April 25, 2016

Telecom Regulatory Authority of India ('TRAI')

Mahanagar Doorsanchar Bhawan,

Jawaharlal Lal Nehru Marg, New Delhi – 110002

Ref: Consultation paper dated March 23, 2016 on the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016 ("***Consultation Paper***").

Dear Sir,

We, IndiaCast Distribution Private Limited, show our appreciation to the opportunity extended to the stakeholders to participate, by way of this Consultation Paper and the cause thereof.

With best determination and effort to support TRAI in establishing a uniform environment in the Broadcasting and Cable TV industry with efficient and effective competition and highest quality service, we would like to bring our observations/response to the attention of TRAI.

In context of the same, we hereby attach our comments on the issues raised in this Consultation Paper for your kind perusal.

For any further clarification you may write to us or contact us.

Yours Sincerely,

For IndiaCast Distribution Private Limited

Authorized Signatory

COMMENTS/RESPONSE OF INDIACAST DISTRIBUTION PRIVATE LIMITED TO THE CONSULTATION PAPER ON THE REGISTER OF INTERCONNECTION AGREEMENTS (BROADCASTING AND CABLE SERVICES) REGULATIONS, 2016

DATED 23 MARCH, 2016

We write to you in response to the Consultation Paper issued by TRAI on 23.03.2016 on Tariff the Register of Interconnection Agreements (Broadcasting and Cable Services) Regulations, 2016.

Before we proceed to respond to the specific issues raised by TRAI in the said Consultation Paper, we wish to briefly summarise the background and brief history of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations, 2004 and amendments thereof issued from time to time by the authority since 2004.

1. TRAI vide Notification dated 31.12.2004 issued The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations, 2004 ("regulations dated 31.12.2004") which provided for the modalities for the maintenance of the register of interconnect agreements entered into by broadcasters, multi service operators and cable operators.

   The main features of the Regulation dated 31.12.2004 were-

   i. maintenance of a register (either in print form as a register or in electronic form or in any other medium that the authority may decide from time to time);

   ii. all broadcasters to register their interconnect agreements entered into by them, including any modifications/amendments thereto;

   iii. 'Interconnect Agreements' meant to include all standard affiliation agreement/service contract, Memorandum of understanding and al its grammatical variations and cognate expressions providing, inter alia, also the commercial terms and conditions of business between the parties to the agreement;

   iv. register to be maintained in two parts- Part A to contain details of all the interconnect agreements with the names of the interconnecting service providers, service are of their operation and dates of executing of such agreements and such other information which are not declared confidential in terms of Clause 4 of the Regulation dated 31.12.2004; and Part B- to contain information which the authority may direct to be kept confidential and it shall not be open to inspection by the public.

v. With regard to the confidential portion of the register-

a) Either *suo moto* or on the request of any party is satisfied that there are good grounds for so doing, the authority may direct that any part of the agreement be kept confidential. (The Regulation did not differentiate between commercial information and other information);

b) While declining the request to keep any portion confidential, the authority was required to record the reasons thereof and give a copy of the order to the concerned party in order to enable him to make a representation before the authority against such order;

c) The authority may disseminate any confidential information if in the opinion of the authority, dissemination of such information would be in public interest, after affording an opportunity of hearing to the party to the interconnect agreement at whose request such information had been kept confidential;

d) When any request is made to keep any information confidential, such part of the agreement was to remain confidential till the authority decides otherwise.

vi. The register was open to access by any member of the public on the payment of the prescribed fee and on his fulfilling such other conditions as may be provided in the Regulation, subject to the limitations prescribed in Clause 3 & 4.

The understanding of the authority was that the standard affiliation agreements varied from group to group and between MSOs/broadcasters depending upon the nature and type of arrangements. Besides the volume in terms of number of agreements expected to be registered was also expected to be very large if the MSOs/broadcasters were to submit arrangements individually. Hence if all the agreements were required to be registered, the existing regulations would have required extensive amendments and hence, there was a need felt to introduce separate set of regulation for the registration of interconnect agreements.

2. On 04.03.2005, TRAI introduced The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005 (No. 3 of 2005), whereby provisions were introduced with respect to the request made for keeping any portion of the interconnect agreement in the confidential portion of the register and access to the confidential information thereof.

   Simultaneously with The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005, TRAI vide notification dated 04.03.2005 promulgated The Register of Interconnect Agreement (Broadcasting and Cable Services) (First Amendment) Regulation, 2005 (12 of 2005), thereby amending Clause 4 of the Regulation dated 31.12.2004 to provide that where any party to the interconnect agreement requests the authority to keep the whole or any part of the agreement as confidential, the authority shall take a decision thereon in accordance with the relevant provisions of The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005.

