

July 13 2005, New Delhi

### 1. Subscriber Numbers for June 2005

#### A. GSM Subscribers

The total cumulative all India GSM subscriber base rose by **1.57 million** from **43.35 million** in May 2005 to **44.92 million** in June 2005, representing a **growth of 3.50%** in the month under review.

Category A, B and C subscribers grew by 3.36%, 4.31% and 8.13% respectively over the previous month while the Metro subscribers grew by 2.12%. Metros constitute 25.97% of the total market. Circles A, B C constitute 36.17%, 31.21% and 6.58% of the total market respectively. Delhi continues to be the leading cellular market with 4.34 million subscribers accounting for 9.66% of the total market, closely followed by Mumbai with 4.17 million subscribers accounting for 9.28% of the total market. A summary picture of the company wise performance is given below:

SI No.	Company	No of Subscribers (In Mn)		Net Additions	% Market Share		Service Areas
		May'05	June'05		May'05	June'05	
1.	Bharti	11.80	12.25	0.45	27.23%	27.28%	23
2.	BSNL	9.88	10.23	0.35	22.79%	22.77%	21
3.	Hutch	8.19	8.44	0.25	18.89%	18.79%	13
4.	IDEA	5.36	5.55	0.18	12.37%	12.36%	8
5.	BPL	2.59	2.62	0.03	5.99%	5.85%	4
6.	Aircel	1.79	1.86	0.07	4.12%	4.15%	2
7.	Spice	1.47	1.47	0.008	3.38%	3.28%	2
8.	Reliance	1.23	1.36	0.13	2.83%	3.03%	7
9.	MTNL	1.04	1.11	0.07	2.39%	2.48%	2
	<b>TOTAL</b>	<b>43.35</b>	<b>44.92</b>	<b>1.57</b>	<b>100.00%</b>	<b>100.00%</b>	

GSM continued to maintain its leadership with 77% of the cellular market. In terms of Net Additions, 79% of the new subs opted for GSM while only 21% for CDMA. The subs for CDMA are dealt with in the next section.

#### B. CDMA Subscribers

The total cumulative all India CDMA subscriber base rose by 0.42 million from 13.20 million in May 2005 to 13.62 million in June 2005, representing a growth of 3.18% in the month under review. A summary picture of the company wise performance is given below:

SI No.	Company	No of Subscribers (In Mn)		Net Additions	% Market Share		Service Areas
		May'05	June'05		May'05	June'05	
1.	Reliance	9.96	10.28	10.32	75.42	75.47	20
2.	BSNL	1.66	1.66*	0*	12.57	12.18*	21
3.	TATA	1.32	1.43	.011	10	10.49	20
4.	MTNL	0.18	0.17	-0.01	1.36	1.24	2
5.	HFCL	0.057	0.058	0.001	0.43	0.42	1
6.	Shyam	0.028	0.028	0.0001	0.21	0.21	1
	<b>TOTAL</b>	<b>13.20</b>	<b>13.62</b>	<b>0.42</b>	<b>100.00%</b>	<b>100.00%</b>	

\* Data for the month of June is not available.

Source: AUSPI

## 2. Refund of Security Deposit

On **July 8, 2005**, TRAI issued a Directive to all Telecom Access Providers to strictly follow the Guidelines contained in its Letter No.301-30/2003-TRAI(Eco) dated September 1, 2003. the letter stated that:

- The security deposit after adjustment of dues, if any, should be refunded to subscribers within a time frame of 60 days.
- The service provider also had to pay an interest @ 10% per annum for any delay in making refund within the stipulated period.

## 3. National Telecom Policy 2005 – Inputs by COAI

COAI on **July 7, 2005** submitted its inputs on the proposed National Telecom Policy 2005. The highlights of the COAI submissions were:

- Immediate introduction of Unified Licensing to ensure that full benefits of convergence reach all corners of the country at affordable prices, for investor confidence and to attract more foreign investment into this sector. Cellular mobile services sector could play a key role in contributing to the country's broadband objectives through 3G services. To ensure the success of 3G/broadband, it was important to ensure affordability of service and use 3G as an overlay network to meet the demands of the market.
- Regulator to adopt a Light touch approach to Regulation. TRAI to look at the option of drawing talent from Private sector.
- All interconnection charges to be determined in a transparent manner and be cost based to enable fair play of market forces.
- Encourage unbundling of copper and active sharing of infrastructure by BSNL in a fair manner.
- Avoid duplicating costly infrastructure. Infrastructure sharing to be a thrust area of NTP 2005.

