



COUNTER COMMENTS
By
DEN NETWORKS LIMITED
ON THE CONSULTATION
PAPER
“ON TARIFF ISSUES
RELATED TO TV
SERVICES”

A. INTRODUCTION

At the outset, we at **DEN Networks Limited**(DEN)would express our sincere gratitude to the Telecom Regulatory Authority of India (the Authority) for its support, cooperation in the establishment &growth of Broadcasting & Cable TV industry in India and for having suggested the Integrated Model of **“Distribution Network Model”**in its Consultation Paper as issued by the Authority. We at DEN fully support &endorse the said model and believe that the same will surely resolve all the existing problems of the industry;proving to be a very successful model of today’s era. *The same is “highly workable” and “extremely consumer friendly” model as being noted by the Authority in its Consultation Paper.*

B. DISTRIBUTION NETWORK MODEL – NEED OF AN HOUR

We have further gone through the comments submitted by various stakeholders and while appreciating the varied views of each stakeholder, we are of the opinion that in today’s scenariothat **“Distribution Network Model”**proposed by the Authority with a few modifications is the only way forward to revamp and streamline the entire sector. *The said model therefore, has been further proposed by various Broadcasters, Multi System Operators (MSOs), Direct-to-home (DTH)Operators, Local Cable Operators (LCOs) and even the Consumer Organizations including individuals because of the numerous benefits and advantages which it holds, in their respective comments as submitted to the Authority. Thus, it is also clearly evident that the entire market has stood in favour of the said model and is expecting the Authority to implement the same:*

Name of Entity	Status
B4U Pvt.Ltd.	Broadcaster
IndusInd Media and Communications Ltd.	Broadcaster
India Cast Pvt. Ltd.	Broadcaster
GTPL Hathway Pvt. Ltd.	MSO
Hathway Cable & Datacom Ltd.	MSO
Siti Cable Network Ltd.	MSO
Asianet Satellite Communications Ltd	MSO
Noida Software Technology Pvt. Ltd.	Head in the sky Operator
Star Broadband Services (I) Pvt. Ltd.	Internet Service Provider
Videocon D2H Ltd.	DTH Operator
Federation of Consumers & Service Organizations	Consumer Association
Satellite Channels Pvt. Ltd.	-
DDC CATV Network Pvt. Ltd.	-

As already submitted in our Response to the Authority, the said model should be adopted & enforced by the Authority having the following features:

- Separation of charges for distribution networks and subscription of Pay TV channels.
- Source of revenue could be in the form of “*Basic Subscription*” as against termed as rental as suggested by the Authority from consumers depending upon the quantum of bandwidth used.
- Broadcasters are free to price channels directly to consumers under the Regulatory Caps fixed by the Authority.
- Revenue share between MSO and LCO (which should be in the form of “*Additional Subscription*” of a minimum of Rs. 150/- for the Basic Services in a ratio of 70:30 (where 70 is for MSOs and 30 is for LCOs).
- **The Revenue Share so fixed between an MSO and LCO should be made mandatory.**
- The revenue in the form of additional subscription from the pay channels should be distributed in ratio of 40:30:30 (Broadcaster: MSO: LCO).
- The Broadcaster should necessarily provide all its Pay channels on a-la-carte basis. There should be no option of bundling or packaging allowed to the Broadcaster either for Pay channels or a combination of Pay and Free to Air. However, the powers to decide the price of Free to Air channels should be given to MSOs (as prevailing in current regime).
- Payment from consumer to MSO should be on Pre-paid basis only. MSO would disburse the share of the Broadcaster and LCO in the ratio mentioned above as well as the relevant taxes to the concerned departments. This will further ensure transparency at ground and payment of statutory dues to the governmental bodies.

Thus, it is very much clear that the entire market believes on the workability of the “**Distribution Network Model**” and requests the Authority to implement the same. The said model would be the best suitable model to meet the current market condition however, after taking into account certain desirable changes/ modifications. There is no doubt to the fact that this is a highly workable model.

Accordingly, it is respectfully submitted to the Authority that this model would be a super successful model and should be adopted at the earliest with proposed changes along with

implementing compulsory Pre-paid Model at ground (as discussed in detail in the subsequent paras). This will ensure that the revenue for each Pay channel is guaranteed to the Broadcasters and the MSOs (who can also be compensated by way of basic subscription, carriage, placement and marketing) and the choice of the consumer would be paramount and would determine the market and the pricing which is key to the success of this model.

