TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 29th September, 2010

Petition No.15 of 2009

Tata Teleservices Limited …Petitioner

Versus

Ministry of Communications and IT & Ors. ...Respondents

BEFORE:

HON'BLE MR. JUSTICE S.B.SINHA, CHAIRPERSON
HON'BLE MR.G. D. GAIHA, MEMBER
HON'BLE MR. P.K.RASTOGI, MEMBER

For Petitioner	:	Mr. Mansoor Ali Shoket, Advocate
For Respondent Nos.1 & 2	:	Mr.Mirza Aslam Beg,Advocate for Ms.Sonia Sharma,Advocate Mr.Maha Singh,AWA Ms.Revathi, AWA,WPC
For Respondent No.3	:	Mr.Sachin Datta, Advocate
For Respondent No.4	:	Mr.Meet Malhotra, Advocate

For Respondent Nos.6 to 16	:	Ms.Vandana Jai Singh, Advocate Mr.Sachin Datta, Advocate
For Respondent No. 17-MSO Alliance	:	Mr.Vibhav Srivastava, Advocate
For Respondent No.18 -AUSPI	:	Ms. Manjula Gandhi, Advocate

O R D E R

S.B. Sinha

The petitioner is a licensee; the license having been granted by the First Respondent in terms of the provisions contained in Section 4 of the Indian Telegraph Act, 1885 (the Act).

It, in terms of the licenses granted in its favour, is engaged in the business of telecommunication by providing both GSM and CDMA services to its customers.

Inter alia, on the premise that the cable service operators, be it multi-service operators and/or the cable service operators while laying down the overhead cables while using the electric and telephone polls cause spectrum interference, this petition has been filed.

In this petition, apart from the Ministry of Communication & Information Technology, Department of Telecommunication, the Ministry of Information & Broadcasting have been impleaded as parties. They are said to have

failed/neglected to control the operation of multi-system operators or the cable operators operating out of the areas wherein such spectrum interference has been noticed.

In this petition inter alia the following reliefs have been prayed for:-

"(a) Direct the Respondent No.1 to 4 and other concerned authorities to take all necessary steps to ensure that the Spectrum allocated to the Petitioner and its beneficial enjoyments/utilization thereof is unrestricted, unconstrained, uninterrupted and interference-free from any manner whatsoever.

(b) Direct Respondent No.1 to 4 to take immediate steps as per the applicable laws and take immediate remedial actions with regard to the problem of spectrum interference faced by the Petitioner.

(c) Direct Respondent No.1 and Respondent No.3 to forthwith cancel the licenses/cash registration of Respondent No.5-16 on account of their failure to comply with Regulation 10 of The Cable Television Networks (Regulation) Act 1995.

(d) Direct DOT to disclose what steps it has taken pursuant to the complaints (Re: Spectrum Interference) made by the petitioner and what future steps it proposes to ensure interference free spectrum.

(e) Declare that the petitioner would not be held responsible in breach of License (Re: Condition 28 – Quality of Performance) and Clause 4 of the Regulation on quality of service of Basic and Cellular Mobile Services, 2005.

(f) Direct the Respondent No.1 to create a mechanism as illustrated in Para 21 to ensure that such spectrum interference in future is investigated and remedial action is taken in a time bound manner (within 4 weeks) from making a complaint including prosecution of such offenders under Section 16 of The Cable Television Networks (Regulation) Act, 1995.

(g) Direct the Respondent No.5 to 16 to abide by Section 10 of Cable Television Networks (Regulation) Act, 1995 and ensure that their amplifiers do not interfere in the telecommunication spectrum allotted to the petitioner."

