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**THE DIRECT TO HOME BROADCASTING SERVICES
(STANDARDS OF QUALITY OF SERVICE AND REDRESSAL OF
GRIEVANCES) (AMENDMENT) REGULATIONS, 2009**

No. 3 of 2009

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 12th March, 2009

F. No. 16-2/ 2009 - B&CS.----- In exercise of the powers conferred by section 36, read with sub-clauses (i) 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. 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 regulations to amend the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007 (8 of 2007), namely:-

1. (1) These regulations may be called the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) (Amendment) Regulations, 2009.

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

2. In the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007, -----

(a) after regulation 4, the following regulation shall be inserted, namely:-

“4A. Obligation of Direct to home operator to provide repair and maintenance of Direct to Home Customer Premises Equipment. -----

(1) Every direct to home operator shall provide a warranty in respect of Direct to Home Customer Premises Equipment which has been acquired by a direct to home subscriber on outright purchase basis from such direct to home operator.

(2) The direct to home subscribers who have acquired the Direct to Home Customer Premises Equipment on outright purchase basis shall not be required to pay any sum as charges -----

(a) for repair and maintenance of the Direct to Home Customer Premises Equipment; or

(b) for visiting the premises of such direct to home subscriber for the purpose of carrying out repair and maintenance of Direct to Home Customer Premises Equipment -----

during the period of validity of such warranty.”

(b) after regulation 9, the following regulations shall be inserted, namely:-

“9A. No change in composition of a subscription package during first six months of enrolment or during the period of validity of subscription paid in advance. -----

(1) No direct to home operator shall change the composition of a subscription package which has been subscribed to by a direct to home subscriber, so as to discontinue exhibition of any particular channel in that subscription package, -----

(a) during the period of six months from the date of enrolment of the subscriber to such subscription package in the case of a subscriber who pays his subscription amounts under such subscription package by recharging or by making payments periodically to the direct to home operator; or

(b) during the entire period of validity of the subscription package if the subscription amount in respect of such subscription package has been paid in advance by the direct to home subscriber or in instalments as per offer of

the direct to home operator, -----

if such channel continues to be available on its direct to home service on its platform:

(2) If any particular channel included in a subscription package which has been subscribed to by a direct to home subscriber subsequently becomes unavailable on the direct to home service of the direct to home operator on its platform, the direct to home operator shall reduce the subscription charges for such subscription package on a proportionate basis from the date of discontinuance of the channel from the direct to home service of the direct to home operator till the expiry of a period of six months from the date of enrolment of that subscriber, or till the expiry of the contracted period of subscription for which the amount of subscription has been paid in advance or in instalments as per offer of the direct to home operator, whichever is later.

Provided that, instead of proportionately reducing the subscription charges for such subscription package on account of non-availability of such channel, the direct to home operator may, at its discretion, introduce in such subscription package another channel of the same genre and language as the channel which has so become unavailable on the direct to home service of the direct to home operator.

Provided further that the direct to home operator shall give an option to each one of its direct to home subscribers, who have subscribed to such subscription package, an option to choose from the modified subscription package with charges reduced on proportionate basis and the modified subscription package with the removed channel replaced by another channel of the same genre and language, and the direct to home subscriber shall be free to exercise the option for the period from the date of discontinuance of the channel from the direct to home service of the direct to home operator till the expiry of a period of six months from the date of enrolment of that subscriber, or till the expiry of the contracted period of subscription for which the amount of subscription has been paid in advance or in instalments as per offer of the direct to home operator, whichever is later.

Explanation: For the removal of doubts, it is hereby declared that the amount of reduction on proportionate basis in the subscription charges, on account of removal of a channel from a subscription package, shall be calculated by dividing the amount of subscription charges for the original subscription package by the number of channels included in the original

package.

9B. Notice before change in composition of a subscription package. -----

Every direct to home operator shall give prior notice of fifteen days to its direct to home subscribers subscribing to any subscription package before changing the composition of that subscription package.”;

(c) in regulation 10, the following provisos shall be inserted, namely:-

“Provided that a direct to home operator may not discontinue the direct to home service to a direct to home subscriber at the request of such direct to home subscriber, if such request for suspension of subscription is for a period which comprises part of a calendar month.

