

Date: 24th Nov 2015

To

Shri S.K.Singhal,

Advisor (B&CS),

TRAI

RE:Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2015 (“Draft Regulation”)

SUB: Our considered submissions to the above.

Dear Sir

We have perused the draft Regulation and offer our comments as follows:

1. We welcome these proposals by the Authority to ensure timely renewal of contracts. We agree that the statutory extension of the agreement for three months even after the agreement has run its full course is altogether uncalled for. This particular provision has long been abused to unduly prolong negotiations and have been significantly unhelpful in arriving at timely agreements between parties. Thus any step by the Authority that will do away with such inefficient requirements and will ensure renewal of the agreements in a timely manner before the expiry of the existing agreement shall go a long way to bring in much needed discipline, regularity and order in the entire ecosystem. We laud the Regulatory intent behind the proposed amendments as the same is driven by consumer interest and aims at ensuring Certainty; Continuity and Choice across the entire value chain. We agree with the issues identified in the Explanatory Memorandum to the Proposed amendments that the large chunk of disputes amongst the service providers revolves around renewal of interconnect agreements and prolonged negotiations, We also add that the same leads to default in payments, piling of outstanding's, non-submission or delay in submission of subscribers report, resistance to audits, abrupt changes in offering of TV channels at subscribers end, continued provisioning of signals without agreements that has a considerable debilitating effect on the entire industry.

2. While the amendments proposed by TRAI are steps that have been taken in the right direction, we believe that there are still some grey areas that will need to be addressed if the proposed amendments have to achieve the stated objectives and intent for which they have been framed in the first place. We enumerate the same as follows:

(a) **Proposed addition to existing Clause 5 (6):** The present Clause 5 (6) reads as hereunder:

“It shall be mandatory for the broadcasters of pay channels to reduce the terms and conditions of the interconnection agreements into writing”

We propose the following:

“It shall be mandatory for the broadcasters of pay channels to reduce the terms and conditions of the interconnection agreements into writing clearly delineating among others the Area or Territory of operation, Consideration or Fee payable, Channels or Bouquets opted for and the Term or Tenure for which the agreement shall run.”

Reason and rationale: the entire sector is yet to be accustomed to working in a professional manner and behavioural changes that will result in a more organised approach will necessarily take time, hence it is imperative to capture at least the very basic elements in the agreements between parties in order to have transparency and clarity.

(b) **Clarification on Notice to be issued by broadcasters in Clause 5 (16):** We propose that a Proviso be added to the existing Clause 5 (16) that will require broadcasters to issue notice under Clause 6 (1) and a public notice for disconnection under Clause 6 (5) atleast 21 days prior to the expiry of the existing agreement in case the Parties have not executed a new agreement.

We therefore propose to add the following to the proposed Clause 5 (16):

“failing which the broadcasters shall issue appropriate notices for disconnection in terms of Clause 6 atleast 21 days prior to the expiry of the existing agreement in case the Parties have not executed a new agreement.”

Reason and rationale: This will enable transparency across the value chain on the status of negotiations and agreements. It will also provide adequate disclosure to viewers on channel availability in their respective platforms. Since disconnection can occur owing to multiple reasons including non-renewal hence the provision of disconnection under clause 6 should be read into 5(16).

- (c) **Disconnection notice to be only by way of scroll instead of public notice:** We submit that the public notice by way of News Paper publication should be dispensed with in Clauses 6(5) and 6 (6) and instead the requirement for scroll should be mandated; The public notice in newspapers as provided for in Clause 6(5) and Clause 6(6) of the Regulation is required to be issued in case of proposed disconnection of signals of TV channel(s). At present the obligation for publishing the public notices in the newspapers is the responsibility of the service provider who intends to disconnect the signals for any reason which among others may include non-payment, non-renewal/signing of agreement, piracy, area transgression etc. The Explanatory Memorandum to the Regulations clarifies that the purpose of the public notices is to inform consumers about the dispute and the proposed disconnection of signals. In most of the cases however such issues arise between Broadcasters and MSOs/DTH operators. We submit that it is not in the fitness of things to impose the responsibility for publishing Public Notices on Broadcaster(s) as the public notices which entail heavy expenditure running into crores of Rupees do not serve any practical purpose as:
- (i) These notices are hardly read by the general public.
 - (ii) Also these public notices are always stayed by TDSAT in almost all cases but the costs incurred on these public notices runs into Crores on a year on year basis which is never reimbursed by the defaulting service providers.
 - (iii) The objective and intent of publication in newspapers i.e. the informing consumers about the disconnection is more efficiently implemented by running scrolls on the channels as the same is then invariably noticed by the viewers. For this purpose the scroll may be run at the bottom of the screen informing the viewers about the disconnection.

Accordingly, the requirement of publishing public notice in

newspapers especially when the Regulations already provide for notices in Clause 6(1), 6(2), 6(3) & 6(4) is entirely unnecessary and ought to be done away with. We therefore request the Authority to delete Clause 6(5) & 6(6) from the Regulations. Instead of public notices in newspapers, the necessary information to the consumers should be conveyed by running scrolls on the concerned channels. These scrolls undoubtedly have greater visibility and resonance with viewers and hence can serve the intended purpose better than the newspaper notices. In case any aggrieved party wishes to approach the courts or the tribunal against such scroll it can very well do so by producing a recording of the scroll being run on the channel(s).

- (d) **Clarification on renewal in Clause 5 (16):** It also needs to be provided that any agreement executed by the parties within the said 21 days that is either mutually negotiated or by way of the MSO having opted for the RIO of the broadcaster, shall take effect immediately on expiry of the existing agreement.

