1st November, 2019

To,

Sh. Anil Kumar Bhardwaj,

Advisor (B&CS),

Telecom Regulatory Authority of India ('TRAI')
Mahanagar Doorsanchar Bhawan,
Jawaharlal Lal Nehru Marg,
New Delhi – 110002

Emails: advbcs-2@trai.gov.in / sapna.sharma@trai.gov.in.

Sub: Response to the Consultation Paper on Issues related to Interconnection Regulation 2017.

Dear Sir,

At the outset, we, Sony Pictures Networks India Private Limited, would like to thank TRAI for providing us an opportunity to participate in this consultation process and submit our response to the Consultation Paper dated 25th September, 2019 on Issues related to Interconnection Regulation 2017 ("Consultation Paper").

Please find enclosed our response to the aforesaid Consultation paper. We hope that our submissions shall be considered favorably by TRAI.

Thanking you,

Yours Sincerely,

For Sony Pictures Networks India Private Limited

Gururaja Rao

Legal Counsel

Encl: As above.

Sony Pictures Networks India Private Limited
CIN : U92100MH1995PTC111487
Registered Office Address:
Interface, Building No. 7, 4th Floor,
Off Malad Link Road, Malad (West),
Mumbai – 400 064, India.
Tel: +91 22 6708 1111 | Fax: +91 22 6643 4748
sonypicturesnetworks.com

RESPONSE OF SONY PICTURES NETWORKS INDIA PRIVATE LIMITED ("SPNI") TO THE CONSULTATION PAPER ("CP") ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA'S ("Authority/TRAI") ON ISSUES RELATED TO INTERCONNECTION REGULATION 2017 DATED 25TH SEPTEMBER, 2019

At the outset, we would like to thank the Authority for inviting stakeholders to respond to the issues related to Interconnection Regulation, 2017 ("Interconnect Regulations"), as more specifically mentioned in the CP.

SPNI firmly believes that the extant TRAI Regulations already has requisite provisions which governs the relationship between a broadcaster and a distribution platform operator (DPO) and there is no need for having any new regulations regarding arrangements such as placement, marketing and other similar arrangements between the broadcasters and the DPOs. It is also pertinent to note that marketing and other similar agreements/arrangements are beyond the scope of the TRAI Act since they do not fall within the ambit of "interconnection agreements". These agreements are business related agreements, which are carried out as per the commercial understanding between the broadcaster and the DPOs and have nothing to do with the "subscription" related aspects which TRAI regulates. In fact the TDSAT itself has recently held that landing page agreements are outside TRAI's purview as they are not related to inter-connection. A similar analogy would hold good in the case of marketing and other non-RIO based agreements.

It is pertinent to note that the MRP Regime which has been promulgated by TRAI effective 1st February, 2019 has ushered an era of transparent and level playing field amongst various stakeholders in connection with issues involved in the subscription and carriage of channels on DPOs platform and sufficient safeguards have already been inbuilt therein. The proposed regulations as enumerated in the CP is restricting the Broadcaster freedom to deal with its business in the manner it best suits them within the four corners of the existing Regulatory framework. The Authority should appreciate that the broadcasters invest huge amount of money in creating varied content and programme and bringing the same to the subscribers. Hence the promotion and marketing of such programs on a DPO's platform should be left to the sole discretion of the Broadcasters and basis the commercial understanding which the respective

broadcasters would arrive at with the DPOs to improve the viewership experience across multiple regions. A broadcaster may wish to promote its channels on a DPOs network and for this it may enter into a commercial understanding with the DPO. Such arrangements are (a) not in the nature of inter-connect agreements and (b) are confidential and commercially sensitive and disclosure will affect the broadcaster's ability to negotiate terms.

We firmly believe that any regulatory intervention at this stage in this regard would hamper the growth of the industry which is already facing lots of issues because of recent implementation of the new tariff order (NTO). Thus, any regulatory intervention in this regard would be violating the Broadcaster's fundamental right to carry on business and trade and would have adverse impact on the broadcasting industry.

Taking the aforesaid into consideration, SPNI would like to put forward its submissions to the issues raised in the Consultation Paper as stated below:

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?**

RESPONSE:

As per current Interconnect Regulations, each DPO is required to define its target market for each distribution network/headend. Frankly speaking we are not aware of misuse of flexibility with respect to the DPOs defining target markets. We believe that each DPOs would have their own rationale and reasoning while declaring their respective Target Market.

