TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 10 May, 2016

Broadcasting Petition No.449 of 2015
(M.A Nos.310, 394 & 435 of 2015)

Karnataka State Digital Cable TV Operators
Welfare Association
Vs. ... Petitioner
Siti Cable Networks Ltd.
... Respondent

ALONG WITH

Broadcasting Petition No.589 of 2015
(With M.A. No.395 of 2015 & M.A. Nos.73 & 102 of 2016)

Cable Operators Sangram Association, Kolkata
Vs. ... Petitioner
Hathway Cable & Datacom Ltd.
... Respondent

Broadcasting Petition No.672 of 2015
(With M.A. No.74 of 2016 & 103 of 2016)

Cable Operators Sangram Association, Kolkata
Vs. ... Petitioner
Hathway Cable & Datacom Ltd.
... Respondent

BEFORE:
HON'BLE MR. JUSTICE AFTAB ALAM, CHAIRPERSON
HON'BLE MR. BIPIN BIHARI SRIVASTAVA, MEMBER

For Petitioner : Mr. Nittin Bhatia, Advocate

For Respondent (Siti Cable) : Mr. Tejveer Singh Bhatia, Advocate
Mr. Upender Thakur, Advocate
Mr. V.S. Dhillon, Advocate
Mr. Kunal Vats, Advocate

For Respondent (Hathway) : Mr. Jayant K. Mehta, Advocate
Mr. Nasir Husain, Advocate

ORDER

By Aftab Alam, Chairperson – These three cases concerning around 375 local cable operators (LCOs) operating in two different parts of the country, Bengaluru and Kolkata, are illustrative of the malaise of distributors of TV channels entering into interconnect arrangements without any agreement in writing (or at any rate a definitive agreement) as mandated by law. In the short run, oral arrangements may appear expedient and profitable but with the passage of time, the relationship becomes both strained and hurtful and then one of the two sides approaches the Tribunal for redressal of its grievances. This is what has happened in the three cases and a number of similar cases pending before the Tribunal.

Broadcasting Petition No.449 of 2015 is filed by *Karnataka State Digital Cable TV Operators Welfare Association.* It represents 269 LCOs operating in Bengaluru which came under DAS transmission in phase-II. All the LCOs represented through this petition are receiving their signals from the multisystem operator (MSO), Siti Cable. The petition was filed on 24.08.2015 challenging the disconnection notices issued by the MSO under clauses 6.2 and 6.5 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (Interconnect

Regulations 2012) issued on grounds of non-payment of the monthly subscription dues.

At the initial stage of the proceedings, with the consent of the parties, an attempt was made to resolve the disputes through mediation and the parties were referred to the Tribunal's Mediation Centre. However, even before any meaningful mediation could commence, the petitioner filed a contempt application alleging violation of the status quo order passed at the time of referring the matter to mediation. Thereafter, it was repeatedly stated before the Tribunal that parties were trying to resolve the disputes through bilateral negotiations but at the same time, issues kept cropping up regularly and a number of miscellaneous applications were filed, practically for regulating the day-to-day relationship of the two sides.

In substance, the grievance of the LCOs is that as per the understanding between the parties, they were liable to pay Rs.60/- as the monthly subscription fee for all the channels received from the MSO and irrespective of the payments received by them from the individual subscribers. It was further the case of the LCOs that the MSO was insisting upon package billing that had greatly increased the amount of the monthly subscription fee. There were a number of other incidental grievances such as the quality of the signals supplied by the MSO being very poor and the MSO not giving replacements for the defective set top boxes. The MSO on the other hand alleged that the LCOs were not making payments of

the monthly subscription fee and large amounts were outstanding against each of the LCOs. On 15.12.2015, it was stated on behalf of the MSO that as on 31.10.2015 the cumulative dues against the 269 LCOs amounted to Rs.1.65 crores for the *a la carte* channels and for the channels that are given to the LCOs in bouquets, approximately Rs.25 lakhs, calculated @ Rs.60/- per STB. It was also stated on behalf of the MSO that as per its agreement with certain broadcasters, it was getting the broadcasters' channels on the latter's RIO rates and it was, therefore, no longer possible for it to give those channels in any packages and any LCO wanting those channels could take them on RIO rates.

