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June 18, 2013

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

Dear Sir,

Re: News Broadcasters Association's Response on TRAI's draft amendments dated June 4, 2013 to the Interconnection Regulations applicable for Digital Addressable Cable Television Systems (DAS) and Tariff Order applicable for all addressable systems.

Attached please find the reply/comments of the News Broadcasters Association (NBA) on the issues raised in the captioned draft amendments dated 4.6.13.

We would be grateful if an opportunity is given to us to present our views to the Hon'ble Authority.

Thanking you,

Yours faithfully,

Annie Joseph
Secretary General, NBA

Encl: As above



News Broadcasters Association's Response on TRAI's draft amendments dated June 4, 2013 to the Interconnection Regulations applicable for Digital Addressable Cable Television Systems (DAS) and Tariff Order applicable for all addressable systems.

I. Issue of Carriage Fee

1. The draft amended regulation 3(2) as proposed by TRAI reads 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 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.

(Emphasis Supplied)

2. Under the draft amendments, Regulation 3(5) which prohibited charging of carriage fee has also been deleted :

"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."

(Deleted)

NBA Response

3. The NBA submits that the amendments 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, namely



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 be construed even more-so with the deletion of regulation 3(5) above. Such an amendment would inevitably 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.

4. 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.
5. NBA also points-out that the phrase "*having the prescribed channel capacity*" appearing in regulation 3(2) above will be rendered meaningless in view of deletion of the minimum channel capacity criteria under the regulations (as discussed below).
6. 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 TRAI and must be rational, non-discriminatory and based upon an actual, verifiable, subscriber base.
7. As stated above, 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 any time, at all.
8. 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

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simultaneously or later-on) cannot arise since such a position offends not just against good regulation but also against plain commercial logic.

9. It may further be pointed-out that by way of the amendments under consideration, 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.
10. 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 may 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.

II. Minimum Channel Carrying Capacity of 500 Channels for MSOs

11. Under the proposed amendments Regulation 3(8) mandating a minimum channel carrying capacity for MSOs has been deleted :

"3(8) Every multi system operator, operating in the areas notified by the Central Government under sub-section (1) of the section 4A of the Cable Television Networks (Regulation) Act, 1995, shall have the capacity to carry a minimum of five hundred channels not later than the date mentioned in the said notification applicable to area in which the multi system operator is operating."

(Deleted)

NBA Response

12. 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 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 this would result in chaos and extortionist business practices resulting from such a 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.

13. The other aspect of the matter is the cost of upgrade that will be required to be borne by MSOs to move from about 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.
14. 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.
15. The TRAI would also kindly appreciate that it would be against consumer interest, and it would certainly be unfair, 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.
16. Therefore, the NBA's submission 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 now mandated under the law.

17. Apart from the above, the NBA also submits that doing away with the minimum channel carrying capacity criteria on MSOs will make the "must carry" obligation upon the MSOs totally ineffective. TRAI in the Explanatory Memorandum has clarified that the 'must carry' clause would remain unaffected by such omission and lack of capacity would not be reason for an MSO denying 'must carry' to a channel. The broadcasters' concern on this issue would be resolved IF another proviso is inserted in regulation 3(10) (the 'must carry' clause) clarifying to the effect that

"lack of channel carrying capacity shall not be valid reason for rejection of a request from a broadcaster for obtaining access to the cable network of a multi system operator".

18. The TRAI's expectation that market dynamics will take care of the emerging situation and that there is no need to specify a minimum channel carrying capacity for MSOs in the interconnection regulations for DAS is based on an erroneous assumption, in that TRAI has failed to appreciate that even today States like Orissa, Punjab, Kerala and Gujarat are covered by a dominant single MSO ; and therefore there are no market dynamics to take care of the business interests of broadcasters. At least in such areas, TRAI must lay-down standards so as to bring the cable services to a certain minimum service level, to take care of customer interest and give to viewers value for their money, before exercising forbearance on minimum channel carrying capacity.
19. The primary objective of DAS was that the digitization will solve the problem of capacity constraint and would enhance the range of choice for the consumer. If TRAI does not prescribe a minimum channels carrying capacity, there will neither be any obligation nor motivation for MSOs to increase the number of channels on their networks.
20. The TRAI has stated that any time a market failure exists, there will be reason for possible intervention by TRAI. However, TRAI has failed to specify the circumstances that it will regard as market failure, which will trigger regulatory intervention. In fact, a non-competitive market is an explicit example of market failure which already exists in

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certain areas as explained above. In view thereof, TRAI should mandate minimum service levels to invoke competition in the market.

III Issue of Placement Fee

21. Under the proposed amendments Regulation 3(11A) which prohibited charging of Placement Fee has been deleted :

"3(11A) No multi system operator shall demand from a broadcaster any placement fee."

(Deleted)

NBA Response

22. The prohibition on charging of placement fee was 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 3(11-A) of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012 (First Amendment) Regulations 2012 (No. 14 of 2012).
23. 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.



24. Also, the NBA had recommended retaining regulation 3(11A) on the ground that it supplemented the preceding regulation 3(11) of the DAS regulations.
25. In the Explanatory Memorandum, TRAI has stated that in DAS there is hardly any justification for charging placement fee, whereby the NBA's position on placement fee has been ratified.
26. In this view of the matter, 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 retaining regulation 3(11A).

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

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;

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

"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];

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

(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;

(e) after sub-clause (4), the following sub-clause shall be inserted, namely:--

"(5) if a service provider offers a bouquet consisting of standard definition channels and high definition channels or three-dimensional channels or both, requiring special type of set top box, it shall:--

(a) ensure that such bouquet is provided to only those subscribers who have set-top-box compatible to receive the channels contained in the said bouquet; and

(b) offer the same bouquet to other subscribers after excluding high definition and three dimensional channels from the bouquet; and

(c) fix the rate of bouquet, referred to in para (b), after deducting the ascribed value of the high definition and the three dimensional channels forming part of the bouquet referred to in para (a)."

On the proposed draft Amendment to Addressable Systems Tariff Order, NBA would like to reiterate the issues in its earlier response to Consultation Paper dated 20.1.2013 which has not been addressed to our satisfaction. In view thereof, please re-consider the issues, as stated herein under, to the proposed draft amendment.

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]=

$$\text{Bouquet Rate} \times (\text{Sum of a la carte rate of Pay channels}) / (\text{Sum of a la carte rate of Pay channels} + \text{Total no of FTA channels} \times \text{factor}^*)$$

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.

June 18, 2013

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