



*Star India's response to TRAI's
Consultation Paper on Issues
Related to Interconnection
Regulation, 2017*

02nd November 2019

We thank the Telecom Regulatory Authority of India (“**Authority**”/ “**TRAI**”) for inviting stakeholders to respond on its consultation on “Issues Related to Interconnection Regulation, 2017” as set out in the Consultation Paper (“**CP**”) released to the public on 25th September 2019.

The CP has identified its objective as to review the provisions of the existing Interconnection Regulation, 2017 (“**NIR**¹”) and consult all the stakeholders on (i) issues related to target market and (ii) issues related to placement and other agreements between broadcasters and distributors.

While we appreciate the Authority for inviting all stakeholders to submit their written comments on these identified issues, we would like to present our preliminary concerns on provisions in the NIR that enable a Distribution Platform Operator (“**DPO**”) to charge broadcasters a “carriage fee”. Additionally, we would like to raise our concerns on the timing and content of the CP on issues related to placement and other agreements between broadcasters and distributors when the TDSAT has found in its judgment that placement or terms and conditions for placement are not at all necessary for interconnection and the related matter is *sub-judice*.

As mentioned above, we would like to humbly submit that provisions in the NIR that enable a DPO to charge broadcasters a “carriage fee”, as defined in Section 2(m) of NIR, is, in principle, against the New Regulatory Framework’s² (“**NRF**”) objective of providing consumers the option to select from all TV channels on an a-la-carte basis within the territory of India.

We strongly believe that these provisions of the NIR that enable a DPO to charge a carriage fee amounts to:

- 1) Denial of access to consumers** – Section 4(7) of the NIR enables a DPO to reject or deny the distribution of a broadcaster’s channel due to the non-availability of “spare channel capacity on the distribution network.” Similarly, Section 4(8) of the NIR enable a DPO to discontinue the carriage of a broadcaster’s channel “*in case the monthly subscription percentage of that channel is less than 5% of the monthly average active subscriber base of that distributor in the target market specified in the interconnection agreement.*” Such enabling provisions amount to denial of access to consumers who wants to subscribe to the channel that has been rejected, denied or discontinued by the DPO on account of the DPO’s infrastructural limitations or the channel’s low penetration in the DPO’s distribution network coverage area. Consumers have a fundamental right to receive information irrespective of its subscription percentage and these provisions amount to unreasonable restrictions on the exercise of the said right.

- 2) Filtering of consumer’s choice by a DPO** – The above-mentioned provisions enable a DPO to filter and decide the TV channels to be made available to the consumers in the DPO’s declared target market. Such provisions disregard the plurality and diversity of taste and preferences of

¹ Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017

² Telecommunication (Broadcast and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 (“**NTO**”), Telecommunication (Broadcast & Cable) Services Interconnect (Addressable Systems) Regulations 2017 (“**NIR**”) and Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017 (“**NQoS**”) (collectively the New Regulatory Framework, 2017, or “**NRF**”)

the consumers and is therefore not in the interest of consumers who prefer niche content/channels or like to sample new content/channels.

