

WITHOUT PREJUDICE

By Email/Hand Delivery

To Mr. Wasi Ahmed

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Advisor(B&CS), TRAI

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SUB: Consultation Paper No. 18/2012 dated 20th December 2012 on Issues relating to amendments to the Interconnect Regulations applicable for Digital Addressable Cable TV Systems (“DAS”) and Tariff Order applicable for Addressable Systems.

Dear Sir,

We thank the Hon’ble Authority for timely aligning the extant regulations and tariff orders with the recent amendments made to the Cable Television Networks (Regulation) Act, 1995 vide the Cable Television Network (Regulation) Amendment Act, 2011 (**“Cable TV Act”**).

We note that in order to ensure proper implementation of the amendments to the Cable TV Act, the Hon’ble Authority came up with The Telecommunications (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order 2012 (No. 3 of 2012) dated 30th April 2012 (**“ The Amending Tariff Order”**) amending The Telecommunications (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order 2010 (1 of 2010) dated 21st July 2010 (**“The Principal Tariff Order”**). However the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004(13 of 2004) dated 10th Dec 2004 (**“The Principal Interconnect Regulations”**) as amended from time to time including vide The Telecommunication (Broadcasting And Cable Services) Interconnection (Fifth Amendment) Regulations, 2009 (4 Of 2009) dated 17th March 2009 (**“The Amendment to the Principal Interconnect Regulations for Addressable Systems”**) and later The Telecommunication (Broadcasting And Cable Services) Interconnection (Sixth Amendment) Regulations, 2010 (4 Of 2010) dated 30-07-2010, was however not further amended and instead the Hon’ble Authority chose to promulgate The Telecommunication (Broadcasting and Cable Services)

Interconnection (Digital Addressable Cable Television Systems) Regulations , 2012 (9 of 2012) dated 30th April 2012 and later amended these very regulations vide The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) (First Amendment) Regulations, 2012 dated 14th May 2012 (**“Interconnect Regulations for DAS”**).

Without prejudice to our rights and contentions in the pending appeals before the Hon’ble Supreme Court including Civil Appeal No. 2847 to 2854 of 2011 and D- 8827/2011 and also otherwise, we state as follows:

1. *That TRAI need not have brought in a separate Interconnect Regulation for cable operators in DAS notified areas.*
2. *The Principal Interconnect Regulations including the amendments that came into effect on 17th March 2009 for all addressable systems could have well served the purpose for cable operators in such notified areas. Limited and targeted amendments to the Amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th March 2009 would have taken care of any specific concerns that may have been felt needed to be addressed under the DAS regime.*
3. *That the Principal Tariff Order dated 21st July 2010 was amended to include in its remit cable operators in areas notified under DAS however it was not comprehensible as to why the Interconnect Regulations were instead promulgated afresh for such cable operators rather than amending the same as aforesaid. These led to unavoidable confusion within the industry which ultimately culminated in the proceedings before the Hon’ble TDSAT.*
4. *That as a result of the Interconnect Regulations for DAS, several anomalies have crept in. Some of the provisions of the Interconnect Regulations for DAS are in direct conflict with the Principal Interconnect Regulations. For example the definition of addressable system applicable to DTH, HITS or IPTV is different from that applicable to cable operators and multi system operators in areas notified under section 4A of the Cable TV Act.*

Our responses to the issues raised in the aforesaid Consultation Paper are as follows:

RESPONSES

I. ISSUE:

(a) Whether the following proviso should be introduced in the clause 3(2) of the interconnection regulations for DAS and the clause 3(5) of interconnection Regulation for DAS should be deleted.

“provided that the provisions of this sub-regulation shall not apply in the case of a multi-system operator, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.”.

(b) If no, the reasons thereof.

