Response to Consultation Paper on Issues related to amendments to the Interconnection Regulations and Tariff Order applicable for Digital Addressable Cable TV Systems

DAS was introduced with an objective of offering the end subscriber/consumer more number of channels along with more choice and improved quality of service and at the same time rationalizing the cost.

Also, the new regime intends to bring complete transparency into the system while taking into consideration the interest of all the stakeholders.

All amendments to the regulations should be viewed against this perspective, i.e. whether it will be beneficial for the customer first and then whether it will collectively benefit all the other stakeholders.

A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems

1) Carriage Fees

Issue for consultation: - To introduce the following proviso

"Provided also that the provisions of this sub-regulation 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."

And delete 3(5) proviso of DAS interconnection regulation.

Our Reply

Digicable's view is that the above mentioned proviso **should not** be introduced and the existing 3(5) proviso of DAS interconnection should also be deleted for the following reasons

a) It contradicts with the MUST-PROVIDE proviso 3(2) of existing DAS interconnection regulation. The provision mandates that the broadcasters will have to provide the content to the MSO's, albeit with conditions and therefore there is no question of seeking the content. This proviso is very important keeping in mind the vertical monopolies and cross-media ownership that exist in this ecosystem and therefore should be the overriding consideration.

How and Why did Carriage come into existence…

Although this has been discussed umpteen number of times, it is pertinent to briefly touch upon this aspect once again.

b) Carriage, as a business practice came into existence due inherent shortcomings of ***Analog*** ecosystem
c) It was the Broadcasters who started and propagated the practice of carriage fees
d) Digital ecosystem is not constrained with anomalies of the Analog system as there is no constraint of channel carrying capacities or clarity issues of certain frequencies i.e. Prime, Colour, S band are more clear and available or tunable in all TV sets whereas Hyper, UHF and Higher UHF have lesser clarity due to ingestion of noise and are not tunable in many TV sets. It was this anomaly that gave rise to the practice of Carriage fees
e) Further, Carriage is clearly a Business to Business transaction with mutual understanding between the broadcaster and MSO and has no direct impact on the end subscriber / consumer
f) On the contrary, there will an indirect positive effect for the end subscriber as the MSO uses the carriage revenue to subsidize the Set-Top-Box and subscription packages
g) The MSO ploughs back the carriage earnings for developing its network infrastructure and adding capacities.

It is also important to consider the following:

h) With the introduction of DAS, which has the feature of addressability, the Broadcasters are all set to gain in terms of exponential increase in subscription and advertisement revenue
i) **And all this without any investment by the broadcaster for creating the Digital infrastructure**
j) The entire onus of Digitalization including bringing in the massive investments to create the digital infrastructure is on the MSO alone who has to not only share his subscription revenue with LCOs, Distributors and the broadcasters but also provide for the necessary subsidy to the end subscriber

k) Finally, there are already adequate safeguards with regards to charging of carriage cost for the broadcasters because of the regulations e.g. Carriage Reference Interconnect Offer (RIO), Carriage fee must be uniform for all the broadcasters, no upward revision in Carriage fee for a minimum of 2 years etc.

l) Finally, it must be borne in mind that this carriage fees is used by the MSO for digitization and this prevents revenue leakage for the Broadcasters in the form of subscription fees from LCO's and Government in the various forms of taxes; besides ensuring a superior viewer experience.

2) Minimum Channel Carrying Capacity of 500 Channels for the MSOs

Issue for consultation: - *Is there a need to specify minimum channel carrying capacity in the DAS Interconnection regulation*

Our Reply

It is pertinent to point out that Digicable despite being the first and only MSO to successfully run a 500 channel Digital Service, has the view that there is no need to specify minimum channel carrying capacity in the DAS Interconnection regulation for the following reasons

a) The cost of setting up a 500 channel Digital H.E is ~ Rs.190 Mn. What is more problematic is the huge cost and challenge in transport / carrying of the 500 channel Digital service
b) Phase 2 covers 38 cities across India, i.e. a MSO will have to set-up 38 500 channel services, where the average number of subscribers range from 2 to 3 lac households, setting up a 500+ channel Digital service is just not viable
c) In the phase 3 cities where the average number of C&S HHs is around 30,000 and 75,000, setting up or even transporting a 500+ Digital service is just not practical
d) The cost of just transporting the 500 + channel Digital service for smaller cities would be in excess of Rs. 300/- per month, per subscriber whereas the average revenue per user (ARPU) in such markets is around Rs.100/- to Rs.150/- per month per subscriber

