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Syniverse's Counter Comments to TRAI's Updated Consultation on Per Port Transaction Charge

Syniverse's Counter Comments to Comments submitted by Operators and other stakeholders to TRAI's 1st April 2019 Updated Consultation Paper on Review of Per Port Transaction Charge and other Related Charges for Mobile Number Portability (Consultation Paper No. 02/2019)

19 April 2019

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1 Summary of Syniverse Response

Syniverse thanks the Telecom Regulatory Authority of India ("Authority" or "TRAI") for a chance to provide our counter comments to clarify and reply to some of the comments of other respondents to TRAI's Updated Consultation Paper on Review of Per Port Transaction Charge ("PPTC") for Mobile Number Portability dated 1 April 2019(Consultation Paper No. 02/2019) ("**Updated Consultation Paper**").

As the current Mobile Number Portability Service Provider (MNPSP) for Zone 1, Syniverse looks forward to continuing to serve Indian mobile subscribers efficiently and have a long-term relationship with the Authority and the Telecom Service Providers (TSPs)

Syniverse prefaces its comments by stating that it believes that any PPTC set by the Authority should be at a rate allowing Syniverse to continue to provide a high-quality mobile number portability service. The objective is to enable a long-term, stable relationship that ensures a mobile number can port between TSPs efficiently and effectively to benefit Indian mobile subscribers. To accomplish this, Syniverse believes:

1) The PPTC should be set based on "Work Done Principle", taking into account the complete and accurate costs incurred by the MNPSP and allowing for a fair return on investments and expenses. We believe that like in the past, this time also the Authority should consult and work with the MNPSPs to set a new PPTC. This will ensure that total costs, the number of porting requests received by MNPSPs, and other financial data considered by the Authority are accurate. A "total cost", not a "selective cost" methodology must be used to accurately and fairly calculate the PPTC.
2) The PPTC should be based on a reasonable estimation of the number of ports that are expected in the future and should not be based on historical porting numbers that include exceptional spikes in volume due to mergers or network shut downs.
3) It is Syniverse's believe that the PPTC should be based on total port attempts and not successful ports, as we do significant work, and incur costs, to process those port requests which do not succeed through no fault of the MNPSP. We also point out that many of the port requests do not go through because the subscriber decides not to continue with the request or because there are problems with the documentation at the subscriber's end. Therefore, MNPSPs should not be penalised for any discrepancy or change of decision on the part of the subscriber. Further the PPTC must be applied in the same manner it was calculated.
4) Any changes to the PPTC pursuant to the Telecommunication Mobile Number Portability (Seventh Amendment) Regulations, 2018 (9 of 2018) (7^{th} Amendment) should be made effective from the same date as the obligations of the MNPSP under the 7^{th} Amendment become effective. The PPTC should also account for the additional capital and operational expenses that the MNPSPs will need to expend to comply with the additional duties mandated under the 7^{th} Amendment.
5) Once set, the PPTC should remain the same for a reasonable period of time, (Syniverse suggests at a minimum three years), and any change in price should be communicated sufficiently in advance to allow both the MNPSPs and the operators to adjust business plans and financial commitments. Syniverse believes at least six to twelve months is a reasonable period of time.
6) Finally, if the PPTC is set at a rate which is below the costs incurred by the MNPSPs rendering the MNPSP's business unviable, then the MNPSP must also be given the option to surrender its license with reasonable notice.

Pursuant to the judgement of the Hon'ble High court of Delhi on 8 March 2019, Syniverse believes the PPTC is INR 19 per port request – successful or otherwise – and has been the same since 2009. Syniverse believes that any adjustment to the PPTC will now come into effect only from a prospective date when the new Regulations/Tariff order will come into force. And that any change in the tariff will take into consideration the additional work and consequent expenditure on the part of the MNPSPs included in the 7th amendment.

