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Subject: Comments on Draft Tariff order

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To

Sh. S.K. Gupta,

Pr. Advisor (B&CS),

TRAI, New Delhi.

Sir,

1. That with reference to clause no. 9 if the DPO are allowed to continue with the subsisting agreement then the whole purpose of the draft regulation is defeated. It is clear after reading this clause that a side door has been offered wherein the Broadcaster can enter into a long term agreement with favoured DPO and which will subsist for many years after this regulation will come into force. **So it should be explicitly clarified that all other agreements which are not within the framework of the current regulation will be null and void from 1st April 2017 onwards. The parties will have to enter into an agreement as per this regulation for continuation of signals after 31st March 2017.**
1. (a) That the said order does not address the main issues raised by the Hon'ble TDSAT in the case of NSTPL vs. Media Pro Enterprise India Pvt. Ltd & Ors. vide its judgement dated 7.12.2015. The Hon'ble TDSAT has observed that there is rampant price discrimination and lack of parity between the distributors of TV channels, especially between the larger MSOs and the smaller MSOs. This discrimination is created primarily in two ways:-
  - a. A secret negotiated agreement is entered into between the broadcaster and his preferred distributor which terms are kept secret and are highly advantageous to the distributor as compared to other competing MSOs.
  - b. A separate placement / marketing agreement is entered into between the same parties which runs parallel to the interconnect agreement and provides for substantial paybacks to the distributor MSO thereby further reducing his net cost per subscriber for the pay channel subscribed.
  - c. Taken together, both these agreements often provide as much as 80% to more than 100% reduction from the base subscription price as mentioned in the interconnect agreement.
1. (b) While the current tariff order has made a serious effort to correct the ills associated with secret negotiated agreements as mentioned in clause (1) (a) as detailed above the said order makes no effort or mention of the parallel agreements as mentioned clause (1) (b) above

The tariff order in no way solves the main issue of non-discrimination and creation of a level playing field by ensuring that the net cost per subscriber is the same for all MSOs, large or small. **We suggest that all the discounts / marketing fees / placement fee should be taken in account while considering the parity between all the DPOs.**

1. **It must be understood that the Broadcaster is earning revenue from across the country from all subscribers of all platforms while the MSO is getting his share of revenue from the limited geographical area in which he is operating.** That the sharing between the broadcaster and MSO as per the draft is also in nonconformity with the international norms. The world wide practise in this particular industry with reference to this scenario is that the MSO/ Distribution platform gets a greater share as compared to the broadcasters as the MSO/ Distributor Platform had invested a huge amount in creating the infrastructure and also incurs recurring expenses on monthly basis on the other hand the broadcaster has minimum expense on infrastructure for distribution of signals and there is no recurring expenses for running the set up.

1. That the Regulator has given several calculations and interpretations in the Explanatory memorandum which we feel is not legally binding as explanatory memorandum is not part of the regulation and it s a set precedent.
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