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**BEFORE THE TELECOM REGULATORY AUTHORITY OF INDIA
AT NEW DELHI**

Written Comments of the Mathrubhumi Printing & Publishing Company Ltd., on
the Consultation Paper on Issues Related to Interconnection Regulations, 2017
(C.P. No.16/2019).

**A. Issues related to Placement and other agreements between Broadcasters
and Distributors**

For the sake of convenience, the issues for consultation mentioned in paras 3.25 to 3.29 of the Consultation Paper are answered together in the following paragraphs:

1. MSOs/DTH operators are continuing to demand hefty Placement Fees/ Marketing fees even after the coming into force of the new Interconnection Regulations. Transparency and non-discrimination are the core principles of the new Interconnection regulations. All Agreements whether for Placement Fees or Marketing Fees or by any other nomenclature should comply with the principles of Transparency and non-discrimination.
2. Extortionary and unconscionable amounts in the name of Placement Fees, Marketing Fees etc. are demanded by the MSOs/DTH operators to carry the channels. MSOs/DTH Operators are not inclined to sign the Interconnection Agreements (RIOs). With a view to wriggle out of the consequences of the new Interconnection Regulations, MSOs/DTH Operators are taking the stand that the Channel would be available only on *Al-a-carte* basis if the Interconnection Agreement/RIO alone is signed without acceding to their unlawful and extortionary demands for hefty Placement fees. MSOs/DTH Operators have made a mockery of the new Interconnection regulations by demanding Placement Fees/Marketing Fees for making available the channels in the Basic Service Tier (BST) or in the packages/bouquets offered by the MSOs/DTH Operators.
3. It is needless to mention that just by placing a channel on *Al-a-carte* basis will not be of any avail either for the Broadcaster or for the Customer.



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Availability of Channels on *Al-a-carte* basis without proper facilities being given to the customers for exercising their option by the MSOs/DTH Operators will be suicidal for the Broadcasters. The customer care facilities of MSOs/DTH Operators are either inadequate or not fully equipped and are not customer friendly. Further, certain MSOs/DTH Operators have made the Basic Service Tier (BST) redundant by including non-popular and other language channels. All this results in the Customers heavily relying on the packages/bouquets offered by the MSOs/DTH Operators for which they demand hefty Placement fees.

4. These are blatant violations of the new regime which aims at creating a level playing field, fair play and non-discriminatory approach. Today, the Distributor is at liberty to fix varied Marketing and Placement fees from different Broadcasters or the Distributors may even exempt few Broadcasters from Placement and Marketing Fees. Thus, Distributors are misusing the situation to arm-twist the Broadcasters.
5. Broadcasters are today at the mercy of the Distributors, as they have complete liberty to fix varied marketing / placement fees or fees of any other nomenclature as a condition precedent to carry the channel. On the one hand, certain distributors demand unconscionable and extortionary amounts from some broadcasters and on the other hand, the very same distributor exempts some other broadcasters from making any payment in the nature of marketing/placement fees. This is a blatant violation of the new regime which aims at creating a level playing field, fair play and non-discriminatory approach.
6. TRAI must insist on all broadcasters to file the details of payments made to the Distributors (MSOs/DTH Operators) in the nature of marketing / placement or by any other nomenclature. TRAI can call for copies of all such Agreements and payment details from all the broadcasters and distributors and independently assess the extent of discrimination meted out by the Distributors. The Marketing/Placement fees paid by the Broadcasters to the Distributors must be categorized according to the nature, category and



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genre wise ie., Pay channel or Free to Air channel, Regional or National channel and genre wise like Sports, GEC, Movies, Infotainment, Kids, News, Music, etc.

