

TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY,
PART III, SECTION 4

**THE TELECOMMUNICATION (BROADCASTING AND CABLE
SERVICES) INTERCONNECTION (FIFTH AMENDMENT)
REGULATION, 2009**

No. ??? of 2009

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the ??? February, 2009

F. No. ???/ 20??? - B&CS.-- In exercise of the powers conferred by section 36, and by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) 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. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following regulation further to amend the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. In the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, (hereinafter referred to as the principal regulation), in clause 2,-

(i) the existing sub-clause (ia) shall be renumbered as sub-clause (ib);

(ii) after sub-clause (i), the following sub-clause shall be inserted, namely:-

‘(ia) “**carriage fee**” means any fee paid by a broadcaster to any distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned/ operated by the distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters;’

(iii) the existing sub-clause (mc) shall be renumbered as sub-clause (md);

(iv) after sub-clause (mb), the following sub-clause shall be inserted, namely:-

‘(mc) “**placement fee**” means any fee paid by a broadcaster to any distributor of TV channels, for placement of the various channels of the broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned/ operated by the distributor of TV channels;’

3. In regulation 3 of the principal regulation,---

after second proviso to sub-regulation 3.2, the following figures and words shall be inserted, namely :-

‘Provided also that this provision shall not apply in the case of a distributor of TV channels, 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.’

4. In regulation 4 of the principal regulation,---

(a) in the first proviso to sub-regulation 4.1, for the figures and words ‘an agreement, written or oral’, the following shall be substituted, namely:-

‘a written agreement’

(b) in the second proviso to sub-regulation 4.1, for the figures and words ‘agreement, written or oral,’ the following shall be substituted, namely:-

‘written agreement’

5. In the principal regulation, after regulation 4, the following regulation shall be inserted, namely

‘4A. Interconnection Agreements to be in writing

4A.1 It shall be mandatory for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.

4A.2 No broadcaster of pay channels or distributor of TV channels, such as multi system operator or headend in the sky operator, shall make available TV channel signals to any distributor of TV channels without entering into a written interconnection agreement.

4A.3 It shall be the responsibility of the broadcasters of pay channels to hand over a copy of signed interconnection agreement to the distributor of TV channels and obtain an acknowledgement in this regard. Similarly, it shall be the responsibility of the multi system operators to hand over a copy of signed interconnection agreement to the cable operators and obtain an acknowledgement in this regard.’

6. In regulation 13.2A of the principal regulation,---

(a) in the sub-regulation 13.2A.1, for the figures and words

‘following terms and conditions, namely:-

(a) rates of the channels on a-la-carte basis and the rates of bouquets offered by the broadcaster to the direct to home operator;

(b) details of discounts, if any;

(c) payment terms;

(d) security and anti-piracy requirements;

(e) subscriber reports based on subscriber management system and audit;

(f) tenure of agreement;

(g) termination of agreements.’,

the following shall be substituted, namely:-

‘terms and conditions listed in Schedule-III to these regulations.

Provided that no broadcaster shall, directly or indirectly, compel any direct to home operator not to make available its direct to home service to any class of subscribers including commercial subscribers.

Provided further that a broadcaster may have a different Reference Interconnect Offer for supply of signals by the direct to home operators to specified commercial subscribers as listed in item (ii) of sub-clause (f) of clause 2 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 as amended from time to time.’

(b) in the sub-regulation 13.2A.11, for the figures and words ‘the entire bouquet’, the following shall be substituted, namely:-
‘any channels’

7. In the principal regulation, after regulation 13.2A, the following regulation shall be inserted, namely

‘13.2B Reference Interconnect Offers for addressable systems

13.2B.1 Every broadcaster, providing broadcasting services before the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009 (?? of 2009) and continues to provide such services after such commencement shall, within ninety days from the date of such commencement, submit, its Reference Interconnect Offer specifying, *inter-alia*, the technical and commercial terms and conditions including those listed in Schedule III for interconnection with addressable systems, other than the direct to home platforms, to the Authority.

Provided that the provisions of sub-regulations 13.2A.1 to 13.2A.13 shall apply mutatis mutandis to such a Reference Interconnect Offer for interconnection with addressable systems, other than the direct to home platforms.