- f. Make roaming mandatory for all operators, subject to commercial terms and agreements between operators. This would be in the interest of customers who would be able to avail of services in areas not served by their service providers.
- g. Review objectives of USO on an annual basis and consider incentives for private operators to enhance presence in rural areas. As contributions to the USO Fund have been far in excess of actual disbursements leading to an unnecessary burden on consumers, Government may consider putting a cap on the quantum of resources that could be collected in the USO Fund, and once this cap is reached, no additional levies be imposed till the resources were disbursed.
- h. Switch over to a Hybrid Revenue share ADC regime and merge it with the USO regime as both had similar objectives. Such a system would be simpler to administer and would result in lower burden on Indian subscribers. ADC to be applicable for rural wireline services only. In light of the fact that private players were also enhancing presence in rural areas, USO/ ADC regime to be phased out over the next three years.
- i. Review the high level of Levies and duties on Indian telecom to enable higher penetration and growth. The burden of duties and levies for India was around 21% of revenues of the telecom sector as compared to just 3% for China.
- j. Ensure availability of spectrum in a timely manner. Government to make efforts to relocate existing users and compensation to be provided from revenues collected from license fee/ spectrum usage charges. Need for a clear road map giving a time bound schedule for availability of spectrum to operators upon reaching predefined milestones (subscriber base). Principle of level playing field for all players and all technologies to be maintained.
- k. Introducing uniform Nation wide guidelines for various Procedures and Clearances for setting up telecom infrastructure. As a first step, uniform rules and guidelines be developed for the following:
  - Right of Way.
  - Municipal & Civic Clearances.
  - Guidelines regarding setting up of Cell sites to provide seamless coverage & service.
- l. Government to put in place policies and incentives in the field of hardware manufacturing. Some of the initiative could be as follows:
  - Status of virtual SEZ for units manufacturing telecom hardware.
  - Introduction of tax holiday schemes.
  - Longer term Income Tax benefit to encourage investment in R & D.
- m. The concept of India One would play a significant role in market expansion and enhancing the reach of telecom services in India. Under India One there could be two distance slabs, one for intra-circle calls and other for inter-circle calls.
- n. Higher FDI/FII limit welcomed by industry. However, while it is important to address the legitimate management and security concerns of the Government, it was also important to ensure that the terms and conditions are conducive so as to actually encourage inflow of FDI.
- o. Government to consider designating TEC along with ALTTC Ghaziabad as National Centers of Telecom Excellence, which would undertake research & development for the industry as a whole. There could be active participation of the private sector in many of the projects and the benefits of the research would flow to both public as well as private sector.

#### **4. License Fee on Difference Between Service Tax Billed and Service Tax Paid to Government**

COAI wrote to DoT vide its Letter No. SN/COAI/102 dated **July 6, 2005** drawing its attention to the anomaly that existed regarding payment of license fee on difference between service tax billed and the service tax collected / paid to the Government. COAI requested DoT to rectify the anomaly and not charge license fee on the difference between the service tax billed and paid.

## **5. Quality of Service Parameters of Basic and Cellular Mobile Telephone Services**

On **July 1, 2005**, TRAI issued a revised Regulation on Quality of Service Parameters of Basic and Cellular Mobile Telephone Services. TRAI reviewed the existing parameters and introduced some new parameters.

## **6. Clarification on Inter Circle Connectivity in 4 States**

On May 20, 2005, the Government issued an order allowing inter-service area connectivity between access providers in the States of:

- a. Maharashtra (Mumbai Metro & Maharashtra Telecom Circle Service Areas),
- b. Tamil Nadu (Chennai Metro & Tamil Nadu Telecom Circle Service Areas),
- c. Uttar Pradesh (including Uttaranchal) [UP(East) & UP(West) Telecom Circle Service Areas) &
- d. West Bengal (Kolkata Metro & West Bengal Telecom Circle Service Areas).

On June 16, 2005, it was further clarified that all calls within these states would be treated as intra-circle calls and would not attract any ADC. Further, operators in these states were not allowed to build any infrastructure outside their Licensed service area but could establish Pol's. Private cellular operators had established direct connectivity taking lease lines for their mobile-to-mobile calls. COAI vide its Letter No SN/COAI/098 dated **July 1, 2005** to DoT requested it to direct BSNL too to establish direct connectivity with private CMSPs in the adjoining areas of the 4 states.

COAI also drew the attention of the DoT towards BSNLs Circulars 351-2/2005-Regn, and 351-2/2005-Regn./B and pointed out the anomalies that existed as:

- a. BSNL would continue to treat these calls as inter-circle calls and charge ADC accordingly.
- b. New Pols would be commissioned after concerned Access Providers signed Addenda's to their existing Interconnect Agreements with BSNL but BSNL till now BSNL had not provided text for it and thus, the Access Providers could not initiate steps to establish Pols.
- c. In case of Mumbai & Maharashtra areas, for mobile-to-mobile calls, unless the carriage charges were reduced by BSNL, it would not have been possible for CMSPs to offer the same tariff for calls to CellOne.

COAI sought for intervention of the Government to direct BSNL to provide lease lines to CellOne GMSC in a time bound manner. It also requested the DoT to reconcile the DoT order and prevailing Regulations and provide clarifications and direction to service providers in order to implement DoT Order fully without defaulting on the Regulation.

