

Interconnection in Venezuela

Editorial Staff:
José Araujo-Juárez
Oscar A. Rodríguez Pacanins
José Andrés Romero Angrisano
Carlos José Seade Canal

Assessment of interconnection charges in Venezuela

In the very first place, the Venezuelan telecommunications regulatory framework leaves the establishment of interconnection charges to *bona fide* negotiations between the parties. However, if negotiations fail (meaning, agreement is not reached within a legally provided period), the National Telecommunications Commission (CONATEL) shall order the interconnection and set forth its economic Ts and Cs. It is clear, then, that CONATEL's intervention shall be exceptional; such extraordinary character having been already confirmed by practice since out of 36 interconnections, up to date only 6 required CONATEL's action.

Accordingly, it seems accurate to assert that CONATEL's intervention in fixing interconnection charges is and has been actually minimal. However, during interconnection negotiations, obviously the first question that the parties ask themselves is: Why would we agree on charges higher than those which CONATEL would ultimately fix based on the values determined by the international benchmark? The answer to this question varies depending on the particular interests at stake in each negotiation. Therefore, many may have opted for agreeing on the same charges as proposed by the benchmark when negotiations revealed such a posture to be preferable than waiting for CONATEL's inevitable intervention; others may have chosen to make concessions in order to quickly open their entrance to the market and avoid problematic litigation; and finally, between operators with a significant market presence, agreements and reciprocal concessions may have appeared attractive in order to preserve income levels, regardless of the treatment that Venezuelan antitrust laws may afford to such agreements. The fact of the matter is that CONATEL may not prevent operators to agree on interconnection charges higher than the benchmark values. CONATEL may only issue its official-non-mandatory comments on the agreement of the parties.

The term of CONATEL's resolution establishing referential benchmark-based interconnection charges

shall expire on 11/24/2002. Such referential charges were to be in effect for the time during which the model for the calculation of interconnection charges was built, on the notion of long-run incremental cost (LRIC), as ordered by the Executive Branch via presidential decree. The intent of the Executive Branch was that CONATEL worked on a LRIC model for a peremptory two-year period, and that, meanwhile, simple benchmark values be applied when negotiations between the parties failed. However, the truth is that less than 4 months are ahead for the two-year period to elapse, and the Venezuelan LRIC model has not yet been prepared.

Classification of interconnection charges in Venezuela

The Interconnection Regulatory Decree (IRD) provides for a peculiar classification of interconnection charges. Interconnection charges are of two kinds, "use charges" and "access charges". Thus, use charges correspond to (i) operational and maintenance **costs** of the network elements required to carry and terminate interconnection traffic, and (ii) to common **costs** caused by interconnection plus a reasonable rate of return (articles 2(3) and 44(2), IRD); whereas access charges correspond to **expenditures** allocable to the construction, operation and maintenance of the infrastructure allowing physical and logical network interconnection (articles 2(2) and 44(1), IRD). The relevancy of the difference between both types of charges is that the LRIC model shall be applied solely for the determination of use charges. CONATEL has already set forth its opinion regarding such differentiation (since the IRD is not clear on the subject): access charges only cover the transportation media between the network of the operator requesting interconnection and the interconnection point, as well as the infrastructure between such interconnection point and the switch; whereas use charges cover the utilization of all other network elements required for interconnection.

Discussion regarding the convenience and viability of LRIC

Framed within the above mentioned circumstances and including CONATEL's participation, a seminar called "Interconnection of Telecommunication Network Operators" took place in Caracas on 7/29/2002. Interestingly, the common denominator among most of the speakers was criticising LRIC models on the ground of alleged inconveniencies, failures and difficulties presented internationally by such models. Thus, it was argued that LRICs purport an excessively complicated methodology and very expensive implementation; that economic concepts utilized in LRIC models may be easily misunderstood; that the implementation of the model in accounting is very troublesome; that in other countries its establishment took more than 2 years; that consensus among operators is achieved only after long and inconvenient litigation; that the uniform application of LRIC-based interconnection charges, among all public network operators, is not justified; that self-regulation schemes have proved to work well in other countries, etc. Despite the above, CONATEL promoted the prompt determination of the Venezuelan model for the calculation of interconnection charges based on LRIC.

From our point of view, in the light of the Venezuelan interconnection regulatory scheme, the discussion regarding the convenience and viability of LRIC-based regulatory systems is totally out of context. Why? Well, first of all, because the Venezuelan Organic Telecommunications Act (OTA) clearly mandates that interconnection charges must tend to costs and allow a margin of reasonable profit (article 133, OTA). Additionally, such mandate is surrounded by a fundamental *desideratum* of free competition (see i.e. articles 2(3), 145 and 146, OTA), which necessarily implies economic efficiency. Moreover, because having the OTA as its foundation, the IRD establishes that interconnection charges (more specifically, "use charges") are to be determined on the basis of LRIC (article 44(2), IRD). Such regulatory approach is guided by generally accepted economic theories and principles which propose that LRIC models are the most efficient way towards cost-oriented interconnection charges. In sum, in the light of currently-in-effect Venezuelan law, choices other than a LRIC-based model are not easily viewed. Therefore, in our opinion, a pertinent discussion should be inclined towards finding the most convenient LRIC model for Venezuela, given its peculiarities, and above all, taking into account the inconveniencies and difficulties experienced internationally.

Given the above *status-quo*, mainly, the new LRIC model should be of interest for: (i) new entrants with interconnections to be established; (ii) operators interconnected pursuant an order by CONATEL, because the T's and Cs of such interconnection are subject to revision (article 53, IRD); and (iii) parties to interconnections governed by contracts providing for future revision of the charges.

Towards a Venezuelan LRIC model

Limited but not insignificant are the practical effects to be caused in the Venezuelan market by the new LRIC model to be used by CONATEL, when fixing interconnection charges should its intervention be required. The search for the most convenient LRIC model for the Venezuelan market, and moreover its implementation, purport tasks of the utmost importance. Think about the consequences of an eventual regulatory vacuum, should the new model not be in full force and effect by 11/24/2002 when the benchmark resolution expires. What charges are to be fixed by CONATEL when ordering interconnection? And, most importantly, lacking of referential values, what would be the position to assume in the scenario for the negotiation of interconnection charges? Such a vacuum would most possibly end up jeopardizing new entrants and end users rights, besides propitiating litigation. Either the IRD is reformed in a way that extends the duration of the transition period for the benchmark resolution to be in effect, or work is undertaken intensively to finish the LRIC model on time. Is the latter alternative feasible? Let's hope so. Nevertheless, competition and users rights wise, there is no doubt that it is desirable.

In any case, it is worth highlighting that the IRD does not limit the approaches to the LRIC model that can be implemented by CONATEL. In fact, the IRD does not exclude, for example, the possibility that use charges be established on the ground of fixed monthly fees calculated on the basis of the cost associated to the traffic capacity required, and not on the basis of the cost associated to traffic effectively carried and measured in time units. The former possibility would be attractive, also, given that it is not based on time calculation of traffic, then turning it simpler the development and implementation of a LRIC model.