3. Thereafter, the broadcasters made representations to the authority with respect to the difficulty faced by them in filing the voluminous agreements at the end of each quarter owing to the number of agreements, renewals, modifications and amendments that take place and happen throughout the year. Basis the representations, TRAI vide its notification dated 02.12.2005, brought in The Register of Interconnect Agreement (Broadcasting and Cable Services) (Second Amendment) Regulation, 2005 (12 of 2005), thereby amending Clause 6 of the Regulation dated 31.12.2004 in order to enable the authority to specify a particular procedure in regard to the manner of filing of data or information; the form or format of filing, number of copies to be filed, and such other procedural issues connected to the filing of the details on interconnect agreements through a simplified process instead of the need to amend the regulation every time whenever a change in procedure in necessitated.

   The main reason for the TRAI to change its mind and provide filing of agreements once a year is provided in the explanatory memorandum to the Second Amendment, which is as under:

> *2. A proposal for amendment to the above regulation was received from a broadcaster expressing difficulties in filing in print form of*

part B at the end of every quarter. It was indicated that new agreements are entered /renewed/modified continuously throughout the year. In view of a large number of agreements involved, the process of tracing amendments /changes becomes laborious and time consuming and the filing in print form at the end of every quarter becomes very voluminous. It was pointed out that it is easier to file the entire updated details of agreements at the end of every quarter in Electronic form and requested for amendment to the above regulation to provide freedom to the broadcasters to file details of part B in Electronic Format at the time of quarterly updation.

3. The request for amendment and options for facilitating filing in Electronic format without compromising on authenticity and security of data was examined in consultation with major broadcasters/distributors of TV channels. It has been experienced during the implementation of above regulations that the filing in print form, in view of the large number of agreements, becomes very voluminous. It was noted that various options of filing in electronic form ranging from filing in CD-ROM bearing the signature of the authorized representative of the service provider to e-filing with digital signature have distinct merits and demerits and could become a viable option over a period of time. While examining the proposal it was also viewed from a broader angle that the regulations would need to be made flexible enough to facilitate adopting a particular procedure not only with reference to a particular form in which the filing is to be done but also with reference to a number of other procedural matters, through a simplified process, instead of resorting to the need to amend the regulations time and again.

4. Accordingly TRAI has decided to amend the existing clause 6 of the above regulation so as to enable the Authority to specify a particular procedure in regard to the manner of filing of data or

information; to the form or formats of filing; to the number of copies to be filed; and, to such other procedural issues connected to the filing of details of interconnect agreements through a simplified process instead of the need to amend the regulation every time whenever a change in procedure is necessitated. Consequential amendment in clause 5 of the regulation has also been made to give effect to the proposed change. The Authority would separately be specifying the procedure to be adopted by the broadcasters for the filing(s) due after amended regulations are notified.

4. TRAI vide Notification dated 10.03.2006 brought in The Register of Interconnect Agreement (Broadcasting and Cable Services) (Third Amendment) Regulation, 2005 (12 of 2005) thereby mandating Direct To Home Operators (DTH Operators) to furnish to the authority a duly authenticated copy of each of the agreement/contract/MOU entered into with the broadcaster signed by the parties to the contract/agreement/MOU with all its annexures containing, all relevant details, including but not limited to the addresses of the parties, contract number, number of subscribers including the minimum number of subscriber guarantee, number and details of names and details of names channels/bouquets, price of each individual channel.

   This amendment was necessitated due to the limitation contained in Clause 5(a) of the existing regulation, limiting the filing to broadcasters only, and further the authority's understanding was that the broadcasters may avoid compliance on the ground that they are operating from outside the country and therefore not governed by Indian laws.

5. On 18.03.2009, TRAI introduced The Register of Interconnect Agreement (Broadcasting and Cable Services) (Fourth Amendment) Regulation, 2005 (5 of 2009) brought in certain further changes to the existing regulation as on that date. The new introductions by way of the said amendment were-
   a) The reporting of the interconnect agreements to the authority should be on annual basis rather than on quarterly basis. Authority decided to revive the annual filing for period 1st July to 30th June by 31st July every year.

b) Pursuant to the introduction of the provision vide amendment dated 17.03.2009 to The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004), whereby it is the responsibility of the broadcasters and MSOs to hand over such written agreements after execution to the distributor of TV channels, a provision of submitting a certificate was brought in the regulation relating to register of interconnect agreement.

c) With respect to the notice period for responding to any notice of the authority calling upon the service provider to furnish any detail relating to the interconnect agreement, the authority decided that the time frame for submission of such information/details may be specified in the communication calling for such information/detail, based upon need and urgency.

d) The authority decided that the information may be retained for a period of three years from the date of their filing or till the expiry of the validity period of the agreement.

e) The regulation was also amended to enable the new platform such as HITS operators or IPTV operators to file their interconnect agreements with the broadcasters on annual basis to the authority.

Reasoning for this change is also provided in the explanatory memorandum of Fourth Amendment, which is as under:

> *4. The Authority discussed the issue of periodicity of filing the agreements in the consultation paper titled "Consultation paper on Interconnection Issues relating to 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 July of every year. The*

period is chosen to cover the industry practices of agreements on calendar year basis or financial year basis.

