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**TELECOM REGULATORY AUTHORITY OF INDIA**

**NOTIFICATION**

New Delhi, the 07 June, 2007

# INTERNATIONAL TELECOMMUNICATION ACCESS TO ESSENTIAL FACILITIES AT CABLE LANDING STATIONS REGULATIONS, 2007 (5 OF 2007)

**File No. 416-1/2007-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, namely:-

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## CHAPTER I

## PRELIMINARY

**1. Short title, extent and commencement.--** (1) These regulations may be called the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007.

(2) They shall come into force on their publication in the Official Gazette.

**2. Definitions. --**In these regulations, unless the context otherwise requires,-

(a) **"**Access Facilitation" means access or interconnection, as the case may be, to the essential facilities (including landing facilities for submarine cable) at cable landing station;

(b) "Access Facilitation Charges" means charges payable by the eligible Indian International Telecommunication Entity to the owner of the cable landing station to interconnect or access the capacity acquired on Indefeasible Right of Use basis or on short-term lease basis from an owner of the submarine cable capacity or a member of consortium owning submarine cable capacity ;

(c) "Act" means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(d) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Act;

(e) “backhaul circuit” means a domestic telecom circuit which connects a cable landing station to the infrastructure or equipment of the eligible Indian International Telecommunication Entity at its premises ;

(f) “cable landing station” means the location,

(i) at which the international submarine cable capacity is connectable to the backhaul circuit;

(ii) at which International submarine cables are available on shore, for accessing international submarine cable capacity; and such location includes buildings containing the onshore end of the submarine cable and equipment for connecting to backhaul circuits;

(g) “Cable Landing Station-Reference Interconnect Offer” means an offer made by the owner of cable landing station containing the terms and conditions of Access Facilitation and Co-location of equipment (including landing facilities for submarine cables at cable landing stations for connectable system of International submarine cable) published after the approval of the Authority under sub-regulation (4) of regulation 3;

(h) “Co-location Facilities” means the facilities at a submarine cable landing station (including building space, power, environment services, security and site maintenance) which may be offered by the owner of cable landing station to the eligible Indian International Telecommunication Entity to facilitate access to the cable landing station of such owner (including installation of co-location equipment);

(i) “Co-location charges” means the charges payable by the eligible Indian International Telecommunication Entity based on the type of facilities used, for the purpose of housing the equipment of such eligible Indian International Telecommunication Entity, at the premises of owner of cable landing station which provides the access to its cable landing station, and such charges include charges for providing space, power supply, accessing physical facilities, operation and maintenance of co-location site for the said purpose;

(j) “Co-location lead-time” means the time taken by the owner of the cable landing station to make available co-location site to an eligible Indian International Telecommunication Entity;

(k)”Capacity owner” means an International Telecom Carrier or Foreign Carrier or Indian International Long Distance Operator who owns capacity on the international submarine cable landing at the cable landing station in India;

(l) “eligible Indian International Telecommunication Entity” means--

(i) an International Long Distance Operator, holding licence to act as such, and, who has been allowed under the licence to seek access to the

international submarine cable capacity in submarine cable system landing at the cable landing stations in India; or

(ii) an Internet Service Provider, holding valid international gateway permission or licence to act as such, and, who has been allowed under the licence to seek access to the International submarine cable capacity in submarine cable system landing at the cable landing stations in India;

(m) "Grooming Service" means breaking down higher capacity outputs from the submarine cable at a place or point at which it terminates into the lower capacity channels for connection to the backhaul circuits of the eligible Indian International Telecommunication Entity;

(n) "International Long Distance Operator" means a service provider or operator who has been granted licence to act as such to provide international long distance service;

(o)"Indefeasible Right of Use" means the right to use the Reference Capacity,

(i) on long term lease for the period for which the submarine cable remains in effective use;

(ii) acquired (including equipment, fibers or capacity) under an agreement entered into between the Capacity owner and an eligible Indian International Telecommunication Entity;

(iii) in respect of which maintenance cost incurred becomes payable in any circumstances during the period of validity of the agreement referred to in sub–clause (i) of this clause;

(p) "licence" means a licence granted or having effect as if granted under section 4 of the Indian Telegraph Act, 1885, (13 of 1885) and Indian Wireless Telegraphy Act, 1933 (17 of 1933);

(q) "operation and maintenance charges" means the annual charges,-

(i) payable to the owner of cable landing station by the eligible Indian International Telecommunication Entity;

(ii) for operation and maintenance of facilities for accessing the capacity of the cable landing station of such owner;

(r) "Reference Capacity" means the international submarine cable capacity,--

(i) in the submarine cable system landing at the cable landing station in India;

(ii) acquired whether on ownership basis or lease basis by the eligible Indian International Telecommunication Entity;

(iii) activated by the owner of the submarine cable system or a

member or members of consortium of submarine cable system;

(s) "regulations" means the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007;

(t) "Schedule " means the Schedule appended to these regulations;

(u) " specified international submarine cable" means any submarine cable having International submarine cable capacity landing at a cable landing station in India;

(v) "owner of cable landing station" means a service provider who owns and manages submarine cable landing station in India and has been granted licence to provide international long distance service or Internet service provider;

(w) "Virtual Co-location" means a location—

(i) of the eligible Indian International Telecommunication Entity, being outside the cable landing station, whether adjacent or at a distant from such station;

(ii) at which the eligible Indian International Telecommunication Entity may install its equipment so as to access the sub-marine cable capacity from the cable landing station ;

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(x) all other words and expressions used in these regulations but not defined, and defined in the Act and the rules and other regulations made thereunder, shall have the meanings respectively assigned to them in the Act or the rules or other regulations, as the case may be.

## CHAPTER II

## ACCESS TO CABLE LANDING STATION AND RELATED INTERNATIONAL SUBMARINE CABLE CAPACITY

**3. Provision of access to cable landing station and related international submarine cable capacity by owner of cable landing station. ------**(1) Every owner of cable landing station shall, in respect of its each cable landing station,---

(a) provide, on fair and non-discriminatory terms and conditions, at its cable landing station, access to any eligible Indian International Telecommunication Entity requesting for accessing international submarine cable capacity on any submarine cable systems;

(b) interconnect specified international submarine cable landing at its cable landing station in India in accordance with the provisions of these regulations;

(c) provide landing facilities for submarine cables at its cable landing station to a service provider, who has been granted licence to act as an International Long Distance Operator under the licence;

(d) submit to the Authority, within thirty days from the date of commencement of these regulations, a document containing the terms and conditions of Access Facilitation and Co-location facilities including landing facilities for submarine cables at its cable landing stations for specified international submarine cable capacity in accordance with the provisions of these regulations (hereinafter referred to as the "Cable Landing Station-Reference Interconnect Offer") for approval of Authority:

Provided that in case of a cable landing station which comes into existence after commencement of these regulations, the owner of such cable landing station shall 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) Every Cable Landing Station-Reference Interconnect Offer including co-location charges shall be prepared in accordance with the Schedule appended to these regulations for submitting the same under sub-regulation (1) to the Authority for its approval.

(3) The Authority shall approve the Cable Landing Station-Reference Interconnect Offer within sixty days from the date of its submission under sub-regulation (1) to the Authority:

Provided that in case the Authority is of the opinion, that the Cable Landing Station-Reference Interconnect Offer requires modifications so as to protect the interests of service providers or consumers of the telecom sector, or to promote or ensure orderly growth of the telecom sector or the Cable Landing Station-Reference Interconnect Offer has not been prepared in accordance with the provisions of these regulations, it may, after giving an opportunity of being heard to the concerned owner of the cable landing station, require such owner to modify the said offer submitted by him and such owner shall make such modifications and submit, within fifteen days of receipt of requirement for the modifications, the said offer after incorporating such modifications, for approval to the Authority.

(4) Every owner of a cable landing station shall publish, on its website and in such other manner as the Authority may specify, within fifteen days from the date of approval of the Cable Landing Station-Reference Interconnect Offer by the Authority, the Cable Landing Station-Reference Interconnect Offer so approved by the Authority and forward a copy thereof to the Authority along with a confirmation to the effect that such offer had been published in accordance with the offer so approved by the Authority and in the manner specified in this sub-regulation.

(5) Every owner of cable landing station, desirous of making any modification

to its Cable Landing Station-Reference Interconnect Offer published under sub- regulation (4), shall submit all such modifications in such Cable Landing Station-Reference Interconnect offer for prior approval of the Authority.

(6) All the provisions of these regulations, which apply for approval of the Cable Landing Station-Reference Interconnect offer, shall, mutatis mutandis, apply to the modifications to the Cable Landing Station-Reference Interconnect offer approved by the Authority under sub-regulation (3).

**4. Application by eligible Indian International Telecommunication Entity for access facilitation to cable landing station and related international submarine cable capacity.----(**1) Every eligible Indian International Telecommunication Entity desirous of accessing International submarine cable capacity on any submarine cable systems may make an application, to the owner of cable landing station for Access Facilitation, in the Form specified in Part-I of the Schedule along with the registration fee to be adjusted subsequently against the Access Facilitation Charges payable by such Entity enclosing therewith the following, namely:- ---

(a) a copy of the licence agreement of the eligible Indian International Telecommunication Entity to act as international long distance operator or a copy of licence agreement with valid international gateway permission to act as internet service provider, as the case may be;

(b) a certificate by the eligible Indian International Telecommunication Entity confirming that it has been granted the permission or approval by the Government of India, Ministry of Communication and Information Technology (Department of Telecommunications) for the operation of international gateway or any other authority required, if any under the law;

(c) a confirmation, severally or jointly, from the owner of submarine cable or member of consortium owning Submarine Cable System or capacity owner in the concerned cable system stating that the eligible Indian International Telecommunication Entity has entered into agreement or Memorandum of Understanding with it or them for sale or lease of Reference Capacity.

(d) a certificate by the eligible Indian International Telecommunication Entity confirming that it shall utilise the reference capacity in accordance with the terms and conditions of its licence.

