

TRAI CONSULTATION PAPER

No. 15/2008

DATED 15th December 2008

ON

**INTER CONNECTION ISSUES RELATING TO
BROADCASTING & CABLE SERVICES**

RESPONSE FROM

NEO SPORTS BROADCAST PRIVATE LIMITED

TRAI Consultation paper No 15/2008 on Inter connection Issues relating to Broadcasting & Cable Services

Introduction: In response to the captioned Consultation Paper; Neo Sports hereby place its views as follows :

Issues for Consultation and our Reply :

Issue : 6.2.1 :

- **Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?**

Our Reply:

We suggest that the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and such RIOs should be similar and not the same for all addressable systems as these are different technology which requires certain peculiar clauses germane to the said technology. We therefore suggest that the RIO for different platform should be similar and not the same.

Issue : 6.2.2 :

- **Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?**

Our Reply:

In this connection we would like to point out that there is must provide clause which obligates the Broadcaster to make it content available to the Distributor on non discriminatory term and an agreement is to be signed by the Broadcaster within 45 days of demand made by the Distributor, however there should be same obligation on Distributor also to carry and provide access to all the Channels on non discriminatory basis and the time limit of 45 days

should also be applicable to the Distributor also. As it is observed that the Distributor normally makes the demand for the channels in order to protect its rights of subscription but thereafter himself delay the process of subscription which makes Broadcaster in default for not signing the agreement within 45 days. We suggest that the obligation of signing the Inter connect agreement should be on both the parties within 45 days and not only on the broadcasters.

It is further suggested that must provide clause is discriminatory to the broadcasters and being mis-utilised by the Distributors, if there is a must provide for broadcasters, the platform should have a must carry clause which will break the monopoly and the contents will be available at all platform in non discriminatory manner.

However in case a platform has bandwidth capacity constrains, the broadcasters need to be put in a waiting list and should be given access on the basis of first come first serve. E.g. in case a broadcaster approach to the Distributor to carry its channels on 1.2.09 and other on 1.6.09 the first broadcasters should be given access before the second broadcaster who has applied on 1.6.09. By this way the content will also be available and discrimination may also be avoided.

But in case platform does not accept the channels within 30 days without any reasons or for any disguised commercial reasons, then the broadcaster should not be under obligation to must provide but should be under its discretion to provide the channel to the defaulting Distributor so as the preference can be given to the Distributors to the other Distributors giving business preferences to the Broadcaster.

Further in case any subscriber who has subscribed the services of any Platform/DTH Operator/Distributor and the said platform is not carrying of some channels, the subscriber of the said Platform/DTH Operator/Distributor will not be able to view the channels of his choice as he will not buy the services of other Platform/DTH Operator/Distributor for 3-4 channels. The choice can be given to the subscriber only when there is must carry clause.

Further we are of the opinion that the Standard RIO should be vetted by the Authority (as prospectus of the Company is vetted by ROC & SEBI) before publishing the same on the web-site of the broadcasters and sending the same to the Distributors. This will reduce the disputes between the Broadcasters and the Distributors, failing of which the Distributor normally demands the Channels by challenging the various terms of the RIO and keeps enjoying the signals without any obligations which causes a huge financial loss to the Broadcasters.

In addition the Distributor must be obligated to carry the channels of most of the broadcasters; this will enable to break the monopolistic position of the big broadcasters and will provide the equal opportunity to all the broadcasters and provide the opportunity to the small broadcasters to grow and provide best content to the Consumers. The Authority therefore should suggest the channels of minimum/certain number of broadcasters be subscribed by and be available on the platform of Distributor.

Issue 6.2.3 :

- **What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?**

Our Reply : minimum specifications/ conditions to be satisfied are being suggested as follows :

- There should be appropriate license with the network to distribute the services in a particular area
- The minimum number of subscribers should be 500.
- The network must obtain an NOC from other broadcasters with respect to payment of subscription fee.
- Service tax registration and Income Tax Registration Certificate
- Identity Proof, Office Address proof
- Mapping / Geographical representation of the Area/Territory
- Copy of SLR submitted to other broadcasters should also be shared with other broadcasters by MSO/LCO while executing the Inter connected agreement.

