

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. ____ of 2013)

NOTIFICATION

New Delhi the _____, 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, 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), 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.”

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

(Rajeev Agrawal)
Secretary, 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.

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 parliament passing the bill, the Ordinance dated 25th October, 2011, subsequently, on 30th December, 2011, became an Act. 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,

notifications of tariff amendment order, regulations for quality of service and redressal of consumer grievances, the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April 2012, were also 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 three MSOs namely M/s IndusInd Media and Communications Limited (IMCL), Delhi Distribution Co. Ltd. and M/s Digicable Networks India Pvt. Ltd. respectively. 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 (Clause 3(5) of the said regulations), MSOs to have a minimum channel carrying capacity of 500 channels (Clause 3(8) of the said regulations) and prohibition regarding charging of placement fee by the MSOs (Clause 11A of the said regulations).
5. While setting aside the provisions of Clause 3(5) of the Interconnection Regulations applicable for DAS, the Hon'ble TDSAT had observed, inter alia, that the regulation pertaining to demand of carriage fee by the MSO is set aside as the said provision is not there for the DTH operators and MSOs in non-CAS areas. 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, therefore, 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 clause 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 the clause 3(2) of the said interconnection regulations and deletion of the clause 3(5) of interconnection 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 interconnection regulation has been amended through this amendment.

II. Analysis of Issues

8. The following is a summary of main issues, comments of the stakeholders and analysis thereon.

A. "Carriage Fee"

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

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 based upon actual, verifiable subscriber base and once the digitization is completed, no carriage fee must be chargeable at all. Several other broadcasters are in favour of TRAI's proposal to amend clause 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 clause 3(5) should be deleted while the proposed proviso should not be included in the clause 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 for upward revision of carriage fee for a minimum 2 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 operator 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. It has been further

suggested by this operator that the carriage fee payment can be regulated at a rate of Rs 0.50 per active subscriber of DTH/DAS. Another DTH operator has suggested that to maintain transparency, DAS operator should file register of interconnect w.r.t. carriage fee agreements with broadcasters.

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 intension of inclusion of the above said proviso to the regulation 3(2) is to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3(2) and at the same time forced to pay carriage fee for the same channel. Also, inclusion of such a proviso prevents a distributor of TV channels from misusing the regulation 3(2). It is worthwhile to note that same provision 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 clause 3(2) and clause 3(5) shall be deleted.

B. “Channel carrying capacity for MSOs”

17. The issue is that 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 (example cities/town/rural area) 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 to the issue, 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 the 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 to the issue, 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 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 the 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.

21. While two of the 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 (based on no. of STBs installed by the MSO) of the FTA channels permitted by Ministry of Information & Broadcasting. One of the consumer organizations 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. Clause 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 the carriage fee are quite adequately taken care of. In view of this, there appears no real need for prescribing a minimum number of channel carrying capacity. In addition to this, Clause 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, in his discretion, can refuse to grant access to the 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 qualification may be required.

23. Although, for the time being, the Authority has not specified the capacity to carry a minimum number of channels by the MSOs, on the expectation that the market dynamics will itself 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, causing creation of artificial capacity constraint, the Authority will intervene in the matter and, at that time, may decide to specify the capacity to carry a certain minimum number of channels.

C. "Placement Fee"

24. The issue is that whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated.
25. 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.
26. 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.

27. 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.
28. 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.
29. The issue has been analysed. Regulation 11A of the interconnection regulation for DAS prescribes that no MSO shall demand from a broadcaster any placement fee. The rationale of regulation 11A has been explained in paragraph 2 of the Explanatory Memorandum of the amendment interconnection regulation dated 14th May 2012, wherein it has been mentioned that in the 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. This display of channels in the EPG is genre-wise where all the channels of a particular genre are listed under relevant genre. Thus, in DAS, there is hardly any justification for charging of the placement fee. In fact, not only DAS, all Digital Addressable Systems support the feature of EPG. Although in the interconnection regulations for Digital Addressable Systems, other than DAS, there is no specific provision barring charging of the placement fee, but the logic, regarding charging of placement fee, applies equally to all Digital Addressable Systems. The Interconnection Regulation already has a

provision (clause 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.

Written comments on these draft amendments to the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April 2012, as amended from time to time, are invited from the stakeholders by 18th June 2013. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi – 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: traicable@yahoo.co.in, advbcs@trai.gov.in). Comments will be posted on the TRAI's website www.trai.gov.in.