

May 10, 2005, New Delhi

## 1. Subscriber Numbers for April 2005

The total cumulative all India GSM subscriber base rose by **1.09 million** from **41.03 million** in March 2005 to **42.12 million** in April 2005, showing a **growth of 2.67%** in the month under review.

Looking at the Group wise performance, Bharti continues to lead the market with 11.39 million subscribers, followed by BSNL with 9.68 million subscribers and Hutch with 7.96 million subscribers. The companies that outperformed the average growth trends were MTNL, Reliance, Bharti and BSNL achieving a monthly growth of 9.06%, 4.42%, 3.7% and 2.94% respectively.

Delhi continues to be the leading cellular market with 4.17 million subscribers accounting for 9.89% of the total market, closely followed by Mumbai with 4.04 million subscribers accounting for 9.95% of the total market. The Metro subscribers grew by 1.84% over the previous month while the Category A, B and C subscribers grew by 2.68%, 3% and 4.6% respectively. In Category A Circles, Maharashtra showed a strong growth trend of 4.88% over the previous month. In Category B Circles, almost all the service areas performed well showing growth of over 3.5% in most Circles. Category C Circles also showed a strong growth, but the cumulative subscriber base of these Circles still constitute only around 6% of the total subscriber base.

A summary picture of the company wise performance is given below:

SI No.	Company	No of Subscribers (In Mn)		% Market Share		Service Areas
		March	April	March	April	
1.	Bharti	10.98	11.39	26.76%	27.04%	21
2.	BSNL	9.41	9.68	22.93%	22.99%	21
3.	Hutch	7.80	7.96	19.01%	18.89%	13
4.	IDEA	5.07	5.15	12.36%	12.23%	8
5.	BPL	2.57	2.59	6.26%	6.15%	4
6.	Aircel	1.76	1.77	4.29%	4.20%	2
7.	Spice	1.44	1.45	3.51%	3.44%	2
8.	Reliance	1.12	1.17	2.73%	2.77%	7
9.	MTNL	0.88	0.96	2.14%	2.28%	2
	<b>TOTAL</b>	<b>41.03</b>	<b>42.12</b>	<b>100.00%</b>	<b>100.00%</b>	

## **2. Cellular Summit 2005**

COAI hosted the 'Cellular Summit 2005'-'The Journey Ahead-50 million to 500 million Mobiles by 2007', on **April 26, 2005** at Hotel Oberoi, New Delhi. The event was graced by the Hon'ble Minister of Communications Thiru Dayanidhi Maran. A large number of senior officials from the Government as well as the corporate sector participated in the Summit. The Summit was used as an opportunity by the cellular industry to unveil a number of initiatives proposed to be taken by the industry to reach a target of 200 million mobile subscribers by 2007. The Hon'ble Minister released the annual Benchmarking Report of the Indian GSM cellular industry for 2004 prepared by Price Waterhouse. Hon'ble Minister also launched a series of ultra low cost handsets developed by Motorola as a part of an initiative by the GSM Association to lower the entry barrier for potential consumers in developing markets. These handsets would be available in the range of US \$30-32. The Summit was also used as an opportunity by the COAI to showcase the importance and relevance of 3G in the Indian context. In a brief but powerful display by Ericsson, the cellular industry demonstrated the important role that 3G mobile could play in delivering hi-capacity voice and hi-speed data services to the Indian consumers. The 3G demo was kick started with the initiation of a video call between the Hon'ble Minister and Mr. Sunil Mittal.

*Presentations made at the Summit can be viewed on the COAI website at [www.coai.in](http://www.coai.in)*

## **3. Price Waterhouse Benchmarking Study for 2004**

The Annual Price Waterhouse Benchmarking Study of Indian GSM Cellular Industry for 2004 was released on April 26, 2005 on the occasion of the Cellular Summit 2005. The Study was conducted for the calendar year 2004 and covered over 70% of the GSM Cellular Industry both in terms of revenues and subscriber base. The study indicated that the Indian GSM Cellular Industry had matured with most GSM networks making profits and was well positioned to reach the 200 million mark by 2007. The highlights of the Report are as below:

- a. The Industry continued to be predominantly prepaid, however, for the first time since the introduction of the prepaid platform, the proportion of prepaid subscribers addition during the year was less than the earlier years leading to a decline of prepaid subscriber base from 80% in 2003 to 74% in year 2004. This trend is reflected across all categories of networks and is an indicator of the maturing of the subscriber base and the reduction in gap of postpaid and prepaid tariffs.

