IndiaCast

November 20, 2015

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan,

Jawaharlal Lal Nehru Marg, New Delhi – 110002

Ref: Consultation paper on draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulation, 2015 ("***Consultation Paper***").

Dear Sir,

We, IndiaCast Distribution Private Limited ("***IndiaCast***") is an authorized agent of various Broadcasters, namely, TV18 Broadcast Limited, Eenadu Television Private Limited and EPIC Television Networks Private Limited and distributes the channels of the said Broadcasters, pursuant to the extant of the TRAI Regulations dated 10.02.2014, or as amended till date.

We wish to show our appreciation on this opportunity extended to the stakeholders by way of this Consultation Paper. In context of the same, we hereby attach our views/comments on the issues raised in this Consultation Paper for your kind perusal.

For any further clarification you may write to us or contact us.

Yours Sincerely,

For IndiaCast Distribution Private Limited

Authorized Signatory

IndiaCast Distribution Pvt. Ltd. MUMBAI

IndiaCast Distribution Private Limited
formerly known as IndiaCast UTV Media Distribution Private Limited I CIN: U22222MH2012PTC238498
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<u>Submission of IndiaCast Distribution Private Limited ("IndiaCast") to Telecom Regulatory Authority of India ("TRAI") on Consultation Paper - Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulation, 2015, Issued by TRAI on November 03, 2015:</u>

<u>Comments of IndiaCast</u>:

<u>Amendment (a)</u>:- *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.

1. It is submitted that Sub-regulation (6) & (7) of Regulation 5 of the Principal Regulation clearly stipulates the requirement to reduce the terms and conditions of an interconnect agreement into writing. Hence, it is implicit that the Broadcaster and the MSO has to execute written interconnection agreement for retransmission of the pay channel(s) even if nil subscription fee is charged by the broadcaster or paid by the cable operator.

   Sub-regulation (6) & (7) of Regulation 5 of the Principal Regulation stipulates that:

   > "*(6) It shall be mandatory for the broadcasters of pay channels to reduce the terms and conditions of the interconnection agreements into writing.*
   > *(7) No broadcaster of pay channels shall make available signals of TV channels to any multi system operator without entering into a written interconnection agreement*".

2. <u>The proposed explanatory memorandum to be inserted after sub-regulation (6) is in contradiction to the definition of pay channels as stipulated in sub-regulation (u) of Regulation 2 of the Principal Regulation</u>. The relevant regulation aforementioned reads as:

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"pay channel" in respect of a cable television network, means a channel for which subscription fees is to be paid to the broadcaster by the cable operator and due authorisation needs to be taken from the broadcaster for its re-transmission on cable.

Hence, it is submitted that instead of proposing an explanation after Clause 6, the TRAI may deliberate an amendment in the definition of pay channels. The relevant definition may be amended as:

"pay channel" in respect of a cable television network, ***means a channel for which subscription fees or a nil subscription fees is to be paid to the broadcaster by the cable operator*** *and due authorisation needs to be taken from the broadcaster for its re-transmission on cable.*

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 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 incase 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."

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1. We would like to draw the attention of Hon'ble TRAI that Regulation 8 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 ("Analog Regulation") inter alia stipulates the renewal provision for interconnect agreements which basically provides a negotiation period commencing from 2 months prior to expiry of existing agreement. The regulation reads as:

   "(8) Time period for renewal of existing agreements.-

   8.1 <u>Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement;</u>

   Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or for the next three months from the date of expiry of the original agreement, whichever is earlier. However, once the parties reach an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement: <u>Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals".</u>

   Sub-regulation 16 of Regulation 5 of the Principal Regulation stipulates that:
   "(16) Every service provider shall enter into a new agreement before the expiry of the existing agreement and in case the service provider fails to enter into the new agreement before the expiry of the said agreement, the provisions of the existing agreement shall continue to apply till the new agreement is entered into between the service providers or for the next three months from the date of expiry of existing agreement, whichever is earlier and if the service providers are able to enter into an agreement before the expiry of the said three months,

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the new agreement shall apply from the date of expiry of earlier agreement: Provided that if service providers are not able to enter into a new agreement, they may be entitled to disconnect the signals of TV Channels by giving three weeks notice published in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area for which the said agreement is applicable."

