

Response from MM TV Ltd, KVMM Building, K. K. Road, Kottayam - 1,

Kerala to:

- (i) DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016 (hereinafter the “Regulations”) ; and
- (ii) THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016 (hereinafter the “Tariff Order”) ; and
- (iii) THE STANDARDS OF QUALITY OF SERVICE AND CONSUMER PROTECTION (DIGITAL ADDRESSABLE SYSTEMS) REGULATIONS, 2016 (hereinafter the “said QoS”)

The draft Regulations, the Tariff Order and the said QoS aforementioned raise certain important issues for FTA broadcasters and our comments, suggestions and response to the above are given herein under:

1. We submit that, The TRAI must ensure that Digital Addressable System (DAS) is implemented and comes into effect by end of December 2016 as stipulated. The Regulations, Tariff Order and QoS should be implemented only after DAS is completely

implemented in India ; or at the very least, these should be implemented only in areas where DAS has been fully implemented. TRAI must ensure that Schedule III – Addressable System Requirements are fully implemented and put in place by all DPOs before The Regulations, Tariff Order and QoS are implemented.

2. As per the draft Telecommunications (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations, 2016, there would be a common interconnection framework for all addressable systems namely DTH, HITS, DAS and IPTV collectively called DPO. This is a very welcome move. However by nature of their re-transmission technology their foot print vary - DTH and HITS have a national footprint though HITS can service a geography or a location only through a LCO while MSOs have only selected footprints with in India, even if some of them have national MSO licenses. We make the following submissions on Appendix I (Relevant geographical areas for TV channel distribution) and Schedule I (Provisions for calculation of the carriage fee amount) :

(a) Appendix I (Relevant geographical areas for TV channel distribution) are categorised into All India, and in linguistic lines as States and UT. This is welcome as most of the DAS licenses / DPO licenses are on those lines, giving regional

channels their fair opportunity to be carried and viewed in their target markets / geographical areas / regional states as in Appendix I. We also submit that there may be some DAS licenses for a limited geography / location within a state. We also submit that there are some DAS operators with a license to cover PAN India or the entire state and may not be covering PAN India or the entire state and in reality be covering only some geographies within India or within the state. Our submission is that if these geographical areas in Annexure I be further sub-categorised into towns and cities, geographies etc to enable both national and regional channels to pick from the same as per their requirement depending on their target audience. This would enable National channels to pick and choose the relevant cities / towns in each state and would enable regional channels to pick and choose cities and towns from outside their regional state over and above their own regional state. This would cater to the viewer / subscriber requirements of citizens / subscribers in major metros and cities who speak and understand multiple languages including their regional mother tongue and who would want to subscribe to regional channels of their mother tongue. Unlike States and Union territories, most of the metros and such cities are not linguistic in nature and instead are more cosmopolitan in nature. And hence this suggestion.

(b) In Schedule I, we submit that a separate formula be applied to compute the penetration of regional channels on any DPO. The penetration for regional channels should be computed as a percentage of average active subscribers in a month for a channel in the target market (State / Union Territory or a selected city / town / region outside their state ) as a percentage of active subscriber base of the bouquet of the DPO in which the channel is included for that month in that territory. This would be very relevant for regional channels on DTH platforms because the penetration of a regional channel would appear to be very low if it is measured on the average subscriber base of a DTH platform instead of the average subscriber base of the relevant language bouquet of the DTH platform.

(c) The draft regulations frame work seems to be mainly intended for Pay channels with two revenue streams – subscription revenue and advertisement revenue. We observe that as per the existing draft, FTA channels are treated on similar terms with that of Pay TV channels, for the purpose of carriage, and carriage fee computation. Though the cost of content and operations remain same for channels in the same genre, irrespective of whether they are Pay TV or FTA, Pay channels have two streams of revenue – advertisement and subscription, while On the other hand FTA channels have only advertisement revenue stream. More over FTA channels are intended to provide good content to viewers with out any additional subscription fee to be paid by them. There

is no mention in the draft regulations for the need to include FTA channels in the basic bouquet of DPOs. The penetration, slabs and slab rates in Schedule I, for calculation of the carriage fee seem to be the same for both FTA and Pay channels. Our submission is that FTA channels, especially the very popular ones with similar content cost as Pay TV channels, do not get a level playing ground in this draft regulations, due to the aforesaid reasons. Hence our submission is that FTA channels be included in the basic bouquet in their regional target market / geography and their carriage fee calculated at a better slab rate than what is currently indicated in the draft regulations and at lower rates compared to pay channels. Our submission is that this be done irrespective of genre – GEC, News etc.

