

Response by Reliance Big Broadcasting Private Limited (“Reliance”) on TRAI’s draft amendments dated June 4, 2013 to the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30th April 2012

I. Issue of Carriage Fee

1. From the abovesaid amendments, we understand that an MSO cannot demand carriage fee “at the same time” that the MSO demands the signal/channel feed, and the converse to this would be that if the MSO demands carriage fee after a lapse of time, say even after one month after receiving the signal, that would be permissible under the proposed amendment. This would be reading more so with deletion of regulation 3(5). You are well aware of the industry, which is predominantly run by the MSOs, would result in giving the MSOs larger power to arm twist the broadcasters and demand any quantum of carriage fee from the broadcaster even a few days or few months after initially receiving the signal; without any stipulation as to the quantum of such carriage fee ; and this would make a mockery of the intent behind the regulation.

2. Reliance’s stand has always been that in the first instance, in view of the “must provide” provision as contained in the present dispensation, the question of any carriage fee, by whatsoever name called, being payable to an MSO must not arise and this is even more so with the advent of digital technology (as the constraint on channels would not exist).
3. As stated above, carriage fee may be payable only for the limited period until digitalization is complete in a given area ; and once digitalization is complete, no carriage fee must be chargeable at any time, at all.
4. It may further be pointed-out that by way of the amendments under consideration, TRAI is not proposing to amend the second proviso to regulation/sub-regulation 3.2 of the Telecommunication (Broadcasting and Cable Service) Interconnection Regulation 2004 (No. 13 of 2004), which in any case bars the payment of carriage fee when the “must provide” stipulation under regulation 3.2 aforesaid is invoked.
5. Therefore, we submit that there should be a clear and unambiguous mandate (without any qualifying words such as “at the same time” or otherwise) that where an MSO demands signal from a broadcaster, the MSO shall not be entitled to demand carriage fee from the broadcaster; and if the broadcaster demands the channel to be carried on an MSO’s network, the MSO may be entitled to charge a regulated and limited carriage fee both in quantum and period.

II. Minimum Channel Carrying Capacity of 500 Channels for MSOs

6. As of date the Ministry of Information & Broadcasting has issued about 825 nos. up-linking/down-linking licenses for various TV channels. Contra to the Analogue mode of signal distribution, there exists a must carry provision in the regulations dated 30.4.2013. If TRAI does not mandate a minimum carrying capacity, then the purpose of must carry will be defeated. It requires no detailed explanation to show that if there are about 825 channels, and there is a channel carrying capacity of only about 200 channels, it would lead to serious market imbalances and this would result in chaos and extortionist business practices resulting from such a serious demand-supply imbalance.
7. Further, the consumer will not have a real choice, which is ultimate aim of digitization. It cannot be said that as a matter of policy, choice should be made available only to viewers living in big cities and not to those who are living in smaller cities / towns.
8. Another aspect is the cost of up gradation.
9. The MSOs will have many areas for generating revenues once the headends are set up through several value-added services such as near-video on demand, high-end gaming, broadband internet, triple play-service, e-remedy, video-conferencing, internet television etc.
10. Thus, the mandate for MSOs to upgrade to a head-end capacity of at least 500 channels, regardless of the city, town or area of operation, was a sound decision and any amendment to this mandate would defeat the “must carry” provision contained in the extant regulations; and would deprive the consumers of real choice everywhere in the country and would in fact defeat the very fundamental purpose of digitalization, which is now mandated under the law.

III. Issue of Placement Fee

11. The prohibition on charging of placement fee was contained in regulations 3(6) and 3(11) of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012 (No.9 of 2012) as well as under Regulation 3(11-A) of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television System) Regulation 2012 (First Amendment) Regulations 2012 (No. 14 of 2012).
12. On this issue, Reliance submits that the fair and equitable position in the industry would be that no placement fee, by whatever name called, should be payable especially due to the effective roll-out of digitalization.

Digitization in fact does not support placement of channels and considering that the mandate of law is genre wise placement, there is no place for placing channels.

13. In this view of the matter, our position on the issue of placement fee is that the charging of placement fee, by whatever name called, should be prohibited by retaining regulation 3(11A).

Issues related to amendments to the Tariff Order applicable for Addressable Systems.

