



RSM/COAI/2015/239

December 21, 2015

**Shri Arvind Kumar
Advisor (NSL)**

The Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sir,

**Sub: COAI Counter Comments on the Stakeholders Response to the TRAI
Consultation Note on "IP Based Interconnection"**

This is with reference to the TRAI Consultation Note on "IP Based Interconnection" issued on 27.11.2015.

In this regard, please find enclosed COAI's counter comments as **Annexure - 1**.

We believe that our submission will merit your kind consideration.

Kind regards,

Sincerely yours,

**Rajan S. Mathews
Director General**



COAI Counter Comments on the Stakeholders Response to the TRAI Consultation
Note on IP Based Interconnection

We would like to make following submissions on Stakeholders Response to the TRAI Consultation Note on IP Based Interconnection.

1. Any change in the licence condition cannot be carried out unilaterally:

- a. As highlighted in our response to the consultation paper we would like to submit that any change in the licence condition cannot be carried out unilaterally. Both Licensor and Licensee have to agree to the proposed changes in the license condition before it is incorporated.
- b. We would hereby like to highlight that Ld. TDSAT in its judgment dated 22.04.2010 in COAI & Ors. v. DoT & Anr. (Petition No. 122/2007) has referred the following pronouncements of the Hon'ble Supreme Court **and held that a contract cannot be changed unilaterally.**
 - i. **In Delhi Development Authority Vs. Joint Action Committee reported in 2008 Vol. 2 SCC page 672, the Supreme Court of India held as under:**

"62. It is well-known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject-matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of fifth installment was a part of the original Scheme, DDA in its counter-affidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr. Jaitley in this behalf could have been taken into consideration only if they were pleaded in the counter-affidavit filed by DDA before the High Court.

*66. The stand taken by DDA itself is that the relationship between the parties arises out of the contract. The terms and conditions therefor were, therefore, required to be complied with by both the parties. **Terms and conditions of the contract can indisputably be altered or modified. They cannot, however, be done unilaterally unless there exists any provision either in contract itself or in law.** Novation of contract in terms of Section 60 of the Contract Act must precede the contract-making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If DDA, a contracting party, intended to alter or modify the terms of contract, it was obligatory on its part to bring the same to the notice of the allottee. Having not done so, it, relying on or on the basis of the purported office*



orders which are not backed by any statute, new terms of contract could (sic not be) thrust upon the other party to the contract. The said purported policy is, therefore, not beyond the pale of judicial review. In fact, being in the realm of contract, it cannot be stated to be a policy decision as such.”

- ii. Yet again in **Bharat Sanchar Nigam Limited and another Vs. BPL Mobile Cellular Limited, 2008, (13) SCC, page 597**, the law has been laid down in the following terms:-

