

**TELECOM REGULATORY AUTHORITY OF INDIA**

**NOTIFICATION**

**New Delhi, the 19<sup>th</sup> October, 2012**

**INTERNATIONAL TELECOMMUNICATION ACCESS  
TO ESSENTIAL FACILITIES AT CABLE LANDING STATIONS  
(AMENDMENT) REGULATIONS, 2012  
(No. 21 of 2012)**

**File No. 416-3/2010-I&FN.** In exercise of the powers conferred upon it under section 36, read with sub-clauses (ii),(iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations to amend the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 (5 of 2007), namely :-

1. (1) These regulations may be called the International Telecommunication Access to Essential Facilities at Cable Landing Stations (Amendment) Regulations, 2012.  
(2) These regulations shall come into force from the date of their publication in the Official Gazette.
  
2. In regulation 10 of the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 (5 of 2007), (hereinafter referred to as the principal regulations), after sub-regulation (3), the following sub-regulations shall be inserted, namely:-  
“(4) The Access Facilitation Charges referred to in sub-regulation (1) and sub-regulation (2) shall be such as had been included in the Cable Landing Station-Reference Interconnect Offer published under sub-regulation (4) of regulation 3 :  
Provided that the Authority may specify Access Facilitation

Charges which shall be payable by a class or classes of eligible Indian International Telecommunication Entity and in such case the approval of the Access Facilitation Charges, as specified in Part II of the Schedule, by the Authority shall not be required to be obtained under these regulations.

- 3.** In regulation 12 of the principal regulations, for sub-regulation (2), the following sub-regulation shall be substituted, namely:-

“(2) The cancellation charges referred to in sub-regulation (1) shall be such as had been included in the Cable Landing Station-Reference Interconnect Offer published under sub-regulation (4) of regulation 3 :

Provided that the Authority may specify cancellation charges which shall be payable by a class or classes of eligible Indian International Telecommunication Entity and in such case the approval of the cancellation charges, as specified in Part II of the Schedule, by the Authority shall not be required to be obtained under these regulations.”

- 4.** In regulation 14 of the principal regulations, after sub-regulation (2), the following sub-regulations shall be inserted, namely:-

“(3) The restoration charges referred to in sub-regulation (1) and (2) shall be such as had been mutually agreed between the eligible International Telecommunication Entity and owner of Cable Landing Station or as specified in Part II of the schedule :

Provided that the Authority may specify restoration charges which shall be payable by a class or classes of eligible Indian International Telecommunication Entity and in such case the approval of the restoration charges, as specified in Part II of the Schedule, by the Authority shall not be required to be obtained under these regulations.”

5. In regulation 16 of the principal regulations, in proviso to sub-regulation (2), for the words “Provided that the Authority may specify, by other regulation made by it under the Act”, the words “Provided that the Authority may specify” shall be substituted.

**Rajeev Agrawal**  
**Secretary**

Note 1: The principal regulations were published vide notification dated 7th June 2007 (5 of 2007).

## **Explanatory Memorandum to the ‘International Telecommunication Access to Essential Facilities at Cable Landing Stations (Amendment) Regulations, 2012’**

### **A- Introduction**

1. TRAI issued ‘International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007’ on 07.06.2007. The Regulations provides that the owner of cable landing station (OCLS) shall provide access to any eligible Indian International Telecommunication Entity (ITE) on fair and non-discriminatory terms and conditions, at its cable landing stations. It further provides that OCLS is required to submit a ‘Cable landing Station Reference Interconnect Offer (CLS RIO)’ to TRAI, in a specified format, containing the terms and conditions of access facilities and co-location facilities including landing facilities for sub-marine cables at its cable landing stations for its approval. After getting approval from TRAI, OCLSs are required to publish the RIO. Accordingly, in 2007, after approval of the Authority, owners of cable landing stations published their RIO containing access facilitation charges and co-location charges. The regulations also provides that in case of a cable landing station which comes into existence after commencement of these regulations, the owner of such cable landing station is required to submit, on or before the date of coming into existence of such cable landing station, the Cable Landing Station-Reference Interconnect Offer in respect of such cable landing station to the Authority for its approval.
  
2. In the year 2010, some of the service providers represented to TRAI that the access facilitation charges and co-location charges at cable landing station need a review as the cost of telecom equipment has gone down while the capacity utilization of cable landing station has gone up over the previous three years.