2. In clause 6 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, (1 of 2010),---

(a) in the heading, the word “pay” shall be omitted;

(b) in sub-clause (1), for the second proviso, the following proviso shall be substituted, namely:-

“Provided further that in case a multi-system operator or direct to home operator or Internet Protocol service provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system, offers channels as a part of a bouquet, the a-la-carte rate of such channels forming part of that bouquet shall be subject to the following conditions, namely:-

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems; and

(b) The a-la-carte rate of a pay channel forming part of a bouquet shall not exceed three times the ascribed value of the pay channel in the bouquet;

Explanation: Ascribed value of a pay channel in a bouquet means the value arrived at by multiplying the proportionate value of the pay channels in the bouquet with the a-la-carte rate of the same pay channel and divided by the sum of a-la-carte rates of all the pay channels in the bouquet, and proportionate value of the pay channels in the bouquet shall be calculated in the following manner:-

$$\frac{[\text{Bouquet rate} \times \text{sum of a-la-carte rate of pay channels}]}{[\text{sum of a-la-carte rate of pay channels} + \text{sum of a-la-carte rate of free-to-air channels taking rate of free-to-air channel as Rs. 1}]}$$

(c) in sub-clause (2), the word “pay”, wherever appearing, shall be omitted;

(d) for sub-clause (4), and before Explanation, the following sub-clause and provisos shall be substituted, namely:--

“(4) It shall be open to the service provider providing services through addressable system to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month per subscriber, towards channels chosen by the subscriber;

Provided that the subscriber of the addressable systems may subscribe to any bouquet or any bouquet and any pay or free-to-air channel or only free-to-air channels or only pay channels or pay channels and free-to-air channels.

Provided further that nothing contained in this sub-clause shall apply to the service provider providing service through digital addressable cable television system;

(e) after sub-clause (4), the following sub-clause shall be inserted, namely:--

“(5) if a service provider offers a bouquet consisting of standard definition channels and high definition channels or three-dimensional channels or both, requiring special type of set top box, it shall:--

- (a) ensure that such bouquet is provided to only those subscribers who have set-top-box compatible to receive the channels contained in the said bouquet; and
- (b) offer the same bouquet to other subscribers after excluding high definition and three dimensional channels from the bouquet; and
- (c) fix the rate of bouquet, referred to in para (b), after deducting the ascribed value of the high definition and the three dimensional channels forming part of the bouquet referred to in para (a).”

Response

We state that the system should be as was being followed earlier.

B. Issues related to amendments to the Tariff Order applicable for Addressable Systems.

Twin conditions at retail level

(6) *The stakeholders are requested offer their comments on the following twin conditions, to prevent perverse a-la-carte pricing of the pay channels being offered as part of the bouquet(s).*

“a. The ceiling on the a-la-carte rates of pay channels forming part of bouquet(s) which shall not exceed three times the ascribed value# of the pay channel in the bouquet;

b. The a-la-carte rates of pay channels forming part of bouquet(s) shall not exceed two times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems.

#ascribed value of a pay channels in a bouquet is calculated in the following manner:

1. *Proportionate Bouquet Rate for pay channels [A]=*

Bouquet Rate x (Sum of a la carte rate of Pay channels)/(Sum of a la carte rate of Pay channels+ Total no of FTA channels x factor)*

2. *Ascribed value of a pay channel in a bouquet = [A] x a-la-carte rate of a pay channel/ (sum of a-la-carte rate of all the pay channels)*

**factor=1 if uniform rate of free-to-air channel is less than or equal to Rupees three. The factor = uniform rate of free-to-air channel/ 3, if the uniform rate of free-to- air channel is greater than Rupees three.”*

The stakeholders are also welcome to submit any other formulation that can achieve the same objective, along with its justification.

Response:

We wish to point out that the explanatory memorandum is bereft of any particulars for arriving at the calculation. Hence, it is difficult to comment on the same.

Minimum Subscription Period

(7) The stakeholders are requested to offer the comments, if any, on the proposed deletion of the word ‘pay’ in clause 6 and 6(2) of the principal tariff order dated 21.07.2010.

RBNL Response:

We agree to the proposed deletion of the word “pay” in clause 6 and 6(2) of the principal tariff order dated 21.07.2010.

Freedom to choose the channel(s) on a-la-carte and/or bouquet(s)

(8) The stakeholders are requested to offer their comments, if any, on the proposed inclusion of the following provision after sub-clause 6(4) in the tariff order dated 21.07.2010, as amended:

“It shall be open to the subscriber of the addressable systems to subscribe to any bouquet(s) or any bouquet(s) and any channel(s) (pay or free to air) or only free to air channels or only pay channels or pay channels and free to air channels”.

Response:

No Comments

Offerings of Bouquet(s) of channels which require special Set Top Boxes (STBs) such as High Definition Television (HDTV) or Three Dimensional Television (3D TV) channels etc.

(9) Whether the channels that require special type of STB be offered only on a-la-carte basis or as part of separate bouquets that consists of only those channels that require a particular type of specialized STB.

Response:

No comments.