



Response of Indian Broadcasting Foundation to the TRAI Consultation Paper on Empanelment of Auditors for Digital Addressable Systems

I. INTRODUCTION

We thank the Telecom Regulatory Authority of India (TRAI) for initiating consultation by way of issuing the Consultation Paper on Empanelment of Auditors for Digital Addressable Systems (DAS) (“**Consultation Paper**”). However, we feel that the present exercise by TRAI ought to have been conducted before framing clauses 10 (in so far as it relates to audit) and 15 of TRAI’s notification regarding Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 dated March 03, 2017 (“**Interconnection Regulations, 2017**”) (presently sub-judice before the Madras High Court and Delhi High Court) to ensure transparency, non-discrimination, consumer protection and create an enabling environment for orderly growth of the sector. As the matter is sub-judice and there is a stay on operation of TRAI’s notifications of 03.03.2017, it is only appropriate for TRAI not to proceed with present consultation paper till such time matters are finally decided by the Hon’ble Courts on jurisdictional issues as well as other merits.

The Interconnection Regulations, 2017, which forms basis for this consultation places the right of audit in the hands of distributors thereby significantly diluting the right of the broadcasters to conduct audit. There are no safeguards in the Interconnection Regulations, 2017 that assure the broadcasters to ascertain the correct reporting and audit of subscriber base, systems and records, thereby hampering their revenue generation. This is against the principles of natural justice viz **Nemo judex in causa sua**, a Latin phrase that means "no-one should be a judge in his own cause". The audit related provisions in the Interconnection Regulations, 2017 which are the subject matter for consultation are accordingly in contravention of the TRAI’s vision for transparency and non-discrimination.

II. ISSUES

Scope of audit

Query 1:

Do you agree with the scope of technical audit and subscription audit proposed in the consultation paper? Give your suggestions along with justification?

Response 1:

Under-declaration of subscribers by Distribution Platform Operators (DPOs) is the moot issue being faced by the broadcasters depriving them of their rightful gains. Transparent and effective audit process is need of the hour. The scope of audit should specifically include audit of systems and records to DPOs to ascertain whether they are in compliance with contractual obligations towards broadcasters as also (a) Headend, (b) CAS, (c) SMS, (d) STBs, (e) distribution network (to ascertain CAS and SMS involved and areas covered, (f) anti-piracy measures, and (g) commercial/subscription audit. Further, audit needs to ascertain whether a



DPO has established and is maintaining necessary systems, processes and records in-line with contractual obligations and the regulatory framework (interconnection regulations, quality of service regulations and tariff orders). This is absolutely necessary since, the whole premise of regulatory structure is dependent / based on the premise that operators shall enforce and implement all stipulations under TRAI's notifications in toto.

Coming to the technical and subscription audit proposed, our views are as follows:

Technical Audit

Technical audit is essentially conducted to verify the Conditional Access System (CAS) and Subscriber Management System (SMS), finger printing technology and set-top-boxes (STBs).

Technical audit provisions find place under Regulation 10 of the Interconnection Regulations, 2017 which inter-alia provides that every distributor before requesting signals from the broadcaster, should meet addressable system requirements specified in the Schedule-III of the Interconnection Regulations, 2017. Application form per Schedule II (self-declaration) is required to be submitted by distributors requesting for signals. Schedule II allows for a self-declaration by distributors that their addressable systems are as per Schedule III and that the configuration and the versions have not changed after the issuance of the report by the auditor. Further, the Regulation 10 also states, if a broadcaster, before providing signals of television channels, is of the opinion that the addressable system, being used by the distributor for distribution of television channels, do not meet the requirements specified in the Schedule III, it may cause audit of the addressable system of the distributor by M/s. Broadcast Engineering Consultants India Limited (BECIL) empanelled authority with TRAI, or any other auditor empanelled by the TRAI for conducting such audit and providing copies of the report prepared by the auditor to the distributor. This is however not applicable if the addressable system of the distributor has been audited during the past one year by BECIL/empanelled authority with TRAI. In the event the configuration/version of the addressable system of the distributor has changed after issuance of BECIL/empanelled authority report, audit can be conducted again in the one-year validity period.

Subscription Audit:

This is essential for broadcasters to ascertain the subscriber numbers being reported by distributors and ensures accurate revenue flow to broadcasters accordingly.

