

GOVERNMENT OF INDIA
TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL
4th Floor, Room No. 478, Hotel Samrat, Chanakya Puri, New Delhi –
110021

No. Misc./1/2005/Judl.

NOTIFICATION

24th November, 2014

The competent authority in TDSAT has directed to insert TDSAT Mediation Procedures as Chapter A below Procedure 25 of the TDSAT Procedures, 2005 through Amendment 3 of 2014 to the said Procedures. The Amendment 3 of 2014 to the TDSAT Procedures, 2005 is notified on the website of TDSAT on 24.11.2014.

SD/-
(D P Chamoli)
Desk Officer

Encl.: Copy of Amendment 3 of 2014

(Amendment 3 of 2014)

TELECOM DISPUTES SETTLEMENT AND APPELLATE TRIBUNAL PROCEDURES 2005

In exercise of the powers conferred by Section 16 (1) of the Telecom Regulatory Authority of India Act, 1997 (as amended) and in amendment of Telecom Disputes Settlement and Appellate Tribunal Procedures, 2005, the Telecom Disputes Settlement and Appellate Tribunal directs that below Procedure-25, a new Chapter A be inserted, which reads as under:

CHAPTER A

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL (TDSAT) MEDIATION PROCEDURES

These Procedures will apply to all mediations connected with any Petition or other proceeding pending before the Telecom Disputes Settlement and Appellate Tribunal (referred to hereafter as TDSAT or Tribunal). These will also apply to pre-litigation matters that come up for mediation before the Mediation Centre of the Tribunal. The mediation in respect of any Petition or other proceeding pending before the Tribunal may be referred to the Mediation Centre which is already functioning informally at the Tribunal. Upon such a reference being made to the Centre, the same will be governed by the present Procedures. These Procedures shall come into force from the date of their notification on the official website of TDSAT, i.e., www.tdsat.nic.in.

<u>Procedure (i) -</u> <i>Procedure for directing parties to opt for mediation</i>	The Tribunal may, after recording admissions and denials of the parties to a Petition or any proceeding, at the first hearing or at any subsequent hearing where it appears to the Tribunal that there exist elements of a settlement through mediation which may be acceptable to the parties, at the consensus of parties, refer the case for mediation.
<u>Procedure (ii) -</u> <i>Tribunal to give guidance to parties while referring the matter to Mediation Centre</i>	While referring the matter to the Mediation Centre under Procedure (i), the Tribunal may give such guidance as it deems fit to the parties, by drawing their attention to the following relevant factors which parties should take into account, before they exercise their option to go for mediation, namely: (i) that it will be to the advantage of the parties, so far as time and expense are concerned, rather than seeking a trial on the disputes arising in the Petition;

	<ul style="list-style-type: none"> (ii) that, where there is a relationship between the parties which requires to be preserved, commercial or otherwise; (iii) that, where parties are interested in a final settlement which may lead to a compromise.
<u>Procedure (iii) -</u> <i>Failure of attempts to settle disputes by mediation</i>	Where a Petition has been referred for settlement for mediation and has not been settled or where it is felt by the mediator that it would not be proper in the interests of justice to proceed further with the matter, the Petition shall be referred back again to the Tribunal with a direction to the parties to appear before the Tribunal on a specific date as may be specified by the Registrar.
<u>Procedure (iv) -</u> <i>Appointment of mediator</i>	<ul style="list-style-type: none"> (a) Parties to a Petition or other proceeding may agree on the name of the sole mediator or joint mediator out of the panel of mediators under Procedure (v) for mediating between them. (b) The mediator so appointed or nominated, under Clause (a), should not be a person who suffers from the disqualifications referred to in Procedure (vii).
<u>Procedure (v) -</u> <i>Panel of mediators</i>	<ul style="list-style-type: none"> (a) The Tribunal shall, for the purpose of appointing the mediator between the parties in Petitions or proceedings, prepare a panel of the mediators and put the same on the Notice Board and official website of the TDSAT within 30 days of coming into force of these Procedures, with copy to the respective mediators. (b) The consent of the persons whose names are included in the panel shall be obtained before empanelling them. (c) The panel shall contain Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields. (d) The panel of mediators appointed under Clause (a) shall normally be for a period of 3 years from the date of appointment and further extension of the panel of mediators or any mediator shall be at the discretion of the Tribunal, as the case may be.
<u>Procedure (vi) -</u> <i>Qualifications of persons to be empanelled under Procedure (v)</i>	<p>The following persons may be enlisted in the panel of mediators under Procedure (v), namely :</p> <ul style="list-style-type: none"> (a) Retired District and Sessions Judges or Officers of any higher Judicial Service. (b) Legal practitioners with at least 15 years standing at the Bar at the level of the Supreme Court or the High Court or the District Courts. (c) Experts or other professionals with at least 15 years standing; or retired senior bureaucrats or retired senior executives;

