

By Email/By Hand

November 20, 2015

To  
Mr. S.K.Singhal  
Advisor (B&CS),  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg  
New Delhi – 110002.

**Kind Attention: Shri S.K.Singhal, Advisor (B&CS).**

Dear Sir,

**Subject:** Response to Telecom Regulatory Authority of India (“TRAI”) Consultation paper dated 3<sup>rd</sup> November 2015.

**Ref:** Consultation Paper dated 3<sup>rd</sup> November 2015 - Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2015.

We thank TRAI for giving us an opportunity to express our views on the above captioned Consultation paper.


We understand and appreciate the noble intention of the Authority to pass an amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012) to protect the interests of the consumers /subscribers.

We are hereby enclosing our comments to the above referred consultation paper on the proposed amendments to the interconnect regulations for Digital Addressable Cable Television systems.

For any elucidations do revert back to us and we shall be glad to assist.

Thanking you.

Yours faithfully

  
Mr. Venkatesh Bhat  
Chief Finance Officer

**Introduction:**

The proposed changes to the regulations in order to protect the customer's interests in terms of timely communication by LCO/MSO is indeed a much needed step. There have been numerous instances where MSO and Broadcaster disputes are impacting the customers' TV viewing experience significantly for no fault of theirs. We endorse the need to bring in changes to the Regulations to address this lacuna. But we are of the humble view that just amending the regulations which govern the relationship between Broadcaster and the MSO won't suffice, a more pragmatic look needs to be also taken on the relationship between the Broadcaster, MSO and LCOs and there is a need to bring in an overall improvement in the business environment.

**Do find below our response to amendments suggested to the interconnect regulation**

**I. Issues related to Broadcasters and MSO.**

**Amendment**

*In regulation 5 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), (hereinafter referred to as the principal regulations),--*

*(a) after sub-regulation (6), the following explanation shall be inserted,----*

*Explanation: It shall also be mandatory for the broadcaster to enter into written interconnection agreement with the multi system operator for retransmission of the pay channel(s) even if nil subscription fee is charged by the broadcaster or paid by the cable operator.*

**Our Response**

We agree with the Regulation. However, the words "cable operator" may be replaced with "multi-system operator" since the intention is to regulate the agreement process between MSO and Broadcaster.

**Amendment**

*(b) for sub-regulation (16), the following sub-regulation shall be substituted, namely:----*

*" (16) to ensure that inconvenience is not caused to the consumers by sudden disconnections of signals due to failure of the service providers to enter into new interconnection agreements, it shall be mandatory for the service providers to enter into new agreements twenty one days prior to the date of expiry of the existing agreement: Provided that the broadcaster or multi system operator, as the case may be, 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"*



**Our Response**

1. One of the biggest hindrances in the successful completion of a mutually negotiated interconnect agreement are the unrealistic and discriminatory prices demanded by the broadcaster. There is an utter lack of transparency in the rates and deals offered by the broadcasters to different MSOs.
2. Broadcasters are providing different types of arrangements – RIO rates, Cost Per Subscriber (encompassing all channels) and a fixed fee arrangement in different markets. MSOs are struggling to understand the implications for their subscribers and make a choice amongst these complex options.
3. Some MSOs are given favourable deals/packages when compared to others which is completely against the regulation 3 sub Regulation 2 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012. This has been observed by TDSAT in its judgement dated 25th Sep 2014 in Hathway vs Star. Broadcasters are getting away with such discrimination as there is no present mechanism to monitor and check the transparency of deals signed by the Broadcasters with the MSOs.
4. There is no mechanism in the market for a MSO to understand and compare the rates it is offered. MSO has to rely on its own market studies to compare other deals signed between Broadcasters and MSOs in the same market. Hence it requires Negotiation period of 5 months as provided in the existing Interconnect Regulations.
5. While we appreciate the laudable object of TRAI that the customer should not have put into inconvenience, the present Regulations ends up providing further powers to the Broadcaster to harass MSOs while concluding agreement with the MSOs. We believe this amendment will allow the broadcasters to push across agreements with unilateral and unreasonable terms on unsuspecting MSOs thereby making the business unviable for the MSOs.
6. It is also observed that present Phases of Digitalisation efforts by the Industry has created numerous new MSOs as well as opportunities to the large MSOs to expand to new territories. While this is a positive development from the perspective of customers, many smaller MSOs are finding it difficult to predict and project their market shares as Digitalisation target dates near and needs to have a deeper understanding of an ever-evolving market situation. While this could be a temporary situation till Phase 3 and Phase 4 are completed, the MSO industry requires the negotiation period to negotiate and ensure their customer requirements are fully covered while concluding broadcaster agreements.
7. In the above said judgement the TDSAT has directed the Regulator to prevent losses to one party when a new agreement is entered into after the expiry of an earlier agreement. While it is important to find a mechanism by which neither broadcaster nor the MSO is penalised while determining subscription fees for the period between two agreements, The proposed change by the Regulator to completely taking away the negotiation period is not justifiable – this will put MSO industry to substantial

losses.. The present negotiation period provided under the regulation should be upheld with the mechanism to compensate the customers in case of disconnection of channels. Hence we hereby suggest the following as an alternate to Authority for its consideration.

