CABLE FAULTLINES NEED REPAIR

The war between TRAI & LCO/MSO community needs to address the root cause of the imbroglio and come up with a suitable remedy.

A. MSO/BROADCASTER TARIFF WAR OPENS UP FAULT LINES IN CABLE INDUSTRY

◆ The New Tariff Order: 3 was issued on 22.11.2022. It amended the New Tariff Order:2, published in 2020, but it ran into a significant legal hurdle when Broadcasters filed a writ in the Bombay High Court, and the MSOs filed a writ in the Kerala High Court.

◆ The Broadcasters failed to get substantial relief from the Bombay High Court in 2021 and filed an appeal in the Supreme Court in 2021, which admitted the petition but refused to stay the Tariff Order. The MSOs did not get much relief, and NTO: 2 was partially implemented.

◆ In the Explanatory Memorandum to NTO:3, TRAI claimed that every consumer now gets 228 TV channels instead of 100 earlier in a maximum NCF of Rs. 130.

◆ TRAI states further that when Broadcasters submitted their new Reference Interconnect Offers, it was noticed that they had priced most of their popular channels, including sports channels, beyond Rs. 19 and offered them on an a la carte basis.
This led to representations from Distribution Platform Operators (MSOS)/LCO Associations and Consumer Organisations. They pointed out various technical difficulties in SMS systems and felt that the revised RIOs would raise consumer bills. They suggested a fresh Consultation for smooth implementation and consumer convenience.

TRAI states it set up a Committee representing various service providers, which met in December 2021. The Committee gave numerous suggestions, leading to a new Consultation paper in May 2022. After an Open House discussion in September 2022, the New Tariff Order was issued in November 2022.

In the New Tariff Order, after a complete analysis of rival contentions and data available with it, TRAI decided to return to the Rs. 19 regime as per NTO:1, stating that "balancing the interests of service providers (Broadcasters and DPOs) and consumers, the Authority decided that a ceiling of Rs. 19 on the MRP of channels in a bouquet will be in order. This is expected to cause minimum hassles to the consumers.”

Further, TRAI prescribed a maximum discount of 45% on the sum of a la carte channels for arriving at bouquet prices.

The issue of additional discounts to DPOs by Broadcasters will be dealt with by TRAI when the Interconnection Regulations are reviewed. This is pending.

All India Cable Federation (AIDCF) filed a fresh writ in the Kerala HC against the revised Tariff Order. It failed to get an interim stay order, and the new NTO:3 came into effect on February 1, 2023.

While hearings have continued in the Kerala HC, the Broadcasters stepped up the pressure by issuing 48 hours’ notice and resorting to mass disconnection of all members of AIDCF who had not signed new interconnection agreements with members of the Indian Broadcasters and Digital Foundation. Significantly Siticable broke rank and signed the new interconnection agreement.

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For the first time in many years, AIDCF targeted TRAI stating that it was in a 'tearing hurry' to implement NTO:3 without having an idea of the price increase being hoisted on consumers. AIDCF alleged that once the "increased rates are passed on to subscribers, the subscriber base will shrink in an irreversible manner causing grave damage to the cable sector, the consumers and the Petitioners."

Even so, the Kerala High Court did not pass an interim order and decided to hear the various parties daily.

Finally, on February 24, 2023, it appears signals were restored based on undisclosed discussions between IBDF and AICDF.

At the hearing on February 24, 2023, the Kerala High Court gave one week's time to AIDCF to file a rejoinder to the IDBF Counter/ TRAI and fixed the next hearing date to March 3 2023.

Curiously, even though signals were resumed on February 24, 2023, it did not make any difference to the continuation of the Court case.

**COMMENT**

This writer recalls that selective disconnections were standard arm-twisting tactics two decades ago when MSO/Broadcaster contractual disputes were frequent. MSOs used to rush to the jurisdictional High Court for relief.

Still, ultimately, the appointment of TRAI as the Broadcast and Cable Regulator in January 2004 led to a fairer Interconnection Regulation regime, with the Telecom Disputes Settlement and Appellate Tribunal often stepping in to provide quick relief to the DPOs/MSOs.

Right from the first set of Interconnection Regulations issued in 2004, the ability of Broadcasters to switch off DPO signals at will came under many restrictions. Though all these Interconnection Regulations were fiercely fought in High Courts, Broadcasters ultimately fell in line, ensuring that mass disconnections were rarely resorted to until February 2023.

