

15<sup>th</sup> November, 2016

By Email and hand

**Telecom Regulatory Authority of India**  
Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg  
New Delhi - 110002

**Subject: RESPONSE TO THE TRAI'S CONSULTATION PAPER ON THE DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016 DATED 14<sup>TH</sup> OCTOBER, 2016**

**Kind Attn: Sh. Sunil Kumar Singhal, Advisor (B&CS)**

Dear Sir,

We thank the TRAI for this opportunity to express our views on the above captioned consultation paper. Tata Sky's response to the same is enclosed for your ready reference.

Yours faithfully,



**Harit Nagpal**  
**Managing Director and CEO**

Encl: As above

**TATA SKY'S RESPONSE TO THE DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016 DATED 14<sup>TH</sup> OCTOBER, 2016**

TRAI has conducted the initial round of consultations on Tariff Order, Quality of Service (QoS) and Interconnection Regulations for the Broadcasting and Cable Services (B&CS) sector in which all aspects of the sector have been thrown open to change through more than 170 questions. This itself is a matter of great concern, because, there is clearly no market failure visible in the sector which calls for such a drastic over-haul.

The basic premise that the TRAI has used for justifying such a massive change is to usher in a common regulatory framework for all DPOs. However, from the currently published draft consultation, it is increasingly evident that DTH Operators have been severely restricted in the guise of bringing in a common framework. At the outset, since the Licensing conditions and regulatory levies are completely different across the different DPO platform, to align them all in a common framework actually leads to a non-level playing field.

**DRAFT REGULATIONS TREATS UNEQUAL AS EQUAL  
TECHNOLOGICAL DIFFERENCES**

A DTH operator is required to incur huge costs for maintaining and operating its DTH platform. As compared to MSOs and LCOs, the DTH operators incur much higher costs in terms of maintaining its uplink center, servicing the Consumer Premise Equipment (CPE), as also for the proprietary machinery and ever evolving technology.

As per the Draft Tariff Order, for an LCO whose operations as compared to DTH are miniscule, the price prescribed as its distribution cost would still result in huge revenue because of its low input costs. However, for a DTH operator, due to higher input costs, it will only result in losses. This would destroy a DTH operator's business.

The Authority is aware that transponder's space on a satellite, apart from being extremely expensive, is also very limited. There are further technological constraints for a DTH operator like time period involved for grant of additional transponder capacity and limitations on account of satellite positioning. This technological requirement is not there in LCO/ MSO/ IP TV.

**FINANCIAL DIFFERENCES**

The license conditions for a DTH operator from the MIB are far more stringent as compared to an LCO or an MSO. Tata Sky being a DTH operator is required to pay 10% of its "Gross Revenue" as license fee irrespective of the nature of the revenue received by it. It additionally has paid 10 crores as entry fee and provided a bank guarantee of 40 crores.

As compared to an LCO/MSO, the DTH operator has a PAN India presence. They have a huge employee base and provides service to its millions of consumers through expensive business operations which includes call center, ISP, Distributors etc. One of the largest MSOs has only a coverage of approximately 120 cities whereas a DTH operator technologically has a reach in every millimeter of the entire country.

The initial capital expenditure of any DTH Operator like Tata Sky is exponentially higher than the capital expenditure incurred by LCO/MSO. The cost of setting up a broadcast center for a DTH operator is far in excess of the entire capital cost incurred by an LCO/MSO.

A DTH business is a capital intensive business. The establishment cost of such a business is to be monetized over a given period of time. Tata Sky after taking into account costs incurred by it on a year to year basis has priced its services to the consumer in a particular manner. Such radical change in the pricing would not only result in huge losses to Tata Sky but would be a regressive step because the technology march /innovation would immediately come to a halt.

#### **SERVICE PROVISION DIFFERENCES**

A DTH service being a satellite service directly available to the consumer has its inherent advantages of being uniform, continuous, uninterrupted with high technological data. Consequently, DTH services reaches remote and non-accessible areas, like Kashmir and the North East etc. This service coverage is unmatched as compared to LCOs/MSOs.

While in LCO/MSO a two way communication is possible between the consumer and the operator, no such two way communication is possible between a DTH operator and its consumers. Therefore, the LCO/MSO can upgrade their existing infrastructure to provide ISP services as well. This at present is not possible for the DTH operator.

**LCO / MSO / IP TV / HITS are not equal to services provided by DTH operators either in respect of technology or financial obligations. Thus, treating un-equals as equals under the draft regulations order would not be in consonance with the statutory obligation of TRAI to provide a level playing field.**

After having conducted a round of consultation (during the first half of 2016), since the approach taken by the Authority is of a complete overhaul, it was only natural for the Authority to announce another round of consultations (through draft regulations). Being a consultation process, there cannot and should not be any predetermined assumptions and the proposal is up for questioning, modification and even a complete rejection. However, we are disappointed to note that the Authority has indicated its position of being amenable to discuss on less contentious issues in the proposed framework but not open to any scope of change on all the significant and basic fundamentals.

