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Ref. No. RP/ FY/19-20/075/050

Dated: 04th November 2019

To,
Advisor – B & CS
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
J.L. Nehru Marg, Old Minto Road
New Delhi – 110002

Subject: Response to Consultation Paper on issues related to Interconnection Regulation 2017.

Reference: TRAI's Consultation Paper dated 25th September' 2019

Dear Sir,

This is with reference to your above mentioned consultation paper.

In this regard, please find enclosed our response for your kind consideration.

Thanking You.

Yours Sincerely.

For Bharti Telemedia Limited


Seema Jindal
Authorized Signatory

Bharti Telemedia Limited ("Airtel's") Response to TRAI's Consultation Paper on issues related to Interconnection Regulation, 2017 dated 25th September 2019.

The Authority will appreciate that the new regulatory framework was implemented by the entire industry in February-March 2019 and it's been merely 6 months since the new framework has come into force. With due respect, we most humbly submit that the consultation papers, both on tariff as well as interconnection is premature as we feel that the new framework should have been given sufficient time to function and evolve, It is a fundamental premise that any regulatory framework when implemented should be allowed to operate for a reasonable period of time; at least for 2 years so that the contours of the framework are tested by market forces which will give a better perspective in understanding the implications of the framework in a holistic manner. We are therefore, of the view that the release of consultations paper on interconnection for reassessing the existing framework was not necessitated at this stage. We also feel that the apprehensions or concerns basis which the Consultation Paper have been formulated may be few odd exceptions rather than the norm or a practice and therefore, any changes in the Regulation is not warranted at this stage. The changes are too soon to be considered and it will neither serve the interest of the industry nor the customers.

We would also like to emphasize that the current framework has both regulated as well as forbearance approach and any changes to oust the existing forbearance allowed on certain matters will tantamount to an over regulated approach. A regulation should be equipped with sufficient flexibility so as to adapt effectively to continuously changing circumstances in the market under the supervision of the Authority. Therefore, any amendments of such nature at this stage will not only have an adverse impact on the entire industry but it will also curtail the natural progression and evolution of the framework by the market forces.

We hope that the Authority will consider our above submission on merit and with this assumption, we are providing our response to the questions put forth by the Authority for Consultation on issues related to Interconnection.

Questions and Response:

1. Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?
3. How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data?

The target market for MSO and DTH is different because of the inherent technology as well as the different geographies being catered by them. The DTH Operator is provided a PAN India License by MIB and hence their target market is logically extending to pan India. Even in terms of the current technology used by DTH operators, it does not allow them to broadcast or confine signals specific to a city, state or region etc.

As regards the consumer choices for content, the consumer behavior is changing. There is a shift in consumer viewing behavior and the languages or regional preferences are no longer confined to the particular geographies. With the increasing trend of urbanization, migration of working population across the geographies in India, emerging section of customers who are being agnostic to language of content, the demand and consumption of regional content outside the respective geographies is quite evident. For instance, there is a large community of Hindi consuming customer in southern India and similarly we see a demand for Tamil content being consumed by the customers in north India. Therefore, we propose that the Target market should not be hard coded and the flexibility should continue. We suggest that the flexibility to decide on the Target Market should be extended and allowed between the Broadcaster and the Distributor as per their mutual agreement and such terms can be captured in the interconnect agreement to bring transparency.

2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

At the very outset, we would like to state that there should not be a capping on the carriage fee. Having said so, the Authority will concur that the cost of providing a channel cannot be measured by merely accounting for the installation cost of setting up a network (Capex). There are significant volume of overheads by way of operational and maintenance costs incurred by the DTH operator for running and maintaining the network of which the transponders as a network element; forms a significant chunk of operating expenditure (Opex). For instance, the average ratio of capex investment into equipment corresponding to each transponder as against the opex of running such single transponder is in the ration of 3:2. There is no denying that a pan India DTH operator makes significant investments into transponders, both capex as well as opex coupled with a fact that these capital investments are long term fixed deals. The average number of transponders deployed by a pan India DTH operator is more than 15.

Therefore, a DTH operator should be allowed to recover its capital investments from the broadcasters, as the DTH operator is also serving the broadcaster by aggregating the signal of many individual broadcasters and making it available to the customers. Since the new regulation is aimed at customer welfare, transferring the complete network cost as NCF to customer will defeat the objective of the current regulation. It is in the light of these facts that we seek continuity of the current rate of 20 paise for SD and 40 paise for HD channel as carriage fee to enable DPOs to recover their capex and opex and to maintain profitability for continuing operations as a going concern.

4. **Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?**

The current tariff regulation has allows to offer 100 Free to Air (FTA) channels including the mandatory central government channels notified by MIB. Since consumer welfare and fair play is the central theme around which the regulation is structured, it is only fair that this clause is made available to the DPOs. This clause allows flexibility to DPOs to bundle the consumer preferred channel and exclude channels which are not preferred by customer and any exclusion of channels at the behest of the customer will lead to low penetration. Further, the carriage of any channel involves cost for the Distributor as well as the Broadcaster and therefore, the channels with a low subscription reflects the customer choice. It is neither in the interest of the customer nor the Broadcaster/Distributor to continue such channel.

We further state that six months' time is a reasonable time given to a channel to improve its viewership. If the viewership fails to improve beyond six months, the DPO should be rightfully entitled to exercise its discretion to carry or discontinue a channel with very low penetration. If the DPO removes a low viewership channel, this is a reflection of consumer choice and not a reflection of arm twisting by the DPO. The capacity created by removing the low penetration channel can be utilized to service a more relevant and consumer preferred channel.

5. **Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons?**
6. **Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favoring DPOs ? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s)?**
7. **Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?**

8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification?

9. Any other issues related to this consultation paper? Give your suggestion with justification.

Airtel's Response:

The new framework has regulated the Reference Interconnection Agreement and has rightfully allowed forbearance on other contractual agreements including the marketing and promotion agreements. However to ensure that such forbearance is under check, the Authority has mandated the inclusion of any agreement, for any kind of fee for a channel, between two service providers as part of interconnection agreement which also needs to be reported to the Authority. Therefore, the Authority has not only ensured that the current incorporated provisions act as safeguard/s against potential misuse but they also bring the transparency. The Authority's apprehensions of probable distortion in the level playing field are unfounded. We therefore, propose that the current forbearance should continue as any change at this stage is not only hasty but the same is not required at this stage. The marketing and promotion agreements are optional and are entered solely at the discretion of Distributor and Broadcaster. These Agreements provide a platform for the interested broadcasters to increase the visibility of their channels by various activities including placing them on all the consumer facing communications viz; ads on barker channel, banners, pamphlets etc. circulated in the market. Therefore the agreements such as marketing, placement or in any other name should be allowed to continue on the principle of forbearance when the prevailing provisions are in place to keep a check on the misuse.