



04, November 2019

To,
The Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India (“TRAI”) in response to the Consultation Paper on Issues related to Interconnection Regulation, 2017

At the outset, we would like to thank the Authority for giving us an opportunity to tender our comments on the “**Consultation Paper on Issues related to Interconnection Regulation, 2017**”.

In this regard, we at ABP News Network Private Limited submit that we have perused the Consultation Paper carefully. We hereby submit our comments which are hereby enclosed.

The same are for your kind perusal and consideration.

Yours Sincerely,

For ABP News Network Pvt. Ltd.



Kishan Singh Rawat
AVP – Administration and Regulatory Affairs
(Authorised Signatory)

Encl: As above



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Submissions by ABP News Network (“ABP”) to the Telecom Regulatory Authority of India (“TRAI/Regulator/Authority”) in response to the Consultation Paper on Issues related to Interconnection Regulation, 2017

At the outset, we are extremely thankful to the TRAI (hereinafter referred to as Authority) for having come up with the Consultation on 25th September, 2019, wherein the TRAI has invited written comments and counter comments on its Consultation Paper from the Stakeholders on the issues relating to Target Market, issues relating to placement and other agreements between Broadcasters and Distributors. We are especially thankful for having taken cognizance and to have acted upon basis industry representation and various letters on the said issue dated 31.07.2019, 21.08.2019 and 06.09.2019. We once again refer to rely upon the same and copies of these letters are annexed along with the response.

The consultations have been invited for the issues namely-

- a) Issues related to Target Market seeking views on Possible Alternative for Target Market and;
- b) Issue related to Placement and other agreements between Broadcasters and Distributors

The TRAI has very well recognised and has already recorded the following contentions:-

- a) “.....From the table, one can observe that a large number of TV Channel cater to regional audiences.....” (para 1.6)
- b) “.....This has created a negative economic barrier for regional channels thereby limiting their presence on smaller distribution platforms. The proposition to pay carriage fee for national market makes it unviable for such channels. Further the number of subscriptions for these channels may never reach the requisite threshold as envisioned vide schedule I of the Interconnection Regulation, 2017.....” (para 1.11)
- c) “.....As of now the placement agreement, marketing agreements or any other technical or commercial arrangements between broadcasters and Distributors (apart from RIO based agreements) are in forbearance. But now, quite a few complaints have been received from various broadcasters whereby it is being alleged that some DPOs are resorting to pushing for marketing/placement/promotion agreement, by exploiting the available forbearance.” (para 1.13)
- d) “.....However, it needs to be taken into consideration that major proportion of the investment may be recovered through Network Capacity fees, and distribution fee by providing TV Service to subscribers.” (para 2.8)
- e) “.....As a result number of subscribers in notified target market is very high and hence the applicable carriage fee. In many cases it may be much more than the cost of creating relevant infrastructure. Further, the number of subscriptions for their channels can never reach the requisite threshold as envisioned vide schedule I of the Interconnection Regulation, 2017. The subscription of such channels on national basis continues to be lower



than the minimum threshold of 5% despite very high subscription in their respective regional market. This gives an opportunity to DPOs to misuse the existing provisions in the regulation to drop their channels from DPOs platform.” (para 2.9)