	<p>(d) Persons who are themselves experts in the mediation, irrespective of experience in conducting mediations who have done 40 hours training of mediation under any government body.</p> <p>(e) Institutions which are themselves experts in mediation and have been recognized as such by the Tribunal, provided the names of its members are approved by the Tribunal initially or wherever there is a change in membership.</p>
<u>Procedure (vii) -</u> <i>Disqualifications of persons</i>	<p>The following persons shall be deemed to be disqualified for being empanelled as mediators:</p> <p>(a) any person who has been adjudged as insolvent or persons</p> <ul style="list-style-type: none"> (i) against whom criminal charges involving moral turpitude are framed by a criminal court and are pending; or (ii) persons who have been convicted by a criminal court for any offence involving moral turpitude. <p>(b) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.</p> <p>(c) such other categories of persons as may be notified by the Tribunal.</p>
<u>Procedure (viii) -</u> <i>Addition to or deletion from panel</i>	<p>The Tribunal, may in its discretion, from time to time, add or delete any person in the panel of mediators.</p>
<u>Procedure (ix) -</u> <i>Preference</i>	<p>The Tribunal may, while nominating any person from the panel of mediators referred to in Procedure (vi), consider his/her suitability for resolving the dispute(s) involved and give preference to those who have proven record of successful mediation or who have special qualification or experience in the mediation.</p>
<u>Procedure (x) -</u> <i>Duty of mediator to disclose certain facts</i>	<p>(a) When a person is approached in connection with his proposed appointment as mediator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his/her independence or impartiality.</p> <p>(b) Every mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (a).</p>
<u>Procedure (xi) -</u> <i>Withdrawal of appointment</i>	<p>The Tribunal may withdraw the appointment of a mediator and replace him/her by another mediator, if:</p> <p>(a) upon information furnished by the mediator under Procedure (x) or upon any other information received from the parties or other persons, if the</p>

	<p>Tribunal, in which the Petition or proceeding is pending, is satisfied, that the said information has raised a reasonable doubt as to the independence or impartiality of the mediator; or</p> <p>(b) such person is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing; or</p> <p>(c) such person has or is appearing for any of the parties in the Petition or in other proceeding(s).</p>
<u>Procedure (xii) -</u> <i>Procedure of mediation</i>	<p>(a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.</p> <p>(b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :</p> <ul style="list-style-type: none"> (i) he/she shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present; (ii) he/she shall hold the mediation at the place prescribed by the Tribunal or the place where the parties and the mediator jointly agree; (iii) he/she may conduct joint or separate meetings with the parties; (iv) each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved. <p>Provided that where the mediator is of the opinion that he/she should look into any original document, the Tribunal may permit him/her to look into the original document before such office of the Tribunal and on such date or time as the Tribunal may fix.</p> <p>(v) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.</p>
<u>Procedure (xiii) -</u> <i>Mediator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908</i>	The mediator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).
<u>Procedure (xiv) -</u> <i>Representation of parties</i>	The parties shall ordinarily be present personally or through constituted attorney at the sessions or meetings notified by the mediator. However, they may be represented by the counsel with permission of the mediator in such sessions or meetings.

Procedure (xv) - <i>Consequences of non-attendance of parties at sessions or meetings on due dates</i>	If a party fails to attend a session or a meeting notified by the mediator on account of deliberate or willful act, the other party or the mediator can apply to the Tribunal in which the Petition or proceeding is pending, in that case Tribunal may issue the appropriate directions having regard to the facts and circumstances of the case, including imposition of costs.
Procedure (xvi) - <i>Administrative assistance</i>	In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person as may be prescribed by the Tribunal.
Procedure (xvii) - <i>Offer of settlement by parties</i>	Any party to the Petition may, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.
Procedure (xviii) - <i>Role of mediators</i>	The mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which affect them; he/she shall not impose any terms of settlement on the parties.
Procedure (xix) - <i>Parties alone responsible for taking decision</i>	The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.
Procedure (xx) –Time limit for completion of mediation	On the expiry of 60 days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the Mediator, either on his own, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of 30 days.
Procedure (xxi) – <i>Parties to act in good faith</i>	All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible, and also; <ul style="list-style-type: none"> 1. all parties shall adhere to these procedures in law and in spirit. 2. cooperate the mediator during proceedings 3. do not indulge in unwanted arguments and bad language

