

10<sup>th</sup> June, 2016

**By Email and hand**

Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg (Old Minto Road)  
New Delhi - 110002

**Subject: RESPONSE TO THE TRAI'S CONSULTATION PAPER ON INTERCONNECTION FRAMEWORK FOR BROADCASTING TV SERVICES DISTRIBUTED THROUGH ADDRESSABLE SYSTEMS, DATED 4<sup>TH</sup> MAY, 2016 (THE "CP")**

**Kind Attn: Mr. Sunil Kumar Singhal, Advisor (B&CS)**

Dear Sir,

We thank the TRAI for this opportunity to express our views on the above captioned consultation paper. Tata Sky's response to the same is attached for your ready reference.

Yours faithfully,



Harit Nagpal  
Managing Director and CEO

Encl: As above

**TATA SKY'S RESPONSE TO THE TRAI'S CONSULTATION PAPER ON INTERCONNECTION FRAMEWORK FOR BROADCASTING TV SERVICES DISTRIBUTED THROUGH ADDRESSABLE SYSTEMS, DATED 4<sup>TH</sup> MAY, 2016 (THE "CP")**

We remain concerned on the issues for consultation and would like to bring the following to the attention of the TRAI:

**ISSUES FOR CONSULTATION:**

*Issue 1:- COMMON INTERCONNECTION FRAMEWORK FOR ALL TYPES OF ADDRESSABLE SYSTEMS [3.2 to 3.5]*

*1.1 How a level playing field among different service providers using different addressable systems can be ensured?*

*1.2 Should a common interconnection regulatory framework be mandated for all types of addressable systems?*

**TATA SKY RESPONSE:** Tata Sky supports an identical regulatory framework for all addressable systems, which will enable a level playing field for all DPOs to compete effectively.

*Issue 2:- TRANSPARENCY, NON-DISCRIMINATION AND NON-EXCLUSIVITY [3.6 to 3.25]*

*2.1 Is there any need to allow agreements based on mutually agreed terms, which do not form part of RIO, in digital addressable systems where calculation of fee can be based on subscription numbers? If yes, then kindly justify with probable scenarios for such a requirement.*

*2.2 How to ensure that the interconnection agreements entered on mutually agreed terms meet the requirement of providing a level playing field amongst service providers?*

*2.3 What are the ways for effectively implementing non-discrimination on ground? Why confidentiality of interconnection agreements a necessity? Kindly justify the comments with detailed reasons.*

*2.4 Should the terms and conditions (including rates) of mutual agreement be disclosed to other service providers to ensure the non-discrimination?*

*2.5 Whether the principles of non-exclusivity, must-provide, and must-carry are necessary for orderly growth of the sector? What else needs to be done to ensure that subscribers get their choice of channels at competitive prices?*

*2.6 Should the RIO contain all the terms and conditions including rates and discounts, if any, offered by provider, for each and every alternative? If no, then how to ensure non-discrimination and level playing field? Kindly provide details and justify.*

*2.7 Should RIO be the only basis for signing of agreement? If no, then how to make agreements comparable and ensure non-discrimination?*

*2.8 Whether SIA is required to be published by provider so that in cases where service providers are unable to decide on mutually agreed terms, a SIA may be signed?*

*2.9 Should a format be prescribed for applications seeking signals of TV channels and seeking access to platform for re-transmission of TV channels along with list of documents required to be enclosed prior to signing of SIA be prescribed? If yes, what are the minimum fields required for such application formats in each case? What could be the list of documents in each case?*

*2.10 Should 'must carry' provision be made applicable for DTH, IPTV and HITS platforms also?*

*2.11 If yes, should there be a provision to discontinue a channel by DPO if the subscription falls below certain percentage of overall subscription of that DPO. What should be the percentage?*

*2.12 Should there be reasonable restrictions on 'must carry' provision for DTH and HITS platforms in view of limited satellite bandwidth? If yes, whether it should be similar to that provided in existing regulations for DAS or different. If different, then kindly provide the details along with justification.*

*2.13 In order to provide more transparency to the framework, should there be a mandate that all commercial dealings should be reflected in an interconnection agreement prohibiting separate*

