



**Tandon & Co.**  
Advocates & Solicitors

*~ Presented by Mr. Kunal Tandon, as Speaker,  
at the National Seminar conducted by  
Hon'ble Telecom Disputes Settlement Appellate Tribunal  
in Gangtok, Sikkim on October 17, 2014*

## **RENEWAL OF AGREEMENTS**

---

### **I. Analogue and Other Platforms (Except Digital Addressable Cable Systems)**

#### **1. What Regulations apply?**

The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 amended eight times till date.

#### **2. Which are the relevant Clauses?**

Clause 8 states-

- a. Process must begin 2 months before the expiry date
- b. Terms and conditions of existing Agreement to continue for 3 months or till a new Agreement is reached.
- c. New Agreement applies retrospectively from the expiry date.
- d. Failure to arrive at an Agreement entitles the broadcaster to disconnect.

Clause 11 states-

To finalize the subscriber base at the time of renewal – all changes in subscriber base of the MSO/LCO for past 3 years must be taken into account alongwith the changes in subscriber base of other MSOs of the same and adjoining areas.

Clause 13 states-

- a. Introduces the concept of Reference Interconnect Offer (RIO) for non-addressable systems.

- b. Technical and commercial conditions for interconnection notified.
- c. Forms basis of all agreements.
- d. Addition/subtraction to RIO is allowed subject to mutual agreement between the parties

**3. What are the kinds of agreements?**

- a. Fixed Fee Agreements where a fixed monthly or yearly fee is charged.
- b. Fixed Fee Agreement where a fixed cost per subscriber rate is charged taking a benchmark subscribers.
- c. A hybrid model of (a) and (b) above, i.e. fixed fee upto a benchmark subscribers and cost per subscriber beyond that.

**4. RIO Agreement for Analogue System**

- a. Clause 2(o) defines RIO to mean agreement published by a party, prescribing conditions by fulfilling which other parties would be entitled to obtain interconnection from that party.
- b. Subscriber base whether for fixed fee or RIO is always negotiated as it is difficult to know the exact subscriber base.

**5. What is the process for renewal of agreements?**

- a. Begins atleast two months prior to the expiry date and continues upto 3 months post expiry.
- b. Agreement applies retrospectively.
- c. Negotiate with broadcasters accordingly.
- d. The main dispute in analogue pertains to finalization of subscriber base.

**6. How to overcome this dispute?**

- a. MSO should study its market, subscriber base, changing trends of subscriber base of other MSOs in the same and adjoining areas.
- b. Study the market well.

- c. Understand whether a fixed fee deal, a CPS deal or a hybrid deal is best for the MSO/LCO.
- d. Negotiate basis such understanding.
- e. If there is any failure to renew, MSO/LCO shall not hesitate to apply to Hon'ble TDSAT to resolve its disputes.

## **II. DAS Areas**

### **1. What is DAS?**

DAS is a system/electronic device which encrypts and decrypts signals through conditional access systems and subscriber management system. It scores over analogue as DAS addresses the issues of

- a. Addressability
- b. Encrypted signals
- c. The subscriber gets a choice of what to watch and what not to

DAS has been notified by the Central Government on 31.10.2012 for 4 metros and thereafter, in 38 cities in the country w.e.f. 31.03.2013.

### **2. What Regulations apply?**

The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 amended four times.

### **3. Which are the Relevant Clauses?**

Clause 5(16) provides:

- a. Enter into an Agreement before expiry of existing Agreement.
- b. Provisions of new Agreement to apply till new Agreement is executed or 3 months, whichever is earlier.
- c. If new Agreement is executed within 3 months, new Agreement shall apply retrospectively.

d. If MSO renews the Agreement from fixed fee to RIO or vice-versa, then retrospectively of the agreement cannot be applied. Refer *Hathway Cable & Datacom Ltd. Vs. Star Sports India Pvt. Ltd.* dated 25.09.2014 passed by Hon'ble TDSAT.

e. Failure to execute any agreement entitles broadcaster to disconnect.

#### **4. Kind of Agreements**

a. Kinds of Agreement remains the same as analogue

b. RIO Agreement is based on actual number of subscribers viewing a particular channel, as the channels are mostly being offered on a-la-carte.

#### **5. What is the process for renewal?**

a. MSO must begin the process atleast two months prior to the expiry date, though the clause is silent on the time period.

b. Negotiate with broadcaster accordingly.

#### **6. What are the problems faced?**

a. In almost every case, the negotiations continue beyond expiry of erstwhile Agreement and in most cases, beyond 3 months post expiry.

b. This raises questions of what payment shall be made until the new agreement is reached.

c. TDSAT in *Hathway judgment* held that agreements executed after expiry in DAS do not enjoy retrospectively if the renewal is from one form of Agreement to another.

d. Thus, we are left to decide what payment has to be made for the intervening period.

e. No answer found in the Regulations. TDSAT has directed TRAI to study this aspect.

#### **III. What is the way forward?**

a. Make an attempt to renew agreement before expiry by initiating the process atleast 2 months in advance.

b. Study your market well.

- c. Shift to RIO immediately upon expiry. Quick decision-making.
- d. Opt for a-la-carte or bouquet, as per requirement.
- e. Payment for the intervening period should be continued at the rates provided in the old agreement till the execution of the RIO or a mutually agreed deal (covering aspect of effective date as well).
- f. Seek TRAI or Hon'ble TDSATs intervention for ensuring non-discriminatory treatment.
- g. TRAI to study and notify appropriate regulation in this regard.

**Tandon & Co.**  
**Advocates and Solicitors**

X-3, Green Park Main,  
New Delhi – 110016, India  
Telephones : - +91-11-26520041-42  
E Mail : - [info@tandonandco.com](mailto:info@tandonandco.com)