

31st August, 2013

Email/by post

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Sub: - Breach of permission granted under downlinking & uplinking policy guidelines
2005 by the broadcasters: Star Den, MSM Discovery, Zee Turner etc.:

Ref: - Amended Comments cum submission submitted on consultation paper No.8/2013:

Respected Sir,

You kind attention is invited to my earlier Emails dated 27th instant regarding above. Sir, I am forwarding herewith the amended comments cum submission on consultation paper No.8/2013 which reads as under:-

It is submitted that as per the relevant provisions of the Cable Act, 1995 amended from time to time & Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 dated 10th December 2004 the broadcaster, LCO & MSO have been defined as under:-

The Cable Television (Regulations) Act, 1995:- u/s 2(aii) "Broadcaster" means a person or a group of persons, or body corporate, or any organization or body providing programming services and includes his or its authorised distribution agencies;

u/s 2(aiii) "Cable Operator" means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network and fulfils the prescribed eligibility criteria and conditions;

u/s 2(ee) "Multi-System Operator (MSO)" means a cable operator who receives a programming service from a broadcasters and/or his authorized agencies and re-transmit the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators (LCOs), and includes his authorized distribution agencies by whatever name called;

Interconnection regulation, dated 10.12.2004:- clause (b):- 'agent or intermediary' means any person including an individual, group of persons, public or body corporate, firm or any organisation or body authorised by a broadcaster / multi system operator to make available TV channel(s), to a distributor of TV channels;

clause (j):- 'distributor of TV channels' means any person including an individual, group of persons, public or body corporate, firm or any organisation or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly. The person may include, but is not limited to a cable operator, direct to home operator, multi system operator, head ends in the sky;

It is submitted that distributor must possess a dish-antenna for downloading the signals from the satellite of the broadcaster and divider which divides the signals into various channels for further distribution.

Policy guidelines for downlinking of television channels: clauses 5.6 & 8.6 reads as under:-

Clause 5.6:-The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India.

Clause 8.6: - On receipt of the permission and upon registration of the channel, the applicant company will be entitled to approach the MSOs/Cable head end operators/DTH Operators for receiving/downlinking its channel's signal, for further transmission/retransmission/ distribution.

Guidelines for uplinking from India - Form 1(A) Licence agreement clauses 5.1, 5.6 & 15.1 reads as under:-

Clause 5.1: - The Licence is non-transferable.

Clause 5.6 :- The licensee shall not either directly or indirectly assign or transfer its right in any manner whatsoever under this agreement to any other party or enter into any agreement for sub-licence and/or partnership relating to any subject matter of the Licence to any third party either in whole or in part. Any violation of the terms shall be construed as breach of the licence agreement and licence of the licensee shall be terminated immediately, without any prior notice. On such termination, the licensor shall take possession and control of the licensee's service, systems and infrastructure with immediate effect.

Clause 15: - The licensee shall keep all the secret and security related information exchanged between the licensor and itself as confidential and shall not disclose such information to any third party or to the media.

On perusal of the above definitions, it is crystal clear that the aggregator's distributors are neither defined in Cable Act, 1995 nor in Interconnection regulation 2004. Even the aggregator's distributors are not licence holder of the Union of India nor registered under Cable Act, hence formation of aggregators distributors by the broadcasters are illegal, contrary and breach the Licence agreement conditions/clauses granted by the statutory authority.

Even subscriber is defined in Cable Act under section 2(h) (i): 'subscriber' means a person who receives the signals of cable television network at a place indicated by him to the cable operator, without further transmitting it to any other person.

There is no place for aggregator's distributors under the prevailing cable Act. The aggregators' distributors are abusing the dominant position or a combination which causes an appreciable adverse effect on competition in the markets in India.

It is humbly submitted that on receipt of the permission and upon registration of the channel the applicant company will be entitled to approach the MSOs, Cable head end operators, DTH Operators, HITS, IPTV for receiving/ downlinking their channels signal, for further transmission/ retransmission/ distribution. On the contrary aggregators are approaching the Multi system operators, Cable operators, DTH, IPTV and HITS of various distribution platforms in an arbitrary & illegal manner and entering into interconnection agreement(s) with the cable TV service providers, issuing monthly invoices and also issuing public notices in news papers for disconnection cable TV signals.

