

RESPONSE OF DISH TV INDIA LIMITED

TO

CONSULTATION PAPER

ON

ISSUES RELATED TO

INTERCONNECTION REGULATION, 2017

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Regulatory jurisprudence clearly prescribe that the Regulatory intervention and related stipulation should be made only when there is a need and such need is not being met by the regulated industry. In the instance case, when the DTH industry is already providing the required resources to the consumers, there is a clear case of “not being any need” and accordingly, there should not be any intervention or stipulation by the regulator for the DTH industry.

It has been the consistent stand on the part of the Authority for giving sufficient time to the draft tariff order and the draft regulations so that the same may be tested with passage of time. We strongly believe that each and every Regulation should be given enough time to test its effectiveness. Without giving sufficient time for any Regulation and suggesting a change will not only be detrimental to the process of implementation of the new regulatory regime but will be severely counterproductive to the efforts made by the DTH operators and can lead to disastrous result and increase customer angst.

The broadcasting and cable industry has recently passed through a tremendous turbulence during the migration process and with all the subscribers now migrated to the new regime and the system starting to just settle down leading to substantial decrease in the consumer grievances, there was no reason nor any occasion for the Authority to come out with the present consultation.

The present consultation, as per the own statement of the Authority, is a result of the consistent demand of the regional channels to redefine the target market because of the fact that some DPOs have declared multiple states as their Target Market which in some case it is PAN India. While assessing such demands the Authority has not considered that declaration of multiple states as target market cannot be attributed to DTH operators, for the DTH operators the Target Market has to be Pan India as the very license conditions of the

DTH Operator stipulates that the services to be provided by the DTH operators has to be on Pan India basis. Therefore there is neither any reason nor occasion for the Authority to prescribe any changes in the existing regulation qua the DTH operators.

What has further been overlooked by the Authority is the fact that such demands by the regional channels can solely be because of their intention to easily place channel on the DPOs platform without giving anything in return. While the Authority has relied on such demands, no consideration has been placed on the amount of advertising revenue being generated by such channels. It may be noted that any effort of rectification of any aspect in the new regulatory regime on the basis of complaints made by the vested interest without looking into the issue holistically would further result into complete chaos and the situation would be such that in the pursuit of an ideal regulatory regime, consultations after consultations would be a normal affair. It is thus suggested that the Authority must look into the issues from all angles before coming out with any consultation which may result into disparaging the entire business model of various stakeholders.

We wish to state that while Authority has recommended curbs on revenue generation capacity of the DPOs, the sustainability of the DTH operator in this cutting competition age, which has increased due to numerous OTT players coming into the market, has completely been overlooked.

The Authority is aware that OTT services have been proliferating at a very rapid pace and have become a part of life of a large sections of society in India. These are the services where the subscribers can avail the channels and content through internet on their mobile handset/computer or any digital display device through an application (app) e.g. Netflix, Amazon Prime Video, Hotstar, Voot, ZEE5, Sony Liv etc. With advent in the technology, now the subscribers are even streaming and projecting the content available through OTT from their mobile handset on the television screens. It is critical to note that the broadcasters/OTT service providers are making their content /

channels available on other OTT platform wherein the same content / channels are being made available to the subscribers completely significantly lower than what is being charged from DTH and cable.

It is noteworthy in this regard that while the TRAI regulations have been made applicable for IPTV services by bringing them under the definition of distributor of TV channels, the OTT broadcasting services have completely been left untouched. It is pertinent to note that OTT services are a small segment of IPTV services.

It is important to note in this regard that the Broadcasters, who have obtained the permissions to uplink / downlink channels from the Ministry of Information and Broadcasting, have started using the internet platform to make their content / channel available. Furthermore, the broadcasters are themselves distributing the same content / channel available to the consumers at significantly lower rates whereas the DTH/cable has to pay higher rates for the same channel.

It is important to note that the content being provided by them are free of cost with an intention to create a captive subscriber base and create a monopolistic situation. Because of 'free of cost' provision of the content by the broadcasters through OTT services, other distributor of TV Channels are heavily prejudiced. This method of streaming of content by the broadcasters directly to the customers, bypassing all the intermediaries would ultimately have the effect of potentially threatening the existence of the other distribution platforms. With the launch of 5G services this trend would only be more and more. Such provision of content completely at no cost would only induce the subscribers to shift their operators for the purpose of channel viewing.

We strongly believe that the ultimate objective of the regulations cannot be achieved until and unless the OTT platforms are brought within the ambit of the TRAI regulations. The Authority must understand the need of the hour

and take proactive steps towards this direction as any delay with respect to the same will only perpetuate the wrong being committed by the broadcasters under the garb of the same.

The above has resulted in huge loss in terms of business opportunities for DPOs. We would thus again urge and state that all OTT players should be brought under the ambit of the TRAI regulations now as the OTT industry is now well passed its diaper stage and is now robust enough to sustain its growth path and it's about time it too should be regulated to enable a level playing field and to ensure a free and fair atmosphere for all M&E Industry's DPO's, and to ensure an orderly growth of the sector

In the above backdrop, we submit our response to the present consultation as under:

Issues related to Target Market

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

We wish to reiterate that there is no reason to define the Target Market as far as the DTH operator are concerned since the licence conditions for any DTH operator mandates the DTH operators to provide services on Pan India basis. Therefore, the DTH operator is mandated to provide its services uniformly on Pan India basis without any discrimination between region to region.