Provided further that a broadcaster may have different Reference Interconnect Offers for different types of addressable systems.

13.2B.2 Any distributor of TV channels using an addressable system for distribution of TV channels seeking interconnection with a broadcaster in terms of the Reference Interconnect Offer referred to in sub-regulation 13.2B.1 shall ensure that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these regulations.

Provided that in cases where a broadcaster is of the opinion that the addressable system being used for distribution of TV channels does not satisfy the minimum specifications for addressable systems as specified in Schedule IV to these regulations, the distributor of TV channels shall get the addressable system audited by M/s. Broadcast Engineering Consultants India Ltd., or any other agency notified by the Government of India in this regard, and obtain a certificate to the effect that the addressable system being used for distribution of TV channels satisfies the minimum specifications for addressable systems as specified in Schedule IV to these

regulations.

Provided further that the finding of M/s. Broadcast Engineering Consultants India Ltd., or any other agency notified by the Government of India in this regard, as the case may be, about the addressable system being used for distribution of TV channels satisfying the minimum specifications for addressable systems as specified in Schedule IV to these regulations, shall be final.’

8. In the principal regulation, after Schedule II, the following schedules shall be inserted, namely

Schedule III

Terms and conditions which should compulsorily form part of Reference Interconnect Offers for interconnection for the direct to home platform and for other addressable platforms

Licence Fee	<p>For each month or part thereof during the Term, the DTH operator shall pay to _____ (name of the Broadcaster) the Monthly Licence Fee which shall be the Rate multiplied by the Monthly Average Subscriber Level.</p> <p>The a-la-carte and bouquet “Rate” per Subscriber is set out in Annexure. The rates mentioned in the RIO, as referred to above, are exclusive of all taxes and levies.</p> <p>The “Monthly Average Subscriber Level” is equal to the sum of the number of Subscribers on the first and last day of the month in question divided by 2.</p> <p>“Subscriber” means, for any calendar month, each Set Top Box, which is served by the DTH operator.</p> <p>Payment of the License Fee shall be subject to deduction of any withholding tax/ TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended.</p>
Payment Terms	<p>The Monthly Licence Fee shall be paid monthly in arrears within fifteen (15) days of receipt of invoice raised on the basis of report of the DTH operator by _____ (name of the Broadcaster) without any deduction.</p>

	<p>Within 7 days of end of each month, DTH operator shall provide opening, closing and average number of Subscribers for that month, based on which _____ (name of the Broadcaster) shall raise an invoice on DTH operator. In case DTH operator fails to send the report within the said period of 7 days, _____ (name of the Broadcaster) shall have the right to raise a provisional invoice and DTH operator shall be under obligation to pay the license fee on the basis of such provisional invoice in accordance with the terms of this clause. On receipt of the report from DTH operator, the parties would conduct reconciliation between the provisional invoice raised by _____ (name of the Broadcaster) and the report sent by DTH operator.</p> <p>DTH operator shall be required to make payments by the Due Date in accordance with the terms hereof, and any failure to do so on the part of DTH operator shall constitute a material breach hereunder. Late payments shall also attract interest calculated from the date payment was due until the date payment is made in full at a monthly rate of ____%. The imposition and collection of interest on late payments does not constitute a waiver of DTH operator's obligations to pay the License Fee by the Due Date, and _____ (name of the Broadcaster) shall retain all of its other rights and remedies under the Agreement.</p> <p>All Licence Fee payments hereunder are exclusive of all applicable indirect taxes including all and any service taxes, VAT, works contract taxes, customs duties, excise duties, entertainment taxes and other such taxes. All such taxes shall be at DTH operator's cost and will be charged at the prevailing rates by _____ (name of the Broadcaster) to DTH operator.</p> <p>If payment of the Licence Fee is subject to deduction of any withholding tax/TDS in accordance with the provisions of the Indian Income Tax Act 1961, as amended, DTH operator shall provide tax withholding certificates to _____ (name of the Broadcaster) no later than thirty (30) days after the end of the month in which tax withholding/TDS is deducted by DTH operator.</p>
<p>Delivery and Security</p>	<p>All _____ (name of the Broadcaster) Channels must be delivered by DTH operator to subscribers in a securely encrypted manner and without any alteration.</p>

