Counter Comments

by

Hathway Cable and Datacom Limited

On Consultation Paper

on Tariff Issues relating to TV Services

Table of Contents

Preamble:

We would once again like to congratulate TRAI to have come out with this Consultation Paper (CP), which would enable the healthy growth of the Cable TV Sector, which was envisaged while implementing the program of digitization.

While we have reviewed the comments of various stakeholders and their views and various issues & challenges raised by them, we would once gain like to reiterate, before we put forth our counter comments, that to enable the Cable TV sector to be a significant contributor to the national economy, the **Integrated Distribution Model with minor modifications** is best way forward

The 3 major issues on which we have placed our counter comments are as under:

1. Objection to the Modified Price forbearance model recommended at Wholesale and/ Or Retail level.
2. Defense of Integrated Distribution Network Model.
3. Defense of Carriage.

In conclusion, we reiterate our earlier stand that the integrated distribution model modified to provide that all pay channels will only be offered on ala-carte basis coupled with a prepaid model is the panacea to all ills facing the Broadcasting Sector.

Objectives of the New Tariff Order :

The basic objectives of this CP are as below:

1. To develop a comprehensive Tariff structure for Addressable TV Distribution
2. To ensure transparent and non discriminating tariff structure
3. To reduce disputes among the stake holders
4. To give consumer the freedom to choose
5. To encourage investment in TV sector
6. To produce good quality content

All these objectives have to be at the core of any Tariff model to enable the sector progress in the right direction.

Objections to Modified Price Forbearance Model at Wholesale and/ Or Retail level

Several stakeholders have recommended Price Forbearance at Wholesale and Retail level with minor modification without elaborating how the interim measure or forbearance as an eventuality will address the main objectives.

To name a few, are as under:

1. FICCI
2. STAR India Private Limited
3. Zee
4. Tata sky
5. SUN TV
6. Sony Pictures Network India Pvt Ltd
7. Disney

Modification Proposed	Our counter Comments
Discounts in the range of 30% to 50% by broadcasters to DPOs on the RIO	If such huge discounts are provided by Broadcasters to DPOs, then parity will never prevail amongst the DPOs. Discount, if any, can only be by way of a volume discount and should be capped at 15% of the RIO rates. This will ensure parity amongst various DPOs
Permitting bouquet offering at wholesale and retail level for pay channels	If Broadcasters are permitted to offer bouquets (even within the confines of twin condition), then less watched and unwanted channels and cloned channels will be bundled along with driver channels and sold by Broadcasters to DPOs who will then be forced to do the same with consumers. We strongly advocate that any bouquet formation should be in the domain of the consumer. The analogy cited

	by STAR India Private Limited in its comment (vide Page number 9) concerning publications and magazine is apt to make this point. If a consumer has to limit his/her spend within the monthly budget, all pay channels have to necessarily be offered only on a ala-carte basis only

Upon reviewing the comments put forth by several stakeholders, more particularly the Broadcasters, we find a push towards forbearance at both wholesale and retail level with minor modifications. This in essence tantamount to continuation of the current tariff structure and dispute ridden status quo, which is completely dehorse the objectives as set above.

Forbearance at wholesale level would imply that Broadcasters would continue to differentiate and discriminate between DPOs i.e. by giving discounts and favoring a few DPOs (some of which are vertically integrated) in any manner and such DPOs then based on the preferential wholesale rate received from the Broadcasters would give rates to the Consumers, which are lesser than market rates, as a result of which the basic objectives of the CP to ensure transparency, non-discrimination and giving consumer the freedom of choice is lost.

In the CP itself, TRAI has commented in Chapter 4 at para 4.7 that in light of para 4.5, where the Broadcasters themselves feel that the current Business Model is not conducive to growth and Para 4.6 where DPOs contend that present business model does not ensure non discrimination and fair play, there is a need to holistically re-examine the existing business model.

Hence seeking continuance of the exiting model i.e. forbearance is completely suicidal and would push the whole Broadcasting sector deeper into the current quagmire of disputes, discrimination and value destruction.

There have been various instances where the Hon'ble TDSAT has very clearly held that all agreements between Broadcasters and DPOs should be based on the principle of parity and non discrimination, particularly in the judgement dated 25.9.2014 in Petition No. 47 (c) of 2014 titled as Star sports India Pvt Ltd vs Hathway Cable & Datacom Ltd and in the judgement dated 7.12.2015 in Petition No. 295 (C) of 2014 in case titled as M/s Noida Software Technology Park Limited vs M/s Media Pro Enterprises India Pvt Limited , which has also been endorsed by the Hon'ble Supreme Court as the appeals filed by the broadcasters challenging the said judgement have been dismissed vide order dated 26.2.2016.

