

January 31, 2009

Mr. R.N. Choubey
Pr. Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi - 110 002

Re: Consultation Paper on Interconnection Issues relating to Broadcasting & Cable Services

Dear Sir,

This has reference to the consultation paper no. 15/2008 dated December 15, 2008 released by the Telecom Regulatory Authority of India ("TRAI") on Interconnection Issues relating to Broadcasting & Cable Services ("Consultation Paper").

1. DEN Networks Limited ("DEN") welcomes the initiative taken by the TRAI for releasing the Consultation Paper and seeking comments of the stakeholders on issues addressed therein.
2. The majority of the litigations relates to the interconnection related issues. We believe that if the following issues are addressed in a judicious manner, the majority of litigations pertaining to discrimination would substantially be reduced and it would also ensure a level playing field for fostering healthy competition:

(a) Promote Digitalization

We believe that digitalization in the non-CAS areas would resolve majority of interconnection related issues. In view thereof, we request the TRAI to mandate the sunset dates for digitalization across cities in a phased manner in line with its recommendations of July 25, 2008. This would not only enable the subscribers in the non-CAS areas to have a better viewing experience but would also enable the subscribers in the non-CAS areas, like the subscribers in other addressable platforms, to opt bouquets of channels offered by the MSOs depending on their taste and paying capacity.

(b) Investment vs. Billing

In order to promote digitalization and enhance subscriber satisfaction, the MSOs are voluntarily introducing digitalization in many areas across India. In this regard, the MSOs are making substantial investments towards Digital Head-end, Fiber backbone, subscriber management system, Set Top Boxes, network upgradation, call centers etc. without receiving any additional revenues for such substantial investments. In view thereof, we suggest that the TRAI mandate a regulatory mechanism that enables the party making investments towards digitalization, in this case the MSOs, to raise the invoices on the subscribers.

(c) Restriction on New Channels

The broadcasters keep adding new channels to their existing bouquets and the MSOs are compelled to pay incremental subscription fees for such bouquets. However, the market dynamics are such that the MSOs/LCOs are not able to recover the incremental subscription fees from the LCOs/subscribers. In view of the recent judgment of the Hon'ble TDSAT, the MSOs in the non-CAS areas are also now deprived from subscribing to channels on a-la-carte basis. Under the circumstances, we suggest that the TRAI either mandate the broadcasters to introduce new channels as part of a separate bouquet, or to introduce, at least the new channels, on a-la-carte basis.

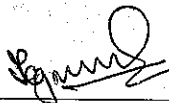
(d) Introduce Standard Reference Interconnect Agreements

The Reference Interconnect Offer ("RIO") is an abridged version of the interconnect agreement and lists certain important terms & conditions only. However, the terms and conditions not included in the RIO leads to disagreement and delay in interconnection. Hence, we suggest that as part of the interconnection regulation, the TRAI mandate three (3) standard interconnection agreements ("RIAs"); namely (i) RIA between broadcasters and addressable platforms providing signals directly to the subscribers (like DTH, IPTV, Mobile TV, etc.), (ii) RIA between broadcasters and addressable platforms providing signals to the subscribers through an intermediary (like MSOs in CAS areas, HTS, etc.), and (iii) RIA between broadcasters and non-addressable platforms providing signals to the subscribers through an intermediary (like MSOs in non-CAS areas).

3. With respect to placement fees, we submit that the placement agreements are executed by broadcasters and the distribution platforms for their commercial benefits. The broadcasters keep launching new channels and use this platform to promote their new/existing channels and derive huge advertising revenues from their sponsors. In view thereof, we suggest that the TRAI desist from issuing any regulation on placement fees.
4. In this background, DEN's comments to the specific issues for consultation are stated in the attached document.

Please feel free to contact us should you need any further clarification.

Yours sincerely,
For DEN Networks Ltd.



Authorized Signatory

**DEN'S COMMENTS TO THE CONSULTATION PAPER ISSUED BY THE TELECOM
REGULATORY AUTHORITY OF INDIA ON INTERCONNECTION ISSUES
RELATING TO BROADCASTING & CABLE SERVICE**

Interconnection for Addressable Platforms

6.2.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIO) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

6.2.2. Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

As suggested in paragraph 2(d) of the cover letter, the TRAI may mandate two (2) standard TRAI mandated RIAs; one for addressable platforms providing signals directly to the subscribers (like DTH, IPTV, Mobile TV, etc.), and the other for addressable platforms providing signals to the subscribers through intermediaries (like MSOs in CAS areas, HITS, etc).

6.2.3 What should be the minimum specifications/conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?

6.2.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

With respect to existing addressable platforms, we suggest that the TRAI specify minimum specifications/conditions to qualify as addressable platforms and introduce a new licensing mechanism in this regard. The specifications/conditions stated in the Annexure may be made part of the new licensing mechanism.

With respect to new distribution platforms, we suggest that the TRAI make the specifications/conditions under the new licensing mechanism as part of the existing licensing mechanism.

Any existing/new addressable platform that obtains the above mentioned license should be entitled to receive signals on terms at par with other addressable platforms.

6.2.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?

