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BY HAND/EMAIL

15th November, 2016

Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions to Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016.

At the outset, we would like to thank the Authority for giving us an opportunity to offer our views on the **Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016.**

In regard to the present consultation process, we submit that we have perused the said **Draft Interconnection Regulations** carefully. We hereby submit our comments attached as Annexure to this letter. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,

For **Discovery Communications India**

Amit Grover
Associate Director – Legal Affairs

Encl: As above

Discovery Communications India
(A Private Company with Unlimited Liability)

Registered Office
125-B, Som Datt Chamber-1
5 Bhikaji Cama Place,
New Delhi-110066, India
T : +91 11 41647135
F: +91 11 46032870

Corporate Office
Building No - 9, Tower A, 9th Floor,
DLF Cyber City,
Gurgaon - 122 002, Haryana
T: +91 124 4349100
F: +91 124 4349289

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Discovery Communications India - Submissions to Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016. ("Draft Regulations")

INTRODUCTION

The exceptional growth of the number of TV channels combined with the inherent limitations of analogue cable TV systems had posed several challenges, mainly due to capacity constraints and non-addressable nature of the network. The evolution of technology has paved way for bringing about digitization with addressability in the cable TV sector, hopefully sooner than later. With implementations of Digital Addressable Systems ("**DAS**"), there has been a remarkable increase in number of subscribers receiving TV channels through addressable platforms. The number of subscribers being served by the DTH services has also gone up significantly. HITS platforms are also expected to make deeper penetration in making available digital broadcasting TV services in the country. At present, majority of the subscribers in India are receiving TV signals through digital addressable systems, albeit "addressability" per se still remains an issue to be resolved.

It is therefore a paradox that a regulation that prescribes non-discrimination and seeks orderly growth of the Broadcasting industry is discriminatory and is adversely affecting the orderly growth of the Broadcasters, who are the creators of the content on which the entire value chain derives its revenue. On the one hand, a Broadcaster is expected to restrict advertising time on television channels to 12 minutes per hour despite advertising being one of the Broadcaster's primary sources of revenue. On the other hand, restrictions like cap on pricing and disclosure requirements directing a Broadcaster to detail its confidential contractual information in public domain ensures that the present regulatory regime is anything but non-discriminatory. We submit that the notion of the Broadcaster's monopoly is a myth as it is often at the mercy of on ground players like the MSOs for important parameters like ratings, channel penetration and placement, which drive its revenue.

To add to the abovementioned, the recent Telecom Disputes Settlement & Appellate Tribunal's ("**TDSAT**") order has brought about a major change in the Broadcasting landscape stating that Reference Interconnection Agreements ("**RIO**")should be published in the public domain and should be the sole method for entering Interconnection Agreements. The order, while expected to be a positive reform to supposedly improve transparency is in fact a step back for the burgeoning Broadcasting sector which had been taking confident strides of development in all these years of measured but real positive reform.

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The Interconnection Regulations ought to evolve to keep pace with new developments in the sector, including ever increasing competition. The commercial parameters for revenue share between service providers primarily depend upon number of subscribers subscribing to the channels/ bouquets. In an ideal scenario where the addressable system complies with the regulatory requirements, the numbers of subscribers in each type of addressable platform are verifiable. To ensure non-discrimination and level playing field amongst the distributors using different digital addressable systems such as DTH, IPTV, HITS, and DAS, it would be in the fitness of things that all these service providers are regulated using a regulatory framework, albeit with a scope for play of market forces.

Further, in an aggressive business environment, freedom to contract and its execution stands as one of the pillars of strength for the parties entering into agreements. RIO being the only basis of signing agreements gravely impacts the fundamental interests as well as rights of the parties. It leads to an implication that the scope for any mutual negotiations would be entirely curbed. Another issue which arises from such a step is of non-flexibility and stringency rendering the marketplace stagnant with disturbed equilibrium. There is an obvious need for a flexible framework to ensure the balance between the market forces and regulation. Like any other industry in India, the TV Broadcast Industry too needs a clear and friendly regulatory framework to operate and effectively, seamlessly and orderly grow, resulting in better efficiencies in terms of Cost, Quality, Service & Speed. It is pertinent to note that non-ambiguity and non-fragmentation are the pillars of a growing sector which the present regulations cease to provide to the Broadcasters.