(d) In Schedule I (Provisions for calculation of the carriage fee amount), the penetration computation is computed as the percentage of subscriber base of the channel as a percentage of subscriber base of the DPO in the target market for the month. This formula seems to be applicable for pay channels for computing their pay channel revenue and for computing the carriage fee. However we observe that the same formula and slab become applicable for FTA channels in calculating their carriage fee. Our submission is that FTA channels would be put at a great disadvantage, if they are put in any other tier other than basic tier. They will also end up paying huge carriage fee to DPO with out any subscription revenue from the DPO. If FTA channels are put in any other bouquet other than basic tier it will also affect their reach to subscribers and in turn the penetration computation as per Schedule I and would end up in a slab with a low penetration. FTA channels will then be

compelled to pay a higher carriage fee while there will be no subscription revenue from the penetrated subscriber base, being a FTA channel. Hence our submission is that FTA channels be mandatorily put in basic bouquet for the sake of level playing ground, and for the benefit of the subscribers. We also submit that the payment as per the slab when the penetration of the channel is below 20% as per schedule I should be only for the active subscriber base of the channel and not for the entire subscriber base of the DPO.

(e) The Regulations stipulate that the Carriage Fee will be calculated as per Schedule I attached to the Regulations. The said Schedule I, further clarifies that where the DAS has been rolled out Carriage Fee is payable only if the penetration of a channel is below 20%. Payment of Carriage Fee also has slabs within that, ranging from 20 paisa to 5 paisa per subscriber as mentioned in Schedule I of the Regulations. Our submission is that if any carriage fee is to be paid by the broadcasters, it must necessarily have a co-relation with a subscriber base cited by the Multi System Operator (MSO)/Digital Platform Operator (DPO) and verified by the Central Facility/Auditor. Carriage fee should be payable by the broadcasters for the actual number of subscribers that subscribe and watch its channels, whether the channel is Pay or FTA.

(f) Furthermore broadcasters must be able to choose the city/ies to which its channels may be carried and be made to pay

carriage fee accordingly on actual subscribers as per slab and slab rates provided in Schedule I of the Regulations.

(g) The broadcasters should be made to pay carriage fee based on the actual number of subscribers that subscribe to and watch its channels (whether pay channel or free-to-air channel) and not on the entire subscriber base of a DPO.

(i) Furthermore we also submit that for the purpose of arriving at the penetration of any HD channel and arriving at the slabs as described in Schedule I of the Regulations, the computation should be the average active subscriber base in a month for the HD channels as a percentage of the average active subscriber base of the HD bouquet of the DPO in which the HD channel is included for that month in a particular territory in the defined market. It should not be calculated on the entire subscriber base of a DPO in the territory. It should be calculated on the active subscriber base of the HD bouquet in which the HD channel is included.

(j) Since the rate of carriage fee has been defined as 20 paisa per set-top box per month ; and slab basis penetration upto 20% HD channels at 40 paisa per set-top box per month for the purposes of infrastructure costs, it is submitted that carriage fee payable by the FTA broadcasters to a DPO be reduced

substantially in the second year. When DAS has been rolled out in phases and digitization is complete, MM TV reiterates that carriage fee must not be permitted to be charged from the news broadcasters.

(k) Since dissemination of news is critical in a democracy the “news” genre of TV channels “must carry” provision should be made absolute in the case of FTA news channels, which would reduce carriage fee for these channels. No carriage fee should be charged from the news broadcasters by Direct to Home Operators (DTH).

3. Priority should be given to Regional FTA channels by DPOs servicing Regional states as given in Appendix I to be carried mandatorily in the basic tier of 100 SD channels and such FTA channels would be picked based on the number of subscribers and popularity for a particular channel in the region with in that genre.
  
4. Placement and Marketing fee – for good relative positioning in the LCN and EPG allocation with in a Genre and the various tiers of the DPO . Our submission is that there would be demand for this from competing channels and hence this should not be left entirely to discretion of the DPO. We submit that the fee for such favorable placement of channels with in the various genres and tiers created by the DPO be disclosed in

their RIO in a transparent manner, and disclosed on their website to give all channels within that genre a fair and equal opportunity to use it. These rates / fees need to vary between each genre with the lowest rate for News genre compared to other genres. The rates / fees should further be differential within a genre with the highest rate / fee fixed for the first channel within a particular genre. The rate / fee for the subsequent channels within that genre should further decrease proportionately depending on the relative position / slot from the first channel in each genre. Broadcasters should be made to pay this only if they request a particular position within a genre to the DPO. If the broadcaster has not made a request for the same, and the DPO has placed a channel on their own discretion, the broadcaster should not be made to pay. The DPO should also publish on his website if a particular slot within a genre has been taken by a channel at the prescribed rate.