- f) “These broadcasters have represented that they are left to the mercy of the distributors as the distributor is not mandated to carry such channels which have a subscription of less than five percent (5%) of monthly average active subscriber base, in each of the immediately preceding six consecutive months. Pertaining to this issue a broadcaster has represented to the authority that the right granted to the DPO with an option to decline to carry a channel having a subscriber base less than 5% should be done away with.” (para 2.10)
- g) “As a result of the present carriage fee regime, the availability of small regional channels on big DPOs is reducing. This may seriously affect the plurality of regional content available in Indian market and reduce competition among broadcasters. In addition, they are required to pay huge carriage fee as the target market is ‘Pan India’. Further, in such cases when ‘entire India’ or a ‘multiple states’ is declared as target market they will be required to pay huge carriage fee in future also as the monthly subscription for their channel in the target market (i.e. entire India) may never be greater than or equal to twenty percent of the average active subscriber base of the distributor in any month in the target market.” (para 2.11)
- h) “The viewership of these broadcasters is confined mainly to one or two cities or at the most few states. But as some of the distribution platform operators define much larger areas as target market, the broadcasters are required to pay much higher carriage fee based on the entire subscriber base of such DPO in the target market. As a result of this, broadcasters have represented that carriage fee in 15 totality should be done away with for regional and FTA channels as the only source of revenue for survival of these channels are advertisement revenue and such unrealistic and unsustainable methodology of calculation of carriage fee would make their business unviable. (para 2.12)
- i) “The main apprehension that remains today, is with the manner of calculation of carriage fee which is dependent on the target area declared by the distributor. Many broadcasters believe that DPOs will not allow channels to reach beyond 20% subscriber base for their own carriage benefits as DPOs would never prefer a model where channel reach to a target of 20% subscriber base in return of no carriage fee paid to them.” (para 2.13)
- j) “.....Further news channel being integral and of grave importance in public interest to the nation as a whole, carriage fee should be done away with in public interest especially for FTA channels.” (para 2.14)
- k) “.....carriage fee deals in terms of present regulations are virtually impossible and commercially unviable, therefore the authority should revisit the rate of carriage fee/target market definition and the entire carriage fee regime with respect thereto. They have also suggested that if the Authority is of the view that carriage fee should continue then the same should be substantially brought down from the current carriage fee rates and the target market should be regulated through Regulations.” (para 2.15)
- l) The authority has also been kind enough to enumerate the Target Market declared by various DTH operators and MSO s and proceeded to observe that: “.....Such declaration is in general not aligned with the regional market as shown in Table 5. For example,



Maharashtra and Madhya Pradesh have been declared as one target market though they may have different taste and preference of the consumers.” (para 2.18)

- m) The authority has also in the Consultation paper recorded the values to be paid by various regional Broadcasters and has observed:- “.....In many cases, it may be much higher than the cost of providing one channel across country. There, one may opine that why should a carriage fee higher than the cost of creating relevant infrastructure be provided.” (para 2.20)*
- n) “.....The tastes and preferences of people generally change after every 50-100 km. The carriage fee regime as mentioned in the Interconnection Regulation 2017 aims to cater to the varied choices of the consumers.....However, a cursory analysis of carriage fee ‘Reference Interconnect Offers’ by various DPOs reflect that some of them have given scant regard to the interest of consumers. Instead such service providers have tried to maximize their carriage fee revenue while declaring ‘target market(s).....This also works as ‘Barriers to entry’ for small regional broadcasters.” (para 2.21).*
- o) “From the meetings held with different groups of industry stakeholders and from the empirical evidences received from some major DPOs, it is clear that post the implementation of New Tariff Order (NTO), the service providers (broadcasters and distributors) are generally not entering into carriage fee agreements, instead they are signing placement/ marketing/ landing page and other commercial agreements. One of the main reasons for the above is that the carriage fee for the target market defined by the DPOs especially DTH operators (pan India or multiple states) comes out to be exorbitantly high.” (para 2.23)*
- p) “According to some of the broadcasters, the decision of declaration of target market should be left upon them as it is their channel and they should have the freedom to decide that which sector of the population will opt for their channels. Almost all the regional broadcasters want that the target market should only be their respective state/ city/ territory and they should not be asked to pay carriage fee for the entire universe (PAN India).” (para 2.24)*
- q) “Interconnection Regulation 2017, prescribes that the DPO can’t alter the LCN for a channel for at least a period of one year. Further that no channel should be placed outside its defined language/genre. Hence, it was expected that there was no need for the placement agreements, unless a broadcaster seeks a particular LCN within its category (language/genre).” (para 3.10)*
- r) “The new regulatory framework, lays emphasis on consumer choice. It is observed that many times a fee in the name of marketing was paid by a broadcaster to DPO for the promotion and advertisement of its TV Channel. Sometimes broadcasters provide incentives to the distributors for inclusion of channels in the bouquets offered by the DPO in the name of marketing fee.....” (para 3.15)*
- s) “However, representations have been received from quite-a-few broadcasters stating that the DPOs are arm-twisting them to sign marketing/ promotion fee deals, in the garb of putting their channels in a specific package. While the framework does not specifically restrict the marketing/ promotion deals, creating packages and forcing broadcasters to sign for such packages is de-hors the new regulatory framework.” (para 3.17)*



