

To,

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**SUB :-WRITTEN COMMENTS ON THE CONSULTATION PAPER ON
ISSUES RELATED TO AMENDMENTS TO THE INTERCONNECT
REGULATIONS APPLICABLE FOR DIGITAL ADDRESSABLE CABLE TV
SYSTEMS & TARIFF ORDER APPLICABLE FOR ADDRESSABLE
SYSTEMS DATED 20th DECEMBER, 2012**

Dear Sir,

In reference to the captioned consultation paper, please find below our comments :-

ISSUES FOR CONSULTATION

A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems.

COMMENT ON # (1) & # (2):-

The proposed proviso must be introduced in clause 3(2) of the Interconnection Regulations, since this is consistent with the position vis-à-vis analogue signals in the existing Interconnection Regulations.

However, the intent of clause 3(5) of Interconnection Regulation for DAS is different and hence, it should not be deleted. Whereas the proviso to Clause 3(2) is relevant for the purposes of “must provide”, Clause 3(5) is relevant for the purpose of “Must Carry”. These have different connotations. Whereas the intent of Clause 3(2) is to not limit the freedom of contract and therefore to not force a broadcaster to provide the signal where the MSO seeks carriage fee, the intent of clause 3(5) is that where the MSO demands a channel, he cannot seek further benefit there from by demanding carriage fee as well. The anomaly that is likely to arise in case clause 3(5) is deleted is that since

the DAS regulations introduce a right of the Broadcaster to have its signal carried by the MSO, under the principle of “must carry”, the said right would be rendered nugatory if the MSO still has the right to charge carriage fee in such a scenario.

Furthermore, the Authority must keep in mind that the arguments that were earlier available to the MSOs, in support of a claim for carriage fee, no longer hold good.

(A) The MSOs had an issue with the LCOs under-declaring or not declaring subscribers in the analogue system. With digitization and addressable systems being in force, that issue is addressed.

(B) Also, since the signals are in digital format, the issue of capacity to carry the channel is also absent. Thus, the MSOs cannot state that they need carriage fee to overcome shortage of capacity.

Carriage Fee as a concept is relevant only so long as a MSO is not able to recover the expenditure incurred by them and/or unable to get a fair return on the MSO’s investment. **It is therefore suggested that payment of carriage fee must also have an end date.**

MINIMUM CHANNEL CARRYING OF 500 CHANNELS FOR MSO'S:-

(3) Whether there is a need to specify certain minimum channel carrying capacity for the MSOs in the interconnection regulations for DAS ?

COMMENT ON # (3):-

As on March 6, 2012, the Ministry of Information and Broadcasting has granted permissions to 831 television channels under the uplinking and downlinking guidelines; with the passage of time it is expected that more television channels will be operationalized. Even at a minimum carrying capacity of 500 channels there is a mismatch between the number of television channels available and carrying capacity [Demand: Supply Ratio =approx. 8:5]

Given that the consumer is to be offered a choice to go for a la carte offering of channels rather than bouquets, it is imperative that a certain minimum carrying capacity is directed to be maintained. 500 is already less than the channels available, but the minimum number that must be enforced. To ensure that the interest of the consumer/ viewer are

protected they should be given the option of deciding amongst the maximum possible television channels. To ensure that the available spectrum is optimally utilized by MSOs there is a crying need to specify the minimum number of channels that an MSO has to carry. In the absence of a statutory minimum the broadcaster/ content aggregators would be left at the whims and fancies of the MSO. It is thus possible for a MSO to create an artificial increase in demand by curtailing the number of channels available for distribution, thereby further skewing the ratio between the channel availability and demand.

Whilst prescribing the minimum number of channels to be carried DTH is often used as a comparator. With the availability of spectrum there has been a progressive increase in the number of channels being carried by various DTH operators. The key point to be noted here is that DTH does not have the bandwidth to carry additional television channels, as against the MSO who can carry additional television channels but may choose not to.

To ensure that the consumer truly exercises his freedom to choose he should be given the largest possible bouquet of channels to choose from; the larger the bouquet of channels the greater the choice available to the viewer. A larger bouquet of channels will also ensure that the viewer can get a variegated offering of television channels; besides this will ensure that discerning viewers who wish to view certain specialized television channels are adequately catered to.

In fact, the carrying capacity of 500 channels was specified keeping in view the market scenario, and once the market forces are able to take over the carrying capacity, the same can be done away with. The basic reason for providing the minimum carrying capacity at 500 channels is primarily on the basis that MSOs should not be allowed to take a refuge that the capacity for carrying the channels is not available for the channels. By not having a minimum carrying capacity would, in fact, render the provisions of 'must carry' nugatory, if the MSOs start taking refuge under the non-availability of bandwidth.

DAS operator does not have any bandwidth constraint. In fact, mandating of minimum of 500 channels is primarily in the interest of the consumer, and the attempt of the Authority to provide 'must carry' for the first time, since 2004. We feel that it is difficult to give effect to the 'must carry' provisions without mandating the minimum carrying capacity, which should at least be at 500 channels.

Even though the minimum channel carrying capacity has been refuted by the MSOs on the ground that the setting up of headends will require huge capital and operational expenditure, but the MSOs have failed to provide the detailed break up of the capital and operational costs.

(4) If yes, what should be the different categories (example cities/towns/rural area) of areas for which minimum channel capacity should be prescribed and what would the capacity for each category.

