

Consultation Paper No. 16/2019



**Telecom Regulatory Authority of India**



**Consultation Paper**  
**on**  
**Issues related to Interconnection Regulation, 2017**

25 September, 2019

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**Written comments on the consultation paper are invited from the stakeholders by 23.10.2019. Counter comments, if any, may be submitted by 6.11.2019. The comments and counter comments will be posted on TRAI's website [www.traigov.in](http://www.traigov.in).**

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## **Chapter-I**

### **Introduction**

#### **Background**

- 1.1 The Telecom Regulatory Authority of India Act, 1997 (the TRAI Act) entrusts, amongst others, the functions to ensure technical compatibility and effective interconnection between different service providers, fix the terms and conditions of interconnectivity as well as regulate arrangement amongst service providers for sharing their revenue derived from providing Broadcasting and Cable TV services (B&CS).
- 1.2 The interconnection means commercial and technical arrangements under which service providers connect their equipment and networks to provide broadcasting and cable services to the subscribers. The Authority, in the exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997, notifies interconnection regulations, from time to time. Based on this framework the service providers finalize the commercial and technical terms and conditions to arrive at an agreement.
- 1.3 Keeping in view the implementation of Digital Addressable Systems (DAS) and to enable the sector to realize its benefits, the Telecom Regulatory Authority of India (TRAI), after due consultation process, published a 'new regulatory framework' for digital addressable systems on 3rd March 2017. This framework comprises of The Telecommunication (Broadcasting and Cable ) Services Interconnection (Addressable Systems) Regulations, 2017,

The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 and Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 for providing broadcasting services relating to television through the digital addressable system. The new regulatory framework was notified in March 2017. However, pursuant to legal challenges to the said regulations, the regulations were re-notified on 3<sup>rd</sup> July 2018 and came into effect from 29<sup>th</sup> December 2018 after satisfying legal pronouncements.

- 1.4 In the DAS based TV services value chain, a broadcaster uplinks signals of the television channel to a satellite in encrypted form. The distributor receives the signals from the satellite and decodes them using the decoder provided by the broadcaster. After processing and merging the TV Channel signals of multiple broadcasters the distributor encrypts the combined signals and retransmits it further, either directly or through local cable operator, to customer. The distributor could be a Multi-System Operator (MSO), a Direct to Home operator (DTH), a Head-end in The Sky operator (HITS) or IPTV operator.
- 1.5 The television distribution ecosystem comprises of approx. 1143 active MSOs, 4 private DTH operators, 328 TV broadcasters, one operational HITS operator and a few IPTV operators in the country. The size and network structure of service providers are quite varied as a few of them have a huge subscriber base, while there are many medium and small distributors. As per the industry

estimates, the total revenue of TV Industry is INR 740 billion and there are approximately 197 million TV households<sup>1</sup>.

- 1.6 A total of 902 private satellite TV channels have been permitted by the Ministry of Information and Broadcasting (MIB) for uplinking only/downlinking only/uplinking and downloading both, as on 31<sup>st</sup> March 2019. The number of regional TV channels based on the language mentioned while seeking permission from MIB, as of March 2019 is shown in Table 1.

**Table 1: Number of Regional Language TV Channels  
(Based on permission from MIB)**

REGIONAL LANGUAGE	NUMBER OF CHANNELS
ASSAMESE	10
BANGLA	47
BHOJPURI	11
BODO	2
DOGRI	1
GARHWALI	1
GUJRATI	26
KANNADA	55
KASHMIRI	1
KHASI	1
KONKANI	1
KUMAONI	1
MAITHILI	1
MALAYALAM	67
MANIPURI	2
MARATHI	42
NAGAMESE	1
ODIA	15
OTHER INDIAN REGIONAL LANGUAGES	10
PUNJABI	49
TAMIL	93
TELUGU	87
URDU	5

From the table, one can observe that a large number of TV Channel cater to regional audiences. Further, there are many

<sup>1</sup> FICCI EY India's Media & Entertainment sector report March 2019

Hindi channels that cater to specific state/ regions like State-specific news channels, etc. For example, Tez Aaj Tak caters primarily to Delhi and NCR region and Kashish News caters primarily to Jharkhand region.

- 1.7 The active subscriber base of DTH operators as on 1<sup>st</sup> June 2019 and the areas of their presence is as per table 2 below:

**Table 2: Number of Subscribers of DTH Operators as on 1st June 2019**

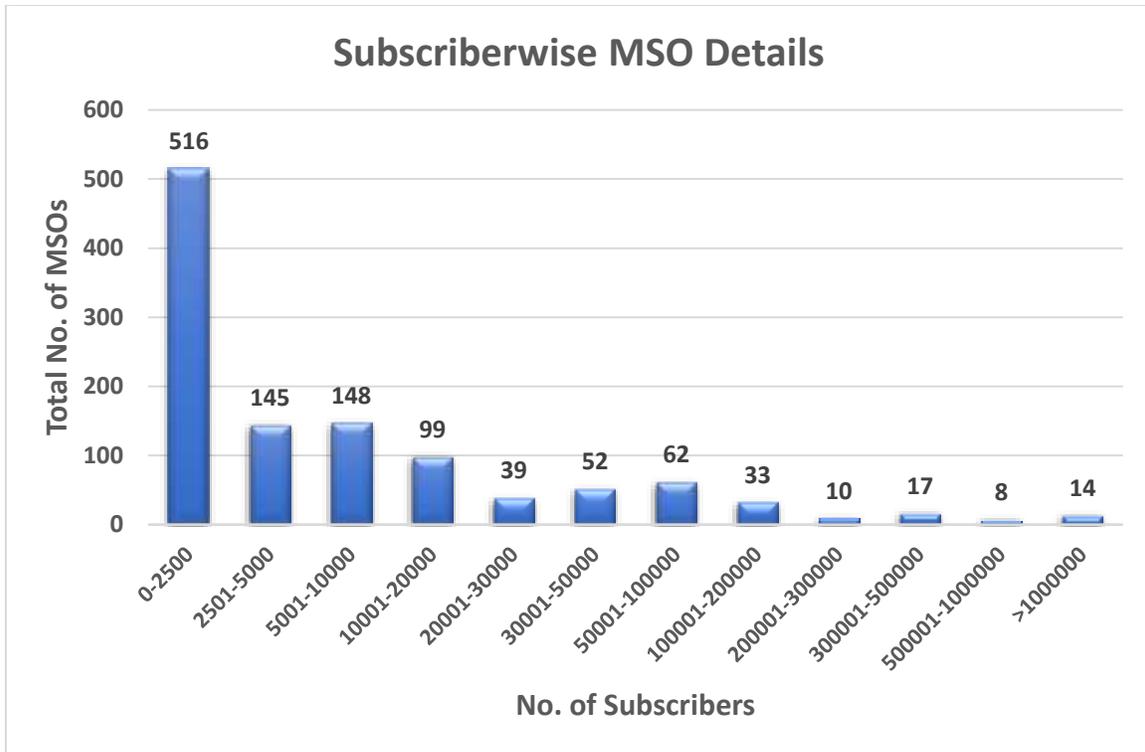
<b>S.No.</b>	<b>Name of DPO</b>	<b>Active Subscriber Base (mn)</b>	<b>Area of Operation</b>
1	Dish TV	16.9	Pan India
2	Airtel	12.5	Pan India
3	SUN Direct	7.3	Pan India
4	Tata Sky Limited	17.4	Pan India
<b>Total</b>		<b>54.1</b>	

- 1.8 While the DTH market comprises of a limited number of players, the country is covered by a large number of MSOs that provide service mainly through Local Cable Operators (LCOs). At present, there are 1471 registered MSOs<sup>2</sup> and more than 60000 local cable operators. Not all registered MSOs are operational at present. Based on MIB data, at present, there are 1143 active/operational<sup>3</sup> MSOs. Only 82<sup>4</sup> MSOs have a subscriber base of more than 1 lakh active subscribers. Graph 1 reflects the number of MSOs in each category as per their subscriber base:

<sup>2</sup> Ministry of Information and Broadcasting data dated 27.8.2018 and 21.1.2019, which includes 2 provisional registered MSOs

<sup>3</sup> Ministry of Information and Broadcasting data dated 21.1.2019

<sup>4</sup> TRAI Information as per subscription figure filed with TRAI in February 2019.



**Graph 1: Subscriber wise Frequency Distribution of MSOs**

1.9 The present active subscriber base of the top 15 MSOs and the areas of their presence is as per table 3:

**Table - 3: Number of Subscribers of Major MSOs as on 1st April 2019**

S. No.	Name of MSO	Active Subscriber Base (mn)	State-wise Area of Operation
1	Siti Networks Ltd	11.13	Punjab, Karnataka, Rajasthan, Kerala, Delhi, Uttar Pradesh, West Bengal, Jharkhand, Madhya Pradesh, Haryana, Odisha, Chhattisgarh, Andhra Pradesh, Telangana & Bihar
2	Den Networks Limited	7.03	Gujarat, Karnataka, Rajasthan, Kerala, Uttarakhand, DELHI-NCR, Uttar Pradesh, West Bengal, Jharkhand, Madhya Pradesh, Haryana & Bihar

3	Hathway Digital Pvt. Ltd	6.69	Delhi, Karnataka, Madhya Pradesh, Maharashtra Rajasthan, Tamil Nadu, West Bengal & Telangana
4	GTPL Hathway	5.25	Rajasthan, Gujarat, Madhya Pradesh, Maharashtra, Telangana, Andhra Pradesh, Bihar, Jharkhand, West Bengal & Assam
5	IMCL	4.54	Delhi, Uttar Pradesh, Haryana, Maharashtra, Gujarat, Karnataka & Andhra Pradesh
6	Fastway	4.01	Punjab, Himachal Pradesh, Haryana, Uttar Pradesh, Uttarakhand & Chandigarh
7	ARASU(TACTV)	3.22	Tamil Nadu
8	KCCL	2.13	Kerala
9	TCCL	1.59	Tamil Nadu, Andhra Pradesh & Pondicherry
10	Asia Net	1.45	Kerala, Karnataka, Andhra Pradesh & Telangana
11	eDigital	1.25	Karnataka, Andhra Pradesh
12	KAL Cables	1.2	Tamil Nadu, Andhra Pradesh & Pondicherry
13	VK Digital	1.1	Tamil Nadu, Andhra Pradesh, Karnataka & Pondicherry
14	UCN	1	Maharashtra & Madhya Pradesh
15	Act Digital	0.74	Karnataka, Andhra Pradesh & Telangana
<b>Total</b>		<b>52.33</b>	



### Present Consultation

1.10 Quite a few regional broadcasters have submitted representation regarding the declaration of bigger target market by DPOs. The regulations provide freedom to the DPOs to declare their target market for the purpose of ascertaining the carriage fee. Some of the distribution platform operators (particularly DTH operators) have declared PAN India as their target market. In case these regional broadcasters desire that their channel(s) is carried on such distribution platforms, they are required to pay carriage fee on national subscription figures of such distributors. Whereas, such

regional channels have a clear strategy to create content suited to certain regional markets. Due to this mismatch of the channel's focus (on a regional market) and carriage fee payment on the basis of the national market, such regional channels are constrained to pay a much larger carriage fee and finding it difficult to survive in the market.