Now, sub-regulation 16 of the regulation 5 of the Principal Regulation is proposed to be amended as:

"(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 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 incase 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."

Therefore, the uncertainties in the proposed amendment may be identified as:

A. TRAI has not elaborated as to whether a public notice in a local newspaper is required to be served or not;

B. TRAI has not clarified whether a disconnection notice of three weeks' notice is required to be serviced by the Broadcaster to the multi system operator/local cable operator.

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C. TRAI is also unclear if the service providers are allowed to cure and entering into an interconnection agreement during the last 21 days to the expiry date of the existing agreement;

D. IT is also not clear if by giving 15 days' notice to the subscribers, the service provider is done away with disconnection notice of 21days or not.

D. Analog Regulation stipulates that *Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations* for the interconnection agreement two months prior to expiry of the existing agreement. However, in contradiction to the said regulation, the proposed amendment sets up onus on the broadcaster to serve a renewal notice two months prior to expiry of the existing agreement, which is prejudicial. The obligation of initiation and commencement of the negotiation of the terms and conditions of the interconnection agreement should be left to the parties to decide. Further the Analog Regulation stipulates that in the event, the parties fails to finalise the agreement and the negotiation continues post expiry of the existing agreement, then the terms and condition of the existing agreement shall prevail for a period of three month thereafter. The terms and conditions of the renewed agreement shall be retrospectively applicable from the date of expiry of the previous agreement. Hence, the proposed amendment to the Principal Regulation is also not in line with the Analog Regulation applicable to the DAS Phase III & IV regions.

E. The present draft amendment to sub-regulation (16) of regulation (5) also defeats the obligations of the Service providers to serve a notice of three weeks prior to disconnection of signals of the channels.

F. The said amendment also shifts the onus of the execution of interconnect agreement d to the Broadcaster. On grounds of general interest, it would imperious of the Hon'ble TRAI to amendment to sub-regulation (16) of regulation (5), when the same is already well regulated.

G. Furthermore, the issue of the anticipated non-execution of interconnect agreement post expiry of the agreement does not seem to be addressed even

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with the proposed amendment, which the Principal Regulation had allegedly failed to obligate. Rather the proposed amendment would give rise more disputes between the stakeholders, in turn lead to inconvenience to the consumers due to frequent interruption of the signals of the channels. Also, it is clearly stipulated in the Principal regulation that the terms and conditions of the renewed agreement shall be applicable retrospectively i.e., from the date of expiry of the previous agreement.

H. The proposed amendment would also lead to the state of confusion for being different DAS and Non DAS Regulations for the same state of affair. This would further create an anomaly when the Broadcaster has to commence a negotiation with an MSO for both DAS and Non DAS areas where a different process has to be adopted in terms of proposed amendment.

I. TRAI has also not identified the disputes between the service providers or petitions and the observations of the Hon'ble TDSAT, as mentioned in para 6 of the explanatory memorandum to the draft amendment regulation which lead to proposed amendment. Hence, the basis of proposed amendment is not justified.

J. TRAI has failed to consider the fact that series of information is required by the Broadcaster to commence a meaningful negotiation for execution of subscription agreement which includes the system generated subscriber report of the service provider of the last month of the agreement and various other meticulous details of service providers. By way of proposed amendment, TRAI is unnecessarily advancing its eagerness for execution of subscription agreements between the parties without giving enough time to parties to form their strategy and decide their plans before commencement of negotiations for interconnection agreement.

K. We would also like to take this opportunity to gently remind the TRAI that the effective date of implementation of DAS Phase III is January 01, 2016, and accordingly, broadcasters have already commenced negotiation of terms and conditions / interconnection agreements with various DPOs for supply of

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signals of the respective channels of the broadcasters in the DAS Phase III areas. Hence, if the TRAI implements the proposed amendments at this crucial juncture of transition from analogue to digital mode of transmission, then it may create a situation of confusion in the marker resulting in non-execution of interconnection agreement, leading to utter pandemonium. We would also like to humbly submit that frequent intervention of the TRAI may have a regressive effect as it may make running the business challenging and in fact this may negate the growth of Indian cable TV industry market.

In light of the aforementioned, we humbly request the Hon'ble TRAI to withdraw the proposed amendment and maintain the Principal Regulation as it is to safeguard the economic rights of the stakeholders.

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