



Speed Post / E-mail: advbcs@traf.gov.in , traicable@yahoo.co.in

January 18, 2013

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

Re: Consultation Paper No. 18/2012 dated 20th December 2012 on Issues related to Amendments to the Interconnection Regulations Applicable for Digital Addressable Cable TV Systems & Tariff Order Applicable for Addressable Systems

Dear Sir,

Attached please find the reply/comments of the News Broadcasters Association (NBA) on the issues raised in the captioned Consultation Paper.

Yours faithfully,

Annie Joseph
Secretary General, NBA

Encl: As above



News Broadcasters Association's Response to Consultation Paper No. 18/2012 dated 20th December 2012 on Issues related to Amendments to the Interconnection Regulations Applicable for Digital Addressable Cable TV Systems & Tariff Order Applicable for Addressable Systems

A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems.

Carriage Fee

(1) Whether the following proviso should be introduced in the clause 3(2) of the interconnection regulations for DAS and the clause 3(5) of interconnection Regulation for DAS should be deleted.

"provided that the provisions of this sub-regulation shall not 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 demanding carriage fee for carrying that channel on its distribution platform."

(2) If no, the reasons thereof.

NBA Response:

NBA supported the provisions of Regulation 3(5) as it existed in the Telecommunication (Broadcasting & Cable Services) Inter-connection (Digital Addressable) Cable Television System Regulations, 2012 dated 30th April 2012, which were in line with the Second Proviso to Clause 3.2 of the Telecommunication (Broadcasting and Cable Services) Interconnect Regulations, 2004 as amended on 17.03.2009.

The amended Regulation 3(2), if amended as proposed in the Consultation Paper, would read as under :

"3(2) Every broadcaster shall provide signals of its TV channels on non-discriminatory basis to every multi system operator having the prescribed channel capacity and registered under rule 11 of the Cable Television Networks Rules, 1994, making request for the same.

Provided that nothing contained in this sub-regulation shall apply in the case of a multi system operator who is in default of payment.

Provided further that imposition of any term which is unreasonable shall be deemed as a denial of request.

Provided that the provisions of this sub-regulation shall not 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 demanding carriage fee for carrying that channel on its distribution platform.”

(Emphasis Supplied)

The NBA submits that the amendment proposed would inevitably be construed to mean that an MSO cannot demand carriage fee “at the same time” that the MSO demands the signal/channel feed ; which would mean that if the MSO demands carriage fee after a lapse of time, say even after one month after receiving the signal, that would be permissible under the proposed amendment. This would again place the broadcaster at the mercy of the MSO, as is the position now, since as per the regulation an MSO may demand any quantum of carriage fee from the broadcaster even a few days or few months after initially receiving the signal; without any stipulation as to the quantum of such carriage fee ; and this would make a mockery of the intent behind the regulation.

NBA’s stand has always been that in the first instance, in view of the “must provide” provision as contained in the present dispensation, the question of any carriage fee, by whatsoever name called, being payable to an MSO must not arise. Even more-so with the roll-out of digital technology whereby the earlier constraints on MSOs of being able to carry only a limited number of channels will no longer exist, there is no basis for imposition of any carriage fee upon broadcasters. In the alternative, the NBA’s position is, that if at all carriage fee is to be imposed, it must only be for a limited period until roll-out of digitalization is complete ; and during such period also the carriage fee payable must be regulated by the TRAI and must be rational, non-discriminatory and based upon an actual, verifiable, subscriber base. As stated, carriage fee may be payable only for the limited period until digitalization is complete in a given area ; and once digitalization is complete, no carriage fee must be chargeable at all.

Notwithstanding any other position and in any event, when the MSO demands signal/channel feed from a broadcaster, the question of MSO also demanding carriage fee from the broadcaster (whether simultaneously or later-on) cannot arise since such a position offends not just against good regulation but also against plain commercial logic.

