

# GTPL Hathway Limited

(Former Name: GTPL Hathway Private Limited)

CIN : L64204GJ2006PLC048908

**Registered Office :** 202, 2nd Floor, Sahajanand Shopping Centre,  
Opp. Swaminarayan Temple, Shahibaug, Ahmedabad-380004, Gujarat.  
Phone : 079-25626470 Fax : 079-61400007



## By Email

04<sup>th</sup> November 2019

To,

**Mr. Anil Kumar Bharadwaj, Advisor (B&CS),**

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

Jawahar Lal Nehru Marg,

New Delhi – 110002

**Sub:** Our comments on Issues related to Interconnection Regulation, 2017 ("**Consultation Paper**")

We, GTPL Hathway Limited ("**GTPL**") are thankful to the Telecom Authority of India ("**Authority**") for granting us the opportunity to share our comments/response on the Consultation Paper captioned as "Issues related to Interconnection Regulation, 2017" and are grateful to share our comments on the Consultation Paper.

Yours faithfully,

For **GTPL Hathway Limited**

  
Chintan Dixit



**Compliance Officer**



## GTPL HATHWAY LIMITED ("GTPL") COMMENTS ON CONSULTATION PAPER ON

### "ISSUES RELATED TO INTERCONNECTION REGULATIONS, 2017"

#### Prologue to our response to the Consultation Paper

At the advent, we would like to explicate the concept of carriage which is based on the principle of "Must Carry" i.e. the distributors are bound to carry channels of any broadcaster who approaches such distributor for carrying their channel, in terms of the regulations, including but not limited to, signing of an interconnection agreement. For this purpose, we would also like to place reference to Reg 2 (x) of the Telecommunication (Broadcasting And Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("Interconnection Regulations"), which defines Interconnection as below:

*"Commercial and technical arrangements under which service providers connect their equipment and networks to provide broadcasting services to the subscribers."*

A plain reading of the above definition clearly shows that it refers to and means only those commercial and technical arrangements between the service providers which enable such service providers to connect their equipment(s) and/or network(s) to provide broadcasting services to the subscribers.

Further, it must be noted that the carriage agreements only specify the terms for carrying the broadcaster channel(s) through the distributor's network, **without specifying the placement of such channels onto a specific position** in the electronic programme guide or, seeking assignment of a particular number to such channels. Hence, carriage agreements, being interconnection agreements, are regulated by the authority and accordingly TRAI regulations provide for Reference Interconnect Offer ("RIO") which specifies the terms and conditions under which the service providers may seek interconnection from one another on fair and transparent terms.





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On the contrary, placement has always been an additional service and has traditionally been determined by the market forces. It is pertinent to mention that the terms and conditions of placement are not at all necessary for interconnection. Placement cannot be taken as an equivalent to "Carriage", since the broadcaster may, at its discretion, enter into a separate placement arrangement on mutually agreeable terms. In fact, carriage (*which is requisite for interconnection between the Service Providers*), may or may not be followed by a placement agreement i.e. there can be an interconnection without placement but there cannot be placement without any interconnection.

Various activities are undertaken for marketing / promotion of product(s) and service(s) through several media including print, electronic, digital, outdoor, etc. Such marketing / promotional activities are undertaken to promote product(s) / service(s) to the end consumers, in an effort to persuade target consumers to buy product(s) / avail service(s). These marketing / promotional activities are undertaken either directly or indirectly through other service providers including advertising agencies. For example, in the broadcasting sector, a broadcaster may promote a programme, channel or a bouquet of channels, through various means including newspaper advertisements, radio, hoardings, audio-visual advertisements on their own channels as well as other channels, social media, SMS, email, etc. through an advertising agency or DPO(s) in the relevant target market(s) to ensure widespread reach. Since, such marketing / promotional activities through DPO(s) are entirely distinct and independent of interconnection, they can neither be regulated nor can be brought within the definition of interconnection.

In light of the above, we state that any placement and/or marketing / promotional agreements are discretionary spends driven by market forces and are also beyond the scope of interconnection as explained above. Therefore, there is no need to regulate such agreements and any attempt to do so is beyond the scope of regulatory mandate entrusted to the authority.





**Question 1. Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/data. If yes, please provide your comments on possible solution to address this issue?**

**GTPL Comments:** We do not agree that the flexibility of defining the target market, in general, is being misused for determining carriage fee. As mentioned by the authority, multi system operators have declared either a state or a group of states as their target market(s) after duly taking into consideration the preferences / choices and viewership patterns of the subscribers. HITS operator has declared its target market state wise while we were unable to find any information with respect to IPTV service providers. However, certain DTH platforms are declaring PAN India as their target market, which may result in potentially higher carriage fee outflows from the regional broadcasters.