We therefore propose to add a further proviso as follows:

“Provided further that any agreement entered into by the service providers within the aforesaid period of 21 days whether on mutually negotiated basis or the RIO published by the service provider, as the case may be, shall take effect immediately upon expiry of the existing agreement.”

Reason and rationale: This will ensure continuity of relationship between the parties and uninterrupted provisioning of TV channels across the value chain. This will cover those cases where parties are able to enter into an agreement during the notice period of 21 days.

- (e) **Removal of proviso proposed in the draft amendments requiring MSOs to provide information to viewers about proposed disconnection:** We propose further that the requirement on MSOs to inform subscriber 15 days prior to the expiry of the existing agreement be done away with as this will create multiple ambiguities while interpreting. The purpose is well served by the 21 day notice period as aforesaid hence this duplication is eminently avoidable.

- (f) **Proposed addition to Clause 5 (8):** The present clause 5 (8) reads as under:

“Nothing contained in regulations (6) or (7) shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal”

We propose as follows: Insertion of a new explanation to Cl 5(8)

Explanation I: When signals are continued to be provided during pendency of the proceeding before any court or tribunal and the existing agreement is due to expire, the broadcaster or multi system operator, as the case may be, shall, sixty days prior to the date of expiry of the existing interconnection agreement, give notice to the multi system operator or the linked local cable operator, as the case may be, to enter into the new agreement. For all pending proceedings where the signals are continuing after staying of disconnection notices, no fresh notices shall be required to be issued for disconnection if the parties have not entered into an agreement within the said period of sixty days. However if the MSO or the LCO as the case may be wants to continue availing signals beyond the said sixty day period it can do so only pursuant to the RIO published by the broadcaster;

Reason and Rationale:

In many cases when parties are in litigation owing to any reason which could be payment default, area transgression, piracy, refusal to audit or refusal to submit subscriber reports, or violation of any regulation or breach of any clauses in the existing agreement, the existing agreement itself comes to an end. There have also been cases where one of the parties has approached the TDSAT for an interim order for provisioning of TV signals after having failed to reach an agreement. Even in the proposed amendments there can be cases where a party having failed to reach an agreement within the stipulated time lines could approach the TDSAT for an interim order.

It is therefore imperative to plug this loophole by ensuring certainty and continuity and ensuring that the signals are provided only consequent to an arrangement between the parties that is in strict compliance with the existing regulatory construct.

(g) Requirement to prescribe consequences for non compliance:

We suggest that the following new Clause 10 be duly inserted as hereunder:

Clause 10: Consequences for non-compliance of Regulations

If a service provider violates any regulations framed by Authority, such service providers shall in addition to other consequences be subjected to a fine which may shall not be less than one lakh rupees and in case of second or subsequent offence with fine which shall not be less than two lakh rupees and in the case of continuing contravention with additional fine which shall not be less than two lakh rupees for every day during which the default continues. Any service provider on detecting such violation shall approach the TDSAT for necessary directions in this regard.

Reason and Rationale: It is respectfully submitted that there is no provision which provides for consequences in case of breach of any regulations by any service providers. Also many a times, arguments are advanced before the TDSAT that non-compliance of Quality of Service Regulation by DPOs cannot be agitated by broadcasters as there is no privity of relationship between broadcasters and subscribers. For effective implementation of the Regulations it is essential that consequences of non-compliance of Regulations are clearly articulated as then it will work as deterrent for service providers and will incentivise them to comply. Amendments in these lines have already been done in the QoS Regulations by providing for financial disincentives. We propose that the same principle be replicated here as well. Further it is necessary to enable any service provider to approach the TDSAT for enforcement and implementation of extant regulations against any defaulting service provider as the same has a direct bearing on not only the viewers alone but across the entire value chain. In some recent cases it has been found that some MSOs have deliberately switched off certain channels or have changed their offerings by taking out channels from packages without following the requirements as enshrined in the Quality of Service

Regulations. Not only were viewers adversely impacted by such arbitrary actions on the part of MSOs but also LCOs who are answerable to the last mile and Broadcasters too were adversely impacted. While broadcasters may not have a direct contractual relationship with the viewers it cannot be ignored that the ultimate product or service being savoured by the viewer is the programs of the broadcaster and non-compliance of quality of service regulations therefore adversely impacts the content offering by broadcasters.

(h) **Extension of these principles for DTH and other addressable platforms including Non DAS:**

The proposed amendments are in respect of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Systems) Regulations 2012 (9 of 2012). Therefore these would be applicable only in respect of the renewal of the agreements for cable operators in the DAS notified areas. We firmly recommend that similar provisions in respect of renewal of agreement are required to be incorporated in the interconnect regulations for agreements in analogue/non-DAS areas as well as for DTH and other addressable platforms. This is because of the fact that the analogue transmission would continue till December 2016 and similar disputes arise in respect of those Interconnection agreements also. There is a need to ensure streamlining of renewals for DTH and other addressable platforms as well as similar issues could arise in respect of such platforms as well.

3. We also respectfully submit that the Authority needs to revisit the entire Regulations per se in order to ensure fairness, transparency and discipline across the value chain more so as the sector is in a transitory stage as it makes the journey from analogue cable to digital addressable systems. While the instant draft amendments are limited in scope there is an urgent need for a holistic review of the extant regulations so that the sector can eventually settle down in a fully addressable environment. Various meetings within the IBF and Regional Broadcasters have brought to the fore several issues that require consideration within the new interconnection regime for addressable systems. We will shortly submit a detailed representation to this effect for the Authority's kind consideration.