

To,
Mr. S.K. Singhal,
Advisor (B&CS),
Telecom regulatory Authority of India
New Delhi

25th April, 2016

Ref: Consultation Paper on the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016.

Dear Sir,

We would like to enclose herewith our detailed response on the above captioned Consultation Paper for your consideration and records.

Thanking you,

Yours faithfully

For Videocon d2h Limited



Shivendra Krishna Singh
Head-Regulatory & Compliance

Encl: A/a

RESPONSE OF VIDEOCON d2h LIMITED TO CONSULATION PAPER DATED 23rd MARCH, 2016 ON THE REGISTER OF INTERCONNECTION AGREEMENTS (BROADCASTING AND CABLE SERVICES) REGULATIONS, 2016

At the outset, we welcome the initiative taken by Telecom Regulatory Authority of India ('Authority') for releasing the Consultation Paper on The Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016 dated 23rd March, 2016 and seeking comments of the stakeholders on the issues referred therein.

As rightly observed by the Authority, the provisioning of the reporting system of interconnection agreements by the service provider will certainly help the Authority to systematically and scientifically maintain a register of all interconnect agreements and allow the Authority to monitor and analyze the trade practices across all distribution platforms. This will also ensure that no distribution platform gets a raw deal at the hands Broadcasters.

We are of the opinion that the present step initiated by the Authority shall act as a stepping stone in addressing various issues like stringent obligations as to carriage of channels being faced by DPOs and will also ensure satisfactory resolution to issues related to discriminatory, unfair/ favorable treatment to certain set of Distribution Platforms (DPOs) and shall ensure fair, non-discriminatory, transparent and level playing field among all DPOs.

We would now like to submit our detailed comments against each question as under:

Q1. Why all information including commercial portion of register should not be made accessible to any interested stakeholders?

At the outset, we would like to highlight the stand of Hon'ble TDSAT in its landmark judgment dated 7th December 2015, which is reproduced below:

"A proper RIO, true to its nature as envisaged in the Regulations, is meant to go a long way in introducing/bringing about fairness, reasonableness and non-discrimination in interconnect arrangements between broadcaster and distributors. But what is passed off by the broadcasters as RIO, instead of doing away with non-discrimination actually becomes a device to perpetuate discrimination"

From the aforesaid, TDSAT Judgment, it is abundantly clear that the intent of the Hon'ble TDSAT has been to bring about fairness, reasonableness and non-discrimination in the dealings between the parties so as to ensure that no DPO or Broadcaster is singled out and provided a discriminatory deal vis-à-vis other DPOs or Broadcasters.

We whole heartedly support and are of the opinion that any and all information including the commercial aspect of the interconnect agreement should be made accessible to all stakeholders except to general public. Since "must provide" and "non-discriminatory" offering of channels is most essential element of the Regulation as envisaged under Clause 3.1 and Clause 3.2 of The Telecommunication (Broadcasting and Cable Services) Interconnect Regulation, 2004 (13 of 2004) dated 10th December, 2004, therefore there cannot be confidentiality criteria permitted by the Authority by classifying the information as confidential and non-confidential. We state that the true reflection of the intent enshrined under Clause 3.1 and Clause 3.2 would be there for all to see, if the commercial aspect along with all information under any given interconnect agreement is made available to all stakeholders excluding general public, to whom general information related to agreements may be provided, but certainly not the commercial information.

Q2. If the commercial information is to be made accessible,

(a) In which way, out of the three ways discussed above or any other way, the commercial information should be made accessible to fulfill the objective of non-discrimination?

In the light of our response to Question no. 1 above, we are of the view that although no information should be classified under confidential and non-confidential information category, for stakeholders the same yardstick of non-classification of information cannot be adopted for general public. As stated above, we sincerely feel that any information forming part of the register may be shared with general public except commercial information. Thus, two categories of confidential and non-

confidential information should be the norm for disclosure of information to general public.

We would like to state that the Authority should permit access or make available all information including commercial information exclusively to stakeholders so as to ensure level playing field and to encourage competition based on efficiency and quality of service.

We feel that disclosure of such information shall not in any manner impact the business relations of parties but on the contrary, access provided to stakeholders will promote overall growth of broadcasting industry and would substantially reduce the litigations pertaining to discrimination, stringent obligations etc.. It would also embark a sense of trust and fairness amongst the stakeholders and would encourage them to implement healthy business practices rather than resorting to unfair, unjust and lopsided clauses such as forced packaging, high level of channel penetration, preferential LCN, etc.