With the presence of 6 Private DTH operators, 1 DD Free Dish DTH Operator, 2 HITS Operators and 800 MSOs (servicing more than 50,000 LCOs) in the country the distribution leg of the B&CS sector is thriving and cannot be said to be lacking in competition. Each customer in the country has an option to choose from at least 1 LCO (if not more) and 7 DTH operators. While it could be argued that there is a need for increased discipline amongst the LCOs (primarily due to the fact that lesser controls can be administered for non-National entities), on the other hand, the DTH operators performance has been exemplary and have furthered the cause of the national objective of digitization and addressable system.

The government has already created a parallel free TV model (DD Free Dish), which is successful, and ensures that highly price sensitive consumers are served. Therefore, such a straitjacketed

regulatory framework would take control and innovation out of the hands of industry players and consumer choice will suffer.

The policy of forbearance along with the existing set of regulations have worked well for the DTH operators. Any further regulation is not required and will lead to distortion in the market place and restrict operators from providing a rich and varied service offering and defeating the market driven principle.

It is an open fact that the balance sheets of all the DTH operators, even after so many years of operations continue to be under severe stress. Completely over-turning the rules of the game at this stage is unexpected from the sector regulator (despite no market failure) and lead us to an uncertain future. And uncertainty is the worst environment that any business can be subjected to.

The draft regulations have not shared any international case study where a similar framework is in place. The proposed framework has the potential to completely turn around the DTH business topsy-turvy and to push it into uncharted and uncertain territory.

The TRAI Act requires the Regulator to protect the interests of service providers and consumers and to promote and ensure orderly growth of the sector. However, we do not observe a balanced approach in the proposed framework and is completely skewed against DTH operators.

We therefore do not agree with the framework proposed in the draft regulations and we request the Authority to withdraw the same.

We stand by our response to the earlier consultation paper on Interconnection Framework for Broadcasting TV Services Distributed Through Addressable Systems, dated 4<sup>th</sup> May, 2016 (“CP”). To maintain brevity in our current response, we are not repeating the points made by us earlier and instead we are attaching a copy of the same.

We remain concerned on the issues for consultation and would like to bring the following to the attention of the TRAI:

#### **TATA SKY RESPONSES:**

##### **MUTUAL AGREEMENTS**

- Freedom of contract is the harbinger of the constitutional rights of any person in India who is involved in business. Price discovery, pricing, obtaining profits, are all matters of different types of freedom which a business has, as a fundamental right in India.
- It is a matter of fact that television content through a DTH operator is neither an essential commodity nor is perceived to be so. DTH operations being capital intensive, the Government of India or any other authority cannot be allowed to ignore such basic cost of the DTH operations.
- Television content being a raw material, for a DTH operation to succeed cannot be so limited as to its choice and its price. For example, if the proposed Regulations were to be passed then due

to the must carry obligation along with a first come first serve mandate it is possible that the DTH operator's entire capacity is slumped with FTA channels. By this flooding of FTA channels the amount which could be recoverable by a DTH Operators from its consumer will be less. This could adversely impact the DTH operations in the long run. The collateral damage by flooding of FTA channels would be that the consumers of the DTH operator would churn out in favour of LCO / MSO providing the choice of local channels.

- Prohibiting the rights of DPOs for a mutually negotiated agreement is unreasonable. This is for the simple reason that in today's market, by showing the strength of the number of subscribers a DTH operator is able to enter into a "bulk deal" with the broadcaster. A bulk deal with the broadcaster provides freedom to the distributor to offer channels at a much lower rate than where the MRP is fixed by the broadcaster while fixing the margins available to the distributor. The economic impact of such a regime would be that, slowly a broadcaster would decrease the MRP for the channel and therefore even the margins available to the distributor would stand reduced. This is the core principle of business in any sector including the regulated ones. Even regulated PSUs buy products in bulk, taking advantage of their scale, at rates that other competitors cannot match. The social impact of the reduction of such MRP would be that the quality of content would stand reduced and a broadcaster would then start relying upon advertisement revenues more than the subscription amounts. This will result in increase of advertisement rates, thus, removing the ability of producers to market their goods on the television channels and resulting in reduction in choice of products available to the consumer. Provision of information to the consumer and the citizen is a matter of consumer's right to obtain such information which would be greatly curtailed. Indirect impact of such a regulation would be content regulation which is not in public interest.
- As a matter of example, Tata Sky is offering a bouquet of various genres of channel called "Dhamal mix". This "Dhamal Mix" has around 167 number of channels at a holistic price of only Rs. 285/- per month as on date. We are able to offer this low priced maximum viewable mix of channels only because we have executed bulk deals with the broadcasters. If the bulk deals are removed instead of lowering the cost of channels available to the consumer, it would increase the rate of the package to an unrealistic figure as calculated on the basis of the RIO cost of each channel. This is against public interest.
- By allowing the consumer to choose the channel he wishes to watch through the distributor for Rs.130 for 100 channels along with the cost of such 100 channels being based upon each channels maximum retail price declared by the broadcaster, it would reduce the expansion of knowledge as also dissemination of wholesome information. This is because the TRAI has already dictated the genre of channels. If a consumer is given this freedom then he would obviously choose the lowest price payable with a specific genre of channels being targeted.
- While it seems good in theory that consumers want to buy a-la-carte, last ten years of operation has clearly shown that our consumers purchase bouquets and migrate to a larger number of channels as they are now accustomed to variety and more number of channels.
- The packaging of channels allows the distributor to provide a variety of channels at a reduced price however if a consumer was to choose the same channels on a – la- carte basis it would result in increase the cost at his hand. This increase in cost would push the consumer to choose lesser



number of channels to achieve the cost being charged by a distributor prior to the regulations and thus decrease the reach of different channels to the consumer.