In course of the proceedings, it also transpired that the LCOs had individually executed interconnect agreements with Siti Cable. The agreement is not for any fixed term and would remain subsisting until terminated. The LCOs, however, complained that the agreement was thrust upon them and a number of its terms were unilaterally inserted and were not acceptable to them.

The matter was in this state when it was noticed that during the pendency of the application, the Regulator (TRAI) had introduced certain amendments in the Interconnect Regulations 2012 that would have a direct bearing and impact on this case as it is explained in due course.

Broadcasting Petitions Nos.589 of 2015 and 672 of 2015 are filed by the same petitioner, namely, *Cable Operators Sangram Association, Kolkata*. Broadcasting

Petition No.589 of 2015 is filed on behalf of 42 LCOs and Broadcasting Petition No.672 of 2015 on behalf of 60 LCOs; thus a total number of 102 LCOs are being represented through these two petitions. All these LCOs operate in Kolkata and receive TV signals from the MSO, Hathway Cable & Datacom Ltd. (Hathway). Most of the LCOs are operating in areas that came under DAS transmission in phase-II and a few are operating in areas that come under DAS transmission in phase-III. In these two cases, the LCOs sought a direction to the MSO to restore supply of signals to some of the STBs that, they alleged, were disconnected arbitrarily and not to interfere with the smooth and good quality supply of signals to the LCOs. According to the petitioner, as per the understanding between the two sides, they were liable to pay Rs.110/- per STB as monthly subscription fee for all the channels being received by them and regardless of the subscription fee charged by them from the individual subscribers. According to the petitioners, contrary to the understanding, the MSO had raised the subscription fee and was trying to enforce package billing that would further greatly increase the monthly subscription fee. The respondent in its turn had the usual grievance regarding default in payment of subscription fees by the LCOs. It was also stated on its behalf that the LCOs' refusal to disclose the channels being supplied to the individual subscribers and the subscription fee charged by them to the individual subscribers was in violation of the statutory regulations and further that the rate at

which the LCOs insisted upon making payment of the monthly subscription fee was far lower than the licence fees paid by the MSO to the broadcasters for those channels and it was simply impossible for the MSO to supply TV signals to the LCOs at the rate claimed by them. It was also alleged that the LCOs were not making payment even at the rate of Rs.110/- per month per STB and even at that rate large amounts were outstanding against a number of LCOs.

In this case, though the parties are in interconnect arrangement for a long time, there is no interconnect agreements in writing. Mr. Mehta, learned counsel for the respondent stated that a few LCOs had executed interconnect agreements with the respondent but none was brought to our notice.

In the absence of an agreement in writing and the two sides feuding over practically every material issue, e. g., the rate of monthly subscription, the channels being supplied to the LCOs, the number of subscribers serviced by each of the 102 LCO, the channels being supplied to the individual subscribers and the monthly fee being charged from the individual subscribers, the proceedings in the case tended to come down to the level where the Tribunal's intervention was sought to practically regulate the everyday affairs of the two sides – clearly an unacceptable situation.

Here it needs to be emphasised that these three petitions do not make an isolated case. Actually, a large percentage of cases coming to the Tribunal from

the broadcasting sector have their root cause in the absence of any agreement in writing between the parties. Further, and what is more regrettable, the cases in which two distributors of TV signals happen to be in interconnect arrangement, without any agreement in writing is not confined only to analogue transmission but arise almost in equal numbers under the DAS regime.

In areas under analogue transmission it is not uncommon for a MSO to give TV signals to LCOs on some oral arrangement that allows both of them to operate outside the regulations. It enables the MSO to expand its area of operation and gives the LCO the opportunity to maximise its profits. But the trouble would starts as those areas come under the DAS regime in which the recording and storage of all the data is computerised. Under DAS transmission it is no longer possible for the MSO to materially hide its subscriber base from the broadcaster. Hence, the MSO now insists on seeding of set top boxes and starts raising invoices to its LCOs in terms of the regulations. The LCO finds the invoices contrary to the oral understanding and deeply cutting into its earnings. The dispute erupts and in the absence of any agreement in writing it gets more and more intransigent.