(2) The confirmation referred to in clause (c) of sub-regulation (1) shall, among other things, specify,

(a) the number of units to be acquired or agreed to be acquired, as Indefeasible Right of Use or on annual lease basis, by the eligible Indian International Telecommunication Entity;

(b) the period of lease of the Reference Capacity to be acquired or agreed

to be acquired as Indefeasible Right of Use or on annual lease;

(c) technical information relating to—

(i) slot allocation of Reference Capacity in relevant submarine cable system acquired or agreed to be acquired by the eligible Indian International Telecommunication Entity;

(ii) bearer designation of the capacity acquired or agreed to be acquired;

(iii) the tentative date or likely date of testing of Reference Capacity by the eligible Indian International Telecommunication Entity.

**5. Confirmation by the owner of cable landing station after receipt of application under regulation 4.--------** (1) Every owner of cable landing station shall, within a period of ten days after receipt of the application for Access Facilitation and the requisite information and documents under regulation 4, send its confirmation of its ability to provide the Access Facilitation and details of required test to be undertaken for providing such Access Facilitation to the eligible Indian International Telecommunication Entity.

(2) In case it is not feasible due to any valid reason for the owner of cable landing station to comply with the access facilitation procedure or the required test to be undertaken, as the case may be, referred to in sub-regulation (1), such owner shall, within a period of ten days of receipt of the application made under regulation 4, intimate in writing, to the eligible Indian International Telecommunication Entity, an alternative plan for Access Facilitation and required test to be undertaken along with such valid reasons for not complying with such procedure or test.

**6. Entering into an agreement for providing Access Facilitation.----** (1)After receipt of confirmation for Access Facilitation, the eligible Indian International Telecommunication Entity shall, within five days from the date of receipt of such conformation , enter into an Access Facilitation agreement with the owner of the cable landing station:

Provided that in case an International Long Distance Operator or Internet Service Provider, falling under the sub-clause (i) or (ii) of clause (l) of regulation 2, had entered, before commencement of these regulations, into an agreement with an owner of a cable landing station and the Cable Landing Station-Reference Interconnect Offer of such owner has been approved by the Authority under sub-regulation (3) of regulation 3, such owner shall, after publication of the said offer under sub-regulation (4) of regulation 3, give an option to such International Long Distance Operator or Internet Service Provider, as the case may be, to make an application for Access Facilitation in accordance with these regulations**.**

(2) In case the owner of a cable landing station and the eligible Indian

International Telecommunication Entity fail to enter into an agreement under sub-regulation (1), in that case, both of them, may, jointly, without prejudice to the provisions of section 14A of the Act, at any time, request the Authority to facilitate in the process for entering into the agreement referred to in sub-regulation (1).

(3) Nothing contained in sub-regulation (2) shall be construed to take away any legal right conferred upon the eligible Indian International Telecommunication Entity and the owner of cable landing station under any law for the time being in force and either of them may, at any time during the facilitation process under that sub-regulation, exercise such right conferred upon them under any law for the time being in force.

(4) Nothing contained in sub-regulation (2) shall apply to any matter or issue for which---

(a) any proceedings, before any court or tribunal, or under the Act or any other law for the time being in force, are pending; or

(b) a decree, award or an order has already been passed by any competent court or tribunal or authority, as the case may be.

**7. Demand for access to Reference Capacity.------**(1) The eligible Indian International Telecommunication Entity shall, within five days of entering into an agreement under regulation 6, make payment of such fees and charges as specified in the Part II of the Schedule for seeking Access Facilitation for Reference Capacity**.**

(2) The owner of cable landing station, on receipt of the payment of fees and charges payable under sub-regulation (1), shall consider, the number of units to be acquired or agreed to be acquired as Indefeasible Right of Use or on an annual lease basis as referred to in the agreement, as firm demand made by the eligible Indian International Telecommunication Entity.

(3) The owner of cable landing station shall, immediately after considering the firm demand referred to in sub-regulation (2), initiate the provisioning of the Access Facilitation for the eligible Indian International Telecommunication Entity.

**8. Ensuring provision of backhaul circuit by eligible Indian International Telecommunication Entity.**------- (1) Every eligible Indian International Telecommunication Entity shall arrange, within ten days after entering into an agreement under sub-regulation (1) of regulation 6, for backhaul circuit from----

(a) the owner of the cable landing station; or

(b) a service provider who has been granted licence to provide basic service or cellular mobile telephone service or national long distance service, or international long distance service,

so as to make ready the backhaul circuit between cable landing station and

the premises of the eligible Indian International Telecommunication Entity.

(2) The owner of the cable landing station and the eligible International Telecommunication Entity shall conduct necessary tests as per mutually agreed testing procedure so that that the backhaul circuit remains in a state of readiness for interconnection before the tests for Reference Capacity provisioning are carried out.

(3) The owner of the cable landing station shall facilitate the interconnection between the eligible Indian International Telecommunication Entity and the service providers referred to in clauses (a) and (b) of sub-regulation (1) at the cable landing station for provisioning of backhaul circuit under sub-regulation (1).

**9. Testing of Reference Capacity proposed to be acquired by eligible Indian International Telecommunication Entity.--------** (1) The owner of the cable landing station shall, upon successful testing of the backhaul circuit to the cable landing station, complete all necessary steps for Access Facilitation to the Reference Capacity and such steps shall, *inter alia*, include--

(a) testing of links;

(b) interconnecting the Reference Capacity to the backhaul circuit or equipment of the service providers co-located at the cable landing station of such owner or at a Virtual Co-location.

(2) The owner of cable landing station and the eligible Indian International Telecommunication Entity, being an applicant under regulation 4, shall conduct necessary tests, as per the testing procedure for the provisioning of Reference Capacity from cable landing station in India to distant end or the other country's submarine cable station, within ten days or as may be mutually agreed upon by them.

(3) The owner of the cable landing station shall--

(a) send an intimation, after taking steps referred to in sub-regulation (2), to the eligible International Telecommunication Entity for taking control of the Reference Capacity;

(b) deliver, upon receipt of all necessary payments from the eligible International Telecommunication Entity, the Reference Capacity to such Entity immediately but not later than two days after receipt of such payment and declare the Reference Capacity as commissioned.

**10. Access Facilitation Charges and payment terms.-----** (1) For the purposes of accessing the landing facilities at a cable landing station the Access Facilitation charges as specified in Part II of the Schedule shall be ---

(a) payable by the eligible Indian International Telecommunication Entity to

the owner of the cable landing station;

(b) determined on the basis of the cost of network elements involved in the provision of access and distributed over the complete capacity of the system.

(2) The Access Facilitation arrangement shall, subject to the payment of the operation and maintenance charges by the eligible Indian International Telecommunication Entity to the owner of cable landing station, continue to be in force during the period of the Indefeasible Right of Use or on an annual lease basis, as the case may be.

(3)The owner of cable landing station shall allow the eligible Indian International Telecommunication Entity to provide Grooming Services at cable landing station of such owner.

**11. Capacity up-gradation and payment for capacity up-gradation charges by eligible Indian International Telecommunication Entity.----** In case the capacity up-gradation is required to be provided for Access Facilitation to international submarine cable capacity at cable landing station, the owner of the cable landing station shall, on receipt of request for such up-gradation and payment of charges for such up-gradation from the eligible Indian International Telecommunication Entity, being an applicant under regulation 4, facilitate, without prejudice to the provisions of these regulations, the up-gradation as per mutually agreed terms and conditions including time frame for such up-gradation.

**12. Cancellation charges.-------** (1) In case the eligible Indian International Telecommunication Entity fails to acquire number of units mentioned in clause (a) of sub-regulation (2) of regulation 4, either due to withdrawing of authorization or rescinding of agreement referred to in regulation 7 or any other reasons, cancellation charge for the units not so acquired shall be payable by such eligible Indian International Telecommunication Entity to the owner of the cable landing station.

(2) The cancellation charges referred to in sub-regulation (1) shall be such as are specified in Part-II of the Schedule.

**13. Termination or discontinuance of Access Facilitation by owner of cable landing station.**..... (1) The Access Facilitation shall be terminated by the owner of cable landing station----

(a) if the eligible Indian International Telecommunication Entity ceases to hold valid licence either by way of termination or suspension;

(b) in case the arrangement to acquire Reference Capacity on the Indefeasible Right of Use or on an annual lease basis, as the case may be, by the eligible Indian International Telecommunication Entity from submarine cable system owner or a member of the submarine cable system consortium or from concerned cable consortium, is terminated.

(2) In case the annual operation and maintenance charges due and payable

by the eligible Indian International Telecommunication Entity remain unpaid for more than fifteen days from the date such charges became payable, the owner of cable landing station may discontinue the Access Facilitation provided to eligible Indian International Telecommunication Entity after giving a notice, in writing, of not less than fifteen days, of such discontinuance to the eligible Indian International Telecommunication Entity and Access Facilitation shall be restored immediately after due payment of such charges by the eligible Indian International Telecommunication Entity.

**14. Restoration of Access Facilities**.---------(1)In case the licence of the eligible Indian International Telecommunication Entity has been terminated or suspended but the same is subsequently restored, the Access Facilitation arrangement if discontinued due to such termination or suspension under regulation 13 may be restored by the owner of cable landing station upon payment of all costs incurred by the owner of cable landing station for the purposes of reconnection or restoration of the Access Facilities, as the case may be, by the eligible Indian International Telecommunication Entity to the owner of cable landing station and such reconnection or restoration charges shall be such as may be mutually agreed upon between them or failing which in accordance with the costs specified in Part - II of the Schedule.

