



Date: 25th April, 2016

**Mr. S.K. Singhal Advisor (B&CS)
Telecom Regulatory Authority of India,
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Sir,

**Subject: Comments on Consultation Paper dated 23.03.2016 on the
Registration of interconnection Agreements (Broadcasting & Cable
Services) Regulations 2016**

We compliment the Telecom Regulatory Authority of India (TRAI) on issuing a detailed Consultation Paper (CP) which seeks to address various issues faced by entire value chain of the Television broadcasting and distribution industry (TV industry). TRAI has rightly chosen to come up with the Regulations on the Registration of Interconnection Agreements to bring in transparency so that the issues on non discrimination may be curbed and may decrease litigation amongst the stakeholders; primarily, Broadcasters' Delivery Platform Operators (DPOs), and LCOs. This attempt of TRAI is highly appreciable and augurs well for orderly growth of the TV industry.

Before we embark on providing our comment on the proposed Regulation and answer various queries raised by the Authority, we would like to draw the attention of the Authority as below:

Authority has recently come out with a consultation paper on tariff issues related to TV services for which consultation process and open houses have been recently completed. TRAI has in its consultation paper suggested various models wherein if any of these models get implemented, the need of register of inter connect agreements would be substantially decreased. Some broadcasters have also proposed for complete forbearance on whole sale

pricing which will further change the need of such register, if such model is permitted.

We also understand that TRAI is likely to come out with model inter connect agreement between broadcasters and service providers, which may further have impact on the information to be provided to TRAI. Hence it becomes important to study the same also before providing any comments on the register of inter connect agreements.

In our view, we need to study both the Tariff regulation and inter connect agreement between MSO and Broadcasters before commenting on the draft register of inter connect regulations.

The attention of the Authority is also invited to the Model Interconnection Agreement (MIA) & Standard Interconnect Agreement (SIA) as being prescribed vide "The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016 (3 of 2016) dated 15th March, 2016" as issued by the Authority. The said regulations are effective from 16th March, 2016 and in pursuance to the same, an MSO has to either sign the MIA or SIA with a LCO going forward.

The framework prescribed under the said regulations visualizes that an MSO and LCO may enter into the Agreement on lines of the MIA or by signing the Agreement strictly in terms of the SIA. The elasticity has been provided to the parties entering into the Agreement on the lines of MIA which is limited to Clauses 10, 11 and 12 of the MIA through mutual arrangement without altering or deleting any other clause of MIA. They also have a freedom to add additional clauses through mutual agreement to the MIA for stipulating any additional conditions. However, it has been mandated that the parties shall ensure that no such additions have the effect of diluting any of the conditions

laid down in the MIA. Further, if the parties decide to enter into the Agreement on the terms of SIA, no addition, alteration and deletion of the clauses provided therein is allowed.

Accordingly, in view of the above, it is respectfully submitted to the Authority that in any event, the deals taking place between an MSO and the LCOs would only be confined to the standards/ parameters which are pre-defined in MIA or the SIA going forward and their formats are already available on the website of the Authority and thus, are in public domain. In such a scenario, extracting required information only for the purpose of reporting under the proposed draft regulations from such pre-defined agreements would only amount to duplicity of work and would further put unwarranted efforts on the part of MSOs.

Hence, in the interest of wider goal of Transparency and Non discrimination which the Authority intends and has accordingly started the process with Consultation Paper on Tariff , it seems logical to wait till both Tariff and MSO-Broadcaster inter connect agreement are regulated or standardized.

Nonetheless, irrespective of our issues and contentions as stipulated above, we would like to share our comments with regard to the Consultation Paper as below:

Comments on the Consultation Paper

1. For clarity and better appreciation, our comments are divided in two parts. Part 1 concerns the issue of disclosure of interconnect agreement; and Part 2 concerns the disclosure of other commercial agreements, like the Carriage or Placement agreements.

Part 1: Interconnect Agreements

2. We understand that The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations, 2016 is proposed by the Authority in order to bring about better transparency and compliance with the non-discriminatory principle underlying the extant broadcasting regulations.
3. We fully support the initiative of the Authority and support the proposed framework, which seeks to achieve the aforesaid principles. However, at the outset, we feel that:
 - (i) The definition of interconnect agreements is too widely worded and may include all the agreements, including those which may have no relation to interconnection. In fact, the draft regulations incorporate this definition verbatim from the Register of Interconnect Regulations dated 31.12.2004. The discussion paper itself records that those regulations have been unable to ensure disclosure. Therefore, unless the interconnect agreements are better defined, the proposed regulations may not be able to achieve their objective.

In our view, interconnect agreements should be defined as the agreements entered in to between two service providers under Regulation 3.1 of the Interconnection Regulations, 2004 and Regulation 3 of the DAS Regulations dated 30.04.2012.

- (ii) There should be a definition of a 'stakeholder', who may seek and be allowed inspection of the Register. By not defining a 'stakeholder', there is ambiguity on its scope and ambit and may

allow a roving and fishing information seeking exercise by any person.

- (iii) There is no provision, which provides for the consequences of non-disclosure. Unless such a provision is incorporated, the proposed regulations may fail to achieve what they are meant to.

- 4. On the specific questions framed by the Authority, our comments are as follows:

- (i) **Question No.1**

Why all information including commercial portion of register should not be made accessible to any interested stakeholders?

All the information including commercial portion of the register should not be made accessible to any interested stakeholders.

Firstly, by definition, commercial information would be confidential. Therefore, unless the contracting parties waive confidentiality, its open ended accessibility cannot be allowed.