We would request the authority to consider this as a preliminary submission to the paper given the paucity of time in preparing a response. This should therefore not be considered as our final position on the paper.

COMMENTS ON THE DRAFT REGULATIONS

1. Broadcaster costs unaccounted for

A broadcaster creates its content which is differentiated in each segment and requires an extraordinary amount of time, effort and costs to produce. We are perhaps the only industry where the wholesale tariff has almost remained the same since the year 2004 but content creation and procurement costs have increased manifold. Necessary checks have to be created in the current Interconnection framework in order to ensure that the Broadcast Reproduction Rights of the Broadcaster are safeguarded.

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2. **Subscriber Base for deciding Rates + Scope for Mutual Negotiations**

In the advent of sunset of non-addressable systems, the addressable systems (assuming proper installation) give power to all stakeholders by providing an accurate measure of the number of subscribers for a particular channel automatically inducing transparency in the industry. By the direct linking of the commercial consideration with the number of subscribers subscribing channels/bouquets, using the addressable systems, different service providers can be facilitated with a level playing field. A scheme of this nature wherein subscriber fee is primarily dependent on the number of subscribers transparently disclosed must be made applicable to all similarly based Distributors and it will in turn ensure non-discrimination throughout the market. The principles of transparency, non-exclusivity and non-discrimination will follow and will fairly contribute to the objective of a level playing field amongst seekers and providers. Mutual negotiations are necessary because they are a marker for a free and progressive commerce. In the current business scenario where there are multitude of channels, operators, distribution platforms (both conventional and non-conventional), limiting license fee to one parameter may not do justice to a particular situation. Decisions like locations and the degree of penetration in the market are subject to change as the transactions between two parties grow and evolve. Hence, the broadcasters and distributors should be given the complete freedom to negotiate, with reasonable criteria. Given the diversity of content offerings and markets (regional, linguistic, cultural), freedom to negotiate the parameters of discount should be left to market. Mutual negotiations should thus be present for parameters such as penetration/ location based discounts in order to maintain the sanctity of the market forces. Such a policy will be balanced wherein contemplation for both market forces and transparency has been made.

3. **Common Interconnection Framework not Feasible**

TRAI has suggested a common interconnection framework for all addressable systems like Direct to Home (DTH), Head-end In the Sky (HITS), Digital Addressable Cable TV Systems (DAS) and Internet Protocol Television (IPTV). A common interconnection regulatory framework should not be mandated for all types of addressable systems as various distribution platforms use different network topologies and technologies, have different geographical coverage and the cost of delivery of services through these platforms also differ drastically. The licensing conditions imposed also vary from platform to platform. Thus, the imposition of same

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framework on diverse platforms may lead to inefficiency, conflict and confusion for both the broadcasters and the service providers. Addressable distribution platforms may be in fact be divided into Cable & Non Cable distribution systems for starters to search for a way out or to the alternative provide a more detailed Interconnection Regulation with defined implementation and technical specification pertaining to each separate Distribution Platform.

4. **Non-Discrimination can be ensured by Regulators**

Given diversified content and large number of players in the Indian broadcasting market, broadcasters have to endure stiff competition to stay in the market. They are already under severe strain from non-linear platforms such as OTT, which are drawing away viewers from appointment based viewing patterns to on-demand viewing habits. In such a scenario, the dominant player who causes discriminatory practises maybe pulled up by the Regulator (TRAI) and the Competition Commission of India ("**CCI**") who are there to play the role of Parens Patriae. TRAI in consonance with other arms of the government is very well equipped to handle instances of anti-market forces which may include attempts to monopoly or abuse of dominant position.

5. **Manner of Offering**

The choice of packaging / placement of channels being completely in the hands of the Distributor should not be permitted. It is important that the Regulators realize that the Broadcasters incur huge procurement and production cost to provide content for the consumers keeping in mind the distinctive content appetite of viewers from all age groups, geographies and strata of society. The only way a broadcaster can make good such costs and earn revenue for future investments in content is to achieve viewership of its content from the number of subscribers. Therefore choice of packaging being completely in the hands of the distributor would drastically and directly affect the revenue stream of a Broadcaster. A Distributor having no bar on choice of packaging, would naturally package the channels looking at what would bring maximum profits to the Distributor. Furthermore, aA Distributor belonging to a vertical integrated channel gets the leverage to package and push its channels for maximum profits, victimizing the revenue stream of other Broadcasters. Further there is no guarantee that the channels are packaged in a manner where there is maximum reach in terms of geographic distribution. For Example: viewers in Bengal would watch mostly Bengali channels, but instead the distributor may package to promote a Marathi channel in Bengal

and a Bengali channel in Maharashtra, which would certainly bring down the viewership to minimal, there are no guidelines provided to a distributor to keep a tab over packaging nor are the distributors made accountable to safe guard the Broadcasters or not act to their detriment.

