Shreya Broadcasting Pvt. Ltd.

09-10-2019

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Respected Sir,

Sub: Comments on Consultation Paper No. 16/2019 on Issues related to Interconnection Regulation, 2017 dated 25 September, 2019

At the outset we express our sincere thanks for acknowledging and issuing consultation paper on the single most contentious issue of "CARRIAGE FEES" which can be in another termed appropriately called as Cancer cell of Media Industry (CCMI). We are enclosing agreement of carriage and its disguised form of placement, marketing, promotional signed under the threat of disconnection of channel. Treatment of CCMI is possible only by making any form of payment by broadcasters to distributors as Illegal with consequences of cancellation of License of either party. We are sorry to say that carriage fees are a legalised form of extortion carried by distributors exploiting both Broadcasters and Viewers. We are pleased to enclose our bold but truth comments before the honourable regulator to address the issue in best of honesty to restore the 4th pillar of democracy from the menace of CCMI.

Thanking you,

Yours faithfully,
For Shreya Broadcasting Private Limited

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"CARRIAGE FEES"- A CANCER CELL OF MEDIA INDUSTRY

Media industry plays very significant role in the society and hence rightly termed as 4th pillar of democracy. Within Media Industry, television industry being an interactive media of listening, viewing and participative nature has become an integrated and vital part of society.

Regulator of the Television industry hence has an intrinsic responsibility to establish transparent level playing field for all its stakeholders. The Major stakeholders of Television Industry are Broadcasters, Distributors and Viewers.

The level playing field in a market driven economic is based on ensuring that the fundamental principles of demand and supply of goods/services are remained non-manipulative. Hence Regulator has to ensure that the appropriate regulations are in place to ensure best supply of services/goods are available at the best optimum price to customers of all segments driven by market dynamics else the availability of goods and price will be always manipulated.

In specific to the television industry, the content producers/broadcasters must be provided with right support through legislation to ensure that the best-of-the-best content is produced as envisaged under article 19 of the Constitution of India – the right to expression/speech. The best-of-the-best content cannot be produced by broadcasters unless the right to expression or speech of viewers of television industry is also sufficiently and effectively protected. Which means that the broadcasters and viewers interest are mutually interdependent are thus required to be sufficiently guarded against any manipulation/hindrances. Hence in order to ensure that the producers of best-of-the-best content i.e broadcasters of all genre i.e news & non-news exist at the one end of supply and at other end of demand of the content, the viewers of all types/choices are able to receive/choose content of their choice at the optimum price.

Broadcaster's revenues directly depend on the demand of the Channel which is in turn depend upon quality and relevance of the content in case of non-news channel and in case of news channel with additional factor of independence. The investment and return on investment of a broadcaster is purely dependent on single factor of

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quality & quantity of content consumed by viewers which is rightly summarised in common parlance as "Content is king". Hence, the market dynamics determines the supply and demand of the channel.

Distributor's revenues currently depend on the numbers of subscriber's base which in turn depends upon the one time set up and monthly cost, non-stop high quality connectivity, multiple services like high speed broadband, telephone, the spectrum of satellite and non-satellite channels distributed and off the shelf content. The investment and return on investment of distributors due to inherent entry barrier is guided by one time sale of set up boxes and recurring fixed network capacity fees besides other revenues such as broadband charges, share of pay channels subscription charges, off the shelf channel & content subscription, all provided to the viewers on the same distribution infrastructure.

The goods and services across all industries are governed with Maximum Retail Price (MRP) set by Manufacturer based on goods demand which is based on market dynamics. The distributor's margins are set by manufacturer not by distributors. In countries like USA and UK, the distributors pay to the channel for the content an environment of market driven economy of best content at best price.

However in India, the distributors of the Media Industry under the advantage of inherent entry barriers, and few service providers coupled with the absence of the appropriate regulations has allowed Distributors to adopt all possible trade manipulative/corrupt practices to control broadcasters and viewers in absolute manner. Due to the said factors Distributors instead of paying for the Content which nearly cost Rs.24,000 Crores per year, demands content producers/channel to pay Carriage Fees or its other disguised form placement/promotion/marketing fees. In no other industry distributor of any goods earn revenues from both end i.e from Manufacturers and Customers.

Distributor revenues in the given scenario are:

Net Capacity fees: Rs. 39,000 Crs [Rs. 130 *12*25 Crs households]

Carriage Fees: Rs. 6,000 Crs [Rs. 6 Crs per channel * 1000 Channels]

Free Content: Rs. 24,000 Crs [Rs. 2 crs*12*1000 channels]

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Excluding other recurring Revenues of Broadband, telephone, off the shelf content subscription and one time revenues of sale of set top boxes

Distributor is generating revenues 6 times & more thorough NCF, Carriage Fees, Free Content, Pay Channel Share and Multiple other services on the same infrastructure.