However one of the thing which can be considered is that while the demand for a regional channel may traverse beyond the State or States where that particular language is widely spoken, the definition of that channel's "target market" ought to be restricted to such State or States where language of channel is predominantly

spoken. For e.g. a tamil language regional channel may be viewed in Gujarat, UP or Maharashtra but its "target market" ought to be restricted to the State of Tamilnadu. This will ensure level playing field between broadcasters and DPOs while at the same time ensuing that there is no misuse by the DPOs as regards stipulations pertaining to declaration of target market for the purpose of calculation of the carriage fees payable to the DPOs. Further, it is felt that the broadcaster is in the best position to determine the relevant target market for its respective channels keeping in mind the kind of content being programmed on the said channels. Thus, we submit that broadcasters should be given the right to declare target market on the same principles as that of the DPOs as stated aforesaid. This would further help the broadcasters in ensuring that the DPOs do not arm-twist them by dropping their TV channels on the ground that uptake of such channels is less than five (5) percent on DPO's distribution network. The DPO should be made to declare its active subscriber base in that target market for the purpose of calculation of the carriage fee payable by the broadcaster keeping in view the active subscriber base of the target market.

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?**

RESPONSE:

Under the MRP Regime, the DPOs are guaranteed a minimum of 20% of maximum retail price ("MRP") of a channel towards distribution fees payable by the broadcaster apart from a further discount / incentive up to fifteen (15) percent of MRP of a channel from broadcaster on fulfilment of prescribed criteria as laid down in the reference interconnect offer. Further the DPOs are also entitled to a network capacity fee (NCF) of Rs. 130 per subscriber per month for providing the channels to the subscribers. Thus, the relative costs incurred by the DPOs in setting up its infrastructure for carrying of channels of the broadcasters to the consumers are already recouped in view of the aforesaid revenue source being provided to the DPOs under the existing regulatory framework.

As per the extant regulations, DPO is required to define its target market and carriage fees is charged for that target market. Ideally the target market should be declared on the basis of the language and the genre of the channel which is the preserve of the broadcaster. It is therefore the broadcaster who must declare its target market and the carriage fees should be payable only for the broadcaster defined target market. A broadcaster should not be obliged to pay carriage fees for a territory beyond its declared target market. Also, the subscriber base of SD and HD channels should be computed on the base of SD and HD universe separately since these channels cannot be packaged together.

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.**

RESPONSE:

This question can be best responded to by the DTH Operator and the MSO since as a broadcaster we are not privy to the same.

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?**

RESPONSE:

A broadcaster launches a new channel only after carrying out extensive research about the consumers likes and dislikes and after making a substantial investment in content and infrastructure. It is pertinent to note that for any channel's offtake and increase in viewership, it takes time and hence we feel that a channel should be carried irrespective of the percentage of subscribers viewing it. Even if there is a small market for a particular channel of a broadcaster means there is a demand and viewership of the said channels and such consumers should not be deprived of watching the said channels which they have chosen to subscribe (for e.g. Niche

channels like GOLF or Food, which cater to only small viewership market). Moreover in present times, there seems to be no issue on the bandwidth of the DPOs to carry channels of the broadcasters. Hence it is important that no broadcaster's channels should be dropped from the DPO's platform on the ground of low penetration. In the consumer interest, as long as it makes business and commercial sense for a particular broadcaster to broadcast a particular channel, they should be allowed to do so without any intervention on the part of the DPOs including a threat to drop the channel if the viewership goes below 5%.

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.**

RESPONSE:

We submit that there is no requirement to have another framework for interconnection agreements for placement and there is no question of regulating the placement fees.

In this regard, it is pertinent to point out that the Authority in the Interconnection Regulations, 2017 already has in place provisions to control and regulate any menace sought to be conducted by way of arbitrary placement of channels. In this regard, it is most pertinent to quote Regulation 18 of Interconnection Regulations, 2017:-

> *"18. Listing of channels in electronic programme guide.— (1) Every broadcaster shall declare the genre of its channels and such genre shall be either 'Devotional' or 'General Entertainment' or 'Infotainment' or 'Kids' or 'Movies' or 'Music' or 'News and Current Affairs' or 'Sports' or 'Miscellaneous'.*
>
> *(2) It shall be mandatory for the distributor to place channels in the electronic programme guide, in such a way that the television*

channels of same genre, as declared by the broadcasters, are placed together consecutively and one channel shall appear at one place only:

Provided that all television channels of same language within the same genre shall appear together consecutively in the electronic programme guide:

Provided further that it shall be permissible to the distributor to place a channel under sub-genre within the genre declared for the channel by the broadcaster. available on the distribution network.

(4) The channel number once assigned to a particular television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment:
Provided that this sub-regulation shall not apply in case the channel becomes unavailable on the distribution network:

Provided further that if a broadcaster changes the genre of a channel then the channel number assigned to that particular television channel shall be changed to place such channel together with the channels of new genre in the electronic program guide."

