

# TELECOM REGULATORY AUTHORITY OF INDIA

## NOTIFICATION

New Delhi, the 20<sup>th</sup> November, 2009

### TELECOMMUNICATION MOBILE NUMBER PORTABILITY PER PORT TRANSACTION CHARGE AND DIPPING CHARGE REGULATIONS, 2009

(9 of 2009)

**No. 116-5/2009-MN** – In exercise of the powers conferred by sub-section (1) of section 36, read with sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations, namely:-

1. **Short title and commencement.**– (1) These regulations may be called the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009.

(a) Except as otherwise provided in clause (b), these regulations shall come into force on the 31<sup>st</sup> day of December, 2009.

(b) Regulation 5 of these regulations shall come into force from the date of publication of these regulations in the official Gazette.

2. **Definitions.**– In these regulations, unless the context otherwise requires,-

(a) “Access Provider” means the holder of a Cellular Mobile Telephone Service licence or Unified Access Service licence and includes a service provider providing fixed wireline or fixed wireless service in addition to Cellular Mobile Telephone Service;

(b) “Act” means the Telecom Regulatory Authority of India Act, 1997 (24 of

1997);

(c) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Act;

(d) “dipping” means use of query response system of the Mobile Number Portability Service provider for obtaining Location Routing Number for routing a message to the called number,

(e) “Dipping charge” means the charge payable by an Access Provider or an International Long Distance Operator, to the Mobile Number Portability Service provider for each dipping;

(f) “Location Routing Number” means the code assigned to every Access Provider for the purpose of implementing Mobile Number Portability;

(g) “Mobile Number Portability” means the facility which allows a subscriber to retain his mobile telephone number when he moves from one Access Provider to another irrespective of the mobile technology or from one cellular mobile technology to another of the same Access Provider;

(h) “Mobile Number Portability Service provider” means an entity who has been granted a licence under section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing Mobile Number Portability Service;

(i) “Per Port Transaction charge” means the charge payable by the Recipient Operator to the Mobile Number Portability Service provider for processing the porting request in respect of a mobile number;

(j) “Recipient Operator” means an Access Provider who will be providing mobile telecommunication service to the subscriber after porting and includes his authorised agent;

(k) all other words and expressions used in these regulations but not defined, and defined in the Indian Telegraph Act, 1885 (13 of 1885) and the Telecom

Regulatory Authority of India Act, 1997 (24 of 1997) and the rules and other regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or such other regulations, as the case may be.

<sup>1</sup>[<sup>2</sup>3. **Per Port Transaction charge.** – The Per Port Transaction charge for each porting request shall be rupees six and paise forty-six only]].

4. **Dipping charge.**– (1) The Dipping charge shall be such as may be mutually agreed between the Mobile Number Portability Service provider and the Access Provider or International Long Distance Operator, as the case may be, who desires to utilise the query response system of the Mobile Number Portability Service provider.

(2) Each Mobile Number Portability Service provider shall, by an agreement with the Access Provider or International Long Distance Operator, as the case may be, arrive at the Dipping charge within thirty days from the date of publication of these regulations in the official Gazette.

(3) In case the service providers are unable to arrive at a mutual agreement under sub-regulation (2) within thirty days of publication of these regulations in the official Gazette, the Authority shall on reference from such service providers or suo-motu fix the Dipping charge.

5. **Reporting Requirement.**– (1) Each Mobile Number Portability Service provider shall report the Dipping charge to the Authority within seven days of entering into an agreement under sub-regulation (2) of regulation 4.

(2) Any subsequent change in the Dipping charge shall be reported to the Authority by the Mobile Number Portability Service provider within seven days of coming into effect of such change.

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<sup>1</sup> Subs. by the First Amendment Regulations, 2018, reg. 2 (w.e.f. 31.01.2018), for the following:  
“**Per Port Transaction charge.**– The Per Port Transaction charge shall be rupees Nineteen.”

<sup>2</sup> Subs. by the Second Amendment Regulations, 2019, reg. 2 (w.e.f. 11.11.2019), for the following:  
“**Per Port Transaction charge.**– The Per Port Transaction charge for each successful porting shall be rupees four”

6. **Intervention and Review.**– (1) The Authority may, by order or direction in writing, from time to time, intervene, for the purpose of protecting the interest of the subscribers or the service providers or for monitoring and ensuring compliance of these regulations so as to promote and ensure orderly growth of the telecom sector.

(2) The Authority may review and modify the Per Port Transaction charge and Dipping charge at the end of one year from the date of these regulations coming into force.

(Sudhir Gupta)  
Advisor (MN)

Note: The Explanatory Memorandum explains the objects and reasons of the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 (9 of 2009).

**INDEX TO THE EXPLANATORY MEMORANDUM**

<b>Sl. NO.</b>	<b>SHORT TITLE</b>	<b>PAGE NOS.</b>
1.	Explanatory Memorandum- The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 (9 of 2009)	
2.	Explanatory Memorandum- Explanatory Memorandum- The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018 (3 of 2018)	
3.	Explanatory Memorandum- Explanatory Memorandum- The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Second Amendment) Regulations, 2019 (4 of 2019)	

# **EXPLANATORY MEMORANDUM TO THE TELECOMMUNICATION MOBILE NUMBER PORTABILITY PER PORT TRANSACTION CHARGE AND DIPPING CHARGE REGULATIONS, 2009**

## **Background**

1. Mobile Number Portability (MNP) allows the subscribers to retain their existing mobile telephone number when they move from one Access Provider to another irrespective of the mobile technology or from one cellular mobile technology to another of the same Access Provider, in a licensed service area. The facility of retention of existing mobile telephone number despite moving to a new telecom service provider helps the subscriber maintain contact with his friends/clientele. Introduction of MNP also helps in increasing competition between the service providers and acts as a catalyst for the service providers to improve their quality of service.

2. Based on the recommendations of the Authority, Government issued guidelines for MNP service license on 1<sup>st</sup> August 2008. It also identified two MNP Service Providers (MNPSPs) for two zones in the country and issued licenses to them. It has also since been decided that MNP shall be implemented w.e.f. 31<sup>st</sup> December 2009 in Metros & category 'A' service areas and by 20<sup>th</sup> March 2010 in rest of the country.

3. Through these regulations, TRAI specifies the per port transaction charge payable by the Recipient Operator to the Mobile Number Portability Service Provider and Dipping charge for those service providers who may use the query response system of the MNPSP.

4. For determining the Per Port Transaction charge, Dipping charge specified in these Regulations, TRAI issued a consultation paper on Determination of Per Port Transaction charge, Dipping charge and

Porting charge for Mobile Number Portability dated 22nd July 2009. Comments of stakeholders were solicited by 5<sup>th</sup> August 2009. Written comments of stakeholders were posted on TRAI's website following which Open House Discussion (OHD) was held on 11<sup>th</sup> August, 2009

4. After the OHD, meetings were held with both the MNPSPs to discuss the cost details submitted by them during which they were requested to provide supporting documents. These documents/financial statements were examined/ analyzed and based thereon, the per port transaction charge has been determined.

## **Key Issues and analysis**

### **1. Compensation for network upgradation**

The introduction of mobile number portability requires some modification in both hardware and software at the service providers' end, so as to make their telecom network compliant for mobile number portability. Some of the service providers argued that the expenditure thus incurred needs to be compensated. The Basic Service Operators and ILDO's pointed out that being intermediaries, they do not in any way benefit from MNP and that the cost incurred by them needs to be reimbursed.

In this context relevant clauses of Basic, ILD and UAS licences governing the service providers read as follows:

Clause 17.7 of Basic licence:

*"The LICENSEE shall, for the purpose of providing the SERVICE, install own equipment so as to be compatible with other service/access providers"*

*equipment to which the LICENSEE's applicable systems are intended for interconnection.” (emphasis supplied)*

Clause 17.6 of ILD licence:

*“The ILD Service Licensee shall for the purpose of providing the service install its own equipment so as to be compatible with other service providers' equipment to which the ILD Service licensee's Applicable Systems are intended for interconnection.” (emphasis supplied)*

Clause 2.6 of UAS licence:

*“LICENSEE shall make its own arrangements for all infrastructure involved in providing the service and shall be solely responsible for installation, networking and operation of necessary equipment and systems, treatment of subscriber complaints, issue of bills to its subscribers, collection of revenue, attending to claims and damages arising out of his operations.” (emphasis supplied)*

In addition, the Department of Telecom through its letter No.201- 20/2008-AS-I dated 6<sup>th</sup> May 2009 addressed to all the Basic Service, CMTS, UAS, NLD and ILD Licenses, amended the respective license agreements and made it mandatory for service providers to facilitate implementation of MNP through upgradation etc. of the network at their own cost. Relevant portion of the above said letter reads as follows:

*“It is mandatory to facilitate timely implementation of Mobile Number Portability (MNP) Service in the respective Licensed Service Area by up- gradation, operation and maintenance of his networks/ systems to support MNP service operation at his own cost. MNP is to be implemented in each intra Licensed Service Area (LSA) as per the schedule notified by the Licensor from time to time.”*

Accordingly, the contractual and legal requirement in the license agreements would render compensation to service providers on this account inadmissible.

