

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

DATED 28th NOVEMBER 2005

APPEAL No.10 OF 2005

M.A.227 of 2005

Videsh Sanchar Nigam Limited

... Appellant

Vs.

Telecom Regulatory Authority of India

...Respondent

BEFORE:

**HON'BLE MR. JUSTICE N.SANTOSH HEGDE
CHAIRPERSON**

MR. VINOD VAISH, MEMBER

LT.GEN.D.P.SEHGAL (RETD.),MEMBER

For Appellants : Mr.C.S.Vaidyanathan, Senior Advocate
with Mr. U. Hazarika, Advocate

For Respondent-TRAI : Mr.P.V.Kapur,Senior Advocate with
Mr.Meet Malhotra,
Mr.Raghvinder Singh and
Mr.Jeevesh Nagrath, Advocates

For Applicant in M.A.227 of 2005 : Mr. P.Nagesh, Advocate

ORDER

Videsh Sanchar Nigam Limited (VSNL) has filed this appeal challenging the Tariff Order of Telecom Regulatory Authority of India (TRAI) dated 8th September 2005, (Telecommunication Tariff [Thirty Ninth Amendment] Order, 2005) whereby TRAI has fixed ceiling tariffs for what are known as IPLC half circuits.

2. As mentioned in the Explanatory Memorandum to the said notification, Cable based International Private Leased Circuit (IPLC) offers global connectivity through submarine cable and is stated to be a critical input for the provision of Broadband and Internet Services, International Long Distance Voice Telephony and for a number of key industries like Information Technology (IT) based Business Process Outsourcing (BPO) and Information Technology Enabled Services. These industries play a key role in the economic development of the country and are considered to be quite critical in the future socio- economic development of India. It has therefore been considered important by TRAI that the price at which IPLC services are made available to the user industries are competitively determined.

3. Respondent in the Appeal is the Telecom Regulatory Authority of India (TRAI) which is the Regulatory Body constituted under the Telecom Regulatory Authority of India Act, 1997 (as amended in January 2004)

4. The appellant has challenged the said Tariff Order and has made the following prayers:

- (a) setting aside and quashing the impugned notification dated 8th September 2005.
- (b) directing the Respondent to practice forbearance as far as tariffs for IPLC half circuit prices from India.
- (c) pass any other or further order which this Tribunal may deem fit and proper.

A prayer for interim relief was also made which was disposed of in terms of the following order by this Tribunal on 14-9-2005:

"Issue notice. Mr.Malhotra, learned counsel takes notice on behalf of the respondent.

Learned counsel for appellant points out that the impugned notification of TRAI would come into affect on 16-9-2005 and prays for interim stay.

After briefly hearing learned senior advocates appearing for appellant and the respondent, it has been agreed that in view of the special circumstances of the case early hearing would be given and both sides would help in early completion of pleadings. Respondent wants one week's time for giving reply and the appellant another five days after that for filing rejoinder. Time prayed for is granted.

Respondent has agreed that in view of the expeditious hearing being given to the matter the impugned notification would be kept in abeyance till a decision in the case is given by the Tribunal.

Accordingly the matter be listed for hearing on 3rd October 2005."

5. At the outset it would be useful to take note of the chronological sequence of events.

On 30-4-2004, TRAI floated a Consultation Paper on fixation of ceiling tariffs for IPLC and held open house discussions in July 2004 in Delhi and Bangalore with the various stakeholders. On 11-3-2005, TRAI notified certain ceiling tariffs which were to become operative with effect from the date of the notification. This was challenged before this Tribunal by VSNL in Appeal No.5 of 2005. The said appeal was allowed by the Tribunal by order dated 28-4-2005 and it was held that the tariff order of TRAI was vitiated by non disclosure of relevant facts and information, and therefore lacked in transparency and also resulted in violation of principles of natural justice. It was also held

that the lack of transparency also prejudiced the Appellant's right to appeal. The relevant extract of the said order reads as follows.

“It has been held and is not disputed as well that TDSAT is itself an expert body and can certainly go into all the questions relating to fixation of tariff.

We must, therefore, overrule the objection of TRAI that this appeal is not maintainable in as much as tariff fixation under section 11(2) of the act is a legislative function, Such a submission is patently against the provisions of the Act, under Section 11(2) is appealable to TDSAT. That being the position, it is difficult to appreciate the argument that TRAI is not required to comply with the principles of natural justice and therefore, not required to disclose the material relied upon or methodology and the data used for working out the costs of E1, DS-3. STM-1 circuits nor give reasons in support of such functions in exercise of its power of price fixation.

We, therefore, direct that all the documents and information as asked for by the VSNL, the appellant, be supplied to it by TRAI. In this view of the matter we are of the opinion that in the absence of non-disclosure of information to the appellant principles of natural justice have been violated and so also TRAI has breached the mandatory requirement of transparency in its functioning as required under Section 11(4) of the TRAI Act.

We could ourselves have heard the matter finally after the documents and information are supplied to the appellant but then the appellant would be deprived of its right to be heard by TRAI and their further statutory right of appeal. We are, therefore, of the opinion that the matter should be heard by TRAI. We accordingly set aside the impugned order and remand the matter to TRAI to have fresh look after giving full opportunity to the appellant keeping in view the observations made by us in this order.

In the circumstances, there will be not order as to costs.”

The Tribunal directed the disclosure of all the documents asked for by VSNL which were also specified in the said order.

Pursuant to the above order of the Tribunal, the Respondent filed an Appeal before the Hon'ble Supreme Court being Civil Appeal No.3362 of 2005. The matter was listed for mentioning before the Hon'ble Supreme Court and for grant of interim orders on 13th May 2005, when the Hon'ble Court not finding any urgency in the petition directed its listing after the summer vacations. The matter was listed before the Hon'ble Court on 22nd July 2005 wherein the Hon'ble Court admitted the Appeal and refused any stay of this Tribunal's judgment.

The Respondent thereafter proceeded to comply with this Tribunal's order of 28th April 2005. The Respondent by letter of 10th June 2005 addressed to the appellant enclosed the report of M/s Ernst & Young and a note containing the calculations for arriving at the costs, and the methodology adopted for fixing the tariffs. The process of sharing with VSNL of reports / data on costs / calculation of costs used in the tariff fixation is stated to have been done thereafter by the respondent. The impugned March 2005 TTO was notified by TRAI on 8-9-2005.

6. Before we proceed ahead it would be useful to explain some of the technical terms.

- An IPLC (International Private Leased Circuit) is a point to point private line used by an organization to communicate between offices that are geographically dispersed internationally. International Private Leased Circuits (IPLC) are the

basic building blocks for international communications, providing raw bandwidth for global communication networks. These point to point private line services are dedicated to the customer's exclusive use providing quality reliable digital transmission seamlessly integrating data, voice and imaging services. A wide variety of applications are supported by IPLC including internet access, LAN-to-LAN connectivity, telemedicine, video and teleconferencing. An IPLC can be used for internet access, business data exchange, video conferencing and any other form of telecommunication. IPLC enables customers with a global reach to over 200 countries to serve their international requirements supported by an extensive range of bandwidth options underlined by a predictable cost structure (Source: Software Technology Parks of India)

- E-1 signifies a 2MBPS capacity (MBPS i.e. Mega Bits per Second is a unit for expressing bandwidth capacity) DS-3 signifies 45 MBPS capacity and STM-1 signifies 155 MBPS capacity.
- In physical terms DS-3 is 21 times that of E-1 and STM-1 is 63 times of E-1.
- The IPLC Circuit comprises of one end in India (called the near end) and the other at the international destination (the far end). The present exercise of TRAI seeks to fix ceiling tariffs for the Indian end also called the near end half circuit. TRAI does not exercise any control over the far end half circuit.

7. In this appeal we would do well to bear in mind the pronouncement of the Supreme Court as to the jurisdiction of this Tribunal while sitting in appeal against an order of the Respondent Tribunal enunciated in the case of Cellular Operators of India &

Ors. Vs. Union of India & Ors. [(2003) 3 SCC 186] wherein the Apex Court while holding that the jurisdiction of this Tribunal in an appeal is not limited or akin to judicial review also indicated that the Tribunal should give due weight to the recommendations of TRAI which consist of an expert body. With this in mind we will consider the various issues arising in this appeal.

8. Briefly stated, according to the Respondent i.e. TRAI, Tariff regulation in IPLC market is necessary for the following reasons:

- The decline in the tariffs for IPLC half circuit services in India is substantially less than the extent of decline witnessed in other parts of the world over time and also as compared to the cost of provision of services.
- Skewed market structure that is detrimental to competition.
- The services of IPLC are critical to the penetration of Broadband / Internet services and to IT and IT Enabled Services.
- This measure would also promote level playing field in the industry.
- TRAI is convinced that such a regulation of tariff will not hamper investment.

TRAI has stated in the Explanatory Memorandum, which is part of the impugned Tariff Order, that after sharing of information / data by TRAI with VSNL, certain submissions were made to TRAI by VSNL regarding calculation of costs wherein some data used by TRAI in the tariff fixation was contested. After going through the Books of Accounts and other documents of VSNL, TRAI found that there was no major difference

in the cost estimates and therefore has reiterated the Tariffs fixed earlier, i.e. in the March 2005 notification.

