

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

**TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION**

**THE TELECOMMUNICATION (BROADCASTING AND CABLE)
SERVICES
INTERCONNECTION (ADDRESSABLE SYSTEMS) (FOURTH
AMENDMENT)
REGULATIONS, 2022
(2 of 2022)**

New Delhi, 22/11/2022

F. No. RG-1/2/(2)/2022-B AND CS (2).— In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) 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 Central Government, in the Ministry of Communication and Information Technology (Department of Telecommunications), 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 II, Section 3,—

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (1 of 2017), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations, 2022 (2 of 2022).

(2) They shall come into force from the date of their publication in the Official Gazette.
2. In regulation 7 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (hereinafter referred to as “principal regulations”), for sub-regulation (4), the following sub-regulation shall be substituted, namely:-

“(4) It shall be permissible to a broadcaster to offer discounts, on the maximum retail price of pay channel or bouquet of pay channels, to distributors of television channels, not exceeding fifteen percent of the maximum retail price:

Provided that the sum of distribution fee declared by a broadcaster under sub-regulation (3) and discounts offered under this sub-regulation in no case shall exceed thirty five percent of the maximum retail price of pay channel or bouquet of pay channels, as the case may be:

Provided further that offer of discounts, if any, to distributors of television channels, shall be based on combined subscription of the channel, both in bouquets as well as in a-la-carte, and such discount, if any, shall be offered on proportionate revenue from such channel as a-la-carte and as part of (any) bouquet:

Explanation: Any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or bouquet, based on actual number of subscribers or actual subscription percentage, recorded in a month, shall take into account total subscription of the channel both in a-la-carte as well as bouquet.

Illustrations

- (a) Let us assume a broadcaster is offering a discount, as an incentive, of say 10% on the maximum retail price of a pay channel to the distributor in case actual subscription percentage of that channel reaches say 75%. In case the actual subscription percentage of that channel reaches say 30% on a-la-carte basis and say 45% in bouquets, then the distributor should become eligible to get the above-mentioned discount, as the actual combined subscription percentage of that channel would be 75%.
- (b) Let us assume a broadcaster is offering a discount, as an incentive, of say 10% on the maximum retail price of a pay channel (Channel X) to the distributor in case actual combined subscription percentage of that channel on a-la-carte basis and as part of a bouquet reaches say 75%. Now, say the actual subscription percentage of that channel reaches 30% in a-la-carte and 45% as part of a bouquet, then the distributor should become eligible to get the above-mentioned discount, because the actual combined subscription percentage of that channel would be 75%. In such case, the discount to be offered as an incentive for the combined subscription attained will be calculated in proportion to the channel’s revenue on a-la-carte basis as well as in a bouquet, i.e. on the maximum retail price and the ‘effective price’ of the channel, respectively. Now, say the bouquet has been designed by combining a few channels and offering 40% reduction of sum of a-la-carte price of individual channels forming part of that bouquet. Say, Channel X has an maximum retail price of Rs. 10/-, then in such case the ‘effective price’ of Channel X in the bouquet will be Rs 6/- (i.e. 40% less than the maximum retail price of the television channel). The final amount of incentive for this Channel X will be arrived at as below:

Sum of Proportionate Revenue of the Channel X on a-la-carte basis and as part of bouquet = Maximum retail price x Subscription on a-la-carte basis + Effective Price in bouquet x Subscription of the bouquet

Amount of Discount on Channel X = Sum of Proportionate Revenue of Channel X on a-la-carte and bouquets * Prescribed % Discount

- (c) Let us assume a broadcaster is offering a discount, as an incentive, of say 10% on the maximum retail price of a pay channel to the distributor in case actual combined subscription percentage of that channel reaches say 75%. Now, say the channel is offered on a-la-carte basis and also as a part of two bouquets, and its actual subscription percentage is 10% in a-la-carte, 20% as part of Bouquet A and 45% as part of Bouquet B. In such case, the discount to be offered as an incentive for the combined subscription attained will be calculated in proportion to the channel's revenue on a-la-carte as well as in each of the bouquets. Say Bouquet A and Bouquet B have been designed by combining a few channels and offering 40% and 30% reduction of sum of a-la-carte price of individual channels forming part of that bouquet, respectively. Say, Channel X has an maximum retail price of Rs. 10/-, then in such case the 'effective price' of Channel X in Bouquet A will be Rs 6/- (i.e. 40% less than the maximum retail price of the television channel) and in Bouquet B will be Rs 7/- (i.e. 30% less than the maximum retail price of the television channel). In this case, the final amount of incentive for this Channel X will be arrived at as below:

Sum of Proportionate Revenue of the Channel on a-la-carte basis and as part of bouquets = Maximum retail price x Subscription on a-la-carte basis + Effective Price in Bouquet A x Subscription of Bouquet A + Effective Price in Bouquet B x Subscription of Bouquet B

Amount of Discount of the said Television Channel = Sum of Proportionate Revenue of the said Television Channel on a-la-carte basis and as part of bouquets x Prescribed % Discount.