Also points to Ponder

e) Digital Cable TV can be categorized as a non-essential service and in fact Entertainment Tax is levied on it
f) Why then is a there a need to have a minimum channel carrying capacity infrastructure, while even in most essential services like say Pharma or say Hospital services such a clause for compulsory stocking of medicines has not been mandated
g) Research shows that even the most avid TV viewers views not more than 15 to 20 channels

h) Hence, we can at best have a minimum channel carrying capacity of 200 – 250 channels considering a wide variety of audience
i) If the market requires more capacity addition, MSO will have to do it

Also IMPORTANT TO NOTE, especially keeping the Future in mind

j) There are discussions going on that the Government is mulling to vacate part of spectrum used by Cable TV services (48.25 to 850 Mhz) for providing other telecommunication services like Wireless Broadband and Next Generation Voice services
k) If this is accepted then this will adversely affect the channel carrying capacity of MSOs
l) Moreover, as is expected in the future, where more channels will be offered on HD and in 3D which require more bandwidth, it will bring down the number of channels that can be carried on the available spectrum. For e.g. if MSO carries about 100 HD channels then only additional 150-200 SD channels can be carried
m) Considering the above mentioned factors, Digicable's view is that the minimum channel carrying capacity should be 200 – 250 and should be left to market forces and demands

3) <u>Placement Fee Regulation</u>

<u>Issue for consultation</u>: *Is there a need to regulate Placement fees? If yes how to regulate it?*

<u>Our Reply</u>

Digicable is of the view that there is no need for regulating Placement fees for the following reasons

a) Placing a channel anywhere on to its network is a prerogative of the service provider, in this case the MSO
b) Placement of a channel in a Digital environment is done with respect to a particular LCN (Logical Channel Number) and it is sought by the broadcaster and not insisted by the MSO
c) The Interconnection Regulation already has a provision (Clause 3(11)) that if a MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such pre-condition amounts to imposition of unreasonable terms
d) If at all a broadcaster is seeking a placement on a particular LCN for his commercial benefit, the Placement fee deal should be construed as a Business to Business (B2B) transaction with mutual understanding between the broadcaster and the MSO

e) Placement revenue, if any broadcaster wishes to pay, will as stated above in our explanation for carriage will go back into the MSOs business for providing subsidy to the end subscriber for STBs and Subscription packages, and help in reducing the resistance of the subscribers to Digitization
f) In view of the above, Digicable opines that there is no need for regulating the placement fee as it is a transaction between an independent seeker and giver

B) Issues related to amendments to the Tariff Order applicable for Addressable Systems.

1) <u>Twin Conditions at retail level</u>

<u>Our Reply</u>

Twin conditions although well thought out and well intentioned to avoid perverse pricing has a few flaws as below

a) As per our understanding, the second condition 26.(b) is a overriding condition in the proposed new twin conditions since it requires that the retail a-la-carte rate of a pay channel in a bouquet to be not more than two times the broadcaster's wholesale rate
b) The calculation of Ascribed rate in the proposed first condition 26.(a) becomes irrelevant if the Ascribed rate is more than two times the a-la-carte wholesale rate and therefore the relevance of this clause is not understood.

However, the new condition 26.(b) is totally unacceptable to Digicable because of the following reason, which is explained in the following paragraphs:

Consider an example of a popular Pay Channel Star Plus with wholesale rate of Rs.7.87/- and various mark-up percentages as shown in the table below

Mark-up	Marked-up a-la-carte Rate	LCO Share	MSO Share
		35%	
50%	11.8	4.13	-0.20
70%	13.4	4.68	0.83
90%	15.0	5.23	1.85
100%	15.7	5.51	2.36
110%	16.5	5.78	2.87
115%	16.9	5.92	3.13
120%	17.3	6.06	3.38
125%	17.7	6.20	3.64
150%	19.7	6.89	4.92
175%	21.6	7.57	6.20
200%	23.6	8.26	7.48
225%	25.6	8.95	8.76
250%	27.5	9.64	10.03

Mark-up	**Revenue Share**		
	Broadcaster	LCO	MSO
50%	67%	35%	-2%
70%	59%	35%	6%
90%	53%	35%	12%
100%	**50%**	**35%**	**15%**
110%	48%	35%	17%
115%	47%	35%	18%
120%	45%	35%	20%
125%	44%	35%	21%
150%	40%	35%	25%
175%	36%	35%	29%
200%	**33%**	**35%**	**32%**
225%	31%	35%	34%
250%	29%	35%	36%