Further, we would like to state that the allegation of the regional broadcasters that the distribution platforms who have declared combination of states as target market, are abusing their position by charging high carriage fees, lacks merit, considering the fact that the broadcaster(s) in general, have not even sent the mandatory application(s) for carrying their channel(s) on distribution platform let alone signing the carriage RIO available on the respective distributor's website. For eg. out of a total of 510 channels being carried on the platform, only one channel has executed carriage agreement with GTPL. The distribution platform(s), in the interest of the consumers and in good faith, are carrying such channel(s), despite the broadcasters having failed to execute any interconnection agreement(s) (*i.e. carriage agreement(s)*). Moreover, the pay broadcasters who were paying placement fee in the earlier regime, have stopped paying any placement fee under the new regulatory framework and have rather included their non-popular channels in their bouquets thereby forcing the DPO(s) to carry





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such channels without executing any carriage RIO(s) with the DPO(s), resulting in huge losses to the DPO(s).

TRAI being the regulatory authority, ought to seek data from all broadcasters regarding carriage agreement(s) to better understand the overall situation and direct the concerned broadcasters to sign carriage agreements with the distribution platforms within a defined timeline, failing which the distribution platforms should be able to deactivate such channel(s) from their network.

A possible solution to address the issue of target market is that it can be classified by taking into consideration the preferred language from among the top 12 first languages spoken in India as per 2011 census. We have herein below provided the list of target markets as per the above criterion:

<u>Sr. No.</u>	<u>Language</u>	<u>Target Market</u>
1.	Hindi	Madhya Pradesh, Uttar Pradesh, Uttarakhand, Haryana, Delhi, Chattisgarh, Jharkhand, Bihar and Rajasthan
2.	English	
3.	Urdu	
4.	Bengali	West Bengal
5.	Marathi	Maharashtra & Goa
6.	Telugu	Andhra Pradesh & Telangana
7.	Tamil	Tamil Nadu
8.	Gujarati	Gujarat
9.	Kannada	Karnataka
10.	Odia	Orissa
11.	Malayalam	Kerala
12.	Punjabi	Punjab





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13.	Other Languages	Manipur, Arunachal Pradesh, Mizoram, Meghalaya, Assam, Sikkim, Nagaland, Tripura, Himachal Pradesh and Union Territories
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Further, we would like to bring to your attention that certain broadcasters have several language feed(s) for the same channel(s) and are forcing the Distributors to carry the channel(s) in all target markets. For eg. ZEE has put the following condition in its RIO for its channel viz. ZEE Hindustan: *"MSO shall place "ZEE Hindustan" channel amongst the news channel of respective regional language in different states with a language feed applicable in that state as detailed in Table A herein above"*

Through such unreasonable condition, the broadcaster is indirectly demanding multiple LCN(s) for different states, for the same channel, which has a direct impact on the DPO(s) with multi state presence. Hence, there is a requirement for the authority to mandate a declaration of primary language of transmission by the Broadcaster(s) and to prohibit Broadcaster(s) from including any such conditions in their RIO(s).

**Question 2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?**

**GTPL Comments:** Firstly, we would like to state that the authority must address the issue of non-execution of carriage RIO(s) by the broadcasters as the same is not only detrimental to the distributors business but is also creating a non-level playing field among the stakeholders. TRAI being the regulator for this industry, has a duty to provide a level playing field amongst the





stakeholders and therefore it must ensure that the carriage RIO(s) are mandatorily signed and payments are made in terms of the said carriage RIO(s).

Further, implementation of our suggestions as mentioned in our response to Question no. 1 on "Declaration of Target Markets" will amply address any potential abuse. Therefore, we are of the opinion that there is no requirement of capping of carriage fee.

Here it will not be out of context to mention that several broadcasters (*pay as well as FTA*) have participated in the auction/e-auction for carriage of their channels on the DTH platform of Prasar Bharati i.e. Free Dish. The same broadcasters on one hand pay huge amounts as high as Rs. 8 crore per annum as carriage fees for carrying their channels on Free Dish platform while on the other hand, they are reluctant to pay any carriage fees to other regulated DPOs (*governed under the regulatory framework of the TRAI*). Thus, capping of carriage fee will not only impact the competitiveness but also further deteriorate the financial health of the regulated DPO(s).

**Question 3. How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.**

**GTPL Comments:** The cost of carrying a channel may be determined after taking into consideration the OPEX and CAPEX of the DPOs which will vary depending on the quality of the equipment used and the size and spread of the network. No specific formula can be derived for arriving at a uniform cost of carrying a channel across DPO(s). The Authority has fixed the carriage fee after consultation process and therefore the same needs no intervention at this juncture.





