

**Counter Comments of AT&T on the Consultation Paper [No. 07/2018 dated October 18, 2018] on
Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations**

Introduction and Summary

AT&T Global Network Services India Private Limited (“AT&T”) respectfully submits these **counter comments** on the TRAI Consultation Paper on Estimation of Access Facilitation Charges and Co-location Charges at Cable Landing Stations, issued on October 18, 2012 (the “Consultation Paper”).

Access to submarine Cable Landing Stations (CLS) is an essential network element for almost every telecom network services requiring international connectivity, and access barriers to these facilities can constrain the competitiveness of telecom operators and harm the growth of the international telecom market and ultimately of the business and other users of such services.

A total 11 stakeholders have responded to the captioned consultation paper. The stakeholders included TSPs who are also OCLs, TSPs as seekers, and Industry Associations. The majority (nine of eleven) of responding stakeholders have acknowledged that cable landing stations charges are abnormally high, create a bottleneck effect, and represent a critical hurdle to cross in order to achieve objectives of seamless connectivity. The same majority of respondents also have supported TRAI’s earlier recommendations of 70% capacity utilization and 2.6 conversion factor to determine the charges of various capacities.

Therefore, TRAI should proceed and republish the Schedules I, II, and III based on its earlier recommendations and regulation dated December 21, 2012 to be made effective from January 1, 2013.

AT&T, in its earlier comments filed on the subject in 2011, 2012 and recently in 2018, has also noted that CLS access charges continue to be unreasonably high and result in artificially inflated prices for international services in India. AT&T urged the TRAI to address these important concerns by requiring access facilitation charges (AFC), operations and maintenance charges (O&M), and co-location charges (CLC) to be established by the Authority on the basis of cost. Other parties in the proceeding, including owners of cable landing stations as well as service providers and other interested parties, have also made similar recommendations.

We respectfully disagree with the comments made by the two OCLs – Tata Communications Limited (“Tata”) and Bharti Airtel Limited (“Bharti”).

1. Both Tata and Bharti argue in their comments that the CLS market is competitive and its pricing already reflects competitive realities – therefore no TRAI regulation of it is warranted. But they then go on to argue for TRAI to set a conversion factor of 4 and a utilization assumption of less than 70%. The “evidence” they provide for a conversion factor of 4 is that it ensures no “over or under recovery” so long as the base rate is correct. And the “evidence” they provide for a utilization assumption of less than 70% is based on their view that the current rate should be set to match average utilization over a CLS’ complete lifecycle – and that early in the lifecycle utilization was well less than 70%.

