

All India Digital Cable Federation (“AIDCF”) response to Consultation Paper on issues related to Interconnection Regulations 2017

PREAMBLE:

At the outset we would like to express that such consultation paper was not required as the Regulations framed in this behalf are adequate and were framed after due consultation from stake holders. The instant response being submitted by us is with respect to the consultation Paper:-

RESPONSE:

Q.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?

AIDCF’S RESPONSE:

No, the flexibility of defining the target market has not been misused by the DPOs for determining carriage fee. The Authority rightly grants the distributors the flexibility to define the target market for the purposes of distribution of signals of TV channels to subscribers. As an association of prudent MSO, our members have aligned coverage area with the head-end and have declared such area (State) as target market. The said head-ends and its corresponding coverage areas envelop a geographical area having similar linguistic and cultural essences i.e. State. The declaration of target market comprising potential subscribers who would be enjoying the services rendered by the distributors, forms an important aspect of their marketing plans and any restriction on the same would stand in the way of effective retransmission of channels to subscribers and would also curb the fundamental right of the DPOs to carry business freely.

Q2. 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?

AIDCF'S RESPONSE:

The carriage fee under the new regulatory framework has been appropriately determined and the same needs no revision. The framework in its current form with respect to the concept of carriage fee aids in effective implementation of principle of 'must carry'.

However, it is pertinent to mention that as of today, only few of the Broadcasters have approached us for the carriage of the channel through the said Agreement and the same speaks volume about the very intentions of the Broadcasters.

Q3. 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.

AIDCF'S RESPONSE:

The cost of carrying a channel may be determined after taking into consideration the OPEX and CAPEX of the DPOs. However, the Authority after due consideration and consultation has appropriately fixed the carriage fee and therefore the same needs no intervention.

Q4. 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?

AIDCF'S RESPONSE:

No, the right granted to the DPOs to decline to carry a channel having subscriber base less than 5% in the immediately preceding six months is not likely to be misused. It may be pertinent to mention that the cap of 5% has been arrived at by the Authority only after due consultation with the stakeholders and is based on a good criteria. The time period of six consecutive months

as has been prescribed is sufficient enough to ascertain whether or not a channel is being well received and/ or demanded by the subscribers. Moreover, for channels that fail to garner a subscriber base that is less than 5%, the current regulatory framework rightly allows the distributors to decline carrying the channel because if a channel that is not well perceived, carrying it for time period beyond the prescribed limit results in blocking bandwidth by carrying channels which are not popular with the subscriber base. The introduction of criteria of a minimum subscriber base clearly reflects the consumer choice which is the cornerstone of the current regulatory framework. Further, the same also saves the distributors the unnecessary costs associated with carrying unpopular channels.

Issues related to Placement and other agreements between broadcasters and Distributors

Q5. 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.

AIDCF'S RESPONSE:

There appears to be no need to introduce a framework for Interconnection Agreements for placement and accordingly placement fee should not be regulated. Further, with an increased focus on the principle of 'pay for what you want to watch', the importance of placement of channel has drastically reduced because the consumers are choosing the channels they want to watch.

In addressable systems, the technology provides for an EPG, wherein, the channels being carried on a DPO's network can be arranged in a simple and easy to understand manner so that the subscriber can easily go through this guide and select the channel of choice. All the channels that were available on the DPO's platform prior to the implementation of the new regime continue to be on the same position, as in accordance with the new regulatory framework, the LCN cannot be changed before one year from the date of assignment of the channels and hence

even the pay broadcasters who were paying the placement fees in the old regime have stopped paying any placement fee under the new regulatory framework. Furthermore, the Authority has pointed out in para 98 of the Explanatory Memorandum to the Interconnection Regulations 2017, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG.

It is further stated that the Broadcasters have been given the leverage to fix the price of a-la-carte channel as per their wish therefore any attempt to regulate Placement, when carriage is already regulated, would be detrimental to the financial viability of the MSO's, who have been suffering for a long time, accordingly, the placement of channel should be left at the sole prerogative of the MSO.

Q6. 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).

AIDCF'S RESPONSE:

The forbearance provided to the stakeholders in the value chain, in relation to placement agreement, marketing or any other agreement, does not favour the DPOs prejudicially.

In the Interconnection Regulations 2017, the broadcasters have been given a complete freedom to declare the genre of their channels and DPOs have been mandated to place the channels in the EPG under the respective genres so declared by the broadcasters. Further, the Authority has itself pointed out that the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG. Furthermore, it is an exclusive prerogative of the Broadcasters whether to enter into agreements for placement and marketing or not and nothing

compels them for such agreement and accordingly the said can neither be misused and nor will distort the level playing field

It may be noted that the micro-management / regulation of any and all the sources of revenue, which are either outside the purview of the Interconnection Regulations 2017, or within an exclusive and discretionary arrangement between a Broadcaster and the MSO is violative of Article 19 (1) (g) of the Constitution of India and will usurp the serenity of the Broadcasting eco system.

It is pertinent to mention that as the rates of advertisement for Broadcasters has been left at market forces and there is no curb or predefined parameters for the same, similarly the arrangement which is solely at the discretion of the Broadcaster and/or DPOs should not be brought within the purview of TRAI.

Q7. 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?

AIDCF'S RESPONSE:

The aspects of placement are already adequately regulated in the current framework and provides for necessary restrictions and safeguards. Further, the ethos of the new regulatory framework, viz. non-discrimination, transparency and level playing field form the basis of every agreement entered into between the service providers. Any attempt to regulate agreements relating to placement, marketing etc. will curb the right of distributors to carry on business freely and would count as unnecessary incursion in their business affairs.

Q8. 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.

AIDCF'S RESPONSE:

The flexibility given to stakeholders to enter into agreements such as marketing and placement is not being misused by DPOs. Distributors and other stakeholders have to submit before the Authority all agreements such as placement and marketing under the new regulatory framework. That by itself curbs the possibility of DPOs misusing the flexibility granted by the Authority and ensures transparency in the affairs of the distributors.

Q9. Any other issue related to this consultation paper? Give your suggestion with justification.

ABOUT

All India Digital Cable Federation (AIDCF) is India's apex body for Digital Multi System Operators (MSOs). The federation works towards the overall growth of the sector and creates an environment for not only complete digitisation of cable TV under regulatory guidelines but also delivers the benefits of digital services including broadband and other value added services to the people of India thus fulfilling the dream of "True Digital India".

AIDCF is the official voice for the Indian digital Cable TV Industry and interacts with ministries, policy makers, regulators, financial institutions and technical bodies. It also provides a platform for discussion and exchange of ideas between these bodies and the service providers, who share a common interest in the development of digital cable TV in the country. It also collaborates with other industry associations such as IBF, CII, FICCI, ASSOCHAM associations etc., with the objective of presenting an industry consensus view to the government on crucial issues relating to the growth and development of the industry.

Members of AIDCF have a market share of more than 75% in the Cable TV Industry