C. CARRIAGEFEE – ALREADY REGULATED

On a review of the comments received from various stakeholders, it appears that the Broadcasters favor abolition of Carriage Fee or having the same regulated (which is however already regulated). It is pertinent to note that Carriage Fees further interchangeably used in the industry along with Placement/ Marketing Fee. Further, even of today as well, no complaints have been made to the Authority or the Hon'ble Telecom Disputes Settlement & Appellate Tribunal (TDSAT) with regard to nonfulfillment of regulatory obligations by any of the Broadcaster. Though, it has been stated by some Broadcasters that the existing provision is illusory and the Carriage Fee fixed by the MSOs is very high, however, no specific instances regarding the same have been pointed out by anyone.

As already stated in our Response, Carriage Fee is already regulated under the present regulatory regime which provides for a must-carry obligation on the part of the MSOs. An MSO has to give non-discriminatory access to its network to Broadcasters which makes it a legitimate and transparent revenue stream. The Broadcasters pay such carriage fees to the MSOs around the world. It is because of the MSOs only that the Broadcasters get reach/access to a large consumer base which they would otherwise not have. This reach allows the Broadcasters to generate ratings which then get translated into advertising revenue. MSOs at present do not get any share of advertising revenue despite being one of the major contributors to creating this advertising revenue.

It is worth mentioning that the publication of the Carriage Fee RIO by the MSOs itself makes it transparent and non-discriminatory for all the Broadcasters. An MSO prescribes uniform Carriage Fee RIO rate for the Broadcasters and any of the Broadcaster can approach a concerned MSO to carry its channels on the MSO's network after paying fixed Carriage Fee.

Additionally, as can be seen from the comments being submitted to the Authority, the DTH Operators and major MSOs have suggested the Authority to provide the forbearance on Carriage Fee as given below:

- Bharti Telemedia Ltd.
- Reliance Big TV Ltd.
- Tata Sky Ltd.
- Videocon D2H Ltd.
- GTPL Hathway Pvt. Ltd.
- Hathway Cable & Datacom Ltd.
- IndusInd Media & Communications Ltd.
- Asianet Satellite Communications Ltd.
- Siti Cable Network Ltd.
- Atria Convergence Technologies Pvt. Ltd.
- Ortel Communications Ltd.
- All India Digital Cable Federation

Out of the total universe, only few Broadcasters who have submitted comments have suggested the Authority to abolish Carriage Fee whereas as most of the Broadcasters have suggested that the Carriage Fee should continue on transparent, non-discriminatory basis and till the time it remains in public domain, which is worth mentioning that which already exists & prevails as on date.

We therefore, reiterate before the Authority that Carriage Fee is already regulated and there is no need of bringing any new regulatory regime in force on it or putting any additional regulations. The same is already transparent in public domain and uniform for all the Broadcasters which further clearly demonstrates that the MSOs are already adhering to the to the principles as set out by the Authority and are working within the limits of existing regulatory regime.

D. PRICEFORBEARANCE TO BROADCASTERS

As it can be seen from the comments submitted by the Broadcasters, that there is almost a unanimous demand for forbearance at the wholesale level as well as the retail level. Although the various reasons given in support of forbearance may seem appealing at first brush, however, the same is far away from reality on the ground.

Forbearance means complete autonomy of pricing at the wholesale level being in the hands of the Broadcasters i.e., to increase, decrease, discount, favor in any manner and for any Distribution Platform Operators (DPOs) as per their choice. The DPOs thereafter, on the basis of the wholesale prices received (which will differ from DPO to DPO) will thereafter have to competitively price at the retail level to the consumer. Thus, apart from a few favored DPOs, the others would be in a situation of utter dismay and rather than promoting competition and level playing field as proposed by the Authority, there will be chaos and anarchy which even as on date exists with certain regulations in place. The same would also militates against the principles of the Hon'ble TDSAT as being established in the order of M/s Noida Software Technology Pvt. Ltd. in its Order dated 7th Dec, 2015. The forbearance has been grossly misused by the Broadcasters as being stated in the said Order.