Before giving its detailed counter comments, Syniverse respectfully submits that in para 3.7 of the updated consultation paper, the Authority has erroneously stated that:

"As explained in the preceding paras, initially, the Per Port Transaction Charges were based on the estimated data furnished by the MNPSPs in 2009. Subsequently, 'Per Port Transaction Charge' were reviewed based on the financial and non-financial data of both the MNPSPs as available for the financial years i.e. from FY 2010-11 to 2016-17. This review was based on the audited annual accounts of the MNPSPs up to the year 2016-17 and other relevant information up to 2016-17. Accordingly, the Authority issued the Telecommunications MNP Per Port Transaction Charge and Dipping Charge (Amendment) Regulations on 31st January 2018 whereby reducing the per port transaction charge from Rs. 19/- to Rs. 4/-."

<u>The fact is that the Authority considered the cost and porting of only one year (i.e. 2016-2017) and not from 2010-11 to 2016-17. This was one major reason for arriving at an un-sustainable PPTC of INR 4.</u>

We would request the Authority to provide full disclosure on the outcome of this consultation and any proposed changes to the Telecommunication Mobile Number Portability Per Port Transaction Charge And Dipping Charge Regulations, 2009 pursuant to this consultation and disclose all relevant data and cost models it proposes to employ and the assumptions made by it in setting the PPTC and any other charges, to all the stakeholders. In doing so the Authority will uphold the mandate as provided under Section 11 (4) of the TRAI Act, 1997 which states: "The Authority shall ensure transparency while exercising its powers and discharging its functions."

Syniverse counter comments on the six issues raised by TRAI in the updated consultation paper are as below:

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2 Syniverse Point by Point Response

2.1 TRAI's Calculation Method

TRAI's Question #1: 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.

Syniverse's Counter Comments:

- Many respondents somehow assumed that the MNPSP's cost of providing number portability have declined since the launch of the mobile number portability service. This assumption is erroneous. Syniverse's total costs (excluding taxes) of providing the MNP service have *increased* by 12.4% when comparing the first fiscal year 2011-2012 to fiscal year 2017-2018 (which is the most recent year of audited financials).

- On the issue of past revenue of the MNPSPs, it may be noted that due to delay in launching the MNP service, the revenue generating period of both the MNPSPs was reduced from 10 years to effectively a little more than 8 years – reduction of around 20%.
- Many respondents also suggest that the PPTC should be cost plus-based and Syniverse also agrees with this proposal. But the principles of work completed would suggest that all costs be included on a total cost basis. This includes royalty costs, an allowance for taxes on profits, and the profit margin should factor in profit on both capital expenses and operational costs. The methodology must use a total cost model, not a selective costs model. A selective cost model was used in the December 2017 consultation and the tariff was set at INR 4 which was struck down by the judgement of the Hon'ble High court of Delhi on 8 March 2019. As stated in our comments to the Updated Consultation Paper submitted on 12 April 2019, the TRAI's PPTC calculation must be based on total costs incurred by the MNPSP, and not selective costs as was done while fixing the charge at INR 4. Great care should be taken by the Authority to use full and accurate costs in the numerator of the calculation, and a complete evaluation of the sustainable porting volume in the denominator of the calculation, while also allowing the MNPSPs a reasonable profit on operational costs in addition to a reasonable return on capital.
    - Many respondents also commented that the number of ports has had a huge upsurge and they refer to the implementation of Full MNP (inter-service provider area porting) as a key cause for the upsurge. This is an erroneous impression. First, even after several years since the introduction of Inter-LSA porting, the amount of inter-circle ports is still relatively low at 7.1% of all ports (as of January 2019 in zone 1 only). Therefore inter-circle ports are clearly not the cause of the so-called "huge upsurge" in ports.
    - Secondly, although there is an increase in total number of ports from 2011 to 2018, this increase is due to the increase in total number of mobile subscribers in India and it certainly does not in any way justify the reduction of PPTC by as much as 80% (from INR 19 to INR 4).
- There are also several comments that the increases in cost that the MNPSP must undertake for the 7th amendment requirements are minimal, and this should add no more than 1-3% of the PPTC. Such costs are significant. The assumption of 1-3% is premature and beyond the scope of the TSPs to accurately estimate these costs. Syniverse looks forward to working collaboratively with TRAI on setting the prices in an open manner as provided under Section 11 (4) of the TRAI Act, 1997.
- One respondent in particular, which operates as the equivalent of an MNPSP in other countries, but which has no role as far as MNP services in India are concerned, and therefore is not a stakeholder at present, indicated the PPTC of INR 4 is adequate for a reasonable profit. However, even a cursory glance at the audited financials of both MNPSPs indicates this is not true. That same respondent then proposed prices for some ancillary services to be settled between the MNPSPs and "other users" of database downloads. This undermines the TRAI's authority and replaces the TRAI's oversight with an unregulated price element which is a threat to both the TSPs and Indian mobile subscribers. Finally this same respondent mentions that they want to participate in the "sale" of the license for the MNPSP. We submit that this proposition is outside the current scope of the updated consultation paper and should therefore be discarded.
- Several of the responses make claims that royalty payments should no longer be allowed due to the age of the service. We assert that the cost model should be based on total costs and not selective costs. There is no reason that these costs should be excluded. In the case of zone 1

