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TRAI/FY24-25/041

Dated: 20.09.2024

To,

Shri Deepak Sharma,
Advisor (B&CS) - II
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi-110002

Subject: Submission of Counter Comments to TRAI CP on 'Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual'

Dear Sir,

This is with reference to TRAI's Consultation on '**Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual'**.

In this regard, please find enclosed our counter comments to the consultation paper for your kind consideration.

Thanking You,

Yours Sincerely,
For Bharti Telemedia Limited

A handwritten signature in blue ink, appearing to read 'Rahul Vatts', is written over a horizontal line.

Rahul Vatts
Chief Regulatory Officer

Encl: a.a

Copy to:

1. Chairman, TRAI
2. Secretary, TRAI
3. Principal Advisor (B&CS), TRAI

Counter comments on TRAI CP on Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and The Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual

Counter comments by Bharti Telemedia Limited

TRAI Consultation Paper on Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and The Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual

Executive Summary

Bharti Telemedia Limited thanks the Authority for the opportunity to provide its counter comments to the responses received on the consultation paper ('CP') '*Audit related provisions of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and The Telecommunication (Broadcasting and Cable) Services Digital Addressable Systems Audit Manual*'.

At the outset, we would like to submit that these counter comments are an extension of the arguments already presented by us in the main response to the CP. For the sake of continuity, here is a quick re-summary of our key submissions:

- As a general principle, self-certification of DAS requirements should be enough. However, for the purpose of ease of doing business and in order to avoid the multiplicity of broadcaster-driven audits, the **provision of an annual audit of the DPOs' Addressable Systems as laid out in Regulation 15(1) of Interconnection Regulation, 2017, is crucial, should be retained and should suffice for purpose of the Audit.**
- The **Regulation 15(2) of Interconnection Regulation, 2017 [broadcaster-caused audits] should be abolished** as it **adds complexity to the entire value chain** in terms of the subjectivity involved which varies from broadcasters to broadcasters and creates a non-level playing field. Further, the TRAI has empaneled the auditors for the very purpose, who possess the requisite technical know-how to perform the audit procedures required as per the regulations. Hence, we see no need for broadcaster caused audits.
- **Financial disincentives for non-compliance should not be increased** for DPOs.
- Existing provision of 'calendar year' should be discontinued and **'financial year' should be specified.**
- Ideal timeline should be **annual audit within nine months of the end of previous financial year (FY)**, i.e. annual audit to be done by December of the current FY.
- The process of audits can be further simplified through **enabling provisions**. Also, **amendments are required in audit manual**. With the innovations and advancement of technology, it is no longer possible to maintain a product life cycle for several years.
- We recommend that a **holistic method for infrastructure sharing** that extends beyond cable and broadband services, i.e., infrastructure sharing across all DPO platforms like HITs with DTH, DTH with IPTV should be prescribed.

In the section that follows, Airtel submits its counter comments on key points raised by some of the stakeholders.

Bharti Telemedia Limited's Counter Response

Mandatory audit of DAS by DPOs

One of the stakeholders suggested '*Broadcasters have an unfettered, first right to audit and the DPO-caused audits under Regulation 15(1) be done away with*'.

A. Aspects related to Regulation 15 of Interconnection Regulation, 2017

At the outset, we categorically oppose this suggestion. We submit that TRAI Recommendations should be aligned to the annual audit mandate by DPOs as mentioned in **Interconnection Regulation, 2017**.

As a background, **Regulation 15(1) of the Interconnection Regulation, 2017** mandated an **annual audit of Distribution Platform Operators' (DPOs) Addressable Systems** by TRAI-empaneled auditors for maintaining compliance and accuracy in reporting. Under the present regulation, audits can be caused by two means i.e., an annual audit by DPOs [Regulation 15(1) – DPO-driven audit], or alternatively, by the broadcasters if they are not satisfied with the audit reports [Regulation 15(2) – broadcaster-driven audit].

