

TELECOM REGULATORY AUTHORITY OF INDIA

No. 3-57/2005/B&CS

March 3, 2005.

New Delhi

In exercise of the powers conferred by section 36, and paras (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecommunication Regulatory Authority of India Act, 1997, read with the Notification No.39 (S.O No. 44 (E) and 45 (E))dated 09.01.2004 issued from file No.13-1/2004-Restg by the Government of India under clause (d) of sub-section (1) of Section 11 and proviso to clause (k) of sub section (1) of the Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) (hereinafter called the "Principal Regulation"), as follows, namely -

1. Short title, extent and commencement:
 - (i) This regulation shall be called "The Telecommunication (Broadcasting and Cable Services) Interconnection (First Amendment) Regulation 2005" (2 of 2005)".
 - (ii) It shall come into force from the date of its publication in the official Gazette.
2. The words and figures "120 days" shall substitute the words and figures "90 days" in clause (7) of regulation 3 of the Principal Regulation.
3. This regulation contains at Annex A, an Explanatory Memorandum that explains the reasons for this amendment to the Principal Regulation.

By Order

(DR. HARSHA VARDHANA SINGH)
Secretary-cum-Principal Advisor

EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India had notified "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) and it came into effect w.e.f. 10th December 2004. As per the provisions of this regulation, all the broadcasters /multi system operators and their agents/ intermediaries through whom they provide the signals are required not to engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that discriminates against any other distributor of TV channels. A period of 90 days was granted in respect of the contracts already entered into before the provisions regarding non-discrimination in Interconnect Agreements would apply to these contracts. This period of 90 days was given for old contracts to be renegotiated and brought in compliance with the new regulations.

2. A proposal was received from a broadcaster to extend the transition period for another 60 days to enable all the agreements to be compliant with the regulations. The reasons given for seeking such an extension are: -

(a) The broadcaster has more than 6000 contracts with various distributors of TV channels that got signed at different points in time. In addition to the above, before the enforcement of the Interconnection Regulation, they had launched several new channels and signed up addendums/ contracts with various operators.

(b) They are now working towards transitioning their various contracts and addendums to make them compliant with the Interconnection Regulation. In addition several internal organizational activities are being implemented to ensure that the transition is entirely smooth, such as

- Formulation of a Policy for distribution of its channels in India to clearly articulate to the distribution personnel the Company's position on various issues related to distribution with step by step instructions on ensuring all activities are compliant with the Interconnection Regulation.
- Review of existing contracts and addendums. On finalization of Distribution Policy, the existing contracts and addendums will be modified to comply with the Policy. The 6000+ contracts will then be re-signed in the modified formats to the extent required and subject to negotiations with their associates.

- Several workshops have already been conducted for distribution personnel and distributors across the country to help them understand the provisions of Interconnection Regulation. The inputs received from these workshops will be used to resolve outstanding issues and queries. Company executives are being briefed in detail regarding the process to be followed for executing the commercial arrangements.
- Organizational processes and systems are being defined to streamline all new activities required to be undertaken by the Company to comply with all the provisions of Interconnection Regulation.

3. The Authority had considered the request to extend the transition period for another 60 days and in line with its consultative approach, it decided to seek comments on the proposed extension of the transition period from 90 days to 150 days. A Press Release was accordingly issued on 11th February 2005 seeking comments in the matter till 18th February 2005. The following are the major comments have been received on the issue: -

(a) Jaipur Cable & Broadband Society has stated that increase in transition period will have adverse effect on those cable channel distributors who raised their voice against broadcaster/ MSO monopolies. By giving more time broadcasters/ MSO will have enough time to manipulate things on the ground. It will delay the upcoming competition in the market. It has further said that there is only one MSO in Jaipur and it is capturing cable networks by increasing connectivity amount. Extension of transition period by 60 days would mean that broadcasters would not give decoders to cable operators for 150 days and it will be difficult to sustain 150 days without Pay channels.

(b) Cable Operators Federation of India has objected to the proposal for the following reasons: -

- All the major broadcasters have made alliance with each other for distribution whereby they are distributing channels in bouquets through a joint distribution staff.
- It is not true that they are unable to renew their contracts as per the new terms in 90 days as the broadcasters have a very large distribution department comprising of distribution heads, regional managers, area managers and distribution executives in each major town. Apart from this, there are distribution companies in every major city who deal with LCOs. Thus at a lower level, a distributor may not have to deal with more than 40-50 contracts in 90 days.

- The broadcasters are not taking any interest in revising their contracts with existing operators and they are busy in forcing the cable networks to increase their connectivity by 40-60% by appointing minimum guarantee agents in each area. Additional 60 day period will give opportunity to these minimum guarantee agents and their affiliated MSOs to extract the maximum from the existing cable operators.

4. The additional time period of 30 days being granted by this amendment is considered adequate by the Authority for the reason that in case any complaint of a discriminatory interconnection agreement is received by the Authority, the broadcasters /multi system operators/ their agents/ intermediaries would be given an opportunity of explaining their position and rectifying the same. This would give them an opportunity to make such a contract compliant with the Interconnection Regulation.

5. Although the Authority had earlier approved only 90 days for the transition period it is considered that in view of difficulties experienced by the broadcasters and the steps taken so far a further extension of 30 days can be given. Moreover, this is only a one time provision and will have no long term impact. On the other hand if all preparations are not completed there could be unnecessary litigation.

6. Therefore, after considering the proposal and the objections, the Authority decided to extend the transition period from 90 days to 120 days.