


ABP
NEWS NETWORK
BY HAND/ELECTRONIC MAIL

March 04th, 2016

To,

Principal Advisor (B&CS)

Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002

Dear Sir,

Re: Submissions of ABP News Network Private Limited to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on Tariff issues related to TV Services

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the **Tariff issues related to TV Services.**

In regard to the present consultation process, we submit that we have perused the Consultation Paper carefully, specifically, with respect to the wholesale tariff, carriage related issues and Regulatory framework, contained therein. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to (a) appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,



Avinash Pandey,

CRO & COO

ABP News Network Private Limited

Encl: As above



1



ABP News Network Pvt. Ltd.

(formerly Media Content and Communications Services (Ind) Pvt Ltd)

A-37 Sector 60 Noida U.P. 201 307 India T: +91 120 407 0000 F: +91 120 407 0211 W: www.abplive.in

CIN No.: U92132MH2002PTC136072

BY HAND/ELECTRONIC MAIL

March 04th, 2016

Re: Submissions of ABP News Network Private Limited to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on Tariff issues related to TV Services

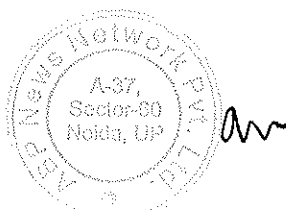
Kind Attention:

**Principal Advisor (B&CS)
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi – 110 002**

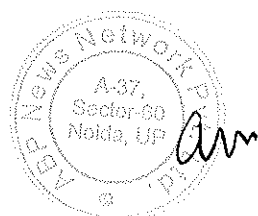
SUBMISSIONS:

The Indian Pay-TV Industry as of today has grown manifold and is one of the most competitive and diverse pay TV markets in the world with thousands of MSOs and cable operators, private operating DTH systems, IPTV offerings, HIT's Offerings, Mobile Television etc. The cable and satellite TV industry operates in a highly competitive marketplace where there is furious competition among the channels and various TV delivery systems for eyeballs and consumer rupees. The ever-increasing competition has led to high growth of subscribers and has put pressure on tariffs, which have seen a sharp drop over the years. From 2004, when broadcasting and cable services came

2



under the purview of TRAI, to 2016 when TRAI has released this Consultation Paper market dynamics have changed significantly, with the advent of addressable digitalization. What is required at this point is that TRAI takes note of the metamorphosis in the Pay-TV industry over the past few years and determine whether continued regulation of tariff is even warranted. As per the current market situation it is the Platform Operators who have the exclusive right to price and package the Channels of the Broadcasters and offer the same to subscribers. In accordance with the existing Regulations it is seen that the Channels of the Broadcasters are available to the Platform operators at a massive discount irrespective of the coverage the Operator affords to the Channels. As on date there is active competition at all levels of the Pay TV industry to discourage perverse pricing. In the coming two years, the digital addressability will increase further giving rise to greater competition thereby, benefiting the consumer ultimately by providing him price efficient services. Therefore it becomes pertinent that a sunset date be set for lifting the ceiling on the tariff letting the market forces determine the rates for themselves. That TRAI is cognized of the fact that there is now effective competition at all levels in the Industry, signifying that the Indian Pay-TV industry is ready for **forbearance**. Even a study of the International markets will go on to show that the Regulators take a lenient view thereby ensuring active competition in the market and leave decisions like wholesale rates, packaging choice to market players. It is submitted that the wholesale Non DAS ceiling currently applicable to analogue platforms, and used as reference point for addressable systems, should be withdrawn, leaving tariffs to be determined by market forces. TRAI should adopt forbearance when it comes to pricing as there is enough competition in the market and therefore there is no reason to put a cap on pricing of channels. A study of international markets has shown that the best regulated markets use a "light touch", creating an open environment that fosters active competition. They, leave decisions regarding program distribution, content choice, packaging, retail and wholesale rates, to market players. Market-friendly regulation also benefits consumers, who, in the best regulated markets (such as the United Kingdom and the United states), have access to new forms of content, new technologies, and more choice in what they view on what device, and when. Huge investments are necessary to create these consumer benefits; and investments flow where regulations permits predictable, economically sensible returns. Businesses need the freedom to operate; they need the trust and confidence of regulatory bodies that given the right operating environment, they will operate on terms that are mutually negotiated and beneficial for themselves as well as their stakeholders and trading partners.