(2) If an authorization of the eligible Indian International Telecommunication Entity or arrangement entered into by it to acquire Reference Capacity on Indefeasible Right of Use or lease from submarine cable system or from a member of the submarine cable system consortium or from concerned submarine cable consortium, has been earlier withdrawn or rescinded but is subsequently restored, the access facilitation arrangement, if discontinued due to such withdrawal or rescinding may be restored by the owner of cable landing station upon payment of all costs incurred by owner of cable landing station for the purpose of reconnection or restoration, as the case may be, by the eligible Indian International Telecommunication Entity to owner of cable landing station and such reconnection or restoration charges shall be such as may be mutually agreed upon them or failing which in accordance with the costs specified in Part - II of the Schedule.

## CHAPTER III

## CO-LOCATION SITE AND CO-LOCATION SPACE

**15. Application by eligible Indian International Telecommunication Entity for provisioning of Co-location space.----**(1) Every eligible Indian International Telecommunication Entity, who makes an application for accessing international submarine cable capacity on any submarine cable systems under regulation 4, shall make, simultaneously, another application to the owner of cable landing station in the Form specified in Part -IV of the Schedule for Co-location space at a cable landing station, if such Co-location space is required by it for accessing international submarine cable capacity on any submarine cable system from the owner of

such cable landing station, enclosing therewith the following, namely:-

(a) equipment layout plan at the Co-location site at which Co-location space is requested for;

(b) purpose of accessing submarine cable capacity;

(c) details of Co-location equipment proposed to be installed;

(d) the details of space and power requirements;

(e) the floor loading of the Co-location equipment;

(f) the specification of the Transmission Tie-Cable required;

(g) the type of optical fibre cable to be used;

(h) the address, phone number, fax and e-mail of the eligible Indian International Telecommunication Entity at which communications may be sent by the owner of the cable landing station;

(i) any other requirement for Co-location of equipment.

(2) The owner of the cable landing station shall, within ten days after receipt of the application made under sub-regulation (1), acknowledge the receipt and communicate the acceptance or rejection thereof to the requesting eligible Indian International Telecommunication Entity referred to in sub-regulation (1).

(3) In case it is not feasible, due to any valid reasons, for the owner of cable landing station to provide co-location at the cable landing station referred to in sub-regulation (1), such owner shall, within a period of ten days, of receipt of the application made under sub-regulation (1), intimate in writing such non-feasibility along with valid reasons therefor, to the eligible Indian International Telecommunication Entity.

(4) The owner of the cable landing station shall reject the application made by the eligible Indian International Telecommunication Entity under sub-regulation (1) if it is not an eligible Indian International Telecommunication Entity or it has not been granted international gateway permission or licence.

(5) After receipt of acceptance from the owner of cable landing station under sub-regulation (2), the eligible Indian International Telecommunication Entity shall, within five days from the date of receipt of such conformation, enter into a Co-location Lease agreement with the owner of the cable landing station.

**16. Co-location charges and payment terms.-----**(1)The Co-location charges shall be payable, by the eligible Indian International Telecommunication Entity who has been provided Co-location by the owner

of cable landing station, to such owner of the cable landing station within five days of entering into an agreement under sub-regulation (5) of regulation 15.

(2) The Co-location 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, by other regulation made by it under the Act, such Co-location charges which shall be payable by a class or classes of eligible Indian International Telecommunication Entity and in such case the approval of the Co-location charges, as specified in Part II of the Schedule by the Authority shall not be required to be obtained under these regulations.

(3) Not withstanding the time period for provision of co-location services specified under sub-para B of Part-III of the Schedule approved by the Authority, the Co-location charges shall be payable by the eligible Indian International Telecommunication Entity as per time schedule as may be mutually agreed upon by them and where no such time schedule has been agreed upon, the Co-location charges shall be payable with in such time period as specified in sub-regulation (1).

(4) The owner of cable landing station shall, upon receipt of application under regulation (1) of regulation 15 and receipt of all charges and fulfillment of other requirements under these regulations, provide the Co-location facility at the cable landing station to the Indian International Telecommunication Entity who made such application.

**17. Allocation of alternative Co-location space.--------** (1) In case the owner of cable landing station is unable to offer, due to space limitations or any other valid reason, the physical Co-location requested for by the eligible Indian International Telecommunication Entity, the owner of the cable landing station shall take reasonable measures to give an options of virtual Co-location to enable such eligible Indian International Telecommunication Entity to have Access Facilitation:

Provided that in case the owner of cable landing station is unable to offer Co-location space at cable landing station and the eligible Indian International Telecommunication Entity fails to arrange a Virtual Co-location site, then the owner of cable landing station shall endeavour to provide an alternate site other than the Virtual Co-location.

(2) The charges relating to alternate site for Co-location and interconnecting link to the cable landing station shall be borne by the eligible Indian International Telecommunication Entity.

(3) In case an eligible Indian International Telecommunication Entity is offered, due to space constraints at cable landing station or any other valid technical reason, a Virtual Co-location facility by the owner of the cable

landing station, in that case the owner of the cable landing station shall make available required elements including duct within the building for the purpose of running an interconnection cable within the cable landing station for which the charges shall be payable and borne by eligible Indian International Telecommunication Entity.

(4) The eligible Indian International Telecommunication Entity shall arrange the telecommunication link from Virtual Co-location Site to cable landing station, cost of which shall be borne by such eligible Indian International Telecommunication Entity.

**18. Additional Co-location space and Co-location equipment.------**(1) If the eligible Indian International Telecommunication Entity intends to replace, modify or re arrange any of its Co-location equipments in the Co-location space or install additional Co-location equipment in the Co-location space, it shall submit a request in writing to the owner of cable landing station for such modification, rearrangement or additional Co-location equipment or replacement, as the case may be and owner of cable landing station shall intimate, within ten days of receipt of such request, its decision for such replacement, modification or re-arrangement.

(2) The eligible Indian International Telecommunication Entity shall, upon receipt of acceptance from the owner of cable landing station for such request made under sub-regulation (1), modify, rearrange or replace, as the case may be, any of its Co-location equipments in the Co-location space or install additional Co-location equipment in the Co-location space after making payment of all charges and fulfillment of other requirements under these regulations.

**19. Installation of Co-location Equipment by eligible Indian International Telecommunication Entity.-------** The eligible Indian International Telecommunication Entity, which has entered into an agreement under sub-regulation (5) of regulation 15 with the owner of cable landing station shall install its Co-location equipment in the Co-location space as may be mutually agreed upon between him and the owner of cable landing station, in accordance with the Co-location equipment installation and maintenance procedures specified in Part -V of the Schedule.

**20. Authorization for physical access for Co-location space at cable landing station**.----------If the application made by the eligible Indian International Telecommunication Entity under sub-regulation (1) of regulation 15 has been accepted by the owner of the cable landing station, the eligible Indian International Telecommunication Entity shall communicate, the names of its personnel in the Form specified in the Part-VII of Schedule to the owner of cable landing station who shall allow them access to the Co-location space and issue the authorization for physical access in the Form specified in the Part-VI of the Schedule.

**21. Prohibition to sub-lease the Co-location space.----------** The eligible Indian International Telecommunication Entity shall not assign the lease in

respect of or sub-let the Co-location space at the cable landing station and Co-location site.

**22. The Co-location space to be used for the purpose of accessing submarine cable capacity in the cable landing station by the eligible Indian International Telecommunication Entity.--------** (1) The Co-location space shall be used by the eligible Indian International Telecommunication Entity for the purpose of accessing submarine cable capacity in the cable landing station.

(2) The equipment of the eligible Indian International Telecommunication Entity installed at the Co-location space may be used for, ----

(a) interconnections amongst eligible Indian International Telecommunication Entities and backhaul circuit providers referred to in sub-regulation (1) of regulation 8 at the cable landing station for provisioning of backhaul circuit;

(b) extending the Reference Capacity to the Point of Presence or premises of eligible Indian International Telecommunication Entity.

**23. Termination of lease of Co-location space**.------- (1) The owner of cable landing station may, in the event of closure of Co-location site or the expiry of the lease of Reference Capacity, terminate the lease of Co-location space, after giving to the eligible Indian International Telecommunication Entity a notice, in writing, of not less than six months from such closure or before the expiry of the lease of Reference Capacity, as the case may be, and such termination of the lease of co-location space shall take effect from the date specified in the notice.

(2)The owner of cable landing station may terminate the lease of Co-location space, if------

(a) the eligible Indian International Telecommunication Entity ceases to hold valid licence or the licensor directs, in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or for any other reason, the termination of such lease;

(b) the eligible Indian International Telecommunication Entity uses or allows to be used the Co-location space in contravention of the regulations or directions issued under the Act or any other law for the time being in force or in contravention of the terms of the licence;

(c) the eligible Indian International Telecommunication Entity removes or abandons its Co-location equipments or keeps such space idle for a period of more than ninety days;

(d) the Co-location space has become unsafe or unsuitable for the purpose of accessing facilities under these regulations:

Provided that the owner of cable landing station shall not terminate the lease of Co-location space under clauses (b) to (d) unless a notice of not less than ten days had been given to the eligible Indian International Telecommunication Entity.

(3) Upon termination of the lease of Co-location space on request by the eligible Indian International Telecommunication Entity, prior to the expiry of the lease term, the following charges shall be payable by the eligible Indian International Telecommunication Entity, namely:-

(a) Co-location charges payable for a period not exceeding six months;

(b) outstanding pro-rata site preparation work charges.

(4) Subject to the provisions contained in sub-regulation (3), the owner of cable landing station may, at any time, by giving notice of not less than ten days to the eligible Indian International Telecommunication Entity, terminate the lease of Co-location space if the eligible Indian International Telecommunication Entity fails to complete the installation of its Co-location equipment within ninety days.

(5) If the eligible Indian International Telecommunication Entity fails to complete installation of its Co-location equipment due to circumstances beyond its reasonable control, it shall intimate such circumstances to the owner of cable landing station who shall grant an extension of reasonable time for installation of its Co-location equipment to the eligible Indian International Telecommunication Entity.