5. The Authority has also decided that all the interconnection agreements should be in written form by the broadcasters. Accordingly, a provision has been made by an amendment dated March 17, 2009 to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) whereby it is the responsibility of the broadcasters and MSOs to hand over such written agreements after execution to the distributor of TV channels. Correspondingly, a provision of submitting a certificate in this regard has also been incorporated in the present regulation.

6. Though the Authority is empowered under Section 12 of the TRAI Act, 1997 as amended to call for information from the Service providers, the issue of notice period to be given to a service provider for any specific interconnection agreement was discussed in above mentioned consultation paper. The stakeholders were of the view of having 15 to 30 days notice period for furnishing such information. Upon careful consideration of the issue, the Authority has decided that the time frame for submission of such information/details may be specified in the communication calling for such information/detail, based upon the need and urgency.

7. The Authority has also discussed the period for retention of the details of interconnection filing with the Authority in the above mentioned consultation paper. The comments for retention period varied from 3 to 5 years. Based on the inputs from the stakeholders and considering large volume of data being filed by various service providers, the Authority is of the view that these filings may be kept for a period of three years from the date of their filing or till the expiry of the validity period of the agreement, whichever is later and accordingly the regulations have been suitably amended for this purpose.

8. These regulations have also been amended to enable the new platform such as HITS operators and IPTV service providers to file their interconnection agreements with the broadcasters on annual basis to the Authority.

6. TRAI vide notification dated 10.02.2014 introduced The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fifth Amendment) Regulations, 2014 (No. 3 of 2014, which provided for the definition of 'authorized agent' and amended the definition of 'broadcaster' and 'multi service operator', and thus, set out the difference between a broadcaster and its authorized agents. The said amendments provide that only broadcasters can publish the RIOs and file the same with the authority.

Considering the above changes, and the intent of TRAI, we do not feel the necessity for TRAI to look at this aspect once again. As narrated above, the documents, agreements, modifications, amendments to the agreements are already being filed on a yearly basis, and there has never been any complaint regarding non-compliance of the same. TRAI pursuant to the Second and The Fourth Amendment accepted the request of the broadcasters about the difficulty in filing documents on a quarterly basis, and hence, made filings on a yearly basis. Hence, we submit that the filings be continued in the manner provided in the amendments till date, and in fact, there exists no reason or change in circumstances that warrant TRAI to change the system which is being followed by the stakeholders for a long time.

Responses to the issues raised by TRAI

Q1. Why all information including commercial portion of register should not be made accessible to any interested stakeholders?

Before we give our response to the issue whether the information including commercial portion of register should be made accessible or not we would like to draw the attention of the authority to the judgment passed by the Hon'ble TDSAT dated 07.12.2015 in *Noida Software Technology Park Ltd. vs. Media Pro Enterprise India Pvt. Ltd.* (Petition No. 295(C) of 2014) and *Noida Software Technology Park Ltd. vs. Taj Television India Pvt. Ltd. & Anr.* (Petition no. 526(C) of 2015) (hereinafter referred to as "NSTPL matters")] has already made it clear that all agreements proposed to be executed between the parties shall be

based on the principle of (i) parity and non-discrimination, (ii) twin conditions contained in Clause 13.2A.11 of the Interconnect Regulations, including applicability of the same for Discounts, (iii) all agreements shall be based on the RIO, including any negotiated deal. The relevant portion from the NSTPL judgment are quoted below:-

> "A*s the Regulations stand in its present form, we are clearly of the view that the RIO must reflect not only the rates of channels but also the different formations, assemblages and bouquets in which the broadcaster wishes to offer its channels for distribution along with the rates of each of the formation or bouquet. Further, the a la carte rate and the bouquet rates must bear the ratio as mandated in clause 13.2A.12. The RIO must also clearly spell out any bulk discount schemes or any special schemes based on regional, cultural or linguistics considerations that would be available on a non-discriminatory basis to all seekers of signals. To sum up the RIO, must enumerate all the formats, along with their respective prices, in which the broadcaster may enter into a negotiated agreement with any distributor. To put it conversely, the broadcaster cannot enter into any negotiated deal with any distributor unless the template of the arrangement, along with its price, consistent with the ratio prescribed under clause 13.2A.12 is mentioned in the RIO. In addition, any volume-related price scheme must also be clearly stated in the RIO so as to satisfy the requirement of clause 3.6 of the Interconnect Regulations."*
>
> *A proper RIO would, thus, form the starting point for any negotiations which would be within the limits allowed by the ratio between the a la carte and the bouquet rates as stipulated under clause 13.2A.12 and the margins between different negotiated agreements would be such as they would hardly be any requirement for disclosures*". **(Page 73-74 of the Judgment dated 07.12.2015)**
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> "*.....Thus, in the interpretation that we have placed on the Regulation, there is the obligation to frame a meaningful RIO in which all bouquet and a la carte rates are specified, and there is also some room for mutual negotiation (even on rates) within certain specified parameters. This will achieve the objective of introducing a transparent non-discriminatory regime whereby distributors can obtain access to content, while still retaining some latitude to mutually negotiate*

