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March 16, 2016

Mr. S.K. Gupta
Pr. Advisor (B&CS),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi-110 002

Dear Sir,

**Re: Consultation Paper on Tariff Issues related to TV
Services dated 29.1.2016**

Attached please find the response of the News Broadcasters Association ("NBA") to the issues contained in the Consultation Paper dated 29th January, 2016 on Tariff related issues to TV Services (the "Consultation Paper").

Thanking you,

Yours faithfully,

Annie Joseph
Secretary General

Encl: As above



NBA's Reply on TRAI Consultation Paper on Tariff Issues related to TV Services dated 29.1.2016

Issue Of Carriage Fee

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

Q32. Under what circumstances, carriage fee be permitted and why?

Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?

Q34. Should the carriage fee be reduced with an increase in subscriber base? If so, what should be the criteria and why?

NBA Response:

1. At the outset NBA submits that in areas where the digital-addressable system (DAS) has been rolled out in phases and digitization is complete, carriage fee must not be permitted to be charged from the broadcasters.
2. However in the interim in areas where DAS has not been completely implemented and final phase IV of DAS is in the process of being implemented, at the very least, carriage fee must be regulated by TRAI. TRAI must ensure that the carriage fee charged from the broadcasters in these cases is reasonable, rational, non-discriminatory, regulated and such carriage fee must only be payable for a limited period so that broadcasters are not left at the whim and mercy of Multi System Operators (MSO)s and other digital platform operators (DPO)s.
3. Furthermore the carriage fee charged from the broadcasters must be based upon an actual, verifiable subscriber base of an MSO and not on the *ipse-dixit* of an MSO/DPO's.

The reasons for the reaching the above conclusions are:

- (i) It may be noted that the broadcasters have been bound in a regulatory framework on several commercial aspects unlike the other DPOs/MSOs. The channel pricing is regulated, bouquet packaging is regulated, the "must provide" clause



exists for all channels whereas the MSOs in particular have remained completely unregulated and therefore the MSOs have been and are continuing to charge unreasonable and unacceptable carriage, placement and marketing fees apart from under-declaring the number of subscribers that they have. This position violates a basic premise of balanced regulation, namely that the interests of all stakeholders must be considered.

- (ii) In case levying of carriage fee continues to be permitted in a post digitized regime, it will leave the broadcasters exposed to the unguided and arbitrary discretion of MSOs/other DPOs; and past experience shows the MSOs have exercised this discretion mercilessly, by enhancing carriage fee by some 200% over the past few years without any basis or reason, thereby exposing broadcasters to severe financial hardship. Charging carriage fee is nothing short of a “ransom charge” which destroys the broadcasters’ attempt to invest in and enhance content and debilitates the process of creating a robust, transparent subscription regime. Often the carriage fee demanded by the MSOs varies from MSO-to-MSO and broadcaster-to-broadcaster without logic or rationale and this results in repeated losses and has a crippling effect on the broadcasters’ business. This defeats the principle of providing a level playing field for broadcasters.

It may be noted that even where DAS has been fully and completely implemented, there has been an increase in carriage fee demanded by the MSOs on grounds that they are carrying the content to a larger number of cities i.e. the viewership has increased. For these reasons the MSO demands unreasonable carriage fee with the addition of every city. The Subscriber Management System (SMS) and the last mile connectivity remain severely defective with no financial benefit to the broadcasters. The SMS and the last mile connectivity systems have to be rectified and monitored if the benefit of DAS implementation is to be shared fairly by all stakeholders.

- (iii) It may be noted that both broadcasters and consumers are ‘captive’ stakeholders in the broadcasting and cable service industry since in spite of the contrary position existing on



paper, since MSOs/DPOs have by way of mutual business arrangements divided territories amongst themselves, and the ground reality is that broadcasters and consumers do not enjoy the choice of multiple MSOs serving a given territory and are therefore compelled to deal with a given MSO without option or choice;