It is further submitted that the principal of non-discrimination gets totally defeated, when the Regulation itself is discriminatory and does not treat the stakeholders on equal footing. Thus it is important that with reference to choice of packaging, even the broadcasters should have an equal right to have a say in the packaging of the channels along with the Distributors.

6. **Terms and Conditions of Mutual Negotiations must be confidential**

The terms and conditions of the sensitive portion of agreements between distributors and broadcasters should not be the subject of public knowledge. Confidentiality of information is a necessity to ensure freedom of trade and commerce as envisaged in the introduction. Interconnection Agreements hold a sacred value under "Freedom of Contract" which comprises of principles of "free will" and "Consensus ad idem". The Authority will appreciate that TV channels are not homogenous goods for sale at a retail store and have different value scheme that are in their own respect unique offerings in different markets. Setting of stringent discounting parameters for all such markets will add to the inefficiency in market equilibrium which will ensure that the best quality content is not being churned out to the consumers which is certainly not the intent of the Authority. Hence the service providers should be given the freedom to negotiate these parameters as per their respective business needs.

7. **Period of 30+30 days too short for Broadcasters for provision of services**

As per the proposed regulatory frame work for interconnection, the period of 30 days for signing of agreements and 30 days for provision of network is too short a period for the broadcaster to complete all processes leading to the provision of services. The processes include (a) initial consent to provide signal/ access, (b) signing of commercial agreement subject to verification of technical systems and parameters as per prescribed regulatory framework and (c) provisioning of signal which include verification/ audit of technical systems and parameters, and deployment of Integrated Receivers and Decoders (IRDs). The time period of 30+30 days must be increased to a more reasonable period. It is important for the Regulators to consider the present scenario, where 95 per cent of the agreements are not

signed within the prescribed period as provided in the subsisting Regulations. Further the provision of providing signals for further three months from the date of disconnection as provided in the Interconnection Regulation 2004 may also be included in the present Draft Regulation. The business module of the broadcasting industry is such that all stakeholders are interdependent on each other, therefore often is the circumstance where despite default, the services are continued to be provided on the mutual goodwill shared between the stakeholder and for continuity of business and not discomfort the viewers. Where the Broadcaster is of the view that the continuation of service provided on good will is misused and overly prolonged and against the existing Regulations, the services are at that very instant disconnected. Therefore it is suggested that the extra three months cushion that was provided for negotiation beyond the date of expiry should also be allowed in the present Draft regulation.

8. **Reasons for Denial/Disconnection of signals to Distributors is too narrow**

The list for reasons for denial of signals by the Broadcaster to the Distributor under the Draft Regulations is too narrow. A non-exhaustive list of reasons for denial/disconnection of signals must include the following reasons:

- The Distributors having previous outstanding with any Broadcaster or a proven track record of not paying such amounts maybe denied signals by the Broadcaster and disconnected for non-payment of outstanding
- The Distributor having a criminal record against or criminal proceedings pending against it may be denied signals or signals may be disconnected signals by the Broadcaster as per its policy.
- The Distributors not complying with the technical specifications and requisite infrastructure necessary to carry the Channels maybe denied signals and disconnected where technical discrepancies creep up and not rectified despite notified for rectification by the Broadcasters.
- The Broadcasters should be permitted to disconnect where the signals are not being retransmitted with the same quality as being provided by the Broadcasters.
- The Broadcasters may also be permitted to disconnect on breach of any of the terms in the Agreement executed between the Broadcaster and the Distributors.

Other minimum eligibility conditions that must be met by the Distributors are as follows:

- Scope of services: To be inclusive of all technologies and services for content distribution. Distributors shall be primarily responsible for provision of information to TRAI of all LCOs registered with them. Distributors to provide content to registered LCOs only.
- Eligibility criteria: The eligibility criteria should include details on financial strength, technical strength, experience and ownership.

