RESPONSE OF ZEE TURNER LTD

ON

INTERCONNECTION ISSUES RELATING

TO BROADCASTING & CABLE SERVICES

(Consultation Paper No. 15/ 2008)

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INTERCONNECTION FOR ADDRESSABLE PLATFORMS:

6.2.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

Comment – The Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems as the same would streamline the process and maintain transparency. This would also enable the signal seeker to know well in advance the broad terms and conditions on which the signals shall be provided by the Broadcaster.

On the other hand, it would not be appropriate to have the same RIO for all addressable systems as the driving technology and the delivery chain for each addressable system is different e.g. RIO for DTH may not necessarily be the same as for HITS. Therefore, broadcasters should be permitted to offer different RIOs for different platforms keeping in view the unique characteristic of each addressable systems.

6.2.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

Comment – There is no need for any further Regulation rather the emphasis should be on effective implementation of the existing Regulations to ensure availability of content to all addressable platforms

on non-discriminatory basis. The anti-competitive practices adopted by certain Broadcasters to deny the content to the addressable platforms affiliated to their competing entities brings out the need to effectively implement the existing Regulations to enable the digital addressable platform to take off in the interest of all stake holders.

6.2.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?

Comment – In addition to the specifications/conditions prescribed in the Annexure to the Consultation paper. The following conditions should also be incorporated –

a) Broadcaster's advertisement signals, OSD, fingerprinting should pass through without any change or interference by MSO/LCO.
b) MSO/LCO should allocate adequate bandwidth to each channel so that the Audio Video quality is of good quality at the consumer's premises.
c) STBs should have the capability to display fingerprinting with/without background in different colours.
d) STBs should not have DVR/PVR/TSV facility without approval from the broadcaster. The network storage should also not be permitted.
e) Water marking (operator's logo) should be visible on the screen.

6.2.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

Comment – There should be technical validation by the broadcasters so that the specifications given in the checklist in Annexure to the Consultation Paper are verified.

6.2.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?

Comment – (i) The TRAI has already observed in the consultation paper that most of the MSOs operating in major metropolitan cities have started providing digital delivery in non-CAS areas as well by deploying STBs in these areas. While it may be imperative for MSOs to introduce the digitalization in these areas to fight the competition with the alternate delivery platforms which are digital and to provide the consumers better viewing experience, in the absence of any norms of pricing etc. and other regulations of TRAI in this behalf, the commercial interest of the broadcasters is getting adversely affected.

(ii) One of the main objectives of introduction of digitalization is to bring transparency. The contentious issue of the actual number of subscriber receiving the service in CAS areas is sought to be addressed by introducing digitalization. The analogue cable at present is characterized by huge under-declarations, thereby resulting in substantial subscription revenue loss to the broadcasters. However even after deploying STBs in these areas, the broadcasters are receiving the payments only in respect of number of subscribers declared by MSOs in the analogue subscription agreements entered into with the broadcasters, thus defeating the very purpose of introducing digitalization.

(iii) As already pointed out hereinabove, as of now no norms have been fixed by TRAI regarding the digital delivery by MSOs in non-CAS areas, which is causing serious handicap to the broadcasters regarding the tariff etc. to be charged in respect of the subscribers receiving channels in non-CAS areas through digital delivery.

(iv) It may be mentioned that the existing agreements with the MSOs authorize the delivery of channels through analogue mode only and as such delivering channels through digital mode by deploying STBs is not in accordance with the terms of the agreements and constitute a violation thereof entitling broadcasters to take action against MSOs in accordance with law.

(v) As observed by TRAI itself in the consultation paper that per the industry estimates, about one million boxes have already been deployed in non-CAS areas where the payment by MSOs to the broadcasters is continued to be made on the basis of analogue declaration, thus depriving the broadcasters of their legitimate subscription entitlement.

(vi) From the above, it is quite clear & apparent that the benefits sought to be achieved by introducing the digital delivery remain eluded in the absence of any norms/pricing mechanism and other incidental terms from TRAI in this behalf. We request the TRAI to take up this matter on priority basis so as to address the concerns of the broadcasters in this regard and also to streamline the process in this behalf so as to avoid the disputes.

