

COMMENTS ON TRAI CONSULTATION PAPER

ON DISTRIBUTION OF TV CHANNELS

FROM BROADCASTERS TO PLATFORM OPERATORS

Lt Col (Veteran) VC Khare, Cable TV Industry Observer

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Introduction

1 Television program means exhibition of feature films , dramas, advertisement clips, news, sports, lifestyle, science and technology, tourism promos, events and serials in real time or through any storage and accessed replay device.

2 In the spirit of Cable Act 1995 Amendment 2011, PAY TV programs(*Distinction needs to be made in the connotations used pertaining to Channel and Program. 'Channel', technically, means a space, 7 or 8 MHz wide, in the 47-862 MHz RF spectrum, required to transport one uncompressed program or several compressed programs in the carrier envelope in the same spectrum space. 'Program' means any such TV content transmitted over the wireless or wireline broadcasting network, such as a hybrid fiber+coax cable TV network for viewing on domestic TV receivers*) for which the Headend Service Provider is required to make payments to the Broadcaster while 'Free to Viewer' TV content is that for which the Headend Service Provider is NOT required to make any payments to the Broadcaster. However Free to Viewer content forms part of 'Basic Tier' in programs delivery.

3. In DAS environment, a close look at the value chain in the SMS (Subscriber Management System) would reveal that there are four entities in the subscription appropriations i.e. :-

(a) Broadcaster means any entity including an individual, group of persons, public or body corporate, firm or any organization or body which owns and operates a wireless terrestrial or satellite radio or television program station that is licensed by the appropriate authority for electronically scattering such programs in a particular area for reception, by an appropriate device, and which is providing programming services. It includes their authorized distribution agencies(created as buffers between content seekers and Broadcasters without putting the extent of representation in public domain probably to isolate the Broadcaster hard core in competition litigation, particularly when PAY content provision is required to be fair, impartial and non-discriminative). All Broadcasters in India operate without a Broadcasting Law passed in the Parliament. However, under Cable Act Rules 2012, Rule 10 provides that Broadcasters shall

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comply with regulations issued by the Authority (TRAI). The only rein in the hands of the Ministry of Information & Broadcasting is revocation of downlinking permission, whereinafter no network shall transport their programs.

(b) Headend Service Provider (Popularly known as MSO) means any operator connected with provision of television programs from resident program distributor, in India, for transporting multichannel programs to end viewer including but not limited to technical aggregator i.e. MSO/Headend Service Provider (*Headend Service Provider installs the SMS and CAS Gateway at the Program aggregation Headend. Subscriber details are extracted from Subscriber Application Form and punched into the database server at the Headend. Thereafter the accounts department of the Headend Service Provider allocates a unique customer ID, linked to the cable operator in whose network the subscriber resides, and this Customer ID gets paired with serial number of the set top box, as well as the viewing/smart card in carded decryption devices, or MAC ID in cardless CAS. Where there are more than one set top boxes linked to one customer ID, each box is similarly paired but billed jointly to generate only one bill per customer ID.*)

(c) Cable Operator means any person with such eligibility conditions as may be prescribed, who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network. Cable Operator, in DAS environment, implies total absence of Headend technical activities in general and aggregation in particular. It may be noted that Cable Operator registration is entrusted to the Department of Posts whereas Headend Service Provider registration rests with the Ministry of Information & Broadcasting.

(d) Subscriber ' means any individual, group, public/private company, other organization or body, who has been allotted a unique identification number against his application form for billing in the subscriber management system and one who views program of cable television network at a place indicated by him/her to the cable operator in the service request application form, through a viewing device, which also has a unique serial number without further transmitting it to any other person. and

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receives an itemized bill for services availed. 'Subscription' means the amount payable by the subscriber to the Headend Service Provider, through an itemized bill.

An Essential Review of The Past

4 In absence of a Broadcasting Law, in India, the Broadcasters actions seem to be self styled and arbitrary. Cable TV Networking is NOT yet recognized as Multi Program Wireline Broadcasting, though its character meets all ingredients of 'BROADCAST'.