- t) *“In one case a Regional broadcaster has informed TRAI that a DPO in the name of promotional activities and non-placement of the channel in relevant genre with threat of disconnection of channel is forcing him to sign promotional charge MOU to extort money from him.” (para 3.18)*
- u) *“The marketing fee towards promotion and advertisement of services contribute towards increase in business. Such increase is due to the joint effort of both the parties. Therefore, there cannot be a specific parameter for regulating such fee. Hence, in the Interconnection Regulation the Authority had recognized that at this stage, any regulation by Authority on such fee is bound to be a porous regulation. Still the Authority has permitted such fee / agreements provided these are on mutual agreed terms. However any agreement, for any kind of fee for carrying/ promoting a channel, between two service providers should be made part of interconnection agreement and reported to the Authority to enable the Authority to monitor the industry practices.” (para 3.22)*

After perusing the said Consultation Paper carefully, ABP News Network Private Limited (“ANN”) hereby takes liberty to provide its comments on each of the issues highlighted in the Consultation Paper in context of Interconnection Regulations, 2017:-

BACKGROUND IN WHICH ANN OPERATES AND FUNCTIONS:-

News and Current Affairs channels like ABP News Network Limited (“ANN”) are both bound under law and by journalistic ethics and to ensure that:

- (a) Truth reaches to the ordinary people of our country in harmony with the right to Freedom as enshrined under Constitution of India.
- (b) They are trustees of public and report fairly with integrity and independence.
- (c) They have the most potent influence on public opinion
- (d) They are performing the duty to educate and inform the people of the happenings in the country.
- (e) They help the people of the country to understand and form their own conclusions.
- (f) They are relentlessly performing these public duties and obligations mandated under the “Constitution of India” for “free press and free media and freedom of information to our viewers” either “free of cost” or at “an extremely nominal subscription fee”.

However, while exercising its Freedom of Speech & Expression and while ensuring that citizens Fundamental Right to Information is performed along with other Constitutional Duties and Public Obligations, News Channels like ANN are subjected to an unreasonable restriction by way of Regulations to pay an “exorbitant carriage Fee” and / or an unsustainable definition of “Target Market” determined by the DPO on account of unbridled power conferred upon them by virtue of the Interconnect Regulations, 2017. In other words, MSO / LCO act as gate keepers in throttling consumers’ ability to choose their own channels / packs and also the have the ability to block news channels performing the aforesaid duties and obligations by asking for an unreasonable and exorbitant carriage fee.



Further, another recent Consultation issued by TRAI on Tariff issues was primarily because of the reason that pay channel broadcaster continued to thrust Bouquets upon the end consumer and the vision and objective of the Authority to have an effective A-la –carte choice has been defeated. The same is a clear pointer to the fact that substantial portion of the network space gets occupied with unwanted pay channels. Thus, it takes an additional amount in the form of additional network capacity fee for the consumer to opt for its favourite FTA channels. In other words, the consumer ends up paying for FTA channel to the DPO in the form of network capacity fee. Thus, the unwanted Pay Channels have a reduced dependency on Advertising Revenues, giving them much higher flexibility in terms of offering lower ad rates as compared to FTA. The favourite FTA channels thus have to struggle for a tough bargain and at a disadvantageous position to find a place within the network and ends up being extorted by the DPOs in the name of Carriage Fee or any other related fee. The TRAI should therefore create suitable means and measures to avoid and facilitate any party in the value chain being put to a disadvantageous position / unequal bargain and thus is requested to revisit the Carriage fee and Target Market regime. One of the ways in which TRAI could achieve apart from revisiting the present issues raised in the Consultation could also be to increase the Network Capacity offered by the MSO to the consumer i.e. the current 100 channels for Rs.130. The same is also necessitated because of the mandatory Doordarshan Channels being occupied in the initial capacity offered. Also, TRAI should make changes to the NTO such that both the FTA broadcasters and MSO run a concerted campaign to inform the users of the choices of FTA Channels they can access and the modalities for the same. Hence in aforesaid context, ANN takes privilege to respond to the issues for consultation sought by TRAI in the present Consultation Paper dated 25.09.2019 on issues related to Interconnect Regulations, 2017.

Response to questionnaires relating to Issues related to Target Market as raised under Chapter II of the consultation paper are here as under:-

Issues related to Target Market

- 1. Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?**

Ans. YES. The flexibility of defining Target market is definitely being misused by DPOs

Our Comments:

The TRAI in the said consultation paper has described “Target Market” as under:-

“.....A target market generally refers to a group of potential customers to whom a company wants to sell its products and services. Identifying the target market is an essential step for any company in the development of a marketing plan. In TV channel distribution, the target market refers to a defined coverage area of distribution network...” (para2.1)



The definition of Target Market is very subjective and is not an easy exercise for the present purpose to achieve the exact intent under the Regulations. Thus, in our view, the definition of Target Market should be left upon the Broadcasters as same is to be decided on various parameters including the nature / content / region / language of channels.