the terms and conditions of access. It will also make the nexus between a la carte and bouquet rates, which the regulator thought fit to introduce, applicable to all mutually negotiated agreements. Negotiations must be within the parameters to those mandatory conditions specified in the Regulations that cannot be avoided or waived, and the mutual negotiation course cannot be used as the means to completely step out of the Regulations. It would be plainly opposed to any common sense principle to first set out an elaborate cumbersome regulatory architecture, only to allow parties to opt out of it at will." **(Page 78-79 of the Judgment dated 07.12.2015)**

Once all kinds of deals/proposed agreements arise out of the RIOs, then the issue under consultation will not assume much importance, as the deal will be based on the details provided under the RIO itself, which will be filed with TRAI in any circumstance.

The Judgment dated 07.12.2015 having come into effect from 01.04.2016, all the broadcasters are mandated to come out with their respective RIOs within the deadline set out in the said Judgment i.e. one month, expiring on 30.04.2016.

The TRAI must also consider that pursuant to the Register of Interconnect Agreements (broadcasting and Cable Services) Regulations, 2004 (as amended upto date), the Broadcasters are already filing the requisite information including the RIOs, and the other forms of subscription agreements, from time to time. Hence, all the information required by TRAI is already available with TRAI for scrutinizing the same, and developing the basis for regulation in the broadcasting industry. However, we express our dissent in sharing commercial portion of the register to any interested stakeholders.

It is also important to note that at the time of reporting/filing of annual interconnection agreements with the TRAI, parties to the interconnection agreement furnish the commercial terms and conditions captured in the interconnection agreements to the TRAI. The mutually agreed commercial understandings are arrived at after much deliberation and negotiation between the parties, while considering multiple facts and circumstances including, but not limited to, the area of operation and the subscriber base etc in Non DAS agreements and LCN, packaging obligations, number of channels taken by the platform etc in DAS agreements in terms of RIO published by Broadcasters .Such commercial understandings are not only variable and involve complexity but are also extremely sensitive in nature. TRAI granting/permitting access to the commercial understandings to any such

persons/stakeholders who are not party to the referred interconnection agreements shall not only be derogatory to the business interest, but the same shall also be highly detrimental to the business interest of parties with whom interconnection agreements are executed. Such disclosures would stunt growth in the broadcasting industry, by disclosing the innovating pricing model which the broadcaster may have with its affiliate and which provides it a competitive edge and may harm competitive position of the party upon any such disclosure to the third party.

While the extant laws and regulation pertaining to Broadcasting and Cable Service entrusts service providers with the responsibility of maintaining a non-discriminatory approach in its dealings with other service providers in Broadcasting and Cable Service, the TRAI should not enforce any such law/regulation which permits a third party to determine whether the disclosing party has been non-discriminatory in its approach while the disclosing party was negotiating commercial terms and conditions for retransmission with such third party. The inherent flaw/irregularity with this approach of granting third party access to commercial understanding arrived at between the parties is that the opinion of the third party shall more or less always be biased in view of the fact that such opinion with be laced with the vested interest of such third party.

We are of the view that instead of disclosing the information including the commercial portion of the register, the exercise of analysing whether any non-discriminatory practice should be rest with TRAI. If the TRAI, upon scrutinizing the commercial understanding furnished by the disclosing party and comparing such commercial understanding with the commercial understanding executed with third party arrives at a conclusion that the approach of the disclosing party has not been discriminatory, then the TRAI always has the option of calling upon the disclosing party to seek explanation under Applicable Laws. Divulging of Commercial Understanding between two parties to a third party is violation of privacy and hence, should not be permitted under any circumstance. It is a well-established principle of law that what cannot be achieved directly, cannot be achieved indirectly.

General standards are entailed under the World Intellectual Property Organization ("WIPO") Agreement on Trade-Related Aspects of Intellectual Property Rights. The tort of breach of confidentiality in India is based upon the violation of right to privacy. The right to

privacy though not specifically granted has been derived by the Supreme Court of India using the provisions of Articles 21, 19(1)(a) and 19(1)(g) given in the Constitution.

Reliance may be drawn to the judgement of the Hon'ble High Court of Andhra Pradesh in the matter of District Registrar and Collector, Hyderabad and Another Vs. Canara Bank Etc.