Subscription Audit provisions find place under Regulation 15 of the Interconnection Regulations, 2017 which provides that every distributor of television channels shall, once in a calendar year, cause audit of its CAS and SMS 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. The said regulation further provides that any variation, due to audit, resulting in less than 0.5% of the billed amount shall not require any revision of the invoices already issued and paid.



Challenges

The scope for audit in the Interconnection Regulations, 2017 are not only severely diluted for broadcasters who are the ultimate beneficiaries of an audit but has several loopholes since, it is skewed in favour of DPOs.

- a) Shared CAS & SMS servers- There are many national MSOs, who share their CAS & SMS servers with their JV partners. These JV partners deal directly with the broadcasters for commercials. In such cases, it becomes difficult to access data from the systems as the principal (National MSO, who owns the servers) refuses to part with data pertaining to its JV partners. Since CAS doesn't differentiate area wise or JV wise divisions, it becomes impossible to verify the accuracy of the data under audit purview. The essence of audit is to obtain the complete data from both the systems viz. SMS and CAS. So, it is extremely critical to ensure that if a distributor is sharing its CAS and SMS with any third party (individual entity / JV, who deals directly with broadcasters), it should be directed to share the data with auditors irrespective of the distributor's arrangement with its JV partners.
- b) Distributor of channels should not withhold information pertaining to pack details, subscribers (free or pay, active and de-active) details generated from CAS and SMS, from the auditors since such information is critical for establishing veracity of the data. Our members have faced issues on this front, for instance: when they asked for complete data from CAS/SMS, distributors deny access on the ground that the same is not within the purview of the TRAI regulations. Distributors take shelter under Schedule I of the extant regulations/Schedule III of the Interconnection Regulations, 2017 which do not mandate them to share such data. The Distributors refute broadcasters' claims by stating that they cannot disclose all package details wherein the particular broadcaster's channels are not available. They also make excuses like logs are not available as the systems have no capability. Further, pack modification logs are not made available since there are no such provisions under the regulations. This leads to conflict and lands both of the distributors and broadcasters before the TDSAT. To avoid such frequent litigations, TRAI should lay down the Subscription Audit guidelines clearly mentioning the data extraction points and all check points for free and fair audit. Further, both technical and commercial audits should be conducted in presence of respective broadcaster representatives who would atleast be interested in identifying gaps, discrepancies, leakages, risks, and check process controls. As a stakeholder in the complete audit process, broadcasters are concerned that if an audit is conducted behind a broadcaster's back, then auditors may not do a complete and meaningful audit and will be largely dependent on declarations made by DPOs without any incentive to establish veracity of such declarations. In any event, it is submitted that no audit ought to be conducted behind broadcasters back, even if such audit is to be conducted by a third party auditor.
- c) There is another misconception in the industry that audit means technical validation only. One should not ask for data! This is due to the wrong interpretation of the extant Schedule I of the regulations, which deals only with validation of the systems and continues to remain open under the Interconnection Regulations, 2017. Subscriber data processing and its declaration to the stakeholders on the other hand is of utmost importance especially to the Government in this whole value chain to be able to deduct appropriate taxes. Appropriate measures should accordingly be taken by the TRAI to tighten all loose ends



in the regulations. This would help minimize conflicts and litigations between distributors and broadcasters.

