

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART III, SECTION 4

**STANDARDS OF QUALITY OF SERVICE
(DIGITAL ADDRESSABLE CABLE TV SYSTEMS) (AMENDMENT)
REGULATIONS 2015
(4 OF 2015)**

**TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION**

New Delhi, the 25th March, 2015

F. No. 16-2/2012-B&CS.---In exercise of the powers conferred by section 36, read with sub-clauses (i) and (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,---

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations to amend the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012), namely:-

1. (1) These regulations may be called the Standards of Quality of Service (Digital Addressable Cable TV Systems) (Amendment) Regulations, 2015 (4 of 2015).
- (2) They shall come into force after sixty days from the date of their publication in the Official Gazette.

2. In regulation 14 of the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) (hereinafter referred to as the principal regulations), after sub-regulation (1), the following Explanation shall be inserted, namely,---

“Explanation: The pre-paid payment option offered to the subscriber shall be an electronic pre-paid mechanism wherein the amount paid by the subscriber is adjusted automatically for the services availed by him.”

3. In regulation 15 of the principal regulations, for sub-regulation (4), the following sub-regulation shall be substituted, namely,---

“(4) Every multi-system operator or its linked local cable operator, as the case may be, shall give fifteen days time, from the date of the bill, to every subscriber for making payment of the bill and in case the subscriber fails to make payment up till expiry of the due date of payment, the multi-system operator or its linked local cable operator shall not charge from such subscriber an amount exceeding the amount calculated at the simple rate of interest of fifteen percent per annum on the amount payable by the subscriber for delayed payment.”

4. In regulation 15 of the principal regulations, for sub-regulation (5), the following sub-regulation shall be substituted, namely,---

“(5) The multi-system operator, either directly or through its linked local cable operator, shall issue a receipt for every payment made by a subscriber and shall enter the details of the receipt including the date and serial number of the receipt, amount paid by the subscriber into the subscriber management system, against the name of the subscriber, within seven days of the payment made by a subscriber.”

5. In regulation 16 of the principal regulations, for sub-regulation (2), the following sub-regulation shall be substituted, namely,---

“(2) Every multi-system operator shall, within thirty days from the date of receipt of request from the subscriber, change his payment plan from pre-paid to post-paid or from post-paid to pre-paid without any extra charge.”

6. After regulation 16 of the principal regulations, the following regulation 16A and regulation 16B shall be inserted, namely,----

“16A. Consequences for contravention of the provisions of regulation 15 or

regulation 16.---- (1) If any multi-system operator contravenes the provisions of sub-regulation (1) or sub-regulation (5) of regulation 15, it shall, without prejudice to the terms and conditions of its registration or the provisions of the Act or rules or regulations or orders made, or, directions issued thereunder, be liable to pay an amount, by way of financial disincentive, not exceeding rupees twenty per subscriber, as the Authority may, by order direct.

(2) If any multi-system operator contravenes the provisions of sub-regulation (2) of regulation 16, it shall, without prejudice to the terms and conditions of its registration or the provisions of the Act or rules or regulations or orders made, or, directions issued, there under, be liable to pay an amount, by way of financial disincentive, not exceeding rupees one hundred for each contravention, as the Authority may, by order direct.

(3) No order for payment of an amount by way of financial disincentive under sub-regulation (1) or sub-regulation (2) shall be made by the Authority unless the multi-system operator has been given a reasonable opportunity of representing against the contravention of the regulation observed by the Authority.

16B. Deposit of amount payable by way of financial disincentive under these regulations.— The amount payable by way of financial disincentive under these regulations shall be remitted to such head of account as may be specified by order by the Authority.”

(Sudhir Gupta)

Secretary, TRAI

Note 1: The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification No. 16-2/2012-B&CS dated 14th May 2012.

Note 2: The Explanatory Memorandum explains the objects and reasons of these regulations.