As already submitted in our response, any other model like Price Forbearance Model which in effect perpetuates the currently identified monopolistic control of TV channels by large Broadcasters has been seriously found objectionable by the Hon'ble TDSAT and also by the Authority and also is a prevailing fact must be avoided. The same would also be giving powers at the disposal of Broadcasters (which have mostly been abused) and at the cost of MSOs and thereby, bringing an imbalance solely to the advantage of Broadcasters and totally skewed against the MSOs.

It is further submitted that "Forbearance" if at all to be accepted as a principle, the same can only be done under the **"Distribution Network Model"**. In other words, forbearance will be more realistic, disciplined and at sustainable prices if the Broadcasters prescribe them directly to the end consumers. The consumers as a result would also get the choice, be in a position to auto regulate & determine the price being sustainable and any attempt to the contrary by the Broadcasters would be at the cost of running the risk of having the same eliminated from the market. Thus, the forbearance as a result of **"Distribution Network Model"** as proposed would be the way forward.

The Broadcaster while fixing up such price of Pay channels under the said model for the end consumers would automatically have forbearance on the pricing within in the Regulatory Caps since the price decided by Broadcasters would be directly meant for the consumers. Therefore, it will be upon the Broadcasters to market the channel content in such a manner so that it gets sold to the

consumers easily. However, the Broadcasters will have to carry out a proper extensive research to understand the taste & preferences of the consumers from market to market and will have to come out with best content vis-à-vis price so that their channels enjoy maximum viewership. The MSOs will offer the Pay channels of Broadcasters to the end consumers without interfering in the price and it will be the consumers only who will decide its fate. So, in this way, the Broadcasters will have complete freedom on pricing the content in the said event.

The basic goal of Consultation Paper is consumer benefit above all and to protect the interests of all tiers of the distribution hierarchy. The consumers in the forbearance regime at wholesale level as proposed by the Broadcasters would be the ultimate sufferers who would once again be saddled with unnecessary channels only because the DPOs are unable to provide channels of the consumer's choice at competitive rates and as per consumer's choice. Additionally, the forbearance will give discretionary, undue powers to Broadcasters and will distort the market leading to a monopolistic situation created by and already practiced by large Broadcasters.

E. PRE-PAID MODEL

The Pre-paid Model of collection subscription money from the consumers as suggested in our Response seems to be the best & effective way of solving the ongoing problems of the entire Cable TV sector which should be mandatorily prescribed. The implementation of the same will ensure collection of entire subscription from the ground in transparent manner, payment of statutory dues to government authorities within defined timelines and will bring the house in order.

The same has also been proposed by most of the Broadcasters and MSOs that the payment model between the consumers and MSOs should be Pre-paid and not Post-paid. A system similar to DTH should be implemented whereby MSOs receive subscription payment in advance from the consumers. The payment can be made through electronic means either through websites of the MSOs or recharge cards purchased from the LCOs or local shops. The MSOs would thereafter disburse the share of the Broadcaster and LCOs. It would help in reduction of disputes between Broadcasters and MSOs, as usually the LCOs collect amount from consumers but do not pass on the same to the MSO, which results in payment defaults by MSOs to Broadcasters. The Pre-paid Model will ensure more generation of

revenue for the three tiers as well as ensure more taxes being paid to the concerned authorities leading to the overall growth of the sector. Thus, a consumer who does not recharge does not get the channels. The Broadcaster thus does not get revenue for such consumer and the MSO is not burdened for paying for the consumer/ non-paying LCOs.

Considering the numerous advantages of Pre-paid Model, the same has been proposed by various entities including Broadcasters such as:

- B4U Pvt. Ltd.
- Disney Broadcasting (India) Pvt. Ltd.
- Sony Pictures Networks Media Pvt. Ltd.
- Star India Pvt. Ltd. and
- Many others.

It is well known that with the digitization having been mandated in a phased manner from 2012, the cost associated with respect to the said digitization has been exclusively spearheaded and borne by the MSOs only. The entire cost of upgradation of the “Analog Network” to a “Digital Network” and giving digital signals to the consumers has been undertaken, borne and fully incurred by the MSOs and not by the Broadcasters or any other third party. The MSOs in order to ensure digitization have invested several thousands of crores resulting into Balance Sheets over stretched because of the costs involved and increasing debt. Thus, with the advent of digitization it is the MSOs who had a huge challenge as also the responsibility of converting the analog market to a digital market.

