



**STAR India's Response to TRAI
Consultation Paper Empanelment of
Auditors for Digital Addressable
Systems**

05 February 2018

Preamble –

We thank the Authority for the opportunity to participate on this consultation process on empanelment of auditors for digital addressable systems (DAS). We hope that the inputs given by us shall be of help and assistance to the Authority to create a light tough enabling regulatory framework for the broadcast sector.

Prior to responding to the questions raised in the said Consultation Paper we would like to provide some inputs on objectives of a transparent audit process that shall help in instituting a hygienic operating environment in the broadcast distribution sector.¹

Audit Objectives

As per the Oxford dictionary, Audit means *“An official inspection of an organization's accounts or systematic review of something, typically by an independent body”*

As part of distribution agreement, broadcaster gets a right of audit of the DPOs systems (SMS, CAS etc) which are used to supply broadcaster's signals to the subscriber.

Audit is carried out by independent third party audit firm(s) to check DPOs' compliance with TRAI guidelines related to, interalia, SMS, CAS, STBs, and anti-piracy capabilities.

Audit is done to check the following:

¹ Though we have provided comments on the instant Consultation Paper dated 22nd December 2017. However, we do this without prejudice to our rights in the matter pending before Hon'ble Madras High Court in WP(C) No. 44126 and 44127. We also refer to the Order dated 18th December 2017 of Hon'ble Delhi High Court in W.P.(C) 4135/2017, wherein the Tariff Order, Interconnection Regulations and QoS Regulations notified by TRAI on 3rd March 2017 have been stayed pending the adjudication in the aforementioned Writ before Hon'ble Madras High Court [i.e. WP(C) No. 44126 and 44127].

1. Integration of SMS and CAS (“System”) and check number of SMSs and CASs used,
2. System’s capability to accurately record and maintain channel wise subscriber count, generate transaction logs and reports, and to ensure accuracy of reported subscribers count,
3. Check System’s ability to enable detection of unauthorized distribution of broadcasters’ channels through fingerprinting

Needless to say, the revenue of broadcasters is based on subscriber count of DPOs.

Right to Cause Audit

The proposed audit mechanism is akin to self-audit to be caused by the DPOs themselves on the Systems that they own and operate. By assigning the right to cause the audit to the DPOs, who are also going to pay for the same, there is a potential to impair the objectivity of the audit exercise. Moreover, it is the broadcasters who may be adversely get impacted if the accuracy of System data is inadequate as it has a direct bearing on commercial interest of the broadcasters. Given that the audit will be caused by the DPOs and besides the fact that auditors’ compensation will be paid by the auditee, other issues such as timing of the audit, will be an omnipresent concern of the broadcasters. Since the frequency of the audit is limited to once a year, the time chosen by the auditee may be the leanest time of the year. The audit is intended to provide confirmation of self-reported numbers and of the Systems owned and under physical control of the DPOs.

There have been instances, wherein audits caused by broadcaster have identified that DPOs have not disclosed CAS systems, territory transgression cases, and unauthorized, unencrypted & channel disguised transmission in order to hide actual subscriber bases. These malpractices directly impact the revenue of broadcasters. The broadcaster has its own market information which is shared with the auditor for testing; with the auditor appointed by DPO, unless the same information is provided by the DPO to the auditor

may not have ability to or have incentive to do which may cause the issues to remain unidentified or ignored. The auditors being engaged by the DPOs may not have the incentive to deep dive causing the discrepancies to remain undisclosed.

With the aforementioned issues, the independence of the audit is likely be a cause of concern.

SMS & CAS

- SMS & CAS systems are owned and installed by DPOs and are located in their premises under their complete control. SMS & CAS systems are fully configurable by DPOs themselves to serve their own interest and may obfuscate revenue and true subscriber data from the auditors.
- Presently, there is no authority to regulate SMS & CAS vendors and these can be influenced by DPOs who are their customers. There is no deterrent penalties to ensure that SMS & CAS vendors act fairly.