## **2. Compensation for Donor operator.**

A few service providers argued that MNP will result in Donor Operators incurring extra burden by way of administrative costs involved in processing the porting request as well as loss of recurring revenue due to switch over of the subscriber to a competing service provider. These service providers submitted that some compensation for these costs was in order.

The Authority has duly examined the matter. In so far as administrative costs are concerned, the procedure laid down by the Authority vide the Telecommunications Mobile Number Portability Regulations, 2009 (8 of 2009) of dated 23<sup>rd</sup> Sep 2009 do not require the Donor operator to carry out any significant work.

In so far as switch over of a subscriber is concerned, the Authority is aware that currently a subscriber is free to terminate his connection with a service provider at any time and the only requirement of the service provider is that the subscriber pays up the outstanding dues, if any. Besides, an overwhelming majority of the subscribers belong to the 'prepaid' category wherein in case of termination of service, the subscriber forfeits the balance available, if any, in the prepaid amount and migrates away. In either case, no extra charges are levied by the service provider. Mobile Number Portability does not bring in any material change to this situation.

As far as acquisition costs are concerned, the ‘Telecommunication Mobile Number Portability Regulations, 2009’ provide that the subscriber must have stayed with the service provider for at least 90 days before he can port his number to another service provider. Besides, every service provider is likely to be both a Donor and a Recipient operator. The Authority accordingly does not see any reason for compensation to the concerned service providers on this count.

### **3. Dipping Charge**

During the consultation process, both the MNPSPs informed that till date they have not received any confirmation of demand for dipping service from the service providers. In the absence of information regarding the number of service providers who require to use the query response system of MNPSPs, it would not be possible to estimate the number of dippings and therefore, the calculation of Dipping charge may not be realistic. Besides, the general consensus that emerged among the stakeholders was to leave the service providers to mutually negotiate the dipping charge with the respective MNPSPs. Considering these factors, the Authority is of the view that Dipping charge may be left, for the present, to mutual commercial agreements between MNPSPs and service providers. This may be considered for review after one year based on the experience.

### **4. Estimation of Per Port Transaction Charge**

#### **Cost Data & Analysis**

Both the MNPSPs had submitted the cost data for estimation of per port transaction charge. The Authority examined these costs and deliberated with the MNPSPs on several points before adopting it with certain modifications (as discussed in succeeding paras) as the basis for working out the per port transaction charge.

On comparison of the details provided by the two MNPSPs, it was noted that

there were a few structural differences between them. One of these is related to the life of the hardware. Whereas one MNPSP had provided a life of 3 years for its hardware, the other MNPSP had considered the life of hardware as 5 years. Since the license is for 10 years, it would mean that the first MNPSP has to replace its hardware twice i.e., in the 4<sup>th</sup> and 7<sup>th</sup> year while the other MNPSP has to replace its hardware once in the 6<sup>th</sup> year. The software life has been indicated as 10 years by both MNPSPs.

In accordance with the accounting principles, the Authority has considered the one time license fee paid to the software licensor by MNPSP under capital expenditure while the usage based variable software license fee has been treated as operating expenditure. Similarly, one time entry license fee paid to Department of Telecom has been treated as capital expenditure. These regroupings have been carried out to the cost data provided by MNPSPs before estimating the per port transaction cost.

The operating expenditure as submitted by the MNPSPs has been considered except license fees, interest and taxes. The license fee has been divided into two parts with the onetime payment to DoT (entry fee) classified as capital expenditure and the recurring licence fee at 1% being added to the estimated Per Port Transaction charge.

While the Authority has noted the total capital expenditure for both the operators for a period of 10 years, only a 5 year period has been considered for determining the per port transaction charge, since as per the MNP service license condition, the MNPSP has an exclusive right to provide MNP solution in the licensed MNP zone only for a period of five (5) years from the effective date of licence. Besides the Authority proposes to review the per port transaction charge at the end of one year, by which time the pattern of porting will be evident.

The total cost to the MNPSP is the sum of computed depreciation & amortization, operating expenditure and Return on Capital Employed @ 15%.

The depreciation on hardware and set up (implementation) cost and amortization of the software, one time license fee to DoT, lease improvement and others have been calculated on straight-line method.

As indicated in the consultation paper, the Authority has used the cost plus methodology which considers the return on capital employed as a factor to be added to the capital and operating expenditure to compute the total cost. It is observed that one of the MNPSPs has used a discounting factor of 14% for computation of NPV (Net Present Value) of the project. The Authority has therefore considered 15% as Return on Capital Employed which includes interest and taxes. The rate of 15% has been used on capital employed which is the sum of Net block and working capital. The Net block has been arrived at after deduction of accumulated depreciation and amortization for five years. The working capital has been estimated as two months operating expenditure.

### **Assumption of Annual rate of porting**

The consultation paper has given the summary of Annual rate of porting around the world at table 4, which ranges from 0.1% to 31.9%. As explained in the consultation- paper, the porting rate in any country depends on a number of factors like mobile subscriber base, churn rate, number of operators in the market, market dynamics etc. In their written submission various stakeholders had given additional factors which affect porting. These are procedure for porting, porting time, porting costs/fee, lock-in period, customer awareness, exit barriers, launch of services by new operators, attractive/aggressive tariff plans, innovative services, VAS offerings, quality of service, time to resolve disputes & porting process complexity etc. The porting rate as projected by the service providers ranges from 0.5% (for year 2009-10) to 20%. The Authority also took note of the results of the two surveys conducted by reputed marketing research organisations wherein it was predicted that the porting rate will be from 10-20% for pre-paid subscription, and upto 50% for post paid subscription.

Considering all these factors, the Authority has estimated 10% porting rate for the first 15 months and 7%, 6% and 5% for the successive three years for the calculation of per port transaction charge due to following reasons:-

- As seen internationally, the porting rate is high in the initial period of introduction of MNP and then reaches a plateau.
- Unlike other countries where at the time of introduction of MNP, the telecom sector had matured, in India, several new operators are entering the market and the monthly addition of new subscriber is still very high.
- As the churn rate is quite high, it is expected that once MNP is available, subscribers may use this facility as an alternative to switch over to other operators.

### **Per Port Transaction Charge**

The per port transaction charge has been computed by dividing the total cost to the MNPSP by the estimated number of porting subscribers, over a period of 5 years. In so far as the cost is concerned, the Authority has considered the lower of the cost of the two MNPSPs.

Accordingly, the Per Port Transaction charge works out as follows:-

<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
<b>Total cost</b>	<b>Rs in Mn</b>	<b>2320.47</b>
Average porting	In Mn	123.26
<b>Per Port Transaction Charge</b>	<b>in Rs</b>	<b>18.83</b>
License fee @1%	in Rs	0.19
<b>Total Per Port Transaction Charge</b>	<b>in Rs</b>	<b>19.02</b>
<b>rounded off</b>	<b>in Rs</b>	<b>19.00</b>

### **5. Porting Charge:**

The subscriber making a request for porting his mobile number may be required by the Recipient Operator to pay a fee as ‘Porting Charge’. The ‘Porting charge’

as may be collected by the Recipient Operator from a mobile subscriber, is separately being notified by TRAI vide Telecommunication Tariff (49<sup>th</sup> Amendment) Order 2009.

**EXPLANATORY MEMORANDUM TO THE TELECOMMUNICATION MOBILE  
NUMBER PORTABILITY PER PORT TRANSACTION CHARGE AND DIPPING  
CHARGE (AMENDMENT) REGULATIONS, 2018**

- 1.1 Under the extant Mobile Number Portability (MNP) regime, a subscriber can retain the existing mobile telephone number while switching from one service provider to another or from one technology to another technology of the same service provider. It allows subscribers to retain their mobile number not only within the same Licensed Service Area (LSA) but also Pan India in any LSA.
  
- 1.2 The Mobile Number Portability is operational in India since 2009, when MNP service licences were issued to two Mobile Number Portability Service Providers (hereinafter referred to as MNPSPs) by the Department of Telecom (DoT). DoT has mandated MNP service licensees to follow the regulations/ orders or directions issued by TRAI under TRAI Act, 1997 or any instructions issued by the DoT (licensor) from time to time.
  