*agreements on key commercial dealing viz. subscription, carriage, placement, marketing and all its cognate expressions?*

TATA SKY RESPONSE:

- 2.1 – While we agree that the RIO should be published by broadcasters, we also do believe that agreements on mutually agreed terms should be allowed. Given the dynamic nature of the industry such deals are often consumer and business friendly.
- 2.2 – The TRAI has already put in place regulations to ensure the basic principles of ‘must provide’ and ‘non-discrimination’ for broadcasters and distributors. Each interconnect agreement is also filed with the TRAI. Even in case of negotiated agreements based on mutually agreed terms, all service providers will have the opportunity to enter into such agreements, and as such, this will provide a level playing field. The TRAI, as the regulator, is also the watchdog of the industry. Accordingly, since all broadcasters and distributors are providing the relevant information to the TRAI, the TRAI will be in the best position to look into any glaring non-compliance with regulations and maintain a level playing field. Further, in any case, individual parties are able to take legal action if they feel there is discriminatory treatment being meted out to them.
- 2.3 and 2.4 – As stated above, all interconnect agreements are filed with the TRAI, and it can point out any non-compliance. Further, in case of any service provider facing “discrimination” from another service provider, the appropriate authorities can act on a complaint made in this regard. As stated in our response to the Consultation Paper on the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016, we do not think certain details of specific agreements need to be made available. If specific commercial details of such agreements are allowed to be accessed by other broadcasters and distributors, this will undermine confidential business interests of the parties to what is essentially a private agreement entered into within a regulatory framework. This will not only affect business relations between service providers, but is likely to increase unnecessary litigation. It is better that the regulator review the agreements rather than commercial information be misused. We believe that making all deals public will actually increase the number of litigation (that may not be necessary) filed by private parties and choking the system.
- 2.5 No, the Must Carry principle must not be introduced in the DTH sector. There are close to 900 channels available in India and many more in the pipeline. Carrying capacity for the DTH business comes at an immense cost and it is not feasible to carry all channels. DTH companies should be entitled to promote and carry content that they know is desired by the subscribers as the ultimate goal is to give subscribers the best viewing experience. In addition, it is a waste of satellite bandwidth.
- 2.6 – Yes, the RIOs published by broadcasters should be detailed and should include discounts and benefits that may be offered, and the RIO should be an optional alternative to mutually negotiated deals.
- 2.7 – See responses above. We believe that RIO should not be the only basis for entering into an agreement and that mutually negotiated deals, disclosed to the TRAI, should be permitted. We understand that non-discrimination must imply that equal opportunities are given to all service providers to negotiate their agreements, and should not imply that each deal has to be comparable to every other deal and/or accessible to all DPOs. Further, non-discrimination could be encouraged by putting in place regulations relating to abuse of dominant position to foster competition in the sector.
- 2.8 – We are not sure why an SIA is required since it is essentially a subset of the RIO.
- 2.9 – No standardised formats are required in relation to existing clients/contracting parties, but for a new or first time broadcaster or DPO, perhaps corporate information relating to company name and address could be mandatorily required.

- 2.10 – 12 No, there are close to 900 channels available in India and many more in the pipeline. Carrying capacity for the DTH business comes at an immense cost and it is not feasible to carry all channels. DTH companies should be entitled to promote and carry content that they believe is desired by the subscribers as the ultimate goal is to give subscribers the best viewing experience. In addition, it is a waste of satellite bandwidth.
- 2.13 – Yes, there could be a mandate that all commercial dealings are to come under one agreement between the broadcaster and distributor, which are disclosed only to the TRAI. This should therefore include carriage fees, placement fees etc.

