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17 May 2018

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Advisor (BB&PA)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg, Old Minto Road,
New Delhi - 110 002

Subject: Vodafone's Response to TRAI Draft Telecommunication Interconnection (Amendment) Regulations, 2018 (___ of 2018)"

Dear Sir,

This is in reference to the Draft Telecommunication Interconnection (Amendment) Regulations, 2018 issued by the Authority on 8 May 2018.

In this regard, please find enclosed our response to the Draft Regulation. We hope that our submissions will merit your kind consideration and support.

Thanking you,

Yours sincerely,

For **Vodafone India Limited and**
Vodafone Mobile Services Limited

P. Balaji
Director – Regulatory, External Affairs & CSR

Encl: As stated above

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Vodafone Response to the TRAI Draft Telecommunication Interconnection (Amendment) Regulations, 2018

At the outset, we would like to express our gratitude that the Authority has appreciated the technical and practical challenges raised by us with regard to Regulation 8 and 9 of its Telecommunication Interconnection (Amendment) Regulations, 2018 dated 1 February 2018 and has sought to address the same in its draft amendment Regulation.

In summary,

We support the proposed amendments to Regulation 8 and Regulation 9, with some additional suggestions for clarity and ease of implementation.

We have serious reservations about the proposed proviso in Regulation 6.

We would like to make some additional submissions with regard to Regulation 10 for the consideration of the Authority.

Our detailed submissions are as below:

1. We support the proposed amendments in Regulation 8 of the TIR, viz.
 - a. Each service provider shall provide its forecast of busy hour outgoing traffic for each POI, at intervals of every six months, to the interconnecting service provider and the first such forecast shall be provided within sixty days of the commencement of "The Telecom Interconnection (Amendment) Regulations, 2018" and thereafter on the 1st April and 1st October every year.
 - b. It is suggested that in addition to forecast of busy hour traffic – the forecast should also cover both number of ports required & expected rise in traffic in erlangs.**
 - c. We submit that such forecast will give time to respective TSPs to prepare for specific augmentation requests that can be made by the interconnection seeker within such bi-annual forecast and thus ensure timely augmentation and quality of service.
 - d. We also support the proposed amendment in setting the capacity utilization band/limits between 75-85% instead of the earlier band of 60-70%. This will help in efficient utilization of available resources.
 - e. We would like to further suggest that the Regulation may also provide for mutual agreement between operators in respect of the above provisions, as long as Grade of Service is maintained at 0.5%.**



- e. Further, the proposed amendment requiring the projected utilization of the capacity of POI to be determined on the basis of the daily traffic for the preceding sixty days at the POI during busy hour instead of the earlier prescribed 30 days during busy hour will provide a reasonable window for analysis and provisioning of additional ports.
 - f. In this regard, it will be helpful if it is **clarified both in Regulation 8 as well as in Schedule II, that Busy Hour is clearly defined as Time consistent daily Busy Hour traffic for all trunk groups (&POI location) in the circle at a network level for a service provider and not use Bouncing Busy Hour (BBH).**
 - g. It is also suggested that Regulation stipulates that **the request for E1 augmentation should be placed after ensuring proper load balancing at the POIs**, i.e. capacity utilization should be assessed after ensuring that the existing traffic is properly balanced between all provided E1s in every POI location. We have had instances where a TSP has sought augmentation citing congestion at one POI, whilst the other POI was severely under-utilized and a proper balancing of traffic between POIs would have brought the capacity utilization down to within permissible limits. It is thus recommended that an operator has equal distribution of traffic on each Trunk Group for optimal loading/utilization across TGs. **This can be achieved using Percentage Routing according to CGR/TG utilization in conjunction with traffic overflow feature in case of multiple CGRs/TGs.**
2. We are also gratified that the Authority has recognized /appreciated the technical and practical challenges with regard to the time-frames proposed for provisioning of ports for initial interconnection and augmentation in Regulation 9, and has, in the proposed amendment, suggested that this be increased to maximum 42 working days, which period may get reduced to less than 30 working days if the seeker takes actions on its own end promptly.
- a. We support the proposed increase in timelines and but we believe that some further increase in the time-lines for the various process steps may be considered given the technical, practical aspects such as assessment and feasibility for allocation of collocation space, establishment of transmission links where required, carrying out acceptance testing, etc. There may also be various cross functional linkages and inter-dependencies that may be involved in the various process steps. Accordingly, we would like to suggest that the Authority may consider increasing the timeline to 60 working days as suggested below:

| | Number of Working Days | | | | |
|--|------------------------|--|--|--|--|
| 1. Maximum period (in working days) for service provider-2 to issue letter of acceptance and demand note, if any, upon | 10 | | | | |



| | | | | | |
|--|--|---|----|----|----|
| receipt of request of ports and collocation space from service provider-1 | | | | | |
| 2. Maximum period (in working days) for service provider-1 to pay the amount from the date of receipt of the demand note, if any | | 5 | | | |
| 3. Maximum period (in working days) for service provider-2 to intimate service provider-1 about the provisioning of the requested ports at the POI and allocation of collocation space | | | 15 | | |
| 4. Maximum period (in working days) for service provider-1 to intimate service provider-2 about establishment of transmission link between the POIs | | | | 15 | |
| 5. Maximum period (in working days) for service provider-2 to carry out acceptance testing and issue final letter of commissioning of the ports | | | | | 15 |