Timelines of Audit

- Broadcaster's business may necessitate audit at a particular time i.e.; before the deal negotiation or deal renewal. But if the audits are caused by the DPOs and not at these specified timings, then it will defeat the very purpose of audit/ revenue assurance.

Audits of Independent DPOs

- It may be difficult to conduct audits within one year of all independents which is approximately 1000 in numbers due to limited availability of audit firms and logistics

- It may not be financially viable for a small size independent DPOs, who are approx. 20% of the total subscriber universe, to cause audit & pay for the audit fees. If the DPO is unable to or unwilling to pay and does not appoint the auditor the audit activity will not happen

As noted, we have strong reservations about the proposed modus of audits being caused by the DPOs. That said, given below is the pointwise response to the questions raised in the consultation paper:

| Question | Response | Justification |
|---|--|---|
| <p>Q1. Do you agree with the scope of technical audit and subscription audit proposed in the consultation paper? Give your suggestions along with justification?</p> | <p>Yes, we agree with the scope mentioned in the CP. Additionally, the audit can be caused by DPO provided it meets the below requirements:</p> <ul style="list-style-type: none"> • Broadcaster representative is present during the audit at the audit location • Stringent regulatory deterrents and penalties are imposed on DPO, SMS & CAS vendors, auditors in | <ul style="list-style-type: none"> • Broadcaster representative is required to avoid conflict situation and exercise of undue influence/mis-information by the DPO over the auditors • Deterrents like commercial penalties, provision of civil & criminal liabilities are necessary to ensure DPO, SMS & CAS |

| Question | Response | Justification |
|---|---|---|
| | <p>case of any malpractices followed by them</p> <ul style="list-style-type: none"> • Auditors should provide complete analysis along with supporting/ logs/ reports & explain the reports to broadcasters • The audit methodology should also be explained to the broadcasters | <p>vendors, auditors do not indulge in malpractices to reduce payout to broadcasters</p> <ul style="list-style-type: none"> • Broadcaster can independently understand and validate the findings of the auditors |
| <p>Q2. Is there a need to have separate panel of auditors for conducting technical audit and subscription audit?</p> | <p>Yes, there is a need of separate panel of auditors for technical audit and subscription audit</p> | <ul style="list-style-type: none"> • Since the skillset and requirement for technical audit and subscription audit are different, it is optimum to have specialized teams. |
| <p>Q3: Should there be a different list of empanelment of auditors based on the model/make of CAS and SMS installed by distributor? Will it be feasible to operate</p> | <p>It may not be necessary to have different list of empaneled auditors by CAS / SMS type, however, the auditors should possess practical knowledge of various database architecture &</p> | <p>Since empanelled auditors have past experience requirement as a mandate, we expect them to be possessing working knowledge of majority of SMS & CAS systems</p> |

| Question | Response | Justification |
|--|---|--|
| <p>such panel of auditors?</p> | <p>query management of SMS and CAS systems.</p> | <p>(Refer response to Q4)</p> |
| <p>Q4: What should be various parameters forming eligibility criteria for seeking proposals from independent auditors (independent from service providers) for empanelment? How would it ensure that such auditors have knowledge of different CAS and SMS systems installed in Indian TV sector?</p> | <p>Given the operational, technical and forensic nature of the audits, we do not believe that the audit needs should be mandatorily carried out by the Chartered Accounting or Cost Accounting firms, we believe that following eligibility criteria for audit firms should be followed:</p> <ul style="list-style-type: none"> • Have team members with experience of conducting or overseeing minimum of 50 audits in past five years • Should not have existing relationship direct or indirect with the DPO or the broadcaster • Should not be a related party of DPO or | <ul style="list-style-type: none"> • Domain knowledge of multiple SMS & CAS systems will ensure quality of work and credibility of auditors • To avoid conflict situation • To avoid conflict situation |

