



PPPDS/2016

24th October, 2016

Mr. S.K. Gupta,
Pr. Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi-110002

Sir,

Sub: Suggestions on Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016.

The Institute of Company Secretaries of India (ICSI) is a premier professional body established under an Act of Parliament, i.e., The Company Secretaries Act, 1980. The ICSI has a nationwide presence having its headquarters at New Delhi, four Regional Offices at New Delhi, Chennai, Kolkata and Mumbai and 69 Chapters spread all over India. The ICSI has on its register over 46,000 members and around 4,50,000 students are pursuing the Company Secretaryship Course.

This is with reference to Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 issued by the Telecom Regulatory Authority of India.

We wish to suggest as under w.r.t Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016:

Sl. No.	Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016	Comments/Suggestions
1	<p>PART III MISCELLANEOUS</p> <p>Order 8. Appointment of compliance officer and his obligations</p> <p>(1) Every service provider shall, within thirty days from the date of commencement of this order, appoint a compliance officer: Provided that nothing contained in this sub-clause shall apply to a distributor of television channels having average subscribers base, over the immediately preceding calendar quarter, less than two lakh or such other number of subscribers which may be prescribed by the Authority through direction from time to time:</p> <p>Provided further that this sub-clause</p>	<p><i>Order 8 of the Tariff Order may be modified and qualified Company Secretary be allowed to be appointed as the Compliance Officer to ensure legal compliance by the Service Provider.</i></p> <p><i>Appointment of Company Secretary as Compliance Officer would give necessary comfort and assurance to the Regulator (TRAI) to the effect that Service Provider complied with the all applicable provisions of the Tariff Order.</i></p> <p><i>Suggested Order 8 may be read as under:</i></p> <p>PART III MISCELLANEOUS</p> <p>Order 8. Appointment of compliance officer</p>



shall also not apply to a free to air broadcaster and a local cable operator.

(2) Every service provider which is a company shall, within ten days from the date of appointment of the compliance officer under sub-clause (1), furnish to the Authority, the name, complete address, contact number and e-mail address of the compliance officer along with authenticated copy of the board's resolution authorizing the appointment of such compliance Officer.

Explanation: For the purpose of this order, the definition of "company" shall be the same as assigned to it in the Companies Act, 2013(18 of 2013).

(3) Every service provider which is not a company shall, within ten days from the date of appointment of the compliance officer under sub-clause (1), furnish to the Authority the name, full address, contact number and e-mail address of the compliance officer along with authenticated copy of the authorization letter authorizing the appointment of such compliance officer.

(4) In the event of any change in the name of the compliance officer so appointed under sub-clause (1), the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change along with authenticated copy of board's resolution or authorization letter, as the case may be.

(5) In the event of any change in the address or contact number or email address of the compliance officer, the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change.

(6) The compliance officer shall be responsible for-

(a) ensuring conformity with the

and his obligations

(1) Every service provider shall, within thirty days from the date of commencement of this order, appoint **a qualified Company Secretary as the compliance officer:**

Provided that nothing contained in this sub-clause shall apply to a distributor of television channels having average subscribers base, over the immediately preceding calendar quarter, less than two lakh or such other number of subscribers which may be prescribed by the Authority through direction from time to time:

Provided further that this sub-clause shall also not apply to a free to air broadcaster and a local cable operator.

(2) Every service provider which is a company shall, within ten days from the date of appointment of the compliance officer under sub-clause (1), furnish to the Authority, the name, complete address, contact number and e-mail address of the compliance officer along with authenticated copy of the board's resolution authorizing the appointment of such compliance Officer.

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(4) In the event of any change in the name of the compliance officer so appointed under sub-clause (1), the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change along with authenticated copy of board's resolution or authorization letter, as the case may be.

(5) In the event of any change in the address or contact number or email address of the compliance officer, the same shall be reported



provisions of this order applicable to the service provider.

(b) reporting to the Authority, with respect to compliance with this order and other directions of the Authority issued under this order.

(c) ensuring that proper procedures have been established and followed by the service provider that would result in the correctness, authenticity and completeness of the information, statements and reports filed by the service provider under this order.

to the Authority by the service provider within ten days from the date of occurrence of such change.

(6) The compliance officer shall be responsible for-

(a) ensuring conformity with the provisions of this order applicable to the service provider.