Under the Indian legal system, all broadcasters are bound by the terms of the Uplinking and /or Downlinking licenses issued to them by the MIB and the policy guidelines laid down by the MIB and modified from time to time in addition to the other specific laws to which they are subject. At the outset it is pertinent to highlight certain key considerations:

- Consumers must have access to every channel – accordingly, while broadcasters “must provide” a channel, the “must carry” provision should be implemented in letter and spirit. Even with the advent of digitization it is seen that the DPO’s especially MSO’s create an artificial blockage in their headend to deny access to the Broadcaster and arm twist to extract carriage and placement fees. In this scenario even though Broadcasters take painstaking and expensive effort to reach out to consumers but in reality get no “must carry” protection.
- Operators need to have complete say in “bouquets of channels” – however, they must offer channels beyond the bouquets based on consumer demand.
- To ensure pricing transparency, its fundamental structure ought to be determined by the content owner – this pricing will be strongly influenced by market demand.
- Wholesale rates have no connect with reality
- “Must provide” ensures every channel is available to Platforms
- Consumers are subjected to what a DPO decides to provide in a bouquet without a “must provide” protection available to the consumer
- Channel visual and audio quality is same and is Platform independent.
- Broadcasters have no visibility to consumer commerce and its vast differences across Operators leave Broadcasters confused. This stifles investment in differentiated or innovative content
- Channel priority to broadcaster OR consumer demand for channel has no bearing.

Even where TRAI attempts to reflect the market in its Regulatory formulations, the enactments tend to make assumptions that may or may not be reflected in fact. For example, the Regulations assume addressable systems are inviolable and sacrosanct, irrespective of whether or not such addressability actually exists on the ground in view of the fact that there is hardly any legislation or other mechanism that would enforce and ensure addressability in real meaningful terms. To the extent that the TRAI believes there is justification for a continuation of the statutory Regulations, whether over the short or long term, it should include specific recommendations designed to limit



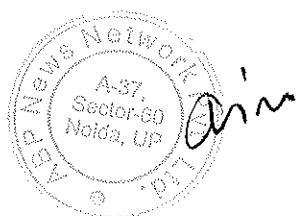
the various market-distorting aspects of those Regulations, including but not limited to those that have been raised herein. Also a Sun Set Clause ought to be introduced to give out the likely tenure of such Regulations. Yardsticks of effective competition should also be formulated. As we tried our best to comprehend the propositions articulated in the paper we realized that the same were of far reaching consequences and would have a huge impact in our industry going forward. Given the significance of the topic being deliberated herein and the sheer magnitude of the impact it can have on our industry together with the paucity of time we have attempted to put together a preliminary submission on the various queries posed in the paper which by no means is indicative of our final position in the matter. A paper of this massive importance requires a lot more enquiry and far greater research and analysis which we admittedly could not afford at this stage owing to the shortage of time. We therefore request the Authority to grant us some more time in order for us to come back with a better-rounded and well considered response. In the meanwhile we request the Authority to take this preliminary submission on record.

ISSUE WISE REPRESENTATION

Q1-3 WHICH OF THE PRICE MODELS DISCUSSED IN CONSULTATION PAPER WOULD BE SUITABLE AT WHOLESALE LEVEL IN BROADCASTING SECTOR AND WHY? YOU MAY ALSO SUGGEST A MODIFIED/ ALTERNATE MODEL WITH DETAILED JUSTIFICATIONS. HOW WILL THE TRANSPARENCY AND NON-DISCRIMINATION REQUIREMENTS BE FULFILLED IN THE SUGGESTED PAIR OF MODELS? EXPLAIN THE METHODOLOGY OF FUNCTIONING WITH ADEQUATE JUSTIFICATION.

All these queries are interrelated and hence clubbed together for the purpose of our response. As would be clear from our introductory comments, we support forbearance at all levels. As submitted earlier, there now exists adequate competition, at all levels, to discourage perverse pricing. Therefore there is no need for TRAI to fix retail or wholesale tariff, for that matter, for example, there are:

- Multiple platforms- Analogue and then DAS, DTH, IPTV, HITS
- MSOs
- DTH operators and
- local cable operators



- More than 800 channels available, competing for inclusion in the limited suite of channels offered to consumers on various platforms.

