

GTPL Hathway Limited's Response to the Draft Telecommunication (Broadcasting & Cable Services) Interconnection (Addressable Systems) Regulations, 2016

15th November 2016

To,

Mr. Sunil Kumar Singhal

Advisor (B&CS)

Telecom Regulatory Authority of India (TRAI)

New Delhi

Sub: Comments on the draft Telecommunication (Broadcasting & Cable Services) Interconnection (Addressable Systems) Regulations, 2016 (Draft Interconnection Regulations of 2016)

Sir,

We thank the Authority for providing us with the opportunity to share our comments on the Draft Interconnection Regulations of 2016.

As desired by the authority, we are limiting our response to only those provisions of the Draft Interconnection Regulations of 2016, which in our opinion require some modification, in order to protect the interests of consumers and further help in reducing disputes between the stakeholders, in the following manner:

S. No.	Existing Draft Interconnection Regulations	Modification/Addition/Deletion proposed by GTPL Hathway Limited to the Draft Interconnection Regulations	Detailed Reasons for the proposals by GTPL Hathway Limited
1	<p>Clause 2 1(b) reads as under:</p> <p>“active subscriber” means a subscriber who has been authorized to receive signals of television channels as per the subscriber management system and whose set top box has not been denied signals;</p>	<p>It is proposed to make the following amendment:</p> <p>“active subscriber” means a subscriber who has been authorized to receive signals of television channels as per the subscriber management system and whose set top box has not been denied signals, for a continuous period of 91 days or more;</p>	<p>It is important to draw a difference between an “active Subscriber” and a “churned Subscriber”. A temporarily deactivated subscriber most of the time returns as an active subscriber. However for the purpose of payment to broadcasters active channels on STB of the subscriber shall only be considered.</p> <p>Very often broadcasters take a count of active STBs even if the pack/ plan containing their channel is off on the report date, leading to several discrepancies.</p>
2.	<p>Clause 2(1)(ee) reads as under:</p> <p>“maximum retail price” or “MRP” with reference to a-la-carte channel or bouquet of channels means the maximum price, excluding taxes, payable by a subscriber for that a-la carte channel or bouquet of</p>	<p>It is proposed that the Clause 2(1)(ee) should be amended to the following:</p> <p>“maximum retail price” or “MRP” with reference to a-la-carte channel or bouquet of channels means the maximum price, including taxes, rounded-off to the next higher rupee,</p>	<p>The term ‘Maximum Retail Price’ in general means such price at which the product shall be sold in retail and such price shall include all taxes levied on the product. If the same term is used to mean a price excluding taxes, then it</p>

	channels, declared by the broadcaster;	payable by a subscriber for that a-la carte channel or bouquet of channels, declared by the broadcaster or distribution platforms ;	will create confusion. Further the distribution platform should be given flexibility to ROUND-OFF the retail price inclusive of taxes to the next higher rupee.
3.	<p>Clause 2(mm) and (nn) read as under:</p> <p>(mm) “subscriber” means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber.</p> <p>(nn) “subscriber base” means the number of active subscribers in the addressable system of a distributor of television channels;</p>	<p>It is proposed that the Clause 2(mm) and (nn) should be amended to the following:</p> <p>(mm) “subscriber” means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person, and shall constitute one subscriber;</p> <p>(nn) “subscriber base” means the means the number of active subscribers, actively receiving signals of television channels in the Subscriber Management system of a distributor of television channels;</p>	<p>The definition given under the Regulations treat each Set-Top Box as an independent customer. However in cases where multiple Set-Top Boxes are installed at an individual customer’s premises, treating each Set top Box as an individual subscriber does not serve any purpose. In today’s age of convenience, many people get multiple TV sets installed in their home, for ease of viewing TV channels at different areas within the home. ‘Subscriber base’ for that matter also reflects a distorted and incorrect if made subject to each Set top Box, regardless of multiple Set Top Boxes being installed at the same location or premises.</p>