(b) reporting to the Authority, with respect to compliance with this order and other directions of the Authority issued under this order.

(c) ensuring that proper procedures have been established and followed by the service provider that would result in the correctness, authenticity and completeness of the information, statements and reports filed by the service provider under this order.

Explanation: "Company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

Justification

Company Secretary as a competent professional comes into existence after an exhaustive exposure provided by the ICSI through compulsory coaching, examinations, rigorous training and continuing professional development programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980. The Company Secretaries in Practice have been recognized to conduct audit/appear as an authorized representative under a host of legislations including Central Excise Act, 1944; Customs Act, 1962; Service Tax; Income Tax Act, 1961; TRAI Act, 1997; Trade Marks Act, 1999; Companies Act, 2013; Competition Act, 2002; Special Economic Zones Act, 2005; SEBI Act, 1992 and State VAT legislations and are acting as extended arms of the regulatory mechanism.

The members of the Institute are actively engaged in Trade and Industry and are rendering value added services to the business enterprises. A Company Secretary is a competent professional who understands legal, financial and compliance dimensions of business entity comprehensively, including aspects relating to Corporate Laws, Labour Laws, Accountancy, Taxation, Insurance Laws, Banking Laws, Foreign Exchange Management and Regulations made thereunder, Intellectual Property Rights and Governance, Information Technology Act 2000, Cyber Laws,



		<p>Management and Systems Audit, Management Information Systems and Maintaining the documents in a Digital /Electronic manner. Further, Company Secretary and Company Secretary in Practice are authorized to issue various Certificates under various Regulations issued by the Reserve Bank of India under Foreign Exchange Management Act, 1999.</p> <p>A brief description of recognitions for the members of ICSI is enumerated at Annexure A.</p> <p>Company Secretary in Practice is authorized to Issue Certificate of Compliance, and to do Secretarial Audit, Sign Annual Returns of the company under the Companies Act, 2013. Company Secretary in Practice while conducting the Secretarial Audit under the Companies Act, 2013 needs to ensure that the company had complied with all laws, rules and regulations which are specifically applicable to the Company and report non-compliances, if any, in his report. Company Secretaries in Practice also ensure that, whether the company had filed necessary returns which are required to be filed under these laws, rules and regulations and report the non-compliance, if any, in the report so that the management and the concerned departments can take necessary action in this regard.</p> <p>The members of the Institute are governed by the Code of Conduct contained in the Company Secretaries Act, 1980.</p>
2	2. Definitions (1) "compliance officer" means any person appointed by a service provider for the purpose of reporting the information as required under the provisions of this order and whose responsibilities include ensuring that the service provider does not contravene any provision of this order;	<p><i>Definitions stated under 2(1) of Tariff Order i.e. "Compliance Officer" may be modified and qualified Company Secretary be allowed to be appointed as the compliance officer to ensure legal compliance by the Service Provider.</i></p> <p><i>Appointment of Company Secretary as Compliance Officer would give necessary comfort and assurance to the Regulator (TRAI) to the effect that Service Provider complied with the all applicable provisions of the Tariff Order.</i></p> <p><i>Suggested Order 2(1) may be read as under:</i></p> <p>(1) "compliance officer" means a qualified Company Secretary appointed by a service provider for the purpose of reporting the information as required under the provisions of this order and whose responsibilities include</p>



ensuring that the service provider does not contravene any provision of this order;

“Company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

Justification

Company Secretary as a competent professional comes into existence after an exhaustive exposure provided by the ICSI through compulsory coaching, examinations, rigorous training and continuing professional development programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980. The Company Secretaries in Practice have been recognized to conduct audit/appear as an authorized representative under a host of legislations including Central Excise Act, 1944; Customs Act, 1962; Service Tax; Income Tax Act, 1961; TRAI Act, 1997; Trade Marks Act, 1999; Companies Act, 2013; Competition Act, 2002; Special Economic Zones Act, 2005; SEBI Act, 1992 and State VAT legislations and are acting as extended arms of the regulatory mechanism.