Various Quality of Service requirements may also be taken into consideration by the Regulator which are also part of its Quality of Service Consultation dated 19th May, 2016 which include:

- Provision of all relevant information regarding availability of various services provided by different operators in his area.
- Distributors to ensure utmost transparency with regard to dissemination of information regarding services being provided to their subscribers.
- Once a customer has decided to subscribe to a particular service, various options should be available to him for requesting a new connection. A number of methods besides the conventional customer care number, such as an online portal, SMS, e-mail may then be provided to enable a customer to place a request for a new connection.
- The service provider needs to respond to a new connection request within a reasonable time frame and communication sent thereafter to the prospective consumer whether or not it's technically feasible to provide a connection to him.

The process above consists of several distinct milestones. Reasonable timelines for executing actions towards each achieving each milestone depend upon several factors such as the platform type, subscriber location, geographical and environmental conditions etc. There is also a need for suitable coordination between the service provider and the consumer to agree upon a mutually convenient time to carry out the activities.

9. Reference Interconnection Offer (RIO)

As suggested above, it is important for the Regulators to provide space for mutual negotiation, and an RIO as suggested by the Regulator should be a starting base for discussion and negotiation but should not be the only means. A standard RIO applying across the industry would completely kill competition and growth. Healthy competition is one of the main pillars

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for growth and development for an industry which cannot be compromised and done away with.

The present Draft Regulation permits the distributor to raise objections on the draft RIO published by the Broadcaster regarding conformance of such draft RIO to the regulations and the tariff order notified by the Authority. It is submitted that such a right should not be given in the hands of the distributor. The Regulators being a competent authority should hold the right and solely be responsible to intervene in the RIO being drafted and published by the broadcaster.

With the leverage of providing choice of distribution solely in the hands of the distributor and with further leverage to intervene in the RIO published by the Broadcaster, would only cause discrimination, monopoly in the hands of the distributor leading to stagnation of growth and clogging healthy competition.

It is further submitted that the option provided to the Distributor to sign the published RIO as provided on the website of the Broadcaster for providing of signals should not at all be permitted at any case. As submitted earlier an RIO should only be used as a reference - as the term itself explains "Reference" meaning "the use of a source of information in order to ascertain something", and not the only whole and sole document. As also mentioned above, Distributors vary in terms of platforms using different network topologies and technologies, geographical coverage and the cost of delivery of services through these platforms, therefore the Agreement executed have to also considered keeping in mind the difference, and accordingly executed. It is submitted that no two distributors can be identically same and thus will have to be accordingly dealt with.

10. Territory of Interconnection Agreement

The liberty given to a distributor to distribute beyond the areas as agreed under the Interconnection Agreement should not be allowed as it would be detrimental to the broadcaster, and would lead to unaccountability. It is necessary that where a distributor wishes to increase the area beyond the areas as agreed in the Agreement should execute a fresh agreement accordingly for the new areas as the commercial terms would also accordingly differ based on the subscriber base for the said areas.

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11. **Subscription Report and Audit**

The manner of providing subscription report is not adequately protected from tampering of the actual numbers of subscribers. With the present scenario in practice it if often found that the subscriber reports are not in conformity of the actual numbers with vast, unreasonable variations. Therefore TRAI needs to develop a method leaving zero percent chance of any loopholes for misappropriating the actual figures.

We also request the authority to take into account the concerns of the Broadcasters with regard to genuine addressability at the ground and those with regard to middleware vendors who are suppliers of CAS and SMS. These vendors should also be brought within the regulatory scanner so that best practices can be uniformly ensured/enforced. These middle ware vendors should regularly report "Failure Data" to the Authority and the measures taken by them to rectify the same. This vital information should be uploaded in the website for Broadcasters to identify the Operator whose CAS/SMS had failed, the exact causes for the same, the remedial measures undertaken and the nature and extent of revenue loss. In the event an audit reveals any shortcoming of such CAS/SMS, which the vendor had failed to report, suitable penal provisions should follow

Also the Authority is requested to ensure declaration of tier wise subscriber base by the operators as has been the practice in the Telecom sector.

