

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

**THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES)
INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS)
(SECOND AMENDMENT) REGULATIONS, 2013**

(No. 12 of 2013)

NOTIFICATION

New Delhi the 20th September, 2013

F. No. 3-24/2012-B&CS----In exercise of powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) 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 Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2013 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012),---

(a) in sub-regulation (2), the phrase “having the prescribed channel capacity and” shall be omitted;

(b) in sub-regulation (2), after the second proviso, the following proviso shall be inserted, namely:-

“Provided also that nothing contained in this sub-regulation shall 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 demands carriage fee for carrying that channel on its distribution platform.”

(c) sub-regulation (5), sub-regulation (8) and sub-regulation (11A) shall be omitted.

(Sudhir Gupta)
Secretary(I/C), TRAI

Note.1-----The principal regulations were published vide notification no. 3-24/2012-B&CS dated 30th April 2012 and subsequently amended vide notifications No. 3-24/2012-B&CS dated 14th May 2012.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulation, 2013 (No. 12 of 2013).

Explanatory Memorandum

I. Background

1. In the last few years, the exponential growth in the number of TV channels (both free-to-air [FTA] and pay) combined with the inherent limitations of the analog cable TV systems has posed several challenges in the cable TV sector, mainly due to capacity constraints and non-addressable nature of the network. With time and evolution of technology, new addressable TV platforms like direct-to-home (DTH), internet protocol television (IPTV) etc. became available. The evolution of technology also paved way for introducing digitization with addressability in the cable TV sector. Accordingly, after studying the subject at length and undertaking a public consultation process, the Authority, on 5th August 2010, gave its recommendations on implementation of Digital Addressable Cable TV Systems (DAS) across the country along with a roadmap to achieve the same.
2. The Government has accepted the recommendations of TRAI and on 25th October, 2011, promulgated an Ordinance amending the Cable Television Networks (Regulation) Act, 1995, enabling the implementation of Digital Addressable Cable TV Systems in India. Thereafter, the Government also issued a notification dated 11th November, 2011 and its amendment dated 21st June 2012, which laid down the roadmap for implementation of Digital Addressable Cable TV Systems in the country in a phased manner in four phases, with the first phase by 31st Oct. 2012 and the final phase to be completed by 31st December 2014. This will lead to sunset of Analogue Cable TV Systems in the entire country. With the Parliament passing the bill, the Ordinance dated 25th October, 2011, became an Act on 30th December, 2011. Subsequently, the Central Government amended the Cable television Networks Rules 1994, vide amendment dated 28th April 2012. These legislative enactments paved way for the implementation of DAS in the country.
3. In order to lay down a comprehensive regulatory framework for the digital addressable cable TV systems (DAS), the Authority initiated a consultation process on the issues relating to implementation of DAS. After following an extensive public consultation process, the tariff

amendment order, regulations for quality of service and redressal of consumer grievances, and the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April 2012, were notified. The interconnection regulations prescribe various provisions relating to the interconnection between Broadcaster, MSO and LCO. Subsequently, an amendment to the interconnection regulations was also notified on 14th May 2012.

4. Some of the provisions of the said interconnection regulations were challenged in appeal numbers 5(C) of 2012, 11 (C) of 2012 and 12 (C) of 2012 before Hon'ble Telecom Disputes and Settlement Appellate Tribunal (TDSAT) by some MSOs. The Hon'ble TDSAT vide its judgment dated 19th October 2012 partly allowed the appeals and set aside three provisions of the said interconnection regulations. The provisions set aside pertain to prohibition of demanding carriage fee by the MSO while seeking signals of a channel from a broadcaster (sub-regulation 3(5) of the said regulations), MSOs to have a minimum channel carrying capacity of 500 channels (sub-regulation 3(8) of the said regulations) and prohibition regarding charging of placement fee by the MSOs (sub-regulation 11A of the said regulations).
5. While setting aside the provisions of sub-regulation 3(5) of the Interconnection Regulations applicable for DAS, the Hon'ble TDSAT had opined, inter alia, that there should not be any difference between 2nd proviso to sub-regulation 3.2 of "The Telecommunication (broadcasting and Cable Services) Interconnection Regulation 2004 (12 of 2004)" as amended from time to time as applicable to non-CAS/DTH operators and sub-regulation 3(5) of "The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulation 2012". On the issue of provision of capacity to carry minimum 500 channels, the Hon'ble TDSAT, in its judgment, had observed that since market forces play an important and significant role in the matter of carrying capacity of the MSO, the same may not be required to be regulated. It has been further observed by the Hon'ble TDSAT that if the regulator deems fit, it may consider making provision for MSOs to have capacity to carry number of channels based on different categories of areas i.e. city/towns/rural area etc. in which MSO will be operating. Further, the