- We understand that the Authority is concerned about the plethora of legal cases that may crop up for lack of suitable agreements. However, in such cases too, the parties can resort to the RIO as is currently the practice. We also wish to point out that the DTH sector has been relatively free from litigation as the DTH operators are able to enter into agreements with the broadcasters without any dispute. A good mix of both mutual agreements and RIO based agreements will drive the market which will strengthen the sector.
- Obliteration of the right of the DTH operator to charge its customer's money for showing a particular channel and with a corresponding right of the DTH operator to pay the broadcaster as per negotiations will completely destroy the DTH operators' business model.
- We therefore request the Authority to remove the prohibition on mutually negotiated agreements.

#### **CONCEPT OF MUST CARRY AND FIRST COME FIRST SERVE**

- We are disappointed that the Authority has proposed to introduce must carry for DPOs using the satellite media. We had given our views on this issue in the earlier response to the CP and it seems that the Authority has chosen to ignore our submissions.
- Spectrum, as is known to all, is a scarce resource. Due to its scarcity as well as due to the cost of the satellite technology itself, all DTH operators are paying an exorbitant amount of monies for not only the satellite cost (to the Department of Space) but additionally spectrum charges and uplinking costs to WPC and NOCC respectively.
- Moreover, Tata Sky is the only operator amongst the private operators who is exclusively using Indian satellites as has been suggested in our DTH License. Due to all these challenges, the capacity of this media can never match that of the cable operators. In such a scenario, it is our right enshrined under the Constitution of India as a business entity to be able to sell the satellite space at the best possible business proposition.
- It is the goal of every DPO to give subscribers the best viewing experience and in conducting millions of transactions daily with our customer base, we are best placed to understand the customer's viewing choices and paying capacity.
- There are several channels that are being introduced by broadcasters and with high costs involved in the carrying capacity in the DTH business it is not feasible to carry all channels based on who approached first.
- Broadcasters deal directly with production houses on the content to be provided to the distributors. And the DTH operators on the other hand, have over the years established content evaluation capabilities to help in deciding the content to be distributed to the consumers. More importantly, DTH operators conduct transactions daily with their customer base and are therefore best placed to understand the customer's viewing choices and paying capacity. The DTH operators

are also in a better position, than the broadcasters, to understand the viewing choices of the customers, and provide customer feedback to the broadcasters, which will in turn help the broadcasters in building their content collection.

- The customer acquisition is a process in which all DPOs make huge investment in order to build a strong consumer base, which can only be done over period of years of service by building the entire field services team and customer care team across the country to provide smooth service. Accordingly, it will not be wrong to state that these customers, who have been acquired over the years, belong to the DPOs and not the broadcasters who have no direct contact/transaction with the customers. Therefore, in such a scenario, since the DPOs directly transact with the customers and know the choices of the customers, the power to price product offerings solely belong to the DPOs and not the broadcasters. Thus, we disagree with the proposed regulation on MRP being decided by the broadcaster, and we request the Authority to withdraw the same so that the satellite media operators are not subjected to must carry provision.
- If this concept is implemented it will not only be a disadvantage for the DTH operators but even for their millions of subscribers who are now used to the varied viewing experience provided by the DTH operators. The reason being that there is a possibility that the DTH operators, due to limitation in the transponder capacity and more popular channels not being the first to approach, will not be carrying certain channels/favorite channels of the customers.
- Moreover, it will not only be a waste of satellite bandwidth but it would also increase customer dissatisfaction if DTH operators are to continue with channels as per the queue system even if they have poor ratings, while giving more popular channels a pass.
- The proposed model will result in fewer channels being chosen by the consumers, and thus there will be no scope of channel surfing. Discoverability of content will become impossible, leading to the death of a large number of less popular channels. Expectedly, consumer choice will substantially reduce.

**CONCEPT OF CONTENT BEING A RAW MATERIAL AND THEREFORE MUST CARRY PROVISION WOULD DESTROY THE DTH OPERATORS ALL INDIA NATURE OF BUSINESS**

- For a distributor of television channels the only raw material available to it is the different television channels available and licensed by the Govt. of India. There are several genre of such channels like (i) GEC (ii) Infotainment (iii) Movies (iv) Kids (v) News and Current Affairs (vi) Devotional (vii) Sports.
- The Authority has however not differentiated in the languages in which each of the above genres would be carried. As the experience shows there are local television channels for each local area like in Mizoram there is 'Zonet' (broadcasted by Zonet Cable TV Pvt. Ltd.), similarly in Odisha there is 'Naxtra Saptrang' (broadcasted by N.K Media Ventures Pvt. Ltd.).