The RIO details the services to be offered by the Distributors and the Broadcasters. In the part containing the definitions in RIO, "Territory / Target Market" is defined as the geographical territory of India and/ or the territory for which the MSO has been granted the license to operate. India is a diverse country with diverse languages and culture. The census statistics of 2011 provides the following information on the Languages of India by number of native speakers indicates that while Hindi is the most spoken language in India with around 42 Billion people speaking it, the next most spoken language in India is Bengali around with 833 million followed by 740 million and 719 million speakers in Telugu and Marathi respectively. Gujarati speakers lie at No. 7 with 460 million and the number of people speaking Kashmiri is at No. 16 at around 55 million.

The present situation is that only Hindi speaking citizens are over 41% and all other schedule language speaking persons are below 10%. India being a Union of States with diverse languages, there are many Satellite TV Channels in the major regional languages in almost all the genres. There are over 872 channels broadcast in India and out of which 184 are pay channels. Many of the Regional Language Channels are FTA channels.

We can take the example of DTH and while market data suggest that the DTH has penetrated 69.7 Million households in India where Dish + Videocon are at 42% Tata Sky is at around 25% and Airtel TV is at around 21%.

The problem that arises with the current determination of Carriage Fee through target market is explained through the example given below:

Suppose a distributor of television channels has an agreement with a broadcaster for carriage of a standard definition channel called 'X' at the rate of Rs. 0.20 per subscriber per month. The carriage fee amount payable by the broadcaster to the distributor would be calculated as follows:-

ILLUSTRATION

Month	Average Active Subscriber Base over the month	Monthly subscription percentage of the standard definition Channel 'X'	Rate of Carriage Fee (in Paisa)	Multiplier	Carriage Fee Amount in (Rs.)
(A)	(B)	(C)	(D)	(E)	(F)=(B)x(D)x(E)
January	1000	4%	20	1	200.00
February	800	8%	20	0.75	120.00



March	1500	12%	20	0.50	150.00
April	2000	19%	20	0.25	100.00
May	3000	20%	20	0	0.00
June	4000	22%	20	0	0.00
July	10000	17%	20	0.25	500.00
August	20000	25%	20	0	0.00

In the Basic Service Tier, all DD FTA channels and channels who have entered into carriage fee by the DTH/ MSO will be carried. There will be 100 Channels of these at a cost of Rs.130/- per month per subscriber. The Pay Channels will then be added by the consumer as per their choice or from the bouquet offered by the broadcasters.

However, the FTA Channels, mostly the Regional Language Channels will not necessarily be made available in the BST. The distributor will be creating various bouquets for the regional language in which FTA will be placed.

The distributor shall then compute the carriage fee in slabs as per their National Average subscription base which will be many times over the actual subscription base for the given Regional Language.

It will be evident from the above table that an FTA channel of Bengali Language in terms of the Language census given above has to pay a carriage fee based on the All India Subscription Base of the DTH operator which will be about 10 times higher than the subscriber base for the given Language. Similarly, as the subscribers of a particular language are reduced, such as Gujarati which is at No. 7, the Broadcaster of a regional Gujarati channel may have to pay a carriage fee of about 20 times that of an All India Subscription Base channel. A Broadcaster of a Kashmiri channel may have to pay a carriage fee of about 40-50 times that of an All India Subscription Based channel.

The above scheme with the definition of "Territory/ Target Market" being defined as a geographical territory of India will do more damage to the economic viability of Regional Language Channels. Even for the pay channels that will have to do an adjustment / discount for the carriage fee, it may not be economical.

Alternatively, the DTH operators are doing LCN deals with the broadcasters and those costs are not standardized and bereft of any reasoning. Neither the choice of the Channels for carriage is done on the basis of popularity and is proportional to the perceived depth of pocket of the promoters.

The FTA channels thrive only through advertising revenue bearing all the costs of production of content. In fact, FTA channels provide the content free to the distributor to enable the provision of signals to the consumers. Denying opportunity to an FTA TV channel is denying equal opportunity to do business in India by an Indian.