TRAI has on this basis fixed the ceiling tariffs for three most commonly used capacities i.e. E-1 (Speed of 2 Mega Bits per Second), DS-3 (Speed of 45 Mega Bits per Second) and STM-1 (Speed of 155 Mega Bits per Second). The salient features of the Tariffs fixed vide the impugned Telecommunication Tariff Order are as under:

- The ceiling tariff of IPLC (Half Circuits) in respect of E-1, DS-3 and STM-I capacities are Rs.13 lakhs, Rs.105 Lakhs and Rs.299 lakhs per annum respectively.
- These ceiling tariffs fixed result in a reduction of 29%, 64 % and 59 % in tariffs for E-1, DS-3 and STM-I capacities respectively (as compared to the existing listed prices prevalent in the market for India – USA {Atlantic Route})
- The prescribed ceiling tariffs would be applicable for all destinations, capacities and types of cable systems used for carrying either voice or data.
- The ceiling tariffs prescribed by this Order were to take effect from 16-9-2005.

According to TRAI, the ceiling tariffs have been determined on the basis of the Historical Costs of the incumbent i.e. VSNL which holds a large chunk of the IPLC market in India and was having monopoly in this business till about two years ago. (VSNL was earlier a Central Government owned Public Sector Company which was

privatized in 2002.) Forward looking cost concepts have not been used in this exercise in order to ensure smooth transition to competition.

9. The Appellant i.e. VSNL has contested all the contentions of TRAI in this regard.

Briefly its contentions are:-

- The Respondent has not dealt with Appellant's factual assertions that IPLC cost is an insignificant component of user industries costs thereby price regulation / reduction would be having a minimal impact. Also, prices of half circuit at the foreign end are three time higher than that at the India end, all of which demonstrates that controlling prices at the Indian end will have minimal if no impact.
- The Respondent, in compliance of this Tribunal's order, disclosed the cost methodology / calculation in arriving at the cost figure of 8.56 lakhs per E-1 circuit in the tariff order of 11th March 2005. The erroneous assumptions of the respondent on being corrected, the revised costs figure would be Rs.13.09 lakhs per E-1 circuit. Instead of accepting this figure of Rs.13.09 lakhs of cost per E-1 circuit and thereafter refixing the tariffs on such basis, the Respondent while keeping the total figure of cost intact, for arriving at the per unit cost divided the total cost by the quantity utilized (which includes restoration and redundant capacity), which is a new and higher denominator as opposed to the previous denominator of quantity sold adopted for calculating per unit cost in the Consultation Paper as well as in the 11th March 2005 tariff order.

- The mandate of this Tribunal in its order of 28th April 2005 is clear i.e. the Respondent is to share the cost methodology / calculation with the Appellant and give an opportunity of hearing. Logically and in the letter and spirit of this Tribunal's order, the Respondent ought to have revised its figure of cost after taking into consideration the Appellant's submissions, to Rs.13.09 lakhs per E-1 circuit and thereafter refixed the tariffs, if at all. While the Appellant's submissions of wrongful exclusion of certain costs, towards calculating total cost, were accepted, the Respondent changed the rules by adopting a different denominator for calculating per unit cost of E-1 circuit, so that it could retain its previous assessment of cost as well as the tariff levels. Such action is not only arbitrary, but violative of the principles of natural justice and the statutory mandate of transparency as no reasons have been assigned for the same, thereby gravely prejudicing the Appellant's right of Appeal.
- Moreover, the sudden change in the methodology was not shared with the Appellant during the entire interactive process over the last five months pursuant to the directions of this Tribunal of 28th April 2005 but was communicated to the Appellant on 7th September 2005 and the impugned order was published on 8th September 2005 thereby giving no opportunity to the Appellant to respond.
- There are several erroneous assumptions, insofar as calculation of costs are concerned, raised previously in Appeal No.5 of 2005 and during the subsequent interactive process, but which have not been dealt with in the impugned order.

- TRAI has further relied upon the report of its consultant M/s Ernst & Young, furnished to the Appellant pursuant to the order dated 28th April 2005 of this Tribunal, to prove its contention that IPLC market in India does not have effective competition, that the prices are too high in India and more importantly for arriving at the extremely low price multiple of 1:8:23. (The ratio between the prices of E-1, Ds-3 and STM-1) M/s Ernst & Young have carried out a survey of International and domestic markets and the Appellant has demonstrated in the Appeal that their findings are certainly not as stated, infact they are in contradiction to the Respondent's stand on crucial issues.
- Moreover, the Respondent has selectively made use of data provided by M/s Ernst & Young to tailor its requirements. To illustrate, M/s Ernst & Young have shown that for every country in Europe there are atleast 25 IPLC providers, which is a ground of the Respondent to regulate prices allegedly due to fewer number of service providers in India. What the Respondent conveniently overlooks and which is not stated in the impugned order is that the decline in prices over a 4 year period from 2000 to 2004 in India is 88% and in Europe is 4 to 20% and which has been set out in the Ernst & Young report.
- The Respondent has made a wrong comparison of the VSNL IPLC prices for India-USA (Atlantic Route) with international prices for Japan-USA, South Korea-USA, Hong Kong – USA and Singapore- USA for the Pacific Route. Since the Pacific Route prices had shown a decline, unlike the India-USA (Atlantic Route), this was not a like to like comparison.

10. We were confronted with voluminous documents for the consideration of this matter starting from the appeal itself comprising of 677 pages with a reply by the respondent though seemingly of only 56 listed pages but including 6 annexes running into additional 375 pages, a rejoinder by the appellant of 181 pages, a sur-rejoinder to the rejoinder filed by the appellant running into 66 pages and response to the sur-rejoinder in 126 pages. The learned counsels on either side also pressed for adequate time to be given to them to present their arguments. Accordingly hearings were given in several sittings starting 3.10.2005 and continued on 4.10.2005, 24.10.2005, 26.10.2005, 7.11.2005, 8.11.2005 and 11.11.2005.

On the basis of the arguments put forth before us we have identified the key issues which need to be addressed as follows:

- (i) Need to regulate IPLC tariffs
- (ii) Whether Costing Methodology for IPLC adopted by TRAI was defective and suffered from lack of transparency.
- (iii) Whether certain erroneous assumptions in calculation of costs that were pointed out by the appellants to TRAI have not been dealt with in the impugned order.
- (iv) Whether the Price Multiple in pricing of E-1, DS-3 and STM-1 viz. 1:8:23 was based on erroneous assumption and would lead to several aberrations e.g. arbitrage opportunity, subsidizing of well to do industry at the cost of small entrepreneurs.

- (v) Whether there was inadequate sharing of information by TRAI with VSNL leading to lack of transparency or violation of rules of natural justice.
- (vi) Whether TRAI has tried to give justification for its order of 8-9-05 through subsequent affidavits / arguments which were not known to the appellant or are not available in the impugned Tariff Order of 8-9-05.

11. In view of the complicated nature of the documentation and the lengthy arguments from either side, we would instead of recording the contentions of the appellant and the respondent in a continuous narrative and giving our conclusions at the end; take up each of these matters one by one and after dealing with the contentions of either side on any one issue would record our conclusions on the same before proceeding to the next issue.

12. Need to Regulate IPLC

12.1 The Explanatory Memorandum which forms Annexure A to the TRAI Notification of 8th September 2005 (impugned order), deals at length with the considerations on the basis of which TRAI has concluded that regulatory intervention in the pricing of IPLC services had become necessary. On the basis of a Consultation Paper issued in April 2004, TRAI also held Open House Discussions with the stakeholders including VSNL. This exercise had been initiated by the Regulator on the basis of representations received from user groups such as NASSCOM (National Association of Software and Service Companies), Internet Service Providers Association of India (ISPAI), Business Process (BPO) Units, requesting for regulating the tariffs in India for

IPLC as they were much higher than in several other countries. The Regulator has recorded that protracted discussions with the incumbent operator i.e., VSNL, who holds a substantial market share in the IPLC market and complete control over four out of five cable land stations, for a reduction in the tariffs for IPLC services did not yield fruitful result. During the course of consultations the overwhelming opinion of the stakeholders was that effective competition in the IPLC business segment had not yet emerged in the country and that TRAI should regulate the tariffs based on assessment of costs for promoting greater penetration of Internet and Broadband services.

The Explanatory Memorandum further spells out the justification, for the Tariff Regulation. In regard to the state of competition and the factors that constrain competition in the IPLC market in India it is stated that:

“Factors Constraining Competition

Limited Number of Players

In India, the international long distance (ILD) segment was opened to competition in 2002. Videsh Sanchar Nigam Ltd. (VSNL) is the incumbent operator with landing station facilities at Mumbai, Cochin and Chennai. The other ILDOs who also supply submarine cable bandwidth services are Bharti Infotel and Reliance Infocomm. Bharti Infotel owns a landing station facility at Chennai. As of now, Reliance Infocomm has not yet established their own cable landing facilities. VSNL is likely to maintain its dominance in the IPLC market for some more time. Thus, the prevalent market structure in IPLC in India is such that there are only three active players and of them only two have landing facilities. It is gathered that in many countries the number of players is large and most of the operators are Non-Facility based operators. At present, resale of capacity is not permitted in India because the focus has been on building additional capacity. The table below shows the number of bandwidth providers in each location (including resellers):

Location	Number of Bandwidth providers
London	33
USA-NY	32
Germany	32
France	24
South Korea	14
India	3

Source: *ERNST & YOUNG/NRA websites*

Access to Facilities

Access to submarine cable landing stations is considered an essential input for many telecom services. Any unnecessary access restrictions tend to limit operator's competitive scope to provide international telecom services. Thus the submarine cable landing stations are critical telecom infrastructure and efforts should be made to ensure that they do not become bottlenecks to telecom service provision. Access barriers constrain the competitiveness of telecom operators and are detrimental to healthy growth of the telecom market. TRAI has received a number of complaints that competition is being restricted due to constraints on access to facilities. VSNL's continued control of cable landing stations and associated facilities are said to constitute bottlenecks, which allow the incumbent to stall or delay entry (or efficient operations) by other operators. Access problems are faced not only by the underlying cable operators but also by operators who have acquired capacity in a cable system and wish to access the capacity at the landing station. Discussions with industry sources suggest that establishing a cable landing station facility in India not only requires a huge amount of investment but is also a time consuming process involving various clearances including security clearance, etc. Thus, the control of access to the cable landing stations make it possible for the supplier of the access facility to impose constraints which are in the nature of non-price factors affecting the competition. TRAI noted that there is a need to enhance competition in the IPLC market in India and to promote competition certain other measures are required to be taken. Towards this end a separate consultation process has been initiated by TRAI with the issue of Consultation paper No. 5 of 2005.