- b. The airtime rates have fallen from Rs. 3.50 per minute five years back to almost 80 paise per minute in 2004.
- c. Industry ARPUs have consistently fallen from a healthy Rs.1300 per month in 1999 to Rs 386 in 2004, primarily as a result of decreasing rentals as well as airtime rates
- d. Operational costs also mirrored the downward trend, dropping from a level of about Rs 1000 in 1999 to the current Rs 210 per subscriber per month.
- e. Reaping benefits of economies of scale due to the burgeoning subscriber base and cost efficiency measures adopted by the operators, the Industry EBITDA margin at the current 33% has shown a constant northward trend except for the year 2003 when most 4th operators started operations.
- f. For the first time, the GSM cellular Industry is nearly in the black after duly considering non-operating costs like interest, depreciation/amortization.
- g. During the year 2004, the private GSM cellular operators made a net payment of about 6% of Gross Service Revenue to other operators on account of ADC.
- h. The performance of the Old Licensees (1st and 2nd Operators) vis-à-vis the New Licensees (4th Operators) has been significantly better because of quantifiable benefits in terms of subscriber base, ARPUs, network usage etc.

Besides calling pattern and traffic related information, the Study also includes interesting data on subscriber churn, bill value based subscriber mix, revenue from value added services, cost compositions etc.

The Study also compares the Indian GSM cellular industry with its Asia Pac counterparts in seven countries: Malaysia, Philippines, Indonesia, Thailand, China, Singapore and Australia. The comparison with these countries reveals that Indian GSM Cellular Industry is competitive in terms of operating cost per subscriber. However, the ARPUs at a level of USD 8 per month per subscriber are well below the regional average of around USD 17 and the EBITDA margin also needs to improve.

Given the very small wireless penetration and a huge “potential” subscriber base, the Indian GSM Cellular Industry is poised to act as a growth engine for the India Telecom sector.

A full copy of the report is available on request from COAI at a nominal price of Rs. 5,000 only.

#### 4. TRAI Tariff Orders

##### A. TRAI Issues The Telecommunication Tariff (Thirty Sixth Amendment) Order, 2005 (3 of 2005)

TRAI issued The Telecommunication Tariff (Thirty Sixth Amendment) Order, 2005 (3 of 2005) on **April 21, 2005**. The Order revised the ceiling tariff for different capacities of Domestic Leased Circuits (DLC) by 3-70% with tariff for higher capacity DLCs being reduced by upto 70% of existing market tariffs. DLC are the medium of carriage for data and voice services within the country. The service are provided by Basic Service Operators / Unified Access Service Licensees, National Long Distance Operators and Infrastructure Service Providers Category II. The key users of the service in India are Internet Service Providers, Informational Technology (IT) and IT-Enabled Service Enterprises like Business Process Outsourcing Units, Telecommunication Service Providers, corporate enterprises, etc.

The Authority fixed revised ceiling tariff for the most commonly used capacities/speed i.e. 64 kbps, 128 kbps, 256 kbps, E1 (speed of 2 Mega bits per second), DS-3 (speed of 45 Mega bits per second) and STM-1 (speed of 155 Mega bits per second). It adopted a Bottom-up Model using cost of network elements involved in the provision of Bandwidth services based on data on costs provided by various operators.

The revised ceiling tariffs in respect of DLC were as given below: -

Capacity / Speed	Existing Ceiling Tariff (Rs. in lakhs)	Existing Market Rate (Rs. In lakhs)	Revised Ceiling Tariff (Rs. in lakhs)	Reduction w.r.t Market Rate (%)
64 Kbps	0.96	0.96	0.44	54
128 Kbps	1.72	1.72	0.79	54
256 Kbps	2.97	2.97	1.36	54
E1 (2 Mbps)	22	8.80	8.50	3
DS-3 (45Mbps)	462	185	62	67

STM-1 (155Mbps)	1386	554	165	70
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Other Features of the Tariff Order were:

1. The tariffs fixed were in the nature of ceiling tariffs and operators were at liberty to offer rates that were lower than the ceiling fixed by the Authority.
2. Discounts and ceiling tariffs when offered should be transparent and non-discriminatory based on laid down criteria and subject to reporting requirement.
3. The ceiling tariff prescribed by this Order would take effect from 1<sup>st</sup> May, 2005. Pro-rata corrections wherever applicable must be made to any advance payments that might have been made for leased circuits on the basis of prevailing tariffs.
4. Providers of leased circuit should report to the Authority the commercial and economic basis of various terms and conditions governing Rent and Guarantee and other similar schemes meant for providing leased circuit when spare capacity was not available.