- 1.3 As per Telecommunication Mobile Number portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 dated 20<sup>th</sup> November 2009, TRAI has fixed Rs. 19/- as 'Per Port Transaction Charge' to be paid by the recipient operator to the concerned MNPSP. Further, through notification of the Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009, the Authority prescribed the Per Port Transaction charge of Rs. 19/- as ceiling for the tariff that could be charged from subscriber by the recipient operator.
  
- 1.4 The Per Port Transaction charge was determined based on the estimated financial data and other information submitted by the two MNPSPs in 2009.

- 1.5 Till 2015, for the purpose of MNP service, the entire country was divided in two zones with 11 LSAs in each zone and MNP service was allowed only within the LSA. The scope of MNP was expanded in the financial year 2015-16, when MNP service was allowed across all licensed service areas on Pan India as the national rollout (Full-MNP) w.e.f. 3rd July 2015. This resulted in huge upsurge in the number of porting requests from 64 lakh in 2010-11 to 368 lakh in 2014-15. This has further gone up to 636 lakh in 2016-17. The Authority also reviewed/ analysed upsurge in the porting requests during the last two years when the MNP services were opened on PAN India basis on 3rd July 2015.
- 1.6 The ‘Per Port Transaction Charge’ of Rs. 19/- was determined by TRAI in November 2009<sup>1</sup> based on the estimated financial and other information/ data submitted by the two MNPSPs in 2009 (details given below). The per port transaction charge was computed by dividing the total cost to the MNPSP by the estimated number of porting subscribers, over a period of 5 years. In so far as the cost is concerned, the Authority considered the lower of the cost of the two MNPSPs.

<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
Total estimated Cost for 5 years	Rs in Lacs	23204.69
Estimated porting for 5 years	in Lacs	1232.65
Porting Charges per subscriber for 5 years	in Rs	18.83
License fee @ 1%	in Rs	0.19
Total Per Port Transaction Charges per Subscriber	in Rs	19.02
<b>Rounded off</b>	<b>In Rs.</b>	<b>19.00</b>

<sup>1</sup> “The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009” dated 20<sup>th</sup> November 2009

- 1.7 However, when the Per Port Transaction cost (using Fully Allocated Cost methodology) based on the audited annual accounts of the MNPSPs has been compared in 2017 with the above figures, it shows a significant decline in the per port transaction cost. Based on the audited annual accounts submitted by MNPSPs for the year 2016-17, the calculation of per port transaction charge works out as follows: -

<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
Total Cost*	Rs. in Lacs	1,229.57
No. of porting requests received	in Lacs	310.47
Per Port Transaction Cost	in Rs.	3.96
Licence Fee @1%	in Rs.	0.04
<b>Per Port Transaction Charge</b>	<b>in Rs.</b>	<b>4.00</b>

- 1.8 Total cost\* in the above table includes the operating expenditure (after adjusting consultancy & royalty charges) and depreciation & amortization and 15% return on capital employed as per the audited annual accounts submitted by MNPSPs. While arriving at afore-mentioned cost and the per port transaction charge, the Authority has adopted the same methodology and the principle to consider the lower of the cost of two MNPSPs as it was followed at the time of initial fixation of Per Port Transaction Charge.
- 1.9 As per Regulation 6(2) of the Telecommunications MNP per Port Transaction Charge and Dipping Charge Regulations 2009, the Authority may review and modify the Per Port Transaction Charge and Dipping Charge.

- 1.10 After reviewing the financial results of both the MNPSPs and the upsurge in the volume of porting requests in the past two years, the Authority opined that the present charge of Rs. 19/- is quite high as compared to cost and volumes of transaction involved. The Authority, therefore, placed draft “The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2017” on 18<sup>th</sup> December, 2017 on TRAI’s website for comments of stakeholders. The last date for receiving comments from stakeholders was 29<sup>th</sup> December, 2017, which was further extended upto 12<sup>th</sup> January, 2018, considering the requests of stakeholders. An Open House Discussion in this regard was also held on 16<sup>th</sup> January 2018.
- 1.11 Most of the stakeholders (comprising TSPs and COAI) commented that the proposed per port transaction charge of Rs. 4 are on higher side and should be brought down to Rs. 2.00 by the Authority, considering the surge in the MNP requests and reduction in the cost of serving such requests.
- 1.12 Majority of stakeholders have commented that the royalty and consultancy charges paid by MNPSPs to their parent companies are very high. Though the MNPSPs are not providing any such service which requires payment of royalty amounts. Thus, the Authority should not consider royalty fee under the item Total Cost while calculating the per port transaction charges. Moreover, only the Relevant Cost of the two MNPSPs may be taken into account for the purpose.
- 1.13 One of the stakeholder also commented that per port transaction charge should be nil in case of forced porting due to closure of the telecom company. Few stakeholders commented that MNP per port transaction charge to be allowed as pass through charges and excess recovery due to overcharging during the preceding years to be passed on to TSPs for facilitating the future porting requests without any cost.

- 1.14 On the other hand, MNPSPs commented that the current per port transaction charge of Rs.19/- is reasonable and should not be revised downward. Considering the market consolidation scenario, subscribers will be left with fewer choices in the future to port to different operators, which will in turn lead to decline in porting volumes.
- 1.15 The written views/ comments received from stakeholders on the draft “The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2017” as well as during the open house discussion were analysed. After taking into consideration the views/ comments received from stakeholders and the other relevant facts, the Authority has decided that the per port transaction charge may be reduced as the costs of operations of MNPSPs have substantially gone down and at the same time the volume of MNP traffic has increased by leaps and bounds.
- 1.16 As a result of this amendment, there will be automatic reduction in ceiling of the charges leviable from subscribers for Mobile Number Portability from Rupees Nineteen to Rupees Four. It will be so because notification of Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009 prescribed the following: -

*“Porting charge payable by the subscriber to the Recipient Operator:- The Per Port Transaction charge specified in regulation 3 of the Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009 (9 of 2009), as ceiling.”*

**EXPLANATORY MEMORANDUM TO TELECOMMUNICATION MOBILE  
NUMBER PORTABILITY PER PORT TRANSACTION CHARGE AND DIPPING  
CHARGE (SECOND AMENDMENT) REGULATIONS, 2019**

1. A subscriber can retain his existing mobile telephone number when he wishes to switch from one service provider to another or from one technology to another of the same service provider using Mobile Number Portability service within the same Licensed Service Area (LSA) as well as Pan India in any LSA. The Mobile Number Portability is operational in India since 2009, when MNP service licences were issued to two Mobile Number Portability Service Providers (MNPSPs) by DoT. DoT mandated MNP service licensees to follow the regulations/orders made or directions issued by Telecom Regulatory Authority of India (TRAI/Authority) under TRAI Act, 1997 or any instructions issued by the DoT (licensor) from time to time through amendments in licenses.
2. For the purpose of laying down the basic business process framework for implementation of MNP services in India, the Authority issued *Telecommunication Mobile Number Portability Regulations, 2009 (8 of 2009)* dated 23<sup>rd</sup> September, 2009 (MNP Regulations). These regulations have been amended from time to time, latest being in 2018.
3. By notifying *The Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2009* dated 20<sup>th</sup> November, 2009 (MNP Charges Regulations), the Authority determined the *Per Port Transaction Charge* (PPTC) as Rs. 19/- to be paid by the Recipient Operator (RO) to the concerned MNPSP. In absence of actual historical data, this exercise was done based on estimated financial data and other information submitted by the two MNPSPs. The per port transaction charge was computed by taking the estimated total cost to the MNPSP and the estimated number of porting subscribers, over a period of 5 years. The Authority also considered the lower of the cost of the two MNPSPs for computing PPTC.

4. Further, through notification of the Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009, the Authority prescribed the Per Port Transaction charge of Rs. 19/- as ceiling for the tariff that could be charged from subscriber by the recipient operator. The 'Dipping charge' was kept under forbearance.
5. Regulation 6(2) of the MNP Charges Regulations provides that "the Authority may review and modify the Per Port Transaction Charge and Dipping Charge at the end of one year from the date of these regulations coming into force".
6. In 2018, 'Per Port Transaction Charge' was reviewed based on the actual financial and non-financial data of both the MNPSPs as available for the financial year 2016-17. Accordingly, the Authority issued the *Telecommunications Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2018* on 31<sup>st</sup> January, 2018 whereby per port transaction charge was reduced from Rs. 19/- to Rs. 4/- for each successful porting. However, this amendment regulation was quashed by Hon'ble High Court of Delhi *vide* its Judgement dated 8<sup>th</sup> March, 2019.
7. Subsequently, the Authority had undertaken a detailed public consultation to review the MNP process itself. The Authority issued Telecommunication Mobile Number Portability (Seventh Amendment) Regulations, 2018 on 13<sup>th</sup> December, 2018 (7<sup>th</sup> Amendment) introducing certain changes in the MNP process to ensure better services to subscribers. These primarily involve shifting responsibility of generation of Unique Porting Code (UPC) from Donor Operator (DO) to MNPSP after making real time query with database of DO and sending of SMSs to the subscriber by the MNPSP for letting the subscriber know of her/his status in the various stages of the process. The regulation also delineated the various ancillary services<sup>1</sup> that are already being provided by the MNPSP, namely, Number return charge, Database download charge, Port cancellation charge, Subscriber reconnection charge and Non-payment disconnect charge.