It is suggested that audits as prescribed under the draft regulations should be conducted quarterly and not limited to once a year, quarterly audits would bring in zero percent discrepancy, leaving no space for tampering the numbers and information, and bringing in further transparency to the system.

The provision for subscription count to be recorded for any instant between 19:00 hrs and 23:00Hrs is not practical. While setting such prescribed time period, TRAI needs to consider the various genres of channels and their viewership varying from various ages, working and non-working class, rural and urban society. For instance, a channel specifically attracting children would have maximum viewership between 14:00 – 19:00 Hrs; a news channels would have maximum viewership during the early morning hrs; channels with programs attracting

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rural viewers or non-working class would have maximum viewership in the afternoon, etc. Therefore with the specific time period between 19:00 Hrs to 23:00 hrs as specified by the authority would drastically cut down viewership numbers depending on the genres that are not viewed during the specified time. Therefore the authority needs to seriously reconsider the prescribed time keeping in mind the genres and viewership belonging to various categories.

Further, the provision of exempting distributors having a subscriber base below two lakhs to appoint compliance officer is without any basis when the Draft Regulation is premised on the principle of non-discrimination, and a provision as such defeats the entire principle of non – discrimination. Regulations framed must be equal for all stakeholders belonging to a vertical and non-vertical integrated platform

12. **No fall back option such as the SIA for interim execution of agreement**

The Standard Interconnection Agreement (SIA) format may be published by the regulator and this may spell out an essential and sufficient set of the terms and conditions, except the prices and other commercial terms, for interconnection between a provider and seeker. It may be akin to RIO less the availability of multiple options of commercial terms and conditions. The prices and other commercial terms may be chosen by seeker from the options available within the RIO and filled in the SIA to render and make it a final acceptable agreement. We also suggest that the terms of SIA may be predefined by the regulator to avoid unreasonable delay in signing of the interconnection agreement.

13. **Too much discretion at the hands of the Distributor**

Distributor having the unilateral right to drop channels on account of the subscription of a channel being less than five percent of the subscriber base of the distributor is arbitrary and a unilateral right accruing to the distributor. If there are concerns regarding subscription of a channel it should be sorted out by mutual negotiations between the two parties. There should be NO provision to discontinue a channel basis percentage of overall subscription as the same as it would defeat the principle of "must carry" on a non-discriminatory and transparent basis. It is pertinent to note that Distributor controls the channel availability to its consumers and the very nature of this ability vests the Distributor with power to control percentage of overall subscription of that particular broadcaster, allowing them to arm twist the smaller

broadcasters. Also pertinent to note is that it is the distributor which provides the subscriber reports, and we have already pointed out that they are not sacrosanct and prone to manipulation. Given the current carriage regime and discretion at the hands of the Distributors, broadcasters under the new regime will find it very difficult to convince Distributors to carry mid-tier / unique content channels in base packs. In order to maintain reach, many broadcasters might also be forced to convert many channels to become Free to Air channels.. The authorities need to find ways to balance the act and bring about some stability in the regime.

14. Elimination of Carriage Fee

It is submitted that it is important to analyze the manner of distribution of channels to also evaluate the calculation of carriage fee and the practicality of its implementation. The draft regulations make it a mandate provision of "must carry" for the DPOs while also giving a leniency subject to availability of channel capacity on the distribution network with an addition provision of first come first basis. This would result in difficulty in practical implementation of "Must Carry" and creates space for discrimination.

It is submitted that According to the following carriage fee arrangements as contemplated-

- The rate of carriage fee has been capped at 20 paisa per channel per subscriber per month. Further, the carriage fee amount will decrease with increase in subscription.
- The distributors of TV channels may offer discounts on the carriage fee rate declared by them not exceeding 35% of the rate of the carriage fee declared.

Schedule I of the Draft Regulation which provides the manner of calculation of carriage fees links the carriage fee to channel penetration, with higher penetration leading to lesser carriage fee payment. The said arrangement is set to benefit only vertically integrated players as the MSO has no incentive to carry any other channels that are competitor channels thereby denying them an equal opportunity of eventually getting in a higher bracket despite quality content. This also gives large MSOs the option of cartelization against certain channels thereby affecting the purity of markets. It would also be prejudicial to interests of smaller broadcasters airing unique content, rendering it a non-level playing field for them.