## **7. COAI Response to Billing Consultation Paper**

COAI vide its Letter No SN/COAI/096 dated **June 30, 2005** to TRAI, submitted its response on the Mobile Billing Consultation. The submissions were as follows:

- a. Undelivered SMS to be charged as originating SMS traveled from the terminal equipment to the MSC of the calling party network then the MSC submitted it to the SMSC for delivery. The network elements of the calling party from BTS to MSC to SMSC had been utilized and repeated attempts were made to deliver the SMS. Hence the operator should be paid for the network elements used.
- b. SMS not to be charged in two parts as the network elements of the originating network were used. Moreover, there was no link between the submitted SMS and delivered SMS as these two CDRs were generated separately on the MSC as MO and MT.
- c. Short durations calls of 3-5 seconds to be charged as:
  - i. Once the call was initiated by the originating network, the network elements to initiate the call and to establish it successfully were utilized.
  - ii. As the incoming calls were free, it was observed that such short durations calls were vastly used by the subscribers to convey a short message. Not charging them would result in heavy revenue losses.
  - iii. In case of a BSNL/ MTNL fixed line call, the charges applicable were for full 3 minutes, even if the call was for a durations of 3-5 seconds. The same principle to be applied to mobile originated calls without any discrimination.
  - iv. For a Mobile to PSTN Call, of such a short duration, once the call was established, the operators were liable to pay full IUC charges to BSNL.
- d. To have a benchmarking system and Code of Practice in India. The proposed code to have the following points:
  - i. It would be relevant to have just a single benchmark rather than two separate benchmarks one in the QoS guidelines and another within code of practice for billing accuracy unless both are uniform and identical.
  - ii. Information relating to Tariffs was already being followed as per the format desired by TRAI.
  - iii. Providing details like rounding rules, accuracy of measurement of time, etc would neither be feasible nor practical.
  - iv. The Authority's view on 'Provision of Service' to the customer with the written consent of the customer, everytime a change was made to the already existing service through a written consent was not feasible.
  - v. Approaches such as tele calling or SMS to be allowed to obtain subscriber consent, as already stated in the Authority letter no. 305-8/2004-QoS, dated 14<sup>th</sup> June 2005 which were also followed internationally.
  - vi. Details needed with regard to mechanisms used for Accuracy of Measurement and Reliability of Billing and exact mechanics being followed at UK to arrive at this and the system requirement if any.
  - vii. Clarification needed on 'excessive use of services' and 'reasonable time to take preventive action'.
- e. Operators to follow a regime based on self testing and reporting to the Regulator.
- f. TRAI might conduct billing audit once a year and the funding for such an audit must come from the government. No additional burden to be imposed on the operators.

- g. All MSCs to be synchronized with highly stable and accurate clock. All GMSCs were to extract clock from BSNL Level 1 TAXs. Further other MSCs could extract clock from GMSCs to synchronize themselves.

## **8. Tariff Plan Information to Customers**

### **A) TRAI's Directive on 'Information to Customers About Complete Details of Tariff Plans'**

On June **29, 2005** TRAI issued a Directive to all the Cellular Mobile Service Providers and Unified Access Service Providers to inform the customer in writing, within a week of activation of service, the complete details of his tariff plan. In addition, as and when there were any changes in any aspect/item of tariff in the chosen package, the operator shall intimate, in writing, such changes to those subscribers whose tariff packages underwent a change.

### **B) COAI writes to TRAI regarding Tariff Plan Information**

COAI vide its Letter No. SN/COAI/100, dated **July 6, 2005** to TRAI clarified that the operators were already following the process established by the Authority, vide its Directive dated May 2, 2005 on Publication/Advertisement of tariffs for consumer information. The practices followed by Service Providers were:

- a. At the time of enrolling a subscriber, all attempts were made by the service provider to inform the customer in detail about the tariff plan best suited for him / her based on the expected type of usage.
- b. The customers could log on to the website of the service provider at any time, for any update required on the tariff plans.
- c. Post Paid customers were kept well informed of the rates charged under the tariff plans in their monthly bills, therefore in case of any apprehension, the customer could call the toll free customer care number at any time, and get details on his plan.
- d. The customer had an option to change from one plan to the other, in case of dissatisfaction with the current plan.

In light of the above it was submitted that providing detailed information to the customers in writing, within a week of the activation of service, and for any change that was made in any item of the tariff in his chosen package was neither necessary nor feasible. It was also submitted that compliance with the Directive would entail a lot of extra costs in the form of pre- formatted letters on each plan, pre-stamped envelopes and additional manpower which would mean a huge cost burden on the service providers, which would ultimately be passed on to the customers. Moreover, with service providers having millions of subscribers, any such exercise of informing each and every subscriber in writing about his/her tariff plan would not be practically implementable. Given the above concern, COAI requested the Authority to review the Directive of June 29, 2005.

