


ABP
NEWS NETWORK
BY HAND/ELECTRONIC MAIL

2nd November, 2016

To,
Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi - 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on the draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016.

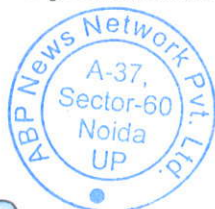
At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the "Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016".

In regard to the present consultation process, we submit that we have perused the said paper highlighting the intricacies and issue of non-workability of certain provisions of the **draft Interconnection Regulation** carefully. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,





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Kind Attention:

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INTRODUCTION

The Indian Broadcasting sector is a fragmented sector, with great variations in the market owing to the varied size and volume of different stakeholders, therefore regulating a massive industry as such needs a comprehensive legislature with equal protection to all stakeholders, with space for healthy competition, freedom for development and growth and at the same time with zero space for loopholes. An attempt to regulate a vast industry as such needs to cater to the interest of all stakeholders, leniency towards one and strings pulled towards the other would create imbalance between stakeholders, resulting to chaos, bantam growth and development of the industry, and victimization of the least privileged. It is important to provide



equal leverage to all the stakeholders while keeping in mind that certain stakeholders are vertically integrated broadcasters and Operators, while keeping in mind the economic business model and the massive subscribers of all status especially subscribers from the deep rooted rural villages.

The current draft of Interconnection Regulation has though been drafted with an intent keeping in mind addressing the difficulties faced by the Broadcasters, Operators and subscribers under the existing Regulations with an attempt to evolve to keep pace with major developments in the sector had accordingly decided to review in a complete and holistic manner and bring changes to the regulations, but in doing so the Authority **cannot completely change the present practice in totality without as much as any basis or study**, the Regulations needed at this hour is to improvise on the existing practice and business model benefitting the stakeholders at all level. The authority while developing new Regulations with an attempt to resolve difficulties faced by the industry has however failed to provide a mechanism to curb these difficulties leaving a loose end which in turn would give rise to further issues during implementation of the current drafts of Interconnection impacting the entire business module of the Broadcasting Industry and resulting in complete blackout of channels of the some of the Broadcasters which may be popular but are not vertically integrated with an Operator .

The discretionary powers of carriage and placement of channels that the Distribution Platform Operators receives, visible vide a combined reading of the current draft as well as the new proposed interconnection rules will become extraordinary and will neither serve the interest of the consumer nor the market. In the entire scenario, there will be few winners namely the Operators but the Broadcaster is sure to lose out a great deal including most of them being forced to be driven out of the market.

The Broadcasters are in the business of dissemination of news and the inaction of the Authority to ensure reach of the Free to Air Channels in letter and spirit will result in unreasonable restrictions being imposed in carrying on their business of broadcasting news. This also affects the common man's right to information. The reasons given in the Drafts are without any basis and are totally contrary to the ground realities and prevailing practices in the market. There has been no attempt to establish a level playing field for the stakeholders and the issues raised by the Broadcasters earlier have either not been addressed at all or have been answered in vague and general terms. Needless to state that the interest of the Broadcasters have been overlooked or have not been addressed at all.



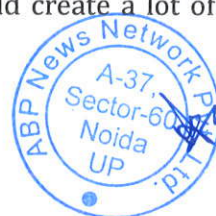
We tried our best to comprehend the propositions articulated in the paper we realized that the same were of far reaching consequences and would have a huge impact on the industry going forward. Given the significance of the topic being deliberated herein and the sheer magnitude of the impact it can have on our industry together with the paucity of time we have attempted to put together a preliminary submission on the various queries posed in the paper which by no means is indicative of our final position in the matter and we reserve our right to detail other issues going forward as counter comments etc.

SALIENT FEATURES OF THE INTERCONNECTION REGULATION

The key points that are discussed in the draft Interconnection Regulation effecting stakeholder interests are reproduced in brief for convenience and discussion.

