

March 31, 2004, New Delhi

1. TDSAT Judgment on Retention of 5% of Pass Through Revenues

COAI and its Members had filed a petition in TDSAT against DoT, BSNL, MTNL and TRAI on July 10, 2003 seeking:

- Implementation of the TRAI Interconnect Determination of January 8, 2001 allowing CMSPs to retain 5% of their pass through revenues to FSPs
- Refund / adjustment of the excess amounts paid by the CMSPs on the above account from January 8, 2001 to January 31, 2002 together with interest computed at PLR from the date of over payment of each bill.

In its judgment dated **March 29, 2004**, Hon'ble TDSAT upheld the Petition and directed BSNL and MTNL to implement the TRAI Determination with effect from January 25, 2001 and to refund / adjust all the excess amounts received by them for the period January 25, 2001 to January 31, 2002. TDSAT also directed that this amount would carry interest @12% p.a. from February 1, 2002.

The reasons given for the above judgment include inter alia :

- a. It has not been disputed that the TRAI Determination of January 8, 2001 is a decision under the Act and is binding in nature.
- b. TRAI also reiterated its Determination to allow 5% retention as a part of its Recommendations on limited mobility, which were accepted by the DoT & Guidelines were issued on January 25, 2001.
- c. When CMSP licenses were amended pursuant to introduction of limited mobility, they provided that retention of 5% revenues would be applicable from January 25, 2001.
- d. The Tribunal's judgment on limited mobility upheld the stand of DoT and the issue of 5% retention stood settled.
- e. The Tribunal's judgment on limited mobility also referred to consideration of the TRAI's Recommendations by the Telecom Commission wherein the Telecom Commission had

observed that “the concession proposed by TRAI for cell operators will become operative from the date of issue / announcement of guidelines for issuance of license for basic service.”

- f. Group on Telecom and Information Technology (GOT-IT) had also, in its report dated April 27, 2001 recommended and accepted the right of CMSPs to retain 5% of pass through revenue.
- g. BSNL’s contention that the Determination was a basket of 6 issues and could not be implemented partially as the CMSPs had challenged the Determination, cannot be upheld because the BSNL letter to its CGMs advising full implementation of the Determination after withdrawal of the Appeal by CMSPs does not dispute the Determination in respect of the retention of 5% revenues.
- h. Assuming other issues still remain to be sorted out but that has nothing to do with the retention of 5% of the revenue.
- i. The said Determination was actually implemented by BSNL in Himachal Pradesh with effect from January 25, 2001. This cannot be claimed by BSNL to be an error as no refund was sought by BSNL for the 5% allegedly paid under mistake.
- j. While BSNL has stated that certain requirements had to be met before the 5% retention could be allowed, they have not specified those requirements nor have they stated when and how these requirements were eliminated
- k. No Interim Order was given by the Tribunal in the Appeal No. 2/2001 (against the Determination) filed by the Petitioner, which prohibited BSNL from complying with the Determination and giving credit of 5% to the CMSPs.
- l. TRAI Interconnection Regulation of 2001 did not supercede its Interconnect Determination of January 8, 2001; there was thus no requirement for the Petitioners to challenge this Regulation.
- m. Implementation of the Interconnection Regulations by January 31, 2002 could at best mean that the pass through revenue for which credit has so far not been given should be done by January 31, 2002. Any other interpretation would question the very legality of the Interconnect Determination of January 8, 2001.

2. COAI Response to TRAI Consultation on Limiting the Number of Tariff Plans

TRAI issued a Consultation Paper No. 5/2004 dated March 8, 2004 on “Limiting the number of tariff plans offered by Access Providers. COAI submitted its response vide Letter No. Letter No. TVR/COAI/047 dated **March 27, 2004**. The highlights of the response are as below:

- a. There should be no restriction on the number of tariff plans that can be offered by a service provider. In an open and competitive scenario, the market is the best determinant on the number of tariff plans that it can sustain.
- b. In the intensely competitive mobile market, niche tariff offerings are an important competition too for successfully serving & maintaining a satisfied consumer base.
- c. Tariff plans must be in line with the regulatory principles adopted by TRAI.
- d. The tariff format prescribed by the TRAI should be simplified to ensure compliance & that consumers are better aware of the financial expenditure on any particular tariff package and can also compare the various tariff plans on offer.
- e. A validity period must be given for all promotional plans and that TRAI should put a system in place to ensure that promotional plans do not exceed their declared validity period.