In regard to the comparison of Indian IPLC tariffs with International benchmarks the position is stated as follows:

“5. The international benchmark analysis suggests that prices for Indian IPLCs are substantially higher than in comparative markets especially for higher bandwidth circuits. It is therefore evident that international bandwidth is not competitively priced in India when compared with many countries in Asia, some of which are India's competitors in global Business Processing Operations business. These

prices are an integral part of the costs of broadband and thus should be specially considered in any strategy to remove constraints and boost broadband in India, in particular rural India. Price regulation becomes important in the above context, based on costs and reasonable profits.

6. The evidence indicated above shows that the actual Indian IPLC prices are high in comparison to international benchmarks, which suggests lack of effective competition in the market for IPLCs in India. This has been confirmed in a recent study conducted by an independent consulting agency (Gartner, Inc 2004, 'Market Focus: International Bandwidth Pricing Trends, Asia-Pacific, 2004'). The conclusion of the Gartner study in regard to international bandwidth markets in Asia- Pacific is reproduced as under:-

'The most-competitive markets for international bandwidth are Hong Kong, Singapore, Japan, Taiwan and South Korea. The least-competitive markets are Indonesia, India and Malaysia

Further it is mentioned that,

“TRAI noted that the IPLC service providers are also Internet Service Providers (ISP) (i.e. they are integrated) and thus they compete with other standalone ISPs who use international bandwidth resources. Similarly, ILDOs owning international capacities, which provide IPLC services, are also providing international long distance telephony and to that extent ILDOs not owning international capacities have to depend upon facilities of their own competitors.”

In the end it is mentioned that:

“Keeping in view these factors and likely developments in the Indian market for IPLC, TRAI concluded that the immediate need would be to mandate ceilings for IPLC prices primarily based on costs. This measure would thus promote a level playing field in the industry.”

The Explanatory Memorandum also brings out that TRAI in compliance with the directions of TDSAT, proceeded to engage with and shared relevant reports, cost data, details of calculation of tariff etc with VSNL, and the latter was also given an opportunity by TRAI of being heard. VSNL made presentations before TRAI on 1-7-05 and 8-7-05.

It is mentioned that key issues raised by VSNL have been addressed in the Explanatory Memorandum. We will deal with these issues as we go along as many of these have been again raised in the appeal before us and argued at length at the time of hearing.

12.2 According to VSNL appropriate bench marks would show that contrary to the view taken by TRAI, IPLC prices in India are competitive. In this regard we find that the Explanatory Memorandum states as follows:

“International Benchmarks, its role and relevance

13. TRAI has used the international benchmark and other factors only to know and compare the situation in India with that outside the country. It has no other relevance for fixation of tariff which is based on cost. Further, the absolute comparison of prices between India and other countries was not the basis for TRAI's consideration to regulate the tariff in India in the IPLC sector. The reasons why regulation is required include a lack of significant decline in tariff over time in India as compared to international benchmarks and also as compared to the decline in the cost of provision of services that signalled market failure to TRAI.

Erroneous Comparison of Time Period and Markets by VSNL

14. VSNL contested the period of comparison of IPLC prices and sought a comparison since 2000 instead of 2002. The comparison of trends in the IPLC prices in India and the International prices for the same service made by TRAI for the period since 2002 is appropriate. The year 2002 is significant for comparison because it saw the opening of the International Long Distance (ILD) Sector to competition and the transfer of ownership of VSNL to a private company. Strangely enough, the evidence before TRAI is that after the sector had been opened for competition, VSNL's tariff declines have been marginal, if at all VSNL showed comparison of IPLC prices since 2000 and preferred comparison not after transfer of ownership that coincided with opening up of the sector for competition.

Independent Reports Classify Indian Market for IPLC as Least Competitive

15. Further, VSNL has sought a comparison between India and countries like Indonesia, Malaysia, Thailand, Middle East etc. which are considered to be

among the least competitive markets. It is noteworthy that independent international report by Gartner (2004) in this regard has concluded that the IPLC market in India is lacking in competition. The findings of Gartner Report in this regard are reproduced below:-

'The most-competitive markets for international bandwidth are Hong Kong, Singapore, Japan, Taiwan and South Korea. The least-competitive markets are Indonesia, India and Malaysia'. (Source: Gartner, Inc 2004, "Market Focus: International Bandwidth Pricing Trends, Asia-Pacific, 2004") When the goal is to achieve competitive efficiency, the submission of VSNL that comparison has to be made with less competitive markets goes against the objective itself.

Comparison of Markets for the Near-end and the Farther-end half Circuits

16. VSNL has also argued that the Indian end half circuit E-1 prices compare favourably with the distant end. TRAI has considered this point and also the evidence produced by VSNL in this regard. Evidence was in the form of very few selective invoices unaccompanied by the relevant details. It was not possible to verify whether the prices cited by VSNL have prevailed in the far-end were for a short-term supply of an additional capacity or the comparison itself was being made for the equivalent services and standards. In fact the Report on International Bandwidth 2005, (PRIMETRICA, INC. California 2005) has provided evidence to the effect that the market is more competitive in the farther end than the near-end. The report states thus:-

*"In 2004, bandwidth pricing on routes to India did not vary by region of origin. Prices for full circuits – based on a combination of two half circuits – between Mumbai and Europe, Asia and the US were highly uniform in 2004...**Much of this uniformity can be attributed to the fact that the price of the incumbent's half-circuit was effectively fixed and competition only affected prices on the foreign owned half circuit.**" (emphasis added)*

Perspective of NASSCOM's Observations

17. In this context, VSNL has referred to the observations of NASSCOM in response to the consultation paper on IPLC tariff fixation. To put the issue in proper perspective, TRAI recalled some of the key submissions made by NASSCOM to TRAI prior to and in response to the consultation paper on fixation of ceiling tariff for IPLC.

These are given below:-

- The cost of a 45 MB/155 MB link from India to US is nearly two to three times (200-300%) as expensive as a similar one from Singapore and of great concern 8-10 times as expensive as China.

- Of particular concern is the fact that while the price for 2 MB link is higher than international norms, as you go to 45 MB and 155 MB the differential is huge. The price multiplier in going from 2 MB to 45 MB and then to 155 MB is about 17 and 53 times for the India end, for the foreign end it is only about 7 and 18 times respectively. Our disadvantage on this front is therefore getting literally multiplied.
- With the proposed tariff of Rs.12 lakhs for a half circuit E-1 (as in the consultation paper), the end-to-end Indian price will be three to four times that of the Philippines.
- The methodology used in setting the ratio is in the right direction and is a good start. The ratio of price for E-1, DS-3 and STM-1 which has been calculated as 1:8:23 should be lower so as to be in line with the world wide industry standards (Japan-US 1:4:10; China-US 1:5:12; Hong Kong-US 1:5:11; Singapore-US 1:4:9)
- ILDOs specially those having ‘incumbent’ facilities should be made to offer a discounted rate to other ILDOs so as to reflect the higher order capacity need and also to encourage sharing of this bottleneck facility.
- TRAI must implement the spirit of sharing of these bottleneck resources to meet the need of flexibility, higher SLA and cost reductions needed by the industry to keep India competitive.

18. It is thus evident that the feedback of one of the key user industry associations like NASSCOM confirms some of the major findings of TRAI in the context of its analysis of IPLC market in India.

19. It has been erroneously concluded by VSNL that the comparison used by TRAI for benchmarking the international prices of IPLC is between the wholesale price and retail price. According to VSNL, the prices compared by TRAI for benchmarking reflect wholesale transit volumes particularly in the case of higher capacity and thus the comparison is too simplistic. This is an incorrect inference by VSNL. It is well known that it is hard to differentiate between a wholesale capacity purchase and a retail purchase of IPLC particularly in respect of higher capacities like STM-1. The buyers of these levels of capacity in those markets are invariably a telecom operator or large trans-national companies (TNC) with very high capacity demands. Both the operators and TNCs would be buying their capacity in the same market. If at all anything could be considered as the ‘wholesale only product’, that would be the market for wavelengths and/or dark fiber which are extremely high capacities without any additional services at the terminating ends. Sales of such capacity are not common and these were not considered by TRAI to be part of the international comparison of IPLC prices.

20. In its attempt to prove that the comparison made by TRAI is inappropriate, VSNL made a wrongful comparison of international prices of IPLC sourced by its own consultant i.e. Boston Consulting Group (BCG) with that of the prices reported in the *Ernst & Young* report (Shared with them by TRAI as part of TDSAT's mandated disclosure). The comparison is wrongful because BCG relied upon the list prices while *Ernst & Young* had taken the market prices in their final analysis. The relevant price for comparison in such situation is the average actual prices prevalent in the market and not the listed prices.