4.	<p>Clause 2(1)(r) reads as under:</p> <p>“distribution platform” means distribution network of a DTH operator, multi-system operator, HITS operator or IPTV operator</p>	<p>It is proposed to amend the clause 2(1)(r) as below:</p> <p>“distribution platform” means distribution network of a DTH operator, multi-system operator, HITS operator, IPTV operator, OTT operator, Doordarshan DTH or any platform that distributes content to the subscriber</p>	<p>By leaving out the emerging platform from the ambit of the tariff regime, the authority is leaving it prone to litigation. In near future, various new platforms are going to emerge for distributing content to the subscribers and keeping them in forbearance would again give rise to non-playing field and which in our views must be avoided to otherwise very competitive regime proposed by the authority.</p>
5	<p>Clause 2(1) (s) reads as under:</p> <p>“distributor of television channels “means any DTH operator, multi system operator, HITS operator or IPTV operator</p>	<p>It is proposed to amend the clause 2(1) (s) as below</p> <p>“distributor of television channels” means any DTH operator, multi system operator, HITS operator, IPTV operator, OTT operator, Doordarshan DTH or any platform that distributes content to the subscriber</p>	<p>Unencrypted signals provided by Doordarshan DTH may jeopardize the entire DAS regime, especially under MRP regime wherein many pay channels could convert to free to air as also adopt rationalized MRPs. This would result in non-level playing fields across distribution platforms.</p>
6.	<p>Clause 2(1)(t) reads as under:</p> <p>“electronic programme guide” or “EPG” means a program guide maintained by the distributors of television that lists</p>	<p>It is proposed that the Clause 2(1)(t) should be amended to the following:</p>	<p>The EPG is maintained by a third party vendor on behalf of the Multisystem operator (MSO) and can be updated</p>

	television channels and programmes, and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs	“electronic programme guide “or “EPG” means a program guide maintained by the distributors of television that lists television channels and programmes, subject to furnishing of the information regarding the programmes by the broadcasters to the distributors in a specified standard format and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs	only based on the information forwarded by the Broadcasters. In case the Broadcasters do not share the information with the MSO, the EPG cannot be updated by the MSO. Hence it is important to include the addition in the definition requested for.
7	Clause 3(7) reads as under: (7) No broadcaster shall, for providing signals of television channel(s) to a distributor of television channels, propose or stipulate, directly or indirectly, for packaging of the channel(s) in any particular bouquet(s) offered by the distributor of television channels to the subscribers.	It is proposed to include below proviso to clause 3 (7): “Provided that no broadcaster shall impose a condition on a distributor to mandatorily offer all bouquets formed by such broadcasters to customer, and imposition of such condition shall amount to imposition of unreasonable condition”	It is generally the tendency of the Broadcasters to push the distributor to include their channels in their base packs to the Subscribers to garner eyeballs. In order to prevent such practice which may come across, this clause/proviso is required.
8.	Clause 3(9) reads as under: (9) Every distributor of television channels	It is proposed that Clause 3(9) should be amended to the following:	It is submitted that the time period of 30 days given to a distributor of TV channels is too short, as in the case of MSOs the capacity for each Network has to be calculated distinctly and such

	<p>shall, within thirty days of the commencement of these regulation, publish on its website the total channel carrying capacity of its distribution network(s) in terms of number of standard definition channels, coverage area of the network(s), list of channels available on the network(s), spare capacity available on the network(s) and the list of channel(s) in chronological order for which requests have been received from the broadcaster(s) for re-transmission and are pending.</p>	<p>(9) Every distributor of television channels shall, within sixty days of the commencement of these regulation, publish on its website separately the total channel carrying capacity of its distribution network(s) in respect of each geographical area in terms of number of standard definition channels, coverage area of the network(s), list of channels available on the network(s), spare capacity available on the network(s) and the list of channel(s) in chronological order for which requests have been received from the broadcaster(s) for re-transmission and are pending.</p>	<p>exercise would require some time to complete and hence, a period of 60 days has been proposed.</p> <p>Furthermore, as far as MSOs are concerned the capacity of carrying channels differs from Network to Network and area to area, depending on a variety of factors. Therefore, there should be no ambiguity at the time of declaration by the distributor of TV channels as to the separate and distinct capacity of each Network. The declaration by the distributor of TV channels for each Network should be separate.</p>
9.	<p>Clause 3(11) reads as under:</p> <p>Subject to the availability of channel carrying capacity on the distribution network, every distributor of television channels shall, within sixty days of receipt of written request from a broadcaster for re-transmission of signals of television channel(s), carry, on non-discriminatory basis, the signals of such television</p>	<p>It is proposed that Clause 3(11) should be amended to include the following:</p> <p>Provided that in case the number of channels in a genre occupy to the extent of 10% of total available capacity, then the distributor should be at liberty to deny carriage of a channel, on the “first</p>	<p>This clause is very important to discourage skew towards a single or few genres. For eg. if a distributor has a 300 channel capacity, it is possible that 100 news channels may seek carriage on first come first served basis and thereby deny opportunity for channels from other genres to be carried on the distributor platform and thereby denying adequate choice to consumer.</p> <p>Further clause 3(20) clearly provides</p>