Hon'ble TDSAT has set aside the provisions of sub-regulation 11A of the interconnection regulation 2012 on the ground that the restriction placed on the MSO for demanding placement fees in terms of May 2012, Regulation is bad in law. It has been further mentioned that the same restriction is not applicable for the DTH operators, the placement charges, if any, will depend upon the mutual agreement between the Broadcasters and the MSO. Consequent to the said judgment of the Hon'ble TDSAT, the Authority initiated a consultation process with the stakeholders to bring in finality to the provisions set aside by the Hon'ble TDSAT.

6. In this connection, a consultation paper titled "Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems" was issued on 20th December, 2012. In this consultation paper, inter-alia, the following issues were posed for the stakeholders to offer their comments:

(a) Introduction of following proviso (in line with the 2nd proviso to the sub-regulation 3.2 of the interconnection regulation applicable for the platforms, other than DAS) in the sub-regulation 3(2) of the interconnection regulations applicable for DAS areas, and deletion of the sub-regulation 3(5) from the same regulation:

"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) Need to specify certain minimum channel carrying capacity for the MSOs based on different categories (cities/town/rural area) of areas in the interconnection regulations.

(c) Need for regulating the placement fee in all the Digital Addressable Systems and how it should be regulated.

7. In response to this consultation paper, a total of 48 comments were received from stakeholders. Taking into consideration the comments/views of the stakeholders and analysis of the issues, the draft interconnection regulation was prepared and uploaded on the TRAI website on 4th June 2013, seeking views/comments of the stakeholders on the same. In response, 27 stakeholders put forth their views/comments. Based on the above said

consultation process, the interconnection regulation applicable to digital addressable cable TV systems has been amended through this interconnection amendment regulation namely the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013.

II. Analysis of Issues

8. The following is the summary of issues taken up for consultation, comments of the stakeholders and analysis thereon.

A. “Carriage Fee”

9. The issue is that whether the following proviso should be introduced in the sub-regulation 3(2) of the interconnection regulations for DAS and the existing sub-regulation 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.”

10. Several broadcasters, in their response to the issue, expressed the opinion that they are in favour of continuation of the existing clauses. They have further stated that if the carriage fee is imposed, it should be for a limited period and during such period the fee must be regulated by TRAI which must be rational, non-discriminatory and based upon actual, verifiable subscriber base and once the digitization is completed, no carriage fee must be chargeable at all. Several other broadcasters were in favour of TRAI’s proposal to amend sub-regulation 3(5) and to bring it in line with that of Interconnect Regulation, 2004, applicable for DTH, IPTV, HITS and non-addressable cable TV systems, wherein, it has been provided that the seeker of the TV signals while seeking signals, cannot demand carriage fee at the same time.
11. Majority of the MSOs, in their response to the issue, have stated that the sub-regulation 3(5) should be deleted while the proposed proviso should not be included in the sub-regulation

3(2). They have further stated that the issue of carriage fee should be left to market forces and should not be regulated as there are already adequate safeguards provided in the interconnection regulations in the form of prescription of uniform carriage fee, to be charged by the MSOs, for all broadcasters, and restriction on upward revision of carriage fee for a minimum two years.

12. All private DTH operators and their association except one DTH operator, in their response to the issue, have suggested that the issue should be left to the market forces since it is a matter of commercial negotiations which does not involve consumers. They further stated that even after complete digitalization, capacity will always be a constraint to carry all the channels. DAS operators have stated that they should have the freedom to choose the channels to carry and suitably charge in order to recover its carriage cost and since there is no limit on advertisement rates, which is driven by demand & supply, there is no reason as to why there should be any limit on carriage / placement fee. One DTH operator has opined that the regularization and clarity need to be brought in carriage fee payment by regulating the carriage fee on per active subscriber basis. Another DTH operator has suggested that to maintain transparency, DAS operator should file details of interconnect agreement with broadcaster w.r.t. carriage fee.
13. While one of the LCO associations has supported the proposal, another has suggested that TRAI should fix carriage fee based on genre of the channel and its Television Rating Points (TRP) and carriage fee received by MSO should be shared between MSO and LCO as LCOs' infrastructure is much larger than that of MSOs'.
14. The issue has been analysed. The Interconnection Regulation applicable for DAS has the following safeguards with regard to charging of carriage fee. (1) Carriage fee to be transparently declared in the RIO of the MSO, (2) The carriage fee is to be uniformly charged (3) The carriage fee not to be revised upwardly for a minimum period of 2 years, and (4) The details of the carriage fee are to be filed with the Authority and the Authority has a right to intervene in cases it deems fit.