## **9. Credit Limit for Postpaid Subscribers**

On **June 27, 2005**, TRAI issued a Directive to all the Telecom Access Providers regarding the credit limit for Postpaid subscribers. TRAI's directions were:

- a. To intimate the subscriber about his credit limit in advance. The initial credit limit to be intimated within 7 days of activation of the service for the new subscribers.
- b. To provide full information to the subscribers in advance on the consequences of usage and other applicable charges exceeding the credit limit as well as the manner in which the credit limit set for them could be enhanced.
- c. To intimate the subscriber when the usage and other applicable charges reach 80% of the credit limit and also about the consequences of his usage exceeding the credit limit including the possibility of disconnection.
- d. On receipt of the intimation, the subscriber would have the option to make interim payments in whole or in part or to restrict his further usage so that the credit set for him was not exceeded.
- e. Services to the subscriber not to be disrupted until and unless the credit limit fixed for a subscriber exceeded despite timely intimation about the same.
- f. Irrespective of the level of credit limit, the services of a subscriber would not be disrupted as long as the amounts due was below the amount of his security deposit.
- g. For all the existing post-paid subscribers, the credit limit to be intimated to them, if not already done.

#### **10. Draft National Frequency Allocation Plan – 2005**

COAI vide its Letter No. TVR/COAI/112 dated **June 24, 2005** to DoT submitted its comments on the Draft of National Frequency Allocation Plan – 2005. The comments were as follows:

- a. In the Draft, replacement of the term 'WLL' with 'CDMA' was unnecessary and undesirable as:
  - i. WLL systems continued to exist as an application.
  - ii. With the introduction of UAS Licensing Regime, fixed operators using WLL systems were entitled to offer cellular mobile services, thus, use of the term CDMA was superfluous.Thus, COAI proposed that in IND 41, IND 48, IND 49 and IND 50, the term CDMA to be replaced by WLL.
- b. COAI noted that IND 51A of the Draft proposed to take a chunk (2110-2120MHz) out of the downlink for the IMT-2000 consensus band (2110-2170MHz) and use it for uplink for Deep Space Research operations. COAI submitted that this proposal would impair the cellular services in the IMT-2000 band and cause severe harmful interference within a range of 200kms. It again requested DOS to provide necessary inputs on the interference parameters, location of transmitters, output radiated power, area of impact and other relevant data on spurious emissions, etc so that the interference issues could be analyzed and discussed with the stakeholders before taking any decision to include it in the NFAP-2005.
- c. Other comments of COAI were:
  - i. Frequency band 5.150-5.350GHz and 5.275-5.875GHz be delicensed for outdoor applications.
  - ii. Remark IND 55B to include WLAN and state that spectrum had been delicensed.

## 11. Subscriber Base - Methodology

- A. TRAI in its Letter No. 101-24/2003-MN dated **June 6, 2005** stated that service providers were using different methodologies to report their subscriber base, which led to artificially inflated subscriber base. TRAI advised operators to follow the subscriber base calculation methodology laid down by TRAI for uniform reporting purposes.
- B. COAI, responded to TRAI vide Letter No SN/COAI/089 dated **June 23, 2005**, submitting that:
- a. Cellular operators reported subscriber numbers every month to DoT and various other authorities on a format devised by the DoT.
  - b. The permitted grace/suspension period to be considered for active subscribers in the HLR for reporting purpose had been commonly discussed and all operators including BSNL/MTNL had agreed to adopt 90 days for prepaid subscribers. This norm was followed by the whole industry and the same had been conveyed to the DoT.

COAI submitted that the Authority should not unilaterally alter this figure, which has been arrived at in a spirit of self-regulation and by consensus among all players including PSU's and that it was undesirable for the Authority to impose a regulation, which would disrupt the entire sector.

## 12. Audit on TATA Walky Phones

COAI conducted random audit checks on TATA Walky Phones, which showed that these FWT services continued to be freely available throughout the SDCA. The details of the audit were submitted to the DoT vide its Letter No TVR/COAI/108 dated **June 22, 2005**. COAI sought DoT's intervention to provide level playing field to all mobile players and to ensure that such violations were urgently curbed so as to safeguard fair competition and orderly growth in the sector.

## 13. Advantages of Switching over to Hybrid Revenue Share ADC Regime

- a. COAI vide its Letter No. TVR/COAI107 dated **June 17, 2005** to TRAI highlighted the flaws of the present ADC regime and the benefits of switching over to Hybrid Revenue Share ADC Regime. The main problems encountered by service providers with the present Regime were:
- i. Private operators were required to furnish to BSNL, a monthly declaration of traffic originating and terminating on their networks in a format which was complicated and required substantial modifications in operators' billing software.
  - ii. The format of Traffic certificates was cumbersome and required operators to spend considerable time, manpower and money in producing and verifying the same.
  - iii. BSNL did not maintain accounting separation and therefore it was impossible to ascertain the actual deficit incurred by BSNL.
  - iv. There was no transparency as to exactly how much ADC had been collected by BSNL so far, since May 2003 when it was first introduced.
  - v. In the absence of any check on the ADC paid to BSNL, it might be possible that subscribers were unnecessarily being burdened with ADC, much beyond the need.
  - vi. The present Regime required policing to ensure that no operator under-reported its traffic, to evade ADC.

