

RESPONSE OF INDIAN BROADCASTING FOUNDATION

TO

TRAI CONSULTATION PAPER

ON

**‘DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES)
INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS)
(SIXTH AMENDMENT) REGULATIONS, 2015’**

ISSUED ON 3RD NOVEMBER 2015



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Response of Indian Broadcasting Foundation on the ‘Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2015’

IBF welcomes the proposed changes with regard to issues relating to, retransmission of TV signals between Service Providers either without valid Interconnection Agreement or expired Interconnection Agreements and would like to place its response before the Authority.

One of the major causes of the disputes at present between the service providers is either the non-execution of the Interconnection agreements and /or the non-renewal of Interconnect agreements upon the expiry of the existing agreements. The issue of renewal of Agreement and the effective date of the said agreement upon renewal has led to lot of disputes and litigations in the sector both between Broadcasters and Multi-System-Operators and also between Multi-System-Operators and Cable Operators. The negotiations are deliberately dragged and in case of non-renewal, the signals are enjoyed on the terms contained in old/expired agreements even beyond the three months period presently stipulated in the Regulations. Invariably in case of failure of negotiations the MSOs opt for RIO from a particular date and the commercial terms/payments for the interregnum period i.e. from the date of the expiry of the agreement till the date of opting the RIO becomes a contentious issue often leading to the filing of petitions in TDSAT. It is expected that the proposed amendments would address all these issues and the disputes in the sector would be minimised.

We feel that the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2015 would definitely be a step in the right direction and the following are our comments on the proposed amendment.

(1) While we agree with the proposed draft, we would like to suggest the following further modifications to bring more clarity:

(i) In Clause 5 (16) the following proviso may be added after the second proviso:

“Provided further that any agreement entered into by the service providers within the aforesaid period of 21 days/15 days whether on mutually negotiated basis or on RIO basis as the case may be, shall take effect immediately upon expiry of the existing agreement.”

Reason: The above mentioned proviso is being suggested to take care of the situation where the service providers are able to enter into an agreement during the notice period of 21/15 days as the case may be.

(ii) In Clause 5 (8) we suggest that following proviso or Explanation may be added:

“Where the existing agreement expires during the pendency of the proceedings before any court or tribunal and the parties to the dispute are not able to arrive at mutually negotiated agreement, the terms specified in the RIO issued by the service

provider would apply from the date of expiry of the existing agreement, in case the service provider is willing to continue availing the channels”.

Reason: The Regulations provide that it is mandatory for the service provider to have a written agreement. Where the existing agreement which is the subject matter of the dispute/proceeding expires during the pendency of the proceedings before court or tribunal, it is imperative even in such case for the parties to negotiate and enter into new agreement in accordance with the provisions stipulated in the proposed Clause 5(16). In case the service providers fail to arrive at a mutually negotiated agreement, in order to maintain continuity and to ensure uninterrupted supply of signals, it is suggested that the RIO terms be made applicable unless the distributor of the channels i.e. MSO, DTH etc. being party to the dispute is unwilling to continue the signals.

- (2) The proposed draft of sub regulation (16) of Regulation 5 of the ‘Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2015 mandates that the service providers have to enter into new agreement twenty one days prior to the expiry of the existing agreement;

Provided that 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.

Provided further that in case the service providers fail to enter into new interconnection agreement **the multi system operator or the linked local cable operator, as the case may be, shall, fifteen days prior to the date of expiry of the agreement inform the consumer the disconnection of signals."**

In this context, we would like to bring to your kind notice the following:

- (I) A perusal of the above especially the highlighted portion would reveal that the responsibility/obligation of informing the consumers regarding the disconnection of signals has been cast upon MSOs and/linked local cable operator. This is quite logical as the Broadcasters do not have any direct contractual relationship with the consumers.
- (II) In such circumstances the publication of notice in newspapers by a Broadcaster as per the provisions of Clause 6(5) and Clause 6(6) of the Regulations is not at all required. Accordingly, in the context of failure to renew the agreement as contemplated in Clause 5(16), it should be explicitly clarified that the provisions of Clause 6(5) and 6(6) would not be applicable.