(6) If the eligible Indian International Telecommunication Entity, upon termination of the lease under sub-regulation (1), fails to discontinue the use of its Co-location equipment and remove its Co-location equipment under that sub-regulation, the owner of the cable Landing station may remove the Co-location equipment and restore the Co-location site to its original condition.

(7) Upon expiry or termination of the lease of Co-location space of the eligible Indian International Telecommunication Entity, it shall pay to the owner of cable landing station all reasonable costs, connected with the work undertaken for restoration under sub-regulation (6) after removal of co-location equipment (including the disposal of the Co- location equipment).

(8) Upon expiry or termination of the lease of Co-location space of the eligible Indian International Telecommunication Entity, any physical access granted to the Co-location site shall stand withdrawn.

(9) In case the eligible Indian International Telecommunication Entity requires restoration of co-location facilities already terminated, it may make a request to the owner of cable landing station which shall undertake reasonable endeavors and make all efforts to get the co-location facilities restored to the eligible Indian International Telecommunication Entity, at the

earliest.

(10) Nothing contained in these regulations shall be construed as binding the owner of cable landing station for any service guarantee agreement or any representation by owner of cable landing station on the performance of the specified international submarine cable system.

(11) Without prejudice to the rights of the owner of the cable landing station specified in sub-regulation (2), the eligible Indian International Telecommunication Entity may negotiate with the owner of submarine cable system or Member of the Consortium of submarine cable system, as the case may be, for any restoration arrangement including alternate transmission medium, if necessary.

## CHAPTER IV

## MISCELLENEOUS

**24. No obligation of owner of cable landing station to place Co-location equipment of the eligible Indian International Telecommunication Entity adjacent to each other.------** Every owner of the cable landing station shall endeavor to accommodate any reasonable request by the eligible Indian International Telecommunication Entity for adjacent placement of its Co-location equipment adjacent to each other but such request shall not confer any right upon the eligible Indian International Telecommunication Entity for adjacent placement of its Co-location equipment and the Co-location space allocated and the actual placement of the Co-location equipment as determined by the owner of the cable landing station shall be final.

**25. Period of Co-location agreement.-------**(1) The agreement between the parties regarding each Co-location space to be leased under the Co-location frame work shall commence on the date the eligible Indian International Telecommunication Entity confirms its acceptance of the charges for the Co-location site and makes payment therefor and remain in force for a minimum period of three years after such commencement or for such period as may be mutually agreed upon between the parties.

(2) The period of Co-location facility referred to sub-regulation (1) shall be renewed by the owner of cable landing station if the eligible Indian International Telecommunication Entity has not defaulted in payment of co-location charges or has not committed any breach of the terms and conditions of such agreement.

**26. Reporting Requirements.-----** The Access Facilitation agreement entered under regulation 6 or Co-location Lease agreement entered under sub-regulation (5) of regulation 15 or every other agreements entered into in pursuance of the provisions of these regulations between owner of cable landing station and eligible Indian International Telecommunication Entity shall be submitted to the Authority for registration within 15 days from the date of entering into such agreements.

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## SCHEDULE

### FORM OF CABLE LANDING STATION-REFERENCE INTERCONNECT OFFER (CLS-RIO)

(See regulation 3 of International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007)

### PART-I

**Form of application for request to Access Facilitation at Cable Landing Station for International Submarine Cable Capacity**

**(See regulation 4)**

M/s .....(Name of eligible Indian International Telecommunication Entity) hereby request for Access Facilitation to below mentioned Reference Capacity, which is subject to the Terms and Conditions published in "Cable Landing Station-Reference Interconnect Offer (CLS-RIO) made under the provisions of the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 for Access Facilitation to essential facilities including landing facilities for submarine cables at cable landing stations for International submarine cable capacity at cable landing station.

M/s .....furnish the necessary details as follows:-

| | |
|---|---|
| 1. Name of the company and its Address | |
| 2. Billing address | |
| 3. Contact person<br>3.1 Name:<br>3.2 Phone No:<br>3.3 Email:<br>3.4 Fax: | |
| 4. Particulars of eligible Indian International Telecommunication Entity, being Access Seeker: | |
| 4.1 International Long Distance Operator | |
| 4.2 Internet Service Provider | |

| | |
|---|---|
| 4.3 Licence number: | |
| 4.4 Date of issue of Licence<br>(Please attach an attested copy of licence and valid International gateway permission as applicable) | |
| 5. Technical details of Reference Capacity (Please provide or enclose the relevant information and details, as the case may be) | |
| 5.1 Reference Capacity details: Speed (STM-1/STM-4/STM-16/ STM-64 etc.) | |
| 5.2 Number of capacity units | |
| 5.3 Indefeasible Right of Use or Lease | |
| 5.4 Period (in case of Lease) | |
| 6. Technical details of Reference Capacity of submarine cable: | |
| 6.1 Cable Station Backhaul Port details (capacity and type-STM-1e/ STM-1o/STM-4/ STM-16/STM64 etc.) | |
| 6.2 Assignment provided by submarine cable system capacity owner to be attached if available (slot or Fiber Pair allocation in submarine cable, Bearer Designation, Cable System Owner Internal ID etc.) | |
| 6.3 Proposed/tentative date of testing of backhaul circuit | |
| 6.4 Proposed test schedule and copy of work-order/document issued by owner of cable system along with any other related technical information to facilitate planning of Reference Capacity testing. | |
| 6.5 End to end testing (between the station of eligible Indian International Telecommunication Entity and distant end submarine cable station) schedule and provisioning of access of the Reference Capacity at cable landing station. | |

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| | |
|---|---|
| 7. Details of Reference Capacity owner(s)/submarine cable capacity owner(s) (See clause (c) under sub-regulation (1) of regulation 4) | |
| 7.1 Name of the company and address | |
| 7.2 Contact person<br>7.2.1 Name:<br>7.2.2 Phone:<br>7.2.3 Email:<br>7.2.4 Fax: | |
| 8.Details of backhaul circuit provider(s) (Domestic Link including local loop) | |
| 8.1 Name of the company and address | |
| 8.2 Contact person<br>8.2.1 Name:<br>8.2.2 Phone:<br>8.2.3 Email:<br>8.2.4 Fax: | |
| 9. Registration fee payment details<br><br>9.1Cheque/Banker's Cheque/Demand Draft No. _____ dated _____ for Rs . _____Drawn on (bank/branch) _____ | |
| 10. Name of authorized signatory of this form (Please attach authorization) | |
| 11. Any other details required to be given but not specified at serial numbers 1 to 10 of this Form. | |

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AUTHORIZED SIGNATORY

Date: _____ Name: _____

Signature: _____

Official Seal:

**PART – II**

(See regulations 3, 7, 10, 12, 14 and 16)

| **Details of Charges**<br><br>**(1)** | **Amount payable (Rupees)**<br><br>**(2)** |
|---|---|
| **1. Access Facilitation Charges for eligible Indian International Telecommunication Entity, being access seeker** | |
| 1.1 In case of Indefeasible Rights of Use, one time Access Facilitation Charges per unit capacity payable on execution of the Access Facilitation agreement | |
| **Sl.No.** **Per Unit Capacity** | |
| (i) STM-1 | |
| (ii) STM-4 | |
| (iii) STM-16 | |
| (iv) STM-64 | |
| 1.2 In case of lease, recurrent Access Facilitation Charges per annum per unit capacity payable on execution of the Access Facilitation agreement and thereafter before the due date (anniversary of commissioning date) each year subsequently. (applicable only for first three years or period as applicable for each unit capacity) | |
| **Sl.No.** **Per Unit Capacity** | |
| (i) STM-1 | |
| (ii) STM-4 | |
| (iii) STM-16 | |
| (iv) STM-64 | |
| **2. Annual Operation & Maintenance (O&M) charges for eligible Indian International Telecommunication Entity, being access seeker** | |
| 2.1 Charges per annum per unit payable on the execution of the Access Facilitation agreement and thereafter before the due date (anniversary of commissioning date) each subsequent year. | |
| **Sl.No.** **Per Unit Capacity** | |
| (i) STM-1 | |
| (ii) STM-4 | |
| (iii) STM-16 | |
| (iv) STM-64 | |

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| | | |
|---|---|---|
| **3. Restoration charges one time per unit capacity in the event of termination or discontinuance of access facilities** | | |
| **Sl.No.** | **Per unit capacity** | |
| (i) | STM-1 | |
| (ii) | STM-4 | |
| (iii) | STM-16 | |
| (iv) | STM-64 | |
| **4. Co-location charges:** (Please specify the items and their charges separately i.e. building space charges per sq feet, duct & cable runway charges, distribution frame, AC power including standby AC Power, DC power, air conditioning including other physical / environmental services, security and site maintenance etc) | | |
| **5. Cancellation charges for eligible Indian International Telecommunication Entity, being access seeker** (See Regulation 12) | | |
| **Sl.No.** | **Per Unit Capacity** | |
| **(i)** | STM-1 | |
| **(ii)** | STM-4 | |
| **(iii)** | STM-16 | |
| **(iv)** | STM-64 | |
| **6. Any other charges or details for eligible Indian International Telecommunication Entity, being access seeker but not specified at serial numbers 1 to 5 of this Form** | | |

***Note:*** *The owner of cable landing station shall provide to the Authority, the costing elements considered, their costs and costing methodology employed along with calculations sheet in arriving at the charges submitted above in Part-II of the Schedule of these regulations for international submarine cable capacity access and co-location facilities etc., while submitting the Cable Landing Station*-Reference Interconnect *Offer as per clause (d) of sub-regulation (1) of regulation 3.*

