAI/037 dated 3rd March'2009 conveying our views and submissions in this regard.

Furthermore, even the presentation made by the Authority at the OHD in Hyderabad, contained certain views, statements and observations regarding the model submitted by COAI/SVP. Our submissions on the same have also been conveyed to the Authority vide our letter No. TVR/COAI/039 dated 4th March'2009.

In light of the above, we believe that it is indeed incorrect to contend that our concerns have been effectively addressed.

2. In response to the views of the Authority contained in Para 2 it is submitted that the paras contained in the IUC Regulation and Explanatory memorandum of 2003 do not, in any way, enlighten us on how the MTC of 30paise per minute has been determined.

It is submitted that statements like opex data of 25 operators was used or that subscriber growth rate was taken at 25% and 70% to arrive at 13 million subscribers, or that components as bad debts, closure of paging division, loss/profit on sale of fixed assets were excluded, minutes of use were assumed to go up from 220 minutes per subscriber per month, etc are in no way sufficient to understand how the end result of 30paise per minute was determined.

It may be appreciated that calculation of MTC is financial/commercial /accounting exercise that necessarily requires

- Choosing a costing model
- Determining the cost elements that are to be included in the costing exercise along with justification for their inclusion / exclusion thereof
- Ascribing a cost value to each cost element based on data obtained from individual operators, examination of industry benchmarks, etc
- Establishing linkages between various cost elements so that any change in any particular cost element/value is automatically reflected in the end result.

In this regard we would also like to draw your kind attention to the costing model submitted by COAI/SVP to the Authority which follows the approach laid out above.

We are sure that the Authority too, must have adopted a similar method to determine the value of MTC.

It is this Cost model that we are requesting the Authority to share with the stakeholders.

3. In response to the views of the Authority contained in Para 3, it is submitted that we are aware that different countries have adopted different approaches when it comes to determining the value of MTC. But there is no doubt that the Hybrid FLLRIC approach is overwhelming emerging as the international best practice approach amongst enlightened regulatory regimes. Most countries have either already moved to or are actively considering a move to FLRIC approach.

In this context, it may not be out of place to once again point out that the Authority too, in 2003 had taken the view that the move to FLRIC was imperative.

We are not aware of any change in circumstances that have compelled the Authority to deviate from the stand / view taken by it in 2003.

We note that the letter mentions that level of competition, ease of entry, level of network rollout by different service providers, level of telecom development, etc are factors that govern the choice of the cost model, but the letter does not clarify how the cost model used by the Authority is justified on the basis of these factors.

In fact, it is our understanding that the above factors in the Indian context, in fact favour the adoption of a cost plus MTC model that will encourage rollout in rural and remote areas and ensure more balanced telecom growth and penetration to bridge the fast increasing digital divide.

We note that the Authority too, in its recent draft recommendation on rural telephony has noted that:

- *The rate of growth of telecom penetration in urban India has been high as compared to rural. Total subscribers as on January 2009 are 400.05 million, out of which only 26.6% is the contribution from rural India which constitutes 70% of the total population of the country. As on Dec 08, the rural teledensity is 12.62 and urban teledensity is 81.40 per hundred of population.*
- *One of the most basic needs of mankind communication is still a challenge in villages and remote places, while urban India witnesses a telecom revolution. The fruits of telecom liberalization have still not reached the rural masses. In a market where margins are getting pressed, setting up of telecom infrastructure in rural areas is not very lucrative.... The crux of the problem is not so much that low revenues make a poor business sense but because the investments needed are high.*

The Authority has also noted the growing urban rural divide as while urban tele density has increased from 21.3 March 2004 to 81.3 by December 2008, rural tele density has gone up from 1.7 to only 12.62 over the same period. Thus the gap between urban and rural tele density has gone up from 19.6 to 68.68 in the last 4-5 years, which is no doubt a matter of growing concern for both the policy maker as well as the Regulator.

It is again reiterated that a cost plus MTC model will encourage rollout in rural and remote areas and ensure more balanced telecom growth and penetration to bridge the fast increasing digital divide.

4. In response to the views of the Authority contained in Para 4, it is once again reiterated that without an actual cost model, it is impossible for us to understand the derivation of the MTC value of 30 paise per minute. It may be appreciated that there is no way for the industry to ratify /accept this value until there is clarity on the cost elements, cost values, assumptions, calculations, etc.

