DRAFT "TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES REGISTER OF INTERCONNECTION AGREEMENTS REGULATIONS, 2019"
ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA
DATED
APRIL 22, 2019

TO
THE TELECOM REGULATORY AUTHORITY OF INDIA

COMMENTS OF
INDIAN BROADCASTING FOUNDATION

Dated: May 15, 2019

➢ INTRODUCTION

The distribution industry has witnessed a paradigm shift from the previous 'fixed fee' regime to the 'MRP' model. With the MRP Regime in play, any inter-linked regulations of TRAI demands streamlining of the same with the MRP Regime and appropriate modifications needs to be carried out to the extent necessary to align them with the relevant existing regulations. TRAI has appropriately issued the Draft Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreement Regulations, 2019 ("**Draft Regulations**") in place of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 (as amended from time to time) ("**Register of Interconnect Agreements Regulations')**.

We wish to clarify that the Draft Regulations should consist of deviations from the Register of Interconnect Agreements Regulations to the extent that the same are required for streamlining the MRP Regime. The broadcast / distribution industry is presently grappling with the implementation of the MRP Regime and more changes at the inter-connect level will only lead to more ambiguity on the ground. Our member broadcasters are making considerable attempts to ensure deployment of adequate processes and procedures for transitioning to the MRP Regime. Adding more onerous compliances as proposed under the Draft Regulations would only put greater strain on the concerned parties and delay the transitioning process.

We have reviewed the Draft Regulations and provid our views as under.

➢ ISSUES

Issue 1:

Quarterly filings {Chapter II - Clause 3 (1)}: The obligation placed under the Draft Regulations for broadcasters to report to TRAI, information pertaining to all interconnection agreements along with modifications / amendments / addenda pursuant to the MRP Regulations within 30 (thirty) days from the end of every calendar quarter in which such agreement / modification / addenda / amendment would have been signed, is extremely burdensome and onerous. Under the Register of Interconnect Agreements Regulations, broadcasters were originally required to make quarterly filings. However, after consultation and open house discussions with stakeholders, the TRAI vide The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fourth Amendment) Regulations, 2009 ("**Fourth Amendment"),** reduced the frequency of filing and limited it to once in a year. Hence, for TRAI to propose quarterly filing is not only to take a step back from an agreed and settled position. The stated position of TRAI should continue which enables broadcasters to make annual filings.

Recommendation 1:

IBF believes that sufficient checks and balances provisioned under the New Regulatory Regime exists to ensure that there is no regulatory vacuum. It is for this reason, we are of the view that the Authority ought not prescribe any onerous or burdensome requirements on stakeholders in the form of quarterly reporting. Further, as per the MRP Regulations, interconnection

agreements like reference interconnect offers (RIOs) are required to be entered into for a minimum period of 1 (one) year. Considering most broadcasters have entered into RIOs for 1 year time period, filings should be concomitant by broadcasters on an annual basis.

TRAI is therefore requested to modify the said clause and limit filing of RIOs to an annual basis as is the current practice.

Issue 2:

Interconnection agreements {Chapter I – Clause 2 (z) & Chapter II – Clause 3 & Clause 4}: IBF believes that for the purposes of reporting requirements to TRAI, the Draft Regulations should restrict itself to interconnection agreements that are required for re-transmission of signals of channels of the broadcasters and include subscription, carriage/ placement RIOs. Requirement for filing of any ancillary agreements like marketing agreements are beyond the scope of 'interconnection agreements' and should accordingly be excluded. Take the example of a broadcaster consuming the advertising inventory on a DPO's channel for promoting its network to the DPO's subscribers. We consider it to be a commercially sensitive arrangement between the broadcaster and the DPO which should not merit any agreement to be filed before the Authority.

As per the Draft Regulations, DPOs are not mandated to file the copies of agreements signed with LCOs since, these are standardized as the regulations prescribe for signing of such agreements on the basis of model interconnection agreement or standard interconnection agreement and therefore, asking the same may amount to duplicity. Accordingly, TRAI has exempted DPOs from filing copies of actual agreements signed with LCOs. Even the interconnection agreements between broadcasters and DPOs fall under the category of standardised agreements since, such agreements can only be on the basis of RIO, and as such, the same logic should be applied by the Authority in respect of filing of copies of interconnection agreement between broadcasters and DPOs and exemption should be granted from filing.

Recommendation 2:

In light of the reasons mentioned above and in case the Authority still insists, the reporting requirements under the Draft Regulations should restrict to subscription, carriage/placement RIOs. Inclusion of any other commercial arrangements between broadcasters and DPOs would result in expansion of scope of the Draft Regulations significantly beyond the scope of the regulations.