- 1.11 This has created a negative economic barrier for regional channels thereby limiting their presence on smaller distribution platforms. The proposition to pay carriage fee for national market makes it unviable for such channels. Further, the number of subscriptions for these channels may never reach the requisite threshold as envisioned vide schedule I of the Interconnection Regulation, 2017. Not only does this put an undesired financial burden on regional broadcasters, it also makes them prone to undue arm twisting as their subscription on national basis continues to remain lower than the minimum prescribed threshold of five percent (5%).
- 1.12 Telecom Disputes Settlement and Appellate Tribunal (TDSAT) also recommended the Authority to examine the issue. According to TDSAT order dated 29.07.2019, the main challenge appears to be to the wisdom of the Regulator in giving liberty to DTH operators to declare their target areas. Adhering to the orders, the Authority had several meetings with each group of stakeholders in the industry including News Broadcasters, Broadcasters, DTH operators, MSOs and regional broadcasters to discuss their viewpoints and come forward with a balanced solution that is in the interest of both the concerned parties (DPOs and regional broadcasters).

- 1.13 Further, the provision related to listing of the channels in the Electronic Program Guide (EPG) were made so that there is no requirement for a broadcaster for asking for a specific position in the EPG. As of now the placement agreement, marketing agreements or any other technical or commercial arrangements between broadcasters and Distributors (apart from RIO based agreements) are in forbearance. But now, quite a few complaints have been received from various broadcasters whereby it is being alleged that some DPOs are resorting to pushing for marketing/placement/promotion agreement, by exploiting the available forbearance.
- 1.14 The objective of this consultation process is to review the provisions of the existing Interconnection Regulation 2017 and consult all the stakeholders on the following issues:
- i. Issues related to Target Market
  - ii. Issues related to Placement and other agreements between broadcasters and Distributors.
- 1.15 This consultation paper has been organized into four chapters. Chapter II of this paper discusses in detail, the issues related to target market. Chapter III discusses the issues related to Placement and other agreements between broadcasters and Distributors and Chapter IV summarizes the issues for consultation.

## Chapter-II

### Issues related to Target Market

2.1 A target market generally refers to a group of potential customers to whom a company wants to sell its products and services. Identifying the target market is an essential step for any company in the development of a marketing plan. In TV channel distribution, the target market refers to a defined coverage area of distribution network.

2.2 According to regulation 4 of the Interconnection Regulation, 2017

*“(3) Every distributor of television channels shall declare coverage area of each distribution network as a target market:*

*Provided that it shall be permissible for a distributor to declare, in non-discriminatory manner, any area within the coverage area of distribution network as a target market.*

*Explanation: For the purpose of this regulation, each Head-end or Earth Station, as the case may be, and its associated network used for distribution of signals of television channels shall constitute one distribution network.”*

*“(4) Every distributor of television channels shall, within thirty days from the commencement of these regulations or within thirty days from the commencement of its operations, as the case may be, on its website, publish—*

*(a) target markets as declared under sub-regulation (3) of this regulation;.....”*

*(8) It shall be permissible to the distributor of television channels to discontinue carrying of a television channel in case the monthly subscription percentage for that channel is less than five percent of the monthly average active subscriber base of that distributor in the target market specified in the interconnection agreement, in each of the immediately preceding six consecutive months:”*

2.3 As per regulation 8 of the Interconnection Regulation, 2017

*“(2) The reference interconnection offer, referred to in sub-regulation (1), shall contain the technical and commercial terms and conditions relating to, including but not limited to, target market, rate of carriage fee per month, average active subscriber base of standard definition set top boxes and high definition set top boxes at the time of publication of the reference interconnection offer, discounts, if any, offered on the rate of carriage fee, manner of calculation of carriage fee payable to the distributor and other necessary conditions:*

*Provided that the rate of carriage fee per standard definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed twenty paisa:*

*Provided further that the rate of carriage fee per high definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed forty paisa:*

*Provided also that a distributor of television channels shall calculate the carriage fee amount for television channels as per the provisions specified in the Schedule I, which shall change with the changes in monthly subscription percentage of such television channels.....”*

2.4 According to regulation 10 of the interconnection regulation, 2017

*“ Every distributor of television channels shall enter into a new written interconnection agreement, for carrying television channels requested by a broadcaster, before the expiry of the existing interconnection agreement:*

*....*

*Provided further that a distributor of television channels shall not discontinue carrying a television channel if the signals of such television channel remain available for distribution and monthly subscription percentage for that particular television channel is more than twenty percent of the monthly average active subscriber base in the target market:...”*