The Authority stated that a competitively priced DLC Service was fundamental to achieve a higher rate of penetration of Broad Band in the country, which provided a basis for fundamentally transferring the socio-economic opportunities, particularly in rural India.

**(B) TRAI Issues The Telecommunication Tariff (Thirty Seventh Amendment) Order, 2005 (3 of 2005)**

TRAI issued the Telecommunication Tariff Order (37<sup>th</sup> Amendment) on **May 2, 2005** specifying separate ceiling tariffs for 64 kbps domestic leased circuits provided through Managed Lease Line Network (MLLN) Technology. The tariff order was issued in light of BSNL's submission that for DLCs provided through MLLN technology the costs were significantly higher than the tariffs notified by TRAI in its 36<sup>th</sup> Amendment to the TTO. TRAI thus decided that in case of DLCs provided through MLLN, the Authority would retain the ceiling tariffs for 64 kbps prevalent prior to the 36<sup>th</sup> amendment and that the same would prevail for one-month during which the Authority would fix cost based tariffs for this service.

**5. TRAI Interconnect Usage Charges (IUC) Regulations**

**A. TRAI Issues the Telecommunication Interconnect Usage Charges (Fifth Amendment) Regulation (7 of 2005)**

TRAI issued its Telecommunication IUC (Fifth Amendment) Regulation (7 of 2005) on **April 11, 2005**. Through this Amendment the Authority defined roaming as the ability for a cellular subscriber to automatically make and receive voice calls, data and to access other services while traveling outside the geographical coverage area of the home network, by using the visited network. It was national roaming when visited network and the home network of the subscriber were in the same country and it was international roaming when visited network and home network of the subscriber were in different countries.

Subsequent to this definition, applicability of ADC on calls originated from national and international subscriber would be as follows:

- All calls from the National Roaming subscribers would be treated as Long Distance calls and all calls from International Roaming subscribers would be treated as incoming international call for ADC purposes. As such for all calls from National roaming subscribers while in a different Service Area, ADC charge as applicable for National Long Distance calls would be applicable at the rate of Rs 0.30 per minute. For International Roaming Subscriber while making any call while in India, an ADC of Rs .3.25 per minute would be applicable.
- For all calls from Roaming subscriber, the access deficit amount to be collected by the visited network operator and paid to BSNL.

**B. COAI makes submission on TRAI's Telecommunication Interconnect Usage Charges (Fifth Amendment) Regulation (7 of 2005)**

COAI responds to TRAI's IUC Regulation (Fifth Amendment) of April 11, 2005 vide its Letter No. TVR/COAI/065 dated **April 13, 2005**. COAI stated that the definition given by the Authority was incorrect, illogical, inconsistent and discriminatory. It was further explained as:

The generally accepted definition of cellular mobile long distance call and international long distance call was:

- A national long distance call was one, which originated in one service area and terminated in another service area in the same country.

- An international long distance call was one which originated in one country and terminated in another country.

Moreover, when a subscriber was roaming then he would become a subscriber of the visited network for all intents and purposes.

In the light of the above, COAI made the following submissions: -

1. The definition of a call as also its physical treatment would not change if the subscriber was roaming. Thus, it was incorrect to state that all calls from National Roaming subscribers would be treated as Long Distance calls and all calls from International Roaming subscribers would be treated as incoming international calls.
2. The definition given by the Authority was illogical, inconsistent and discriminatory in as much as if all calls from the National Roaming subscribers were to be treated as Long Distance calls for ADC purposes.
3. When a subscriber roams outside his service area, then he becomes a subscriber of the visited network and should be treated as such in all respects.

COAI also submitted that the Authority had initiated IUC/ADC review on March 17, 2005, which dealt with a number of issues related to ADC including inter alia issues related to admissibility and extent of ADC. Thus, the issue of ADC on roaming calls should necessarily form part of that consultation rather than being dealt outside the consultation process.