Issue : 6.2.4 :

- **What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?**

Our Reply : minimum specifications/ conditions to be satisfied are being suggested as follows :

- a) The MSO/LCO should install the highly secured and standard CAS, which is linked and integrated, with SMS and activation/deactivation is processed through such SMS.
- b) Both CAS and SMS systems should be in accordance with the standard prescribed by BIS and both the CAS and SMS software must be from a reputed company .
- c) The Affiliates operating system should be able to handle individual channels, packages, tiers, discounts, free offers, promotional offers;
- d) The CAS and SMS of the network/platform must have the capability or recording activation/deactivation history with respect to each addressable device (IRD/VC) and each service for every activation and deactivation in the system for a minimum period of 1 year. In addition the SMS of the network/platform should have the compulsory features of maintaining a detailed database of the Subscribers which shall inter-alia includes - the name, address and the channels/tier/package(s) opted by the Subscribers, basic features of the contracts executed with the Subscribers such as date of contract, details of Customers Equipments, method of billing, payments and outstanding by the Subscribers etc. & administration of such features as per industry standards, handling complaints of the Subscribers.
- e) The CAS/SMS system must have the features of finger printing (FP) and On Screen Display (OSD) to be shown on various location, frequencies and duration as advised by NEO from time to time. The FP & OSD should not be removable by the Subscriber and should be controllable as and when required.
 - I) FP should be possible at any location and different FP location setting should be possible for different groups

of STBs. In addition the FP should be displayed/defined by x - y coordinates on the TV screen and be capable of being displayed for varying length of time which can be scheduled at different intervals.

- II) FP shall be visible in the Electronic Program Guide (EPG), Picture in Picture (PIP) or in any other mode in which the Service is available. FP should be possible on single and/or all the Channels.
- III) CEs should support both visible & invisible Finger Printing as well as OSD messaging.
- IV) Remote access (e.g. through dial up or otherwise) to Addressable System of the Affiliate should be provided in order to verify the Subscriber numbers.
- V) The FP should not be removable by the Subscriber or any other person not authorized by NEO.

- f) The network/Platform should have the adequate systems, processes and controls with respect to transmitting the Services in an authorized manner so as to avoid the unauthorized usage of the Service.

We would also like to point out that when ever a new head end makes efforts to set up operations in a new territory, there is serious opposition from existing operators. Such trends often noticed at monopolistic markets, because of which to which the subscribers are always the sufferer, due to poor service and do not have any choice of service. It is therefore suggested to have two or more operators in all the areas which may be subject to population This will promote competition and result in improving service to the Subscriber.

Issue : 6.2.5 :

- **What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e.,**

analogue (without encryption) and digital (with encryption) services?

Our Reply:

As regards 6.2.5- Hybrid Cable networks should not be encouraged at all as it will not be possible to check and control piracy, however in case the same is to be done two agreements are required to be signed between Broadcasters and network – one for digital and one for analogue. Under the terms of those agreement a clear detailed list of all the subscribers (containing name and addresses etc.) should be given separately for digital and analogue on monthly basis and the services in case need to be changed from analogue to digital or vice-versa the same is to be done only from the next month of request and not in between the month. But the intimation of the same need to be given to the broadcasters in advance and also by monthly lists. The pricing should be applicable should be the same of analogue.

Issue 6.2.6 :

- **Whether there is a need to define “Commercial Subscribers”, and what should be that definition?**

Issue 6.2.7:

- **Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters’ RIOs for non-Commercial Subscribers?**

Our Reply:

- Yes the Commercial Subscribers must be defined and we suggest the following definition :

Commercial Cable Subscriber’ means any person, other than a Multi System Operator or a cable operator, who receives the Service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place, which inter-alia includes Commercial Establishment(s).

