

TELECOM REGULATORY AUTHORITY OF INDIA

Consultation Paper

on

Tariff issues related to Cable TV services in Non-CAS areas

Our **(TV Today Network Ltd.)** response to the issues raised in the consultation paper is as under:

1. **Are the figures in Annexure B3 representative for the different genres of broadcasters? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company.**

Ans. No, the figures given in Annexure B3 do not represent the data related to different genres of broadcasters. The data reflects a subscription revenue of 10% of the total revenue for Hindi News genre, which is far in excess of actual figure. For instance, in our case there was no subscription revenue for 2006-7 and 2007-08 and revenue data for 2008-09 would show that subscription revenue was hardly 2 to 2.5% of total Revenue from operations. Further this figure is not relevant for free to air (FTA) channels as there is no subscription revenue for FTA channels and this percentage is not a correct representative for pay channels in this category as majority of news channels are FTA..

Thus it seems prima facie that the data is not a proper representative either for English or for Hindi/ regional news channels. More importantly, TRAI should take average of FTA channels in news genre category rather than overall channels since majority of news channels are FTA. Needless to say subscription revenue is insignificant compared to carriage and placement charges.



2. **Are the figures in Annexure B5 representative for aggregators? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

Ans. Since there is no indication of any authentic source or category, we would not like to comment on same. Moreover these relate to reach and not connectivity.

3. **Are the figures in Annexure B7 representative for the national MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

Ans. As per Annexure 7, the subscriber base shown is 2 million + , however this figure is far too lower compared to industry estimates of 65-68 million homes. These figures are based on estimates which are not authentic and not verifiable. and are rather as per the convenience of operators. The fact that large scale under reporting/declaration of subscriber numbers by LCOs is there is even acknowledged in TRAI Consultation Paper itself. Further the revenue potential of a MSO varies due to the extent of reach and target audience delivered by the MSO, more the reach higher will be the target audience, which in turn will increase the revenue from carriage and placement.

. In recent years there has been a manifold increase in carriage and placement fee being charged by MSOs, which in turn has increased the revenues which is not completely captured in the Annexure B7.

It is the duty of TRAI, being regulator for this industry to provide level playing field amongst stakeholders. While there is a cap on subscription charges, there is no cap/ ceiling on exorbitant carriage and placement charges. This has resulted in an adverse economic impact on broadcasters like us which has to be addressed. There is need for certain



concrete steps to ensure fair competition and promote consumer choice which must lie at the heart of the regulatory decision making process.

The current business model of MSOs is structured primarily around carriage and placement fees whereas it should concentrate on number of households, collection from consumers, efficiency of service and subscription revenue. This business model is an anomaly and TRAI should not take the same as a basis for future decision and policy making. The thrust of the MSOs should be to collect the maximum revenue by way of subscription.

The need of hour is to have a thorough and accurate scrutiny of the market, market forces, under-reporting of numbers and monopolistic tendencies. This can be done through an independent verification based on following parameters:

- (i) Verification of records of MSO/ LCOs to determine the correct numbers. including by way of independent audit practice followed in certain countries to ascertain the real picture.
- (ii) To formulate guidelines to bring consistency among tariffs pan India depending upon similarity of market conditions, popularity and choice of genre.
- (iii) Regulatory regime in terms of licensing provisions for MSO/ LCOs to bring them under the scanner of compliances and regulation.
- (iv) Presently, both placement and carriage fee are entirely ad-hoc and are negotiated VIRTUALLY UNDER COMPULSION and not based on any logic and not linked to number of households being served by the LCO , subscription paid by households or any other data and are thus totally arbitrary, capricious and without any corresponding benefits. Thus the present situation does not lead to the correct basis of arriving at proper and correct estimate and thus does not ensure level playing field.



The rationale behind an independent verification is to have correct, accurate and bias free information which in turn will ensure more regulation in industry. This verification can be conducted by TRAI, as being the regulator for this industry it is well placed to do it.

4. **Are the figures in Annexure B7 representative for the regional MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

Ans. The figures of regional MSOs are not fully reliable. There are many MSOs which are operating as shadow of one large MSO, which has monopoly in a particular territory. It is pertinent to mention in this context that there are certain markets like Punjab, Gujarat and U.P. etc. where the regional MSOs have complete monopoly and increase the subscription charges and carriage and placement fees at will. This in turn increases their revenue and puts an additional burden on the revenue of broadcasters. Moreover, as stated earlier independent verification of this sector has to be undertaken for proper regulation of the industry. The figure captured in the annexure does not contain true picture about numbers.

