



January 11, 2013.

Shri Wasi Ahmad,
Advisor (B& CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru,
NEW DELHI 110 002.

Dear Sir,

Sub: IMCL's response to TRAI's Consultation Paper dated 20.12.2012 on issues related to amendments to the Interconnection Regulations applicable for DAS.

We enclose herewith our written comments on the Consultation Paper dated 20th December, 2012.

In addition to the enclosed, we wish to bring to your kind attention paras 5 & 6 of the Consultation Paper and subsequent paragraphs wherein the Authority has acknowledged that the Hon'ble TDSAT vide its Judgment dated 19.10.2012 has partially allowed Appeals filed by M/s. IndusInd Media & Communications Limited, M/s. Delhi Distributions Company Limited and M/s. Digicable Networks India Private and set aside three provisions of the said Interconnections regulations viz relating to carriage fees (clause 3 (5) of the said regulations; minimum 500 channel capacity (clause 3(8) and prohibition of charging placement fees by MSO clause 11(a).

Without prejudice to rights & contentions, in view of the favourable TDSAT judgment as summarized above, we wish to bring to your kind attention that a key direction of TDSAT in Para 69 was as under relating to fixation of tariff and retail amounts.

69. "The question is as to whether on that term alone, this Tribunal would refuse to consider the question raised by the Appellants. We are of the opinion that the same could not be. Incidentally the broadcasters, when the table appears to turn in their favour, have raised similar contentions adopting the submission of Mr. Malhotra that as the digitalization at transformation stage, the same should not be obstructed.

We think TRAI should consider the matter at an appropriate stage".



Unfortunately, while the Consultation Paper in effect seeks to undo the positive implications for MSOs with regard to the three items above, it does not even start the consultation process for fixation of broadcast tariff as required under Para 69 of the TDSAT judgment.

We request the Regulator to kindly take early action on this direction on fixation of tariff as this has caused grave distortion of level playing field for independent MSO as has been experienced in DAS Phase I and has also hampered the complete switchover to a digital platform because of wholesale price regime. This will be a severe deterrent to timely launch of phase II DAS. However, in a spirit of full cooperation with the new consultation and notwithstanding any legal remedies available in law, we enclose herewith our formal reply.

Thanking you,

Yours sincerely,

For IndusInd Media & Communications Ltd.,

(Subhashish Mazumdar)
Authorized Signatory

Encl: As above



**Response to Consultation Paper on Issues related to amendments to the
Interconnection Regulations applicable
for Digital Addressable Cable TV Systems & Tariff Order applicable for
Addressable Systems**

Responses to the Issues for Consultation

A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems.

1) **Carriage fee** :

RESPONSE:

The mentioned proviso “*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*” **should not be introduced in Interconnection of DAS regulation either in clause 3(2) or 3(5) because of the following reasons:**

- a) There is already a condition which talks of “*imposition of any other unreasonable term as in clause 3(2)*” which takes care in case of a perverse carriage document.
- b) Most of the top news channels are a part of subscription bouquet of an aggregator, (e.g.NDTV with MediaPro) and are being paid subscription amount, which implies that an MSO has sought the signals of that channel, as he is paying for it. The MSO is paying a minimum guarantee (MG) for that channel, because it is a part of Media Pro bouquet. Since the digital business is done on MG basis, the MSO is paying for the channels, he is not seeking. This does not imply that because he is paying for a channel, he cannot charge carriage. He is charging carriage to compensate him for paying for channels he may not want to carry and also incurring the cost of encrypting the same and is forced to provide more capacity in his network.
- c) Is optional for the broadcaster on a network to network basis based on his business requirements city to city, Region to Region. The rationale followed in



closing carriage deals in based on the broadcasters need to enhance revenues through advertisements as well as subscription. This being purely voluntary doesn't call for regulation.

- d) The must provide clause is relevant in a scenario where many broadcasters have interest in Distribution companies/ MSOs. The tendency to deny/delay content to MSOs who are not related to broadcasters would result in MSO business suffering and also consumers being denied of content. The must provide clause encourages competition and thereby better offering to MSOs and end consumers.
- e) Just like broadcasters have been given the opportunity to lay down their subscription rates and modalities relating to it, the MSOs should have the opportunity to decide where carriage fee is concerned.
- f) While in analogue, several channels couldn't be carried despite being ready to pay carriage fee, in digital scenario, the MSOs have made substantial investment to enable encryption and carriage of many more channels and are offering the opportunity to a large number of channels to be carried. Imperative, it is only justified that a mutually agreed amount be paid to the service provider (MSO) for the facility and opportunity that he is bringing.
- g) This is a purely B2B transaction based on the business model requirement of a channel i.e. " In case a channel wants to collect advertisement revenue , then the channel may be willing to pay carriage, which is like blocking a shelf space, akin to FMCG products, for promoting the product.

*We would like to quote the following in this case from TDSAT:
Without Prejudice to above*

"TDSAT JUDGEMENT IN APPEAL 3 (C) OF 2012 DATED 19.10.2012

Para 29 of Judgment on questions for consideration of TDSAT

Whether MSOs have been discriminated against in so far as demand in carriage under regulation 3(5) and placement fee in terms of regulation 3 (11)(a) are concerned.