- b. In the view of the aforesaid problems, it was desirable to move to a 'Hybrid Revenue Share' ADC Regime with salient features as follows:
  - i. ADC would be a uniform percentage of the revenue for all types of calls except for incoming ILD calls.
  - ii. ADC on incoming ILD calls should be on a per minute basis.
  - iii. ADC would be levied on all types of telecom services including Internet Services so as to create level playing field.
  - iv. The percentage of revenue payable towards ADC would be same for all services and Adjusted Gross Revenue (AGR) to be used as a measure of revenue earned from a particular service.
- c. The primary advantages of revenue share ADC Regime were:
  - i. It would simplify collection of ADC as revenue share from all operators
  - ii. Problems of Inter-Operator Traffic Reconciliation would be avoided.
  - iii. It would eliminate the possibility of ADC evasion by service providers.
  - iv. Disbursement of ADC would be fair and transparent.
  - v. Service providers would be able to disclose the ADC burden to their subscribers as a separate item in the subscriber tariff, which would be identifiable in the subscriber bill.
  - vi. It would provide pricing flexibility to operators, thus increasing the possibility of revenue maximization.
- d. In the light of the above, COAI submitted to TRAI to switch to revenue share ADC Regime.

#### **14. Billing Issues**

- A.** COAI vide its Letter No TVR/COAI/075 dated **May 16, 2005** to TRAI, requested the Authority to share the Report prepared by an international consultant with respect to audit of metering and billing systems of service providers. It was submitted that the request was in consonance with:
  - a. Section 4 of the TRAI Act
  - b. The Access to Information Regulation dated March 4, 2005.
  - c. The Hon'ble TDSAT's Order in VSNL vs. TRAI in Appeal No. 5 of 2005 decided on April 28, 2005.
- B.** TRAI responded to COAI's request vide its Letter No. F.No.305-8/1004-QoS dated **June 13, 2005**, whereby, TRAI rejected COAI's request on the grounds that :
  - a. The information sought was commercially sensitive and its disclosure may cause loss to the concerned service provider and may compromise his competitive position.
  - b. Under the Access to Information Regulation only a service provider could seek information in respect of another service provider and COAI not being a service provider was not eligible to seek this information.
  - c. TRAI had already filed an appeal against the Hon'ble TDSAT's Order in Supreme Court.

- d. In line with international practice in UK, the Report was confidential and could only be discussed with the relevant operator for amending the discrepancies.

In light of the above, TRAI stated that the Report was confidential, however, the Authority could share relevant portion of the audit report concerning a service provider, if that service provider asked for it.

- C. COAI is in the process of filing its response in the matter.

## 15. COAI's Response to TRAI Recommendations on Spectrum Related Issues

- A. COAI vide its Letter No. TVR/COAI/103 dated **June 10, 2005** to WPC submitted its views/comments on the concerned TRAI Recommendations. COAI's comments were:

- a. Optimal and efficient use of spectrum was of highest priority and thus, each MHz needed to be fully exploited in terms of the subscriber capacity that it could deliver.
- b. Efficient management of available spectrum was an important mandate of TRAI under the Act, thus, Government should review TRAI's recommendations from this critical viewpoint.
- c. TRAI's recommendation that the subscriber linked criteria should be "quickly" revised for GSM and CDMA and to be made to "gradually" move in a direction wherein it becomes "technology neutral" (equal MHz Spectrum) was completely misconceived and untenable and it encouraged inefficient use of spectrum as it did not consider that:
  - i. CDMA had a 5 Times higher Erlang (Capacity) vis-à-vis GSM.
  - ii. Erlang Capacity of CDMA did not appreciably "Diminish" in CBDs.
  - iii. Investment in infrastructure was crucial to ensure optimal utilization of Spectrum.
  - iv. Capacity Enhancement/Optimization techniques were available to both GSM & CDMA.
  - v. Giving excess Spectrum to CDMA would not only encourage its inefficient use, but also give CDMA operators preferential entry into 3G through the backdoor.
- d. By encouraging inefficient spectrum use and creating non-level playing field, TRAI's Recommendations violated NTP-99, NFAP-2002 and the TRAI Act.
- e. In respect of spectrum allocation procedure subscriber linked approach be continued keeping in mind:
  - i. The different erlang (subscriber) capacities of GSM and CDMA.
  - ii. The investment in infrastructure by both GSM and CDMA operators.
  - iii. The use of capacity enhancement techniques by both technologies.
- f. 450 MHz to be equally available to both GSM and CDMA. CDMA operators be required to follow subscriber link policy to get 1800 MHz spectrum.
- g. As under present UAS regime, a UAS license was available off the shelf and an operator could offer mobile services, subject to availability of spectrum, TRAI could not make any recommendations that precluded the entry of new operators into the sector.
- h. TRAI has rightly adhered to the ITU identified, NFAP-2002 stipulated, globally harmonized, international consensus band plan of 2GHz for IMT-2000 services. Adherence to this band would ensure interference free coexistence and growth of both GSM and CDMA operators, and also would give Indian subscribers the benefits of economies of scale (lower tariffs), seamless roaming and interoperability of systems.