COAI sought that the Authority put the present Regulation in abeyance and raise the issue as a part of the ongoing consultations on IUC Charges Review that inter alia also dealt with issues related to ADC.

### **C. COAI Files Appeal in TDSAT against TRAI's Telecommunication Interconnect Usage Charges (Fifth Amendment) Regulation (7 of 2005)**

On **April 27, 2005**, COAI filed an Appeal in TDSAT against the TRAI IUC Regulation (Fifth Amendment) 2005 on the grounds inter alia that the Impugned Regulation

- (a) Had been passed in violation of Section 11(4) of the TRAI Act as also principles of natural justice.
- (b) Was based on totally irrelevant and extraneous considerations and reasons and passed in an arbitrary manner leading to unjust enrichment at the hands of BSNL.

COAI prayed that the Hon'ble TDSAT set aside and quash "The Telecommunication Interconnection Usage Charges (Fifth Amendment) Regulation (7 of 2005)" issued by TRAI April 11, 2005.

The Appeal was listed for hearing on 28th April, 2005. At the hearing, TDSAT issued notice of the appeal to TRAI and directed TRAI to file its reply within two weeks. Further, BSNL has sought permission to implead itself as a party respondent in the appeal. The next date of hearing is fixed for May 11, 2005.

## **6. COAI Writes to DoT on Issues Related to Fixed Wireless Terminals**

COAI vide its Letter No. TVR/COAI/061 dated **April 7, 2005** wrote to DoT drawing attention to the clarification issued by the Government March 23, 2005, which stated inter alia that Fixed Wireless services should be strictly confined to the premises of the subscriber and that it was the services providers' responsibility to ensure that these instructions were complied with. COAI expressed concern that the above directive was not being complied with by the concerned service providers as its random checks had shown that these FWT services continued to be freely available throughout the service area.

COAI referred to the Government clarification that had also stated that if these services were not confined to the subscriber premises, they would be treated as a WLL(M) service in all respect. Accordingly COAI intimated the DoT that in the light of the above continuing violations, the refusal of fixed operators to disclose their numbering schemes for fixed and fixed wireless services, and in line with the Governments clarificatory Order of March 23, 2005, they would be treating all the fixed service connections of the violating operators, as WLL (M) services with retrospective effect.

## **7. COAI Writes to DoT on Subscriber Linked Spectrum Policy for CDMA Operators**

Vide its Letter No. TVR/COAI/070 dated **April 29, 2005**, COAI wrote to the DoT drawing attention to its earlier submission that the Government's subscriber linked policy on assignment of spectrum to CDMA Operators contained in the WPC letter No. J-14025/200(17)/2004-NT dated 10<sup>th</sup> December 2004 was based on different criteria than what was adopted for GSM operators, thus creating a non-level playing field for GSM operators. COAI reiterated its concerns as under :

- a. For GSM, the spectrum-subscribers linkage was the same irrespective of the type of Circle, whilst for CDMA, the spectrum-subscriber linkage was different for Metro I (Delhi & Mumbai), Metro –II (Kolkata & Chennai), Category A, B & C Circles.
- b. For GSM, a mathematical model was used by TEC to work out the total erlangs in a city from a given spectrum, and thus number of subscribers calculated at usage level of 35mE/ subscriber, whilst no such approach was adopted for CDMA.
- c. GSM operators were subjected to deployment of micro/pico sites, besides all software measures to enhance capacity, but no such deployment techniques/ criteria were considered for CDMA.
- d. For CDMA, an alternative eligibility criterion had been provided for allotment of spectrum on SDCA basis for 3<sup>rd</sup> carrier and 4<sup>th</sup> carrier whilst no such alternative eligibility criterion was available for GSM. Further, this alternative criterion effectively defeated the very purpose of having a subscriber-linked policy on circle basis.
- e. The inter-site distances for CDMA operators were around 2.9 kms (radius 1.45 kms), whilst for GSM, it was around 100-300 metres. There were no technical issues in CDMA deploying more sites. Different BTS density criteria for GSM and CDMA would lead to a non-level playing field and give CDMA a huge capex advantage.

In the light of the above, COAI reiterated its request for an urgent review of the CDMA subscriber-linked policy.