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## PART - III

## TIME PERIOD FOR PROVISION OF ACCESS FACILITATION SERVICES AND CO-LOCATION SERVICES BY OWNER OF CABLE LANDING STATION

(See regulation 4, 5, 6, 7, 8, 9, 15 and 16)

| **Activity**<br>**(1)** | **Days (Time limit)** |
|---|---|
| **A. TIME PERIOD FOR PROVISION OF ACCESS FACILITATION SERVICES** | |
| 1.Eligible Indian International Telecommunication Entity, being access seeker submits request to owner of cable landing station | Day 1 |
| 2. Owner of cable landing station checks feasibility and reverts to eligible Indian International Telecommunication Entity, being access seeker with acceptance or modified schedule for access facilitation and testing; provides proforma for invoice | Day 11<br>(max 10 days) |
| 3. Date of firm demand {x is the time taken by of eligible Indian International Telecommunication Entity, being access seeker to sign the Access Facilitation agreement including the payment as per invoice}; x is the time limit max 5 days as per clause (a) and also 5 days as per clause (b) below:- | Day 11+x |
| (a) Time limit for Access Facilitation agreement by eligible Indian International Telecommunication Entity | 5 days |
| (b) Time limit for payment as per invoice by eligible Indian International Telecommunication Entity | 5 days |
| 4. Eligible Indian International Telecommunication Entity, being access seeker arranges and provides backhaul {y is the time taken by eligible Indian International Telecommunication Entity to arrange and provide the backhaul circuit}; y is the time limit max 10 days as per clause (a) below:- | Day 11+x+y |
| (a) Time limit for eligible Indian International Telecommunication Entity to arrange for backhaul circuit from any of the service providers including cable landing stations owner having backhaul circuit capacity at the cable landing station | 10 days |

| | |
|---|---|
| 5. Owner of cable landing station Cable Landing Station to complete all actions with a view to facilitate access to reference capacity | Day 22+x+y<br>(max 10 days) |
| 6. Owner of cable landing station extend Reference Capacity to cable landing station and provide cross connection immediately but not more than 2 days after completion of step 5. | Day 22/24 +x+y<br>(max 2 days) |
| 7. Any other details required to be given but not specified at serial numbers 1 to 6 of the Para A of this Form | |
| **B. TIME PERIOD FOR PROVISION OF CO-LOCATION SERVICES** | |
| 1.Eligible Indian International Telecommunication Entity, being access seeker submits Request to owner of cable landing station | Day 1 |
| 2. Owner of cable landing station checks feasibility and reverts to eligible Indian International Telecommunication Entity, being access seeker with acceptance or rejection with reasons and with alternative proposal | Day 11<br>(max 10 days) |
| 3. Owner of cable landing station provides provision of Co-location at cable landing station (z is the time taken by of eligible Indian International Telecommunication Entity, being Access Seeker to sign the co-location agreement and payment of charges); Z is the time limit max 5 days as per clause (a) and also 5 days as per clause (b) below:- | Day 12+z |
| (a) Time limit for the co-location agreement by eligible Indian International Telecommunication Entity | 5 days |
| (b) Time limit for payment of charges for Co-location by eligible Indian International Telecommunication Entity | 5 days |
| 4. Any other details required to be given but not specified at serial numbers 1 to 3 of the Para B of this Form | |

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**PART-IV**

**Form of Request for Co-Location Facility and Services**

(See regulation 15)

**Application for Request to Co-location Facility at Cable Landing Station for International Submarine Cable Capacity**

M/s .....(Name of access seeker) hereby request for Co-location facility, which is subject to the terms and conditions published in "Cable Landing Station-Reference Interconnect Offer (CLS-RIO) made under the provisions of the Telecommunication Access to Essential Facilities at Cable Landing Stations regulations, 2007.

M/s .....furnish the necessary details as follows.

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| | |
|---|---|
| 1. Name of the company and its address | |
| 2. Billing address | |
| 3. Contact person<br>3.1 Name:<br>3.2 Phone No:<br>3.3 Email:<br>3.4 Fax: | |
| **4. Particulars of eligible Indian International Telecommunication Entity, being Access Seeker:** | |
| 4.1 International Long Distance Operator | |
| 4.2 Internet Service Provider | |
| 4.3 Licence number: | |
| 4.4 Date of issue of Licence | |

<table>
<tr><td colspan="4">5. Details of eligible Indian International Telecommunication Entity requesting for Co-location</td></tr>
<tr><td>5.1 Date of application</td><td colspan="3"></td></tr>
<tr><td>5.2 Application reference No.</td><td colspan="3"></td></tr>
<tr><td>5.3 Approval for physical access is sought for the purpose of:</td><td colspan="3"></td></tr>
<tr><td>5.4 Reference date /time of access</td><td colspan="3"></td></tr>
<tr><td>5.5 Estimated duration of access</td><td colspan="3"></td></tr>
<tr><td rowspan="5">5.6 Name of Person(s) for which physical access is required</td><td>No</td><td>Name of Person</td><td>Contact No.</td></tr>
<tr><td>1</td><td></td><td></td></tr>
<tr><td>2</td><td></td><td></td></tr>
<tr><td>3</td><td></td><td></td></tr>
<tr><td>4</td><td></td><td></td></tr>
<tr><td>5.7 The Co-location site at which Co-location space is requested:</td><td colspan="3"></td></tr>
<tr><td>5.8 Purpose of accessing submarine cable capacity:</td><td colspan="3"></td></tr>
<tr><td>5.9 Co-location equipment proposed to be installed:</td><td colspan="3"></td></tr>
<tr><td>5.10 The space and power requirements:</td><td colspan="3"></td></tr>
<tr><td>5.11 The floor loading of the Co-location equipment:</td><td colspan="3"></td></tr>
<tr><td>5.12 The capacity of the Transmission Tie-Cable required:</td><td colspan="3"></td></tr>
<tr><td>5.13 The type of optical fibre cable to be used:</td><td colspan="3"></td></tr>
</table>

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| | |
|---|---|
| **6. On Behalf of eligible Indian International Telecommunication Entity** | |
| 6.1 Name: | |
| 6.2 Designation | |
| 6.3 Contact Number | |
| 6.4 Fax Number | |
| 6.5 e-mail id | |
| 6.6 Company Seal | |
| 6.7 Signature | |
| **7. Owner of Cable Landing Stations' (Name) reply to the requesting eligible Indian International Telecommunication Entity** | |
| 7.1 Application returned – incomplete / illegible | |
| 7.2 Not approved | |
| 7.3 Reasons for rejection | |
| **8. Approved subject to details & conditions given in the attached letter of authorization** | |
| 8.1 Alternative date & time | |
| 8.2 Alternative co-location site (if applicable) | |
| 8.3 Owner of cable landing station approval code | |
| **9. On Behalf of owner of cable landing station** | |
| 9.1 Name | |
| 9.2 Designation | |
| 9.3 Contact number | |
| 9.4 e-mail id | |
| 9.5 Fax No. | |

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| | |
|---|---|
| 9.6 Company seal | |
| 9.7 Signature | |

**PART-V**

**CO-LOCATION EQUIPMENT INSTALLATION AND MAINTENANCE GUIDELINES**

**(See regulation 19)**

## 1. INSTALLATION OF EQUIPMENT AT CO-LOCATION SPACE

### 1.1 Installation of Co-location equipment

(a) Prior to commencing installation of its Co-location equipment, the eligible Indian International Telecommunication Entity, being access seeker must submit detailed installation plans and installation schedule.

(b) The eligible Indian International Telecommunication Entity, being access seeker, must ensure that the floor loading of its Co-located equipment shall be limited to as specified by owner of cable landing station. The eligible Indian International Telecommunication Entity, being access seeker shall certify that the floor loading limit will not exceed as specified.

(c) The eligible Indian International Telecommunication Entity, being access seeker must install its Co-location equipment in the Co-location space within ninety days after the final site inspection or as mutually agreed. If the eligible Indian International Telecommunication Entity, being access seeker, failure to complete installation is attributable to circumstances beyond the reasonable control of eligible Indian International Telecommunication Entity, owner of cable landing station will grant a reasonable extension of time for installation to the eligible Indian International Telecommunication Entity, at his request. Eligible Indian International Telecommunication Entity, being access seeker, request under this clause must describe the circumstances beyond its control and such request must be received prior to the expiry of the aforementioned ninety days period.

(d) The eligible Indian International Telecommunication Entity, being access seeker must not locate equipment other than Co-location equipment in the Co-location space.

**1.2 Optical Fibre Cable**

Unless otherwise agreed by the parties, the eligible Indian International Telecommunication Entity, being access seeker, must not install more than two physical optical fibre cables in the Co-location space and up to the lead-in manhole outside Co-location space.

**1.3 Power & Earth**

Owner of cable landing station shall, if the eligible Indian International Telecommunication Entity, being access seeker so desires, designate and provide the Exchange Earth and Power Distribution Point for the eligible Indian International Telecommunication Entity. The eligible Indian International Telecommunication Entity, being access seeker, shall pay owner of cable landing station the charges for the provision of the Exchange Earth and power installation and termination in accordance with owner of cable landing station published Co-location charges.

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**1.4 Interference**

Each Party shall ensure that its Co-location equipment does not cause any interference to the other Party's equipment, plant, facilities, Networks and the equipment of other occupying eligible Indian International Telecommunication Entity, being access seeker, in the Co-location space, including when installing equipment. In the event of any interference, the parties shall take in good faith reasonable measures to resolve the problem promptly. Where the eligible Indian International Telecommunication Entity's equipment is causing interference to existing equipment and the interference cannot be resolved, the eligible Indian International Telecommunication Entity shall remove the source of interference immediately.

**1.5 Standard Operating Procedures and Safety**

(a) Regarding the installation, operation and maintenance of its Co-located equipment located in the Co-location space, the eligible Indian International Telecommunication Entity, being access seeker, must comply with owner of cable landing station Standard Operating Procedures for Co-location space and any written instructions, which are provided to the eligible Indian International Telecommunication Entity by owner of cable landing station.

(b) Regarding the physical access to the Co-location space, the eligible Indian International Telecommunication Entity shall comply with owner of cable landing station Standard Physical Access Procedures as amended from time to time and any written instructions, which are provided to the eligible Indian International Telecommunication Entity by owner of cable landing station.

