



## MSM Discovery

(An ISO 9001:2008 Certified Company)

June 26<sup>th</sup>, 2013

To,

Advisor (B&CS)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi – 110 002

Dear Sir,

**Re: MSM Discovery Pvt. Ltd. (“MSMD”), Multi Screen Media Private Ltd. (“MSMI”) and Discovery Communications India (“DCI”) response / submissions to Draft Amendments to “The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations; 2013 AND “The Telecommunication (Broadcasting and Cable Services) Fourth (Addressable Systems) Tariff (Second Amendment) Order.**

This has reference to the Draft Amendments to the Interconnection Regulations (Second Amendment) applicable for DAS and Tariff Order (Second Amendment) applicable for Addressable Systems.

Kindly find enclosed herewith, our response to the same, for your kind perusal and consideration.

Yours Sincerely,

For MSM Discovery Pvt. Ltd, MSMI& DCI

  


Payal Kakra

Deputy Associate Director – Legal

Encl: As above

### MSM Discovery Private Limited

Regional Office : Unit Nos. 5 / 6 / 7 & 8, Ground Floor,  
Time Tower, M G Road, Gurgaon – 122 002, Haryana  
Tel.: (+91-124) 484 8700 Fax : (+91-124) 484 8701

Regd. Office : Interface Building No. 7, Third Floor, Malad Link Road,  
Malad (West), Mumbai - 400 064.

Tel.: (+91-22) 4042 2222 Fax : (+91-22) 6640 7565

A Joint Venture Company





**MSM Discovery Private Limited**

By Speed Post / Electronic Mail

June 26<sup>th</sup>, 2013

**CONFIDENTIAL**

**Submission of MSM Discovery Pvt. Ltd. ("MSMD"), Multi Screen Media Private Ltd. ("MSMI") and Discovery Communications India ("DCI") to Telecom Regulatory Authority of India ("TRAI") in response to the Draft Amendments on "The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations; 2013 AND "The Telecommunication (Broadcasting and Cable Services) Fourth (Addressable Systems) Tariff (Second Amendment) Order.**

---

Kind Attention: **Advisor (B&CS)**

Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi – 110 002

We are thankful to the Telecom Regulatory Authority (TRAI) for affording us this opportunity to express our views and suggestions in response to the Draft Amendments detailed above.

The suggestions made by us herein are without prejudice to our legal rights and contentions and do not represent the views of the channel owners other than MSMI and DCI.

**Preliminary**

**We reiterate our response submitted with TRAI on 30.01.2012 and 18.01.2013 wherein we have submitted our views in detail on the suggestions made in the Draft Amendments as well as other issues. Our response to the Draft Amendments does not in any way override our earlier responses and is only in addition to it.**

**MSM Discovery Private Limited****Reply to the issues:****A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems.****Carriage Fee**

We reiterate our earlier stand that there should not be any scope for Operators to charge carriage fees directly or indirectly. Broadcasters cannot be seen to mandatorily providing content and paying carriage for it too! High carriage costs have severely impacted Broadcasters. Operators use the carriage model to compel payments from Broadcasters and in many cases carriage fees exceed the subscriptions received from operators creating an unsustainable distribution revenue model. This problem is compounded by vertically integrated broadcaster and distribution networks which may be in a position to leverage their control over content and distribution to deny popular content to competing networks or discriminate against them. All these years, the revenue model of Broadcasters have been under severe financial strain since the operators have created an artificial bandwidth shortage on their network so that they can carry channels as per their own whims and demand arbitrary and exorbitant carriage fee from Broadcasters. We urge TRAI to take necessary steps to ensure that carriage fee is rendered completely redundant in a post DAS scenario, given the capacity of digitized networks to carry a far greater number of channels than analogue networks.

Broadcasters also incur substantial costs not just in producing content but also in uplinking and downlinking signals as well as hiring transponders. None of these costs are separately chargeable to operators. Hence there is no logic to allow operators to charge for carriage which is part and parcel of their distribution obligation.

**Channel Carrying Capacity for MSO's**

We reiterate our earlier stand that there should be a minimum channel carrying capacity of 500 channels for the MSO's in the Interconnection Regulations for DAS. The Hon'ble Regulator in the explanatory memorandum itself foresees that there may be cases where artificial capacity constraints may be created by the operators. Therefore if the MSO's are mandatorily equipped to carry maximum number of channels so they will not be able to cite capacity constraint as an excuse. Mandating number of channels will also help to maximize subscription revenues which will ensure growth and is the intent of digitization. The Hon'ble Regulator is cognizant of the fact that there is a high cost involved in generation of content and mandating minimum

**MSM Discovery Private Limited**

number of channels will ensure that the content providers are able to reach and showcase their content to their consumers thereby giving them maximum and diverse choice. There are currently 828 registered channels in India, thus it is only fair that the minimum channel carrying capacity be reinforced and implemented. This measure is also required to ensure fair competition and promote consumer choice which must lie at the heart of the regulatory decision making process.