TRAI has also recognized the positive role played by market forces in controlling the prices, in its various consultation papers. We further refer to the Hon'ble Supreme Court's decision in the case of *Ashoka Smokeless Coal India Pvt. Ltd. v. Union of India*¹ where the Apex Court observed "*In a market governed by free economy where competition is the buzzword, producers may fix their own price. Prices are required to be fixed having regard to the market forces, demand and supply is a relevant factor as regards fixation of the price.*"

Price fixation for broadcasters should always be under forbearance and market forces ought to determine such prices; the price of a channel should be allowed to vary depending upon the unprecedented diversity that India offers. Platforms also differ inter-alia - in terms of viewing experience. The Broadcaster should be left free to bundle the Channels and ala carte offering to the DPO should not be made mandatory. Offering channels on an a-la-carte basis not only reduces diversity in programming and consumer choice but also raises costs for consumers and restrains industry growth. The broadcast industry is not an essential service industry and there has been an increase in the competition which has been acknowledged by TRAI itself time and again. A mandate for a-la-carte pricing of channels could have the effect of chilling additional investment in India's digital economy, leading to higher costs – higher marketing and promotional costs for more number of individual channels instead of one bouquet, increased legal costs due to more number of contractual arrangements, higher operating costs due to hiring and training of more staff, up gradation of business to allow more sophisticated billing system, costs of renegotiations - for programmers and distributors, fewer viewing options to consumers, restricting investment and leading to stagnation in the creation of new and quality content. It is believed that packaging regulation and in particular a-la-carte pricing has a severe impact on the distribution and availability of the channels to the viewers thereby directly effecting the operations of the channel business in terms of reducing overall revenues, lowering pay channel revenues and reducing program diversity. Pricing and packaging of channels if left to market forces, cable operators and channels themselves are forced to protect and improve their market position by delivering quality entertainment and services to consumers thereby relying on supply and demand to dictate pricing and programming. Bouquets are the most cost-efficient means of delivering variety of quality

¹ (2007) 2 SCC 640



content as it facilitates the spreading of marketing and operational costs across a range of channels. Given the level of upfront Investment and long breakeven period the risk of launching a new channel would increase substantially in the absence of ability to secure wide reach of distribution as part of bouquet and to negotiate a fair and reasonable rate of return. Without the wide reach the bouquets offer, channels will struggle to attract advertisers leading to suffering of revenue, slowing of investment in programming. In this situation the channels will be compelled to close down having failed and this shall have a cascading effect on the Distributors of TV channels as well.

Having said that out of the models suggested by TRAI the **Regulated RIO model clubbed with flexible RIO model** furthers the regime as it stands today with respect to wholesale pricing in broadcasting. This is the only framework which hints at reduced level of non-discrimination and transparency amongst various stakeholders in the value chain. Further Broadcasters should be given freedom of converting FTA Channels to Pay Channels and vice versa as well as to repackage i.e. introduction of new channels in the bouquets and club the other channels of their genre. Even the FTA (Free to Air) Channels and pay channels must be continued to be allowed to bundle together. This will work in favour of the consumers, as they can opt for more channels ultimately ending up paying less. For instance, this is simple economics, if the demand of the bouquets would increase, then the prices would automatically fall. This model suggests transparency and non discrimination for all the distributors and then consumers because the distributors would already have the access to the content, while retaining some latitude to mutually negotiated terms and conditions of access. As the DPOs operators obtain more content from the broadcaster/ aggregator at lower price, they have the ability to offer more choice at rationalised prices to the consumers as well. The bouquets comprising of channels of various broadcasters also add to the variety being provided to the ultimate consumer. If this be followed religiously then the actual fruits of bundling of channels i.e. provision of channels in form of bouquets get passed on to the subscribers.

Q4-7. HOW WILL THE CONSUMERS INTERESTS LIKE CHOICE OF CHANNELS AND BUDGETING THEIR EXPENSES WOULD BE PROTECTED IN THE SUGGESTED PAIR OF MODELS? GIVE YOUR COMMENTS WITH DETAILED JUSTIFICATIONS.

It is evident that there is great variation in individual preferences for TV programmes – one may like to watch soap operas while the other the news channels. It is equally evident that it is impossible for the broadcaster to ascertain individual preferences. Thus, the marginal cost being



zero and the individual preferences being unknown, the broadcaster finds that its channels have greater reach to the viewers when packaged together in a bouquet than on a la carte basis. Hence, the broadcaster would always prefer to give its channels for distribution in bouquets. The Regulations though require the broadcaster to offer its channels on a la carte basis, apparently in recognition of this basic fact, do not prohibit it from giving its channels for distribution in bouquets. The first choice for the broadcaster, therefore, as dictated by the market dynamics, is to give its channels for distribution in the form of bouquets. The fact that if all the broadcasters give their channels in a bouquet, then the viewership would not be affected, rather the supply would increase, bringing down the price for the bouquets. That it is in the interest of the consumer that they can enjoy every kind of channel in a bouquet paying minimal.