*Issue 3:- EXAMINATION OF RIO [3.26-3.32]*

*3.1 How can it be ensured that published RIO by the providers fully complies with the regulatory framework applicable at that time? What deterrents do you suggest to reduce non compliance?*

*3.2 Should the regulatory framework prescribe a time period during which any stakeholders may be permitted to raise objections on the terms and conditions of the draft RIO published by the provider?*

*3.3 If yes, what period should be considered as appropriate for raising objections?*

TATA SKY RESPONSE:

- 3.1 – The TRAI, as the regulator for the sector, should examine the RIOs published by broadcasters and take cognizance and suitable action against any gross violations of regulatory requirements. In addition, private parties have the ability to agitate any disputes relating to the RIOs of other parties in the appropriate forum.
- 3.2 – While we understand the concerns stemming from which the suggestion of prescribing time limits has been made, we would point out that deals take place at different time periods and it is unlikely that DPOs will thoroughly examine the RIOs of all broadcasters at the time at which they are published, unless there is a new or renewed deal to be concluded.

*Issue 4:- TIME LIMIT FOR PROVIDING SIGNALS OF TV CHANNELS / ACCESS TO THE PLATFORM [3.33-3.39]*

*4.1 Should the period of 60 days already prescribed to provide the signals may be further sub divided into sub-periods as discussed in consultation paper? Kindly provide your comments with details.*

*4.2 What measures need to be prescribed in the regulations to ensure that each service provider honour the time limits prescribed for signing of mutual agreement? Whether imposition of financial disincentives could be an effective deterrent? If yes, then what should be the basis and amount for such financial disincentive?*

*4.3 Should the SIA be mandated as fall back option?*

*4.4 Should onus of completing technical audit within the prescribed time limit lie with broadcaster? If no, then kindly suggest alternative ways to ensure timely completion of the audit so that interconnection does not get delayed.*

*4.5 Whether onus of fixing the responsibility for delay in individual cases may be left to an appropriate dispute resolution forum?*

TATA SKY RESPONSE:

- 4.1 – We do not think the period under the regulation needs to be sub-categorized. The current timeframe applicable under the relevant regulations is broadly flexible for all the actions to be completed within the time period. Furthermore, monitoring compliance with the sub-categorized time frames will be an unnecessary burden.
- 4.2 – We do not think deterrents or disincentives are required currently. The Platform should be able to complain to the regulatory authorities if the counterparty does not honour time limits and appropriate action can then be taken on a case to case basis.
- 4.3 – See response to 2.8 above.

- 4.4 – Yes, the onus of completing the audit must lie with the broadcaster, otherwise giving them the right to audit is superfluous. In addition, the right to audit should be restricted to once in a year. (Please also see our response to Issue 12 below on Technical Audit)
- 4.5 – Yes we agree that delays in individual cases can be handled at the appropriate dispute resolution forum.

*Issue 5:- REASONS FOR DENIAL OF SIGNALS / ACCESS TO THE PLATFORM [3.40-3.42]*

*5.1 What are the parameters that could be treated as the basis for denial of the signals/ platform?*

*5.2 Should it be made mandatory for service providers to provide an exhaustive list in the RIO which will be the basis for denial of signals of TV channels/ access of the platform to the seeker.*

TATA SKY RESPONSE: No specific list of potential reasons should be set down – we think that denial of signals should be on a case to case basis as there may be numerous factors at play. Individual disputes, if any, should be adjudicated by the competent authority.

*Issue 6:- INTERCONNECTION MANAGEMENT SYSTEM (IMS) [3.43-3.48]*

*6.1 Should an IMS be developed and put in place for improving efficiencies and ease of doing business?*

*6.2 If yes, should signing of interconnection agreements through IMS be made mandatory for all service providers?*

*6.3 If yes, who should develop, operate and maintain the IMS? How that agency may be finalised and what should be the business model?*

*6.4 What functions can be performed by IMS in your view? How would it improve the functioning of the industry?*

*6.5 What should be the business model for the agency providing IMS services for being self supporting?*

TATA SKY RESPONSE: While it would seem like having an online IMS developed by a third party would introduce efficiency in the system, we would like to draw the TRAI's attention to the fact that such systems are not free from technical glitches and failures that may end up nullifying the objective. As you will be aware, the Ministry of Corporate Affairs portal has been facing issues for weeks and this has led to complete chaos for companies required to make statutory filings with RoC – we do not believe that there is a way to guarantee a fully functional, effective online system/portal. We therefore believe it is best left to individual parties.

