

04 November 2019

By Email and Hand

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi - 110002

Kind Attn: Shri Anil Kumar Bhardwaj, Advisor (B&CS)


Subject: **TRAI's Consultation Paper dated September 25, 2019 on issues related to Interconnection Regulation, 2017**

Dear Sir,

We thank you for the opportunity to express our views on the above Consultation Paper. Tata Sky's response to the same is enclosed for your ready reference.

Thanking you,

Yours sincerely,



Harit Nagpal
Managing Director and CEO

Enclosed: As above

Tata Sky's Response dated November 04, 2019 to TRAI's Consultation Paper dated September 25, 2019 on 'Issues related to Interconnection Regulation, 2017'.

ISSUES RELATED TO TARGET MARKET:

1. Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?

- No, there has been no misuse in the identification of the Target Market by Tata Sky.
- The nature of the DTH technology involves a single Satellite beam across the nation, being controlled by a single head-end/ Earth Station. Therefore, it is natural that a DTH Operator would prefer a pan-India target market. This was being followed prior to the new Regulations and is consistent under the new regime as well.
- To now claim that DTH operators may be misusing the flexibility is grossly unfair. A smaller target market cannot be forced upon a Pan India operator.
- Paragraph 2.1 of the Consultation Paper states that identifying the target market is an essential step for any company in the development of a marketing plan. Hence, defining the target market of a DPO should be left to the DPOs as any constraint in this regard is intrusion into fundamental business plan of the company.
- The regional channels, due to the nature of the technology, automatically get re-transmitted to the entire nation while riding on a DTH platform. Since the satellite beam cannot be fragmented into blocks of smaller geographical area, announcing smaller target markets is not feasible.
- The concept of defining smaller/state centric target market maybe more relevant to MSOs and cannot be applied to DTH Operators.
- The previous regulatory regime was able to manage the differing aspirations of all the broadcasters through a mutually negotiated settlement because of forbearance.
- The TRAI regulations need to remove a straight-jacketed approach to the Carriage Fee and allow for mutual negotiations to arrive at agreements so that a sustainable equilibrium is attained under the free market principle.
- Regional segregation of the target market will create a dangerous loophole where all broadcasters who do not meet the national viewership bench mark will reduce their target market to limited regions, thus making the concept of carriage revenue for a DPO redundant.

2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

- The previous regulatory regime was able to manage the differing aspirations of all the broadcasters through a mutually negotiated settlement because of forbearance.
- It is requested that TRAI should do away with any kind of prescriptive carriage fee or for that matter any kind of caps. And the regulations should allow for the resumption of mutually negotiated agreements.

3. How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.

- The Explanatory Memorandum to the Interconnection Regulations, 2017 have mentioned the rationale (DD Free Dish auction reserve price) for arriving at the Carriage Fee of 20p. Since then the DD auction reserve price has successfully been raised to more than 8 Crores.
- Notwithstanding the case for a higher Carriage Fee, we stand by our views and request the Authority to de-regulate the Carriage Fee market and pave the way for a mutually negotiated agreements.

4. Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?

- DTH operators have a finite capacity for carrying channels depending on the number of satellite transponders they have leased.
- Consequently, the regulations have provided a reasonable time-frame to both the broadcaster and the DPO to review the performance and take corrective action.
- Any regulatory mechanism which empowers broadcasters to cling on to a DPOs platform irrespective of the market conditions of popularity, subscription, payments etc. would be unfair towards the platforms. The negative impact will be more impactful on DTH operators who have a finite carrying capacity.
- There will be instances of several channels of a single regional language being on the DTH Platform on account of the 'Must Carry'. Now if the first ever channel of a new language comes up, it would be in the DTH Operator's interest to carry it to maintain a national flavour. However, the regulations would come in the way and would not allow us to remove an existing channel. This would lead to a market distortion for the DTH Operator which is highly undesirable.
- Break up of multiple regional target markets for a pan India DTH operator could lead to the operator being reduced to a regional channel operator, irrespective of its reach. As permitted under the old regime, the DTH Operators did not have the obligation of must carry. This was due to capacity constraints and it also gave freedom to the Operators to choose and carry the most optimal content catering to the pan national audience.

ISSUES RELATED TO PLACEMENT AND OTHER AGREEMENTS BETWEEN BROADCASTERS AND DISTRIBUTORS

5. Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.

- The existing regulations on carriage fee has not found takers amongst the FTA broadcasters. However, as we have mentioned above, the solution is not to bring in further regulations but to roll it back and permit forbearance. Bringing in more regulation is not

the solution. Instead, forbearance will allow for mutually negotiated agreements and that should be the way forward.

- On similar lines, we strongly suggest that TRAI may not enter into regulating Placement Fee.

6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring DPOs? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).

- The existing regulations have introduced complexities in the business-to-business interactions of DPOs with broadcasters. Forbearance is aligned to the actual market value of the offering, especially with respect to subscribers. We do not agree that the level playing field gets distorted under forbearance.
- Moreover, each broadcaster has differing needs, capabilities, and often caters to a different segment of the subscribers. It needs to be recognised that our industry is not just another 'service' industry, but an industry ruled by 'content'.
- The current 'one size fits all' approach for Carriage fee has led to a market failure. Hence, we believe forbearance is the best way forward not just for Placement and Marketing but also for Carriage fee.

7. Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

- Broadcasting Sector is not a critical sector and there are enough Platform Operators to carry channels. Hence, the insistence on 'Must Carry' for Satellite operators must be reconsidered.
- There is no international precedence of even the Carriage Fee being regulated. For Carriage Fee we are strongly suggesting to go back to the forbearance regime.
- On similar lines, we are of the firm view that there is no case for regulating Placement, Marketing or other agreements.
- We also wish to highlight the fact that, one of the key reasons for an upsurge in OTT subscription is on account of subscriber's unhappiness with the new regime. The OTT platforms are enjoying a completely liberalized environment where they have no limitations in costing, pricing innovation. Unfortunately, OTT's are a direct competition to our business offering and therefore we are alarmed by the fact that this glaring non-level playing field is not being addressed by the regulator. The existing set of broadcasters are now able to reach the customers directly through their own OTT subsidiaries.
- The net effect of the NTO has been that DTH Operators, LCOs and Broadcasters/ Channels are shutting shop. Reliance Big TV has stopped transmission. Videocon D2H has merged with Dish TV. Media reports claim a further possible merger in DTH.

8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.

- We maintain our stand that forbearance is the best way forward which allows for a mutually negotiated agreements.

9. Any other issue related to this consultation paper? Give your suggestion with justification.

- No comments.