Even under DAS transmission we come across many cases in which the supply of signals by the broadcaster to the MSO or by a MSO to a LCO is continued for long periods, sometime extending to over a year after expiry of the interconnect agreement, while there is truly no written agreement in existence.

What has been of concern to the Tribunal is that the practice is quite common and it is indulged into not only by small operators at the lower tier of the distribution chain but by even major and pan-India operators in the broadcasting sector.

We are glad to note that the Regulator has moved in and amended the Regulations to plug in even the little loop-hole that was misused for continuing the supply of signals under DAS transmission even after the expiry of the agreement. Further, by another amendment in the Regulations it has removed the ambivalence that was created in the scheme of interconnections as result of fixing the shares of the MSO and the LCO by the Tariff Order dated 10 July 2010 as amended on 30 April 2012.

The two amendments in the Interconnect Regulations 2012 made by TRAI during the pendency of these petitions leave nothing for adjudication in these matters and all that is required is to direct the parties to simply follow the law.

We may here advert to the relevant provisions of the Interconnect Regulations.

The Telecommunication (Broadcasting and Cable Services) Interconnection Regulations, 2004 was issued by the Telecom Regulatory Authority of India (TRAI) vide notification issued on 10 December 2004 in order to cover arrangements for interconnection and revenue sharing among service providers in

the broadcasting sector. On 17 March 2009, a notification was issued incorporating clause 4A in the body of the Regulations. Clause 4A lays down as under:

> **"4A. Interconnection Agreements to be in writing.**
>
> **4A.1** It shall be **mandatory** for the broadcasters of pay channels and distributors of TV channels to reduce the terms and conditions of all their interconnection agreements to writing.
>
> **4A.2 No** broadcaster of pay channels or **distributor of TV channels, such as multi system operator** or headend in the sky operator, **shall make available signals of TV channels to any distributor of TV channels without entering into a written interconnection agreement**.
>
> **4A.3** Nothing contained in regulations 4A.1 or 4A.2 shall apply to any supply of signals or continuance of supply of signals of TV channels by a broadcaster or distributor of TV channels, such as multi system operator or headend in the sky operator, in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.
>
> **4A.4** It shall be the responsibility of every broadcaster of pay channels who enters into an interconnection agreement with a distributor of TV channels to hand over a copy of signed interconnection agreement to such distributor of TV channels and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement and, **similarly, it shall be the responsibility of every multi system operator** or headend in the sky operator, as the case may be, **who enters into an interconnection agreement with a cable operator to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement**."
>
> (emphasis added)

In clause 8, however, the regulation states as under:

> **"8. Time Period for Renewal of existing agreements**
>
> 8.1 Parties to an interconnection agreement for supply of TV channel signals shall begin the process of negotiations for renewal of existing agreement at least two months before the due date of expiry of the existing agreement.
>
> Provided that if the negotiations for renewal of the interconnection agreement continue beyond the due date of expiry of the existing agreement then the terms and conditions of the existing agreement shall continue to apply till a new agreement is reached or **for the next three months from the date of expiry of the original agreement**, whichever is earlier. However, once the parties reach

an agreement, the new commercial terms shall become applicable from the date of expiry of the original agreement.

Provided further that if the parties are not able to arrive at a mutually acceptable new agreement, then any party may disconnect the retransmission of TV channel signals at any time after the expiry of the original agreement after giving a three weeks notice in the manner specified in clause 4.3. The commercial terms of the original agreement shall apply till the date of disconnection of signals."

(emphasis added)

Provisions identical to clause 4A of the Interconnect Regulations 2004 are to be found in the Interconnection Regulations 2012 in clauses 5 (17) to 5 (20) which are as under:

"(17) It shall be **mandatory** for the multi system operator to reduce the terms and conditions of the interconnection agreements into writing.

