

**WITHOUT PREJUDICE****TIMES NETWORK'S COMMENTS ON THE CONSULTATION PAPER ON ISSUES RELATED TO INTERCONNECTION REGULATION, 2017 DATED 25<sup>TH</sup> SEPTEMBER, 2019 ISSUED BY TRAI****DATE OF SUBMISSION OF COMMENTS: 4<sup>TH</sup> NOVEMBER, 2019.****INTRODUCTION:**

The Telecom Regulatory Authority of India (TRAI) recently implemented the following regulations governing the broadcasting and cable industry:-

The Telecommunications (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (ICR) ;

The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017; and

The Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017

These regulations were made after comprehensive review of the erstwhile regulations and they replaced the earlier regulations including their various amendments. These are collectively & commonly referred to as New Regulations /NTO/New regime.

There was a very long process of consultation and other activities undertaken prior to making these regulations and the views / counter views of the various stakeholders were taken into account while framing these regulations. The Regulations were also subject to extensive legal challenge and scrutiny and have battled many concerns and apprehensions of the industry and the consumers on its proper implementation. The TRAI, after holding numerous meetings, open house discussions in various parts of the country with all the stakeholders, finally implemented the New Regulations with effect from 1<sup>st</sup> February, 2019.

We are of the opinion, that after such a comprehensive review and introduction of a completely new regulatory framework for broadcasting sector, TRAI should give reasonable time for the new regulatory framework to settle down and should not attempt making frequent changes which disturbs the entire ecosystem of the broadcasting industry.

**Preamble:**

Under the Interconnection Regulations, 2017, the right of declaring target market vests with the DPO. However, the broadcaster should have equal say in declaring the target market. A balance needs to be found between the DPO and the

broadcaster's concerns with regard to declaring target market. The formula of determination of carriage fees should also be looked into in this context and may be revised. There should be a maximum cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO. The 5% viewership threshold in target markets may be revisited.

As regards the Placement, Marketing and other agreements, the same are not falling under the category of interconnection agreements and are outside the scope of the TRAI's regulation. There are already detailed safeguards and provisions related to placement wherein placement as a pre-condition to providing of signals is not allowed and where there already exists a detailed manner in which a channel has to be placed in the EPG. Any further over-reaching regulation in this regard is not warranted and will severely curtail the freedom to do business.

There is no need for any kind of intervention in the limited area of flexibility allowed to the service providers in the regulations itself. If a broadcaster, after achieving the interconnection, desires to place its channel at a particular position or on a specific number, subject to the provisions of new regulations relating to EPG placement, it may offer discount within the prescribed framework or pay the mutually agreed fee, after signing the interconnection agreement, to a distributor for placing such channel.

The interconnection agreements are adequately regulated by the new framework through provisions on Reference Interconnection Offers (RIOs). However, any other form of further arrangements including placement and marketing are purely business related commercial arrangements and TRAI should not micro-manage the same.

In any business, there may arise a need for marketing and promotion activities on occasional basis. The business should have the freedom to do such activities as may be required without any artificial regulatory curbs or restrictions. In today's highly competitive world, the businesses are required to reach out to customers, increase consumer education, awareness, facilitation etc. through marketing and promotion activities which are also consumer friendly and hence such activities should not be regulated.

**With the above preface and without prejudice to our rights, we submit our responses to the 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?**

**Comments:**

Presently, the provisions related to target market under the Interconnection Regulations are as under:-

**Regulation 4(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.*

**Regulation 4(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;*
- (b) the total channel carrying capacity of its distribution network in terms of number of standard definition channels;*
- (c) list of channels available on the network;*
- (d) number of channels for which signals of television channels have been requested by the distributor from broadcasters and the interconnection agreements signed;*
- (e) spare channel capacity available on the network for the purpose of carrying signals of television channels; and*
- (f) list of channels, in chronological order, for which requests have been received from broadcasters for distribution of their channels, the interconnection agreements have been signed and are pending for distribution due to non-availability of the spare channel capacity:*

*Provided that the list of channels in chronological order, under clause (f), shall be prepared on the basis of date and time of receipt of the written request from the broadcaster*

**Regulation 4(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:*

**Regulation 8 (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.*

**Further the carriage fee slab is defined in Schedule I of ICR as follows:**

*a. If monthly subscription for a channel in TM < 5% of 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 TM is  $\geq$  5% but less than 10% 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 TM  $\geq$  10% but less than 15% 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 TM is  $\geq$  15% but less than 20% 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 monthly subscription for a channel in the target market is  $\geq$  to 20% 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'.*

Under the Interconnection Regulations, 2017, the right of declaring target market vests with the DPO. This is with the premise that it is the DPO which creates the infrastructure for distribution of TV channels.