	<p>4. follow the instructions given by the mediator for the administration of the mediation process.</p>
<u>Procedure (xxii) -</u> <i>Confidentiality, disclosure and inadmissibility of information</i>	<p>(a) When a mediator receives factual information concerning the dispute(s) from any party, he may disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.</p> <p>Provided that, when a party gives information to the mediator subject to a specific condition that it is to be kept confidential, the mediator shall not disclose that information to the other party.</p> <p>(b) Receipt or perusal, or preparation of records, reports or other documents by the mediator, while serving in that capacity shall be confidential and the mediator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation before any court of law or any other authority or any person or group of persons.</p> <p>(c) Parties shall maintain confidentiality in respect of events that transpired during the mediation and shall not rely on or introduce the said information in other proceedings as to :</p> <ul style="list-style-type: none"> (i) views expressed by a party in the course of the mediation proceedings; (ii) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator; (iii) proposals made or views expressed by the mediator; (iv) admission made by a party in the course of mediation proceedings; (v) the fact that a party had or had not indicated willingness to accept a proposal; <p>(d) There shall be no stenographic or audio or video recording of the mediation proceedings.</p> <p>(e) No statement of parties or the witnesses shall be recorded by the mediator.</p>
<u>Procedure (xxiii) -</u> <i>Privacy</i>	The Mediation sessions or meetings would be conducted in privacy where the persons as mentioned in Procedure (xiv) shall be entitled to represent parties. However, other persons may attend only with the permission of the parties and with the consent of the mediator.
<u>Procedure (xxiv) -</u> <i>Immunity</i>	No mediator shall be held liable for anything bonafide done or omitted to be done by him/her during the mediation for civil or criminal action nor shall he/she be summoned by any party to the Petition or proceeding to appear in a Court of law to testify in regard to information received by him or action

	taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.
<u>Procedure (xxv) -</u> <i>Communication between mediator and the Tribunal</i>	<p>(a) In order to preserve the confidence of parties in the Tribunal and the neutrality of the mediator, there should be no communication between the mediator and the Tribunal related to any specific matter or case, except as stated in clauses (b) and (c) of this Procedure.</p> <p>(b) If any communication between the mediator and the Tribunal is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or the counsel.</p> <p>(c) Communication between the mediator and the Tribunal shall be limited to communication by the mediator:</p> <ul style="list-style-type: none"> (i) with the Tribunal about the failure of the party to attend; (ii) with the Tribunal about the consent of the parties; (iii) regarding his/her assessment that the case is not suited for settlement through the mediation; (iv) that the parties have settled the dispute(s).
<u>Procedure (xxvi) -</u> <i>Settlement Agreement</i>	<p>(a) Where an agreement is reached between the parties in regard to all the issues in the Petition or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties or their constituted attorney. If any counsel has represented the parties, the mediator may obtain his/her signature also on the settlement agreement.</p> <p>(b) The agreement of the parties so signed shall be submitted to the mediator who shall, with a covering letter signed by him/her, forward the same to the Tribunal in which the Petition or proceeding is pending.</p> <p>(c) Where no agreement is arrived at between the parties, before the time limit stated in Procedure (xx) or where, the mediator is of the view that no settlement is possible, he shall report the same to the Tribunal in writing.</p>
<u>Procedure (xxvii) -</u> <i>Tribunal to fix a date for recording settlement and passing decree</i>	<p>(a) On receipt of any settlement, the Tribunal shall fix a date of hearing as early as possible. On such date of hearing, if the Tribunal is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.</p> <p>(b) If the settlement dispose of only certain issues arising in the Petition or proceeding, on the basis of which any decree is passed as stated in Clause (a), the Tribunal shall proceed further to decide remaining issues.</p>
<u>Procedure (xxviii) -</u> <i>Fee of mediator and costs</i>	<p>(a) Fee to the mediators shall be fixed by the Tribunal by issue of office order from time to time as may be required.</p>

	<ul style="list-style-type: none"> (b) As far as possible, a consolidated sum per case or matter may be fixed rather than for each session or meeting. There may be variation in fee for successful mediation with other mediations. (c) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be paid by TDSAT or as may be otherwise directed by the Tribunal. (d) The expense of the mediation including fee, if not paid by the parties in case of direction of the Tribunal to this effect, the Tribunal shall, on the application of the mediator or the parties, direct the concerned parties to pay, and if they do not pay, the Tribunal shall recover the said amounts as if there was a decree for the said amount.
<u>Procedure (xxix) –</u> <i>Pre-Litigation Mediation</i>	<ul style="list-style-type: none"> (a) For Pre-litigation mediation, application by any party may be made to the Registry of TDSAT. (b) There shall be fee, payable to TDSAT for pre-litigation matters as may be fixed by order by the Tribunal from time to time as may be required. (c) The Registry will allocate the matter to a suitable mediator on the panel.
<u>Procedure (xxx) -</u> <i>Ethics to be followed by mediator</i>	<p>The mediator shall :</p> <ol style="list-style-type: none"> 1. follow and observe these Procedures strictly and with due diligence; 2. not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator; 3. uphold the integrity and fairness of the mediation process; 4. ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process; 5. satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner; 6. disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias; 7. avoid, while communicating with the parties, any impropriety or appearance of impropriety; 8. be faithful to the relationship of trust and confidentiality imposed in the office of mediator; 9. conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law; 10. recognize that the mediation is based on principles of self-determination by the parties and that the mediation process relies upon the willingness of parties to reach a voluntary agreement; 11. maintain strict confidentiality; 12. refrain from promises or guarantees of results.
<u>Procedure (xxxi) -</u> <i>Transitory provisions</i>	Until a panel of mediators is prepared by the Tribunal as stated in Procedure (v), the Tribunal, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Procedure (vi) and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute(s).