5. **Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

Ans. The data shown in Annexure B9 does not seem to be correct representative figure. Any figure to be a reasonable representative of the revenue of LCOs should be based on accurate and true information relating to number of subscribers/ consumers since this is the main source of revenue for LCOs as they do not receive any placement fees. But again it is pertinent to mention here that in many areas LCOs have monopoly and they do not compete with anyone for offering services to the consumers in certain localities. The LCOs further gain in the areas



where there is intense competition at the MSO level, by incurring lesser content costs and deriving benefits like infrastructure upgradation. It is pertinent to mention here that as per industry estimates there are around 68 million cable households in India. But in reality, there is large scale under reporting of these numbers on part of LCOs, which does not give correct figures about their revenue numbers, which in turn adversely impacts the balance of the industry.

It is due to these reasons the figures in said annexure cannot be taken as representative figures for LCOs. There are to the knowledge of all the stakeholders in the industry 68 million households but the declaration being made is not even a miniscule percentage of the households being declared leading to under declaration of revenue from subscription.

6. **Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

Ans. Covered in Point no.5.

7. **What according to you is the average analog monthly cable bill in your state or at an all India level?**

Ans. There is difference among the monthly analog cable charges in different states. This difference further extends to different areas within the same city/ state. In our view based on present scenario and after taking into consideration, Figure 3.12 & 3.13 placed on page 45 and 46 of the consultation paper respectively, it can be around Rs. 167/- (Rupees One Hundred Sixty Seven Only) per month.

8. **Is the market for cable services in non-CAS characterized by the following issues:**

- (i) Under-reporting of the analog cable subscriber base**
- (ii) Lack of transparency in business and transaction models**
- (iii) Differential pricing at the retail level**



(iv) Incidence of carriage and placement fee

(v) Incidence of state and region based monopolies

(vi) Frequent disputes and lack of collaboration among stakeholders

Ans.

(i) Yes, there is large scale under reporting of analog cable subscriber base as there is no reliable mechanism available to track the same and operators tend to under reporting to increase their revenues. This is substantiated by the fact that in the consultation paper in Clause 2.1.3, the analog cable base is shown as 68 million whereas the figure reported by MSO/ LCOs is far less than this figure.

(ii) Yes, there is a lack of transparency in the business and transaction models across various levels. The payment of various indirect taxes including entertainment tax etc. are relevant in this regard. There is no mechanism to track entertainment tax (if any) being levied by LCO on consumers since the numbers are grossly under reported by them. Since under declaration is to the extent of approximately 90% as per the industry estimates, government is also losing out on revenue. This is not only affecting the industry but depriving the government of substantial sum in terms of taxes and revenue.

(iii) Yes, there is a system of differential pricing prevalent in the retail sector. The same is mentioned in page no 45 & 46 of the consultation paper. It is important to mention here that the practice of charging nominal monthly cable charges ranging from Rs. 50/- to Rs. 75/- in the slum area is quite prevalent which is not taken into consideration in the figures mentioned on page 45 & 46.

(iv) Yes, there is large scale incidence of carriage and placement fee. This is because the cable TV has capacity to carry around 70-80 channels in analog mode and at present there are around 450 channels present in the market. Distributors are charging exorbitant carriage and placement fees in which there has been a very high increase on year to year basis. The increase in carriage and placement fees is completely arbitrary and without any logic or rationale. Further, there is no assured value to broadcasters in terms of increase in subscriber base, more reach and



continued placement in return of high carriage and placement fees being charged by MSO/ LCOs. At present, there is no mechanism for determination of carriage and placement fees and same depends upon MSO/ LCO. There is no commitment for the households being serviced which is one of the fundamental reasons for the payment of carriage and placement charges. Besides, one of the consideration for the payment is a placement in a proper bandwidth but there is no sanctity attracted to it for the LCOs to transfer the bandwidth at their own sweet will. The Broadcasters are left with no remedy and should have the corresponding right to switch off channels in event of violation of any terms on basis of which the carriage and placement charges are being paid. The placement and carriage fees should be based on the return of the value for which this is being paid like the number of households covered, the quality of the band, efficient coverage without breaks. The MSOs are like any other service provider similar to service providers in the categories of business like FMCG, Auto etc. The fee should be based on the above factors.

(v) Yes, there is incidence of state and regional based monopolies. There are known cases of almost complete monopoly in Punjab, Uttar Pradesh, Gujarat and Tamil Nadu.. This monopoly is all pervasive. Even down to the lowest mile, the monopoly persists. Over every geographical location there is this malady to the extent in same cities and towns. It may even be prevalent in local pocket areas.