- These localized channels cannot and will never concentrate on the entire country because of their local nature and local content. Thus, LCO/MSO will have an inherent advantage of concentrating the content as per the local taste in its geographic region.
- DTH however being an all India service having a common satellite beam cannot localize content to that extent. However, if the regulations are implemented, a DTH operator would be competing against an LCO/ MSO who has had an inherent advantage of being able to carry localized content to the maximum.
- This is because of two factors in relation to DTH Operator. First factor is the limited capacity of the DTH operator due to the inherent technological limitations and second factor is it being an all India service. Due to the inherent technological limitations, it can only carry a particular number of channels but if all local channels all around India mandate their carriage through the DTH Operator as per the draft interconnection regulation, the DTH operator would be slumped by such localized content which is not at all palatable to the all India body and it would exhaust the capacity of the DTH operator. For example, there are 500 Hindi channels available in the market. 200 Tamil channels. 100 Bengali Channels. 50 Punjab Channels. 100 English Channels and the capacity of the DTH operator is only that of 600 channels, the entire parading of a DTH operator can be skewed in favour of one language against the other and thereby destroy the all India basis of a DTH Operator. Therefore, the must carry provision in respect of DTH operator because of the technological limitations is unreasonable.

#### DISCOUNTS:

- The Authority has placed sever restrictions on discount at various levels, such as:
  - Discount between a-la-carte and bouquet
  - Discount between broadcaster input price and DPO output price
  - Discount in carriage fee, discount cap on distribution fee and other discounts
- Discounting is a standard tool available with marketers trying to sell their products to all types of consumers. There are various ways in which discounting methods are being employed in the market, such as festival discounts, end of season discount, year long discount etc. for salability of a product. The aim of business is to be able to sell maximum quantity basis the capacities built up at the best suited prices for an optimum and efficient market driven mechanism. Therefore, we do not agree with the restrictions placed on discounts to both the broadcaster and the DPOs on carriage fee. For regulatory oversight, all such agreements with the discounting structure should be filed with the regulator.
- Therefore, we do not agree with the severe restrictions that the regulator is placing on all types of discounts including carriage fee, and we request the Authority to withdraw the same.



### CARRIAGE FEES

- The Authority in the proposed regulation enables the broadcasters in getting one HD for three times that of SD channels. While the DPOs capacity is capped for HD to two times that of SD channels.
- In terms of carriage fee, DPOs are again capped at one HD for only twice of SD.
- Therefore, there appears to be clear discriminatory approach being taken by the Authority.
- While we maintain that HD being a nascent technology and is still coming up, it should remain under forbearance. However, alternatively if the Authority insist on regulating then the treatment for the DPOs and the broadcasters should be identical.
- As already mentioned above, spectrum is a scarce resource. Due to its scarcity as well as due to the cost of the satellite technology itself, all DTH operators are paying exorbitant amount of monies for not only the satellite cost (to the Department of Space) but additionally spectrum charges and uplinking costs to WPC and NOCC respectively.
- Moreover, Tata Sky is the only operator amongst the private operators who is exclusively using Indian satellites as has been suggested in our DTH License. Due to all these challenges, the capacity of this media can never match that of the cable operators. In such a scenario, it is our right enshrined under the Constitution of India as a business entity to be able to sell the satellite space at the best possible business proposition. Therefore, the Authority should not restrict our ability to earn carriage fees so long as all the amount/information are filed with the Authority.
- It is important to mention that even DD Free Dish is conducting auctions to give their channel slots to the highest bidders. In fact, the 31<sup>st</sup> e-auction conducted by it received bids wherein the highest bids have touched Rs. 5.1 crores per channel
- Notwithstanding the above, we do not agree with the fact that carriage fee should be reduced with increasing subscription base. This is a self-correcting mechanism and is suitably dealt with when the negotiation for renewal happens. We believe that such straight jacketed regulations will distort market and make DTH business unviable. We therefore request the Authority to withdraw the regulation.

### APPOINTMENT OF CONTACT OFFICER IN EVERY STATE

- There seem to be no logical reasoning for introducing this provision in the proposed regulation. In today's digital world, with easy connectivity we feel that there is no need for appointing and setting up a place for contact officer in every state. This will further increase the costs towards manpower and infrastructure. The existing system being followed in the broadcasting industry have been functioning well over the years without appointment of any designated contact person in every state within the country. Therefore, there is no need for further regulation.

- The key is to be accessible and that is through email and phone, which we will continue to do so as provided today.

#### APPOINTMENT OF COMPLIANCE OFFICER

- We disagree with the requirement placed on the appointment of compliance officer. Telecom industry is not imposed with such a requirement. Therefore, mandating it in the DTH industry comes as a surprise considering there is no security obligation/threat as compared to the telecom industry.
- Moreover, the DTO in regards to the compliance officer is discriminatory. TRAI seems to suggest that certain DPOs do not need to comply with this requirement and in so doing it is institutionalizing discrimination. It seems the asymmetric regulation has been suggested on grounds of exempting smaller players. However, it may be stated here that it is the smaller players that require monitoring instead of the big, organized DPOs. Therefore, if at all asymmetric regulation is to be brought in, it should be so for the smaller players and not on the DPOs who have always been in compliance.
- The TRAI Act have sufficient provisions in placed for enforcing compliance amongst licensees. Therefore, the requirement of compliance officer in unnecessary as it signals a step back towards license raj era.

