



November 4<sup>th</sup> ,2019

To,

Shri Anil Kumar Bhardwaj (Advisor-B & CS)  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg  
New Delhi-110002

**Sub: Comments on the Consultation Paper dated 25<sup>th</sup> September 2019  
on Issues related to Interconnect Regulation, 2017 ("Consultation  
Paper")**

Dear Sir,

At the outset we thank Telecom Regulatory Authority of India (TRAI) for giving us an opportunity to provide inputs on further issues raised with respect to the Interconnect Regulation 2017.

We would like to highlight to the Authority that the issues of Target Market and placement & other agreements have already been settled in terms of their workability in the market place with respect to MSO's and hence it is our sincere request to Hon'ble TRAI to judiciously mull the ramifications of change, if any, being considered to the Interconnect Regulation 2017 for the issues raised in this consultation paper.

We are detailing our response to issues raised by Hon'ble TRAI for its kind consideration.

**Thanking you,**

**Yours Faithfully;**

**For Hathway Digital Private Limited**



**Niharika Matlani  
Company Secretary and Compliance officer**

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## 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?**

**HDPL's Response:** We do not think that there is any misuse of the scope of Target Market defined by Hon'ble TRAI. It may be noted that by way of provision 4 (3) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 Hon'ble TRAI has given a mandate for declaration of coverage area of each distribution network as a target market wherein 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.

It is stated that we as a prudent Multi System Operator (MSO) having natural acumen to be on the right side of law have aligned our coverage area with our head-end and have declared such area as our target market. The said head-ends and its corresponding coverage areas sail through a geographical area having similar linguistic and cultural essences. The target market being declared by us is mentioned below for your ready reference:

Distribution Network Location	States/Parts of State covered as "Coverage Area"
Bangalore	Karnataka
Bhopal	Madhya Pradesh
Delhi	Delhi, Haryana, Rajasthan and Uttar Pradesh
Hyderabad	Telangana
Kolkata	Odisha, West Bengal, Sikkim
Mumbai	Maharashtra

A perusal of the details of the above location of head-end and its coverage area will give an informatics insight to our scientific approach in declaration of the Target Market and same convincingly stands against the concerns of Hon'ble TRAI with respect to the misuse of Target Market.

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It is stated that by the own admissions of Hon'ble TRAI, the concerns with respect to Target Market is primarily whirling around the Direct to Home Operators (DTH) and parameters if any with respect to Target Market needs to be defined for the said DTH operators only.

**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?**

**HDPL's Response:** It is stated that the amount of carriage fee is already a heavily guarded affair and any further curb is not going to serve any purpose.

It is stated that in terms of Sub Regulation 15-18 of Regulation 10 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 every Broadcaster desirous of distribution of its channel through the platform of distributor of television channels have the rights and leverage to get the access of the distribution platform through the application form for seeking access and carriage agreement available on the website of every distributor of television channels.

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.

It is stated that putting further restriction on the carriage fee will not be fair idea unless, Hon'ble TRAI comes up with a solution for alternate sources of revenue for the MSOs.

**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.**

**HDPL's Response:** It is stated that determination of cost of carrying an individual channel is nearly impossible as it is difficult to ascertain only those activities which can be directly attributable for carrying an individual channel. If you look at the role of MSO in the broadcasting value chain, its very existence is for retransmitting channel provided by Broadcasters, hence the whole organisational setup with its paraphernalia constitutes the cost for carrying the various channels.

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- 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?**

**HDPL's Response:** It may be noted that by way of provision 18 (4) of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 it has been explicitly mandated by Hon'ble TRAI that 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. The safeguards for a channel to be at the same LCN once assigned is adequate and independent of the wish of a MSO.

It may be noted that as stated in response to issue 1 above, the target market defined by us have the same linguistic and cultural soul and accordingly the attention of subscribers a channel will garner will exclusively depend on the quality of content being made available by the concerned broadcaster.

It is wrong to say the subscriber base of a channel can be managed by the MSO. The availability of channel has a direct co-relation with its demand and the provision should be retained to keep a window for carriage of the channel actually in demand in view of the constraint of the channel carrying capacity of the MSOs.

It may also be noted that all the channels cannot be positioned at the same LCN and accordingly survivability will depend exclusively on the quality of the content.

## **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.**

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**HDPL's Response:** In our opinion Placement is an area of mutual discussion and negotiations between the Delivery Platform Owners and Broadcasters. Placement of a channel at a particular LCN is a prerogative of the DPO's and accordingly it should be left to the discretion of the DPO's. Placement fee does not impact the subscriber choice of channel nor it has any impact on the price which is being made by the subscriber for subscribing a channel or a Bouquet. Accordingly, such price/commercials should be left to the market to determine instead of trying to regulate the same.

It is stated that while at one hand the Broadcasters have been given the leverage to fix the price of a-la-carte channel as per their wish, an 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, which anyways is a one-time affair owing to the regulatory curb in place with respect to the change of channel number.

**6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring 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).**

**HDPL's Response:** We do not think that existing regulatory regime which focuses on non-regulation / interference by Authority in agreements related to placement, marketing or any other agreement is favouring DPOs in any form.

It is stated that 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 is stated that every setup has its own cost and consequences and the parameters are determined while having a considerate eye on the said cost and consequences of every stake holder.

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 Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, or within an exclusive and

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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.

**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?**

**HDPL's Response:** It is stated that there is already a heavy guard to the arrangement between the service providers and any added curb will make the business unviable for us. Further Placement , marketing or terms and conditions of placement & marketing are not at all necessary for interconnection. Placement, marketing or any such agreement of similar nature is an important right for the DPOs to carry on their business and trade for profit and should not be curtailed unless , it is proved beyond doubt that they impact the interest of the Subscriber , who are the focal point of the New Tariff Regime.

Further, the technology is ever evolving and the DPOs have been investing to make the Set Top Boxes more smarter . Hence more and more STB properties apart from existing ones for commercial exploitation would come to fore in future. These STB properties are DPOs real estate and DPOs should have complete freedom to exploit these real estate. For the purpose of exploitation of these real estates, DPOs would be required to enter into some commercial arrangement with the Broadcasters or other service provider. Any intervention by the Authority to regulate such agreements would be detrimental to various innovations that the sector is looking at post the New Tariff Regime. It would also have serious adverse effects on the incoming revenue stream of DPOs for no good reasons. Regulation of these Agreements, neither serves the interest of service providers (Broadcasters & DPOs) nor Subscribers. It would impede the orderly growth of the sector by affecting the lawful source of income of the DPO's who have spent lot of money and effort in creating these STB properties.

Hence, it is submitted that placement, marketing or other commercial agreements in any name should not be treated as interconnection agreements

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and Authority should not regulate the same as it has no impact on the Subscribers.

**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.**

**HDPL's Response:** We strongly believe that there is no exploitation by us in the name of agreements for marketing or placement etc.

It may be noted that as stated in our response to issue number 5, the accomplishment of any agreement is exclusively a mutual affair and cannot be forced on any Broadcaster or DPO.

The Hon'ble TRAI has given a convenient privilege to the Broadcaster to enter into the carriage agreement with the MSOs; however, the numbers so far entered speaks volumes about the actual scenario.

It is stated that Hon'ble TRAI must give a thought on the steady source of revenue for the MSOs while mulling the alleged problems of the Broadcasters. Further, revenue of MSOs outside TRAI's ambit ought not be treated as interconnection agreements and/or be regulated.

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

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