Recommendation:

In order to ensure minimal legislative changes and to make sure that third proviso to Clause 3(2) of the Principal Interconnect Regulations as amended by the Amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th march 2009 are applicable to operators in areas notified for DAS we recommend as follows:

1. The “Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006)” dated 24th August 2006 should be formally repealed and taken off the statute books. This regulation pertained to the earlier CAS regime that mandated Standard Interconnect Agreements. Given the recent amendments to the Cable TV Act, these are no longer applicable.
2. Existing Clause 2 of Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 should be suitably incorporated in existing clause 2 of The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) as amended from time to time including the amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th March 2009. For example existing Clause 2 (a) of “The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004” (13 of 2004) viz the definition

of addressable systems should be amended and the revised definition should be as follows:

"addressable system" means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of cable television network can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorization made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by the cable operator to the subscriber;"

Likewise, other definitions from the Interconnect Regulations for DAS should be incorporated in the Principal Interconnect Regulations as amended from time to time viz. "Act", "ala carte", "ala carte rate", "bouquet", "bouquet rate" , "cable operator", "DAS area" , "free to air channel", "multisystem operator", "ordinary subscriber", "pay channel", "programme", "RIO", "Service Provider", "set top box", "subscriber management system", "TV Channels".

3. All definitions in the Principal Interconnect Regulations that are inconsistent with the above, if any, should be deleted.
4. All definitions in the Principal Interconnect Regulations as amended from time to time that are not covered in 2 supra should be retained.
5. Clause 2 (j) of the Principal Interconnect Regulations defines "Distributor of TV Channels"; the said definition in any event includes a Multi System Operator, therefore we recommend deletion of Clause 13.2B.1 (a) of the Principal Interconnect Regulations as propounded by the amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th March 2009. This will ensure that the Principal Interconnect Regulations are applicable to Cable Operators and Multi System Operators in areas notified under Section 4 A of the Cable TV Act as well. Accordingly the revised Clause 13.2B.1 should read as follows:

"13.2B.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (4 of 2009) and continues to provide such services after such commencement shall, within thirty days from the date of such commencement, submit its Reference Interconnect Offer specifying, inter-alia, the technical and commercial terms and conditions

including those listed in Schedule III for interconnection with addressable systems other than the direct to home service to the Authority.”

6. Delete the following from Clause 13.2B.3 of the Principal Interconnect Regulations as propounded by the amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th March 2009:

“...cable service in areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and”

Accordingly the revised Clause 13.2B.3 shall read as follows:

“13.2B.3 *The provisions of regulations 13.2A.1, 13.2A.2, 13.2A.4, 13.2A.5, 13.2A.6, 13.2A.7, 13.2A.8, 13.2A.9, 13.2A.10, 13.2A.11, 13.2A.12 and 13.2A.13, relating to Reference Interconnect Offers for direct to home service, shall apply, mutatis mutandis, to such a Reference Interconnect Offer for interconnection with addressable systems other than the direct to home service.*

Provided that a broadcaster may have different Reference Interconnect Offers for different types of addressable systems.”

II. ISSUE:

- (a) Whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS.
- (b) If yes, what should be the different categories (example cities/town/rural area) of areas for which minimum channel carrying capacity should be prescribed and what would the capacity for each category.

Recommendation:

There is no need to specify any minimum channel carrying capacity for MSOs in the interconnect regulations for DAS. These decisions should be left to the individual discretion of Operators who will be grounding such decisions on commercial considerations and market forces. In any event an operator who provides limited channels will be displaced by another operator who has a more varied offering. Also, the subscriber of such operator will always have the option to subscribe to a DTH or IPTV service if it is dissatisfied with its cable operator.

III. ISSUE:

Whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated. The stakeholders are requested to submit their comments with justifications.

Recommendation:

1. As per the Principal Interconnect Regulations broadcasters cannot demand placement as a precondition for supplying signals. In order to ensure parity and level playing field it is necessary that Distributors of TV Channels are also subjected to a similar bar as has been contemplated in Clause 3(11) of the Interconnect Regulations for DAS. The Hon'ble TDSAT has struck down Clause 3 (11A) of the Interconnect Regulations for DAS. But there is no bar in suitably incorporating the said Clause 3(11) of the Interconnect Regulations for DAS in the Principal Interconnect Regulations. Accordingly a further proviso may be added to Clause 3 (2) of the Principal Interconnect Regulations:

“Provided that if a distributor of TV channels before providing access to its network to a broadcaster insists on placement of the channel of such broadcaster in a particular slot or bouquet or demands from a broadcaster any placement fee such precondition shall amount to imposition of unreasonable terms.”

