

January 29, 2009

The Chairman,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi 110002

Sub: Consultation Paper on Interconnection Issues relating to Broadcasting & Cable Services

Dear Sir,

We are pleased to present our views on the Consultation Paper on Interconnection Issues relating to Broadcasting & Cable Services

We commend TRAI for its efforts towards clarity and harmony in regulatory aspects governing digital video content services.

We hope our views would help in these efforts. This response has been submitted electronically also.

Thanking you,

Yours faithfully,

KAPIL DEV KUMAR
CHIEF OPERATING OFFICER
(Tel: 98100 48448)

SMART DIGIVISION'S VIEWS ON THE CONSULTATION PAPER ON INTERCONNECTION ISSUES RELATING TO BROADCASTING & CABLE SERVICES

ITEMWISE RESPONSE TO "ISSUES FOR CONSULTATION"

6.2 INTERCONNECTION FOR ADDRESSABLE PLATFORMS

6.2.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

6.2.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

Response:

As consumers are oblivious to the technology when they consume a service, so should be the case with regulations. Inter-connection regime should be technology neutral across the digital addressable platforms (Digital Cable, DTH & IPTV). A level playing field on commercial terms for channels is required across these addressable platforms. In Telecom Services too, a technology-neutral approach has been followed. Inter-connection regulations are common to CDMA & GSM Services, as also fixed line services. The current technology-neutral approach in Inter-connection Regulations in Broadcasting & Cable Services should continue.

Even after the Advisories issued by TRAI in April & June on Inter-connection rates for DTH & IPTV Platforms, availability of content as per the Regulations and Advisories has remained a big challenge. Most Broadcasters continue to demand minimum commitments, contract at total bouquet rates, and packaging restrictions. When we seek contract as per Interconnection Regulations and RIO terms (a-la-carte rates without minimum commitments or packaging restrictions), content availability is denied and delayed to the extent of causing damage to business and consumer interest, forcing us to agree to the unreasonable demands under duress. The unreasonable approach continues to cause delays in conclusion of contracts and also curtails flexibility in offering choice and lower price to consumers.

Hence, it should be mandatory for Broadcasters to publish a common RIO for all addressable systems. Differences in technology standards can be incorporated in the specific agreement signed between broadcasters and addressable system operator.

Further, all the contracts signed between the Broadcasters and Addressable Platforms should be examined to assess if Regulations and RIO have been adhered to or not.

6.2.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?

Response:

The specifications indicated in the Annexure as also in the RIOs of leading Broadcasters are generally adequate and generally acceptable. Though the requirements in Annexure are for Cable Systems, they can be generally applied to other addressable platforms with some

minor differences for other platforms without compromising on the underlying need for such conditions. For example, in case of IPTV some of the differences are:

- There are no BIS Standards for IPTV STBs. International standards are being followed.
- As there is no separate VC in IPTV STBs, the concept of embedded VCs is being followed.

Differences in technology standards can be incorporated in the specific agreement signed between the broadcaster and the addressable system operator.

Requirements with respect to PVR are included in some RIOs. **Inclusion of requirements for PVR (both STB based and Network) as well as Time-Shift TV should be made mandatory in the RIOs.**

6.2.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

Response:

As incorporated in most agreements, Broadcasters have the right to visit & inspect the capability of the distribution networks to verify adherence to technical requirements.

6.2.5 What should be treatment of hybrid cable networks in non-CAS areas which provide both types of service i.e., analogue (without encryption) and digital (with encryption) services?

Response: No view

6.2.6 Whether there is a need to define “Commercial Subscribers” and what should be that definition?

Response:

The definition of Commercial Subscribers in the Inter-connect Regulations is appropriate. The key distinct, as already included in the definition, is “personal/ private use” and “commercial use for business enhancement”.

Personal/ Private use in Office Rooms, Office Meeting Rooms, and in shops should not be deemed as commercial.

6.2.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial subscribers as distinct from broadcasters’ RIOs for non-Commercial subscribers?

Response:

Same RIO should be used. Separate Annexure(s) for rates for Commercial Subscribers should be incorporated in the RIO.

6.2.8 Whether the regulation should mandate the publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Orders (RIOs)?

6.2.9 Whether the time period of 45 days prescribed for signing of Interconnection agreements should be reduced if RIOs are replaced by RIAs as suggested above?