Q 8 - 10 & 14 IS THERE A NEED TO IDENTIFY SIGNIFICANT MARKET POWERS? WHAT SHOULD BE THE CRITERIA FOR CLASSIFYING AN ENTITY AS A SIGNIFICANT MARKET POWER? SUPPORT YOUR COMMENTS WITH JUSTIFICATION. SHOULD THERE BE DIFFERENTIAL REGULATORY FRAMEWORK FOR THE SIGNIFICANT MARKET POWER? IF YES, WHAT SHOULD BE SUCH FRAMEWORK AND WHY? HOW WOULD IT REGULATE THE SECTOR?

We agree that there is a need to identify the significant market power that has created monopoly/market dominance in cable TV distribution. There is a need in the present scenario that the TRAI imposes restrictions on the DPO's to prevent monopolies and accumulation of interest in order to ensure fair competition, improved quality of service, and equity.

It has been observed in many States the majority of the cable TV network is controlled by a single entity virtually monopolizing the distribution of cable TV services in these States. Such monopolies and market dominance may not be in the best interest of consumers and may have serious implications in terms of competition, pricing, quality of service and healthy growth of cable TV sector, it said. Therefore in the wake of the aforementioned scenario the present step is path breaking.

We wish to apprise the Hon'ble Regulator that Monopolies can arise in any of the following non exclusive ways also:



1. There needs to be a check on horizontal integration. Cartelization and Collusion at MSO level leads to Monopoly. This is a prevalent practice as many MSO's reach an understanding on ground where they agree to affect pay out to the broadcasters to maximize their own revenues. This is unhealthy business practice and has an effect on quality of service being provided to the subscribers. There should be prohibition on dividing up markets so that entry of new entrant is not curtailed.
2. Monopolistic practices also increase when there is a fight for maximization of revenues by the Operators at ground level. There are situations where there are increasing cases of piracy and increasing cases of territorial transgression (without once seeking permission from the broadcasters). This leads to unhealthy competition at ground level, undercutting and minimization of revenues for the broadcasters. Even if the situation arises that broadcasters have to take action for protection of their interest there is no support from the local administration. This results in some operators increasing their market share rigorously to the disadvantage of other players and broadcasters. In situations where there is no support from the local administration and blatant acts of piracy continue, it causes an imbalance and leads other existing operators and / or new entrants to withdraw from the market.
3. There are instances where a dominant MSO has made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers.

Q11. IS THERE A NEED TO CONTINUE WITH THE PRICE FREEZE PRESCRIBED IN 2004 AND DERIVE THE PRICE FOR DIGITAL PLATFORMS FROM ANALOGUE PRICES? IF NOT, WHAT SHOULD BE THE BASIC PRICING FRAMEWORK FOR PRICING THE CHANNELS AT WHOLESALE LEVEL IN DIGITAL ADDRESSABLE PLATFORMS? Q14 -15.WHAT SHOULD BE THE MEASURES TO ENSURE THAT PRICE OF THE BROADCAST CHANNELS AT WHOLESALE LEVEL IS NOT DISTORTED BY SIGNIFICANT MARKET POWER? WHAT SHOULD BE THE BASIS TO DERIVE THE PRICE CAP FOR EACH GENRE?

No. There are absurdly low rates prevalent in analogue areas. Even otherwise if one sees logically a local telephone call that lasts for an hour costs many times more than the monthly subscription fees meant for a pay channel. To illustrate, assuming a local call tariff of Re. 0.50 per minute, an hours



duration shall cost Rs. 30/-. However a subscriber shall be paying Rs. 1 for availing a pay channel in notified DAS areas during the entire month. While equity and international best practices demand that not only should the broadcaster be paid a fair price for the content it invests in and generates but it should also get remunerated for the signals it transmits. This is not to argue that there should be parity between telecom and broadcasting rates, but only a pointer to the fallacy involved in the tariff structures prevailing today. It is not advisable to fix a one size fits all tariff in a heterogeneous country like India given the varied content offered by broadcasters across genres and the differences in viewing patterns across states and their linguistic and cultural preferences. Procurement costs for content are not uniform; neither are they amenable to precise determination or correlation to the final product; Broadcasters do not have the luxury of a compulsory, non discriminatory must provide to fall back upon in order to generate quality content. Over the years content procurement costs have shot through the roof whereas subscription revenues have stagnated given the abnormally low pricing norms fixed by TRAI in non DAS areas. If the Regulatory regime is not enabling enough, Broadcasters shall have no incentive left to generate quality content. The Indian consumer currently gets an average of over 200 channels at an average cost of Rs. 200 per household which is the lowest in the world. Price Regulation should be reserved for essential service industries such as water and electricity or industries in which competition is not deemed to exist. Pricing of channels is best left to market forces. Pay TV channels are non essential, discretionary services primarily intended for entertainment. Any methodology or principle used for price controls is likely to result in a misallocation of resources and lead to market distortions.