(vi) Yes, there are frequent disputes and lack of collaboration among stakeholders and the same is due to the monopoly status enjoyed by the MSOs due to which broadcasters and consumers are at the receiving end.

In light of above, it is submitted that the there is an urgent need to move to addressable systems which will stimulate structured growth and ensure effective competition regime.



9. **Are these issues adversely impacting efficiency in the market and leading to market failure?**

Ans. Yes, these issues are adversely impacting efficiency in the market and leading to its failure. The same is due to monopoly enjoyed by the MSOs due to which broadcasters and consumers are at the receiving end.

10. **Which of the following methodology should be followed to regulate the wholesale tariff in the non-CAS areas and why?**

(i) Revenue share

(ii) Retail minus

(iii) Cost Plus

(iv) Any other method/approach you would like to suggest

Ans. **(i) Revenue Share**

Under this method, subscription revenue generated at consumer end is shared among various stakeholders. Thus parties receive a pre determined share in revenue. This is a simple method and links share of each stakeholder to the demand of the channel. More the demand of a channel, higher will be the revenue share of each stakeholder and vice-versa. The number of subscribers for a particular channel along with price paid by the subscribers are pre-requisites of this method. In non CAS areas where there is no addressability and it is difficult to determine the retail price of a channel, this method is not very well suited. Proper addressability would help implement this. This system is also in line with those existing in advanced markets like the U.S.A.

(ii) Retail Minus Method

Under this method, retail price for a channel is fixed based on its popularity among people, price of channel and number of subscribers of a channel. It also allows the distributor to recover its cost of operations and retain a reasonable margin. Therefore, where content is popular and consumer is willing to pay a high amount for the same, retail price will be high and vice-versa. But again this method is not well suited due to lack of addressability in non CAS areas.



(iii) Cost Plus Method

Under this method, tariff is based on cost structure of the Broadcaster. Cost structure of a channel is determined on the basis of available financial and operational information. This method provides for effective recovery of Broadcasters cost and a reasonable margin. This method also requires information about the number of subscribers, which is not accurately available.

At present, the broadcasters have to pay exorbitant and unregulated carriage and placement fees to the MSOs. This fees is not at all proportionate to the amount recovered by broadcasters from distributing their channels. The rationale to link advertisement revenue with carriage fee has no basis. Advertisement revenue is dependant on several factors which include quality of content of a channel, its reach and brand image of the channel. Also the advertisement revenue depends upon market share of viewership ratings, which in turn depends upon the quality of content and investment made into content production. With carriage and placement fee rising indiscriminately, broadcasters are forced to divert money from content investment to distribution.

- 11. If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder? Please provide supporting data.**

Ans. The prescribed share should be based on number of households being served by LCO, time period of services, quality of band place and efficiency of services. MSOs, like distributors are service providers, as there are in other industries like FMCG, auto etc. Any share/ fee to be legitimate and reasonable should be based on these factors. The revenue share should be in line with the accepted international practices: 20% for the LCO, 25% for the MSO/ Aggregators and 55% for the Broadcasters.

- 12. If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?**



Ans. It should be channel wise as costs are different for every channel. Operating costs, content costs, manpower costs, software/ hardware costs etc. are different based on technology used, quality of content. Hence it will not be reasonable to treat every channel in same genre on an equal footing. Cost of one channel may be much higher as compared to another channel due to quality of content, technology etc. Further whether a Broadcaster intends to go pay or not is an integral part of that particular channel's revenue strategy. This cannot and should not be mandated through regulation. It is business decision of the channel but it should be fair and equitable for all. In evolved and advanced markets, the advertisement and subscription revenue ratio may vary from 80:20 to 50:50. The process and the Indian media should move to this end eventually.

13. Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.

Ans. Forbearance is a process under which price is determined by mutual agreement between Broadcaster and distributor. Broadcasters and distributors are free to decide the price of content, discounts, payment terms etc. In our opinion, this will give unfettered and arbitrary freedom to the MSOs to command even higher charges from Broadcasters. What needs to be seen is that even if the charges among Broadcasters and MSOs are decided, whether consumer would be willing to pay such charges. In absence of accurate figure on numbers of subscribers, how will the price be fixed. Even if forbearance has to be considered, it should be subject to government intervention. Also, Forbearance would work only in case of complete addressability being in place coupled with the last mile implementation and complete control. So these issues should be addressed first before we move to forbearance.