It has happened in the past that a global broadcaster such as BBC shut two of its channels BBC Entertainment and C-Beebies because of economic reasons. It was their publicly stated position that India is the only market where they pay carriage fee for their channels. So if a



channel with the pockets of BBC considers itself a difficult chance of surviving in an Indian market which pays carriage fee, there will not be a chance do ordinary channels who wish to broadcast for regional audiences thereby killing healthy competition for good content in the market.

It is our considered view that the Broadcaster who creates the content is the best judge in determining the fact that which type of region / subscriber is being catered to and with what content. One of the most important factors for determining the type of audience is the language spoken at the particular region and going by the data, it is clear that people are divided region wise speaking a particular language for instance Kerala will be dominated by people speaking Malayalam and West Bengal and Orissa will be dominated by people speaking Bengali. Thus, for a Bengali News Channel or a Malayalam News channel, the Target Market would obviously be the concerned part of State of West Bengal and / or the State of Kerala. The growth and increase in Carriage Fee is also to be determined basis the overall growth and increase in the number of Television viewing households. This apparently has never been factored in for the purpose of determining the Carriage Fee rate.

Without prejudice to our view, Carriage Fee in whatever form should be completely eliminated especially for a FTA News channel if the same is to continue then, it is our request that the same should be substantially brought down from the current 20 / 15 / 10 Paise. Further the Target Market if at all needs to be determined for payment of a lower Carriage Fee than what is currently prescribed under the Regulations then it should be left upon the Broadcasters who owns and creates the content. As already submitted herein above News Broadcaster is the best judge to determine the exact type and nature of its audience which forms the basis to determine the Target Market.

2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

Ans. In our view, there must be Nil Carriage Fee & Must Carry of News Channels (especially by FTA) by the DPOs. The same should also be keeping in mind the fact that the Cable TV household are on a rise and thus in the event any rate / reduced rate from current paise is arrived at by the TRAI has to be for specified period keeping in mind the growth of Cable TV households in the times to come.

The Authority has rightly in its recent Consultation Paper on Tariff related issues for Broadcasting and Cable Services dated 16th August, 2019, recognized that small broadcaster's were constrained to convert their Pay Channels to Free to Air Channels (FTA) as a survival strategy. Some of the examples of our own channels are ABP Majha and ABP Ananda has been rightly referred to. The clause under the Consultation Paper is reiterated as below:

"3.37 The Authority also noted that small broadcasters, who are not able to make bouquet of their channels and handicapped to face the competition from the big broadcasters, have converted their pay channels to FTA as survival strategy."



The Authority has rightly recognized that the New Regulation and Tariff Order have taken away the ability of a standalone News Broadcaster to have a source of subscription revenue and to confine to a business model of FTA or survive on extremely low subscription.

A prime reason for the said conversion has been the prevailing regulations on the Carriage Fee rates and also the fact that the Target Market definition being left at the sole prerogative and discretion of the Distributor of Television channel.

As the data available with TRAI would indicate that post the implementation of New Regulations, Carriage Fee deals in terms of the present Regulations is virtually impossible and commercially unviable, therefore it is high time to revisit the rate of Carriage Fee / Target Market definition and the entire Carriage Fee regime with respect thereto.

The Authority can easily re-visit the Carriage Fee part of the Regulations, as it has never been part of any Litigation. Further, going by TRAI's own understanding as encapsulated in the 2017 Regulations the time has come to revisit and relook into the Carriage Fee rates and Target Market definition. While the effective date of implementation of the Tariff Order and Regulation was postponed due to pending litigations (in which carriage fee was never a subject matter of challenge) thus going by the original date contemplated for implementation of Tariff Order and Regulations, the two year period is already over thus justifying the need for a change now. The need for change was contemplated in Original 2017 Regulations dated 03.03.2017 wherein it was observed in the explanatory memorandum as under:

"89.....The Authority is conscious of the fact that the rate of carriage fee varies with the changes in the input cost incurred for erection, operation and maintenance of the distribution networks and number of subscribers. Therefore the cap on carriage fee should be reviewed on periodic basis say in every 2 to 3 years period. In case of some material changes in the input costs, the review can be initiated early also."

It is submitted that while the input cost may vary from Distribution Platform Operators (DPO) to Distribution Platform Operators and to the best of our knowledge and understanding, there has been no further additions at the DPO level on the said input cost and the same has remained constant. In any event substantial time has also elapsed post digitization and thus Network costs already stand recovered.

In terms of the present Regulations, the DPO collects the cost of its network mainly in three different forms namely:

- a) Carriage Fee;
- b) Distribution Fee;
- c) Network Capacity Fee;



This is apart from advertisement through platform services which is an additional source of revenue generation for DPOs.