- i. For spectrum usage charges it was desirable to continue with the present incremental revenue share model as it was fair, simple, transparent and easy to administer and also ensured efficient use of spectrum. However, the ceiling of 4% of AGR recommended by TRAI for spectrum usage charges was still too high and needed to be brought down further. Government may consider that the overall cap for spectrum usage charges be set at 2% of revenues and within this, Government might adopt a stepped approach of say increments of 0.2 or 0.25%, for increased levels of spectrum assignment.
  - j. TRAI's recommendation to have a fixed spectrum charge per MHz for IMT-2000 spectrum until 'rollout obligations' were met was not acceptable as no new license was being acquired and therefore the issue of stipulation of fresh rollout obligations did not arise.
  - k. Notwithstanding the above, imposition of a rollout obligation would defeat the very purpose of the expeditious introduction of 3G services inasmuch as operators would then focus on meeting rollout obligations rather than market demands, Furthermore each operator would try and cover the more lucrative areas, thus resulting in duplicate costly infrastructure in select pockets (higher potential DHQs) and it could well be that in certain areas there would be as many as 12-14 networks, (2G + 3G) whilst other areas would be starved of even a simple coverage.
  - l. In light of the above 3G should be treated as an overlay network, which was set up, based on market requirements and the demands of consumers.
- B.** In a follow up submission to Government, vide Letter No. TVR/COAI/111 dated **June 24, 2005** to DoT, COAI submitted its response to same issues raised by the Government. These were as under:
- a. As long as the same inter site distances were applied to both GSM and CDMA operators, the ratio of the higher erlang capacity of CDMA vis-à-vis GSM remained the same, irrespective of whether the inter-site distances were taken at 400metres or 600metres for both standards. Further, there was no constraint on CDMA inter-site distances as inter site distances of less than 500 metres were commonly seen in CDMA networks in Hong Kong, Bangkok, Tokyo, etc.
  - b. With regard to Issues of interference, if any, with six-sector sites in CDMA it was submitted that some of the inherent advantages of CDMA, like soft/softer handover, could be better exploited in a six-sector configuration than in a tri-sector configuration and that in a service area where there was a heavy traffic demand for service, Six Sectors was a good solution for small size hot spots while a second Carrier overlay on the top of the First Carrier was a good solution for large area.
  - c. In addition to the above clarification, COAI also submitted that:
    - i. As CDMA operators only needed to set aside a separate carrier of 1.25MHz to be able to offer 3G EVDO services, it was extremely crucial that the subscriber linkage for CDMA operators be correctly prescribed as any leniency in this regard could enable the CDMA operators to spare a separate carrier for 3G/EVDO services.
    - ii. It was also pointed out that as per the details of spectrum assignments to CDMA given in TRAI's recommendations, in several cases, the spectrum assigned to CDMA operators was in excess of their entitlement based on their subscriber base. As this availability of surplus spectrum could allow these operators to offer 3G /EVDO services, even today. In the interests of level playing field, it was important that CDMA operators be required to surrender their surplus spectrum and be entitled only to assignments justified by their subscriber base.

- iii. With regard to Tri-band/quad band handsets in 3GSM (WCDMA) and CDMA 2000 1xEVDO, development of multi band handsets was not an issue at all and that these could be developed in a very short while to meet the demands of the market. This view was also voiced by Qualcomm as well as TRAI.
- iv. At present GSM operators pay an incremental spectrum usage charge (2-6%) for additional assignments of spectrum, whilst CDMA operators continue to enjoy the same flat rate of 2% even for additional spectrum assignments. As a result of the above inequitable treatment:
  - CDMA operators enjoyed an ongoing financial advantage over GSM operators.
  - Government lost revenues.
  - There was no incentive for CDMA operators to use their spectrum efficiently.

COAI submitted that Government kindly address the above anomaly and ensure that the same approach was adopted for both GSM and CDMA operators in the matter of spectrum usage charges.

## **16. Interconnection Usage Charges**

COAI made a presentation on various aspects of IUC to TRAI on **June 9, 2005**. The highlights of the presentation were:

- a. The need for ADC should be clearly established before imposing additional burden on the Service Providers and the consumers.
- b. Surplus to fund the ADC requirement already existed and no additional levy on operators and consumers was called for.
- c. Fixed Wireless Service did not qualify for ADC as costs of providing FWT service was exactly the same as that of providing WLL(M) or even full cellular mobile services and the services were freely available throughout the service area.
- d. Private Fixed Service Providers were not eligible for ADC as they were providing wireless service in urban and semi-urban areas.
- e. The Authority should switch to Revenue Share ADC Regime and it should be merged with the USO Regime.
- f. MTC should be made more cost reflective.
- g. MTC, in line with the WTO regulations, should be cost-oriented, arrived at in a completely transparent manner and should, at the same time, ensure economic feasibility of the operators.
- h. Carriage charges were not in line with the costs and a drastic reduction was required in order to arrive at cost based carriage charge.
- i. The Authority could consider prescribing two slabs, less than 200 km and greater than 200 km with the ceiling carriage charge being 15p for < 200 km and 30p for > 200 km.