“Commercial Establishment” : includes the establishments which avails/subscribes the Services in order to distribute/transmit the same as integral or part of the services to its main services being provided to its customers/employees/members and/or to use the same for its own members,

which *inter-alia* includes Hotels, Hospitals, Guest houses, lodges, Pubs, bars, clubs, hospitals, banks, offices and factories etc. Airports, which are now privatized should also be brought in the ambit of commercial Establishments. Any venue that can promote Public viewing ,which providing any other service or charged for viewing the Channels can also be treated a Commercial Establishment such as Cinema Halls , Auditoriums etc.

- We are of the opinion that the Broadcasters should be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters' RIOs for non-Commercial Subscribers, this will reduce the disputes among the stake holders.

Issue 6.2.8:

- **Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?**

Issues 6.2.9:

- **Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?**

Our Reply:

We are of the opinion that publishing of RIA will of course reduce the dispute and time for inter connection. The time period to execute the RIA should be reduced to 21 days. But the obligation for execution should be imposed on both the parties and not on one party.

Issue 6.2.10

- **Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?**

Our Reply:

As suggested earlier the Distributor should treat all the channels equally and in non discriminatory manner. Since there is no regulation to protect the interest of the Broadcasters against discrimination by the Distributors/Platforms the broadcasters are being treated discriminated

by the Distributor/Platforms and with the no other options the broadcasters are therefore compelled to advise the DTH operators/Distributors/Platforms to place their channels in a particular package in order to protect their rights. If there are some regulations protecting the interests of the broadcasters the dispute will automatically be resolved.

Presently the Distributor are forming the bouquet as per their own wish and commercial benefit without considering the interest of the Consumers and broadcasters, who so ever is paying the high placement fee their channels are placed in a better (basic) tier which is a clear discrimination and injustice to the small or new broadcasters who cannot afford to pay the high placement fee but have the capability and good content with them.

We are of the view that the Distributors/ Platforms should not offer any basic package. The Distributor should charge the price of STB and should offer 30 FTA along with the said STB. The Distributor may offer various packages but the options should be given to the Subscribers which package it wants to subscribe and not the compulsory subscription along with the STB. The channels should also be available on a-la-carte mode. The relation between the a-la-carte price and bouquet should be based upon the formula suggested by the Authority.

In case a platform offers the packages a basic package, then package should contain channels of all genres. Further range of %age of discount being offered should also be finalized by the Authority as a package having more channels should be allowed to fetch more discount.

Creating packages by the Distributors and particularly the concept of basic package do not offer flexibility to Subscribers to pick the channels of their choice, and unwanted channels are forced on them, which defeats the purpose of consumer choice and will be against the principal of fair packaging and fair pricing.

Considering above it is suggested **the regulation should not prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform.**

Issue 6.2.11

- **Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?**

Our Reply:

The Authority has rightly observed that high retail price would not only lead to a reduction in number of subscribers subscribing the channels and adversely affect the revenue of broadcasters but this will also lead to affect the consumers who will be forced to pay high price for the channels. The high margin will only go in the pocket of Distributor.

It is therefore suggested that the MRP should be decided with the mutual consent of both the parties failing of which a margin should be fixed up by the Authority on the whole sale price so as to arrive the MRP by the Distributor. We suggest a margin upto 40% on whole sale price depending upon the genres.

Fixation of MRP by the broadcasters will bring uniformity in the pricing across all DTH Platforms and will not creating confusion and differentiation among subscribers. As in all other industries the MRP is fixed by the manufacturer and not by the Dealers or Distributors. Same way the MRP of the channels should be decided by the Broadcasters or the same should be fixed up the margin suggested by the Authority. Else this will bring confusion and non parity as one Platform selling the same channels at different price.

It is further requested to the Authority to abolish CAS pricing else separate pricing should be fixed on the basis of genres.

6.3 Interconnection for non-addressable platforms

Issue : 6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

Issue 6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

Our Reply:

We support the view of the Authority that for a non addressable system, most of the commercial terms and conditions would be decided by negotiations between the parties. The existing Regulation adequately covers the provisions relating to RIO.