14. What is your view on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both,



advertisement and subscription revenue, what according to you should be the ratio between the two? Please indicate this ratio at the genre levels.

Ans. Presently there is hardly any subscription revenue for reasons as already explained including majority of channels being FTA channel . While on the other hand there has been exponential increase in carriage cost over the last few years have lead to double jeopardy. There is no corresponding benefit accrued to us against the said increase in the carriage cost. We also refer to our comments made in reply to Question 10 of this paper.

We would also like to stress here that a channel should be at liberty to decide on going pay because it is a channel revenue strategy. Regulation in this regard should be supportive and not subject to lengthy and time consuming compliances. In an evolving and a growing market, advertisement to subscription revenue ratio varies from 80:20 to 50:50.

15. What is your view on continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level? You may also suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.

Ans. On 4.10.2007, TRAI issued The Telecommunications (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 effective from 1.12.2007. The said order prescribed the charges payable for channels on 1.12.2007 and put a ceiling on 4% on any increase in charges after 1.12.2007. In present system initial price is freezed and further increase is also regulated. This pricing model is adverse to the interest of Broadcasters and predominant to the benefit of MSOs as it does not take into account the cost of content and cost of operations of individual broadcaster. Costs are different for various broadcasters due to quality of content, level of technology, manpower, infrastructural facilities. This pricing model restricts the creativity of broadcaster and



also the quality of the content. It completely ignores the popularity of a channel among consumers.

The present regime leaves the Broadcaster at the mercy of the MSOs and the ultimate sufferer is the consumer. The MSOs at their own sweet will may tamper with channels and while on one hand the Broadcaster is mandated to offer channels on a-la-carte, no such corresponding obligation is cast on the MSO, barring the consumer to the whims and fancies of the MSO.

The markets have evolved enough for the consumer to determine where value is and hence be willing to pay price if they see value. So in our opinion, free pricing should be allowed so that the Broadcaster is allowed to set the price as per its requirements. Given that there are almost 500 channels, there is adequate competition in every genre, which would prevent the Broadcaster from reckless pricing.

16. Which of the following methodologies should be followed to regulate the retail tariff in non-CAS areas and why?

(i) Cost Plus

(ii) Consultative approach

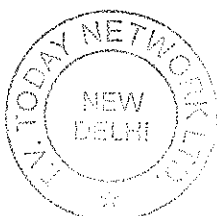
(iii) Affordability linked

(iv) Any other method/approach you would like to suggest

Ans.

(i) Cost Plus

Under this method, price is based upon estimated cost of providing cable services to the consumers. This includes cost of broadcasters, MSOs and LCOs and a reasonable margin for all stakeholders. The main requisites of this method are cost of content for each subscriber incurred by the broadcaster and cost of distribution of content to consumers incurred by MSO/ LCO. Again due to lack of addressability and under reporting of numbers by MSO/ LCOs there is no reliable data available, which in turn puts broadcasters under risk of revenue loss. Moreover, there is variation in the infrastructure set of MSO/ LCOs across country. Thus, these costs



are based on assumptions which differ from broadcaster to broadcaster and from MSO/ LCO to MSO/ LCO.

(ii) Consultative Approach

Under this method, MSO/ LCOs are required to share details related to the services being provided by them, cost of there operations, cost of infrastructure maintained by them. They are required to share these costs and accordingly justify the amount charged by them. This system is not in operation in India and is suitable to work in a licensed cable environment, which is not in prevalence at present in India.

(iii) Affordability Linked

Under this method, price is linked to ability and affordability of the consumer to pay. Various factors like income of consumers, spending capacity etc. are studied and thereafter a price mechanism is developed. Subject to certain assumptions on consumer spending habits, a affordability linked bench mark can be arrived at.

In present scenario, Affordability linked method can provide a practical solution to the problem of non-addressability. But any system to work has to consider interest of broadcasters. Given the high levels of competition, this system would work well as competition would prevent Broadcasters from taking up prices recklessly and affordability would ensure that consumer prices are kept under control.

17. **In case the affordability linked approach is to be used for retail tariff then should the tariff ceilings be prescribed (i) single at national level or (ii) different ceilings at State level or (iii) A tiered ceiling (3 tiers) as discussed in paragraph 5.3.23 or (iv) Any other.**

Ans. Affordability linked approach with 3 -tier ceiling can be used. The tiers in this case can be developed by calculating an average affordability tariff pan India ("Weighted Average") based on spending habits of the consumers, willingness for a particular genre, popularity of channels, content costs etc . The classification of tiers can be as follows:



Tier I: States with affordability over the Weighted Average

Tier II: States with affordability similar to the weighted average.