- d) The variation of upto 0.5% as stated in the Interconnection regulations, 2017, to not be accounted for is onerous on the broadcasters since the volume of the subscriber base may run in millions. At the most there can be a flexibility of say 0.1% subscribers, which may not require revision of invoices already issued and paid.
- e) Independent distributors do not have sufficient funds to conduct audit. This may result in incremental costs across value chains.
- f) Granting a distributor, the right of self-declaration and self-audit prior to supply of signals would result in a distributor being a judge in his own case (Nemo judex in causa sua) and hence resulting into conflict of interest and biased reporting.
- g) As far as audit of CAS and SMS of distributors are concerned, a techno-commercial audit is required to be conducted which calls for eligibility of a technical expert. BECIL is competent to conduct technical audit only. Hence, appointment of BECIL by the TRAI as proposed under the Interconnection Regulations, 2017 for conducting audit might result in erroneous audit reports arising from non-competency, which would defeat TRAI's very intent of transparency and accuracy in audit.
- h) BECIL certification for DPOs systems has validity period of one year from the date of issuance thereof and broadcasters are not allowed to audit the same unless the configuration or the version of the addressable system of a distributor has undergone change. This would enable distributors to tamper their system after the date of issuance of the certificate thereby enabling him to fiddle with the subscriber numbers. In the new regime, subscriber numbers will be very critical factor. Any variations, under-declarations in sub-base will directly hit the revenue of the broadcasters. Due to the foregoing provision in the Interconnection Regulations, 2017, the following questions arise:
 - What control do the broadcasters have if DPOs insist audit of their own set-up as directed by TRAI?
 - What is the guarantee that the empanelled audit firm has NO "interest" in DPO dealings? Empanelled audit firm having 'under-the-table' understanding with a distributor would not provide an unfavourable audit report.
 - Who would ensure whether the auditor has extracted real time data from the live server or extracted the same from archive server?
 - There is no indication of CAS/SMS vendor accountability (there are sufficient chances of MSO-vendor understanding to achieve under-declaration).
 - How would broadcasters verify/ cross-check the field samples collected from network without complete access to the CAS/SMS servers?
 - It gives MSOs complete control on how many subscriber numbers to be declared to the broadcasters.



- Even month-end deactivations, before generating broadcaster reports may become common practice with MSOs.

To address the issues highlighted in e- h) above, our recommendations are as follows:

- a) TRAI should empanel reputed auditors nominated by Indian Broadcasting Foundation (IBF) having sufficient experience in conducting audit of systems of DPOs and who meet the eligibility criteria (provided below). Further, the broadcasters should be allowed to participate during such audits and get the systems/validation carried out by such audit firm(s) at their own cost and not through BECIL (as has been currently proposed).
- b) Further such exercise of audit should be conducted twice a fiscal year.

Query 2:

Is there a need to have separate panel of auditors for conducting technical audit and subscription audit?

Response 2:

There is no requirement for separate sets of auditors in view of our suggestion as regards auditors, hereinabove in Response 1.

Query 3:

Should there be a different list of empanelment of auditors based on the model/make of CAS and SMS installed by distributor? Will it be feasible to operate such panel of auditors?

Response 3:

In addition to our response to Response No. 1 above, the model /make of CAS and SMS installed by distributor should form the basis of division of list empanelment of auditors. Before a broadcaster decides on an auditor, it should be able to check whether such auditor has evaluated CAS and SMS of makes that have been deployed by the relevant DPO or not. As such panel of auditors need not be common across all models /makes of CAS and SMS installed by the DPO. Auditors should have the expertise and experience of conducting audit indifferent of any make / model of CAS / SMS etc. Empanelment of different auditor based on the model and make of CAS & SMS installed by DPOs would require a fresh empanelment process every time a new model /make of CAS and SMS vendor enters the market which is not be feasible.

Eligibility Criteria and experience

Query 4:

What should be various parameters forming eligibility criteria for seeking proposals from independent auditors (independent from service providers) for empanelment? How



would it ensure that such auditors have knowledge of different CAS and SMS systems installed in Indian TV sector?

Response 4:

Audit firms nominated by IBF should have the following areas of expertise which should also be the criteria for empanelment by TRAI:

Technical expertise:

- a) Hands-on experience on MSOs/DTH/IPTV/HITS Systems.
- b) Well acquainted with system architecture of DAS.
- c) IT professionals who are experts at data analysis and have sufficient knowledge of advance Excel, SQL, ORACLE or any other software on servers.
- d) Knowledge of content security, CAS and SMS is a must. (There are many models of CAS and SMS in the market. Different types of architecture are used in different CAS/SMS models. Even though fundamental theory is same, commands differ.)
- e) Ability to locate discrepancies in the system to check the undeclared subscriber base or pilferage of signals.
- f) Knowledge of multiplexers, encoders, decoders, STBs and their CAS modules is critical.
- g) Ability to handle large data (especially when DTH operators, National MSOs are concerned)

Statutory knowledge:

- a) Since this is a comprehensive audit, the team should have the knowledge of TRAI regulations.
- b) They should be well versed with QoS regulations related to subscribers and handling their grievances.
- c) Knowledge of channel packages, their combinations and effect of altering the packs.

