

**SITI NETWORKS LIMITED COMMENTS TO THE DRAFT
TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES)
INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016**

At the outset, we would like to congratulate the Authority for coming up with consultation paper on Interconnection, 2016. The Authority has put in sincere efforts in coming up with the draft telecommunication interconnection regulations and we welcome a common interconnection framework for all addressable systems.

It is most humbly submitted that the authority in its present consultation and also in other two consultation papers have widely used the words “will” and “shall” and thereby creating a confusion as to which of the two would be mandatory. In this regard, the Hon’ble Supreme Court in the case of Mohan Singh & Ors. Vs. International Airport Authority had observed as below “

“The word shall is not always decisive. Regard must be made to the context, subject matter and object of the statutory provisions in question in determining whether the same is mandatory or directory”. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory”.

In view of the same, it is pertinent for the Authority to bring out more lucidly as to its intention with regard to the wordings to be used in the final version of the Regulations by putting specifically the mandatory nature of Regulation or directory nature of the Regulation. The other synonyms to **will** and **shall** could be **may** and **must** which can be appropriately used while drafting the regulations.

Our response with regard to draft regulations is as below;

Clause 2 (ee) - “maximum retail price” or “MRP” with reference to.....broadcaster;

Our Comments:

Herein “**excluding taxes**” should be replaced with “**including taxes**” in view of the GST being implemented effective next fiscal. In the case of existing DTH pricing also their bouquet prices are including taxes which help in customer service as the MRP is fixed for the service. In case GST is delayed then the existing definition suffice.

Clause 2 (mm) - “subscriber” means a personshall constitute one subscriber.

(nn) “subscriber base” means channels;

Our Comments:

It is proposed that the Clause 2(mm) and (nn) should be amended to the following:

(mm) “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.

(nn) “subscriber base” for the purposes of this Regulation means the number of active subscribers in the addressable system of a distributor of television channels;

It is submitted that the aforementioned changes are necessary as various 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.

Clause 3 (9) Every distributor of television channels shall.....

Our Comments:

It is submitted that the time of 30 days given to DPOs is not enough, as in the case of MSOs they are operating with different control rooms across country and the capacity for each control room has to be calculated separately hence the time should be given for 60 days and similarly separate declaration should be given for each of the control room. There may be some upgradation required which may be pending or ongoing to take care of regulatory requirement.

Clause 3(12) It shall be open.....

Our Comments:

In sub clause 3(12) the time period of six consecutive months should be reduced to three months, as the period of six months is too long and would result in blocking bandwidth by carrying channels which are not popular with the subscriber base. A period of 3 months is sufficient to ascertain the demand and popularity of a channel.

Clause 3(15) - Every distributor of television channels shall, within sixty days of receipt of written request from a local cable operator.....

Our Comments:

As proposed in the proposed draft regulations clause 3(15) proviso, it is mentioned that LCO shall not be considered in default of payment to a distributor if it produces the copies of immediately preceding three consecutive months invoices with corresponding payment receipts, as a proof of having paid its dues. In this regard, it is pertinent to mention that the LCOs generally have an outstanding of more than three months in a row and they never pay their monthly dues on time. In this regard, it is further submitted that there should be an obligation for including the monthly arrear in every invoice being raised on the LCO and upon clearance of such arrears of outstanding, the said LCO's request for providing the signal should be considered by the concerned DPO.

There should also be clarity with regard to putting a new proviso wherein it should be made mandatory to every LCO to provide a No Objection Certificate (NOC) with regard to outstanding and return of STBs from the existing DPO from whom the said LCO is taking the signals, in case the said LCO wishes to migrate to another DPO. It is pertinent to mention herein that in most of the cases, the ownership of the STBs lies with the DPO which is providing services to its affiliated LCO and in case of any dispute, the affiliated LCOs generally tends to arm twist its existing DPO to migrate to competing DPO without clearing its outstanding dues or returning of STBs.

Clause 5(3) - Every broadcaster shall declare a minimum twenty percent.....

Our Comments:

It is proposed that the minimum percentage of distribution fee be increased from 20% to 55%. It is submitted even under the CAS regime; the distribution fee had been fixed at 55% for MSO and LCO. Under The Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006) dated 24.08.2006 had published a Standard Technical and Commercial Interconnection Agreement which provided that 55% of the Maximum Retail Price to be retained by the Distributor of TV channels. During CAS lot of work was done, which had resulted in minimization of disputes between 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. 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. Since broadcasters have been permitted forbearance in premium channels, a broadcaster can declare a channel premium and still price it lower than the price fixed in genre thus creating a situation where a DPO will incur cost but will not receive the fare revenue share.

Clause 5 (4) - A broadcaster may offer discounts.....

Our Comments:

It is submitted that the distribution fee should be fixed at 55% of the MRP.

Clause 6 (2) - Such draft reference interconnection offer.....

Our Comments:

The rate of carriage fee for SD channels per subscriber per month should be increased to forty paisa and similarly the rate of carriage fee per HD channel per subscriber per month declared by the DPOs should be increased to one rupee and twenty paisa and also the Schedule I of the Draft Regulations be completely done away with. The Authority in any other Regulation/ Tariff has not provided for a slab system, wherein increase in subscriber base leads to lowering of the charge. Furthermore, the same also takes away the right of the distributor of TV channels to package its channels accordingly. At present, a Broadcaster can request for and the distributor of TV channels can place a channel in the basic service tier or within a package which is subscribed by a large number of subscribers. However, if the slab system as proposed is implemented all channels will necessarily have to be only provided on a-la-carte basis only, even if the channel is a FTA Channel, as if the channel is provided in a popular bouquet, it will lead to stoppage of carriage fee. Alternatively, this slab should be applicable for only pay channel since a DPO will earn from subscription too but the same is not the case for FTA channels.

Clause 9(20) -- Every distributor of television channels.....

Our Comments:

The criteria of upper limit of 20% for non-receipt of carriage payment should apply only in the case of pay channels and FTA Channels which ask for carriage under must provide should pay carriage without any percentage limits.

Clause 17 - Listing of channels in electronic programme guide. --- Every distributor of television channels shall assign a number for each television.....

Our Comments:

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/subscription 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.

Clause 19. Appointment of compliance officer and his obligations. -

Our Comments:

The time limit for appointment of Compliance officer should be amended to 60 days in the clause 8(1) and 30 days in the clause 8(2).

The service providers should get appropriate time for appointment and re-appointment of Compliance Officers as they need to identify/hire suitable person for the required job which is a time taking exercise and cannot be done in a hasty manner.