Notwithstanding the above concerns, COAI also pointed out that even based on the prevalent subscriber linked spectrum policy, it was clearly evident that the demands of the CDMA operators for additional spectrum were unjustified.

COAI also requested that in the event of considering further additional carriers for CDMA, due consideration should be given to concerns on level playing field and that the Government should follow the same process that was used for determining the GSM spectrum policy. COAI also emphasized that any additional carriers considered for CDMA should only be confined to the spectrum bands allocated for cellular under policy (NFAP-2002) and license.

## **8. COAI Responds to TRAI Consultation Paper on IUC Charges Review**

Vide its letter No TVR/COAI/071 dated **April 30, 2005**, COAI submitted its response to the TRAI Consultation Paper on IUC Review.

At the outset, COAI expressed its anguish and concern that due to the non-sharing of requested data by the Authority, it was unfairly disadvantaged in providing all possible meaningful inputs to the consultation. It was submitted that non-sharing of requested data by TRAI was in conflict with Section 4 of the TRAI Act and also not in conformance with the Access to Information Regulation issued TRAI on March 4, 2005. The information requested by the industry related to the critical issue of competition and full disclosure was absolutely essential to ensure that no player was disadvantaged or made to subsidize his competitor. Provision of equal opportunities and level playing field for all players, public and private was a key objective NTP-99 and the regulatory framework for IUC and ADC must ensure this aspect.

Against this background, COAI placed the following submissions before the Authority for its kind consideration:

- a. ADC should be provided only to BSNL and that too only for its rural wireline services, after adjusting for support from the USO Fund, etc.
- b. There was no justification to give ADC to other fixed operators as they were offering services only in the urban and semi-urban areas where tariffs were forborne and the issue of an access deficit did not arise.
- c. ADC was not justified on fixed wireless services as
  - The cost of WLL(F) was the same as that of providing WLL(M).
  - WLL(F) was being widely used as mobile over the service area.
- d. A revenue share regime for ADC should be introduced with immediate effect.
- e. The revenue share percentage should be the same for NLD and ILD calls as otherwise it would be difficult to implement as it could lead to the same problems of misreporting/ bypass, etc.
- f. The ADC regime should be merged with the USO regime immediately upon moving to revenue share regime.
- g. ADC should be recovered from all operators and should cover all types of services.

- h. Eligibility of ADC funding should be kept separate from disbursements. This will ensure simplicity and transparency.
- i. The USO funds collected by the Government, but not used, could be used to fund the ADC. Similarly, the Authority must take into account the excess ADC collected since inception before considering further ADC funding.
- j. At this juncture, carriage charges may continue to be distance based. However, the recent sharp reduction in the price of domestic leased circuits would go a long way in hastening the death of distance and converging the cost of carriage for intra and inter-circle calls. This reduction needed to be actioned with immediate effect.
- k. Authority may prescribe cost based carriage charges as a ceiling for different distance slabs and leave it to the Access Provider and NLDOs to negotiate the actual carriage charges based on market forces.
- l. Access Providers should be allowed to negotiate with the ILDOs for termination charges on incoming ILD calls. However, the Authority may prescribe a ceiling for termination charges on international incoming calls.
- m. There should be difference in the termination charges for domestic and international long distance calls. Termination charges for domestic calls (local and long distance) should be cost based, which should be specified as a ceiling, with actual charges left to be negotiated between concerned parties. However, the termination charges for incoming ILD calls should be based upon the principle of reciprocity and should be higher than for domestic calls.
- n. Mobile termination charges needed to be urgently reviewed as they were significantly below costs and also well out of line with international practices. Further, with 70% of the traffic being incoming on cellular, low MTC resulted in continuously rising volume of subsidy on incoming calls. This was untenable and would seriously harm the interests of service providers and deter the orderly growth of the telecom sector and thus severely harm consumer interest in the short to medium term. It would be appreciated that the Authority was required under the Act to inter alia “protect the interests of service providers and consumers” and to promote and ensure orderly growth of the telecom sector”

- o. Under IUC Regime the charges were payable for a specific work done by an operator for carriage or terminating a domestic call, and could not be on the basis of revenue realized from the subscribers. However, the IUC charges from international in-roamers could be left to mutual negotiations, if the similar facility was allowed for incoming ILD calls

COAI also informed the TRAI that in the absence of any data being shared by TRAI, it was researching other international practices in the matter and would soon revert to TRAI with additional submissions based on its findings and research.