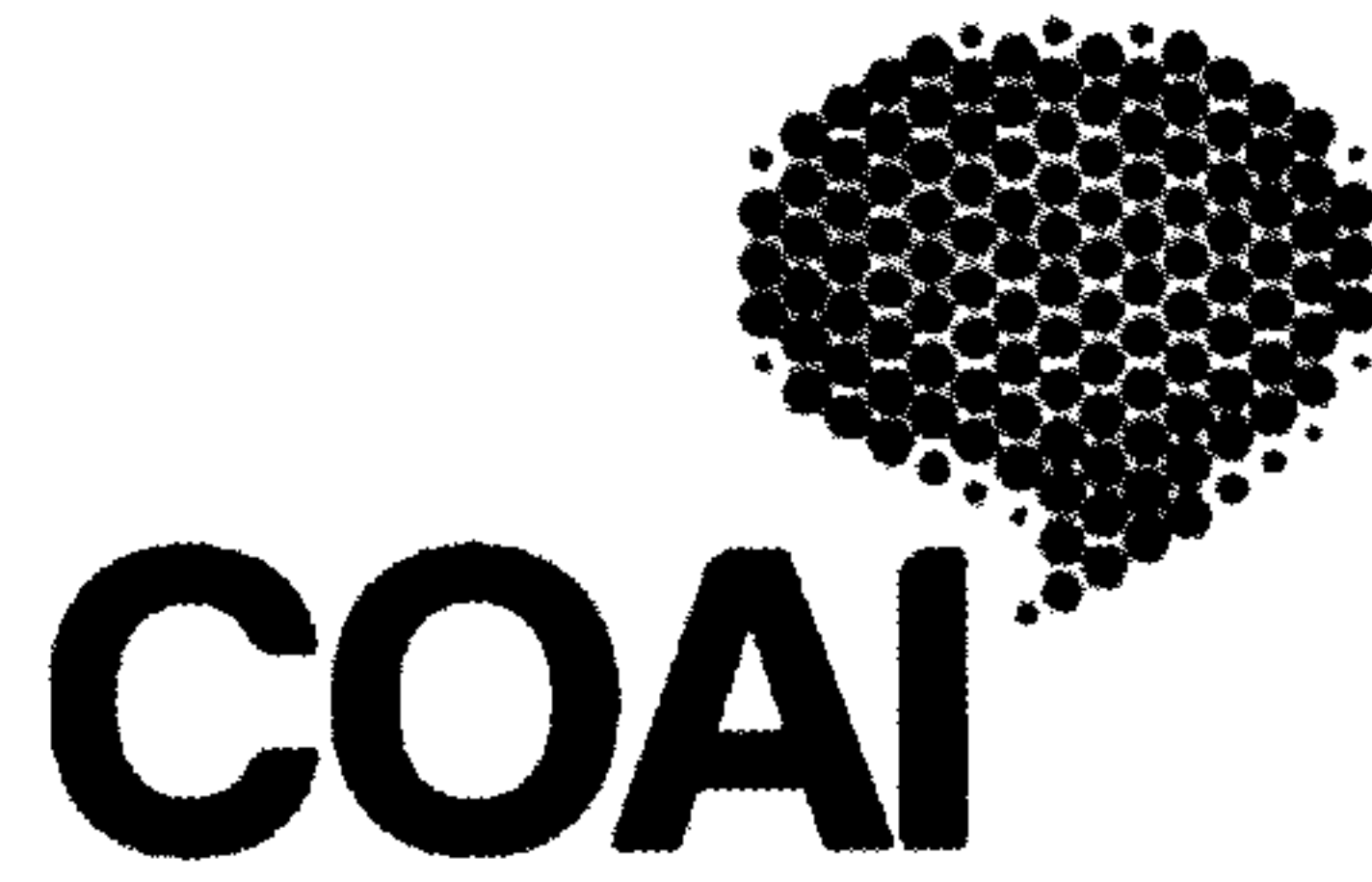
“44. If the parties were ad idem as regards terms of the contract, any change in the tariff could not have been made unilaterally. Any novation in the contract was required to be done on the same terms as are required for entering into a valid and concluded contract. Such an exercise having not been resorted to, we are of the opinion that no interference, with the impugned judgment is called for.”

- iii. A three judge bench of the Apex Court in **City Bank Vs. Chartered Bank reported in 2004 (1) SCC page 12** held as under :

“47. Novatio, rescission or alteration of a contract under Section 62 of the Indian Contract Act can only be done with the agreement of both the parties of a contract. Both the parties have to agree to substitute the original contract with a new contract or rescind or alter. It cannot be done unilaterally. The Special Court was right in observing that Section 62 would not be applicable as there was no novatio of the contract. Further, it is neither Citi Bank’s nor CMF’s case nor even SCB’s case that there was a tripartite arrangement between the parties by which CMF was to accept the liability. Such a case of novatio does not arise for consideration. Shri Andhyarujina, the learned Senior Counsel for Citi Bank has also not seriously pressed for Citi Bank’s case being considered by reference to Section 61 abovesaid”

2. Removal of existing restrictions on CUG/IP/PSTN interconnections to spread the BPO industries in the smaller cities.

- a. One of the stakeholders in its response has submitted that there is need for fully integrating IP/PSTN/CUG from technology and service perspective. Further, existing restrictions on CUG/IP/PSTN interconnections should be removed in order to spread the BPO industries in the smaller cities.
- b. In this regard, we would like to submit that the removal of the restrictions on CUG/IP/PSTN interconnections will go against the level playing field and the Terms & Conditions of different licences.
- c. Further, as correctly highlighted by the stakeholder TRAI vide its Recommendations dated April 2012 on “Recommendations on Guidelines for Unified Licence/Class Licence and Migration of Existing Licences dated 16th April 2012” raised security related concerns and hence suggested following restriction between public network / PSTN and leased circuits /CUGs.



“2.32 Regarding restriction on the interconnectivity between public network / PSTN and leased circuits /CUGs, the Authority is of the opinion that in view of the security requirements and to prevent the possibility of carriage of international traffic through leased circuits, the present restrictions proposed in the guidelines are required.”
