

Response to Consultation on the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016

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Introduction:

At the Outset we would like to thank the Authority for publishing the Consultation Paper on the Register of Interconnection Agreements (Broadcasting and Cable services) Regulations, 2016 and giving us an opportunity to furnish our comments.

We feel that the above referred regulation would not only help the authority to discharge its obligation under Section 11 (1) (b) of the TRAI Act, 1997 but a strict implementation of the regulation would improve the overall reporting system paving the way for effective monitoring and analysis of the written interconnection agreements between

- ❖ A broadcaster of Pay TV channels and Distributor of such TV channels.
- ❖ A Multi System Operator (MSO) and Local Cable operator (LCO).
- ❖ Headend in the Sky (HITS) operator and LCO.

As specified in the consultation paper a trend analysis and/or disclosure of relevant commercial data to relevant stakeholders would go a long way in meeting the conditions of reasonableness, parity, Non-exclusiveness and Non-Discrimination as given in the order of Honourable Telecom Dispute Settlement and Appellate Tribunals (TDSAT) in *Star vs. Hathway* case.

TRAI Act

Before we offer our comments on the issues raised in the consultation paper, we would like to context it with respect to relevant portion of the TRAI act which has also been quoted in the consultation paper.

11. (1) (b) discharge the following functions, namely:

...

(vii) maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations;

(viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;

The TRAI Act is the main legislation and the regulation issued under it is the subordinate legislation. The subordinate legislation works within the ambit of the main legislation, it cannot exceed or restrict the mandate provided in the main legislation.

As per regulations there has to be interconnection agreements between all broadcasters and distributors. It is clear that the purpose of the interconnection register is to maintain a record of the rates at which signals are provided by the broadcaster to each distributor. This can never be commercially sensitive information. The provision of inspection is provided to ensure transparency and level playing field between the distributors. This is very important since some major broadcasters and distributors are vertically integrated.

Comments on the issues raised

Q1. Why all information including commercial portion of register should not be made accessible to any interested stakeholders?

Ans. We are of the opinion all information (**except the personal details like names and phone numbers etc**) including commercial portion of register should be made accessible to any interested stakeholder, this would help the service providers to negotiate better taking into consideration the market trends. It also ensures a level playing field thereby negating discrimination and inducing healthy competition in the market.

Q2. If the commercial information is to be made accessible,

(a) In which way, out of the three ways discussed above or any other way, the commercial information should be made accessible to fulfil the objective of non-discrimination?

Ans. Out of the methods suggested we feel taking into consideration present market conditions the most suitable method would be to disclose the commercial information **without hiding the identity of the provider (service provider who provides the signal)** and the seeker.

(b) Should it be accessible only to the service providers, general public or both?

Ans. Since the TRAI act says that it should be open for inspection to any member of public, the same cannot be restricted through the regulation.

(c) Should any condition be imposed on the information seeker to protect the commercial interests of the service providers?

Ans. As we understand, the rates at which signals are supplied, is the only commercial information in the agreement. According to us, this is not commercially sensitive information. So the question of protecting the commercial interest may not arise.

Q3. If the commercial information is not made accessible to stakeholders, then in what form the provisions under clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act be implemented in broadcasting and cable sector so that the objective of non-discrimination is also met simultaneously?

Ans. As discussed earlier, unless the commercial information is made accessible to any member of public, it would be non-compliance to the provisions of the TRAI act.

Q4. Please provide suggestions on regulation 5 of the draft regulations regarding periodicity, authentication etc.

Ans. We are of the opinion that filing of the Interconnection agreement with the authority within one week of the signing of the agreements electronically is reasonable. The information given to the Authority can be signed by the authorized officer. This would ensure that misleading and incorrect information is not filed with the authority.

Q5. Please provide comments on how to ensure that service providers report accurate details in compliance of regulations?

Ans. We are of the opinion that reasonable financial disincentives and penal action can be initiated against the service providers who do not provide accurate details in compliance to the regulations.

Q6. Please provide comments on digitally signed method of reporting the information.

Ans. We feel that a digital signature provides the highest level of security and is universally accepted, so using digital signed method while submitting the relevant agreements electronically is keeping in tune with current latest developments.

Q7. Please provide suggestions on regulation 6 of draft regulations and also the formats given in schedules? Stakeholders can also suggest modified format for reporting to make it simple and easy to file.

Ans. NO COMMENT

Q8. Any other suggestions relevant to the draft regulations.

Ans. In regulation 7 – Access to the register of the draft regulation mentions

“The register shall be open for inspection by any member of the public on payment of prescribed fee and upon fulfilling such other conditions as may be specified by the Authority, or through a direction, from time to time”

The fee that is payable and the other conditions may be clearly prescribed by the authority.