The worst sufferer from the forbearance would be the consumer, who would again be thrusted with unwanted channels by DPOs on the behest of the Broadcasters, who would try and push their non-driver channels with driver channels by giving lucrative deals to the privileged and favored DPOs.

Hence it is important the forbearance as requested by Broadcasters is not allowed to ensure:

1. Parity and Non discrimination
2. Freedom of choice to consumer

Defense of Integrated Distribution Network ("IDN") Model:

Several DPO stakeholders have found merit in the Integrated Distribution Network Model;

To name a few, are as under:

1. AIDCF
2. Hathway
3. DEN
4. SitiCable
5. COFI

Several objections to this model concern the right of bouquet formation by Broadcasters. We have suggested a modified IDN model wherein broadcasters will offer Pay channels only on a Alacarte basis to consumers. If this suggestion is accepted, all objections will be addressed. The broadcast industry is very similar to the FMCG industry. Broadcasters are the equivalent to manufacturers – DPOs are akin to the Wholesale distributors of the products and the LMOs are like the retail stores. In FMCG industry, the manufacturer fixes MRP and every stakeholder in the value chain is given a commission commensurate to meet costs and make profits. There is no reason why broadcast industry should be any different. DPOs are in essence distributors of Content created by broadcasters and should earn a commission linked to revenue generated. Consumer should "purchase" content which he/ she would like to watch within the confines of his/ her budget. The case for continuation of carriage is to defray the huge capital investments made by DPOs in delivering the content to consumers. Placement and marketing fee are akin to the display fee charged by retailers of FMCG products and is a B2B transaction. It is meant to improve visibility of product (content) so that the consumer may have a better chance of sampling the content

We also welcome the proposal made by one of the Broadcasters i.e. Sun to raise the minimum monthly subscription fee from Rs. 150 to Rs. 250.

Some of the issues raised by some of the Broadcasters particularly Star India Private Limited are completely unfounded for the reasons mentioned below:

Sl. No.	Issues Raised	Our Counter Comments
1	**For the consumers who are paying separately for pay channel rental being charged amounts to double charging the consumer for same service**	Even under the current regime, the Consumer is required to pay a minimum of Rs. 100 for FTA channels or Rs. 150 for even if he is availing one pay channel. Hence charging of rental is not out of place, more so it needs to be understood that MSOs have invested a lot of money in building the infrastructure and in purchasing Set Top boxes. There are cost of bandwidth, customer service and other operating costs to provide the services. The proposed rental under this model is to provide a reasonable return on investments made by MSOs for transmitting signals to consumer homes and hence it is completely justified. One of the Broadcasters i.e. Zee Television though not in favour of the Integrated Distribution model at this stage has also clearly agreed that lot of characteristics of this model
2	**Similarly FTA channel in principal are suppose to be free to consumer as well but are being charged for in this scenario**	
3	**Charging access fee and charging of rental is akin to thrusting them to pay this amount even if they select just a few 10 pay or FTA channel**	

		are already provided for as stated above.
4	**In telecom Industry, for prepaid consumers practice of charging rental or access fee has been done away with**	We need to compare apple with apple. The comparison with Telecom industry is not correct, it is completely different, they do not distribute any product, also earn their revenue from the incoming calls as termination charges.
5	**Maximum discount on Multi broadcaster retail bouquet to be capped at 33% vs 66.66% allowed under regulation**	As per TDSAT judgement dated 7.12.2015, the Broadcasters have to come up with new RIO by 1st April 2016. Till the new RIO comes into force, any attempt to reduce the current discounting would further lead to chaos. Hence, should not be considered.