Response:

We find that the details in the RIOs of most broadcasters are generally adequate.

We have found that most Broadcasters are reluctant to adhere to their own RIOs for the reasons mentioned in response to item 6.2.1.

RIO should be a complete document of contract which can be used as an Interconnection Agreement. Changes should be allowed through mutual consent, such as the differences in technology platforms. With this change, the time frame for the conclusion of should be reduced.

6.2.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

Response:

Regulation does exist on the subject (clause 13.2A.11) as mentioned in para 2.13 of the Consultation Paper. However, most Broadcasters continue to seek or insist on packaging restrictions. Hence, the Regulations should clearly prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform.

6.3 INTERCONNECTION FOR NON-ADDRESSABLE PLATFORMS

6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

Response: No View

6.4 GENERAL INTERCONNECTION ISSUES

6.4.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

Response:

The regulations on interconnection and quality of service have been issued with different objectives and there are different mechanisms for implementation of these regulations. Inter-connection is a subject matter between broadcasters and distributors. Quality of Service is a subject matter between customer and distributor, and is supervised & governed by TRAI.

Availability of Inter-connect at reasonable terms is an important input for providing quality service. By seeking minimum commitments, contract at total bouquet rates only, and by imposing packaging restrictions, Broadcasters curtail the flexibility available to distributors in offering choice and lower prices to customers. In this way, the stance of broadcasters affect the quality of services to customers.

The availability of reasonable non-discriminatory inter-connect terms is more important for start-up and small operators, who may need some time to meet the quality of service parameters.

Any attempt to link availability of inter-connection to the quality of service would only provide more excuses to the broadcasters for delaying/ denying inter-connect. This could also become a 0-1 game, where a distributor would be entitled to inter-connect with all broadcasters at reasonable terms or be left to the unreasonable demands of the broadcasters (in which the services may not run at all).

Hence, there shouldn't be any linkage between inter-connection regulations and QoS Regulations.

6.4.2 *Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?*

Response: No view

6.4.3 *Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.*

6.4.4 *If so, then what should the manner of such regulation be.*

Response: No view

6.4.5 *Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?*

Response: No view

6.4.6 *Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?*

Response: No view

6.4.7 *What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?*

6.4.8 *Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?*

6.4.9 *Is there any other regulatory measure which will achieve the same objective?*

Response:

The principle of six month protection is not as practical as in telecommunication services. In telecommunication services, inter-connect is a commodity link, whereas in video services, each inter-connect provides a unique content. Loss of an inter-connect agreement in telecommunication is not viewed as violation of six month protection period. Given that content is unique, discontinuation of an inter-connect agreement across the platform should not be seen as violation of six month protection period

It is important to ensure that no operator lures a set of customers through aggressive pricing and then increases it later. As long as a pricing action is applied to all customers and not directed at a set of customers, the operator should be allowed to take such pricing action.

Hence, we believe that the condition to provide six month protection for subscribers should be imposed subject to the following conditions:

- **Availability of content on the platform:** If for any reason a channel is taken off the platform impacting all the customers, then the condition should be imposed.
- **No change in status of channel from FTA to Pay:** In case a channel goes pay, then the operator should be allowed to increase the price to customers.

6.5 REGISTRATION OF INTERCONNECTION AGREEMENTS

6.5.1 *Whether it should be made mandatory for all interconnect agreements to be reduced to writing?*

6.5.2 *Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?*

Response: This should be mandatory

6.5.3 *Whether no regulatory protection should be made available to distributors of TV channels who have not executed interconnect agreements in writing?*

Response:

We have found that Broadcasters have been delaying or denying signing of inter-connect agreements until their expectations on rate, minimum guarantees or packaging are met. Distributors should, infact, get the regulatory protection for getting signals in case the broadcasters do not provide signals within the stipulated period through signed agreement.

6.5.4 *How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?*

6.5.5 *Whether it should be the responsibility of the Broadcaster to hand over a copy of the signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs who are executing interconnection agreements with their affiliates should be required LCOs?*

6.5.6 *Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?*

Response:

It should be mandatory for each party to have a copy of the agreement signed by the other party. Also, it should be a responsibility of the Broadcaster to submit a signed copy with TRAI within 15 days of execution date of the agreement.