Explanatory Memorandum

1. The Telecom Regulatory Authority of India (TRAI) notified the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012, laying down, amongst others, norms for Quality of Service (QoS) and provisions for issue of bills to subscribers of Digital Addressable Cable TV Systems (DAS). Chapter VI of the Regulations, amongst others, prescribe the payment options, the issue of bills to subscribers with usage and other details, and the issuing of a receipt for every payment made by a subscriber.
2. The Authority received a large number of complaints where subscribers reported that they are neither getting bills for the services subscribed on cable TV nor receipts for the payments made.
3. It has been observed that the cited prescribed norms are not being complied with by the Multi-System Operators (MSOs). Such non-compliance has resulted in numerous legitimate consumer grievances. In the absence of a bill, a subscriber cannot know whether or not the payment being made for the cable TV services availed is correct. Similarly, in the absence of a receipt for the payment made, there is no means to get a grievance redressed in case of any QoS related issues, in general, and any billing related dispute with the operators.
4. The Regulations/Directions issued from time to time require the cable operator (MSOs) to issue bills and receipts. Because of the non-delivery of such bills and receipts by the MSOs, information on actual subscription vis-a-vis payment details are not being entered into the Subscriber Management System (SMS). Consequently, commercial deals and financial transactions amongst operators are not being carried in a transparent manner. This has proved to be a major road block in the sector especially since the transition to a DAS regime was to bring in greater transparency and a more consumer friendly environment. The absence of billing/ payment records has resulted in a number of disputes amongst MSOs and their linked Local Cable Operators (LCOs). It has also been adversely affecting smooth implementation of DAS as mandated by law.
5. One of the prime objectives of implementation of DAS was to make cable TV systems addressable and thereby measurable. Due to non addressability of analog cable TV systems, the business transactions were taking place on the basis of estimation and

negotiation instead of actual subscriber base. Due to this limitation in the system it was possible to under declare the number of subscribers at various stages in the value chain and the tax paid to the Government was not commensurate to estimated market size. Implementation of DAS as per the Regulations removes such limitations. However, non delivery of bills and receipts to a subscriber re-introduces these limitations in the system which otherwise is fairly transparent and auditable. This leaves scope for under declaration/ evasion of tax due to the Government.

6. As per the Regulations, an MSO is responsible for generating the bills indicating the subscription amount and the applicable taxes, such as service tax, entertainment tax etc., along with the rate of taxes levied. Proper billing and accounting of receipts is necessary to ensure that the entire amount collected by an MSO from its subscribers is completely accounted for in the books of the MSO. Further, it is also necessary for the purpose of verification and audit to ensure correctness of the tax amount collected from the subscribers and deposited with the Government. In the absence of proper billing and accounting of receipts, there is a distinct possibility of a loss of revenues accruable to the Government. It is essential that the Government gets its due tax revenues arising out of the business of the cable TV services sector.
7. In view of the foregoing, and in order to ensure compliance with the Regulations and to ensure proper collection of revenue due to Government, the Authority envisaged amending certain provisions of the Regulations pertaining to billing for the subscribers, by incorporating provisions for levying financial disincentives on cable operators. Accordingly, a draft amendment to the said QoS Regulations, incorporating provisions for levy of financial disincentives, was put up for consultation with stakeholders. The draft amendment was uploaded on TRAI website www.traai.gov.in on 28th August 2014, inviting comments from stakeholders latest by 8th September, 2014. The last date for submission of comments was extended upto 14th September, 2014 on request of stakeholders. In response to this consultation process, a total of 32 comments were received from stakeholders, including consumers. Subsequently, an Open House Discussion was also held on 29th September 2014 in Delhi, which was attended by a large number of stakeholders. Further time up to 10th October 2014 was given to stakeholders for any additional views/comments on the draft amendments to the Regulations.

Comments of Stakeholders

On Jurisdiction

8. Only one MSO stated that TRAI cannot prescribe financial disincentive as it does not have penal power.

Analysis

9. The TRAI Act confers powers on the Authority not only to regulate but also to ensure compliance with the provisions of the Regulations. The word “ensure” has a mandatory connotation; it means “make certain”. Furthermore, the Hon’ble Supreme Court, in its judgment dated 17th August, 2007, in Civil Appeal No. 2104/2006 (Central Power Distribution Co. & Ors Vs. CERC & Anr), inter-alia, held that ***“it is well settled that a power to regulate includes within it power to enforce”***. It will not be out of place to mention that there are a catena of judgments by the Supreme Court wherein the Hon’ble Court has repeatedly re-stated the proposition that legislation should be read and interpreted so as to further the purpose of its enactment and not in a manner that derogates from its main objectives. The Hon’ble Supreme Court in its judgment in the case of State of Karnataka Vs. Vishwabharthi House Building Co-operative Societies and Ors. [(2004) 5 SCC 430], quoted with approval the judgment of Hon’ble Guwahati High Court in the case of Arbind Das Vs. State of Assam & Ors. [AIR 1981 Gau 18 (FB)] wherein it was, inter-alia, held that where a statute gives a power, such power implies that legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt out in the statute. The Hon’ble Court further held that in determining whether a power claimed by a statutory authority can be held to be incidental or ancillary to the powers specially conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purposes of the provision of the statute which confers power on the Authority in exercise of such powers. The relevant part of the said judgment reads as under:-

