

Girish Srivastava
Secretary General



07 January 2016

Mr. Sunil Kumar Singhal
Advisor (B&CS),
Telecom Regulatory Authority of India,
New Delhi.

Sub: Response to Consultation Paper dated 9th Dec 2015 on "Draft Model & Standard Interconnection Agreements between MSOs & LCOs for offering cable TV services through Digital Addressable Systems"

Dear Shri Singhal,

We at the Indian Broadcasting Foundation (IBF) thank TRAI for giving an opportunity to all stakeholders to present their views on the "Consultation Paper" (Hereinafter: "CP"), which would allow the formulation of an appropriate regime for governing the commercial relationships between the MSOs and LCOs.

We would like to bring the following observations to the Authority's notice:

Clause 3.1 states that "Either Party has a right to terminate the Agreement through an advance notice of 21 days in writing to the other Party in event of:-

(i) material breach of the Agreement by a Party which has not been cured within thirty (30) days of being required in writing by one Party to do so by the other party"

We would like to point out that providing 21 days' notice for dis-connection after providing 30 days' notice for curing the breach may be against the intent of the Regulation and may also not serve the object of party who is proposing to terminate. Hence, it is suggested that the notice period for curing the breach as stated in Clause 3.1 (i) may be reduced to say 14 days instead of 30 days.

Clause 8.7 of the "Model and Standard Interconnect Agreement" (MIA) states the following regarding piracy related activities:

"The MSO shall not indulge in any piracy or other activities, which has the effect of, or which shall result into, infringement and violation of trade mark and copyrights of the LCO or person associated with such transmission"

It is our considered opinion that the above stated clause though well-intentioned, requires some necessary rephrasing. Our reason for such a recommendation is that the MSOs do not create any content themselves and also they do not carry any content/signal of the LCOs. Accordingly, the LCOs are not involved in creating any content/IPRs themselves and merely carry the signals of the broadcaster from the MSOs. Hence, broadcaster is the only party in the distribution chain

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who stands the risk of infringement or violation of trade mark or copyright by other parties, namely the MSOs and LCOs.

Therefore, we would respectfully like to present the following replacement clause for Authority's consideration:

"8.7 The MSO and the LCO shall not indulge in any piracy or other activities which has the effect of, or which shall result into, infringement and violation of trademarks and copy rights of the Broadcaster or resort to under declaration or non-declaration of the number of subscribers."

We would also like to draw Authority's attention to Clause 8.10, which in its current form states the following:

"The MSO shall be responsible for encryption of the complete signal, transmitted through its network and the network of the LCO, up to the STB installed at the premises of the subscriber."

We are of the opinion that the above clause in its current form does not address the issue of preventing unencrypted transmissions by the operators. This is because most MSOs/LCOs operate under the fallacious understanding that they can continue generating and retransmitting unencrypted feed as they have always done. However, nothing could be farther from truth as the Hon'ble TDSAT in two successive judgments has clearly changed this position¹. Thus, it is required that there be a clear stipulation in the agreement between MSOs and LCOs that neither shall indulge in generating or retransmitting unencrypted feed at any time.

To facilitate the same objective we propose the following clause:

"8.10 (1) The MSO shall be responsible for encryption of the complete signal, transmitted through its network and the network of the LCO, up to the STB installed at the premises of the subscriber. In addition the LCO shall also be responsible for the delivery of the same encrypted signal provided to such LCO by the MSO to the STB installed at the premises of the subscriber.

8.10 (2) Both LCO and MSO shall compulsorily transmit, retransmit or otherwise carry any channel, content or programme only in encrypted mode and only through a digital addressable system strictly in terms of and in accordance with the TRAI Act and the Regulations framed thereunder as well as the Cable Television Act and the Rules framed thereunder.

8.10 (3) Neither LCO nor MSO shall generate, transmit, retransmit, place, run, make available or otherwise carry any frequency in unencrypted mode or without a digital addressable system as specified in the TRAI Act and the Regulations framed thereunder as well as the Cable Television Act and the Rules framed thereunder.

Other than our previously stated submissions, we humbly bring the following points to the Authority's notice:

One thing that can be included, to facilitate proper collection and also provide a fillip to prepaid billing is that MSOs should be mandated to effectively communicate the billing ²for any

¹ M.A. No. 162 of 2015 in Petition No. 177(C) of 2015 & Petition No. 466 of 2013.

² Such billing should include a proper breakup of the channels delivered and tax payable under different heads (Such as entertainment tax & service tax).

specific period to subscribers and they must also be required to set up appropriate structures with themselves or with the LCOs for allowing the subscriber or LCO to recharge in a smooth and convenient manner.

Only that content or those programs which conform to the "Program Code" under the Cable TV Act and the Rules framed under it should be available on the network laid down by the MSOs and the LCOs both. However, some might assert that such a condition is already a basis for termination in clause 3.1. But it should be noted that a negative covenant would go a long way in facilitating injunctive reliefs that an aggrieved party may seek before a court of law in situations where a mere act of termination is not sufficient.

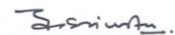
To ensure that the data being made available to a broadcaster is accurate and does not suffer from any weaknesses, the KYC of subscribers should be done at least once in 2 years.

The programming of many broadcasters is not just limited to the usual GEC content and many of them have diversified into TV movie premieres and live sports events. Thus, if an MSO has to give 21 days' notice to an LCO in case the latter is indulging in piracy, the effectiveness of the intended legal remedy is jeopardized. One also has to keep in mind that the rights to such events are very expensive and have very limited shelf value. Hence, MSOs should be empowered to promptly disconnect the signal to such violating LCO and the former should be given an ex-post facto opportunity to present the basis on which such an action was taken.

We would be most welcoming in assisting the Authority with any further help in the form of clarifications and also look forward to an audience with the Authority before a final decision is made.

With warm regards,

Yours sincerely,



Girish Srivastava