Ancillary:

- a) Audit firm should be registered as per the provisions of the Companies Act.
- b) The auditor should have minimum team size of at least 50 auditors across India so that only serious players get empanelled and there are conscious of repercussion in case they do not provide independent audit report.
- d) It should have a physical establishment and other infrastructural requirements.
- e) Minimum 2-3 years of DAS audit experience is necessary.
- f) Any certification related to DAS is an added advantage.
- g) Capability (technical and commercial) to question and probe distributors, vendors and other related personnel.



Query 5:

Should the minimum period of experience in conducting the audit be made a deciding parameter in terms of years or minimum number of audits for empanelment of auditor?

Response 5:

As mentioned in our Response 4 above, minimum 2-3 years of audit experience would be relevant. Further, our members are of the view that prior knowledge and experience in the field are of utmost importance to serve the purpose of conducting audit. The empanelled auditor must have certain minimum number of audits having ample experience for conducting various aspects of audit of DPO. TRAI may also consider basic eligibility criteria for empanelment of auditors which should include professional/company accreditation by professional body / certifying authorities such as Quality Council of India, National Accreditation Board for Certification Bodies or from the International Accreditation Forum or should be registered with the Institute of Chartered Accountants of India/ Institute of Costs and Works Accountants of India having certain minimum number of years of experience in audit of addressable systems.

Query 6:

Any suggestions on type of documents in support of eligibility and experience?

Response 6:

- Companies Act registration certificate.
- Documents related to experience and accreditation.
- Proof of employment of staff having requisite knowledge and qualification as provided in our Response 4.
- Resume of the audit firm's team members with appropriate qualifications.
- Self-certification regarding independency as regards DPOs and vendors.

TRAI may also consider imposition of penalty or blacklisting of empanelled auditors in case it has been found that such auditors have made wrong declaration to the authority with respect to its eligibility and/or experience. The list of empanelled auditors along with their experience both in terms of number of audits and number of years, along with the qualifications of audit firms including details of team members with their professional qualifications may be published by TRAI so as to ensure transparency and credibility of such empanelled auditors.

It is submitted that as per our past experiences, we have observed that even the best reputed audit firms do require Broadcaster's inputs while conducting both Technical & Subscription audits. Hence, we are of the view that the experience and knowledge of technical team of broadcasters should also be utilized by the auditors.



Length of empanelment

Query 7:

What should be the period of empanelment of auditors?

Response 7:

We are in agreement with the TRAI that since the empanelment process is being carried for the first time by the TRAI for Broadcasting and Cable sector, the initial the length of empanelment may be kept for few years so that this process can be reviewed and list of the auditors may be updated. Accordingly, the period of empanelment may range from 1 year to 3 years. This period may be enhanced to 5 years later. There should be a strict vigilance initiated by the TRAI to curb any illegal practices.

Notwithstanding the above, the TRAI should retain the ability to add more number of eligible auditors in the panel of auditors (as nominated by IBF) if it is of the view that there is a gap in the demand and supply. Such flexibility would ensure non-corruption and would be a balanced approach.

Query 8:

What methodology to decide fee of the auditor would best suit the broadcasting sector? and Why?

Response 8:

The fee payable to auditors can be divided under 3 (three) slabs a) National MSOs/DTH operators, b) Medium sized operators c) For smaller operators. In this regards, we would also like to highlight that smaller operators do not typically have sufficient cash flow to invest in appointment of auditors adding further to the reason for placing the right with IBF. Having said this, the fee the following methodologies for deciding fee of auditors is proposed by us:

a) Category-wise fee structure based on their area of operation:

- National MSOs having multi-city operations;
- DTH Platforms;
- Prominent MSOs; (Medium sized)
- Independent MSO (Smaller operators)

b) Subscriber base-wise Fee structure:

- For DTH and National MSOs, there can be a fixed amount per subscriber;
- For smaller independent operators, the per subscriber amount can be different.

The basis of fixed fee should include both fixed component and variable component. The fixed component should include all administrative, travel, lodging and boarding etc. Similarly, variable component of audit should be based on size on DPO as mentioned above including number of CAS/SMS deployed, locations, number of head-ends, service area etc.

c) Lump-sum amounts across the networks for audit exercise can also be considered.



