Comments By Den Networks Limited on The consultation on the Draft Telecommunication (Broadcasting And Cable Services) Interconnection (Addressable Systems) Regulations, 2016

PREAMBLE

At the outset, we at **DEN NETWORKS LIMITED** (DEN) wish to express our sincere gratitude to the Telecom Regulatory Authority of India (the Authority) for its support, cooperation in the establishment and growth of Broadcasting & Cable TV industry in India and also resolving various issues, which have arisen from time to time.

In continuation with its vision for growth, streamlining and revamping the said industry, the Authority has come up with the Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016 keeping in mind the interest of all the stakeholders. We congratulate the Authority and its officials on all the hard work put behind the in-depth study and research and for having come up with the said Draft Regulations.

We specially thank the Authority for providing us an opportunity to submit our response on the same.

COMMENTS ON THE DRAFT TELECOMMUNICATION INTERCONNECTION (ADDREESABLE SYSTEMS) REGULATIONS, 2016

- **Clause 2(mm) states that "subscriber" means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber."**

DEN's response: It is submitted that few amendments are necessary in the definition of subscriber as Entertainment Tax departments have been consistently misreading the existing definition of subscriber under the extant Regulations and levying Entertainment Tax on the basis of each Set-Top Box irrespective of whether they are within the same customer premises. In essence, Entertainment Tax is a Tax imposed on the end consumer on availing Entertainment Services. However, the Departments relying upon the definition given under the Regulations, treat each Set-Top Box as an independent customer, whereas in cases where multiple Set-Top Boxes are installed at an individual customer's premises, they should not be treated as such for the purposes of Entertainment Tax. Various complaints have been received by MSOs from customers on account of the same, as it is the customer who has to pay the said tax.

Proposed Definition: "subscriber" for the purposes of this Regulation means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber.

- **Clause 2(nn) states that "subscriber base" means the number of active subscribers in the addressable system of a distributor of television channels."**

DEN's response: It is submitted that few amendments are necessary in the definition of subscriber base as Entertainment Tax departments have been consistently misreading the existing definition of subscriber under the extant Regulations and levying Entertainment Tax on the basis of each Set-Top Box irrespective of whether they are within the same customer premises. In essence, Entertainment Tax is a Tax imposed on the end consumer on availing Entertainment Services. However, the Departments relying upon the definition given under the Regulations, treat each Set-Top Box as an independent customer, whereas in cases where multiple Set-Top Boxes are installed at an individual customer's premises, they should not be treated as such for the purposes of Entertainment Tax. Various complaints have been received by MSOs from customers on account of the same, as it is the customer who has to pay the said tax.

Proposed definition: "subscriber base" for the purposes of this Regulation means the number of active subscribers in the addressable system of a distributor of television channels".

- **Regulation 3 sub regulation 9 states that *"Every distributor of television channels shall, within thirty days of the commencement of these regulation, publish on its website the total channel carrying capacity of its distribution network(s) in terms of number of standard definition channels, coverage area of the network(s), list of channels available on the network(s), spare capacity available on the network(s) and the list of channel(s) in chronological order for which requests have been received from the broadcaster(s) for re-transmission and are pending."***

  DEN's response: The draft regulations mandates for every DPO to publish its channel carrying capacity on the website with complete details. In our views, we would like to mention herein that such details should be notified to the Authority on geographical basis instead of publishing it on website. We would like to propose that such information should be further bifurcated in a city wise manner as the MSOs placed like us are purely dependent on the leasing the lines from Telcos and it may not be feasible for us to take higher capacity links for smaller cities where the uptakes of channels is not higher. We would also like to submit that uploading such a huge data of more than 800 cities on website may not be technically possible due to huge size and frequent changes. Thus, we would like to propose that the above information shall be notified to the Authority and not published on website.

- **Regulation 3 sub regulation 12 states that *"It shall be open for a distributor of television channels to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding six consecutive months, for that particular television channel is less than five percent of the subscriber base of that distributor, in the target market specified by the broadcaster in the interconnection agreement, in that particular month."***

  DEN'S response: In our views, the timelines of six consecutive months shall lead to unnecessarily blocking the frequencies of DPOs. A new channel or existing channel may be carried on DPOs platforms and three months' time is sufficient time to understand the appetite and demands of the consumers. The DPOs will be forced to carry the such channel for six months without beings subscribed by the subscriber and resulting in losses carriage revenue to DPOs. Thus, we would like to propose that immediate preceding six consecutive months shall be replaced with immediate preceding 3 (three) consecutive months.