The voluntary digitalization introduced by the MSOs probably accounts for 1% to 1.5% of the total market presently being serviced by the MSOs. Further, unlike other addressable environment where the service providers raise the invoice on the subscribers, in the areas where the MSOs have introduced voluntary digitalization, like in other non-CAS areas, the invoices are being raised by the LCOs. Hence, until such time voluntary digitalization in the non-CAS areas reaches a certain threshold and/or the TRAI mandates digitalization across cities in non-CAS areas in a phased manner, the hybrid cable networks in non-CAS areas should be treated at par with analogue cable networks.

6.2.6 Whether there is a need to define "Commercial Subscribers", and what should be that definition?

In order to ensure a level playing field, it may be advisable to have common definition for "Commercial Subscribers" across addressable platforms. In this regard, we suggest that the definition of "Commercial Subscribers" as applicable in CAS areas be made applicable across addressable platforms.

In terms of Clause 2(k) of the Interconnection Regulations, "direct to home operator" means an operator licensed by the central government to distribute multi channel TV programmes by using a satellite system directly to subscriber's premises without passing through intermediary such as cable operator or any other distributor of TV channels. Further, in terms of Clause 2(ka) of the Interconnection Regulations, "direct to home service" means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber's premises without passing through an intermediary such as cable operator or any other distributor of TV channels. However, in terms of Clause 2(na) of the Interconnection Regulations, "subscriber" means a person who receives the signals of a service provider at a place indicated to the service provider by him without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded. Hence, the Interconnection Regulations may need to be amended to enable the DTH operator provide signals to "Commercial Subscribers" for further transmission of the signals to its guests.

6.2.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters' RIOs for non-Commercial Subscribers?

The interconnection issues applicable to Commercial Subscribers are likely to be same as non-Commercial Subscribers. Hence, as suggested in paragraph 2(d) of the cover latter, the two (2) standard TRAI mandated RIAs; one for addressable platforms providing signals directly to the subscribers (like DTH, IPTV, Mobile TV, etc.), and the other for addressable platforms providing signals to the subscribers through intermediaries (like MSOs in CAS areas, HITS, etc.) be made applicable for Commercial Subscribers as well.

6.2.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?

As suggested in paragraph 2(d) of the cover latter, the TRAI may mandate two (2) standard TRAI mandated RIAs; one for addressable platforms providing signals directly to the subscribers (like DTH, IPTV, Mobile TV, etc.), and the other for addressable platforms providing signals to the subscribers through intermediaries (like MSOs in CAS areas, HITS, etc.).

6.2.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?

Considering (i) the ease of executing the RIAs in an addressable environment and (ii) the logistics involved, we suggest that the time prescribed for signing interconnect agreements for addressable platforms be reduced to 30 days.

6.2.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

- 6.2.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

Like the DTH platforms, all addressable platforms should have the right to package the channels and price the bouquet based on the taste and paying capacity of the subscribers. Hence, we suggest that the TRAI strictly prohibit the broadcasters from imposing any kind of restriction on packaging and/or pricing of the channels.

Interconnection for non-addressable platforms

- 6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?
- 6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

As suggested in paragraph 2(d) of the cover letter, the TRAI may mandate one (1) standard RIA for non-addressable platforms providing signals to the subscribers through intermediaries (like MSOs in non-CAS areas).

General Interconnection Issues

- 6.4.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

With respect to addressable platforms, we suggest that the TRAI specify the QoS specifications as part of the minimum specifications/conditions stated in response to points 6.2.3 and 6.2.4.

With respect to non-addressable platforms in non-CAS areas, the MSOs do not even have the details of the subscribers and it would not be possible for the MSOs to address QoS related issues (including billing and complaints relating thereto). Hence, until such time the MSOs are permitted to bill the customers in non-CAS areas, such QoS compliance should not be mandated on the MSOs in the non-CAS areas.

- 6.4.2 Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?
- 6.4.3 Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.
- 6.4.4 If so, then what should the manner of such regulation be.

At the outset, we would clarify that the broadcasters seek to place their respective channels on particular frequency/band and pay 'placement fees' (and not 'carriage fees') to the distributor of TV channels. The broadcasters use this platform to promote their channels and derive huge advertising revenues from their sponsors.

Moreover, the placement fees principally depend on regional/local preferences and also capacities of the network of the distribution platform. Hence, under the circumstances, it may be difficult to implement any regulation on placement fees. Further, the broadcasters may be willing to pay equal placement fees purely from a strategic reason irrespective of the popularity of the channels.

In view thereof, the TRAI should desist from issuing any regulation on placement fees and the placement fees should not be linked to Interconnection Regulations and/or TAM/TRP ratings.

- 6.4.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?**

There are separate set of licensing mechanism, regulations and tariff orders for MSOs operating in the CAS notified areas. The HITS operator operates like a conventional MSO. In view thereof, the HITS operator would be governed by all laws applicable to the MSOs in the CAS notified areas including obtaining separate license. Further, if the MSOs are taking signals from the HITS operator, it would be treated as an LCO and it would loose the status of MSO.