- (iv) Furthermore there is cartelization as between MSOs/DPOs without any real on-ground competition and broadcasters are therefore coerced into paying excessive carriage fee without any rationale or basis ; and it is therefore in the interest of the growth of the broadcasting and cable service industry, especially for small and news broadcasting companies, that carriage fee be abolished completely; and if it must remain for the present, the carriage fee chargeable should be rational, non-discriminatory and regulated and be payable for a limited period until complete digitalization is rolled-out;
- (v) Unlike analogue systems once DAS has been implemented completely, there would be no shortage of bandwidth and capacity to carry channels and therefore the question of requiring payment of carriage fee would not arise. While in an analogue cable system only around 80-100 channels could be carried, in DAS, the network capacity for carrying digital channels has increased significantly to around 500 channels per head-end. In DAS the MSOs must set up head-ends having carrying capacity of a minimum of 500 channels as it is in consumer interest and in-line with the principle of giving the widest choice to the consumer. The total number of channels available are increasing at a quick rate, thus, having a capacity to carry 500 channels will ensure that widest possible choice is available to all consumers; an increase in the channel carrying capacity of MSOs is also necessary in the interest of the public at large, since with increased carrying capacity the consumer will get wider choice, better quality of transmission and services by MSOs/DPOs;
- (vi) 500 channel head-end capacity is almost fundamental to digitization since the “must carry” mandate issued by the TRAI will be defeated if there is any less channel carrying capacity with MSOs/DPOs *a fortiori* in view of the Ministry



of Information & Broadcasting (MIB) already having issued about 825 permissions, uplinking and downlinking, to various channels; and since an MSO does not have any bandwidth constraints, the TRAI has simply mandated having a capacity of minimum 500 channels under the DAS regime in the context of availability of more than 1000 channels in a typical DAS cable network, which is by all counts reasonable, fair and necessary in the interest of other stakeholders in the industry, viz. broadcasters and above all the viewers. All television channels which have been granted the downlink permission by the MIB have a right to be viewed by virtue of that permission. Furthermore if a DPO requisitions a channel, particularly if the channel is popular or for reasons of business interests, for the DPO to charge carriage fee in those circumstances would be arbitrary and unfair on the broadcaster.

In a scenario where the “must carry” and “must provide” is mandated, the question of carriage fee does not arise. The “must carry” obligation instills an assurance and confidence in the minds of the broadcasters and improves the competitive health of the industry, as also curbs restrictive trade practices, avoids conflict of interest, fosters transparency, accountability and serves as a balancing force. This provision will increase competition amongst broadcasters and in turn will benefit the consumer in terms of quality of programming and reasonable pricing. In the absence of an obligation to carry the MSO’s will continue to seek and to create “an artificial bandwidth shortage” and therefore demand carriage fees.

- (vii) Once digitalized head-ends are set up, it is a well known business fact that the revenue generation opportunities available to the MSO will increase manifold since an MSO will then be able to provide several value-added services such as video on demand, high-end gaming, broad band internet, triple play-service, e-remedy, video conferencing, internet television etc., all of which would more than defray/recoup the up-gradation cost incurred in head-end up-gradation.
- (viii) Increase in the channel carrying capacity of MSOs is also necessary in the interest of the public at large, since with



increased carrying capacity the consumer will get wider choice, better quality of transmission and services by MSOs;

- (ix) The broadcasters' position on Carriage Fee and Placement Fee is premised on a 500+ channel head-end capacity and if this premise were to fail the entire industry would suffer

In view of the reasons stated above NBA's response to the queries are:

Answer to Qs. 31& 32

Where the digital-addressable system (DAS) has been rolled out in phases and digitization is complete, carriage fee must not be permitted to be charged from the broadcasters.

In Non-DAS areas carriage fee may be permitted but it should be regulated.

Answer to Qs. 33 & 34

Till such time as DAS is implemented in all areas, there must be a price cap on maximum carriage fee charged from the broadcaster. This price cap should be between 50 paise and one rupee per set top box per subscriber per channel per year and no more. This criteria would qualify as "reasonable" and the carriage fee payable on this calculation would be substantially lower than what the broadcasters are currently paying in the analogue regime.

The above queries stand answered.

Placement Fee and Marketing Fee:

Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

NBA's response:

The fair and equitable position is that no placement fee or marketing fee, by whatever name called, should be payable in the partially implemented DAS regime or when DAS has been implemented completely in all areas.