It addition it is suggested that sports channels particularly all Cricket channels must be subscribed by all the platform as the cricket being the first choice of the Subscribers they should not deprived of the same and the cricket should be available to maximum number of viewers, as even the Govt. has introduced the mandatory sharing by the sports broadcasters.

The RIO of non addressable networks must contain the following.

- a) Declare the list of LCOs and their connectivity .
- b) List and count of Homes the MSO is directly servicing.
- c) Channel listing – so that carriage fee can be controlled and channels not shifted randomly.
- d) preset declared rates of fixed channels in each Band to be listed .
- e) Territorial spread must be defined , declaring total number of homes as per Census and number of Homes the Analog network connects .
- f) Subscriber rates to be announced and followed as per the Regulation.
- g) Declare the official Bank and authorized signatory .

6.4 General Interconnection Issues

Issue 6.4.1 : Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

Our Reply:

We are of the strong opinion that it should be made mandatory to follow the QoS Standard by all the stake holders and a service provider to enjoy the benefits/ protections accorded under interconnect regulations must first establish that he fulfills all the requirements under quality of service regulations as applicable. In addition the minimum requirement as suggested above in para 6.2.3 and 6.2.4 should be followed by the Distributor. This may be done by a certificate from outside practicing professional, if required.

Issue 6.4.2 : Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in

respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?

Our Reply:

Yes of course the applicability of clause 3.2 of the Interconnect Regulation should be restricted to the defaulting Distributor of TV channels and he should be barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in case he not only demands the carriage fee but also:

- **defaults in making payment**
- **Deliberate delay in reporting Subscriber base.**
- **involves in piracy**
- **repeatedly defaults the terms of the Inter connect Agreement**

Issue 6.4.3 : Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.

6.4.4 If so, then what should the manner of such regulation be.

Our Reply :

Carriage fees on analog systems should be directly related to the Declared Subs. Base of the Network towards the respective broad casters. TAM & TRP ratings of a network must be kept confidential by this way as the apprehension of nexus between Rating agencies and MSO might be controlled . This process will bring a sense of commercial balance which will help the Broadcasters to drive the business in a give and take basis. The one sided approach must be changed to a more logical and negotiation between a Broadcasters and the MSO. The same approach may be effected in a addressable system, the carriage if commended by a Service provider will depend on the volume of subscribers subscribing to the Channel.

The Carriage fee, availability and for the period for the selected Frequencies in each Band must be pre - declared. This will bring control and transparency in this area too. This process also gives space for market force to play its role.

6.4.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing

services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?

Our Reply : In such a case a different agreements need to be executed for different distribution mode as the commercial and technological terms will be different for the various platforms. Single MSo planning to adopt all three technology must define the territory of the specific network and there should not be a cock tail of all three with in a given territory. As stated above though we do not recommend hybrid networks which will lead to leakage of revenue and difficult to monitor which should be otherwise be allowed subject to the suggestion given above.

6.4.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?

Our Reply : We are of the opinion that the same should be on the terms mutually agreed between the parties.

Issue 6.4.7 : What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?

6.4.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?

6.4.9 Is there any other regulatory measure which will achieve the same objective?

Our Reply :

We are of the opinion that there should be a minimum Term of Three years of the Agreement between Broadcaster and DTH operator, this will enable to provide the signals in continuity to the DTH operators and the Consumers.

And in case when the interconnection agreement in respect of any particular channel is due to expire, the DTH operators either should ensure the renewal or stop enrolment of subscribers for any such

channel/package in which such a channel is included so that no subscriber is deprived of the six months protection as laid down in the regulation.

Further any package/channel to be introduced by DTH operator should be minimum period of six months or one year and the payment of subscription fee may be received on monthly basis. By this way there will be assurance to the Subscribers to receive the channels and the price will also be maintained.

The six month lock in period for Sports Channels (due to high cost) must be guaranteed , particularly if the Channels are offered to subscribers on top up basis and the service provider does not guarantee any fee to the broad casters. For a sports Channel it may not be viable to operate at a controlled rate, to be subscribed only on LIVE event Basis (like a pay per view Basis).