Thus there is no need to continue with the price freeze prescribed in 2004 because we believe that the Broadcasters should have all the freedom and right to price their own channel and thus notify them further. TRAI has itself recognized vide various notifications specially the one introducing the 27.5 % hike that there is a pressing need for revenue generation for Broadcasters.

Q12-13. DO YOU FEEL THAT LIST OF THE GENRES PROPOSED IN THE CONSULTATION PAPER (CP) ARE ADEQUATE AND WILL SERVE THE PURPOSE TO DECIDE GENRE CAPS FOR PRICING THE CHANNELS? YOU MAY SUGGEST ADDITION/ DELETION OF GENRES WITH JUSTIFICATION IS THERE A NEED TO CREATE A COMMON GEC GENRE FOR MULTIPLE GEC GENRE USING DIFFERENT REGIONAL LANGUAGES SUCH AS GEC (HINDI), GEC (ENGLISH) AND GEC (REGIONAL LANGUAGE) ETC? GIVE YOUR SUGGESTIONS WITH JUSTIFICATION.



The list provided has clubbed the GEC (Hindi, English and Regional) as one. Thus, the genre should be the following so that there is simplicity in the genres thus making it user friendly for the consumers. There would be less of complexity for the consumers to choose a genre. The suggested genres should be:

1. National channels – Separate for News & Current Affairs and Non News Channels
2. Regional channels– separate for News & Current Affairs and Non News Channels

Moreover, within the News/ Non News Genre, Regional and National needs to be packaged separately. There is no requirement to create a common News Genre for multiple News Genres rather there should be News (Hindi), News (English), and News (Regional language).

Q16, 18-19 WHAT PERCENTAGE OF DISCOUNT SHOULD BE CONSIDERED ON THE AVERAGE GENRE RIO PRICES IN THE GIVEN GENRE TO DETERMINE THE PRICE CAP?

WHAT SHOULD BE THE CRITERIA FOR PROVIDING THE DISCOUNTS TO DPOS ON THE NOTIFIED WHOLESALE PRICES OF THE CHANNELS AND WHY? WHAT WOULD BE THE MAXIMUM PERCENTAGE OF THE CUMULATIVE DISCOUNT THAT CAN BE ALLOWED ON AGGREGATED SUBSCRIPTION REVENUE DUE TO THE BROADCASTERS FROM A DPO BASED ON THE TRANSPARENT CRITERIA NOTIFIED BY THE BROADCASTERS?

Submissions made in response to Q1 to 3 are reiterated in this regard.

Q17. WHAT SHOULD BE THE FREQUENCY TO REVISIT GENRE CEILINGS PRESCRIBED BY THE AUTHORITY AND WHY?

The frequency to revisit genre ceiling prescribed by the authority should be done after 1 year and frequency can be revisited thereafter.

Q.20-27WHAT SHOULD BE PARAMETERS FOR CATEGORIZATION OF CHANNELS UNDER THE “NICHE CHANNEL GENRE”? DO YOU AGREE THAT NICHE CHANNELS NEED TO BE GIVEN COMPLETE FORBEARANCE IN FIXATION OF THE PRICE OF THE CHANNEL? GIVE YOUR COMMENTS WITH JUSTIFICATION. WHAT SHOULD THE MAXIMUM GESTATION PERIOD PERMITTED FOR A NICHE CHANNEL AND WHY? HOW MISUSE IN THE NAME OF “NICHE



CHANNEL GENRE” CAN BE CONTROLLED? CAN A CHANNEL UNDER “NICHE CHANNEL GENRE” CONTINUE IN PERPETUITY? IF NOT, WHAT SHOULD BE THE CRITERIA FOR A NICHE CHANNEL TO CEASE TO CONTINUE UNDER THE “NICHE CHANNEL GENRE”?