Secondly, as to who constitutes 'any interested stakeholder' is unclear in the absence of 'stakeholder'.

Thirdly, such open-ended disclosure may prove to be an inhibitor rather than facilitator of transparency for the fear that all the information between the two service providers would be easily accessible.

Fourthly, the purpose of non-discrimination is to facilitate healthy competition, which can be achieved only by meaningful disclosures rather than open ended access.

Fifthly, the draft regulations do not contain any stipulation as to fair use of the information disclosed by the Authority.

Therefore, according to us, the commercial information of an interconnect agreement should be kept confidential. However, it should be disclosed to any distributor of TV signals, who in the opinion of the Authority, is entitled to use it for the purposes of seeking and enforcing non-discrimination from any service provider. For the purposes of forming this opinion, the Authority may seek comments of the concerned third parties and then decide upon the disclosure taking in to account such comments.

(ii) Question No.2

If the commercial information is to be made accessible,

- a. In which way, out of the three ways discussed above or any other way, the commercial information should be made accessible to fulfill the objective of non-discrimination?**

The purpose of maintaining the Register and provide disclosure is to ensure non-discrimination. This cannot be achieved by 'trend analysis', which would be normative rather than dealing with individual competitors of the information seeker. This also cannot be achieved by keeping the information about the identity of the seeker confidential under all circumstances. However, please see our comments in (c) below. Identity of the 'provider'

cannot be confidential since the provider of information is the Authority and not any service provider.

The proposed framework of keeping the commercial information confidential is preferable. However, before allowing access to such information, the Authority may consider seeking comments of the parties in relation to whom this information is sought.

b) Should it be accessible only to the service providers, general public or both?

Since the purpose of maintaining the Register and provide disclosure is to ensure non-discrimination, its disclosure should only be to a person who is entitled to seek and enforce non-discrimination. It should not be allowed to be accessible to all. Also, its disclosure should be allowed with a proper and binding fair usage policy.

c) Should any condition be imposed on the information seeker to protect the commercial interests of the service providers?

In the event that an information seeker furnishes to the Authority satisfactory evidence of its invoking the non-discrimination principle against any service provider, the Authority should allow inspection of the Register by such person. A fair use undertaking should be taken from the information seeker before disclosure of information.

(iii) Question No.3

If the commercial information is not made accessible to stakeholders, then in what form the provisions under

clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act be implemented in broadcasting and cable sector so that the objective of non-discrimination is also met simultaneously?

As we have said, the commercial information should be kept confidential. Its access should only be allowed to a person who furnishes evidence to the Authority that it seeks non-discrimination from a service provider. In other words, the information would be available to achieve this purpose but would not be available for a roving and fishing exercise.

(iv) Question No.4

Please provide suggestions on regulation 5 of the draft regulations regarding periodicity, authentication etc.

There cannot be any periodicity of information filing with the Authority. We suggest that the Authority may consider incorporating a suitable provision to make filing of the interconnect agreements mandatory and unless so filed, the defaulting parties be not allowed to exercise any rights or make any monetary demands under such agreement. In other words, in the event of litigation, unless a party provides a proof of filing of the interconnect agreement with the Authority, it cannot be allowed to exercise the right of disconnection or recovery of dues. This would inhibit any broadcaster, its distributor and/or an MSO from withholding filing of the agreement since the other contracting party would be entitled to deny its liability under the agreement on such failure.

(v) Question Nos. 5

Please provide comments on how to ensure that service providers report accurate details in compliance of regulations?

As reiterated in our opening Para, there is no provision, which provides for the consequences of non-disclosure. Unless such a provision is incorporated, the proposed regulations may fail to achieve what they are meant to and the service provider may continue to be lax in providing /sharing information with the Authority

(Vi) Question Nos. 6

Please provide comments on digitally signed method of reporting the information.

Looking at the volumes involved, the information flow should only be digital, whereby Authority can design a portal for uploading this information. In the interim, Authority should allow information to be provided in Excel or PDF format, which can be submitted to the Authority through email. There should not be any requirement of submitting hardcopy by service providers.

(Vii) Question Nos. 7

Please provide suggestions on regulation 6 of draft regulations and also the formats given in schedules? Stakeholders can also suggest modified format for reporting to make it simple and easy to file.

The current formats are fine except for the fact that carriage/placement not being interconnect agreements, there should not be any requirement to provide the same through any format.

At the same time in schedule I, where Broadcaster needs to provide subscription information to be provided by the Broadcasters, the following information should also be provided by the Broadcasters:

- 1) No of channels DPO have agreed to carry on its Network
- 2) LCN on which DPO have agreed to carry each channel
- 3) Any other arrangements like digital properties for promoting Broadcaster channel which DPO have agreed to with Broadcaster e.g. Landing channel or promotion on EPG.

Part 2: Placement / Carriage Agreements

- (i) In our understanding, Placement / Carriage Agreements are not interconnect agreements. The extant regulations do not allow a party to demand placement or carriage fee. This is left to the bargain of the two contracting parties.
- (ii) Therefore, Placement / Carriage agreements should be kept completely confidential and no disclosure should be provided unless under the Authority passes a reasoned order after notice to the concerned contracting parties.
- (iii) These agreements are typically between a broadcaster and an MSO. Therefore, unless the information seeker belongs to any

of these two categories, it should not be allowed to access this information.

Thanking You,

Yours Faithfully

For Hathway Cable & Datacom Limited


Ajay Singh



(Head Legal, Company Secretary & Chief Compliance Officer)

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