

BENNETT, COLEMAN & COMPANY LIMITED

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By Speed post/ E-mail

January 18, 2013

The Telecom Regulatory Authority of India,
Mahanager Doorsanchar Bhawan,
Jawahar Lal Nehru Marg (Old Minto Road),
New Delhi- 110002.

Kind Attention: Mr. Wasi Ahmad, Advisor (B&CS)

In re: Consultation Paper 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,

We appreciate the Hon'ble Authority's call for comments from the stakeholders on the issues related to the amendment to the Interconnection regulation applicable to the Digital Addressable Cable TV Systems & the Tariff Order(s), related thereto. We are also aware that the Hon'ble Authority has initiated this consultation process in view of the Hon'ble TDSAT's judgment dated October 19, 2012 ("Judgment") in the Appeal 5(C) of 2012 and related matters ("Appeal"). Whilst, we welcome every step which can help for bringing in effective interconnection between the service providers with a sense of transparency and equality, however at the same time we submit that as a party to the Appeal, we have an inherent right to appeal against the Judgment. It is humbly submitted that the Authority may have allowed the aggrieved parties to exercise their right to appeal against the Judgment first, before initiating the present consultation process.

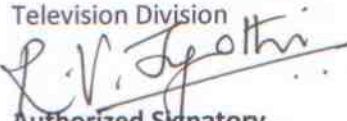
In regard to the present consultation process, we submit that we have perused the consultation paper, specifically, the issues for consultation, contained therein. We hereby submit our issue-wise comments attached as Annexure. In due course we may also submit our counter-comments to the comments received from the other stakeholders. However, the said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to (a) appeal and/ or any such legal recourse or remedy available under the law against the Judgment; and (b) further submission of our comments or counter comments to this consultation process.

The appended Annexure is for your kind perusal and reference. Should you require any further clarification or assistance, please do not hesitate to contact us.

Thank you.

Yours truly,
For **Bennett, Coleman and Company Limited.**

Television Division



Authorized Signatory

Enclosed: Annexure.

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Comments from Bennett, Coleman and Company Limited through its Television Division ("BCCL")

on

TRAI's Consultation Paper on Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems & Tariff Order applicable for Addressable Systems 20th December, 2012

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)¹ of the interconnection regulations for DAS and the clause 3(5)² 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.

BCCL Comments:

The third proviso of clause 3.2 of the Interconnection Regulation, 2004 as amended from time to time, was placed, vide amendment in 2009, to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3.2 ("Must Provide" Clause) and at the same time be forced to pay carriage fee for the same channel. The Hon'ble Authority also further clarified that the provision has

¹ "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."

² "A multi system operator, who seeks signals of a particular TV channel from a broadcaster, shall not demand carriage fee for carrying that channel on its distribution platform."

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been made to prevent a distributor of TV channels from misusing the "Must Provide" Clause. The proviso is in line with the principles of demand and supply and makes the "Must Provide" clause equitable to both the MSO and the Broadcaster. Moreover, the said proviso has remained unchallenged, so far and thus, has been accepted by all stakeholders.

In its submissions, before the Hon'ble TDSAT in the Appeal 5(C) Of 2012, the Authority has submitted that the clause 3(5) of the Interconnection Regulation, 2012 (for DAS) provide the similar effect as in the third proviso to clause 3.2 of the Interconnection regulation, 2004 as amended from time to time. Further, Authority has clarified the same in the present consultation paper that the intention of Clause 3(5) of the Interconnection Regulations 2012 was similar to the intention as mentioned in the Interconnection Regulation, 2004.

A detailed analysis of clauses 3(5) of the Interconnection Regulation, 2012 and third proviso of clause 3.2 of the Interconnection Regulation, 2004 would reveal that though the clause have been phrased differently, but have a similar meaning and if one reads the former along with the words "at the same time", not even an iota of doubt remains in the similarity of meaning that comes out in both referred clauses. Even the Hon'ble TDSAT had made a similar observation in (para 56) of its referred Judgment.

In view of the foregoing, we submit that the either the words "at the same time" be appropriately added in the existing clause 3(5) of the Interconnection Regulations 2012 or the same clause may be replaced by the third proviso of clause 3.2 of the Interconnection Regulation, 2004.

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.