(c) Owner of cable landing station will get the Co-location space inspected by its representatives/staff to which access has been approved for the installation, modification, replacement or addition of the equipment to verify that the eligible Indian International Telecommunication Entity, being access seeker, is undertaking the installation, modification, maintenance, operation, replacement or addition of the equipment in accordance with the plan and such other written instructions provided to the eligible Indian International Telecommunication Entity.

(d) The eligible Indian International Telecommunication Entity, being access seeker, shall consult with and obtain the consent of owner of cable landing station before carrying out any hacking or drilling work on the floor, wall and ceiling slabs.

(e) No work shall be performed by the eligible Indian International Telecommunication Entity, being access seeker, on any of equipment, facilities, plant or Networks including, but not limited to earth bars and Power Distribution Points/boards of the owner of cable landing station.

(f) Owner of cable landing station staff shall carry out all the interconnection of the eligible Indian International Telecommunication Entity, being access seeker, Co-location equipment to owner of cable landing station earth bars and Power Distribution Points/boards. Charges for the work shall be borne by the eligible Indian International Telecommunication Entity, as set out in owner of cable landing station published Co-location charges.

(g) Where, during the course of installation, operation, maintenance, replacement or repair of its Co-located equipment the eligible Indian International Telecommunication Entity, being access seeker, causes any damage to owner of cable landing station Co-location site, plant, network, equipment or facilities, the eligible Indian International Telecommunication Entity, being access seeker, must report the damage immediately to owner of cable landing station. Owner of Cable Landing Station shall rectify the damage in any way it deems fit, the cost and expense thereof shall be borne by the eligible Indian International Telecommunication Entity, being access seeker.

**1.6 Final Inspection**

(a) Upon completion of the installation of the Co-location equipment in the Co-location space, the eligible Indian International Telecommunication Entity, being access seeker, shall advise owner of cable landing station and request owner of cable landing station to

conduct a final inspection and confirm that the installation conforms to the approved detailed installation plans.

(b) Where the final inspection reveals that the installation does not materially conform to the approved detailed installation plans; owner of cable landing station shall notify the eligible Indian International Telecommunication Entity, being access seeker. The eligible Indian International Telecommunication Entity, being access seeker must reinstall or take other appropriate corrective action within ten (10) working days of notification, or such other time as is otherwise agreed.

(c) If the eligible Indian International Telecommunication Entity, being access seeker, fails to reinstall or take the appropriate corrective action referred to in clause 1.6(b) above, the owner of cable landing station may take appropriate corrective action including removal of the eligible Indian International Telecommunication Entity's Co-location equipment. The reasonable costs for the corrective action shall be borne by the eligible Indian International Telecommunication Entity, being access seeker.

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**2. MAINTENANCE OF CO-LOCATION EQUIPMENT IN CO-LOCATION SPACE**

**2.1** The eligible Indian International Telecommunication Entity, being access seeker, shall be responsible for the operation and maintenance of its Co-location equipment or as mutually agreed with the owner of cable landing station.

**2.2** If a fault, defect or problem with the Co-location equipment of the eligible Indian International Telecommunication Entity, being access seeker, causes damage to the Co-location space or facilities of the owner of cable landing station, the eligible Indian International Telecommunication Entity, being access seeker must:

(a) notify owner of cable landing station as soon as practicable; and

(b) repair the fault, defect or problem or take other appropriate corrective action immediately.

**2.3** The Co-location equipment must only be used by the eligible Indian International Telecommunication Entity, being access seeker, for the purpose of connecting the eligible Indian International Telecommunication Entity's Network to access Reference Capacity on specified international submarine cable at cable landing station under this Schedule or for interconnection with other service providers' equipment/ network located in cable landing station for provisioning of backhaul circuit.

**2.4 Compliance**

(a) The eligible Indian International Telecommunication Entity, being access seeker, must ensure that its employees, agents and approved sub contractors comply with the provisions of this document including all reasonable procedures and directions of owner of cable landing station as notified from time to time.

(b) The eligible Indian International Telecommunication Entity, being access seeker, must comply with all laws, standards, authorizations and leases when performing works.

(c) The eligible Indian International Telecommunication Entity, being access seeker, must ensure that it has all necessary permits, approvals and leases from any person, governmental, regulatory or relevant authority in order to perform works or provide service.

d) The eligible Indian International Telecommunication Entity, being access seeker, will vests no right, title or proprietary interest in the Co-location site.

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**2.5 Marking of Equipment**

The Co-location equipment must be marked by the eligible Indian International Telecommunication Entity, being access seeker, to clearly indicate that it is leased by the eligible Indian International Telecommunication Entity, and in such manner as owner of cable landing station may reasonably direct.

**PART - VI**

**Form of Letter of Authorization for Physical Access to Co-Location Space**

**(See regulation 20)**

This Letter of Authorization is issued in conjunction with the final approval given to the request application via reference _____ date _____

It must be carried in the possession of the designated supervisor/person at all time during the period of access granted to the Co-location space as indicated below

Location of Co-location space granted for access:

[Location / Building name]

Photo identity

1. Approved date of access

2. Approved time of access

3. Approved duration of access

On behalf of owner of cable landing station

Signature .....

Name .....

Contact phone number.....

Fax No.....

**PART - VII**

**Form of Name and Details of Personnel to be Authorized**

**(See regulation 20)**

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| Sl.No. | Name of the Persons/ Representatives/ Contractor of eligible Indian International Telecommunication Entity (access seeker) | Identity Card No. | Contact Tel. No. | Fax No. |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| - | | | | |

**(R.K. Arnold)**
**Secretary**

**Note**. -------The Explanatory Memorandum explains the objects and reasons of the International Telecommunication Access to Essential Facilities at Cable Landing Stations Regulations, 2007 (5 of 2007).

# EXPLANATORY MEMORANDUM TO THE INTERNATIONAL TELECOMMUNICATION ACCESS TO ESSENTIAL FACILITIES AT CABLE LANDING STATIONS REGULATIONS, 2007 (5 OF 2007)

## 1. BACKGROUND

1.1 International Private Leased Circuits (IPLC) is one of the significant elements of international connectivity for Internet, Broadband and IP enabled services. The international connectivity consists of distant end IPLC half circuit, near end IPLC half circuit and access to submarine cable landing stations. At the time of opening of the international long distance telecom services to private sector in the year 2002, the Government had realized that submarine cable landing station is essentially a bottleneck facility and the fact that access to international connectivity would be severally influenced by monopolistic position of the incumbent International Long Distance (ILD) operator.

1.2 In order to enhance competition in international connectivity segment, Telecom Regulatory Authority of India (TRAI) initiated a consultation process in June 2005. TRAI made recommendations to Department of Telecommunications (DOT) on measures to promote competition in International Private Leased Circuits in India on December 16, 2005. TRAI's recommendations pertaining to access to essential facilities including landing facilities for submarine cables have been accepted by the licensor. The Department has also amended relevant clauses in ILD licence to enable TRAI to bring out regulations to ensure efficient, transparent and non-discriminatory Access to Essential Facilities (including landing facilities) for submarine cables at Cable Landing Stations.

1.3 The Authority has, thereafter, for the purpose of bringing out regulations to ensure efficient, transparent and non-discriminatory access to Essential Facilities, including landing facilities for submarine cables, at Cable Landing Stations released a Consultation Paper on 13th April, 2007 including the draft regulations with detailed description to various terms & conditions proposed for access facilitation for submarine cables at Cable Landing Station (CLS) and co-location of equipment at CLS. The stakeholders were to submit written comments by the 30th April 2007. On the request of some of the stakeholders, the date for submission of written comments was extended till the 7th May 2007. Written comments were received from AT&T, Orange Business Services, BT Global Services, BSNL, MTNL, Bharti, VSNL, Reliance, Cables & Wireless, Sify Communications Ltd., Verizon Communications Pvt. Ltd., ISPAI, Telxess Consulting Service Pvt. Ltd. and Asia Pacific Carriers' Coalition. Gist of comments received from stakeholders by the extended date of submission of comments i.e. 7th May 2007 was placed on the TRAI's website. Open House Discussion was held on 14th May 2007 in

Delhi with the stakeholders wherein stakeholders had expressed their views on various aspects of the subject.

## 2. EXAMINATION OF MAIN COMMENTS MADE AND ISSUES RAISED BY STAKEHOLDERS

2.1 The Authority has taken various comments and inputs of the stakeholders into consideration and analysed the matter in detail. For the sake of clarity the comments made and issues raised by stakeholders are given in italics followed by consideration and decision of the Authority on the points.

### 2.2 ISSUE 1: APPLICABILITY AND NECESSITY OF REGULATION

2.2.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) to (d) and dealt with in the paragraphs following thereafter.

*(a) The scope of the proposed Regulation should be narrowed to focus on access, co-location and backhaul arrangement at cable landing stations controlled only by dominant operators.*

*(b) CLS-RIO to access the essential facilities and co-location at cable landing stations should be voluntarily published by the concerned landing station operator, and no ex-ante Regulation should be resorted to.*

*(c) Access facilitation Regulation for CLS is urgently required to facilitate access to international capacities as well as co-location facilities at CLS.*

*(d) This Regulation should not extend to mandating landing arrangements for new submarine cables.*

2.2.2 In this matter, the Authority noted that majority of the stakeholders are in favour of mandating access and co-location to submarine cable landing station, which is an essential input for many international telecommunication services. The Authority further noted that limiting the scope of this regulation to mandate access, co-location and backhaul arrangement at cable landing station controlled only by dominant / incumbent operators would not yield the optimum results and will also hinder the emergence of sustainable competitive market. It may also impose burden and obligation only on dominant / incumbent operators to meet request for access and would, therefore, not be fair. The Authority is of the view that adequate competition is not there at present in accessing international bandwidth. Therefore, to create effective competition in the sector, Cable Landing Station-Reference Interconnect Offer (CLS-RIO) needs to be mandated for the owner of all cable landing stations including those would be commissioned in the future.