On the contrary, the MSOs at present are not even able to generate reasonable return on their investments and are also casted with the responsibility of making further investments to achieve digitization with no certainty of any expected return on investments being made. It is evident that digitization has resulted in huge expenditure of CAPEX and for which the MSOs were constrained to take the burden of heavy loans / huge debts. The MSOs would need several years to get over the same to deflate the swollen debt burdens and they also are additionally saddled with the responsibility of servicing of these debts which also results in interest cost.

The MSOs having invested several crore of rupees into digitization are very much entitled to receive due return on their investments and keep a share of the subscription money collected from ground with them.

However, the MSOs are unable to achieve the same and earn adequate returns because of the less Average Revenue Per User and non-sharing of collection money by the LCOs. It is pertinent to mention that under the present regulatory regime, it is an MSO who has to generate bills to the end consumers and has to collect subscription money from the consumers but nowhere the subscription money from the end consumers is reaching into the hands of MSOs. Consequently, the MSOs are struggling a lot to raise ARPU at ground and in order to solve this issue, it becomes very much imperative that the money from the end consumers is mandatorily permitted to be directly paid to the MSOs only who will then share the credit of Broadcasters, LCOs and taxation authorities within defined timelines. It is respectfully submitted that the Authority may further prescribe reasonable timelines on the MSOs within which the MSOs will credit the dues of all such parties into their respective accounts.

It should be noted that the Pre-paid Model has been made mandatory under the various other industries such as Railways, Civil Aviation, Road Transport, Delhi Metro Rail Service and many others. For an e.g., under the Railways, a consumer first has to buy a ticket and then only he is allowed to board the Train and carry out his journey. In case a consumer travels in Train without a valid ticket, this further amounts to an Offence under the provisions of The Railways Act, 1989 and is punishable with imprisonment up to 6 months making it a criminal offence.

However, if this happens in Cable TV sector, neither it is made mandatory Pre-paid nor a criminal offence. The only remedies which exist are available under the relevant civil laws and the stakeholders end up losing their share. The Pre-paid Model will address all these concerns as stated herein above and will ensure that the consumers who pay the money for services are the only one who are in receipt of Cable TV services and no consumer who has not made the payment is able to avail the Cable TV services illegitimately. This will further redress the concerns of the cable operators in the situation when any consumer does not pay subscription money to them and keep on availing the Cable TV service.

The rationale for having a Pre-paid Model in the transport or such other sectors is to ensure that there is no means, occasions and any opportunity whereby the leakage/ pilferage of revenue can arise. The said industries have mandated Pre-paid which further gets strengthened from the fact that any attempt of non-payment is



construed as a punishable offence. The Cable TV industry today is going through a similar face and thus to ensure the successful of digitization, guaranteed revenue share to all the stakeholders including Broadcasters, DPOs, LCOs and the government, it can be ensured by way of compulsory Pre-paid Model only.

It would also guarantee that the exchequer is not put to any loss and would help in growth of the sector & GDP of the country. It is common prevalent practice in most of the sectors that compulsory Pre-paid Model is adopted as the most preferred model and the same is the need of hour.

We also would like to draw the attention of the Authority towards the fact that in DTH market, all the players are offering the services on Pre-paid Model only. Not a single DTH player is providing the services on Post-paid basis. The present regulatory regime only mandates the DTH Operators to compulsory offer Pre-paid option to the consumers and provides Post-paid services only in the situation as in when any consumer asks for the same. Whereas on the contrary in the Cable TV sector, the services have to be compulsorily offered on Pre-paid & Post-paid basis which point out towards the discrimination prevailing in both sectors.

In light of the aforesaid, it is respectfully submitted that Authority should prescribe the Pre-paid Model compulsory in Cable TV sector as prevailing in DTH keeping in mind the interest of all the stakeholders and orderly growth of the industry under the relevant provisions of Telecom Regulatory Authority of India Act, 1997.

To conclude, we once again thank the Authority for carrying out such an exhaustive exercise and request the Authority to consider our comments/ submission made herein above.

In case of any queries or clarification required by the Authority, we further request the Authority to contact Mr. Rajkumar Varier – Group General Counsel @ rajkumar.varier@denonline.in or Mr. Lalit Taneja – Assistant Manager – Legal @ lalit.taneja@denonline.in - DEN Networks Limited.