Carriage fees and all other disguised form of carriage fees MUST be declared illegal for free to air channel with immediate effect followed with no carriage fees for all channels in next 6 months and leading to distributors paying to the broadcasters for the content shall be the way to regulate the industry, like USA & other economies else no amount of regulations can ensure market driven economies. Viewers payment shall also change from fixed NCF to data consumed per day basis which is currently adopted by reliance jio in India and by Comcast in USA since year 2004.

Consultation Issues:

2.33 Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?

Yes, the ill concept of Target Market is absolutely misused by distribution platform operators. The fact is evident from the number of cases filed against distributors for fake carriage fees and its disguised form of placement/marketing/promotion fees before TRAI/TDSAT. Enclosing some of the agreements signed with distributors for base less fees charged in the name of carriage fees and fake placement/marketing/promotional fees. The tool of Target Market is an extortion tool and hence shall be deleted from the regulation with immediate effect for Free to Air Channel and for all Broadcasters in next 6 months. The technology adopted by the distributor at the time of set up of business determines the cost of carrying which is a well thought decision of the distributor and the return on technology adopted by

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the distributor cannot be assured by the regulator or regulation which is against the Fundamental principle of Demand and Supply driven economies. The Network capacity fees charged by the Distributor should be directly proportional to the technology and cost of operation of distributors. In fact, like USA economies where the Viewers pay based on data consumed not fixed monthly fees shall be implemented in India also.

2.34 Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

Yes, cap of zero shall be applicable to carriage fees or its disguised form such as placement/marketing/promotional fees for Free to Air Channel with immediate effect and for all broadcasters in next 6 months. Please note CARRIAGE FEES or its other disguised form Placement/Promotional/marketing is the CORE factor completely damaging the natural principle of demand and supply driven economies of MEDIA INDUSTRY. In no other industry across the world and in India, the distributors earn revenues from Manufacturers and Customers i.e Broadcasters and Viewers due to absence of regulation failing to address the manipulative and monopolistic power derived from inherent entry barrier.

2.35 How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.

The technology adopted by the distributor at the time of set up of business determines the cost of carrying which is a well thought decision of the distributor and the return on technology adopted by the distributor cannot be assured by the regulator or regulation which is against the Fundamental principle of Demand and Supply driven economies. The Network capacity fees

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charged by the Distributor from customers should be directly proportional to the technology and cost of operation of distributors along with multiple bundles of services run on the same infrastructure. Hence, cost of carrying channel is not feasible to allocate only for channel distribution and inappropriate to make basis of determining the fees, if any. This is worth repeating for the sake of consequences of carriage fees, that carriage fees or its disguised form is an extortion tool and shall be made illegal until then the Media Industry cannot reach to best of its potential. A monthly fixed fees paid by Viewers is also not appropriate and should be based on data consumed similar to countries like USA. Rs. 1800 per year per household should be the cost payable by per household for 1 GB data per day similar to Reliance Jio cost for content on handheld devices including data and telephone without restrictions on channel or content. Which means @ Rs. 150 per month of NCF a distributor can provide all channels to viewers BUT the best way should be charge based on data consumed per day similar to Comcast in USA & Reliance Jio in India.

2.36 Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?

Yes, similar to the ill concept of Target Market, tool of 5% subscriber base is an extortion tool to derive illicit benefit in the name of carriage or its disguised form of placement/marketing/promotional fees. In fact the capacity is never the constraint and is a falsely propagated to extort carriage fees. Most of the distributors carry non-regional channel for free and charge carriage fees for only regional channel because of the compulsion or based on disconnection threat.

Should there be a well defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.

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A placement fee is another disguised form of Carriage Fees. Similar to Illicit tools of Target Market and 5% of subscriber base, placement fees is another disguised form of carriage fees. Hence Carriage Fees or its other disguised form of Placement/marketing/Promotion fees MUST be made illegal else a market driven Media Industry cannot be established. In United State of America (USA), broadcasters charge distributors for the content cost either in fixed fees or percentage to the channel subscriber fees basis from distributors whereas unfortunately due to inappropriate regulations the Media Industry in India is severely damaged affecting the content producers/broadcasters and Viewers.

3.26Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favoring DPOs ? Does such forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).