Tier III: States with affordability less than weighted average.

This allocation will ensure that the states having similar spending capacity are grouped together and tariffs are calculated accordingly. But again interests of broadcasters are to be kept in mind while deciding tariffs. Any step without considering the interest of broadcasters will be adverse to their interest.

- 18. In case of retail tariff ceiling, should a ratio between pay and FTA channels or a minimum number of FTA/pay channels be prescribed? If so, what should be the ratio/number?**

Ans. It can be decided taking into consideration needs in local market, demand of channels of particular genre in a territory and other regulatory factors and more importantly the benefit to the end consumer.

- 19. Should the broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs? If yes, should the existing system continue or should there be any modification to the existing condition associated with it?**

Ans. Any step in this direction should be taken after considering the interests of broadcasters. The tariff order dated 4.10.2007 issued by TRAI has directed broadcasters to offer their channels on a-la-carte basis and price in this respect has also been frozen and further increase is also regulated. But the ceiling/ cap on the price to be charged for the channel should be fixed taking into consideration market forces, cost of content, operational costs, popularity of channels, technology etc. which varies from channel to channel. This concern is further substantiated by the fact that due to problem of non addressability there is no mechanism to determine the actual number of subscribers and therefore any cap/ limit



without taking into consideration the practical issues is prejudicial to interest of the broadcasters. We are of view that in absence of addressability, it is not viable to apply a-la-carte provisioning on broadcasting industry.

Till the issue of addressability is sorted out, the current restriction of offering the channels on a-la-carte basis with price cap by broadcasters to MSOs, is totally discriminatory and against the interest of broadcasters as there is no regulation on price being charged by MSO/ LCOs.

We suggest to relax the restrictions on going pay, relax the freeze on bouquet and existing channels be allowed to go pay while in the same bouquet. Also, there are leakages in a bouquet which need to be controlled.

While the broadcasters have to adhere to a 'must provide' obligation qua MSO/ LCO and are compelled to offer all their channels to the MSO/ LCO. There is no reciprocal 'must carry' obligation on part of MSO/ LCO to pass the signal to viewer. In other words, broadcasters have no choice but to offer all channels or any channel as demanded by the distributor subject to payment of subscription fees/ charges at the bouquet or a-la-carte rate as prescribed under the tariff order. However, the distributor is not obligated to offer all the channels to the subscriber, thus depriving him of choice.

20. How can it be ensured that the benefit of a-la-carte provisioning is passed on the subscribers?

Ans. Addressability will ensure that the relevant benefit is passed on to the subscriber. LCOs form their own bouquets based on their business interests and this derives consumers of choice of various channels. The consumer should also be given a choice to decide the channels individually on a-la-carte basis.



21. **Are the MSOs opting for a-la-carte after it was mandated for the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10.2007. If not, why?**

Ans. No, in practice the MSOs are not opting for a-la-carte. It is so because they need more channels from various aggregators so that they can target audiences in various categories. Moreover, this gives them the option to have more channels at a lower price. They make bouquets as per their own discretion which is prejudicial to the interests of Broadcasters and consumers and this benefit is at cost of the consumer who are ultimately left at the hands and discretion of the MSO/ LCOs.

22. **Should the carriage and placement fee be regulated? If yes, how should it be regulated?**

Ans. Yes, there is an utmost requirement to regulate and control the carriage and placement fee which is being increased exorbitantly by the MSOs as evident from approximately 70% increase in carriage and placement fee over the period of last 3 years without any corresponding benefit to Broadcasters. Till date there is no basis behind such a high carriage and placement fee.

One way can be to determine the costs on basis of reach and popularity of a channel. We suggest that a bench mark fee be frozen by taking a **year (2006-07)** as base taking into consideration all relevant market factors like growth of cable industry and growth of subscriber base. There need to be a cap on increase of carriage and placement fee from year to year. The government shall introduce penal provisions in case of any arrangement made between the broadcaster and MSO which violates the cap fixed in respect of the carriage and placement fee. It is also suggested to further cap the placement fees for various bands like prime, colour and S accordingly which will prevent any unhealthy and detrimental conduct. Also, if a broadcaster is willing to pay the prescribed fees for a band, there should be must carry clause i.e. it should be mandatory for the cable operators to run the channel on that



band. This should be specifically provided in the regulations with penal consequences for non compliance.

