

Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

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Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

In exercise of the powers conferred upon it under section 36, and paras (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecommunication 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 makes the following Regulation, namely:

1. Short title, extent and commencement :-

(i) This regulation shall be called "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (13 of 2004) (The Regulation).

(ii) This regulation shall cover arrangements among service providers for interconnection and revenue share, for all Telecommunication (Broadcasting and Cable) Services throughout the territory of India.

(iii) This regulation shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions :-

In this regulation, unless the context otherwise requires:

2(a) "addressable system" means an electronic device or more than one electronic device put in an integrated system through which signals of television channels can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within limits of the authorization made, on the choice and request of such subscriber, by the service provider to the subscriber.

2(aa) "Act" means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);

(b) "agent or intermediary" means any person including an individual, group of persons, public or body corporate, firm or any organization or body authorised by a broadcaster/multi system operator to make available TV channel(s), to a distributor of TV channels;

(c) "authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(d) "authorized officer" has the same meaning as given in the sub-section (a) of the Section 2 of the Cable Television Networks (Regulation) Act, 1995, as amended;

(e) "broadcaster" means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his/her authorised distribution agencies;

(f) "broadcasting services" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(g) "cable operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(h) "cable service" means the transmission by cables of

programmes including re-transmission by cables of any broadcast television signals;

(i) "cable television network" means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;

2(ia) "commercial subscriber" means any subscriber who receives a programming service at a place indicated by him to a service provider and uses signals of such service for the benefit of his clients, customers, members or any other class or group of persons having access to such place;]

(j) "distributor of TV channels" means any person including an individual, group of persons, public or body corporate, firm or any organization or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator;

(k) "direct to home operator" means an operator licensed by the central government to distribute multi channel TV programmes **4**[***] by using a satellite system directly to subscriber's premises without passing through intermediary such as cable operator or any other distributor of TV channels;

5(ka) "direct to home service" means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber's premises without passing through an intermediary such as cable operator or any other distributor of TV channels; (kb) "direct to home subscriber" means a subscriber who receives the signals of a direct to home service;]

(l) "head ends in the sky operator" means any person permitted by the central government to distribute multi channels TV programmes in C band by using a satellite system to the intermediaries like cable operators and not directly to subscribers;

(m) "multi system operator" means any person who receives a broadcasting service from a broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators and includes

his/her authorised distribution agencies.

6 (ma) "ordinary subscriber" means any subscriber who receives a programming service from a service provider and uses the same for his domestic purposes;

(mb) "pay channel" means a channel for which fees is to be paid to the broadcaster by the person receiving the signals from the broadcaster, for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly;

(mc)"programme" means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation, and the expression 'programming service' shall be construed accordingly;

(vi) after sub-clause (n), the following sub-clause shall be inserted namely :- (na)"subscriber" means a person who receives the signals of a service provider at a place indicated to the service provider by him without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded;

(n) "service provider" means the Government as a service provider and includes a licensee as well as any broadcaster, multi system operator, cable operator or distributor of TV channels.

Substituted for the following by the Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006).

Omitted by the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 vide Notification No. 4-54/2007-B and CS dated 03.09.2007.

Inserted by the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 vide Notification No. 4-54/2007-B and CS dated 03.09.2007.

3. General Provisions relating to Non-Discrimination in Interconnect Agreements :-

(1) No broadcaster of TV channels shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts with any distributor of TV channels that

prevents any other distributor of TV channels from obtaining such TV channels for distribution.

(2) Every broadcaster shall provide on request signals of its TV channels on non-discriminatory terms to all distributors of TV channels, which may include, but be not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky operator; Multi system operators shall also on request re-transmit signals received from a broadcaster, on a non-discriminatory basis to cable operators.

Provided that this provision shall not apply in the case of a distributor of TV channels having defaulted in payment.

Provided further that any imposition of terms which are unreasonable shall be deemed to constitute a denial of request

(3) A broadcaster or his/her authorised distribution agency would be free to provide signals of TV channels either directly or through a particular designated agent or any other intermediary. A broadcaster shall not be held to be in violation of clauses 3.1 and 3.2 if it is ensured that the signals are provided through a particular designated agent or any other intermediary and not directly. Similarly a multi system operator shall not be held to be in violation of clause 3.1 and 3.2 if it is ensured that signals are provided through a particular designated agent or any other intermediary and not directly.

Provided that where the signals are provided through an agent or intermediary the broadcaster/multi system operator should ensure that the agent/intermediary acts in a manner that is (a) consistent with the obligations placed under this regulation and (b) not prejudicial to competition.

