

Cable Operators Federation of India

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11 January 2013

The Chairman
Telecom Regulatory Authority of India
New Delhi-110002

Kind Attention: Sh Rahul Khullar

Comments on TRAI consultation on issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems Dated 20 December 2012

Sir,

Ref Consultation Paper No 18/2012 dated 20 December 2012 on issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems.

It is strange that in spite of TRAI's detailed consultations with industry since 2004 and numerous recommendations, the industry has been lead to the present situation where some basic provisions made by TRAI are being questioned in the court rooms before even properly implementing them. Stake holders have been giving enough information to TRAI on functioning of the industry in their replies to the many consultation papers issued so far but hardly any practical solutions have been found to regulate the industry.

It appears that TRAI ignores all the ground realities and takes a stand on their perceived views of functioning of the industry that are generally influenced by views of a few stakeholders who have more than the usual opportunity to impress the government and the regulator using different forums like industry associations created for lobbying (IBF, NBA, FICCI, CII, ASSOCHAM, CASBAA etc.), sponsored industry events, using their lawyers and personal meetings.

Courts cannot always find solutions for the industry as they only examine the present laws and give judgements accordingly, keeping in mind the statement of dispute projected before them for resolution. If there is basically something wrong with the law itself, it is very difficult to match the court judgements with the real situation on the ground. **Also small stake holders cannot even afford going to courts where as large players are always ready with their lawyers to approach highest of the court to get relief or delay the action.** And TRAI as a technical expert has an important role to play in suggesting the government the right kind of laws and regulations that would lead to consumer benefit and all inclusive growth of the industry.

We feel TRAI should have gone deep into the functioning of the industry, its present state and the future possibilities instead of trying to create a brand new industry of its choice, where the interests of only a few stake holders are taken care of.

We also would like to submit that there is a need to ensure that once TRAI gives its recommendations, the Ministry concerned must accept them or reject them with reasons made public within a given time frame rather than keep them in cold storage like it has been done in case of many recommendations for the broadcasting industry, in particular the ones that would have benefitted the cable TV industry. It will not be wrong to say that cable TV industry has been neglected by the government since the regulatory task was given to TRAI in 2004. Industry has not grown after that and like the rate freeze imposed by TRAI, the whole industry has been frozen.

Results of the first Phase of digitalisation show that we are slowly moving towards a chaotic situation that would benefit only a few large companies and consumers and cable operators would suffer the most. **Digitalisation effort has failed miserably as summarised below:-**

- (a) **There is no addressability and a-la-carte choice as yet.**
- (b) **SMS and Billing systems are not operational as KYC forms have not been fed in to the system.** Bills are being given as in analogue systems.
- (c) **Installing STBs using force is not addressability.**
- (d) **Consumers are not paying for their choice.** Instead they are being forced to accept what package is being offered by their MSO.
- (e) **No agreements signed between MSO and franchisee operators.** Operators are being forced to sign on blank agreements. They don't get the signed agreements back.
- (f) **Broadcasters are asking lumpsum payments from MSOs and not based on consumer demand.** All dealing are being done on negotiated rates.
- (g) **Crores of cash is being collected by the MSOs in the name of security for STBs from the LCOs without any receipt and no tax has been paid by any MSO so far.**
- (h) **Consumers are still unaware of what is in store for them** as TRAI has avoided giving any realistic cable service rates for them. Although TRAI has mentioned that there was low response to a-la-carte on DTH, it has failed to accept that none of the DTH operators ever gave a-la-carte choice to consumers even if it was mandatory in the Guidelines. Interoperability was never introduced in DTH even if it was mandated. **So consumers were always neglected by the DTH companies and DTH remained an extension of large pay TV broadcasters enabling them to exploit the cable dry areas and cable deficient regions of rural India.** The same model is now being introduced in cable TV.

Some of the basic problems of the industry that should have been addressed before implementation are still to be attended to as given below:-