So, what has gone wrong? This writer vividly remembers that when the new Digital Addressable Era dawned in April-June 2012, TRAI took the initiative along with MIB to set up implementation

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task forces which ultimately eased inter and intra-service provider tensions. India can take pride in being fully digital and addressable in cable services. This time there has been no initiative either by TRAI or MIB.

Clearly, AIDCF (representing large MSOs) felt that the Regulator had given the Broadcasters an upper hand in NTO:3, and the concerns expressed by AIDCF had been ignored. Bitterly attacking TRAI must have led to a stiffening of TRAI’s desire to get the NTO:3 quickly implemented, which is understandable. MIB’s silence is intriguing.

What is of deep concern to this writer is the large gap in the reaction of the Last Mile Operator, who directly supply cable signals to 98% of the 75-80 million cable base and the Multi System Operator.

Perhaps AIDCF did not take its LMOs into confidence before going to Kerala High Court. A press release by the powerful Maharashtra Cable Operators Federation on February 23, 2023, accused MSO of "double standards", claiming MSOs "forced NTO:1" on the LMOs and turned PAT positive at the cost of LMOs whose revenue streams have dwindled.

MCOF pointed out that DTH operators and Independent MSOs had already signed the NTO:3 new interconnection agreements, so why had AIDCF not followed suit? The Press Release tends to imply that the Kerala petition aimed to increase MSO revenues. At the same time, MCOF claimed, LMOs and Consumers were being "used as pawns".

So, the fault lines in the Cable Industry, which had been gradually smoothened, are again out in the open. This can only delight Broadcasters and powerful DTH operators.

Some observers claim that the current battle is a proxy between Star Disney on behalf of Broadcasters and Reliance Cable on behalf of MSOs. This writer finds such claims outlandish, at least for the time being.

This writer has often pointed out the galloping rise of OTT platforms and the rise of Free Dish. Both are flourishing and will take away large chunks of the legacy market. The latest paid OTT base is estimated at 130.20 million as per Ormax Media, and Free Dish viewers have jumped to 45 million.

stakeholders' interest, especially the MSOs, who are the largest transmitters of content to the end-users. India can take pride in being fully digital and addressable in cable services. This time there has been no initiative either by TRAI or MIB.

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So far, cord-cutting has been less than 5 per cent. This will increase unless wars with Broadcasters end and peace with Last Mile Operators is achieved. Let's hope for better times.

To conclude, Cable Industry must close ranks and solve its internal contradictions.

B. ZEE/SONY MERGER GETS FRESH SETBACK/SITICABLE ADMITTED TO INSOLVENCY

ZEE INSOLVENCY

The Zee/Sony merger process started in late 2021, whereby on completion of all approvals, Sony will own a 50.86% stake in the merged entity, while the promoters of Zee will own a 03.99% stake. Public shareholders in Zee will hold the remaining 45.15% of the merged company.

By early February 2023, the proposed merger was approved by SEBI/Stock Exchanges, the Competition Commission of India and other government authorities.

Some creditor challenges were pending in the National Company Law Tribunal in Mumbai, which was not taken too seriously because Zee lawyers had been arguing in the Tribunal that all pending liabilities would be paid off by the merged company, which, in combined form, would have sufficient liquidity.

So, when the NCLT passed an order on February 22 2023, in favour of Indusind Bank appointing an Interim Resolution Professional, the news shocked the entire industry and the stock exchanges. The amount due to Indusind Bank is around Rs. 92 crores. That is not such a large sum which cannot be paid off.

Zee MD Mr Punit Goenka immediately filed an appeal to the National Company Appellate Tribunal, which, by a short order on February 24 2023, stayed the
NCLT Order appointing an Interim Resolution Professional and fixed March 29 2023, to hear the counsel for Indusind Bank. The Court directed that "List for final disposal on March 29, 2023. Till that date, the order dated February 22 is stayed".

**COMMENT**

- It is surprising that Zee, which needs the merger with Sony to survive, took the long pending NCLT creditor petitions lightly.
- The final order allowing the merger is listed for hearing in the Mumbai Bench of NCLT on March 9, 2023. This will most likely be postponed until the NCLAT hears the Zee appeal on March 29, 2023.
- All these legal complications will undoubtedly delay the merger process by three to six months.