21. The incumbent has further submitted to TRAI that certain lower prices for IPLC shown to be prevalent in certain Asian countries are in fact prices between hubs and prices of IPLC between such hubs ought to be lower. This assertion of VSNL is not entirely true under the prevailing circumstances. Where there are specific dedicated links – like for Singapore – the capacity available there is on the order of magnitude of a Hub to Hub link. Further, India has the advantage of being on the direct routes of the major trunk cable systems landing in India. The “Hub- Spoke” framework of analysis propounded by BCG on behalf of VSNL in their report is applicable to a market where there is a lack of demand and corresponding lack of international capacity which is not true of Indian market considering the growth of data services in India and the investments of ILDOs including VSNL in augmenting international private line capacity. The usage of international bandwidth in India as projected by Primetrica for 2005, 2006 and 2007 are in the order of 12.8 Gbps, 28 Gbps and 45.9 Gbps respectively. The utilization of international Bandwidth by India (as estimated for 2005) is higher than in countries like Thailand, Malaysia, Philippines, Indonesia, Vietnam, UAE, Saudi Arabia, New Zealand, Egypt and South Africa (Source: Primetrica Inc. 2005, International Bandwidth Report 2005). Needless to say, the demand for international Bandwidth is stimulated by the success of the Business Process Outsourcing Industry and also by the high rate of growth of the economy itself. In this regard, TRAI further noted that the tariffs fixed for IPLC have been determined based on actual costs and in that cost also sufficient margin and buffer have been provided.

Low international submarine bandwidth prices in other markets is not in all cases due to the distress of cable owners

22. The argument of VSNL that prices in other market are route specific and the low international submarine bandwidth prices in other markets is due to the distress of cable owners on account of Chapter 11 bankruptcy is not entirely true. If that was so, VSNL has not explained as to why heavy downward pressures on pricing exist on routes that are not catered to by carriers who are distressed. In fact, according to the data provided by the VSNL (BCG Report), the large share of capacity for such bankrupt companies was in the trans-Atlantic segment, and not in links to South, South East and East Asia. Further, recent investments by the cable operators in i2i, TIC cable system, SEA-ME-WE-4 and FALCON run contrary to the theory of VSNL that ‘price falls on either side of India has been a

compulsion to recover any thing possible' and thus 'cable investments of carriers are uneconomical'. VSNL had in fact admitted that *"all the ILDO players are entering the market aggressively with significant investments in cable systems. In the near term (6 to 12 months) it is anticipated that Indian companies are likely to invest around US \$ 500 million in various new cable system that land in India."* (source : p.11 of 24 of VSNL submissions dated 6.7.2005 in response to consultation paper on 'Measures to Promote Competition in International Private Leased Circuits in India').

Lastly, the operators in India, including VSNL have themselves also been in a position to take advantage of the unfortunate financial conditions of various international circuit operators by buying or sourcing submarine bandwidth from them at tremendous discount to actual investments. This is not included in the cost based calculations of TRAI. Since cost is being fully allocated on a Historical Basis, the bankruptcy of operators in other markets is not relevant"

12.3 At the time of arguments learned senior counsel for the appellant Shri C.S Vaidyanathan pointed out that a wrong comparison has been made between the VSNL IPLC prices for India-USA (Atlantic route) with Japan-USA, South Korea-USA, Hong Kong – USA and Singapore-USA which are via the Pacific route. Since the Pacific routes had shown a decline which was not the case with the India –USA Atlantic route, this was not a like to like comparison. This was countered by Shri Kapur, the Learned Senior Counsel for TRAI by stating that the regulator has tried to see whether the India – USA IPLC tariffs are competitive vis-à-vis to countries with which India is competing and these would be Singapore, Hong Kong and China and not any of the South Asian countries or even countries like Indonesia, Malaysia or Thailand who may be having higher IPLC tariffs, which is not much of relevance as these are not the countries with which India is competing. It would not make sense for us to compare with such of the countries which offer no competition to India.

12.4 In regard to the decline in the IPLC tariffs of VSNL we have taken note of the following analysis in the Explanatory Memorandum:

“i) Comparison with List Prices

1. The tariffs prevalent in India for IPLCs were compared with international benchmarks, and with the cost based estimates arrived at using cost data available in the separated accounts of VSNL. Through intensive interaction with domestic and international experts, TRAI examined various aspects of International lease prices for bandwidth including international benchmarking exercises, trends in the cost of cable construction for sub-marine network, market structures in various countries where prices are competitive, the regulatory environment governing the IPLC sector etc.

2. Owing to various factors, the international market for Bandwidth has steadily witnessed a deflationary spiral for more than five years. For purposes of comparing price trends across regions, STM-1 lease prices are said to be the most useful common denominator. In what follows, a comparison is made of the trends in the lease price of STM-1 across regions. It has been found that in the Trans-Atlantic region, the median STM-1 price had plummeted 70% in 2000, 65% in 2001, 26% each in 2002 and 2003 and 25% in 2004. In the Trans-Pacific region, the median price of an STM-1 in a representative route fell 56% in 2003 and 40% in 2002. In the Europe-Asia region, the median STM-1 circuit prices fell by approximately 42% in 2003, which is comparable to the decline witnessed in the previous year. Median STM-1 lease prices in Asia fell by 50-60% in 2003 (source: PRIMETRICA, INC.2004, Vol.I: submarine networks). The report of PRIMETRICA, 2005 has given more evidence of further decline in IPLC prices in the year 2004 across many regions and routes. As against this backdrop, lease price for STM-1 originating from India, has declined only by about 12.5% in terms of Compounded Annual Growth Rate (CAGR) (from India to USA) during the period 2002 to 2005 (till June, 2005). The corresponding percentage decline in the lease price of DS-3 and E1 capacities originating from India was 12.5% and 15.7% (from India to USA) respectively. A comparison of the above with the Indian prices shows that the extent of decline in the lease price of international capacity of services in India is substantially less than the extent of decline witnessed in other parts of the world.”

This position is also brought out very clearly through graphic depictions of the decline in prices which shows a steep drop during 2001 to 2002 and almost steady prices in the period 2002-2005.

12.5 In view of the very detailed analysis contained in the Explanatory Memorandum and the cogent reasoning given for arriving at the relevant conclusions, we do not find any merit in the VSNL assertion that Indian IPLC prices are competitive and that in view of the declining trend pointed out by VSNL there is no need for any regulatory intervention for fixing the IPLC tariffs..

12.6 On behalf of VSNL it has also been argued that IPLC is not used by Internet Service Providers, that bandwidth is different from IPLC, that IPLC constitutes an insignificant part of cost of ISP Service, or even BPO or IT Enabled Services. Some cost sheets have also been produced before us to indicate that IPLC costs would be not more than 1 to 4 % of the total cost, countering the assertion of TRAI in the Consultation Paper that IPLC constitutes a significant proportion of the operating cost ranging upto even 40% of the cost. We find no reason to disbelieve the assertions of NASSCOM, ISPAI and TRAI that IPLC constitutes a critical factor in the provisioning of international bandwidth within the country which in turn is vital for internet and broadband connectivity.

It could be true that IPLC cost may not be constituting as high a proportion of total cost as 40-45 %, but the fact remains that where the market is concentrated in a few hands and a large chunk of which is with one service provider, distortions in prices are bound to occur. In these circumstances, regulatory intervention per se to tackle the situation cannot be held to be without any basis. As already mentioned by the Regulator in the Explanatory Memorandum, some IPLC Service providers like VSNL are also Internet Service Providers (i.e., they are integrated), thus they compete with stand-alone ISPs who use international bandwidth resources. Similarly ILDOs owning international

capacities, which provide IPLC Services, are also providing international long distance telephony and to that extent ILDOs not owning international capacities have to depend upon facilities of their own competitors. This regulatory action in the form of fixing of tariff charges for IPLC would therefore help in promoting a level playing field in the industry.

We, therefore, are inclined to conclude that adequate basis has been established in the impugned TTO to justify intervention by the Regulator in IPLC price fixation and do not find any merit in the arguments addressed to the contrary on behalf of VSNL.

13. Whether Costing Methodology for IPLC adopted by TRAI was defective and lacked transparency.

13.1 According to the Appellant, the Respondent herein despite going through the elaborate motions of complying with this Tribunal's direction has again on the crucial aspect of costing methodology failed to observe the statutory mandate of transparency and the principles of natural justice. During the entire process of documents disclosure and presentation, the Respondent followed an interactive process, however in respect of the cost methodology and the manner and mode of arriving at the cost of an E-1 circuit, which formed the basis of tariff fixation, the Respondent did not seek any response from the Appellant and just on the eve of publication of the tariff order, sent across a communication on 7th September 2005 to the Appellant disclosing the calculations. No reasons have been assigned for departing from its previously adopted cost methodology. Whereas in the case of other issues the Respondent had elicited the response of the Appellant, however on this crucial aspect the Respondent again failed to comply with the principles of natural justice and the statutory mandate of transparency.