We believe that **as a good practice to encourage ease of doing business (EoDB), the approach of self-certification should be sufficient. Otherwise, only the TRAI's annual audit [Regulation 15 (1) – DPO-driven audit] should be retained rather than the broadcaster-driven audit [Regulation 15 (2)].**

Since the DPOs are regulated under the TRAI Act and regulations made thereunder and comply with its audit requirements, in accordance with the regulations issued by the TRAI from time to time, there is no justification to give a similar and separate audit causing option to broadcasters who are an equal partner in the business value chain.

This diminishes the spirit of a trust-based regime, which was envisioned by TRAI in the current Consultation Paper, which reads as:

'1.3 As regards Audit related issues, TRAI had issued Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Amendment) Regulations, 2019 (7 of 2019) on 30th October 2019 amending certain provisions of Schedule III of Interconnection Regulation 2017.

1.4 The framework envisions a trust-based regime where every DPO is enjoined to cause a system audit of their systems by the auditors empaneled by the Authority.'

Therefore, there is no rationale for giving two options for audits. They are against the intent of ease of doing business, add unnecessary cost to compliance and allow broadcasters to seek additional audits that challenges regulator's mandate of annual audit and is over and above the regulator's own defined audit process. An additional broadcaster-caused audit is not required when regulator has mandated an annual audit to be undergone by every DPO for the very purpose and objective of the TRAI Regulation.

Further, in **Explanatory Memorandum of the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order, 2022, dated 22.11.2022**, TRAI itself mentioned:

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*'The trust-based audit regime through third party empaneled auditors started functioning. These measures helped in **enabling orderly growth of the sector...**'*

The Authority has, on multiple occasions, cautioned against practices that might disturb the orderly growth of the sector by disrupting ease of doing business (EoDB). We second the Authority's view that the trust-based audit regime (DPO-driven audit) provides a **neutral view through third-party verification i.e., audit by TRAI empaneled auditors**. It ensures a standardized approach and a common framework for audits.

The prescription of the **annual audit mandate for DPOs help in avoiding multiple broadcaster-driven audits**. Such **broadcaster-driven audits are an exhaustive exercise** as scope of audit differs from broadcaster to broadcaster leading to not just **comparability issue (as no common audit report) but also duplication of efforts**. There is also a **possibility of bias** in case of broadcaster-driven audit as views of auditors might differ from case-to-case basis.

Our view is in consonance with the Explanatory Memorandum in TRAI's Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, whose provision is *inter-alia*, reproduced as under:

*'131. Proper and accurate subscription report is very important as the settlement of charges between the service providers is based on such reports. **Audit of systems is a tool to verify the correctness of data and systems specification as per the requirements under the regulations. Moreover, allowing audit of addressable systems will help in confidence building measure in the value chain. Therefore, a mechanism is required to be put in place for audit of such addressable systems. The Authority is of the view that if a DPO gets its system audited from an auditor for the purpose of verifying subscription reports and sends these reports to the broadcasters then the problem of multiple audits can be solved significantly. This will also reduce the burden on the broadcasters and DPOs...**'*

In view of the above, broadcasters should be restricted from challenging completed audits by TRAI empanelled auditors without valid justification and further, ensuring that disputes are resolved without disrupting services. This will help **hone the process and avoid multiple audits**. The requirement for a pre-signal audit for new systems should also be eliminated to further streamline the process.

We believe that all the DPOs must cause audits in the same way as specified in Regulation 15 (1) which **mandates** all the distributors of television channels to cause audit of their system once in a calendar year to not only ensure that the systems of all the DPOs are compliant with Schedule III of the Applicable Regulations on Interconnection but to also ensure level playing field. The said regulation is reproduced herewith for ready reference:

'15. Audit - (1) Every distributor of television channels shall, once in a calendar year, cause audit of its subscriber management system, conditional access system and other related systems by an auditor to verify that the monthly subscription reports made available by the distributor to the broadcasters are complete, true and correct, and issue an audit report to this effect to each broadcaster with whom it has entered into an interconnection agreement...'