#### EPG - LISTING OF CHANNELS

- Currently, there are already 881 channels approved by the MIB, and there are a lot more in the pipeline. There may be instances wherein certain channels may be introduced or discontinued in between across genres which will require DPOs to alter the channel numbers. This may also be as a result of a launch of a significant number of channels in a specific genre, or cancellation of requisite permission by the MIB.
- DTH operators, like us, have been voluntarily providing our customers details of channel numbers and the charges in a separate page. Bringing in regulation will only restrict the DPOs ability to present such information in an accessible format for the consumers and is also technologically not possible for the DPOs to rework on the channel listings at regular intervals.
- In light of this, we believe the Authority should not place one year restriction for altering channel numbers.

The present response is without prejudice to the rights and contentions of Tata Sky and may not be construed as either an admission, or a waiver of the rights, otherwise available to Tata Sky under law.

**TATA SKY'S RESPONSE TO THE TRAI'S CONSULTATION PAPER ON INTERCONNECTION FRAMEWORK FOR BROADCASTING TV SERVICES DISTRIBUTED THROUGH ADDRESSABLE SYSTEMS, DATED 4<sup>TH</sup> MAY, 2016 (THE "CP")**

We remain concerned on the issues for consultation and would like to bring the following to the attention of the TRAI:

**ISSUES FOR CONSULTATION:**

*Issue 1:- COMMON INTERCONNECTION FRAMEWORK FOR ALL TYPES OF ADDRESSABLE SYSTEMS [3.2 to 3.5]*

*1.1 How a level playing field among different service providers using different addressable systems can be ensured?*

*1.2 Should a common interconnection regulatory framework be mandated for all types of addressable systems?*

**TATA SKY RESPONSE:** Tata Sky supports an identical regulatory framework for all addressable systems, which will enable a level playing field for all DPOs to compete effectively.

*Issue 2:- TRANSPARENCY, NON-DISCRIMINATION AND NON-EXCLUSIVITY [3.6 to 3.25]*

*2.1 Is there any need to allow agreements based on mutually agreed terms, which do not form part of RIO, in digital addressable systems where calculation of fee can be based on subscription numbers? If yes, then kindly justify with probable scenarios for such a requirement.*

*2.2 How to ensure that the interconnection agreements entered on mutually agreed terms meet the requirement of providing a level playing field amongst service providers?*

*2.3 What are the ways for effectively implementing non-discrimination on ground? Why confidentiality of interconnection agreements a necessity? Kindly justify the comments with detailed reasons.*

*2.4 Should the terms and conditions (including rates) of mutual agreement be disclosed to other service providers to ensure the non-discrimination?*

*2.5 Whether the principles of non-exclusivity, must-provide, and must-carry are necessary for orderly growth of the sector? What else needs to be done to ensure that subscribers get their choice of channels at competitive prices?*

*2.6 Should the RIO contain all the terms and conditions including rates and discounts, if any, offered by provider, for each and every alternative? If no, then how to ensure non-discrimination and level playing field? Kindly provide details and justify.*

*2.7 Should RIO be the only basis for signing of agreement? If no, then how to make agreements comparable and ensure non-discrimination?*

*2.8 Whether SIA is required to be published by provider so that in cases where service providers are unable to decide on mutually agreed terms, a SIA may be signed?*

*2.9 Should a format be prescribed for applications seeking signals of TV channels and seeking access to platform for re-transmission of TV channels along with list of documents required to be enclosed prior to signing of SIA be prescribed? If yes, what are the minimum fields required for such application formats in each case? What could be the list of documents in each case?*

*2.10 Should 'must carry' provision be made applicable for DTH, IPTV and HITS platforms also?*

*2.11 If yes, should there be a provision to discontinue a channel by DPO if the subscription falls below certain percentage of overall subscription of that DPO. What should be the percentage?*

*2.12 Should there be reasonable restrictions on 'must carry' provision for DTH and HITS platforms in view of limited satellite bandwidth? If yes, whether it should be similar to that provided in existing regulations for DAS or different. If different, then kindly provide the details along with justification.*

*2.13 In order to provide more transparency to the framework, should there be a mandate that all commercial dealings should be reflected in an interconnection agreement prohibiting separate*

*agreements on key commercial dealing viz. subscription, carriage, placement, marketing and all its cognate expressions?*

TATA SKY RESPONSE:

- 2.1 – While we agree that the RIO should be published by broadcasters, we also do believe that agreements on mutually agreed terms should be allowed. Given the dynamic nature of the industry such deals are often consumer and business friendly.
- 2.2 – The TRAI has already put in place regulations to ensure the basic principles of ‘must provide’ and ‘non-discrimination’ for broadcasters and distributors. Each interconnect agreement is also filed with the TRAI. Even in case of negotiated agreements based on mutually agreed terms, all service providers will have the opportunity to enter into such agreements, and as such, this will provide a level playing field. The TRAI, as the regulator, is also the watchdog of the industry. Accordingly, since all broadcasters and distributors are providing the relevant information to the TRAI, the TRAI will be in the best position to look into any glaring non-compliance with regulations and maintain a level playing field. Further, in any case, individual parties are able to take legal action if they feel there is discriminatory treatment being meted out to them.
- 2.3 and 2.4 – As stated above, all interconnect agreements are filed with the TRAI, and it can point out any non-compliance. Further, in case of any service provider facing “discrimination” from another service provider, the appropriate authorities can act on a complaint made in this regard. As stated in our response to the Consultation Paper on the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016, we do not think certain details of specific agreements need to be made available. If specific commercial details of such agreements are allowed to be accessed by other broadcasters and distributors, this will undermine confidential business interests of the parties to what is essentially a private agreement entered into within a regulatory framework. This will not only affect business relations between service providers, but is likely to increase unnecessary litigation. It is better that the regulator review the agreements rather than commercial information be misused. We believe that making all deals public will actually increase the number of litigation (that may not be necessary) filed by private parties and choking the system.
- 2.5 No, the Must Carry principle must not be introduced in the DTH sector. There are close to 900 channels available in India and many more in the pipeline. Carrying capacity for the DTH business comes at an immense cost and it is not feasible to carry all channels. DTH companies should be entitled to promote and carry content that they know is desired by the subscribers as the ultimate goal is to give subscribers the best viewing experience. In addition, it is a waste of satellite bandwidth.
- 2.6 – Yes, the RIOs published by broadcasters should be detailed and should include discounts and benefits that may be offered, and the RIO should be an optional alternative to mutually negotiated deals.
- 2.7 – See responses above. We believe that RIO should not be the only basis for entering into an agreement and that mutually negotiated deals, disclosed to the TRAI, should be permitted. We understand that non-discrimination must imply that equal opportunities are given to all service providers to negotiate their agreements, and should not imply that each deal has to be comparable to every other deal and/or accessible to all DPOs. Further, non-discrimination could be encouraged by putting in place regulations relating to abuse of dominant position to foster competition in the sector.
- 2.8 – We are not sure why an SIA is required since it is essentially a subset of the RIO.
- 2.9 – No standardised formats are required in relation to existing clients/contracting parties, but for a new or first time broadcaster or DPO, perhaps corporate information relating to company name and address could be mandatorily required.

- 2.10 – 12 No, there are close to 900 channels available in India and many more in the pipeline. Carrying capacity for the DTH business comes at an immense cost and it is not feasible to carry all channels. DTH companies should be entitled to promote and carry content that they believe is desired by the subscribers as the ultimate goal is to give subscribers the best viewing experience. In addition, it is a waste of satellite bandwidth.
- 2.13 – Yes, there could be a mandate that all commercial dealings are to come under one agreement between the broadcaster and distributor, which are disclosed only to the TRAI. This should therefore include carriage fees, placement fees etc.

*Issue 3:- EXAMINATION OF RIO [3.26-3.32]*

*3.1 How can it be ensured that published RIO by the providers fully complies with the regulatory framework applicable at that time? What deterrents do you suggest to reduce non compliance?*

*3.2 Should the regulatory framework prescribe a time period during which any stakeholders may be permitted to raise objections on the terms and conditions of the draft RIO published by the provider?*

*3.3 If yes, what period should be considered as appropriate for raising objections?*

TATA SKY RESPONSE:

- 3.1 – The TRAI, as the regulator for the sector, should examine the RIOs published by broadcasters and take cognizance and suitable action against any gross violations of regulatory requirements. In addition, private parties have the ability to agitate any disputes relating to the RIOs of other parties in the appropriate forum.
- 3.2 – While we understand the concerns stemming from which the suggestion of prescribing time limits has been made, we would point out that deals take place at different time periods and it is unlikely that DPOs will thoroughly examine the RIOs of all broadcasters at the time at which they are published, unless there is a new or renewed deal to be concluded.

*Issue 4:- TIME LIMIT FOR PROVIDING SIGNALS OF TV CHANNELS / ACCESS TO THE PLATFORM [3.33-3.39]*

*4.1 Should the period of 60 days already prescribed to provide the signals may be further sub divided into sub-periods as discussed in consultation paper? Kindly provide your comments with details.*

*4.2 What measures need to be prescribed in the regulations to ensure that each service provider honour the time limits prescribed for signing of mutual agreement? Whether imposition of financial disincentives could be an effective deterrent? If yes, then what should be the basis and amount for such financial disincentive?*

*4.3 Should the SIA be mandated as fall back option?*

*4.4 Should onus of completing technical audit within the prescribed time limit lie with broadcaster? If no, then kindly suggest alternative ways to ensure timely completion of the audit so that interconnection does not get delayed.*

*4.5 Whether onus of fixing the responsibility for delay in individual cases may be left to an appropriate dispute resolution forum?*

TATA SKY RESPONSE:

- 4.1 – We do not think the period under the regulation needs to be sub-categorized. The current timeframe applicable under the relevant regulations is broadly flexible for all the actions to be completed within the time period. Furthermore, monitoring compliance with the sub-categorized time frames will be an unnecessary burden.
- 4.2 – We do not think deterrents or disincentives are required currently. The Platform should be able to complain to the regulatory authorities if the counterparty does not honour time limits and appropriate action can then be taken on a case to case basis.
- 4.3 – See response to 2.8 above.