In terms of Regulations, it is important to note the meaning of the terms Carriage Fee, Distribution Fee and Network Capacity Fee-

According to Clause 2(m) “**carriage fee**” means any fee payable by a broadcaster to a distributor of television channels only for the purpose of carrying its channels through the distributor’s network, without, specifying the placement of such channels onto a specific position in the electronic programme guide or, seeking assignment of a particular number to such channels;

According to Clause 2(q) “**distribution fee**” means any fee payable by a broadcaster to a distributor of television channels for the purpose of distribution of pay channel or bouquet of pay channels, as the case may be, to subscribers and it does not include carriage fee;

According to Clause 2(ee) “**network capacity fee**” means the amount, excluding taxes, payable by a subscriber to the distributor of television channels for distribution network capacity subscribed by that subscriber to receive the signals of subscribed television channels and it does not include subscription fee for pay channel or bouquet of pay channels, as the case may be;

It is pertinent to mention and as already recorded in the present Consultation exercise, most of the broadcasters have commented that there is no rationale for carriage fee, as in terms of Tariff order.

News broadcasters and their association specifically commented that no carriage and placement / marketing fees should be charged from the News Broadcasters (especially FTA News Channel).

Thus, we strongly feel that since Distributors are already making enough money through Distribution Fee and Network Capacity Fee, there is no requirement of another source of revenue in the form of a carriage pay out.

Must carry provision and provision relating to pricing of carriage with respect to subscriber percentage (like Distributor is not bound to carry channels having average subscriber base of less than 5% in a month and non-charging of carriage fee beyond subscriber base of 20%) is totally ambiguous and it provides unwarranted teeth to the Distributor to put unreasonable and undesirable conditions before the Broadcaster for carrying their channels which will not only have grave and serious repercussions on the survival of the Broadcasters business but it has all potentiality to create unnecessary, unwarranted plethora of disputes before various legal fora.



3. **How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.**

Ans. The answer to issues 1 and 2 is reiterated as we feel that carriage fee should entirely be done away with.

4. **Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?**

Ans. YES, the answer to issues 1 and 2 may be considered as our response to this questionnaire.

Issues related to Placement and other agreements between Broadcasters and Distributors

5. **Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.**

Ans. The TRAI in its recent regulation “The Telecommunication (Broadcasting and Cable) Services Register of Interconnection Agreements and all such other Matters Regulations, 2019”, is already seeking details pertaining to placement, marketing, or any other technical or commercial arrangements. In other words, the same is primarily to check the presence of any deal or arrangement which is entered to masquerade the carriage fee deals. In other words, TRAI in any event is regulating or intending to regulate the same to the extent that the same has any impact on the Carriage Fee deals.

Today as it stands, there is a carriage of max. of 20 paise per subscriber prescribed under the Regulations as evidenced from the above. In addition the carriage gets charged in different forms namely placement fee and marketing fee. In our view, any form of carriage or any related charge thereto should be a maximum of 10 paise and to the said extent the TRAI should be regulating all such aspects of Carriage. In the absence, thereof the DPOs could be collecting carriage in some other names and thus every element of Carriage Fee needs to be capped to a maximum of 10 paise. The said submission is without prejudice to our submission that there should be no carriage fee for the FTA News Channel.

6. **Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring DPOs? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).**



Ans. We refer to answer above (Refer to answer in issue 5) In the absence of eliminating any levy or capping from the present max of the carriage fee of 20 paise, it can be contended that the other possible option left would be leaving the market to forbearance. A forbearance market will surely have the ability to distort the level playing field because same will lead to the favourites of DPOs finding a place in the network and the said favourites would be no other than with deep pockets having the potential to pay higher carriage / marketing fee / pseudo carriage fee being levied in some other name. The same in our view is avoidable.

7. Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

Ans. While we stand by our suggestion (Refer to answer in issue 5) the suggestion of putting a cap in the absence of total elimination on carriage and / or all elements of carriage, however in the event the TRAI intends to regulate placement and marketing then in our view the marketing fee arrangement should be subject to the actual marketing done which are capable of being measured and which could form the basis for arriving at the consideration. The same should be descriptive and clearly measurable and should not be an attempt to camouflage a carriage fee levy or any extended form thereof. The placement agreements should also be based on similar rationale.

8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification?