1. Provisions relating to Interconnection

It is suggested that the Authority keeping in mind of the present discrepancies must evolve the interconnection regulation in a manner to fill the gaps addressing the present industry module. It is also important to allow competition and space for creativity and improvisation, at the same time allowing a healthy growth amidst all stake holders in the value chain. For a broadcaster providing carriage fee and free to air channel, it is important to consider that only revenue earned for the cost incurred in production is vide advertisement based on maximum reach. It is important to note in order to make content available by a Broadcaster to the consuming public, a Broadcaster entails heavy cost to purchase and produce content with practically nil marginal cost. Broadcasters providing carriage fee and retransmitting Free to Air Channels are totally dependent on revenues generated from advertisements, thus greater reach of its channels to the viewers directly relates to a larger potential for advertisement revenue. In this backdrop, it is pertinent to point to the fact that the 'must carry' provision which the Authority now seeks to enforce is arbitrary, illusionary and is glaringly unworkable. The Authority before putting forth such provision should have first dwelled on TRAI's own basis in the previous explanatory memorandum for inserting the 'must carry' provision which now the Regulator seems to have not considered. Therefore giving the leniency to a distributor to carry channel on the availability of capacity to carry channels based on the unworkable ***first come first serve*** gives no assurance of any carriage let alone 'must carry' of the channels. It is suggested that a minimum carrying capacity by a distributor should be determined by the authority. Such leniency and ambiguity as such would create a lot of discrepancies and



space for discrimination. Further the first come first serve basis is impractical if not unworkable for a massive industry with heavy competition having a large number of channels with a huge variety in each genre.

The provision permitting the distributors to package the channels as per their own whims for offering to its subscriber would further narrow the reach of a free to air channel or for that matter a new entry channel. Furthermore, a distributor belonging to a vertical integrated channel gets the leverage to package and push its channels for maximum profits, also where the distributor is paying a huge subscription amount would rather make good by maximum promoting those said channels. Further there is no guarantee that the channels are packaged in a manner where there is maximum reach in terms of geographic distribution. For Example: viewers in Bengal would watch mostly Bengali channels, but instead the distributor packages to promote a Marathi channel in Bengal and a Bengali channel in Maharashtra, which would certainly bring down the viewership to minimal, there are no guidelines provided to a distributor to keep a tab over packaging nor are the distributors made accountable to save guard the Broadcasters. Thus it is important that the packaging of the channels should have a parameters which would regulate the Distributor to avoid unjust enrichment, discrimination and monopoly causing loss of revenue for a broadcaster, it is further suggested that a broadcaster should also be given a right to have a say in packaging of channels provided to the subscribers and there should be no bar on packaging in an "as is" basis.

The Authority is also requested to make it mandatory for operators not to treat channels with discrimination, i.e., to say operators having vertical integration with broadcasters should not discriminate against channels of other broadcasters. Non Discrimination should be analysed on the basis of language, genre, and ownership of the channels. In the case of regional news channels at least 5 regional news channels relating to the state / region should be mandatorily carried.

For example. A Operator vertically integrated with a broadcaster, puts all the channels of such broadcaster in all the tiers and complains about lack of transponder space when it comes to availing the platform to channels of other broadcasters. For the convenience of the consumer there should also be sub - categorization within a genre like Hindi, English, Business Channel, Regional, etc.



TRAI has further laid down that every distributor of television channels shall offer at least one bouquet, referred to as basic service tier, of one hundred free to air channels including all the channels notified by the Central Government to be mandatory provided by the subscribers and such bouquet shall contain at least five channels of each genre. Now looking at the manner of offering from the perspective of a Broadcaster offering Free to Air Channels, or a new entry channels, with the rate of such high competition, a broadcaster with such offering may merely survive with no certainty if its channels would even be amidst the first 100 channels and if at all there are a percentage of viewers selecting their channels then it would have to pass the test of at least minimum 5 per cent viewership to survive from the threat of being disconnected by the Operators as the draft interconnection regulation clearly permits Operators to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding six consecutive months, for that particular television channel is less than 5 percent of the subscriber base of that Distributor, in the target market specified by the broadcaster in the interconnection agreement in that particular month which least to say becomes the sole prerogative of the Operator.