there is an existing agreement that provides for an ongoing royalty payment. Since there was no requirement in the license terms or RFP terms to indicate otherwise the parties in this agreement followed industry de facto standard terms for technology licensing. This is very similar to how technology is licensed for other services like databases and other third-party services. There is usually an ongoing license fee for as long as the third-party software is in use. If this suggestion for exclusion of 3rd party license costs is accepted, it will lead to stifling innovation in the sector as third-party software are critical for improving existing services and efficiently delivering world class service. Because of this, disallowing this cost would be arbitrary and capricious. We also re-iterate that the technology licensed actually reduced initial cost and the licensed technology continues to benefit Indian mobile subscribers to this day.

- Syniverse also disagrees with commenters who have stated that the price should be adjusted yearly and/or based on a single year's financial data. Businesses require accurate forecasts so that investment decisions can be made, and shareholders repaid. Changing the price suddenly or drastically based on a single year's data leads to tremendous financial variability and risk for the MNPSPs and ultimately Indian mobile users. We reiterate our comments that several years of data should be averaged to ensure that abnormal, extraordinary and non-repeatable ports due to network closure is normalized. Further, we submit that any price changes should be made, and notice given sufficiently in advance of them becoming effective to provide all parties with enough time to make plans and notify interested parties about the change.
- One respondent claimed that the porting volume rose in 2018-2019. That may be true for one recipient operator, but the fact is that the overall volume decreased in 2018-2019 compared to the previous fiscal year. To claim otherwise is not accurate at all and is very misleading.
- One of the responses mentions that failures will always be a small fraction of total requests and thus the fee should be based on successful ports only. While the failure rate is currently around 12.4% for zone 1 it has been as high as 22% in March 2018 when a network was closing down. That spike may have been caused by a variety of reasons including hurried sales people making data entry mistakes due to increased volume, or subscribers allowing the UPCs to expire, etc. But the truth is that there are costs incurred to process failed porting requests and those costs are higher than successful ports due to the overhead associated with handling enquiries and complaints. This respondent did recognize that the "*MNPSPs would be required to perform many activities even in case of rejected cases under the new regime, a small mark-up for the same should be prescribed to cover this cost*". While we appreciate that the respondent recognized that many activities (and costs) are needed in the case of failed ports, we must question the reference to only a "*small mark-up*" since the concept of "*many* activities" will result in increased costs and a "*small* mark-up" will not suffice to cover these costs.
- Another respondent pointed out that the MNPSPs are rendering services in a monopolistic market. This is true of all other countries where MNP is implemented as well. Yet India has one of the lowest per port transaction charges amongst all countries. The presence of two MNPSPs – which is as per TRAI mandate – gives the TRAI added insight into costs. TRAI can use such insight to act as a check and balance on an MNPSP if it seems to have exorbitant costs beyond the scale of the other MNPSP.
- One response indicated that the MNPSPs have earned excessive profits above the level envisaged by the TRAI when it set the initial price at INR 19. The calculations of this respondent are based on incomplete and inconsistent data using assumed costs and porting volumes rather than accurate data reported by TRAI. For example, this respondent's analysis completely ignores actual costs incurred by the MNPSP during start up and while the MNP service was delayed and

launched post the original planned start date. Taking these numbers into account it becomes clear that the so-called "excess earnings" is overstated. This same respondent suggested a price of INR 2.11 after arbitrarily eliminating royalty and return on Capex costs. In fact, royalties were already removed from TRAI's calculation that resulted in the PPTC of INR 4. This respondent also completely ignored the need and right of the MNPSPs to earn a fair profit margin on ongoing operational costs. In essence, they have proposed that the MNPSPs fund the operation of porting in India by losing money for the next ten years.