Further, it is important to note that while the authority has herein sought the cost of carrying a channel through the present Consultation, there is neither any base nor any cap on the subscription rates charged by the broadcasters.

**Question 4. Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?**

**GTPL Comments:** No, DPO(s) are not likely to misuse the right granted to them to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months. On the contrary, the said provision in the regulations shall ensure that non-popular channels are replaced with channels that may have more demand.

Further, it is important to understand that while the network capacity declared by various distribution platforms is ranging from 250 – 600, the total channels licensed to operate in India are 902, which is resulting in demand for network capacity. As suggested by us in our response to Question 1 with respect to “defining target markets” coupled with the network capacity constraints, it would be prudent to reduce the requirement of carrying a channel whose subscriber base is less than 5% from the current 6 months to 3 months. The period of 6 months casts an excessively onerous obligation on the distributor of TV channels and we believe that a period of 3 months is sufficient to ascertain whether or not a channel is being well received and/or demanded by the subscribers. This shall not only ensure that bandwidth / frequency is not unnecessarily blocked by such non-popular channels but also pave way for other channels (*including niche channels*).







**Question 5. Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.**

**GTPL Comments:** In furtherance to the Prologue, placement agreements are executed at the discretion of the broadcasters after the execution of the interconnection agreements and to that extent itself are independent. Here it is also pertinent to mention that while there cannot be any placement agreement in absence of an interconnection agreement, there surely can be interconnection agreement (*which is governed within the regulatory framework of the TRAI*) without having any corresponding placement agreement. Such placement agreements were therefore traditionally kept outside the scope of the regulatory regime since the advent of regulatory regime on interconnection by TRAI in 2004.

We would like to reiterate that prior to the implementation of the new regulatory regime, the DPOs had substantial earnings from placement fee from pay TV broadcasters. However, the pay TV broadcasters have conveniently included LCN based discount(s) / incentive(s) in their RIOs and thus avoided payment of placement fee which has drastically affected the business models of the DPO(s).

Even under the new regulatory regime, TRAI itself has acknowledged that the relevance of placement has drastically reduced since all the channels are to be made available by the DPOs in their respective genres and all the channels of similar language within the genre are to be stacked together. Therefore, placement had been specifically kept outside the ambit of the New Regulations.

Despite this settled position and being fully aware of the lack of jurisdiction to regulate placement, vide this Consultation TRAI has tried to make an attempt to regulate the same. Hence,





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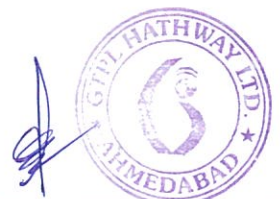
the question of having a well-defined framework and/or the need to regulate placement agreements does not arise.

Here it will not be out of context to mention that several broadcasters have participated in the auction / e-auction for carriage of their channels on the DTH platform of Prasar Bharati i.e. Free Dish. The same broadcasters on one hand pay huge amounts as high as Rs. 8 crore per annum as carriage fees for carrying the same channels on Free Dish platform and on the other hand are reluctant to pay minimal carriage fees to regulated DPOs (*governed under the regulatory framework of the TRAI*). The regulated DPOs are not only under an obligation to carry the channels of the broadcasters within the genre but are also under an obligation not to displace the said channels from the LCN position for a period of one year (*which itself is arbitrary*).

Placement agreements are primarily targeted/aimed towards increase in advertisements revenues of the broadcasters through seeking beneficial position on the DPOs network and have no direct implication on the availability and/or the subscription/license fees of the channels.

Be that as it may, we would like to reiterate that since the pay broadcasters are confident about the popularity of their content/channels, pay channels should strictly be made advertisement free since the subscriber is forced to unnecessarily pay for viewing needless advertisement(s).

For reasons stated in paras above, we strongly suggest that there should not be any regulatory intervention on placement agreements and rather the same should continue to be under forbearance.





**Question 6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favoring DPOs? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).**

**GTPL Comments:** As stated in our response to question 5, placement or marketing or any other similar agreement/arrangements are executed at the discretion of the broadcasters and have no direct implication on the availability and/or the subscription/license fee payable in terms of the interconnection agreement.

Such arrangements are primarily targeted/aimed towards increase in advertisements revenues of the broadcasters. It is not out of context to mention that such agreements are one of the initiatives adopted by the broadcasters to enhance their advertisement revenues. Further, the Authority itself acknowledges that marketing/promotion initiatives are outcome of joint effort of the broadcasters and DPOs which cannot be quantified/capped and thus kept under forbearance.

Hence, any assumption that such forbearance is favoring DPOs and/or distorting the level playing field is inappropriate.