(3) **Public Notice in newspapers - not required even in other cases**

It may be stated that the public notice in newspapers contemplated 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) for any reason which inter alia may include default in payment, non-renewal of agreement, piracy etc. At present the obligation for publishing the public notices in the newspapers has been cast upon the service provider which intends to disconnect the signals. It has been stated in the Explanatory Memorandum to the Regulations that the purpose of the public notices is to inform the consumers about the dispute and likely disconnection of signals because of such dispute so as to enable them to make alternate arrangement(s).

It may be observed that most of disputes which entail the publication of notices in newspapers are between Broadcasters and MSOs/DTH operators. It is entirely inequitable in such cases to cast obligation for publishing Public Notices on the Broadcaster(s) when they have no direct contractual relationship with the consumers/subscribers. The responsibility if any in this behalf has to be that of MSO/linked Cable Operator/DTH Operators who directly deal with consumers. Even otherwise the public notices which entail heavy expenditure running into crores of Rupees do not serve any purpose as:

- (a) It is observed that general public do not even read these notices which are published in some corner of a newspaper. Even otherwise because of the advent of various other alternate mediums for accessing news such as Internet, mobile, TV etc there has been drastic reduction in the newspaper readership.
- (b) These public notices are invariably stayed by TDSAT in almost all cases;
- (c) The expenditure incurred on these public notices runs into crores which is never reimbursed by the defaulting service providers.
- (d) The purpose sought to be achieved through publication in newspapers i.e. the intimation/information to the consumers about the likely disconnection is better served by running scroll on the channels which the consumers consciously notice while viewing a particular channel/program.

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 is required to be dispensed with. Thus, we request the Authority to delete Clause 6(5) & 6(6) from the Regulations. Alternatively, instead of public notices in newspapers, the necessary information to the consumers be conveyed by running scrolls on respective channels/programs. It is an undisputed fact that scrolls have very high visibility and can serve the intended purpose better than the newspaper notices

(4) A perusal of the proposed draft Regulations reveal that the same are in respect of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Systems) (Sixth Amendment) Regulations 2015. In other words, these would be applicable only in respect of the renewal of the agreements in **Addressable mode**. We strongly recommend that the similar provisions in respect of renewal of agreement are required to be incorporated in the interconnect regulations for agreements in analogue/non-DAS areas. 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.

(5) **Suggestion regarding proposed amendment coming into force after ninety (90) days from the date of their publication in the Official Gazette**

We do welcome the change proposed whereby the 90 days period allowed for negotiations after the expiry of the Interconnection Agreement has been done away with. This will definitely help the stakeholders to have valid Agreements in place before services are provided and availed and thereby resulting in minimal litigations.

Clause 1.2 of the proposed amendment to the Principal Regulation sets forth that it shall come into force after ninety days from the date of publication in the official Gazette.

It is pertinent to point out that majority of the Interconnection Agreement(s) executed between the Broadcaster and the MSO's are effective from 1st April 2015 to 31st March 2016 and are due for renewal from 1st April 2016. In this regard it is suggested that the proposed amendment may be published in the official Gazette not later than 9th December 2015 so as to enable the stakeholders to ensure seamless transition to new regime without causing any inconvenience to the consumers.

Conclusion: We feel that the proposed amendment shall bring in semblance of discipline and consistency in the renewal process of Interconnection Agreements between Broadcaster and MSO's as well as between Cable Operators and MSOs. This will also ensure clear cut interpretation of the Regulation with regards to effective date of applicability of the terms of the new agreement. Earlier due to provision of three months period allowed for mutual negotiation to renew the Agreements after expiry of term resulted in various dispute inter alia relating to applicability of commercial terms leading to sudden disconnection of signals of TV channels and thereby causing inconvenience to the consumers.