Provided further that every direct to home operator shall suspend the direct to home service to a direct to home subscriber at the request of such direct to home subscriber, if such request for suspension of subscription is for a period of a calendar month or multiple of calendar months and the requested period of suspension does not exceed three calendar months.”.

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

Note.1-----The principal regulations were published vide notification F. No. 4-55/2007 - B&CS dated 31st August, 2007.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) (Amendment) Regulations, 2009.

EXPLANATORY MEMORANDUM

Background

1. The Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007, were issued on 31st August, 2007. These regulations were issued to lay down the standards of quality of direct to home services and to protect the interests of direct to home subscribers. At the time of issue of these regulations, only two direct to home operators apart from Doordarshan were providing direct to home services in the country. Since then, three new direct to home operators have started commercial operations and the number of direct to home subscribers has also risen to about 11 million. With the evolution of the direct to home segment and the increase in the number of direct to home subscribers, new issues relating to quality of direct to home service have arisen. In order to address these issues the Authority has decided to amend the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

Consultation Process

2. Sub-clause (v) of clause (b) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act, 1997), provides for the Authority to “lay down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication services”. Sub-section (4) of Section 11 of the TRAI Act, 1997 requires the Authority to ensure transparency while exercising its powers and discharging its functions. Accordingly, the Authority decided to go in for a consultation process before amending the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

3. The process of consultation was initiated by circulating a consultation paper on the Quality of Service issues for Cable TV Services in Non-CAS Areas and for DTH Services on 1st December, 2008 inviting inputs from the stakeholders. Responses were received from 26 stakeholders/ representatives. An open house discussion was also held

on the 6th February, 2009 in Kolkata with representatives of stakeholders to further deliberate on various issues raised in the consultation paper.

Issues for Consultation

4. The issues which were raised for consultation in the consultation paper are as under:-

- i) Whether the DTH operators should be specifically prohibited from dropping of channels from a subscription package for a subscriber for six months from the date of enrolment of that subscriber, if the channel continues to be available on their platform.
- ii) Within this period of six months, in case the channel ceases to be available on a particular DTH platform, then whether it would be appropriate to have a mechanism of reducing the subscription charges by an amount equal to the wholesale a-la-carte rate of that channel. *Alternatively*, can you suggest any other methodology for such compensation to the subscriber? Should such compensation be paid/adjusted even when one channel in a package is dropped, and it is replaced/substituted by another channel so that the total number of channels in that package is not affected?
- iii) Whether the subscribers should also be required to subscribe to any channel/package for a certain minimum subscription period as in CAS areas. If yes, what should be such minimum subscription period?
- iv) Whether there is any justification for visiting charges for “no signal” complaint by the subscribers? If yes, should there be a ceiling on such visiting charges for complaints of “no signal”?
- v) Similarly, should any ceiling be placed in respect of visiting charges for repair and maintenance of CPE for DTH services? Alternatively, should DTH operators be required to offer Annual Maintenance Contracts (AMCs) to their subscribers?
- vi) Can you suggest some form of AMCs for DTH Service covering all aspects such as repair & maintenance charges for CPE, visiting charges, attending “no signal” complaints, etc.?
- vii) Whether the service providers should be required to make available toll-free numbers for recharge calls for prepaid accounts?
- viii) Whether the request for suspension of service for full calendar months only should be entertained?

ix) Whether tariff plan or subscription package changes requested by the DTH subscriber should be accepted and implemented immediately or from the start of next billing cycle for DTH subscriber.

x) Whether advance notice of minimum 30 days should be given by DTH operators to a DTH subscriber before terminating his existing tariff plan provided that no tariff plan can be terminated within the contracted period, if any, for that package or within six months of enrolment of that subscriber to that package.

Analysis of the responses received during the consultation process

Dropping of channels from a package

5. The DTH operators have suggested that the freedom of adding/ dropping the channels should be with the DTH operator. On the other hand the consumers have demanded that protection should be available not only for six months, but for the entire contract period of subscription package, if such period exceeds six months, so long as advance payment has been made by the subscriber. The DTH operators have expressed a view that there need not be any reduction in subscription charges in case of any channel being withdrawn from a subscription package. However, the consumers have taken a stand that in case of any channel being withdrawn from a subscription package, the subscribers should be compensated by way of reduction in subscription fee. Further, some consumers have demanded that in case a channel is substituted by another channel, the choice of subscribing to the new channel or to get a reduction in subscription fee should be with the subscriber.

