

COMMENTS OF DEN NETWORKS LIMITED ON DRAFT THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (FOURTH) (ADDRESSABLE SYSTEMS) TARIFF (SECOND AMENDMENT) ORDER, 2013

2. In clause 6 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, (1 of 2010),---

(a) in the heading, the word “pay” shall be omitted;

DEN:- We agree with omission.

(b) in sub-clause (1), for the second proviso, the following proviso shall be substituted, namely:--

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“*Provided further that* in case a multi-system operator or direct to home operator or Internet Protocol service provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system, offers channels as a part of a bouquet, the a-la-carte rate of such channels forming part of that bouquet shall be subject to the following conditions, namely:-

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

(b) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed three times the ascribed value of the pay channel in the bouquet;

Explanation: Ascribed value of a pay channel in a bouquet means the value arrived at by multiplying the proportionate value of the pay channels in the bouquet with the a-la-carte rate of the same pay channel and divided by the sum of a-la-carte rates of all the pay channels in the bouquet, and proportionate value of the pay channels in the bouquet shall be calculated in the following manner:-

[Bouquet rate x sum of a-la-carte rate of pay channels]/[sum of a-la-carte rate of pay channels + sum of a-la-carte rate of free-to-air channels taking rate of free-to-air channel as

Rs. 1];

DEN :- This restriction has made the business of MSO unviable and this restriction will lead to elimination of MSO from the business and other players will take over the business of MSO if this restriction is not removed.

The pricing of the channels have never been determined by any Authority and therefore firstly channel pricing is to be corrected as it relates only to the pricing prevalent earlier in the name of Under Declaration. The TRAI has taken a benchmark of the analogue channel price which is already at very higher side and therefore the Authority should determine the actual price of the channel at whole sale level and this correction is needed for the benefit of consumers. The pricing of channel has emerged from the self assessment of price by the Broadcasters and therefore it has to be corrected first. In the price sensitive market if we offer all the channels to the subscriber then as per RIO rates of the content aggregators the total cost to whole sale level is only Rs. 855/- and after factoring into LCO and MSO margin it will go high but we have made packages in such a way so that it should be affordable to the consumer and by applying twin conditions the packages will no more be affordable to the consumer.

The DTH operator has no intermediary therefore it can do so but in case of Digital Addressable Cable System MSO's have to share its revenue with LCOs and if MSO follows this twin condition then it would be detrimental to subscriber as MSOs will not be able to form cheaper bouquets for the subscribers.

Therefore this twin condition should be removed completely.

However if the Authority wants to keep this condition then it should be:-

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed **three** times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems; and

(b) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed **five** times the ascribed value of the pay channel in the bouquet;

(c) in sub-clause (2), the word “pay”, wherever appearing, shall be omitted;

DEN:- We agree with omission.

(d) for sub-clause (4), and before Explanation, the following sub-clause and provisos shall be substituted, namely:--

“(4) It shall be open to the service provider providing services through addressable system to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month per subscriber, towards channels chosen by the subscriber;

Provided that the subscriber of the addressable systems may subscribe to any bouquet or any bouquet and any pay or free-to-air channel or only free-to-air channels or only pay channels or pay channels and free-to-air channels.

Provided further that nothing contained in this sub-clause shall apply to the service provider providing service through digital addressable cable television system;

DEN:- Now this condition has been put to other addressable systems also but it is submitted that the effect of such a choice being given to the subscribers i.e. to choose any combination of one or more pay channel or only free to air channels or only pay channels or pay channels and free to air channels will result in endless number of packages / commands in the Headend, which is not possible to be implemented by the MSO's because to add each channel, huge investments are needed in backend, running into Crores. So MSO can't be forced to do it without any business model. Therefore such conditions should be removed for MSOs.

COMMENTS OF DEN NETWORKS LIMITED ON DRAFT THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (DIGITAL ADDRESSABLE CABLE TELEVISION SYSTEMS) (SECOND AMENDMENT) REGULATIONS, 2013

2. In regulation 3 of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (9 of 2012),---

(a) in sub-regulation (2), after the second proviso, the following proviso shall be inserted,
namely:-

“Provided also that nothing contained in this sub-regulation shall 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 demands carriage fee for carrying that channel on its distribution platform.”

