

30th September, 2014

To,
 Dr. Rahul Khullar,
 Chairperson
 Telecom Regulatory Authority of India
 Mahanagar Door Sanchar Bhawan
 Jawahar Lal Nehru Marg (Old Minto Road)
 New Delhi 110002

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 for Advertisers of 9K
 Adw (of cs) - I

Subject: Civil Appeal Nos 829-833 of 2009, namely Telecom Regulatory Authority of India Vs. Set Discovery before the Hon'ble Supreme Court of India.

Dear Sir,

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 DR J (M)

While disposing off the above appeals, the Hon'ble Supreme Court vide its order dated September 17, 2014 has stated that in "In case any of the stakeholders intend to make representations to the TRAI, they may do so positively within ten days and in any case on or before 30.09.2014".

Please find enclosed our submissions.

Thanking You,

For **New Delhi Television Limited**



Authorised Signatory

कार्यालय प्रधान सलाहकार (बी. एवं सी.एस.)
 डायरी सं. 1653
 दिनांक 9/10/14

Enclosure(s): as above.

अध्यक्ष, ट्राई 969
 डायरी सं. 7-10-14
 दिनांक

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 1370

Outline of Submissions to TRAI

1. At the outset, it is necessary to exercise forbearance so that tariff (i.e. retail sale price of channels) can be left to market forces like in the telecom sector. The first Tariff Order was issued in 2007 and since then the market has undergone a complete change. In today's scenario, there is substantial competition in the market and therefore the tariff rates can be decided by the market.
2. However, if tariff is regulated and there is a cap placed on the prices charged by broadcasters, it is necessary to regulate carriage and placement fees charged by MSOs in order to maintain level playing field conditions.
3. Carriage and placement charges are imposed by the MSOs on the broadcasters. These are input costs for the broadcasters, which have to be considered while imposing any price control on the charges fixed by the broadcasters.
4. The basic issue is that if there is a price control on how much the broadcasters can charge the MSOs for content, reverse controls should also be applied i.e. control on how much MSOs can charge the broadcasters for carriage and placement. This is necessary to maintain level playing field conditions.
5. Permitting carriage and placement charges to be determined by market forces, while regulating the prices charged by the broadcasters leads to regulation of one stakeholder without regulating the other within the same regulatory regime. This is arbitrary and discriminatory.
6. Carriage and placement fees charged by the MSOs from the broadcasters have increased exponentially. The charges paid by MCCS have increased by 300 % in over the years. It is estimated that the total amount of carriage and placement fee paid by the broadcasters is between Rs. 1200 – 1500 crores.
7. Ground realities show that commercial balance has shifted in favor of the MSOs while broadcasters are compelled to work within the constraints of price ceiling of the channels. Due to exponential increase in the high costs of distribution, operational costs have increased for the broadcasters.
8. That there is no mechanism for auditing the number of household serviced. The Distributors make under declarations and keep substantial margins with themselves. The MSOs increase the carriage and placement fees without any demonstrable increase in the reach or the viewership offered by such cable network operators.
9. Broadcasters are being compelled to divert money from content investment to distribution. This apart from being detrimental to the consumer interests and rights under Article 19 (1) (a) as they are deprived of receiving content that matches global standards, is also violative of Article 19(1) (g) as it hampers the business models of the broadcasters.

10. There is now also a cap on advertising which is imposed on the broadcasters, i.e. 12 minutes of ads per hour. This further impacts the broadcasters who have to face increased operational costs due to unregulated carriage and placement charges as against the price ceiling of subscription charges. Further, advertising revenue is directly related to content quality of the broadcaster and the public perception thereof. It is not related to the placement or position of the channel on the distribution platform. Thus, inference of nexus between advertising revenue and carriage and placement fees is erroneous.
11. Further, the movement towards DAS and DTH regime has had no bearing on the carriage and placement charges, as the broadcasters are compelled to pay carriage and placement charges for their channels even under the said regimes, without any differentiation in the charges based on the genre of the channel.
12. The Tariff Order had frozen the prices as prevalent on 01.12.2007. Therefore, till date, broadcasters are permitted to charge prices at 2007 level only while incurring huge costs and charges paid as carriage and placement fees. This has adversely affected the broadcasters. Broadcasters especially the news channels find it difficult to raise the spot rates owing to the rise in number of news channels since 2007. The cost of production has also gone up substantially due to inflation.
13. Capping and regulating the retail sale price without regulating the input cost/expenditure (which includes carriage and placement charges) leads to additional cost / burden on the broadcasters who have to incur huge costs as carriage and placement fees but are unable to fix appropriate retail price. This also has an effect on investment into content, which will ultimately affect end consumers.
14. In this scenario, a suitable regulatory model for carriage and placement charges would be to regulate transactions in any of the following ways:
 - (a) Prohibiting the MSOs from charging any fees.
 - (b) Limiting the fees charged by MSOs by imposing a ceiling.
 - (c) Linking the fees charged by MSOs to a formula that reduces the ability of MSOs to charge arbitrarily.

Carriage and placement charges may be regulated by:

- (a) Setting particular year as benchmark or base year for calculation of carriage fees and linking increases to increase in subscription fees.
- (b) Linking the fees to parameters such as reach, number of channels, and broadcaster's performance in terms of viewership in that year, consistency and efficiency of the MSO etc.
- (c) Bidding and auctioning of available frequencies for a fixed period.
- (d) Setting ceiling based on genre/band.

- (e) Make it mandatory for MSOs to disclose the broad terms and conditions along with carriage and placement fees charged from various broadcasters for different bands and frequencies in order to monitor the fees charged.
- (f) In the alternative, carriage fees if imposed should be for limited period of time during which period it should be regulated by TRAI which must be rational, non-discriminatory and based on actual, verifiable subscriber base and once digitalization is completed, no carriage fees must be chargeable at all.