*Issue 9:- CONVERSION FROM FTA TO PAY CHANNELS [3.56-3.57]*

*9.1 Whether it should be made mandatory for all the broadcasters to provide prior notice to the DPOs before converting an FTA channel to pay channel?*

*9.2 If so, what should be the period for prior notice?*

TATA SKY RESPONSE:

- Yes, notice of a period deemed fit by the TRAI should be given for conversion of FTA channels to pay channels and, more importantly, also for conversion of pay channels to FTA, in which case the relevant broadcaster should amend the applicable rate card, and stop charging the relevant DPO for such channel.
- In addition, if pay channels are given for free to any DPO, or on any platform, including the internet, information relating to this must be given to those DPOs who pay for it under agreements then in force – for e.g. we understand that DD Free Dish carries certain pay channels for free after the broadcaster pays carriage fees, whereas those channels are still classified as pay channels.

*Issue 10:- MINIMUM SUBSCRIBERS GUARANTEE [3.58-3.62]*

*10.1 Should the number of subscribers availing a channel be the only parameter for calculation of subscription fee?*

10.2 If no, what could be the other parameter for calculating subscription fee?

10.3 What kind of checks should be introduced in the regulations so that discounts and other variables cannot be used indirectly for minimum subscribers guarantee?

TATA SKY RESPONSE: We reiterate that to maintain a healthy, competitive sector, parties should have the option to come up with negotiated deals, including lump sum/fixed fee deals being permitted at the DPO's option – all agreements will in any case be disclosed to the regulator.

*Issue 11:- MINIMUM TECHNICAL SPECIFICATIONS [3.63-3.67]*

11.1 Whether the technical specifications indicated in the existing regulations of 2012 adequate?

11.2 If no, then what updates/ changes should be made in the existing technical specifications mentioned in the schedule I of the Interconnection Regulations, 2012?

11.3 Should SMS and CAS also be type approved before deployment in the network? If yes, then which agency may be mandated to issue test certificates for SMS and CAS?

11.4 Whether, in case of any wrong doing by CAS or SMS vendor, action for blacklisting may be initiated by specified agency against the concerned SMS or CAS vendor.

TATA SKY RESPONSE: The minimum technical specifications in the 2004/2012 Regulations are, in our opinion, more than adequate for their purpose. Further, there are requirements listed for the SMS and CAS, and in case of non-compliance the TRAI is competent to take action – it would be an inefficient use of resources to pre-approve SMS and CAS systems despite having laid down detailed criteria.

*Issue 12:- TECHNICAL AUDIT OF ADDRESSABLE SYSTEMS [3.68-3.72]*

12.1 Whether the type approved CAS and SMS be exempted from the requirement of audit before provisioning of signal?

12.2 Whether the systems having the same make, model, and version, that have already been audited in some other network and found to be compliant with the laid down specifications, need not be audited again before providing the signal?

12.3 If no, then what should be the methodology to ensure that the distribution network of a DPO satisfies the minimum specified conditions for addressable systems while ensuring provisioning of signals does not get delayed?

12.4 Whether the technical audit methodology prescribed in the regulations needs a review? If yes, kindly suggest alternate methodology.

12.5 Whether a panel of auditors on behalf of all broadcasters be mandated or enabled? What could be the mechanism?

12.6 Should stringent actions like suspension or revocation of DPO license/ registration, blacklisting of concerned SMS and CAS vendors etc. be specified for manipulating subscription reports? Will these be effective deterrent? What could be the other measures to curb such practices?

TATA SKY RESPONSE:

- In this connection we would like to point out that DPOs are faced with a large number of broadcasters seeking to get the DPOs systems audited. This results in multiplication of effort and a waste of resources.
- We support centralized audit mechanisms, whether that implies that one more agency or a panel of auditors be appointed or that BECIL be provided the resources to finish its audits in a timely manner to minimise delays. Audit rights must extend to the ability to conduct an audit once a year. We also agree with the suggestion in the CP that systems of a given make, model and version, which have already been audited in some other network and were found compliant with specifications, need not be audited again.