It is also once again most strongly submitted that in a cost model, it is imperative that the mobile termination charge should be fully reflective of all the cost elements involved in terminating a call.

This view has also been taken by the Authority right from the inception of the IUC Regulation that the IUC for, inter alia, termination is based on the principle of element based charging, i.e. one operator charging the other for the resources consumed for carriage of its call.

Under these circumstances, we fail to understand how the revenues earned by one service provider are to be set off against the costs incurred by it for terminating the call of another service provider.

We have repeatedly maintained that such an approach is against public interest as it encourages the operators to charge from the consumers what should rightly be paid by interconnecting operators.

5. In response to the views of the Authority contained in Para 5, it is submitted that we disagree with the Authority' approach / view that relevant operating costs are to be recovered from the call charges / airtime and capital cost from rentals. It has also been stated by the Authority on a number of occasions that a similar methodology was used to estimate termination charges on fixed wireline networks.

It is first most respectfully submitted that the above approach again mixes up between costs and revenues and requires the operators to recover from the consumers, charges that should rightly be paid by interconnecting operators. This is against public interest.

The above approach also suffers from yet another serious anomaly that, unlike fixed services, over 95% of the subscribers in the mobile sector are prepaid subscribers, where there is no concept of "rentals"

Further, the Authority is also aware of its TTO (48th) Amendment dated 01.09.2008, wherein it had directed that:

b) under the heading "TARIFF", in the entries occurring against the item "(6) Tariff for pre-paid service", in the proviso, after clause (e), the following clause shall be inserted, namely:-

]

"(f) no amount, whether as fixed fee or otherwise other than---

(i) applicable taxes; and

(ii) a nominal fee, not exceeding two rupees towards administrative costs or expenses for each recharge under any tariff plan, shall be levied on any recharge exclusively meant for provision of talk time value."

- It is surely appreciated that telecom is highly capital intensive sector and each subscriber adds to cost, in fact, traditionally, operators always talk in terms of capex per subscriber. This cost goes up significantly when the rollout is in the rural areas. In fact the Authority has itself noted in its recent draft recommendations on rural telephony that "*The crux of the problem is not so much that low revenues make a poor business sense but because the investments needed are high.*"

In light of the above, we believe that it is imperative that capex /cost of capital be taken into consideration for determination of cost based JUC charge.

We believe that our above submission assumes even greater importance and relevance in view of the Authority's recent recommendations on rural telephony and its concerns on the growing digital divide.

It is also most respectfully submitted that the objective of the interconnection usage charge is not to afford operators the ability to offer innovative tariff plans but rather to fairly compensate/charge interconnecting operators for the costs involved in terminating of a mobile call. This can only be achieved through a cost based model which uses the correct yardstick of costs

Such an approach will also encourage investment, promote the growth of the sector and encourage new technologies.

As regards the Authority view that the idea of "sharing" data from accounting separation reports was not favoured in Hyderabad, it is first most respectfully submitted that what was suggested by the Authority in Hyderabad was making the data "public", which it is assumed, meant putting the data in the public domain. It was this suggestion that was not favoured by the service providers.

It is submitted that the industry has no objection if the data is shared within the confines of a joint industry working group that could be set up by the Authority or is made available in a coded form, etc.

The Authority may also be aware that in the ongoing Appeal No. 4 of 2006 (in respect of transparency in the setting of MTC charges) that was being heard by the Hon'ble TDSAT, the Ld. Counsel for TRAI informed the Court that TRAI is considering disclosures based on averaging whilst maintaining operator confidentiality. Thus, the position taken by the Authority in Court indicates that it is in favour of transparent disclosures but is considering evolution of a method on how the same can be achieved to the satisfaction of all stakeholders.

6. In response to the views of the Authority contained in Para 6, we are pleased to note that the letter dated March 3, 2009, also commits that the Authority will strive to maintain the utmost transparency in the decisions arrived at for benefit of the service providers, consumers and the telecom sector at large.

It is submitted that the above commitment is in consonance with the provisions of 11(4) of the TRAI Act and also the statements made before the Hon'ble TDSAT on March 4, 2009.