- **Regulation 3 sub regulation 15 proviso 3 states that *"Provided further that this sub-regulation shall not apply in case of a local cable operator who is in default of payment of a distributor of television channels and continues to be in such default."***

DEN's response: We have noticed that LCOs mostly operate in close nexus and either of the family member acts as a front of the entity. To avoid such complications and wrongdoing, we would recommend that the term Local Cable Operator shall include relatives and the relatives shall be the same as defined under the Companies Act, 2013.

In addition to the above recommendation, it is submitted that the third proviso shall be amended in such a way that there is a bar on every distributor of TV channels on providing signals to defaulted LCOs. Generally, the LCOs do not clear their dues on time and after accumulation of the same, migrate to some other MSO without returning the STBs and make payment of dues, in such a case the MSO is left with no remedy which results in incurring huge loss to the MSO.

We propose the following 3rd proviso:

"Provided further that no other distributor of television channels shall provide signals of television channels to a local cable operator who is in default of payment of a distributor of television channels and continues to be in such default".

- **Regulation 5 sub regulation 2 proviso states *that "Provided further that the terms and conditions mentioned in the reference interconnection offer shall include all necessary and sufficient provisions, which make it a complete interconnection agreement*** *for signing by other party, for distribution of television channel(s).”*

DEN’s response: We have noticed during our experience that the Broadcaster for the sake of compliance do publish reference interconnection offer on their website. However, they do mention in the background that the copy available is only of reference and not for execution. We propose that the Broadcasters should be mandated to publish the RIO on the website and accept the executed copy of RIO published on website as valid agreement for supply of signals.

- **Regulation 5 sub regulation 3 states that *“Every broadcaster shall declare a minimum twenty percent of the maximum retail price of pay television channel(s) or bouquet(s) of pay television channels, as the case may be, as the distribution fee.”***

DEN’s response: In order to avoid any ambiguity, we would request the authorities to kindly clarify that the Distribution fees as mentioned in the clause is “excluding taxes” as any absence of such language may lead to uncertainty with respect to sharing broadcaster and tax authorities.

Further, we would like to propose that the minimum percentage of distribution fee be increased from 20% to 55% as the same was fixed under the CAS regime. CAS being a tested methodology has resulted in minimization of disputes between the stakeholders.

- **Regulation 5 sub regulation 4 proviso 1 states that *“Provided that the sum of distribution fee declared by the broadcaster under sub-regulation (3) and discounts offered under this sub-regulation in no case shall exceed thirty-five percent of the maximum retail price of pay television channel(s) or bouquet(s) of pay television channels, as the case may be.”***

DENs response:. Herein, we would like to reiterate that the distribution fees be increased from 20% to 55% as the same was fixed under the CAS regime. CAS being a tried and tested methodology has resulted in minimization of disputes between the stakeholders.

Furthermore, under CAS the maximum ceiling for channel pricing was Rs. 5/-, whereas now the Broadcaster has been given much more leeway to price its channels accordingly. On the other hand, all the cost for providing the Digital signals PAN India in order to achieve the humungous and ambitious task of the Government of India has been solely incurred by the MSOs like DEN, which has affected their balance sheets significantly comprising of Higher Debts and lower profits. Moreover, the MSOs are fighting for their own survival due to the same. Also the distributor of television channels and the local cable operators incur a significant cost in collection of monthly subscription fee and therefore, there is a need to increase their share in the distribution fee. The Broadcasters having another source of revenue i.e. advertisement fees, would nowhere lead them losses, however, as the MSOs are not given any share in the said fees, it would be highly onerous on the MSOs and the LCOs to try and make ends meet within the proposed 20% distribution fee.

The change in the percentage of discount mentioned in the first proviso to sub-regulation 4 of regulation 5 has been done below in order to reflect the proposed increase in the distribution fee in sub regulation 3 of regulation 5 above

Proposed proviso: "Provided that the sum of distribution fee declared by the broadcaster under sub-regulation (3) and discounts offered under this sub-regulation in no case shall exceed seventy percent of the maximum retail price of pay television channel(s) or bouquet(s) of pay television channels, as the case may be."

- **Regulation 5 sub regulation 6 states that *"Every broadcaster shall publish on its website final reference interconnection offer after taking into consideration the objections, if any, received from the distributors, in conformance with the regulations and the tariff orders notified by the Authority and simultaneously provide, for the purpose of record, a copy of the same to the Authority."*.**

DEN's response: In our view, there shall be a time period of 30 days for the Broadcasters to publish the final Reference Interconnect Offer on their website, after taking into consideration the objections, if any, received from the distributors. This shall be time bound in order to protect the interest of all the stakeholders.

- **Regulation 6 sub regulation 2 proviso 1 & 2 states the following:**

"Provided that the rate of carriage fee per standard definition channel per subscriber per month declared by the distributor of television channels shall not exceed twenty paisa.

