DRAFT "TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES REGISTER OF INTERCONNECTION AGREEMENTS REGULATIONS, 2019"
ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA
DATED
APRIL 22, 2019

TO
THE TELECOM REGULATORY AUTHORITY OF INDIA

COMMENTS OF
SONY PICTURES NETWORKS INDIA PVT. LTD.

Dated: May 06, 2019

➢ INTRODUCTION

Pursuant to the ruling of the Supreme Court dated October 30, 2018 in Civil Appeal No. 7326 and 7327 of 2018 in the matter between Star India Pvt. Ltd. vs. Department of Industrial Policy and Promotion & Ors., the Telecom Regulatory Authority of India (TRAI) had notified the Telecommunications (Broadcasting & Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("**MRP Regulations")**, The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (collectively "**MRP Regime").** The New MRP Regime was to be implemented in terms of the timelines prescribed by TRAI vide its Press Release No 71/ 2018 dated 3rd July, 2018 however, an extension vide direction bearing no. F.No.21-4/2018-B&Cs dated December 27, 2018 ("**Direction")** was granted by TRAI. In terms of the Direction, the MRP Regime has been implemented effective January 31, 2019.

The distribution industry has witnessed a paradigm shift from the previous 'fixed fee' regime to the 'MRP' model. With the MRP Regime is in place as on date, any inter-linked regulations of TRAI demands streamlining with the MRP Regime and appropriate modifications would need to be carried out to that extent to the relevant regulation. Hence, TRAI has appropriately issued the Draft Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreement Regulations, 2019 ("**Draft Regulations**") in place of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 (as amended from time time) ("**Register of Interconnect Agreements Regulations')**.

At the outset, we wish to clarify that the Draft Regulations should consist of deviations from the Register of Interconnect Agreements Regulations to the extent that the same are required for streamlining with the MRP Regime. Any other changes should be avoided at this stage. The broadcast/distribution industry is presently grappling with the implementation of the MRP Regime and more changes at the inter-connect level will only create greater confusion on the ground. We are making considerable attempts to ensure deployment of adequate processes and procedures for the transition to the MRP Regime. Adding more onerous compliance conditions proposed under the Draft Regulations would only put greater strain on the concerned parties and delay the transition completion.

We have reviewed the Draft Regulations and provided our views herein below.

➢ ISSUES

Issue 1:

Quarterly filings {Chapter II - Clause 3 (1)}: As the TRAI is aware, pursuant to the introduction of the MRP Regime, which has revamped the manner of business had conducted in the distribution sector over the years; it has been sufficiently challenging for stakeholders to adapt to the shift. There have been several teething problems for resolution of which, stakeholders have approached TRAI on various occasions, directions have been issued from time to time and numerous meetings conducted by TRAI.

The obligation placed under the Draft Regulations for broadcasters to report to the TRAI, information relating to all interconnection agreements along with modifications/amendments/addenda pursuant the MRP Regulations within 30 (thirty) days from the end of every calendar quarter in which such agreement/modification/addenda/amendment would have been signed, is extremely cumbersome.

Under the Register of Interconnect Agreements Regulations, broadcasters were originally required to make quarterly filings. However, the TRAI vide The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fourth Amendment) Regulations, 2009 ("**Fourth Amendment"),** reduced the frequency of filing and limited it to once a year. The relevant portion of the Fourth Amendment has been reproduced below for ease:

"3. In regulation 5 of the principal regulations, ------ (a) for sub-clause (3) of clause (b), the following sub-clause shall be substituted, namely:-

*(3) **Annual Reporting**: The reporting of interconnection agreements shall be done on or before the 31st day of July of each year for all interconnection agreements including modifications or amendments made therein, which remained valid as on the 30th day of June of that year or during a part of the period from 1st July of the 2 previous year till the 30th day of June of that year, as the case may be, or as may be specified by the Authority from time to time in terms of the second proviso to regulation 6:*

Provided that the Authority may, without prejudice to its powers under section 12 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), at any time, call for the details of any interconnect agreement from any broadcaster, and such broadcaster shall furnish such details within such time limit as may be specified by the Authority in the communication calling for such details.".