In support of its statement in the petition, the petitioner has placed the CATV allocation in Band-5 overlapping with CDMA frequency band of 824-844/869-889 MHz vis-à-vis the CATV frequency band-5, which reads as under:

“CATV Frequency

2. CATV frequency allocated in Band V overlaps with the CDMA frequency band of 824-844/869-889 MHz. The CATV frequency Band V is given in the Table below:

Channel	***Bandwidth***	***Video***	***Sound***
38	*606-614*	*607.25*	*607.25*
39	*614-622*	*615.25*	*615.25*
40	*622-630*	*623.25*	*623.25*
41	*630-638*	*631.25*	*631.25*
42	*638-646*	*639.25*	*639.25*
43	*646-654*	*647.25*	*647.25*
44	*654-662*	*655.25*	*655.25*
45	*662-670*	*663.25*	*663.25*
46	*670-678*	*671.25*	*671.25*
47	*678-686*	*679.25*	*679.25*
48	*686-694*	*687.25*	*687.25*
49	*694-702*	*695.25*	*695.25*
50	*702-710*	*703.25*	*703.25*

51	*710-718*	*711.25*	*711.25*
52	*718-726*	*719.25*	*719.25*
53	*726-734*	*727.25*	*727.25*
54	*734-742*	*735.25*	*735.25*
55	*742-750*	*743.25*	*743.25*
56	*750-758*	*751.25*	*751.25*
57	*758-766*	*759.25*	*759.25*
58	*766-774*	*767.25*	*767.25*
59	*774-782*	*775.25*	*775.25*
60	*782-790*	*783.25*	*783.25*
61	*790-798*	*791.25*	*791.25*
62	*798-806*	*799.25*	*799.25*
63	*806-814*	*807.25*	*807.25*
64	*814-822*	*815.25*	*815.25*
65	*822-830*	*823.25*	*823.25*
66	*830-838*	*831.25*	*831.25*
67	*838-846*	*839.25*	*839.25*
68	*846-854*	*847.25*	*847.25*
69	*854-862*	*855.25*	*855.25"*

The respondent Nos.5 to 16, according to the petitioner, use poor quality amplifiers which is said to be violative of Section 10 of the Cable Television Networks (Regulation) Act, 1995.

The petitioner in this petition has inter alia contended as under:

"3. The TV signal, modulated on carriers falling in the CDMA band, are carried through the co-axial cable and amplified at regular interval. The major cause of leakage of CATV signal is the poor quality/worn out amplifiers normally improperly installed on the poles or rooftops. The leaking signal from such amplifiers causes interference in the CDMA network as these signals can be picked-up by nearby BTS Towers used for CDMA network.

4. It is seen from the above Table that CATV channel 66 & 67 (830 – 846 MHz) falls in the Up-Link band of CDMA (824-844 MHz). These two channels are the main source of interference for the CDMA cellular service. CATV operators modulate the TV channel on these two carriers and transmit it through the cable network. The power content of these two channels is very high and when they leak through the poor quality amplifier they cause severe interference in the CDMA Up-Link channels. Other than these two main channels, there are harmonics and spurious emission from the CATV system which also causes interference in the CDAM cellular service.

Impact of Interference

5. The major effect of CATV interference is in call drops and failure in call setup. It is pertinent to mention that interference in our CDMA carriers seriously impacts the load on all the network elements, thus deteriorating network performance. This in turn impacts QoS and increase customer dissatisfaction/complaints. The details of some of the cable operators which are interfering the frequency of TTSL which is resulting in average call drop rate and average call set up failure rate are depicted in a tabular chart herein below:-

Circle Name	***City Name***	***Name of Cable Operator***	***TTSL frequency which is being interfered***	***Areas affected due to interference from cable operators***	***Average Drop Call Rate for affected areas [%]***	***Average Call Set up Failures [%]***
Delhi	*Delhi*	*Siti Cable,* ***Indusland Media & Communication Ltd. ,*** *Karol Bagh Network Private Limited, The Pooja Cable, M/s Den Ltd., M/s Jay Amba Cable Network, M/s Nelson Communication Ltd. & The Yadav Cable & other local cable operators*	*Ch 492 [839.274 MHz] most effected, 836.77 MHz, 835.683 MHz*	*Karol Bagh, Patel Nagar, Jahangirpuri, Ashok Vihar, Sector-17, Gurgaon*	*12% to 35%*	*2.7% to 6.3%*
West Bengal	*Kolkata*	*Prakash Cable Centre &Kolkata Cable Network*	*Ch. 228 [833.03 MHz – 834.26 MHz]*	*Terity Bazar, Salt Lake Area, Bagri Marker, Bara Bazar, MG Road*	*3.4% to 11%*	*6% to 21%*