5. The Tariff Order should make a distinction between a commercial subscriber and an ordinary subscriber. However the Tariff Order does not make such a distinction as it does not give a definition of a “commercial subscriber” or tariff related to commercial subscribers. The difference between an ordinary subscriber and a commercial subscriber is important as an ordinary subscriber would subscribe to a channel for their own

individual use whereas a commercial subscriber would make profit from further selling the service to its consumer.

6. After the Regulations, Tariff Order and QoS come into effect status quo should be maintained in respect of the availability of the channels , Pay or Free To Air (FTA) and the place given to such channels in Electronic Program Guide (EPG) in that the availability and placement of channel should remain exactly the same as it was on the DPO Network, three months prior to the implementation of the Regulations, Tariff Order and QoS.

7. (a) We submit that Electronic Program Guide (EPG)'s of any DPO should be made available in a categorized manner with different genres of television channels (GEC, News, Sports, Movies, Kids, HD etc.) and further such EPG should display all available television channels in each respective genre, with the objective of offering convenience to consumers.

(b) It is acceptable to us, if details of programs of channels not subscribed by a consumer were also included in the EPG ; or if the EPG included a preview of the channels on the platform of the DPO's even for channels not subscribed to by the consumer. Under the Regulations, for the convenience of the consumer there should also be sub-categorization within a genre for example within the category of GEC, News, Hindi or English, Malayalam there must be further sub-categorization such as

Malayalam - GEC, Malayalam - News etc. Such sub-categorized genres would help to simplify the search for channels by consumers and will ensure that no sub-categories of channels are at any disadvantage due to the placement/EPG positioning by DPO with in that category.

8. a) In respect of Auditing, a Central Auditor /Facility must be in place in order that the correct subscriber numbers for channels, Pay or FTA, are available to the broadcasters. The Auditor would also be able to co-relate the number of the subscribers to a channel as given by a DPO and verify the same. This would be an important issue vis-a-vis payment of carriage fee by the news broadcaster to a DPO.

(b) There must be regular monthly reporting by a DPO to the Regulator/Auditor in respect of the number of subscribers to a channel which should be available for the Regulator to verify at all times. A DPO must report monthly to the Regulator/Auditor in respect of the total number of active subscriber that it has and this reporting must be done territory wise, city wise and bouquet wise.

9. The lack of transparency and visibility in reporting the subscriber numbers has been a malaise in the Non-DAS system for the broadcasters ; and in order to correct this the

broadcasters should be allowed to verify/audit these the numbers at least twice a year.

10. We submit that the DPOs must not be given the right to discontinue carrying of a television channel, in case in the immediate preceding six consecutive months, for that particular television channel is less than 5 percent of the subscriber base of that distributor, in the target market specified by the broadcaster in the interconnection agreement, in that particular month. We have already submitted our views on the calculation of the penetration in our submissions above. If a DPO is given the right to disconnect on the above terms the chances of a DPO giving incorrect subscriber number to the broadcasters and using it as an excuse to disconnect or to demand more fee in the name of placement etc. increases. Whether a channel can carry on its business of telecasting/broadcasting with a subscriber base of less than 5 percent of the subscriber base of a distributor should be left for the market forces to decide.

11. In the Regulations the DPOs have the right to price the packages and to offer any discount they choose, which would create commercial problems for the news broadcasters. Therefore to create a level playing field amongst channels in the same genre the discounts offered by DPOs should be uniform for all channels in that genre.

12. We submit that the DPO's should report on a monthly basis their capacity to carry channels, free capacity available and the names of the channels in the queue for obtaining an LCN/number allotment.
13. The DPO's should also report on a monthly basis about their active subscriber base in a territory, city, town and they should also report on a monthly basis in respect of the new territories they have entered and the territories that a DPO has withdrawn/exited from.
14. We submit that a Standard format for Reference Interconnection offer and draft Interconnect agreement between DPOs and Broadcasters for both Pay Tv and FTA channels be included by The TRAI in the draft Regulations. This would help in standardizing the RIOs and Interconnect agreements between various DPOs and Broadcasters.