(18) **No multi system operator, shall make available signals of TV channels to any linked local cable operator without entering into a written interconnection agreement.**

(19) Nothing contained in regulations (l7) or (18) shall apply to any supply of signals or continuance of supply of signals of TV channels by a multi system operator in pursuance of or in compliance with any order or direction or judgment of any court or tribunal, including any order or direction or judgment of any court or tribunal on any proceeding pending before such court or tribunal.

(20) It shall be the responsibility of every multi system operator to hand over a copy of signed interconnection agreement who enters into an interconnection agreement with a linked local cable operator/s to hand over a copy of signed interconnection agreement to such cable operator and obtain an acknowledgement in this regard within a period of 15 days from the date of execution of the agreement."

(emphasis added)

And the provision corresponding to clause 8 of the Interconnect Regulations 2004 is there in clause 5(16) of the Interconnect Regulations 2012 which is as under:

"(16) Every service provider shall enter into a new agreement before the expiry of the existing agreement and in case the service provider fails to enter

> into the new agreement before the expiry of the said agreement, the provisions of the existing agreement shall continue to apply till the new agreement is entered into between the service providers or **for the next three months from the date of expiry of existing agreement,** whichever is earlier and if the service providers are able to enter into an agreement before the expiry of the said three months, the new agreement shall apply from the date of expiry of earlier agreement: Provided that if service providers are not able to enter into a new agreement, they may be entitled to disconnect the signals of TV Channels by giving three weeks notice published in two local newspapers, out of which one shall be published in the newspaper of the regional language of the area for which the said agreement is applicable."
>
> (emphasis added)

This Tribunal has read and interpreted clause 4A of the Interconnect Regulations 2004 and clauses 5(17) to 5(20) of the Interconnect Regulations 2012 as a prohibition against supply of TV signals for distribution in the absence of an interconnect agreement between the parties in writing. In a number of cases for recovery of dues, the Tribunal has held that no claim for recovery of dues for supply of TV signals in the absence of an agreement in writing between the parties would be maintainable because the supply of signals without an agreement in writing is illegal and prohibited by law. The Tribunal has taken the view that supply of TV signals on oral agreement is a gross malpractice. An oral agreement for supply of TV signals is bound to give rise to disputes between the parties and thus it impedes in the orderly growth of the broadcasting sector. What is more an oral arrangement for supply of TV signals makes the mandate of non-discrimination which is of essence of the Interconnection Regulations meaningless and unworkable.

In some cases of recovery of dues, especially those arising in DAS transmission, dues were claimed for periods far beyond the expiry of the agreement on the plea that signals were continued to be supplied even after the expiry of the agreement and until the supply was disconnected after giving notices under the regulations. In all such cases, the Tribunal took the view that the claimant would be entitled to recover dues only for the period of the agreement and not beyond the date of expiry of the agreement. In some cases, reliance was placed upon clause 8 of the Interconnect Regulations 2004 and 5(16) of the Interconnect Regulations 2012. In such cases, the Tribunal held that at the most the claimant may be entitled to recover dues up to three months from the date of expiry of the agreement provided there was material and reliable evidence to show that supply of signals was continued beyond the date of the expiry of the previous agreement as the parties were negotiating upon the terms for the renewal of agreement. In no case, however, any claim for recovery of dues beyond that point would be maintainable.