Provided further that the rate of carriage fee per high definition channel per subscriber per month declared by the distributor of television channels shall not exceed forty paisa."

DEN's response: With regard to the Carriage Fee, here the Authority shall give a fall back option as the same is given between the Multi System Operator and the Local Cable Operators on revenue sharing in the Model Interconnection Agreement and Standard Interconnection Agreement. It shall also be left open to the Broadcasters and the Multi System Operator to come up on a mutually decided Carriage Fee. The authority will appreciate the fact that the DPOs have to invest in CAPEX and OPEX on regular intervals and upgrade the technology from time to time. This requires huge investments and thus governing the carriage fee at this stage may lead to detrimental to our business. We request the Authority to kindly look into the cost incurred by us towards the carrying of channel. As the DPOs do not get carriage fees for mandatory channels and few channels which are not in huge demand but required to be carried due to regional demand. Thus, DPOs are left with limited carrying capacity of channel. We have tried to explain the cost incurred towards the carrying of channels. A copy of explanation is attached herewith and marked as Annexure – 1.

The rates as suggested do not take in to account the various factors such as mentioned in our explanation. Hence, we recommend following charges:
For SD Channels: 85 paisa per standard definition channel per subscriber per month.

FOR HD Channels: (Price of SD Channel X 3) Rs. 2.55/- per high definition channel per subscriber per month as the HD Channels consumes for capacity of network.

- **Regulation 9 sub regulation 6 second proviso states that *"Provided further that if the addressable systems of such distributor have been audited during the last one year by M/s. Broadcast Engineering Consultants India Ltd., or any other auditor empanelled by the Authority for conducting such audit and the distributer produces a report issued by the auditor as a proof of conformance to the requirements specified in Schedule III to these regulations."***

  DENs response: In our view, the time period of one year shall be increased to two years as there is a substantial cost incurred by the distributor of TV channels in getting its systems audited by M/s. Broadcast Engineering Consultants India Ltd. or any other empaneled auditor. Thus, the Audit Report should be valid for a minimum period of 2 years.

- **Regulation 9 sub regulation 7 second proviso states that *"Provided further that the term of the interconnection agreement in no case shall be less than one year from the date of commencement of the agreement."***

  DENs response: In our view, minimum duration of the interconnection agreement shall be increased from one year to two years, reason being that the distributor of TV channels requires some certainty with regard to its packaging obligations, as also to plan for its Return on Investment. Even, as on date it is only with MSOs that Interconnection Agreements are executed for a shorter duration whereas with DTH Operators the duration is usually 2-3 years. Furthermore, the execution of a longer duration agreement only ensures availability of channels for a longer period and has nothing to do with pricing of the channel.

  It is also pertinent to mention that the agreements should for a period of 2 years from the date of signing of the agreement irrespective of the accounting year closing i.e. 31st March or 30th June of the year as Broadcasters for the sake of their convenience sometimes enter into very short term agreements which end corresponding to their respective companies accounting year closing and then the MSOs are left running from pillar to post to get the agreements renewed and the same also leads to disputes and/or unnecessary litigation.

- **Regulation 9 sub regulation 20 third proviso states that *"Provided further that a distributor of television channels shall not discontinue carrying a television channel if the signals of such television channel remain available for retransmission and subscription for that particular television channel is more than twenty percent of the subscriber base in the target market."***

DENs response: In our view, a channel should not be discontinued only in the event the a-la-carte subscription of that channel is more than 20 per cent of the subscriber base, as if on the request of a Broadcaster a channel is placed in the basic service tier or a popular package on receipt of carriage fee by a distributor of TV channels, the distributor of TV channels will never be able to discontinue the channel, even if the carriage fee is stopped by the Broadcaster. The intent of the regulation is that popular channels are not taken off from the network of the distributor of TV channels. Popular channels will satisfy the criteria of 20% of the a-la-carte subscriber base. It will help in balancing the interest of all stakeholders.

Proposed third proviso: "Provided further that a distributor of television channels shall not discontinue carrying a television channel if the signals of such television channel remain available for retransmission and the a-la-carte subscription for that particular television channel is more than twenty percent of the subscriber base in the target market."

- **Regulation 14 sub regulation 2 states that *"In cases where a broadcaster is not satisfied with the audit report received under sub regulation (1), after communicating the reasons of dissatisfaction in writing to the distributor, such broadcaster may, not more than once in a calendar year, audit the subscriber management system, conditional access system and other***

related system of the distributor of television channels for the purpose of verifying the information contained in the subscription reports, the amounts payable by the broadcaster or the distributor, as the case may be, and compliance with the terms and conditions of the interconnection agreement.