2. Clauses from the Interconnect Regulations for DAS that appertain to placement of channels should be suitably incorporated in the Principal Interconnect Regulations. A new clause 13.2C should be inserted in the Principal Interconnect Regulations titled “ Channel Placing”

“13.2C.1 Every broadcaster shall declare the genre of its channels and such genre shall be either News and Current Affairs or Infotainment or Sports or Kids or Music or Lifestyle or Movies or Religious or Devotional or General Entertainment (Hindi) or General Entertainment (English) or General Entertainment (regional language).

13.2C.2 The distributor of TV Channels using an addressable system shall place the channels of a broadcaster in the genre declared by such broadcaster.

13.2C.3 Every distributor of TV Channels using an addressable system shall display, in his Electronic Programme Guide, all the channels offered by him, in the same genre in which a particular channel has been indicated by the broadcaster and one channel shall appear in only one genre.”

3. The following may also be added further :
- (a) Clause 3 (9), 3(10), 3(12), 3(13), 3(14), 3(15) and 3 (16) of the Interconnect Regulations for DAS can be suitably incorporated in the Principal Interconnect Regulations as Clause 13.2C.4 to Clause 13.2C.10, with 'multi system operator' being substituted with 'distributor of TV Channels using an addressable system'.
 - (b) Clause 4 (6) to Clause 4 (9) of the Interconnect Regulations for DAS can be suitably incorporated in the Principal Interconnect Regulations as Clause 13. 2B. 5 to Clause 13.2B.8, with 'multi system operator' being substituted with 'distributor of TV Channels using an addressable system.'
 - (c) Clause 5 (10), 5 (13) and 5 (14) of the Interconnect Regulations for DAS can be suitably incorporated in the Principal Interconnect Regulations as Clause 13.2B.9, Clause 13.2B.10, Clause 13.2B.11 with 'multi system operator' being substituted with 'distributor of TV Channels using an addressable system.' This is because even a HITS provider may provide signals to a linked local cable operator.
 - (d) Clause 9 of the Interconnect Regulations for DAS can be suitably incorporated in the Principal Interconnect Regulations as Clause 13D with 'multi system operator' being substituted with 'distributor of TV Channels using an addressable system' and Schedule III being renumbered as Schedule V.
4. The Principal Interconnect Regulation as amended by the Amendment to the Principal Interconnect Regulations for Addressable Systems dated 17th march 2009 in any event provides the basic framework for all broadcasters and distributors of TV channels including those who use addressable systems. Such distributors of TV channels also include Multi System Operators. Accordingly the amendments as aforesaid in the Principal Interconnect Regulations shall suitably incorporate the relevant clause of the Interconnect Regulations for DAS dated 30th April 2012 and the amendment thereto dated 14th May 2012. Accordingly these Regulations should no longer be continued in the statute books as till the time they exist it will provide an opportunity to vested interests to argue discrimination qua operators/distributors coming under the Principal Interconnect Regulations.
5. Accordingly The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (First Amendment) Regulations, 2012 dated 14th May 2012 should thus be repealed.

6. Likewise The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 No. 9 Of 2012 dated 30th April 2012 should be also repealed.
7. The Judgment rendered by the Hon'ble TDSAT dated 19th Oct 2012 will thus also have been given effect to.

IV. ISSUE:

- a. The ceiling on the a-la-carte rates of pay channels forming part of bouquet(s) which shall not exceed three times the ascribed value# of the pay channel in the bouquet;
- b. The a-la-carte rates of pay channels forming part of bouquet(s) shall not exceed two times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems.

ascribed value of a pay channels in a bouquet is calculated in the following manner:

1. Proportionate Bouquet Rate for pay channels [A]= Bouquet Rate x (Sum of a la carte rate of Pay channels)/(Sum of a la carte rate of Pay channels+ Total no of FTA channels x factor*)

2. Ascribed value of a pay channel in a bouquet = [A] x a-la-carte rate of a pay channel/ (sum of a-la-carte rate of all the pay channels)

*factor=1 if uniform rate of free-to-air channel is less than or equal to Rupees three. The factor = uniform rate of free-to-air channel/ 3, if the uniform rate of free-to- air channel is greater than Rupees three.