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<sup>1</sup> Details of these ancillary charges are available in subsequent paras of the Explanatory Memorandum, where the issue of ancillary charges has been dealt with.

8. In view of the above, the Authority initiated a public consultation process for review of the existing MNP Charges Regulations by issuing a consultation paper on 22<sup>nd</sup> February, 2019 (subsequently updated on 1<sup>st</sup> April, 2019 in view of the judgement of the Hon'ble High Court of Delhi, as mentioned above). The last date for receiving comments and counter comments from stakeholders originally was 15<sup>th</sup> March, 2019 and 22<sup>nd</sup> March, 2019, respectively. However, considering the requests of stakeholders, the last date for receiving comments and counter comments was extended up to 12<sup>th</sup> April, 2019 and 19<sup>th</sup> April, 2019 respectively. An Open House Discussion in this regard was also held on 27<sup>th</sup> May, 2019. MNPSPs and TSPs have also submitted additional comments after the open house discussion.
9. *Vide* letter dated 7<sup>th</sup> May, 2019 and subsequent reminders, the two MNPSPs were asked to provide details of capital expenditure (CAPEX) and operating expenditure (OPEX) along with copies of audited annual accounts for the financial year 2018-19. The audited financial results for the FY 2018-19 were submitted by M/s Syniverse on 22<sup>nd</sup> July, 2019. M/s MNP Interconnection Telecom Solutions India Pvt. Ltd. (MITS) submitted the audited financial results for the FY 2018-19 for MNP business on 28<sup>th</sup> June, 2019.
10. The major telecom service providers (TSPs) were also called upon to provide cost inputs for hardware and software requirement for the additional work involved due to changes introduced by 7<sup>th</sup> Amendment and probable expenditure *vide* letter dated 25<sup>th</sup> June, 2019, the responses to which were also considered by the Authority.
11. The two MNPSPs also submitted their “estimates” for the additional work required due to the 7<sup>th</sup> Amendment. The two MNPSPs were called upon to make a presentation on the architectural framework and additional hardware/software required to implement the changes in the MNP process along with the justification for the additional expenditure, which was made by both the MNPSPs on 24<sup>th</sup> July, 2019. During the presentation, it was highlighted by both the MNPSPs that the additional cost estimates given for implementation of 7<sup>th</sup> Amendment includes costs to be incurred for supporting ongoing/existing operations as well as changes envisaged under 7<sup>th</sup> Amendment. Accordingly, both were asked to segregate the two cost components. One of the

MNPSPs submitted revised cost estimates after splitting cost between current operations and 7<sup>th</sup> Amendment requirements on 28<sup>th</sup> July, 2019. The other MNPSP *vide* letter dated 2<sup>nd</sup> August, 2019 informed that such segregation is not possible.

12. Based on the comments and counter comments received during the consultation process, the deliberations of open house discussion and comments received afterwards from MNPSPs and other stakeholders, the Authority issued draft “*Telecommunication Mobile Number Portability Per Port Transaction Charge and Dipping Charge (Amendment) Regulations, 2019*” on 16<sup>th</sup> August, 2019 (Draft Regulations). The stakeholders were requested to submit their comments on the Draft Regulations by 23<sup>rd</sup> August, 2019. However, considering the requests of stakeholders (MNPSPs), the last date for receiving comments was extended up to 28<sup>th</sup> August, 2019.
13. In paras 14 to 46, basic rationale for arriving at the Draft Regulations and the questions raised in the consultation paper have been discussed. Thereafter, in para 47, inputs received pursuant to issue of Draft Regulations (*i.e.* after 16<sup>th</sup> August, 2019) have been discussed.

**Issues raised in the consultation paper and the analysis of the inputs for the consideration of decision by Authority**

14. In view of the foregoing, following questions were raised in order to obtain the views of the stakeholders on review of Mobile Number Portability Per Port Transaction Charge and other charges. Written comments and counter comments of stakeholders are available at [www.traai.gov.in](http://www.traai.gov.in) along with the consultation paper. The subsequent paras illustrate the issues raised in the consultation paper along with the rationale for conclusion and decision of the Authority.

**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.**

15. Few stakeholders have submitted that existing methodology should be continued whereas few others have suggested certain modifications. One MNPSP has *inter alia* suggested that tariff review should happen on a 5-year basis instead of an annual basis whereas the other MNPSP has suggested to review the same every three years. It has been argued by them that volume of the Mobile Number Portability used for tariff calculation should be based on sufficiently longer period after adjusting non-recurring porting volume changes, working capital requirement to be changed to 3 months from 1 month to factor in late payments by TSPs, return on capital employed should be higher than 15%, *etc.* It has also been submitted by MNPSPs that all costs incurred by them should be considered and genuine business cost for which evidence is on record should not be disallowed. Further, for calculating PPTC, one of the MNPSPs mentioned that the average of both MNPSPs' (operations & business) costs should be considered instead of lower of two because both the MNPSPs operate under different environment and average of two would be best and appropriate method to adopt. They have suggested that PPTC should be stable over a period of time and review should be done after 3 years with a 6-month price implementation period. One MNPSP has submitted that "Cherry Picking" of lower costs between the two MNPSPs should not be done and costs of one MNPSP should be taken as a whole.
16. In this regard, another stakeholder has submitted that TRAI should base the PPTC on '*lower of the two*' MNPSPs' costs, as averaging the costs of two MNPSPs would not reflect the cost of an efficient MNPSP thereby penalizing the Mobile Network Operators (MNOs) by supporting inefficient MNPSP. Further, provision of bad debts in the cost calculations would result in imposition of penalty on the MNOs who make timely payments to MNPSPs. Such issues of non-payment/late payment by MNOs should be resolved between MNPSPs and MNOs under the legal framework. It has also been submitted by few stakeholders that cost of royalty/ consultancy/ licensing cannot be recovered from the MNOs for perpetuity.
17. Another stakeholder has commented that both MNPSPs 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 MNPSPs.

18. Few stakeholders have submitted that due to substantial increase in the port volume in recent years without any significant increase in costs, the MNPSPs have already earned an excess amount after covering all the costs. They have suggested that excess recovery by MNPSPs should be adjusted in future calculations of PPTC.
19. One stakeholder has commented that cost incurred by MNPSPs for implementation of the 7<sup>th</sup> Amendment will not materially change as MNPSPs will largely be utilizing the existing network of the MNOs to cater to changed processes with marginal hardware, software and operational costs at their end. It has been submitted that additional cost would be around 1-3% of the MNPSP's present cost. In this regard, one MNPSP has commented that the assumption of 1-3% is premature and beyond the scope of the TSPs to accurately estimate these costs.
20. Another stakeholder has commented that the review should be carried out based on actual audited data of the MNPSPs and estimates on the cost to be borne under revised process. However, the Authority should keep a provision for further review after one year when the actual audited financial and non-financial data would be available. It has also been submitted that separate exercise should be done for both the MNPSPs to arrive at per port transaction considering all porting requests processed. This number should be marked up on the basis of the percentage of cancelled or rejected requests. Thereafter, a charge for ancillary services may be added to derive a per port transaction charge for both MNPSPs. It has also been suggested that the lower of these numbers should be fixed as the per port transaction charge, as Indian consumers should not suffer for inefficiencies of one MNPSP. With regard to this point, one MNPSP has commented that this approach of marking up for unsuccessful ports would reward operators which submit frivolous ports that lead to large number of errors. The cost of these failed ports will then be paid by other operators with better processes and control. Further, this approach is stated to assume that ratio of failed to successful ports is constant which is not true.