- Several TSPs suggested that the MNPSP would largely use the network of the operators. Syniverse does indeed acknowledge that the SMSs used to port mobile numbers will use the network of the TSPs, and therefore we agree with Mobile Interconnection Telecom Solutions' (MITS') statement that the TSPs should not charge any termination fees to the MNPSPs for sending the SMSs to the subscribers.
- Few respondents said that the MNPSPs are already carrying out the functions of the new requirements mandated by the 7th amendment. Syniverse disputes that assertion. Syniverse currently, does not receive SMSs, interrogate the donor network, generate UPCs or rejection codes, send SMS to subscribers or validate validity period or UPC-MSISDN mismatch. There are also changes in other processes that the MNPSPs need to put in place. Therefore, it is incorrect to state that the MNPSPs are already carrying out these new functions.

2.2 Total Requests vs. Successfully Ported Numbers.

TRAI's Question #2: 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.

Syniverse's Counter Comments:

This seems to be the area with the most disagreements amongst the respondents. Some TSP respondents suggest the PPTC should apply to all requests (successful or otherwise). Others say the PPTC should be levied only on successful ports. However, we believe all respondents support that the PPTC should be applied on the same basis in which it was calculated.

One respondent said that it should be based on successful ports only and said that this was international practice. That may be the case for retail fees charged to subscribers by a network provider. However, this is generally not the case for wholesale charges from the MNPSP (or equivalent in that country) to an TSP. A PPTC based on successful ports only will increase the PPTC. Therefore customers who successfully port will end up subsidising and pay for the free porting attempts made by non-serious subscribers or subscribers who submit discrepant documents. Further, if there are no charges, it will also drive up the number of frivolous porting attempts who will look for a better offer from existing telecom service provider.

At least one response indicated that with the new process under the 7th amendment that the number of failures should decrease. This may be true for porting requests (provided Indian mobile users understand that UPC validity periods are reduced), however, there will be many UPC requests that do not result in a successful port because the UPC cannot be provided for a technical reason (e.g. MSISND under sub-judice, not enough time on the network, too soon since the last porting, etc.). Additionally, many UPCs that are generated but do not result in a port. Furthermore with the reduced validity period of the UPC, the port rejections due to expiry of the validity period may go up.

2.3 Should Ancillary Services be Charged Separately

TRAI's Question #3: 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.

Syniverse's Counter Comments:

All of the TSP respondents indicated that they believe the ancillary fees should not be assessed separately, or that if they are assessed separately, then the cost of these features should be removed from the cost basis of the PPTC (thereby reducing the PPTC). Some point out that the ancillary services have been provided from the start and included in the PPTC. However, they do not mention that the PPTC was initially set at a rate that enabled generous behaviour by the MNPSPs in this regard. As mentioned in its initial comments, Syniverse agrees with the respondents' position that the ancillary services can be included in the PPTC – provided the PPTC is set appropriately to cover all the costs of the MNPSPs and allow a fair return on investment and operational expenses.

We disagree with one of the respondents who indicated that no extra work is done for ancillary services. They stated that, for example, a number disconnect is a database-only activity and no broadcast is necessary. First a database-only activity requires efforts on behalf of the MNPSPs. But secondly, and more importantly, this respondent is wrong in stating that a broadcast is not required. Without a broadcast to other operators after a number disconnects the other operators would still route calls to the last known recipient operator instead of the number range owner who received the number back as a result of the disconnect process. If no broadcast is performed before the returned number is reassigned to a new user, calls to that user will be sent to the recipient operator.

2.4 Dipping Charges

TRAI's Question #4: 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.

Syniverse's Counter Comments:

Most recipients indicate that a review of the dipping charge is not necessary. While Syniverse would welcome the opportunity to provide such service, this is really a separate issue and is outside the current scope. In other words, setting the PPTC is not dependent in anyway on the dipping charge. This can be reviewed later.