2.5 According to regulation 14 of the interconnection regulation, 2017

*“(3) Every distributor of television channels shall issue monthly invoice to the broadcasters, with whom the written interconnection agreements have been entered into for carrying channels, for payment of the carriage fee payable by such broadcaster along with the average active subscriber base in the target market in the month and the monthly subscription report for the channel of the broadcaster carried by the distributor of television channels in the format specified in the Schedule VII and such invoices shall clearly specify the current payment dues and arrears, if any, along with the due date for payment:...”*

- 2.6 As per sub-regulation (2) of regulation 8 of the interconnection regulation, 2017 the rate of carriage fee per standard definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed twenty paisa while the rate of carriage fee per high definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed forty paisa.
- 2.7 As per Schedule I of Interconnection Regulation 2017, the carriage fee amount, for each month or part thereof, during the term of the interconnection agreement shall be calculated as given below:
- a. If monthly subscription for a channel in the target market is less than five percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by the average active subscriber base of the distributor in that month in the target market
  - b. If monthly subscription for a channel in the target market is greater than or equal to five percent but less than ten percent of the average active subscriber base of the distributor in that

month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.75 times of the average active subscriber base of the distributor in that month in the target market.

- c. If monthly subscription for a channel in the target market is greater than or equal to ten percent but less than fifteen percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.5 times of the average active subscriber base of the distributor in that month in the target market.
- d. If monthly subscription for a channel in the target market is greater than or equal to fifteen percent but less than twenty percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.25 times of the average active subscriber base of the distributor in that month in the target market.
- e. If the monthly subscription for a channel in the target market is greater than or equal to twenty percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to 'Nil'.

2.8 In the existing regime, the broadcasters are required to pay monthly carriage fee depending upon the average active subscriber base of the DPO in the target market declared by the DPO.

However, the genesis of carriage fee regime stems from the fact that every DPO creates an infrastructure to distribute TV channels. There is a cost associated with the development of such infrastructure. Such as, for seeking transponder capacity, the DTH operators are required to pay satellite bandwidth charges or the transponder costs. Similarly, the MSOs also create the infrastructure at their Head-end to transmit a given number of channels by deploying encoders and related equipment. In addition, there are recurring costs in form of bandwidth charges paid to the bandwidth providers or the cost of OFC network to transmit signal from Head-end to LCOs. Thus, every DPO makes proportionate investments (one-time establishment cost as-well-as recurring costs) to transmit TV channels. However, it needs to be taken into consideration that major proportion of the investment may be recovered through Network Capacity fees, and distribution fee by providing TV Service to subscribers.

- 2.9 Many regional broadcasters have represented to TRAI that several distributors have declared either 'the whole country' or 'combination of some states together' as their target market. As a result number of subscribers in notified target market is very high and hence the applicable carriage fee. In many cases it may be much more than the cost of creating relevant infrastructure. Further, the number of subscriptions for their channels can never reach the requisite threshold as envisioned vide schedule I of the Interconnection Regulation, 2017. The subscription of such channels on national basis continues to be lower than the minimum threshold of 5% despite very high subscription in their respective regional market. This gives an opportunity to DPOs to

misuse the existing provisions in the regulation to drop their channels from DPOs platform.

- 2.10 These broadcasters have represented that they are left to the mercy of the distributors as the distributor is not mandated to carry such channels which have a subscription of less than five percent (5%) of monthly average active subscriber base, in each of the immediately preceding six consecutive months. Pertaining to this issue a broadcaster has represented to the authority that the right granted to the DPO with an option to decline to carry a channel having a subscriber base less than 5% should be done away with.
- 2.11 As a result of the present carriage fee regime, the availability of small regional channels on big DPOs is reducing. This may seriously affect the plurality of regional content available in Indian market and reduce competition among broadcasters. In addition, they are required to pay huge carriage fee as the target market is 'Pan India'. Further, in such cases when 'entire India' or a 'multiple states' is declared as target market they will be required to pay huge carriage fee in future also as the monthly subscription for their channel in the target market (i.e. entire India) may never be greater than or equal to twenty percent of the average active subscriber base of the distributor in any month in the target market.
- 2.12 The viewership of these broadcasters is confined mainly to one or two cities or at the most few states. But as some of the distribution platform operators define much larger areas as target market, the broadcasters are required to pay much higher carriage fee based on the entire subscriber base of such DPO in the target market. As a result of this, broadcasters have represented that carriage fee in

totality should be done away with for regional and FTA channels as the only source of revenue for survival of these channels are advertisement revenue and such unrealistic and unsustainable methodology of calculation of carriage fee would make their business unviable.

- 2.13 The main apprehension that remains today, is with the manner of calculation of carriage fee which is dependent on the target area declared by the distributor. Many broadcasters believe that DPOs will not allow channels to reach beyond 20% subscriber base for their own carriage benefits as DPOs would never prefer a model where channel reach to a target of 20% subscriber base in return of no carriage fee paid to them.
- 2.14 According to a representation received from a broadcaster, DPO should not receive any carriage fee on pay channels as they already avail hefty 20% on Distribution fee from Pay TV Broadcasters and thereafter a healthy Network Capacity Fee from each subscriber. Further news channel being integral and of grave importance in public interest to the nation as a whole, carriage fee should be done away with in public interest especially for FTA channels.
- 2.15 One of the broadcasters has represented to the Authority that it is not correct to leave the Target market definition at the sole prerogative and discretion of the DPOs. Since carriage fee deals in terms of present regulations are virtually impossible and commercially unviable, therefore the authority should revisit the rate of carriage fee/target market definition and the entire carriage fee regime with respect thereto. They have also suggested that if the Authority is of the view that carriage fee should continue then

the same should be substantially brought down from the current carriage fee rates and the target market should be regulated through Regulations.