"Section 73 of the Indian Stamp Act, 1899, as incorporated by Andhra Pradesh Act No. 17 of 1986, by amending the Central Act in its application to the State, had been struck down by the High Court of Andhra Pradesh as against the provisions of the Indian Stamp Act as also of Article 14 of the Constitution. That Section 73 basically purported that any public officer who has in his custody any registers, books, records, papers, documents or proceedings which have any public purpose such as discovery of fraud etc., shall allow anybody authorized for that purpose by the Collector to inspect the same at any reasonable time without charging any fee. The amended Section 73 however held that the same person who inspects those documents can ask for payment for proper stamp duty if the documents are not duly stamped records, papers, documents or proceedings.

There were writ petitions filed by many banks and other companies challenging amendment of Section 73 on ground that it empowered any person authorized in writing by collector to have access to documents in private custody or custody of a public officer without regard to fact whether documents were sought to be used before any authority competent to receive evidence. The plaintiffs also contested that the law was unconstitutional as it interfered with personal liberty of citizens as it allowed intrusion into privacy and property of citizens.

An element also given by the prosecution was confidentiality in the case of bank records. This case talks about the fact that can the Collector authorize 'any person' to examine the bank records. The right to privacy of the customers of the bank is thus violated here as well.

The court held that the Karnataka government should revert the law back to its original state as the law is unconstitutional and as held in the Kharak Singh case there exists a certain right to privacy which would be violated by this law."

Right to Information Act, 2005, has also provided exemptions to the disclosure of the confidential commercial information. Sub-section (d) of Section 8 stipulates as:

"8. Exemption from disclosure of information:
(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;"

In fact, from an international perspective, just like their Indian counterparts, the Courts in various countries have recognized both the right to confidentiality as well as a right to privacy as a principal of law. Relevant to quote the below judgments:

(i) The Information Rights Tribunal in Bristol City Council *vs.* Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012, 24 May 2010) has applied the principal of exception and expanded its purpose to protect any legitimate economic interests underlying commercial confidentiality and stated the grounds for qualification as:

"*All four elements are required in order for the exception to be engaged:*
õ *The information is commercial or industrial in nature.*
õ *Confidentiality is provided by law.*
õ *The confidentiality is protecting a legitimate economic interest.*
õ *The confidentiality would be adversely affected by disclosure*."

(ii) The Court of Appeal in *Veolia ES Nottinghamshire Ltd v Nottinghamshire CC [2010] EWCA Civ 1214* noted that "*if the penalty for contracting with public authorities were to be the potential loss of such confidential information, then public authorities and the public interest would be the losers, and the result would be*

potentially anti-competitive", and held that it was not necessary to decide whether this contract was regulated by the Directive, which prohibits the disclosure of confidential information relating to public works contracts in certain circumstances. This was because Article 1 Protocol 1 (and perhaps Article 8 ECHR) provided sufficient reason for reading down section 15 of the ACA so as to exclude confidential information from disclosure. In conclusion, the Court found that such information should be protected from inspection.

Further, it is also relevant to bring the attention of the TRAI to the Register of Interconnect Agreements Regulations 1999, as amended from time to time, which prescribes the modalities of maintenance of register and reporting requirements applicable to the telecom industry in India, *inter alia*, stipulates that certain information are confidential in nature and is vital for the conduct of the business for the parties. Hence, even if the information being shared in the interest of the general public, a right to make representation and/or to be heard by the Authority against such order has been prescribed which the authority may humbly note. An excerpt of the relevant portion of the regulation is as below:

"4. Confidential Portion of the Register:

i) The Authority may, on the request of any party to an Interconnect Agreement, direct that any part of such Interconnect Agreement be kept confidential.

ii) Any request for keeping a part of the Interconnect Agreement confidential must be accompanied by a non-confidential summary of the portion sought to be kept confidential.

iii) Where any party to an Interconnect Agreement requests the Authority to keep the whole or any part of the agreement as confidential, the Authority shall take a decision thereon in accordance with the relevant provisions of The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005. [as amended vide The Register of Interconnect Agreements (Third Amendment) Regulation, 2005 (5 of 2005)].

iv) If the Authority declines the request of any service provider to keep any portion of the Interconnect Agreement confidential, it shall record its reason for doing so and furnish a copy of its order to the service provider concerned. In that event the service provider shall have the right to make a representation and/ or to be heard by the Authority against such order.

v) The Authority may at any time disseminate confidential information in Part II of the Register if in its opinion the disclosure of the information would be in public interest. Before making such disclosure, the Authority shall afford an opportunity of hearing to service provider at whose request such information had been kept confidential.

vi) Where a service provider requests that any part of the Interconnect Agreement be kept confidential, such portion of the Agreement shall remain confidential until the matter is determined by the Authority."

Q2. If the commercial information is to be made accessible,

a) In which way, out of the three ways discussed above or any other way, the commercial information should be made accessible to fulfil the objective of non-discrimination?

b) Should it be accessible only to the service providers, general public or both?

c) Should any condition be imposed on the information seeker to protect the commercial interests of the service providers?

