

No.101/1/2012-CW/TRAI

Dated 10<sup>th</sup> February, 2012

To

Mrs. Anuradha Mitra,  
Principal Advisor (FA&IFA)  
Telecom Relgulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg (Old Minto Road),  
New Delhi-110002.

Subject: Draft "The Reporting System on Accounting Separation Regulations, 2012" – Views / Suggestions regarding.

Respected Madam,

Cable & Wireless Worldwide(C&WW) welcomes the endeavor of TRAI for the long pending review of the Accounting Separation Regulations, 2004.

We are offering our comments/ suggestions on the letter No. 16-07/2010-FA dated 16<sup>th</sup> January 2012 including general comments on the draft regulations as per Annexure-I and para wise / schedule wise specific comments on the draft ASR-2012 separately as per Annexure-II.

We earnestly, request TRAI to look into the concerns indicated by C&WW in the Annexure-I & II and incorporate the views / comments while finalizing the Accounting Separation Regulation, 2012 with a view to streamline the proposed Regulation, 2012 for its effective implementation in the best interest of the industry.

With Kind regards,  
Yours truly,

(Manoj Kr. Misra)  
Head of Regulatory – India  
Cable & Wireless Networks India Pvt. Ltd.,  
Mobile No.9818210011  
Email: manoj.misra@cwgoindia.com

General comments on the letter No. 16-07/2010-FA dated 16<sup>th</sup> January including general comments on the draft “The Reporting System on Accounting Separation Regulations, 2012”

**A. What is accounting separation and why it is required**

The System on Accounting Separation is a set of rules and procedures to ensure the attribution and allocation of revenues, costs, assets, liabilities and capital employed to individual activities and services, in particular considering direct and indirect operating costs.

*The accounting-separation methodology lays down the concepts, approach and practices for attributing revenues and costs, captured in entity accounting, to individual products and services, or aggregations thereof. All revenues and costs reported for the licensed entity are dis-aggregated to determine the profitability of retail and inter-service provider segments .Following concepts are relevant in the context of accounting separation:*

- *Assignment and allocation;*
- *Cost classifications; and*
- *Distribution of costs*

(Source: Accounting Separation Consultation Paper of 2000)

## **B. Purpose of Accounting Separation**

The purpose of imposing an obligation regarding the Accounting Separation is to ensure that fair, pro-competitive and transparent criteria are followed by telecom service providers in allocating their costs to the services/ products. The major resulting benefit has a transparent illustration of the relation between costs and prices, as the Accounting separation system should be able to break costs down in order to ensure that costs allocated to services/products do not result in cross subsidies, excessive prices and, in general, that costs are efficiently incurred.

## **C. Identification / estimation of Transfer Charges in the existing/ proposed Regulations – suggestions reg.**

It is important to note that under the Accounting Separation System, the transfer charges of services and/or internal purchases need to be clearly identified on business activity / product level to fulfill compliance with non-discrimination obligations. Transfer charges shall be the same as the prices charged for services offered to other telecom companies at the same conditions. The details of information provided to the Regulator should serve to ensure that there has been no undue discrimination between the provisions of services internally and those provided externally and allow identification of the average cost of services and the method by which costs have been calculated.

It has been observed that under the present accounting separation regulations, there is no system to ensure that the transfer charges / wholesale services are non discriminatory and the significant market powers / incumbent operators are not involved in anti-

competitive, unfair and discriminatory behavior. It has also been noted that under the proposed ASR 2012, this issue has not been taken up very clearly. However, through proforma H – “Statement of Related Party Transaction” an attempt has been made but there is no system to calculate separately the average cost of the product or network services provided internally or externally (Wholesale and Retail products/ network services).

**As Accounting Separation is a common regulatory tool used by worldwide telecom regulators to address the anti-competitive concerns, therefore, the proposed ASR should generally enable the monitoring a systematic division of costs between retail and wholesale (external and internal).**

**D. ASR should be applicable to Significant Market Power (SMP) telecom operators only, as per ITU Guidelines and European Union (EU).**

We would also like to draw the attention of the Hon'ble Authority to the fact that International Telecom Union(ITU)'s Guidelines on the Implementation of Regulatory Accounting in Telecommunications Sector of March, 2009 has recognized that accounting separation and cost accounting models are ex-ante obligations and imposed on Significant Market Power (SMP) operators. Other available documents (including EUROPEAN COMMISSION RECOMMENDATION of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications - (2005/698/EC) as amended from time to time )on the subject have also recognized that the Accounting Separation is generally applicable to incumbent / SMP telecom service providers. Therefore, we would

once again like to submit that TRAI may also adopt the similar international best practices with regard to the applicability / ambit of the proposed ASR on the service providers.