In the above example if we follow the proposed 26.(b) condition i.e. mark-up of a maximum 100% then

a) The broadcaster will earn 50% of the revenue **(please see the section of table highlighted in red color).** What is not acceptable and understood by us is that as per the revised Proviso, the Broadcaster without making any incremental investment in Digitalization is being offered a 50% Share of Subscription revenue while also getting to retain the entire advertisement revenue they generate by running advertisements and commercials on their channel
b) While on the other hand, the MSO would earn only 15% from Subscription Revenue after making all the investments in Digitalization which includes setting up of Digital Headends, procuring STBs, setting up and maintaining the call centres, SMS, CAS and all other related technical Capital and Operational Expenditure and not getting any share in revenue generated by the Broadcaster from Advertisements and Commercials aired on channels which they are carrying

c) **Further, it is important to state that only when the MSO marks-up the subscription a-la-carte rate by 200%, that there is parity in the revenue share with the other stakeholders. (Please see the section of table highlighted in Green color)**
d) **However, the irony in this case is that if the MSO marks-up the a-la-carte rate of all the pay channels shown by him by 200% then the rate to the Consumer (for the a similar set of pay channels that the MSO is offering in Analog) jumps from an average of Rs.175-200 p.m to Rs.651/- p.m (excl. taxes) which is ~ 300% jump in the price to the consumer. (Please see Annexure-1)**

e) In the light of above, the proposed new Twin conditions are not acceptable

Moreover, we would like to highlight the fact that while the proposed twin conditions seeks to limit the MSO share to 15%, the regulator, is also proposing amendments to curtail or even get rid of the Carriage and Placement fees which the MSO intends to plough back into its business for subsidizing the STBs and subscription packages, for developing its network and adding capacities. With 15% of the subscription revenue and assuming that there is no carriage fee and/or placement fee how is the MSO expected to bankroll the entire burden of digitization? While no such similar provisions are being sought to be made to DTH players, which seeks to interfere in Digicable's right to carry on its business under section 19 (1) (g) of the Constitution of India and will be totally detrimental to the business of the MSO. It is necessary for the Regulator to keep the in mind the costs being borne by the end consumer/ viewer and at the same time try to balance the competing commercial interests of the Broadcaster, Distributor, MSO and LCO.

<u>Our Suggestion</u>

We request the Hon'ble regulator to therefore to mandate a ***Retail Tariff instead of a Wholesale Tariff and mandate an equitable share from subscription, so that the MSO is able to recover the costs incurred in ushering digitization and earn a fair return on investment.***

2) Minimum Subscription Period

Our Reply

The minimum subscription period for both Pay and Free-to-air (FTA) channels should be 3 months

3) Freedom to the consumer to choose the channel(s) on a-la-carte and/or bouquet(s)

Issue for Consultation: - *Authority is of the view that following provision be introduced for all addressable systems*

"It shall be open to the subscriber of the addressable systems to subscribe to any bouquet(s) or any bouquet(s) and any channel(s)(pay or free to air) or only free to air channels or only pay channels or pay channels and free to air channels"

Our Reply

The introduction of above provision for all addressable systems is acceptable.

However, in DAS Tariff order dated 30th April 2012, the Clause 6 1(B) which states...
"It shall be open to the subscriber to choose any combination of free to air channels up to one hundred channels, in lieu of the basic service tier offered by the multi-system operator"

The above provision is not acceptable as the existing CAS and SMS systems will be heavily over-loaded and will find it very difficult to cope up with the above requirement.

Today there are about 500+ FTA channels and if the MSO were to provide all these FTA channels on a-la-carte basis, they would have to provide for 100 x 100 options x no. of subscribers and the data (all encryption data) that would traverse on the cable network would be huge which will clog the entire network and will severely impact QoS standards.

The option of offering FTA channels on a-la-carte basis is not practical.

4) Offerings of Bouquet(s) of channels which require special Set Top Boxes (STBs) such as High Definition Television (HDTV) or Three Dimensional Television (3D TV) channels etc.

Issue for consultation: - *Whether the channels that require special type of STB be offered only on a-la-carte basis or as part of separate bouquets that consists of only those channels that require a particular type of specialized STB.*

Our Reply

The channels that require special type of STB should be made available on both a-la-carte as well as bouquets consisting of a mix of both HD and SD channels put together.