## **9. Judgments Delivered by Hon'ble TDSAT**

### **A. TDSAT Order on Reference Interconnect Offer (RIO) dated April 27, 2005**

BSNL and MTNL had challenged TRAI's letter of October 9, 2002 wherein TRAI had directed BSNL and MTNL to make changes in the RIO that had been submitted by them for the approval of the Authority.

In a separate petition, the cellular operators had challenged the RIO of BSNL (published on July 8, 2004 and subsequently withdrawn) seeking that the BSNL implement TRAI's RIO in letter and spirit praying that no clause that be included in the RIO that is unfair, unjust, unreasonable or discriminatory; BSNL apply the RIO to all CMSPs/UASLs, BSNL complies with TRAI's directives, etc on interconnection, BSNL publish the RIO forthwith upon approval from TRAI, etc.

In its judgment and Order dated April 27, 2005, the Hon'ble TDSAT held that :

- a. RIO Regulation stipulates broad framework on the basis of which the service provider is to make the offer of interconnection to other service providers.
- b. Time taken from the date of submission of draft RIO for TRAI's approval, date of final approval as well as period during which the matter remained in appeal needs to be excluded from 90 days period stipulated in Clause 3.1 of the RIO regulation.
- c. TRAI's alterations in the RIO submitted to it for approval, were more in the nature of a directive and did not explain the reasons for the non-acceptance of the clauses proposed by BSNL/MTNL in their draft RIOs. Thus the grievances of BSNL/MTNL regarding lack of transparency were fully justified. However, subsequent discussions have substantially addressed the concerns on lack of transparency.

- d. There is no stipulation in RIO regulation to adopt Model RIO. It only requires that proposed RIO be based on the Model RIO.
- e. RIO Regulation etc. would need to be in consonance with license conditions and TRAI's powers under the Act. The stipulation of the prior approval does not empower TRAI to impose a new set of terms; it is basically to ensure that the basic structure of the Model RIO is adhered to. Any other intrusive approach in the garb of "prior approval" will undermine the freedom of the service provider to mutually negotiate, which has been referred to in the licensees and also the RIO regulation. Model RIO cannot usurp the service providers right to first enter into an agreement in exercise of the freedom of a contract envisaged in the license.
- f. TRAI's / COAI's argument that Section 11(1)(a)(ii) Re: terms and conditions of the license would not include terms of interconnectivity, does not stand a reason. TRAI cannot vary or override license terms. TRAI can fix terms of interconnectivity of pre January 2000 licenses and to the extent that those terms could be brought in harmony with terms of interconnectivity of post January 2000 licenses.
- g. TRAI cannot override license conditions or vary contracts or existing private rights unless specifically empowered under the statute.
- h. If the license term i.e. that licensee shall comply with regulations, etc. is to be read as an overarching provision, it does not make sense why in other clauses mutual agreement has been provided for.
- i. The Delhi High Court Division bench judgment would apply even to post January 2000 amendment situations.

TDSAT also dealt with the points of difference between TRAI and BSNL/MTNL as under :

- a. RIO would be applicable to those agreements entered into after publication of the RIO. Service providers who have already entered into interconnection agreements would be given the option to migrate to the RIO regime on a non-discriminatory basis.

- b. Interconnection be based on CCS 7 signaling system or on the R2 signalling system if CCS 7 is not available as per permissibility under the terms and conditions of the license agreement.
- c. Costs of augmentation and interconnection to be borne by the interconnection seeker in line with license terms.
- d. If the CLI is found to be tampered with BSNL would have the right to reject the call, subject to a 3-day prior notice, or charge them at the highest applicable rate for carriage and termination of international calls subject to other instructions issued by the Licensor from time to time in this regard. Further, subject to the instructions issued by the licensor, CLI of the caller transmitted to the receiving network , neither party shall suppress or modify or tamper with the CLI in any manner that prevents the true CLI being detected at the receiving end.
- e. In case of inter-operator billing disputes, the matter be referred to an auditor appointed jointly by both parties, failing which the parties may approach TDSAT.
- f. In respect of security deposit, both parties to furnish a bank guarantee based on net payments and details of this to be incorporated in the main body of the RIO.
- g. In case of misuse of POI for unauthorized activities, immediate withdrawal of interconnection facility at the concerned POI may be appropriate with a short term show cause notice (10-days) to defaulting parties under intimation to the licensor before resorting to termination of interconnection facility
- h. Guidelines are only relevant for the purpose of preparing the draft RIO and for finalizing the interconnection agreement and once the agreement has been entered into, the guidelines cease to be of contractual relevance.