The provision permitting a television channel distributor the leverage not to carry a channel for a period of one year which has been disconnected for the reason of inability to provide a minimum subscriber base of 5 percent (due to the discriminatory treatment meted out by the Operator), would completely wash out a broadcaster and would further stand as an obstacle for a new broadcaster to enter the industry thus restricting competition, clogging space for creativity, creating vast discrimination, causing monopoly and stagnation of the broadcasting industry.

After the Regulations come into effect Status Quo should be maintained in respect of Genre, Relative Positioning, LCN allotted to news channels, Pay Channels and Free To Air (FTA) Channels and the place given to such channels in EPG for at least three (3) months after the Regulations come into effect.

2. Reference Interconnection Offer and Carriage Fee

It is submitted that it is important to analyze the manner of distribution of channels to also evaluate the calculation of carriage fee and the practicality of its implementation. The draft regulations make it a mandate provision of "must carry" for the DPOs while also giving a leniency subject to availability of channel capacity on the distribution network



with an additional provision of first come first basis. In such a scenario, there is certainty for difficulties to arise during practical implementation and surety of space for discrimination.

It is submitted that According to the following carriage fee arrangements as contemplated-

- The rate of carriage fee has been capped at 20 paisa per channel per subscriber per month. Further, the carriage fee amount will decrease with increase in subscription.
- The distributors of TV channels may offer discounts on the carriage fee rate declared by them not exceeding 35% of the rate of the carriage fee declared.

To add further, channel penetration of 5% of subscriber base has a carriage fee based on forbearance, channel penetration of 10% of subscriber base has a carriage fee which is at .75 times the average subscriber base in that month, channel penetration of 15% of subscriber base has a carriage fee which is at .25 times the average subscriber base in that month, and No carriage fee is to be paid by a broadcaster if the subscription of the channel is more than or equal to 20% of the subscriber base.

The said arrangement is set to benefit only vertically integrated players as the MSO has no incentive to carry any channels that are competitor channels thereby denying them an equal opportunity of eventually getting in a higher bracket despite quality content. This also gives large MSOs the option of cartelization against certain channels thereby affecting the purity of markets.

The power in the hands of a DPO in this case is quite discriminatory which is against the principles of ensuring transparency, protection of consumers' interest and creating an enabling environment for orderly growth of the sector. The Regulators while providing the provision for calculation of carriage fee amount with the present manner of distribution of channels it is important to evaluate whether the existence of carriage fee payable to broadcaster to a distributor is limited only to the extent that the broadcaster's channel is in the list of channels being carried by the Distributor, or it is only to an extent to those subscribers who have requested to subscribe to that particular channel or is it only limited to the extent to reach out only to a target market of 20 percent.

With the leniency given to a television Distributors to package the channels with no power provided to a Broadcaster to have any say in packaging of its channels, there is no



guarantee if the channels would be even selected in the first 100 capacity and if the Distributor would even make an effort to package and place the channels to reach a target subscriber base of at least 5 percent. While structuring the business module through the present draft regulations, it is important to also take note of the vertical integrated companies existing in the broadcasting industry that may give rise to discrimination and monopoly in the market.

It is further submitted that as per the calculation of carriage fee amount if the number of average active subscribers in a month for a channel in the target market is greater than to equal to twenty percent of the average subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to 'Nil'. With reference to this calculation, two questions arise firstly with the freedom of packaging of channels provided to the distributor of television channels, would the DPO prefer a module where channels are reached to a target of 20 percent subscriber base in return of no carriage fees paid to them. Secondly, even if we consider that the channels are reached to a target market of 20 percent subscriber, then what is the next step, what benefits will Operators get to increase the subscriber base over 20 percent, what happens to the remaining 80 percent of subscriber base. There is no mechanism provided by the authority to target the remaining 80 percent of subscriber base. If any carriage fee is to be paid by the news channels, it must necessarily have a co-relation with subscriber base cited by the MSO / DPO and verified by the Central Facility / Auditor.