The parameters for categorization of Niche Channel would be only on the basis of viewership. There would be other parameters also like audience attributes, gestation period and nature of content, production, distribution and marketing costs. The interest of the consumer can be protected by adopting the price forbearance model for niche and HD Channels for such premium content. Broadcasters should have the freedom of pricing premium quality content which would also boost the broadcaster’s interest and bring in variety and quality of content including niche channels. If regulations in this regard are introduced at this nascent stage then it will ultimately lead to crippling of growth of this sector.

Q28. DO YOU AGREE THAT SEPARATION OF FTA AND PAY CHANNEL BOUQUETS WILL PROVIDE MORE FLEXIBILITY IN SELECTION OF CHANNELS TO SUBSCRIBERS AND WILL BE MORE USER FRIENDLY? JUSTIFY YOUR COMMENTS

The Broadcasters and DPOs should be free to formulate bouquet of combination of FTA and Pay channels. This would enable consumer to have better selection of channels depending upon his choice and affordability and would work in the interest of the consumer. Submissions made in response to Q1 to 3 are reiterated in this regard.

Q29-30. HOW CHANNEL SUBSCRIPTION PROCESS CAN BE SIMPLIFIED AND MADE USER FRIENDLY SO THAT SUBSCRIBERS CAN CHOOSE CHANNELS AND BOUQUETS OF THEIR CHOICE EASILY? GIVE YOUR SUGGESTIONS WITH JUSTIFICATION. HOW CAN THE ACTIVATION TIME BE MINIMIZED FOR SUBSCRIBING TO ADDITIONAL CHANNELS/BOUQUETS?

The channel subscription procedure can be simplified and made user friendly in many ways. Firstly, there should be a direct link between the MSOs and subscribers i.e. the subscribers should directly pay the revenue to the concerned MSOs in the process maximize their ARPU and overall revenue. Secondly, there should be proper education and awareness for the consumers, DPOs



should initiate such educational programs for the consumers wherein they are educated about the different schemes and bouquets that are offered and suggestions can be given. Thirdly new applications need to be developed to provide ease of subscription i.e. there should be options like where the operators can make use of the registered mobile number of the subscriber to add a channel or bouquet if the subscriber has asked so.

The activation time can be minimized for subscribing to additional channel/bouquet by providing some provision for prepaid recharge coupons for say 15 days or a month which are user friendly and the consumer can then and there recharge their bouquets or additional channel of their choice.

Q. 31-34 SHOULD CARRIAGE FEE BE REGULATED? IF YES, WHAT SHOULD BE THE BASIS TO REGULATE CARRIAGE FEE? UNDER WHAT CIRCUMSTANCES, CARRIAGE FEE BE PERMITTED AND WHY? AND IS THERE IS A NEED TO PRESCRIBE CAP ON MAXIMUM CARRIAGE FEE TO BE CHARGED BY DISTRIBUTION PLATFORM OPERATORS PER CHANNEL PER SUBSCRIBER? IF SO, WHAT SHOULD BE THE "PRICE CAP" AND HOW IS IT TO BE CALCULATED? SHOULD THE CARRIAGE FEE BE REDUCED WITH INCREASE IN NUMBER OF SUBSCRIBERS FOR THE TV CHANNEL AND IF SO, MENTION THE CRITERIA AND WHY.

We are in principle against the levy of carriage fees and / or placement fees from broadcasters by whatever name called (marketing fee, placement fee, technical support, channel promotion, etc). We reiterate our earlier stand that there should not be any scope for DPOs to charge carriage fees directly or indirectly. Broadcasters cannot be seen to mandatorily providing content and paying carriage for it too! High carriage costs have severely impacted Broadcasters. Operators use the carriage model to compel payments from Broadcasters and in many cases carriage fees exceed the subscriptions received from operators creating an unsustainable distribution revenue model. This problem is compounded by vertically integrated broadcaster and distribution networks which leverage their control over content and distribution to deny popular content to competing networks or discriminate against them. All these years, the revenue model of Broadcasters have been under severe financial strain since the operators have created an artificial bandwidth shortage on their network so that they can carry channels as per their own whims and demand arbitrary and exorbitant carriage fee from Broadcasters. We urge TRAI to take necessary steps to ensure that carriage fee is rendered completely redundant. Broadcasters also incur heavy costs not just in producing content but also in uplinking and downlinking signals as well as hiring transponders. None of these costs are separately chargeable to



