

Tata Sky's response to TRAI on the draft "Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreement Regulation, 2019"

1. Frequency of Reporting

3(2) "Every distributor of television channels, whose average active subscriber base of its entire distribution network (including joint venture(s), if any) in the month of March of that year is equal to or more than two lakhs (Two hundred thousand), shall through its compliance officer, report to the Authority, the information relating to all interconnection agreements or modifications or amendments or addenda thereto, pursuant to the interconnection regulation, 2017, in the manner and in the format as specified in regulation 4, within thirty days from the end of every 'calendar quarter' in which such agreements or modifications or amendments or addenda, as the case may be, have been signed."

Tata Sky Comments:

- ❖ The previous 'Register of Interconnect Agreements Regulations' provided for an Annual submission of the Interconnect agreements
- ❖ This draft Regulation proposes to increase the frequency to a Quarterly reporting. This will add to the efforts and man-hours and also increase the compliance. Quarterly reporting may not necessarily add substantial value to the compliance objective
- ❖ Specific queries and/or non-compliances can be handled on a case to case basis in which all the concerned parties will submit the specific agreements for scrutiny and analysis.
- ❖ In the interest of smooth transition to the new regime with minimum disruption, we strongly recommend that the reporting frequency may continue to be on an Annual basis.

2. Exemption for smaller DPOs

3(2) "Every distributor of television channels, whose average active subscriber base of its entire distribution network (including joint venture(s), if any) in the month of March of that year is equal to or more than two lakhs (Two hundred thousand), shall through its compliance officer, report to the Authority, the information relating to all interconnection agreements or modifications or amendments or addenda thereto, pursuant to the interconnection regulation, 2017..."

Tata Sky Comments:

- ❖ The underlying principle of the new Regulations is to create a level playing field amongst all DPOs irrespective of their size. Having moved to the new regime, now carving out an exception for a subset of DPOs, would be contrary to the principles stated above.
- ❖ We recommend that no exemptions may be created in the Regulations leading to an asymmetric regulatory regime.

3. Financial Disincentive

5 (1) "If any broadcaster or distributor of television channels fails to furnish the information or the certificate required to be submitted under regulation 3 by the specified date, it shall, without prejudice to the terms and conditions of its license/permission/registration, or the Act or rules or regulations or order made, or direction issued there under, be liable to pay, by way of financial disincentive,--

- (a) an amount of rupees one thousand per day for up to thirty days beyond the date specified in regulation 3,
- (b) additional amount of rupees two thousand per day in case the default continues beyond thirty days from the due date, as the Authority may, by order, direct.

Provided that the cumulative financial disincentive levied by the Authority under this sub-regulation shall in no case exceed Rupees Two Lakhs (Rs. Two hundred Thousand)."

Tata Sky Comments:

- ❖ The TRAI Act has a provision for financial disincentive which maybe invoked against a licensee, for non-compliance, after following necessary procedure. By incorporating financial disincentive within the Regulations, the procedures may get bypassed and that would not be appropriate.
- ❖ Tata Sky has been submitting the reports in a timely manner for the past several years. However, there could be instances, going forward, wherein the timelines may get missed due to inadvertent reasons not entirely in our control. We believe that such a delay should not be construed as a grave violation for which a disincentive may need to be levied.
- ❖ The timely submission of these reports has no bearing on the key underlying issue i.e. the RIO and the signed agreements follow the Regulatory principles.
- ❖ The financial disincentive is unfair on those DPOs who have a good track record of compliance. Instead, we suggest that TRAI deal with the non-compliant DPOs on a case to case basis.
- ❖ We therefore strongly recommend that the provision of financial disincentive should not be incorporated in these regulations.

4. Report submission through Compliance Officer

3(2) "Every distributor of television channels, whose average active subscriber base of its entire distribution network (including joint venture(s), if any) in the month of March of that year is equal to or more than two lakhs (Two hundred thousand), shall through its compliance officer, report to the Authority, the information relating to all interconnection agreements or modifications or amendments or addenda thereto, pursuant to the interconnection regulation, 2017..."

Tata Sky Comments:

- ❖ The role of the Compliance Officer has already been established in the three Regulations of TRAI on Interconnection, Tariff & QoS. The role has been reinforced in Clause 8 of the proposed Regulations.
- ❖ There is no need for an additional requirement of the reporting to be done by the Compliance Officer. The reporting should be permitted from any Authorized officer of the company.

- ❖ Mandating the reporting to be done by a single individual, places an additional load on the organization and will require the Compliance Officer to be available at the time of submission. In case of certain circumstances of non-availability of the Compliance Officer, the submission could get delayed.
- ❖ We recommend that the proposed Regulations should allow for the submission by any Authorized officer of the Licensee and should not insist of the reporting from only the Compliance Officer.

5. Certificate

3 (4) *“Every broadcaster or distributor of television channels, while filing any report as required under sub-regulations (1) and (2) of regulation 3, shall also simultaneously furnish to the Authority a certificate, in electronic format, duly signed by the concerned compliance officer, to the effect that all information in the report is true and correct and all interconnection agreements or modifications or amendments or addenda thereto reported under these regulations are compliant with all regulations, orders and directions made or issued by the Authority and that they do not contravene the provisions contained in any such regulation, order or direction.*”

Tata Sky Comments:

- ❖ All reporting done by the Licensee to the Regulator is required to be true and correct and the TRAI Act has sufficient provisions to take action against any false reporting. Requirement for an additional certificate does not add any value. We would therefore suggest that the requirement for the submission of the certificate should be removed from the final Regulation.
- ❖ Notwithstanding the above suggestion, the following language ‘all information in the report is true and correct to the best our knowledge’ should be permitted in the proposed certificate. The summary reports are a compilation of the signed interconnect agreement and inadvertent compilation errors may occur and should not be a cause to be treated as a non-compliance.
- ❖ The Broadcaster signs the agreement on the basis of our RIO which we have placed on our website (and also submitted with TRAI). While we believe that the RIO is compliant to the Regulations, the Broadcaster could interpret (and are already doing so) that certain clauses are not adhering to the Regulations.
- ❖ Being an issue of interpretation, if TRAI determines that our RIO requires certain modification, then it should not be construed as a non-compliance.
- ❖ Since, such interpretation issues could arise, the additional requirement of pre-certifying that all agreements are compliant should not be made part of this proposed Regulations.