Issue 3:

Reporting / filing of copies of interconnection agreements / modifications / amendments / addenda {Clause 4 (1) (c) & 4 (2) (c)}:

The Draft Regulations requires broadcasters to report to TRAI copies of interconnection agreements / modifications / amendments / addenda, which was not required under the Register of Interconnect Agreements Regulations.

Under Part A and Part B of the said Clause 4(1)(c) & 4(2)(c) of the Draft Regulations, a whole new gamut of issues requires to be furnished to the Authority and we believe that such information should be sufficient for TRAI's review purposes. Further, considering standard reference interconnect agreements have been mandated under the MRP Regulation, templates of which have already been filed with TRAI and would continue to be filed in case of modifications, the only additional items would be the information referred to be provided in Part A and Part B. We do not see the need for filing copies of interconnection agreements since it would not be prudent, would result in duplication, and moreover it is a costly affair.

Considering the subscription RIO templates have already been furnished by broadcasters to TRAI and carriage and placement RIO templates would similarly have been submitted by DPOs with TRAI and, would continue to be filed in case of any change, as mentioned above, the requirement in any case is fulfilled in light of the MRP Regulations.

Further, the stipulations permitting exemption of DPOs, which do not have average active subscriber base of two lakh or more in the month of March in a calendar year, will encourage rampant malpractice of under-reporting of subscriber numbers by DPOs and piracy. In fact, DPOs who have marginally higher average subscriber-count than 2 Lakhs in the month of March would be enticed to indulge in under-declaration of subscriber numbers so as to bypass reporting requirements.

Recommendation 3:

We urge TRAI to remove the requirement for filing of copies of the interconnection agreements/modifications in light of the standardization that has been introduced by the MRP Regime. The reporting requirement should be restricted to information required to be filed under Part A and Part B of Clause 4(1)(c) & 4(2)(c). Any requirement for agreements to be filed as specified under Part C should be removed from the said clause 4 and elsewhere from the Draft Regulations.

Issue 4:

Clause 5 of the Draft Regulations: The frequency of proposed reporting being so high would require additional manpower to comply with the requirements. For the distribution industry that has to operate on the basis of yearly contracts as per the regulatory requirements, this proposed frequency of reporting creates undue hardship and burden on the business operations.

Recommendation 4:

It is proposed that the financial disincentive, if imposed, should be for not reporting in a timely manner for one-a-year reporting requirement.

Issue 5:

Inspection of register {Chapter III – Clause 7}: The process of inspection of Part 1 of the register has been relaxed under the Draft Regulations, which would allow unconnected, non-serious/non-concerned parties to inspect the register. This could result in fishing and roving enquiries resulting in misuse of such information by vested interests. In this regard, we wish to draw TRAI's attention to Section 11 (1) (b) viii. of the TRAI Act, 1997 ("**TRAI Act**") which states as follows:

> *"11 (1) (b)*
>
> *vii. Maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations;*
>
> *viii. Keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirements as may be provided in the regulations;*
>
> *ix.----------"*

Considering the TRAI Act itself envisages levy of fee, the Draft Regulations cannot dilute this provision of the Act. Even other laws which allow members of the public to view documents such as the Companies Act, 2013, also require payment of a fee to view as well as to take copies of documents.

Further, the Draft Regulations are silent on the manner in which any member of the public can approach TRAI to view the register which needs clarification. It is to be noted that the filings with TRAI cannot be considered a matter of "public interest" as these relate to commercial arrangements between parties

Recommendation 5:

In order to evade non-serious parties and persons with vested interests from accessing such registers and for the reasons mentioned above, the process laid down under the Register of Interconnect Agreements Regulations, should be retained in the Draft Regulations. Further, the process provided under the Register of Interconnect Agreements Regulations in terms of application being made to the designated officer of TRAI for inspection of the register /inspection through the TRAI website and payment of a fee, should also be incorporated in the Draft Regulations. It should also be mandated that the person seeking inspection should make full disclosure of reasons as to why the inspection is being sought.

- **CONCLUSION**

The primary objective of the Draft Regulations, to our perspective is the formulating and legitimizing of a reporting system for the service providers where they part with their information on details of interconnection agreements. This would enable TRAI to maintain register of interconnect as per the TRAI Act. As long as the said purpose is being achieved by TRAI, any additional obligations on broadcasters and DPOs should be avoided.

We believe some of the modifications brought in by way of the Draft Regulations in terms of electronic submissions, allowing digital signatures (to be notified by separate directions) and streamlining the concept of Compliance Officer are very laudable. The broadcasters are not leaving any measures to make the MRP regime successful, but any addition of additional obligations will definitely over burden the broadcasters

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