Since the broadcaster creates its content keeping in mind a certain kind of targeted viewership, it is also important that the broadcasters have a say in deciding the target market and not necessarily cater to all areas where the DPO is present.

DTH service providers, due to the DTH technology, cater their service to all the geographical areas in the country. Hence, they may be right in declaring PAN INDIA as their target market. Similarly the MSOs with nation-wide presence may also declare their target market as PAN INDIA, however the carriage fee charged by them from broadcasters on this basis may not be correct for all kinds of broadcasters as some broadcasters may have limited target viewership within the entire target market as declared by these DTH/MSOs. The broadcaster may not have the requirement to reach to the entire subscriber base, as declared by the MSO thereby creating conflicting interests. In view of the above, it would be correct to infer that the target market provisions, if required, can be misused by DPOs especially where there is high demand for number of channels and limited channel carrying capacity.

Further, as has been noted in the consultation paper, the regulations provide freedom to the DPOs to declare their target market for the purpose of ascertaining the carriage fee. Since some of the DPOs and more particularly the DTH operators have declared PAN India as their target market, the regional TV channel broadcasters desiring to get their channels carried on such distribution platforms, are required to pay carriage fee on national subscription figures of such distributors and as a result are constrained to pay a much larger carriage fee, which make their business unviable.

In view of the above, one of the alternative could be - that for DTH and MSOs who declare PAN INDIA as their target market, the carriage fee provisions as mentioned above should either not be applicable or the carriage fee amount so payable by the broadcaster to the DPO, as per the regulations, should be subject to an upper limit.

Another alternative could be that the broadcaster should have the right to declare its target market and pay the DPO only for the active subscriber base of the DPO in that target market. The broadcaster may declare its target market as Primary and Secondary market, wherein Primary Market would mean that a broadcaster is having the main or the primary market of its viewers for which it agrees to adhere to the carriage fee requirements/ stipulations and the secondary target market, where the carriage fee requirement stipulations are subsequently lowered. However, we understand that this system will also result in certain aberrations and anomalies.

Thus, we suggest that a mixed system wherein the DPO and broadcasters have equal say in determination of the target market based on their respective declarations should be thought of and designed.

Yet another option which can be considered is that carriage fees should only be applicable on the number of subscribers who subscribe to a broadcaster's channel.

**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?**

**Comments:**

Yes, there should be a maximum cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO. The DPOs are already getting the NCF charges from subscribers for the capacity being provided by them and are obliged to carry various TV channels from which the viewers can select their channels. Further the DPOs, in case of pay TV channels, also get 20% distribution fee and upto 15% incentive from broadcaster. Though in case of FTA channels, distribution fee and incentive is not received by the broadcasters, but the same is made good by higher uptake of FTA channels by the subscribers and the DPOs get the NCF. An upper maximum limit of carriage fee per channel per month shall be prescribed separately depending on the active subscriber number of the distribution network. Such amounts can be based on the different slabs of average active subscriber base of the DPO for last 6 months. The maximum carriage fee in each slab should be defined and shall be the maximum amount payable, subject to calculation by the formula given in the regulations or on the basis of new formula if being stipulated.

**3. How should cost of carrying a channel be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.**

**Comments:**

The cost of carrying channel is recovered by NCF charges levied by the DPOs. The primary objective of charging carriage fee should be with an intent that the network capacity is not unnecessarily blocked and there should be some churning of the channels on the network. The primary objective for charging carriage fee should be that the channels with very negligible viewership should give way for other/better channels on the network. Hence the carriage fees should be seen as supplementary revenue source and only a reasonable amount should be charged which also helps the DPOs in having alternative source of revenue and at the same time, does not put unnecessary burden on the broadcaster.

**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?**

**Comments:**

As per the extant regulations, the exclusive right of deciding and declaring the Target Markets (TMs) rests with the DPOs. Further, as rightly pointed out by the Authority itself, there is a huge variance in the TMs so declared, wherein the DPOs, have declared large areas as their Target Markets. Moreover, the DTH Operators have declared the entire universe (PAN India) as their TM. It would be extremely difficult for regional channels, FTA channels & niche channels, to hold on to the 5% viewership threshold. Channels serving language based content or region based content are already being made to pay heavy carriage fee. This would also serve as an entry barrier for new entrants, which would prove to be a major setback for present government initiatives like 'Ease of Doing Business'. Such stipulations are also anti-consumer as the consumer will be bereft of watching such channels which don't meet the 5% threshold limit, even if they wish to watch such channels.

