

New Delhi, the 16th April, 2007

DIRECTION

Sub : Direction under section 13 of the Telecom Regulatory Authority of India Act, 1997

F.No.3-231/2006-B&CS .----- Whereas the Telecom Regulatory Authority of India established under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) [hereinafter referred to as the Authority] had, in exercise of powers conferred upon it under section 36 and 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, 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 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.No.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4, made the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (13 of 2004) (hereinafter called the principal Regulation) providing for disconnection of TV signals only after giving notice indicating the brief reasons for the proposed action;

2. And whereas the principal Regulation had been amended by the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006), published under notification of the Telecom Regulatory Authority of India No.6-4/2006-B&CS dated the 4th September, 2006 in the Gazette of India, Extraordinary, Part III, Section 4;

3. And whereas the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006), inter alia, substituted clause 4 of the principal Regulation with the following clause 4 and entries relating thereto, namely:-

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“4. Disconnection of TV channel signals

4.1 No broadcaster or multi system operator shall disconnect the TV channel signals to a distributor of TV channels without giving three weeks notice to the distributor clearly giving the reasons for the proposed action.

Provided that a notice would also be required before disconnection of signals to a distributor of TV channels if there was an agreement, written or oral, permitting the distribution of the broadcasting service, which has expired due to efflux of time.

Provided further that no notice would be required if there is no agreement, written or oral, permitting the distribution of the signals.

4.2 No distributor of TV channels shall disconnect the re-transmission of any TV channel without giving three weeks’ notice to the broadcaster or multi system operator clearly giving the reasons for the proposed action.

4.3 A broadcaster/ multi system operator/ distributor of TV channels shall inform the consumers about such dispute to enable them to protect their interests. Accordingly, the notice to disconnect signals shall also be given in two local newspapers out of which at least one notice shall be given in local language in a newspaper which is published in the local language, in case the distributor of TV channels is operating in one district and in two national newspapers in case the distributor of TV channels is providing services in more than one district. The period of three weeks mentioned in sub-clauses 4.1 and 4.2 of this regulation shall start from the date of publication of the notice in the newspapers or the date of service of the notice on the service provider, whichever is later.

Explanation

1. In case the notice is published in two newspapers on different dates then the period of three weeks shall start from the latter of the two dates.

2. Broadcaster/multi system operator/ distributor of TV channels may also inform the consumers through scrolls on the concerned channel(s). However, issue of notice in newspapers shall be compulsory.

4.4 The notice in the newspapers must give the reasons in brief for the disconnection”.

4. And whereas the Authority received a complaint dated the 1st December, 2006 from M/s. Shah Cable Network, Telhara, Akola, Maharashtra, (hereinafter referred to as M/s Shah Cable Network) complaining about the disconnection of signals of Star Sports Channel on the 26th of October, 2006 by M/s ESPN Software India Pvt. Limited;

5 And whereas a copy of the said complaint letter of M/s Shah Cable Network was forwarded by the Authority vide its letter No.3-231/2006-B&CS dated the 12th December, 2006 to M/s. ESPN Software India Pvt. Ltd, having their head office at 7th floor, Tower 'C', Infinity Towers, DLF Phase 2, Gurgaon, Haryana-122002 (hereinafter referred to as M/s. ESPN Software India Pvt. Ltd.) asking them to convey their comments on the issues raised in the complaint letter;

6. And whereas in response to the said letter of the Authority referred to in paragraph 5 above, M/s. ESPN Software India Pvt. Ltd. informed the Authority that their contract with M/s Shah Cable Network authorized the cable network to provide its services to households only and the cable operator is barred from providing services to hotels and commercial establishments and that during their survey, it was noticed that the cable operator was providing his services to hotels and other commercial establishments which is not only in breach of terms of the contract but also tantamount to piracy of the service and further that despite their informing and warning him about this unauthorized distribution, the cable operator did not discontinue his services to the hotels and kept pirating the services and that, therefore, due to reasons mentioned above, the services to the said operator were discontinued;

7. And whereas the Authority, vide its letter dated the 28th December, 2006, sought further clarifications from M/s ESPN Software India Pvt. Ltd. as to whether the signals had been switched off in violation of the principal Regulations as amended by the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006) and whether any public notice was issued before effecting the disconnection of signal to M/s Shah Cable Network in terms of clause 4.1 of the principal Regulations and also asked M/s ESPN Software India Pvt. Ltd. to furnish evidence of giving such public notice to the Authority latest by the 5th January, 2007;

8. And whereas M/s. ESPN Software India Pvt. Ltd. has informed the Authority, vide their letter dated 3.1.2007, that their act of de-activating the services to the cable operator was not in violation of the Interconnection Regulations dated the 4th September, 2006 or any amendments thereof and that as per the TRAI guidelines, sub-section 4.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2006, they are not required to give a notice, if there is no agreement, written or oral, permitting the distribution of the signals and that since, the cable operators are explicitly barred from providing the services to hotels and commercial establishments and since, the hotels and commercial establishments were not a part of the contract to whom the cable operator was distributing the services, therefore, no public notice was issued before switching off the services;

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9. And whereas the Authority has considered the clarifications given by M/s ESPN Software India Pvt. Ltd., which have not been found to be satisfactory for the following reasons, namely:-

- (a) the assertion by M/s ESPN Software India Pvt. Ltd. that since hotels and commercial establishments were not a part of the contract to whom the cable operator was distributing the services, therefore, no notice was required to be issued, is not acceptable for the reason that there was a contract between M/s ESPN Software India Pvt. Ltd. for the distribution of the services and they have themselves informed the Authority that their contract with M/s Shah Cable Network authorized the cable network to provide its services to households;
- (b) the assertion that cable operators are explicitly barred from providing the services to hotels and commercial establishments is not a valid ground for disconnection of signals without notice to the cable operator for distribution of services as the households were also covered under the contract;
- (c) any contravention of the terms of the contract by the cable operator is a dispute between the service providers and as such disconnection of the services on account of such dispute was squarely covered by the requirement of public notice under clause 4.3 of the principal Regulations as amended by the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006;
- (d) the disconnection of the services without issuing such public notice has resulted in a situation where the consumers have been deprived of their right to be informed about the likely disconnection with a view to protecting their interests as envisaged in sub-clause (3) of clause 4 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006; and
- (e) since, admittedly, there was a contract between M/s ESPN Software India Pvt. Ltd. and M/s Shah Cable Network, notice of disconnection under sub-clause (1) of clause 4 of the principal Regulation and public notice under sub-clause (3) of clause 4 was mandatory before disconnection of the signals.

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10. Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India under section 13, read with clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) and for the reasons mentioned in the preceding paragraph, the Telecom Regulatory Authority of India hereby directs that M/s ESPN Software India Pvt. Ltd. shall ---

- (i) immediately restore of the signals of the said ESPN Star Sports Channels to M/s. Shah Cable Network, Telhara, Akola, Maharashtra; .
- (ii) furnish a compliance report within two days of issue of this direction; and
- (iii) Scrupulously comply with the requirements of the principal Regulation before disconnection of signals.

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

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