It is further submitted that in the present market considering the fact that the entire revenue stream is totally based on the subscriber number, the distributors have been providing abrupt figures with no concrete method to authenticate the figures, thus causing severe loss to the Broadcasters and with the present draft regulation limiting the number of audits to one per year would further be detrimental to the broadcasters, with no possible tab to control misrepresentation of subscriber base. The provision provided for calculation of carriage fee based on the percentage of subscriber base would be absolutely defeated if there is no authentication process laid down to control the figures provided by the Distributor. With the 20 per cent tab of subscriber base provided thereafter which the carriage fee becomes nil would make it impossible at the time of implementation, as nil carriage fee would certainly lead to decrease of revenue to a Distributor, the Distributor with leverage to packaging, reducing audit to only once a year, gives ample opportunity to reap benefits without passing the fair share to the broadcasters court.



It is further suggested that there should be no distinction made between carriage fees and placement fees as placement fees also invariably includes carriage within its fold and accordingly Broadcasters should be allowed to negotiate with the Operators for preferential placement of their Channels within the carriage fee itself, there should not be any placement/marketing fee. No Carriage Fee should be charged from News Channels by DTH Operators,

It is further submitted that the time period given to enter into a written interconnection agreement is 30 days from the date of receipt of request from a broadcaster for retransmission, in failure of a written agreement, the Distributor has been restricted from carrying signals and further provides a 60 days period to enter into a fresh interconnection Agreement on expiry, observing the present trend in the market wherein, the Distributors prolong the period of executing the agreement beyond the prescribed period, with the strict proviso of not permitting to carry signals without a written connection agreement, put the broadcasters at a difficult situation. It is suggested in case the Distributor does not execute the agreement within the prescribed manner, the distributor should give a written reason for doing so with further permitting to continue to calculate the subscriber base for the channels from the date of expiry for the purpose of carriage fee and while executing the fresh interconnection agreement/ renewal of interconnection Agreement the previous subscriber base should be taken into consideration. Further the leverage to discontinue signals of the channels where the subscriber base is below 5 percent should not be permitted as the same would cause major discrimination and monopoly in the hands of the Distributor, restricting the entry of broadcasters introducing new channels and throwing the already not so popular channels out of business.

It is submitted that since the rate of carriage fee has been defined as 20 paisa per set-top box per month ; it is submitted that carriage fee payable by the news channels to a DPO be reduced year on year ; and there should a model which can phase out carriage fee completely . So that no carriage fee should be payable after that, since the infrastructure cost would by then have been recovered by the DPOs.

3. Subscription Report and Audit



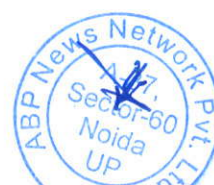
The manner of providing subscription Report is not adequately protected from tampering of the actual numbers of subscribers, with the present scenario in practice it is often found that the subscriber reports are not in conformity of the actual numbers with vast unreasonable variations. Therefore the authority needs to develop a method leaving zero percent chance of any loopholes for misappropriating the actual figures.

We also request the authority to take into account the concerns of the Broadcasters with regard to genuine addressability at the ground and those with regard to middleware vendors who are suppliers of CAS and SMS. These vendors should also be brought within the Regulatory scanner so that best practices can be uniformly ensured/enforced. These middle ware vendors should regularly report "Failure Data" to the Authority and the measures taken by them to rectify the same. This vital information should be uploaded in the website for Broadcasters to identify the Operator whose CAS/SMS had failed, the exact causes for the same, the remedial measures undertaken and the nature and extent of revenue loss. In the event an audit reveals any shortcoming of such CAS/SMS, which the vendor had failed to report, suitable penal provisions should follow

Also the authority is requested to ensure declaration of tier wise subscriber base by the operators as has been the practice in the Telecom sector.