- a) The Negotiation period 5 months to be provided i.e. Two months prior to expiry of the Existing Agreement and three months post expiry of the Agreement.
- b) The statutory negotiation period cannot be extended beyond said Five months period i.e. Three months post expiry of the agreement.
- c) In case of new agreement is negotiated and arrived by the parties completely different from the basis on which the previous agreement executed, then the Fresh Agreement shall be effective from the date of expiry of said Negotiation period.
- d) In order to avoid loss of one party, we suggest that for the said Three months negotiation period the subscription charges shall be payable with a moderate hike at 10% over and above the existing subscription charges under the expired agreement.
- e) There can be a mechanism such as Rent Rebate / service waiver charges be prescribed to be payable by MSO to its customers in case of disconnection of channel for want of Agreement. This mechanism is working well in ISP industry and ensure customers/ subscribers are suitably compensated for the loss of service.
- f) TRAI to contemplate whether the broadcasters should give the same rates to all the MSOs on all India basis. A rate card to this effect to be published by the broadcasters.

## **II. Issues related to Interconnection between MSO and LCO:**

The Local Cable Operators are in the trend of swapping and disconnecting the existing MSO signals without giving proper notices as per regulations. This causes huge inconvenience to customers and also revenue loss to existing MSOs. The Authority also observed this in explanatory memorandum of "The Telecommunication (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation, 2006" (10 of 2006). But the Authority did not prescribe any regulation to control the same as the explanatory memorandum does not have any binding effect. Because of this disconnection/swapping the customers did not even know name of the MSO providing signals to them. Hence to make the ground stable we request Authority to consider the below suggestions and pass necessary regulations / amendment to existing regulations on the below addressed issues:

- a. The LCO which has a valid interconnect agreement with the existing MSO shall not disconnect channels of existing MSO without giving due notice as per TRAI regulations & clearing all the outstanding due to the MSO as per last invoice amount.
- b. The connecting / New MSO should ask the LCO to furnish the copies/details of notices issued by LCO and No Due certificate from existing MSO for clearing all dues before

providing signals to said LCO. (This is at par with the existing Mobile Number Portability Regulations passed by the Authority).

### **III. RIO Rates:**

One of the biggest concern in the industry with regard to interconnect agreement is discrimination of terms and conditions between Broadcasters and various MSOs. The main reason for the said discrimination is the RIO agreement become unrealistic from the perspective of Customers due to the illusionary RIO Rates published by Broadcasters. The Authority and the Ministry of Information Broadcasting envisage for providing high quality and en-number of channels to customers in a cost effective manner. The same becomes unrealistic due to the High RIO rates of channels. The purpose of RIO is to promote a common transparent basis and healthy competition by providing level playing ground as per the regulations. But the present RIO rates becomes a ploy to turn the RIO into a coercive tool and a threat to the seeker of the TV channels.

RIO should set parameter of negotiations and RIO should be base of negotiation between the parties. But in actual, the negotiated rates between the parties are far lower than the published RIO rates which means the RIO rates are illusionary one and published for the purpose of pushing the seeker of the TV channels to dotted terms of Broadcaster. The present RIO rates are actual tool of discrimination in the hands of Broadcaster. Hence without looking into the issue of difference between Market rate of Channel and so published RIO rate of channel, the present regulation does not serve any purpose.

Hon'ble TDSAT also in the same judgment dated 25th Sep 2014 in Hathway vs Star reiterated the Authority to look into the above mentioned aspects the rates quoted by broadcasters and MSOs, to serve the purpose as intended in the regulations and held as follows:

*"We reiterate the urgent need for TRAI to examine the RIOs submitted to it, especially the rates quoted by broadcasters and MSOs, to make these serve the purpose as intended in the regulations."*

Unless the Authority addresses all the above mentioned issues in holistic way, the present unstable ground situation would continue and the intention of Regulations to reach to end Subscriber would take far long way as the present stakeholders taking advantage of the said gaps in the present Regulations. We once again thank the Authority to giving us this opportunity to put forth our views/comments on the proposed amendment to interconnect Regulations.