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(भारत सरकार का उद्यम)
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(A Government of India Enterprise)
पावरग्रिड

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संदर्भ संख्या/Ref. No.

Ref No.: PG-Tele/TRAI/Consult/2014–15/001 **Date:** April 23, 2014

Advisor (F & EA)
Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhavan,
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi – 110002

Kind Attention: Shri Manish Sinha

Subject: TRAI Consultation Paper No. 01/2014 on Review of Tariff for Domestic Leased Circuits

Dear Sir,

This is in reference to TRAI Consultation Paper No. 01/2014 on Review of Tariff for Domestic Leased Circuits. Power Grid Corporation of India is pleased to submit its comments on the same. (Enclosed as **Annex**)

Thanking you,

Yours truly,

23/4/14
(S Subramanian)
DGM (Telecom – Core Group)

Encl: As Above

ANNEX

POWERGRID'S RESPONSE ON TRAI'S CONSULTATION PAPER ON REVIEW OF TARIFF FOR DOMESTIC LEASED CIRCUITS

QUESTION NO. 1

Should TRAI continue to use the bottom – up fully allocated cost method for computation of cost – based ceiling tariffs for point – to point DLCs?

POWERGRID'S RESPONSE:

We compliment TRAI in issuing a consultation paper on the review of Tariff for Domestic Lease line Circuit (DLC). The consultation paper has well documented all the developments consequent upon implementing the earlier tariff order of 2005. However, we are of the opinion that the market condition that exists today is very different and matured and does not in any way support for a Tariff fixing.

POWERGRID's views in this regard are detailed below:

1. DLC market is a miniscule market and immaterial for regulation :

Our understanding is that TRAI has fixed a cost based DLC tariff in 1999 and revised in 2005 with a clear objective of sharing of infrastructure facilities so that it should be competitive, cost based and maximizes usage. The regulatory intervention had given a direction for future with a promise of shrinkage in regulatory over-reach. Thanks to the forward looking vision of TRAI that this objective has been achieved today and the DLC market is witnessing effective competition.

Indian telecom sector has now developed to a matured market where very few services are under regulation e.g. DLC, IPLC, Rural tariff, and roaming tariff. Tariff of all other services including mobile service is under forbearance, taking into account the competition developed in the market. As far as DLC is concerned, today it is a fully matured market, where several service providers, big and small, are providing DLC services and hence corresponding prices are highly competitive. TRAI in the consultation paper itself has stated that the market discovered price for DLC service is at a discount up to 80%.

Revenue from DLC segment is said to be of the order of Rs 8000 Cr, comparing to approx Rs 2,10,000 Cr of Industry revenue i.e. only 3.73%. POWERGRID is of the opinion that Regulator's intervention is required only when prices are going up or when there is probability of cartel formation. As rightly stated by the Authority, in this consultation paper, the bandwidth prices are much more competitive and hence the DLC tariff may be left for forbearance like other services e.g. VPN, Mobile Tariff etc. The Regulator can monitor DLC prices based on Tariff reporting by TSPs like in Mobile services and ensure that there is no monopoly. With approx. 30+ NLD players in market as mentioned in the consultation paper, competition of the market will ensure that the prices of DLC as well as VPN services are highly competitive and are self regulated by the market. Hence, there should not be any regulatory intervention in the market dynamics and no useful purpose will be served if TRAI venture to fix prices for DLC services.

2. This prescription will go against the policy of TRAI:

The ability of service providers, including POWERGRID, to grow in the market will be adversely affected by this intrusive regulation by way of a new price cap that may be fixed by the regulator. The impact will be significant. This prescription will go against the policy of TRAI, so far followed in liberalizing the telecom market in India to transform from a highly restrictive regulatory environment to a forbearance era. Most of the Telecom services are under forbearance now. It has moved from a highly restrictive regulatory regime to a light handed regime of forbearance era for most of the services. DLC service was subjected to tough regulation in 1999 and further liberalized in 2005 and now it is the right time to place this DLC service under forbearance.

3. This will reduce the incentives to further invest in this business sector :

A failure to further liberalize the DLC market will reduce the gains available for de-regulation of this market. This will reduce the incentives to further invest in this Business sector and provide better services to facilitate further competition and growth. Experience in Indian telecom sector has proved beyond doubt that the development has occurred more rapidly under the forbearance regime than micro managing it, particularly at the initial stage of liberalization.

4. There is no perceived benefit to the end users :

There is no perceived benefit to the end users as the price today is far lower than the ceiling fixed in 2005. It may be a case that the price may go up if the sector is less cost efficient by way of imposing additional regulatory cost and will be further restrictive in nature. There will be increase in risk on the part of service providers as a lower ceiling will restrain the free market play. This will also result into reduction in the return on investment and can increase the debt servicing cost and other costs of DLC service.

5. It will be counterproductive and will cause significant harm :

International experience suggests that intrusive regulation or micromanaging any market which is highly competitive will be counterproductive and will cause significant harm for producers and users. Price regulation is a short term policy which should be resorted to only when there is market failure or there is natural monopoly which exploits market power. As is evident from DLC prices today in Indian DLC market, these conditions do not exist. Hence, the outcome in imposing a lower price cap where nothing needs to be imposed will ensure collapse of the industry.