The carriage and placement fees should be shown separately as a component of operational expenses, since it is most crucial and consistent component of operational costs for the news broadcasters. TRAI should regulate carriage and placement fee in same manner as it is regulating subscription revenue. The data does not show any corresponding benefits accruing to broadcasters in respect of carriage and placement fees being paid by them. Both the carriage and placement fees are completely ad-hoc and not based on any logic and not linked to number of households, subscription paid by households or any other reliable data. These are totally arbitrary, capricious and without any corresponding benefits.

As stated earlier, while the broadcasters have to adhere to a 'must provide' obligation qua MSO/ LCOs and are compelled to offer all their channels to the MSO/ LCOs. There is no reciprocal 'must carry' obligation on MSO/ LCOs. As a result, there is no compulsion to pass on the channels to subscribers. This means that broadcaster has no choice but to offer all channels or any channel as demanded by the distributor subject to payment of subscription fees at the bouquet or a-la-carte rate which is prescribed under tariff orders. However, the distributor is not obliged to offer all channels to the end subscriber, thus depriving the subscriber of choice. The tariff order of 1.10.2004 has frozen the tariff charges payable by a distributor to the broadcasters as on 26.12.2003. This remained in force for a period of five years barring a seven percent increase on account of inflation.

Further, there is no rationale to link the issue of advertisement revenue to carriage and placement fees. The present issue is totally bilateral where the broadcasters have to pay exorbitant and unregulated carriage fees to the MSOs. This fees is not proportionate in any way to the amount recovered by broadcasters from distributing their channels. The advertisement revenue has no basis to be linked with carriage fees.



Advertisement revenues are dependent upon several factors like quality of content of a channel, reach of a channel and its brand image. The advertisement revenue depends upon on the market share of viewership ratings, which in turn depends upon the quality and investment in content creation. With carriage and placement fee growing indiscriminately, broadcasters are forced to divert money from content investment to distribution. The incidence of high carriage and placement fees has hit the broadcasters adversely. The demand of MSOs is unjustified as it shifts the balance of commercial parlance entirely in favour of the MSO wherein they make limitless demands without any cap, ceiling, control and regulation whereas the broadcasters are compelled to work within the constraints of ceiling when it comes to pricing of their channels. Thus, a regulation of carriage and placement fees will ensure a level playing field with parity between the bargaining powers of broadcasters and MSOs.

23. Should the quantum of carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?

Ans. Yes, it shall be linked to parameters such as:

- (i) Number of households/ increase in households
- (ii) Placement at designated and agreed band.
- (iii) Quantum of digitization achieved by the MSO.
- (iv) Consistency and efficiency of service

The MSO/ COs should be paid carriage and placement fees based on following parameters:

- (i) Number of households serviced
- (ii) Price paid per household
- (iii) Placement of channel

This in turn will ensure that the broadcasters get value for their money spent on carriage and placement fees. If there is a carriage fees, there should be a cap on annual increase and a maximum of 4%-5% annual increase should be allowed. This increase should be linked to the



increase in number of households serviced and level of digitization done. A cut off year can be considered for placement fees as benchmark or base year and increase should be calculated from that year. This should be linked to subscription increase percentage prescribed. Due to non regulation of carriage and placement charges, MSO/ LCOs enjoy an unfair advantage/ benefit. They charge exorbitant amounts as carriage and placement fees.

Since there is no audit of number of households actually serviced by a distributor and in view of rampant under declaration of number of subscribers/ households by the distributor to broadcaster while negotiating the subscription revenue to be paid, the revenue potential of broadcaster drops significantly due to under declaration. In addition distributor demands and extracts carriage and placement fees from broadcaster which is not regulated and is more of an "extraction" fee, since the broadcaster has no leverage. There is also a cap on charges payable by a subscriber to the cable operator as per order on 1.10.2004, but there is no cap on carriage and placement charges levied by MSO/ COs on broadcasters over the years.

Vide Notification No. 4 of 2009 dated 17.03.2009 although words carriage fee and placement fee have been defined, the regulation is silent on regulating/ capping/ ceiling these charges levied by distributors. This problem becomes more acute and severe for broadcasters like us who are earning no subscription revenue and pay out of carriage and placement fee is unregulated. This scenario becomes disproportionate to any revenue earning of the broadcaster. Since there is no regulation to determine the number of subscribers, there is no incentive for FTA channels to go pay. Over the period of time our carriage and placement fees have increased manifold.