Explanation statement no. 3 & 4 of the Fourth Amendment provides insight into the reason for the said amendment which have been reproduced below for ease:

"3. The details of interconnect agreements are at present filed quarterly by the broadcasters and DTH operators in compliance with these regulations. However, the Authority noted that the Industry practice is largely to sign Interconnection Agreements on annual basis, mainly for a calendar year or for the financial year. At the same time, the process of signing of interconnection agreements continues throughout the year on account of agreements with new distributors of TV channels, launch of new channels/ bouquets, amendments in terms and conditions of existing agreements etc. In case of DTH, the Interconnection agreements are sometimes for five years or for even longer durations.

4. The Authority discussed the issue of periodicity of filing the agreements in the consultation paper titled "Consultation paper on Interconnection Issues relating to 6 broadcasting & Cable Services" issued on December 15, 2008. A majority of stakeholders are in favour enlarging the periodicity of filing these agreements with the Authority. Based on the analysis of the written comments received, and open house held at Kolkata on February 06, 2009, the Authority has come to the conclusion that the filing of the interconnection agreements should be on annual basis. The Authority has decided to receive annual filing for period 1st July to 30th June by 31st July of every year. The period is chosen to cover the industry practices of agreements on calendar year basis or financial year basis."

In light of the above, it is evident that sufficient time and efforts have been invested by all stakeholders in arriving at a consensus on annual filing of interconnection agreements. Hence, for TRAI to propose quarterly filing is to take a step back from an agreed position.

Recommendation 1:

Under the MRP Regulations, interconnection agreements like reference interconnect offers (RIOs) are required to be entered into for a minimum period of 1 (one) year. Considering most broadcasters have entered into RIOs for 1 year time period, filings should be undertaken by broadcasters on an annual basis.

Further, as mentioned above, the issue has already been discussed at great lengths in the past post which, the requirement of quarterly filings had been reversed to annual filings. Hence, it would be in the best interest of all stakeholders to ensure consistency with this provision.

We request the TRAI to modify the said clause and limit the filing requirement to annual basis in accordance with the Fourth Amendment.

Issue 2:

Interconnection agreements {Chapter I – Clause 2 (z) & Chapter II – Clause 3 & Clause 4}: The Draft Regulations appear to have taken an extremely broad interpretation of the meaning of 'interconnection agreements'. Upon perusal of the Draft Regulations alongwith the Explanatory Memorandum, we are given to understand that TRAI intends for broadcasters and DPOs to submit details and copies of all commercial arrangements existing between the broadcasters and DPOs. Interconnection Agreements under the Explanatory Memorandum have been explained as 'techno-commercial agreements for provisioning/carriage of television channels and includes carriage or marketing or support or visibility or placement or similar agreement signed between broadcasters and distributors of television channels'. For the purposes of reporting requirements to TRAI, the Draft Regulations should restrict itself to interconnection agreements that are required for re-transmission of signals of channels of the broadcasters and include subscription, carriage/ placement RIOs. Requirement for filing of any ancillary agreements like marketing agreements are beyond the scope of 'interconnection agreements' and should accordingly be excluded. For example a broadcaster may take advertising inventory on a DPO's channel for promoting its network of channels to the DPO's subscribers and this would be a commercially sensitive arrangement between the broadcaster and the DPO. There would be no occasion for such an agreement to be filed with TRAI

Recommendation 2:

In light of the reasons mentioned above, the reporting requirements under the Draft Regulations should restrict themselves only to subscription, carriage/placement RIOs. Inclusion of any other commercial arrangements between broadcasters and DPOs would result in expansion of scope of the Draft Regulations significantly beyond the scope of the regulations and is unwarranted.

Issue 3:

Reporting/filing of copies of interconnection agreements/modifications/amendments/addenda {Clause 4 (1) (c) & 4 (2) (c)}: The Draft Regulations requires broadcasters to report to TRAI copies of interconnection agreements/modifications/amendments/addenda, which was not required under the Register of Interconnect Agreements Regulations.

Under Part A and Part B of the said Clause 4 (1) (c) & 4 (2) (c) of the Draft Regulations voluminous information is mandated to be furnished and such information should be sufficient for TRAI's review purposes. Further, considering standard reference interconnect agreements have been mandated under the MRP Regulation, templates of which have already been filed with TRAI and would continue to be filed in case of modifications, the only additional items would be the information referred to be provided in Part A and Part B. We do not see the need for filing physical copies of interconnection agreements since it would prove to be extremely cumbersome, result in duplication, be a costly affair and will not be environment friendly as these filings are to be done by DPOs as well as broadcasters, thousands of pages of paper will be used.

