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Subject: ISPAI response to TRAI Consultation Paper on “Review of Tariff for Domestic Leased Circuits”

Dear Sir,

First of all, we wish to place our sincere thanks for providing an opportunity to submit our response to an important consultation paper on “Review of Tariff for Domestic Leased Circuits”

We believe that India is one of the most competitive telecommunication markets in the world. India is at a stage when market forces and a tariff forbearance policy can take over from price controls currently prescribed on DLC. TRAI too, has in the past, brought certain services under a tariff forbearance regime, so a market may evolve from one that requires oversight to one that exemplifies free and fair markets.

Since 1999, TRAI has been setting the ceiling price for DLC. The last review of tariff ceiling was done in 2005. At that point of time, TRAI explicitly pronounced the following:

5.6.1 the long term goals of the Authority are to establish effective competition in the sector such that regulation of tariffs is not required.....the DLC market has witnessed an increase in the number of players but competition is still not effective in the majority of cases. This is mainly on account of the fact that new entrants have not matched the incumbents in rolling out networks both in terms of quantum and in terms of reach.

The above paras clearly established that while prescribing the tariff ceiling for DLC, TRAI agreed for tariff forbearance policy once it finds that there is effective competition in DLC market.

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Since 2005, the DLC market has changed significantly. The number of NLDOs has increased from four to 34 besides access service providers. In its current consultation paper, TRAI has acknowledged that there is effective competition in the DLC market. The relevant paras of the consultation paper are as under:

1.10(i) Prevailing Tariff is significantly below the ceiling tariff prescribed by the Authority, particularly on the dense routes: Most of the service providers use the ceiling tariffs prescribed by the Authority through the TTO (36th Amendment), 2005 as their base tariff and offer discounts depending on the bandwidth, distance, location, volume of business etc. The discounts with respect to the ceiling tariffs are generally much higher on the dense routes.

2. 15 Between the year 2001 to year 2004, the new set of NLDOs made significant investments in building long distance bandwidth capacity in the country. As a result, several thousands of kilometers of optical fiber cables (OFC) were laid in the length and breadth of the country. As the supply of bandwidth capacity increased particularly between large cities, DLC segment for the first time witnessed competition in the country.

2.22 In consequence of the liberalized licensing regime for NLD services, 16 new players entered into NLD market between the year 2006 to 2007. As the NLDOs could now access the subscribers directly for provision of leased circuits/closed user groups, many NLDOs built not only long distance (trunk) transmission infrastructure but also the local area networks in order to serve their customers directly. As a result, a significant competitive activity was witnessed in the retail market of the DLCs which drove the prices further downwards. The new breed of the players started offering MPLS-VPN and a host of customized services viz. provision of service level agreements (SLAs), class of service (CoS), bandwidth on demand, managed services etc. as per the requirement of the customers. The increase in customer focus of the TSPs and reduction in tariffs for DLCs owing to increased competition fuelled the demand of DLCs in the country particularly amongst the enterprises in the field of IT, ITES and financial services.

2.24 As on date, apart from 7 to 10 ASPs, which are present in each licensed service area (LSA), there are 31 licensed NLDOs who can offer DLCs in the entire country to the end users.....Most of the large players in the NLD market such as Bharti Airtel Ltd, Bharat Sanchar Nigam Limited, Reliance Communication Limited, Tata Teleservices Ltd are also major ASPs. These NLDOs have built their long distance transmission infrastructure primarily for carrying the inter-circle voice traffic generated by the access segment. Further, being ASPs themselves, they have a presence in the local lead market....

There is adequate evidence that currently, the DLC market is extremely competitive and there is no sign of market failure or anti-competitive behaviour. The customers are enjoying all possible benefits of intensive competition by way of falling tariffs, better quality of service, coverage and innovation. Therefore, we strongly believe that DLC market no longer requires tariff ceiling policy that were originally implemented to protect consumer interest.

ISP AI strongly believes that the best way to deliver competitive outcomes to end users is now to allow the competitive forces in the market to operate unfettered by unnecessary and unwarranted regulatory intervention and to allow firms to compete on price and product innovation.

TRAI has noted in its consultation paper that in some circles like Jammu & Kashmir, Assam and North-East, the competition is less. In such situation At best, TRAI may continue with tariff ceiling approach for these service areas only while taking into account this fact that establishing and maintaining OFC in such service areas is extremely challenging, both administratively and financially, with rising capex and opex and lower demand, which is forcing operators to sell bandwidth closer to ceiling price. It is important to mention that in the past, TRAI has considered the “Death of distance concept” in some other segment i.e. carriage charge, IPLC etc.

We note that globally, regulators of Japan, South Korea and Belgium have deregulated the DLC market after finding the evidence of effective competition. In some markets like UK, OFCOM has deregulated the tariffs for DLC for those places where it has found the evidence of effective competition. It is to be noted that in countries where tariff ceiling exists, either the number of operators are quite less or one operator enjoys the status of Significant Market Player, which is not the case for India.

In light of the above, we request TRAI to consider tariff forbearance policy for DLC segment also and allow the market forces to govern. This policy has been highly successfully for cellular market and it is the high time that the same confidence is also shown for DLC market. Needless to say that if after bringing tariff forbearance regime for DLC, TRAI feels that there is less competition or there are signs of market failure or anti-competition behaviour, then it can again go back to tariff ceiling regime.