- b. Further, the Authority may clarify that **whilst the time lines for individual steps have been laid down by the Authority, the overall compliance will be for provision of POIs within 60 working days.** This will provide the service providers with desirable flexibility and also ensure the intent and spirit behind the Regulation.
- c. The Authority has noted that the period may get reduced if the seeker takes actions on its own end promptly. Similarly, **it is our understanding that the timelines would get appropriately extended in case of any delays in the actions to be taken by the seeker at its end.**
3. We however have **serious reservations about the proposed amendment in Regulation 6, viz.**

"Provided that the port charges and infrastructure charges for all ports provided before the 1st February, 2018 shall continue to be payable as per the terms and conditions which were applicable to them before the 1st February, 2018."

In respect of the above proviso, the Explanatory Memorandum has stated as below:

As far as the issues relating to charges for the existing ports are concerned, conversion of these ports from both way to one way should not affect the commercial arrangement already in place between the two connecting service providers. However, keeping in view



the new regulatory framework in place, for new ports, to be added on the basis of outgoing traffic, the service providers may mutually decide the terms and conditions for provisioning of such ports including port charges. Accordingly, to avoid any uncertainty, it may be appropriate to provide in the regulation that, the interconnection charges such as port charges and infrastructure charges for all existing ports of the existing POIs shall continue to be as per existing arrangement between the interconnecting service providers.

- a. In this regard, it is first submitted that it **cannot be mandated under Regulation** that the port charges and infrastructure **charges** for all ports provided before the 1st February, 2018 shall **continue to be payable as per the terms and conditions which were applicable to them before the 1st February, 2018.**
- b. It is respectfully submitted that **interconnection charges can either be as prescribed by Regulation or as per mutual agreement** between the Interconnecting TSPs **at rates that are lower than those prescribed by Regulation.** It cannot be mandated by Regulation that existing terms will continue. This is tantamount to converting existing Interconnection Agreements into a regulatory mandate, which is not permissible.
- c. We are also unable to understand the justification that conversion of ports from both way to one way should not affect the commercial arrangement already in place between the two connecting service providers.
- d. The Authority is aware that the **existing terms are different inter se between the private operators and those between the private operators and BSNL/MTNL.** Whilst in case of the former, port charges are payable by the interconnection seeker only for the first two years, where after each party maintains its respective ports and no port charges are paid by either TSP to each other; however, **in the case of BSNL/MTNL, due to the unilateral, coercive continuation of one-sided interconnection agreements, the private operators have been constrained to be perennial interconnection seekers** due to the outright refusal of the PSUs to review the interconnection agreements based on the principles of reciprocity.
- e. It is estimated that the **charges being borne entirely by Vodafone for interconnection with BSNL /MTNL access** services are to the tune of **around Rs. 100 crores per annum**, which includes around Rs. 70 crores per annum on account of the cost for transmission and media laid entirely at Vodafone's cost. With the **outgoing traffic of BSNL/MTNL being around 55% of the total traffic** carried on the interconnection infrastructure being set up and maintained at the sole cost of Vodafone, **the proposed amendment will mean that Vodafone continue to bear this cost** for BSNL/MTNL outgoing traffic and **thereby subsidize its competitor**, which is completely untenable. We submit that this will result in Regulator mandating that the public sector be subsidized for perpetuity by the private operators, which is **also against the purpose and mandate of the Authority under the TRAI Act.**