Hence, what has been mandated is-

i. Broadcaster to declare the respective genre of its channels;
ii. The distributor of TV channels must "place" the channels in the EPG in such a way that channels of the same genre are placed together and consecutively;
iii. One channel must appear only at one place in the EPG;
iv. All TV channels of the same language within the same genre must be "placed" together consecutively;

v. The Local Channel Number once assigned to a particular TV channel shall not be altered by the distributor for a period of at least one year from the date of such assignment

It is pertinent to note that some DPOs have created sub-genres. In this regard, we submit that it is better if the DPO places the TV Channel in a sub-genre of a genre in consultation with the respective broadcaster. E.g: some DPOs have created sub-genres Senior Kids and Junior Kids under the Kids genre. Firstly this is an artificial classification as there cannot be a "senior" kids and a "junior" kids sub-categorisation. But even assuming the need for such a categorisation exists, whether a TV Channel should be placed in Senior Kids or Junior Kids sub-genre should be done only in consultation with the concerned broadcaster since the target audience of a TV channel is defined by the broadcaster.

Thus, from the above, it becomes apparent that there is already a certain process prevalent in the industry with respect to placement of a channel of a particular genre and a particular language. If any deviation from this regulatory mandate is seen by the Authority, it can always seek enforcement of the regulations by way of issuance of a direction.

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).**

RESPONSE:

We submit that the extant TRAI Regulations has already got requisite regulations which governs the relationship between a broadcaster and a distribution platform

operator (DPO) and there is no need for having new regulations in regard to arrangements such as placement, marketing and other similar arrangements between the broadcasters and the DPOs. It is also pertinent to note that these agreements/arrangements do not come within the ambit of "interconnection agreements" and hence are not subject to regulatory purview. These agreements are business related agreements, which are carried out as per the commercial understanding between the broadcaster and the DPOs and not with the "subscription" related aspects which TRAI regulates. Hence we strongly believe that any regulatory intervention at this stage in this regard would hamper the growth of the industry which is already facing lots of issues because of recent implementation of the NTO.

In view of submissions made above, we believe the forbearance allowed to the service provider does not distort the level playing field and hence there is no requirement for any additional regulatory framework to govern the placement, marketing or similar arrangements between the broadcasters and the DPOs. Such arrangements should be better left to the commercial acumen and discretion of the broadcasters and the DPOs and no regulatory intervention is required at this stage as it would have a negative impact on the broadcasting industry.

.

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?

RESPONSE:

In this context it is pertinent to note the definition of the term(a) "interconnection" and (b) "interconnection agreement".

Regulation 2 (x) of the Interconnect Regulations states : '***interconnection***' refers to and means only those commercial and technical arrangements, which enable or authorize

service providers to connect their equipment and networks to provide broadcasting services to the subscribers.

Thus "interconnection" is clearly distinct from arrangements for commercial marketing, advertising, placement or other activities, which are carried out by the broadcasters for their commercial benefits to promote the content on their channels. Just as manufacturers of products or providers of service promote or market their products so also do broadcasters and they will choose the most effective medium or platform to reach potential viewers. If that medium or platform happens to be a DPO, the broadcaster should be free to negotiate commercial terms without having a Damocles sword of the Regulator over its head

Clause 2 (y) of Interconnect Regulations states : *"**interconnection agreement**" with all its grammatical variations and cognate expressions means agreements on interconnection providing technical and commercial terms and conditions for distribution of signals of television channel;*

Thus from the aforesaid definition it is amply clear that the intent was to cover only such agreements which contains both technical as well as commercial terms for distribution of television channels. All other agreements / arrangements between a broadcaster and DPO would be accordingly excluded since it does not fall within the aforesaid definition.

It is respectfully submitted that placement, marketing or other agreement merely because it is between a broadcaster and a DPO would not automatically mean that such agreement is an interconnection agreement. Further, we do not agree that the Authority should intervene and/or regulate agreements such as placement, marketing or other agreements. It is submitted that agreements such as placement, marketing or other similar agreements are not interconnection agreements and should not be regulated. Submissions made above may kindly be read as forming part of our reply to question under response.

Further, as stated aforesaid the extant TRAI Regulations has already got requisite regulations which governs the relationship between a broadcaster and a distribution

platform operator (DPO) and there is no need for having new regulations in regard to arrangements such as placement, marketing and other similar arrangements between the broadcasters and the DPOs.

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.**

RESPONSE:

There is no question of any misuse of flexibility provided to the DPOs and we have already detailed our response in this regard in question no. 6 and 7, which may please be referred. In view of submissions made above, the issue pertaining to evaluation / curbing of misuse of flexibility to stakeholders to enter into agreements such as marketing, placement or other agreements does not arise.

9. **Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

RESPONSE:

In light of the concerns as elucidated above, we request TRAI to refrain from bringing out any new regulatory framework as enumerated in the CP to govern the placement, marketing and similar arrangements entered into between broadcasters and DPOs.