

September 02, 2013

Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg,
New Delhi-110 002

Sub: "Distribution of TV Channels From Broadcasters to Platform Operators"

Kind Attn: Mr Wasi Ahmad

Dear Mr Ahmad,

At the outset we appreciate the opportunity given by the authority to provide our comments on the Consultation Paper referred hereinabove. In this context, we wish to make the following submissions with respect to the consultation raised there under:

We are enclosing our comments in this respect for your reference and records and it may be noted that the above views/ recommendations/ submissions/ suggestions have been made by us without prejudice to our legal rights and contentions with regard to jurisdiction and other legal issues and we reserve our right to modify our response at any time.

Thanking You,

Yours Faithfully,

For NEO Sports Broadcast Private Limited

Sd/-

Ranjan Sharma
(Assistant Manager- Legal & Regulatory Affairs)

Encl: As above

TRAI CONSULTATION PAPER

ON

**“DISTRIBUTION OF TV CHANNELS FROM BROADCASTERS TO
PLATFORM OPERATORS “**

RESPONSE OF

NEO SPORTS BROADCAST PRIVATE LIMITED

Dated: September 02, 2013

We appreciate the efforts put in by the Telecom Regulatory Authority of India to issue draft Amendments to the tariff orders, interconnection and register of interconnect regulations, applicable for both the addressable and non-addressable broadcasting and cable TV services Specifically:

*The Telecommunication (Broadcasting & Cable) Services (Fourth) (Addressable Systems) Tariff (Third Amendment) Order 2013 to amend The Telecommunication (Broadcasting & Cable) Services (Fourth) (Addressable Systems) Tariff Order 2010 (1 of 2010)

* The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Tenth Amendment) Order 2013 to amend The Telecommunication (Broadcasting & Cable) Services (Second) Tariff Order 2004 (6 of 2004)

* The Telecommunication (Broadcasting & Cable Services) Interconnection (Seventh Amendment) Regulations 2013 to amend The Telecommunication (Broadcasting & Cable Services) Interconnection Regulation 2004 (13 of 2004).

* The Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations 2013 to amend The Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (9 of 2012).

* The Register of Interconnect Agreements (Broadcasting & Cable Services) (Fifth Amendment) Regulations 2013 to amend The Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation 2004 (15 of 2004)

and on the opportunity provided to us for submitting comments on the same particularly distribution of TV channels from broadcasters to platform operators.

The views/ recommendations/ submissions made by us are without prejudice to our legal rights and contentions with regard to jurisdiction and other legal issues.

PROPOSED AMEMDMENTS:

1) If a broadcaster appoints a person as its authorized distribution agent, it shall ensure that----

(a) there is no change in the composition of its bouquet provided by the authorized distribution agent to distributors of TV channels;

(b) its authorized distribution agent does not bundle its bouquet or channels with the bouquet or channels of other broadcasters;

(c) while acting as an authorized distribution agent, such person acts for and on behalf of the broadcaster.

2) Every broadcaster shall ensure that the authorized distribution agent appointed by it under sub-clause (1) shall----

(a) not publish Reference Interconnection Offer by itself or on the behalf of the broadcaster; and

(b) not enter into interconnection agreement with the distributor of TV channels.”

NEO'S Views:

- a) There are 825 Channels which hold licenses from Ministry of Information and Broadcasting (“MIB”) out of which around 233 are pay channels, many of them are run and managed by relatively much smaller media companies, who lack the required resources, infrastructure, finances and manpower capability to distribute their channels in the market which is extensively scattered and geographically stretched. Hence, like any other Broadcaster they are vitally reliant on the Distribution Agent/Channel Aggregator to optimally & efficiently carry on their business.

- b) Another extremely important reason for using the Distribution Agent/Channel Aggregator is to prevent the one sided manipulation by the MSOs/LCOs in the carriage negotiation, which specifically is quite rampant with small companies that have started their own channel(s) or are operating in limited market/ niche segment. Most MSOs/LCOs demand exorbitant & irrational carriage, placement and other kind of monies as a prerequisite to allowing access to their network, this becomes even more obvious where MSO's have monopoly. Most operators or channels catering to niche segment/ Limited market are relatively easy targets because they have virtually no negotiating strength, either because the channels have not been adequately sampled or have limited impact on the MSO's business thereby very negatively impairing the business/survival of these

channels. Hence, MSO's tend to influence the negotiation in their favour, making it almost a unilateral diktat to which the channels have to meekly submit to avoid risking their entire business. As per opinion of Industry Sources there might have been cases where high carriage fees may have been paid even if such losses might have impacted the survival of such channels.

Hence, such channels under survival risk are forced to find way to balance the negotiating strength by working with the Distribution Agent/ Channel Aggregators.

Industry sources are also generally of the view that post consolidation of channels as part of bouquet, carriage fee for such channels has dropped there by making it relatively less difficult for the survival of the small broadcasters.

Industry trend also suggest that after consolidation of the MSOs/ LCOs in the post digitalization era, MSO's negotiating position will further significantly increase.

It is well known fact that under the present regulation MSO's have the choice to subscriber for channels on a-la-carte basis and continue to enjoy the fruits of bouquet and price freeze for the last ten years.

It is also a well established fact that the present regulation already provides “Must Provide” and no “Must Carry”. Hence, the proposed structure will take away the limited bargaining power that the Broadcaster currently has and will lead to increase in carriage costs of the broadcaster and reduction of subscription revenue.

Therefore, our strong submission is that unless the deep/critical negotiating malaise is not corrected and a fair and equal negotiating/access opportunity is not provided, all small /niche segment/Limited market Broadcaster, such broadcasters will heavily suffer further wherein the MSOs/LCOs will get a free run to misuse their position at the cost of such channels.

Hence our submission is that before such steps as recommended are taken the following factors must be clearly established for the MSO/LCO

- i) Must carry provision that provides the opportunity to present its case /get access to network in a fair and equitable manner.
- ii) To draw up regulations which shields the small broadcasters from the manipulation of negotiating power by Distributor of TV Channels.

c) Regarding the perception that there are differential treatment between the DTH and MSO by Broadcasters it must be seen in perspective that:

- i) DTH has very few players with huge reach which can be managed in House by even small Broadcasters which is pursued on the line of institutional sale which is an established sales practice across all industries with larger customers.

Conclusion

The Hon'ble Authority needs to revisit the draft regulation in the light of the above submission

Thanking You,

Yours Faithfully,

For NEO Sports Broadcast Private Limited

S/d

Ranjan Sharma

(Assistant Manager- Legal & Regulatory Affairs)