3. Meeting with Secretary DoT & Chairman Telecom Commission

A joint meeting of the Members of COAI & ABTO with the Secretary DoT and his senior colleagues was held on **March 19, 2004**. The common issues put forth by the members of both Associations included :

- a. **Review of Definition of AGR** (Adjusted Gross Revenues) to include only revenues from licensed activities – the DoT noted that the matter was sub judice.
- b. **IUC & BSNL Related Issues**
 - (i) Publication of RIO by BSNL – COAI sought DoT's support in advising BSNL to accept the modifications suggested by TRAI and to publish its RIO. DoT noted that the matter was between two operators and was sub judice.
 - (ii) Non-discriminatory Billing by BSNL – COAI sought DoT's support in ensuring that BSNL adopted a non-discriminatory approach in billing. DoT noted that the matter was between two operators and was presently with the TRAI.
 - (iii) Direct Connectivity with BSNL – COAI sought the support of DoT in advising BSNL to set up direct links with the CMSPs for its cellular traffic and not to unfairly impose a carriage charge of 20p per minute for calls made by private CMSPs to its cellular consumers. DoT noted that the matter was sub judice in TDSAT.
 - (iv) Distance based charging by BSNL – COAI pointed out that BSNL was indulging in distance based charging for intra-circle mobile to PSTN calls instead of the prescribed carriage

through TAX charges of 20p per minute stipulated by TRAI. DoT noted that the matter was presently in TRAI

(v) Roaming agreements with BSNL – COAI sought support of DoT for advising BSNL to enter into roaming agreements with private operators to ensure connectivity for consumers of private CMSPs roaming in areas served only by the BSNL networks. DoT noted that the matter was between two operators.

c. **Issues Related To Access Deficit** - COAI submitted that ADC as a source of subsidy should be realistic, rational, transparent, non-discriminatory, fair to competition and in the interests of consumers. DoT noted that the TRAI had jurisdiction in this matter

d. **Review of Bank Guarantees** – COAI sought that Financial Bank Guarantees be brought down to one quarter's license fee. DoT indicated that it would review this submission. COAI also sought full release of Performance bank Guarantees as the CMSPs had met their rollout obligations. DoT stated that the PBG related not only to rollout but also to enforcing other terms & conditions of license

e. **Guidelines on Mergers & Acquisitions** – COAI sought to learn from the DoT that in cases where the 1st or 2nd Circle CMSP merged with the 4th CMSP, whether the additional concession of 2% in license fee revenue share applicable to the former would also be available to the merged entity. DoT pointed out that the rule of survival would apply in this case.

f. **Surrender of Licenses Under UASL** – COAI asked DoT to consider refund of license fee in case of operators who, by virtue of having both a fixed as well as a mobile license ended up with a surplus license under UASL. DoT stated that the path for surrender of licenses was provided for both under the Intra-Circle Merger & Acquisition guidelines as well as under the terms of the license agreement

A few issues that were pertinent only for the CMSPs were not discussed in the joint meeting, but merely flagged for a detailed discussion at a later date. These included :

- Direct Inter-Circle Connectivity
- Spectrum Allocation & Pricing
- Surrender of Surplus Licenses under UASL.

A separate meeting has already been sought with the Secretary DoT vide Letter No. TVR/COAI/041 dated March 19, 2004, to discuss the above issues in detail

4. Clarifications on License Agreement for Unified Access Services

In a submission vide Letter No. TVR/COAI/042 dated **March 19, 2004**, COAI sought certain clarifications on the Unified Access License Agreement finalized by DoT. These included :