13.2 The Appellant has further stated that the Respondent in compliance of this Tribunal's order, disclosed the cost methodology / calculation in arriving at the cost figure of 8.56 lakhs per E-1 circuit in the tariff order of 11th March 2005. While the Appellant's submission of wrongful exclusion of certain costs, towards calculating total cost, was accepted however the Respondent changed the rules by adopting a different denominator for calculating per unit cost of E-1 circuit, so that it could retain its previous assessment of cost as well as tariff levels. The erroneous assumptions of the respondent on being corrected, the revised cost figure would be 13.09 lakhs per E-1 circuit. Instead of accepting this figure of Rs.13.09 lakhs as cost per E-1 circuit and thereafter refixing the tariffs, if at all, on such basis, the Respondent for arriving at the per unit cost divided the total cost by the quantity utilized (which includes restoration and redundant capacity), which is a new and higher denominator as opposed to the previous denominator of quantity sold adopted for calculating per unit cost in the consultation paper as well as in the Tariff Order of 11 March 2005. It has been pointed out that TRAI had earlier arrived at a figure of cost of Rs.11.84 lakhs per E-1 circuit in its consultation paper, which correcting for its erroneous assumptions M/s Boston Consulting Group (BCG) had revised the cost estimates to Rs.18.16 lakhs per E-1 circuit and further revised by the TRAI itself to a figure in the range of Rs.7.4 to 9.0 lakhs in the Tariff Order of 11 March 2005, on which due to the methodology and calculation not being shared with VSNL & TRAI, this Tribunal had by order of 28th April 2005 directed the disclosure / sharing of relevant information with VSNL.

13.3 According to the Appellant, such action of TRAI is not only arbitrary, but violative of the principles of natural justice and the statutory mandate of transparency as no reasons have been assigned for the same, thereby gravely prejudicing the Appellant's right of Appeal. Moreover, the sudden change in methodology was not shared with the Appellant during the entire interactive process over the last five months pursuant to the directions of this Tribunal of 28th April 2005 but was communicated to the Appellant on 7 September 2005 and the impugned order was published on 8th September 2005 thereby giving no opportunity to the Appellant to respond.

13.4 The contentions of the respondent in this regard are as follows:

- The respondent carried out this Tribunal's orders and proceeded to engage with and shared the relevant reports, cost data, detailed calculations of tariff for E-1 and price ratios for higher capacities etc with the Appellant. Also, that the respondent held a number of interactive sessions with the appellant after the Tribunal's order dated 28-04-05. The process of interaction was significantly extended to accommodate various and repeated submissions of VSNL. The Appellant tried to protract the process by sending repeated requests for time to furnish its written response and for making presentation before the Respondent. This process started on 10-6-2005 and came to an end on 7-9-2005.
- That after the sharing of information, the appellant was given opportunity by the respondent for being heard. The appellant made use of this opportunity and made presentations in the office of the respondent on two occasions viz on 1-7-2005 and on 8-7-2005.

- After TRAI had shared the detailed calculations of cost and other reports relevant for tariff fixation with VSNL, the latter made its submissions to TRAI which process took about three months. TRAI after thorough examination of VSNL's oral and written submissions including the supporting documents and Auditor's certificates furnished by VSNL, found a number of discrepancies in data in respect of certain items of expenses and apportionment of investments made by VSNL, between VSNL's new submissions, VSNL's accounting separation reports, its Annual Reports and other information supplied earlier. With a view to verifying the correctness and to check the veracity of Auditor's certificates submitted to TRAI subsequent to the submission of Accounting Separation Report, TRAI found it necessary to depute a team of officers of TRAI to inspect Books of Accounts and other supporting documents used by VSNL for preparation of its accounting separation reports. The Inspection Report contains commercially sensitive data including details relating to network elements of VSNL. etc and thus has not been shared in public. The findings of the Inspection Team have been given to the Tribunal with an affidavit along with the information in a sealed cover.
- Although there were differences of opinion between TRAI and VSNL, regarding accuracy of data, TRAI considered that for fixation of this tariff these differences would not make a material change for the following reasons:
 - (i) the revised cost estimates take into account the wrongful claims of VSNL (on account of investment in TTSL and apportionment of satellite related expenditure) and these estimates are still lower than the earlier estimates of

costs (this was shared by TRAI with VSNL vide its letter of 7-9-05, which has been submitted to TDSAT by TRAI with an affidavit along with other information in a sealed cover) Copy of this letter has been enclosed by VSNL in Vol.II of their appeal.

- (ii) TRAI has not used the Forward Looking Cost Approach or even the current cost of the new entrants which would have resulted in much lower costs.
 - (iii) The cost data is for the period 2003-04 and more than 18 months have passed, therefore for the implementation period the costs should be still lower.
- TRAI therefore felt that no useful purpose would be served by delaying the tariff order further as this would lead to usurious tariffs being continuously charged impacting adversely the consumers and other downstream industries.
 - No deeper examination of VSNL's Books of Accounts and other documents at this stage was considered necessary as TRAI did not intend to involve itself in such detailed inquisition which would have only delayed the matter further. The verification exercise undertaken by the Inspection Team of TRAI not only did not prove the service providers view point, it opened up further areas of doubt. Infact, TRAI had expressed its serious doubts about the disclosures of VSNL to TRAI particularly in respect of the data relating to cost, the capacity, etc, way back in April 2004 in its Consultation Paper on this subject, relevant extract of which is reproduced below:

During the tariff review, VSNL provided data relating to parameters like gross block, net block, and directly attributable operating expenditure to

IPLC segments. VSNL provided a relative apportionment of assets used in cable based leased circuits, which was not easy to verify. The presumption in such situations is that the costs provided by the operator are likely to be over-estimates. VSNL used assumptions to further inflate the cost base. VSNL had claimed a depreciation rate, of 33% under WDV method for cable system. For the purpose of fulfillment of statutory obligations etc., however, VSNL was found to be using straight-line method of depreciation and average life of cable systems between 10 and 25 years in their Balance sheet. They had also claimed a pre tax return of 23.66% on total investment, which includes unutilized sum of Rs.625 crores raised through GDR issue. Further, the revised data submitted by VSNL, after prolonged discussions with them, vide their letter dated 10th October 2003 were also over estimates. These data too were inconsistent and not verifiable for a number of parameters like cable O&M restoration cost, and general-administration manpower and other overheads, etc. The number of E1 circuits declared from time to time also varied. More importantly, VSNL could not explain the basis for the gross block that was apportioned for purposes of IPLC segment of the business and also the higher amount of O&M under the operational expenses head

- The findings of the Inspection carried out by the TRAI officials were communicated to VSNL. Reply of VSNL to the observations contained in the report of the team of TRAI deputed for verification of Books and other documents was obtained and examined by TRAI. The analysis of the observations made by VSNL on the report of the Inspection was made available to VSNL along with the revised calculation. Since these matters involving commercial data of VSNL are sensitive, TRAI did not share the details of the findings of Inspection of Books of Accounts and other documents of VSNL in the Explanatory Memorandum to the impugned Tariff Order.
- In the March TTO also the denominator used for determining the per unit cost of E-1 was capacity utilized and not capacity sold.
- VSNL were required to give figures of capacity utilization in the accounting separation reports. However at no stage were the figures given despite being

pointed out and also discussed with VSNL representatives in Delhi. The Appellant was informed about the non-submission of full information in the non-financial reports, especially relating to the capacity on 16-2-2005. The appellant was also called for discussions on 3-3-2005 and during these discussions Respondent was assured that the non financial information would be provided. In the letter dated 16-2-2005 the Respondent had also raised issues relating to costs especially those pertaining to inclusion of investment in the capital employed. The appellant very promptly replied on issues relating to expenses which obviously had direct bearing on inflating the cost of IPLC but totally ignored the reply on capacity related issues though these were raised in the same letter as that would have resulted in the disclosure of higher utilization of capacity and thereby reducing the per unit cost of IPLC. When requisite information was not forthcoming, the Respondent had two choices, either complete a costing inquisition exercise by forcing the operator to give data under section 12 of the TRAI Act and then launch prosecution in a court of law if operator does not give the data or use the data as derived by the regulator. The only figures available with TRAI were the total capacity and capacity sold. In the absence of information regarding capacity utilization, the capacity utilization was derived from the figures of capacity sold. This would be evident from paras 40 to 42 under the heading Capacity Utilisation of the Tariff Order dated 11-3-2005 reproduced below:

“Capacity Utilisation

40. TRAI has information on the actual capacity available with VSNL as of July, 2004. TRAI examined the capital expenditure/investment made

by VSNL in the period April to July 2004, and concluded that the capital expenditure for the separated accounts for 2003-2004 could be allocated to this capacity available in July 2004, i.e. the CAPEX for end-March 2004 could be considered as giving rise to the available capacity in July 2004.

41. The next step is to examine the extent of this available capacity to which the costs should be allocated for determining the average cost per E1. TRAI has data on VSNL's sales in terms of various capacities i.e. E-1, DS-3 and STM-1 for March 2004 and September 2004. In September, 2004 the capacity sold by VSNL was less than 60% of the capacity available in July 2004. The Capital expenditure and Operating expenditure are allocated on per E 1 basis to this capacity level.

42. Taking account of the growth scenario submitted by VSNL itself, this would appear to be an underestimation of the capacity utilization relevant for the implementation period. VSNL's saleable capacity will also increase manifold during the implementation period and its cost will be much lower than those calculated for capacity available for July 2004. Thus, a substantial reduction in average cost would arise if TRAI relies on the relatively lower cost estimated for the new additions to capacity. The new lit capacity added by the incumbent is more than 96% of its total lit capacity and thus to that extent the cost based tariffs based on historical cost of the older cable systems would be a significantly higher estimate than the cost that would arise for VSNL during the implementation period. Nonetheless, TRAI has provided a buffer to ensure smooth transition to competition, by not relying on the incremental cost approach for reasons of managing the transition without causing a major shock to the market. Instead, TRAI has thus used average costs based on the data submitted by VSNL for 2003-04 and other data on sales / capacity etc. during 2004, while the implementation period is 2005-2006."