1. **Cross media holdings and vertically integrated operations** of a few large broadcast companies who wish to capture the whole media market through various means have received further support by the present regulations leading the industry to a situation that may become difficult for even the government to control.
2. **Cable operators** who control the last mile of 100 million households providing service to the subscribers have never been promoted and strengthened to help **consolidation through supporting regulations**.
3. **India is not a pay TV market as yet**. Pay channels have been forced on consumers without addressable system and operate just like free to air channels. **Hence there is no way to judge their viewership or revenue collection. TRP system does not give the right picture**. But TRAI on the other hand has taken for granted that subscribers must pay for them whether they like it or not and made the present regulations to support pay channels.
4. **Revenue for Cable Operators** has been frozen since December 2003 where as channels have increased and pay channel rates are allowed to go up.
5. **TRAI understands the importance of providing Broadband on cable networks but done nothing for the infrastructure**. TRAI expects 72 million broadband connections on cable in the next three years as projected in the National Broadband Plan but never examined the issue of how to upgrade the existing networks to broadband networks of future in any of its consultation for digital systems. Instead, **large MSOs who are part of the vertically integrated operations of Broadcasters** and do not have any stakes in the last mile have been given more opportunities to increase their monopolies with unrealistic timelines for others. The small operators who work independently or are franchisee to the large MSOs have been given impractical, unviable revenue share to run their companies thus killing self made industry created by small entrepreneurs.
6. It is ironical that addressability was curtailed on cable in 2003 but was permitted on DTH and other platforms. **Thus addressability never grew in cable and now it is being forced to adopt a similar structure as in DTH in an unrealistic time frame** that is primarily favourable to pay channels and not favourable to the Cable TV infrastructure providers who need money as well as time to upgrade their networks.

With this background we wish to answer the issues raised in Consultation Paper and also request TRAI to include reviewing of the revenue share and structural changes to be made in the cable TV industry as it is an important part of making a whole industry addressable and broadband ready which is need of the day.

Carriage fee

Para 16 (a) Whether the following proviso should be introduced in the clause 3(2) of the interconnection regulations for DAS and the clause 3(5) of interconnection Regulation for DAS should be deleted.

“provided that the provisions of this sub-regulation shall not apply in the case of a multi-system operator, who seeks signals of a particular TV channel from a broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform.”

(b) If no, the reasons thereof.

Comments

Yes, the mentioned proviso should be introduced in clause 3(2). However, it should be mentioned only for ‘Pay Channels’.

Minimum Channel Carrying Capacity of 500 Channels for MSOs

Para 20 (a) Whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS?

(b) If yes, what should be the different categories (example cities/town/rural area) of areas for which minimum channel carrying capacity should be prescribed and what would the capacity for each category?

Comments The analysis done by TRAI is not correct as Cable Networks operate in very small areas compared to the all India presence of DTH. MSOs also operate with many headends in the cities and hence each headend provides service within a city or a few neighbouring towns and not the whole state. Hence, considering the interests of a complete state while assessing needs of cable TV consumers, may not be correct. Except in the metros the market is served by many small independent MSOs, feeding only a locality or part of a city and they cannot be equated with large nationwide MSOs. Similarly a state wide audience cannot be equated with audience in a locality or part of a city in the state while deciding the number of channels in the headend. Moreover, channels are increasing every day and a headend can never meet all the demand of people all the time. There is enough competition there to take care of this.

Therefore we should leave this to market forces and choice of people served by a network. In case an independent operator does not supply the choice of all his consumers, consumers have a choice to take up DTH connection or get service from another MSO.

An MSO has the option to increase his number of channels as and when new channels are introduced or there is an increase in demand from consumers. In the rural area or small cities the choice of channels does not even go beyond 100, hence it is unrealistic to force a MSO to carry 500 channels to supply to a few consumers and make his business unviable

leaving his subscribers to a DTH operator or a HITS company if one starts operating in the future.

Hence there is no need to specify certain minimum channel carrying capacity for the MSOs.

Permit only FTA networks. Also, MSOs if they wish should be permitted to have only FTA channels in their network. Carrying pay channels should not be made mandatory. Condition of licensing will have to be changed to provide this so that NOC from a broadcaster is not made a compulsory condition to get DAS licence. This will allow many small operators to operate only FTA networks where there is not much demand of 'pay' channels or the economic condition of subscribers is such that pay channels are unaffordable to them.

Placement Fee

(5) Whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated. The stakeholders are requested to submit their comments with justifications.

Comments:

There is no need to regulate the placement fee. There is adequate competition in the market to level out the rates charged. Also when pay broadcasters rates are not regulated and it has been left to the broadcasters to charge as much as they like, MSOs should also be left to decide what they charge the broadcasters to place their channels in a particular slot. Value of the placement is depending on many factors like, type of area served, economic section served and quality of service provided which are different in different networks. Hence let it be negotiated between MSO and broadcaster.

Issues related to amendments to the Tariff Order applicable for Addressable Systems.

Para 29. Twin conditions at retail level

(6) The stakeholders are requested offer their comments on the following twin conditions, to prevent perverse a-la-carte pricing of the pay channels being offered as part of the bouquet(s).

(a) The ceiling on the a-la-carte rates of pay channels forming part of bouquet(s) which shall not exceed three times the ascribed value# of the pay channel in the bouquet;

(b) The a-la-carte rates of pay channels forming part of bouquet(s) shall not exceed two times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems.