We are also enclosing herewith the comments of ISPAI on the issues for consultation.

Best Regards,
For Internet Service Providers Association of India

A handwritten signature in black ink, appearing to read 'R. Chharia', is positioned below the typed name.

Rajesh Chharia
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Encl: As above

ISPAI response- Issue wise comments to the consultation paper are as follows:

Q1: Should TRAI continue to use the bottom-up fully allocated cost method for computation of cost-based ceiling tariffs for point-to-point DLCs (P2P-DLCs)?

ISPAI Response:

We believe that there is enough competition in the DLC segment; therefore, DLC segment may be left on market forces. However if TRAI feels that DLC segment need to be regulated in particular area, then,TRAI may continue to use the bottom-up fully allocated cost methodology for computation of cost-based ceiling tariffs for point-to-point DLCs in the areas/ circles where there is segmental & geographical monopoly prevails.

Q2: In case your response to the Q1 is in the affirmative, what values of the following items should be used for estimation of ceiling tariffs for P2P-DLCs:

(i) Return on Capital Employed (ROCE)

(ii) Useful lives of transmission equipment and Optical Fiber Cable (OFC) separately

(iii) Average no. of fiber pairs lit in OFC in trunk segment and local lead segment separately

(iv) Utilization factor of OFC system in trunk segment and local lead segment separately?

ISPAI Response:

(i) Return on Capital Employed (ROCE) - This is operator specific and operators should respond individually on this.

(ii) Useful lives of transmission equipment and Optical Fiber Cale (OFC) separately

This is operator specific and operators should respond individually on this.

(iii) Average no. of fiber pairs lit in OFC in trunk segment and local lead segment separately - This is operator specific and operators should respond individually on this.

(iv) Utilization factor of OFC system in trunk segment and local lead segment separately?

This is operator specific and operators should respond individually on this.

Q3: In case your response to the Q1 is in the negative, what should be the alternative approach for determining tariffs for P2P-DLCs of various bandwidth capacities? Please support your view with a detailed methodology along with supporting data and assumptions, if any.

ISPAI Response: Not Applicable

Q4: In your opinion, what are the bandwidth capacities of P2P-DLCs for which ceiling tariffs need to be prescribed?

ISPAI Response:

In our opinion, Upto STM -16 level in the areas such as Assam, North East, Jammu & Kashmir should be considered.

Q5: In your opinion, is there a need for prescribing separate ceiling tariffs for local lead and trunk segment?

ISPAI Response:

We are of the opinion; there should not be separate ceiling tariffs for local lead & trunk segment.

Q6: In your opinion, is there a need for prescribing separate ceiling tariffs for remote and hilly areas?

ISPAI Response:

We believe that at best, TRAI may continue with tariff ceiling approach for these service areas while taking into account this fact that establishing and maintaining OFC in such service areas is extremely challenging, both administratively and financially, with rising

capex and opex and lower demand, which is forcing operators to sell bandwidth closer to ceiling price.

Q7: In your opinion, what are the distances of

(i) trunk segment and

(ii) local lead segment (separately) of P2P-DLCs for which ceiling tariffs need to be prescribed?

ISPAI Response:

The categorization of <50 km as local lead segment & more >50km as trunk segment is appropriate.

Q8: In your opinion, is the distance interval of 5 km still relevant for prescribing distance-based ceiling tariffs for P2P-DLCs?

ISPAI Response:

Yes, in the case of areas such as Jammu & Kashmir, Assam and North-East the distance interval of 5 km is relevant.

Q9: In case your response to the Q8 is in the negative, what distance interval should be used for prescribing distance-based ceiling tariffs for P2P-DLCs?

ISPAI Response:

Not Applicable

Q10: What equipped capacities of trunk segment and local lead of P2P-DLC should be used for computation of ceiling tariffs of various bandwidth capacities?

ISPAI Response: This is operator specific and operators should respond individually on this.

Q11: Should VPNs such as MPLS-VPNs also be brought under tariff regulations for DLC?

ISPAI Response:

Our opinion is that, MPLS-VPN should not be brought under tariff regulations for DLCs. The reasons are:

1. There is sufficient competition in this segment and its price is already dependent on DLC.
2. As this market is growing rapidly and as mentioned in the TRAI consultation paper, the MPLS-VPN services are already being offered at 90% discount in some cases.
3. Deployment of MPLS-VPN networks is complex and the solutions offered to customers are different in nature. For eg. Hub & Spoke, Any to Any, layer 2 VPN services etc.

Q12: In case your response to Q11 is in the affirmative, what method should be used for computation of cost based ceiling tariffs for VPNs?

ISPAI Response:

Not Applicable

Q13: In your opinion, is there still a need for prescribing separate ceiling tariffs for DLCs which are provided on Managed Leased Line Network (MLLN) Technology?

ISPAI Response:

In our opinion, there is no need for separate ceiling tariffs for DLCs which are provided on MLLN Technology.

Q14: Is there any other relevant issue related to tariff for DLCs which the Authority should keep in mind while carrying out the present review exercise?

ISPAI Response:

- a) TRAI should consider reviewing opening DLC resale further (with or without the need for value addition). This will help in encouraging capacity utilization, faster roll out, augmenting competition.
- b) In order to address the issue of viability of telcos and affordability to the end consumer, the input cost of bandwidth should be allowed as a valid deduction under the current revenue share definition.