**E. Non-integrated standalone operators may be exempted from the ambit of ASR**

The Authority has very rightly noted in para 1 of the letter NO.16-07/2010-FA dated 16<sup>th</sup> January, 2012 that ASR enables the authority to address anticompetitive behavior, discrimination and predatory pricing concerns and to facilitate fair competition. It is further substantiated by the fact as mentioned in para 4 of the said letter that "*Business models of service providers have also changed over time. Vertically integrated telecom, service providers provide retail telecom services and products as well as wholesale services within the same jurisdiction with substantial concentration of market power..... New and more complex forms of upstream and downstream market relationships have emerged*". We believe that small operators like us who are not integrated telecom service providers and not generally providing upstream and downstream telecom services would not be in a position to influence the competition in the respective market. Therefore, we request that authority may reconsider the applicability of accounting separation regulation to all service providers even after a revised threshold limit.

**F. Separate set of formats to be prescribed for integrated and non integrated/standalone operators.**

It is humbly submitted that if TRAI is keen to implement the ASR in general we would like to request that the reporting requirement

should be divided into two separate set of formats for two levels of operators, i.e. one for those who are vertically integrated operators providing up and downstream telecom services, there should be detailed formats and the other for non-integrated telecom service providers, there should be simplified formats. Singapore Accounting separation Model could be considered for it.

**G. Legal cum accounting framework for preparation of ASR-2012 vis-à-vis ASR-2004 – a mismatch.**

We have noted that the proposed ASR, 2012 has indicated some important changes over the present established accounting separation framework which was established over a period of time through a consultative process. For e.g. the present accounting separation reports are required to be prepared based on the Central Government Notification No. GSR 782(E) dated 27.11.2002, Notification / Order No. 7-4/2001-tariff dated 21stb October, 2003 and guidelines issued by TRAI on System on Accounting Separation in December, 2002 whereas in the proposed regulation (ASR-2012) there is no indication about the basis of books of accounts and guidelines on which accounting separation report shall be prepared by the service providers.

It also appears that product / network services and network elements indicated in Schedule I & II of the proposed ASR are not in line with the product and network elements notified under the Central government Notification No.7-4/2001-Tariff dated 21<sup>st</sup> October, 2003.

**H. Duplication of work by again asking for information pertaining to the year 2010-11 in the revised proformae.**

The proposed regulation also envisage that with a view to assess the performance of new accounting separation statement, the service providers would be expected to provide the data for the last accounting year (2010-11) in soft copy in revised Proformae as prescribed in Schedule-III to the draft Regulations. Such new provision under the proposed ASR, besides being a time consuming exercise, will increase the cost of implementation of accounting separation system. **Therefore, the above condition may be dropped from the draft ASR as it is not going to serve any useful purpose besides being cumbersome and time consuming job for the service providers.**

**I. Resubmission of already submitted Accounting Separation Manual**

Further, as per Regulation 3 on Manual & Reports Service Providers are required to submit a copy of the Manual within one month from the date of commencement of new Regulation whereas Accounting Separation Manual has already been submitted by the service providers. Since there is no change in the items / information sought in the manual of the proposed ASR vis-à-vis existing ASR, we request that there should not be any duplication of the information which has already been submitted to the Authority. **Therefore, we submit that the service providers who have already submitted the manual to TRAI should not be asked to submit it again.**



**J. Requirement of appointment of Auditor to verify cost allocation / attribution parameters may be dropped.**

It is also requested that non integrated operators may be exempted from the auditing, as the auditor is not verifying any cost allocation / attribution parameters notified / approved by the TRAI. The Auditor is verifying only those parameters that have been filed by the telecom service provider under the accounting separation manual. Moreover, **in view of the fact that the preparation and allocation of cost, revenue and capital employed under the Accounting Separation system is the responsibility of the management / company, therefore, merely verification of the data / airthematic calculation in the TRAI's prescribed format by the auditor for the sake of formality will not provide any fruitful results to TRAI and Telecom Service Providers.**

**K. Certification /Audit Report on ASR**

With respect to auditing & Audit Report, as per the TRAI Act, the management or officers of the company would be held responsible for any incorrect data submitted to the TRAI. **We would like to suggest that instead of asking for the auditor's opinion/certificate, if it is verified / certified by the member of the Institute of Chartered Accountant of India (ICAI) or Institute of Cost and Works Accountants of India (ICWAI), whether member is in service / service in the same company or in practice, the same should be considered as a compliance of audit formalities under the proposed regulations. This would help to reduce the cost of the concerned service provider.**

**L. Requirement of Certificate from Auditor with respect to keeping of books of accounts in compliance of standard / costing principles issues by ICWAI.**

