



भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA
भारत सरकार /Government of India



DIRECTION

Dated: 8th July, 2019

Subject: Direction to M/s Tata Sky Limited under section 13, read with sub-clause (v) of clause (b) of sub section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997, to ensure compliance to Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007(08 of 2007).

No. 03-84/2018-B&CS --- Whereas the Telecom Regulatory Authority of India [hereinafter referred to as the Authority], established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) [hereinafter referred to as TRAI Act, 1997], has been entrusted with discharge of certain functions, *inter-alia*, to regulate the telecommunication services; fix the terms and conditions of inter-connectivity between the service providers; ensure technical compatibility and effective inter-connection between different service providers; lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication services;

2. And whereas the Central Government, in the Ministry of Communication and Information Technology (Department of Telecommunications), vide its notification No.39, ---

(a) issued in exercise of powers conferred upon by proviso to clause (k) of sub-section (1) of section 2 of the TRAI Act, 1997 and

(b) published under notification number S.O.44(E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3 – sub-section (ii)---

notified broadcasting services and cable services to be telecommunication service;

3. And whereas the Authority, in exercise of the powers conferred upon it by section 36, read with sub clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the TRAI Act, 1997 made the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007 (08 of 2007) dated the 31st August, 2007 (hereinafter referred to as the DTH QoS Regulations 2007);

4. And whereas regulations 9A and 9B of DTH QoS Regulations 2007 read as under: -

“9A. No change in composition of a subscription package during first six months of enrolment or during the period of validity of subscription paid in advance. ----- (1) No direct to home operator shall change the composition of a subscription package which has been subscribed to by a direct to home subscriber, so as to discontinue exhibition of any particular channel in that subscription package, ----

(a) during the period of six months from the date of enrolment of the subscriber to such subscription package in the case of a subscriber who pays his subscription

amounts under such subscription package by recharging or by making payments periodically to the direct to home operator; or

(b) during the entire period of validity of the subscription package if the subscription amount in respect of such subscription package has been paid in advance by the direct to home subscriber or in instalments as per offer of the direct to home operator, -----

if such channel continues to be available on its direct to home service on its platform:

(2) If any particular channel included in a subscription package which has been subscribed to by a direct to home subscriber subsequently becomes unavailable on the direct to home service of the direct to home operator on its platform, the direct to home operator shall reduce the subscription charges for such subscription package on a proportionate basis from the date of discontinuance of the channel from the direct to home service of the direct to home operator till the expiry of a period of six months from the date of enrolment of that subscriber, or till the expiry of the contracted period of subscription for which the amount of subscription has been paid in advance or in instalments as per offer of the direct to home operator, whichever is later.

Provided that, instead of proportionately reducing the subscription charges for such subscription package on account of non-availability of such channel, the direct to home operator may, at its discretion, introduce in such subscription package another channel of the same genre and language as the channel which has so become unavailable on the direct to home service of the direct to home operator.

Provided further that the direct to home operator shall give an option to each one of its direct to home subscribers, who have subscribed to such subscription package, an option to choose from the modified subscription package with charges reduced on proportionate basis and the modified subscription package with the removed channel replaced by another channel of the same genre and language, and the direct to home subscriber shall be free to exercise the option for the period from the date of discontinuance of the channel from the direct to home service of the direct to home operator till the expiry of a period of six months from the date of enrolment of that subscriber, or till the expiry of the contracted period of subscription for which the amount of subscription has been paid in advance or in instalments as per offer of the direct to home operator, whichever is later.

Explanation: For the removal of doubts, it is hereby declared that the amount of reduction on proportionate basis in the subscription charges, on account of removal of a channel from a subscription package, shall be calculated by dividing the amount of subscription charges for the original subscription package by the number of channels included in the original package.

9B. Notice before change in composition of a subscription package. ----- Every direct to home operator shall give prior notice of fifteen days to its direct to home subscribers subscribing to any subscription package before changing the composition of that subscription package.”;



5. And whereas the Authority issued a letter dated 05.10.2018 to M/s Tata Sky Ltd. asking it to furnish a detailed and comprehensive report including the reasons for discontinuation of transmission of TV channels of M/s Sony Pictures Network India Pvt. Ltd. on distribution network of M/s Tata Sky Ltd. and steps taken to mitigate the grievances of consumers;

6. And whereas M/s Tata Sky Ltd., in response to the Authority's letter dated 05.10.2018, vide its letter dated 12.10.2018, inter-alia, submitted that while Tata Sky was keen to extend the previous arrangement with Sony on mutually favorable terms, however, the negotiation broke down on account of Sony demanding an unusually exorbitant amount. That the points urged by Sony by way of various advertisements have been pleaded by them before the Hon'ble TDSAT. The Hon'ble TDSAT dealt with these issues and passed a reasoned order rejecting the relief sought by Sony and directing both parties to negotiate and reach a mutually acceptable agreement within a period of four weeks (extendable);