Moreover, many stakeholders, in their response during the consultation stage to the ICR 2017, have already submitted their concerns regarding probable under-reporting of subscriber numbers by DPOs in order to avoid the stage of 'Nil' carriage fee. This would also have a great bearing on the established channels whose business and reputation may be put at stake.

In light of the above, we are of the opinion that the present provisions regarding disconnection based on subscriber base being less than 5% in the immediately preceding six months is likely to be misused by the DPOs and should be done away with.

**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.**

**Comments:**

Regulation 18 of the Interconnection Regulations 2017, as reproduced below, already provides in detail, the manner in which the channels should appear on the EPG.

*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*

These are detailed provisions and do not require further regulations which may result into micro-management.

In the new regulatory framework, the carriage and placement have been clearly distinguished. The carriage fee has been regulated and the must carry provisions are made to ensure access to the distribution networks in a transparent and non-discriminatory manner. Detailed provisions relating to placement are already provided, however, if a broadcaster still wishes to place its channel at a particular position or on a specific number, subject to the provisions of new 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. The regulations already disallow placement as a pre-condition to provide signals.

In view of the above, we are of the opinion that the present provisions relating to placements are adequate and the Authority should not consider any further regulation in this aspect.

**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).**

**Comments:**

Placement, marketing and other agreements are not interconnection agreements and are outside the scope of TRAI's regulation. There are already detailed safeguards and provisions related to placement wherein placement as a pre-condition to providing of signals is not allowed and where there already exists a detailed manner in which a channel has to be placed in the EPG. Any further over-reaching regulation in this regard is not warranted and will severely impacts the freedom to do business and curtails the innovation and creativity. Any arrangement done between the service providers for marketing and promotion, after achieving interconnection, should not be interfered by the regulatory authority.

**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?**

**Comments:**

We are of the opinion that there is no need for any kind of intervention in the limited area of flexibility allowed to the service providers in the regulations itself. If a broadcaster, after achieving the interconnection, desires to place its channel at a particular position or on a specific number, subject to the provisions of new regulations relating to EPG placement, it may offer discount within the prescribed framework or pay the mutually agreed fee, after signing the interconnection agreement, to a distributor for placing such channel.

We also wish to state that the interconnection agreements are adequately regulated by the new framework through provisions on Reference Interconnection Offers (RIOs). However, any other form of further agreements including placement and marketing are purely business related commercial arrangements and TRAI should not micro-manage the same.

In any business, there may arise a need for marketing and promotion activities on occasional basis. The business should have the freedom to do such activities as may be required without any artificial regulatory restrictions. In today's highly competitive world, the businesses are required to reach out to customers, increase consumer education, awareness, facilitation etc. through marketing and promotion activities and hence such activities should not be regulated, which are also consumer friendly. In no other business, such marketing & promotion are restricted.

**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.**

**Comments:**

It is not correct to always assume that the flexibility is subject to misuse. The market forces in a competitive environment themselves take corrective measures if any such flexibility is endeavoured to be misused by any player in the market. The cornerstone of the new regulatory framework is based on the choice of the

consumer. With more and more consumers exercising and revising their choice, the assumption that the business model can be misused is unfounded. Further with the easy to use app/website wherein consumers can select/de-select any channel or bouquet with click of a button empowers the consumer in exercising his choice. Hence there is a check and balance on this limited flexibility based on consumer choice and requirement. Further, as stated above, there should be some flexibility always available with players otherwise it may result in a situation where there is no growth, no innovation, nor any scope for creativity in business for the players in the sector.

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

**Comments:**

The present consultation paper is brought about by TRAI without evaluating the effects of such frequent discussions / proposed changes on the entire ecosystem of the industry. TRAI has to appreciate that there has been significant pain and transition cost which has been faced by all the stakeholders including consumers while adopting the new regime. A fresh consultation on the same very issues which have already been dealt and closed is not in the interest of any of the stakeholders. The regulator should not put the industry and its consumers to frequent inconveniences.

TRAI itself had stated that they would like to review the system after two years; hence it should give some reasonable time to the stakeholders and consumers to settle down before thinking of tinkering with the recently implemented regulations for which the ground work took more than 2 years. It is requested that this consultation process be called back or kept on hold and deferred.

---