The power in the hands of a DPO in this case is quite discriminatory which is against the principles of ensuring transparency, protection of consumers' interest and creating an enabling environment for orderly growth of the sector.

With the leniency given to a television Distributor to package the channels with no power provided to a Broadcaster to have any say in packaging of its channels, there is no guarantee if the channels would be even selected in the first 100 channel capacity and if the Distributor would even make an effort to package and place the channels to reach a target subscriber base of at least 5 percent. While structuring the business model as per the present draft regulations, it is important to also take note of the vertical integrated companies existing in the broadcasting industry that may give rise to discrimination and monopoly in the market.

It is further submitted that as per the calculation of carriage fee amount if the number of average active subscribers in a month for a channel in the target market is greater than to equal to twenty percent of the average subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to 'Nil'. With reference to this calculation, two questions arise firstly with the freedom of packaging of channels provided to the distributor of television channels, would the DPO prefer a model where channels reach to a target of 20 percent subscriber base in return of no carriage fees paid to them. Secondly, even if we consider that the channels reach a target market of 20 percent subscribers, then what is the next step - what incentive will Operators get to increase the subscriber base over 20 percent, what happens to the remaining 80 percent of subscriber base. There is no mechanism provided by the authority to target the remaining 80 percent of subscriber base.

We submit that there should be no distinction made between carriage fees and placement fees. While TRAI proposes to regulate carriage fees, we request it to recognize that placement fees also invariably include carriage within its fold and accordingly broadcasters should be allowed to negotiate with the Operators for preferential placement of their Channels within defined and reasonable parameters, leaving no scope for ambiguity. Since in the proposed model placement fee and marketing fee can be mutually negotiated and are outside the regulatory ambit this has the potential to completely distort and vitiate the entire non-discriminatory principles. This would create a back door entry for packaging and side-deals. While TRAI seeks to regulate carriage fee by capping the same (albeit allowing for its potential

abuse as pointed out above), it has been rendered illusory by allowing negotiated agreements between DPOs and broadcasters for LCN and Marketing. Hence these should also be brought within the regulatory ambit.

It is further submitted that the time period given to enter into a written interconnection agreement is 30 days from the date of receipt of request from a broadcaster for retransmission. Upon failure of a written agreement, the Distributor has been restricted from carrying signals and further provides a 60 days period to enter into a fresh interconnection Agreement on expiry. Observing the present trend in the market wherein, the Distributors prolong the period of executing the agreement beyond the prescribed period, the strict provisio of not permitting to carry signals without a written connection agreement puts the broadcasters in a difficult situation. It is suggested in case the distributor does not execute the agreement within the prescribed manner, the distributor should give a written reason for doing so with further provision to calculate the subscriber base for the channels from the date of expiry for the purpose of carriage fee and while executing the fresh interconnection agreement/ renewal of interconnection Agreement the previous subscriber base should be taken into consideration. Further the leverage to discontinue signals of the channels where the subscriber base is below 5 percent should not be permitted as the same would cause major discrimination and monopoly in the hands of the Distributor, restricting the entry of broadcasters introducing new channels and throwing the smaller channels having unique content out of business.

Once an interconnect agreement is signed, the same should be valid for the term of the agreement and Distributors should not be allowed to terminate the agreement in part or in full for the entire term of the agreement. In effect they should be bound to discharge their obligation in terms of the agreement for the entire term. DPOs should be allowed option to terminate the interconnection agreement only under certain legitimate circumstances i.e. expiry of time period, exit by either party from business, modification of agreements due to government or service providers, or change in regulations.

15. **Must Carry must be mandated and given "teeth"**

The Authority before putting forth such provision should have first dwelled on TRAI's own basis in the previous explanatory memorandum for inserting the 'must carry' provision which now the Regulator seems to have not considered. Giving the leniency to a distributor to carry channel on the availability of capacity to carry channels based on the unworkable ***first come first serve*** gives no assurance of any carriage let alone 'must carry' of the channels. It is suggested that a minimum carrying capacity by a distributor should be determined by the authority. Such leniency and ambiguity as such would create a lot of discrepancies and space for discrimination. Further, "first come first serve basis" is impractical if not unworkable for a massive industry with heavy competition having a large number of channels with a huge variety in each genre.