Minimum Subscription Period

6. The Broadcasters and the DTH operators have favoured imposition of a minimum subscription period for any channel/ package similar to the 4 month period prescribed in quality of service norms for CAS. However, the consumers are divided on the issue and while some of the consumers agree with the concept of minimum subscription period, others have opposed it.

Maintenance of Customer Premises Equipment

7. The issue of visiting charges payable by the DTH subscribers for visits made by personnel of DTH operators for repair and maintenance of CPE also divided the

consumers. While some consumers opposed visiting charges or wanted a ceiling on the visiting charges, others did not agree with them. It was pointed out by an individual that "...warranty does NOT include transporting charges for individuals and hardware. Therefore for customers of all categories, itemized bills must be issued detailing the breakdown of payments sought. ...". The DTH operators did not favour any kind of regulation of visiting charges.

8. Almost all the stakeholders were of the view that the DTH operators should offer Annual Maintenance Contracts for maintenance of CPE to their subscribers. Different suggestions were also received regarding the form of Annual Maintenance Contracts. One DTH operator has suggested that all DTH operators must have their own Annual Maintenance Contracts.

Toll Free number for recharge calls

9. The proposal has been opposed by the DTH operators and the consumers have unanimously favoured the proposal. Only one DTH operator has suggested that all DTH operators should make provision for toll-free numbers for calls made for recharging their prepaid accounts.

Suspension of service or change of plan on request of Subscribers

10. All the DTH operators have suggested that the request for suspension of service for full calendar months only should be entertained. It has been pointed out by the DTH operators that the broadcasters are paid on the basis of calendar months and accordingly, any suspension of service for part of the month results in financial burden on the DTH operator. It was also suggested by an operator that "...either it should be done from the calendar month or the operator should be allowed to charge a service fees for extending this service...". The consumers were divided on the issue.

11. As regards timeframe for carrying out changes in tariff plan or subscription package on the request of a DTH subscriber, the DTH operators wanted to be permitted to levy administrative/ additional charges for such changes. Further, it was pointed out by some DTH operators that any upgradation is possible with immediate effect, but downgradation of a package can be done from next billing cycle only as the broadcasters have to be paid for supply of content. The consumers were divided on this issue. Some of the consumers suggested that the DTH subscribers should be billed on pro rata basis but there should not be any administrative charge.

Notice period for termination of a tariff plan

12. Most of the consumers wanted a notice of minimum 30 days to be given by DTH operators to a DTH subscriber before terminating his existing tariff plan. Some of the consumers wanted a 60 days notice, while others suggested that the DTH subscriber may be warned about such a change 15 days in advance of exhaustion of credit limit. The DTH operators opposed any such notice.

Rationale for making amendment to the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007

13. The Authority noted that a large number of complaints have been received from the Direct to Home subscribers regarding dropping of channels from subscription packages offered by DTH operators. In case of subscription to DTH services, a subscriber subscribes to the service on the basis of specific channels included in the subscription package. If any channel is taken out of a subscription package and it is replaced by another channel then the DTH subscriber may be getting the same number of channels as earlier, but will be deprived of viewing the particular channel which has been removed. In case the channel which is removed is offered to the subscriber as an add-on package then the subscriber ends up paying more for viewing that channel which was earlier included in his subscription package. This subverts the tariff protection provided to DTH subscribers by Regulation 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007.

14. Further, the Authority has also noted that the DTH operators are offering annual or fixed period subscription contracts also to DTH subscribers. To protect the interests of the DTH subscribers who have entered into annual or fixed period subscription contracts with the DTH operators, it is necessary to ensure that the channels offered to the subscriber at the time of entering into the subscription contract are not removed from the package during the validity of subscription contract.

15. However, on the other hand it must be recognized that the DTH operators have to tailor their packages according to the changing demands of their subscribers. Accordingly it was not considered advisable to completely prohibit the DTH operators from making changes to their subscription packages. To balance the interest of service

providers and subscribers, the DTH operators have been prohibited from changing the composition of any subscription package for a minimum period of six months from the date of enrolment of the subscriber for such subscription package, if the channel continuous to be available on their DTH service platform from the broadcaster in any other subscription package. In cases where the existing subscription contract between DTH subscriber and the DTH operator is for a period longer than six months, such prohibition would apply for the complete term of the subscription contract.

