

Bharti Telemedia Ltd.
Airtel Center, Plot No. 16,
Udyog Vihar, Phase - IV,
Gurgaon - 122 015
Haryana, India

dth services

www.airtel.in
call+91 124 4222222
fax +91 124 4243252



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Dated: 15th November 2016

To,
Advisor (B&CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
J.L. Nehru Marg, Old Minto Road
New Delhi - 110002

Subject: Consultation on Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016.

Kind Attention: Sh. Sunil Kumar Singhal

Dear Sir

This is with reference to the above mentioned draft Interconnection Regulation. In this regard, please find enclosed our response for your kind consideration.

Thanking you
Yours sincerely
For Bharti Telemedia Limited

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', is written over a horizontal line.

Ravi P. Gandhi

Authorized Signatory

Enclosed: As mentioned above

Bharti Telemedia Limited's Response to TRAI's Consultation Paper on the Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016

At the outset, we wish to thank the Authority for providing us with the opportunity to submit our response to the abovementioned consultation paper. We hope that TRAI will consider our submissions favourably.

Before making any submission on the specific points of the draft regulation, we humbly put forth that through the draft Regulation on Interconnection, TRAI is intending to micromanage the DTH business, which is at present intensely competitive. Such an attempt will stifle the DTH operators' freedom to run their business and is, in principle, against the government's efforts to promote the ease of doing business.

As per the draft regulation, TRAI intends to cap the carriage fee at 20 paisa per channel per subscriber per month. Further, DPOs will be required to offer their networks on the principle of 'must carry', on a 'first come first served' basis.

We strongly oppose such a policy framework on the following grounds:

1. Satellite bandwidth is a scarce resource, which makes it not only cost prohibitive for DTH operators to add requisite transponders but is also difficult to obtain because of the long waiting time involved (usually 1-2 years). Therefore, DTH operators should be given the flexibility to use this bandwidth economically and efficiently to meet the demands and preferences of their retail customers. However, as per para 33 of the draft paper, *"Subject to the availability of capacity for carrying channels, the access to the network should be provided on first come first serve basis on payment of applicable carriage fee."*
2. We recommend that the principle of 'first come first served' not be implemented in situations where there is a gap between demand and supply and/or the resource to be provided is scarce. For instance, the Indian Government conducts auctions for scarce resources such as spectrum and coal due to the huge gap between demand and supply and monetizes the scarce resource. Further, the Indian government has permitted the trading of the spectrum under which telecom service providers can decide the price of their spectrum for trading. The principle of 'first come first served' might end up creating disputes between broadcasters and DPOs since it would be hard to determine the priority level of broadcasters' requests for the carriage of a channel. It would also lead to administrative issues (documentation, etc.) which would be difficult for private entities to manage.

3. DTH operators are paying the market-determined price to the DoS for transponders apart from paying very high charges to WPC, therefore, DTH operators should have the right to determine the carriage fee for channels with low viewer demand or otherwise to recover their costs and to incentivize investments.
4. The fixation of carriage fee is a market phenomenon based on the forces of demand and supply. Broadcasters pay carriage fee to the DPOs for the less popular channels in order to increase their viewership, which ultimately leads to incremental advertisement revenue. However, once the channels become popular, the broadcasters stop paying carriage fee to DPOs and, instead, seek higher subscription charges from them. Therefore, DPOs should have complete freedom to levy the carriage fee for channels in order to recover carriage and other operational costs. Such fee should be left unregulated for the free market dynamics of demand and supply to operate. If there are no limits or regulations on advertisement rates, there is no justification for placing any limit or regulation on the carriage fee.
5. DTH operators should be permitted to decide the carriage fee, which should continue to depend upon market forces. In fact, the state-run Doordarshan recently conducted an e-auction for determining the carriage fee on DD Free Dish (the DTH arm of Doordarshan)¹. The reserve price for carriage fee in the e-auction was Rs. 4.3 crores per channel, which fetched Doordarshan Rs.4.35 crores-Rs.5.1 crores per channel as carriage fee from 24 channels. Therefore, the dynamics of free market and competition should not be curbed, which the draft regulation seeks to achieve.
6. Currently, DPOs have a limited capacity, while the number of channels in India is very high, viz., approximately 850 (800 SD channels and 50 HD channels). DTH operators require at least 1500MHz spectrum to be able to carry all these channels. However, the capacity of existing DTH operators ranges from 200MHz to 700MHz, which means that they cannot carry all channels. Carriage fee is one of the sources of revenue for DTH operators and helps them increase their infrastructure investment, which further enables broadcasters to expand the reach of their channels and enhance their revenue. The draft proposal to cap the carriage fee on the basis of subscribers will dis-incentivize DPOs from investing in their infrastructure. DPOs will focus only on carrying limited and popular channels, instead of upgrading their infrastructure to carry as many channels as possible.

¹ <http://www.bestmediainfo.com/2016/10/24-channels-renewed-three-channels-added-to-dd-free-dish/>

7. Furthermore, there is no international precedent for the regulation of the carriage fee. In fact, the Authority, in its report dated 24.07.2010 submitted to the Hon'ble Supreme Court, had recognized that *"The Authority has also looked at the international experience in controlling or capping carriage fee. **Carriage fee in international markets is viewed as a matter of commercial negotiation** and is based on relative bargaining power and market strength of players. **In all the countries studied, there is no incidence of direct intervention in placement and carriage fee**, nor in any other transactions at the wholesale level (e.g. subscription fee negotiations). In fact, even in international digital markets, where carriage fee cannot be monetized because the supply of bandwidth is almost unlimited – there is still incidence of placement fee. While carriage fee reflects the supply demand mismatch and is market driven, placement fee is also a commercial transaction linked to the willingness of a channel to pay for being carried on a certain number that is easy to recall and/or placed adjacent to a particular channel."*
8. **Therefore, we recommend that the carriage fee should not be regulated in any form and, instead, should be left to market forces.**
9. As per para 43 of the draft Regulation, the placement and marketing fee are totally optional and based on mutual agreements between the broadcasters and DPOs. However, in the same regulation, TRAI has also mandated that the placement of channels shall not be altered by the distributor for a period of at least one year from the date of such assignment. It is submitted that the placement of the channels and the frequency of such alteration should be left to the decision of the distributor who shall duly inform the broadcaster in advance (say, a month's notice) about the change in the placement of the channels. Otherwise, it will restrict the DPO's ability to recover the placement fee from the broadcasters.