- 3) Entry barrier for new channels, small broadcasters and broadcasters of niche content/channel** – Third proviso of Section 10(21) of the NIR defines the requisite threshold for a channel to continue to be available for distribution as “twenty percent of the monthly average active subscriber base in the target market”. This effectively forms an entry barrier for new channels, small broadcasters and broadcasters of niche content/channels.
- 4) Disincentivises DPOs to develop and upgrade their network capacity and infrastructure** – The NIR, by enabling DPOs to charge carriage fees from broadcasters for carrying their channels and to reject / deny channels due to low spare channel capacity, disincentivises DPOs to develop and upgrade their network capacity and infrastructure as the non-availability of spare channel capacity in the DPO's distribution network enables them to earn economic rent for a service that practically costs nothing.
- 5) An unjustified compensation to DPOs for the economic cost of carrying a channel** – The NIR has already provisioned an unjustifiably high economic cost for carrying a channel (both FTA and pay channels) by all DPOs through the Network Capacity Fee (NCF) of INR 130 for 100 SD channels and additional INR 20 for every additional 25 SD channels. In addition, a pay TV channel is mandated to pay 20% of its MRP as “distribution fee” to the DPO under Section 6(3) of the NIR. Therefore, the ability of a DPO to charge a carriage fee as per Schedule I of the NIR, over and above the NCF and the distribution fee is unjustified and seems to have no economic or factual rationale.
- 6) Regulatory asymmetry in telecommunication services and against “net neutrality” principles enforced in the telecom sector** – The provisions of the NIR that enable a DPO to deny broadcasters access to the DPO's network unless a carriage fee is paid (or basis low subscriptions or low spare channel capacity) is akin to throttling and paid prioritization under net neutrality principles. Therefore, to ensure symmetry of regulation and regulatory principles in all types of ‘telecommunication services’ under the TRAI Act, the Authority must re-evaluate and re-visit the provisions in the NIR that enables a DPO to reject, deny or discontinue the carrying of a TV channel and enables a DPO to charge a carriage fee for carrying the broadcaster's channel.

On the issue related to placement of TV channel in the landing page or the Logical Channel Number (LCN), the Hon'ble TDSAT in its order dated May 29, 2019 held that the subject matter of placement of a channel of broadcaster by the distributor on the landing page of a subscriber is not “interconnection” and hence outside the power and jurisdiction of the Authority. The Authority has challenged the order in to the Hon'ble Supreme Court, and the matter is *sub-judice*. Since the matter and agreements between broadcasters and distributors identified in the CP are not “interconnection” and hence outside the power and jurisdiction of the Authority, we request the Authority not to proceed with the consultation process on these issues/agreements.

Without prejudice to any rights and obligations, including in event of any action prior to our filing of the response, we humbly submit and unequivocally state that no part of our response or any suggestions may be deemed to be a consent on the part of STAR India on the issues raised by TRAI in CP dated 25.09.19 or consent towards the piecemeal implementation of the suggestions.

With these preliminary submissions, we now provide our responses issue wise:

- 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?**

RESPONSE: In our view, this question does not relate to the main issue being caused by permitting carriage fee charges. In line with our preliminary submission, we strongly believe the provisions of the NIR that enables a DPO to charge a carriage fee could amount to:

1. Denial of access to consumers
2. Filtering of consumer's choice by a DPO
3. Entry barrier for new channels, small broadcasters and broadcasters of niche content/channel
4. Disincentives for DPOs to develop and upgrade their network capacity and infrastructure
5. An unjustified compensation to DPOs for the economic cost of carrying a channel
6. Regulatory asymmetry in telecommunication services and against "net neutrality" principles enforced in the telecom sector

In addition, any rejection or refusal to carry a broadcaster's TV channel due to the non-availability of capacity in the DPO's distribution network or low subscription is equivalent to denial of consumer's access due to the DPO's infrastructural limitation. To ensure that such denial of access does not arise under the NRF, the Authority must ensure that all DPOs are fully equipped to carry and make available all licensed channels on an a-la-carte basis to all subscribers within the territory of India.

- 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?**

RESPONSE: Without prejudice, we believe that the NRF must not provide any enabling provisions for a DPO to charge a carriage fee for the reasons mentioned in our preliminary submission and reiterated in our response to the previous 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.**

RESPONSE: Without prejudice, we submit that the cost of carrying a channel may be determined by considering:

- a) The cost attributable to one-time establishment of the systems and;
- b) The recurring costs with respect to maintenance and upkeep of the systems.

It may be relevant to note that once a DPO puts in place the basic infrastructure for providing its services, the marginal cost of carrying an additional channel is zero or negligible. Moreover, the NRF has already provisioned for an unjustifiably high economic cost of carrying a channel (both FTA and pay channels) by all DPOs through the Network Capacity Fee (NCF) of INR 130 for 100 SD channels and additional INR 20 for every additional 25 SD channels. In addition, a pay TV channel is mandated to pay 20% of its MRP as "distribution fee" to the DPO under Section 6(3) of the NIR. Any additional cost over and above these provisions are not only unjustified with no rational or factual basis but are against the interest of consumers.