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It is pertinent to note that the NTO was introduced to bring parity and non-discrimination amongst the similarly placed DPOs and therefore, the provisions should apply equally to all operators irrespective of size. Therefore, **discriminatory provisions, including audit by broadcasters and exemption of few DPOs, should not be introduced.**

B. Other aspects related to Ease of Doing Business (EoDB)

We would like to re-iterate that the outcome of EoDB can be achieved by simplifying certain procedures under the current audit process. With this intent to reduce administrative burdens and enhance efficiency under the current audit process, we suggested certain modifications to Regulation 15(1):

1. Remove obsolete and redundant provisions in **Schedule III** [requirements of digital addressable systems] **and Schedule IX** [testing and certification regime for Conditional Access Systems (CAS) & Subscriber Management Systems (SMS)].
2. Review duplication in the overall reporting system, i.e., the reporting done to MIB / TRAI in various formats leads to an overlap.
3. Provide exemption/ grace period / error margin in initial phases of new service.
4. Modify audit frequency to 'once in two financial years' to reduce compliance burden.

To ease the cost of compliance, it is recommended that **financial disincentives for non-compliance should not be increased for DPOs.**

To support the growth of the sector, given that any change in RIO with respect to pricing of channels by broadcasters affects the whole ecosystem including DPOs and their customers, TRAI should fix a minimum validity period for the agreement between a DPO and Broadcaster and discourage broadcasters from making frequent changes.

Scheduling of audit

We echo the views of some of the stakeholders that **aligning the audit period with the financial year**, rather than the calendar year will enhance consistency with other financial reporting and compliance requirements. Most businesses operate and report their financials on a financial year basis.

By aligning the audit requirement with the financial year, the audit process can be streamlined, thereby reducing administrative burden. We suggest that providing a grace period for compliance can further ensure an efficient regulatory framework.

We agree that financial year would ensure that subscription and compliance audits are consistent with the financial data reported which may improve the reliability of audit outcomes, as audit would be based on data that has already undergone financial scrutiny.

Therefore, we would like to re-emphasize that existing provision of 'calendar year' should be discontinued and 'financial year' should be specified as follows:

1. Ideal timeline should be annual audit within nine months of the end of previous financial year (FY), i.e. annual audit to be done by December of the current FY.

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2. In case the DPO does not carry out an audit of its system in the specified time period (i.e. by December of the current FY), a grace period of three months should be provided (i.e. by March of the current FY). After this time period, the broadcaster may suo-moto initiate an audit of the DPO's systems within a six-month period, after which no audit should be allowed to be triggered.
3. In case the broadcaster receives an audit report from DPO, the fixed time period within which the broadcaster can raise queries should be within a month of receipt of the audit report.

Amendments to Audit Manual

The audit manual requires significant modifications. We re-iterate our submission pertaining to amendments in audit manual:

1. Audit processes for IRDs and VCs deployed by the DPOs should be carried out on **sampling basis** so that the audit may be completed within a reasonable timeframe.
2. Simulations on STBs should be carried out on those STB models that have been deployed and activated by the DPO in **previous two years**.
3. Data extraction **should be performed by DPO in front of the auditor** in case of any doubts regarding the CAS and SMS systems since IP credentials and system ID and passwords cannot be shared with any external teams.
4. Fingerprinting should be allowed to be **triggered either from the CAS or from the SMS**.
5. Requirement of providing compliance certificates, including a BIS certificate, by the DPO for each make and model of STB should be applicable for STBs procured in the **previous two years**.

Issues related to infrastructure sharing

We would like to re-state that presently, infrastructure sharing is not allowed between DPOs like DTH and IPTV. A holistic method for infrastructure sharing that extend beyond cable and broadband services allowing **sharing across all DPO platforms** like HITS with DTH, DTH with IPTV should be instituted. A **single auditor should be permitted to conduct audits for DPOs** and their all lines of services.

Although the guidelines allow for voluntary sharing of infrastructure, **infrastructure sharing may be treated as pass through charges between the DPOs**. Specification of logos should not be regulated considering complexity involved with implementation. We recommend that **Broadcaster should not be allowed to ask for a complete technical audit of all the DPOs** as part of the precondition for the broadcaster to provide the signals of television channels. Similarly, Broadcaster **should not be permitted to simultaneously audit all the DPOs** sharing the CAS/DRM/SMS.