DEN:- This proviso cannot be inserted, The Judgment of Hon'ble TDSAT in Appeal 3(C) of 2012 is very clear and any stipulation of such proviso shall be violative of the said judgment.

More Over the rational given by the Authority is non-existence as the carriage fee is totally depend on the Broadcaster's wish if it wants its channel to be carried. There is no such stipulation for other existing Addressable System then why the authority is contemplating to put this for Multi System operators only?

MSO's are in the business of serving customers, therefore MSOs will give channels as per the wish of the customers and if customer will not get as per his choice then he will move to other alternate platforms and therefore to retain its base the MSOs will serve the customers as per their choice. It is best to leave carriage fees to market forces.

In mature markets, cost of access for the MSO's come in the form of revenue share or sharing of some of the advertisement time to MSO's to recover some

cost. These models work to provide the cost of access to platform operators. The market will evolve over a period of time as other mature markets have and will find its own model. Therefore by that time there should not be any regulation on Placement/Carriage Fee.

Regulation of carriage fee in the present circumstances is very difficult as it also implies regulation of positioning of channels. Our Country has diversified culture, language, choice etc. and there are different viewership patterns. The capacities of cable networks also have to be considered. Therefore any such regulation would lead to multiplicity of disputes. Even Public Broadcaster is charging carriage fee which receives grant from the Government and we do not get any such grant and regulating carriage fee also infringes the commercial bargaining power.

The TDAST has already heard the rational given by the Authority behind this proviso and has given its verdict. In the Judgment dated 19th October 2012 in Appeal No. 3 (C) of 2012 the Hon'ble TDSAT has recorded that :-

“27.Mr. Meet Malhotra and Mr. Saket Singh, learned counsel appearing on behalf of the Respondent, on the other hand, would urge :-

.....

(xvii)No carriage fee has been permitted in respect of the case where the MSOs/LCOs sought to invoke their right of ‘must provide’ clause, the carriage fee will be levied only if the broadcasters invoke their right of ‘must carry’ and not otherwise;

.....

54.The only submission made by the Respondent in this behalf is that keeping in view the analogy between ‘must provide clause’ as contained in clause 3.2 of the 2004 Regulations whereby and whereunder the distributors of TV channels are prohibited from asking the broadcasters to

pay any 'Carriage Fee', clause 3 (5) of the Regulations provide for a similar effect.

55. It is difficult to comprehend the said submission. Such a criteria has not been adopted so far as the CAS operators or the DTH operators are concerned.

56. Clause 3.2 of the Regulations may not be attracted in the case of DTH operator, but we may notice that the restrictions put therein are only limited to "at the same time".

57. Payment of Carriage Fee, therefore, cannot be put in as a condition on the 'distributor of a TV channel' for all time to come only because at one point of time it had asked the broadcaster to supply signal of its channel.

58. Perusal of clause 3.5 of the Regulations as also the proviso appended to clause

3.2 thereof would show that both the provisions would not have the same effect. While applying the said principle in a case of 'must provide', the same would not mean that the MSOs would never be entitled to take any Carriage Fee throughout the period during which the original agreement remain valid and/or renewed. It is a privilege of the broadcasters and the MSOs.

59. It is only for that purpose, we intend to place emphasis on the words on record "at the same time".

60. It has not been disputed before us that even in a non-CAS regime Carriage Fee has been paid to the signal seekers.

We are of the opinion that there should not be any difference between 2nd proviso to clause 3.2 of "The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004" (12 of 2004) as amended from time to time as applicable to non-CAS area/DTH Operator and clause 3(5) of

“The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Systems) Regulation 2012

We, therefore, do not find justification for not giving the broadcasters and the MSOs an opportunity to enter into bilateral agreement in the matter of Carriage Fee; particularly in view of the fact that no such prohibition has been imposed on the DTH operators.”

When the same analogy for inserting this clause which has been given in explanatory memorandum has been rejected by Hon’ble TDSAT then inserting it again would be completely violation of Hon’ble TDSAT judgment.

(b) sub-regulation (5), sub-regulation (8) and sub-regulation (11A) shall be omitted.

DEN:- We agree with omission.