The members of the Institute are actively engaged in Trade and Industry and are rendering value added services to the business enterprises. A Company Secretary is a competent professional who understands legal, financial and compliance dimensions of business entity comprehensively, including aspects relating to Corporate Laws, Labour Laws, Accountancy, Taxation, Insurance Laws, Banking Laws, Foreign Exchange Management and Regulations made thereunder, Intellectual Property Rights and Governance, Information Technology Act 2000, Cyber Laws, Management and Systems Audit, Management Information Systems and Maintaining the documents in a Digital /Electronic manner. Further, Company Secretary and Company Secretary in Practice are authorized to issue various Certificates under various Regulations issued by the Reserve Bank of India under Foreign Exchange Management Act, 1999.

A brief description of recognitions for the members of ICSI is enumerated at **Annexure A**.

Company Secretary in Practice is authorized to Issue Certificate of Compliance, and to do Secretarial Audit, Sign Annual Returns of the company under the Companies Act, 2013.



		<p>Company Secretary in Practice while conducting the Secretarial Audit under the Companies Act, 2013 needs to ensure that the company had complied with all laws, rules and regulations which are specifically applicable to the Company and report non-compliances, if any, in his report. Company Secretaries in Practice also ensure that, whether the company had filed necessary returns which are required to be filed under these laws, rules and regulations and report the non-compliance, if any, in the report so that the management and the concerned departments can take necessary action in this regard.</p> <p>The members of the Institute are governed by the Code of Conduct contained in the Company Secretaries Act, 1980.</p>
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In view of the above, we request that:


Definition under Order 2(l) and Order 8 of the Tariff Order may be modified and qualified Company Secretary be allowed to be appointed as the compliance officer to ensure legal compliance by the Service Provider.

Appointment of Company Secretary as Compliance Officer would give necessary comfort and assurance to the Regulator (TRAI) to the effect that Service Provider complied with the all applicable provisions of the Tariff Order.

We shall be pleased to offer any further information as may be desired by your good self. We also look forward to an opportunity for a personal meeting at any time and place convenient to your good self for explaining our submissions.

Thanking you

Yours sincerely


CS Mamta Binani
President

**Recognitions of the profession of Company Secretary**

Principal Officer of the Company
Secretary of a company has been recognized as a principal officer of the company responsible for its affairs under host of legislations including Customs Act, 1962, Central Excise Act, 1944, etc. Companies Act, 2013 has recognized the Company Secretary as one of the Key Managerial Personnel of the company.
To act as Authorised Representative under various laws and Rules
The Company Secretaries in Practice have been recognized to act as Authorised Representative before-
<ol style="list-style-type: none">1. Securities Appellate Tribunal <i>vide</i> Section 15V of the SEBI Act, 19922. Central Electricity Regulatory Commission <i>vide</i> the Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 20163. Telecom Regulatory Appellate Tribunal <i>vide</i> the Telecom Regulatory Authority of India Act, 1997-Section 174. National Company Law Tribunal <i>vide</i> Section 10GD5. Competition Commission of India <i>vide</i> Section 35(b) of Competition Act, 20026. Appellate Tribunal or the Regulatory Authority or the adjudicating officer <i>vide</i> Section 56 of the Real Estate (Regulation and Development) Act, 20167. The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 [Section 146A (2) (d)] read with Customs (Appeals) Rules, 1982 [Rule 9(c)] and The Central Excise Act, 1944 [Section 35Q (2) (c)] read with Central Excise (Appeals) Rules, 2001[Rule12(c)].8. Advance Ruling Authority in the matters relating to Service Tax <i>vide</i> Authority for Advance Ruling (Procedures) Rules, 2003-Rule 2(d)(i)9. The Customs, Excise and Service Tax Appellate Tribunal in the matters relating to Service Tax <i>vide</i> section 83 of Chapter V of Finance Act, 1994.10. Income Tax Appellate Tribunal <i>vide</i> Section 288(2)(v) of Income-Tax Act, 1961 read with Rule 50(2A) of the Income Tax Rules,1962
To act as Authorised Representative under various State VAT Laws
The Company Secretaries in Practice have been recognized to act as Authorised Representative under -
<ol style="list-style-type: none">1. Arunachal Pradesh Goods Tax Act, 2005- Section 83(1)(c) read with Rule 78(1)(a) of Arunachal Pradesh Goods Tax Rules, 2005 Bihar VAT Act, 2005 - Section 87(d)2. Daman & Diu VAT Regulation, 2005 - Regulation 82(1)(b)3. Delhi Value Added Tax Act, 2004- Section 82(1)(b)4. Goa VAT Act, 2005 - Section 82(1)(b)5. Haryana VAT Act, 2003- Section 52(2) (iii) read with Section 288(2)(v) of Income-Tax Act, 1961 and Rule 50(2A) of the Income Tax Rules,19626. Jharkhand VAT Rules, 2006- Rule 51 (1)(c)7. Karnataka VAT Rules, 2005 - Rule 34(1) read with Rule 168(2) (b)8. Kerala VAT Act, 2003 - Section 86(e)9. Maharashtra VAT Act, 2002- Section 82(1)b10. Meghalaya VAT Rules, 2005- Rule (1)(f) (iv)11. Rajasthan VAT Rules, 2006- Rule 62(b) read with Rule 50(2A) of the Income Tax12. Uttar Pradesh VAT Rules, 2008- Rule 2 (e) read with Rule 7313. West Bengal Value Added Tax Rules, 2005 - Rule 2(1)(a)(iv)