It may further be pointed-out that by way of the Consultation Paper under consideration, the TRAI is not proposing to amend the second proviso to regulation/sub-regulation 3.2 of the Telecommunication (Broadcasting and Cable Service) Interconnection Regulation 2004 (No. 13 of 2004), which in any case bars the payment of carriage fee when the “must provide” stipulation under regulation 3.2 aforesaid is invoked.

Therefore, in summation the NBA’s stand is that there should be a clear and unambiguous mandate (without any qualifying words such as “at the same time” or otherwise) that where an MSO demands signal from a broadcaster, the MSO shall not be entitled to demand carriage fee from the broadcaster; and where the broadcaster demands that its channel be carried on an MSO’s network, the MSO shall be entitled to charge a regulated carriage fee, the quantum of which carriage fee must be rational



and non-discriminatory and not arbitrary ; and such carriage fee should be payable only until such time as digitalization is completed in a given area ; and upon complete digitalization of an area no carriage fee must be chargeable at all.

Minimum Channel Carrying Capacity of 500 Channels for MSOs

(3) *Whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS.*

(4) *If yes, what should be the different categories (example cities/town/rural area) of areas for which minimum channel carrying capacity should be prescribed and what would the capacity for each category.*

NBA Response:

NBA's submission is that verifiable data bears-out that as of date the Ministry of Information & Broadcasting has issued about 825 nos. up-linking/down-linking licenses for various TV channels. On a point of policy, it must be assumed that the licenses so given-out are meant to be "usable" and not "redundant". Evidently therefore, regulation / policy must correspondingly mandate that MSOs must upgrade to have the capacity to offer and carry the signal of the television channels that have been licensed. It requires no detailed explanation to show that if there are about 825 channels, and there is a channel carrying capacity of only about 200 channels, it would lead to serious market imbalances and would result in chaos and extortionist business practices resulting from such serious demand-supply imbalance. Another perspective is that the entire process of digitalization arises from the (correct) policy decision to make real choice available to the consumer, namely the viewer, who should then be able to effectively choose what he wishes to watch. It cannot be said that as a matter of policy, choice should be made available only to viewers living in big cities and not to those who are living in smaller cities / towns.

The other aspect of the matter is the cost of upgrade that will be required to be borne by MSOs to move from a 200 channel head-end capacity to a 500 channel head-end capacity. On this point, costing data available bears-out that the cost of such upgrade is in the range of Rs. 2.5 crore to set-up a head-end with a capacity of up to 1000 channels. In assessing such cost it must also be borne in mind that it is available to an MSO to set-up a 500 channel head-end in a major city and to service large surrounding areas, including satellite cities and towns, from the same single head-end, thereby obviating the need to set-up 500 channel head-ends in every small city and town.

Moreover, once digitalized head-ends are set-up, it is a well-known business fact, that the revenue generation opportunities available to an MSO will increase manifold since an MSO will then be able to provide several value-added services such as near-video on demand, high-end gaming, broadband 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 upgradation.



The TRAI would also kindly appreciate that it would be against consumer interest, and certainly not fair, to not make available to a consumer everywhere in the country the widest choice of channels, once the consumer has invested a sum of upto Rs. 1500/- in a set-top box.

Therefore, the NBA's position is that the mandate for MSOs to upgrade to a head-end capacity of at least 500 channels, regardless of the city, town or area of operation, was a sound decision and any amendment to this mandate would defeat the "must carry" provision contained in the extant regulations; and would deprive the consumers of real choice everywhere in the country and would in fact defeat the very fundamental purpose of digitalization, which is mandated under the law.

Placement Fee

(5) Whether there is a need for regulating the placement fee in all the Digital Addressable Systems. If so, how it should be regulated. The stakeholders are requested to submit their comments with justifications.

NBA Response:

The prohibition on charging of placement fee is contained in regulations 3(6) and 3(11) of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012 (No.9 of 2012) as well as under Regulation 11-A of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012 (First Amendment) Regulations 2012 (No. 14 of 2012).