In Schedule IV of the proposed Regulation (ASR 2012) TRAI has mandated for a certificate, under which auditor has been asked to comment / opinion observation with respect to keeping of books of accounts in compliance of standard / costing principles issues by ICWAI. The relevant portion of the report as indicated in para 3(b) is reproduced below:

*"In my / our opinion proper book of accounts have been kept by the company in compliance of cost accounting standards issued by Institute of Cost & Works Accountants of India and generally accepted cost accounting principles so far as appears from my / our examination of those books to enable the preparation of complete and proper accounting separation reports in accordance with the regulations"*

With respect to above provision it may be noted that in the main draft regulations, there is no specific provision to the effect that books of accounts will be maintained as per the standard/ principle issued by the ICWAI. **Therefore, this very specific clause will be in contradiction of TRAI's own guidelines on system on accounting separation which has been considered as a guiding factor for preparation of TRAI's ASR Reports till now.**

**M. TRAI may update / revise its own present guidelines on “system on accounting separation (SAS)”**

In view of above facts, instead of referring the standards/principles issued by the ICWAI, TRAI may update / revise its own present guidelines on “system on accounting separations” which shall be referred as underline principle / standards for preparation of proposed accounting separation reports as the prevailing practice also suggest that generally existing ASR are prepared based on guidelines issued by TRAI.

In this regard we would like to mention the expert opinion given by Professor William H. Melody in his book on “Telecom Reform – Principles, Policies and Regulatory Practices” to the Telecom Regulators. The relevant portions are reproduced below;

*“Regulator must establish cost methodologies which are designed to meet their specific needs, that are not too costly to implement on a continuing basis, and that provide for the maximum extent of accountability for the necessary judgements that must be made in implementing them. ----- . In addition, consistency of application of cost study methodology is extremely important. This helps reduce uncertainty, cost manipulation and unnecessary debates. -----”*

**N. Summing up:**

- i. The proposed ASR may be aligned with the international best practices / guidelines issued by the ITU, EU and other leading telecom regulators. It should be applicable only to incumbents and SMP telecom service providers.
- ii. The proposed ASR should have a system to examine the issue of anti-competitive behavior of telecom service providers. Therefore, the proposed proforma of ASR should be aligned in such a manner so that it may provide the relevant information on the face of Proforma 'B' (Profit & Loss Statement for each product as prescribed in Schedule-I of the proposed regulation) and Proforma 'H' (Statement of related party transactions) to show the average cost per unit of product / network services as well as revenue realized against it. The formats should be so devised to show separately the average cost of the product or network services provided internally or externally by a service provider.
- iii. We believe that the proposed ASR does not provide any relief to the standalone non-integrated telecom service provider. On the contrary, it has created confusion regarding the maintenance of regulatory accounts.
- iv. TRAI may consider two separate set of formats for two levels of operators, i.e. one for those who are vertically integrated operators providing up and downstream telecom services and the other for non-integrated telecom service providers.
- v. With respect to auditing & Audit Report, we would like to suggest that instead of asking for the auditor's opinion/certificate, if it is

certified by the member of the ICAI or ICWAI, the same should be considered as a compliance of audit formalities under the proposed regulations.

- vi. A careful glance at the paper reveals that there are no major changes in the applicability of regulations and the formats have not been simplified or renewed as per the requirement of time and the same are as cumbersome as the existing ones.
- vii. Further we have noted that in various regulations / Tariff orders / Guidelines, TRAI has proposed to switch over to forward looking costing allocation principles i.e. from FAC to Long Run Incremental Cost (LRIC) etc. Perhaps, the LRIC and its variants have not been indicated in the proposed ASR.
- viii. We request to consider reframing of the draft ASR in a way to address the concerns of the competition which are taking place / will take place in the near future.
- ix. Before finalizing ASR, TRAI may update / revise its own existing guidelines on "system on accounting separations" which shall be referred as underline principle / standards for preparation of proposed accounting separation reports.

**Relevant Para wise / schedule wise comments on the draft ASR-2012**

**1. Power to make the Regulations**

- 1.1 It is important to highlight that existing ASR 2004 was issued under clause (i) of Sub-section 1(b) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 as amended by Telecom Regulatory Authority of India (Amendment) Act, 2000, the Telecom Regulatory Authority of India, Service Providers (Maintenance of Books of Accounts and Other Documents) Rules, 2002 and the order / notification issued there under. Whereas the proposed regulations is to be issued under clause (i) of Sub-section 1(b) of Section 11 of the Telecom Regulatory Authority of India Act, 1997. It appears that it is inconsistent with the earlier legal provisions.