	<p>channel(s) or convey the reasons in writing for rejection of request if the re-transmission of such signals of television channel(s) is denied to the broadcaster.</p>	<p>come first serve basis”</p>	<p>that once the subscription for a channel reaches 20% of the sub base, then the distributor shall not discontinue the channel. Hence, the corollary that the distributor should be permitted to discontinue if the subscription is less than 20% for the preceding 3 month which is sufficient time for a channel to scale up the reach is valid.</p> <p>Further if less popular channels are permitted to block the capacity of a distributor, then new channels with attractive content may be denied opportunity of carriage (given limited capacity of distributors) and thus act as a entry barrier</p> <p>Further, Clause 6(2) read with Schedule 1 provides that no carriage shall be payable by a broadcaster upon subscription reaching 20%. Hence the distributor should have the option to discontinue carriage if reach is less than 20% for preceding 3 months by foregoing the carriage fee.</p>
10.	<p>Clause 3(12) reads as under:</p>	<p>It is proposed that Clause 3(12) be amended to the following:</p>	<p>In sub clause 3(12) the time period of six consecutive months has been reduced to three consecutive months, as the period of six months is too long</p>

	<p>(12) It shall be open for a distributor of television channels to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding six consecutive months, for that particular television channel is less than five percent of the subscriber base of that distributor, in the target market specified by the broadcaster in the interconnection agreement, in that particular month.</p>	<p>(12) It shall be open for a distributor of television channels to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding <u>three</u> consecutive months, for that particular television channel is less than five percent of the subscriber base of that distributor, in the target market specified by the broadcaster in the interconnection agreement, in that particular month.</p>	<p>and would result in blocking bandwidth by carrying channels which are not popular with the subscriber base. A period of 3 months is sufficient to ascertain whether or not a channel is being well received and/ or demanded by the subscribers. The period of 6 months casts an excessively onerous obligation on the distributor of TV channels.</p>
11.	<p>Clause 5(3) reads as under:</p> <p>(3) Every broadcaster shall declare a minimum twenty percent of the maximum retail price of pay television channel(s) or bouquet(s) of pay television channels, as the case may be, as the distribution fee.</p>	<p>It is proposed that Clause 5(3) be amended to the following:</p> <p>(3) Every broadcaster shall declare a minimum <u>fifty-five</u> percent of the maximum retail price of pay television channel(s) or bouquet(s) of pay television channels, as the case may be, as the distribution fee.</p>	<p>It is proposed that the minimum percentage of distribution fee be increased from 20% to 55%. It is submitted even under the CAS regime; the distribution fee had been fixed at 55%. Under The Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006) dated 24.08.2006 had published a Standard Technical and Commercial Interconnection Agreement which provided that 55% of the Maximum Retail Price to be retained by the</p>