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BCCL Comments:

We would like to emphasize the fact that the clause 3(8) of the Interconnection regulation, 2012 specifies for the capacity of channels in a DAS cable network and does not, in any way, mandates for compulsory carrying of 500 channels in a DAS cable network.

The Interconnection Regulation, 2012 also provides for "Must Carry" provisions that remain unchallenged and thus has been accepted by all stakeholders.

The Authority is aware that there are already more than 800 channels in the country that have been licensed to be downlinked for cable TV. While, out of the such channels, at any given time there are at least 400 channels that are relevant for a particular area, considering Hindi, English and regional languages of that area and this number is increasing with the time.

The Authority is also aware of the fact that digitization technology in cable TV allows to send across more than 1000 television channels in a digital cable network.

The Authority is also a regulator for other services like mobile, telephony and broadband services in the country. The Authority has also prescribed certain QOS parameters for such services in the consumer interest. Amongst several, one such QOS parameters is the minimum bandwidth for broadband service that has to be maintained by the service provider at the consumer end.

We submit that prescribing 500 channels was essential, justified and reasonable for the MSOs in the interest of the consumer. Form the consumer's point of view, prescribing certain minimum number of channels would give true meaning to digitization which inter alia brings in increase in services vis-à-vis analogue cable systems. Since the technology enables to carry increased number of channels by way of digitization, nothing should be allowed to impede it. Further, increase in number of channels can only justify consumer's investment in set-top-boxes and increase in number of channels will provide a greater choice of channels to consumers where the customer can decide for itself which channel to watch, rather than the MSO deciding for the consumer, which in the true sense is the real purpose of digitization. If the common and most widely used technology provides for carrying more than 1000 channels, then at least its 50% should be prescribed for the capacity of channels in DAS cable network.

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While the 'must Carry' provision as envisaged in the regulations for DAS, have been widely accepted by all the DAS stakeholders and thus, for its effective implementation prescribing minimum 500 channels carrying capacity was most pertinent, otherwise 'must carry' can never be enforced, since any MSO reluctant to carry any channel under 'must carry' provisions would conveniently site lack of bandwidth as a reason to carry additional channel on its cable network.

On the issue that the market forces will play an important and significant role in the matter of carrying capacity of the MSO, and therefore same may not be required to be regulated, it is submitted that the DAS market is so naïve to leave it to the market forces. As a sector regulator and an expert body on broadcasting & cable services, it is the duty of the regulator to do a hand holding by way of effective regulations till such time the service providers reach a minimum standard of service and there is market integration and ample competition. Thus, leaving the sector to market forces at this stage may lead to cartelization, monopolistic and anti-competition practices being adopted by some service providers, which ultimately will result in cessation of envisaged growth in the DAS sector.

Regarding different categories (cities/town/rural area) of areas for which minimum channel carrying capacity should be prescribed and the capacity for each category, it is submitted that such differentiation would amount to discrimination against the consumers in the areas, where less number of channels will be prescribed. We believe broadcasting and cable services are essential part of the basic services and therefore, these should be available equally accessible to every consumer in the country. Further, even in the similar services, like the telecom services/ DTH services, there has not been any practice for differentiation in provision of services to the consumers based on their location/ area. Moreover, any regulation based upon the assumption that certain areas are interested in lesser number of channels is in itself a fallacy and unjustified.

In wake of increase in FDI and easy availability of finance and banking loans in DAS cable, the huge costs involved in maintaining minimum capacity of 500 channels is also taken care of. Further, all over the world it has been observed that digitization has led to consolidation of networks to save costs and thus, in a digital cable environment, one can cater to far flung areas from a single cable headend/ control room, with the same quality level of signals and services.

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On the basis of the above we submit that a minimum capacity to carry 500 channels in DAS cable should be prescribed universally, irrespective of the areas.

Placement Fee

- (1) 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.**

BCCL Comments:

Just to reiterate what TRAI, in its previous consultation papers, has said regarding 'Placement Fee', that the Placement Fee is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and revenue of their channel(s). It also said that the placement fee is different from "carriage fee" and further, that the Placement Fee is governed by the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel.