- *Restriction placed on placement charges cannot be upheld and is set aside accordingly (Para 49)*
- *It is difficult to comprehend as to if placement fee is an evil for DAS operators why it has not to be found for DTH operators. If so, no reason why not done away for DTH (Para 52)*



- *Not disputed that even in non CAS regime carriage fees has been paid to signal seekers. No justification for not giving broadcasters and MSOs an opportunity to enter into bilateral agreement in the matter of carriage fees as there is no prohibition on DTH operators. (Para 60)”*

2) **Minimum Channel Carrying Capacity of 500 Channels for MSOs**

RESPONSE:

- a) There is no need for any minimum channel carrying capacity requirement of offering optimum number of channels. Competing against other platforms like DTH and other competing MSOs will ensure an optimum offering to consumers. Building capacity beyond market requirement will only increase the cost to the MSO and thereby to the end consumer. Further the requirement will be different for different cities and Regions based on the demographics and market requirements. This is pertinent in many of the DAS Phase II cities and almost all DAS Phase III cities.
- b) Just because the city belongs to TIER I or is a metro, does not mean 500 channels have to be provided or 300 in Tier II and 100 in Tier III. As we are aware, even a city like Chennai, as a metro during CAS time, was comfortable with 60 to 70 channels only, with 10-15 pay channels! Hence , it is best to be left to the decision of concerned MSO of each city , what digital carrying capacity should be considered

In this regard we would like to quote the following from TDSAT:

Without Prejudice to above

“TDSAT JUDGEMENT IN APPEAL 3 (C) OF 2012 DATED 19.10.2012

Para 29 of Judgment on questions for consideration of TDSAT

Whether obligation put on MSOs to create headend having capacity to carry 500 channels is irrational and discriminatory vis-à-vis DTH operators.

- *No reason why metros and rural areas would be treated equally. No restriction has been placed on DTH operator and having regard to fact that Petitioners have to compete with DTH operators, Respondent cannot say on one hand that market shall take care of situation and on the other hand issue mandate to carry out 500 channels (Para 105)”*

3) **Placement Fee**

**RESPONSE:**

There is **no need for regulating a Placement fee** in the Digital Addressable System for cable MSO's because of the following reasons:

- a) Placement fee is a part of the MSOs business plan. The MSO has the pulse of the subscriber and makes the packages according to their taste; e.g.: He may make a lifestyle package that may be subscribed to by all his Sec A subscribers. A Shopping channel will pay the MSO to be in their package, as these are customers, the shopping channel would like to target.
- b) Placement in bouquet/package is a promotional activity that a channel undertakes to enhance its viewership by utilizing the middleware and the marketing tools offered by the MSO. This will keep changing from time to time, season to season and will be based on commercial arrangements between the parties involved.

We would like to quote the following:

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Without Prejudice to above:

Para 29 of Judgment on questions for consideration of TDSAT.

Whether MSOs have been discriminated against in so far as demand in carriage under regulation 3(5) and placement fee in terms of regulation 3 (11)(a) are concerned.

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B) Issues related to amendments to the Tariff Order applicable for Addressable Systems.

RESPONSE:

Twin Condition at retail level:

- a) We feel the no twin conditions is practically feasible to be maintained by MSO, when a Broadcaster is providing a wholesale pricing to MSO.
- b) The concept of any twin condition is possible only when a Broadcaster provides a MRP price, which is maximum retail price for customer and revenue share is regulated.
- c) In the present wholesale scenario, if a MSO has to maintain at least a 35% revenue share, then even with 3 times of RIO ala carte wholesale rate of Broadcaster, the prices may defy market acceptability.
- d) Hence, in absence of customer MRP pricing not available through Broadcasters. No conditions of various complexities for package and ala carte should prevail
- e) We don't agree with the new formula proposed in the consultation, as they will be very complex to implement and manage with Operators and customers. Also , it does not resolve the issues of market driven pricing and a fair and equitable revenue share
- f) We believe that the Tariff should be MRP based from the Broadcaster and in such scenario; some condition may be made to avoid perverse pricing. We request the Authority to hence consider the Retail tariff from the Broadcaster (for customers) with a revenue share plan.

2) Minimum subscription Period :

RESPONSE:

- a. The FTA channels of a FTA bouquet need not be provided as ala carte .Considering there are over 400 FTA channels, the commercial and



technological feasibility of providing all FTA channels as ala carte choice is not practical.

- b. However, the minimum subscription of 3 months should be for any ala carte channel.

C) Offering of Bouquet for HD

RESPONSE:

- a) Subscribers having SD STBS will not have to pay for HD bouquet. While subscribers with HD STBS will have an option of mixed SD &HD bouquet.
- b) We agree that separate bouquet or only A-la-carte should be offered for these types of channels, as different STBs are required for these channels. However, there should be any bar for creating MORE bouquets along with the normal SD channels, for subscribers with HD STBS.
- c) Separate bouquets need to be made available without HD channels; however HD bouquets should have the option of including non HD also.