- 4.4 – Yes, the onus of completing the audit must lie with the broadcaster, otherwise giving them the right to audit is superfluous. In addition, the right to audit should be restricted to once in a year. (Please also see our response to Issue 12 below on Technical Audit)
- 4.5 – Yes we agree that delays in individual cases can be handled at the appropriate dispute resolution forum.

*Issue 5:- REASONS FOR DENIAL OF SIGNALS / ACCESS TO THE PLATFORM [3.40-3.42]*

*5.1 What are the parameters that could be treated as the basis for denial of the signals/ platform?*

*5.2 Should it be made mandatory for service providers to provide an exhaustive list in the RIO which will be the basis for denial of signals of TV channels/ access of the platform to the seeker.*

**TATA SKY RESPONSE:** No specific list of potential reasons should be set down – we think that denial of signals should be on a case to case basis as there may be numerous factors at play. Individual disputes, if any, should be adjudicated by the competent authority.

*Issue 6:- INTERCONNECTION MANAGEMENT SYSTEM (IMS) [3.43-3.48]*

*6.1 Should an IMS be developed and put in place for improving efficiencies and ease of doing business?*

*6.2 If yes, should signing of interconnection agreements through IMS be made mandatory for all service providers?*

*6.3 If yes, who should develop, operate and maintain the IMS? How that agency may be finalised and what should be the business model?*

*6.4 What functions can be performed by IMS in your view? How would it improve the functioning of the industry?*

*6.5 What should be the business model for the agency providing IMS services for being self supporting?*

**TATA SKY RESPONSE:** While it would seem like having an online IMS developed by a third party would introduce efficiency in the system, we would like to draw the TRAI's attention to the fact that such systems are not free from technical glitches and failures that may end up nullifying the objective. As you will be aware, the Ministry of Corporate Affairs portal has been facing issues for weeks and this has led to complete chaos for companies required to make statutory filings with RoC – we do not believe that there is a way to guarantee a fully functional, effective online system/portal. We therefore believe it is best left to individual parties.

*Issue 9:- CONVERSION FROM FTA TO PAY CHANNELS [3.56-3.57]*

*9.1 Whether it should be made mandatory for all the broadcasters to provide prior notice to the DPOs before converting an FTA channel to pay channel?*

*9.2 If so, what should be the period for prior notice?*

**TATA SKY RESPONSE:**

- Yes, notice of a period deemed fit by the TRAI should be given for conversion of FTA channels to pay channels and, more importantly, also for conversion of pay channels to FTA, in which case the relevant broadcaster should amend the applicable rate card, and stop charging the relevant DPO for such channel.
- In addition, if pay channels are given for free to any DPO, or on any platform, including the internet, information relating to this must be given to those DPOs who pay for it under agreements then in force – for e.g. we understand that DD Free Dish carries certain pay channels for free after the broadcaster pays carriage fees, whereas those channels are still classified as pay channels.

*Issue 10:- MINIMUM SUBSCRIBERS GUARANTEE [3.58-3.62]*

*10.1 Should the number of subscribers availing a channel be the only parameter for calculation of subscription fee?*

10.2 If no, what could be the other parameter for calculating subscription fee?

10.3 What kind of checks should be introduced in the regulations so that discounts and other variables cannot be used indirectly for minimum subscribers guarantee?

TATA SKY RESPONSE: We reiterate that to maintain a healthy, competitive sector, parties should have the option to come up with negotiated deals, including lump sum/fixed fee deals being permitted at the DPO's option – all agreements will in any case be disclosed to the regulator.

*Issue 11:- MINIMUM TECHNICAL SPECIFICATIONS [3.63-3.67]*

11.1 Whether the technical specifications indicated in the existing regulations of 2012 adequate?

11.2 If no, then what updates/ changes should be made in the existing technical specifications mentioned in the schedule I of the Interconnection Regulations, 2012?

11.3 Should SMS and CAS also be type approved before deployment in the network? If yes, then which agency may be mandated to issue test certificates for SMS and CAS?

11.4 Whether, in case of any wrong doing by CAS or SMS vendor, action for blacklisting may be initiated by specified agency against the concerned SMS or CAS vendor.

TATA SKY RESPONSE: The minimum technical specifications in the 2004/2012 Regulations are, in our opinion, more than adequate for their purpose. Further, there are requirements listed for the SMS and CAS, and in case of non-compliance the TRAI is competent to take action – it would be an inefficient use of resources to pre-approve SMS and CAS systems despite having laid down detailed criteria.

*Issue 12:- TECHNICAL AUDIT OF ADDRESSABLE SYSTEMS [3.68-3.72]*

12.1 Whether the type approved CAS and SMS be exempted from the requirement of audit before provisioning of signal?

12.2 Whether the systems having the same make, model, and version, that have already been audited in some other network and found to be compliant with the laid down specifications, need not be audited again before providing the signal?

12.3 If no, then what should be the methodology to ensure that the distribution network of a DPO satisfies the minimum specified conditions for addressable systems while ensuring provisioning of signals does not get delayed?

12.4 Whether the technical audit methodology prescribed in the regulations needs a review? If yes, kindly suggest alternate methodology.