**2. Applicability of the Regulations**

- 2.1 The existing Accounting separation Regulation is applicable to every service provider, who is engaged in any one or more of the following telecommunication activities, namely: -
- (i) Basic Telephone Service;
  - (ii) National Long Distance Service;
  - (iii) International Long Distance Service;
  - (iv) Cellular Mobile Telephone Service;
  - (v) Very Small Aperture Terminal Service (VSAT);
  - (vi) Radio Paging Service;
  - (vii) Public Mobile Radio Trunk Service;
  - (viii) Global Mobile Personal Communication Service; and
  - (ix) Internet Service

and having an aggregate turnover of Rupees twenty five crore or more, made from the sale or supply of all its products or activities during the preceding financial year."

- 2.2 In the proposed regulations, the scope of applicability of regulations has been made open-ended and the proposed regulations are applicable to those services which have been covered under Section 4 of Indian Telegraph Act, 1885. In this regard, it is important to mention that worldwide accounting separation is generally applicable for incumbent and SMP Operators only. The ITU has also recognized that accounting separation is an *ex ante* regulation and therefore it should be applicable for SMP Operators.
- 2.3 Considering the stated objectives of the TRAI regarding the ASR, we welcome the TRAI's proposal for increasing the threshold limit from 25 crore to 100 crore. However, we believe that this will not provide expected relief to the non-integrated /standalone telecom service providers. As the Authority has recognized that these reports will enable TRAI to examine the issues of anti-competitive behavior discrimination and predatory pricing concerns and to facilitate fair competition. Considering this objective we would like to request that the threshold limit may be aligned with the threshold limit prescribed by the Competition Regulator viz. Competition Commission of India. Therefore, we suggest that the non-integrated telecom operators may be kept out of the ambit of the ASR-2012. Alternatively, the threshold limit may be increased from the proposed Rs. 100 crore to well above Rs. 2000 crore.

### **3. Definition**

- 3.1 Under the proposed regulations, certain new products / components and network elements have been introduced. However, these have not been defined in the regulations. For e.g. under Schedule-II at Sl.No.(IX) - Cable Landing Station, the term MMR (Meet Me Room) has not been defined. Therefore, each and every new term prescribed in the schedules of the draft regulations should be suitably defined under the regulation 2 of the proposed regulations so as to ensure that there is no ambiguity in the interpretation of these terms.
- 3.2 It appears that the definition of Co-location charges defined in section 2 (viii) of the proposed regulations is applicable for ILD services only. Whereas the co-location charges are also payable by access / long distance service providers.

### **4. Reports**

- 4.1 Proforma A -Profit & Loss Statement- Service - Sl.No. 1.3 – “Pass Through Charges” – it should be further bifurcated within group / company and outside group to restrict the anti-competitive behavior. The objective of further bifurcation is that it would help the TRAI to verify data / information provided under proforma-H. That is say that the information furnished in Proforma H should be verifiable from proforma A & B. Similar bifurcation is also required in Sl. No. 2.6.5 relating to interconnection.
- 4.2 Proforma B – Profit & Loss Statement – Product – Sl.No.1.3 – “Pass through Charges” – it should be further bifurcated within group / company and outside group to restrict the anti-competitive behavior. The proposed proforma does not derive or calculate average cost of the service / product on per unit basis. Therefore, further bifurcation is necessary to check the competition related



issues like predatory pricing etc. that could not be verified from average revenue received / generated on per unit basis as indicated in proforma-H.

- 4.3 It is also noted that in the proposed regulations TRAI has not asked any information about the weighted average cost of capital (WACC) which is one of the important factor to derive the average cost of service / product. In the absence of this important information, we are unable to understand how TRAI would examine the cost oriented tariff to prevent the anti-competitive behavior of a particular operator.
- 4.4 Proforma-H – Statement of Related Party Transactions – We would like to submit that this proforma may be modified to account for the golden accounting principle i.e. matching concept. This proforma should also separately demonstrate the average cost of each product sold within group / company vis-à-vis outside the group / company. We believe that it would be one of the important proformae to demonstrate the competition related issues.
- 4.5 Proforma-I – Reconciliation Statement (Covering all services and area of operations) with audited financial statements. - Proforma-I, is confusing and the desired information is not coming up very clearly. Therefore, we suggest that instead of the proposed proforma-I, the existing reconciliation statement (Proformae-J,K) may be continued.
- 4.6 As per Regulation 4(2) on Reports, the authority requires that in addition to the reports prepared based on Historical Cost Accounting, reports prepared based on Replacement Cost Accounting are also required for every second year. It is our experience that such requirements for Replacement Cost Accounting reports are almost always exclusively required only for

dominant/SMP operators as arriving at such reports can be extremely costly involving significant resources which increases regulatory cost. We are of the view that only the vertically integrated / SMP operators should be obliged to provide these Replacement Cost Accounting reports. The replacement cost based reporting every alternate year should be dispensed with for vertically non integrated operators.