Query 9:

How the optimum performance of the auditors can be ensured including maximum permissible time to complete audit? Give your suggestions with justification.

Response 9:

Time period of completing audit of various DPOs vary due to size of network, no. of headends, CAS and SMS, cooperation by DPOs, availability and extraction of data, specification of machines provided by distributor for data analysis etc. Total timeline to complete the audit should not exceed beyond 4 weeks. It should be mandatory for auditors to submit report in a time bound manner so as to ensure that DPOs do not indulge in unnecessary procrastination / dilatory tactics to defeat the very purpose of audit. Report should clearly indicate any aspect of audit that could not be completed and reasons (if any). In such an event, adverse inference may be drawn against erring DPO. For the smaller operators, the audit can be completed within a week-10 days.

Query 10:

What can be the parameters to benchmark performance of the Auditor? What actions can be taken if the performance of an Auditor is below the benchmark?

Response 10:

Benchmark for the auditor's performance is his ability to probe the systems in a dynamic manner. If an auditor validates the system as per the feedback given by the distributor, then such audit should be considered as below the benchmark. The audit firm members should evaluate the systems in a neutral manner by application of their skill sets by probing all angles, extracting data, analyzing them, comparing them with other systems etc. will give 360-degree view of the systems.

Subscription Audits are the pillars in the age of digitization. So, this entire process should be done in impartial way. Hence, broadcasters having the capability and years of experience should assist the empanelled auditors to also ensure impartiality.

During audit, daily update of work done by auditors and the work planned for the next day during audit should also be shared by auditors to bring in some transparency.

Post audit, a feedback form may be developed with defined parameters including (a) time taken in concluding the audit, (b) independence/credibility of auditors, (c) work knowledge of auditors, (f) issues during audit decided by the auditor, etc. Such form may be filled in by both the broadcaster as well as the DPO. This would ensure fair evaluation of work done by the auditor.



Time period for completion of audit work

Query 11:

Should there be different time period for completion of audit work for different category of the distributors? If yes, what should be the time limits for different category of distributors? If no what should be that time period which is same for all categories of distributors?

Response 11:

This has already been discussed in Response 9. To reiterate, the time period to complete the audit depends on category and the network architecture of the distributor to be audited and the number of personnel deployed by the auditor. If the distributor has a single headend, SMS, and CAS, auditor would get all the information at one place, whereas if the distributor is a DTH operators/National MSO, it would have multiple headend/CAS/SMS, either more number of auditors to be deployed or longer time period is required to complete the audit work.

Query 12:

Are the conditions cited sufficient for de-empanelling an auditor? If not what should be the conditions for de-empanelling the auditor?

Response 12:

In addition to the criteria for de-empanelment specified in the Consultation Paper, another criteria for de-empanelment should be due to indulgence in illegal and unethical practices such as collusion with distributors/vendors, wrong declaration of self-certification, misuse of confidential information of DPO / broadcasters, failure to meet eligibility condition, failure to maintain independence during audit, subletting the work by the empaneled auditor to other auditors are some of the grounds for de-empanelment of auditors. Such acts should result in banning these entities forever.

However, delay in completion of audit may not necessitate the conditions for de-empanelment of auditors as the delay in audit may not be necessarily caused for the reasons owing to the auditors. Hence, reasons for delay needs to be further examined in detail to arrive at any conclusion. Similarly, reliability of audit is a subjective issue which also needs further deliberations. However, misstatement or wrong statement of facts and figures in the audit report or misconduct, misrepresentation etc. ought to be considered as grounds for de-empanelment of auditor. Without prejudice the foregoing, TRAI ought to ensure that sufficient protections are given to auditors to work in a fearless and independent manner and that interests of broadcasters are protected in case auditors deliberately decide to do a shoddy job.



Query 13:

Comments on re-empanelment if any?

Response 13:

As stated in our response in 12 above.

Query 14:

Any suggestion relating to the audit framework.

Response 14:

As we suggested above, it is important to note that DAS audit is in the interest of broadcasters and also to achieve objectives of the Government. Hence, transparent and honest declaration of subscriber base is the key to smooth functioning of this industry. In light of this, broadcasters' right to audit should not be significantly diluted and the approach proposed by us must be implemented to safeguard broadcasters' interests.