12.5 Whether a panel of auditors on behalf of all broadcasters be mandated or enabled? What could be the mechanism?

12.6 Should stringent actions like suspension or revocation of DPO license/ registration, blacklisting of concerned SMS and CAS vendors etc. be specified for manipulating subscription reports? Will these be effective deterrent? What could be the other measures to curb such practices?

TATA SKY RESPONSE:

- In this connection we would like to point out that DPOs are faced with a large number of broadcasters seeking to get the DPOs systems audited. This results in multiplication of effort and a waste of resources.
- We support centralized audit mechanisms, whether that implies that one more agency or a panel of auditors be appointed or that BECIL be provided the resources to finish its audits in a timely manner to minimise delays. Audit rights must extend to the ability to conduct an audit once a year. We also agree with the suggestion in the CP that systems of a given make, model and version, which have already been audited in some other network and were found compliant with specifications, need not be audited again.

*Issue 13:- SUBSCRIPTION DETAILS [3.73-3.80]*

13.1 *Should a common format for subscription report be specified in the regulations? If yes, what should be the parameters? Kindly suggest the format also.*

13.2 *What should be the method of calculation of subscription numbers for each channel/ bouquet? Should subscription numbers for the day be captured at a given time on daily basis?*

13.3 *Whether the subscription audit methodology prescribed in the regulations needs a review?*

13.4 *Whether a common auditor on behalf of all broadcasters be mandated or enabled? What could be the mechanism?*

13.5 *What could be the compensation mechanism for delay in making available subscription figures?*

13.6 *What could the penal mechanism for difference be in audited and reported subscription figures?*

13.7 *Should a neutral third party system be evolved for generating subscription reports? Who should manage such system?*

13.8 *Should the responsibility for payment of audit fee be made dependent upon the outcome of audit results?*

**TATA SKY RESPONSE:**

- A common format should be prescribed for subscriber reports as it makes it more efficient for the DPOs to generate the reports, rather than customized reports for different broadcasters – this will also ensure timely provision of reports. The present system of calculating average number of subscribers should be retained.
- Given the number of broadcasters who would like to conduct audits of subscriber reports which leads to multiplicity of efforts, we support the view that a common centralized audit agency be appointed – this will overall be more efficient, as pointed out in the CP.
- Generation of subscriber reports should remain the responsibility of each DPO, and not a neutral third party – the latter is time consuming and would lead to inefficiency.

*Issue 14:- DISCONNECTION OF SIGNALS OF TV CHANNELS [3.81-3.84]*

14.1 *Whether there should be only one notice period for the notice to be given to a service provider prior to disconnection of signals?*

14.2 *If yes, what should be the notice period?*

14.3 *If not, what should be the time frame for disconnection of channels on account of different reasons?*

**TATA SKY RESPONSE:** We recommend that one uniform notice period of 3 weeks be required to be given to a service provider prior to disconnection of signals, except that in the case of a broadcaster discontinuing its business of providing broadcasting TV services in the territory, the current 3 month notice period be retained.

*Issue 15:- PUBLICATION OF ON SCREEN DISPLAY FOR ISSUE OF NOTICE FOR DISCONNECTION OF TV SIGNALS [3.85-3.88]*

15.1 *Whether the regulation should specifically prohibit, the broadcasters and DPOs from displaying the notice of disconnection, through OSD, in full or on a partial part of the screen?*

15.2 *Whether the methodology for issuing notice for disconnection prescribed in the regulations needs a review? If yes, then should notice for disconnection to consumers be issued by distributor only?*

15.3 *Whether requirement for publication of notices for disconnection in the newspapers may be dropped?*

**TATA SKY RESPONSE:**

- In relation to disconnection of TV signals, we urge the TRAI to eliminate the mandatory requirement to publish notices in newspapers, which are a hassle and are costly and unnecessary. Television is a visual medium and any notices relating to TV channels should be aired on the visual platform itself rather than being issued in the completely separate

form of print media. Customers often do not read the newspaper notices and will end up enquiring/complaining about not being able to view channels despite notices.

- Further, we believe that OSDs should be allowed and is a suitable alternative to newspaper publication of notices – in addition, the DPO should be able to give an OSD on any other screen apart from the relevant channel, such as on the start up screen or a screen where all alerts, reminders and notifications to the subscriber are published. An OSD covering part of the screen or even a scroll will ensure that it is noticed by the viewers. The CP states that OSDs hamper viewing – however, we would like to point out that the relevant channel is in any case to be disconnected after the notice period so it is better that the viewers are aware of this. This will help reduce unnecessary calls made and grievances filed by the customer.

*Issue 20:- NO-DUES CERIFICATES [3.104-3.107]*

*20.1 Whether a service provider should provide on demand a no due certificate or details of dues within a definite time period to another service provider? If yes, then what should be the time period?*

TATA SKY RESPONSE: All DPOs should be provided a no-dues certificate automatically (without a demand for such certificate being made) within 60 days of payments being made. In the event of failure to provide a no dues certificate by the Broadcaster within this time limit, it should be deemed that there are no pending dues.

Issues 7, 16-19, 21 and 22 are not relevant to Tata Sky and we have no comments on these.