(vii) The hybrid cable networks in Non CAS areas which provide both types of service, i.e. analogue (without encryption) and digital (with encryption) services should be directed to convert their entire network in digital within a stipulated period of 6 months and a separate

agreement for providing digital services should be entered with the Broadcasters. However the conversion of the network into digital would not entitle the operator to seek rates applicable for CAS notified areas. In case an operator wishes to continue the analogue services also it should be done through a separate decoder and by entering into a separate agreement. The decoders obtained for digital services should not be used for providing analogue services and vice versa.

6.2.6 Whether there is a need to define "Commercial Subscribers", and what should be that definition?

Comment – (i) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006) dated 7th March 2006 defines the term "Commercial subscriber" as under -

> *"(ddd) 'Commercial cable subscriber' means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.*
>
> *Explanatory note*
>
> *The distinction between an ordinary cable subscriber and a commercial cable subscriber is in terms of the difference in the use to which such signals are put. The former would use it for his/her own use or the use of his/her family, guests etc. while the latter would over commercial and other establishments like hotels, restaurants, clubs, guest houses etc. which use the signals*

for the benefit of their customers, clients, members or other permitted visitors to the establishment."

The aforesaid definition is comprehensive and needs no amendment.

(ii) However, in terms of the present Regulatory framework the two categories of commercial subscribers need to be dispensed with. In other words the Broadcasters should be free to charge tariff based on mutual commercial negotiations even in respect of the commercial subscribers belonging to the category of -below 3 Star hotels and below 50 people in PVA (i.e. restaurants, clubs, pubs, hospitals, eating joints, cinemas, discos, Pubs etc.). This is to protect the loss of revenue for the Broadcaster/content provider providing the services to these categories of Commercial Cable subscriber via addressable platforms which admittedly the commercial cable subscriber(s) are using for the benefit of its customers, clients, members, etc. unit. There is no logic for giving them protection by stipulating the tariff applicable for ordinary cable subscribers.

6.2.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters' RIOs for non-Commercial Subscribers?

Comment – In the present scenario, the penetration of the addressable platforms should be limited to ordinary cable subscribers only. Till such time that the Authority comes out with the necessary clarification covering each and every category of Commercial Subscribers giving freedom to the Broadcasters to arrive at their agreements with commercial subscribers by way of mutual negotiations irrespective of their category, status quo as on date should be maintained.

6.2.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?

Comment – RIO methodology is working well in case of DTH. It gives the required flexibility to both the parties in negotiating the terms & conditions and arrive at mutually beneficial agreements. There is no need to provide RIA.

6.2.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?

Comment – We have already indicated that RIO methodology is working satisfactorily in facilitating the finalization of agreements in DTH sector. In any event, the time period of 45 days prescribed for signing of Interconnection Agreements should not be reduced in case the RIOs are replaced by RIAs as it would not be fair to cut down on the negotiating period between the parties. As mentioned above there may be a disagreement between the parties with reference to commercial terms and conditions which has to be resolved through negotiations only. Moreover the Authority itself has clarified that even after notification/stipulation of RIO the Broadcasters and service providers are free to enter into mutually negotiable Interconnection Agreements.

6.2.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

Comment – There should not be any kind of restrictions on packaging of channels on an addressable platform as it would be legitimate for a

broadcaster to get its channel placed on a non-discriminatory basis with the channels of the competitor in the same genre. The freehand given to the DTH platform owner would result in monopolistic practice of promoting a particular content in preference to another thereby depriving the subscribers the proper access and would also lead to the anti-competitive and inequitable practice of demanding higher carriage fees for carriage / placement of content of the Broadcasters which would also ultimately be detrimental to the interest of the Consumers.

6.2.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

Comment – No, there should not be any regulation to prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform. The rates of the channels (ala carte with Bouquet) to be offered by Broadcasters to DTH platform owners have already been fixed by the Authority. However, there is no Regulation on the price at which the channels would be offered to the consumers by the DTH platform owners. In such circumstances the high price charged by the DTH platform owner would mean that the consumers would be deprived of the content and the broadcasters would lose on Revenue. Thus, the entire exercise of fixation of the tariff by TRAI would be rendered futile if the DTH platform owner is at a liberty to charge exorbitant price for a content which would not only be detrimental to the commercial interest of the Broadcaster but also to the disadvantage of the consumers.