“We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though these steps may not be clearly spelt in the statute. Where the rule-making authority gives power to certain

authority to do anything of public character, such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority. In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers power on the authority in its exercise of such power.”

10. In view of the above, the Authority has the power to impose financial disincentives on service providers for non-compliance with the provisions of the Regulations.

On the levy of financial disincentives

11. LCO associations opined that since the Regulations and Tariff orders applicable to DAS have been challenged in various courts, therefore, amendments to the Regulation should not be carried out. A HITS (Head-end In The Sky) operator stated that the financial disincentive for MSOs operating in Phase-III and Phase-IV areas of DAS implementation should be made applicable only after the implementation of digitisation in these areas is completed.

Analysis

12. It was seen that even though some of the provisions of the Tariff Orders and the Regulations are sub-judice, no court of law has passed any order or judgement staying the Regulations and the Tariff Orders. Hence, the Authority, in the interest of consumers, can amend the provisions of the Regulations, as deemed fit, in exercise of powers conferred upon it under the TRAI Act.
13. The QoS Regulations for DAS are applicable for cable TV services provided through Digital Addressable Systems. Therefore, applicability cannot be linked to any particular phase of DAS implementation or particular area. The norms laid in the Regulations would be applicable for all areas where cable TV services are being provided through DAS. Further, it was noted that one of the objectives of introducing an addressable system (DAS) was to ensure that all transactions in the value chain are carried out in a

transparent manner. Issuing of bills and receipts for services being availed of by the subscriber is vital for all stakeholders concerned with the flow of revenue in the value chain. For consumers, such transparency is essential; it is available to consumers in other commercial markets, so why not in the cable TV market? The Authority is of the view that enabling the imposition of financial disincentives will be an effective deterrent and will incentivise MSOs to issue bills and payment receipts to subscribers while carrying out their business transactions based on verifiable parameters. This will vastly benefit the entire sector and strengthen DAS implementation on the ground.

On applicability and quantum of financial disincentives

14. MSOs stated that the financial disincentives are very onerous. They stated that the LCO is the de-facto owner of the subscriber base and the MSO has very little or no say in the LCO-subscriber relationship. MSO also opined that financial discipline has to percolate to the end-subscriber level too and there should be a provision for a penalty of Rs 25 or 5% of amount due, whichever is higher, recoverable from subscribers who pay beyond the due date. A provision may also be made to empower the LCO to charge a reconnection fee of Rs 100.00 for reactivating STBs which were, deactivated because of non-payment.
15. The LCO Association stated that the option for an MSO to directly bill the end-subscriber should be dispensed with and a two - level mechanism [MSO to LCO and LCO to subscriber] should be made mandatory. This will help both sides immensely. MSOs will be relieved of the financial disincentive risks. LCOs will be relieved of the fear of the network being usurped and, for this affirmation of their rights, they would be glad to assume the onus of complying with billing and receipt obligations.
16. A HITS operator stated that, to begin with, financial disincentive should be just Rs.1-2 for the first contravention and Rs. 5 for subsequent ones. Once awareness is built up, the Authority may revise the amount after a period as per market conditions prevailing at that time.
17. Consumers stated that financial disincentives should be applied in respect of all provisions of the Regulation. They opined that financial disincentive amounts should be Rs. 100 to Rs. 500 and independent checks / feedback should be carried out.

18. Some LCO associations stated that they do not oppose imposing financial disincentive for deficient services. However, it should be applicable for all stakeholders and encompass all sectors (DTH and broadcasting sector).