COMMENT ON # (4) :

Television as a medium is based on the footprint, which it covers. Television channels in India are normally on a pan India basis. Many media buying agencies also view television channels on the basis of a pan India reach. In today's India, viewers are spread across different geographies. Viewers of a given language may be spread across different cities/ towns/rural areas. Migration of workers in rural India is a common phenomenon; so is the migration of people from rural India to urban India. It is necessary to cater to this floating population who may be far away from their homeland and the best way to cater to these specialized groups is by offering maximum number of television channels spread over different languages.

It is imperative that we do not lose sight of the fact that one digital head-end can cater to a much larger area and which may cover an entire city, towns and many villages. The MSO's have been crying hoarse that setting up digital head ends will require huge capital and operational expenditure, this contrary to the actual facts. The Hon'ble TDSAT in Petition No. 25 (C) of 2010 recorded in its order dated 28.7.2011, that IMCL (a leading MSO) had agreed that

*"1.56 In the hybrid model, the capacity of the system increases so that around 30-50 analogue channels (FTA channels) and 250-400 digital channels (pay/local channels) can be carried. In the notified CAS areas and many voluntarily digitized areas, this model is being used. **Where pay content is encrypted, only authorised subscribers can have access to the content. In notified CAS areas, the pay content is encrypted whereas in the case of voluntarily digitized areas, it is distributed without encryption.** This is because addressability is mandatory in notified CAS areas whereas it is not so in voluntarily digitized areas. As explained above, digitization uses compression techniques to alleviate capacity constraints, creating more space for TV channels, value added services and broadband. However, it is addressability that provides choice to the consumer, promotes transparency in business transactions and checks signal piracy."*

From the foregoing it is an accepted position by a leading MSO that there are no carrying capacity constraints for a MSO. Categorization of the minimum channels capacity of MSO's based on cities/ towns/ rural area presumes that the viewer in cities is different from those in the villages. Aspirations of people transcend a rural and urban divide, geographies, language barriers, economic strata etc. The average Indian in rural area aspires to be like his counter part in the city. To create minimum channel capacity for MSO's based on cities/

towns/ rural areas would be an artificial creation of barriers where none are required.

Placement Fee:

COMMENT ON # (5):-

Placement Fee as a concept is alien to DAS systems. In a DAS environment, there does not exist a placement of channel concept like the way it exists in the analogue mode. It is the statutory mandate that the placement of channels has to be genre-wise. Once that is complied with, no broadcaster can have any quarrel as to where the channel is placed within the genre. Testing this from a viewer/consumer angle, it must be kept in mind that the viewer in the DAS environment primarily looks for a particular genre and then goes through the EPG listing. Hence, whether a channel in a particular genre is placed at 1 or 10 is most unlikely to affect the channel.

MSO's are already attempting to place the Logical Channel Numbers ("LCN") of certain channels within a genre in the DAS regime; thereby hoping to disadvantage or otherwise treat less favorably other channels of similar genre. This convoluted and bizarre form of placement of channels within a genre needs to be strongly deprecated.

In a DAS environment the MSOs can possibly have the following source of incomes:-

1. Subscription income which is witnessing a robust increase;
2. Carriage Fees – this is being debated;
3. Fibre on lease/ hire;
4. Advertisement from local cable channels.

To add to the above revenue streams of the MSO, Placement Fees also is unfair to the broadcasters. Most Broadcasters are already reeling under increased content cost, operational cost, capex etc. [none of which are borne by the MSO]. Hence, there should not be any Placement Fee.

By allowing placement fee to exist in the DAS environment, the authority cannot and should not shift the burden of and cost of

digitization upon the broadcasters. While on one side, the broadcasters have to procure content at a very heavy cost (costs of which is not shared by the MSOs) and on the other hand, the MSOs tend to recover all the costs from the broadcasters through the concept of carriage fee and placement fee, while the same remains inapplicable in a number of areas, and while on the third front, in the DAS environment, MSOs are liable to get an increased subscription revenues.

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

Twin conditions at retail level:

Comments:

In the future, with super-niches developing/ or for sports channels, the relationship between ala carte rate and bouquet rate can be very interesting. This relationship should be set by the market and not regulated. Also, currently, there is not enough data available as to how this market will play out. Hence, the need for forbearance and not regulation.

Minimum Subscription Period:

COMMENT ON # (7) :

The proposed deletion appears to be in order and we stand in favor with the Hon'ble regulatory authority.

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

COMMENT ON # (8) :

The proposed deletion appears to be in order and stand in favor with the Hon'ble regulatory authority.

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

COMMENT ON # (9) :

It is recommended that channels that require special type of STBs must be offered, only on a-la-carte basis or as part of a separate bouquet that consists of only those channels so as to ensure that the choice available to the consumer is between equals and comparable channels in all material respects.

If HD TV or 3D TV are offered in a bouquet comprising of standard definition TV (SDTV) this would result in comparing the proverbial “apples with oranges”. To enable a consumer/ viewer to make appropriate choices the options available to the consumer /viewer should be similar and comparable.

HD TV or 3D TV is superior viewer experience and will be availed of by the discerning and affluent viewer and to have a separate bouquet that consists of only those channels is fair. Business class air travelers and economy class air travelers cannot and should not be compared.

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