Annexure-1

Even in the Existing Twin conditions there are drawbacks / flaws

a) Under the existing twin conditions, it is observed that the MSO is restrained from reducing the customer price of a bouquet below a certain threshold
b) It is observed that if a MSO forms a bouquet of popular channels and intends to offer the same at a very attractive and reasonable price to the end subscriber, they are unable to do so because it fails the twin conditions
c) One of the key reasons for this is because of the anomaly of **WHOLESALE** pricing formula in the regulation i.e. rates declared by the broadcasters to the MSO
d) In the example below one can clearly see that the retail price of 63 popular pay channel bouquet that were generally available on analog at an average price of **Rs.175/- to Rs.200/-** p.m per subscriber **including all taxes** will now have to be offered at a minimum price of **Rs.651/-** p.m per subscriber **excluding taxes** to satisfy the twin conditions. This is **~300%** hike in the subscription revenue
e) Since the Price of Rs. 650/- + Taxes would be a steep hike to the subscribers and if the MSO would like to subsidize the price to the subscriber by say offering this bouquet of channels at a price point of Rs.250/-, it fails the Twin condition. Strangely, the MSO can keep on hiking the price to the Subscriber by any number of times, without failing the Twin Conditions
f) Therefore, the Twin Condition would have to viewed as Anti-Consumer and needs to be deleted
g) If we add Service Tax and Entertainment tax then the subscription will go up to ~ Rs.776/- p.m per subscriber i.e. ~ **350%** hike

Sr.	Channel	Genre	Wholesale a-la-carte Rate	Mark up	Retail A-la-Carte RATE
1	Sony TV	Hindi GEC	8.99	200%	26.97
2	SAB	Hindi GEC	6.17	200%	18.51
3	Colors	Hindi GEC	8.99	200%	26.97
4	Zee TV	Hindi GEC	5.83	200%	17.49
5	Star Plus	Hindi GEC	7.87	200%	23.61
6	Max	Hindi Movie	7.64	200%	22.92
7	Zee Cinema	Hindi Movie	5.83	200%	17.49
8	Star Gold	Hindi Movie	7.42	200%	22.26

9	AXN	English GEC	6.52	200%	19.56
10	Star World	English GEC	2.05	200%	6.15
11	Comedy Central	English GEC	6.51	200%	19.53
12	Star Movies	English GEC	7.42	200%	22.26
13	HBO	English GEC	7.01	200%	21.03
14	PIX	English Movie	5.39	200%	16.17
15	Aaj Tak	News	3.15	200%	9.45
16	IBN 7	News	3.15	200%	9.45
17	Times Now	News	3.82	200%	11.46
18	Headlines Today	News	1.35	200%	4.05
19	CNN	News	0.67	200%	2.01
20	CNN-IBN	News	2.25	200%	6.75
21	ET Now	Business News	3.57	200%	10.71
22	CNBC TV 18	Business News	3.82	200%	11.46
23	CNBC Awaaz	Business News	2.02	200%	6.06
24	NDTV Profit	Business News	2.70	200%	8.10
25	Cartoon Network	Kids	5.62	200%	16.86
26	Pogo	Kids	5.62	200%	16.86
27	Animax	Kids	0.21	200%	0.63
28	NICK	Kids	2.70	200%	8.10
29	Disney Channel	Kids	4.00	200%	12.00
30	Discovery Kids	Kids	5.56	200%	16.68
31	sonic	Kids	5.46	200%	16.38
32	Disney XD	Kids	4.00	200%	12.00
33	Hungama	Kids	3.51	200%	10.53
34	Discovery	Infotainment	6.74	200%	20.22
35	National Geograhic	Infotainment	2.58	200%	7.74
36	Animal Planet	Infotainment	2.25	200%	6.75
37	History TV 18	Infotainment	6.72	200%	20.16
38	Discovery Science	Infotainment	5.04	200%	15.12
39	Discovery Turbo	Infotainment	4.20	200%	12.60
40	MIX	Music	3.15	200%	9.45
41	MTV	Music	3.15	200%	9.45
42	Channel V	Music	0.45	200%	1.35
43	VH1	Music	1.35	200%	4.05
44	NDTV Good Times	Lifestyle	4.04	200%	12.12
45	TLC	Lifestyle	4.04	200%	12.12

46	ESPN	Sports	14.89	200%	44.67
47	Star Sports	Sports	14.89	200%	44.67
48	Star Cricket	Sports	12.58	200%	37.74
49	Zee Marathi	Regional	3.60	200%	10.80
50	Zee Talkies	Regional	6.96	200%	20.88
51	Star Jalsa	Regional	5.04	200%	15.12
52	Asianet	Regional	5.57	200%	16.71
53	Surya TV	Regional	5.17	200%	15.51
54	Sun TV	Regional	5.57	200%	16.71
55	Gemini TV	Regional	4.63	200%	13.89
56	Gemini Movies	Regional	7.64	200%	22.92
57	Udaya TV	Regional	5.17	200%	15.51
58	Udaya Movies	Regional	6.47	200%	19.41
59	ETV Urdu	Regional	4.37	200%	13.11
60	Kiran TV	Regional	7.64	200%	22.92
61	K TV	Regional	4.37	200%	13.11
62	Zee Bangla	Regional	3.64	200%	10.92
63	Discovery Tamil	Regional	6.74	200%	20.22