Gujarat	*Ahmedabad*	*Gujarat Telelink Pvt. Ltd. (GTPIL) & **In Cable***	*Ch. 42[825.64 MHz-826.87 Mhz], Ch.226 [831.16 MHz-832.39MHz], Ch.1[824.41MHz–825.64 MHz]*	*Shahibaug, Isanpur, Anjali Cross Rd., Ghodasar, CG Rd. Narol, Maninagar, Sabarmati, Naroda-nr. Airport area, Sola Rd., Thaltej etc.*	*1% to 2.69%*	*1.12% to 2.16%*
Punjab	*Amritsar*	*Unknown*	*Ch.512[839.745MHz to 840.975 MHz]*	*Fatehgarh Churian, Dhanipur,Ajnala, Majitha, Dera Baba Nanak*	*7% to 23%*	*3.4% to 4.18%*

Status of CATV Interference

6. TTSL had started experiencing CATV interference in its Delhi Network since October 2007. Thereafter, it had spread to other places like Ahmedabad, Kolkata, Bangalore, Kerala, Hyderabad etc. TTSL intimated all concerned through various letters including Wireless Monitoring Organization (WMO), a wing of DOT responsible for resolving interference issues, WPC and TRAI regarding impact of degradation of quality of service due to CATV interference. WMO has carried out interference measurement at number of places on several occasions and confirmed the source of interference as CATV signals. WMO has asked these CATV operators to switch off the interfering channels. Thereafter, the interference level has gone down. However, the approach followed by WMO, by asking CATV operator to switch off the channel transmitting at CDMA carrier allotted to TTSL, is not yielding the desired result in controlling the interference. On direction from WMO officials; local CATV operators switch off the culprit channel only for a short duration of 1-2 hours and thereafter, when these officials leave the site, they

again switch on the channel. Thus, the effort put in by WMO result in respite from interference only for 1-2 hours. ***One of the permanent remedial measures could be to stop transmission of CATV signal from the Head End at CDMA carrier allotted to TTSL in the affected areas."***

The respondents Nos.1 and 2 in their affidavit have, inter alia, contended that the Department of Telecommunications, Ministry of Communications and Information Technology had requested the Ministry of Information & Broadcasting to amend the relevant rules framed under Cable TV Networks Regulation Act, 1995, so as to incorporate "penal action may be taken by Wireless Planning & Coordination Wing, Department of Telecommunications, Ministry of Communications and IT under Indian Telegraph Act, 1885 in case interference is observed to wireless licensed telecom service."

The Respondent No.3 has also filed an affidavit affirmed by one Mr.Navil Kapur. In the said reply it had been contended:

"1. That the Ministry is in receipt of suggestion dated 10th may, 2010 of the Wireless Planning and Coordination Wing in the Ministry of Communication & IT to amend 'The Cable TV Network Regulation Act, 1995, to incorporate penal action under Indian Telegraph Act, 1885 for causing interference to licensed telecom services'.

2. That the respondent herein has been considering the recommendations of the Telecom Regulatory Authority of India on restructuring of cable services and considering comprehensive amendments in the Cable TV Act. The suggestion of the respondent Department of Telecommunication relating to amendment in the Act is being considered along with other amendments in the Cable TV Act.

3. That since amending the provisions of the Cable Act are likely to take some time in the interim and as has been suggested in the Affidavit filed by this Respondent earlier, the Wireless Monitoring Organisation can furnish

evidence with regard to violations of Section 10 of the Cable Act to the authorized officers under the Cable Act so that complaint can be lodged by them in a competent Court for criminal action."