It must be pointed out that the Hon'ble TDSAT did not prohibit the Regulator from mandating a minimum channel carrying capacity. It only wanted a proper rationale to be articulated which we believe the Regulator ought to be able to do given the burgeoning number of television channels and the Regulator's decision to enable the consumer/subscriber to have the power to choose which channel he or she wishes to view.

**Placement Fee**

We wish to submit that deletion of the protection being given to broadcasters in the form of Clause 3(11A) will only create ambiguity leaving it unclear whether placement fee can be charged by operators for "placing" channels within genres at a higher order in the EPG and therefore more easily accessible to viewers. This will lead to a situation where the MSO's will be free to demand at their discretion exorbitant placement fee for the higher LCN's. The ambiguity created by the deletion of this provision will allow MSO's to charge discretionary placement fee from broadcasters completely unrelated to the channel's popularity. The must carry proviso will be rendered meaningless. It will no longer remain a level playing field anymore as the prices of channels are frozen for the broadcasters but the MSO's will be allowed to charge monies at their discretion. The Hon'ble Regulator is cognizant of the situation as it is on date i.e to say that MSO's are freely demanding placement fees for higher LCN's. Removal of such protection will only lead to further litigation. The Hon'ble Regulator has itself recognized that there is hardly any justification for charging any placement fees therefore granting the protection is only a natural consequence. It is the duty of the Regulator to provide Level Playing Field conditions amongst the stakeholders. The reasons given for the removal of the clause are without any basis and are totally contrary to the ground realities and prevailing practices in the market. The interest of broadcasters has been overlooked and has not been addressed at all. Hence the deletion of Clause 3(11A) should not be allowed.

**MSM Discovery Private Limited****B. Issues related to amendments to the Tariff Order applicable for Addressable Systems.****Twin Conditions at Retail Level**

At the outset we wish to reiterate that we have consistently maintained that there should be forbearance on tariffs and tariff fixation should be left to market forces and not be mandated by regulation. Our position remains so- forbearance should be the norm whether at wholesale or at the retail level and moreso as we move to a fully digital distribution regime with full transparency on subscriber numbers, packaging and pricing. However the current scenario with tariff regulation at the wholesale level only, gives room for manipulation at the retail level particularly where interlinkages between MSOs and channel owners exist. To prevent this happening and only for such time as full digitalization happen (if not earlier), a formula for pricing at the retail level may be considered.

In such circumstances, we agree with the Hon'ble Regulator that there should be a formula to cap pricing of bouquets at the Retail level by interlinking the retail price with the wholesale price as suggested in the amendment. This will ensure that there is no perverse pricing by operators when they offer channels to subscribers. The proposed formula is in line with current market realities. It has been established empirically that ala carte pricing does not favour consumers because of the high price of individual channels restricts consumer choice. This amendment by placing limits on the maximum retail price of channel bouquets will ensure that ala carte option is not rendered illusionary to the consumers.

**Minimum Subscription Period For FTA channels subscribed on a-la-carte basis by subscribers**

Yes we are in agreement with the Hon'ble Regulator that the word "Pay" should be deleted to include both "Free to Air" and "Pay" channels. We would like to recommend that the minimum period for the Subscription of a channel be enhanced to at least 6 months if not a year.

**MSM Discovery Private Limited****Freedom to choose the channels on a-la-carte and/or bouquet (s)**

We agree with the Hon'ble Regulator that this freedom will allow the television subscribers to pick and choose the channels they want to subscribe to. We are approaching complete digitalization and it is pertinent that maximum choice should be made available to the consumer.

**Offerings of Bouquet (s) of channels which require special Set Top boxes (STB's) such as High Definition Television (HDTV) or Three Dimensional Television (3D TV) channels etc.**

It is reiterated that these services are in the nature of niche services available only to consumers with special set top boxes and HD/3D televisions which cost much more than the standard definition TVs. Hence they are not basic in nature and there should be forbearance for such services in HD or 3D or in any other mode other than Standard Definition. In fact we would urge the Regulator to reconsider the tariff fixation and free on demand services like VOD, Catch Up TV, etc. from pricing restrictions to enable the market for these niche services to expand.

**CONCLUSION:** Just as the market has worked over the last 10 years to produce a robust ecosystem for the aggregation of rights by cable and satellite networks, the market should be allowed to work to facilitate the distribution of broadcast signals. The procurement costs for content are not uniform; neither are they amenable to precise determination or correlation to the final product. Over the years content procurement costs have shot through the roof, while advertising revenues have been declining for most of the broadcasters given the large number of channels operating at lower than their normative cost of production and the disproportionate bargaining power of advertising agencies given the absence of genuine competition within advertising agencies. . The broadcasting sector has unfortunately been at the receiving end of a spate of certain stringent regulations in the past one decade. It is therefore humbly suggested that the existing regulations be amended in light of ground realities for protection of interest of the broadcasters for enforcement of a level playing field.