In response to the above question, before we proceed further, and without prejudice to the fact that the information may not be disclosed keeping in mind the answer to question no. 1 above and answer to question no 3 below , if TRAI decides to disclose the information, it should only be trend based. TRAI must consider the purpose of disclosure of information, which is two-fold – one to allow the stakeholders to maintain parity, and second, for TRAI to study the industry in detail, and publish reports, and studies to help the growth of the industry. The purpose of parity stands achieved by the Judgment and Order dated 07.12.2015 in *Noida Software Technology Park Ltd. vs. Media Pro Enterprise India Pvt. Ltd.* (Petition

No. 295(C) of 2014) and *Noida Software Technology Park Ltd. vs. Taj Television India Pvt. Ltd. & Anr.* (Petition no. 526(C) of 2015). The other purpose being to study the information, we feel can be handled by declaring trend analysis of the information. In this manner, the privacy and confidentiality aspect of the matter will also be taken care of.

Alternatively, in the event that the authority decides to allow access to the information as contained in the agreements executed between the parties, the said access should be given only upon hearing the party whose information has to be disclosed and also giving enough time or opportunity to such party to approach judicial forum if in the opinion of such party, the information contained in part B cannot be shared at all.

Furthermore, we feel that any information disclosed by TRAI must be subjected to conditions including but not limited to confidentiality and non-disclosure. The information seeker should give an undertaking to the authority that 'it understands and acknowledges that the commercial terms are in the best commercial and proprietary interest of the information given and hence, the information is being sought only for the limited purpose of analysing the trend of commercial terms in place with other service providers and shall not be disclosed to any third person in any manner whatsoever' or undertaking of a similar nature. Any violation of the undertaking shall be treated as a violation of a direction of TRAI, punishable under Section 29 of the TRAI Act.

Q3. If the commercial information is not made accessible to stakeholders, then in what form the provisions under clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act be implemented in broadcasting and cable sector so that the objective of non-discrimination is also met simultaneously?

TRAI should be the only authority authorized to scrutinize the Commercial Understanding provided by the Declaring Stakeholder and if post comparing such Commercial Understanding with the commercial understanding provided by Third Party Stakeholder, the TRAI feels that the principal of non-discriminatory treatment has not been upheld by the Declaring Stakeholder in its dealings with Third Party Stakeholders, then the TRAI should call upon the Declaring Stakeholder to seek explanation under Applicable Laws.

Additionally, if the TRAI receives any formal written complaint from any stakeholder of such stakeholder being subjected to non-discriminatory treatment, then the TRAI is free to examine the relevant document to arrive at a logical and reasoned conclusion after giving opportunity to the disclosing party to give its explanation.

Regarding compliance of clause (vii) and (viii) of Section 11 (1) (b) of TRAI Act, it is stated that the purpose of the regulations is to provide TRAI with the information to conduct a study in the sector, and secondly, to ensure that the agreements executed are based on parity, and non-discrimination. Clause (vii) of Section 11(1) (b) of TRAI Act, though provides for maintenance of register of inter-connect agreements and other matters, however, subjects the same to **'as may be provided in the regulations'**. Similarly, Clause (viii) of Section 11(1)(b) of TRAI Act provides for inspection of the register to any member of the public, however, same has been subjected to **'...and compliance of such other requirement as may be provided in the regulations.'.** Hence, both the requirements are subject to regulations which are already in effect viz. The Telecom Regulatory Authority of India (Access to Information) Regulation, 2005 or which may have to be framed by TRAI. Thus, it is not correct to state that every information provided by the stakeholders must be provided to the other stakeholder or the public at large.

Alternatively, any information (including the commercial terms) if made available to the general public, will open the flood gates and the element of privacy and confidentiality will be disregarded, which is a sine qua non for any transaction, off course maintaining the basic facet of parity and non-discrimination. Any information made available to the general public will put the confidential information to constant abuse and will take away the element of primacy between the parties.

Q4. Please provide suggestions on regulation 5 of the draft regulations regarding periodicity, authentication etc.

While digitally signed reporting of interconnection agreements is a step forward towards simplifying and easing reporting of interconnection agreement by stakeholders with the TRAI, with respect to the periodicity of reporting of interconnection agreement by stakeholders, TV18 is of the opinion that the current reporting structure, i.e., annual reporting

of interconnection agreements, should not be discontinued and the suggested regulation should not be adopted.

In the 'Explanatory Memorandum' annexed with The Register of Interconnect Agreements (Broadcasting and Cable Services) (Fourth Amendment) Regulations, 2009, the TRAI observed as follows. Basis such observation of TRAI, it is imperative to note that from 2009 to 2016, there has not at all been any change in the periodicity of the agreements that gets executed between stakeholders. The observation of the TRAI, as is quoted above, still holds good and hence, there is no apparent reason why current practice should be done away with.