## 2.3 ISSUE 2: TIME FRAME FOR SUBMISSION OF DRAFT CLS-RIO BY OWNER OF NEW CABLE LANDING STATIONS TO THE AUTHORITY

2.3.1 Following comment received on the issue.

*Relevant CLS owner should provide the draft RIO terms no less than six months prior to a new cable system being activated.*

2.3.2 Submitting the draft CLS-RIO six months prior to commissioning a new cable landing station by owner to the Authority for approval would not be feasible in some of the cases. Discussion with industry suggested that establishing an international cable system in India is a time consuming and complex process involving various clearances including security clearance, maritime clearance and civil authority permission etc. Thus it may not be possible for the owner of the cable landing station to determine the exact date of commissioning of the cable landing station. Therefore, the Authority is of the opinion that it is sufficient that owner of the cable landing station submits its CLS-RIO to the Authority on or before the date of commissioning of the cable landing station.

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## 2.4 ISSUE 3: COMMENT OF OTHER PARTIES ON CLS-RIO SUBMITTED BY OWNER OF CABLE LANDING STATION (OCLS) TO THE AUTHORITY FOR APPROVAL

2.4.1 Following comment received on the issue:

*Other parties may wish to comment on the proposed CLS-RIO terms which is submitted to the Authority for approval.*

2.4.2 The Authority has noted this point of view of one of the stakeholders and is of the view that this is not relevant and appropriate to seek the comments on the CLS-RIO submitted by the OCLS to the Authority for approval. Since OCLS, while submitting the CLS-RIO, has been mandated to submit the detail of network cost elements and costing methodology adopted to arrive at the charges prescribed in various parts of the CLS-RIO. Therefore, the Authority is of the opinion that seeking comments again of stakeholders may unnecessarily delay the whole process and at the same time adequate opportunity has already been given to stakeholders.

## 2.5 ISSUE 4: TIME FRAME FOR UPGRADATION

2.5.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) and (b) and dealt with in the paragraphs following thereafter.

*(a) Any facilitation of upgrade facility should be in accordance with a specified time frame.*

*(b) There is a no provision in the Regulation to mandate the OCLS to upgrade the co-location space in case of non-availability.*

2.5.2 The capacity upgradation to access the submarine cable capacity requires procurement of equipment by the requesting eligible Indian International Telecommunication Entity (ITE) as the entire cost of such upgradation required to be borne by the requesting ITE or foreign submarine cable capacity owner with whom the ITE has entered into an agreement for acquisition of reference capacity. Moreover, basic ingredients of the upgradation to meet the new landing requirement may not be uniformly applicable. Therefore, it would suffice if Owner of Cable Landing Station (OCLS) are mandated to be non-discriminatory and transparent in their charging for upgradation and time frame and it should be best left to mutual negotiations in line with the global practices.

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## 2.6 ISSUE 5: NOTICE BEFORE ACCESS FACILITATION TERMINATION

2.6.1 Following comment received on the issue:

> *In addition to the 30 days payment period, the CLS owner would be required to give the eligible Indian International Telecommunication Entity (ITE) 14 days prior written notice (with opportunity to rectify the breach) before the CLS owner could terminate the service.*

2.6.2 The Authority considered the concern raised by the stakeholders regarding notice before termination and decided that if annual operation and maintenance charges due and payable by the eligible Indian international telecommunication entity remain unpaid for more than 15 days from the date such charges become payable, the owner of cable landing station may discontinue the Access Facilitation provided to the eligible ITE after giving notice, in writing, of not less than 15 days of such discontinuance to the eligible ITE. The Authority is also of the view that by having a notice period before termination, may also avoid the disputes. Moreover, there would be one more advantage by way of notice period to the affected party i.e eligible Indian International Telecommunication entity would be able to rectify the breach and also end consumers will not be affected.

## 2.7 ISSUE 6: INTERCONNECTION AND MANDATING LEASING OF BACKHAUL FACILITY AT CABLE LANDING STATION FOR PROVISIONING BACKHAUL CIRCUIT

2.7.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) and (b) and dealt with in the paragraphs following thereafter.

*(a) Regulation should allow interconnection between co-locating ITEs at cable landing station. This would offer the ability for international traffic handoff amongst the ITEs and would offer them access to multiple backhaul service providers within the cable landing station.*

*(b) TRAI should mandate the leasing of backhaul facility by dominant cable station operators for an interim period at cost oriented rates to ensure that competitive ILDOs do not pay unreasonable charges for these services before the development of competitive backhaul services at each cable landing station.*

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2.7.2 Mandating leasing of backhaul facility to dominant owner of the cable landing station would discourage any fresh creation of additional backhaul infrastructure. Instead of mandating owner of cable landing station to provide backhaul facility, it is better to provide flexibility to eligible ITE to take backhaul facility from any of the service providers. This will provide more options to eligible ITEs for backhaul facility. The primary objective of this Regulation is to mandate access facilitation for the available international bandwidth and backhaul circuit provisioning be made available at reasonable terms with flexibility.

2.7.3 Interconnection between co-locating ITEs / backhaul service providers at CLS would facilitate the provisioning of backhaul circuit speedily and at competitive rates. Eligible ITE shall also get the benefit of accessing international reference capacity even without placing its own equipment at CLS by utilizing the backhaul circuit capacity of other service providers located there. This would ease the pressure for Co-location space at cable landing station. The other benefit for not mandating OCLS for provisioning of backhaul circuit is that the ITE will get the flexibility of taking backhaul circuits at competitive terms from any of the service provider including the OCLS. Therefore, the Authority has made suitable provision accordingly in these regulations.

## 2.8 ISSUE 7: CHARGES FOR ACCESS FACILITATION AND OPERATION AND MAINTENANCE TO BE CAPACITY INDEPENDENT

2.8.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) to (b) and dealt with in the paragraphs following thereafter.

*(a) Charges for cross-connection services should be capacity independent. The annual recurrent access charges available commercially at CLS are levied on a per STM-1 or 155 Mbps of cable capacity. There is a no nexus between the capacity and the cost for service provision.*

*(b) Charges should be cost-oriented, access facilitation charges, annual operation and maintenance charges and restoration charges should not be structured on a "per unit capacity" basis. Under a cost-oriented fee structure, only access costs that are incurred on a per unit capacity basis should be charged* on that basis.

2.8.2 The Authority has provided the basic frame work through Schedule annexed with these regulations for disclosure of charges to be published by OCLS after the approval of the Authority. The Authority would consider these points after owners of the CLSs submit their CLS-RIO for approval with the details of cost of network elements, costing methodology and calculation sheets etc.

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## 2.9 ISSUE 8: SHARING OF SECURITY MONITORING FACILITY

2.9.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) to (c) and dealt with in the paragraphs following thereafter.

*(a) the sharing of security monitoring facilities at CLS with new ILD operators should be mandated.*

*(b) In the new ILD license conditions there is a provision for sharing of monitoring capabilities under mutual agreement with existing licensees from whom international connectivity is taken to provide layer 2 and layer 3 VPN services. This provision in the license can enable a new ILD operator to start offering the services in a short timeframe without waiting to install its own security monitoring equipment thereby lowering a potential barrier to entry for new operators.*

*(c) International telecommunication entities that are accessing the capacity from cable landing station, should have their own data & voice monitoring system. The International telecommunication entity should be responsible for all security guidelines, set as per the licensing conditions.*

2.9.2 The International Long Distance Operators (ILDOs) are fully responsible to comply with the security conditions imposed on them through the licence conditions. Licensor has already mandated security conditions for ILDOs through ILD licence wherein installation of suitable

monitoring equipment is necessary for the ILDOs. Mandatory access to cable landing station should not dilute any of the security condition which is required as per respective licences. National security is of the great importance, therefore, sharing of security monitoring facility at CLS with eligible ITEs/new ILDOs should be governed as per the respective licences and licensing conditions specified in such regards thereto. Therefore, the Authority is of the opinion that no regulation or mandating provision needed for the issue in these regulations

## 2.10 ISSUE 9: PRE-APPROVAL OF INTERCONNECT AGREEMENT BY THE TRAI

2.10.1 Following comment received on the issue:

> *In principle, all agreements between the owner of cable landing station and eligible ITEs pursuant to the CLS-RIO should be pre-approved by TRAI. In this respect, the Access Facilitation Agreement should form part of the pre-approved CLS-RIO. This would avoid any potential delays and stalemate if it were to be commercially negotiated and better achieve timely provision of access to and collocation of essential facilities at Cable Landing Stations.*

2.10.2 The Authority is of the opinion that the role of TRAI should be purely on need basis and once the Cable Landing Station - Reference Interconnect Offer (CLS-RIO) is approved by the TRAI and published by OCLS and on the basis of which such Access Facilitation Agreement is made should be adequate. Further to maintain transparency and non–discrimination, it would be appropriate if the interconnect agreement is submitted to the Authority for registration within 15 days from the date of the agreement. Accordingly provision has been made in these regulations.

## 2.11 ISSUE 10: INTERNATIONAL GATEWAY PERMISSION FOR ISP

2.11.1 Following comment received on the issue:

> *Eligible ITE such as an ISP with international gateway permission should include both types of permission i.e. submarine cable gateway and / or satellite gateway.*

2.11.2 In this regard, it is understood that there is no separate international ISP gateway permission for meeting the Internet bandwidth requirement through International Leased Circuits (IPLCs) provided either through cable landing stations on submarine cable capacity and through satellite earth station on satellite media. The ISPs with International Gateways are fully responsible to comply with the security conditions imposed on them through the licence conditions. Licensor

has already mandated security conditions for ISP through its licence in this regard wherein installation of suitable monitoring equipment and obtaining approval/ permission from Department of Telecommunications (DoT) to operate the ISP International Gateway after security agencies clearance is necessary for it. Therefore, the Authority is of the opinion that if an ISP has the permission and security monitoring facilities to meet the security requirement, it may seek access facilitation being eligible ITE for international reference capacity at the cable landing stations.