#ascribed value of a pay channels in a bouquet is calculated in the

following manner:

1. Proportionate Bouquet Rate for pay channels [A]=
Bouquet Rate x (Sum of a la carte rate of Pay channels)/(Sum of a la
carte rate of Pay channels+ Total no of FTA channels x factor*)

2. Ascribed value of a pay channel in a bouquet = [A] x a-la-carte rate
of a pay channel/ (sum of a-la-carte rate of all the pay channels)
*factor=1 if uniform rate of free-to-air channel is less than or equal to
Rupees three. The factor = uniform rate of free-to-air channel/ 3, if the
uniform rate of free-to- air channel is greater than Rupees three.”

The stakeholders are also welcome to submit any other formulation that can
achieve the same objective, along with its justification.

Comments:

The above method of prescribing the rates of a-la-carte rates of pay channels is acceptable.
However, we also wish to submit the following:-

- (a) Upper limit of A-la carte rates of FTA channels should be fixed by TRAI. At present
some MSOs are selling FTA at Rs 3 per channel and others at Rs. 5. The difference is
formidable when many channels are involved. At present there are more than 600
pay channels.
- (b) It should be ensured that a-la-carte rate of a FTA channel should be less than a-la-
carte rate of any ‘pay channel’ in that network.

Minimum Subscription Period

Para 32. (7) The stakeholders are requested to offer the comments, if any, on the
proposed deletion of the word ‘pay’ in clause 6 and 6(2) of the principal tariff
order dated 21.07.2010.

Comments:

Yes, the word ‘Pay’ may be deleted from the said clause.

Freedom to choose the channel(s) on a-la-carte and/or bouquet(s)

(8) The stakeholders are requested to offer their comments, if any, on the
proposed inclusion of the following provision after sub-clause 6(4) in the tariff
order dated 21.07.2010, as amended.

“It shall be open to the subscriber of the addressable systems to subscribe to
any bouquet(s) or any bouquet(s) and any channel(s)(pay or free to air) or
only free to air channels or only pay channels or pay channels and free to air
channels”.

Comments:

Yes, this provision must be included and Tariff Order amended accordingly.

This will also require making **mandatory for all MSOs to provide a basic tier of only FTA channels at the prescribed cost.** At present some MSOs do not do this and are forcing pay channels on consumers through basic packages.

Offerings of Bouquet(s) of channels which require special Set Top Boxes (STBs) such as High Definition Television (HDTV) or Three Dimensional Television (3D TV) channels etc.

Para 36. Whether the channels that require special type of STB be offered only on a-la-carte basis or as part of separate bouquets that consists of only those channels that require a particular type of specialised STB.

Comments:

- (a) First, these channels must be available on a-la-carte basis.
- (b) Second, if these are part of a bouquet, the whole bouquet must comprise of only such special channels.

At the end we wish to suggest that TRAI should consider adding the following provisions to safeguard the interest of poor subscribers and small operators operating independently:-

1. **Separate Regulations must be made for Large MSOs, Medium size MSOs and Small size MSOs** to ensure that they are able to continue running their business like the US government had done when it regulated the industry.
2. **There should be separate tariff order for large and small networks** so that small networks who do not have the advantage of economy of scale because of their geographic location or special conditions under which they operate like in Army cantonments or industrial towns, can also abide by the regulations and operate freely.
3. **Revenue Model to be reworked.** Like TRAI has done internal analysis of issues it has taken up in the consultation, it should have done the internal analysis of the functioning of small cable networks who work independently or as franchisee of MSOs, worked out the exact financials of setting up, upgrading, operating, maintaining these networks so that a minimum revenue required by these operators can be worked out. Since the whole revenue system of the distribution chain depends on the consumer subscriptions, it should be ensured that minimum revenue from subscribers matches up with the minimum need of an operator and MSO. Once the revenue model supports upgrades to technology, we can expect consolidation and growth in the industry automatically.

4. FTA Only networks must be permitted. India is a vast country and cable networks in different parts of the country grew because they could meet the requirement of people of the area and this also the reason that in spite of DTH available since 2003, **these networks are still going strong providing employment to many local people of their respective areas.** All of them do not carry pay channels. These networks number in lakhs, much more than the 60000 figure being considered by TRAI. For example Tamilnadu government announced ARASU connecting more than 22000 operators in the state. If one state in the country has 22000 operators, number will be huge when we take all the states in India.

TRAI should not assume that all subscribers of these small networks will go to DTH or these operators will join HITS network. TRAI should find a way to let these networks survive within the ambit of regulations.

Yours Faithfully,

(Roop Sharma)

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