Kanika Jain <kanika.91jain@gmail.com>

Fwd: Written Comments against the proposed Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations 2016

1 message

Gorishankar Kesarwani <gs.kesarwani@trai.gov.in> Wed, Nov 16, 2016 at 10:12 AM
To: Kanika Jain <kanika91jain@gmail.com>

-------- Original Message --------
From: **CABLEOPERATORS WELFARE ASSOCIATION** <keralalco2016@gmail.com>
Date: Nov 15, 2016 3:30:46 PM
Subject: Fwd: Written Comments against the proposed Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations 2016
To: gs.kesarwani@trai.gov.in, sksinghal@trai.gov.in

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From

Cable Operators Welfare Association,

Jaihind Building,

Kumbalapally Road, Chalikkavattom, Vennala.P.O,

Ernakulam represented by its President Naveen.V.D

To

Mr. Sunil Kumar Singhal,

Advisor, (B &CS)

Telecom Regulatory Authority of India(TRAI),

Mahanagar, Door Sanchar Bhavan,

Jawaharlal Nehru Marg, New Delhi-11002

Represented by its Secretary.

Sir,

1. The petitioner herein is an Association registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act,1955. The members of the petitioner are Linked Local Cable Operators within the State of Kerala. The petitioner Association is established for protecting the interest of its members.

2. The Association has already filed Writ Petition as W.P.(C).No.20901/2016 before the Hon'ble High Court of

Kerala challenging the Telecommunication (Broadcasting and Cable Services) Inter Connection (Digital Addressable Cable Television Systems) (7th Amendment) Regulations, 2016 (No.3 of 2016) issued by TRAI by which a default revenue sharing ratio between the Multisystem Operator (MSO) and Local Cable Operator(LCO) is prescribed and the same is pending consideration.

3. The petitioner and its members have serious objections against the proposed Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations 2016 by which a default revenue sharing ratio of 55 :45 between the Multisystem Operator (MSO) and Local Cable Operator(LCO) is prescribed.

4. The petitioner and its members are having the following objections in the matter.

1. TRAI gets the power to make Regulations by virtue of Sec.36 of the Telecom Regulatory Authority of India (TRAI) Act, 1997. Sec.26 authorizes TRAI to make Regulations consistent with the said Act and the Rules made there under to carry out the purposes of the said Act. The functions of the TRAI are enumerated in Sec.11 of the TRAI Act. Neither under Sec.36 nor under Sec.11, TRAI has power to prescribe the Revenue sharing ratio between the MSOs and LCOs. The Revenue sharing between the MSO and LCO is a matter to be decided by the parties taking into consideration their respective duties and responsibilities in the transaction. In other words, TRAI has no authority to curtail the contractual freedom of the parties. Of course, the TRAI has authority to fix the terms and conditions of the interconnectivity between MSOs and LCOs for efficient working of the system and to maintain standard of quality of service.

2. Though a Model Interconnection Agreement is provided in the Regulations giving freedom to the parties to fix the revenue sharing ratio, it is defeated as the Standard Interconnection Agreement which includes the revenue sharing ratio of 55:45 between MSO and LCO would be applicable in case the parties fail to enter into Model Interconnection Agreement within the prescribed time. As a result, the MSOs would avoid execution of Model Interconnection Agreement fixing a revenue sharing ratio on mutual consent according to the responsibilities of each parties in the transaction with malafide intention to gain undue advantage of the default revenue sharing ratio of 55:45.

3. At present on account of the heavy responsibilities and liabilities on the part of the LCOs, the MSOs have been collecting Rs.30/- per live connection per month out of the average monthly subscription of Rs.250/-. It is only 12% of the monthly subscription charge. Now on account of the default revenue sharing ratio of 65:35 is fixed by the Regulation No.3 of 2016, the MSOs are demanding exorbitant share to them. In most of the cases, the MSOs are demanding the LCOs to execute Model Interconnection Agreements with blank spaces for the revenue sharing ratio permitting the MSOs to fix the revenue sharing ratio according to their unilateral decisions.

4. As per the present system, there are heavy responsibilities and liabilities on the part of the LCOs. Originally there were no MSOs providing signals to the LCOs. The LCOs themselves procured signals from the Satellite using Antennas of their own and supply the same through the Cable Network established and maintained by them. On account of their dedication and hard work over several years, they procured a good subscriber base for their Cable Net work. The MSOs wanted to provide signals directly to the subscribers though the Cable Network established and maintained by them, but they could not procure the required subscriber base and they found it difficult to establish and maintain Cable Network on account the heavy investments and difficulty in procuring required Permissions from the Authorities. Consequently, MSOs agreed to provide Cable TV Signals at the Control Room of the LCO and LCOs agreed to distribute the Cable TV Signals to the subscribers through the Cable Network established and maintained by them. It is the LCOs who pay the Pole

Rent to the Electricity Board, fees to the Municipalities and Public Works Department for using road Etc. The present revenue sharing ratio of 65: 35 or the proposed revenue sharing ratio of 55:45 between the MSOs and LCOs are fixed without understanding these ground realities and without considering the heavy costs incurred by the LCOs in the form of government taxes, maintainance and supply costs for providing signals to its subscribers.