- According to TRAI, at no stage was the ‘capacity sold’ used as the denominator, but the capacity utilised was used as the denominator. The ‘capacity utilisation’ figures were noticed by the inspection team only during their inspection. If these figures of capacity utilization had been given by VSNL in their accounting separation reports, the cost per E-1 would have been much less. Therefore, it is apparent that VSNL did not disclose these figures so as to keep the costs artificially higher. It is therefore evident that the ‘capacity sold’ has never been in the denominator. And TRAI has consistently used the same methodology for costing, consistent with all costing and accounting norms and practices.
- It is further pointed out by the respondent in relation to the tariffs set by TRAI is the fact that the costing has been done based on the cost data applicable for the period 2003-04 and no adjustment has been made for the subsequent period although more than 18 months have passed. The capital work in progress (CWIP) in the capital employed upto March 2004 that has been included in the cost estimate, would have given rise to higher capacity in services which has not been factored in the calculations. This means that the cost estimates should still be lower and to that the extent, there is a large buffer in the cost estimates that formed the basis of tariff fixation.
- It is also pointed out by the respondent that it has not adopted Forward Looking Cost approaches. The Forward Looking Cost approaches have been adopted by regulators in many parts of the world e.g. Federal Communications Commission of USA (FCC) adopted Total Element Long Run Incremental Cost (TELRIC) to implement the 1996 Telecommunications’ Act. The European commission has

adopted Total Service Long Term Incremental Cost (LRAIC) as its preferred costing methodology. Forward Looking Approaches use current price data and attempt to calculate an efficient Network to provide the service in question, Forward Looking generally represents the Least Cost Technologies and the cost of a new entrant with newly constructed facilities. LRIC are the incremental costs that would arise in long run with a defined increment to demand. These approaches are preferred because they better reflect efficient working of competitive markets. If a competitor is more efficient, the operator will need to respond by adjusting its prices rather than to continue pricing on the basis of its Historical costs and historical technologies. Competitive operators are compelled to look forward to set prices to compete with newer technologies rather than look back at prices based on their original / Historical investments. If costs of historical technologies are taken, the regulatory process would have consumers to pay for older technologies, in perpetuity – even though the normal market process would have eliminated these technologies. Further it relies exclusively on operator data, with little or no opportunity for independent verification. TRAI did not use Forward Looking cost approaches precisely with the view to make transition to competition a smooth process without causing shock to the incumbent operator. FLLRIC would be incrementally used in the next tariff fixation unless competition in the sector brings down the prices to FLLRIC levels.

- Therefore, according to the respondent, by adopting the Top Down Fully Allocated Cost Method (using Historical Cost) a surplus over and above the actual

cost of providing services has been provided which would be far in excess of FLLRIC.

- Further, it is pointed out by the respondent that the cost based tariffs determined by it were not based on the extremely low levels of investments / cost of acquisitions of submarine cable systems recently executed by the ILDOs in India. Using these costs would have led to fixation on FLLRIC principles and led to drastic reduction in the cost based tariff of IPLC and would have gone against TRAI's attempt to fix cost based ceiling tariffs without causing major shock to the market during the transition period. TRAI also did not use the cost of providing submarine cable IPLC services by new entrants for similar reasons. TRAI is not in a position to share the cost details of these operators i.e. M/s Reliance and M/s Bharti and now Tate Indicom cable because these data are quite sensitive from the commercial point of view. However, TRAI has on affidavit before TDSAT given this date / calculations of cost in a sealed cover for the perusal of TDSAT.
- According to TRAI, the appellant has made the grounds of this appeal on exactly similar issues which have been adequately addressed in the Explanatory Memorandum appended with the impugned order dated 8th September 2005.
- In the end it is stated by the respondent that the appellant has not quoted even a single accounting principle or a costing standard which has been violated by the respondent in its tariff determination exercise. The costing methodology adopted is not only compliant to major costing accepted accounting standards but also consistent with the Accounting Separation Guidelines of the respondent that had been evolved after consultation with the stakeholders including the appellant. The

contention of the appellant that the per unit cost of IPLC should be estimated by dividing the total cost by the capacity sold in not only against the basic principles of costing but also against the consumer interest. Further, such a dispensation of arriving at cost based on sold capacity would also encourage the operators to create artificial scarcity by not releasing capacities available for sale thus leading to constraining the demand. However, in arriving at the cost estimates, a liberal approach has been adopted by TRAI in as far as the consideration of capacity for costing purposes is concerned. TRAI could have taken the entire activated / lit capacity at the disposal of VSNL but have instead taken only the utilized capacity. If the activated / lit capacity is taken the cost would have been considerably less than the estimates arrived now.

13.5 During arguments we had occasion to see the papers submitted by TRAI which clearly brought out the position that the inspection team had unearthed certain information which had earlier not been given by VSNL. Also the figure of E-1s indicating capacity utilized was entirely based on the information given by VSNL. Also VSNL itself had indicated that 30% of capacity was un-utilized. While we do appreciate VSNL's argument that for efficient and reliable IPLC service some provision has to be made to provide for restoration / redundancy, we see considerable merit in TRAI's argument that with only 70% capacity being utilized, the remaining 30% un-utilized capacity would suffice for meeting the requirements of redundancy. We also find ourselves in agreement with the argument addressed by the learned senior counsel for TRAI that price fixation is an exercise for the future, in this case for the period 2005-06 as such, in a situation of rising demand, there is no reason why at least 70% capacity

utilization would not take place when about 60% capacity utilization had been noticed almost a year ago. We find that the 70% figure of capacity utilization has been derived by TRAI on the basis of the data obtained from VSNL, including that unearthed at the time of inspection. We have also seen the wordings of the Explanatory Memorandum of the TTO of March 2005 which was quashed by this Tribunal while remanding the matter to TRAI and find that while capacity sold has been referred to therein but capacity utilized was taken as the basis for price fixation which was derived from the figures of capacity sold.

13.6 We are therefore, satisfied that there has been no change in methodology in costing and the approach has remained the same and calculations of cost have been made based on data that has now become available to TRAI from VSNL. In our view there is also no violation of accounting principles and the allegations that have been made in this regard are vague and do not deserve any consideration. We find considerable merit in the argument advanced on behalf of the Respondent that if capacity sold was to be taken as the basis it would lead to several aberrations. The learned senior counsel for the respondent took us through the calculation sheets and based on information obtained from VSNL it was shown to us that the number used for the denominator in the calculation of per unit cost of E-1 was indeed deduced from the information extracted from VSNL in regard to bandwidth utilized, which could be translated as capacity utilization figure of 3319 E-1s.

13.7 We have also noticed that in the costing methodology adopted by TRAI, certain buffers have been provided which would go in favour of VSNL in the determination of per unit cost. These are:

- (i) According to TRAI, it could not be established that the investments made in M/s TTSL, a sister undertaking VSNL have not been included in the figures of capital employed for IPLC segment given by VSNL to TRAI. Even so, TRAI has accepted the claim of VSNL in this regard.
- (ii) VSNL had raised the objection that while making adjustment of satellite related expenses, over estimation has been made by TRAI. According to TRAI its inspection team was informed by VSNL that satellite related expenses had been allocated by VSNL on actual basis for the purpose of IPLC costing. However, the documentation given by VSNL to TRAI in compliance to the Cost Record Rules indicated that the expenses had been apportioned on the basis of satellite utilization which would have given totally different results. TRAI has accepted the figure given by VSNL earlier to avoid any further delay in tariff fixation.
- (iii) The cost data is for the period 2003-04 whereas the prices would apply for the period 2005-06 during which implementation costs and capacity utilization are expected to be much lower.
- (iv) The capital work in progress included in the capital employed upto to March 2004 would have given rise to higher capacity in services which has not been factored in the calculation.

In the totality of circumstances we do not find any reason to hold that the costing methodology for IPLC was defective or lacked in transparency.

14. Whether certain erroneous assumptions in calculation of costs that were pointed out by VSNL to TRAI were not dealt with in the impugned order.

14.1 We do not find any justification for the assertion on behalf of the appellant. We have taken two examples by way of illustration.

- Investment made in TTSL not allocated to capital employed for the IPLC Segment.

According to letter of 7-9-2005 addressed to VSNL from TRAI it was conveyed to VSNL that TRAI had conveyed that it cannot be conclusively established that investments in TTSL have not been included in the capital employed for IPLC Segment. Notwithstanding this, TRAI has not made adjustment on account of investment in TTSL for capital employed for IPLC .i.e. claim of VSNL on this has been fully provided.

- TRAI had over estimated satellite related expenses allocated to the IPLC Segment.

In letter of 7-9-2005 it was communicated to VSNL that TRAI in TTO dated 11.3.2005 had estimated that the satellite related expenses allocated to the IPLC segment were Rs.64 crores. However, VSNL claimed that only Rs.19 crores were allocated to the IPLC Segment. The inspection of books were carried out to examine VSNL's claims. The inspection team was informed that the allocation is made on the actual basis and another document filed subsequently indicated that the satellite related expenses have been apportioned on the basis of 'Satellite Utilisation'. There is considerable difference between two allocation methods and would give totally different results. Therefore, TRAI

was not convinced about VSNL's submissions relating to cost apportionment and allocation of satellite related expenses to the IPLC Segment. As detailed inquiry on this would have delayed the tariff fixation, TRAI allowed claims on account of satellite related expenses on this accounting head also as per the contention of VSNL

15. Whether the Price Multiple in the pricing of E-1, DS-3 and STM-1 viz. 1:8:23 was based on erroneous assumptions and would lead to distortion in the market and aberration e.g. arbitrage opportunity, or subsidizing larger well to do consumers at the cost of smaller consumers.