	<p>The uplink specifications, satellite capacity and infrastructure allocated by DTH operator in respect of the broadcast signal of the _____ (name of the Broadcaster) Channels by DTH operator to its subscribers shall be no worse than that of the broadcast signal of any other channel within the same genre on its DTH platform.</p>
<p>Anti-Piracy</p>	<p>In order to prevent theft, piracy, unauthorized retransmissions, redistribution or exhibition, copying or duplication of the of any Channel, in whole or in part, (collectively, “Piracy”), DTH operator shall, prior to the commencement of the Term and at all times during the Term, employ, maintain, and enforce fully effective conditional access delivery and content protection and security systems, and related physical security and operational procedures (collectively, the “Security Systems”) as may be specified (security specifications) in a non discriminatory manner in writing from time to time by the _____ (name of the Broadcaster).</p> <p>To ensure DTH operator’s ongoing compliance with the security requirements set out in the Agreement, _____ (name of the Broadcaster) may require technical audits conducted by an independent security technology auditor, approved by _____ (name of the Broadcaster) in writing (“Technical Auditor”) no more than twice per year during the Term (“Technical Audit(s)”), at _____ (name of the Broadcaster)’s cost and expense. If the results of any Technical Audit are not approved by _____ (name of the Broadcaster), _____ (name of the Broadcaster) shall notify DTH operator and the _____ (name of the Broadcaster) may, in its sole discretion, suspend DTH operator’s right to distribute the Channels or take other actions as provided under the Agreement, until such systems, procedures and security measures have been corrected to _____ (name of the Broadcaster)’s satisfaction. DTH operator shall bear the cost and expense of any Technical Audit if the result of the Technical audit is not in accordance with the terms of the Agreement.</p> <p>DTH operator shall deploy covert and overt finger printing mechanisms to detect any piracy, violation of copyright and unauthorized viewing of the Channels, distributed / transmitted through its Platform at least every 10 minutes on 24 x 7 x 365(6) basis.</p> <p>DTH operator shall not authorize, cause or suffer any portion of any of the Channels to be recorded, duplicated, cablecast, exhibited or otherwise used for any purpose other than for</p>

	<p>distribution by DTH operator at the time the Channels are made available. If DTH operator becomes aware that any unauthorized third party is recording, duplicating, cablecasting, exhibiting or otherwise using any or all of the Channels for any other purpose, DTH operator shall within 10 minutes so notify _____ (name of the Broadcaster) and DTH operator shall switch off the concerned Set Top Box to prevent such unauthorized use. However, use of a Set Top Box with Personal Video Recorder/ Digital Video Recorder facility which has been supplied by the DTH operator shall not be treated as unauthorized use, as long as such Set Top Box is used in accordance with the terms and conditions of the subscription agreement between the DTH operator and the subscriber.</p> <p>If so instructed by Information (as defined below) by _____ (name of the Broadcaster), DTH operator shall shut off or de-authorize the transmission to any unauthorized subscriber/ subscriber indulging in piracy, within 10 minutes after it receives any Information from _____ (name of the Broadcaster). Any communication under this clause shall be considered as valid Information only if (i) the information is sent through e mail in a format as mutually agreed by the parties and (ii) the information is sent by a person(s) who is designated to send such information. However the “information” may even be provided by _____ (name of the Broadcaster) representatives through other means of communications such as telephonic message, fax etc and the said “information” shall later be confirmed by _____ (name of the Broadcaster) through e mail and DTH operator shall be under obligation to act upon such information.</p>
<p>Reports</p>	<p>DTH operator will maintain at its own expense a subscriber management system (“SMS”) which should be fully integrated with the CAS (Conditional Access System).</p> <p>DTH operator shall provide to _____ (name of the Broadcaster) complete and accurate opening and closing subscriber monthly reports for the _____ (name of the Broadcaster) Channels and the tier and/or package containing the _____ (name of the Broadcaster) Channels within seven (7) days from the end of each month in the format provided by _____ (name of the Broadcaster).</p> <p>Such reports shall specify all information required to calculate the Monthly Average Subscriber Level (including but not limited to the number of Subscribers for each _____ (name of the Broadcaster) Channel and each package in which a _____ (name of the Broadcaster) Channel is included) and the Licence Fees payable to _____ (name of the Broadcaster)</p>