*Issue 13:- SUBSCRIPTION DETAILS [3.73-3.80]*

*13.1 Should a common format for subscription report be specified in the regulations? If yes, what should be the parameters? Kindly suggest the format also.*

*13.2 What should be the method of calculation of subscription numbers for each channel/ bouquet? Should subscription numbers for the day be captured at a given time on daily basis?*

*13.3 Whether the subscription audit methodology prescribed in the regulations needs a review?*

*13.4 Whether a common auditor on behalf of all broadcasters be mandated or enabled? What could be the mechanism?*

*13.5 What could be the compensation mechanism for delay in making available subscription figures?*

*13.6 What could the penal mechanism for difference be in audited and reported subscription figures?*

*13.7 Should a neutral third party system be evolved for generating subscription reports? Who should manage such system?*

*13.8 Should the responsibility for payment of audit fee be made dependent upon the outcome of audit results?*

TATA SKY RESPONSE:

- A common format should be prescribed for subscriber reports as it makes it more efficient for the DPOs to generate the reports, rather than customized reports for different broadcasters – this will also ensure timely provision of reports. The present system of calculating average number of subscribers should be retained.
- Given the number of broadcasters who would like to conduct audits of subscriber reports which leads to multiplicity of efforts, we support the view that a common centralized audit agency be appointed – this will overall be more efficient, as pointed out in the CP.
- Generation of subscriber reports should remain the responsibility of each DPO, and not a neutral third party – the latter is time consuming and would lead to inefficiency.

*Issue 14:- DISCONNECTION OF SIGNALS OF TV CHANNELS [3.81-3.84]*

*14.1 Whether there should be only one notice period for the notice to be given to a service provider prior to disconnection of signals?*

*14.2 If yes, what should be the notice period?*

*14.3 If not, what should be the time frame for disconnection of channels on account of different reasons?*

TATA SKY RESPONSE: We recommend that one uniform notice period of 3 weeks be required to be given to a service provider prior to disconnection of signals, except that in the case of a broadcaster discontinuing its business of providing broadcasting TV services in the territory, the current 3 month notice period be retained.

*Issue 15:- PUBLICATION OF ON SCREEN DISPLAY FOR ISSUE OF NOTICE FOR DISCONNECTION OF TV SIGNALS [3.85-3.88]*

*15.1 Whether the regulation should specifically prohibit, the broadcasters and DPOs from displaying the notice of disconnection, through OSD, in full or on a partial part of the screen?*

*15.2 Whether the methodology for issuing notice for disconnection prescribed in the regulations needs a review? If yes, then should notice for disconnection to consumers be issued by distributor only?*

*15.3 Whether requirement for publication of notices for disconnection in the newspapers may be dropped?*

TATA SKY RESPONSE:

- In relation to disconnection of TV signals, we urge the TRAI to eliminate the mandatory requirement to publish notices in newspapers, which are a hassle and are costly and unnecessary. Television is a visual medium and any notices relating to TV channels should be aired on the visual platform itself rather than being issued in the completely separate

form of print media. Customers often do not read the newspaper notices and will end up enquiring/complaining about not being able to view channels despite notices.

- Further, we believe that OSDs should be allowed and is a suitable alternative to newspaper publication of notices – in addition, the DPO should be able to give an OSD on any other screen apart from the relevant channel, such as on the start up screen or a screen where all alerts, reminders and notifications to the subscriber are published. An OSD covering part of the screen or even a scroll will ensure that it is noticed by the viewers. The CP states that OSDs hamper viewing – however, we would like to point out that the relevant channel is in any case to be disconnected after the notice period so it is better that the viewers are aware of this. This will help reduce unnecessary calls made and grievances filed by the customer.

*Issue 20:- NO-DUES CERIFICATES [3.104-3.107]*

*20.1 Whether a service provider should provide on demand a no due certificate or details of dues within a definite time period to another service provider? If yes, then what should be the time period?*

TATA SKY RESPONSE: All DPOs should be provided a no-dues certificate automatically (without a demand for such certificate being made) within 60 days of payments being made. In the event of failure to provide a no dues certificate by the Broadcaster within this time limit, it should be deemed that there are no pending dues.

Issues 7, 16-19, 21 and 22 are not relevant to Tata Sky and we have no comments on these.