*A copy of the presentation can be obtained from COAI Secretariat*

## **17. Provision of Wireless Services Outside Licensed Area**

On **June 9, 2005**, TRAI issued a Directive to all the service providers directing them:

- a. To ensure that the service coverage was restricted to the Licensed Service Area only.
- b. To carry out regular monitoring of radio spillage actually being provided
- c. To initiate steps to minimise the RF spillage, if any, and

- d. Report to TRAI with details of steps taken by them including report of drive tests etc., within 7 days of the end of each quarter.

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

In an ongoing attempt to resolve the issues related to ADC on Fixed Wireless Terminals, COAI vide its Letter No. TVR/COAI/099 dated **June 8, 2005** wrote to the DoT requesting it to review the ADC policy and stipulate that ADC should be admissible only for fixed wireline services in only those areas where tariffs were to be mandatorily provided at below cost tariffs for social reasons. COAI opined that as the costs of providing FWT service was exactly the same as that of providing WLL(M) or even full cellular mobile services, it was unfair to permit ADC support for Fixed Wireless Services, when it was inadmissible for WLL(M) and Cellular.

## **18. Status of COAI's Legal Cases**

### **A. Sales Tax Matter: COAI & Others vs. Union of India & Others**

**Court:** Supreme Court of India

**Counsel:** Mr. Harish n. Salve (Sr. Adv.), Mr. C.S. Vaidyanathan (Sr. Adv.), Mr. Manjul Bajpai, and Ms. Bina Gupta.

**Case Background:** COAI filed a Writ Petition in the Supreme Court of India challenging the levy of Sales Tax on "Voice Telecommunication Service" provided by Cellular Mobile Service Providers (CMSPs). Provision of voice telephony to the subscribers was only a service, (and not goods) on which the Central Government levied "Service Tax", which was already being paid by CMSPs.

The petitioners were also challenging the legality and validity of the levy of Service Tax as being unconstitutional in as much as the same transaction/activity cannot be both 'service' and 'goods' and therefore would be eligible to both these taxes at the same time.

**Current Status:** The matter came up for hearing on **May 26, 2005** before the Supreme Court of India. All the pleadings were completed and the next date of hearing would be given by the Supreme Court after the summer vacations.

### **B. Pulse Petition Matter: COAI & Others vs. BSNL & Others**

**Court:** Telecom Dispute Settlement Appellate Tribunal (TDSAT)

**Counsel:** Mr. C.S. Vaidyanathan (Sr. Adv.) and Mr. Manjul Bajpai

**Case Background:** In this Petition, COAI & Others were challenging the actions of BSNL / MTNL which were in violation of the relevant Regulations /Directions or discriminatory, arbitrary, unfair, unreasonable and against established principles of equity, justice and good conscience. The actions of BSNL and MTNL, which were the subject matter of challenge under this Petition, included:

- (a) **Reciprocal Billing Arrangement:** BSNL / MTNL at Delhi were billing CMSPs on MCU (Meter Call Units) basis i.e. on call by call basis, whereas they were paying private CMSPs on aggregate basis. This was in variation with TRAI's IUC Regulation dated 29.10.2003 and 24.01.2003, which expressly mandated IUC payments to be on bulk basis. In this way BSNL was charging the CMSPs an excess amount between 6-10%.
- (b) **Distance Based Carriage Charge:** BSNL was imposing a distance based carriage charge (Rs. 0.65 for 50-200 Kms; Rs. 0.90 for 200-500 Kms and Rs. 1.10 for greater than 500 Kms) for Intra Circle LDCA Calls from Cellular Network to PSTN handed over to BSNL at Level II TAX with effect from 01.02.2004. However, this was in violation of the TRAI's October IUC regulation dated 29.10.2003, which provided Carriage charge of only 20 paise per minute, irrespective of the distance from Level-II TAX to the terminating Tandem / Local Exchange.
- (c) **Access Deficit Charge (ADC) refund:** No ADC was leviable on several kinds of WLL (M) calls. Therefore, BSNL was obliged to refund the same to private CMSP's. BSNL also admitted that it had to refund ADC amounts on WLL (M) calls. But, it has not refunded ADC even in cases where relevant details were provided by concerned CMSP to BSNL.
- (d) BSNL was charging interest on the delayed payments of IUC bills by Member Operators. On the contrary, BSNL was not paying any interest on reciprocal basis for long delays in payment of bills by BSNL / MTNL to Member Operators.