Ans. As “News Channels” being integral and of grave importance in public interest to the nation as whole, Carriage Fee as previously suggested should be done away with, in public interest in toto. Whereas, the issue of marketing and placement of the channels are concerned any agreement on the said subject matter shall be based upon mutual agreement between the Broadcasters and DPOs on the principles of Equality.

Equality amongst Equals – Unequal Genres / Language cannot have the Same Target Market definition:

As already, recognised and observed by the Authority in the present Consultation Paper, for deciding target market should also be dependent upon the fact of language of the population of the region to which the channel caters to and that should also be a determining factor. This is to ensure and uphold the principle of equality amongst equals i.e. unequal genre and type of channels like a regional Bengali news channels being made to be treated similarly to channel having the potential to cater to a Hindi Speaking Market (HSM) Market or an All India Target Market. It is a settled principle of law that equality can only be amongst equals and thus if the Authority is able to create a class of News Channels and / or Regional Channels and / or Channel basis its content to cater a particular set of viewers in a market,



then the same would be based upon an intelligible differentia and would also have nexus with the objective to be achieved. The said approach would also pass the test of non – discrimination and equality principles enshrined under Article 14 of the Constitution of India and also an aspect which TRAI wants to ensure while determining carriage fee rate and Target Market definition.

9. Any other issue related to this consultation paper? Give your suggestion with justification.

Ans.

CONSTITUTIONAL MANDATE FOR FREEDOM OF PRESS

While drafting any Regulation especially regulating News & Current Affairs State it is mandated to be present to the fact that there should be no formulation of any laws or regulations which directly or indirectly restricts or curbs the fundamental right of citizen of India to have access of Free Media publishing or broadcasting information or news of public importance. In India Freedom of Press has been treated as part of the Freedom of Speech and Expression as guaranteed by Article 19(1)(a) of Constitution of India.

In India, freedom of the press has been treated as part of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, vide *Brij Bhushan and Another vs. State of Delhi*, [x] and *Sakal Papers (P) Ltd. vs. Union of India*.

Freedom of Press has always been a cherished right in all democracies. “Growth and development of representative democracy are so much intertwined with the growth of press that the press has come to be recognized as an *institutional limb of modern democracy*.”

Speaking of democracy, political scientists and experts always say there are four pillars of democracy, namely the judiciary, executive, legislative, and media. Furthermore, the fourth pillar which is also very important is the media. Why the media can be regarded as the fourth pillar of democracy? Because often time’s people assume that the media is more neutral and free from elements of state power, in contrast with the previous three pillars which are all oriented to power. The media not only as a source of news, but it is also the voice of the people carrier and fittings. The media also often become a tool for suppressing the three pillars of democracy before.

Various judicial interventions from time to time have guaranteed that Media and Freedom of Media in order to ensure that a vibrant democracy exists in India. Some instances of the same are given herein-below:-

In *Indian Express Newspapers v. Union of India*¹, the Supreme Court emphasized the importance of freedom of the press in these words:

¹ 1986 AIR 515



“.....The expression freedom of the press has not been used in Article 19 but it is comprehended within Article 19(1)(a). The expression means freedom from interference from authority, which would have the effect of interference with the content and circulation of newspapers. There cannot be any interference with that freedom in the name of public interest.

“The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make a responsible judgement. Freedom of the press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions, which interfere with it contrary to the constitutional mandate.”

In *Sakal Papers (Private) Limited v. Union*², Supreme Court had observed that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions, and views with complete freedom and by resorting to any available means of publication, subject to the restrictions imposed under Art. 19(2). The Indian Constitution does not expressly provide for the freedom of the press but this freedom is included in “Freedom of speech and expression” guaranteed by Article 19(1)(a).

Blackstone said that the essence of freedom of expression is that every person should be able to lay his sentiment before the public without previous restraint, that to forbid this, is to destroy the freedom of the press; but if publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.

In *Bennet Coleman Company v. UOI*³, the Court held that freedom of the press is both quantitative and qualitative. Freedom lies both in circulation and in content. The fixation of page limit will not only deprive the petitioners of their economic viability but also restrict the freedom of expression by compulsive reduction of page level entailing the reduction of circulation and the area of coverage for news and views.

In view of the Supreme Court decision in *Tata Press Ltd. V. Mahanagar Telephone Nigam Ltd.*⁴ the ruling in *Hamadard Dawakhana case* has now a limited application that is, prohibiting an obnoxious advertisement and cannot be applied to the general advertisement as such. In this case, the Court has held that commercial speech is a part of the freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution. ‘Commercial speech’ cannot be denied the protection of Art. 19(1)(a) of the Constitution merely because the same are issued by the businessman.