The private respondents, however, while denying and disputing that any interference is being caused in the CATV frequency bands, contend that the provisions of the 1995 Act are sufficient to deal with a situation of this nature.

Cable television is one of the systems to provide television to the consumers. The signals of the broadcasters put up through satellite or otherwise are transmitted to the headends except in the case of direct-to-home consumers. While effecting re-transmission, the MSOs or big LCOs are required to do so through fixed optical fibres or coaxial cables for transmission of radio frequency signals as opposed to digital methods used in television broadcasting wherefor a television antenna is required.

The centrally placed headend amplifiers necessary for operating CATV systems, are to be connected with very long cables for reaching the television sets of the subscribers. For meeting the technical requirement, namely, to boost the signals headend, amplifiers at regular intervals are installed for the purpose of boosting the strength of signal and make them acceptable to the television sets. For the said purpose, it is possible that signals are amplified by using 30 to 40 amplifiers before it reaches the subscribers' premises. The cable television headend is a master facility for receiving television signals for processing and distribution over a cable television system. The signals are thereafter mixed in accordance with the cable system channels numbering scheme using a series of cable modulators. They in turn are fed into a multiplier or signal

combiner. The mixed signals are then sent into a broadband multiplier and then sent into the cable system by the trunk line and continuously applied in stages as per the system requirement. The modulator input signals and modulation to a specific radio frequency which fall in CDMA frequency band 824-844 MHz/869-889 MHz.

The Parliament enacted Cable Television Act, 1995 (1995 Act).

While the Ministry of Telecommunication deals with the matters relating to grant of licenses to the licensees in terms of the provisions of the Act, the matters relating to grant of permissions to the multi-system operators, broadcasters and other distributors are governed by the 1995 Act.

The 1995 Act also provides for the matters which are required to be dealt with for violation of the provisions of the said Act.

We may notice Section 10 thereof, which reads as under:

> ***"10. Cable television network not to interfere with any telecommunication system.—****Every cable operator shall ensure that the cable television network being operated by him does not interfere, in any way, with the functioning of the authorised telecommunication systems."*

Section 16 of the said Act provides for a penal provision. However, Section 18 thereof provides that a court may take cognizance of an offence under Section 16 of the Act, if a complaint is filed by the authorized officers.

The term 'authorized officers' is defined in Section 2(a) of the Act which reads as under:

> ***"2. Definitions.—****In this Act, unless the context otherwise requires,—*

[1][(a) 'authorised officer' means, within his local limits of jurisdiction;-

(i) a District Magistrate, or

(ii) a Sub-divisional Magistrate, or

(iii) a Commissioner of Police,

and includes any other officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government;]"

The private operators like the petitioners, therefore, have no independent right to make a complaint although violations of the provisions of the said Act may be noticed by them. It invariably is required to approach the authorized officers who by the nature of the office they hold may not be expert persons. Be that as it may, in terms of the provisions of the 1995 Act, therefore, only the authorized officers are empowered to file a complaint petition so as to enable a Magistrate to take cognizance of an offence.

When a criminal complaint is filed, successful completion thereof may not only require examination of the complainant but also examination of the witnesses who would be able to prove the commission of an offence.

Indisputably, no immediate action can be taken. There if no time-limit within which a criminal complaint can be dealt with or for allowing a criminal case to reach to its logical conclusion one way or the other. Till such time violations of the Act

may continue. On the other hand, an innocent person may also be prosecuted although he may not have any hand in commission of the alleged offence.

Telecommunication services on the one hand, and Broadcasting and Cable Services on the other, although are governed by the same Act, are looked after by two different Ministries. There are different hierarchies of officers, their viewpoints may be different.

The respondent No.1 as also the respondent No.3 feels that the 1995 Act should be amended. What should be the nature of the amendment is not a matter which comes within the domain of this Tribunal.

It is not competent or even otherwise has any hand for asking the Parliament to amend the Act one way or the other.