7. TRAI should immediately regulate all fees charged by the Distributors whether Marketing / Placement or any other nomenclature in the best interests of the broadcasting industry and put an end to the unhealthy practice prevalent for quite a long time.
8. The practice of charging such exorbitant Placement/ Marketing fee is not only wholly unwarranted but is a death knell to the Broadcasters especially the FTA Regional language News channels. Further such unhealthy practice is discriminatory, unfair, unreasonable and denying level playing field to the broadcasters.
9. As stated earlier, TRAI must regulate this unhealthy practice and create a win-win situation for Broadcasters and Distributors. Such a step will ensure co-existence of Broadcasters and Distributors and create a level playing field, ensure transparency and fairness.
10. The TRAI is entrusted by the Telecom Regulatory Authority of India Act, 1997 to, *inter alia*, fix the terms and conditions of 'interconnectivity', as well as, regulate 'arrangement' amongst service providers. The interconnection Regulation gives a broad definition to 'interconnection agreement' (see R. 2(y)) to cover the technical and commercial terms and conditions for distribution of signals of television channel. However, the effective regulation has been limited to establishment of 'interconnection', leaving out of it other commercial agreements- left open to commercial negotiations between the market players. This is referred to in the Consultation paper as the 'soft touch' approach or 'forbearance' (see paras 1.13).
11. Both the Broadcasters and Distributors may act as seeker or provider in the value chain. Under the present framework, both the Broadcasters and the



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Distributors are required to offer their services on 'non-discriminatory basis' (refer Regulation 3 and 4). As regards placement of channels, Regulation 3.3 specifically prohibits the Broadcaster from demanding the placement of channels at a particular LCN as a pre-condition for providing signals to the distributor. Thus, by taking out the issue of placement out of the Broadcaster's hands, the Distributors are sought to be protected from unscrupulous demands/ pressure tactics from the part of the Broadcasters. On the other hand, there is no protection to the Broadcasters against the demands of the Distributors.

12. This is despite the market reality, that largely, it is the Broadcasters especially the Free-to-Air Regional language channels who pay huge sums of money to the Distributors to secure viable/attractive placement of their channels in the latter's network with a view to survive competition from other Broadcasters offering channels in the same genre. In the absence of any regulation/ embargo on the Distributors, the Broadcasters are made to suffer exploitation.

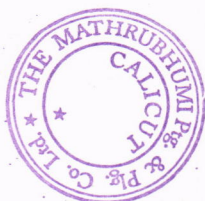
13. It may be noted here, that the Consultation paper itself recognizes that in India, the channels are offered in many languages and majority of channels cater to regional audiences (para 1.6). This fact plays great significance in the backdrop of flexibility given to the distributors in the matter of placement of channels under the present regime- refer discussion in Consultation Paper 10/2019- taken note of in para 3.13 of the present paper. It is submitted that whichever mode is prescribed for placement of channels in EPG-

L1Gx, L2Gx ... (where 'x' varies) OR

G1Lx, G2Lx ... (where 'x' varies) OR

GxLy ... (where 'x' and 'y' vary),

the competition in the market being among regional TV channels, the Distributors will continue to have an elevated position in the market economics. However, although not strictly within the scope of the present paper, it is submitted that the viewership in India being primarily segregated by language, the arrangement of L1Gx, L2Gx ... may be most convenient for customers/users.



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14. Thus, it is submitted that although the Interconnection Regulation attempts to discourage the prevalent practice of negotiating 'placement of channels' (see paras 1.13 and 3.3 of this Consultation Paper) by the broadcasters and distributors, for the reasons stated above, the balance is tilted in favour of collection of heavy placement fees by the Distributors.
15. Another factor which gives leverage to the Distributors' authority is the flexibility given to Distributors in the offering of channels in Basic Service Tier (BST) and also bouquets of channels (also recognized in Consultation Paper 10/2019). At present there is also no cap on the number of bouquets which can be offered by the Distributors-which effectively nullifies the customer choice. In such circumstances, the Distributors encash on the market competition for the Broadcasters by taking the stand that the channel would be available only on *Al-a-carte* basis (and not in Basic Service Tier (BST) or in the packages/bouquets offered by them) if unlawful and extortionary demands for hefty Placement fees or marketing fees or such other fees, are not acceded to. It goes without saying that where the consumer is not able to effectively exercise his choice of channels on *al-a-carte* basis (paras 3.15, 3.16 etc.), especially when the customer care facilities of MSOs/DTH operators are either inadequate or not fully equipped and are not customer friendly (morefully mentioned in para 3 above), the availability of Broadcaster's Channels on *al-a-carte* basis alone, will be suicidal for the Broadcasters.
16. The Consultation paper recognizes that while the framework does not specifically restrict the marketing/promotion deals, creating packages and forcing broadcasters to sign for such packages is de-hors the new regulatory framework (para 3.17). This also goes against 'consumer choice' which is recognised as the fulcrum of the new regulatory framework.
17. It is submitted that to curb the menace of misuse by Distributors of the flexibility given to them under the present regime, one of the two alternative can be adopted-