INTERCONNECTION FOR NON-ADDRESSABLE PLATFORMS

6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

Comment – There must be a distinction between addressable and non-addressable systems. In the absence of addressability and any technological mechanism to determine the actual number of subscribers, the Interconnection Agreements in non-CAS areas are based on mutual negotiations, keeping in view various factors including the operational area of the Service Provider. Accordingly, in non-CAS areas the commercial terms and conditions are dependant on negotiations. The provisions of the Interconnect Regulations dated 04/09/2006 are adequate in this regard and no more stipulations are required to be made.

6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

Comment – No Comments in view of Point 6.3.1

GENERAL INTERCONNECTION ISSUES

6.4.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

Comment – Yes, it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all

the requirements under quality of service regulations as applicable. The license to provide services- whether addressable or non-addressable should be granted to only those Cable Operators who fulfill the criteria as laid down by the Authority in the Consultation Paper on Quality of Service and should be certified by the competent Authority.

6.4.2 Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?

Comment – (i) It would be unfair that the MSO on one hand is taking the protection of Clause 3.2 of the Interconnect Regulation at the time of seeking of signals and demanding Carriage fees for the transmission of the same. Therefore, in a situation where the MSO seeks the signal under *must provide* clause he should be barred from demanding carriage fees for the transmission of the signals.

(ii) It is pertinent to point out that MSOs/Cable Operators adopt conflicting and varying stand while negotiating for payment of subscription fee on the one hand and while negotiating for carriage fee with the content provider on the other. The subscriber base disclosed for the purpose of seeking subscription agreement jumps many fold when an MSO negotiates with the Broadcaster for receipt of carriage fee. This anomaly needs to be addressed by way of Regulations. The carriage fee, if at all, payable for non-CAS areas should also be based on the subscriber base declared for the purpose of payment of subscriptions.

(iii) All the distributors of channels, particularly MSOs, are repeatedly demanding the publication of RIOs by the Broadcasters for the purpose of smooth Interconnection so far as the procurement of the content is concerned. This Analogy is to be extended to the "carriage" also. At present, the carriage regime is plagued by adhoc demands and total non-transparency. The Authority should stipulate the requirement of publishing RIOs by the MSOs for carriage of channels which inter alia should include the terms & conditions and tenure of the agreement and also the commercial terms for different band placements in analogue/non-CAS regime. This will introduce much need transparency in carriage agreements till the time the addressability is achieved and the capacity is augmented.

6.4.3 Whether there is a need to regulate certain features of carriage fee, such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings and carriage fee.

Comment – We are of the firm view that the concept of Carriage fees should be abolished and since the operators are seeking the shelter of must provide clause, the operators should not be entitled for any carriage fees. However, till the time it is prohibited by the appropriate Orders of the Regulator, there is an urgent need to regulate certain features of placement charges such as stability, transparency, predictability and periodicity, as well as the relationship between TAM/TRP ratings. The placement charges should depend upon the TRP/TAM rating and the weightage given to the networks. There should not be any placement fees for addressable system.

6.4.4 If so, then what should the manner of such regulation be.

Comment – Needs no Comment in view of Point 6.4.3.

6.4.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?

Comment – The HITS is a cost efficient and effective methodology of introducing digitalization & addressability and needs to be promoted in all areas - whether CAS or non-CAS. The Standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas subject to the condition that there should be a proper Subscriber Management System (SMS) to reflect the exact number of subscribers receiving the service to the satisfaction of the Broadcasters so as to ensure the realization of proper revenue by the Broadcasters. It may be mentioned that there is no restriction on use of any technology by the MSOs who have been granted authorization/permission by the competent Authority (MIB) to provide services in the CAS areas. Accordingly, there is no reason to impose any kind of restriction on the authorized MSOs to use HITS for delivering digital signals in CAS areas.

6.4.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?

Comment – The standard Interconnect agreement between broadcasters and HITS operators should be prescribed by the Authority as it would

streamline the procedure, smoothen the Interconnection process and would introduce transparency. Thus, this would lead to a fewer disputes amongst the Broadcasters and the HITS operators. The TRAI has already observed that the SIA notified for CAS areas can be applied for HITS as well by introducing certain modifications to take care of the IPR issues of the Broadcasters.

6.4.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007?

6.4.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of interconnection agreement to enable the DTH operators to discharge their obligation?