2.5 Subscriber Charge Ceiling

TRAI's Question #5: 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 not, please suggest methodology and various consideration for calculating porting charge payable by subscribers.

Syniverse's Counter Comments:

Syniverse has no counter comment to offer.

2.6 Other MNP Charge Related Issues.

TRAI's Question #6: Any other relevant issue that you would like to highlight on the MNP related charges.

Syniverse's Counter Comments:

- One respondent stated that the PPTC should be waived in cases where ports are increased due to network closure or merger acquisition because these are "forced ports". In a closure or merger scenario a subscriber has two choices: (i) at any time after 90 days since their last port or 90 days on the network, a subscriber can choose to pay the fee (if any such fee is charged by the TSP) and port his number; or (ii) move to a new network without porting his number by taking a new number from the new mobile service provider. This is the subscriber's choice. In the case of network closing this decision is simply constrained to occur before a specific end time. If that time is reached without a decision by the subscriber, then the network shuts down and the subscriber can no longer port out his number. In this case it can be said that the switch without porting is forced and the subscriber loses the right to port for up to INR 19. We also would mention that operators generally do not pass on the INR 19. PPTC to the subscriber because they do not want to raise a barrier to acquiring the valuable subscriber. And the TSP also benefits from the subscriber's spend on their network. Thus, the proposal to require for the MNPSP to waive the fees in this case is not warranted because the subscriber benefits from the MNP service, the TSP also benefits from the subscriber. In any event, since the benefit from this scenario is to the recipient operator, the recipient operator can always choose to waive this and MNPSPs would suffer a loss due to a decision which is not in their control in any manner.
- One respondent pointed out that the Hon'ble Delhi High Court's decision on 8 March 2019 did not indicate that the differential port charges should be paid (i.e., INR 15 on successful ports and INR 19 on non-successful porting requests). This respondent also states that since no stay of the INR 4 was ever ordered by the court they collected only INR 4 from its subscribers. Therefore they stated that the restoration of INR 19 should come into effect only as of 8 March 2019. However, Syniverse points out that the Hon'ble Delhi High Court quashed the Mobile Number Portability Per Port Transaction Charge and Dipping Charge Regulations, 2018 (the "Amendment**"**) which set INR 4 as the PPTC. This means that the Amendment was void from the time of its enactment. Irrespective of the grant of a stay order, the fact that the amendment was quashed makes it void ab initio, and the charge of INR 19 becomes applicable in the period that the amendment was operative. During the intervening period Syniverse complied in good faith with the INR 4 order but notified carriers that it reserved the right to rebill the differential PPTC if the courts overturned the TRAI's tariff. The TRAI should now issue directives to clarify the issue instructing the TSPs to pay the differential PPTC.

3 Other Counter Comments

The PPTC of INR 4 implemented on 31 Jan 2018 and quashed on 8 March 2019 has caused confusion in the industry as to from when the INR 19 is in effect. Factually, the Hon'ble Delhi High Court's quashing of the amendment which reduced the PPTC to INR 4 means the INR 19 has always been in effect as the PPTC from the beginning. Therefore the PPTC of INR 19 presently continues to be in effect until it is changed by the TRAI as a result of this consultation process. The PPTC of INR 4 was *never* valid. However, Syniverse billed TSPs only INR 4 for only successful ports as per TRAI's ruling in good faith while we appealed what we believed to be an improper fee change.

We also note that several respondents have said that there had been no review of the PPTC by the TRAI in the 8 years since the launch of the Indian MNP service. This is incorrect. In fact, there were two requests by the TRAI for financial information from the MNPSPs in 2013 and 2016. Syniverse complied with these requests in both cases. In neither case was a change to the PPTC recommended by TRAI. Therefore, even though no order to revise the PPTC or open a consultation was made in either case, the reviews of data did in fact happen.

4 About Syniverse

Syniverse is the world's most connected company—we pioneer innovations that take businesses further. Our secure, global network reaches billions of people and devices. Our engagement platform powers the customized experiences of the future. And the millions of secure transactions we drive every minute are revolutionizing how goods and services are exchanged. We have always led companies to reimagine the boundaries of possibility. Today we're delivering on opportunities with the power to change the world. www.syniverse.com.