(4) Any agent or any other intermediary of a broadcaster/multi system operator must respond to the request for providing signals of TV channel(s) in a reasonable time period but not exceeding thirty days of the request. If the request is denied, the applicant shall be free to approach the broadcaster/multi system operator to obtain signals directly for such channel(s).

(5) The volume related scheme to establish price differentials based on number of subscribers shall not amount to discrimination if there is a standard scheme equally applicable to all similarly based distributors of TV channel(s).

Explanation: "Similarly based distributor of TV channels" means distributors of TV channels operating under similar conditions. The analysis of whether distributors of TV channels are similarly based includes consideration of, but is not limited to, such factors as whether distributors of TV channels operate within a geographical region and neighbourhood, have roughly the same number of subscribers, purchase a similar service, use the same distribution technology.")

(6) Any person aggrieved of discrimination shall report to the concerned broadcaster or multi system operator, as the case may be. If the broadcaster or multi system operator does not respond in a satisfactory manner in a reasonable time period, but not exceeding thirty days, the aggrieved party can approach the appropriate forum.

(7) The provisions of clauses 3.1 to 3.6 shall apply to the contracts already entered into, after ¹ [120 days] from the date of this regulation coming into force.

Substituted by Notification No 3-57/2005/BandCS dated 03.03.2005 for the words "90 days".

4. Disconnection of TV channel signals :-

(1) No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving one month notice indicating the brief reasons for the proposed action:

Provided that in case a distributor of TV channel is re-transmitting signals for which he/she is not authorized and thereby affecting the commercial interest of the concerned broadcaster or multi system operator, the notice period shall be two working days giving reasons to the concerned distributor of TV channel for such action.

Explanation :- A distributor of TV channels is said to be authorised if there exists any agreement between the broadcaster, including his/her agents permitting the distribution of the broadcasting service by the said distributor of TV channels, either through a written agreement or through an oral agreement. Consequently no notice would be required if there is no agreement, written or oral, permitting the distribution of the broadcasting service.

(2) Broadcaster/multi system operator shall inform the consumers about the dispute to enable them to protect their interests. Accordingly, the notice to discontinue signal shall also be given in

two local newspapers in case the distributor of TV channels is operating in local area and in two national papers in case the distributor of TV channels is providing services in a wide area. Alternatively consumers can be informed through scroll on the concerned channel(s). Where a Broadcaster or a Multi System Operator decides to give this notice through a scroll the Multi System Operator or the Cable Operator, as the case may be, must carry the scroll in the concerned channel(s).

5. Standard Interconnection Agreements :-

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(1) All broadcasters, multi system operators and cable operators shall mutually negotiate and finalise their interconnection agreements in respect of areas notified by the Central Government under section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) of sub-section (1) vide notification no. S.O. 1231(E) dated 31.7.2006.

(2) In case any of the service providers in the areas as notified by the Central Government vide notification no. S.O. 1231(E) dated 31.7.2006, are not able to arrive at a mutually acceptable interconnection agreement within a time-period to be specified by the Authority through a direction, then they shall enter into interconnection agreements in terms of the standard interconnection agreements as specified in Schedule I (between broadcaster and multi system operator) or in Schedule II (between multi system operator and cable operator) to this Regulation, as the case may be, within a time period to be specified by the Authority for entering into standard interconnection agreements.

Explanation :-For removal of doubts, in respect of areas notified by the Central Government referred to in clauses 5.1 and 5.2 above, it is clarified that if the service providers have already entered into mutually acceptable interconnection agreements by such date as specified in the direction issued by the Authority, then they need not take recourse to standard interconnection agreements specified in Schedules I and II. Further, those service providers, who have a pre-existing interconnection agreement as on the date of issue of this regulation, will also have the option, after the expiry of their existing agreement, to either enter into a mutually acceptable interconnection agreement, or failing which to enter into interconnection agreements as per the standard agreements specified in Schedules I and II, within a period to be specified by

the Authority in the direction.

(3) If the provisions of the standard interconnection agreements in Schedule I and II are in conflict with any Act, rule, regulation, direction or order of the Government, TDSAT or TRAI, as the case may be, then the provisions of such Act, rule, regulation, direction or order shall prevail.

Inserted by the Telecommunication (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation, 2006 (9 of 2006).

6. Prohibition of minimum guarantee clause :-

Where a distributor of TV channels is using a technology by which pay channels can only be seen through an addressable system, then no service provider shall stipulate, insist or provide for any clause in an interconnection agreement with such a distributor which would require such distributor to pay a minimum guaranteed amount as subscription fee for the services provided.

7. Explanatory Memorandum :-

(1) Annex A to this order contains an Explanatory Memorandum for the issue of this regulation.