

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated 14th October, 2019

Broadcasting Petition No.195 of 2019

ZEE Entertainment Enterprise Ltd. ... Petitioner

Vs.

DEN ADN Network Pvt. Ltd. ... Respondent

Broadcasting Petition No.196 of 2019

ZEE Entertainment Enterprise Ltd. ... Petitioner

Vs.

CCN DEN Network Pvt. Ltd. ... Respondent

BEFORE:

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON

HON'BLE MR. A.K. BHARGAVA, MEMBER

For Petitioner : Mr. Kunal Tandon, Advocate
Mr. Shashank Shekhar, Advocate
Mr. Amardeep Singh, Advocate

For Respondents : Mr. Vibhav Srivastava, Advocate

ORDER

By S.K. Singh, Chairperson – These two petitions have been heard together because they raise common issues of law and are based on almost

identical facts. The petitioner is common and only the respondents are different MSOs/DPOs but they both are joint ventures of a common entity, namely, DEN Networks Ltd. Since the issues are mainly of law and are common, this judgment shall govern both the petitions.

2. For the purpose of deciding the main issue raised by the petitioner that the Logical Channel Number (LCN) of the channels of the petitioner has been displaced by the respondents from their respective networks prematurely, without completion of one year from the allocation of the LCN in violation of Clause 18(4) of the Interconnection Regulations 2017 and Clause 12(iv) of the Interconnect Agreement, it is not necessary to notice the facts of the case in detail. Fortunately, there is no controversy on the basic facts. The only difference between the two petitions is that the date of displacement of LCNs of the channels in B.P. No.195/2019 is 26.07.2019 whereas in the other petition (B.P. No.196/2019) the displacement date is 09.08.2019. The current agreement between the parties was executed on 25.01.2019 effective from 01.02.2019. The preceding agreement filed by the respondent along with its reply is dated 12.05.2018 between the petitioner and DEN Networks Ltd. (not the respondent) for the term 01.05.2018 to 30.04.2019 but admittedly that agreement came to an end on 31.01.2019 on account of implementation of the new regime as per Regulations 2017.



3. As per Clause 5 in the preceding agreement, the licence fee payable by the MSO was for carrying the channels of the petitioner on all the MSO networks including the entities which are joint ventures/subsidiaries/associates/affiliates. Clause 6 provided for special discount of Rs.55 crores for the entire term, on MSO fulfilling its obligations relating to carriage, packaging and LCOs. The specific stipulations for various channels were detailed in Schedule E to that agreement.

4. In order to appreciate the case of the parties, Clause 18 of the Interconnection Regulations 2017 which is verbatim quoted in Clause 12(iv) in the existing Interconnect Agreement needs to be extracted. It runs as follows:-

“18. Listing of channels in electronic programme guide.— (1) Every broadcaster shall declare the genre of its channels and such genre shall be either ‘Devotional’ or ‘General Entertainment’ or ‘Infotainment’ or ‘Kids’ or ‘Movies’ or ‘Music’ or ‘News and Current Affairs’ or ‘Sports’ or ‘Miscellaneous’.

(2) It shall be mandatory for the distributor to place channels in the electronic programme guide, in such a way that the television channels of same genre, as declared by the broadcasters, are placed together consecutively and one channel shall appear at one place only:

Provided that all television channels of same language within the same genre shall appear together consecutively in the electronic programme guide:

Provided further that it shall be permissible to the distributor to place a channel under sub-genre within the genre declared for the channel by the broadcaster.

(3) Every distributor of television channels shall assign a unique channel number for each television channel available on the distribution network.

(4) The channel number once assigned to a particular television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment:

Provided that this sub-regulation shall not apply in case the channel becomes unavailable on the distribution network:

Provided further that if a broadcaster changes the genre of a channel then the channel number assigned to that particular television channel shall be changed to place such channel together with the channels of new genre in the electronic program guide.”

5. From the above clause, it is clear that the respondent as a distributor is mandatorily required to place channels in its Electronic Programme Guide(EPG) on the basis of genre and language. The distributor is also required to assign a Unique Channel Number(Logical Channel Number) for each television channel available on its distribution network. Thereafter comes the main stipulation in the form of Clause 18(4) requiring that the channel number(LCN) once assigned to a particular television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment. But this stipulation will cease to apply if the channel becomes unavailable on the distribution network or if the broadcaster changes the genre of a channel so as to require that channel to be placed differently as per its new genre, in the EPG.

6. On behalf of petitioner, it has been submitted that prior to the new regime under the Regulations 2017, the agreement was with another entity which had assigned a LCN for petitioner’s channel for the entire term of the Interconnect

Agreement and not for one year period because of monetary considerations and to earn the discount of Rs.55 crores. So long as the earlier agreement was in force prior to 01.02.2019, petitioner's channels were legally not available on the distribution network of the respondent in these petitions and in any event they could not have assigned a different LCN on any date till the said agreement was in force. In other words, according to learned counsel for the petitioner the requirement of sub-clause(3) of Clause 18 that the respondent should assign a Unique Channel Number could not have kicked in only because of coming into force of the Interconnect Regulations on any earlier date because that would not make the concerned television channel available on the distribution network of the respondent. For this, an agreement permissible under the new regime as well as under the Regulations of 2017 was necessary. The petitioner's television channels could be, therefore, available on the distribution network as per the new regime so as to be controlled by Clauses 18(3) and (4), only w.e.f. 01.02.2019 and hence, the date of assignment of LCN cannot be earlier than 01.02.2019 and it could not be altered for a period of at least one year from that date.

