

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL**

**NEW DELHI**

**13<sup>TH</sup> JULY, 2012**

**Petition No.97 (C) of 2010**

Harika Cable Vision ... Petitioner

Vs.

Zee Turner Ltd. and Anr. ... Respondents

**BEFORE:**

**HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON  
HON'BLE MR.P.K. RASTOGI, MEMBER**

For Petitioner : Mr. Yoginder Handoo, Advocate

For Petitioner : Mr. Upender Thakur, Advocate for  
Ms. Prathiba M. Singh, Advocate

**J U D G E M E N T**

The Petitioner in this petition has inter-alia prayed for a direction upon the Respondents herein to set aside the notices dated 31.12.2009 and 05.01.2010 having been issued by the Respondent in terms of Clause 4.1 of the Telecom (Broadcasting & Cable Services) Interconnection Regulations, 2004, as amended from time to time.

It has also prayed for a direction upon the Respondent for directing it to enter into a subscription agreement on just and reasonable terms as per the Memorandum of Understanding dated 15.12.2008.

2. During pendency of this petition, the learned counsel for the parties agreed that having regard to the core issue between the parties hereto being the subscriber base of the Petitioner, a joint survey should be undertaken in respect of both the existing areas as also 56 other areas to which the Petitioner intends to extend its operation.

3. A joint survey was undertaken by the learned Advocate appointed by the District Judge, Guntur.

The parties had also been negotiating for settlement of their disputes and differences. The local Commissioner has submitted his report, which has been received by this Tribunal on or about 16.01.2012. No objection thereto has been filed by the parties hereto. No oral evidence also has been adduced.

4. The report of the learned Advocate Commissioner, thus, must be taken on record having regard to the provisions of Order XXVI Rule 10 of the Code of Civil Procedure.

The learned Commissioner visited both urban areas as also rural areas in and around the town of Tenali.

5. The Petitioner in its petition has agreed to pay the subscription fee on the following subscriber base :-

<i>“Bouquet-I</i>	<i>360 Subscribers</i>
<i>Bouquet II</i>	<i>360 Subscribers</i>
<i>Bouquet IV</i>	<i>360 Subscribers</i>
<i>Ten Sports</i>	<i>360 Subscribers</i>
<i>Zee Telugu</i>	<i>2000 Subscribers”</i>

6. The Respondent in its reply denied and disputed the same.

7. In response to paragraph 7 of the petition, the Respondent contended as under :-

*“6-12. Contents of the paras 6-12 are denied to the extent that they are contrary to the submissions made hereinabove. Submissions made hereinabove are most respectfully reiterated. It is submitted that Subscription Agreement dt. 04.08.2008 was executed between the parties. The said agreement was superseded by Memorandum of Understanding dated 15.12.2008 executed between the parties. The term of the said MOU expired on 31.03.2009 by way of efflux of time and it was incumbent upon the Petitioner to approach the*

*Respondent to negotiate the terms and conditions of a fresh Subscription Agreement for the period commencing from 01.04.2009, for a further period of one year. It is submitted that as per Memorandum of Understanding dt.15.12.2008 it was agreed that the commercial terms of the fresh Subscription Agreement shall be reviewed before 31.03.2009. It is submitted that the Respondent believing the declaration of the Petitioner regarding its subscriber base to be true executed the said MOU.”*

8. Indisputably, the Memorandum of Understanding was entered into by and between the parties hereto on or about 15.12.2008, wherein the subscriber base of the Petitioner was stated to be the following :-

S. No.	Bouquet (s)	Declared Subscriber Base as on 15.12.2008	Revised subscriber base agreed by MSO for the period 01.01.2009 to 31.03.2009
1.	Bouquet-I	150	360
2.	Bouquet-II	150	360
3.	Bouquet-IV	150	360
4.	Ten Sports	150	360
5.	Zee Telugu	1500	2000

2. Accordingly, in view of the increased subscriber base, the Company shall raise invoices w.e.f. from January, 2009 to March, 2009 for the following Zee Bouquet(s) of channels as under :-

S. No.	Bouquet(s)	Rate per Bouquet	Subscriber Base	Total (Rs.) per month
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1.	<i>Bouquet-I</i>	55.20	360	19,872/-
2.	<i>Bouquet-II</i>	22.28	360	8,020.80
3.	<i>Bouquet-IV</i>	10.40	360	3,744/-
4.	<i>Ten Sports</i>	15.00	360	5,400/-
5.	<i>Zee Telugu</i>	10.40	2000	20,800/-
		<i>Total</i>		57,836.80
	<i>Add : Service tax @ 12.36</i>			7,149/-
	<i>Grand Total</i>			64,985.80

9. Keeping in view the fact that the Petitioner has expanded its area of operation, on the basis of materials brought on record, we are of the opinion that interest of justice would be sub-served if, regard being had to popularity of the channel 'Zee Telugu', the subscriber base is fixed at 3,000 as for the Bouquet 2, 11, 12 and 13 the subscriber base is fixed at 650.

This estimate has been arrived at by this Tribunal also taking into consideration the fact that the Petitioner has expressed its intention to take the supply of signal of various channels in stead of Bouquet I & Bouquet II only.

10. So far as prayer of the Petitioner to obtain the supply of signal of the Respondent No.2 is concerned, having regard to the fact that it is a sports channel and transmits signal of a few channel, the subscriber base of the Petitioner should be fixed at 360 which has been agreed to by the parties hereto in the above mentioned Memorandum of Understanding.

11. This Petition is disposed of with the above-mentioned directions. The parties must enter into the agreement within one week from date.

The Respondent is furthermore directed to supply a copy of the agreement to the Petitioner within a fortnight from the date of execution.

12. In the facts and circumstances of this case, there shall be no order as to costs.

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**(S.B. Sinha)**  
**Chairperson**

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**(P.K. Rastogi)**  
**Member**

rkc