2.16 The target market defined by DTH Operators is shown in Table 4.

<b>Table 4: Target market defined by DTH Operators (6<sup>th</sup> August 2019)</b>	
<b>DTH Operator</b>	<b>Target Market declared by the DTH operator</b>
Airtel DTH	PAN India
Dish TV	PAN India
Tata Sky	PAN India
Sun TV	PAN India

2.17 The target market defined by few major MSOs is shown in Table 5.

<b>Table 5: Target market of few major MSOs (6<sup>th</sup> August 2019)</b>		
<b>MSO</b>	<b>Location of Headend</b>	<b>Target Market declared by the MSO</b>
Hathway Digital Private Limited	Bangalore	Karnataka
	Bhopal	Madhya Pradesh
	Delhi	Delhi, Haryana, Rajasthan & Uttar Pradesh
	Hyderabad	Telangana
	Kolkata	Odisha, West Bengal, Sikkim
	Mumbai	Maharashtra
Den Networks Limited,	Bangalore	Karnataka
	Okhla	Haryana

		Madhya Pradesh
		NCT of Delhi & NCR
	Shahdara	Rajasthan
		Uttar Pradesh
		Uttarakhand
	Kolkata	Jharkhand
		West Bengal
	Mumbai	Maharashtra
	Vadodara	Gujarat, Daman & DIU, Dadra & Nagar Haveli
	Eranakulam	Kerala
	Patna	Bihar
Siti Networks Limited,	Indore	Madhya Pradesh
	Bilaspur	Chattisgarh
	Korba	Chattisgarh
	Hyderabad	Odisha
		Telangana
	Noida	Delhi
		Haryana
		Rajasthan
		Uttar Pradesh
	Agra	Uttar Pradesh
	Kanpur	Uttar Pradesh
	Banglore	Karnataka
	Mumbai	Maharashtra
Nagpur	Maharashtra	
Kolkata	West Bengal	
	Orissa	
GTPL Hathway Limited	Ahmedabad	Gujarat, Rajasthan,
		Goa, Maharashtra (except Nanded District)

		Bihar, Jharkhand
		Assam
		Andhra Pradesh, Telangana, Nanded District in Maharashtra
UCN Cable Network Pvt. Ltd.	Nagpur	Maharashtra and Madhya Pradesh

2.18 From Table 4 and Table 5 it is observed that mainly the DTH operators have defined entire India as their target market. Whereas most of the MSOs have declared multiple states/ large states as their target market. Such declaration is in-general not aligned with the regional market as shown in Table 5. For example, Maharashtra and Madhya Pradesh have been declared as one target market though they may have different taste and preference of the consumers.

2.19 In the present scenario when certain DPOs have declared the target market as 'Pan India' then the details of the carriage fee that a regional broadcaster may be required to pay in case the broadcaster requests a distributor of television channels to carry its channels on the distribution network is shown in Table 6:

**Table 6: Carriage fee required to be paid by a broadcaster**

S.No.	Name of DTH Operator	Active Subscriber Base (mn)	CARRIAGE FEE TO BE PAID MONTHLY FOR ONE SD CHAANEL (In RS. millions)				
			If Monthly Subscription is below 5%	If Monthly Subscription is between 5-10%	If Monthly Subscription is between 10-15%	If Monthly Subscription is between 15-20%	If Monthly Subscription is above 20%
1	Dish D2H	16.6	3.32	2.49	1.66	0.83	0
2	Airtel	12.1	2.42	1.815	1.21	0.605	0
3	SUN Direct	6.7	1.34	1.005	0.67	0.335	0
4	Tata Sky Limited	14.35	2.87	2.1525	1.435	0.7175	0



2.20 From the above table, it is clear that while the coverage area for all the four DTH operator is all India, still the carriage fee payable to each of the DTH operators have great variations. In many cases, it may be much higher than the cost of providing one channel across country. There, one may opine that why should a carriage fee higher than the cost of creating relevant infrastructure be provided.

2.21 Interconnection regulation 2017 specifies new carriage fee regime as the same in the previous regime was discriminatory and non-uniform. There were cases of some DPOs demanding/ charging exorbitant carriage fees. India is a diverse country with varied language, culture, and tradition. The tastes and preferences of people generally change after every 50-100 km. The carriage fee regime as mentioned in the Interconnection Regulation 2017 aims to cater to the varied choices of the consumers. The DPOs have been provided with the flexibility to declare different target market as per the local choice of the consumers, whereas the broadcasters are required to declare uniform MRP of their channels/bouquets. The flexibility of target market enjoins DPOs to create channel packages suited to the local choices of the consumers. However, a cursory analysis of carriage fee 'Reference Interconnect Offers' by various DPOs reflect that some of them have given scant regard to the interest of consumers. Instead such service providers have tried to maximize their carriage fee revenue while declaring 'target market(s)'. For example, one DPO has declared Maharashtra and Madhya Pradesh together as a single target market. With 42 Marathi channels (see Table 1), one can easily infer that there exists a distinct regional market for 'Marathi' language. Merging such regional market with Madhya Pradesh, which is a

predominantly Hindi language state, conveys scant regard to consumers' choice/ interests. This also works as 'Barriers to entry' for small regional broadcasters.