Provided also that offer of discounts, if any, to distributors of television channels shall be on the basis of fair, transparent and non-discriminatory terms:

Provided also that the parameters of discounts shall be measurable and computable.”

3. In regulation 10 of the principal regulations, for explanation to sub-regulation (12), the following explanation shall be substituted, namely: -

“*Explanation:* For removal of doubt, it is clarified that any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or the bouquet of pay channels, based on actual number of subscribers or actual subscription percentage, recorded in a month shall not amount to guarantee for a minimum subscriber base or a minimum subscription percentage for its channel.”

(V. Raghunandan)
Secretary, TRAI

Note.1---- The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, vide notification No. 21-4/2016-B&CS dated the 3rd March, 2017 (1 of 2017).

Note. 2---- The principal regulations were amended vide notification No. 21-6/2019-B&CS dated the 30th October, 2019 (7 of 2019).

Note. 3---- The principal regulations were further amended vide notification No. 21-5/2019-B&CS dated the 1st January 2020 (1 of 2020).

Note. 4---- The principal regulations were further amended vide notification No. RG-1/2/(3)/2021-B AND CS(2) dated the 11th June 2021 (1 of 2021).

Note. 5---- The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations, 2022 (2 of 2022).

Explanatory Memorandum

1. Keeping in view the implementation of Digital Addressable Systems (DAS) and to enable the sector to realize its benefits, the Telecom Regulatory Authority of India (TRAI), after due consultation process, published a ‘new regulatory framework’ for digital addressable systems on 3rd March 2017. This framework comprises of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 for providing broadcasting services relating to television through the digital addressable systems. The new regulatory framework was notified in March 2017. However, pursuant to legal challenges to the said regulations, the regulations were notified on 3rd July 2018 and came into effect from 29th December 2018 after satisfying legal pronouncements.
2. The framework brought about a paradigm shift to the television distribution value chain. Transparency, non-discrimination and revenue assurance to all stakeholders were the underlying principles of the new framework. The framework enabled consumers like never before, with full control over their subscribed channels.
3. After implementation of the New Regulatory Framework 2017, TRAI carried out a consumer survey in July and August 2019. TRAI noticed some inadequacies impacting the consumers. There were quite a few consumer representations also. As the New Regulatory Framework changed quite a few business rules, many positives emerged. Consumers could exercise their choices like never before. The stakeholders in value chain were assured of their revenue shares. The trust-based audit regime through third party empaneled auditors started functioning. These measures enabled orderly growth in the broadcasting sector. Yet, it was observed that few service providers were exploiting available flexibilities of the framework to their advantages. The Authority took up a consultative exercise to address these issues. After due consultation with stakeholders, TRAI notified the amended Regulatory Framework 2020 by amending the Regulatory Framework 2017, on 1st January 2020.
4. TRAI issued a consultation paper (CP) on issues related to New Regulatory Framework for Broadcasting and Cable services on 7th May 2022. Please refer to this consultation paper and the explanatory memorandum to Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order, 2022 (4 of 2022) for details related to developments that led to above said consultation paper dated 7th May 2022.
5. After taking into consideration the comments received from the stakeholders and in-house analysis, the Authority has finalized the Telecommunication (Broadcasting and

Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations, 2022 (hereinafter referred to as the “Fourth Amendment Regulations”). The subsequent paragraphs explain the objects and reasons of the Fourth Amendment Regulations.