The fair and free availability of information exclusively amongst the stakeholders would also enable the Authority to achieve its objective of formulating market driven realistic price of the channel at wholesale level.

(b) Should it be accessible only to the service providers, general public or both?

Instead of placing the data in public domain and permitting general public at large to access the interconnect agreements between the stakeholders it would be apt that only the stakeholder i.e., the Broadcasters and DPOs are permitted to access respective interconnect agreements. Transactions between DPOs have no direct correlation with general public. The Authority should therefore restrict sharing of all information including commercial information amongst DPOs exclusively. The Authority may consider issuing passwords to DPOs in order to enable them to access the information amongst themselves. Such passwords may be issued to the authorized representative of each of such DPOs.

The present consultation refers to disclosure of information which is B2B in nature, accordingly disclosure of information should be restricted to business associates and partners only and not to general public at large.

This will curb unsolicited and unjustified requests from general public.

Q. 2(c) Should any condition be imposed on the information seeker to protect the commercial interests of the service providers?

AND

Q. 3 If the commercial information is not made accessible to stakeholders, then in what form the provisions under clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act be implemented in broadcasting and cable sector so that the objective of non-discrimination is also met simultaneously?

As the Authority is well aware in any given business transaction the paramount interest is the commercial understanding arrived between the parties. Commercial Interests of the DPOs being trade sensitive need to be treated on a different footing in the context of sharing the same with DPOs vis-à-vis general public. We reiterate that, there is no need of sharing commercial interests of the DPOs with general public as the prime objective of the present consultation paper is to ensure level playing field by offering non-discriminatory terms, which objective can be well and truly achieved if all information including commercial information is disclosed exclusively amongst DPOs only.

The information, which can be disclosed to general public, has to have its limitations and boundaries. There are areas of information that should remain totally protected / exempted to be shared with general public, like information of commercial interests, trade secrets, intellectual property, technical parameters, the disclosure of which would not only be needless but would also not help either the Authority or the DPOs in creating level playing field amongst DPOs, which is the principal objective of this consultation paper. In fact sharing information with general public as to information of commercial interests, trade secrets, intellectual property, technical parameters would

unnecessarily create unwarranted issues between the DPOs, in the event such information is misinterpreted, misled and consequently misused.

Q4. Please provide suggestions on regulation 5 of the draft regulations regarding periodicity, authentication etc.

We would request for following modification to regulation no. 5 of draft regulations regarding periodicity, authentication etc. as follows:

➤ **One-time Reporting Requirement:**

The timeframe for reporting of interconnect agreements executed before coming into effect of these regulations should be amended from one month to **three months**. This will give the DPOs sufficient time to collate the data in the desired formats and submit the same in accordance with the regulation.

➤ **Periodical Reporting:**

The Authority may consider to revise periodical reporting requirement which presently is proposed to be on monthly basis i.e., 10th day of the following month **to Quarterly basis** i.e., 10th day of the following month of Quarter end.

➤ **Authentication / Certificate Requirement:**

We understand that the Authority's intention behind introduction of certification requirement for reporting of information is primarily with intent to ensure that the reporting should be done in responsible manner and that complete and accurate information is submitted by service providers. In this context we would like to state that as rightly mentioned by the Authority, only in case of service providers who are not registered as a company should file certificate digitally signed by Company Secretary and authorized representative and not those who have been duly registered under Companies Act.

For service providers incorporated and registered under Companies Act, the reports can be certified by authorized representative who is duly permitted to do so by the Company.

Q5. Please provide comments on how to ensure that service providers report accurate details in compliance of regulations?

AND

Q7. Please provide suggestions on regulation 6 of draft regulations and also the formats given in schedules? Stakeholders can also suggest modified format for reporting to make it simple and easy to file.

We feel that if the formats as proposed in the draft regulation vide Schedule I to III if implemented in both letter and spirit, the Authority will achieve its objective of ensuring fair, transparent and non-discriminatory dealing between parties.

Further, such common reporting formats will ensure uniform disclosure of information by all service providers, which in turn would facilitate the Authority to analyse the data and to take corrective actions, if so required.