> *"3. The details of interconnection agreement 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 agreement 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 Issue relating to Broadcasting and Cable Service" issued on December 15, 2008. Majority of stakeholders are in favor of 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 6, 2009, the Authority has come to the conclusion that the filing of interconnection agreements should be on an annual basis. The authority has decided to receive annual filing for period 1st July to 30th June by 31st July every year. The period is chosen to cover the industry practices of agreements on calendar year basis or financial year basis."*

With respect to the specific part of the proposed provision in regulation 5 of the draft regulations which as is set forth below, we are not in agreement with the Authority, *suo moto*, passing a direction exempting certain class of service providers from the proposed reporting requirements. If any exemption needs to be granted, then the entire granting of exemption process needs to be transparent and should be made equally applicable.

> *"Provided further that the Authority may, through a direction, exempt certain class of service providers as specified in that direction, from reporting such information relating to interconnect agreements."*

With respect to the specific part of the proposed provision in regulation 5 of the draft regulations which as is set forth below, we hereby humbly submit to the TRAI that the requirement of the principal broadcaster further certifying that it has been duly authorized by the pay channel broadcasters (that it represents) to report information on behalf of such pay channel broadcasters is sheer duplication of work on a repetitive basis. The principal broadcaster has anyways reported to the TRAI, in terms of Regulation 10 of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012, that is has been duly authorized by the pay channel broadcasters that it represents and there is no reason to repeat the same on a regular basis unless there is a deviation from such settled position.

> *"In case, broadcaster of pay channel submits the report of information as mentioned in sub-regulation (1) with the Authority through a broadcaster with whom it can form bouquet under regulation The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012, a certificate shall be furnished along with the report to the effect that such broadcaster has been duly authorized to report such information on behalf of the broadcaster of pay channel and all such information in the report is true and correct, and such certificate shall be digitally signed by the company secretary and the authorized representative of the broadcaster of the pay channel."*

Considering the above changes, and the intent of TRAI as narrated in this response related to the changes brought about in the Regulations, we do not feel the necessity for TRAI to look at this aspect once again and/or increase the periodicity for filing the agreements. As narrated above, the documents, agreements, modifications, amendments to the agreements are already being filed on a yearly basis, and there has never been any complaint regarding non-compliance of the same. TRAI pursuant to the Second and The Fourth Amendment accepted the request of the broadcasters about the difficulty in filing documents on a quarterly basis, and hence, made filings on a yearly basis. Hence, we submit that the filings be continued in the manner provided in the amendments till date, and in fact, there exists no reason or change in circumstances that warrant TRAI to change the system which is being followed by the stakeholders for a long time.

Similarly, the condition of providing the documents in digitally signed format is not a workable suggestion and should not be made compulsory for reporting purposes. It is a known fact that the broadcasting industry involves very small MSOs and LCOs operating in the smallest of towns, and villages of the country. If digital signature is made mandatory, it will be difficult for such like MSOs and LCOs to file documents.

Q5. Please provide comments on how to ensure that service providers report accurate details in compliance of regulations?

In our opinion, the moment a document is filed by a stakeholder, it is understood, that the document and details provided are true and correct, and any wrong information will entail appropriate legal measures under applicable law.

Q6. Please provide comments on digitally signed method of reporting the information.

In our opinion, making it mandatory for submitting digitally signed reports will not be an effective and feasible method. Digital signatures will be an extra burden on the small operators who are operating at small scale and catering to few subscriber base as they will not be in a position to implement the said mandate of reporting in digitally signed requirements. Further, since the duly executed agreements are required to be filed with the authority, the

requirement of filing the reporting in digitally signed forms will be additional financial burden on the stakeholders. However, TRAI may consider digitally signed method as optional to the stakeholders so that the stakeholders who are capable to furnish digitally signed reporting may furnish digitally signed information.

Q7. Please provide suggestions on regulation 6 of draft regulations and also the formats given in schedules? Stakeholders can also suggest modified format for reporting to make it simple and easy to file.

In our opinion, the reporting format as provided earlier should be allowed to continue, as the format provided in the Regulations earlier has worked well, and there has never been any complaints regarding the same. Furthermore, we feel that the issue of carriage and placement fee being provided in the reports will depend upon the tariff model that is proposed by TRAI in its Consultation Paper dated 29.01.2016. Hence, the issue of carriage fee should be dealt with separately.

However, we suggest that the "Part B" section of the Schedule should be marked "Confidential" and must be kept out of the area which is accessible by the general public or the stakeholders.

Regarding carriage and placement fee declaration, we feel that carriage and placement fee has always been unregulated, and there is no need to regulate the same at this stage. Following will show that TRAI has always intended not to regulate carriage and placement fee, and there being no change in circumstances, there is no reason why TRAI should change its stand adopted for the last more than 2 years in the industry:

Sl. No.	Regulation Dated	Relevant Provision
1.		**Cl. 2(n) "carriage fee"** means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-a-vis channels of other broadcasters.