It is suggested that audits as prescribed under the draft regulations should be conducted quarterly and not limited to once a year, quarterly audits would bring in zero percent discrepancy, leaving no space for tampering the numbers and information, and bringing in complete transparency to the system.

Further the provision for subscription count to be recorded for any instant between 19:00 hrs and 23:00Hrs is not practical, while setting such prescribed time period, the authority needs to consider the various genres of channels and their viewership varying from various ages, working and non working class, rural and urban society. For instance, a channel specifically attracting children would be maximum viewed between 14:00 – 19:00 Hrs, like wise a news channels would also be maximum viewed during the early morning hrs, channels with programs attracting rural society or non working class would be maximum viewed in the afternoon, therefore with the specific time period between 19:00 Hrs to 23:00 hrs as specified by the authority would cut down drastic viewership numbers depending on the genres that are not viewed during the specified time.



Therefore the authority needs to seriously reconsider the prescribed time keeping in mind the genres and viewership belonging to various categories.

Further, the provision of exempting distributors having a subscriber base below two lakhs to appoint compliance officer is without any base, the regulation is based on the principle of non discrimination, therefore a provision as such defeats the entire principle of non – discrimination. Regulators framed must be equal for all stakeholders belonging to a vertical and non vertical integrated platform

CONCLUSION

The TRAI must ensure that DAS is implemented and comes into effect by 31st December, 2016 as stipulated.

The Broadcasting industry as a whole including various stakeholder and subscribers have evolved drastically in the past many years based on the practicality that suits best to all stakeholders providing adequate competition, space for creativity, ample opportunity for new entries and a healthy growth in totality. Thus it is important that the Regulators while drafting the regulations must keep in mind the present trend and provide regulations for enhancing a smoother growth while filling the deficiency hindering the industry. But the present Regulation drafted has in totality would change the entire business model to restart from ground zero. Thus bringing in newer and larger discrepancies to resolve.

The broadcasting sector has unfortunately been at the receiving end of a spate of certain stringent regulations in the past one decade. It is therefore humbly suggested that the existing regulations be amended in light of ground realities for protection of interest of the broadcasters for enforcement of a level playing field. The intent should be to regulate the market in such a manner, so that it fulfils the demands of all the stakeholders, without prejudicing the interest of any of the stakeholders.

The present draft is more DPO centric, while totally ignoring the difficulties faced by the broadcasters especially the one paying carriage fee and providing free to air channels. The present draft Regulations have been drafted without considering the practical implementation of the regulation at ground reality. Doing away with freedom of mutual negotiation would completely clog the space for growth and competition. It is suggested that mutual negotiation



should be permitted on the basis reference interconnection offer in a fair and transparent manner without curtailing industrial growth.

It is further proposed that the broadcasters should be provided enough freedom to innovate their offering of channels and its should not be completely left to the hands of the Distributors wholly to avoid discrimination and to provide for fairness and transparency in the system

The Regulators while providing space for discounts have failed to provide a mechanism keeping in mind the present market scenario, without considering its practical implications and the easily provided loop holes for the DPOs to benefit out of this draft regime on the cost of the Broadcasters. It is Important for the regulators to consider the content procurement cost of the broadcaster to makes its channels worth being viewed. With the present draft it would make it impossible for a broadcaster to cover its cost incurred does making it impossible to survive in a highly competitive industry as this. The present regulation is more concentrated on the distribution cost incurred by the DPO than considering the heavy cost incurred by the Broadcasters.

The principle of Must carry necessary has also been defeated in the said regulation while permitting the DPOs to refuse on the basis of capacity constraints and first come first serve basis with the provision of the test of 5 percent to survive.

It is submitted the over -all Draft regulation, requires to be reconsidered while keeping the present business module of all stakeholders in mind in order to prioritise the principle of non-discrimination, healthy competition and growth, which however has been overlooked in the present draft Interconnection.

