

DEN NETWORKS LIMITED'S RESPONSE ON THE DRAFT MODEL & STANDARD INTERCONNECTION AGREEMENT ISSUED BY TELECOM REGULATORY AUTHORITY OF INDIA ON 9TH DEC, 2015

1. Preamble

At the outset, we wish to express our sincere gratitude to the Telecom Regulatory Authority of India (the Authority) for its support and cooperation in the establishment and growth of Broadcasting & Cable TV industry in India and also resolving various issues, which have arisen from time to time.

We further thank the Authority for providing us an opportunity to submit our response on the Draft Model & Standard Interconnection Agreement as issued.

2. Response

The Telecommunication (Broadcasting and Cable services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April, 2012 (the Regulations) amended till date as issued by the Authority provides that no Multi System Operator (MSO) shall provide signal of TV channels to Linked Cable Operator (LCO) without entering into written interconnection agreement.

The Regulations further provides that the interconnection agreement between an MSO and its LCO *inter-alias* shall have the details of various activities rendered by LCO and MSO, the revenue settlement between the parties for these services etc. Further it has been mandatorily provided in the *Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 dated 21st July, 2010 (the Tariff Order)* that fall back option has to be mandatorily followed in the absence of mutual arrangement in the following words in the proviso to Clause 5 as *“Provided that in case the multi-system operator and the local cable operator fail to arrive at mutual agreement, the charges collected from the subscribers **shall be shared in the following manner...**”* In our view it is respectfully submitted to the Authority that this has to be strictly followed in letter and spirit and must be incorporated as a mandatory term of the agreement.

We would also like to draw the attention of the Authority towards Para 7 of the Consultation Paper released by the Authority on the said agreement. The said para states as under:

“In cases, where the revenue settlement is mutually agreed between the MSO and the LCO, the MIA part of the draft agreement would be applicable. In other cases where the revenue settlement could not be agreed mutually between the MSO and the LCO; **and it is decided** to continue relationship based.....”

We wish to state to the Authority that in the event the MSOs and the LCOs fail to arrive on the mutual agreed revenue sharing arrangement, the provisions pertaining to sharing of revenue/ subscription money prescribed under the Tariff Order become applicable on both the parties by default. Consequently, the parties are no longer required to decide on its applicability and thus, must abide the same without any repudiation.

As the Authority is already aware, there have been various instances in the past where the LCOs have showed reluctance in executing the agreement with the MSOs and have expressed their dissent on majority of the terms & conditions of the agreement including the revenue sharing arrangement which has led to non-execution of the same. Consequently, the MSOs are unable to execute a deal with the LCOs and have to limit their area of operations. It is pertinent to mention that this also adversely affects the growth propositions of both the parties and the industry as whole including consumers who are unable to enjoy quality services as also the non-implementation of Digitalization in letter and spirit and leading to constant disputes.

Additionally, the MSOs are currently under the process of implementing packages across all DAS cities and need some more time to fully implement and execute the same. The said exercise also requires the cooperation from the LCOs which as we all know and which the Authority is also well aware has faced stiff opposition and has always been an extremely difficult task. This opposition is but natural as the same prevents LCOs from bypassing the digital set-top box, and deciding the mix and price of channels according to locality and customer base. There is also a fear as to the shift in the balance of power away from LCOs to MSOs who will now be able to monitor their subscriber base and control the flow of revenues.

In any event, it is well known that with the nature of difficulties faced by MSOs at ground level, it is becoming extremely difficult with our endeavor to comply with the regulations prescribing such requirements. The collection of subscription money is further very miniscule by the MSOs compared to an amount which otherwise would have been collected if the parties have agreed amicably. The same also results in the LCO continuing to unjustly and unfairly gain at the cost of MSOs

The Authority with an objective to regulate the Cable TV industry and to reduce the disputes between MSOs and LCOs has notified draft "Draft Model & Standard Interconnection Agreement" on 9th Dec, 2015 devising Model & Standard Interconnection Agreements which contains mandatory provisions to ensure the compliance of the regulatory framework available for DAS.

The proposed draft consists of a Model Interconnection Agreement and Standard Interconnection agreements in a single document namely draft Model & Standard Interconnection Agreement. The draft contains necessary terms and conditions to ensure the compliance of the regulatory framework available for DAS and to provide a level playing field to the MSOs and the LCOs. The draft agreement also lists roles and responsibilities as well as rights and obligations of each party separately.

3. Concerns in the draft Standard Interconnection Agreement issued by the Authority

The following roles & responsibilities as mentioned below have been put upon the MSOs in the SIA part of the draft agreement, however in our view, the same should be left open subject to mutual negotiations of the signing parties i.e., among the MSOs and the LCOs even in case of execution of agreement under the prescribed fall back arrangement. Both the parties should be provided adequate liberty to decide their roles & responsibilities during execution of the agreement in accordance with the relevant regulations issued by the Authority.