- 2.22 On the other hand, the DPOs, especially the DTH service providers contend that the coverage area of their signal is across the geography of the country. The technology chosen by them does not allow to restrict signals to a limited geographical coverage area. Once a channel is available on the DTH platform it is distributed across the coverage area. Therefore, they cannot declare state-wise or city-wise target areas.
- 2.23 From the meetings held with different groups of industry stakeholders and from the empirical evidences received from some major DPOs, it is clear that post the implementation of New Tariff Order (NTO), the service providers (broadcasters and distributors) are generally not entering into carriage fee agreements, instead they are signing placement/ marketing/ landing page and other commercial agreements. One of the main reasons for the above is that the carriage fee for the target market defined by the DPOs especially DTH operators (pan India or multiple states) comes out to be exorbitantly high.
- 2.24 According to some of the broadcasters, the decision of declaration of target market should be left upon them as it is their channel and they should have the freedom to decide that which sector of the population will opt for their channels. Almost all the regional broadcasters want that the target market should only be their respective state/ city/ territory and they should not be asked to pay carriage fee for the entire universe (PAN India).

- 2.25 The DPOs however, have a different opinion. According to some of the distributors, the cost of infrastructure associated with running a channel is significant. In case the provision related to target market is altered to states, it will alter their revenue structure. Any reduction in the revenue stream from carriage fee will result in additional subscription cost for the consumers. In addition, any smaller target market will mean more and more broadcasters will achieve subscription threshold of 20%. As soon as the subscription crosses the threshold, their carriage fee revenue will reduce to zero. As per extent provisions a broadcaster is exempted from payment of any carriage fee if the monthly subscription of his channel in the target market exceeds 20%.
- 2.26 As per DPOs, even if a broadcaster is mandated to pay a carriage fee of twenty paisa per subscriber per state irrespective of the total active subscriber base, the DPO will still not be able to recover his/her costs. Let us suppose that a DPO has a subscriber base of five lakh in particular state which cumulates to a carriage fee bill of one lakh rupees per month. A distributor will never carry such a channel at his/her expense. Further, even in case a distributor decides to carry forward a channel at his loss then there are several other channels that might approach that DPO demanding the same relaxation. A DPO will not be able to fulfill such demands as there are issues with network capacity associated with this. DPOs in India have a channel carrying capacity ranging from 250 to 600 channels and there are presently a total of 902 private satellite channels available in the country. Certainly, a DTH operator cannot carry all the channels due to limitation of transponders.

2.27 In view of above, the authority wants to consult its stakeholders on the issues related to target market.

### **Possible Alternatives for Target Market**

2.28 As per the Interconnection Regulation 2017, every distributor of television channels may declare any area within the coverage area of distribution network as a target market and for the purpose, each Head-end or Earth Station, as the case may be, and its associated network used for distribution of signals of television channels shall constitute one distribution network. Thus, MSOs may declare its target market as the area covered under a head end or any smaller area within the total area covered by a head end. Table 5 provides details of the Target market declared by few major MSOs. Some of the MSOs have stated their target market in terms of states while others have defined their target market in terms of cities of the nation. However, the problem is more pronounced in the case of DTH operator.

2.29 DTH operators have declared PAN India as their target market. As mentioned earlier, DTH operators assert that the technology selected by them does not allow to restrict signals to a limited geographical coverage area, therefore, their DTH signal's coverage area is the entire country. Once a channel is available on the DTH platform it is distributed across the entire coverage area. Therefore, they cannot declare state-wise or city-wise target areas. On the other hand, any broadcaster working on a small scale having limited capital will not be able to ensure that his/her channel is carried by on the desired DPO platform as he/she is required to pay a huge carriage fee. Major viewership of many of these

channels is confined to only a few cities or states of the country. Therefore, it will be unfair for all those regional broadcasters (offering those channels) to pay carriage fee factoring in the active subscriber base of PAN India of the DPO. In view of above, one option could be that carriage fee may be linked to cost of carrying a channel. In this option the cost of carrying a channel may be worked out and the amount of carriage fee that a broadcaster may be required to pay the distributor may be capped at that level. In this case, the issue for consideration would be to determine the cost of carrying a channel.

2.30 Further as per regulation 4 (8) of the Interconnection Regulation, 2017

*“(8) It shall be permissible to the distributor of television channels to discontinue carrying of a television channel in case the monthly subscription percentage for that channel is less than five percent of the monthly average active subscriber base of that distributor in the target market specified in the interconnection agreement, in each of the immediately preceding six consecutive months:”*

2.31 Thus, as per the Interconnection Regulation 2017 in case the monthly subscription percentage for any channel is less than five percent of the monthly average active subscriber base of that distributor in the target market, then it is up to the DPO to carry or not to carry that channel. Thus, a small regional broadcaster will be left at the mercy of the DPO to be carried on his/her platform.

2.32 The subscription of Regional channels on national basis continues to be lower than the minimum threshold of 5% despite very high subscription in their respective regional market. This makes them prone to undue arm twisting by the distributors. To address this

issue, one may opine that the threshold of 5% may be done away with especially for DTH platform as their target market is Pan India, however in case of MSOs this condition may remain.