**Question 7. Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?**

**GTPL Comments:** In this context we would like to refer to our response to question 5 as well as our Prologue.





**Question 8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.**

**GTPL Comments:** In this context we would like to refer to our response to question 6.

**Question 9. Any other issue related to this consultation paper? Give your suggestion with justification.**

**GTPL Comments:** We have herein below listed few of the issues that are related to this Consultation Paper:

1. **Declaration of genre as well as mandatory signing of interconnection agreements/carriage RIOs by broadcasters:**

The FTA broadcasters have not declared the genres of their channels, till date. Accordingly, the FTA broadcasters should be first mandated to declare the genre (*along with the applicable primary language*) of their respective channels and disclose the same to the DPOs as well as to the Authority. The said information should also be made available on the website of the respective broadcasters as well as a consolidated list of all permitted channels (*including genre and primary language*) should be made available on TRAI website.

While the DPOs have executed written interconnection agreements published by the pay TV broadcasters, the FTA broadcasters have not executed carriage agreements with all the regulated DPOs, under the new regulatory regime which has come into effect from February 1, 2019. The FTA broadcasters have rather shown reluctance in execution of any interconnection agreement/carriage RIO's published by the DPOs. Further, some of the broadcasters have raised issues to the Authority with respect to discontinuation of their channels from the DPOs platform,





even in the absence of a written interconnection agreement only with the malicious intent of creating undue pressure on the DPOs through the Authority.

Accordingly, the Authority should gather information on interconnection/carriage agreements executed by all the broadcasters under the new regulatory regime and direct/mandate execution of written interconnection agreements/carriage agreements for all the broadcasters (*irrespective whether FTA or Pay*) whose channels are being carried on DPOs platform. Further, the Authority or TDSAT (*as the case may be*), should not even intervene and/or entertain any complaint(s) /dispute(s) of the broadcasters with respect to non-availability and/or discontinuation of the channels on DPOs platform in the absence of a valid interconnection agreement / carriage RIO with the DPO.

Here the Authority should ponder upon the fact that DPOs have continued to carry some channels after the implementation of the new regulatory regime in good faith that broadcasters of such channels would execute required interconnection agreements in due course. The DPO(s) should not be under any obligation to carry such channel(s) on their distribution platform in the absence of a written interconnection agreement. Thus, to bring uniformity and certainty, the Authority should strictly mandate execution of written interconnection agreement/carriage RIO for all broadcasters.

**2. Prohibition of any LCN based incentive/discounts offered by pay TV broadcasters in their RIOs:**

While the RIO of pay TV broadcasters is envisaged on the principle of "Must Provide" for availability of their channels on the distribution platforms of the DPOs, pay TV broadcasters have been very conveniently offering incentives/discount for placing of their channels on favorable LCN positions in the same RIO document. In this way, the pay TV broadcasters are now seeking





something (i.e. LCN position) indirectly which cannot be sought by them directly (which tantamount to imposition of unreasonable condition for access of their signals/channels). Placement of channels is distinct from interconnection and thus, by offering conditional discounts / incentive on placement of their channels on favorable LCN position, most of the pay TV broadcasters have essentially diluted / conveniently bypassed the statutory obligation. To effectively compete and remain commercially viable, a DPO will have to necessarily avail the said discounts/incentives based on LCN positions and penetration amongst others, so that it can pass on the benefit of the same to its LCOs/subscribers.

Further, it would not be out of place to mention that placement of channels has traditionally been a DPO prerogative and any broadcaster may seek additional service in the form of placement on mutually agreeable terms after execution of interconnection agreement. There should not be any reference and/or linkage to placement of channels on LCN position in the RIO of the broadcasters which is envisaged on the principle of "Must Provide" and "Non-Discrimination".

Therefore, we strongly suggest that the practice of offering discounts/incentives on placement of channels on specific/favorable LCN position in the RIO of the pay TV broadcasters should be strictly prohibited.

**3. Abolition on requirement of placement of channel on a particular LCN for a period of one year:**

Under the new regulatory framework, all the channels are to be made available by the DPOs in their respective genres and all the channels of similar language within the genre are to be stacked together on the EPG. This ensures that the subscribers are able to easily navigate and view their favorite channels. Thus, there is no need to continue to place the channel on the same LCN for a





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period of one year. On the contrary, one-year lock-in period for LCN has been misused by the broadcasters who have even neglected to execute basic interconnection agreement in the form of carriage RIOs of the DPOs. We are of the opinion that the existing regulations in the form of lock-in of one year for LCN should be abolished with a rider for the DPO to communicate any change in LCN position of a channel to the subscribers by running scrolls, so that the subscriber is aware of such change and is not inconvenienced.



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