



Speed Post / Email

November 15, 2016

Mr. S.K. Gupta

Pr. Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110 002
Email: pradvbcs@traf.gov.in,
vk.agarwal@traf.gov.in

Mr. Sunil Kumar Singhal

Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110 002
Email: sksinghal@traf.gov.in,
gs.kesarwani@traf.gov.in

Prof. M. Kasim

Advisor (B&CS)-III
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110 002
Email: mkasim@traf.gov.in, ks.rejimon@nic.in

Dear Sirs,

- (i) **DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016** (hereinafter the “Regulations”); and
- (ii) **THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016** (hereinafter the “Tariff Order”); and
- (iii) **THE STANDARDS OF QUALITY OF SERVICE AND CONSUMER PROTECTION (DIGITAL ADDRESSABLE SYSTEMS) REGULATIONS, 2016** (hereinafter the “said QoS”)

Attached please find the response of the News Broadcasters Association (NBA) to the issues contained in the above regulations issued by the TRAI.

Thanking you,

Yours faithfully,

Annie Joseph
Secretary General

Encl: As above



Response on behalf of the News Broadcasters Association to:

- (i) **DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016 (hereinafter the “Regulations”) ; and**
- (ii) **THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016 (hereinafter the “Tariff Order”) ; and**
- (iii) **THE STANDARDS OF QUALITY OF SERVICE AND CONSUMER PROTECTION (DIGITAL ADDRESSABLE SYSTEMS) REGULATIONS, 2016 (hereinafter the “said QoS”)**

The News Broadcasters Association (“NBA”) had given a response to the relevant and material issues contained in Consultation Paper dated 29th January 2016 hereinafter (the “Consultation Paper”) vide NBA response dated 16th March 2016.

Subsequently, the Telecom Regulatory Authority (TRAI) has further issued the captioned draft Regulations, Tariff Order and QoS :

The draft Regulations, the Tariff Order and the said QoS aforementioned raise certain important issues for member news broadcasters and their comments, suggestions and response to the above are given herein under:

1. The TRAI must ensure that Digital Addressable System (DAS) is implemented and comes into effect by December 2016 as stipulated.
2. The Regulations, Tariff Order and QoS should be implemented only after DAS is completely implemented in India ; or at the very least, these should be implemented only in areas where DAS has been fully implemented.
3. No carriage, placement or marketing fee should be charged from the news broadcasters by any Digital Platform Operator (DPO).
4. The Tariff Order should make a distinction between a “commercial subscriber” and an “ordinary subscriber”. However, the Tariff Order does not make such a distinction as it does not give a definition of a “commercial subscriber” or tariff related to commercial subscribers. The difference between an ordinary subscriber and a commercial subscriber is important as an ordinary subscriber would subscribe to a channel for their own individual use whereas a commercial subscriber would make profit from further selling the service to its consumer. In fact it is suggested that TRAI draft a



regulatory framework which permits Digital Platform Operators (DPO) to enter into a subscription arrangements with news broadcasters with the fee calculations being based on “no ceiling rates” and fixed rates.

5. After the Regulations, Tariff Order and QoS come into effect status quo should be maintained in respect of availability of the channels, Pay or Free To Air (FTA) and the place given to such channels in Electronic Program Guide (EPG) in that the availability and placement of a channel should remain exactly the same as it was on the DPO Network 3 months prior to the implementation of the Regulations, Tariff Order and QoS.
6. The Regulations stipulate that the Carriage Fee will be calculated as per Schedule I attached to the Regulations. The said Schedule further clarifies that where the DAS has been rolled out Carriage Fee is payable only if the penetration of a channel is below 20%. Payment of Carriage Fee also has slabs within that, ranging from 20 paise to 5 paise per subscriber as mentioned in Schedule I of the Regulations.

