

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi the 7th January, 2016

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES)
INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (SIXTH
AMENDMENT) REGULATIONS, 2016

(No. 1 of 2016)

No. 3-106/2015-B&CS -----In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012), namely:-

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems)(Sixth Amendment) Regulations, 2016 (1 of 2016).

(2) They shall come into force from the 1st day of April 2016.

2. 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 be mandatory for the broadcaster to enter into written interconnection agreement with the multi system operator for retransmission of its pay channels including those pay channels for which no subscription fee is to be paid by the multi system operator to the broadcaster.

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

“(16) Every service provider shall enter into a new interconnection agreement before the expiry of the existing interconnection agreement:

Provided that the broadcaster or the multi system operator, as the case may be, shall, at least 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 new agreement:

Provided further that in case, the service providers fail to enter into new interconnection agreement before the expiry of the existing interconnection agreement, the broadcaster or the multi system operator, as the case may be, shall not make available the signals of TV channels to the multi system operator or the local cable operator, as the case may be, on expiry of the existing interconnection agreement:

Provided also that the multi system operator shall, fifteen days prior to the date of expiry of its existing interconnection agreement, inform the consumer.----

- (a) the date of expiry of its existing interconnection agreement; and
- (b) disconnection of signals of TV channels from the said date in the event of its failure to enter into new interconnection agreement.”

(Sudhir Gupta)
Secretary, TRAI

Note.1-----The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4, vide its notification No. 3- 24/2012- B&CS dated the 30th April 2012 and subsequently amended vide notifications No. 3- 24/2012- B&CS dated the 14th May 2012, No. 3-24/2012-B&CS dated the 20th September 2013, No. 3-24/2012- B&CS dated the 10th February, 2014 and No. 6-33/2014-B&CS dated the 18th July, 2014 and 6-29/2015-B&CS dated: 14th September 2015.

Note.2-----The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Sixth Amendment) Regulations, 2016 (1 of 2016).

Explanatory Memorandum

Background

1. The responsibility of regulating broadcasting and cable TV services was entrusted to the Telecom Regulatory Authority of India (hereinafter referred to as the TRAI) in 2004 by the central government. Since then, TRAI has taken a number of initiatives for regulating the sector in exercise of both its recommendatory and regulatory powers vested with it by the TRAI Act, 1997. TRAI has been issuing Regulations, Tariff Orders, Directions and Orders from time to time for orderly growth of broadcasting sector.
2. The operation of cable TV networks is governed by the Cable Television Networks (Regulation) Act 1995, as amended from time to time (CTV Act). The Government of India made an amendment, to the CTV Act and Rules made there under, to pave a way for implementation of Digital Addressable Cable TV Systems (DAS). TRAI has notified a comprehensive regulatory framework for DAS encompassing inter-alia interconnection regulations, QoS regulations, tariff orders and consumer complaint redressal regulations.
3. The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012) dated 30th April, 2012 provides a framework for interconnection between Broadcasters & MSOs and MSOs & LCOs. Based on this framework, the service providers are required to enter into a written agreement before providing signals of TV channels for re-transmission to consumers.
4. The TRAI Act, 1997, mandates the Authority to maintain the register of interconnect agreements between service providers. In pursuance of the same, the Authority had notified “The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004” which inter-alia, mandates annual filing of details of interconnection agreements by service providers for retransmission of signals of TV channels.
5. While examining the details of interconnections submitted by the Broadcasters of pay channel(s) and Multi System Operators (MSOs), it has come to the notice of the Authority that in many cases the signals of TV channels are being provided by the broadcasters to MSOs and MSOs to Local Cable Operators (LCOs) even in the absence of valid interconnection agreement in writing. It has also been observed that in several cases, agreements between service providers are delayed on the pretext of continued mutual negotiations, but, they continue the retransmission of TV signals beyond the date of expiry which often results into disputes and sometimes sudden disconnection that affects quality of service to consumers. In the context of various petitions filed by broadcasters and

MSOs, the Hon'ble TDSAT has also made certain observations for strengthening the existing regulatory provisions.

6. Therefore, strong need is felt to make it clear in the regulations that re-transmission of TV signals should not take place between service providers without a valid written interconnection agreement and new agreement is entered between them well before the expiry of the existing interconnection agreement.
7. Accordingly, Draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems)(Sixth Amendment) Regulations, 2015 was released on 3rd November, 2015 seeking comments and counter comments from all stakeholders. Subsequently, the comments and counter comments received in TRAI were uploaded on TRAI website. Further, an Open House Discussion (OHD) was held on 11th December, 2015. In the OHD, on request of few stakeholders, Authority granted further time for providing written inputs till 16th December, 2015. After considering all inputs of stakeholders, the Authority has finalized the amendment.