Provided that if such audit reveals that additional amounts are payable to the broadcaster, the distributor shall pay such amounts, along with the late payment interest rate specified by the broadcaster in the interconnection agreement, within ten days and if such amount including interest due for any period exceed the amounts reported by the distributor to be due for such period by two percent or more, the distributor shall pay all of the broadcaster's costs incurred in the conduct of such audit, and take any necessary actions to avoid such errors in the future."

DENs response: In our view, it is impossible to maintain perfect harmony between the CAS and the SMS as there are many factors which can hamper the accuracy of the CAS and SMS such as any malfunction, system error, system crashing etc. This could be in the case of every distributor of TV channels. The Broadcasters being aware of such issues in the system, during Audit use the same as a tool to harass and arm-twist the distributor of TV channels. As it is impossible to maintain perfect harmony, they insist that the difference be not more than 0.5%, which is not technically possible to maintain. However, we would recommend that the difference shall be not more than 2.5 to 3% instead of 0.5%, only in case the system is in right condition

- **Regulation 17 proviso 1 states *that "Provided that the number assigned to a television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment."***

  DEN's response: In our view, the period of 1 (one) year shall be reduced to 6 (six) months as the shifting of channels may happen due to reduction in subscription and other reasons. Further, blocking a number for a year may lead to inconvenience to customers. Further, the shifting of number or change of number shall be allowed subject to due notification to customers by way of scrolls, messages, emails and website etc. Secondly, a condition needs to be added that the channel numbering will only be retained in the event that the channel is continuously available on the platform during the said period. If for any reasons, including non-payment of carriage fee the channel is removed from the platform, it cannot insist that upon reconnection it shall be entitled to the same channel number. The distributor of TV channels should be at liberty in such circumstances to replace the channel.

Proposed proviso: "Provided that the number assigned to a television channel shall not be altered by the distributor for a period of at least six months from the date of such assignment, in the event of continuous availability of a television channel on the platform."

- **Regulation 19 sub regulation 1 states that *"(1) Every service provider shall, within thirty days from the date of commencement of these regulations, appoint a compliance officer:***

  Provided that nothing contained in this sub-regulation shall apply to a distributor of television channels having average subscribers base, over the immediately preceding calendar quarter, less than two lakh or such other number of subscribers which may be prescribed by the Authority through direction from time to time:

  Provided further that this sub-regulation shall also not apply to a free-to-air broadcaster and a local cable operator."

  DEN's response: In our view, the time period of 30 days shall be increased to 60 days, as in most cases new hiring would have to be done by the service providers in terms of the Regulations. Any new hiring in an organization would be difficult to manage within a period of 30 days.

- **Regulation 19 sub regulation 4 states that *"In the event of any change in the name of the compliance officer so appointed under subregulation (1), the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change along with authenticated copy of board's resolution or authorization letter, as the case may be."***

DENs response: In our view, the time period of 10 days shall be increased to 30 days. The same is on account of the fact that in the event of any change in the compliance officer, 10 days is not sufficient to recruit a replacement. Furthermore, at times employees can resign at very short notice period and therefore, sufficient time is required to appoint a replacement.

To conclude our submissions, we once again express our deepest gratitude to the Authority for taking up an exhaustive exercise and coming up with the said draft regulations and we request the Authority to consider our comments/suggestions made above.

In case of any queries or clarification required by the Authority, we further request the Authority to contact Mr. Ashish Yadav –Deputy General Manager – Legal @ ashish.yadav@denonline.in or Ms. Ritika Arora- Officer-Legal @ ritika.arora@denonline.in DEN Networks Limited.

ANNEXURE - 1

Per Channel Capacity Cost

Particulars		Unit	Amount
No. of Subs		Million	8.00
Digital Infrastructure Investment:			
Capex		Crore	2,150
Network Acquisition Cost		Crore	600
Loss Incurred		Crore	260
Total Digital Infrastructure Capex		Crore	3,010
Subtotal [Per sub monthly recovery cost in 5 years]	A	INR	63
Annual Operational Cost			
Subscriber Management System		Crore	19
Per Sub per month cost		*INR*	*2*
Other Opex		Crore	480
Per Sub per month cost		*INR*	*50*
Return on Capital Employed @ 15%		Crore	452
Subtotal [Per sub monthly operational cost]	B	INR	99
Cost of services [Per sub monthly cost]	C = A+B	INR	162
Cost per net carriage paying channels		INR	0.85
No. of Carrying Channels			250
Less: DD Channels			24
Less: Non carriage paying channels			36
Net Carriage Paying Channels			190