(a) As suggested by the news broadcasters in their response to the earlier Consultation Paper, if any carriage fee is to be paid by the news broadcasters, it must necessarily have a co-relation with a subscriber base cited by the Multi System Operator (MSO)/Digital Platform Operator (DPO) and verified by the Central Facility/Auditor. Carriage fee should be payable by the news broadcasters for the actual number of subscribers that subscribe to and watch its channels, whether the channel is Pay or FTA. This point is reiterated in clause (d) below.

(b) Furthermore, a news broadcaster must be able to choose the city/ies and/or areas/ regions within a city to which its channels may be carried and be made to pay carriage fee accordingly on actual subscribers as per slab and slab rates provided in Schedule I of the Regulations. Schedule I should list all Cities of DAS I & DAS II markets and all States & UTs. Broadcaster may select a city only as target market (of DAS I & II areas) or a State, whatever is relevant.

(c) In relation to Schedule I of the Regulations, the news broadcasters further suggest that the relevant geographical areas/target markets where the channels of the news broadcasters reach need to be defined clearly. It is suggested that where it concerns national channels in fact the “target market” or “the relevant geographical areas” should be defined as 40 cities in all States where DAS I and DAS II has been implemented. In the case of regional channels, the “target market” or the “relevant geographical areas” should be defined as the key cities of those particular regional States. The



regional news broadcasters should also be given the choice of cities outside of its regional State where they could broadcast their channels. The choice of the above cities would naturally be cities where there would be a substantial number of subscribers who speak/understand that particular language of the channel and would therefore want to subscribe to such channels. These cities would include all DAS I and several DAS II cities or States/UTs.

(d) The news broadcasters should pay carriage fee based on the actual number of subscribers that subscribe to and watch its channels (whether pay channel or free-to-air channel) and not on the entire subscriber base of a DPO in the target market as defined by broadcaster

(e) Furthermore, the news broadcasters suggest that carriage fee charged by a DPO for carrying a news broadcasters SD/HD channels has to be on the basis of the actual number of subscribers who have subscribed to those relevant channels. News broadcasters also suggest that for the purpose of arriving at the penetration of any HD channel and arriving at the slabs as described in Schedule I of the Regulations, the computation should be the average active subscriber base in a month for the HD channels as a percentage of the average active subscriber base of the HD bouquet of the DPO in which the HD channel is included for that month in a particular territory in the defined market. The above percentage should not be calculated on the entire subscriber base of a DPO in the territory. It should be calculated on the active subscriber base of the HD bouquet in which the HD channel is included.

(f) Since dissemination of news is critical in a democracy the “news” genre of TV channels must be given preference over other genres of television channels and the “must carry” provision should be made absolute in the case of FTA news channels, which would reduce carriage fee for these channels.

(g) In the case of the regional FTA channels at least 5 FTA channels (which regional FTA channels relate to that region/State) should be carried in the basic tier of 100 SD channels and such FTA channels would be picked based on the number of subscribers for a particular channel in the region.

7. With regard to placement & marketing fee, TRAI must ensure that the fair and equitable position is that no placement fee or marketing fee, by whatever name called, should be payable when DAS is implemented



completely in all areas. The reasons why there should be no levying of placement or marketing fees are as follows:

- (i) If the MSO's/DPO's are permitted to charge placement and marketing fee from the broadcasters it would mean giving the DPO's a carte blanche and untrammelled leverage to demand extortionate placement and marketing fee from broadcasters with no rationalé or reason. It is necessary to curb one of the most pernicious malpractices that is prevalent in the industry, which has been the bane of broadcasters and also affects the interest of the consumers;
 - (ii) Once the channel carrying capacity of an MSO is conveniently raised between 500 to 1000 channels there would be no necessity to charge either placement or marketing fee from the broadcasters; and in such scenario, broadcasters would no longer require to demand any specific or preferential channel placement, except to the extent that channels be placed in their correct and rational genre and sub-genre;
 - (iii) There is no justification at all for charging placement fee since upon digitization of the distribution platforms there is no "frequency band" and channels are arranged in the Electronic Program Guide ("EPG") accessible to the subscriber who can easily browse through the EPG and select the channel of his choice from a list (arranged genre-wise) instead of 'flipping' through all the channels.
8. (a) In response to the earlier Consultation Paper, the news broadcasters had suggested that in the larger consumer interest, Electronic Program Guide (EPG)'s of any DPO should be made available in a categorized manner with different genres of television channels (News, Sports, Movies, Kids etc.) and further such EPG should display all available television channels in each respective genre, with the objective of offering convenience to consumers.
- (b) It is acceptable to news broadcasters if details of programs of channels not subscribed by a consumer were also included in the EPG; or if the EPG included a preview of the channels on the platform of the DPO's even for channels not subscribed to by the consumers. Under the Regulations, for the convenience of the consumers there should also be sub-categorization within a genre for example within the category of news, Hindi or English, there must be further sub-categorization such as Hindi-Business and English-Business news ; and a sub-category of Music between Hindi-Music and English-Music etc. Such sub-categorized genres would help simplify the search for channels by consumers and will ensure that no sub-



- categories of channels are at any disadvantage due to placement/EPG positioning by DPO within that category.
9. (a) In respect of Auditing, a Central Auditor /Facility must be in place in order that the correct subscriber numbers for channels, Pay or FTA, are available to the news broadcasters. The Auditor would also be able to correlate the number of the subscribers to a channel as given by a DPO and verify the same. This would be an important issue vis-a-vis payment of carriage fee by the news broadcaster to a DPO.
 - (b) There must be regular monthly reporting by a DPO to the Regulator/Auditor in respect of the number of subscribers to a channel which should be available for the Regulator to verify at all times. A DPO must report monthly to the Regulator/Auditor in respect of the total number of active subscriber that it has and this reporting must be done territory wise, city wise and bouquet wise.
 - (c) The lack of transparency and visibility in reporting the subscriber numbers has been a malaise in the Non-DAS system for the news broadcasters ; and in order to correct this the news broadcasters should be allowed to verify/audit these numbers at least twice a year.
 10. Since the rate of carriage fee has been defined as 20 paisa per set-top box per month ; and slab basis penetration upto 20% ; HD channels at 40 paisa per set-top box per month for the purposes of infrastructure costs, it is submitted that carriage fee payable by the news broadcasters to a DPO be reduced substantially in the second year ; and when DAS has been rolled out in phases and digitization is complete, NBA reiterates that carriage fee must not be permitted to be charged from the news broadcasters.
 11. The news broadcasters submit that the DPOs must not be given the right to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding six consecutive months, for that particular television channel is less than 5 percent of the subscriber base of that distributor, in the target market specified by the news broadcaster in the interconnection agreement, in that particular month. If a DPO is given the right to disconnect on the above terms the chances of a DPO giving incorrect subscriber number to the news broadcasters and using it as an excuse to disconnect or to demand more fee in the name of placement etc. increases. Whether a news channel can carry on its business of telecasting/broadcasting with a subscriber base of less than 5 percent of the subscriber base of a distributor should be left for the market forces to decide.



12. In the Regulations the DPOs have the right to price the packages and to offer any discount they choose, which would create commercial problems for the news broadcasters. Therefore, to create a level playing field amongst channels in the same genre, the discounts offered by DPOs should be uniform for all channels in that genre.
13. The DPO's should report on a monthly basis their capacity to carry channels, free capacity available and the names of the channels in the queue for obtaining an LCN/number allotment.
14. The DPO's should also report on a monthly basis about their active subscriber base in a territory, city, town and they should also report on a monthly basis in respect of the new territories they have entered and the territories that a DPO has withdrawn/exited from.
15. In case of launch of a new channel as a pay channel, the broadcasters should be allowed to give a promotional offer to charge nil value / higher discounted value for the said channel and package the channel with existing pay channel bouquets offered.

November 15, 2016

X X X X X X


15/11/16