The regulation of carriage and placement fee is also imperative due to demand-supply mismatch. The capacity constraints of analogue cable create an 'analogue choke' whereby only 106 channels out of present 450 ultimately reach the subscribers. Over and above this the broadcasters have to adhere to a 'must provide' covenant whereby they are compelled



to offer all their channels to the MSOs. However, it is not mandatory for MSO to adhere to 'must carry' covenant. They are under no compulsion to distribute all channels that they receive from broadcasters. Further, there is a ceiling (Rs. 5/- per channel, per subscriber, per month) on the amount that broadcasters can charge per channel whereas there is no ceiling on the amount that the MSOs can charge as carriage fees. This lack of parity results in following adverse consequences for broadcasters:

- (i) The MSOs have limitless bargaining powers that enable them to charge exorbitant amount as carriage and placement fee from broadcasters. However, having paid these exorbitant fees, the broadcasters have no guarantee that their channels will enjoy desired placement, due to lack of 'must carry' clause.
- (ii) The subscriber/ consumer also becomes a victim as there is no guarantee that the MSO will further distribute all the channels that they receive from broadcasters. This often results in non-carriage of news channels to subscriber homes, which is a direct breach of fundamental rights of the subscribers.
- (iii) There is a regular practice among LCOs to violate the channel placement agreement with Broadcaster and shift the channel to a lower band or even switch off the channel in case a better deal is offered. The contravention is not only of the Agreement but also the consideration paid by the Broadcasters is frustrated without any remedy left in the hands of the Broadcasters because of the present skewed regulation which are in favour of the MSOs.

Assuming that the carriage fee can be levied, it should be based on following parameters:

- (i) Number of household services by the MSOs.
- (ii) Price collected per household
- (iii) Placement of channel
- (iv) Period



The payment of carriage and placement fees should be made only via legally binding agreements between the parties. The MSO/ LCOs accepting carriage and placement fees should be subject to regular or surprise audits to determine the usage of the amount received.

We strongly feel that regulation of carriage and placement fee is only weapon in hands of authority to ensure smooth and speedy digitization of Cable TV in country. Further there should be correlation between carriage and placement fees linked to the number of households reached by the MSO through the LCOs. This will not be a level playing ground but will reveal the actual number of households reached. This will require proper revelation of revenue which in turn will be for the benefit of government in terms of revenue and collection of taxes.

24. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?

Ans. Already covered in Point 22 & 23.

25. Is there a need for a separate definition of commercial subscriber in the tariff order?

Ans. No comments.

26. If the commercial subscriber is to be defined in the tariff order, then does the existing definition of 'commercial subscriber' need to be revised? If yes, then what should be the new definition for the commercial subscriber?

Ans. No comments.

27. In case the commercial subscriber is defined separately, then does the present categorization of identified commercial subscribers, who are not treated at par with the ordinary subscriber for tariff dispensation need to be revised? If yes, how should it be revised?



Ans. No comments.

28. Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?

Ans. No comments.

29. Do you agree that complete digitization with addressability (a box in every household) is the way forward?

Ans. Yes, the same is the need of hour and is very essential of a healthy and a fairly competitive market. In fact Broadcasters have been over years demanding that this issue needs to be addressed on urgent basis which in turn would help solve number of issues. Addressability will help in effective and efficient management of this industry and will provide accurate subscriber data. It will provide a level playing field for all stakeholders including broadcasters, distributors, MSOs and COs. Every digital platform must carry all news channels and bundling of news channels should be based on genre and other parameters like viewership, market share and reach. News channels have a social obligation of providing information to viewers. There should be a regulation that in digital or analogue cable network, all news channels should to be bundled together in one frequency band just like DTH. Atleast top 5 news channels (based on TAM market share) should be considered for this. Also top 3 channels of a genre must be available below 300 MHz (S-20 Band). This would ensure that a large part of population has access to news channels and will reduce the pressure of placement fees payment on news channels. The regulator must ensure digitization, which will remove all blocks on channel capacity and will do away with carriage and placement charges as there will be no demand supply mismatch. To begin with, there should be mandatory digitization in top 100 cities and consumers should be educated about the same. There should be no disparity among various digital platforms like HTS, DTH and IPTV for carriage and placement fees. These steps will yield



tremendous benefits for all stakeholders some of them are listed as under:

For Broadcasters

- (i) Subscription charges based on correct numbers
- (ii) Proper regulation of carriage and placement charges
- (iii) Enhancement in quality of content
- (iv) Stimulate growth and development of the industry
- (v) Increase in subscription revenue
- (vi) Savings in carriage and placement charges

For MSO/ CO

- (i) Ensure growth and development
- (ii) Channels on a-ala-carte basis from broadcasters
- (iii) Helpful in achieving digitization

For Consumers

- (i) Efficient and effective services
- (ii) Reduction of costs
- (iii) Choice of channels
- (iv) Healthy competition

30. What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.

Ans. The switch off shall happen in a phased manner whereby the complete digitization is achieved by March 2017. The roadmap to this can be as under:

March 2012 - All cities having population of more than 50 lac as on a pre determined date.