Analysis

19. In DAS, as per the Regulations, before providing cable TV services to a subscriber, a subscription agreement [popularly known as Consumer Application Form (CAF) or Subscription Application Form (SAF)] has to be signed between the MSO and the prospective subscriber. The MSO is responsible for providing services to the subscriber in accordance with the subscription agreement. The Head end, Conditional Access System and SMS are installed and maintained by the MSO and the responsibility for QoS and billing reposes with the MSO. The SMS contains information regarding the subscriber, the channels or bouquets that have been subscribed to, the prices of such channels or bouquets, the taxes along with rate of taxes levied, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period. As per the Regulations, the MSO is responsible for generation and delivery of bills to subscribers. Further, the MSO is also responsible for issuing the receipts for payments made by the subscriber. In cases where cable TV services are being provided by an MSO through its linked LCOs, the responsibility of compliance with QoS norms and billing can be shared between the MSOs and LCOs through suitable service level agreements between them. However, the responsibility for meeting the norms for billing and receipt remains with the MSO. Therefore, the Authority is of the view that the financial disincentives ought to be imposed on MSOs for the contravention of provisions relating to the billing of the subscriber.
20. The subscriber has the right to get a bill and a receipt for every payment made for cable TV services. The collection of monthly subscription charges from subscribers without delivery of bills, and without issue of receipts for payments made by the subscriber amounts to an unfair trade practice. Further, in cable TV service, the service tax and entertainment tax, as applicable, are required to be collect from the subscriber and deposited with Government. To assess the exact amount of tax collected from a subscriber, the bill should have the breakup of the charges for services and taxes. In absence of such a breakup, and in absence of bills and receipts, the information about breakup of the amount collected from the subscriber remains opaque and there is a

distinct possibility of tax evasion. Further, proper billing and accounting of receipts would make it incumbent upon the MSOs to pay the Governments the taxes collected from the subscribers. Therefore, to ensure proper billing and accounting of receipts, the amount of financial disincentives that ought to be levied for each contravention should be commensurate to the breach and work as a credible deterrent. This disincentive should not be so large as to make the business unviable. In view of the above, the Authority has decided to levy financial disincentives on the MSO for each non-compliance of the Regulations 15(1) or 15(5) at a rate not exceeding Rs. 20 per subscriber.

21. On the issue of levy of such financial disincentives on DTH operators, it is observed that DTH subscribers are mostly prepaid whereas cable TV subscribers are largely post-paid. This amendment to the Regulations enables the levy of financial disincentives on MSOs who fail to provide bills and receipts to post-paid subscribers. As and when such a requirement arises in respect of pre-paid subscribers, then the Authority may consider amendment to the Regulations applicable for both kinds of operators i.e. cable and DTH, simultaneously. At this stage, no financial disincentives are envisaged on the billing of pre-paid customers. Moreover, in DAS, non-issuance of bills and receipts to the post-paid subscribers has proved to be a major roadblock in effective implementation of DAS. This defeat on the prime objective of implementation of DAS. However, in order to safeguard the interest of all subscribers of all the segments of broadcasting and cable TV sector, the Authority would keep a close watch and intervene in the public interest wherever necessary.
22. On the issue of imposition of penalty recoverable from subscribers who make payments beyond the due date, the Authority is of the view that along with the service provider, the subscriber should also follow certain financial discipline. It is expected that subscribers make the payment of the bills within its due date. Delay in payment affects the cash flow of the service provider. Therefore, to deter the subscriber from making payment after the due date, a reasonable financial charge can be levied on subscriber for delayed payment. Also, it compensates the additional cost of working capital to the service provider. Therefore, these financial charges should be comparable to Weighted Average Cost of Capital (WACC) of the service provider. The Authority, from time to time, has used 15% per annum WACC for the purpose of costing. Therefore, it is legitimate that in case a subscriber makes payment after due date, the MSO or its linked

LCO, as the case may be, may charge a simple interest on due amount at a rate up to 15% per annum. Accordingly, the Regulation 15(4) has been amended.

23. On the issue of charging a reconnection fee, it is observed that in DAS, reconnection of an existing subscriber can be done automatically through SMS on entry of receipt of payment and therefore, there is no reason for levy of such reconnection fee by the MSO or its linked LCO.

Electronic pre-paid billing

24. Many LCOs stated that pre-paid billing may lead to disputes and delays in the payment of their share of revenue. LCO associations stated that any amendments like introduction of pre-paid cards, levying of financial disincentives on LCOs, etc. would be detrimental to LCOs.