Placement, marketing or any other agreement are disguised form of carriage agreement. The core disease of "carriage fees" and it's all forms including placement, marketing, promotional or in any other form need to be completely eliminated to restore the health of the media industry (level playing field) driven by market economies of demand and supply.

The technology adopted by the distributor at the time of set up of business determines the cost of carrying which is a well thought decision of the distributor and the return on technology adopted by the distributor cannot be assured by the regulator or regulation which is against the Fundamental principle of Demand and Supply driven economies. The Network capacity fees charged by the Distributor from customers should be directly proportional to the technology and cost of operation of distributors along with multiple bundles of services run on the same infrastructure. Hence, cost of carrying channel is not feasible to segregate and inappropriate to make basis of

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determining the fees, if any. This is worth repeating for the sake of consequences of carriage fees, that no carriage or its disguised form should be permitted under the regulation.

3.27Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

As a broadcaster of regional channel with 12 years of operations, we are forced and compelled to sign agreements in the name of carriage fees or its various other disguised forms of placement, marketing or promotional agreements under the threat of disconnection of channel. Distributors of all types i.e DTH or MSOs or Local Cable Operators and all kinds i.e Tata Sky, Videocon, Airtel, Sun, Hathway, Den Networks, Siti, ACT, ACN, and many more are exploiting the absence of proper regulation for extortion of money on and off record under the threat of disconnection of channel, ala carte, target market, LCN and the latest being disconnection of news channel for no reason not bothered to oblige honourable TDSAT order. The copy of honourable TDSAT order enclosed. The deadly practice of manipulation and corruption is thriving due to absence of appropriate legislation. The carriage fees or its all forms needs to be completely made illegal and punished with cancellation of license with 3 warnings. Similarly, disconnection of channel for any reason except force majure shall be punished with Rs. 2 lakh per day with the fund utilised for Viewers welfare fund.

3.28How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.

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Carriage fees or all other its disguised form need to be made illegal. In no industry in India, Distributor derives revenues from both Manufacturers and Customers except in Media industry. The distributor in Media Industry is able to extort revenues from Broadcaster and Customers due to absence of appropriate regulation and monopolistic presence.

Across any industry, no regulator assures return on investment of an Industry. Rather the role of the Regulator is to ensure that the demand and supply of the goods and services are driven by market and remained non manipulative due to monopolistic or other factors. The technology adopted by the distributor at the time of set up of business determines the cost of carrying which is a well thought decision of the distributor and the return on technology adopted by the distributor cannot be assured by the regulator or regulation which is against the Fundamental principle of Demand and Supply driven economies. Example, Youtube or Reliance Jio, revenues i.e return on investment is not guaranteed by regulator. Youtube or Reliance Jio does not charge broadcasters any fees for carrying the content in exchange to the free content thus promotes independent best content production/availability. Youtube return on investment is through advertisement which is in turn shared with broadcasters. Reliance Jio return on investment is thorough data consumed charges paid by viewers which in turn depend on seamless connectivity and remain non-manipulative.

3.29Any other issue related to this consultation paper? Give your suggestion with justification.

Broadcasters provide free content to distributors hence carriage or any other form of payment to the distributor MUST be made illegal. Carriage Fees and other forms of payment extorted by distributor from Broadcaster is a synonym of Cancer of Media Industry surviving under the threat of disconnection of channel. And a fit case to be compared with payment of "Hafta Vasuli" to distributors to keep channel live. Similarly, viewers of channel should not be

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charged fixed fee ("Hafta Vasuli" from Viewers) on the basis of no. of channels subscribed BUT as per the amount of data consumed. Regulator is duty bound to empower broadcasters and viewers like in USA where neither broadcasters pay any carriage fees to the distributors or viewers pay based on no. of channels subscription.

The Regulator is required to set up following building Block asap:

TELEVISION VIEWERS

Pay for the content consumed driven by independent viewer's choice and appetite with no restriction on number of channels/type/region/language

DISTRIBUTORS

Investment: Content/Data distribution Infrastructure

RoI: Revenues based on quantity of Content/data consumed not based on number, time period, type, region or language of content

Demand and supply of content is driven by independent viewer's choice and appetite

BROADCASTERS

Investment: Content Production Cost

RoI: Advertisement revenues from advertisers and/or content subscription fees from Viewers

Demand and Supply of Content is driven by independent viewer's choice & appetite

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TV5 NEWS Shreya Broadcasting Pvt. Ltd.