However, as in some countries, it is possible for this Tribunal to enter into a dialogue of the nature as has been done in the instant case. In our opinion, the concerned departments have taken a right approach but we are not very sure when the Parliament would be able to amend the Act and/or what would be the contours of such amendment.

We may, however, notice that according to the petitioner a provision should be made which is akin to the provision governing “theft of electrical energy” under Electricity Act, 2003 being Section 135 in terms whereof the Government can

authorize some of the officers of the private telecom operators above a particular rank to act as authorized officers and to monitor the interference and lodge complaints before the appropriate forum.

The petitioner may be justified in contending that even the power of search and seizure should be given to the above officers with suitable checks and balances. It is not for us to endorse such suggestions nor any comment in respect thereof.

The question which arises for consideration, moreover, involves technologies.

Despite the fact that the Government of India and/or the authorized officers are required to constantly monitor the system so as to find out as to whether interference is being caused to CDMA frequency resulting in disturbance in carrying out the telecommunication services by the licensees is a matter which requires an empirical study.

The Central Government in exercise of its power conferred upon it under the proviso appended to Section 2(k) of the Indian Telegraph Act has issued a notification on or about 07.01.2000 in lieu whereof, the 'Broadcasting and Cable Services' have been brought within the purview of the 'Telecommunication Services'.

The Telecom Regulatory Authority of India (TRAI) in exercise of its powers conferred upon it under Section 11(1)(b) of the TRAI Act, 1997 is entitled to make regulations both in respect of 'Telecommunication Services' which is *stricto sensu* are covered by the Indian Telegraph Act as also the 'Broadcasting and Cable Services' which are deemed to be 'Telecommunication Services' by reason of the aforementioned notification.

Although, TRAI had made various regulations regulating both 'Telecommunication Services' as also 'Broadcasting and Cable Services', it is yet to make any regulation which covers both the services.

Convergence of the services although is a known phenomenon in the industry in other countries, neither the Parliament nor TRAI had made any Act or any regulations in this behalf.

The Central Government made Convergence Bill as far as back in the year 2000. For one reason or the other the Convergence Bill had not been placed before the Parliament.

This Tribunal by reason of interpretative process has tried to do something in this behalf (Petition No.172 of 2009 [Star (India) Pvt. Ltd. Vs. Bharat Sanchar Nigam Ltd.] disposed of on 22.01.2010)

Keeping in view the fact that the technological aspects of the matter cannot be ignored being its crux, we would request TRAI to frame regulations in this behalf upon obtaining comments/suggestions from all the stakeholders during

the consultation process. This, however, shall not mean that the authorized officers under the 1995 Act need not proceed against the offenders for violation of Section 10 thereof and appropriate actions may not be taken in this behalf.

We may only place on record that the suggestions have also been made by the petitioner that WMO should be authorized to levy penalty on the cable TV operators if radio frequency leakage beyond specified limits is detected. This aspect may also be studied.

We hope and trust that not only the Ministry of Information and Broadcasting, the Ministry of Law and Ministry of Telecommunication and Information Technology, TRAI as also the authorized officers shall apply their mind and take appropriate action in this behalf.

For the aforementioned purpose, TRAI may also hold a meeting between the concerned officers of the Ministry of Information & Broadcasting as also the Department of Telecom, some big MSOs like the respondents No.5 to 16 as also the well known CDMA operators. It certainly can invite in the said meeting, if not of the individual operators and licensees, at least their associations.

We hope and trust that apart from the concerned Ministries, all concerned shall take appropriate steps in this behalf at least to know the viewpoints of all the stake holders.

This petition is disposed of with the aforementioned observations.

Let the Registry send a copy of this order to the respondents herein as also TRAI.

.....J
(S.B. Sinha)
Chairperson

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(G. D. Gaiha)
Member

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(P.K. Rastogi)
Member

rkc/sks

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[1] Inserted by the Cable Tekevision Networks (Regulation) Amendment Act, 2000, with effect from 1.9.2000.