operators. Hence there is no logic to allow operators to charge for carriage which is part and parcel of their distribution obligation. The Hon'ble Regulator is cognizant of the situation as it is on date i.e to say that MSO's are freely demanding placement fees for higher LCN's. The Hon'ble Regulator has itself recognized that there is hardly any justification for charging any placement fees therefore granting the protection is only a natural consequence. It is the duty of the Regulator to provide Level Playing Field conditions amongst the stakeholders. Carriage fee is a market pricing distortion created by the 'must provide' obligation without a corresponding 'must carry' requirement. If this distortion is removed, there will not be any demand for carriage fee and the question will be redundant. Placement inherently and intrinsically includes Carriage. While there is cap on subscription charges vis-à-vis Broadcasters, DPO's charge exorbitant carriage and placement charges and there is no ceiling or order. This has an adverse economic impact on Broadcasters. In this regard it is pertinent to note that with the advent of **digitization**, all choke/block on channel capacity has a consequential effect on doing away with carriage and placement charges since demand will meet supply. These measures are required to ensure fair competition and **promote consumer choice** which must lie at the heart of the regulatory decision making process. Carriage/placement charges are not regulated and have not been regulated till date – the consequence of this is that **MSOs/LCOs enjoy an unfair advantage/benefit**. They charge exorbitant amounts under the head of carriage and placement fees, for carrying signals/and for its placement on the distribution platform by which signals reach the end-subscribers/viewers. This has resulted in patent discrimination and the failure to regulate carriage and placement charges is unfair and unjust and has disturbed the playing field. This problem becomes more severe for Broadcasters who are providing free to air channels where there is no subscription revenue and the pay out of carriage and placement fee is unregulated - this becomes then disproportionate to any revenue earning of the Broadcaster.

It is further stated that every digital platform must carry all the news channels and bundling of channels should be based on the Genre as well as other parameters can be considered while bundling channels e.g. for channels that are over an year old, the Channel lineup (LCN allocation/ EPG) can be decided on the basis of Cumulative Coverage_as per BARC data for their respective Genre/s and markets. Alternatively, they must be allowed to form and price their own bouquet. News channels have a social obligation to provide information to viewers and meet viewers.



The practice of charging carriage fee should not be allowed. At present only MSO charges carriage fee from the broadcasters and because of this only broadcasters are not able to earn good revenue. If the carriage fee is recognized and regulated, it will be difficult for the broadcasters to pay different huge amount of carriage fee to different DPOs and thus it will become financial burden on the broadcasters and it will be difficult for the broadcaster to survive in the competition. Broadcasters already facing less revenue and default payment issues and in such scenario if the carriage fee is recognized and regulated, the broadcasters will be exploited to a great extent. The broadcasters already invest huge amount in producing the program content and uplinking the content to the satellite.

Q.35 SHOULD THE PRACTICE OF PAYMENT OF PLACEMENT AND MARKETING FEES AMONGST STAKEHOLDERS BE BROUGHT UNDER THE AMBIT OF REGULATION? IF YES, SUGGEST THE FRAMEWORK AND ITS WORKABILITY?

Placement fee is the fee paid for placing the channel in the most advantageous position in its genre. As per recommendations the practice of charging of placement fee is not prevalent in the sector and thus there is no need to regulate it. As per DAS regulation, MSO is obligated to provide EPG and under this all channels of similar genre are clubbed and placed together. Thus there is no necessity of paying placement fee and hence no requirement to be recognized and regulated by TRAI. **We are principally not in favour of any type of placement fee with whatever name like marketing fee, technical upgradation fee, channel promotion fee it's been existing in value chain.**

Q.36. IS THERE A NEED TO REGULATE VARIANT OR CLONED CHANNELS i.e. CREATION OF MULTIPLE CHANNELS FROM SIMILAR CONTENT, TO PROTECT CONSUMERS' INTEREST? IF YES, HOW SHOULD VARIANT CHANNELS BE DEFINED AND REGULATED?

The variant channels are broadcasted in the interest of the customers, for example a person can enjoy same set of programs in their regional languages too. Thus it is not an issue which needs to be regulated and no interest of customers is hampered while providing clone or variant channels. It is not a matter which needs attention of the government and to be regulated.