- a. The effective date for CMSPs migrating to a UAS License.
- b. A confirmation that under UAS License a service provider will be entitled to offer either wired or wireless services or both, but not obligated to offer each and every service listed under the license.
- c. That the penalty of Rs. 50 crores specified in Clause 10.2 (ii) for violation of terms and conditions of license was not there in the license agreements of the existing CMSPs & would not be applicable to CMSPs migrating to UASL.
- d. That it must be clarified that the annual license fee revenue share under Clause 18.2 includes contribution towards USO, R&D and cost of administration & regulation as has been mentioned in the 4th CMSP license
- e. That it be clarified that the Performance Bank Guarantees under Clause 21.1 would be fully released upon fulfillment of rollout obligations.
- f. That the provision under Clause 21.3 for securitizing one-years spectrum usage charges was not there under the 4th CMSP license. That if at all spectrum charges have to be securitized, these should be in line with the conditions applicable to license fee revenue share.
- g. That Clause 26.6 should be strengthened to state that direct connectivity is mandated for each service, except under extraordinary circumstances.
- h. That the liquidated damages of Rs. 7 crores specified under Clause 35.2 are far higher than those applicable to existing operators (Rs. 1 crores) and the same will not be applicable to existing licensees.
- i. That the spectrum cap given in Clause 43.5 (ii) is far lower than what is already available to allocated to existing licensees and that this clause should be modified to state that spectrum allocated will be as per the spectrum policy of the Licensor as amended from time to time.

5. Clarifications on DoT Guidelines on Intra-Circle Mergers & Acquisitions

In a submission vide letter No. TVR/COAI/024 dated March 1, 2004 to Secretary, DoT, COAI sought certain clarifications on the Intra-circle Merger and Acquisition guidelines notified by DoT. DoT responded to COAI's submissions on **March 17, 2004**. The queries raised by COAI as well as the clarifications given by DoT are reproduced below :

COAI Query	DoT Clarification
1. Duration of license of merged entity as original license periods of the merging companies may be ending on different dates.	Duration of license will be as per the license period of the acquiring company. <u>Please Note :</u> However, in a subsequent media clarification, DoT is reported to have stated that the effective date will be as per the later effective date of the two entities. We are seeking clarification from DoT in this regard.
2. Upper limit of spectrum allocation in case of merger of 2 CDMA players or one CDMA and one GSM player	Ceiling of spectrum specified in the guidelines is technology neutral. (2x15 MHz for Metros & Category "A" Circles and 2x12.4 MHz for Category "B" and "C" Circles)
Criteria if any, for determining the number of players in a service area - e.g. minimum market share or coverage area necessary for determining the effective presence of each player?	No. Operator having license or even token presence will be counting as a player for determining minimum number of players.
3. Higher spectrum usage charges post merger will act as disincentive for M&A. Suggest that spectrum usage charges be reviewed and a flat percentage of AGR be specified or alternatively, post merger, the usage charges could be pegged at the higher %age of the two being paid by them prior to M&A.	Spectrum charges will be as per applicable charges for the total spectrum held by the merged entity.
4. Calculation of spectrum usage charges in case of merger of one CDMA and one GSM player?	Spectrum charges will be the same for GSM as well as CDMA. Charges will be as per total spectrum held by the merged entity.
5. Could a company having UAS License split its fixed line and mobile businesses and merge only its mobile business with another operator having cellular license for the same or different service area	No. UAS Licensee cannot split its fixed & mobile businesses and merge its mobile business with another operator in the same service area.

6. Handing over of Inter-Circle traffic to BSNL for Delhi & Mumbai

Ever since the commencement of cellular mobile services in India, inter-Circle cellular traffic from Delhi & Mumbai has been routed through MTNL. For this the requisite links have been built up by all Access Providers. However vide its letter dated January 29, 2004 BSNL has asked all service providers to hand over, with immediate effect, all their NLD traffic directly to the Level I TAX set up by BSNL. On the other hand MTNL vide its letter dated March 5, 2004 has requested all the service providers to sign tripartite agreements for transiting NLD traffic through MTNL failing which MTNL will refuse to handle transit traffic of BSNL. Further MTNL is levying a transit charge of 20p per minute for all such calls transited through MTNL.

In light of the fact that it would be extremely difficult as well as expensive for the service providers to comply with the extremely short time frames given by BSNL and MTNL to establish direct links, COAI has sought the intervention of TRAI in the matter vide its Letter No. TVR/COAI/033 dated March 9, 2004.

TRAI responded to COAI's submission on **March 12, 2004** stating that CMSPs must immediately obtain direct connectivity with the BSNL's NLD TAX that is already functional in Delhi and Mumbai and that transiting of traffic may be done only in exceptional situations where direct connectivity may not be possible or due to emergency breakdown, overflow of traffic, etc.