21. One stakeholder has submitted that the Authority should share the financial and non-financial data of the MNPSPs including for the years 2017-18 and 2018-19 and their projected costs for detailed consultation with other stakeholders. Both the incumbent MNPSPs contested this assertion in OHD and said that it should not be done.
22. One stakeholder has stated that there should be separate charges for UPC Request Generation in addition to the Per Port Transaction Charge as there are significant and incremental costs to comply with the 7<sup>th</sup> Amendment by the MNPSPs to receive a UPC request, query the donor operator, generate the UPC or rejection reason, send that UPC or rejection reason. In this regard, another stakeholder has commented that all costs should be subsumed under the PPTC as a separate charge for UPC Request Generation would imply that the Donor Operators will need to charge the subscribers for UPC generation activity in order to make payments to the MNPSPs, which will be detrimental to the interests of subscribers
23. Many stakeholders have also recommended the exclusion of royalty and consultancy charges from the cost calculations by TRAI. Another stakeholder submitted that cost related to licensing and royalty should be discounted, as the same should not be applicable on a simple regulatory process for such a long duration. Stakeholders also commented on such costs being incurred in perpetuity despite the MNPSPs having gained enough expertise.

### **Analysis**

24. The Authority analysed the submissions made and the issues involved. It decided to consider the following while arriving at the mobile number per port portability charges:
  - 24.1 Unlike the year 2009 when the PPTC were initially computed in the absence of historical cost data, presently sufficient information on previous years' audited historical cost data is available with the Authority. Accordingly, the Authority decided to use audited historical cost data as the base for computing PPTC for the existing MNP process. Further, the 7<sup>th</sup> Amendment introduced certain changes in the

MNP process for which the MNPSPs may have to make some modifications in the existing setup. Accordingly, the Authority sought the cost estimate from the stakeholders in relation to additional work involved for implementation of 7<sup>th</sup> Amendment so that the same can be appropriately considered while calculating PPTC. The responses received from all the stakeholders have been considered for computing incremental cost component of PPTC on account of additional work involved for implementation of 7<sup>th</sup> Amendment by MNPSPs.

24.2 In relation to the cost and port volume data to be considered for computing PPTC, one of the MNPSP suggested to use three-year cost and port volume data to determine PPTC. The other MNPSP has suggested to consider port volume of last five financial years. In this regard, the Authority observed that the port volume has seen some volatility in the past few years. The porting volumes have varied from 636 lakhs in 2016-17 to 981 lakhs in 2017-18 to 576 lakhs in 2018-19. As such, the Authority decided that to get a reasonable estimate of the porting volumes and costs, it may be necessary to have an average of sufficient number of years, so that the highs and lows of particular years may not distort the results. Besides, full mobile number portability was introduced in India in July, 2015. Therefore, it would be logical to compare the porting volumes thereafter, as they would give a more reasonable and accurate estimate than comparing with the volumes earlier, when only intra-circle MNP was in place. This has also been suggested by one of the MNPSPs. As such, the Authority decided to take the average of the costs and porting volumes of a three-year period, from 2016-17 to 2018-19, into account for arriving at the Per Port Transaction Charge (PPTC).

24.3 The MNPSPs have also submitted that total and actual costs of each of the MNPSP should be considered as a whole for determining PPTC. In view of this submission and in line with TRAI's standard practise of determining tariff on the basis of costs of the economically most efficient operator, the Authority decided to take the 'lower' of the two MNPSPs' *total* costs (including royalty/license fee and depreciation, as indicated in the audited annual financial statements) and the associated port volume of the same MNPSP, for determining the PPTC. In this regard, the MNPSPs have

contended that average of both MNPSPs' costs should be considered instead of lower of two as they operate in different environment. However, the Authority is of the view that an inefficient operator (with a relatively higher cost structure for same services as those provided by an efficient player with lower cost structure) should not be rewarded for its inefficiency by a higher tariff determination based on its higher cost structure. A reasonable tariff determination based on the cost structure of the efficient player would compel the inefficient player to achieve efficiency in its operations by reducing its cost. Moreover, deciding a higher tariff would be detrimental to the interest of the recipient operator/subscriber and the telecom sector as a whole.

24.4 One of the MNPSPs has also submitted that bad debts incurred by MNPSPs as a result of non-payment or delayed payment by the operators should also be considered as a cost component while computing PPTC. The Authority has carefully considered the issue and determines that non-payment or delayed payment between the MNPSPs and the operators is a commercial dispute between the two and same should not be a cost component for computing PPTC. Absorption of bad debts in computation of PPTC would dis-incentivise the MNPSPs to take good faith efforts to recover outstanding debt. Moreover, as commented by other stakeholders, provisioning of bad debts in the cost would inflate PPTC which would be akin to imposition of penalty on the MNOs who make timely payments to MNPSPs in the form of inflated PPTC. As such, the Authority decided to exclude Bad Debts as a cost component for the purpose of calculating PPTC.

24.5 The Authority also decided to take the audited financial statements of the two MNPSPs into account for determining the costs involved. This ensures that the costs are not based on estimation but are actual costs incurred by the MNPSPs in providing their services.

24.6 From the analysis of the inputs provided by the MNPSPs in the last three years, it is observed that the costs on account of consultancy and related charges for one MNPSP is almost 80%, which is substantial.

24.7 The two MNPSPs have suggested to increase return on capital employed (ROCE) (35% suggested by one MNPSP) as against present 15%. The MNPSPs have primarily cited tax rates, inflation, legal costs and currency fluctuation as reasons for increasing ROCE. These are discussed below:

- (a) Tax Rates: Historically, the ROCE @ 15% includes tax element at the applicable rates. Therefore, unless and until there is significant changes in the applicable tax rates, the Authority does not find any reason to adjust the ROCE rate.
- (b) Inflation: The inflation is reflected in the historical cost structure of the company which would change every year with prevailing rate of inflation in the economy. In the present case, the Authority has already considered the historical costs of the MNPSPs to determine tariff and therefore, there is no further need to adjust ROCE for inflation again. Further, the inflation is already represented in the existing ROCE.
- (c) Legal costs: These have already been considered as part of the historical cost of the MNPSPs and making another provision for the same in ROCE would result in double accounting of legal costs.
- (d) Currency fluctuation: The quantum of currency fluctuation loss, as reflected in the audited financial statement of the MNPSPs, is insignificant and therefore, it would not impact the overall ROCE determination. Further, currency fluctuations may result in loss as well as profit depending upon on the exchange rate movement and therefore, there is no merit in considering currency fluctuation in such exercises.

24.8 As such, the Authority determines that ROCE @ 35% is exorbitant and 15% is a reasonable return on the capital employed. Therefore, in line with the existing practice, the Authority has considered return on capital employed @ 15% for determining the total cost.

**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.**

25. In this regard, most of the stakeholders have commented that while calculating PPTC, total number of MNP requests received by MNPSP should be considered. Few other have commented that only successful porting requests should be considered for calculating PPTC. In this regard, one stakeholder has commented that with the implementation of the 7<sup>th</sup> Amendment, gap between porting requests and successful port would reduce and therefore the same will not have any substantial financial impact on the MNPSPs. Another stakeholder has commented that MNPSPs have to incur cost even in case of an unsuccessful porting which are generally more expensive than successful ones. It was also submitted that PPTC based on successful ports will be higher as compared to PPTC based on total port requests. Therefore, the customers who successfully port will end up subsidising and paying for the free porting attempts made by non-serious subscribers or subscribers who submit incorrect documents.

#### **Analysis**

26. In this relation, the Authority observed that the gap between total porting requests and successful porting has been reducing over the years and is likely to reduce further after the 7<sup>th</sup> Amendment comes into force. Besides, the MNPSP has to incur costs even on unsuccessful porting requests. Further, in many cases, the failure of a porting request could be due to reasons beyond the control of the MNPSP. As such, the Authority decided to take each porting request into consideration for determining the PPTC. As already mentioned, most of the stakeholders have also suggested to consider total number of port requests.