With respect to the Petition filed by the cellular operators, the Hon'ble TDSAT held that COAI couldn't raise objections to the RIO of BSNL even before it was published on the web after approval of TRAI. As regards the other issues raised by COAI, the Tribunal indicated that these had been covered whilst dealing the outstanding points of difference between TRAI and BSNL/MTNL inasmuch as it had held that :

- RIO would be applicable to those agreements entered into after publication of the RIO. Service providers who have already entered into interconnection agreements would be given the option to migrate to the RIO regime on a non-discriminatory basis.
- Costs of augmentation and interconnection to be borne by the interconnection seeker in line with license terms.
- As regards the issue relating to the higher rate of interest, TDSAT stated that it was given to understand that this matter had been resolved between BSNL and TRAI.

#### **B. TDSAT Order on Port Charges dated April 27, 2005**

Vide Petition No. 3 of 2002 filed by Cellular Operators through COAI had challenged the BSNL Circular dated November 2, 2001 which inter alia sought to revise, with retrospective effect (from May 1, 1999), the port charges to be levied on CMSPs at rates prevailing prior to May 1, 1999.

BSNL contended that its Circular dated October 12, 1999 issued on the basis of the TRAI Regulations of May 1, 1999 was on the assumption that in view of Clause 8 of the Regulations, these Regulations would have an overriding effect on existing agreements / license conditions. However, when Clause 8 of the Regulations was declared null and void by the Division Bench of the Delhi High Court, the BSNL Circular of October 12, 1999 automatically ceased to have effect and the rates prevailing prior to May 1, 1999 came into force.

Hon'ble TDSAT in its judgment and Order dated April 27, 2005 held in favour of the cellular operators and set aside the BSNL Circular of November 2, 2001 as issued without any sound basis.

TDSAT opined that the Delhi High Court judgment had no relation to the present matter as the cellular licenses had no stipulation on port charges, which were determined by separate arrangements between DoT and the licensees. TDSAT also noted that there was a delay of over 22 months by BSNL in allegedly taking corrective action based on the Delhi High Court judgment of January 17, 2000 and that they did not see merit in the argument that the Circular of October 12, 1999 automatically became non-existent after the judgment of the Delhi High Court.

### **C. TDSAT Order on International Private Lease Circuits (IPLC) dated April 28, 2005**

VSNL had challenged the TRAI's TTO-34<sup>th</sup> Amendment dated March 11, 2005 wherein the Authority had reduced the price of International Private Lease Circuits (half circuit) on the grounds inter alia that TRAI had violated the principles of natural justice and acted in breach of the mandatory requirement of transparency as the TRAI had not disclosed the various documents on which it acted.

In these proceeding TRAI raised an objection stating that its power to fix tariffs was in the nature of a subordinate legislation and beyond the purview of TDSAT and that there are no limits to TRAI's powers under 11(2) of the Act. TRAI contended that the reports sought by the Appellants could not be disclosed. Authority also contended that fixation of tariff could only be challenged on grounds of unreasonableness or arbitrariness and not on demonstrative grounds.

The TDSAT vide its judgment dated April 28, 2005 remanded the matter back to TRAI after over ruling TRAI's objection that the appeal was not maintainable. TDSAT held that such a submission was patently against the provisions of the Act. TDSAT also held that principles of natural justice had been violated and TRAI had breached the mandatory requirement of transparency. Accordingly, the TDSAT directed that all materials and documents asked for by VSNL be supplied by TRAI.

### **D. TDSAT Order on Direct Connectivity dated May 3, 2005**

BSNL had appealed to TDSAT challenging TRAI's letters/directions dated July 22, 2003 whereby TRAI had directed under Section 13 of the Act that direct connectivity should be made between the networks of different service providers at the earliest and not later than 3-months from the date of issue of directions.