5. Prior to 1994, Cable Networks (Short operating range radii with few programs, erected by Cable Operators) too, like Broadcasts, were NOT legal in India. It is the ordinance, and later the statute, in 1995 legalized this service. Then the entity MSO surfaced, followed by representation of the present shape of Broadcasters, other than 'Prasar Bharati'. As the connectivity on Cable Networks built up and content programs (*in analog transportation each program occupied one TV channel spectrum width of 7 or 8 MHz and hence in that domain 'channel' was synonymous with program*) proliferated, ill laid networks posed the problem of equally clear picture and sound delivery on all programs transported, as distance, in terms of cable length from the Headend increased. The MSOs, with stronger financial muscle, motivated the Cable Operator (popularly called LCO) to shut down their Headends, take multi-program feed from their better, and hence costlier, Headends to be distributed over their networks, without any rectification of networking infirmities. Then, in Oct 1994, STAR Movies was about to be launched as a PAY content when Cable Ordinance was promulgated. Next to follow was ESPN and Zee Cinema. Gradually, entire RF spectrum from 47-862 MHz got used up with 106 programs occupying that space. Around 1997, the phenomenon of addressability (i.e. a facility to enable or disable a viewing device selectively and remotely), at Headend level, was introduced, arbitrarily by PAY TV content providers. The then agreements started with approx 30% connectivity declaration. Thereafter, arbitrary PAY TV tariff hikes started on the saga of 'under-declaration' leading to introduction of CAS in 2002. Till then REGULATOR, ie. TRAI was NOT dealing with Cable TV. CAS implementation, though partial, could NOT be implemented because (i) Basis for pricing of PAY TV content was never disclosed and (ii) 'a-la-carte' rates for PAY TV content were NOT published by PAY TV Broadcasters. CAS, therefore, could not be implemented by 13 Jul 2003.

6 TRAI, was appointed the REGULATOR for Cable TV Networking too and rate of Rs 5.00 per PAY channel per subscriber per month was fixed by TRAI, Regulations started getting formulated but without much compliance by Broadcasters till introduction of the provision of Downlinking permissions by the MIB was introduced in 2006, with a clause for cancelling that permission by the MIB, if TRAI so recommended.

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7. During the process of regulation over the last 7 years, TRAI stipulated that Content will be made available in a fair, non-discriminative and impartial way. A charter of 30 days was laid down for the Broadcaster to state reasons for denial of content, if any, in writing to the content seeker. Realizing that Cable TV business is PAY TV content intensive, and hence unviable without PAY TV content, it appears that in order to avoid litigation in competition courts, a buffer, i.e. representatives, which have now grown into aggregators, were created. This creation, and its terms of reference, were never revealed in the public domain. The aggregators, with or without the consent of the Broadcasters, imposed their own procedures to utter discomfort of the content seekers i.e. Headend Service Providers.

12. It may also be noted that explanatory memorandum has listed the trends in commercial arm twisting only. The technical speed breakers do not seem to have caught their attention.

13. The aggregators have set up a practice, for denial of content, of inspecting the headends and issuing infirmity notes on issues outside the mandated norms by the TRAI in terms of schedule I of Regulation no 9 of 2012 or the Indian Standards on Set Top Boxes, which have not included watermarking, covert finger printing, enhancement of font sizes and colour, varying co-ordinates on the TV screen, finger printing or messages disappearing even when power ON/OFF key is pressed on the remote hand set(expecting displays to continue even when STB is powered off to result in blank blue TV screen) etc and Geo Fencing in case of HITS operator (a system which is not YET commercially deployed anywhere and pre-judicial to the known use of DTH (subscribers receiving services outside india, when in the foot print of the satellite casting, while physical address in records pertains to India).

Presnt Scenario

14. It would be evident that most practices employed in control of PAY TV content, including the system of aggregators have been engineered by PAY TV Broadcasters, in absence of a Broadcasting Law in India, for use in Cable TV networking. The power to make rules, for Cable TV domain, is enshrined in Sec 22 of the Cable TV Networks Regulation Act 1995 and amplified in Cable TV Networks Regulation Act Rules 2012- Rule 10 wherein TRAI has been entrusted to frame regulations, which are also to be conformed to by Broadcasters.

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15. In view of para 14 above, wherein actions by TRAI and MIB have been reactive and not pro-active, there is a need to limit the role of the aggregators to that of a service kiosk for providing business related stationary, forwarding correspondence to broadcasters, communicating their responses to the content seekers and maintaining serviceability of IRDs issued to the service providers, which are nothing but headend Level addressable STBs, i.e. satellite receiver top box. They may also pursue delivery of invoices for service providers and following up payments. The aggregators should only deal with forwarding requests from content seekers.