Additional discount offered by broadcasters to DPOs

6. In the consultation paper on ‘Issues related to New Regulatory Framework for Broadcasting and Cable services’ dated 7th May 2022 one of the issues for consultation was as follows:
“Q6. Should there be any discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs? If yes, what should be the amount and terms & conditions for providing such discount? Please provide your comments with justifications.”
7. In response, many stakeholders favored discounts to be provided by broadcasters to the DPOs. A number of these stakeholders opined that the discounts offered by broadcasters/distributors are beneficial to the subscriber, who gets to enjoy greater diversity of content at lower rates. Consumer choice is in favour of bouquets, and hence, there is no reasonable justification for preventing discounts being offered on bouquets. Further there should not be any cap on the discount that broadcasters can offer to DPOs on the MRP of *a-la-carte* and bouquets. Such discounts are important market tools to incentivise a DPO’s performance. The stakeholders opined that the time is ripe to implement a forbearance model on discounting and commission. The NTO 1 contains sufficient safeguards to ensure that discounts and commission are offered on non-discriminatory basis and as such, no additional stipulations are required. Another argument put forth in favour of discount was that there may be a requirement to offer different discounts in different target markets or for new product launches. Hence, when such discounts are offered on measurable parameters, on a parity basis without discrimination, such discounts/incentives should be freely allowed as per the business requirements.
8. One stakeholder opined that small broadcasters should be permitted to offer further discounts to DPOs as per their business strategy to incentivize / reward efficient DPOs for reaching out to different target markets and expanding the broadcaster’s subscriber base. Another stakeholder opined that existing practice of allowing discount of up to 15% in addition to mandatory minimum distribution fee of 20% should be continued and as the ultimate beneficiaries of discounts are consumers, TRAI should also allow discount on bouquets, since the same are evidently more preferable to consumers.
9. One stakeholder opined that broadcasters should be allowed to provide discount of 35% (distribution fee + incentive) on MRP offered by broadcasters to DPOs. Another stakeholder opined that the provision of the additional 15% may be continued without

any riders which are discretionary to the broadcasters and total discount to be offered by a broadcaster to a DPO should be made fixed at 35%. One stakeholder opined that 15% Slab of discount should be removed and broadcasters should be given a free hand to offer the discounts on a-la-carte channels but the discounts offered should be non-discriminatory to all the DPOs and subscribers whether a-la-carte or bouquet.

10. On the other hand, another group of stakeholders were not in favour of discounts. Many stakeholders opined that the distribution fee on both a-la-carte as well as bouquet offerings by the broadcasters should be made flat at 35% of MRP, to curb anti-regulatory activities by the broadcasters. This will ensure that the DPOs are not arm twisted to meet unreasonable penetration targets set by the Broadcaster. Further on parity, a maximum discount 33% should also be made available to both the broadcasters as well as DPOs, on their bouquet offerings. Another suggestion received was that it should also be made mandatory that all the broadcasters who sign interconnect agreement with DPOs should also mandatorily sign the carriage RIO of DPO.
11. Some stakeholders opined that today's proportion of 20% fixed and 15% variable margin is too lopsided and discretionary and is the root cause of negotiations, disputes and litigation in a very straightforward content owner/content distributor relationship. The incentive needs to be of a fixed nature @ 35%, a fair share for the partner who invests in bandwidth and last mile infrastructure. In the event any low single digit percentage variable quantum of incentive is proposed over and above 35%, the broadcasters should not be allowed to use 'reach' as a criterion for awarding the incentive. Alternate proposed heads for allowing small quantum of incentive could be: a) Timely submission of subscriber report to the Broadcasters, b) Timely payments, c) Compliance with the mandatory auditory submissions, etc. One suggestion received during the consultation process was that the discount of 15% on the MRP of the channel should be given to the DPOs on compliance of certain terms of the interconnect regulations rather than linking the same to the penetration of the channels. A few MSOs opined that the distribution fee on both a-la-carte as well as bouquet offerings by the broadcasters should be made flat at 35% of MRP, to curb such anti-regulatory activities by the broadcasters. Alternatively, the broadcasters may be permitted to offer discounts on provisions like submission of MSR reports on or before due date, compliance with mandatory audit or any such parameters which are in conformity with the essence of the New Regulatory Framework. One stakeholder opined that there should not be any additional discount offered, however, if at all any discount is to be offered, trusting that the same shall be passed on by DPO to the end consumer, then the quantum of such discount shall be decided by the broadcaster considering prevailing market conditions.
12. An association opined that the total of distribution fee should be mandated to 35% with 25% being shared with LCOs and 10% being retained by MSOs. This is on the

condition that NCF limits will be remain as specified at 130 and 160 for <200channels/>200 channels.

13. One stakeholder opined that there is no need for TRAI to get into the regulation of relationship among intermediary, but only to facilitator. It should be best left among them with TRAI only be a facilitator. TRAI must focus on last mile pricing regulation i.e., between broadcaster/service providers and end customer. Another stakeholder opined that whether there should be a discount on MRP of bouquet and a-la-carte channels needs to be a business decision taken by broadcasters and DPOs and not a regulation to be imposed by TRAI. Another stakeholder also suggested that prescribing caps on discounts may be left to market forces.