As on date there are four main aggregators: Media Pro Enterprise India Private Limited, India Cast UTV Media Distribution Private Limited, M/s Sun Distribution Services Private Limited and The One Alliance MSM Discovery Private Limited.

It is submitted that there is nexus between distributors and their so-called aggregators distributors who themselves are operating as MSOs in collusion with the mafia. Broadcast tribunal TDSAT has also pulled up channel distributing firms – Star Den, MSM Discovery and Zee Turner – for letting their signals be distributed illegally by a Punjab-based leading MSO in Himachal Pradesh without getting necessary approvals. The broadcasters themselves become a mafia in India and become a parasitic in the Indian economy causing loss to the government ex-chequer by evading state revenue & committing an economic offence by not following due process of procedure.

The matter starts reaching the Supreme Court and they find the industry divided into two Government, TRAI, large 'Pay' Broadcasters and their MSOs are on one side and independent MSOs not supported by Pay broadcasters are on the opposite side. Refer Supreme Court of India Judgments in case Appeal (civil) 5524 of 2005 titled Star India Pvt. Ltd v/s Sea T.V. Network Ltd. & another decided on 03/04/2007 – MSO Can't be Exclusive Agent.

There are number of mafia's who are operating in India such as Cable TV Mafia, mining mafia, land mafia, hawala mafia, chit fund mafia, cricket fixing mafia, settlement with central/state government mafia for approving the government contracts/ licences, telecom 2G mafia, Colgate mafia, Railway Berths Reservation mafia etc. etc. & time will come they will hijack the administration & become an empire of the nation, if not taken any hard action against them with iron hands for their illegal activities.

It is submitted that the cable TV distribution is virtually monopolized in market as operation of entire cable TV network is dominated by a single entity. The broadcasters are aiding illegal MSOs & boosting monopoly in cable business in a planned, systematic manner with malafide intention to boost cable TV mafia. It is felt that such monopolies may not be in the interest of consumers and may have serious implications in terms of competition; pricing and healthy growth of cable TV sector in that market competition is good for the consumers as it leads to better quality of service at reasonable prices. Competition also gives a choice of service providers to the consumer.

In view of the aforementioned reasons, it is submitted that the broadcasters are violating the due process of procedures, nullifying the directives of TRAI, Cable Act, breach the licence agreement granted under the downlinking/uplinking policy guidelines 2005, allowing exclusive rights to MSOs, aiding illegal service providers (MSOs) frequently, frustrating the basic concept of Interconnection Regulation, evading state revenue, committing economic offence, boosting monopoly in a planned, systematic manner.

It is respectfully prayed to unearth the cable racket mafia which will also open a Pandora box - for sample survey - please get it to be scrutinize by calling the entire relevant records including monthly invoices raised, all the affiliated application forms executed by the aggregators with cable operators period from 01/01/2008 onwards for one station only i.e. Ambala District (Haryana State) not for the whole of India by deputing an authorized officer to ascertain the universal truth as narrated above of the Cable TV service providers and their affiliated local cable operators providing cable TV services to the end of consumers to un-earth the wholesale financial irregularities, economic offences and serious violations of procedure of law are being committing by the broadcasters.

It is submitted there is no legal mechanism to prosecute the errant broadcasters from their illegal and irresponsible acts. By Cable Act only authorised officer defined in section 2(i) (ii) (iii) and includes any other officer notified in the Official Gazette Central/State governments is competent to file a criminal complaint before Judicial Magistrate against the broadcasters not by any individual persons.

Accordingly, it is humbly respectfully prayed to please save the nation from the clutched hands of the cable tv mafia sponsored by the broadcasters who are overstepping the Cable Act 1995, non adhering interconnection regulations 2004, violating downlinking/uplinking policy guidelines 2005, miscarriage the legal process of procedure, evading state revenue, committing economic offence and to protect the interest of the consumer subscriber and to ascertain the universal truth of my allegations as narrated above may please be investigated and to take appropriate & suitable action in the interest of natural justice.

Thanking you,

Yours sincerely,

(Surinder Kumar Goel)
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PS: Please intimate the venue, date and time for open house on consultation paper so that I may attend the same. Fees or any other formalities if required may please be intimated the applicant accordingly for which I shall be highly appreciated.