Further, under the Draft Regulations, so far, templates of the subscription agreements and carriage & placement agreements were being filed with TRAI. Considering the subscription RIO templates have already been furnished by broadcasters to TRAI and carriage & placement RIO templates would similarly have been submitted by DPOs with TRAI and, would continue to be filed in case of any change, as mentioned above, the requirement in any case is fulfilled in light of the MRP Regulations.

Recommendation 3:

We urge TRAI to remove the requirement for filing of copies of the interconnection agreements/modifications in light of the standardization that has been introduced by the MRP Regime. The reporting requirement should be restricted to information required to be filed under Part A and Part B of Clause 4 (1) (c) & 4 (2) (c). Any requirement for agreements to be filed as specified under Part C should be removed from the said clause 4 and elsewhere from the Draft Regulations.

Issue 4:

Inspection of register {Chapter III – Clause 7}: The process of inspection of Part 1 of the register has been relaxed under the Draft Regulations, which would allow unconnected, non-serious/non-concerned parties to inspect the register. This could result in misuse of such information by vested interests. In this regard, we wish to draw TRAI's attention to Section 11 (1) (b) viii. of the TRAI Act, 1997 ("**TRAI Act**") which states as follows:

"11 (1) (b)
vii. Maintain register of inter-connect agreements and of all such other matters as may be provided in the regulations;
viii. Keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirements as may be provided in the regulations;
ix.----------"

Considering the TRAI Act itself envisages levy of fee, the Draft Regulations cannot dilute this provision of the Act. Even other laws which allow members of the public to view documents such as the Companies Act, 2013, also require payment of a fee to view as well as to take copies of documents.

Further, the Draft Regulations are silent on the manner in which any member of the public can approach TRAI to view the register which needs clarification. It is to be noted that the filings with TRAI cannot be considered a matter of "public interest" as these relate to commercial arrangements between parties

Recommendation 4:

In order to evade non-serious parties and persons with vested interests from accessing such registers and for the reasons mentioned above, the process laid down under the Register of Interconnect Agreements Regulations, should be retained in the Draft Regulations. Further, the process provided under the Register of Interconnect Agreements Regulations in terms of application being made to the designated officer of TRAI for inspection of the register /inspection through the TRAI website and payment of a fee, should also be incorporated in the Draft Regulations.

We have extracted the relevant portions from the Register of Interconnect Agreements Regulations below, which should also be included in the Draft Regulations:

"Access to the register

7. Subject to the provision contained in clauses 3 and 4 of this regulation, the register shall be open for inspection by any member of the public on payment of prescribed fee and on his fulfilling such other conditions as may be provided for in the regulation or as may be notified by the authority from time to time.

8. Any person seeking inspection of the register shall apply to the officer designated for the purpose by the authority, detailing therein the information he/she seeks.

9. The designated officer shall allow inspection of the register and also make available extracts of the relevant portions of the register on payment of such fee as may be prescribed from to time.

10. The Authority may also allow access to the register through the website maintained by the authority on the same conditions and on payment of such fee as may be prescribed from time to time.

Levy of fees and other charges

11. I) There shall be levied a fee of Rs. 50 per hour for inspection of the register.

II) A fee of Rs. 20 per page shall be charged for copies of extracts from the register."

The amount of fee provided above, may slightly be increase to Rs. 100/- per hour of inspection and Rs. 50/- per page of copies to be extracted from the register.

- **CONCLUSION**

The primary objective of Draft Regulations we believe is to formulate a reporting system for the service providers so that they can report details of interconnection agreements. This would enable TRAI to maintain register of interconnect as per the TRAI Act. As long as the said purpose is being achieved by TRAI, any additional obligations on broadcasters and DPOs should be avoided at this nascent stage.

We believe some of the modifications brought in by way of the Draft Regulations in terms of electronic submissions, allowing digital signatures (to be notified by separate directions) and streamlining the concept of Compliance Officer are laudable. However, as previously mentioned, we are making best efforts to ensure that the transition to the MRP Regime is a success. Imposition of any additional compliances over and above what is presently prevalent would have severe ramifications and overburden stakeholders. Prior to implementation of the Draft Regulations, the points made by us needs to be given careful consideration.

----------xxxxxx----------