Apropos the above, the stakeholders are requested offer their comments on the above conditions to prevent perverse a-la-carte pricing of the pay channels being offered as part of the bouquet(s). The stakeholders are also welcome to submit any other formulation that can achieve the same objective, along with its justification.

Recommendation:

This is not advisable. The formula is unduly complicated. With existing levels of competition, the Authority would do well to discontinue formulations that

establish a relationship between bouquet and ala carte rates both at the whole sale as well as at retail.

V. ISSUE:

Apropos the above the stakeholders are requested to offer the comments, if any, on the proposed deletion of the word 'pay' in clause 6 and 6(2) of the principal tariff order dated 21.07.2010.

Recommendation:

No comments. However it is advisable to repeal all Tariff Orders pertaining to erstwhile Sec 4A of the Cable Television Act (The "CAS" Tariff Orders).

VI. ISSUE:

"It shall be open to the subscriber of the addressable systems to subscribe to any bouquet(s) or any bouquet(s) and any channel(s)(pay or free to air) or only free to air channels or only pay channels or pay channels and free to air channels"

Apropos the above, the stakeholders are requested to offer their comments, if any, on the proposed inclusion of the above mentioned provision after sub-clause 6(4) in the tariff order dated 21.07.2010, as amended.

Recommendations:

No comments.

VII. ISSUE:

Whether the channels that require special type of STB be offered only on a-la-carte basis or as part of separate bouquets that consists of only those channels that require a particular type of specialized STB.

Recommendations:

No comments.

FURTHER SUBMISSIONS:

It is submitted that while it is indeed commendable on the part of the Hon'ble Authority to come up with regulations for the DAS regime within such short period of the Cable TV Act being amended, it has come to the notice of the industry while firming up deals that there are certain additional aspects that

need to be factored in as a logical corollary to the regulations and the tariff orders applicable for the DAS regime. We enumerate some of them hereunder for the Hon'ble Authority's ready convenience in having the needful done.

1. It is submitted that in Schedule III of the Principal Interconnect Regulation in the Clause pertaining to License Fee, the following should be added:

“Month for the purpose of calculation of License Fee shall mean a calendar month.”

Rationale: Various Distributors of TV channels have different billing cycles for its retail business. Also the churn and dunning of subscribers varies from one operator to another. This leads to confusion of the word 'month'. Hence for clarity and uniformity, this is needed.

2. In the same clause the following should be included after the word “Set Top Box” as indicated:

*“....Set Top Box, which is **or was** availing the Channel(s) of _____ (name of the Broadcaster) through the DTH operator **in a calendar month.**”*

Rationale: Sometimes DTH operators/Distributors of TV channels provide services to subscribers for duration less than one month by charging them some amounts. However such set top boxes may not be active during the first or the last day of the month thereby the broadcaster loses out on its subscription fees as the DTH operator does not report such set top boxes for the calculation of license fees.

3. In the clause defining “Subscriber Base” the following Explanation should be added:

Explanation 1: For addressable systems the monthly subscriber base shall mean the calculated number that is equal to the sum of the number of

subscribers on the first and last day of the calendar month in question divided by two.

Explanation 2: A Set Top Box that was active and availing the Channel(s) for any duration within a month shall be included in the number of subscribers on the last day of such month irrespective of whether such Set Top Box was actually active or not on such last day of the month.

Explanation 3: The subscriber base of Channel(s) shall be the subscriber base of the package(s) wherein such Channel(s) are included and made to form a part thereof by the distributor of TV Channels.

Rationale: It is important to clarify that the subscriber base of the channel is the subscriber base of the package where such channel forms a part.

4. In the clause pertaining to “ Payment Terms” the following should be included:

“in any event, the DTH Operator shall submit the report within 15 days of the end of each month failing which the DTH Operator shall be construed to be in material breach.”