As you are aware, that the traditional (analogue) cable services had a channel carrying capacity constraint and MSO realized the efficient value of this "scarce" commodity i.e. cable TV frequencies to transmit channels. Therefore, certain cable TV frequencies had a premium for placing the channel on them, such premium was called as Placement Fee. However, not all broadcasters, who had carriage deals with a MSO, had placement deals for their channels. Whereas in the digital addressable cable TV systems, the technology provides for abundance of channel carrying capacity and all channels are displayed as per the cable network's Electronic Program Guide (EPG). The Interconnection Regulation, 2012 mandates that each channel has to be displayed genre-wise in the genre-wise list of EPG.

The clause 3 (11) of Interconnection Regulation, 2012 provides for that if an MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such precondition amounts to imposition of unreasonable terms. Whereas, the clause 3 (11A) of Interconnection Regulation, 2012 prescribes that no MSO shall demand from a broadcaster any placement fee, is nothing but supplement to its predecessor clause i.e. clause 3 (11).

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Even though, the system of placement fee was relevant for analogue mode of cable television was kept outside the purview of the Principal Regulations, 2004 and left to the market forces and mutual negotiations between the broadcaster(s) and distributor(s) of TV channels. Even for the DAS cable networks, the system of placement fee would remain inconsequential for the reason that when there is no scarcity/ shortfall, then charging premium is meaningless for something that is available in abundance.

With reference to the above submissions, the placement fee should be kept outside the purview of the DAS Regulations and left only to the market forces and mutual negotiations.

B. ISSUES RELATED TO AMENDMENTS TO THE TARIFF ORDER APPLICABLE FOR ADDRESSABLE SYSTEMS.

Twin conditions at retail level

(2) 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*)

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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.

BCCL Comments:

The Authority has not provided any basis of deriving at the above formula. The proposed formula is not only complex but also difficult to decipher and understand and will certainly pose a challenge in terms of understanding and effective implementation on ground. Hence, at this stage it will not be appropriate to implement this formula without understanding the fall out of the same. We request more details and background pertaining to the formula which will enable us to understand this better and enable us to comment on the same.

Minimum Subscription Period

- (3) The stakeholders are requested to offer the comments, if any, on the proposed deletion of the word "pay" in clause 6³ and 6(2)⁴ of the principal tariff order dated 21.07.2010.

BCCL Comments:

We agree with the Authority's view and the proposed deletion of the words "pay" in clause 6 and 6(2) of the principal tariff to ease out technical and operational difficulties in implementation of the existing provisions. However, we submit that to ensure that any channel or genre/ category of channels is not

³ "6. Mandatory offering of pay channels on a-la-carte basis to ordinary subscribers and charges therefor. (1) Every service provider providing broadcasting services or cable services to its subscribers using an addressable system shall, from the date of coming into force of this Order, offer or cause to offer all pay channels offered by it to its subscribers on a-la-carte basis and shall specify the maximum retail price for each pay channel, as payable by the ordinary subscriber: Provided that in the case of direct to home service, a direct to home operator who is unable to offer all its pay channels to its subscribers on a-la-carte basis on the date of coming into force of this order due to any technical reason, shall offer all its pay channels on a-la-carte basis to its subscribers with effect from a date not later than the 1st day of January, 2011."

⁴ "6(2) It shall be open to a service provider, while offering its pay channels on a-la-carte basis and specifying a-la-carte rates for each of them under clause (1), to specify a minimum subscription period, not exceeding three months, for subscribing to a pay channel on a-la-carte basis by a subscriber."

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disadvantaged or discriminated vis-à-vis others, a uniform 'minimum subscription period' should be kept by a DAS MSO for all channels in its network.

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

- (4) The stakeholders are requested to offer their comments, if any, on the proposed inclusion of the following provision after sub-clause 6(4)⁵ in the tariff order dated 21.07.2010, as amended.

"It shall be open to the subscriber of the addressable systems to subscribe to one or more pay channel or only free to air channels or only pay channels or pay channels and free to air channels."

BCCL Comments:

We agree with the Authority's view and the proposed inclusion of the said provision after sub-clause 6(4) in the tariff order dated 21.07.2010, as amended.

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.

- (5) 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.

BCCL Comments:

We submit that at the retail level, in the interest of consumers, the channels that require specialize STB for viewing may be offered as a part of separate bouquets that consist of those channels, only.

⁵ "6(4) It shall be open to the service provider 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, either a-la-carte or bouquet, for availing the services of such service provider".