**Current Status:** The matter was called upon for hearing on **July 6, 2005** before the Tribunal, after it became functional with the appointment of new Chairperson. The Petitioners requested an adjournment subsequent to which the matter had been adjourned till July 26, 2005.

**C. ADC on Roaming:** COAI & Others vs. TRAI & Others

**Court:** TDSAT & Delhi High Court

**Counsel:** Dr. A.M Singhvi (Sr. Adv.), Mr. Navin Chawla, and Mr. Arun Jaitley.

**Case Background:** COAI challenged TRAI's Telecommunication Interconnection Usage Charges (Fifth Amendment) dated 11.05.05 seeking to unilaterally alter the definitions on national & international roaming calls for the purpose of ADC on the grounds inter-alia that it had been issued without affording an opportunity of hearing to the Appellants and for totally extraneous considerations. The matter was filed before the Tribunal on 17.04.05. The Appeal was heard on 28<sup>th</sup> April 2005 and the Ld. TDSAT was pleased to issue notice of the Appeal to Respondent No 1 (TRAI) and directed the matter to be listed on 11<sup>th</sup> May 2005 for arguments and consideration of interim relief. However, due to the retirement of the Chairperson TDSAT & the non-appointment of his successor, the TDSAT was non-functional & the matter was simply getting renotified /adjourned.

Whilst the Appeal was pending in TDSAT, BSNL vide its Circular No. 352-1/2005-RegIn dated 9<sup>th</sup> May 2005 in purported implementations of Authority's IUC Regulation (Fifth Amendment) sought to impose ADC even on intra circle roaming calls. COAI filed a writ petition in High Court and the matter was heard in the High Court on 31<sup>st</sup> May 2005. Our senior counsel contended that the urgency in filing of the Writ Petition was the BSNL Circular and the non-functioning of TDSAT these days. After hearing the arguments, the Hon'ble Court remarked that a mere Circular might not be sufficient to give rise to urgency as this was yet to fructify into demands. The Court was pleased to adjourn the case to 13<sup>th</sup> September 2005 with the observation that as and when any demand was raised by BSNL on the impugned circular, the Petitioners would be at liberty to approach the High Court in the present Writ petition for seeking stay of such demands.

**Current Status:** The matter was called upon for hearing on **July 7, 2005** before the Tribunal. The Chairperson, TDSAT directed the Petitioners to withdraw their petition from the High Court as TDSAT would not hear a matter which was already pending in the High Court. Accordingly, COAI has withdrawn the matter from the High Court and also filed an application in TDSAT impleading BSNL as a Respondent in the case.

**D. 5% Retention Matter:** BSNL vs COAI & Others

**Court:** Supreme Court of India

**Counsel:** Dr. A.M. Singhvi (Sr. Adv.), Mr. Aryama Sundaram (Sr. Adv.), Mr. Manjul Bajpai & Ms. Bina Gupta.

**Case Background:** TRAI in its Interconnection Determination dated 08.01.2001 in the TDSAT allowed all the Cellular Operators to retain 5% of their pass through revenue paid to the Fixed Operators for calls made by Cellular Subscribers to cover their cost of bad debts and collection charges. COAI & Others challenged BSNL & MTNL in the TDSAT who did not paid this amount to the petitioners for the period 8.1.2001 to 31.1.2002. Further in the bills raised by BSNL and MTNL, though full amount was paid by the petitioners for the pass through traffic from the networks of BSNL and MTNL but credit was not given to the petitioners of this 5% revenue.

TDSAT in its Order dated 29.03.04 directed BSNL & MTNL to implement the TRAI recommendations dated 08.01.01 allowing the petitioners to retain the 5% of their passed through revenue paid to them for calls made by the petitioners w.e.f 25.1.2001 and BSNL & MTNL to refund/adjust all the excess amounts received by them from the Petitioners towards the 5% of their passed through revenues w.e.f.25.1.2001 upto 31.1.2002.

The final order dated 29.03.04 passed by the Hon'ble TDSAT was challenged by BSNL and it filed a Civil Appeal against COAI in the Supreme Court of India.

**Present Status:** The matter was called on for hearing on **January 3, 2005**. COAI filed a reply to the BSNL appeal and the Supreme Court had ordered BSNL to refund the amount to the petitioners subject to petitioners giving a Bank Guarantee of the refunded amount to BSNL. The next date for hearing would be given by the Supreme Court after the summer vacations.

## 19. Forthcoming Events

The next meeting of the ITU Forum of the Regional Working Group (RWG) on Private Sector Issues: Asia & Pacific Region hosted by the Ministry of Information and Communications Technology (MICT), Thailand, is scheduled to be held from **3 to 5 August 2005**, at the IMPACT Convention Centre Muang Thong Thani, Bangkok, Thailand. Members are requested to participate in the Forum. Details on the event may be obtained from the COAI Secretariat or at the ITU website at [http://www.itu.int/ITU-D/partners/Events/2005/Bangkok\\_Aug05/index.html](http://www.itu.int/ITU-D/partners/Events/2005/Bangkok_Aug05/index.html)

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