On this issue, the NBA submits that the fair and equitable position in the industry would be that no placement fee, by whatever name called, should be payable especially now, since upon effective roll-out of digitalization the channel carrying capacity of an MSO would conveniently be between 500-1000 channels. Furthermore, in a digitalized environment, broadcasters would no longer demand any specific or preferential channel placement, except to the limited extent that their channels be placed in the correct and rational genre and sub-genre (e.g. English News channels be placed in the "English News" sub-genre and Hindi News channels be placed in the "Hindi News" sub-genre and so on); and it will no longer be necessary for the broadcaster to ask for being placed in any particular "frequency band". With digitalization, channels would be arranged in the Electronic Programme Guide (EPG), and would be easily accessible to subscribers by browsing through the EPG. It would no longer be necessary for a viewer to 'flip' through all channels to search for a given channel.

Therefore, the NBA's position on the issue of placement fee is that the charging of placement fee, by whatever name called, should be prohibited by regulation; and, therefore, there should be no need for regulating placement fee.



B. Issues related to amendments to the Tariff Order applicable for Addressable Systems.

Twin conditions at retail level

(6) *The stakeholders are requested offer their comments on the following twin conditions, to prevent perverse a-la-carte pricing of the pay channels being offered as part of the bouquet(s).*

"a. The ceiling on the a-la-carte rates of pay channels forming part of bouquet(s) which shall not exceed three times the ascribed value# of the pay channel in the bouquet;

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

#ascribed value of a pay channels in a bouquet is calculated in the following manner:

*1. Proportionate Bouquet Rate for pay channels [A]=
Bouquet Rate x (Sum of a la carte rate of Pay channels)/(Sum of a la carte rate of Pay channels+ Total no of FTA channels x factor*)*

2. Ascribed value of a pay channel in a bouquet = [A] x a-la-carte rate of a pay channel/ (sum of a-la-carte rate of all the pay channels)

**factor=1 if uniform rate of free-to-air channel is less than or equal to Rupees three. The factor = uniform rate of free-to-air channel/ 3, if the uniform rate of free-to-air channel is greater than Rupees three."*

The stakeholders are also welcome to submit any other formulation that can achieve the same objective, along with its justification.

NBA Response:

We request for more details on how you have arrived at this formulation. Thereafter, we will be able to comment on the same.

Minimum Subscription Period

(7) *The stakeholders are requested to offer the comments, if any, on the proposed deletion of the word 'pay' in clause 6 and 6(2) of the principal tariff order dated 21.07.2010.*

NBA Response:

We agree to the proposed deletion of the word "pay" in clause 6 and 6(2) of the principal tariff order dated 21.07.2010.



Freedom to choose the channel(s) on a-la-carte and/or bouquet(s)

(8) *The stakeholders are requested to offer their comments, if any, on the proposed inclusion of the following provision after sub-clause 6(4) in the tariff order dated 21.07.2010, as amended:*

"It shall be open to the subscriber of the addressable systems to subscribe to any bouquet(s) or any bouquet(s) and any channel(s) (pay or free to air) or only free to air channels or only pay channels or pay channels and free to air channels".

NBA Response:

We agree with the Authority's view of the proposed inclusion of the said provision after sub-clause 6(4) in the tariff order dated 21.07.2010 as amended. In doing so the interest of all stakeholders should be safeguarded through BST. BST channels are the minimum number of channels that consumers must get/avail and BST pricing is the minimum amount that any consumer must pay.

Offerings of Bouquet(s) of channels which require special Set Top Boxes (STBs) such as High Definition Television (HDTV) or Three Dimensional Television (3D TV) channels etc.

(9) *Whether the channels that require special type of STB be offered only on a-la-carte basis or as part of separate bouquets that consists of only those channels that require a particular type of specialized STB.*

NBA Response:

At the retail level, in the interest of consumers, the channels that require special Set Top Boxes (STBs) for viewing may be offered as part of separate bouquets that consists of those channels only or on a-la-carte basis. With special STBs also the minimum BST price cap and at least BST channels distribution will be applicable.

Annie Joseph
Secretary General

Place : New Delhi
Dated : January 18, 2013