2nd December, 2019

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Dear Sir,

Sub: Comments on CP No. 16/2019 on Issues related to Interconnection Regulation, 2017 dated 25-09-2019 post OHD held on 28th November, 2019 at TRAI New Delhi office

We request you to kindly consider the following submission in order to restore the level playing field for Viewers, Distributors and Broadcasters through simple, transparent and effective regulation.

The following terms be included / amended in the Section 2, definitions of the Regulations and where ever used to rectify the fundamental flaws of the regulation:

"**Target Audience Market**" which means one or More Territory of State/Union Territory declared by Broadcaster for a channel.

(Existing Flaw: Territory of India in case of DTH and one or more state as per control room/head end in case of MSOs/LCOs is an absolute disconnect with the Language of channel and audience. 99% of the population will be covered. "Target Market" word where ever used in the regulation should be replaced with "Target Audience Market".)

भारतीय दूरसंचार विनियामक प्राधिकरण
महानगर दूरसंचार भवन, नई दिल्ली-2
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"**Network Capacity**" The number of channel carrying capacity of the Distributor as certified by BECIL or qualified system auditor approved by TRAI as at financial year ending on March month of every calendar year.

(<u>Existing flaws:</u> In the absence of the independent third party certification the network capacity is under stated and artificially filled proven by a fact that all non-regional channels are always listed in NCF pack and no carriage fees is charged by distributors from broadcasters)

"**Network Capacity Fee**" means the amount, excluding taxes, payable by a subscriber to the distributor of television channels for distribution network capacity ~~subscribed by that subscriber~~ to receive the signals of ~~subscribed~~ **all Free To Air** television channels **available on the distributors network** and it does not include subscriptions fee for pay channel or bouquet of pay channels, as the case may be.

(**<u>Existing Flaws:</u> All FTA channels must be carried upon NCF payment. The multiple subscription conditions of FTA channels empower distributors to remove FTA channels from network. Compliance with multiple subscription terms such as SMS/toll free/additional multiple payment of Rs.20 per 25 FTA channels/language wise bouquet/genre wise bouquets etc is impossible to regulate and hence MUST be removed from the regulations.**

Also, Interconnect regulation addresses only "Listing" of channel not carriage of channel though the Interconnect regulation is meant to regulate carriage of TV channel. As per dictionary, "Carriage" is a noun which means "the act or process of transporting goods"**. Whereas, the word "Listing" is a noun which means** "a list of information that is published regularly, or an item on this list"**. Therefore, in the name of carriage, only listing of channel is regulated and carriage is completely missed. Hence unless the fee of distributor's choice is paid in the name of placement/marketing/advertising the channel is not carried by distributors and remains inaccessible to the viewers.)**

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"**Cost of Carrying a Channel**" is a cost per month per channel incurred by distributor to carry a channel certified by BECIL or TRAI approved panel of system auditors based on audited Balance sheet of the distributors as at financial year ending on March month of every calendar year based on net asset and/or capital employed basis after adjusting Network capacity Fee.

(Existing flaws: Disclosure of cost of carrying channel will rationalise Network capacity fee and carriage fees charged by distributors beside transparency)

"**FTA channel Carriage Fees**" 115% of the cost of carrying a channel, if any, payable by broadcaster of a FTA channel to a distributor of television channels only for the purpose of carrying its channel through the distributor's network effective for 12 months period starting from July to June.

(Existing Flaws: Variable Carriage fees with maximum Fees @ Rs. 2.40 per annum per Set Box based on subscriber's base is impossible to pay by broadcasters. Total TV Advertising revenues market is Rs. 32K Crores whereas carriage fees of Rs.2.40*25 crs STB*900 channels is equal to Rs.54K Crores. Please refer counter comments for Rs. 0.02 per STB per month carriage fees calculation.)

"**Placement Fees**" fees payable by a broadcaster to a distributor of television channels only for the purpose of placement of such channels onto a specific position in the electronic programming guide or seeking assignment of a particular number to such channels and cannot be clubbed with marketing or advertising or promotion or other fees;

(Existing Flaws: Placement fees must be defined and must be prohibited and illegal as placement of channel distort the level playing field and promotes discrimination unlike SC/STs employment reservation dedicated to backward community. Marketing and Advertising of channel is sufficient to promote channel in a market driven economy.)

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We are sure that appropriate level playing regulation will benefit all stakeholders and shall stop abusive practice of any nature ultimately leading to generation of best content, best distribution platform with best price to empower and entertain TV Viewers of our country.

Thanking you,

Yours faithfully
For Shreya Broadcasting Private Limited

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Anil Kumar Singh
Chief Financial Officer

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