7. It is also the case of the petitioner that no doubt after the permission from the Hon'ble Supreme Court, TRAI issued a Press Note dated 03.07.2018 to inform all concerned that all the timelines prescribed in the Interconnection Regulations 2017 would commence from 03.07.2018 but availability of



channels for the purpose of new Regulations would depend upon the execution of the agreements and for this the notification or the Press Note dated 03.07.2018 provided that agreements should be signed within a period of 150 days and migration of the subscribers had to take place within 180 days from 03.07.2018. But even before the expiry of these time periods, on 28.12.2018 TRAI issued another Press Note which provided that all plans, bouquets, packs etc. including migration of subscribers should be completed by 01.02.2019. Thus agreements under the new regime were required by the Regulator to come into effect from 01.02.2019. Only then the provision of sub-clauses (3) and (4) of Clause 18 of the Interconnection Regulations 2017 could have come into play.

8. It was also highlighted on behalf of the petitioner that Regulation 45 of the Quality of Service Regulations 2017 was itself amended on 28.12.2018 so as to clearly provide for the new regime to come into effect after 31.01.2019. Therefore, in absence of any challenge to the aforesaid decisions of TRAI or the amendment of Regulation 45, like others the parties accepted the said requirements and they executed the RIO under new regime on 25.01.2019 making the agreement effective from 01.02.2019. Hence, according to petitioner, its channels became available to the respondent for assignment of a LCN under the new regime free of contractual obligations under the past regime



only on 01.02.2019. Hence, the respondent was legally obliged not to disturb the LCN of petitioner's channels at least for one year i.e. till January 2020.

9. In reply, the stand of the respondent is that petitioner's channels were already available on respondents' network with same LCN that was left unchanged on 30.04.2019, even after lapse of one year from last assignment. According to respondent the new regime along with Regulations of 2017 came into effect with Press Note of TRAI on 03.07.2018 and hence LCN assignments, even if counted from that date became more than one year old when it was changed towards the end of July and in August, 2019.

10. It is further case of the respondent that the existing agreement requires that LCN be not changed for one year but there is no specific mention as to when the period of one year shall begin; the date of agreement(RIO) can not be taken as the date of assignment because the broadcaster such as petitioner has power under the Interconnection Regulations, 2017 to amend or issue fresh RIO after 30 days' notice and at least 6 RIOs were issued by the petitioner between December, 2018 and June, 2019. But this submission overlooks the fact that under the new Regulations of 2017, an interconnect agreement can not be for less than a year.

11. As to the Press Release of TRAI dated 28.12.2018 respondents' stand is that it allows further time for migration of subscribers from the old to new



framework but it does not say that for Regulation 18(4) the date of assignment of channels will be from 01.02.2019.

12. Learned counsel for the respondent has emphasized that in law, after the stay orders by courts against the Regulations of 2017 came to an end, the Regulations became effective and hence all the timelines prescribed in the Regulations of 2017 commenced from 03.07.2018. According to him allowing further time by the Regulator TRAI for migration to the new regime by 01.02.2019 does not affect coming into force of the Regulations of 2017 on 03.07.2018 and therefore assignment of LCN would also be effective from that date.

13. In written notes, respondent has referred to and relied upon a judgment of Delhi High Court in **Hathway Cable Datacom Pvt. Ltd. Vs. Union of India, 128(2006) DLT 180** wherein it has been held that after issuing a notification to bring into force the provisions of an Act of legislature, the Government can not assume further powers to withdraw the notification so as to nullify or repeal the Act. Such power can be exercised only by the legislature. This judgment ought to have been cited during hearing so as to give opportunity to other side to meet it. But that proposition of law is not relevant for the present case as would appear from the discussions made and findings that follow.

14. On a careful consideration of rival contentions, we find more force and logic in the submissions advance on behalf of petitioner. The petitioner's stand

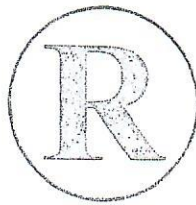
that LCN can be assigned only when the channels become available for the network on execution of agreement deserves to be accepted. Even if a law or Regulation has come into effect prior to such agreement the broadcaster's channel can not in the eyes of law, become available to an MSO for redistribution and assignment of LCN unless such availability and related right of redistribution is created by an agreement.

15. Further, the Regulations under TRAI Act are to enable effective regulation by TRAI for which it has powers to issue directions under the Act. In the interest of all stakeholders it had issued directions for smooth transition to the new regime under the 2017 Regulations. These were at the instance of stakeholders or for benefit of the consumers and were not challenged. The extension of time for migration directly protects the earlier regime under which placement agreements and fixed fee arrangement was permitted. These had to come to an end for which TRAI as a Regulator issued directions. In terms of new Regulations which do not allow placement agreements, there could be no freedom to the respondent as an MSO to assign a LCN under Regulations 18(3) valid for at least one year till the old contractual obligations came to an end and new agreement became effective from 01.02.2019.

16. The provision in the new Regulations of 2017 that LCN assigned shall not be changed at least for one year shall mean one year even after reassignment due to availability of channels on account of renewal of agreement/fresh

agreement ^{under} as new regime. This makes the provision certain and in conformity ^{sk} with another new provision that requires that the term of an agreement shall not be less than a year.

17. For all the abovesaid reasons we find merit in the case of the petitioner and accept that the LCN of its channels in both the petitions have been illegally changed by the respondent before expiry of prescribed period of minimum one year which has to be counted from the 01.02.2019 when the new existing agreement as per 2017 Regulations came into effect. As a consequence, final prayers in the petition bearing Nos.(i) and (ii) are allowed. The petitioner's channels must be restored to the earlier LCN forthwith and in any case within two days from the date of this order. However, there shall be no order as to costs.



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(S. K. Singh, J)
Chairperson

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(A.K. Bhargava)
Member