

ASIA PACIFIC CARRIERS' COALITION
(Incorporated in the Republic of Singapore)

Our Ref: RSN/LHL/

19 April 2012

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By Email

Dear Sirs

APCC Comments on TRAI's Consultation (No.08/2012) on Access Facilitation Charges and Co-location Charges at Cable Landing Stations

This submission is provided by the Asia Pacific Carriers' Coalition ("APCC") in response to the TRAI's request for comments on cable landing station (CLS) access facilitation charges, co-location charges, and related issues.

The APCC is an industry association of global and regional carriers operating in the Asia Pacific region, formed to work with governments, national regulatory authorities and consumers to promote open market policies and best practice regulatory frameworks throughout the Asia Pacific region that will support competition and encourage new and efficient investment in telecommunications markets. APCC's submission reflects the consensus of opinion among at least a majority of the APCC members. Therefore none of the views expressed in this submission should be attributed to any individual member of the APCC.

The APCC has previously participated in CLS related consultations issued by TRAI in 2007, and we would like to make specific comments on four key points in this matter for TRAI's consideration and earliest decision.

In addition to the below points, APCC is also pleased to submit its response on the 10 specific questions which have been part of the current consultation document.

1. Timeline and Socio-Economic Impact

The APCC welcomes TRAI's efforts since October 2010 towards reviewing the CLS related charges in consideration of feedback from the industry.

However, we believe that the longer this review takes, the bigger the impact on the end-users in absence of competitively priced international bandwidth. Any further undue delay would only benefit the CLS owners (OCLs), in particular OCLs whom are vertically integrated telecoms operators providing both wholesale and retail telecoms services in India.

ASIA PACIFIC CARRIERS' COALITION

(Incorporated in the Republic of Singapore)

We would urge TRAI to take immediate measures to bring down the CLS access charges, through a prompt charges determination pursuant to this Consultation. We further urge the TRAI to immediately approve the RIO in respect of the EIG / other cable systems (with an appropriate charges determination arising from the current consultation process) to ensure that appropriately licensed carriers are able to obtain prompt and competitive access to this international capacity. This would effectively and immediately benefit the end-users in India, contribute towards the Government's objective to bridge the digital divide between rural and urban India, and further boost the Indian economy.

2. CLS Charges Regulation

In line with our previous comments to TRAI's consultation on Access to Essential Facilities (Including Landing Facilities for Submarine Cables) at CLSs in 2007, the APCC would recommend that the CLS charges be specified by TRAI. We would expect that TRAI would require certain information and would consider the inputs from OCLSs to decide on the appropriate CLS charges. In this regard, we would recommend that TRAI consults and considers the inputs from other stakeholders in addition to OCLSs.

3. Competition Perspective

In view that the CLS charges set by the present integrated incumbent operators range up to 251 times higher than in comparable jurisdictions, it seems safe to assume that these charges are not cost based. Such a large disparity in prices suggests that there exists the risk of cross-subsidisation, with revenues from supra-competitive CLS charges being used to subsidize the OCLSs' charges for other services in markets in which there is a greater degree of competition. In this way, market power in the CLS services market may be leveraged into other markets, to the detriment of telecommunications users. Added to this, the two incumbent operators have a market share of 93% between them (per Plum Consulting report, quoted at para 2.19), which suggests that there is a significant competition issue. In such a highly concentrated market – a near-duopoly – the risks of conscious parallelism and tacit collusion cannot be overlooked (see F Scherer and D Ross *Industrial Market Structure and Economic Performance* 3rd edn, 1990, p 199). There may also be potentially a danger of a price squeeze, since the OCLSs are vertically integrated into downstream services markets. Those vertically integrated incumbents have the ability to leverage their power in the CLS services market to squeeze the margins of their competitors in downstream markets. All of these factors likely contribute to the identified concern that high Access Facilitation Charges are preventing telecommunications users in India from receiving the full benefit of highly competitive prices for international bandwidth.

4. CLS Charges

The APCC believes that generally the CLS capital cost would reduce relatively as the capacity utilisation increases. We note that there has been significant and progressive increase of capacity utilisation. Further, costs incurred by CLS (OPEX and CAPEX) are reimbursed by consortium members. Based on the previous inputs by stakeholders to TRAI in relation to CLS charges, it is apparent that the current CLS charges are significantly high and not relative to their related costs and capacity utilisation and it is unlikely that OCLSs will set charges that approximate either cost or competitive rates.

Hence we would propose that CLS charges should be determined by TRAI to prevent over-compensation to OCLSs, in the interest of time and in the spirit of effective competition. Further, to ensure that the CLS charges are appropriate and reasonable, we would recommend that the periodicity of revision of CLS charges be at least once every 2 years subject to public consultation and inputs from stakeholders.

ASIA PACIFIC CARRIERS' COALITION
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In conclusion, the APCC would highlight the it is inevitable for unnecessarily high CLS charges to be ultimately translated into end customer services charges and may also result in a non-level playing field for services where competition between carriers is inhibited. We would be glad to assist TRAI on any further feedback or international best practices info-sharing which TRAI may require.