16 The words ‘ including their aggregators’ need to be deleted from the definition of broadcasters.

17. In the spirit of mandated digitalization across the country by the end of 2014, and unviability of cable TV services without PAY TV content, the same needs to be mandated as ‘must provide’ to all Headends carrying registration from the MIB. Denial/delays, if any, should be communicated under two different heads i.e. (i) conformity to schedule of Regn No 9 Of 2012 – Schedule I and (ii) desired features outside the mandated requirements in the regulations for ease of adjudication in TDSAT, if necessitated

Possible Remedies

18. The statute on DAS, in spirit, envisaged the following :-

- (a) Demise of analog transmission from Headend.
- (b) Transmission of all content from Headend in digital, encrypted and authentication controlled through SMS.
- (c) Viewing at subscriber end only through an addressable STB.
- (d) Provision of service against a written application from subscriber to the service provider, indicating signed choice on seeking STB and initial choice of programs against a rate card to be provided by the service provider. against which a UID is generated for

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the subscriber. This form, with terms and conditions for service printed on reverse of the form, was also to serve as an agreement between Headend Service Provider and the subscriber.

(e) Release of a duly paired Unique ID of subscriber, Serial Number of the STB and Serial No of the Viewing Card / MAC ID of the STB (in case of cardless CAS), programmed for initial choice of content mentioned in the application form, for installation at the location indicated in the application form.

(f) Simultaneous punching of subscriber details in the SMS so that functionality of the STB can be tested before leaving the warehouse (*As a good engineering practice live feeds are made available at the warehouse to check this functionality.*)

(g) Physical carriage of duly authorized and checked STB at subscriber premises for installation and intimating completion of the installation to the Headend for itemized billing to commence.

(h) Generation of all MIS regarding status of installed and active STBs, itemized bills generated with breakdown details of amounts payable, taxes charged and accrued for deposits with Govt, amounts payable to Broadcasters, Service Provider and Cable Operator, Ageing accounts etc.

(i) Compliance of Customer Relations and EOL (end of Line) obligations under TRAI Regulations No 12 and 13 of 2012 by the Headend Service Provider.

19. One fallout of DAS statute is that PAY TV charges are payable by the Headend Service Provider to the Broadcaster against a duly signed inter connect offer. This meant that rates payable to the Broadcaster and those charged the Subscriber could differ and that rates payable to the Broadcaster were necessarily not to be disclosed to the Subscriber. Cable Operator, Headend Service Provider, Broadcaster/Aggregator and Service provider's distributors, if any, were to appear as entities in the SMS payments management electronic register of the SMS at the Headend.

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20. In view of the above, possible remedies, even in absence of a Broadcasting Statute, are :-
- (a) Basis for pricing of content (aggregate cost of content, transportation cost, access cost and consideration as cost plus divided by 30% of 120 million connectivity can indicate minimum wholesale price of content, while true connectivity in DAS environment would yield additional inflows for the remaining 70% over a period of time) needs to be stated.
 - (b) 'A-la-Carte' rates for content to be promulgated by the PAY TV Broadcasters.
 - (c) ICO to be signed by the Broadcaster, and NOT the aggregator whatsoever, for actuals at 'a-la-carte' rates multiplied by consolidated programwise elected viewing data of the subscriber universe, and their payments less deduction of permissible taxes at source. The ICOs to indicate validity and other terms and Conditions.
 - (d) Introduction of 'Must Provide' clause for content to DAS Headends registered with the MIB.
 - (e) Prohibition against introduction of any procedures by the Broadcaster or the aggregator without ratification and promulgation by the TRAI.
 - (f) Provision for reporting disputes/unfair practices first to TRAI before approaching TDSAT for remedies within a time frame. In fact TRAI should suggest reference to TDSAT if the issue cannot be remedied.
 - (g) Really treating verdict of nominated authority(presently only BECIL) for conformity of Headend to Schedule I of TRAI Regulation No 9 of 2012, as final, to provide content first and then litigate with TDSAT.
 - (h) Deletion of the term 'aggregator' from the definition of Broadcaster in the rules.
 - (i) Charter of Aggregator to be displayed prominently in the premises of the aggregator.

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Conclusion

21. Incorporation of contents in para 5 and 6 of the consultation paper, as well as remedies, suggested in para 20 of these comments (because they are additional), may be considered to rectify the existing scenario.