15.1 In this regard the following extract of the Explanatory Memorandum in the impugned notification is relevant:

“51. VSNL has also stated that the tariff structure for IPLC fixed by TRAI i.e. Rs.13 lakhs per E-1 with a price multiple of 8 times and 2times that of E-1 for DS-3 and STM-1 would create an opportunity for arbitrage enabling its competitors to buy an STM-1 from VSNL and profitably sell the same at below cost at E-1 level to customers. This point has been carefully considered by TRAI and it is seen that the apprehensions of VSNL in this regard are misplaced for the following reasons:-

52. The arbitrage opportunity is one that is repeated in many markets and that has been significantly overstated by VSNL. For that matter, even in the existing tariff structure of VSNL for IPLC there does exist an arbitrage opportunity. But this is an over simplification of the complex situation involving resale and that too only by other ILDOs. Resale of E-1s after purchasing STM-1 capacity involves acquiring 63 E-1 customers, which involves substantial cost and time. This would also further require the facilities of an NLD operator and a BSO/UAS Licensee to sell this capacity directly to a customer. Beyond that, equipment and IT infrastructure is required to technically take STM-1 capacity from one operator and to then attempt to resale it as E-1 capacity in the market. Rather, the advantages for the seller of STM-1 like VSNL would include, a large financial commitment from the customer, a simpler selling and 27 service process and thus a lower administrative cost in general, and better utilization of capacity and thus reduced cost for that capacity.

Price Multiple and its Economic Rationale

53. Closely related to this issue is the price ratio multiple adopted by TRAI and reservations of VSNL about it. Economies of scale arise when any goods/services are traded in bulk. This is also applicable in the case of IPLC services. STM-1 is a larger capacity than DS-3 and DS-3 is again a larger capacity than E-1. The physical capacity ratio known to exist among the three capacities that are discussed here are 1:21:63. The price ratios for the three capacities i.e. E-1, DS-3 and STM- 1 would not be in the same ratio because of economies of scale in operations. That is to say for example, the STM-1 price has to be less than 3 times of the price of DS-3. When larger capacities are purchased, the prices are less because the cost of selling larger capacities is also less when compared to selling smaller capacities. This economic rationale behind the price multiple has been acknowledged by a recent international report on “International Bandwidth – Submarine Networks, It states:-

“Capacity-Price Multiples

Bandwidth, like most goods, tends to be cheaper on a per-unit basis when it's purchased in large volumes. For example, DS-3 circuits, which have 22 times more capacity than E-1 circuits, frequently cost only four to eight time more than an E-1. Carriers charge proportionally more for small circuits because, on a bit-fo rbit basis, smaller capacities cost sellers more to administer than larger circuits. Some provisioning costs including sales, legal fees, installation, and some maintenance costs are fixed regardless of circuit size.

Traditionally, prices across different capacities tended to fall into fairly predictable multiples. At each successive circuit increase, from DS-3 to STM-16, price roughly doubles, while capacity sometimes quadruples. However, bulk discounts have become increasingly aggressive in recent years, as operators have come under growing financial pressure. Since prices of high capacity circuits have fallen faster than prices of smaller circuits, capacity-price multiples have declined sharply. Consequently, an STM-1 can carry about 76 times more data than an E-1, but can be leased for only three to 15 times the price of an E-1.”
(Source: PriMetrica Inc., International Bandwidth Report, 2004)

54. The evidence given above implies the following:-
- a) The price ratios have to be less than the ratios of respective capacities.
 - b) The price ratios prevalent worldwide are far less than the capacity multiple ratios for E-1, DS-3 and STM-1 that are obtained in Indian market for IPLCs.

- c) The maximum price ratios reported to be prevalent internationally are: Price for DS-3 = 8 times the price for E1 and Price for STM-1 = 15 times the price of E1.
- d) Thus, if one goes by this alone, then the price ratio for international Bandwidth in respect of E-1, DS-3 and STM-1 shall at the maximum be 1:8:15.

55. From this analysis, it emerges clearly that the price ratios fixed by TRAI i.e. 1:8:23 are higher than the ones prevalent elsewhere in the world. And more importantly, the revenue realization for VSNL on a weighted average basis (with these multiples) would comfortably cover the cost for VSNL and still leave a surplus. This has been demonstrated to VSNL by TRAI in the material made available to it as part of the TDSAT mandated. The prevalent tariffs offered by ILDOs in India gave the ratio for these capacities that were very high as compared to international price ratios (see Table below).

International comparison of IPLC price (E-1 prices and price multiples)

	1	2	3	4
Country	E-1 US\$'000	DS-3 US\$ Million	STM-1 US\$ Million	Ratio of Columns (1):(2):(3)
Japan	23	0.10	0.2	1:4:8
South Korea	23	0.10	0.2	1:4:8
Hong Kong 0.3	24	0.12	0.3	1:5:11
Singapore* 0.3	33	0.17	0.3	1:5:11
India**	41	0.70	1.8	1:17:44

Source of International data: ERNST & YOUNG/Telegeography

Note :-US \$=Rs.44

* Singapore's E1 price is high inter-alia on account of low multiple for DS-3 and STM-1

** IPLC half circuit tariffs of VSNL offered w.e.f. June 2005 for India-USA (Atlantic route). Not adjusted for discounts as discount is dependent upon a number of criteria

No Evidence of Consortium Imposed Constraint on VSNL in pricing matters

56. VSNL has contested the pricing ratio on the ground that, most submarine cable capacity sold out of India is on consortium cables. TRAI noted that this argument has no basis because consortium members do have complete freedom to set their prices and VSNL has not brought before TRAI any evidence of constraint being imposed on VSNL in the matter of pricing by the consortium.

57. Further, raising these ratios above the ones fixed by TRAI will give undue surplus to VSNL which has been verified by TRAI based on full cost recovery on a weighted average basis for various capacities, and the share of each of these capacities to the total. Once full cost recovery is ensured to VSNL for the price fixed for E-1 and on the basis of the price ratios for other higher capacities, the question of revenue realization going below the cost does not arise.

Appropriate capacity mix assumptions used in the calculations

58. VSNL has submitted that the capacity mix assumptions used in the tariff fixation exercise are “inappropriate”. In the calculation sheets containing detailed calculations of costs, provided to VSNL (as part of the disclosures made), it has been amply demonstrated that even if 50% of the total capacity is sold in terms of DS-3 and STM-1, the revenue to VSNL is more than adequate. Even if it is assumed that large capacity as projected by VSNL would be sold in terms of higher capacities like STM-1 in future, it is logical that the operating expenses would also substantially come down because of economies of scale in selling STM-1 as against selling in terms of E-1s. Using a range of capacity mix assumptions, an iterative process revealed that the weighted average recovery of revenue would still be above the average cost leaving a surplus (demonstrated in the cost calculations shared with VSNL). Further, in a given period of time, if there has to be shift of customers from lower capacity to higher capacities like STM-1 (of a greater magnitude), it can take place only if the total capacity sold also goes up simultaneously and in which eventuality, unit cost per capacity would come down on account of higher utilization of capacity in services.”

15.2 We find that the Explanatory Memorandum explains the standpoint of TRAI and takes into account the objections of VSNL very comprehensively. We see no reason to disagree with the conclusions and analysis of TRAI in this regard which are quite self-explanatory. The learned counsel for the appellant has during the course of hearing drawn our attention in particular to the following:

- Fixing of lower DS-3 and STM-1 prices would result in giving subsidy to the larger users who are well to do at the expense of the users who would be taking E-1 capacity.

- Lower DS-3 and STM-1 prices would encourage arbitrage as middlemen would take capacity on DS-3 and STM-1 and sell at a premium at the E-1 tariffs.

In the light of the very clear reasoning given by TRAI mentioned in para 54 of the Explanatory Memorandum wherein it is brought out that the price ratios fixed by TRAI i.e. 1:8:23 are higher than ones prevalent elsewhere in the world and the fact that it had been ensured that the revenue realization of VSNL in this manner would comfortably cover the cost for VSNL and still leave a surplus, we see no merit in the objections raised by VSNL. We have also taken note that VSNL is presently charging prices for E-1 which are higher on the Atlantic route than the ceilings stipulated in the Impugned Order. With the implementation of the ceilings on tariffs contained in the Impugned Order all such users would stand to gain.

16. Whether there was inadequate sharing of information by TRAI with VSNL leading to lack of transparency or violation of rules of natural justice.