			<p>Distributor of TV channels. CAS is a tried and tested methodology, which had resulted in minimization of disputes between stakeholders. Furthermore, under CAS the maximum ceiling for channel pricing was Rs. 5/-, whereas now the Broadcaster has been given much more leeway to price its channels accordingly. Also, the distributor of television channels and the local cable operators incur a significant cost in collection of monthly subscription fee and therefore, there is a need to increase their share in the distribution fee. Further, the Broadcaster has another source of revenue i.e. advertisement fees, however, as the MSOs are not given any share in the said fees, it would be highly onerous on the MSOs and the LCOs to try and make ends meet within the proposed 20% distribution fee.</p> <p>Sufficient data to support the above calculations are available with TRAI from the time CAS was first implemented.</p>
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12.	<p>Clause 5(6) reads as under:</p> <p>(6) Every broadcaster shall publish on its website final reference interconnection offer after taking into consideration the objections, if any, received from the distributors, in conformance with the regulations and the tariff orders notified by the Authority and simultaneously provide, for the purpose of record, a copy of the same to the Authority.</p>	<p>It is proposed that Clause 5(6) be amended to the following:</p> <p>(6) Every broadcaster shall publish on its website within 30 days of receipt of objections, final reference interconnection offer after taking into consideration the objections, if any, received from the distributors, in conformance with the regulations and the tariff orders notified by the Authority and simultaneously provide, for the purpose of record, a copy of the same to the Authority.</p>	<p>It is proposed that a time limit of 30 days be fixed for publication of the Reference Interconnect Offer after receipt of objections, so that the same remains a time-bound exercise, which is essential to protect the interests of the stakeholders.</p>
13.	<p>Second Proviso to Clause 9(6) reads as under:</p> <p>Provided further that if the addressable systems of such distributor have been audited during the last one year by M/s. Broadcast Engineering Consultants India Ltd., or any other auditor empanelled by the Authority for conducting such audit and the distributor produces a report issued by the auditor as a proof of</p>	<p>It is proposed that Second Proviso to Clause 9(6) be amended to the following:</p> <p>Provided further that if the addressable systems of such distributor have been audited during the last five years by M/s. Broadcast Engineering Consultants India Ltd., or any other auditor empanelled by the Authority for conducting such audit and the</p>	<p>The certification by BECIL should be valid for a period of upto 5 years based on audit packages to be designed by BECIL. Smaller packages will enable new MSOs to quickly get certified and start availing services even though the certification could only be for a year. Comprehensive packages will enable large MSOs to conduct their business without frequent hassle.</p>

	<p>conformance to the requirements specified in Schedule III to these regulations.</p>	<p>distributor produces a report issued by the auditor as a proof of conformance to the requirements specified in Schedule III to these regulations.</p>	<p>BECIL is the only trustworthy and certified agency to carry out these audits and a short period of validity would necessitate a number of audits by BECIL, which would increase the burden on BECIL. This would showup as a shortage in capabilities to conduct audit and could lead to agencies who lack experience and qualification to stake claims to be empanelled as authorized certification agency. Even BECIL could landup diluting its process of audit and defeat the purpose of certification.</p>
14.	<p>Proviso to Clause 9(7) reads as under: Provided further that the term of the interconnection agreement in no case shall be less than one year from the date of commencement of the agreement.</p>	<p>It is proposed that proviso to Clause 9(7) be deleted: Provided further that the term of the interconnection agreement in no case shall be less than <u>two years</u> from the date of commencement of the agreement and the agreement shall subsist perpetually unless terminated by either parties as per the agreement.</p>	<p>It is proposed that the second proviso to Clause 9(7) be amended and the minimum duration of the interconnection agreement be increased from one year to two years. The reasons for the same is that the distributor of TV channels requires some certainty with regard to its packaging obligations, as also to plan for its Return on Investment. Even, as on date it is only with MSOs that Interconnection Agreements are executed for a shorter duration</p>

			<p>whereas with DTH Operators the duration is usually 2-3 years. Furthermore, the execution of a longer duration agreement only ensures availability of channels for a longer period and has nothing to do with pricing of the channel.</p>
15.	<p>Third proviso to Clause 9(20) reads as under:</p> <p>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 retransmission and subscription for that particular television channel is more than twenty percent of the subscriber base in the target market.</p>	<p>It is proposed that third proviso to Clause 9(20) be amended as following:</p> <p>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 retransmission and the a-la-carte subscription for that particular television channel is more than twenty percent of the subscriber base in the target market.</p>	<p>It is proposed that the third proviso to Clause 9(20) be amended to reflect that a channel should not be discontinued only in the event the a-la-carte subscription of that channel is more than 20 per cent of the subscriber base, as if on the request of a Broadcaster a channel is placed in the basic service tier or a popular package on receipt of carriage fee by a distributor of TV channels, the distributor of TV channels will never be able to discontinue the channel, even if the carriage fee is stopped by the Broadcaster. The intent of the regulation is that popular channels are not taken off from the network of the distributor of TV channels. Popular channels will satisfy the criteria of 20% of the a-la-carte subscriber base. It will help in balancing the interest of all</p>