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A) Continuing under the 'soft touch' method:

18. One way to regulate the placement, marketing and other arrangements is by leaving the same open to fair and transparent market negotiations. This would be in complete agreement with the policy now taken by TRAI by adopting the 'soft touch' method or method of 'forbearance'. In fact, the Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and All Such Other Matters Regulation, 2019 mandate the disclosure/ reporting by the Broadcaster of the Interconnection Agreements entered as per RIO and also the arrangements for placement/ marketing/other technical or commercial arrangement-R.3(3) r/w Schedule III thereto. Further, such Register shall be available in public domain. However, the information regarding placement/marketing and other arrangements, which are contained in Part II of the register are susceptible to be classified as 'confidential' at the request of any party to the agreement (See R.5 and R.6). Consequently, once the request for 'confidentiality' is allowed as per R.6 of the Telecom Regulatory Authority of India (Access to Information) Regulations, 2005, the details pertaining to these arrangements are inaccessible for other Broadcasters. Therefore, it is submitted that if the Authority has decided to leave the commercial arrangements to be negotiated by market players, then the Authority ought to enable transparency by mandating that all information will be available in the public domain. Otherwise, adequate clarity ought to be given in the 2019 Regulations itself, to ensure that such vital information is not brushed under the carpet of 'confidentiality'.

B) Bring within the active regulatory framework:

19. The Interconnection Regulation provides a cap on the amount of discount that can be offered by the Broadcasters to Distributors as an *incentive* for 'placement of channels'. This too shall be done in 'fair, transparent and non-discriminatory terms' (see Explanation to R.3(3) and also, the provisos to R.7(4)). One way to curb the menace of placement fee is to interpret the above provisions as exhaustive in the matter of placement fees permitted to be collected by the Distributors. Thus, the only placement fee that could be collected by the Distributors are in the form of limited discounts on MRP



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of pay channels/ bouquets of channels. Such an interpretation would be in tune with the Interconnection Regulations, which at present, do not positively enable the collection of placement fee/marketing fee etc., over and above what is permitted in R.3 r/w R.7. Therefore, it is submitted that consequent clarifications may be made to the Interconnection Regulation to clarify this aspect.

Alternatively, the placement of channels can be based on open bidding by the Distributor, which would ensure a fair and competitive market. E-bidding can be adopted to ensure fairness and transparency.

It is also open to the Authority to completely do away with such 'other' commercial arrangements, by mandating the periodic rotation of channels within the subgroup of channels belonging to a particular language and a particular genre. This will also mean that the channel viewership is only dictated by the popularity of that channel and that viewership data is not tweaked by other methods.

20. Another aspect which lacks clarity at present and used by the Distributors to their advantage is the nature/mode of entering into arrangements for placement, marketing etc.
21. TRAI has recognized that the 'interconnection' (defined under R.2(x) of Interconnection Regulation) shall be established by the payment of 'carriage fee' alone. No other aspect is permitted to factor in the very establishment of interconnection. Only in the case of pay channels, a 'distribution fee' also is payable for distribution of the pay channel in the network of the distributor. The mode of calculating 'carriage fee' and 'distribution fee', are both, prescribed and regulated under the present legal framework (see generally, Interconnection Regulation, 2017). Thus, one can safely say that, basic services are established once a Reference Interconnection Agreement has been entered into between the Broadcaster and a Distributor--- i.e., completely under the aegis of the supervisory control of the Regulation.
22. It is for the very first time, that a clear statutory indication (apart from Explanatory notes/memorandum etc.) regarding the permissibility of these



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'other arrangements' have come in the form of the Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and All Such Other Matters Regulation, 2019 - See Schedule III, Table IIIC. However, there is still no clear indication regarding the mode of entering into these agreements.