**SITI CABLE LIQUIDATION**

- The focus of industry and analysts has always been on Zee. The woes of Siticable have relatively gone unnoticed. Siticable is a pioneer MSO set up in June 1994 with 7.65 million subscribers. It has steadily gone downhill; The listed share price fell to Rs. 1.25 on February 24, 2023.
- The NCLT also passed a similar order against Siticable for outstanding dues of Rs. 148.83 crores to Indusind Bank. Here too, an Interim Resolution Professional has been appointed.

**COMMENT**

- The insolvency of Siticable is a sad development for the MSO Industry, which is seeing difficult days. Many MSOs, despite favourable Tariff Orders and Interconnection Regulations in force from 2019, are not doing well. This is especially so for legacy MSOs who have not seized upon the broadband opportunity and have surrendered it to telecom companies like Jio and Airtel.
Many of the 1748 licensed MSOs have not yet launched their services. Existing MSOs are losing ground to OTT/Free Dish. It is no consolation that DTH, too, is losing ground.

One key opportunity lies in the estimated 100 million homes lacking organised TV service. If this figure is correct, MSOs must move out of their metropolitan comfort zone and capture ground in rural and semi-urban areas ensuring high-quality video and broadband services.

C. CONVERGENCE IS IN THE AIR

On January 30, 2023, TRAI issued a Consultation Paper, which deals with whether existing laws are adequate for the convergence of broadcasting and telecommunication services carriage.

This Consultation has been launched, based on two references by the Department of Telecommunications (DOT) dated 20.10.21 and 12.08.2022, requesting TRAI to give recommendations on

- Amending the licensing regime to enable the convergence of carriage of broadcasting and telecommunication services (2021) and
- Establish a unified policy framework and spectrum management regime for the carriage of broadcasting and telecommunication services. (2021)
- Restructuring of legal, licensing, and regulatory frameworks for reaping the benefits of the convergence of carriage of broadcasting and telecommunication services. (2022)
- Revising regulatory regime regarding DTH and Cable TV services holistically addressing all institutional, regulatory, and legal aspects. (2022).

Interestingly enough, the Ministry of Information and Broadcasting expressed disquiet with the amended 2022 reference by DOT to TRAI dated 04.10.2022, stating:

1748 लाइसेंसिक एमएसओ में से कई ने अभी तक अपनी सेवाएं खुद नहीं की हैं। मैंने अमेरिका में आयोजित की गई 1748 ने वहीं अपनी सेवाएं खुद नहीं की हैं।

एक प्रमुख अवसर अनुमानित 100 मिलियन घरों में संगठित दीवी सेवा की कमी है। यदि यह वातावरण सही है तो एमएसओ को अपने महानगरीय सुविधाएं क्षेत्र से बाहर निकलना चाहिए और उच्च गुणवत्ता दीवी टीवी और बॉडबैंड सेवाओं को सुनिरंित करते हुए गायब करें और अर्ध-शहरी क्षेत्रों में अवसर को ही करनी चाहिए।

सी. कन्वर्जेंस की हवा है

30 जनवरी 2023 को ट्राई ने एक पर्चा पत जारी किया, जो इस वात से मंविथित है कि मैंने अनुमानित 100 मिलियन दीवी सेवाओं के कन्वर्जेंस के लिए पायलट है।

यह परामर्श दूरसंचार विभाग द्वारा (डीओटी) 20.10.21 और 12.08.2022 के दो संदर्भों के आधार पर पुरुषों ने दिया है, जिसमें ट्राई पर नियमित प्रयोग किया है।

प्रसारण और दूरसंचार सेवाओं के कन्वर्जेंस के क्रियों को गवर्तन करने के लिए लाइसेंसिंग व्यवस्था में संशोधन करना (2021) और

प्रसारण और दूरसंचार सेवाओं के क्रियों के लिए एक एकीकृत नीति ढांचा और स्पेक्ट्रम प्रयोग व्यवस्था स्थापित करना | (2021)

- प्रसारण और दूरसंचार सेवाओं के क्रियों के कन्वर्जेंस के लिए मध्यवर्ती दो विनिमय के लिए कानून, लाइसेंसिंग और नियामक ढांचे को पुनर्गठन। (2022)

- डीटीए और नेटवर्क दीवी सेवाओं के संबंध में सभी संस्थागत, नियामक और कानूनी प्रामाण्य को समान रूप से वाचनिख करने हेतु नियामक शासन को संशोधित करना। (2022)

दिलवाला बयां यह है कि सुचना और प्रसारण मंडल में डीटीए द्वारा ट्राई को दिनांक 04.10.2022 को संशोधित 2022 के संदर्भ में खिता व्यक्त करते हुए कहा है कि
The convergence of technologies has already happened greatly in the last decade. TRAI and the Ministry have successfully handled all the legal, policy and regulatory requirements arising from such changes.