It appears that the Regulator too took notice of the way clause 5(16) of the Interconnect Regulations 2012 was being abused and on 7 January 2016, it amended clause 5(16) of the Interconnect Regulations to the following effect:

> "(16) Every service provider **shall enter into a new interconnection agreement before the expiry of the existing interconnection agreement**:
>
> Provided that the broadcaster or the multi system operator, as the case may be, shall, at least sixty days prior to the date of expiry of the existing interconnection agreement, give notice to the multi system operator or the linked local cable operator, as the case may be, to enter into new agreement:

Provided further that **in case, the service providers fail to enter into new interconnection agreement before the expiry of the existing interconnection agreement**, the broadcaster or **the multi system operator**, as the case may be, **shall not make available the signals of TV channels to** the multi system operator or **the local cable operator**, as the case may be, **on expiry of the existing interconnection agreement**:

Provided also that the multi system operator shall, fifteen days prior to the date of expiry of its existing interconnection agreement, inform the consumer. ----

(a) the date of expiry of its existing interconnection agreement; and
(b) disconnection of signals of TV channels from the said date in the event of its failure to enter into new interconnection agreement."

(emphasis added)

By bringing in this amendment, the Regulator has made it clear that after the expiry of the existing agreement supply of signals cannot be continued for a single day unless a fresh agreement in writing comes into existence.

We now proceed to take note of the development taking place in the regulations on a different but connected issue.

The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order 2010 dated 21.7.2010 in clause 5 provided that the charges payable by a cable operator to a multi system operator would be determined by mutual agreement. Clause 5 was amended and expanded by notification dated 30.4.2012 and after amendment, it came to lay down as under:

"5. Charges payable by cable operator to multi system operator or HITS operator to be governed by mutual agreement between them.---

The charges payable by a cable operator to a multi system operator or to a HITS operator, as the case may be, shall be as determined by mutual agreement.

"*Provided that* in case the multi-system operator and the local cable operator fail to arrive at mutual agreement, the charges collected from the subscribers shall be shared in the following manner:-

(a) the charges collected from the subscription of channels of basic service tier, free to air channel and bouquet of free to air channels shall be shared in the ratio of 55:45 between multi-system operator and local cable operator respectively; and

(b) the charges collected from the subscription of channels or bouquet of channels or channels and bouquet of channels other than those specified under clause (a) shall be shared in the ratio of 65:35 between multi-system operator and local cable operator respectively."

The tariff order fixed the shares of revenue between the MSO and the LCO, both in respect of free-to-air channels and pay channels but the details of various services rendered by the LCO to the MSO and the charges to be paid by the MSO for those services was left undetermined to be settled through mutual negotiations in terms of clause 5(13), as it existed at that time. This seemed to give to the MSO some undue advantage in its relationship with the LCO.

TRAI remedied the situation by amending regulation 13 of Regulation 5 of the Interconnect Regulations 2012 and by substituting it by the following:

"(13) The multi system operator shall enter into a written interconnection agreement with the local cable operator for providing signals of TV channels to the local cable operator, on lines of the model interconnection agreement as set out in the Schedule IV of these regulations, by mutually agreeing on the clauses 10, 11 and 12 of the said agreement:

Provided that the multi system operator and the local cable operator, without altering or deleting any clause of model interconnection agreement, may add, through mutual agreement, clauses to the model interconnection agreement, provided that no such addition shall have the effect of diluting any of the clauses as laid down in the model interconnection agreement:

Provided further that in case the multi system operator and the local cable operator fail to enter into interconnection agreement as provided above in this sub-regulation, the multi system operator and the local cable operator shall enter

> into standard interconnection agreement as specified in Schedule-V of these regulations.
>
> **Explanation:** for removal of doubts it is clarified that in the event of any conflict between the terms and conditions of the prescribed model interconnection agreement and new terms and conditions added through mutual agreement by the parties, the terms and conditions of the prescribed model interconnection agreement shall prevail."

Further, after sub-regulation 13, sub-regulations 13A and 13B are inserted in regulation 5. The newly inserted regulations read as under:

> "(13A) Every multi-system operator shall, within thirty days from the date of commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Seventh Amendment) Regulations, 2016, give a written option to all linked local cable operators to modify their existing agreements in accordance with the model interconnection agreement or standard interconnection agreement, as the case may be, and it shall be open to the linked local cable operator to modify their existing agreement within thirty days from the date of receipt of such option or continue with the existing agreement till its expiry and enter into the model interconnection agreement or standard interconnection agreement, as the case may be, thereafter.
>
> (13B) Every multi-system operator shall, within a period of thirty days from the date of receipt of request from the local cable operator to provide the signals of TV channels, enter into an interconnection agreement in accordance with the terms and conditions of the model interconnection agreement or standard interconnection agreement, as the case may be."