- f. It is further submitted that once the TIR has provided for the conversion of all existing ports to carrying one way traffic, it is impermissible to [implicitly] mandate that private TSP will pay for and maintain the ports used by BSNL/MTNL for their outgoing traffic.
- g. The proviso under Regulation 6 **besides being legally untenable is also discriminatory** as it places all TSPs on a discriminatory footing. To illustrate, a private TSP who has entered the market in say the last two years will be required to pay for ports provided by BSNL /MTNL in the last 2 years, whilst other private TSPs who entered the market in say 2001, will have to pay permanently for ports set up by BSNL/MTNL in the last 16-17 years. **The proviso is discriminatory and treats similarly placed operators unequally.**
- h. It is further submitted that the Authority is aware that apart from port and infrastructure charges, there are also **several other unilateral and one sided conditions costs in the interconnection agreements with BSNL/MTNL, like:**
- POI set up charges and POI surrender charges. Surrender charges are equivalent to one full-year's Port Charges.
 - Penal interest payable only by private operators to BSNL/MTNL
 - Entire cost of space and infrastructure charges even though the equipment and infrastructure is used equally to carry the traffic of BSNL/MTNL,
- i. **Vodafone was willing to find a fair and reasonable solution that is mutually agreeable** to both parties, however, BSNL/MTNL refused /rejected all efforts to arrive at fair, reasonable and reciprocal terms of interconnection. In fact, the **Authority is aware that in respect of its expiry Circles, Vodafone has been constrained to approach TDSAT against BSNL and MTNL seeking reciprocity** in Interconnection arrangements.
- j. It is further submitted that the statement in the Explanatory Memorandum that "*keeping in view the new regulatory framework in place, for new ports, to be added on the basis of outgoing traffic, the service providers may mutually decide the terms and conditions for provisioning of such ports including port charges*" is in conflict with its existing Regulations on Port Charges.
- k. In this regard, we would like to draw the Authority's attention to its Telecommunication Interconnection (Port Charges) (Second Amendment) Regulations, 2012 dated 18 September, 2012, which states, inter alia

(3) Every interconnection provider shall charge, on or after the 1st day of October, 2012, the Port charges in accordance with the Port charges specified in Schedule III to these regulations and raise the demand note or the invoice, as the case may be, for the Ports demanded on or after the said date by the interconnection seeker under sub-regulation (1) and (2).



(4) The Port charges for every Port demanded, allotted and provided before the 1st day of October, 2012 shall be charged on or after the said date in accordance with the Port charges specified in Schedule III to these regulations and the interconnection provider shall raise the demand note or the invoice, as the case may be, for such Ports provided by him before the aforesaid date accordingly.

(5) Nothing contained in the Schedule III to these regulations shall apply in case the interconnection provider and the interconnection seeker mutually agree to charge and pay charges lower than those specified in the Schedule III to these regulations.

3. After the Schedule II to the Telecommunication Interconnection (Port Charges) Regulation, 2001, the following Schedule III shall be inserted, namely:-

SCHEDULE III (See regulation 2B)

PORT CHARGES

| Item | Port Charges | |
|-----------------------------------|--|---|
| <i>(1) Date of implementation</i> | <i>1st October, 2012</i> | |
| <i>(2) Coverage</i> | <i>Charges for 'Ports' (other than the Port charges for internet, which are specified in Schedule VI of the Telecommunication Tariff order 1999)</i> | |
| <i>(3) Port Charges</i> | <i>Port Charges (in Rs.) per port per annum for providing port in MSC</i> | <i>Port Charges (in Rs.) per port per annum for providing port in Tandem/TAX Switch</i> |
| | <i>4,000</i> | <i>10,000</i> |

- l. As can be seen from the above, the Port Charges Regulations**
 - a. Do not discriminate between charges for existing and new ports**
 - b. Provide for mutual agreement below the charges prescribed by Regulation.**

- m. It is therefore respectfully submitted that the proposed amendment to the TIR should clearly state that upon conversion of POIs post 1st February 2018, each party should bear the cost of the E1s required for carrying the outgoing traffic from its network and in all existing and new cases where the same E1 is used for carrying the traffic of both parties, the costs of interconnections should be borne by each party based on its respective outgoing traffic post 1st February 2018.**

Further, it may be reiterated that the port charges shall be as specified by the Authority in its Port Charges Regulation of 2012 unless the two parties mutually agree to a lower rate.

- 4. We would also take this opportunity to make our submissions on Regulation 10 of the TIR, which states inter alia that:



10. Interconnection charges.- The interconnection charges such as set-up charges and infrastructure charges may be mutually negotiated between service providers subject to the regulations or directions issued by the Authority from time to time:

Provided that such charges are reasonable, transparent and non-discriminatory.

- a. In this regard, we would first like to suggest that in order **to enable these objectives, inclusion/incorporation of the principle of reciprocity is a must and we request that reciprocity should be specifically added into the proviso in Regulation 10.**
 - b. In addition we would like to suggest that the Authority may like to regulate and prescribe set up charges, space and infrastructure charges that may be charged by respective interconnecting operators, such that the charges meet the test of 'reasonableness.' Further, like in the case of the Port Charges Regulation, in this this case also, the Authority may provide for mutual agreement to charge and pay charges lower than those prescribed by Regulation.
5. We reiterate that the Authority is aware that in respect of our expiry Circles, we have approached the Hon'ble TDSAT seeking reciprocal terms on interconnection with BSNL/MTNL. Our above submissions are without prejudice to our rights and contentions in the matters pending before the Hon'ble TDSAT.

New Delhi
17 May 2018