6. DLC is a consumers/users market and not a supplier's market:

More than 30 service providers in the DLC market today shows that this is highly competitive market where the consumers are dictating terms with the service providers. In such a situation there is no case for TRAI to seek regulation in the pre text of protecting the interest of consumers/users. The buyers of DLC today have significant countervailing power and hence further regulation would not be needed. When DLC market is viewed as a consumers/users market and not a supplier's market, imposing any form of price cap makes no economic sense.

7. There is no abuse of market power :

The consultation paper also mentioned about some of the users asking TRAI to go for a revised price ceiling. We are of the opinion that these stake holders/users who are proponent of fixing DLC prices fail to recognize that this will have adverse impact even for them and also will contribute increase in business risk and cost for the service providers. Hence, TRAI should not consider their request as the DLC market condition seeking a price fixing is not present today since there are multiple service providers offering DLC service and there is no abuse of market power . We are sure that any price fixing will produce economically perverse results and it will adversely affect a well competitive DLC market where the prices are negotiated below the cost, and at the same time the service delivery is guaranteed with the highest quality.

8. Light handed regulation in the form of forbearance is the best option :

We are sure, nothing will be achieved by fixing a ceiling price on DLC which is already struggling to survive. The market is well developed and growing. The market is witnessing healthy commercial transactions and strong negotiations. The light handed regulation in the form of forbearance, with TRAI monitoring the sector with certain threat of intervention would only be the best preferred option now. This will contribute incentive for further investment, improve productivity, ensure adequate level of service quality and there cannot be any excessive prices and above all this will ensure that there will be low compliance cost. This can only contribute further development of telecom in India.

The massive discounts have made a mockery of tariff ceiling. It is better if the service providers have the freedom to seek agreement on lease or make investments for infrastructure. This would be feasible if the competition is encouraged with a forbearance regime. This will firstly, encourage infrastructure and secondly maximize the utilization of already sunk capital in terms of laid lines.

9. ROW cost and conditions differ from state to state :

TRAI in its recommendations on telecommunication infrastructure policy 2011 has admitted that in the absence of uniform national policy on ROW, different states have different terms and conditions, taxes, levies, safety aspects, lengthy application procedures, complicated approval procedure and cost. It is a fact that the availability of right of way for installation of telecom system is one of the greatest hurdles faced by the infrastructure providers today.

Overall, the interest of the country should be paramount in terms of services for corporate business, e-governance, internet access etc. It is extremely important and critical that the bottleneck of last mile is dismantled. Many of the local Authorities are seeing this as an opportunity to levy exorbitant charges. Hence fixing a uniform tariff for the DLC across the country will make the DLC providers vulnerable for a very high financial risk particularly on the provision of local lead.

10. TRAI has the power to investigate any abuse of dominance :

We are of the opinion that TRAI should bear in mind that intrusive regulation will only be resorted when there is clear evidence that the service providers could abuse its dominant position to ensure non discrimination and transparency in the application of DLC charges. TRAI has the power to investigate any abuse of dominance. There is no market failure and therefore there is no case for any price fixing. Venturing micromanaging the highly competitive DLC sector will in fact stifle competition, the market development and innovation..

TRAI should select the most appropriate form of economic oversight of forbearance keeping the regulatory interventions at a minimum and to the extend required taking into account the degree of competition , the cost and benefits related to alternative forms such as price fixing etc. Experience shows that in any regulatory governance structure minimal regulation will always lead to a superior level of cost efficiency, higher investment, incentive to service quality etc. Hence forbearance of the present DLC market will be far superior to a price fixing/ revising the ceiling.

11. Simplistic/Mechanical view of tariff doesn't captures all factors:

The Consultation paper mentions that the need to review the DLC tariff because of fall in prices below the ceiling tariffs and prevalent discount rates. But this doesn't detail the reasons for the low prices. In the tariff revision, price ceiling was fixed on the basis of Distance for E1, DS3, and STM1 Capacities. But in last few years, the DLC prices have undergone significant change in terms of how bandwidth prices are offered. Also, Distance is not the only criteria on the basis of which prices are offered. There are multiple other factors which are considered while deciding the final prices and thus the discount