	<p>and shall be signed and attested by an officer of DTH operator of a rank not less than Head of Department/Chief Financial Officer who shall certify that all information in the Report is true and correct.</p>
Audit	<p>_____ (name of the Broadcaster)'s representatives shall have the right, not more than twice in a calendar year, to review and / or audit the subscriber management system, conditional access system, other related systems, books and all relevant records of DTH operator relating to the Channels for the purpose of verifying the amounts properly payable to _____ (name of the Broadcaster) under the Agreement, the information contained in Subscriber Reports and full compliance with the terms and conditions of the Agreement. If such review and or audit reveals that additional fees are payable to _____ (name of the Broadcaster), DTH operator shall immediately pay such fees, as increased by the Late Payment Interest Rate. If any fees due for any period exceed the fees reported by DTH operator to be due for such period by two (2) percent or more, DTH operator shall pay all of _____ (name of the Broadcaster)'s costs incurred in connection with such review and / or audit, and take any necessary actions to avoid such errors in the future.</p> <p>DTH operator shall remain the sole owner and holder of all customer databases compiled by DTH operator under the Agreement.</p> <p>DTH operator will maintain at its own expense a subscriber management service ("SMS") capable of, at a minimum:</p> <ul style="list-style-type: none"> (i) maintaining a computerised customer database capable of recording adequate details of each Subscriber, including name, address, chosen method of payment and billing; (ii) administering subscriptions of Subscribers by producing and distributing contracts for new Subscribers and setting up and maintaining an infrastructure whereby Subscriber contracts are collected and recorded in the SMS database for ongoing administration; (iii) handling all ongoing administrative functions in relation to Subscribers, including, without limitation, billing and collection of subscription payments, credit control, sales enquiries and handling of complaints; (iv) administering payments of any commission fees from time to time payable to authorised DTH operator agents for

	<p>the sale to Subscribers of programming packages;</p> <p>(v) obtaining and distributing receivers and smartcards, if applicable, to Subscribers, and issue replacement smartcards from time to time in its discretion; and</p> <p>(vi) enable new Subscribers via the SMS over-the-air addressing system and disable defaulting Subscribers from time to time in its discretion.</p>
Term	<p>AS mutually agreed between _____ (name of the Broadcaster) and DTH operator subject to a minimum of One (1) Year from the date of signing of the Agreement unless terminated earlier in accordance with the Agreement.</p> <p>The Term of the Agreement may be extended on terms and conditions to be mutually agreed and recorded in writing between the parties.</p>
Termination	<p>Either Party has a right to terminate this Agreement by a written notice, subject to applicable Law, to the other in the event of:</p> <ol style="list-style-type: none"> 1. material breach of this Agreement by the other Party which has not been cured within thirty (30) days of being required in writing to do so; 2. the bankruptcy, insolvency or appointment of receiver over the assets of the other Party; 3. The DTH licence or any other material licence necessary for DTH operator to operate its DTH service being revoked at anytime other than due to the fault of DTH operator. <p>_____ (name of the Broadcaster) shall have the right to terminate this Agreement by a written notice to DTH operator if (i) DTH operator breaches any of the Anti Piracy Requirements and fails to cure such breach within ten (10) days of being required in writing to do so; or</p> <p>(ii) _____ (name of the Broadcaster) discontinues the _____ (name of the Broadcaster) Channels with respect to all distributors in the Territory and provides DTH operator with at least ninety (90) days prior written notice.</p> <p>DTH operator shall have the right to terminate this Agreement on written notice to _____ (name of the Broadcaster) if DTH operator discontinues its DTH business and provides at least ninety (90) days prior written notice.</p>

Jurisdiction	The Governing Law shall be the Indian Law and TDSAT, shall have exclusive jurisdiction in respect of any dispute between the parties, arising out of /in connection with or as a result of the Agreement.
--------------	---

Note: The phrase “DTH operator” appearing in the Schedule above shall get replaced by the appropriate nomenclature connoting the addressable platform for which the Reference Interconnect Offer is to be issued by the broadcaster.

(B) BOUQUET RATES

BOUQUET – 1

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	

BOUQUET 2

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	
6.	

BOUQUET 3

Channels	Rate to DTH operator (Rs)
1.	
2.	
3.	
4.	
5.	