- 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?**

RESPONSE: As mentioned in our preliminary response and responses to the previous questions, Section 4(8) of the NIR amounts to creating an economic entry barrier for new channels, small broadcasters and broadcasters of niche content/channels, whose subscriber base may never reach the 20% requisite threshold as envisioned in the NIR.

The discontinuation, on the part of the DPO to carry a broadcaster's channel, based on Section 4(8) of the NIT, amounts to denial of consumer's real and effective choice.

To ensure that such denial of access does not happen, the Authority must ensure that all DPOs are fully equipped to carry and make available all licensed channels on an a-la-carte basis to all subscribers within the territory of India. Towards this end, we would like to highlight that claims of limited channel carrying capacity are unfounded as channel carrying capacity can be increased by simple and meaningful investments in upgradation of infrastructure.

- 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.**

RESPONSE: There is no need for the Authority to define a framework for agreements for placement. The Hon'ble TDSAT in its order dated May 29, 2019 held that the subject matter of placement of a channel of broadcaster, by the distributor on the landing page of a subscriber is not "interconnection" and hence outside the power and jurisdiction of the Authority. Since the matter is *sub-judice*, we request the Authority not to proceed with the consultation process on these issues/agreements or define a framework for agreements for placement.

In any event, in the absence of any empirical evidence to substantiate that the placement of a TV channel at a certain place in the LCN impacts viewership or impacts consumer choice, the Authority must not intervene. Such interventions will negatively impact investments, innovations and efficiencies in the industry.

- 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).**

RESPONSE: We do not have any facts or documents to support that agreements related to placement, marketing or any other agreement favours DPOs. Moreover, we do not have facts or documents to support that forbearance, or the freedom to otherwise contract commercial marketing and other such agreements can distort the level playing field.

The only fact available with us is the Hon'ble TDSAT Order dated May 29, 2019. The order held that the subject matter of placement of a channel of broadcaster, by the distributor on the landing page of a subscriber is not "interconnection" and hence outside the power and jurisdiction of the Authority.

In the light of this fact, it is humbly submitted that intervention with the respective commercial and business activities for enhancement or value creation by service providers is beyond the scope of TRAI's directions. The right to carry on trade and business ought to be unrestricted, so far as it is fulfilled in a fair, reasonable and non-discriminatory manner within the fundamental proposition of upholding competition and a robust market.

- 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?**

RESPONSE: No, we do not think that the Authority should intervene and regulate agreements such as placement, marketing or other agreements. Agreements or trade arrangements such as, placement, marketing or other agreements are not interconnection agreements and hence they should not be regulated.

- 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.**

RESPONSE: We do not have any facts or documents to support that DPOs are misusing the flexibility presently given to them to enter into agreements such as marketing, placement or in any other name.

We humbly submit that any marketing, promotion, or advertising only serves in building consumer interest, ensuring the public's informed decision-making facilitated by awareness and education toward diversity and plurality of views.

9. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

RESPONSE: We would like to take this opportunity to reiterate that the Indian TV Consumers are spoilt for choice today. There are currently 902 channels to choose from and these channels are available under 9 different genres and in more than 15 regional, national and international languages. For instance, under the movie genre, a consumer can choose from 72 pay channels and 48 FTA channels. All this choice comes at a cost of INR 271³ per month (or APRU), which is less than US\$ 4.

Moreover, the content development is hyper-competitive where vying for subscribers' attention requires constant investments in programme and content creation, sampling and innovative offerings, advertising and marketing activities to enhance the consumer's experience.

Given this business operating environment, we recommended that the Authority observe regulatory forbearance, and allow the market to determine on issues related to placement and other agreements identified in the CP to enable innovation in content and consumer choice.

³ Data from ChromeDM