Analysis of stakeholders' comments:

8. Most of the stakeholders have agreed to the proposed amendment. Some broadcasters have suggested that publication of notices in newspaper mandated under the regulation 6 in case of disconnection of TV signal, may be reviewed. Their contention was that the publications of such notices not only involves expenditure but are less noticed by the general public. They have suggested that purpose of such notices can also be achieved by running scroll on the channels which consumers consciously notice while viewing a particular channel/program. On the contrary, in the OHD, one of the MSOs pointed out that such scrolls on number of channels will give inconvenience to consumer, especially when the notice of disconnection is an issue between two business entities i.e broadcaster and MSO. They contended that viewing experience of customer will be impacted by such scrolls. The Authority has noted the suggestions of the stakeholders and felt that this issue need detail deliberation among stakeholders particularly the enforcement and verification mechanism of informing through such scrolls. However, this requirement may be taken up while reviewing interconnection regulations as a whole, in future, when such need arise.
9. One stakeholder suggested that instead of incorporating an explanation, the definition of pay channel may be reviewed so as to consider pay channels as a channel even if a nil subscription fee is charged by the Broadcaster. In this regard it is mentioned that the definition of pay channel given in the regulation is in line with the Cable TV rules. Moreover, the words 'to be paid' already cover the scenario when nil subscription amount

is paid. As such the purpose of incorporating the explanation is to inform the stakeholders in simple words so that the provision of the sub-regulation (6) is understood in its true spirit.

10. Few stakeholders expressed their concern stating that timeline of sixty days for starting of negotiation will bring practical difficulties and inconvenience at the ground level in view of large number of service providers across the country. This concern has been addressed by adding the word “at least” before 60 days in the amendment thereby they can start negotiations any time prior to 60 days. Moreover, several broadcasters and MSOs do their mutual agreements for all its operating areas or pan-India basis simultaneously.
11. Few stakeholders have suggested that similar provision may be made in the regulations for Non-DAS areas and also in other platforms such as DTH. In this context it is mentioned that the delay in renewal of interconnection agreements is predominantly observed between broadcasters and MSOs in areas where Digital Addressable Cable System has been implemented. However, stakeholders request may be taken up while reviewing interconnection regulations as a whole, in future, when such need arise.
12. In view of the above, the present amendment has incorporated mainly the following:
 - a. For more clarity and to understand the spirit of the sub-regulation (6) of regulation-5 it is explained that it shall be mandatory for the broadcaster of pay channel to enter into written interconnection agreement with the multi system operator for retransmission of its pay channels including those pay channels for which no subscription fee is to be paid by the multi system operator to the broadcaster as per their mutual agreement. It will ensure that the broadcaster signs an interconnection agreement for TV channels, declared as pay TV channels by the broadcaster to the Authority under the requirement specified in the relevant tariff order, are distributed by the broadcaster to the MSOs only after signing of written interconnection agreement even if nil amount is paid by the MSO to the broadcaster of pay channel.
 - b. The sub-regulation (16) of regulation 5 has been amended so that :
 - i. Every service provider should enter into new written interconnection agreement before expiry of existing interconnection agreement;
 - ii. To have sufficient time to reach mutual agreement between service providers, for Business to Business relations, the broadcaster of pay channel to MSO and MSO to LCO to give notice at least sixty days prior to the expiry of existing interconnection agreement. Such notice will initiate mutual discussion and also act as notice for disconnection to the other party, in case of failure to enter into new agreement.

iii. In case service providers are not able to enter into new agreement fifteen days before expiry of existing interconnection agreement, the MSO, in the interest of consumer, shall inform the consumer the date of expiry of its existing interconnection agreement and disconnection of signals of TV channels in the event of its failure to enter into new interconnection agreement from the said date. This will enable the consumer to take informed decision in respect of his/her choice.

13. In order to ensure interruption free services to the end consumer and continuity of business as usual among the service providers, it is expected that new written interconnection agreement should be signed in all cases before 15 days from the date of expiry of the existing interconnection agreements. Though the regulation does not bar to sign new interconnection agreement in the last 15 days before the date of expiry of existing interconnection agreement, it is expected that new agreements would be signed much before that and it would be rarest where the agreements between service providers could not be signed before 15 days of expiry of existing interconnection agreement.

14. It is expected that, with this amendment, the service providers will reach at mutual agreement in time to minimize uncertainties in the value chain and inconvenience to consumer.