In addition to the reasons given for abolishing/regulating carriage fee, the further reasons for NBA's response on placement fee and marketing fee are:

- (i) If the MSO's/DPO's are permitted to charge placement and marketing fee from the broadcasters it would mean giving the DPO's a *carte blanche* and untrammelled leverage to demand extortionate placement and marketing fee from broadcasters with no rationalé or reason. It is necessary to curb one of the most pernicious malpractices that is prevalent in the industry, which has been the bane of broadcasters and also affects the interest of the consumers;
- (ii) Once the channel carrying capacity of an MSO is conveniently raised between 500 to 1000 channels there would be no necessity to charge either placement or marketing fee from the broadcasters; and in such scenario, broadcasters would no longer require to demand any specific or preferential channel placement, except to the extent that channels be placed in their correct and rational genre and sub-genre (e.g. English news channels in 'English News' sub-genre, Hindi news channels in 'Hindi News' sub-genre and so on);
- (iii) There is no justification at all for charging placement fee since upon digitization of the distribution platforms there is no "frequency band" and channels are arranged in the Electronic Program Guide ("EPG") accessible to the subscriber who can easily browse through the EPG and select the channel of his choice from a list (arranged genre-wise) instead of 'flipping' through all the channels.

Electronic Program Guide (EPG)

Q.37 Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Q.38 Can EPG include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

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16/3/2016



NBA's response:

NBA's response to both questions 37 & 38 is that DAS has the potential to facilitate enhanced consumer friendly features such as EPG. In the larger consumer interest, EPG's should be made available in a categorized manner with different genres of television channels (News, Sports, Movies, Kids etc.) and further such EPG should display all available television channels in each respective genre with a twin objective of offering convenience to consumers and also to finally put an end to and discourage the practice of DTH operators and MSO's, LCO's seeking consideration/gratification in lieu of carriage and placement fees in any form whatsoever. It would be easier for the consumers to find channels within the genre and the search would be based on easy to understand logic.

In fact the news broadcasters are flexible if details of programs of channels not subscribed by the consumer are included in the EPG or if the EPG includes a preview of the channels on the platform of the DPO's not subscribed to by the consumer.

The reason for coming to the above conclusion is, as stated in the consultation paper, that non-visibility of these channels on the EPG amounts to a "lost opportunity cost" to the DPO and the ARPUs prevailing in the TV broadcasting sector are in any case low. In view of the above it may be a good idea for the stakeholders to agree to the display on the EPG information/preview/pictures of unsubscribed channels that may enable better utilization of the DPO's latent capacity, improved monetization to broadcasters and may also help enhance the ARPUs.

Audit & reporting issues related to the tariff infrastructure

Q.41 Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

NBA's response:

The NBA agrees with the suggestion that there should be a central facility set up by for conducting the auditing & reporting issues relating to tariff infrastructure of the industry. The third party should be an independent third party professional organization appointed by the regulator and none of the stakeholders should be members of the organization. The contribution for the working of the central facility should come from all the stakeholders of the Industry.



The central facility should lay down the mechanism for checking the integrity of Subscriber Management System (SMS) of the DPOs, standardize the parameters, data, forms, formats, and reports to be shared amongst the stakeholders. The server of the central facility would access and retrieve the requisite information from the SMS of DPOs, the broadcasters would not have direct access to the SMS of DPOs, however broadcasters would have option for the audit. DPOs should be obliged to get such audit conducted in a time bound manner. These external audits would be conducted regularly and checks and balances would have to be built into the system so that the data obtained from the DPOs is authentic, confidential and secure. The aim of establishing such a central facility would be to have a neutral agency-conducting audit in a transparent, impartial and non-discriminatory manner.

To summarise, the essential concerns of our member broadcasters, which we would want to be suitably addressed by the TRAI are:

1. Subject to the submissions made above, if any carriage fee is to be paid by the broadcasters, it must necessarily have a co relation with a subscriber base cited by the MSO/DPO verified by the central facility/auditor.
2. The broadcaster must be able to choose the city/ies and/or areas/ regions within a city to which a channel may be carried and be made to pay carriage fee accordingly.
3. The rate of carriage fee per set top box per subscriber per channel per year must be strictly regulated by the TRAI and be reviewed not more often than annually.
4. The rate as aforesaid should vary depending on the genre, with due weightage being given to the significance of a genre e.g. the importance of news in a democracy.

Annie Joseph
16/3/2016

Annie Joseph
Secretary General
News Broadcasters Association