7. TRAI Consultation on Application of Principles of Non Discrimination in Tariffs

TRAI issued a Consultation Paper No. 4/2004 dated February 13, 2004 on "Application of the principles of Non-discrimination in tariff schemes like CUG (Closed User Group), VPN (Virtual Private Network), F&F (Friends & Family), etc". COAI submitted its response vide Letter No. Letter No. TVR/COAI/028 dated **March 5, 2004**. The highlights of the response are as be

- a. CUG & VPN schemes have been in existence for some time and they have proved extremely beneficial for subscribers. They should not be disallowed.
- b. However, TRAI should clearly define the terms CUG, VPN and F&F so as to avoid their misinterpretation and misuse.
- c. The ITU definition for CUG and VPN may be adopted.
- d. In line with the ITU definition, there must be some restrictions on outside access under CUG / VPN.
- e. Bills for CUG / VPN should be raised in one single name.

- f. CUG schemes should be restricted within one license area and specific fixed Or mobile network only.
- g. The minimum number of connections could be 5, there should be no maximum limit.
- h. The schemes must satisfy the regulatory principles of non-discrimination, non-predation and IUC compliance laid down by the Authority

8. TRAI Meeting on Cellular Services for Rural Areas

TRAI organized a meeting of all cellular mobile service providers including BSNL & MTNL on **March 1, 2004**. At the said meeting:

- a. TRAI requested CMSPs to submit details of their subscriber basis on the basis of Urban & Rural subscribers (as defined under the Census) so that it could be projected to the Government that cellular mobile was no longer an elitist service but was also contributing to rural communication needs. All CMSPs agreed to segregate their subscriber base as above for all new subscribers enrolled from April 1, 2004. For past records it was submitted that they would try to complete the segregation by June 30, 2004. It was also suggested that given the enormity of the task, it would perhaps be easier for the CMSPs could designate all non-urban subscribers as rural.
- b. TRAI also requested the service providers to discuss amongst themselves the possibilities on infrastructure sharing (including active sharing) for such sites that were on the fringes of urban areas but yet able to provide mobile services in nearby rural areas. Such sharing could also be considered for other uncovered areas if agreed to amongst operators.
- c. TRAI also expressed its willingness to consider a higher termination charge for cellular mobile calls terminating in rural areas and asked the CMSPs to propose a foolproof mechanism to implement the same.

9. Subscriber Numbers for February 2004

The all India GSM cellular subscriber base rose by 0.96 million in February 2004 to touch 24.62 million by end- February 2004, up from 23.36 million as of January end 2004 - a growth of 5.4% in the month under consideration. This growth represents a slow down from previous quarter of November 2003 to January 2004 when the GSM industry had been regularly clocking subscriber adds of 6-7% per month.

This slowdown could perhaps be attributed to the introduction of the revised IUC & ADC regime with effect from February 1, 2004. The imposition of an ADC on cell-to-cell calls as also a high ADC levy on ILD calls both incoming as well as outgoing, has lead to an increase in cellular tariffs. This would no doubt have had an adverse impact on the attractiveness / affordability of the service translating into lower growth.

The market share of different service area categories remained virtually constant with Metros accounting for 31% of the subscriber base, Category A Circles for 37%, Category B Circles for 28% and Category C circles for 4%.

10. Meeting with Commissioner Liikanen of the European Union

A team from the European Commission visited India for the Euro India Forum. Commissioner Liikanen, a very senior official in the European Commission, who was leading the delegation, expressed an interest in meeting the Promoters / CEOs of Indian Cellular companies. Accordingly a meeting was set up with Commissioner Liikanen and his team for an interaction with some senior representatives of the Indian Cellular industry on **March 26, 2004**.

A brief presentation was made to Commissioner Liikanen on the Role of COAI, present status and future prospects of the Indian Cellular Industry and focus on some subsisting Issues that need to be resolved expeditiously for the cellular industry to perform to its full potential.

11. Meeting of the ITU (D) Regional Working Group, April 26-27, New Delhi

The ITU (D) Sector has scheduled a meeting of its Regional Working Group for Private Sector Issues for the Asia Pacific Region on April 26-27, 2004 at Hotel Maurya Sheraton, New Delhi. The Meeting is being convened by Mr. Hamadoun I. Toure, Director BDT (Telecom Development Bureau) of the ITU and will be attended by delegates from all parts of the Asia Pacific region.

During this Meeting, the regional Working Group will pursue the examination of the following issues as :

- Spectrum
- Interconnection
- Cost of Levies and Duties

The meeting is being facilitated by COAI.