3. With a view to align Access Facilitation Charges, Annual O&M Charges and Co-location Charges with the current costs and utilization, TRAI vide its letter dated 06.10.2010 asked all the owners of cable landing stations (OCLSs) to resubmit the revised Access Facilitation Charges, Annual O&M Charges, Co-location Charges for all of their cable landing stations (CLSs). In response, the OCLSs submitted the Access Facilitation Charges and Co-location charges for their various cable landing stations. The owners of some of the new cable landing stations which came into existence subsequently also filed RIO for their new Cable Landing stations.
4. In the meantime, TRAI received representation from some of the service providers and their association requesting formal broad based consultation with all industry players on review of Access Facilitation Charges. They submitted that there has been a dramatic change in the international bandwidth market both in terms of a significant drop in the prices of IPLC as well as an exponential rise in capacity utilization of submarine cable systems since 2007. They further submitted that international capacity utilization at the major cable landing stations in India has gone up by at least 10 times since 2007. They have argued that the increased capacity utilization should have translated in proportional reduction in Access Facilitation Charges and Operation and Maintenance (O&M) Charges. The service providers further submitted that these charges have remained virtually unchanged since 2007, as a result, CLS facility continues to remain a bottleneck facility and, therefore, there is no effective competition possible in the sector for the ILDOs, who do not own cable landing stations. They also represented that:
  - i. CLS access charges in India are extremely high and a comparison with other South East Asian countries shows that the charges prevalent in these countries are just a fraction of what is being charged in India;
  - ii. Countries in South East Asia, Far East and Western Europe regions do not have multiple charges for access to

cable landing station facilities but levy a token RIO/ cross-connect charge as most of the operational and recurring costs are recovered from consortium members and original signatories;

iii. Each consortium reimburses CLS owners the cost associated with buildings and operational expenses in running these stations.

5. In order to address divergent views in the matter and to protect the interests of service providers and consumers of the telecom sector TRAI initiated consultation process on the issue. A letter dated 22.06.2011 was sent to the ILD service providers and their industry associations to furnish cost data and comments on various issues including international practices pertaining to 'International Telecommunication Access to Essential facilities at Cable Landing Stations'.
6. After analyzing responses received from service providers, TRAI issued consultation paper on 'Access Facilitation Charges and Collocation Charges at Cable Landing Stations' on 22.03.2012. Last date for comments and counter comments was 05.04.2012 and 12.04.2012 respectively. These dates were further extended to 19.04.2012 and 26.04.2012 respectively.

**B- Analysis of Response received and the cost data submitted by the OCLSs**

7. In response to the consultation paper comments and counter comments were sent by 24 and 8 stakeholders respectively. Majority of the stakeholders were of the view that there is an urgent need to reduce the Access Facilitation Charges and Co-location Charges to reasonable and comparable level in order to ensure continued growth in India's international telecommunication market. Further, the stakeholders were generally of the view that access facilitation charges and co-location charges submitted by the Owner of Cable Landing Stations (OCLS) to TRAI should, after scrutiny and seeking necessary

clarifications from the OCLS, be published along with the methodology used for arriving at the charges. One of the stakeholders submitted that the method of fixing of AFC and CLC by TRAI is more appropriate in the present situation where these charges need stronger and continuous regulation till such time the competition takes care of these charges and the bandwidth prices along with AFC and CLC aligned themselves with the international prices.

8. Another stakeholder was of the view that the prevalent arrangement i.e. submission of AFC and CLC by owner of the cable landing station and approval by the TRAI after scrutiny has not served the purpose. In the last four years, the bandwidth charges have come down significantly but AFC and CLC have remained the same. These charges are now as high as 56% of the total bandwidth cost which is quite significant and if not brought down, will stifle competition in the international bandwidth market. The stakeholder further suggested that the method of fixing cost based AFC and CLC by TRAI is the most appropriate in the given situation when these charges are significantly high as a percentage of the BW charges. One of the association submitted that countries in South East Asia, Far East and Western Europe regions do not have multiple charges for access to cable landing station facilities but levy a token RIO/ cross-connect charge as most of the operational and recurring costs are recovered from consortium members and original signatories. Another stakeholder also preferred that TRAI should impose cost based pricing and mentioned that other options given in the consultation paper are highly inappropriate given the circumstances and experience to date.
9. The owners of the Cable Landing stations who own majority of cable landing stations submitted that there is no justification to continue treating CLS as an essential/bottleneck facility and the existing AFC and CLC should be left to the market forces.

10. The Authority noted that the number of submarine cable systems landing in India have now increased to 15 from the earlier 10 nos. as in 2007 and these numbers are further likely to increase. Further, it has also been noted that out of present 15 nos. of Cable Landing stations for various cable systems, 12 nos. of Cable Landing Stations for various cable systems are owned by two OCLSs. As per the present provision of the regulation owner of cable landing station is required to submit the CLS-RIO including charges mentioned in Part-II of the schedule before the date of coming into existence cable landing station. The charges submitted by owner of the cable landing station are required to be further discussed with them and after getting complete details from the OCLS these charges are required to be approved by the Authority in 60 days. Since the process of approval of the charges involve scrutiny by TRAI of costing elements considered, costs and costing methodology employed by OCLS and final approval by TRAI, it takes more time and provides competitive advantage to the owner of cable landing station as OCLS is also integrated operator owning bandwidth in submarine cable system. The Authority further noted that though the work done in providing Access Facilitation is same irrespective of specific cable landing station, the Access Facilitation and Co-location charges varies between different operators based on their network configuration and costing methodology.
  
11. In view of the above, the Authority has decided to amend the regulations making suitable provisions for specifying Access Facilitation Charges, Co-location Charges and other related charges like Cancellation Charges and Restoration Charges.

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