16. **Inadequate protection of the Broadcast Reproduction Rights**

Broadcasters have been granted certain statutory rights under the Section 37(3) of the Copyright Act, 1999. By virtue of the amendment to the Copyright Act in the year 1994, broadcasting organizations which were engaged in the business of transmitting signals containing audio and/or audio-visual content, were accorded protection. India being a signatory to the TRIPS Agreement incorporated Broadcast Rights in a separate Chapter, dealing with Broadcast Reproduction Rights which protected the exploitation of signals emanating from broadcasting organizations. Section 37 of the Copyright Act, defines the scope of broadcast reproduction rights and mandates that any person, who during the continuation of the broadcasting reproduction right, distributes/retransmits without the Authority of the owner, is deemed to infringe the Broadcast Reproduction Rights. The Broadcasters have also been provided rights available to copyright owners by virtue of Section 39A of the Copyright Act. Regulations like 'must provide' and regulation of price at the wholesale level are hurting the rights of the Broadcasters provided by the legislature. While the substantive law dealing with Broadcast Reproduction Rights recognizes and protects the freedom of contract of a broadcaster, such right has been weakened and eventually annihilated using subsidiary legislations. We respectfully submit that the Regulations and tariff orders notified by TRAI on broadcasting services are in the nature of limitations on the exclusive broadcast reproduction rights of a broadcaster. Such orders and regulations not only interfere with the normal exploitation of the broadcast by a broadcaster, but is also against the genuine interest of a broadcasting organisation. We request the Authority to consider the plight of the broadcaster and prevent the continued depletion of this right. Necessary checks have to be created in the

current Interconnection framework in order to ensure that the Broadcast Reproduction Rights of the Broadcaster are safeguarded.

17. **Non-Bundling and fears of vertical integration**

The discretionary powers of placement of channels that the Distributers receives, visible vide a combined reading of the draft tariff order as well as the new proposed interconnection rules will become extraordinary and will neither serve the interests of the consumer nor the market. In a scenario where Broadcasters aren't allow to re-bundle their channels once bundled, gives them little flexibility to react to changing market scenario. On the other hand, the Distributor may bundle the channels of a Broadcaster as it may please. In such a scenario, the Distributor may favour certain Broadcasters more than others and freely bundle favoured channels on a discretionary basis while others lose out. This regulation will not only encourage discrimination but also vertical agreements between Distributors and favoured broadcasters which are against the spirit of TRAI's preamble in the first place. Certain Broadcasters, especially smaller broadcasters operating niche channels are sure to lose out a great deal, including most of them being forced to be driven out of the market.

CONCLUSION

The broadcasting sector has unfortunately been at the receiving end of a spate of certain stringent regulations in the past one decade. It must be borne in mind that the very object and purpose of regulation is to promote competition. It, therefore, follows that at the level where there is little or no competition, the degree of regulation would be much higher and the level at which competition is sufficient or near sufficient there might be less or even no regulation.

The industry had hoped that in keeping with TRAI's stated policies the present exercise will result in a "light touch" regulatory regime given that digitalization has ushered in a highly competitive pay TV market with multiple digital platforms offering diverse content and choice to consumers. However, instead, in our humble view the proposed regime seek to introduce more stringent, onerous and intrusive regulatory dispensation virtually micromanaging the activities and that too only in respect of one stakeholder, i.e. broadcasters, by regulating pricing, discounting, manner of offering, bundling and legitimizing carriage fee leaving total uncertainty in both advertisement and subscription revenues. This would also create a fertile ground for disputes and avoidable litigation that was never the intent of the instant exercise.

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A consultation paper of this extreme importance requires a lot more research and analysis which we admittedly could not afford at this stage owing to the shortage of time. We therefore request the Authority to grant us some more time in order for us to come back with a well-rounded and well considered response. In the meanwhile we request the Authority to take this preliminary submission on record.

Discovery Communications India
(A Private Company with Unlimited Liability)

Registered Office
125-B, Som Datt Chamber-1
5 Bhikaji Cama Place,
New Delhi-110066, India
T : +91 11 41647135
F: +91 11 46032870

Corporate Office
Building No - 9, Tower A, 9th Floor,
DLF Cyber City,
Gurgaon - 122 002, Haryana
T: +91 124 4349100
F: +91 124 4349289

CIN - U74300DL 1996 ULT 082136