Hence carriage policy and regulations for broadcasting should remain with the Ministry of Information and Broadcasting.

Regulation of content requires different skill sets of creative and artistic persons than that of technocrats or economists who can factor in the impact of content on sensibilities, morals, and society’s value system. Hence content policy and regulation should also continue with MIB.

Allocation of broadcasting spectrum and realignment should continue to be dealt with by MIB.

Shifting licensing functions to DOT will not serve any purpose but only disturb existing practices.

Despite such a strong comeback from MIB, the parent ministry for the Broadcasting and Cable Industry under Allocation of Business Rules 1961, TRAI has issued a detailed Consultation Paper, which is heavily weighted in favour of the Telecom Service Providers.

The issues identified for Consultation are:

- Is there a need for a comprehensive/converged legal framework (separate Comprehensive Code) to deal with the convergence of carriage of broadcasting and telecommunication services?
- What should be the suggested alternative licensing and administrative framework?
- The convergence of technologies has already happened greatly in the last decade. TRAI and the Ministry have successfully handled all the legal, policy and regulatory requirements arising from such changes.
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- What should be the suggested alternative licensing and administrative framework/
architecture/establishment that facilitates the orderly growth of the telecom and broadcasting sectors while handling challenges posed by convergence?

- What steps must be taken to establish a unified policy framework and spectrum management regime for carriage broadcasting and telecommunication services?

- Some interesting observations in the Consultation Paper clearly show TRAI's intentions. These include:
  
  - Different ministries are regulating different aspects of online services. This impacts ease of business "as the Industry is not clear as to who will prepare policies, give permissions and who will decide the regulatory framework."
  
  - This "impacts innovation as the response time to exploit new technologies increases. Thus, an ambiguous regulatory environment will negatively impact the investment sentiment."
  
  - Many regulatory powers are with various ministries, making governance convergence all the more challenging".
  
  - "Key considerations for developing a single code/ Act may be by consolidating the laws governing the provision of communication services, development, establishment, operation and expansion of communication services, communication infrastructure and networks and management of communication resources and for matters connected or incidental thereto.

- Having a fully converged regulator for the ICT sector, which includes the data privacy and cyber-security functions, would also help increase the confidence of the international investors and facilitate the faster rollout of the digital services in the country."

- कव्यर्जस्त्र द्वारा उत्पन्न भुगतानीमध्ये से निपटने के 
  दौरान दूरसंचार और प्राणायाम क्षेत्रों के व्यवस्थापन 
  विभाग की सुविधा प्रदान करे?

- कौन से प्रावधान और दूरसंचार सेवाओं के लिए एक 
  एककेंद्रित नीतिगत चर्चा और औपचारिक प्रविष्टक्त करने के लिए 
  क्या क्रम उठाये जाने चाहिए?

- प्रणालियों में कुछ विकल्प टिप्पणियाँ स्पष्ट रूप से द्राई के इग्दे 
  दिखाई है।इसमें शालिम हैं।

- विभिन्न मंत्रालय ऑनलाइन सेवाओं के विभिन्न फलूओं 
  को नियमित कर रहा है। यह व्यवस्था की आसानी को 
  प्रभावित करता है 'क्योंकि उपयोग 
  स्पष्ट नहीं है कि नीतियाँ की नीतियाँ तैयार 
  करेगा, अनुपल्लि देखा और नियमक 
  द्वारा कीन तय करेगा?

- यह नियमक को प्रभावित 
  करता है 'क्योंकि नयी तकनीकियों 
  के दौरान के लिए प्रतिक्रिया समय 
  बढ़ता है।इस प्रकार, एक अस्पष्ट 
  नियमक वातावरण नियेक्ष भवनों 
  को नकारात्मक रूप से प्रभावित 
  करेगा।'

- कई नियमक अवकाश विभिन्न मंत्रालयों के पास हैं 
  जो आसान, कव्यर्जस्त्र को और अधिक चुनौतीपूर्ण बना रही है।'

