Without Prejudice

Times Network's Comments on the draft Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements Regulations, 2019 ["Register Regulations 2019"]

Date of Issue: April 22, 2019

Date of Submission of Written Comments: May 06, 2019

Please find below, our comments to the draft Register Regulations 2019:

1. Provisions of Clause 3 and 4:

It is important to notice that the term ''interconnection" is a well-known concept. All agreements executed, after the interconnection agreement is achieved/executed, cannot be treated as interconnection agreements as per the definitions of 'Interconnection agreement' and of 'interconnection'. Hence, while Regulation 3 (except the periodicity) is validly formulated which requires only the Interconnection Agreements to be filed, contrary to that the draft, Regulation 4 requires the Broadcasters and Distributor of TV Channels to include all agreements executed after the interconnection has been achieved. Regulation 4 is, thus, contrary to Regulation 3.

Relevant portion of Regulation 4 (1)(b)(i) reads as *'…other details of any agreement including any incentive (monetary or otherwise) for marketing or support or visibility or placement signed between the broadcaster and distributor of television channels and any other details which may be specified by the Authority, through direction, from time to time…'* There are similar provisions in Regulation 4(2)(b)(i). This is clearly contrary to Regulation 3 which requires only an interconnection agreement to be filed.

TRAI's stand is that all such agreements as executed after Interconnection are also interconnection agreement (as contained in para nos. 14-17 of the explanatory memorandum) is also wrong. The relevant portion of Para 15 and 17 are '…*From the above it is clearly inferred that as per the interconnection regulations, 2017, any commercial arrangement between the broadcaster and distributors of television channels is a type of interconnection agreement. Carriage and placement agreements essentially involves interconnectivity between broadcaster and distributor of television channel, therefore, there is no basis to state that the carriage fee/placement fee agreements are not interconnection agreements. Interconnection agreements are techno-commercial agreements for provisioning / carriage of the television channel(s) and includes carriage or marketing or support or visibility or placement or any similar agreement signed between the broadcaster and distributor of television channels.*' TRAI treats all such agreements as Interconnection Agreement, and this stand is contrary to law and settled position that there is no aspect of interconnection contained in placement/marketing agreements or such type of agreements.

Furthermore, the above explanation as contained in para nos. 14-17 is also contrary to the Interconnection Regulations, 2017, which clearly enunciates that placement agreement or marketing agreement or such agreements are outside the scope of the Interconnection

Regulations. On that count also, the insertion of Regulation 4 is contrary and must not form part of the final Regulations under response. The filing shall be only for interconnection agreements as given in Regulation 3.

Further, the extant Regulations already provides signing of subscription agreements for a period not lesser than one year. Therefore we strongly recommend that the periodicity of reporting of agreements under these regulations be retained to yearly reporting, as existing under the present provisions in this regard. We also recommend that the reporting for the agreements should be made as on March 31 of every year instead of June 30, in order to bring it in line with the other regulatory filings which follow the 'financial year' pattern.

2. Details of Information to be reported:

In our opinion, the details sought in the report relates to extremely confidential and business sensitive information and such data has the possibility of revealing the critical business information and commercials involved therein, which, if disclosed in the public domain, may cause irreparable injury to the business of the stakeholder. Such data, if misused may be detrimental to the business interest of the stakeholder. Hence, we strongly recommend doing away with the provisioning of confidential details in the report.

Further, with the advent of the new regulatory framework, the provision for transparency of business has been well taken care of and needs no further micro management.

3. Submission of Copies of agreements:

Under the extant Regulations, the service providers enter into standard RIO Agreements. Hence we recommend against the submission of copies of all Interconnection Agreements, as suggested under Part C of the report as this is unnecessary and would greatly add to the compliance requirements on part of the stakeholders. The Authority may however, call upon any agreement on receipt of any complaint, as practiced presently.

4. It is not clear from the Draft Regulations, that whether only the Agreements executed within the reporting period are to be filed or all Agreements which have impacted financial transactions between the parties during the reporting period are to be filed.

5. On reading para 33 of the Explanatory Memorandum to the Register Regulations 2019, it has been observed that the Authority has exempted the DPOs and LCOs to file the agreements entered into between them, due to standardization of their agreements in the form of MIA and SIA, as provided under the Interconnection Regulations, 2017. Taking the same logic further, we recommend that the Authority shall consider that the same may be made applicable for RIO based agreements signed between Broadcasters and MSOs as well, due to presence of a standard RIO available on the respective websites.