Rationale: This is required to ensure timely submission of reports by Distributors of TV channels.

5. In the clause pertaining to “Reports” the following should be included:

“Subscriber Reports under this Agreement shall be system generated only through SMS and CAS and the same should be in a pre-defined read only format such as a suitable PDF format which cannot be manually edited and attested. Any difference in subscriber numbers between the SMS and CAS reports shall have to be reconciled to the satisfaction of the Broadcaster.”

The DTH Operator shall report to the broadcaster the details of all packages being offered to subscribers in the following manner:

S.No.	Name of the Packages available at the first day of the month				Name of the Packages discontinued during the month				Name of the Packages created during the month				Name of the Packages available at the last day of the month			
	As per CAS	Names of channels included	As per SMS	Names of channels included	As per CAS	Names of channels included	As per SMS	Names of channels included	As per CAS	Names of channels included	As per SMS	Names of channels included	As per CAS	Names of channels included	As per SMS	Names of channels included

Rationale: Just as broadcasters need to be transparent on their offerings it is imperative that distributors of TV channels should also be likewise transparent about their retail offerings. Broadcasters are regulation bound to disclose all their bouquets and also when they discontinue their bouquets. Similarly Distributors should also disclose their packages, constituent channels and corresponding subscriber numbers.

6. In the clause pertaining to “Audit” the following should be included:

- (i) *“DTH Operator shall provide full cooperation to broadcaster’s representatives in order to carry out the audit including but not limited to granting unfettered, unqualified and unrestricted access to DTH Operator’s facilities and systems including but not limited to SMS, CAS, IT systems and providing documents as may be required by the auditors. Broadcaster shall give DTH OPERATOR notice of at least 15 days before the Audit is undertaken. DTH Operator shall have no objection to Auditors carrying/using their own equipment’s, systems including but not limited to laptop, software & hardware for conducting such audit and shall be provided with free ingress and egress from the premises where in such audit is conducted.”*

- (ii) *“For the purpose of computing Opening and Closing Subscriber Base – DTH Operator shall allocate a unique identification number/code to such STBs receiving one or more of the Services so that subscriber counts can be generated on the basis of such unique identification*

numbers. Such codes shall be shared by DTH Operator with Broadcaster.”

Rationale: This is required to ensure smooth audits so that there is no stone walling from any party during the course of the audit. Experience has shown that the broadcaster faces high resistance from operators during the course of an audit and as such it is necessary to build these hygiene factors.

7. In the clause pertaining to Delivery and Security the following should be added:

“It is clarified that DTH OPERATOR shall not offer the Channels to Subscribers on the basis of any specific programming event, feature, characteristic or attribute. DTH OPERATOR shall make available the Channels to Subscribers on 24/7/365 basis with effect from such Channels being activated at the Subscriber’s end till the time (a) the channel ceases to be available in the DTH Operator’s platform, or (b) such subscriber is switched off by the DTH Operator for being a defaulter or (c) such Subscriber having expressly indicated its intention to discontinue its subscription to such Channels or packages containing such Channels in accordance with extant regulations.”

Rationale: This shall ensure that channels are offered in their entirety to subscribers and are not arbitrarily switched off. This will ensure that channels will be deactivated at the subscriber’s end only if such subscriber defaults or such subscriber explicitly indicates that he does not wish to continue availing such channels or when such channel is no longer available in the operator’s platform. This will ensure that the subscribers are protected from arbitrary disconnection of a particular channel or channels.

CONCLUSION:

In conclusion we would like to thank the Hon’ble Authority for having provided us an opportunity to address the instant consultation paper.

We seek the Hon'ble Authority's indulgence in submitting any additional representations or submissions as may be relevant during the ongoing consultation process.

Our submissions herein are not in contradiction or in derogation to any of our earlier submissions and are to be read harmoniously with each other.

Yours Faithfully,

For Star India Private Limited

Sd/- Pulak Bagchi

(Pulak Bagchi)

Vice President – Legal and Regulatory