To conduct VAT Audit

The Company Secretaries in Practice have also been recognized to conduct VAT Audit in following states:

1. Jharkhand VAT Act, 2005- section 2(i)
2. Karnataka VAT Rules, 2005- As a Tax Practitioner under Rule 34(1)
3. Gujarat VAT Act, 2005- As a Tax Practitioner under Rule 59(1)(a)

Certified Facilitation Centres *vide* MoU between CBEC and ICSI

Company secretaries in Practice are authorised for Setting up of Certified Facilitation Centres under the Automation of Central Excise and Services Tax ("ACES") Project of CBEC to facilitate e-filing of returns and documents under Central Excise and Service Tax.

To appear before various Authorities under the Goods and Services Tax law

Clause 86(2)(c) of the Integrated GST Bill, 2016 provides that the Practising Company Secretary, is inter alia, entitled to appear before various authorities under the Goods and Services Tax law, first appellate authority and the appellate tribunal.

To conduct Internal Audit

As per section 138 of the Companies Act 2013 read with Rule 13 of Companies (Accounts) Rules, 2014, Company Secretaries are authorized to conduct Internal Audit of the Companies

To conduct Secretarial Audit

Section 204 of Companies Act, 2013 recognizes Company Secretaries to perform Secretarial Audit.

Company Secretary could be appointed as Judicial Member of NCLT

Section 409 of the Companies Act, 2013 prescribes that for appointment as Judicial Member of NCLT, the qualification includes at least 10 year practice as advocate of court. Whereas for appointment as technical member, both Company Secretary and Chartered Accountant in practice for at least 15 years are eligible.

Section 432 recognises all the three professionals to appear before NCLT and NCALT.

To issue Diligence Report and No Objection/Tax Clearance Certificate

1. The Reserve Bank of India *vide* its Circular No. DBOD NO. BP.BC. 46/08.12.001/2008-09 dated September 19, 2008 has advised all the Scheduled Commercial Banks to obtain **Diligence Report** by a professional, preferably a Company Secretary, regarding compliance of various statutory prescriptions by the borrowers.
2. Under Master Direction - Reporting under Foreign Exchange Management Act, 1999 issued by Reserve Bank of India *vide* RBI/FED/2015-16/13, FED Master Direction No. 18/2015-16 dated January 1, 2016{ Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000} **Company Secretary in Practice authorised to issue No Objection/Tax Clearance Certificate** regarding transfer of capital contribution/ profit shares of an Limited Liability Partnership from resident to non- resident / non-resident to resident.



To conduct Audit under SEBI Regulations

A. SEBI has authorized the Practising Company Secretaries, amongst others professionals to carry out complete **internal audit** of:

1. Stock Brokers / Trading Members / Clearing Members *vide* SEBI Circular MRD/DMS/Cir-29/2008 dated October 21, 2008.
2. Portfolio Managers *vide* SEBI Circular IMD/PMS/CIR/1/21727/03 dated November 18, 2003.
3. Credit Rating Agencies *Vide* SEBI Circular MRD/CRA/CIR-01/2010 dated January 06,2010

B. SEBI has authorized the Practising Company Secretaries amongst other professionals to carry out **audit of Investment Advisors** on yearly basis under Regulation 19 (3) of the SEBI (Investment Advisers) Regulations, 2013.

C. SEBI has authorized the Practising Company Secretaries to carry out **Annual Audit of Research Analyst** under Regulation 25 (3) of SEBI (Research Analysts) Regulations, 2014.