7. And whereas the Authority on examination of the response submitted by M/s Tata Sky Ltd. observed that it failed to explain the reasons for non-compliance of the DTH QoS Regulations 2007 and also failed to indicate the steps adopted by it to protect the interest of the consumers in the light of violation of the regulations;

8. And whereas the Authority also found out from various newspaper reports that transmission of 26 other channels was discontinued on M/s Tata Sky Ltd.'s distribution network and accordingly, another letter dated 12.11.2018 was issued to M/s tata Sky to clarify their stand in respect of such channels as well;

9. And whereas M/s Tata Sky Ltd. vide its letter dated 19.11.2018, inter-alia, submitted that they have issued advertisements in the newspaper on September 16, 2018 as prior notification to their subscriber. Further, they have provided replacement channels in lieu of the discontinued channels to their subscribers. Notwithstanding these replacements, wherever required, refunds are being credited back in the account of the subscribers. In regard to the mention of the media report, the channels are being discontinued for reasons of 'Expiry of Agreement' and 'Breach of Agreement';

10. And whereas the Authority vide its letter dated 21.12.2018, informed M/s Tata Sky Ltd. that based on its reply and analysis of a plethora of consumer complaints, the Authority noticed that M/s Tata Sky Ltd. has not addressed the matter in true letter and spirit of the regulatory provisions as there is no clarity on measures undertaken for providing choice to the consumer. Accordingly, M/s Tata Sky, was, inter-alia, directed to provide explicit options to consumers highlighting the policy of refunds, as applicable and to submit a clear compliance of the relevant provisions, including the details of the refund credited to the consumers for the period of discontinuance of the channels;

11. And whereas M/s Tata Sky Ltd., in response to Authority's letter dated 21.12.2018, vide its letter dated 31.12.2018 requested for some more time to respond to the queries raised by TRAI and informed TRAI that they will submit their response by 11.01.2019;



12. And whereas M/s Tata Sky Ltd. submitted its response vide its letter dated 14.01.2019. However, in their reply, M/s Tata Sky Ltd. again did not convey the process undertaken to credit the refunds to the subscribers. M/s Tata Sky Ltd. also did not provide any details of the communication made to subscribers regarding the refund or refund policy. Further, M/s Tata Sky Ltd. mentioned that they have now come to a mutual agreement with Sony and the deal is valued at a fixed amount of Rs.985 crores for a 3year term with an additional pay out of upto 25% of the fixed deal basis viewership. All the Sony channels have resumed transmission on their platform on 5th December, 2018;

13. And whereas the Authority vide its letter dated 18.03.2019 intimated M/s Tata Sky Ltd. that their reply has not been found satisfactory as it does not convey the process undertaken to credit the refunds to the subscribers and, any details of the communication made to subscribers regarding the refund or refund policy. Further, the reply of M/s Tata Sky was also indicative of the fact that a fixed fee deal with M/s Sony Pictures India Private Limited has been concluded, and therefore, M/s Tata Sky was requested to explain as to how this is in compliance with the applicable Interconnect Regulations. M/s Tata Sky Ltd. was also advised to preserve all the relevant data of the said period of disconnect/reconnection of TV channels pertaining to M/s Sony Pictures India Private Limited & M/s TV Today Network Ltd;

14. And whereas M/s Tata Sky Ltd. vide its letter dated 22.03.2019 requested TRAI to grant them time till April 1, 2019 for submitting their reply;

15. And whereas M/s Tata Sky Ltd., vide its letter dated 29.03.2019, inter-alia, mentioned that both M/s Tata Sky Ltd. and M/s Sony have reached an amicable settlement and resolution several months earlier and the transmission of all channels of M/s Sony had resumed on the Tata Sky's platform on 05.12.2018. Further, M/s Tata Sky also provided details of various steps that they undertook to ensure subscriber well being;

16. And whereas it is observed that M/s Tata Sky Ltd. has continuously failed to comply with extant DTH QoS Regulations 2007 and also provide the details sought by TRAI;

17. Now, therefore, the Authority, in exercise of powers conferred upon it under section 13, read with sub-clause (v) of clause (b) of sub section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997, hereby directs M/s Tata Sky Ltd. to submit the following information within ten (10) days from the date of issue of this direction: -

- (a) confirm whether the choice was given to the consumer to choose between the proportionate refund and alternate channels;
- (b) provide the details of the communication made to subscribers for providing choice to the consumers regarding the refund or refund policy;
- (c) credit the refunds to the subscribers who were not given an option to choose between the proportionate refund and alternate channels, if any;
- (d) provide a list of consumers with amount of the refund credited to the consumers for the period of discontinuance of the channels;
- (e) provide the list of churned out subscribers who were to be refunded for the period of discontinuance of the channels along with the details of the amount to be refunded to such subscribers;



- (f) provide a copy of Interconnect Agreement of M/s Tata Sky Ltd. with M/s Sony Picture Private Limited which is in force as on date.


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To,

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