2.	30.04.2012 *(Principal DAS Regulation)*	**Cl. 2(v) "placement fee"** means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels
3.		**Cl. 3(6)** If a broadcaster before providing signals to a multi system operator insist for placement of its channel in a particular slot as a pre-condition for providing signals, such pre- condition shall amount to imposition of unreasonable terms
4.		**Cl. 3(11)** If a multi system operator before providing access to its network to a broadcaster insist on placement of the channel of such broadcaster in a particular slot or bouquet, such precondition shall amount to imposition of unreasonable terms
5.		**Cl. 9 (Reporting Requirement):** Every broadcaster shall furnish the details of carriage fee paid by him to the multi system operator along with the information furnished by him under the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004), as amended from time to time. Such information henceforth shall also include details of carriage fee paid to the multi system operator by the broadcaster.
6.	14.05.2012 *(First Amendment to Principal DAS Regulation)*	**Cl. 3(11A)** No multi system operator shall demand from a broadcaster any placement fees. ***(This Clause was inserted by First Amendment)***
7.		**Cl. 3(11A)** was omitted pursuant to Hon'ble Tribunal's Judgment dated 19.10.2012, which set-aside the aforementioned provision on the ground that since no restriction is placed on DTH for placement, similarly no restriction w.r.t. placement should be placed on MSO's.
		Pursuant to Hon'ble Tribunal's Judgment dated 19.10.2012, TRAI commenced Consultation Process wherein the issue was raised whether there is a need for regulating the placement fees in all the Digital Addressable System, if so, how it should be regulated.

8.	20.09.2013 *(Second Amendment to Principal DAS Regulation)*	Accordingly, Stake Holders have given their response on the aforesaid issue and majority of them stated that Placement should be left to market forces. ***(Please refer to paras 26-29 of the Explanatory Memorandum).*** After the Consultation Process TRAI was of the following view - **Para 30 of Explanatory Memorandum:** The issue has been analysed. In DAS, the technology provides for an EPG wherein the channels being carried on an MSO's network can be arranged in a simple, easy to understand, manner so that the subscriber can easily go through this guide and select the channel of his choice instead of flipping through all the channels. The genre-wise display of channels in the EPG, where all the channels of a particular genre are listed under relevant genre, has been mandated through regulations. Moreover, in digital systems, signal quality of the channels is independent of the placement of the channel. Further, the Interconnection Regulation already has a provision [sub-regulation 3 (11)] that if an MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such precondition amounts to imposition of unreasonable terms. **Thus, adequate provisions already exist in the regulations. Accordingly, sub-regulation 11A of regulation 3 of the interconnection regulation has been deleted.**
		<u>NON DAS REGULATIONS</u>
9.	04.09.2006 *(Third Amendment to Principal Analogue Regulations)*	Before coming out with the Third Amendment to the Principal Analogue Regulations, TRAI has commenced Consultation Process. In the said Consultation Process, wherein two issues arose which are as under – • Whether carriage fees on cable networks should be regulated? If so, on what basis should this be done and how should carriage charges be calculated? • What should be the mechanism for ensuring that the ceiling for carriage charge is not exceeded?

		All the Stake Holders presented their views and majority were of the opinion that the carriage and placement fees should be left to market forces on the ground that broadcasters pay placement and carriage fee from their advertisement pie.
11.	17.03.2009 *(Fifth Amendment to Principal Analogue Regulations)*	**Cl. 2(ia)** "**carriage fee**" means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters.
12.		**Cl. 2(mc)** "**placement fee**" means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels.
13.		**Explanation 2 to Cl 3(2)**. The stipulation of "placement frequency" or "package/ tier" by the broadcaster from whom the signals have been sought by a distributor of TV channels, as a "pre-condition" for making available signals of the requested channel(s) shall also amount to imposition of unreasonable terms."
14.		TRAI while undergoing the Consultation Process for the Fifth Amendment has stated that "The Authority has decided that no regulation w.r.t. carriage fee is required at this stage for the following reasons:- • Payment of Carriage/ Placement/ Technical Fee by a broadcaster is intimately linked with the perceived benefit that the broadcaster would enjoy by way of increased advertising revenue. This linkage is manifested by higher levels of Carriage Fee in TAM cities (cities where the rating agencies have installed their metering devices in sample households). Therefore, Regulation of Carriage Fee cannot be done in isolation without regulating the advertising revenue. ***[Para 34(b) of Explanatory Memorandum]*** TRAI, w.r.t. placement fees in the Explanatory Memorandum has stated that "The 'placement fee ' is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and

		revenue of their channel(s). The placement fee is different from "carriage fee" and the said aspect has been explicitly recognized by the Authority by defining these two terms separately in the definition clause. The amendment seeks to address the issue of carriage fee only and not the placement fee, which is governed by the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel." ***[Para 36 of the Explanatory Memorandum].***

Q8. Any other suggestions relevant to the draft regulations.

None