Comment – There is no need for any further Regulation rather the emphasis should be on effective implementation of the existing Regulations to ensure availability of content to all addressable platforms on non-discriminatory basis. There is no need to impose such stipulation. The suggested stipulations would force the Broadcasters to continue providing content to the DTH Operators even after expiry of agreement which is not only inequitable but also contrary to the Regulations. In addition there is a practical difficulty in as much as the contract between the DTH Operators & their subscribers runs into millions and keeping in view the fact that already five DTH operators area providing their services, it would be very difficult for the Broadcasters to match the date of expiry of their contract with the expiry of six month periods

of various set of subscribers of DTH operators. This is virtually impossible. In addition there would be other issues. The contract may be coming to an end because of the payment default committed by the DTH operator and/or on account of piracy, etc. The continuation of signals by the Broadcasters in such an event would mean the further accumulation of outstanding and/or continuation of rampant piracy of signals, thus affecting the commercial and other interest of the Broadcasters.

6.4.9 Is there any other regulatory measure which will achieve the same objective?

Comment – Needs no comment in view of point 6.4.7 & 6.4.8.

REGISTRATION OF INTERCONNECTION AGREEMENTS

6.5.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

Comment – It should be made mandatory for all interconnect agreements to be reduced to writing. This will ensure lesser disputes as the terms and conditions would be in writing and the same should be presumed to be the intention of the parties at the time of execution of the Agreement.

6.5.2 Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

Comment – This will ensure lesser disputes as the terms and conditions would be in writing and the same should be presumed to be the intention of the parties at the time of executing of the Agreement.

6.5.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

Comment – No regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing. However, a time limit should be prescribed within which such distributors should be permitted to enter into Subscription Agreements failing which they should not be protected under the Regulations.

6.5.4 How can it be ensured that a copy of signed interconnection agreement is given to the distributor of TV channels?

Comment – To ensure that a copy of the signed interconnection agreement is given to the distributor of TV channels it should be made mandatory for every broadcaster to have an acknowledgement at the end of the Subscription Agreement reciting the factum of handing over the certified copy to the distributor. There should be a statutory presumption of fact that on signing of the acknowledgement by the distributors, the copy has been delivered to the distributor.

6.5.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

Comment – It should be the responsibility of the Broadcaster to hand over a copy of the signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement. Similarly it should be the responsibility of the MSOs when they are executing interconnection agreements with their affiliate LCOs. However, it is reiterated that there should be a statutory presumption of fact that on signing of the acknowledgement the copy must have been delivered to the distributor and no oral evidence should be taken to the contrary.

6.5.6 Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?

Comment – The requirement of furnishing a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation would only add unnecessary bulk to the filings before the Authority. In case of any dispute the Broadcaster would file the acknowledgement with the Authority and same should suffice the purpose.

6.5.7 Whether the periodicity of filing of Interconnect agreements be revised?

Comment – The periodicity of filing of Interconnect agreements should be revised from quarterly to six monthly.

6.5.8 What should be the due date for filing of information in case the periodicity is revised?

Comment – In view of point 6.5.7 the date of filing information for the period ending on 30th June should be 31st July and for the next half of the year ending on 31st December the date should be 31st January.

6.5.9 What should be a reasonable notice period to be given to the Broadcaster DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?

Comment – One months notice period to be given to the Broadcaster/ DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements.

6.5.10 What should be the retention period of filings made in compliance of the Regulation?

Comment – The retention period of filings made in compliance of the Regulation should be 5 years to take care of legal issues & court cases etc.

6.5.11 Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/ DVDs?

Comment – The broadcasters and DTH operators should not be required to file the data in scanned form in CDs/ DVDs. This would compromise the confidentiality of the data filed by the Broadcasters and the DTH operators. The Authority should instead initiate process of e-filing of

the data with a restricted pass word access to the authorized persons in TRAI.

6.5.12 Whether the interconnection filings should be placed in public domain?

Comment – The interconnection filings should not be placed in public domain as the data pertaining to the subscriber base is commercially sensitive and confidential in nature and should not be available in public domain.

6.5.13 Is there any other way of effectively implementing non-discrimination clause in Interconnect Regulation while retaining the confidentiality of interconnection filings?

Comment – Instead placing the data in public domain and permitting the parties to inspect the data, for ascertaining the discrimination or non – discrimination on the basis of a specific complaint , the decision should be left to the regulator to scrutinize the filings by the Broadcasters and make sure that no discrimination takes place.