

Counter Comments by GTPL Hathway Limited on Consultation Paper on
“Audit related provisions of Telecommunication (Broadcasting and Cable)
Services Interconnection (Addressable Systems) Regulations, 2017 and Audit
Manual:

(I) Removal of Regulation 15(1)

Indian Broadcasting & Digital Foundation (“IBDF”), an association representing majority of the pay broadcasters, have in their comments to the current consultation have, essentially sought for removal of Regulation 15(1), admittedly citing non-compliance by bulk of the Distribution Platform Operators (“DPOs”) as well as granting an absolute and first right for the broadcasters to conduct audits of the DPOs under Regulation 15(2).

The said stance clearly establishes that the broadcasters are merely interested in abusing the right under Regulation 15(2), despite audit under Regulation 15(1) being carried out by independent as well as empaneled auditor(s) of TRAI. It is apparent that the said approach is aimed at diluting the essence of Regulation 15(1).

It is noteworthy to state that the broadcasters (represented by IBDF), who are seeking unfettered right of audit under Regulation 15(2), have themselves not initiated any action against the non-compliant DPOs, who have failed to undertake the mandatory audits in terms of Regulation 15(1), ever since the inception of MRP regime in 2019. The compliant DPOs have frequently highlighted and raised concerns about the mushrooming as well as flourishing of such non-compliant DPOs, to such broadcasters, at their cost. However, neither the said broadcasters have called for any broadcaster caused audit nor have disconnected the supply of signals to such non-compliant DPOs. Rather they have deliberately continued to provide signals to such non-compliant DPOs and are now claiming foul.

Hence, it is only imperative that the mandate under Regulation 15(1) should be followed by all the DPOs without any exception or artificial distinction. Further, the broadcasters shall be strictly

prohibited from providing signals of their respective channels to the DPOs who are not in compliance with Regulation 15(1).

Further, right of audit under Regulation 15(2) cannot be an absolute right left open to abuse by the broadcasters. It is important that Regulation 15(2) should not become a fishing inquiry or a tool for the broadcaster to harass/arm twist the DPOs who are and have been in compliance with Regulation 15(1). Accordingly, Regulation 15(2) needs to be suitably modified and can be exercised by a broadcaster only if the DPO has complied with the requirement 15(1) and the empanelled auditor has issued a qualified audit report with certain qualifications (specifically stated hereinbelow) and not otherwise.

- a. More than 0.5% variation found between the number of subscribers submitted by DPO and verified by the TRAI empanelled auditor in its audit report.
- b. Undeclared CAS / SMS/Head End found during audit.
- c. If Unencrypted signal found during Audit.
- d. More than 5% variation found between ground STB samples given by the broadcaster and actual availability in the system.

(II) Controlled approach on Infrastructure Sharing

The broadcasters (represented by IBDF) have also expressed their reservations and called for adopting a cautious approach on infra sharing between the DPOs.

The broadcasters have raised concerns pertaining to revenue leakage in the form undeclaration/analogue signals/piracy etc. and hence called for a controlled approach on infrastructure sharing between the DPOs.

It is surprising that these are the same set of broadcasters who have and are continuing to encourage non-addressability by making available their pay channels on non-addressable platforms like free dish by paying hefty carriage fees in e-auctions. They have rather challenged the amendments to the regulatory framework of July 2024 which purportedly removes the anomaly of a pay channel being offered for free on other platforms. The said approach of the broadcasters is highly questionable since if addressability is a concern for infrastructure sharing, then the same is

suitably taken care by audit under Regulation 15(1), which they themselves want to eradicate/remove.

Hence, infrastructure sharing should be permitted between the DPOs and rather encouraged by the broadcasters who admittedly are facing the issue of declining subscriber base of the DPOs and thus share a mutual concern with the DPOs to that extent.

Certain additional suggestions with respect to Audits of the DPOs

(a) Mandatory audit of the DPOs having subscriber base One million and Above by Broadcast Engineering Consultants India Limited (BECIL)

In continuation to response wherein we had suggested for prescribing cap on the audit fees charged by the empaneled auditors so that all the DPOs comply with Regulation 15(1) without exception, we also suggest that DPOs having subscriber base of One million and above, need to mandatorily conduct audit(s) (both subscription as well as compliance), strictly through BECIL.

(b) Amendments in the Audit Manual for audit conducted by BECIL

The Audit Manual specifies that an empanelled auditor shall not undertake audit of the addressable system of any service provider consecutively for more than three years. However, we suggest that the said provisions shall not apply to BECIL since efficiency and independency of audits conducted by BECIL cannot be a subject matter of doubt, both for the broadcasters as well as the DPOs. To that extent suitable amendments shall be made/incorporated in the Audit manual.