15. The intention for including the above said proviso to the sub-regulation 3(2) was to ensure that the broadcasters are not forced to supply their channel in terms of sub-regulation 3(2) and at the same time pay carriage fee for the same channel. Also, inclusion of such a proviso prevents a distributor of TV channels from misusing the sub-regulation 3(2). It is worthwhile to note that same provision (2nd proviso to sub-regulation 3.2) exists in the interconnection regulations for other addressable and non-addressable platforms since 2009.
16. Considering all the above aspects, the Authority is of the view that the proposed proviso shall be included in the sub-regulation 3(2) and sub-regulation 3(5) shall be deleted.

B. “Channel carrying capacity for MSOs”

17. Another issue raised in the consultation paper was whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS and if so what should be the different categories (cities/town/rural area etc.) of areas for which minimum channel carrying capacity should be prescribed and what should be the capacity for each category.
18. While some of the broadcasters, in their response, have suggested that the issue should be left to the market forces, others have suggested that certain minimum channel carrying capacity should be prescribed by TRAI to ensure effective roll out of digitization of the cable TV sector. They have stated that if minimum capacity is not prescribed, MSO’s are not likely to upgrade their systems and the number of channels available to the consumers will remain limited and the broadcasters will continue paying unreasonable carriage fee. They further stated that if the issue is left to the market forces at this time, it may lead to anti-competitive practices through cartelization or misuse of monopolistic positions, as the case may be. Some of the broadcasters, who are in favour of prescribing minimum channel capacity, have further suggested that the minimum capacity of 500 channels should be prescribed universally, irrespective of category of areas. One broadcaster has suggested that the carrying capacity can be linked with the size of the MSO, depending upon their subscriber base.

19. All the MSOs, in their response, have stated that the issue should be left to the market forces since there is enough competition in the market which will compel the MSOs to carry all relevant channels. Further, no MSO should be required to carry channels unless there is a market demand or an opportunity, making economic sense. They have further stated that any prescription for minimum channel carrying capacity will only help the broadcasters who do not have a viable subscription model and the said unreasonable mandate of certain minimum channel carrying capacity will only help such broadcasters to develop their advertising model. One of the MSO has suggested that if the Authority deems it necessary to specify it, the same should be limited to the minimum FTA channels as presently regulated by TRAI and for the pay channels, the market forces should be allowed to decide.
20. DTH operators are also not in favour of fixing a minimum channel carrying capacity for the DAS service providers. They have stated that it should be left to the discretion of the MSO to decide, based on the market requirements. One of the DTH operators and the DTH Association have suggested that, in case, it is prescribed by TRAI, it should be lesser than 500 channels, so that DTH operators also have a level-playing-field vis-a-vis MSOs, as DTH is constrained due to limited satellite bandwidth capacity available to them.
21. While two LCO associations, in their response to the issue, are in favour of not regulating the channel carrying capacity, another association has suggested that the minimum carrying capacity should be a certain percentage of the FTA channels permitted by Ministry of Information & Broadcasting. One consumer organization has stated that the minimum carrying capacity for MSOs needs to be mandated otherwise it will defeat the very purpose of digitization. The organization further suggested that the Authority may prescribe a minimum 300 channels immediately and 500, by March 2014.
22. The issue has been analysed. Sub-regulation 3(10) of the interconnection regulation for DAS mandates the MSO to carry channel(s) if it is in the regional language of the region in which that MSO is operating or if it is in Hindi language or in English language. Thus, in other words, there is a 'must carry' provision for regional language channels (specific to a region) and channels in Hindi and English languages. If channel(s) fall within these categories, MSO