Analysis

14. As per sub-regulation 4 of regulation 7 of Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 dated 3rd March 2017 (hereinafter called “Interconnection Regulation 2017”), a broadcaster is permitted to offer discount of maximum of 15% on the MRP of pay channel or bouquet of pay channels to DPOs in addition to distribution fee. The sub-regulation 4 of regulation 7 is reproduced below:

“(4) It shall be permissible to a broadcaster to offer discounts, on the maximum retail price of pay channel or bouquet of pay channels, to distributors of television channels, not exceeding fifteen percent of the maximum retail price:

Provided that the sum of distribution fee declared by a broadcaster under sub-regulation (3) and discounts offered under this sub-regulation in no case shall exceed thirty five percent of the maximum retail price of pay channel or bouquet of pay channels, as the case may be:

Provided further that offer of discounts, if any, to distributors of television channels, shall be on the basis of fair, transparent and non-discriminatory terms:

Provided also that the parameters of discounts shall be measurable and computable.”

15. In this regard, sub-regulation 12 of regulation 10 of Interconnection Regulation 2017, is also reproduced below, prohibits a broadcaster to incorporate any provision requiring DPOs give a guarantee for a minimum subscriber base or a minimum subscription percentage for its channels:

“(12) A broadcaster shall not incorporate any provision, directly or indirectly in its interconnection agreement with a distributor of television channels which requires such distributor of television channels to give a guarantee for a minimum subscriber

base or a minimum subscription percentage for the channels offered by the broadcaster and any agreement to contrary shall be void.

Explanation: For removal of doubt, it is clarified that any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or the bouquet of pay channels, based on actual number of subscribers or actual subscription percentage, recorded in a month shall not amount to guarantee for a minimum subscriber base or a minimum subscription percentage for its channel.”

16. During implementation of New Regulatory Framework 2017, the Authority observed that some broadcasters were offering discount of 15% as an incentive only on subscription of certain minimum subscription of bouquets of pay channels to DPOs. The Authority also noted that offer of penetration-based incentives on the bouquets, by the broadcasters to the DPOs, may lead to pushing of bouquets by DPOs to consumers, in order to avail penetration-based incentives. This approach was defeating one of the main objectives of the new regulatory framework of promoting the consumer choice either to accept bouquet or a-la-carte channels as per his/her choice.
17. Accordingly, the sub-regulation 4 of regulation 7 was amended for offering discount of 15% by broadcasters to DPOs only on MRP of a-la-carte pay channels. According sub-regulation 12 of regulation 10 of Interconnection Regulation 2017 was also amended.
18. As mentioned in the CP on issues related to New Regulatory Framework for Broadcasting and Cable services dated 7th May 2022, during discussions representatives of DPOs suggested that broadcasters should be allowed to offer additional fifteen (15 %) percent discount to DPOs on bouquets of pay channels as well, as has been permitted for a-la-carte channels.
19. Incentives motivate individuals to work more efficiently. Israeli economist Victor Lavy evaluated two carefully designed programs in Israel and found significant gains in student-teacher performance. He¹ concludes that, “pay-for-performance incentives can improve teachers’ performance”. Author Michael Armstrong² suggests transparent rewarding decisions that visibly show how rewarding processes operate effect on individual’s performance. Official pay policies and principles which are visible for all of the employees will increase the feeling that rewarding is fair and thus increase employee satisfaction. Regis Terpend & Daniel R. Krause³ in their paper inter-alia talk about competitive, market-based incentives that reward suppliers based

¹ *Using Performance-Based Pay to Improve the Quality of Teachers, Victor Lavy, The Future of Children Vol. 17, No. 1, Excellence in the Classroom (Spring, 2007), pp. 87-109 (23 pages), Published By: Princeton University*

² *Strategic Human Resource Management: A Guide to Action, 2008*

³ *Regis Terpend & Daniel R. Krause, 2015. "Competition or Cooperation? Promoting Supplier Performance with Incentives Under Varying Conditions of Dependence," Journal of Supply Chain Management, Institute for Supply Management, vol. 51(4), pages 29-53, October.*

on how well they perform relative to other suppliers. In their paper, they inter-alia mention that competitive incentives can be an effective approach to improving delivery, quality, innovation and flexibility, for purchases where the buyer–supplier relationship is characterized by balanced and moderate amounts of mutual dependence.