- March 2013 - All cities with population of more than 10 lac but less than 50 lac.
- March 2015 - All cities with population of more than 5 lac but less than 10 lac.
- March 2017 - All cities with population of more than 1 lac but less than 5 lac.

Pan India digitization achieved in March 2017, over a period of 7 years from now.

31. What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs and Customers)?

Ans. Government through Investment, Subsidy, tax and cess
Broadcaster through Digitization fund
MSO/ LCO through digital head ends and receiving stations and appropriating part of carriage and placement fees towards digitization.
Consumers through tax/ service charge on subscription charges
Cess on purchase of Televisions.

32. Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?

Ans. Yes, there should be a set standard for digitization so that the entire process can be regulated. It can have following parameters:

- (i) A pre determined date for analog switch off.
- (ii) Complete and clear roadmap to oversee the entire process.



- (iii) Requisite training programmes and seminars to explain the benefits of digitization to all stakeholders
- (iv) Incentives in form of financial and regulatory for digitization
- (v) Licensing of MSO/ CO so as to regulate the area of operations.
- (vi) Penalties for not complying with any provisions in this regard.
- (vii) Set standards for technology and ensure that these are maintained in state of art form.
- (viii) Removing service tax for Broadcasting sector.

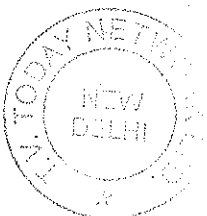
33. What could be the possible incentives that can be offered to various stakeholders to implement digitization with addressability in the shortest possible time or make a sustainable transition?

Ans. For achieving the objective of complete digitization with addressability, following incentives can be provided to stakeholders:

- (i) Increase in placement and carriage charges to be paid to MSO/ LCO shall be linked to digitization.
- (ii) To increase FDI limit in broadcasting sector to 74%.
- (iii) To reduce custom duty and VAT on equipments required for digitization.
- (iv) Sharing of the cost of Set Top boxes.
- (v) Customers should not be required to change Set Top boxes while switching from one service provider to other.
- (vi) To allow LCOs to downlink 2-3 channels in their area catering to the taste and likings of the genre in that area.
- (vii) Other monetary incentives from government in form of concessions and rebates.
- (viii) Any other benefit/ incentive that the government thinks appropriate.
- (ix) Service Tax exemption for Broadcasters.

34. What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?

Ans. The structure of license should be such that monopolies are ruled out from the market and at the same interest of all concerned is safeguarded.



But there should be an eligibility and compliance criteria and penalties for non compliances to provide a level playing field and to secure the interests of various stakeholders. It is also important to license LCOs for ensuring better implementation at the last mile, monitoring of 100% declaration and ensuring that all the taxes are paid by them to national exchequer.

35. What would be the best disclosure scheme that can ensure transparency at all levels?

Ans. It can be same as in force in CAS notified areas. Also we should ensure that both subscription revenue and carriage fees are based on the same criteria per household. This will ensure complete declaration.

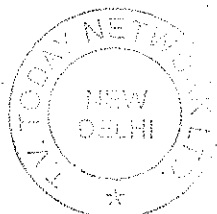
36. Should there be a 'basic service' (group of channels) available to all subscribers? What should constitute the 'basic service' that is available to all subscribers?

Ans. Yes, there should be a basic service available to all subscribers. It can be in following form:

- (i) DD channels
- (ii) Popular FTA channels having wide popularity in the area catering to various genres.
- (iii) To require every consumer to buy certain minimum quantity of Pay channels so that interests of all stakeholders are not adversely affected.
- (iv) To fix a price for basic services.
- (v) News bouquet

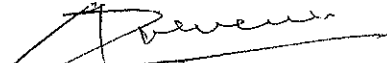
37. Do you think there is a need for a communication programme to educate LCOs and customers on digitization and addressability to ensure effective participation? If so, what do you suggest?

Ans. Yes, there should be extensive and detailed communication programmes specially covering LCOs and consumers so as to apprise them with the



need and benefits of digitization. It is very important to make all stakeholders understand the objective and purpose of digitization. Only then all benefits of digitization can be fully realized.

For TV Today Network Ltd.


(A.K. Vermani)

GM (Legal) & CS