23. Paragraph 17 of the Explanatory Memorandum thereto states that these are in the nature of 'consequential' agreement, consequent to entering into of Interconnection Agreement. Further, it is only to be agreements entered into 'subsequent' to the interconnection agreement. i.e., after signing the interconnection agreement (para 19 thereof). Further, they shall not alter the 'nature' and 'form of mandatory technical and commercial conditions' of interconnection agreement (para 17).
24. A combined and harmonious reading of the 2019 Regulations in light of the Explanatory Memorandum and the provisions of the Interconnection Regulations (see para 2 above), in general, indicate that 'Interconnection' should be established strictly as per the Interconnection Agreement and these arrangements can only be entered into to ensure further/additional services.
25. However, at present, Distributors are reading the Regulatory framework to mean that a composite agreement can be had for interconnection, placement and/or marketing, which is against the provisions. Consequently, they are able to arm-twist the Broadcasters into paying huge sums of money, only to ensure interconnection. It is requested that the Authority clarify that the Interconnection Agreement and the arrangement(s) for placement/ marketing ought to be several and distinct.

B. Issues related to Target Market in the DTH platform:

For the sake of convenience, the issues for consultation mentioned in paras 2.33 to 2.36 of the Consultation Paper are answered together in the following paragraphs:



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26. Carriage charges are to be paid to DPOs based on the number of active subscribers subscribing the channel. DTH Operators will have country wide connection of approx. 1.50 crores each and out of which, they will be having a total connection of approximately 5 lakhs each only in the State of Kerala, which will be much less than 5% of their total nation-wide connectivity. Even if the Free-to-Air Malayalam language channels reach 100% active subscribers in the target market of Kerala, we will be falling in the basic slab of less than 5% and are bound to pay @ Re. 0.20 per active subscriber / month which works out to a staggering Rs. 3.60 crores per year per DTH service provider (1.50 crore connections x Rs. 0.20 per month x 12 months). This causes serious prejudice to the Regional language channels and unless the active subscribers are limited to the particular geography ie., number of connections in Kerala market or number of subscribers opting for the Regional Base Pack (*which includes those who are residing outside Kerala but subscribing for Malayalam Regional language base pack*), it will lead to disastrous consequences by making it unviable to the Free-to-Air Regional Channels to be placed in the DTH platforms.

It is submitted that target market and active subscribers for Regional language channels in the DTH platform may be re-defined as the linguistic geography / State or be limited to the regional language packs offered by the DTH operators.

By doing so, no prejudice will be caused to the DTH operators as the Network Capacity Fee (NCF) under the new regime is arrived at by TRAI after taking into account the bandwidth and other related costs. Hence, it is submitted that there is no need to re-invent the wheel.

27. Having said this, it should be noted that all DTH Operators are insisting on Placement/Marketing fees and have given a go-by to the Carriage fee due to the illogical definition of Target Market especially for the Regional language channels. The illogical definition of Target Market enables DTH operators to arm twist the Regional language channels to make their demands stronger by insisting on higher Placement/Marketing fees by comparing it with the staggering Carriage Fee as shown in para 26 above. It is submitted that all



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these unhealthy practices can be put to an end if and only if TRAI steps in to regulate the Placement/Marketing Fees.

28. In the light of the above, it is submitted that TRAI may fix a cap of Rs. 0.20 per active connection per month towards Placement fee or Marketing fee or any other nomenclature irrespective of the active subscribers the television channel has in the target market. It is submitted that a maximum amount of Rs. 0.20 per active connection per month will create a win-win situation for Broadcasters and DTH operators and will ensure their co-existence. It will also ensure transparency, fair play and level playing field. It is further submitted that Rs. 0.20 per subscriber per month is the maximum amount arrived at by TRAI towards Carriage fee as laid down in Regulation 8 read with Schedule I of the Interconnection Regulations.

29. TRAI cannot be oblivious to the market realities in the field and must quickly bring out a Policy for regulating the Placement and Marketing Fees and to ensure transparency, non-discrimination, fair play, and level playing field.

It is therefore humbly prayed that the Hon'ble Telecom Regulatory Authority may immediately intervene in the matter and regulate the Placement fees, Marketing fees or by whatever name it is called in the best interests of the broadcasting industry.

Dated this the 4th day of November, 2019.

for and on behalf of the Mathrubhumi Ptg. & Pbg. Co. Ltd.,

(G. Anand)

General Manager-HRD

(Authorised Signatory)