has to carry the channel(s). With these provisions, the concerns of the broadcasters regarding MSOs creating artificial scarcity of channel carrying capacity for justifying charging of unreasonable carriage fee are adequately taken care of. In view of this, there appears no real need for prescribing a minimum channel carrying capacity. In addition to this, sub-regulation 3(10) of the interconnection regulations also makes it mandatory for the MSOs to provide to the broadcasters access to its cable network, within a time frame of sixty (60) days which is equivalent to the time frame given to the broadcaster under the 'must provide' provisions. Further, a responsibility has also been cast upon the broadcaster under the provisions of 'must carry' to ensure that the subscription of the channel does not fall below a certain minimum level. This minimum level has been prescribed in the regulations as five percent of the subscriber base of that MSO, taken as an average of subscriber base, for the preceding six months. In case the channel fails to maintain this minimum subscriber base, the MSO has the discretion to refuse access to its network for a period of next one year. Such a refusal would not be considered as a violation of the 'must carry' provision. Considering all the aspects, the Authority is of the view that the interests of the broadcasters have already been taken care of in the 'must carry' provisions of the regulation and as such no further prescription may be required.

23. The Authority has decided that the phrase "having the prescribed channel capacity" appearing in sub-regulation 3(2) should be deleted as the same will have no relevance with the deletion of the minimum channel carrying capacity criteria from the regulations.
24. For the time being, the Authority has decided not to specify the capacity to carry a minimum number of channels by the MSOs, on the expectation that market dynamics will take care of the emerging situation. However, in the event the Authority notices that the market dynamics are not allowed to function freely by the service providers, resulting in creation of an artificial capacity constraint, it will intervene appropriately.

C. “Placement Fee”

25. The issue raised in the consultation paper was whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated.
26. Some of the broadcasters, in their response to the issue, have stated that in DAS, since an MSO is obligated to provide electronic programme guide (EPG), the requirement of placement fee does not arise. However, broadcasters should have the flexibility to pay reasonable amount towards tiering / packaging fee, if they so desire, as part of their commercial negotiation and that it should be left to market forces. One of the broadcasters’ associations has stated that charging of placement fee, by whatever name called, should be prohibited by regulation since in DAS environment broadcasters would no longer demand any specific or preferential placement, except to the limited extent that their channels be placed in the correct and rational genre/sub-genre. One of the broadcasters, who is in favour of regulating the placement fee, suggested that the regulations should take into account the carriage cost, EPG placement, packaging of channels and any other fee, called by any other name, in a transparent and non-discriminatory manner.
27. All the MSOs, in their response to the issue, have stated that they are not in favour of regulating the placement fee. They have stated that placement fee is purely a commercial transaction with no impact to the end consumers. It has been further mentioned that, since, India is a low ARPU market, recovery of infrastructure cost is not possible with such ARPU as compared to mature markets where cost of access for the MSO's come in the form of revenue share or through sharing of some of the advertisement time with the MSOs. They have further stated that market will evolve over a period of time as other mature markets have and will find its own model. Till then, it should not be regulated. They have further stated that demand and supply will balance placement fee in the market by itself as presently only few channels have demand for specific placements to suit their business model.
28. One DTH operator has stated that the placement fee should be regulated across all addressable platforms in such a manner that placement fee is same for any two operators if they carry channel with same priority. All other operators are not in favour of regulating it.

However, one DTH operator has suggested that the MSOs should publish RIO for placement fee and agreement details regarding placement fee should be filed under register of interconnect regulation.

29. While two LCO associations have stated that it should be left to market forces, another LCO association has suggested that it should be regulated by TRAI on slab-wise basis which should be based on TRP ratings.

30. The issue has been analysed. In DAS, the technology provides for an EPG wherein the channels being carried on an MSO's network can be arranged in a simple, easy to understand, manner so that the subscriber can easily go through this guide and select the channel of his choice instead of flipping through all the channels. The genre-wise display of channels in the EPG, where all the channels of a particular genre are listed under relevant genre, has been mandated through regulations. Moreover, in digital systems, signal quality of the channels is independent of the placement of the channel. Further, the Interconnection Regulation already has a provision (sub-regulation 3 (11)) that if an MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such precondition amounts to imposition of unreasonable terms. Thus, adequate provisions already exist in the regulations. Accordingly, sub-regulation 11A of regulation 3 of the interconnection regulation has been deleted.