## 2.12 ISSUE 11: APPROVAL OF THE ACCESS AND CO-LOCATION CHARGES

2.12.1 The comments received from the stakeholders on this issue are summarized below in Paras (a) to (b) and dealt with in the paragraphs following thereafter.

> *(a) charges for collocation and access should be determined in the first instance by the cable landing station owner based on the relevant costs and should be submitted to the TRAI for approval with information concerning the underlying cost components. The TRAI should evaluate these charges on the basis of an international benchmarking approach by comparing them with similar charges in other countries.*
>
> *(b) Cost of real estate, power, human resources, air-conditioning, taxes etc. and also the cost of extending of capacity from CLS to a convenient location for access provisioning may be different from place to place. It would suffice if OCLS are mandated to be non-discriminatory and transparent in their charging.*

2.12.2 The Authority examined the principle that whether the cost based charges for access facilitation and co-location charges are required to be prescribed in the regulations or OCLS are mandated to publish non-discriminatory and transparent charges for access facilitation and co-location etc. The Authority observed that in most of the countries the charges are published by the OCLS with the prior approval of the regulator. The Authority is also of the view that to have reasonable and fair charges, the need is to have such charges on cost oriented basis and also to provide first opportunity to the owner of the cable landing station. It is appropriate that OCLS determine the charges on the basis of cost oriented principles taking into account the cost involved in access facilitation, operation & maintenance, cancellation and in provisioning of co-location facilities including Co-location space and submit to the Authority. However, these charges will be approved by the TRAI on the basis of well-established costing methodology already in vogue in the Authority. Prior-approval of the TRAI will ensure transparency, fairness and reasonability and also OCLS will not tend to adopt an arbitrary

approach in prescribing various charges. Therefore, the Authority has made provisions in these regulations to address this issue.

## 2.13 ISSUE 12: PROVISION FOR COMPLAINTS BEFORE THE AUTHORITY

2.13.1 The comments received from the stakeholders on this issue are summarized in Paras (a) to (d) and dealt with in the paragraphs following thereafter.

*(a) TRAI should also allow ITEs and other international operators to bring complaints before the Authority in the event that cable landing station owners attempt to impede cable station access in any manner, including in ways not anticipated by these regulations.*

*(b) Once this framework is implemented, failing which, either disputing party should be able to call upon TRAI to intervene and provide resolution to the dispute.*

*(c) In the case of dispute the jurisdiction lies with TDSAT.*

*(d) TRAI facilitation is always welcome.*

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2.13.2 Dispute resolution mechanism lies with the Hon'ble TDSAT. However, in case of owner of a cable landing station and the eligible Indian International Telecommunication Entity fail to enter an agreement, in that case both of them may jointly, without prejudice to the provisions of the Section 14A of the Act, at any time request the Authority to facilitate in the process of entering into agreement. For effective enforcement and implementation of these regulations or any other regulation made thereto, the Authority may intervene at any time as per the provision of the TRAI Act. Therefore, the Authority is of the opinion that there is no need to make separate provision in these regulations for such complaints. However provision has been made for facilitating the process of entering into agreements if required by parties involved.

## 2.14 ISSUE 13: PENALTIES

2.14.1 The comments received from the stakeholders on this issue are summarized in Paras (a) to (d) and dealt with in the paragraphs following thereafter.

*(a) Penalties for failure to adhere to mandated time frames are required to be included.*
*(b) the mandate may not come into actual practice in spirit and in words, if there are no provisions for penalties for delay at any step.*

*The authority may kindly include suitable and deterrent financial penalties in case of proven delays.*

*(c) The provisions of the proposed regulation will not be effective in true spirit unless strict penalties are recommended in case of any contravention. Hence, we would like the Authority to implement penalties on both the OCLS and the eligible ITE through appropriate regulations in all cases where the party involved has contravened any of the provisions put forth by this regulation.*

*(d) Imposing unnecessary or unnecessary complicated procedures that increase risks of a requesting party's non-compliance (thereby exposing applicant to penalties or to termination of an application)*

2.14.2 As per TRAI Act:

***"Penalty for contravention of directions of Authority***

*29. If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues."*

2.14.3 The case of failure to adhere to mandated time frame by the service providers is a violation of the regulation of the TRAI and would be dealt with as per the provisions of TRAI Act. Therefore, the Authority is of the opinion that there is no need to make specific provisions in this regard.

## 2.15 ISSUE 14: MANDATING ACCESS TO CAPACITY FOR PRIVATE CABLE LANDING IN INDIA

2.15.1 Following comments were received on the issue:

*The proposed Regulation may not be effective in case of private cables landing in India. In order to make the proposed Regulation effective in a real sense, the integrated cable owner should be obligated to a must provide Regulation, subject to technical feasibility and availability of the capacity.*

2.15.2 The scope of the present regulation is to mandate access to the cable landing station on fair, non-discriminatory and transparent manner. There is no rationale for TRAI to make any such separate provision in these regulations for integrated cable landing station owners having reference capacity for access facilitation. All OCLSs are subjected

to uniformly to these regulations. However, if required at later date that such integrated cable landing station owners are resorting, in access facilitation / provisioning of Co-location facilities, to non-discriminatory and unfair practices than the TRAI would consider appropriate regulatory intervention as per the situation and the circumstances.

## 2.16 ISSUE 15: WHILE SUBMITTING CLS-RIO, COSTING ELEMENTS AND COSTING METHODOLOGY TO BE PROVIDED TO TRAI

2.16.1 The comments received from the stakeholders on this issue are summarized in Paras (a) to (c) and dealt with in the paragraphs following thereafter.

*(a) Dominant cable landing station owner should submit their proposed charges for access facilitation and co-location to the TRAI for approval with information concerning the underlying cost components.*

*(b) Since there is an adequate competition, there is a no need to mandate provisioning of costing elements / methodology by OCLS.*

*(c) The OCLS may be asked to declare the various cost elements of cable landing station to TRAI in confidence.*

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2.16.2 Charges for co-location and access should be determined first by the cable landing station owner based on the relevant cost and should be submitted to the TRAI for approval with information concerning the costs components, costing methodology and calculation sheets. Without having details of the costing elements and methodology adopted by the OCLS it would be very difficult for the TRAI to evaluate these charges and approve the same. Access facilitation charges are based on the non-recurring initial cost of the new access arrangement, including such elements as the cost of construction, equipment and cross-connect access which are specific to such arrangements. Similarly, co-location cost will also comprise the recurring rental and operation and maintenance cost of building support and maintenance, leasehold, power and other utilities. These costs also are specific to each access arrangement or co-location facilities and, therefore, the Authority is of the view that OCLS should submit CLS-RIO as per the various provisions in these regulations and as per the Schedule annexed with these regulations along with the details of costing elements, methodology employed and calculation sheets etc.

## 2.17 ISSUE 16: MINIMUM COMMITMENT PERIOD FOR CO-LOCATION SERVICE

2.17.1 The comments received from the stakeholders on this issue are summarized in Paras (a) to (d) and dealt with in the paragraphs following thereafter.

*(a) A minimum commitment period of three years would provide a reasonable balance between the need to encourage the competition, by reducing entry barriers for ITEs.*

*(b) When the existing resources are utilized there should be no minimum period of commitment.*

*(c) General term could be three years initially with six months notice period in case of early termination and minimum one year payment of co-location charges even if he vacates before one year period."*

*(d) A term of co-location should be co-terminus with the term of reference capacity. In case of leased capacity there should be provision for automatic extension of co-location term to match with the term of reference capacity.*

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2.17.2 In case of Co-location many times the large amount of resources need to be created to fulfill the specific requirements of eligible ITE. A minimum commitment period of three years would provide a reasonable balance between the need to encourage competition and ensure that Co-location arrangement are maintained for a sufficient period necessary for reasonable returns to OCLS. Normally reference capacity is being taken on Indefeasible Right of Use (IRU) or annual lease or on long lease basis, therefore, Co-located eligible ITEs would like to have a certainty for such facilities till the arrangement exist for access facilitation for reference capacity. The Authority considered that since eligible ITE would take international reference capacity on IRU basis or on lease basis for certain number of years, therefore, it would be desirable that extension of the time for Co-location may continue on fair, non-discriminatory, transparent and cost based charges to be determined by OCLS and published after the approval of the Authority from time to time on completion of initial lease of minimum commitment period of three years. This shall also be subject to fulfillment of all obligations as per the agreement made by eligible ITE including payments to OCLS. The Authority, after carefully considering the concerns of stakeholders has incorporated suitable provisions in these regulations.

## 2.18 ISSUE 17: TERMINATION IN THE EVENT OF CHANGE IN OWNERSHIP OF CABLE LANDING STATION

2.18.1 Comments received on the issue are as follows:

*Termination – should include situations where, ownership of CLS companies and physical ownership of Co-Location spaces changes, the agreement of the CLS shall be kept irrevocable with the ITE for the remaining period of the IRU Tenure under the Agreement and shall not discontinued or terms and conditions changed.*

2.18.2 The relevant provision in the licence agreement is quoted below:

*"M/s ---------- LIMITED, a company registered under the Companies Act 1956, having its registered office at ----------, acting through Shri ----------, authorised signatory (hereinafter called the LICENSEE which expression shall, unless repugnant to the context, include its successor in business, administrators, liquidators, legal representatives and permitted assigns) of the SECOND PARTY."*

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The above provision in licence agreement and various provisions in other laws in force on the issue of successor will adequately safe guard the interest of eligible ITE and also address the concerns of the stakeholders. The new entity/ assignee/successor will have to fulfill all such obligations and liabilities. Therefore, the Authority is of the opinion that there is no necessity to specifically address this issue in the regulations.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART III, SECTION 4

# TELECOM REGULATORY AUTHORITY OF INDIA

## NOTIFICATION

**New Delhi, the 19th 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."

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**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).

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# 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.

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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'.

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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.

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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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