Describing the advertising as the cornerstone of Indian economic system, the Judges said that low prices for consumers are dependent upon mass production, mass production is dependent upon the volume of sales, and volume of sales are dependent upon advertising.

² 1962 AIR 305

³ 1973 AIR 106

⁴ 1995 AIR 2438



In *Printers (Mysore) Ltd. v. Assistance Commercial Tax Office*⁵, the Supreme Court has reiterated that though freedom of the press is not expressly guaranteed as a Fundamental Right, it is implicit in all democratic countries and the press has rightly been described as the fourth estate. The democratic credentials of a state are judged by the extent of freedom the press enjoys in that state.

The Supreme Court has emphasized that the freedom of the press is not so much for the benefit of the press as for the general community because the community has a right to be supplied with information and the government owes a duty to educate the people within the limits of its resources.

Thus, any acts that curtail the freedom of the press and dissemination of information such as the act of imposition of high carriage fee by the DPOs which helps the DPOs to strong arm News Broadcasters creates an obstruction to the performance of the above said duty. The said aspect is also to be appreciated from the fact that ANN is performing such duty as a News Channel, however it is incurring cost of distribution in the name of marketing, placement and being burdened by the same, its business is being made unviable. Thus, the said situation leads to making DPOs even more powerful than the content creators i.e. the Broadcasters themselves giving them room making the business of the News Broadcasters unviable at their whim which is at the core of disabling the News Broadcasters from performing the above-stated constitutional duty of disseminating free and fair news to the public.

In essence, the News Broadcasters do deserve a differential treatment on the aspect of Carriage Fee as any regulatory levy in the said form results in violation of the aforesaid constitutional principles.

CONCLUSION

In view of the above said factual matrix, it is evident that any regulation governing the inter-personal arrangement / agreement and relationship between various stakeholders including service providers has to sub-serve the objection for which TRAI Act has been enacted vis-à-vis for regulating the Cable TV industry. It is a settled proposition that the regulation has to be minimum and it shall in no way thwart the Fundamental Right for Freedom of Trade and Business. The regulation under TRAI Act is only limited to ensure that the agreement between the various service providers are non-discriminatory in nature. It is also imperative to highlight here that regulation of news and current affairs has to be dealt differently vis-à-vis regulation of another genre as they are sub-servient to the constitutional mandate by serving fourth pillar of democracy in the country. Thus while regulating any interconnect agreement between broadcaster of news channels vis-à-vis other service providers it has to be kept in mind that there should be no regulation which might make the running of a News Channel unviable especially when the news channel are the most important instrument for

⁵ 1994 SCR (1) 682



covering every event of public and national importance occurring every moment 24x7 which not only requires top quality of highly trained professionals to cover the same but it also incurs huge expenses to create content of high standard. Thus any act which is detrimental for prompt and quality coverage of news shall only act as curtailment to the freedom of press and dissemination of information. It is also to be kept in mind that the same is done at negligible cost or at zero cost to the consumers. It may be noted that ANN is a FTA channel and thus makes available to the consumer his right to be informed at nil cost and thus furthering Constitutional objectives. Thus, any imposition of any charge for carrying out the aforesaid obligations could be even termed or construed as unconstitutional.

Higher carriage fees in addition to other charges like network fee, distribution fee being already charged by the DPOs shall only act as catalyst in making the broadcast of news of public importance to public at large economically unviable or if not economically unviable. It may also have an impact to the quality of the programming that is being broadcasted by the broadcasters of News Channels.

Moreover, in the overall interest of business viability, we must be envisaging a regulatory framework that builds an environment of growth and trust in the sector so that players are not forced to exit on economic un viability and even the smaller players such as regional free to air channels find the entire environment conducive to growth. There cannot be a situation that if a Broadcaster of a regional channel who has a demand for its channels gets left out of the supply chain due to the fact that the business environment is not conducive for it to cater to its limited language speaking subscribers and viewers as that shall definitely not be in the orderly growth of the Sector.

We look forward for a favourable outcome of the present consultation process and we request Authority to kindly examine all the aforesaid aspect before re-visiting the current regulating regime.

A handwritten signature in blue ink is written over a circular blue stamp. The stamp contains the text "ANN News Network Pvt. Ltd." around its perimeter.