Specifications for Set-Top-Boxes (STBs), Conditional Access System (CAS) & Subscribers Management System (SMS) for implementation of Digital Addressable Systems

(A) STB Requirements:

1. All the STBs should have embedded Conditional Access.
2. The STB should be capable of decrypting the Conditional Access inserted by the Headend.
3. The STB should be capable of doing the Overt and Covert Finger printing. The box should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.
4. The box should be individually addressable from the Headend.
5. The box should be able to take the messaging from the Headend.
6. The messaging character length should be minimal 120 characters.
7. There should be provision for the global messaging, group messaging and the individual box messaging.
8. The box should have forced messaging capability.
9. The box must be BIS compliant.
10. There should be a system in place to secure content between decryption & decompression within the STB.
11. The boxes should be addressable over the air to facilitate Over The Air (OTA) software upgrade.

(B) Fingerprinting Requirements:

1. The finger printing should not be removable by pressing any key on the remote.
2. The Finger printing should be on the top most layer of the video.
3. The Finger printing should be such that it can identify the STB or the Viewing Card (VC).
4. The Finger printing should appear on all the screens of the STB, such as Menu, EPG etc.
5. The location of the Finger printing should be changeable from the Headend and should be random on the viewing device.
6. The Finger printing should be able to give the numbers of characters as to identify the unique STB and/ or the VC.
7. The Finger printing should be possible on global as well as on the individual STB basis.
8. The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency.
9. No common interface Customer Premises Equipment (CPE) to be used.
10. The box should have a provision that OSD is never disabled.

(C) CAS & SMS Requirements:

1. The current version of the conditional access system should not have any history of the hacking.
2. The fingerprinting should not get invalidated by use of any device or software.
3. The STB & VC should be paired from head-end to ensure security.
4. The SMS and CA should be integrated for activation and deactivation process from SMS to be simultaneously done through both the systems. Further, the CA system should be independently capable of generating log of all activations and deactivations.
5. The CA company should be known to have capability of upgrading the CA in case of a known incidence of the hacking.
6. The SMS & CAS should be capable of individually addressing subscribers, on a channel by channel and STB by STB basis.
7. The SMS should be computerized and capable to record the vital information and data concerning the subscribers such as:
 - a. Unique Customer Id
 - b. Subscription Contract no
 - c. Name of the subscriber
 - d. Billing Address
 - e. Installation Address
 - f. Landline no
 - g. Mobile No
 - h. Email id
 - i. Service /Package subscribed to
 - j. Unique STB No
 - k. Unique VC No
8. The SMS should be able to undertake the:
 - a. Viewing and printing historical data in terms of the activations, deactivations etc
 - b. Location of each and every set top box/VC unit
 - c. The SMS should be capable of giving the reporting at any desired time about:
 - i. The total no subscribers authorized
 - ii. The total no of subscribers on the network
 - iii. The total no of subscribers subscribing to a particular service at any particular date.
 - iv. The details of channels opted by subscriber on a-la carte basis.
 - v. The package wise details of the channels in the package.
 - vi. The package wise subscriber numbers.
 - vii. The ageing of the subscriber on the particular channel or package
 - viii. The history of all the above mentioned data for the period of the last 2 years

9. The SMS and CAS should be able to handle at least one million concurrent subscribers on the system.
10. Both CA & SMS systems should be of reputed organization and should have been currently in use by other pay television services that have an aggregate of at least one million subscribers in the global pay TV market.
11. The CAS system provider should be able to provide monthly log of the activations on a particular channel or on the particular package.
12. The SMS should be able to generate itemized billing such as content cost, rental of the equipments, taxes etc.
13. The CA & SMS system suppliers should have the technical capability in India to be able to maintain the system on 24x7 basis throughout the year.

(R. N. Choubey)
Principal Advisor (B&CS)

Note.1-----The principal regulations were published vide notification no. 8-26/2004-B&CS dated 10th December, 2004 and subsequently amended vide notifications no.3-57/2005-B&CS dated 3rd March, 2005, no.11-13/2006-B&CS dated 24th August, 2006, no. 6-4/2006-B&CS dated 4th September, 2006 and no. 4-54/2007-B&CS dated 3rd September, 2007.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009.