BSNL had contended that TRAI's directions were without jurisdiction and contrary to the terms of license signed by the operators and further had been passed in a non-transparent manner in violation of the principles of natural justice. BSNL further stated that there was no justification for making direct connectivity mandatory, it would result in grave technical difficulties and adversely affect quality of service, which would not be in consumer interest.

TRAI on its part contended that it was the legislative mandate that TRAI fix terms and conditions of interconnectivity to ensure effective interconnection. TRAI also contended that the non obstante

clause in Section 11(1)(b)(ii) was provided to legislatively undo the effect of the Delhi High Court judgment of January 17, 2000

In a separate petition file in the same matter the cellular operators had sought the implementation of direct connectivity by BSNL CellOne with other cellular operators as mandated inter alia in the licenses of cellular operators, the IUC Regulations of October 29, 2003, NTP-99 and the DoT letter of 9.08.2000. The cellular operators prayed that the additional transit charge of 19p/minute being charged by BSNL be quashed and that BSNL be directed to refund / pay with interest, all costs that had been unjustly levied on the cellular operators by virtue of BSNL not implementing direct connectivity.

In this regard, BSNL contended that directive connectivity was permissible, but not mandatory and that TRAI did not have the jurisdiction to vary terms of licenses. Further that direct connectivity would result in wastage of capacity already created by BSNL and the huge expenditure on creation of additional infrastructure.

TDSAT in its order of May 3, 2005 maintained the stand taken in its judgment on RIO dated April 27, 2005 wherein it had held that TRAI cannot vary the terms and conditions of licensee and any directive etc issued by TRAI would have to be within the confines of the licensing framework and in conformity with the statute. TDSAT held that the TRAI letter of July 22, 2003 had resulted in a modification of license conditions and was not in accordance with the provisions of the TRAI Act.

In respect of the petition of the cellular operators TDSAT held that TRAI could not override the license conditions and make direct connectivity could not be made mandatory. However, on consideration of level playing field, TDSAT directed that BSNL should stop charging 19p/minute transit charges for accessing CellOne subscribers and that this order would take effect prospectively from the date of the judgment.

Having held that direct interconnectivity was not mandatory, the TDSAT did however make a number of positive observations on the matter inasmuch as it opined inter alia that:

- a. Since the pending demands of CMSPs on BSNL about E-1 connectivity, we are not very much convinced about the argument of infrastructure going waste.....the technological requirement of Direct Connectivity between the MSCs of CMSPs and the MSCs of BSNL CellOne needs to be addressed in a comprehensive manner.

- b. It is logical that media use/infrastructure created for interconnection ...entail some expenditure. This should be share between the two operators who by mutual agreement are going to have direct connectivity...Wherever, till the date of this order, infrastructure has been created for connections from the cellular operators to Level I TAX the same will be used for the termination of calls to the PSTN subscribers as well as to CellOne subscribers. ...In the interest of level playing field, direct connectivity between the CMSP and BSNL CellOne may be encouraged in the future by mutual agreement on the basis of costs being shared between the CMSP and BSNL CellOne.

#### **10. TRAI Issues Consultation Paper No. 3/2005 dated May 2, 2005 on Billing Issues**

In the Paper, TRAI has noted that whilst the metering and billing systems used by various operators are in line with those used by international operators, there are several areas of detail with significant problems pointing to aspects that need standardization to build consumer confidence. Accordingly, the TRAI has suggested a synchronization of clocks by introducing a reference national/common standard clock to avoid wrong billing in instances where tariffs are related to the time of the day. TRAI has also raises the following concerns and posed them as issues for consultation

- a. Charging for SMS – most operators are charging on the basis of SMSs being received on their server as a result of which SMS's sent to invalid numbers / landlines also get charged
- b. Publishing of tariffs- operators need to publish complete details of their tariff plans with sufficient information as to what is applicable to any specific customer. International roaming charges also need to be published.
- c. Charging for value added services by putting the burden of subscribing / unsubscribing on the customer.
- d. Premium rate services accidental dialing of PRS offered on the IVR platform, which are not disconnected even if the customer gives no response, leading to generation of heavy bills.
- e. Short duration calls – operators are charging for dropped calls (which is no fault on part of the customer), but which are billed on a per minute basis.
- f. Issues relating to credit limit and bill payment period

The Consultation Paper also included information on international practices in billing as well as a Code of Practice for Billing Accuracy in India. Responses to the Consultation Paper have to be submitted by May 31, 2005.

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