16. In case any channel has to be removed from a subscription package by the DTH service provider during the contracted period of the subscription or six months whichever is later due to the channel no longer being available on the DTH service platform in any other package, then the DTH operator would be required to compensate the DTH subscriber by way of proportionate reduction in the subscription charges for a minimum period of six months from the date of enrolment of the subscriber for such subscription package or for the remaining period of subscription contract whichever is more. However, the DTH operator may replace such a channel by another channel of the same genre and language in the subscription package without reducing the subscription charges. This will enable the DTH operators to include more popular content in their offerings and package the content to suit the needs of their subscribers. However, the option to choose the modified subscription package with reduced charges or the modified subscription package with the replaced channel shall remain with direct to home subscriber. Further, it has been mandated that the DTH operators should give prior notice of fifteen days before changing the composition of any package to all the subscribers who have subscribed to that package.

17. Presently there is no restriction on the direct to home operators about offering any channels/ packages on quarterly/ annual/ any other basis. The direct to home operators have been designing their packages as per the demand of customers and terms and conditions of their interconnection agreements with the broadcasters. Accordingly, the Authority is of the view that currently there is no need to bring in any regulation requiring the direct to home subscribers to subscribe to any channel/ package for a certain minimum subscription period as in CAS areas.

18. The direct to home operators have also been mandated to offer Warranty for CPE acquired by their subscribers on outright purchase basis from them. Although offering of AMC by DTH operators is not being mandated, it is expected that some competition among the direct to home operators would ensure that the repair and maintenance services are available to the DTH subscribers. Even presently, some of the DTH operators are already offering AMCs for DTH CPE.

19. Presently, some of the direct to home operators are not charging any visiting charges for repair and maintenance of CPE while some are charging. The Authority is of the view that market forces will take care of this issue. The DTH operators have to compete with cable networks and no such charges are levied by cable operators. Further, there are five pay DTH operators in the country and therefore there is some level of competition among DTH operators also. Hence it was not found necessary to prohibit, by way of regulation, the direct to home operators from charging any visiting charges after the warranty period is over, as it was felt that competition and market forces will work on this issue to ensure that the interests of direct to home subscribers are protected.

20. The Authority has decided against mandating the direct to home operators to make available toll-free numbers for recharge calls for prepaid accounts. The main reason for this decision is that ultimately the cost of operational expenses of providing direct to home service gets passed on to the direct to home subscribers. Any additional expenditure by direct to home operators in making available toll-free numbers for recharge calls for prepaid accounts will result in increase in the subscription charges in the long run negating the benefits from the toll free number. However, it is expected that the telephone number provided for recharge calls for prepaid accounts should not have premium charges.

21. The direct to home operators have to pay the broadcasters on the basis of number of viewers for the entire calendar month. Any suspension of service for part of the month puts a direct to home operator at a loss because even though the direct to home subscriber is not required to make payment for the period of suspension, the broadcasters have to be paid for the entire calendar month. Accordingly, the direct to home operators have been permitted not to entertain, at their discretion, any request for suspension of service for part of calendar months. However, it has also been mandated that the DTH

operators should entertain requests for suspension of service for a period which does not comprise part of a month and which does not exceed three calendar months.

22. The issue of change of tariff plan or subscription package on the request of a direct to home subscriber is also linked with the payments that a direct to home operator is required to make to the broadcasters. Accordingly, any downgradation of subscription package entails discontinuance of supply of certain channels to the direct to home subscriber. However, the broadcasters whose channels have been discontinued have to be paid for the entire month/ billing cycle. Therefore, such a downgradation is normally done from the next billing cycle. The Authority has noted that the upgradations are done by the direct to home operators immediately. Therefore, no regulation is being brought in regarding this aspect.

23. The issue of advance notice to a direct to home subscriber before terminating his existing tariff plan by the direct to home operator is to be seen in the context of tariff protection being made available to the direct to home subscriber. The present amendment regulations have extended the protection available to the direct to home subscriber regarding composition of a subscription package for six months from the date of enrolment or contracted period, whichever is longer. However, an advance notice will enable the direct to home subscribers to make an informed choice out of new subscription packages available once the existing package is discontinued after the period of tariff protection (six months from the date of enrolment or contracted period, as the case may be) has expired. Accordingly, a prior notice of fifteen days has been mandated for change in composition of a subscription package.