In addition to the present format of reporting requirement for Broadcasters, as proposed in Schedule I of the draft regulation, following criteria's or reporting requirement may be added, to ensure no anomalies are left behind:

- a) Broadcaster to submit cost of offering channels and revenue generated from each DPO, for the Authority to have a view of net cost across platforms.
- b) Promotional Schemes as and when proposed to be introduced by Broadcaster, Broadcaster must declare the same to the Authority along with its terms and conditions including validity period.
- c) Promotional schemes whether introduced or withdrawn by Broadcaster should be made part of reporting requirement.
- d) Discounts, if any provided by the Broadcasters, either monetary or non-monetary form to all DPOs including vertically integrated DPOs, should be disclosed.

- e) Parameters of Discounts along with the details of actual discount provided should be clearly spelled out in the format of reporting so as to ensure that there is no incorrect reporting made by the Broadcasters.
- f) Broadcaster should be mandated to file its standard Reference Interconnect Offer (RIO) Agreement to the Authority on Quarterly basis highlighting any amendments thereto for earlier RIO Agreement filed by Broadcaster.

Q6. Please provide comments on digitally signed method of reporting the information.

We support this initiative of the Authority to implement digitally signed method of reporting of the information. However, we suggest that for the service providers which are incorporated and registered under Companies Act, the reports can be certified only by one authorized representative who is duly permitted to do so on behalf of the Company. For all other DPOs who are not registered under Companies Act, the reporting of the information should be digitally signed by the company secretary or general counsel and the authorized representative of the service provider.

Q8. Any other suggestions relevant to the draft regulations.

- **Additional reporting requirement for Broadcaster – Mobile TV Platforms**

In addition to the reporting requirement proposed in Schedule I of draft regulations, which presently is limited to DTH, IPTV, HITS and MSOs, we would like to propose, additional reporting requirement for Broadcasters having agreements with other entities vide which Broadcasters have independently permitted such entities (such entities may be hotels, commercial establishments, Mobile TV platforms and/ or other video on demand platforms) to carry their channels/ content.

If such reporting structure is brought in place, then we shall be able to achieve level playing field in a realistic and holistic manner. Such reporting requirement will ensure

applicability of must provide and non-discriminatory regulations for Mobile TV platforms as well.

In view of the above we propose the below mentioned format of reporting for Broadcasters providing their Channels to Mobile Tv platforms.

“Commercial details regarding interconnect agreement between Broadcaster and Mobile TV Platforms

Name of the Broadcaster _____ Month: _____

Name, address, contact details of Authorized person

Table C

Agreement Number	Name of the Mobile TV Platform	Name of the Company operating Mobile TV Platform	A-la-carte/ Bouquet	Name of the Channels	RIO Price of A-la-carte/ Bouquet	Subscription fee of A-la-carte/ Bouquet agreed in Rs.	Discount Offered, if any	Remarks

- Need to introduce Self Certification for Audit**

As the Authority is aware DTH platform is entirely addressable and transparent. Once the Authority introduces the proposed requirement of filing interconnect agreements by all stakeholders more and more clarity will come in for all to experience relating to often disputed areas between the stakeholders. One of such dispute zone revolves around stringent provisions of audit conducted by broadcasters thereby they transgress the scope of audit and insist on providing other unrelated but business sensitive confidential information. Under the garb of audit exercise the broadcasters seize the opportunity to get to critical data from DPOs which according to us needs to

be stopped and one way of stopping such misuse of audit provisions is self certification.

As a corrective measure to minimize litigation pertaining to audit, it would be ideal on part of the Authority, to take two fold steps:

- (i) to expressly limit the scope of audit for Broadcasters to know the number of active pay subscribers and
- (ii) to allow the DPOs who are registered under Companies Act and have implemented CAS and SMS systems to submit their own self certification to broadcasters or to have themselves certified through government managed audit agencies like BECIL or independent agencies like E&Y, and to submit such certificate to Broadcasters, which would suffice the purpose and also avert often experienced disputes between the DPOs and the Broadcasters.

Videocon d2h Limited

Uplink Centre: Plot No.1D, Udyog Vihar Industrial Area, Surajpur, Greater Noida, Dist Gautam Budh Nagar- 201 306.

☎ +91 120 6141000 📠 +91-120-6141250.

Corporate Office: 1st Floor, Techweb Centre, New Link Road, Near Mega Mall, Oshiwara, Mumbai- 400 102.

☎ +91-22 42 555 000 📠 +91-22 42 555 050.

www.videocond2h.com

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