16.1 After hearing the extensive arguments advanced for both the sides, we are left in no doubt whatsoever that a very elaborate process of interaction has been gone through between TRAI and VSNL. After the matter was remanded to TRAI by this Tribunal while deciding Appeal No.5/2005, the process of sharing of reports / data on costs / calculation of costs used in the tariff fixation, with VSNL was a fairly detailed exercise as brought out in the communication from TRAI to VSNL dated 7-9-2005 and involved the following:

- 10-6-05 – All documents including data on costs / calculation sheets showing the methodology etc. sent to VSNL by TRAI. Ten days time was given to VSNL to give reply / observations on the documents furnished. The date of personal hearing was also fixed on 27-6-05.
- 14-6-05 – VSNL responded seeking extension of time for giving written submission by 10-7-05. Postponement of personal hearing was sought till 15-7-05.
- 20-6-05 – TRAI approved extension of time for giving written submissions by 27-6-05. TRAI also approved extension of the date for personal hearing and refixed the date of personal hearing on 1-7-05.
- 27-6-05 - VSNL made written submissions to TRAI on the disclosures made by TRAI. VSNL pleaded that they could not procure certain documents available in public domain i.e. the ITU paper of November 2002 on Competition Policy in Telecommunication and the report of Gartner on International Bandwidth 2004.
- 29-6-05 – TRAI sent a detailed reply to VSNL on the observations of VSNL contained in their letter dated 27-6-05. TRAI vide this letter expressed concern about the delay involved in the matter on account of such protracted correspondences.
- 1-7-05 – VSNL made presentation before TRAI.
- 5-7-05 – Minutes of the meeting / presentation of VSNL with TRAI sent to VSNL.
- 8-7-05 - VSNL made their second presentation to TRAI.
- 18-7-05 – TRAI issued the minutes of the meeting held on 8-7-05 to VSNL.
- 19-7-05 – TRAI issued an order to inspect the Books of Accounts of VSNL, after the considering the data made available to TRAI by VSNL on various occasions and the data contained in the separated accounts of VSNL 2003-04. this was communicated by TRAI to VSNL giving the date of inspection as 25-7-05.
- 21-7-05 – VSNL sought postponement of the date of inspection upto to 4-8-05.
- 22-7-05 – TRAI having considered the request of VSNL for postponement of the date of inspection conveyed the new date of inspection as 1-8-05 as against the original date of 25-7-05.

- 22-7-05 – VSNL issued a rejoinder to the minutes of the meeting held on 8-7-05. In this letter VSNL contested certain points contained in the minutes.
- 3-8-05 – TRAI communicated another date of inspection on 4-8-05 on account of natural calamity in Mumbai.
- 11-8-05 - TRAI sought clarification on certain date issues from VSNL.
- 12-8-05 – VSNL replied to the letter of TRAI dated 11-8-05.
- 16-8-05 – TRAI issued a letter to VSNL drawing their attention to the issues raised by VSNL and clarified the correct position.
- 25-8-05 – TRAI communicated the findings of the inspection of the Books of Accounts and other documents of VSNL used for preparation of Accounting Separation Reports.
- 26-8-05 – VSNL sought time from Authority for submission of its reply to the findings of the inspection carried out by TRAI officials.
- 30-8-05 - TRAI communicated the extension of time for submission of VSNL's reply by 1-9-05.
- 1-9-05 – VSNL sent their comments. VSNL sought personal hearing from TRAI.

In the letter of 7-9-2005, TRAI disclosed to VSNL its conclusions on the various contentions of VSNL and enclosed with it the details of costing and further informed that in the larger interests of the industry and the consumer groups, who continue to pay high tariffs, TRAI did not feel it necessary to extend this process any further and delay the matter. In this approach, TRAI considered that another personal hearing would not serve any fruitful purpose.

It is true that the notification of the impugned TTO is dated 8-9-2005 which is just one day after the communication of 7-9-2005 of TRAI to VSNL informing it about the basis of the cost calculation. But this letter of 7-9-2005 is the culmination of several rounds of discussions and interactions between TRAI and VSNL. The entire exercise has gone through a fairly long period of time. We feel that the requirements of transparency have been met in this case and VSNL has also had the opportunity of getting the entire matter reviewed in the appeal presently before us. In a matter of price fixation, particularly where the incumbent may be called upon to reduce the prices and large number of downstream users are expected to derive benefit from the same, we need to see that the incumbent or for that matter any other stakeholder, while entitled to full hearing should not be able to delay the exercise beyond reasonable limits. We are satisfied that the requirements of transparency and natural justice have been fully met in this case.

17. Whether TRAI has given justification to its order of 8-9-2005 by giving additional affidavits / arguments which are not contained in the TTO of 8-9-2005 or which was not known already to the Respondent:

17.1 In support of the above issue the appellants had placed reliance on a judgment of the Bombay High Court in Commissioner of Police Vs. Gordhandas Bhanji [AIR 1952 SC 16] and Mohinder Singh Gill Vs Chief Election Commissioner [1978(1) SCC 405]. Before referring to the above judgments we should notice that the Explanatory Memorandum which forms part of the impugned TTO gives a comprehensive analysis of

all the points raised in the appeal and takes into account the objections / concerns of VSNL and we do not find that any relevant material has been excluded by TRAI or consideration has been given to any irrelevant material for reaching the conclusions contained in the impugned order. It is true that certain details of costing are not there in the Explanatory Memorandum but these details had actually been obtained by TRAI from VSNL and TRAI has informed VSNL fully about the use of this data. During the course of hearing, this data was brought to our notice and the documents were shown to the learned counsel of the appellant. We are satisfied that in the interest of maintaining confidentiality of business information obtained from an individual company it was not necessary for it to be published in the public notification of 8-9-2005.

This is particularly so in the background of the statutory provision contained in the “Telecom Regulatory Authority of India Access to Information Regulation 2005” (3 of 2005) which states that commercially and financially sensitive information, the disclosure of which is likely to cause unfair gain or unfair loss to the service provider or to compromise his competitive position shall be exempt from disclosure. Therefore, by producing this additional material, Respondent has only convinced this Tribunal of the methodology used by it to arrive at the impugned conclusions. Herein we should bear in mind that the process of tariff fixation involves an elaborate procedure of both consultation and investigation which in turn involves a highly technical process and the ultimate decision is arrived at by following a cumulative exercise involving a large group of people from various disciplines. The voluminous records that are found in the appeal papers itself indicate the amount of material otherwise taken note of and consultative

proceedings undertaken by the Authority. These were of such magnitude that the principles laid down by the Bombay High Court in Police Commissioner's case and Mohinder Singh Gill's case (supra) which held an order of an authority cannot be supported by an affidavit filed afterwards in court proceedings are not attracted hence these judgments do not support the contention of the appellant. Assuming that some of the materials used in the decision making process in the instant case might have been produced for the first time in the pleadings of the Respondent Authority, still it cannot be said that respondent is justifying its decision on the basis of materials which were not before it. Therefore, we do not think principles laid down in the two cases cited by the appellant in support of this contention could in any way help the petitioner.

18. We may note another technical argument advanced on behalf of the appellant. Learned senior counsel for the appellant contended that the respondent has committed an impropriety by filing an affidavit in this Tribunal and engaging a counsel to defend its decisions which a judicial Tribunal ought not to do. In support of this contention the learned counsel relied on a decision of the Bombay High Court in Mohd.Oomer Vs. S.M. Noorudin [AIR 1951 Bombay 156] and Sayed Yakoob Vs. K.S. Radhakrishan [AIR 1964 SC 477] wherein the Bombay High Court and the Supreme Court deprecated the practice of a quasi-judicial body which decided an issue between two parties appearing through counsel before the Court in appeal and trying to justify its order. We do not think that these two judgments would apply to the facts of the case. The Respondent Authority while fixing a tariff which it is entitled to do so under the Act, follows a procedure of consultation and interaction with various players in the concerned field and its ultimate

decision is enforceable in law. Though during the process of consultation and interaction it is bound to follow the principles of natural justice, the Authority cannot be called as a court or a judicial forum while exercising its function of tariff fixation. In our opinion the final decision of the Authority is more in the nature of an administrative decision than a judicial verdict. Therefore, when its decision of tariff fixation is challenged before this Tribunal or other appellate forum the Authority has to justify its decision and in that process of justification the Respondent Authority has to file its pleadings and also has to be represented to explain its stand. The procedure of tariff fixation as noted hereinabove by us is so complicated that it is necessary for the appellate authority to have the assistance of all parties concerned, especially the regulator to arrive at a just conclusion. If the Authority is not permitted to be represented in an appeal challenging its order of fixation of tariff then this Tribunal will have to adjudicate only on the basis of allegations made in the appeal memorandum without any assistance from the Respondent. Tariff fixation is contemplated under the statute in public interest hence if the Respondent is not permitted to present its case there is every likelihood of public interest suffering. The decision of the two courts referred to in support of this argument of the appellant in our opinion does not apply to the facts of this case. Hence we find no merit in this argument of the appellant as to the impropriety of the Respondent Authority in filing objections to the appeal memorandum and representing itself before this Tribunal through its counsel.

19. In the end we would state that fixation of tariff in any Sector is no doubt a complicated exercise and this has been amply proved in the matter presently before us. We are of the opinion that if the pricing methodology adopted has given due regard to the relevant issues and has been reasonably transparent and does not suffer from any

perversity, the Tribunal should ordinarily not interfere with the pricing decision of the Regulator. We find that the Respondent in the present case has answered satisfactorily all the points raised by the appellant and we are satisfied that all the relevant points have been taken into account while determining the ceiling prices for IPLC in the impugned notification.

20. M.A. 227 of 2005 is an application for impleadment on behalf of the Internet Service Providers Association of India (ISPAI) stating that they are an interested stakeholder and therefore having vital stakes in the implementation of the impugned notification of TRAI. During hearing of the arguments, opportunity was given to the learned counsel appealing on behalf of ISPAI to submit their written arguments. We have gone through the same and find that all the points raised have been adequately addressed by us in this order. Accordingly, MA 227 of 2005 is disposed of.

21. For the reasons stated above, we find no merit in this appeal and find no reason to interfere with the impugned notification. Hence, we dismiss this appeal and direct that the notification in question be brought into effect immediately by TRAI so that the benefit of the notification to the consumer is not delayed further. Appeal dismissed with cost computed at Rs.50,000/-.

.....J
(N.Santosh Hegde)
Chairperson

.....
(Vinod Vaish)
Member

.....
(D.P.Sehgal)
Member