WITHOUT PREJUDICE

DEN NETWORK's ("DEN") response to Consultation Paper on issues related to Interconnection Regulations 2017

PREAMBLE:

The instant response being submitted by us is with respect to following issues:

1. Target Market;
2. Placement and other agreements between broadcasters and Distributors.

RESPONSE:

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

DEN'S RESPONSE:

No, the flexibility of defining the target market has not been misused by the DPOs for determining carriage fee. The Authority rightly grants the distributors the flexibility to define the target market for the purposes of distribution of signals of TV channels to subscribers. As a prudent MSO, we have aligned our coverage area with our head-end and have declared such area as our target market. In fact we have declared complete state as one target market. The head-ends and its corresponding coverage areas envelop a geographical area having similar linguistic and cultural essences. The declaration of target market comprising potential subscribers who would be enjoying the services rendered by the distributors, forms an important aspect of their marketing plans and any restriction on the same would stand in the way of effective retransmission of channels to subscribers and would also curb the fundamental right of the DPOs to carry business freely.

Q2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

DEN'S RESPONSE:

The carriage fee under the new regulatory framework has been appropriately determined and the same needs no revision. The framework in its current form with respect to the concept of carriage fee aids in effective implementation of principle of 'must carry'.

However, it is pertinent to mention that as of today, only few of the Broadcasters have approached us for the carriage of the channel through the said Agreement and the same speaks volume about the very intentions of the Broadcasters.

Q3. How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.

DEN'S RESPONSE:

The cost of carrying a channel may be determined after taking into consideration the OPEX and CAPEX of the DPOs. However, the Authority after due consideration and consultation has appropriately fixed the carriage fee and therefore the same needs no intervention.

Q4. Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?

DEN'S RESPONSE:

No, the right granted to the DPOs to decline to carry a channel having subscriber base less than 5% in the immediately preceding six months is not likely to be misused. It may be pertinent to mention that the cap of 5% has been arrived at by the Authority only after due consultation with the stakeholders and is based on a good criteria. The time period of six consecutive months as has been prescribed is sufficient enough to ascertain whether or not a channel is being well received and/ or demanded by the subscribers. Moreover, for channels that fail to garner a subscriber base that is less than 5%, the current regulatory framework rightly allows the distributors to decline carrying the channel because if a channel that is not well perceived, carrying it for time period beyond the prescribed limit results in blocking bandwidth by carrying channels which are not popular with the subscriber base. The introduction of criteria

of a minimum subscriber base clearly reflects the consumer choice which is the cornerstone of the current regulatory framework. Further, the same also saves the distributors the unnecessary costs associated with carrying unpopular channels. The question itself uses the word "likely to be misused" which itself indicates that till date the same has not been misused therefore no change to the existing provision is warranted at this moment.

Issues related to Placement and other agreements between broadcasters and Distributors

Q5. Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.

DEN'S RESPONSE:

There appears to be no need to introduce a framework for Interconnection Agreements for placement and accordingly placement fee should not be regulated as the same is already adequately regulated. Further, with an increased focus on the principle of 'pay for what you want to watch', the importance of placement of channel has drastically reduced because the consumers are choosing the channels they want to watch.

In addressable systems, the technology provides for an EPG, wherein, the channels being carried on a DPO's network can be arranged in a simple and easy to understand manner so that the subscriber can easily go through this guide and select the channel of choice. All the channels that were available on the DPO's platform prior to the implementation of the new regime continue to be on the same position, as in accordance with the new regulatory framework, the LCN cannot be changed before one year from the date of assignment of the channels and hence even the pay broadcasters who were paying the placement fees in the old regime have stopped paying any placement fee under the new regulatory framework. Furthermore, the Authority has pointed out in para 98 of the Explanatory Memorandum to the Interconnection Regulations 2017, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG.

It is further stated that while at one hand the Broadcasters have been given the leverage to fix the price of a-la-carte channel as per their wish, an attempt to regulate Placement, when carriage is already regulated would be detrimental to the financial viability of the MSO's, who have been suffering for a long time, accordingly, the placement of channel should be left at the sole prerogative of the MSO, which anyways is a one-time affair owing to the regulatory curb in place with respect to the change of channel number.

Q6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring DPOs? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).

DEN'S RESPONSE:

The forbearance provided to the stakeholders in the value chain, in relation to placement agreement, marketing or any other agreement, does not favour the DPOs prejudicially.

In the Interconnection Regulations 2017, the broadcasters have been given a complete freedom to declare the genre of their channels and DPOs have been mandated to place the channels in the EPG under the respective genres so declared by the broadcasters. Further, the Authority has itself pointed out that the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG. Furthermore, it is an exclusive prerogative of the Broadcasters whether to enter into agreements for placement and marketing or not and nothing compels them for such agreement and accordingly the said can neither be misused and nor will distort the level playing field

It may be noted that the micro-management / regulation of any and all the sources of revenue, which are either outside the purview of the Interconnection Regulations 2017, or within an exclusive and discretionary arrangement between a Broadcaster and the MSO is violative of Article 19 (1) (g) of the Constitution of India and will usurp the serenity of the Broadcasting eco system.

It is pertinent to mention that as the rates of advertisement for Broadcasters has been left at market forces and there is no curb or predefined parameters for the same, similarly the arrangement which is solely at the discretion of the Broadcaster and/or DPOs should not be brought within the purview of TRAI.

Q7. Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

DEN'S RESPONSE:

The aspects of placement and other arrangements between the service providers are already adequately regulated in the current framework and provides for necessary restrictions and safeguards.

Further placement and marketing or commercials related to placement and marketing do not form essential aspects of interconnection. Placement, marketing or any such agreement of similar nature is an important right for the DPOs to carry on their business and trade for profit and should not be placed restriction upon unless, it is proved beyond doubt that they impact the interest of the subscribers, who are the focal point of the New Regulatory Regime. Therefore, any attempt to regulate agreements relating to placement, marketing etc. will curb the right of distributors to carry on business freely and would count as unnecessary incursion in their business affairs.

Furthermore, with the advancement of technology, the DPOs in order to provide better and varied services and benefits to its subscribers, are investing to make the Set Top Boxes (STBs) smarter. The natural consequence of the same would mean STBs with advanced features and its commercial would be up for exploitation in the coming times and STBs being properties of the DPOs, they should have absolute freedom to exploit such commercials. Commercial exploitation of the properties of the DPOs in the form of these STBs would require some commercial arrangement with the Broadcasters or other service provider. If these agreements are also considered a part of the interconnection regime and hence considered to be regulated by the Authority, the same would prove to be setback for the sector and stifle innovation that

that the sector is looking at post the implementation of the New Regulatory Regime. Micromanaging the agreements would have adverse impact on the revenue stream of the DPOs. It would impede the orderly growth of the sector by affecting the lawful source of income of the DPOs who are tirelessly investing money and effort in creating these STB properties/features.

Hence, it is submitted that placement, marketing or other commercial agreements in any name should not be treated as interconnection agreements and Authority should not regulate the same.

Q8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.

DEN'S RESPONSE:

The flexibility given to stakeholders to enter into agreements such as marketing and placement is not being misused by DPOs. The flexibility was given after due process of consultation with all stake holders and there is no data released or published by TRAI which can even suggest that there is any misuse of the flexibility. Hence no intervention is required in this regard.

Q9. Any other issue related to this consultation paper? Give your suggestion with justification.