### **Issues for consultation**

- 2.33 **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?**
- 2.34 **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?**
- 2.35 **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.**
- 2.36 **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?**

## Chapter-III

### Issues related to Placement and other agreements between broadcasters and Distributors

- 3.1 The Interconnection Regulation 2017 promotes transparency, fairness, level playing field and non-discrimination as core principles. In the new regulatory framework, the emphasis has increased on consumer choice.

#### Placement Agreements

- 3.2 In addressable systems, the technology provides for an Electronic Program Guide (EPG) wherein 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 instead of flipping through all the channels.
- 3.3 The issue of placement agreements essentially relates to listing of channels in the Electronic Programme Guide (EPG). In order to curb the practice of frequent change in LCN number and address other issues related to placement of channels, the Interconnection Regulation 2017 mentions the following:

*“18. Listing of channels in electronic programme guide.— (1) Every broadcaster shall declare the genre of its channels and such genre shall be either ‘Devotional’ or ‘General Entertainment’ or ‘Infotainment’ or ‘Kids’ or ‘Movies’ or ‘Music’ or ‘News and Current Affairs’ or ‘Sports’ or ‘Miscellaneous’.*

*(2) It shall be mandatory for the distributor to place channels in the electronic programme guide, in such a way that the television channels of same genre, as declared by the broadcasters, are placed together consecutively and one channel shall appear at one place only:*

*Provided that all television channels of same language within the same genre shall appear together consecutively in the electronic programme guide:*

*Provided further that it shall be permissible to the distributor to place a channel under sub-genre within the genre declared for the channel by the broadcaster.*

*(3) Every distributor of television channels shall assign a unique channel number for each television channel available on the distribution network.*

*(4) The channel number once assigned to a particular television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment:*

*Provided that this sub-regulation shall not apply in case the channel becomes unavailable on the distribution network:  
Provided further that if a broadcaster changes the genre of a channel then the channel number assigned to that particular television channel shall be changed to place such channel together with the channels of new genre in the electronic program guide.”*

- 3.4 Thus, as per the Interconnection Regulation, 2017 the DPOs are mandated to list all the channels available on the platform in the EPG, in such a manner that a consumer can easily select the channel of his/her choice. The genre and language-wise listing of TV channels in the EPG is done so as to ensure placement of a channel among similar channels.
- 3.5 Further, as per Interconnection Regulation 2017, a broadcaster cannot put any pre-condition for providing signals to the DPOs to place his channels at a particular position in the EPG or to assign a particular number to his channel as such stipulation may not be practically possible to implement. For example, if any two broadcasters insist for the same position in the EPG as a pre-condition before providing signals of their TV channels then it is not practically possible for a DPO to meet the pre-condition.

- 3.6 According to the Interconnection Regulation 2017, the broadcasters were given complete freedom to declare the genre of their channels and in terms of the regulations, it was mandated that a DPO shall place the channels in the EPG under the respective genres so declared by the broadcasters. Further, it was also mandated that DPOs shall place the channels of the same genre in such a manner that all TV channels of the same language within the same genre shall appear together consecutively in the EPG.
- 3.7 In order to curb the practice of frequently changing LCN number, it was mandated that LCN number once allocated will not be changed for the duration of at least one year. Therefore, the placements of channels were adequately regulated and necessary protection were granted to the broadcaster so that their channels were not placed at any disadvantageous position in the EPG. Hence as such, there was no requirement for a broadcaster for asking for a specific position in the EPG
- 3.8 Consumer choice is the fulcrum of the new regulatory framework. Therefore, when consumers choose the channels which they want to view; the importance of the placement of the channel reduces drastically.
- 3.9 However, in case, a broadcaster still wishes to place its channel at a particular position or a specific number assigned to its channel, subject to the provisions of these regulations, the broadcaster may offer discount within the prescribed framework or pay the mutually agreed fee, after signing the interconnection agreement, to a distributor for placing the channel.

- 3.10 Interconnection Regulation 2017, prescribes that the DPO can't alter the LCN for a channel for at least a period of one year. Further that no channel should be placed outside its defined language/genre. Hence, it was expected that there was no need for the placement agreements, unless a broadcaster seeks a particular LCN within its category (language/genre).
- 3.11 The objective of such scheme was that consumer who is interested in one specific type of genre is not forced to move across all channels to get TV channel of his choice. Further, the regulation also endeavors that the malfeasance by some DPO to arm-twist the Broadcasters by unilaterally changing the LCN of their channel is curbed. Frequent changes in LCN of a channel put a consumer to inconvenience. Unregulated allocation of LCN also impacted the viewership of channel. The regulation therefore balances the stakeholders' interests, keeping in view of the consumer convenience, and ensures level playing field for both the broadcasters and DPOs
- 3.12 But representations have been received from many broadcasters where they have mentioned that the DPOs are arm-twisting these broadcasters to sign placement fee deals dehors the interconnection regime.
- 3.13 In a separate consultation, the Authority has already sought the comments of the stakeholders on the issue related to listing of the channels in the Electronic Program Guide (EPG).
- 3.14 Therefore, it is for consideration as to whether there should be a framework for regulating the Interconnection Agreement for placement. The Authority would like to consult all the stakeholders on the above mentioned issues.