In view of the above, we humbly request that the Authority may kindly revisit/ reconsider the following Clauses:

S. No	Reference	Particulars	DEN's Remarks
1	Exp. on Clause 4.2	Explanation:- The clause 4.2.....etc.	It is respectfully submitted to the Authority that the MSOs are free to offer additional schemes pertaining to Set Top Boxes (STBs) in addition to the prescribed tariff schemes. In such a case, where an MSO is offering the STBs under right to use to its consumers through LCOs, then the LCOs are bound to return the STBs to the MSOs even if the STBs are installed at the consumers' premises in case of failure of payment or otherwise. The LCOs shall be made accountable for the properties of the MSOs which MSOs are providing to LCOs in good faith and as per their business models. Accordingly, we request the Authority to delete the said explanation from the draft agreement and make the LCOs responsible for the properties of MSOs which are installed at the premises of subscribers acquired under such right to use arrangements.
2	Clause 5.1	The MSO shall make availableetc.	It is submitted to the Authority that signals should be provided to the LCOs by MSOs on non-exclusive basis for further re-transmission to the consumers in digital mode only. Accordingly, the said clause should be amended.

3	Clause 6.2	The MSO shall sign...etc.	It is submitted to the Authority that there are situations when the agreements with the Broadcasters and the MSOs are at negotiation stage, and the services are availed from the Broadcasters through a written Memorandum of Understanding. Imposing such restriction in the draft agreement will put superfluous stress on the MSOs to sign the deals in hurry without analyzing the impact. This would also give an opportunity to the Broadcaster to arm twist and make the MSO sign on dotted lines and unreasonable terms. In light of the same, we request the Authority to revisit the said clause and amend it accordingly.
4	Clause 7.1	The LCO shall continue to have its...etc.	The right of ownership to LCOs should be with respect to their owned network only. Accordingly, it is requested to the Authority to amend the same.
5	Clause 8.3	The MSO shall provide web based...etc.	MSOs are already entertaining the complaints o of the LCOs through emails and other mode of communication. It has been always the intentof the MSOs to redress the grievances of LCOs. The present regulations require the MSOs

			to provide this facility only to the consumers. Therefore, the Authority is hereby requested to amend the said clause accordingly.
6	Clause 8.5	The MSO shall generate bills...etc.	It is submitted to the Authority that the generation of invoices needs processing of large amount of data through systems and it may not be possible to generate all the invoices within a short period of 3 days from the end of billing cycle. A reasonable time period should be granted to the MSOs for generating the bills keeping in mind the limitations.
7	Point No. 2 of (1) of Column 4 of Clause 10	Devising of formats of...etc.	The liberty to devise the applications forms should be provided to both the parties in accordance with Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) dated 14th May, 2012 amended till date. There may be a situation when anyLCO may insist an MSO to devise the application form itself.
8	Point No. 6 of (1) of Column 4 of Clause 10	Establishment of Complaint Centre...etc.	The responsibility to establish a complaint center has been put upon the MSO or the LCO under the Consumers Complaint Redressal (Digital Addressable Cable TV Systems) Regulations, 2012(13 of 2012) dated 14 th May, 2012. Accordingly, the

			responsibility to establish the same should be left upon on both the parties in accordance with the said regulations instead of only an MSO, as provided in the draft agreement.
9	Point No. 7 of (1) of Column 4 of Clause 10	Specification of a system of discount...	It is requested to the Authority that the said responsibility to specify such scheme should be left upon on both the parties in accordance with the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) dated 14 th May, 2012 amended till date instead of only an MSO, as provided in the draft agreement.
10	Point No. 16 of (1) of Column 4 of Clause 10	Response to the consumer complaints as per norms of QoS Regulations.	It is requested to the Authority the said responsibility should be put upon the MSO and LCOs jointly and severally with respect to the complaints as given under the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) dated 14 th May, 2012 amended till date instead of only an MSO, as provided in the draft agreement.

11	Point No. 20 of (1) of Column 4 of Clause 10	Delivery of system generated itemized bills to subscribers	It is understood that the responsibility to deliver the bills vest upon the MSOs, however the attention of the Authority may kindly be drawn to Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) dated 14 th May, 2012 amended till date. The said regulations allow the MSOs to deliver the bills to the subscribers through the LCOs which should be stated in the draft agreement instead of only an MSO, as being provided. Further, the MSOs may deliver the payments receipts to subscribers through its LCOs.
12	Clause 15.1	Prevention of Piracy	It is requested to the Authority to prescribe stricter and harsh punishment in the agreement itself on the persons who are found indulging in committing offences such as piracy so that those persons can be punished. The wrongdoers must be held responsible and substantial quantum of penalty will act as deterrent to their wrongdoings.
13	Clause 19	Notices	It is submitted to the Authority that along with

			Registered Acknowledgement Due and hand delivery with acknowledgement, the notices may also be served at the registered email IDs of the both the parties as mentioned in the agreement or which may be communicated in writing by one party to the other. This will enable both the parties to save their cost and time while issuing notices.
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Further, the draft agreement should provide a proper mechanism to act as a safeguard for MSOs against the malpractices of LCOs such as swapping of boxes. The Authority should provide a mechanism in the draft agreement itself which should enable the MSOs to impose penalties / fair pre estimate of damages on the LCOs if the LCOs are found indulging in such malpractices and crimes. There have been several instances in the past when the STBs of an MSO has been swapped with the STBs of another MSO in the market without following the due procedure of law and as a result, the MSO whose STBs has been swapped/ replaced has faced substantial amount of losses in terms of money and the consumers both. Therefore, a penal / fair pre estimate of damages provision should be included in the agreement itself to stop this rampant practice prevailing in the market.

4. Conclusion

In light of the aforesaid, we humbly request the Authority to incorporate/ amend the above mentioned provisions in the draft agreement.

We further request the Authority to prescribe the fall back arrangement and execution of SIA part of the draft agreement as

mandatory in case where the parties fail to arrive at a consensus on the revenue sharing terms.