Defense of Carriage:

Several pay Broadcasters have objected to carriage and would like to subsume the same within the discount on Wholesale RIO rates (as high as 50%)

There are 2 flaws in the argument put forth by the Broadcasters

1. Discount on wholesale RIO will lead to disparity amongst DPOs – vertically integrated DPOs will get a higher discount and smaller and independent DPOs will be offered a lesser discount leading to continuation of existing flawed scenario

2. DPOs will not be able to fund upgradation of infrastructure to carry additional channels thereby acting as a serious entry barrier for new entrants and weaker channels

It appears that Broadcasters are trying to act as if they are completely unaware of the ground realities and facts and are crying for abolition of carriage. **In this regard as reiterated in our comments we would like to state as below once again**:

The carriage fee should not be regulated. It is estimated that annual TV AD revenues in India in Financial Year 2016-2017 would be Rs 22,620 crores (Source: FICCI KPMG report). The financial statements of all publicly listed Broadcasters also indicate healthy growth in advertising revenues. It is an accepted fact that the reach and distribution provided by DPOs is a significant contributor to burgeoning advertising revenues of Broadcasters. Hence carriage fees should be a subject matter of mutual negotiation between the DPO and the Broadcaster.

Post digitization, in spite of the increase in bandwidth, carriage continued for several reasons like choice of a particular Logical Channel Number (LCN), need for the channel to remain in a particular pack so as to optimize the reach and remain in preferable slots in the neighborhood of the leading channels to enhance “Opportunity To See”. All these factors have a direct correlation with the advertisement (AD) revenue earned by the Broadcasters. Due to the bandwidth constraints during analogue regime, the Broadcasters paid carriage to be on the prime band/colour band; they now pay placement/marketing fees to ensure channel placements in particular LCN/packs to increase their viewership and ultimately increase their AD revenue. Even the Broadcasters have a differential pricing for AD revenue depending on time slots/day parts/week day/weekends/events etc. Similarly, there is justification for DPOs to charge placement fee for preferential LCN.

Further, the capacity created by all MSOs does not exceed 500 channels. The number of licensed channels is close to 900. This discrepancy has resulted in strong case for the continuation of carriage regime even in a digital era. Even in a scenario where a subscriber will be able to choose and pay for what he choose, the DPO will be constrained to create capacity to carry all the channels to make its product offering attractive. Such capacity expansion entails significant cost (both one time and recurring) and hence carriage is the only means to recover the same. In the absence of carriage, healthy competition within the Cable industry will cease to exist as MSOs, will not be able to accommodate lesser viewed channels and new entrants. In the current scenario where capacity is limited and there are numerous DPOs each DPO may end up carrying only compelling content creating a strong entry barrier for newer entrants.

Hence the comments by some of the Broadcasters of Must carry does not hold good as there is limit of channels which can be carried by a MSO on its network.

Carriage constitutes 40% of the revenues of the MSOs post digitization, which is the second largest revenue component after subscription. Despite earning carriage income, the losses and capital employed (Equity and Debt) of MSOs have been mounting post digitization on account of the following factors:

- Subsidy on Set Top Box;
- Disproportionate increase in content cost;
- Reduction in carriage income;
- Increase in bandwidth cost;
- Investment in subscriber management system and conditional access system;
- Investment in technology up gradation and creation of

infrastructure.

- LCOs not paying monthly subscription in accordance with the agreements / TRAI Regulations to MSOs.

The subscription of MSOs was expected to grow significantly to offset the above factors. One way to achieve the same is through increase in the end consumer price by pushing more (unwanted) channels to end consumers, however this will be against the key objective of freedom of choice to consumer. Further, the subscription revenue has a limit, beyond, which it cannot be increased leading to severe stress on the financials of the DPO's.

Further some of the Broadcasters have suggested that carriage should be subsumed in the discount that they offer on their Bouquet (capping it at 33% & 40%). They have not shared the logic behind this discounting % and further why this should be subsumed in the carriage payable. It is pertinent to note that this whole scheme of discounting would once again give rise to the issue of discrimination and non-parity, which is the genesis of this consultation paper.

Hence we once again request TRAI that in the interest of the Broadcasting sector it is important that carriage continues, else there is bound to be a very serious threat to the MSO industry as a whole.

Implementation of Prepaid model

We would once again like to highlight that while it is important that the new tariff structure leads to transparency, non- discrimination and provides freedom of choice to consumer, it has now become amply clear that the payment mechanism as far as DPO's are concerned has to be, "Prepaid Payment Mechanism" which appears to be the only solution to ensure that the cable subscriber can enjoy uninterrupted services akin to those provided by other DPOs like DTH.

In the pre-paid model, a consumer who does not recharge does not get the channels. The Broadcaster thus does not get revenue for such subscriber and the MSO is not burdened for paying for the customer. It will bring transparency in the system, helps customer to execute their choice and manage their cost efficiently, will also help in increase in revenue for the all the stakeholders as well as ensure more taxes being paid to the concerned authorities, leading to the overall growth of the sector.