| Question | Response | Justification |
|--|--|--|
| | Broadcaster | |
| <p>Q5. Should the minimum period of experience in conducting the audit be made a deciding parameter in terms of years or minimum number of audits for empanelment of auditor?</p> | <p>Yes, the audit team members should have conducted at least 50 audits or overseen such number of audits in last 5 years</p> | <ul style="list-style-type: none"> • Domain knowledge of multiple SMS & CAS systems will ensure quality of work and credibility of auditors |
| <p>Q6: Any suggestions on type of documents in support of eligibility and experience?</p> | <p>The following types of documents supporting eligibility/ experience may be provided by audit team members:</p> <ul style="list-style-type: none"> • Profile with details of experience • Self-certification on non-association with stakeholders • Engagement letter from broadcaster/DPO or • Certificate of experience from | <ul style="list-style-type: none"> • To avoid conflict situation • To ensure independence, quality of work and through engagement of experienced resource possessing adequate domain knowledge |

| Question | Response | Justification |
|---|---|---|
| | broadcasters/DPO | |
| Q7: What should be the period of empanelment of auditors? | 3 years | To enable the auditors to effectively plan the resource deployment ensuring long term commitment |
| Q8: What methodology to decide fee of the auditor would best suit the broadcasting sector? and Why? | The fee should be prescribed based on the size of the DPO. However, out of pocket expenses should be actual based on invoices | Size of DPO depicts the efforts required and linking audit fees to the size will justify it and will give equal opportunity for all firms to deliver quality work |
| Q9: How the optimum performance of the auditors can be ensured including maximum permissible time to complete audit? Give your suggestions with justification. | There has to be a standardized approach to audit with defined timelines and quality of delivery. | Audit firms will have to deliver quality product within the defined SLA |

| Question | Response | Justification |
|---|--|---|
| <p>Q10: What can be the parameters to benchmark performance of the Auditor? What actions can be taken if the performance of an Auditor is below the benchmark?</p> | <p>Parameters – Quality, Error-free and Adherence to Non-adherence to Timelines for 3 times in row</p> <p>Action-</p> <ul style="list-style-type: none"> • 5% fee reduction per day after the scheduled date of delivery • 10% fee reduction in case of material errors/ deficiencies and quality breach is noticed. | <p>Parameters and performance benchmark will ensure auditors delivery of quality product on a timely basis</p> |
| <p>Q11: Should there be different time period for completion of audit work for different category of the distributors? If yes what should be the time limits for different category of distributors? If no what should be that time period which is same for</p> | <p>Yes, as mentioned below :</p> <p>Category 1 (Subs >1,00,000) – 15 to 20 working days</p> <p>Category 2 (Subs >=10,000-1,00,000) 10 to 12 working days</p> <p>Category 3 (Subs<10,000) 3 to 5 working days</p> | <p>Timelines of Audit depends on :</p> <ul style="list-style-type: none"> • Complexity of System • Data volume • How easily data is made available from DPO systems (Cooperation from DPO's) |

| Question | Response | Justification |
|--|---|---|
| <p>all categories of distributors?</p> | | |
| <p>Q12: Are the conditions cited above sufficient for de-empanelling an auditor? If not what should be the conditions for de-empanelling the auditor?</p> | <p>The conditions cited are :</p> <ul style="list-style-type: none"> a) Self-certification and declarations are found false b) Disclosure or misuse of confidential information of distributor c) Not meeting eligibility conditions including independency clause at a later stage d) Delay in conducting audit e) Subletting the work to some other auditor f) Reliability of audit <p>Additionally, the below condition should also be part of :</p> <ul style="list-style-type: none"> • Collusion with DPOs | <p>The conditions should be deterrent enough so that auditors are not involved in any kind of misrepresentation and falsification of facts. Besides de-empaneling other punitive consequences referred to in Q1 should also be applicable</p> |

| Question | Response | Justification |
|---|---|--|
| <p>Q13: Comments on re-empanelment if any?</p> | <p>On expiry of empanelment period without blemish – Automatic renewal on submission of documents</p> <p>Re-empanelment of auditors on de-empanelment under Q12</p> <p>Post 2 years of de-empanelment on fulfillment of conditions of empanelment</p> | <p>To give the auditors fair chance of performance after due course correction</p> |