The legal position that emerges from the amendment and regulations as described above may be summarized as follows:

(i) No TV signals can be supplied by an MSO to LCO for retransmission in the absence of an agreement in writing or beyond the date of expiry of the existing agreement unless a fresh agreement in writing is executed between the parties.

(ii) The law provides two formats for interconnect agreements; one called the Model Interconnection Agreement leaves some scope for negotiation, including on the crucial issue of sharing of revenue while the other called the Standard Interconnection Agreement statutorily fixes both the sharing of the revenue and the respective services to be rendered by the two parties to each other.

(iii) In case, there is a subsisting agreement between the MSO and a LCO from before the coming into force of the amended regulations, the LCO has the right to either continue with the existing agreement or to switch over either to the Model Interconnection Agreement (following fresh negotiations) or to the Standard Interconnection Agreement.

The three petitions in hand are thus to be disposed of in terms of the aforesaid legal position. Accordingly, the following directions are made:

(i) In the Karnataka case[1], there is said to be a subsisting agreement certain terms of which are unacceptable to the LCOs. It is, accordingly, directed that all the 269 LCOs in this petition will be free either to continue with the existing agreements or to switch over to either the Model Interconnection Agreement or the Standard Interconnection Agreement within 30 days from today. Each of the

[1] Broadcasting Petition No. 449 of 2015

LCOs should intimate Siti Cable whether or not it wishes to continue with the existing agreement. Those exercising the option not to continue with the existing agreement, may further negotiate with Siti Cable for execution of the Model Interconnection Agreement failing which both sides must execute the Standard Interconnection Agreement within 30 days from today.

(ii) In the Kolkata case[2], there is no interconnect agreement between the two sides. All the 102 LCOs and Hathway are directed to execute either the Model Interconnection Agreement based on mutual negotiations or failing this, the Standard Interconnection Agreement within 30 days from today.

(iii) It is made clear that in case no interconnection agreement in writing comes into existence between the LCOs and The MSOs, Siti Cable (in the Karnataka case) and Hathway (in the Kolkata case) will be obliged to discontinue the supply of signals to the LCOs for any supply of signals beyond that period would be illegal and in contravention of the statutory prohibition.

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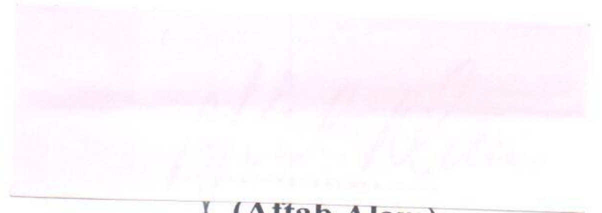
[2] Broadcasting Petition No. 589 of 2015

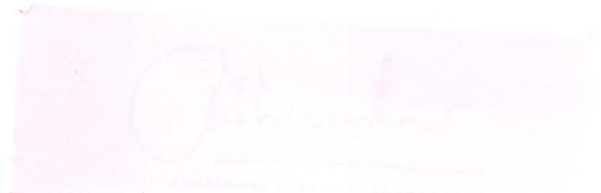
(iv) In case any of the LCO wishes to shift away from its present MSO, it must give 21 days' notice to the MSO before migrating to any other distributor of signals.

(v) As regards the past relationship, in case of any dues that the two MSOs (Siti Cable in Karnataka and Hathway in Kolkata) might claim on the basis of any written agreement or on the basis of any interim order passed by the Tribunal in these proceedings, it would be open to them to initiate recovery proceedings against the concerned LCO in accordance with law. Needless to say that no monetary claim for supply of signals may be entertained that is not based on any written agreement.

The petitions stand disposed of.



(Aftab Alam)
Chairperson



(B.B. Srivastava)
Member

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