6.5 Registration of Interconnection Agreements

Issue 6.5.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

Our Reply : We strongly suggest that it should be made mandatory for all interconnect agreements to be reduced to writing only and the same be registered with the authority (TRAI). This will establish the relations between the parties in a clear manner and will reduce the disputes between the parties.

Issue 6.5.2 : Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

Our Reply :

We are of the view that it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement, which clearly records the terms and conditions of the arrangement. As specified above this will establish the relations between the parties in a clear manner and will reduce the disputes between the parties.

Issue 6.5.3 : Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

Our Reply :

There should not be any regulatory protection be made available to distributors of TV channels who have not executed Interconnect Agreements in writing. The service provided in this case do not stand valid .

Issue 6.5.4 : How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?

Our Reply :

The Broadcaster should obtain an acknowledgement from the Operator of receipt of the Inter connect Agreement and in case the copy of the Agreement is not given to the Distributor he should immediately approach to the Authority for such irregularities. The Authority in such case facilitate to make the agreement available to the Distributor and in case of repeated default by any broadcaster a serious action is required to be taken against them. The acknowledgement should also become a part of the Agreement as a separate mandatory Annexure without which the validity of the Agreement should not be accepted.

Issue 6.5.5 : Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

Our Reply :

It should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO (provided all pre-requisite documents that the MSO or LCO needs to be submitted to the Broadcaster to make the Interconnect Agreement complete) and obtain an acknowledgement in this regard also the MSO should hand over the copy of signed copy to their affiliate LCOs and obtain acknowledgment .

Issue 6.5.6 : Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect

agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?

Our Reply :

The Broadcaster may be required to furnish a certificate to this effect. The above reply supports the point.

Issue 6.5.7 : Whether the periodicity of filing of Interconnect agreements be revised?

6.5.8 What should be the due date for filing of information in case the periodicity is revised?

Our Reply : In our opinion the period of filing of Inter connect agreements should be six months and the due date should be 45 days from the ending date of six months.

Issue 6.5.9 : What should be a reasonable notice period to be given to the Broadcaster/ DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?

Our Reply : In our opinion the period should be minimum 21 days.

Issue 6.5.10 : What should be the retention period of filings made in compliance of the Regulation?

Our Reply : Two years

Issue 6.5.11 : Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/ DVDs?

Our Reply : Yes filing the data in scanned form in CDs/ DVDs will be easier than the filing the date in hard copy and this will facilitate Authority also to store the same in a convenient manner and maintain confidentiality.

Issue 6.5.12 : Whether the interconnection filings should be placed in public domain?

Our Reply : Yes the inter connection should be placed in public domain, this will bring transparency. However any information disclosure of which may affect the business of the Broadcaster should not be placed in public domain. It is suggested that the subscriber base of the network should not be taken as the confidential.

Issue 6.5.13 : Is there any other way of effectively implementing non-discrimination clause in Interconnect Regulation while retaining the confidentiality of interconnection filings?

Our Reply :

We suggest the frequency for the channel should not be changed unless the Distributor obtain approval of at least 10% of subscribers of its network.

In addition the channels once subscribed should not be blacked out or disrupted and should be shown on continuous basis till the tenure of the interconnect Agreement.

In addition we would also like to point out our views regarding Disconnection of service due to default/breach of the Agreement:-

- 21 days for a normal disconnection is a very long period for a Sports channel. The Notice period must not be more than 3 days as the LIVE event is over in one day or in some hours. The Distributor will continue to breach the terms of the Agreement and show the LIVE Event at the cost of Broadcaster who cannot deactivate the service even for material breach by the Distributor.
- The Distributor may stop payment, may increase the subscriber base, may enter into the area in which he is not authorized or any other breach and may continue to show the LIVE Event till 21 days which should not be allowed.
- Cost of Notices in national Dailies are also very high and broadcasters should not be punished for the breach by the Distributors. It is therefore suggested that the cost of the Public Notice must be shared 50-50 by the broadcasters and the defaulting networks.