			stakeholders.
16	<p>Clause 10 (2) reads as follows:</p> <p>It shall be open for a multi system operator to distribute the channel(s) beyond the areas agreed under clause (b) of sub-regulation (1) by giving a prior written notice of at least thirty days to such broadcaster;</p>	<p>It is proposed that Clause 10(2) be amended as following:</p> <p>It shall be open for a multi system operator to distribute the channel(s) beyond the areas agreed under clause (b) of sub-regulation (1) by giving written intimation to the broadcaster not later than 15 days of providing such signals.</p>	<p>Giving notice to broadcaster does not serve any purpose.</p> <p>As long as there is an MRP regime and as long as it is on per subscriber basis and as long as the distributor has license, the area of operation should not be a criteria for distribution of the signals, except to the extent of any geographical areas as defined in the Regulations.</p>
17	<p>It is proposed that Clause 11 be amended to the following:</p> <p>Interconnection agreement between distributor of television channels and local cable operator.--- (1) No distributor of television channels shall provide signals of television channels to a local cable operator without entering into interconnection agreement with such local cable operator.</p>	<p>It is proposed that Clause 11 be amended to the following:</p> <p>Interconnection agreement between distributor of television channels and local cable operator.--- (1) No distributor of television channels shall provide signals of television channels to a local cable operator without entering into interconnection agreement with such local cable operator.</p> <p>Explanation: Such interconnection agreement can either be in writing</p>	<p>TRAI has taken significant steps by incorporating various clauses which promotes transparency by allowing use of technology. Hence to further strengthen the philosophy, we are proposing to have electronic interconnect agreement with LCO.</p>

		or in electronic form	
18	Clause 13 (1) read together with Schedule VII		It needs to be amended as schedule VII requires Distributors to provide report 4 times a month and that too the data has to be sourced from the SMS and CAS during 19 hrs to 23 hrs, which are the peak hours. This requirement to procure the report 4 times that too during peak hrs. is not only cumbersome but technically would put strain on the SMS and CAS, impacting the performance of the System and thereby impacting the delivery of services to the subscribers. The current procedure of providing data twice (start of the month and end of the month) a month along with report being generated at midnight is working absolutely fine and should not be tinkered with.
19.	Clause 14(2) reads as under: (2) In cases where a broadcaster is not satisfied with the audit report received under sub-regulation (1), after communicating the reasons of dissatisfaction in writing to the distributor,	It is proposed that in Clause 14(2) a second proviso which reads as under be added and Clause 14(2) would read as under: Provided further that no additional amounts shall be payable by the distributor to the Broadcaster if there is a difference of less than or equal to 5	It is necessary to add the above mentioned proviso, as it is impossible to maintain perfect harmony between the CAS and the SMS as due to time lag between the report generation from CAS and SMS. The Broadcasters during Audit, use the same as a tool to harass and arm-twist the distributor of TV

	<p>such broadcaster may, not more than once in a calendar year, audit the subscriber management system, conditional access system and other related system of the distributor of television channels for the purpose of verifying the information contained in the subscription reports, the amounts payable by the broadcaster or the distributor, as the case may be, and compliance with the terms and conditions of the interconnection agreement.</p> <p>Provided that if such audit reveals that additional amounts are payable to the broadcaster, the distributor shall pay such amounts, along with the late payment interest rate specified by the broadcaster in the interconnection agreement, within ten days and if such amount including interest due for any period exceed the amounts reported by the distributor to be due for such period by two percent or more, the distributor shall pay all of the broadcaster's costs incurred in the conduct of such audit, and take any necessary actions to avoid such errors in the future.</p>	<p>per cent in the subscriber base reflected in the subscriber management system with the subscriber base reflected in the conditional access system.</p>	<p>channels. As it is impossible to maintain perfect harmony, they insist that the difference be not more than 0.5%, which is not technically possible to maintain.</p>
20.	<p>Clause 17 reads as under:</p>	<p>It is proposed that the first proviso to the Clause 17 be deleted.</p>	<p>The number assigned to a channel is of significance in analogue era, as there is no EPG or genre and the consumers</p>

<p>17. Listing of channels in electronic programme guide.--- Every distributor of television channels shall assign a number for each television channel distributed by him in such a way that the television channels of same genre, as declared by the broadcaster, are placed together consecutively and one channel shall appear at one place only.</p> <p>Provided that the number assigned to a television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment.</p> <p>Provided further that all television channels of same language within the same genre shall appear together consecutively in the electronic programme guide.</p>		<p>have to remember the channel number, which was possible in a scenario of less than 100 channels.</p> <p>In a digital scenario with channels ranging from 250 – 400 and with EPG facility, and placement of channels within the genre, the LCN numbers can be shifted without any inconvenience to the subscribers. In addition, such adjustments are more required to be done often to improve consumer experience. Therefore there should be no restriction on change of LCN numbers.</p>
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