Yours faithfully

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ASIA PACIFIC CARRIERS' COALITION

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ANNEX

Comments of APCC on TRAI's Consultation Paper (No. 08/2012 dated 22nd March 2012) on Access Facilitation Charges (AFC) and Co-location Charges (CLC) at Cable Landing Stations

Q1: Which of the following method of regulating Access Facilitation Charges and Co-location charges (AFC & CLC) should be used in India?

(a) The prevalent method i.e. submission of AFC & CLC by owner of the cable landing station (OCLS) and approval by the TRAI after scrutiny

(b) Submission of AFC & CLC by OCLS and approval by TRAI after consultation with other stakeholders

(c) Fixing of cost based AFC & CLC by TRAI

(d) Left for mutual negotiation between OCLS and the Indian International Telecommunication Entity (ITE)

(e) Any other method, please elaborate in detail.

Response

APCC believes that for regulating AFC and CLC, TRAI should adopt a method that would provide transparency and the opportunity for comment by other stakeholders, that is absent from the existing procedures for determining the AFC and CLC.

APCC further notes that the current excessive AFC and CLC are having a material and detrimental impact on competition and prices in the international bandwidth market in India. We therefore urge the TRAI to issue an immediate determination of AFC and CLC under this current consultation. APCC submits that such charging decision may be taken by the TRAI based on costing information currently available to the TRAI (both from OCLSs and from other operators and stakeholders) as well as other international comparison data.

Q2: In case AFC & CLC are regulated using method (a) or method (b) above, is there a need to issue guidelines containing algorithm and network elements to be considered for calculating AFC & CLC to the OCLSs? If yes, what should be these guidelines?

Response

Same as Response to Q1.

Q3: In case, AFC & CLC are regulated using method (a), (b) or (c) above, please suggest the value of pre-tax WACC, method of depreciation and useful life of each network element? Please provide justification in support of your answer.

Response

An exact value of the weighted cost of capital (WACC), should be subject to market conditions in India and determined under a clear, auditable methodology.

We recommend for straight line method (SLM) with average life of networks elements 10 years.

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Q4: Which cost heads/ network elements should be included/ excluded while calculating Access Facilitation and Co-location charges? Please enumerate the items with specific reasons.

Response

We believe that only those cost heads / network elements should be considered for determination of AFC & CLC which are unavoidable to provide the AFC & CLC services and golden costing principle i.e. causation principal should be adopted for selection of cost heads / network elements etc. Further, as noted above under the consortium model, the capital expenditure and operating expenditure of CLS (in form of S and T segment) are reimbursed by consortium. Therefore, in the case of CLS access charges under consortium system, the amount received on account of CAPEX and OPEX should be deducted otherwise this would lead to overcompensation to the OCLS. As per generally accepted costing & accounting principles if any costs that have already been reimbursed to the OCLS should not be included in the access facilitation charge.

Q5: What should be periodicity of revision of AFC & CLC? Support your view with reasons.

Response

The frequency of review will depend upon the method under which the AFC and CLC are established. If these are established through use of an appropriate LRIC methodology and under transparent procedures allowing review and comment by other stakeholders, the TRAI should review these charges at least every 2 years to ensure that the facts and assumptions on which it relied in establishing the rates remain accurate. This again should include the opportunity for consultation with stakeholders on the information submitted by OCLS. If the AFC and CLC are established under other procedures, these charges should be reviewed at annually.

Q6: In case, cost based AFC & CLC are fixed by TRAI, which costing methodology should be applied to determine these charges? Please support your view with a fully developed cost model along with methodology, calculation sheets and justification thereof.

Response

TRAI should use the internationally generally accepted Long Run Incremental Cost (LRIC) methodology.

Q7: Whether Access Facilitation charges and O&M charges should be dependent on capacity (i.e. STM-1, STM-4 or STM-16) activated? Support your view with reasons.

Response

The charges should be cost based and not capacity based.

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Q8: If Access Facilitation charges and O&M charges are fixed on the basis of capacity activated; (a) Should the charges be linearly proportionate to the capacity activated; or (b) Should the interface capacity as provided by the submarine cable system at the cable landing station be charged as a base charge while higher or lower bandwidth be charged as the base charge plus charges for multiplexing/ de-multiplexing?

Response

As stated in the previous response to Q7, access facilitation charges should be cost based and not capacity based.

APCC supports the use of a base charge plus non-linear charges. TRAI accordingly should prohibit the use of linear pricing by the OCLS under which the charges for a STM-64 connection are 64 times those for a STM-1. This methodology results in an extraordinary non-cost oriented over recovery for the OCLS.

Q9: Whether there is a need to fix Access Facilitation charges for all types of submarine cables? If no, which kind of submarine cables may be exempted and why?

Response

The scope of the present regulation should equally applicable to all types of submarine cables and therefore there is need to fix Access Facilitation Charges for Consortium Model, Private Model and Private / Public Partnership Model until the access charges are in line with the international trends.

Q10: Is there a need to introduce any new provision or to modify/delete any of the clauses of the 'International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulation 2007', in order to facilitate access to essential facilities at cable landing station?

Response

No comment.