#### **Determination of PPTC**

27. Based on the above considerations, the Authority arrived at the following PPTC for the existing services provided by MNPSPs:

<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
Employee Cost <sup>#</sup>	Rs in Lacs	1318.37
Administration and other costs <sup>#</sup>		2452.93

Consultancy/ royalty charges <sup>#</sup>		1049.27
Depreciation & Amortisation <sup>#</sup>		94.09
RoCE @ 15% <sup>#</sup>		1096.53
<b>Total Cost* for 3 years</b>	<b>Rs in Lacs</b>	<b>6011.19</b>
<b>Actual porting for 3 years</b>	<b>in Lacs</b>	<b>1102.08</b>
<b>Porting charges per port</b>	<b>in Rs</b>	<b>5.45</b>

*\* Based on the total cost of the concerned MNPS P excluding bad debts/provision for bad debts and foreign exchange losses (Even if foreign exchange losses are considered, it would not impact the PPTC computation significantly). This also includes Return on Capital Employed (RoCE) @ 15%. Capital employed has been calculated as the sum of net book value of fixed assets, total capital work in progress and net working capital (current assets – current liabilities) as at the end of the financial year.*

*<sup>#</sup> Aggregate value for three financial years (i.e. 2016-17, 2017-18 and 2018-19)*

#### **Incremental Component of PPTC**

28. The 7<sup>th</sup> Amendment, as discussed earlier, provides for some changes in the flow of the MNP process like UPC generation by MNPS P instead of DO after real-time query from the DO database and the MNPS P sending status notifications to the subscriber. The MNPS Ps may incur some CAPEX and OPEX to implement changes envisaged under 7<sup>th</sup> Amendment. Accordingly, for computation of incremental component of PPTC on account of additional work involved for implementation of 7<sup>th</sup> Amendment, the Authority sought cost estimates from MNPS Ps as well as TSPs in relation to additional work involved for implementation of 7<sup>th</sup> Amendment. However, the cost estimate given by the MNPS P, whose total costs are lower, includes cost to be incurred for supporting ongoing/existing operations as well as additional work envisaged under 7<sup>th</sup> Amendment. Despite repeated requests, the segregation of the two cost components have not been provided to the Authority by the said MNPS P. Accordingly, the Authority has used the data provided by the stakeholders, including MNPS Ps and TSPs (who are presently engaged in UPC generation and associated processes), for determining incremental component of PPTC on account of additional work involved for implementation of 7<sup>th</sup> Amendment.
29. The MNPS Ps have submitted that they need to add personnel to address incremental responsibilities. However, the Authority determines that the additional work involved on

account of 7<sup>th</sup> Amendment would largely be automated with no or minimal human intervention and the existing personnel deployed by MNPSPs in the current operations would be sufficient to undertake the additional work envisaged under 7<sup>th</sup> Amendment.

30. The MNPSPs may have to do some minor software and hardware modifications in their existing system. During the presentation mentioned above, one of the MNPSPs has even submitted that in the short-term, changes required for 7<sup>th</sup> Amendment will be made in the current system itself. This implies that software and hardware changes required to implement the changes should be minimal. Another MNPSP has submitted that for implementation of 7<sup>th</sup> Amendment, it would require total 4 units of hardware components (i.e. one storage unit, one tool for ITSM/network and system monitoring and 2 units of SMPP servers). Accordingly, the Authority finds that the additional work involved for implementation of 7<sup>th</sup> Amendment is not likely to result in substantial additional CAPEX and OPEX to be incurred by MNPSPs.

31. The cost should be minimal if the marginal capacity in the present hardware is utilised using open source software or existing licensed software to implement the changes required as per the 7<sup>th</sup> Amendment. Even if it is allowed that new additional hardware and separate licensed software is used to implement the changes, the total cost on account of additional work involved for implementation of 7<sup>th</sup> Amendment would be approximately Rs. 87 lakhs per annum. In calculating this, the Authority has considered depreciation of the capital expenditure on hardware and software development/licensing as per the provisions of the Companies Act, 2013, along with related operating expenditure. Considering an average porting request volume of 367 lakhs per annum (i.e. average of last three financial years), the Authority determines that an additional cost of 23 paisa per port request is sufficient to cover the additional requirements of hardware and software, if required by the MNPSPs. This would also adequately cover the cost of handling UPC requests by the MNPSPs under the 7<sup>th</sup> Amendment. Thus, the PPTC to cover the entire MNP process, as per the 7<sup>th</sup> Amendment to MNP regulations worked out to:

<b>Particulars</b>	<b>Unit</b>	<b>Amount</b>
Total Cost for 3 years	Rs. in Lakh	6011.19
No. of porting requests received	in Lakh	1102.08

Per Port Transaction Cost	in Rs.	5.45
Incremental component of PPTC	in Rs.	0.23
Total Per Port Transaction Cost	In Rs.	5.68
Licence Fee @1%	in Rs.	0.06
<b>Per Port Transaction Charge</b>	<b>in Rs.</b>	<b>5.74</b>

32. The MNPSAs have also submitted that the Authority should review the tariff on a 3-year basis instead of an annual basis as it would provide stability and continuity to the business. The Authority has considered this and notes that for determining incremental component of PPTC, actual cost data related to software and hardware requirements is not available and the same would be available only after these changes are implemented and the Bills of Material generated/expenses incurred. One of the MNPSAs has also submitted that all the costs of complying with 7<sup>th</sup> Amendment as well as UPC volume are not known at the time of launch. The other MNPSA has also submitted that tariff can be reviewed in the intervening period in case of any exigency. As such, the Authority has decided to consider reviewing the PPTC after one year, if required.

#### **Review of Ancillary Charges**

33. During the consultation process preceding the 7<sup>th</sup> Amendment to MNP Regulations, issue of ancillary service charges was raised for the comments of the stakeholders. After examination of the comments of the stakeholders, the Authority noted that the provision for ancillary service charges shall remain in the regulations subject to consultation at the time of defining the actual amount of charges or otherwise will be subsumed in per port transaction charges.
34. Accordingly, following question was raised for comments of the stakeholders:

**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.**

35. The stakeholders were required to provide comments on the two options as described below for determining 'Per Port Transaction Charge' and other charges termed as ancillary charges: -
- (i) Based on the cost incurred, separate charges for 'Per Port Transaction Charge', 'Number Return Charge', 'Database download charge', 'Port cancellation charge', 'Subscriber Reconnection Charge' and 'Non-payment disconnect charge' may be determined; or alternatively,
  - (ii) Only one charge *i.e.* 'Per Port Transaction Charge' may be made applicable and cost of all other charges termed as 'ancillary charges' may be subsumed in the 'Per Port Transaction Charge'.
36. In this regard, most of the stakeholders have submitted that there should be a consolidated per port transaction charge subsuming the charges for ancillary services also. One stakeholder has commented that Number Return, Subscriber Reconnection and Non-payment disconnection should be charged separately, whereas Port cancellation charge should be included in PPTC. Further, Database Download to be provided free of charge. One of the MNPS also proposed to set a quota per operator for database download to avoid egregious abuse by frequent downloads.

### **Analysis**

37. In the Telecommunication Mobile Number Portability (Seventh Amendment) Regulations, 2018, the provision of ancillary service charges payable to MNPS have been made in the regulation for the activities to be performed as mentioned below:
- (a) **Number Return Charge** for facilitation of returning the mobile number to Number Range Holder after disconnection due to any reason including non-payment.
  - (b) **Database download charge** for downloading the Number Portability Database by the Access Provider.
  - (c) **Port cancellation charge** for execution of 'Port withdrawal' request of the subscriber of Donor operator.

- (d) **Subscriber Reconnection Charge** for facilitation of reconnecting the ported subscriber of Recipient Operator in its network.
- (e) **Non-payment disconnect charge** for facilitation of disconnection of the mobile number of the postpaid subscriber who has not cleared the dues of the Donor Operator after porting his number.

38. In relation to separate charges for ancillary services, it is noted that PPTC has been determined on the ‘cost-plus’ basis. This implies that all the costs of the MNPSP in providing ‘all’ its services are taken into account while arriving at the PPTC. It may be noted that the ancillary services, as listed out in the 7<sup>th</sup> Amendment to the MNP Regulations, are already being provided by the MNPSPs as brought out in the following table:

**Table: Information of ancillary activities for the period Jan-Dec 2018**

<b>MNPSP Zone</b>	<b>No. of Number Return requests received</b>	<b>Total instances of Database download</b>	<b>No. of Port cancellation requests received</b>	<b>No. of Subscriber Reconnection requests received</b>	<b>No. of NPD requests received</b>
Zone I	9351497	954	107517	787266	1620505
Zone II	7691841	1499	14972	NIL <sup>1</sup>	480104
Total	17043338	2453	122489	787266	2100609
Avg. per month	1420278	204	10207	65606	175051

39. The Authority has used a ‘Cost Plus’ approach in determining the PPTC. As such, while factoring in the total costs in providing services for previous three financial years, the costs of providing the ancillary services are also included. In considering the costs of previous three financial years, the costs of any software and hardware changes made by the MNPSPs has also been considered. The Authority, therefore, determines that

<sup>1</sup> Zone II has not provided any data related to subscriber reconnection requests received

separate charges for providing ‘ancillary’ services are not necessary as the costs for providing all the services have been considered in arriving at the PPTC. Further, considering the present volume of database download, the Authority decided that setting any quota for database download by the TSPs is not required.

### **Review of Dipping Charges**

40. The following question was raised for the comments of the stakeholders:

**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.**

41. Most of the stakeholders have commented that Dipping charges should continue to be 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. One of the stakeholders has commented that till date, no operator has used this service and therefore, the MNPSPs should be allowed to remove the related infrastructure that adds to additional cost.