Discount (%) on base ceiling tariff may be offered by the TSPs based on the following:

i. Volume of business (no. of links) offered by the customer. E.g. A customer with just one link will be offered less discount vis-à-vis a customer with multiple links.
ii. Volume of business (monetary value) offered by the customer. E.g. Customer who gives all India links of big capacities having big total business volume commitment (of the order of tens of crores)
iii. Future commitment of the customer to continue buying (i.e whether the customer raises order for 6months/1Year/2Years/5 Years etc.)
iv. Payment Terms finalized with the customers. E.g. Additional discount can be provided if a customer agrees to pay upfront or in advance.
v. Volume of business expected from the customer in future beyond his present commitment.
vi. Past Payment record of the customer i.e. the level of average outstanding/past defaults etc.
vii. Cost involved in serving the customer i.e. last mile/access equipment to be provided.
viii. Connectivity already present or new connectivity to be made. E.g. Already connected locations on the network will not involve last mile and ROW expenses and thus could be provided at higher discount. A new site that is to be connected fresh will involve huge costs and approvals regarding last mile, co-location and ROW and hence will be priced at lower discount.
ix. Customer's Loyalty to Service Provider. If TSP is the first preference for any customer whenever any new requirement comes up and it gives TSP the preferential 'First right of refusal' treatment, then that customer is given higher discount.
x. Service level of Terms Agreed: Availability of the links and other SLA terms that are finalized with the customer also have an impact on the discount factor. A customer asking for standard 99% availability will involve less penalty, less O&M urgency and hence will be given more discount whereas a customer asking for 99.99% availability with triple cut protection will involve multiple paths, fibre lease from third parties and additional management of strict penalty terms and thus will be offered less discount for these strict terms.
xi. Availability of Bandwidth in the geographic region. E.g. for tough terrain areas the initial cost of fiber laying, equipment installation and Operations & Maintenance costs are higher as compared to plain regions and hence discounts offered are less for the same capacity or same customer.

Thus, looking at the tariff prevalent in the market only on the basis of lower cost of new equipments/ fiber doesn't fully take care of all the issues involved. TRAI during this review exercise, on 22.11.2013, asked the TSPs to provide information on prevailing tariffs in respect of DLC. In the format, the information of Maximum Discount % for various capacities and kilometers was sought. As detailed above, the maximum discount is because of various figures and doesn't directly co-relate to the decrease in cost of serving all customers.

There is enough evidence to establish that the leasing cost has no relationship with the cost based ceiling tariff. Evidently, the estimation has not taken into consideration the financial gains of maximizing unlit fiber. Our considered opinion is that there is a distinct need for moving in the direction of forbearance as in voice traffic. Any mechanical review of tariff for domestic leased circuit is both least progressive and conveys lack of vision.

Thus, taking a mechanical approach of reviewing the tariff without considering the full complexity of the market dynamics might not result into the desired outcome.

Conclusion

It is universally recognized that effective competition ensures better outcomes for both consumers and producers than intrusive regulation. We believe that we are in a growing DLC market with substantial competition both in upstream and downstream markets and having invested in a sunk and fixed assets which has high cost and low profit margin with less complimentary product line and struggling to survive .Any intrusive regulation by way of re-fixing a ceiling tariff to an already competitive market will be highly detrimental to the growth of the industry and the sector. It may also be noted that telecom sector is in a way subject to competition law and general supervision of TRAI. The sector Regulator TRAI has the power to "step in" to avoid any abuses, but otherwise also has an oversight role. Additional regulatory cost should not be imposed on the Industry unless there is a strong reason to do so and if still required the format should be only "Price monitoring" and not price fixing. A credible threat of intervention will surely eliminate the need for actual regulation. In the DLC market where several service providers compete effectively do not need to be regulated by fixing a ceiling tariff.

TRAI shall give the future milestones and not just resort to mechanical computation of cost based tariff ceiling. The principle of return on capital employed can be both persuasive and coercively effective for maximization of available infrastructure usage and this maximization of infrastructure will be possible only in a forbearance regime. There is no case for TRAI to go once again for fixing ceiling tariff DLC now. It will be a step in the reverse direction.

Hence we respectfully request TRAI not to consider any explicit regulation by way of any price fixing in this highly competitive DLC market.

TRAI should instead consider keeping this DLC tariff under forbearance to maintain consistency and predictability in its approach and to ensure growth of the industry, availability of high quality service to consumer and also revenue share to the government. This can only give a right signal to the investors in to the sector.

Having said this, answer to all other questions for DLC is not applicable to us.

QUESTION NO. 11

Should VPNs such a MPLS – VPNs also be brought under tariff regulations for DLC

POWERGRID'S RESPONSE

DLC and VPN are two different services. DLC is a point to point service to customers who require high bandwidth in a reliable manner. DLC is also distance dependent resulting into distance sensitive tariffs. The scalability of DLC is limited due to point to point nature of this service. On the other hand, in case of VPN, network is shared and services are port bandwidth dependent. It is highly scalable service owing to usage of MPLS technology. MPLS protocol has ensured creation of a connection oriented service using shared network devices in packet network and made it more efficient in terms of resource utilization.

VPN services use leased line, and hence strong competition in tariffs of leased line has an automatic impact on the VPN prices too. MPLS services are mainly utilized for providing low bandwidth to large no. of locations.

Fully allocated cost based model for VPN would be very complex owing to multiple location, multiple user with different quality of services and complex SLA requirements. The last mile access costing would also involve complications because of presence of optical fiber and Radio communication.

Hence, POWERGRID is not in favor to bring MPLS VPNs under tariff regulations for DLCs and like DLC, TRAI should let the VPN prices also under forbearance.

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