Also, the Broadcasters should be required to submit a monthly/ quarterly certificate that signed copies of all interconnect agreements have been handed over to the concerned distributors and an acknowledgement has been received from them.

6.5.7 *Whether the periodicity of filing of Interconnect agreements be revised?*

6.5.8 *What should be the due date for filing of information in case the periodicity is revised?*

Response:

Given the number of inter-connect agreements are few, a monthly filing should be followed.

6.5.9 *What should be a reasonable notice period to be given to the Broadcaster/DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?*

Response:

A seven day notice period should be adequate.

6.5.10 What should be the retention period of filings made in compliance of the Regulation?

Response:

All currently valid agreements should be retained. Expired contracts could be retained till the currently valid agreement is filed.

6.5.11 Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/DVDs?

Response:

Scanned copies in CDs/ DVDs should be preferred and considered adequate.

6.5.12 Whether the interconnection filings should be placed in public domain?

6.5.13 Is there any other way of effectively implementing non-discrimination clause in Interconnect Regulation while retaining the confidentiality of interconnection filings?

Response:

We believe that the inter-connection agreements should not be put in public domain. Instead, there could be a provision for the concerned distributor to provide details of the terms provided to it to TRAI and seek clarity from TRAI whether the terms offered to it are discriminatory or not vis-à-vis other agreements entered into by the concerned Broadcaster.

OTHER ISSUES

This Consultation Paper has not dealt with issues relating to pricing rules for addressable systems. We believe that there is a need for review of pricing rules for addressable systems. Some of the Key Pricing Rule Issues that need to be reviewed are:

A. Rates for Addressable Networks as compared to rates for Analog Networks

Through an Advisory in April 2008, the interconnection rates for addressable systems have been advised at 50% of the rates for analog networks, in consonance with the TDSAT's judgment dated 31st March, 2007 in petition no. 189(C) of 2006 and judgment dated 14th July, 2006 in petition no. 136(C) of 2006.

The Judgement, in itself, was not a final view on the discount for addressable systems vis-à-vis analog systems. While recognizing that declarations in cable industry are close to 20%, and the consequent rationale of rate for DTH Networks being 20% of the rates paid by analog networks, TDSAT Judgement dated 31st March, 2007 in petition no. 189(C) of 2006 observed:

"...It is common knowledge as projected by the industry itself that in Cable, the declaration of subscribers is only about 20 per cent of the actual number of subscribers. As compared to this in DTH, the counsel suggests, the declaration would be 100 per cent. Therefore, according to the learned counsel, the DTH operator should get the channels from the broadcaster at 20% of the rates declared by them. Today the position is that this Tribunal has already requested the TRAI to come out with price regulation in this area. Price fixation should be done by the TRAI. In the judgment dated 14th July 2006 this Tribunal had fixed a norm in the interim till price fixation is done by TRAI, that broadcaster will charge the DTH operator 50% of its listed price for cable platform. For the present we would like to continue with the said norm and we reiterate that the TRAI should come out with price fixation and regulation in this behalf as early as possible. Price regulation is a must for protecting consumer interest. Delay on the part of the TRAI in carrying out this job is prejudicial to the DTH operators while it suits the broadcasters..."

We believe the Authority should consider review of the rates for Addressable Systems

B. Non-Uniformity in Channel Rates across India

Some of the regional channels have different rates in different states.

There are many channels that are FTA in some parts and pay in other areas. CAS Areas are a prime example of this phenomenon – many channels are FTA in CAS areas, but pay in non-CAS areas.

We believe that the rationale for allowing different rates in different areas/ zones is weak:

- Should a customer in north Delhi pay for a channel that is free in the CAS areas of South Delhi.
- Or for that matter, should a DTH/ IPTV customer in South Delhi pay for a channel that a cable customer in South Delhi is not paying for.
- Should addressable customers interested in a Tamil channel be subjected to different rates in Delhi and Tamil Nadu.

We believe that:

- **There should be uniform categorization of channel as FTA or Pay throughout the country, across platforms, as also across CAS & non-CAS Areas. If a channel is FTA in CAS area, it should be FTA for all digital networks all over the country. If a channel is FTA in analog networks, it should be FTA for digital networks as well.**
- **Channel rates should be same across India for addressable systems.**