42. After analysing the comments and counter comments received from various stakeholders, the Authority decided that the Dipping charge will continue to be under forbearance. Dipping charges may be mutually decided by the MNPSP and the access provider or the ILDO who desires to utilise the query response system of the MNPSP.

### **Review of Porting charge payable by subscribers**

43. The Telecommunication Tariff (Forty-Ninth Amendment) Order, 2009 prescribed the Per Port Transaction Charge, as provided under the MNP Charges Regulations, as ceiling for the tariff that could be charged from subscriber by the recipient operator. Accordingly, following question was raised for the comments of the stakeholders:

**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.**

44. Almost all the stakeholders have suggested to continue the existing practice. In this regard, one of the stakeholders has commented that due to fierce competition in the telecom market, porting charges, which is payable by customer generating porting request, are being absorbed by the recipient operators.
45. Another stakeholder has commented that recently due to closure of few TSPs and ongoing consolidation in the sector, the subscribers had to resort to forced porting and therefore, in the interest of the subscribers, no charges should be payable for forced porting.
46. After analysing the issues at hand, the Authority determined that the existing practice of Per Port Transaction Charges shall continue to be the ceiling for the porting charges payable by the subscriber to the recipient operator.

**Issues raised by stakeholders' post issue of Draft Regulations**

47. The stakeholders have largely reiterated their previous submissions on various issues and a few new comments have also been submitted. Various issues raised and the deliberations on the same is as follows:
  - 47.1 One of the MNPSPs has contended that whilst deciding on the total ongoing costs for existing operations as well as the changes envisaged under the 7th Amendment, the only appropriate stakeholders are the MNPSP's and not the Telecom Service Providers, who technically would lack the technical know-how to assess and/ or comment on the intricate and complex process involved in services being rendered by MNPSP's, let alone the costs. The Authority disagrees with the view taken by the said MNPSP as TSPs are also an equally important stakeholder of this entire consultation process. Besides, the primary additional work being assigned to the MNPSPs, that of UPC generation, is currently being handled by the TSPs. In any case, it would be fair to ask the TSPs to offer their comments on the

price they are supposed to pay. The very basis of the consultation process is to seek comments from stakeholders at different ends of the issue.

47.2 The TSPs have reiterated that cost of royalty/consultancy/licensing cannot be recovered for perpetuity as the MNPSPs have gained substantial expertise in last 8-9 years. Accordingly, the TSPs have requested the Authority to exclude these costs from the calculation of PPTC and only cost of production/rendering services should be included such as hardware, software, operation and maintenance. However, the Authority decided to consider the historical audited cost data available from the annual accounts of the MNPSPs.

47.3 The MNPSPs have also reiterated that costs of carrying bad debt are real costs and they should be included in the overall costs. The MNPSPs are of the view that non-payment of dues by various TSPs is affecting their overall financial health. In this regard, the Authority notes that as per Regulation 15 of the MNP Regulations, the Recipient Operator (RO) is required to pay the billed PPTC amount to the MNPSPs within fifteen days of receipt of the bill or within such other time limit as may be mutually agreed upon. If the RO do not adhere to these regulations, it becomes a dispute between the two service providers and either of the party is free to approach the Hon'ble Telecom Dispute Settlement and Appellate Tribunal (TDSAT) seeking appropriate redressal. The Authority is therefore of the view that bad debts cannot be considered as a cost component while calculating PPTC.

47.4 One of the MNPSP has also suggested that there should be severe penalty on late payments by TSPs to MNPSPs so that the impact of bad debt is minimized. The Authority has carefully considered the suggestion of the said MNPSP and is of the view that the same cannot be accepted primarily for two reasons *i.e. Firstly*, the imposition of penalty for non-payment or delayed payment is beyond the scope of present consultation process as the same cannot be covered under the MNP Charges Regulations, *Secondly*, as already stated in the previous paragraph, the MNPSPs while approaching the Hon'ble TDSAT may always seek appropriate remedy for non-payment or delayed payment by the TSPs. Another MNPSP has suggested to allow the MNPSPs to cease providing MNP services to the defaulting TSPs. The Authority has considered this suggestion and again cannot accept the same

primarily for two reasons *i.e. Firstly*, allowing MNPSPs to cease providing MNP services to the defaulting TSPs is beyond the scope of present consultation process, *Secondly* and more importantly, it would harm the interest of the willing subscriber who wants to port his number to the said TSP.

47.5 The MNPSPs further submitted that the detailed breakup of total cost of Rs. 6011.19 Lacs was not provided in the Draft Regulations, however, the same is essential to know what all genuine costs have been omitted in computing PPTC. One MNPSP has stated that in the spirit of transparency, cost breakups considered by the Authority should be shared with the MNPSPs so that they are aware of the costs allowed and /or disallowed. It is however, noted that the said MNPSP during the open house consultation claimed that there are some costs which can be shared and some costs which cannot be shared publicly because of the fact that those are costs which are “commercially competitive” for them and it would hamper their principals to bid in other countries.

47.6 The said MNPSP has also submitted that despite several representations, the Authority has disallowed genuine costs negatively and unjustifiably. It has also recommended that the Authority should appoint a third-party international consultant who has domain expertise to review and ascertain costs, porting volume and the resultant tariff. It is reiterated that the Authority has considered total costs as available from the audited financial statements of the MNPSPs with few exclusions like bad debts/provision for bad debts and currency fluctuations loss (the reason for the same has been detailed sufficiently). Further, the Authority has considered total cost (including royalty/license fee and depreciation, as indicated in the audited financial statements) of the more economical of the two MNPSPs, for determining the PPTC. In other words, total cost and port volume data of the MNPSP with lower per port transaction cost has been considered for determining the PPTC.

47.7 A revised table showing detailed breakup of the costs (Rs. 6011.19 lacs) has also been added in the Explanatory Memorandum. It would be more appropriate if the MNPSPs were to review its cost structure and identify the areas of improvement to achieve cost efficiency.

- 47.8 The MNPSPs have again contended that return on capital employed @ 15% is not sufficient and the same must be measured after taxes to grant a sufficient return on capital employed. One of the MNPSP has suggested to use mark up on costs @ 25%. This issue was already adequately addressed in the Draft Regulations and has been elaborated in the Explanatory Memorandum. The Authority reiterates that the MNPSPs have not furnished any compelling reason for reconsideration of the ROCE rate. Therefore, in line with the existing practice, return on capital employed @ 15% has been considered for determining the total cost. Another MNPSP has suggested to provide the basis of computation of capital employed. Accordingly, it is clarified that capital employed has been calculated as the sum of net book value of fixed assets, total capital work in progress and net working capital as at the end of the financial year.
- 47.9 The MNPSPs have further submitted that reduction in PPTC would render providing ancillary services free of cost. Further, database download rate should be fixed at Rs. 15000/- for each download after 2 free downloads every month. In this regard, the Authority determines that the concerned MNPSP has made contradictory submissions. On the one hand the said MNPSP admitted that costs of these services were already included in the historical costs whereas on the other, it claimed that reduction in PPTC would effectively render such services free of cost. This is not true as the Authority has considered all the relevant costs incurred by the MNPSPs (except few heads as already explained earlier) to determine PPTC which include costs for providing 'ancillary' services. Therefore, the Authority does not find any reason to change the Draft Regulations in this respect.
- 47.10 It has also been contended by the MNPSPs that the Authority has arbitrarily taken a figure of Rs. 87 lacs as cost of 7<sup>th</sup> Amendment completely ignoring actuals being incurred towards capital costs for Hardware and Software development. The MNPSPs have further contended that the Authority has not given a rationale for its assumption that substantial addition of CAPEX and OPEX is not required by MNPSPs. On the other hand, few TSPs are of the view that additional cost/investment would not be more than 1-3% of the MNPSPs present costs. One of the TSP has suggested that with open source software this cost of Rs. 87 lakhs will be reduced to 25%. The rationale and basis of computation of incremental

component of PPTC on account of implementation of 7<sup>th</sup> Amendment was elaborated in detail in the Draft Regulations. In this regard, it is reiterated that the additional work involved on account of 7<sup>th</sup> Amendment would largely be automated with no or minimal human intervention and the existing personnel deployed by MNPSPs in the current operations would be sufficient to undertake the additional work envisaged under 7<sup>th</sup> Amendment. As elaborated above, the data provided by the stakeholders, including MNPSPs and TSPs (who are presently engaged in UPC generation and associated processes), for determining incremental component of PPTC on account of additional work involved for implementation of 7<sup>th</sup> Amendment has been used. Further, in relation to the contention of the concerned MNPSP that actual data has not been considered, it is stated that none of the MNPSP has provided data related to actual expenditure (software and hardware requirements) incurred on account of additional work envisaged under 7<sup>th</sup> Amendment. Therefore, the Authority has decided to review the PPTC and other charges after one year when audited historical data would be available.