## **Marketing and other agreements**

3.15 The new regulatory framework, lays emphasis on consumer choice. It is observed that many times a fee in the name of marketing was paid by a broadcaster to DPO for the promotion and advertisement of its TV Channel. Sometimes broadcasters provide incentives to the distributors for inclusion of channels in the bouquets offered by the DPO in the name of marketing fee. Provision of channels/ bouquets to the subscriber only as per her/his choice is the cornerstone of the new regulatory framework. Therefore an incentive in whatever form for inclusion of a specific channel in certain bouquet/ package against the choice of subscriber is not the spirit of the regulatory framework. It is the subscriber who should decide choice of channels and not due to pushing of channel(s) by a service provider. It is with this reason that the interconnection regulations 2017, mandates that no incentive, in whatsoever name, can be given by the broadcaster to the DPO for inclusion of its channels in the DPO's bouquet.

3.16 Further, as per the new Regulatory framework, every distributor of television channels shall offer at least one bouquet, referred to as basic service tier (BST), of one hundred free-to-air channels including all the channels to be mandatorily provided as notified by the Central Government to all the subscribers and such bouquet shall contain at least five channels of each genre as referred to in the Interconnection Regulations, 2017. Such bouquet shall be **one of the options** available to a subscriber. As per new Regulatory framework, the subscriber, as per his/her requirement, shall have complete freedom to choose either bouquet of basic service tier or any other bouquet of pay channels or any other bouquet of free-to-air channels or a-la-carte pay channels or a-la-carte free-to-air channels available on the

platform of the distributor of television channels or a combination thereof. Incidences has been brought to the notice of the Authority that provision of BST is being mis-interpreted and being pushed to consumers as only option for initial 100 channels. Hefty fee is being charged by some DPOs from broadcasters to keep their channels in BST.

- 3.17 However, representations have been received from quite-a-few broadcasters stating that the DPOs are arm-twisting them to sign marketing/ promotion fee deals, in the garb of putting their channels in a specific package. 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.
- 3.18 In one case a Regional broadcaster has informed TRAI that a DPO in the name of promotional activities and non-placement of the channel in relevant genre with threat of disconnection of channel is forcing him to sign promotional charge MOU to extort money from him.
- 3.19 Many broadcasters have complained that some DPOs are denying them subscription agreement and are imposing supplementary terms for signing placement/ promotion agreement as a precondition for the signing of the subscription agreement. Many FTA broadcasters have also informed TRAI that DPOs are forcing them to sign marketing/ promotion/ placement fee agreements otherwise they would not include them in the BST.

- 3.20 Many small regional broadcasters have also submitted that certain DPOs are threatening discontinuance of their channels from the platform if they do not sign placement/ market promotion deals.
- 3.21 One of the regional broadcasters has also informed TRAI that their channels are very popular and in-demand in their territory. Therefore, knowing fully well that they cannot afford to be taken off the channel from platform, under threat of disconnection as well as by way of misleading scrolls on their channels, an attempt is being made to extort money by way of forcing these broadcasters to sign a carriage agreement in the guise of promotional charges.
- 3.22 The marketing fee towards promotion and advertisement of services contribute towards increase in business. Such increase is due to the joint effort of both the parties. Therefore, there cannot be a specific parameter for regulating such fee. Hence, in the Interconnection Regulation the Authority had recognized that at this stage, any regulation by Authority on such fee is bound to be a porous regulation. Still the Authority has permitted such fee/ agreements provided these are on mutual agreed terms. However any agreement, for any kind of fee for carrying/ promoting a channel, between two service providers should be made part of interconnection agreement and reported to the Authority to enable the Authority to monitor the industry practices.
- 3.23 As mentioned earlier the Interconnection Regulation 2017 mandates transparency, level playing field, fairness and non-discrimination as core principles. Therefore, all the consequential agreements (consequential to the Interconnection agreement) between the service providers must comply with the principle of Transparency, level

playing field, fairness and non-discrimination. Vis-à-vis these agreements (marketing fee or any other nomenclature of mutual agreement among service providers), the Authority has till date followed a principle of light touch regulatory regime, whereby no ceiling or formula has been prescribed. However, as a sector regulator it is important that such agreements do not hinder the growth of the sector and must not be misused by DPOs to force particularly smaller & FTA Broadcasters to get money.

- 3.24 In view of above, the Authority would like to consult all stakeholders whether such placement fee/ marketing fee agreements should be regulated.

#### **Issues for consultation**

- 3.25 **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.**
- 3.26 **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).**
- 3.27 **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?**

- 3.28 **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.**
- 3.29 **Any other issue related to this consultation paper? Give your suggestion with justification.**



**Chapter-IV**  
**Summary of Issues for Consultation**

**Issues related to Target Market**

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?**
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?**
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.**
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?**

**Issues related to Placement and other agreements between broadcasters and Distributors**

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.**

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

## **Glossary**

<b>Abbreviation</b>	<b>Description</b>
DAS	Digital Addressable System
DPO	Distribution Platform Operator
DTH	Direct to Home
EPG	Electronic Program Guide
FTA	Free To Air
HITS	Head-end In the Sky
IPTV	Internet Protocol TV
MSO	Multi-System Operator
MRP	Maximum Retail Price
RIO	Reference Interconnection Offer
STB	Set-Top Box
TRAI	Telecom Regulatory Authority of India