- संचार सेवाओं के प्रावधान, संचार सेवाओं के विकास, 
  स्थापना, संचालन और संचार, संचार अवसरचना और 
  नेटवर्क व संचार संसाधनों के प्रवाहण और संबंधित 
  या प्रामाणिक मामलों के प्रावधान को निर्धारित करने 
  वाले कानूनों को संयुक्त करने वाले एक कोड/अधिनियम 
  विकसित करने के लिए महत्वपूर्ण विचार हो सकते 
  हैं।

- आईटीसी क्षेत्र के लिए पूरी तरह से एककेंद्रित नियमक 
  होने से, निम्न संघ गणपतियों और ग्रामीण सुरक्षा कार्य 
  शालिम हैं, अंतरराष्ट्रीय नियोजिकाओं के विवादों 
  को बढ़ाने और देश में हिकायत सेवाओं के तेजी से गोलहाट 
  की सुविधा प्रदान करने में भी मदद मिलेगी.'
Ironically, this entire Consultation Paper has been issued, ignoring the Draft Communication Commission of India Bill 2001. This Bill originated from the seminal Supreme Court decision in the Cricket Association of Bengal case of 1994, which held that airwaves are public property and not the preserve of either the private or government sector. An autonomous regulatory body best manages them the Supreme Court ruled.

TRAI also refers to the Draft Telecommunication Bill 2022 released in September 2022, which, apart from overhauling telecom laws, plans to bring in sections to regulate OTT communication and broadcasting services regulation.

Amazingly, TRAI appears to have departed from its neutral stance and seems to be only espousing the cause of DOT, which is going all out to make the MIB non-est. It is well aware of the deep concerns expressed by MIB.

Indeed, when such a vast gulf appears between two ministries, both having vital functions to play in the digital economy, the PMO/Cabinet Secretariat should settle the dispute between DOT/MIB before further damage is done to the interests of the Broadcasting and Cable Sector.

Of course, TRAI may be looking for a significant overhaul of its powers, but it is doubtful that DOT will give up its vast powers.

Further developments will have to be carefully monitored in future columns by the broadcasting and cable industry.

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**Tips**

- विज्ञापन यह है कि पूरा परामर्श पर भारत के मरीने संचार आयोग विवेश वर्ष 2001 की अनुप्रेषण करने हुए जारी किया गया है। यह विवेश 1994 के क्रिकेट एसोसिएशन ऑफ बंगाल मामले में गुप्त संस्करण के मौलिक फैले में उलझा हुआ था, जिसमें कहा गया था कि ‘बायु तरंग’ सार्वजनिक संपत्ति है और निजी या सरकारी क्षेत्र के संबंध में नहीं है। सरकारी न्यायालय के निर्णय के अनुसार एक स्वायत्त नियामक संस्था उनका रखना अच्छा प्रबंधन करती है।

- दराई 2022 में जारी ड्रैगन टेलिकमनिकेषन बिल 2022 का भी हवाला देता है जो बैंकिंग कार्यों की ओट्ट बालू के अलावा ओट्ट संचार और परामर्श संबंध में नियम को विनियमित करने के लिए दायरे लाने की योजना बन रहा है।

- आवर्जनक रूप से ऐसा प्रतीत हो रहा है कि दराई अपने पता रखा में हट गया है और ऐसा लगता है कि केंद्र डीआईटी का पथ ले रहा है जो एआईटी की गैर ऐसी बनाने के लिए हर संभव प्रयास कर रहा है। यह एआईटी का माह 2022 की गधी गहरी विचारों से अद्यतन तह चलाकर है।

- बालक में जब दो मंत्रियों के बीच इतनी बड़ी वार्ता उत्पन्न हो जाती है, तो दोनों के नाम विभिन्न अर्थव्यवस्था में रोजराहने के लिए महत्वपूर्ण कार्य होते हैं, तो पीएम/केन्द्र कार्यालय के बादकटिंग और केंद्र क्षेत्र के हितों को और नुकसान पहुँचने से पहले डीआईटी/एआईटी के सीधे विवाद को मुक्ताजना चाहिए।

- बेकार, दराई अपनी अवधारणाओं में महत्वपूर्ण बलात्कार की तात्पर्य कर रहा है, लेकिन यह संदेहास्पद है कि डीआईटी अपनी विधाय अवधारणाओं को छोड़ देगा।

- परामर्श और केंद्र उद्योग द्वारा भविष्य के कॉलम में आगे के विकास की सावधानीपूर्वक निगरानी करनी होगी।