Moreover, CAS has been notified in a very small area. The HITS operation is generally meant for much larger areas. The benefits of HITS can be experienced if the TRAI mandates digitalization across cities in a phased manner in line with its recommendations of July 25, 2008.

Hence, it may not be appropriate to go beyond the scope of existing legal/regulatory framework merely to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas.

- 6.4.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?**

Subject to the HITS operators operating as a distribution platform and not merely operating as an infrastructure provider, as suggested in paragraph 2(d) of the cover letter, the standard TRAI mandated RIA for addressable platforms providing signals to subscribers through intermediaries may be made applicable for HITS operators as well.

- 6.4.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?**
- 6.4.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?**
- 6.4.9 Is there any other regulatory measure which will achieve the same objective?**

It would be unfair to the broadcasters if they are asked to provide signals to the DTH operators for a period of six (6) months even after the expiry of the interconnect agreement merely to enable the DTH operator to meet with its QoS obligations. It may be noted that the DTH operators would not be able to meet the QoS obligations if the broadcasters were to disconnect the signals of the DTH operator for violation of the provisions of the interconnect regulations, tariff orders, etc. In view thereof, we suggest that the TRAI consider amending Clause 9(1) of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances)

Regulations, 2007 to state that the protection would be available subject to the DTH operator receiving the signals from the broadcasters.

Registration of Interconnection Agreements

6.5.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

The absence of written interconnect agreements leads to disputes and litigation. Moreover, it also makes it difficult for the affected party to enforce its rights. Hence, we suggest that all interconnect agreements between broadcasters and distributor of TV channels be reduced in writing.

6.5.2 Whether it should be made mandatory for the Broadcasters/MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

Subject to Clause 8.1 of the Interconnection Regulations, we suggest that the signals be provided by pay channel broadcasters to the distributor of TV channels only after executing written interconnect agreements with the broadcasters. It may be noted that these regulations should not be applicable on FTA encrypted channel broadcasters. We suggested that the TRAI introduce relevant interconnection regulation with respect to such FTA encrypted channel broadcasters.

6.5.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

Subject to clauses of the Interconnection Regulations relating to execution or renewal of interconnect agreements, we suggest that no additional regulatory protection be made available to the distributor of TV channels who have not executed interconnect agreements with pay broadcasters in writing. However, the TRAI needs to ensure that the provision is not misused by the broadcasters for discriminatory practices.

6.5.4 How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?

6.5.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

6.5.6 Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?

We suggest that each RIA be broadly divided into two (2) parts. While the first part of the RIA can deal with all the variable provisions of the RIA [including (i) details of the broadcasters, (ii) details of the distribution platforms, and (iii) the commercial details], the second part of the RIA, which can be incorporated in the first part of the RIA by reference, may deal with the standard terms and conditions of the RIA. The broadcasters and distribution platforms may be mandated to execute only the first part of the RIA, the second part of the RIA may be posted on the TRAI web site. The pay broadcasters may be mandated to provide only the first part of the RIAs to the MSOs within seven (7) days from execution. If the broadcasters fail to provide a copy, MSOs should be entitled to receive a copy of such agreement through the TRAI within one (1) month.

- 6.5.7 Whether the periodicity of filing of Interconnect agreements be revised?
6.5.8 What should be the due date for filing of information in case the periodicity is revised?

Generally, the interconnect agreements are executed for a period of one (1) year. In majority of the cases, the interconnection agreements are not amended. In view thereof, we suggest that the periodicity of filing of interconnect agreements may be once each year, within three (3) months from its execution, with a clear direction that any amendment to the existing interconnection agreements need to be reported to the TRAI within three (3) months from its execution.

- 6.5.9 What should be a reasonable notice period to be given to the Broadcaster/DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?

We suggest that the broadcasters be asked to provide relevant interconnect agreements within fifteen (15) days from the date of request.

- 6.5.10 What should be the retention period of filings made in compliance of the Regulation?

We suggest that the broadcasters be mandated to retain the interconnect agreements for a period of two (2) years from the date of execution. The TRAI should have the right to call for the interconnection agreements anytime within the two (2) years period.

- 6.5.11 Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/ DVDs?

The scanned versions of the interconnection agreements may not be required. We suggest that the broadcasters be mandated to provide details of the interconnection agreement.

- 6.5.12 Whether the interconnection filings should be placed in public domain?

- 6.5.13 Is there any other way of effectively implementing non-discrimination clause in Interconnect Regulation while retaining the confidentiality of interconnection filings?

As suggested in paragraph 2(d) of the cover letter, if the TRAI mandates three (3) separate RIAs for addressable and non-addressable platforms, it would address majority of non-discrimination related issues.

Further, with respect to addressable platforms, since the commercials are based on actual number of subscribers, we suggest that the TRAI place the interconnection filings with respect to addressable platforms in public domain. However, the commercials for non-addressable platforms are negotiated and hence may not be placed in public domain.

In order to protect the interest of a non-addressable platform against discrimination with respect to commercial issues, we suggest that upon reasonable and justified request from a non-addressable platform, instead of sharing the information with such non-addressable platform, the TRAI reviews the interconnection filings of other non-addressable platforms in the area and determine if the broadcaster is discriminating.