20. Para 77 of the Explanatory Memorandum of the Interconnection Regulation 2017 explains that in a business, the discounts on MRP of a product/service provide flexibility to the suppliers to increase its sales by improving efficiency in the value chain. On the other hand very high level of discounts may become a source for discrimination and source of exploiting consumers. It was observed in the past that many times service providers, in their RIOs, declare very high rates for their products or services and then they offer deep discounts on such rates. Unreasonable amounts of discounts lead to illusionary/perverse pricing and non-level playing field. The Authority felt it necessary to put a reasonable cap on discounts as absence of such prescription would hamper the commercial interests of various stakeholders and would be detrimental to choice of the subscribers. Therefore, there is a need to regulate such discounts so as to provide the same on transparent, measurable and non-discriminatory terms. Further, the Authority has agreed with the views of some broadcasters that maximum amount of discounts on prices declared in the RIO should be capped. This will help in declaring the optimum price for their services i.e. the price at which their gross revenues are maximised. This will also reduce the possibility of discrimination between the similarly placed service providers. The cap on discounts suggested by various stakeholders during the consultation process in 2017 varied from 33% to 50%. Therefore, the Authority was of the view that the sum of distribution fee and discounts offered to DPO shall be restricted to 35% of the MRP. Further, in the regulations, it has provided that any such discounts must be offered in the RIO on the basis of fair, transparent and non-discriminatory terms and the parameters of discounts shall be measurable and computable.
21. In the present consultation process, the Authority has received diverse comments. Details of the same may be seen in the pre-paras. The Authority is of the view that the discounts on MRP of a product/service assist in improving efficiency in the value chain. However, very high level of discounts may become a source for discrimination and source of exploiting consumers. Unreasonable amounts of discounts lead to illusionary/perverse pricing and non-level playing field. Therefore, the Authority is of the view that the broadcasters may be permitted to offer discount, however, there should be a cap on these discounts. Further, the Authority is of the view that any such discounts must be offered in the RIO on the basis of fair, transparent and non-discriminatory terms and the parameters of discounts shall be measurable and computable. One of the suggestions received during the consultation process was that whether there should be a discount on MRP of bouquet and a-la-carte channels needs to be a business decision taken by broadcasters and DPOs and not a regulation to be

imposed by TRAI. In this regard, it may be noted that the Authority is enjoined by the Statute to protect the interests of service providers and consumers while ensuring orderly growth. It is imperative to restrain practices that compromise effective competition and choice of customers. Therefore, there is a need to regulate such discounts so as to ensure that they are reasonable and are provided on transparent, measurable and non-discriminatory terms.

22. One of the main objectives of the new regulatory framework is to ensure that consumers get the most value for what they pay. In order to remove discriminatory approach for promoting subscription of either a-la-carte channels or bouquet and provide due opportunities to the end consumers to subscribe channels of their choices whether in bouquet or on a-la-carte basis, the Authority is of the view that broadcasters may be permitted to offer discounts to the DPOs both on a-la-carte channels as well as bouquets. It is expected that benefits of these discounts are passed on to the consumers in the form greater diversity of content at lower rates. Further, the Authority has mandated in this regulation that any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or bouquet, based on actual number of subscribers or actual subscription percentage, recorded in a month, shall take into account total subscription of the channel both in a-la-carte as well as bouquet. i.e. any discount based on actual number of subscribers or actual subscription percentage, recorded in a month, shall be based on total subscription of the channel both in a-la-carte as well as bouquet. In case a channel is offered in a bouquet by a distributor in addition to being offered in a-la-carte, then any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel, based on actual number of subscribers or actual subscription percentage, recorded in a month, shall take into account total subscription of the channel both in a-la-carte as well as bouquet.
23. A question may arise as to how the discount, as an incentive will be calculated for one or more television channels out of a bouquet, if as a whole the bouquet does not attain the threshold subscription levels. In such cases, the respective price of a television channel that has attained the subscription threshold (jointly by counting subscription attained on a-la-carte basis as-well-as part of any bouquet) may be arrived at by calculating net price of a television channel in respective bouquet.
24. The Authority will continue to keep close watch on the discounts being offered by the broadcasters, its impact on the market, and may take further suitable measures, if the situation warrants.
25. Appropriate modifications have been carried out in the relevant provision(s).
26. The Consultation Paper on issues related to New Regulatory Framework for Broadcasting and Cable services dated 7th May 2022, the Stakeholders' Committee

also lists other issues for subsequent consideration by TRAI which include allowing additional fifteen (15%) percent incentive to DPOs for bouquets as well, as has been provided for a-la-carte channel. Similarly, during the consultation process, TRAI received suggestions on other issues related to Interconnection Regulation 2017 (as amended), for consideration of TRAI which include removal of carriage fee capping, removal of discontinuation threshold, etc. TRAI has noted the suggestions and may take further suitable measures, if the situation warrants.