Analysis

25. The QoS Regulation for DAS, notified in 2012 mandates that cable TV services shall be offered to the subscribers both on pre-paid and post paid payment models, with subscribers having the option to choose. The amendment to Regulation 14(1) is simply an explanation which clarifies that the pre-paid payment option mentioned in the Regulation is to be implemented through electronic pre-paid mechanisms; such mechanisms are already in place for mobile telephones and DTH operators. The electronic pre-paid systems have the facility to record the amount paid by the subscriber in each subscriber account, calculate automatically the validity period based on the price of the subscribed services, automatically adjust the available amount as per the services already availed by the subscriber, and recharge the account through various modes like recharge vouchers, ATM machine, short-message-service, mobile/net-banking, auto-debit facility etc., as may be offered by the MSO. In the prepaid model, the revenue share between LCO and MSO would be based on the interconnection agreement between the MSO and its LCO. Further, for ensuring that the LCO gets the due revenue shares in time, necessary provisions can be incorporated in the interconnection agreements signed between the MSO and the LCO.
26. The MSO may offer several modes and multiple denomination schemes for recharging the subscriber's account depending on the convenience of subscribers and the business model of the MSO. However, as cable TV charges are generally paid by the subscribers

on a monthly basis, it is expected that an MSO would offer a monthly recharge scheme to its subscribers as one of the options.

27. On the issue of implementation of the electronic pre-paid model, the Authority observed that MSOs have already been directed through its Direction dated 27th May 2014 to provide, within 45 days of issue of the Direction, an on-line payment option in its SMS for payment of bills by the subscriber. With an on-line payment system in place and the availability of SMS, the Authority is of the view that a time of 60 days would be sufficient to stakeholders to align their business processes to comply with the provisions of these Regulations.
28. In order to check MSOs from preventing a subscriber to opt for pre-paid option or post paid option, the Authority is of the view that a financial disincentive not exceeding Rs. 100 per subscriber will be levied on the MSO for each contravention. The Authority has provided a reasonable time of 30 days to accept and activate the request of the subscriber for a change in the payment options. The subscriber can make such request, through verifiable means, to the MSO and the MSO must ensure that an acknowledgement is provided to the subscriber regarding receipt of the request. Accordingly, Regulation 16(2) has been amended.

Time limit for entry of details into SMS

29. On the time limit of 3 days for entry of details of the receipts into the SMS, one HITS operator has stated that the time given for the entry of details of the receipt is not sufficient as LCOs lack understanding of computer systems. On the other hand, LCO associations have stated that payment details should be updated at the MSOs' end in real time to avoid STB deactivation for those who pay towards the end of the grace period.

Analysis

30. In case of post-paid bills, the subscriber is billed on a monthly basis and the due date for payment is generally kept 15 days from the date of issue of bills. The Authority is of the view that details of payment received should be entered into the SMS as soon as possible but no later than 7 days from the date of payment made by the subscriber so that the subscriber account is updated well before the next billing cycle starts.

Other Misc. Comments

31. MSOs stated that the Authority should clarify as to whether delivery of bills/invoices/receipts etc. through alternate mediums such as e-mail, broadcast-mail and through mobile phone could be considered as compliance with the Regulation before imposition of financial disincentives on the service providers.

Analysis

32. On delivery of bills/invoices/receipts etc. through alternate mediums such as e-mail, broadcast-mail and through mobile phone, the Authority is of the view that broadcast-mail can be used for providing information to the subscriber but it cannot be considered as compliance with the Regulation. It does not provide the facility of storing the information. In respect of other options, such as print and e-mail, the choice of the subscriber shall prevail. The choice of the subscriber must be collected in a verifiable manner before adopting such alternatives.
33. The Authority is of the view that a reasonable opportunity should be given to stakeholders to represent to the Authority before a conclusion is reached about an alleged contravention and the imposition of a financial disincentive. Accordingly, a suitable provision has been incorporated in this amendment to the Regulations.
34. The levy of financial disincentives is necessary to protect the interests of subscribers, strengthen transparent business practices and ensure that revenues due to the Government are paid and deposited in full. It is the Authority's expectation that imposition of disincentives would effectively curb non-compliance with the provisions of the Regulations.