To be Appointed as Compliance Officer under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Under SEBI (LODR) Regulations, 2015, Company Secretaries are recognized:

1. To be appointed as the Compliance Officer. [Regulation 6 (1)]
2. To sign a compliance certificate as a Compliance Officer, to be submitted to the exchange, wherever applicable, certifying that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with SEBI. [Regulation 7 (3)]
3. To issue a certificate certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. [Regulation 40 (9)]
4. To issue a half-yearly certificate regarding maintenance of hundred percent asset cover in respect of listed non convertible debt securities. [Regulation 56 (1) (d)]
5. To issue compliance certificate regarding compliance of conditions of corporate governance to be annexed with the directors' report. [Schedule V, Clause E]

To Conduct Internal/Concurrent Audit of Depository Participants

1. NSDL has authorised the Practising Company Secretaries to conduct internal audit of operations of the Depository Participants *vide* Circular No. NSDL/POLICY/2008/0072 dated October 17, 2008.
2. NSDL has also authorised the Practising Company Secretaries to conduct Concurrent Audit in case of Demat Account Opening, Control and Verification of Delivery Instruction Slips *vide* Circular No. NSDL/ POLICY/2006/0021 dated 24th June, 2006.
3. CDSL has authorised the Practising Company Secretaries to conduct internal audit of operations of the Depository Participants *vide* CDSL Bye Law 16.3.1

To issue Net Worth & Compliance Certificate for listing on BSE

To issue quarterly certificate under Regulation 55A of SEBI (Depositories and Participants Regulations, 1996)

Practising Company Secretaries are authorized to issue quarterly certificate with regard to reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form.



To Conduct Internal Audit of Custodian Securities on quarterly basis under PFRDA
Company Secretaries in Practice are authorised to do Internal Audit of Custodian Securities on quarterly basis under PFRDA (Internal Audit of Custodian of Securities) Guidance Note-2015.
To issue Compliance Certificate under Insurance Regulatory and Development Authority of India
Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies) (Seventh Amendment) Regulations, 2016 authorise Company Secretaries in Practice for certifying that all the requirements relating to registration fees, equity share capital, and other requirements of the Act have been complied with by the applicant.
To Certify Returns and issue Certificate with respect to Foreign Trade
<ol style="list-style-type: none">1. Foreign Trade and Development Act, 1992 read with Foreign Trade Policy and Procedure 2015-2020 authorise the Company Secretaries in Practice to certify various returns pertaining to import and export by individuals and partnership firms as well as companies.2. Company Secretaries are also authorised to issue certificate after examining the prescribed registers and the relevant records for issue of Export Promotion Capital Goods (EPCG) authorization and EPCG Redemption.
Recognition to Company Secretary for third party certification in Transparent Inspection Scheme, Government of Haryana
Department of Labour, Government of Haryana has brought out a new comprehensive transparent inspection policy, under which it recognizes Company Secretary to provide third party certification under the scheme.
To act as retirement adviser under PFRDA(Retirement Adviser) Regulation
Pension Fund Regulatory and Development Authority (Retirement Adviser) Regulations, 2016 authorize Company Secretary to act as retirement advisor.
Company Secretaries are authorised to certify the documents for Other Service Providers (OSP) Registration
Department of Telecommunications (Carrier Services Cell) vide No.18- 2/2008-CS-I under Revised "Terms and Conditions - Other Service Provider (OSP) Category, authorize Company Secretaries to certify the documents for Other Service Providers (OSP) Registration for the entities which propose to provide the services such as tele-banking, tele-medicine, tele-trading, e-commerce Call Centers, International and Domestic, Network Operation Centers and Vehicle Tracking Systems etc.
Company Secretary to certify the Certificate of Registration along with Articles of Association, Memorandum of Understanding, Details of Promoters / Partner/Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services.
Ministry of Communication and Information Technology, Department of Telecommunications (Access Service Cell) vide its notification No. 800-23/2011-VAS (Vol. II) dated 31st May, 2016 issued Guidelines for Grant of Unified License (Virtual Network Operators) and authorises Company Secretaries to certify the Certificate of Registration along with Articles of Association, Memorandum of Understanding, Details of Promoters / Partner/Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application to Department of Telecommunications for Grant of Unified License (Virtual Network Operators)/Authorisation for Additional Services.