- 47.11 One of the MNPSP has submitted that the Authority has not considered the need of separate charges for UPC generation from the PPTC. It has also been submitted that apart from UPC generation and SMS processing, there are certain other changes to the porting process to be catered to under the 7<sup>th</sup> Amendment, which will also drive up costs and the same have not been considered (*e.g.* non-payment suspension and reconnection). In this relation, it is noted that the computation of incremental component of PPTC as proposed in the Draft Regulations covered the estimated cost towards all the additional work associated with the implementation of 7<sup>th</sup> Amendment including handling UPC requests and therefore, the amended tariff of PPTC under these regulations adequately covers these costs to be incurred by the MNPSPs under the 7<sup>th</sup> Amendment. In any case, the Authority has decided to review the PPTC after one year when audited historical cost data would be available for the additional work performed by the MNPSPs.
- 47.12 One of the MNPSP has submitted that considering the significant reduction in the porting revenue, the Authority should enable the MNPSPs to obtain data from both MNP zones and provide dipping services to 3<sup>rd</sup> parties under commercial terms mutually agreeable between the MNPSP and 3<sup>rd</sup> parties. The said MNPSP has

submitted that this may allow the MNPSPs to share certain assets and resources across multiple services. While the cost of the MNPSP will not change, the allocation of some of those costs can be reduced by allocating a portion of them to dipping. In this regard, the Authority determines that the tariff related to Dipping charges is under forbearance and the present issue raised by the MNPSP is beyond the scope of this consultation process.

- 47.13 One of the MNPSP has requested to delay the implementation of the new PPTC tariff till 1<sup>st</sup> January, 2020. It has been further submitted that the new tariff should be implemented on the 1<sup>st</sup> of the month following implementation of the 7<sup>th</sup> Amendment by all stakeholders. The Authority has considered the difficulty expressed by the MNPSPs in the billing system due to changes in tariff during the month. However, the Authority determines that the amended tariff specifically covers the incremental component for implementation of 7<sup>th</sup> Amendment and therefore, the 7<sup>th</sup> Amendment and the amended tariff should come into force simultaneously. The difficulty expressed by MNPSPs can be addressed easily in their billing systems.
- 47.14 A TSP has sought clarification from the Authority in relation to the applicable PPTC rate during the period from 31<sup>st</sup> January, 2018 (*i.e.* when the previous amendment to MNP Charges Regulations were notified) to the date when the present amendment would come into force due to subsequent quashing of the said amendment by the Hon'ble High Court of Delhi. In this regard, the Authority is of the view that the claims and liabilities of the parties depend upon the findings/ observations given by the Hon'ble High Court of Delhi *vide* its judgement dated 8<sup>th</sup> March 2019. In case of any dispute between the parties, arising due to difference of opinion on the issue, the aggrieved party may approach the appropriate forum for redressal of its grievances.
- 47.15 The TSPs have also requested the Authority to address the issue of competition in the MNP services by ending lack of choice to TSPs as well as subscribers in choosing its MNPSP by opening entire 22 service areas to both the MNPSPs. Another stakeholder has advocated the adoption of Blockchain to create more efficient processes and lower the cost of operation. The Authority has considered these submissions and agrees that promoting competition in MNP services would

improve efficiency and innovation in the MNP services. However, these suggestions cannot be addressed in the present consultation process. However, the Authority would continue to take measures for facilitating competition and promoting efficiency in the telecom services in general and MNP services in particular.

47.16 The MNPSPs have submitted that the port volume considered by the Authority for computing PPTC is not representative of current volumes or volumes estimated for the future on which PPTC would be applied. The MNPSPs have reiterated to 'normalize' the port volume data for one-time spikes on account of closure/merger of the operations by the TSPs, as the one-time spikes are unlikely to be repeated in the future. One of the MNPSP also suggested a tiered pricing structure to minimize risk of using a high or low number for deriving PPTC.

47.17 The Authority examined the suggestions about tiered pricing structure. Such approach would involve many subjective assumptions and would be difficult to implement both for MNPSPs and TSPs, hence is not a practical option. The Authority also considered the representation of the MNPSPs and decided that the one-time exceptional porting due to closure/merger of TSPs needs to be taken into consideration for the porting volumes to be a fair reflection of the normal porting that is likely to happen in the absence of such 'forced portings'. The market has stabilized between the major players to some extent and abnormal spikes due to closures and mergers are unlikely to happen in the near future. As such, the porting volume being crucial in determining PPTC, it is essential that the porting volumes being considered are as 'normal' as possible. The Authority had 'normalized' the porting volumes to an extent in the Draft Regulations by taking an average of three years to smoothen the spikes in particular years, but present trend in porting volumes is indicated better by excluding the 'forced portings', especially as the relevant information/data is available with TRAI.

47.18 The two MNPSPs submitted their own estimates of the one-time spikes due to closure/merger of TSPs. The relevant MNPSP has projected 190.76 lakh ports as 'extraordinary' *i.e.* due to closure/merger of TSPs during the period, based on the criteria that the spikes were greater than the average trend. However, it would be too simplistic to assume all the spikes in porting to be due to 'forced portings',

arising out of closure/merger of TSPs. More than 95% of the mobile connections in India are pre-paid connections with a balance in the account, which the subscriber would like to utilize before porting the number. Further, some of these port requests would be due to factors other than closure /merger of the TSPs e.g. bad quality of service, better tariff/service offered by other TSPs, *etc.* As such, the Authority decided to arrive at a relatively more objective criteria of arriving at the ‘forced porting’ volume, based on the information/data submitted by the MNPSPs and TSPs to TRAI during the relevant months. The TSPs reported to TRAI about the date of closure/merger of operations in the relevant LSAs. The MNPSPs also reported to TRAI about the porting volumes TSP-wise and LSA-wise. As such, the authority has decided that the port-out volumes of a TSP happening from the month of closure of operations (as reported to TRAI) in the relevant LSAs till the month that TRAI directed the TSPs and MNPSPs to complete the porting of subscribers, will be considered as ‘forced portings’, and the porting volumes shall be ‘normalized’ to that extent.

47.19 Upon considering the above-mentioned criteria, it is found that out of total port volume of 1102.08 lakhs considered by the Authority for the relevant MNPSP in the Draft Regulations, 120.60 lakh is on account of one-time spikes due to closure/merger of TSPs. Thus, the ‘normalized’ port volume for the MNPSP is 981.48 lakhs (*i.e.* 327.16 lakhs in a year). Comparing the ‘normalized’ port volume with the present volume of porting (the Authority has considered the port volume from January to July’ 2019, which is available as of now), it is observed that the annualized port volume based on the porting data since January’ 2019 for the concerned MNPSP is 313 Lakhs. As such, the ‘normalized’ port volume as arrived at by the Authority fairly represents the prevailing port volume. Therefore, the Authority decided to consider the ‘normalized’ port volume for the calculation of PPTC.

47.20 Based on the above, the revised calculation of PPTC is as follows:

S.No	Particulars	Unit	Amount
A	Total Cost for 3 years	Rs. in Lakh	6011.19
B	No. of porting requests for 3 years	in Lakh	1102.08

C	No. of exceptional porting ( <i>i.e.</i> due to closure/merger of TSPs) for 3 years		120.60
D	Normalized port volume for 3 years (B-C)		981.48
E	Per Port Transaction Cost (A/D)	in Rs.	6.125
F	Additional cost per annum due to implementation of functionalities prescribed by 7 <sup>th</sup> Amendment	Rs. in Lakh	87.00
G	Additional per port cost to implement the functionalities prescribed by 7 <sup>th</sup> Amendment ((F*3)/D)	in Rs.	0.27
H	Total Per Port Transaction Cost (E+G)		6.395
I	Licence Fee @1%		0.064
J	<b>Per Port Transaction Charge (H+I)</b>	<b>in Rs.</b>	<b>6.46</b>

#### **Effective date for new PPTC**

48. During the consultation process, one stakeholder submitted that the new tariff should be implemented with retrospective effect *i.e.* 31<sup>st</sup> January, 2018. In this regard, the MNPSPs have submitted that the new tariff should not be implemented with retrospective effect and any changes in PPTC pursuant to 7<sup>th</sup> Amendment should be made effective at the same date as the obligations of the MNPSPs under the 7<sup>th</sup> Amendment becomes effective. The Authority has decided that the present amendment to the PPTC would come into effect from 11<sup>th</sup> November, 2019.