2. Tata and Bharti are completely at odds with their contention that current CLS markets are competitive. If they believe that the market to be competitive, it is counterintuitive that Tata and Bharti should argue for a conversion factor of 4 and pricing based on less than 70% utilization.
3. In a competitive market situation, it is not significant what the utilization of a OCLs is over the complete CLS lifecycle. Instead the consideration should be current utilization. Competitive markets force price structures for different capacity circuits to match their economic cost ratios. Trying to maintain a set of 4:1 price ratios in a competitive market when cost ratios are closer to 2.6:1 (or lower), only ensures that Tata and Bharti offerings would be arbitrated into oblivion.
4. The comments from Tata and Bharti largely concentrate on questioning TRAI's rightful authority which has already been settled pursuant court orders, and the same is no longer an open issue..
5. Cost recovery has been advocated as a justification for conversion factor of 4. Such a matter has to be determined by market forces. TRAI is responsible as a regulator to ensure affordability in the sector, orderly competition, consumer interest and overall growth of the telecom sector.
6. If Tata and Bharti believe the CLS market is competitive (as claimed in their comments), there is no compelling basis for advocating for the TRAI to establish CLS rates that are too high in general (because they assume a utilization factor of <70% rather than at least 70%), or not structured to match the cost differences between different STMs by using a conversion factor of 4 that reflects only relative throughputs and not relative costs.
7. While both have argued for a conversion factor of 4 and not 2.6, on the ground the rate they offer for various capacities are far less than 4. Therefore, it needs to questioned, why charges are offered which are based on less than 4 as a conversion factor.
8. The counter comments of Tata and Bharti are circular, conflicting, and re-agitate and open up various issues that are not only beyond the scope of the present Consultation by the Authority but also the order of the Hon'ble Supreme Court of India dated 08.10.2018, in which the Court has stated "*it is clear that the High Court has interfered **only on two counts**. In so far as both counts are concerned, the **ultimate finding is that both need to be reworked by the Authority***". The Hon'ble Supreme Court has further gone on to request the Authority to '**re-work the figures on both counts.**' In view of this, the only requirement for the Authority under the present Consultation is to rework the figures on the two counts, utilization and conversion factors, and nothing more. In fact, it is pertinent to note that the Hon'ble Supreme Court of India has further stated that "It will be open to the Authority, if it so finds, to **re-determine the same two figures that have been accepted by the learned Single Judge.**" With respect to the following sentence in the Hon'ble Supreme Court's order "All contentions may be raised and kept open to both sides", the same needs to be read harmoniously and in conjunction with the overall order and not piecemeal or in isolation. On such a reading of the entire order, the Authority is required to rework and, if it so finds, re-determine the same two figures on the two counts (utilization and conversion factors) and it not required and there is no basis in law to require it to go into the entire prior consultation by it and/or into matters on which the Hon'ble Division Bench of the High Court of Madras has not interfered, with it being open to both sides to raise and keep open all contentions in relation to these two counts, the only counts on which the Hon'ble Division Bench of the High Court of Madras has interfered in the order of the Hon'ble Single Judge of the same court.

9. Finally and in keeping with the order of the Hon'ble Supreme Court of India dated 08.10.2018, we support the TRAI's settled authority to conduct this public consultation to seek the industry's view on utilization and conversion factors to rework the figures, and if it so finds, to re-determine the same two figures that were accepted by the learned Single Judge of the Hon'ble High Court of Madras and on which alone, the Division Bench of that court has interfered.

Conclusion

AT&T agrees with the TRAI's overall approach and decision, which properly recognizes that the predominant form of access is now at the 10G/STM-64 level. The TRAI has appropriately based its calculations of apportioned capital cost on fully loaded equipment and has applied a utilization factor of 70 percent in calculating average annual CAPEX. Since at 70 percent utilization the relevant CLS equipment may, if necessary, be augmented on an economic basis within a reasonable timeframe, 70 percent is a conservative utilization factor that provides more than adequate buffer capacity to meet unexpected near term increases in demand. AT&T submits that the 70% utilization factor used by the TRAI is well within the international norms and practice, which tend to have higher utilization.

AT&T supports the TRAI's earlier recommendation of fixing the conversion factor at 2.6 for determining access facilitation charge for lower capacities i.e. STM-1, STM-4 and STM-16 from 10 G/ STM-64 capacity. We also support the two evidentiary bases for this conversion factor level: (a) economies of scale associated with higher capacities; and (b) prevailing market conversion factors for domestic leased circuits. Most of the stakeholders during the consultation proceedings in 2012 favored using the chosen factor of 2.6 – and even in the India domestic backbone scenario, the standard conversion factor currently used is in the similar range.

We also support TRAI's earlier view that a higher conversion factor will not be appropriate as it will result in non-uniformity of charges across different capacities. This will also not provide advantages of economies of scale as we move towards higher capacities.

AT&T again commends the Authority for the important steps it has taken to establish more reasonable and cost-based rates for these important facilities, which will provide significant benefits to the Indian market and facilitate the government's Digital India initiative. The Authority should require these new rates to be applied to all access arrangements at India's cable stations from the effective date i.e., **January 1, 2013**.

We reserve the right to file additional counter comments in case other stakeholders file additional submissions.

AT&T would be pleased to answer any questions concerning these counter comments.

Respectfully submitted,

Naveen Tandon
Authorised Signatory

November 3, 2018