5. The present revenue sharing ratio of 65: 35 or the proposed revenue sharing ratio of 55:45 between the MSOs and LCOs would remove LCOs from the chain automatically transferring the Subscriber Base of LCOs to MSOs without payment of any amount to the LCOs. While passing the Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 specific provisions were made in Regulations Nos.9 & 11 with respect to the subscriber base of the LCOs considering its importance in the field. The members of the petitioner Association have been functioning as the LCOs under 3 MSOs namely Asianet Satellite Communications Ltd, Den Networks Ltd and Siti Cable Net Work Limited. Asianet started functioning in Kerala in the year 1993 and they could not procure the required subscriber base for their operation. Later they acted as MSO and entered into agreements with LCOs and started distributing their Cable TV Signals to the subscribers of the LCOs. In most of the cases, the Agreements were for a period of 10 years and in those agreements specific provision was made that in case the Agreement is not renewed after 10 years a compensation of Rs.2,250/- would be given per subscriber to the LCOs. Likewise, Den Network started their operation in the year 2008 with the intention to provide the Cable T V signals directly to the subscribers. They also could not procure the required subscriber base to continue the operation. The same happened in the case of Siti Cable also. Resultantly, they also entered into agreements with the LCOs assuring great offers and their revenue share is around 10% of the income. In case, the new revenue sharing ratio is applied the LCOs will not be able to sustain and they would be removed from the chain as intended by the MSOs and the MSOs would get the entire subscriber base of the LCOs without any additional burden.

6. On account of the implementation of DAS, the MSOs are required to change their head end system only by making a onetime investment. But they are very much benefitted on account of the change of technology as their capacity is increased by several manifolds. MSOs have income from several sources like Advertisements, Placement charges, Carriage charges, Sales and Service of Set Top Boxes etc, but the LCOs derive their income only from out of their share from the subscription amount. On the other hand, on account of the advancement of technologies, the LCOs had to change RF Cables to Fiber Cables and to replace Boosters with Nodes expending huge amounts. The LCOs have to maintain the Cable Net Work expending huge amount. When a new customer is enrolled the LCO alone has to face the expenses for giving new connections. On the other hand the MSO is very much benefitted by a new connection on the sale of Set Top Boxes. There are no additional expenses to the MSOs if the subscriber base is increased apart from the payment for pay channels. There is no change of responsibilities of MSOs and LCOs in CAS and DAS justifying a higher revenue share to the MSOs in DAS.

7. The present revenue sharing ratio of 65: 35 or the proposed revenue sharing ratio of 55:45 between the MSOs and LCOs would give undue enrichment to the MSOs and it would extend undue help to the MSOs in monopolizing the Cable TV Industry by removing the LCOs from the chain. It gives upper hand to the MSOs to compel the LCOs to yield to their illegal demands. Almost all the MSOs are National and Multinational companies having high financial affluence whereas the LCOs are small entrepreneurs eking their livelihood out of the income derived form the Cable Business.

8. The present revenue sharing ratio of 65: 35 or the proposed revenue sharing ratio of 55:45

between the MSOs and LCOs is not in the interest of Cable TV Industry. It would make the LCOs virtually jobless and put them into great financial liabilities on account of sudden stop of their old business in which large amounts are invested after taking loan from Banks and Financial Institutions. It would create monopoly of the Cable Industry at the hands of MSOs and the ultimate aggrieved persons would be none other than the public at large.

9. Even going by the old ratio, the LCOs were making only negligible profits, otherwise they would have become financially sound by this time where they themselves would have afforded an independent Head End rather than still depending on the MSOs.

10. The nature of business does warrant such a higher ratio to MSOs. Till the passing of Telecommunication (Broadcasting and Cable Services) Inter Connection (Digital Addressable Cable Television Systems) (7th Amendment) Regulations, 2016 (No.3 of 2016), the MSOs had been demanding only marginal increase in their share. They all have been working on profits also. But after passing of the said Amendment on 15/3/2016, the MSOs have been making exorbitant share to them near to the ratio fixed.

11. After digitalization, all the transactions have become transparent and error free.. There can not be any under declaration of subscribers as had, allegedly been, present during the analogue system. During Analogue system, apprehending underdeclaration , the MSOs used to demand a lump sum amount on a rough estimate of the total connections. Now the share of revenue of MSOs is fully secured as share is given calculating the actual number of connections given through Set Top Boxes.

12. Fixing a uniform ratio for the entire country is not reasonable or rational. The expenses for establishment and maintenance of Cable net work are comparatively high in Kerala State due to extensive cabling, heavy rain Etc.

13. By fixation of default ratio of 55:45, the bargaining power of one of the contracting parties namely, the LCO is completely lost.

Hence we request TRAI to leave open the fixation of Revenue Sharing Ratio to the decision of the contracting parties.

Dated this the 15th day of November 2016

Cable Operators Welfare Association,

represented by its President Naveen.V.D

CABLE OPERATORS WELFARE ASSOCIATION
JAIHIND BUILDING
KUMBALAPALLY ROAD
CHALIKAVATTOM
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Dy. Advisor (B&CS)
TRAI