The existing TRAI Regulations prescribe that the DPO has to declare its Target Market. Any attempt to change in the definition of target market qua the DTH operators in the interconnection regulation would only be ultra-virus as it cannot change the license issued by the Ministry in the licence agreement. Further, in its own statement the authority has also admitted that the complaints by the regional channels are because of declaration of some or

multiple states as target markets by some DPOs which cannot be the case with DTH operators.

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

Dish TV has always advised that the issue of carriage fee should always be kept at forbearance being purely a matter between a broadcaster and a DPO. However this was made a part of the regulation along with introduction of must carry provisions for the DTH operators and with a cap of meagre 20 paisa per subscriber in case of a channel seeking placement on the DPOs platform. Now further cap on the said carriage fee merely on the basis of the complaints made by the regional channels does not find any logic as the subscriber base of a DTH operator is not limited to any particular region unlike a local MSO.

It is also critical for the Authority to analyse the revenue a Broadcaster would be generating from being available on the Distribution Platforms. While though the regulations governing the Carriage fee, the revenue of the Distribution platforms is capped however the corresponding benefit to the Broadcaster through an increased Advertisement Revenue remains unconsidered. It is submitted that the Interconnection Regulations which govern the relationship between the Broadcaster and DPO has to consider all the business aspect of both, the Broadcaster and DPO and cannot be targeted against the DPO's. The advertising revenue garnered by any broadcaster is directly proportional to the number of eyeballs its channels are getting.

In case of an MSO which describes its target market consisting of many states the problem can be understood, however this is not applicable at all in the DTH industry which is mandated to provide its services across India uniformly. Therefore the issue of capping carriage fee should either be kept under forbearance or the same may be kept as is provided under the new regulation.

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

In view of the response provided in the preceding query, there is no reason for any change in the prescribed provision of 20 paisa per subscriber in case of DTH operators. Any action on the part of the Authority to bring any change in the carriage fee for the DTH operators merely on the basis of complaints filed by the vested interest and that too majorly against the errant MSO would only be detrimental against the DTH operators who are already being discriminated on various licensing issues like payment of annual license fee, entry fee etc. The Authority must see the issues holistically including the Advertisement revenue being generated by such Broadcasters before initiating any action in this regard.

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

This issue is itself contradictory. The entire thrust of the Authority behind issuance of the new regulatory framework was the fact that the non-popular or not so popular channels are being packaged with the leading and most popular channels of the broadcasters leading to the consumers pay for the channel which they do not want to watch. As a natural corollary, the channels having good content and programmes will automatically attract viewership purely on the basis of its merit. Therefore if a channel which fails to achieve at least 5% of the subscriber base, it will only be a cost incurring exercise for a DTH operator to continue carrying the said channel on its platform. Further, this will also hinder the incoming of new and better channel on the platform which may prove to be more value for money for the subscribers.

At this stage, we would like to state that there has not been many complaints in this regard and it is thus suggested that the new framework should at least be allowed to be settled properly before bringing such humungous changes in the same as doing so will only result in further turbulence between the consumer offering and consumer satisfaction which is the prime motto of the Authority at this juncture.

Issues related to Placement and other agreements between broadcasters and Distributors

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

We reiterate that the Authority must allow the new regulatory framework to settle down before bringing drastic changes in the same so as to change the entire objective behind issuance of the same. We believe that the market should be allowed to mature and grow with mutual respect and recognition and in the end bad content shall not find favour with the audiences, no matter what ways are adopted.

6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favoring 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).

It is matter of business prudence that the Agreements are executed and arrangements entered into only make sound business sense for either parties. An intending broadcaster pays an amount towards placement only if it sees advertising revenue capacity out of the same. No broadcaster would be willing

to shell out money from its pocket at the cost of its business opportunities. The broadcasters do not disclose its ad revenue out of placing a channel on a particular slot/LCN on any DPOs platform. We thus reiterate that without getting specific details from the broadcasters about their revenue generation out of placing their channels on a particular LCN of their choice, no steps should be initiated to regulate the placement fee payable to the DPOs. Till such time forbearance is the best way forward for all such agreements.

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

No. for the reasons stated hereinabove, TRAI should not intervene in this regard. In fact TRAI should not have initiate this current exercise basis complaints or as a measure of complaint redressal basis a few concerns and should not put to doubt their own wisdom by revisiting a regulation which is not even 10 months in currency.

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

We reiterate that there is no misuse of any provision by the DTH operators. The Authority should play the neutral judge and should analyse apple to apple when it comes to revenue streams of all stakeholders and should seek all relevant data including advertisement revenue earned by the broadcasters and then consult the stakeholders of the industry before taking any call in this regard. We are afraid that we are heading into a regime of over regulation which yields no benefit and has the potential of jeopardizing the entire business model and sustenance of the key stakeholders.