Q.37-38 CAN EPG INCLUDE DETAILS OF THE PROGRAM OF THE CHANNELS NOT SUBSCRIBED BY THE CUSTOMER SO THAT CUSTOMER CAN TAKE A DECISION TO SUBSCRIBE SUCH CHANNELS? CAN EPG INCLUDE PREVIEW OF CHANNELS, SAY PICTURE IN PICTURE (PIP) FOR CHANNELS AVAILABLE ON THE PLATFORM OF DPOs BUT NOT SUBSCRIBED BY THE CUSTOMERS AT NO ADDITIONAL COST TO SUBSCRIBERS? JUSTIFY YOUR COMMENTS.

There is no problem in including the details of the program of channels on EPG which are not subscribed by the customer, as it will be in the benefit of the customers and broadcasters both. With such practices the reach or viewership of channel will increase and it will be dependent on the decision of the customer whether to opt for the channel or not. It will create the awareness among the customers about the present channels and programs available and will be helpful in making a good decision. There is no problem in including the preview of channels, for channels available on the platforms of DPOs but not subscribed by the customers, it can be easily achieved as per the suggestion made by honourable TRAI. It could be done by providing a preview / teaser of the channels contents, to the subscriber, even if those channels have not been subscribed, thus it will not only make the consumers aware about the programs and content but may also lead to actual consumer choice. Non-visibility of such channels ultimately leads to "lost opportunity cost". Providing the information will enable better utilization of the platform operators' latent capacity, improve monetization to broadcasters and may also enhance ARPUs.

Q.39-40 IS THE OPTION OF PAY-PER-PHROGRAM VIEWING BY SUBSCRIBERS FEASIBLE TO IMPLEMENT? IF SO, SHOULD THE TARIFF OF SUCH VIEWING BE REGULATED? WILL THERE BE ANY ADDITIONAL IMPLEMENTATION COST TO SUBSCRIBER FOR PAY-PER-VIEW SERVICES? GIVE YOUR COMMENTS WITH JUSTIFICATION.

The option of Pay-Per-Program is not feasible to implement because it is very dynamic in nature, where one subscriber may wish to see a particular channel or program today but may not wish to see the same in future. So it will be difficult for the broadcasters and MSOs to keep a track in reference to such volatile changes.

Q41. DO YOU AGREE WITH THE APPROACH SUGGESTED IN PARA 5.8.6 (i.e. MAKING AUDIT DETAILS AVAILABLE ONLINE FOR BROADCASTERS REFERENCE) FOR SETTING UP OF A



CENTRAL FACILITY? IF YES, PLEASE SUGGEST DETAILED GUIDELINES FOR SETTING UP AND OPERATION OF SUCH ENTITY. IF NO, PLEASE SUGGEST ALTERNATIVE APPROACH(S) TO STREAMLINE THE PROCESS OF PERIODIC REPORTING TO BROADCASTERS AND AUDIT OF DPOs WITH JUSTIFICATION.

With advancement in the broadcasting sector there has been increase in disputes related to subscription verification and payments. Subscriber Management System (SMS) is an integral part of the accountability regime under DAS. The SMS is maintained by the DPOs, while the broadcasters through agreement provision conduct audit of SMS and seek periodic reports from the DPOs which in most cases is hardly submitted by MSOs. It is essential to conduct audits to bring transparency and credibility in the value chain. The provision of auditing and reporting has itself become a point of dispute between broadcasters and DPOs. Auditing details are essential for the broadcasters because it helps them to take financial decisions, helps in settling revenues and to verify regulatory and statutory compliances. There is no problem in setting up a central online system for collection information automatically from the SMS of all DPOs, because it is already stored in digital format. The central server can itself collect the information or DPOs may provide such information automatically and it can be made available with the help of web services. The broadcasters can also have physical audit of SMS with the help of experts. The broadcasters can also be provided data free of cost because they require data and reports to make important financial decision.

CONCLUSION: As the market has worked over the last 10 years to produce a robust model for the aggregation of rights by cable and satellite networks, the market should be allowed to work to facilitate the distribution of broadcast signals. The procurement costs for content are not uniform; neither are they amenable to precise determination or correlation to the final product. Over the years content procurement costs have shot through the roof, while advertising revenues have been declining for most of the broadcasters given the large number of channels operating at lower than their normative cost of production and the disproportionate bargaining power of advertising agencies given the absence of genuine competition within advertising agencies. The broadcasting sector has unfortunately been at the receiving end of a spate of certain stringent regulations in the past one decade. It is therefore humbly suggested that the existing regulations be amended in light of ground realities for protection of interest of the broadcasters for enforcement of a level playing



field. The intent should be to regulate the market in such a manner, so that it fulfils the demands of all the stakeholders, without prejudicing the interest of any of the stakeholders.

