DIGITAL CABLE OPERATOR ASSOCIATION MUMBAI
Regd. No. : MUM / 1527 / 2012 / G.B.B.S.D.
13, Akbar House, 1st Floor, N. F. Road, Colaba, Mumbai - 400 001. Tel. : 2282 8594
E-mail : dcoamcable@gmail.com

27.9.23

Shri Anil Kumar Bharadwaj
Advisor (B & CS), TRAI,
New Delhi

Dear Sir,

Pl find our response to the CP on "Review of Regulatory Framework for Broadcasting & Cable Services" dated 8th August 2023. At the outset, we welcome your decision and initiative to revisit issues regarding NCF and other issues which affect LCOs.

NCF related Questions (Q1 to Q3)

It is a fact that the concept of NCF was brought about by you in your Draft Tariff Order of 2016. The logic given then as per the Explanatory Memo in the above was as follows :

"As per data available, the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs 80/- per month and cost of other activities like subscriber management, billing, complaint redressal, call center etc comes out to be Rs.50/- per month. Accordingly, the Authority has proposed that distributors of television channels may charge a maximum fixed amount of upto Rs 130/- per month, excluding taxes, from its subscribers towards its network cost to carry 100 SD channels including mandatory channels of Prasar Bharti, as notified by the Government from time to time. A subscriber may request for additional network capacity in bundles or lots of 25

SD channels at a rate of Rs 20/- per month for subscribing to more than 100 channels. This accounts for additional bandwidth cost by distributors of television channels."

Thereafter the same was amended to Rs.130/- for upto 200 channels and Rs.160/- for more than 200 channels as per your Tariff Amendment Order dated 1.1.2020.

Once again in this CP, some table was provided giving the NCF realisation of 6 DPOs to show that NCF being charged to customer is less than 130/-. Two crucial factors need to be considered as regards this tabulation :

1. This was done without naming the DPOs who's data you have published. Can you provide which of these are DTH players and which MSOs data is being quoted. Is the same from Urban MSO or rural MSO?
2. In pt 79 of the EM to the TO Amendment, you state that an analysis of annual reports shows that the cost of distribution is not more than 130/-. Which Annual report provides this data? We could not find this in any Annual Report. If DPOs have provided the same you we ask you to clarify if the data submitted by MSOs is only MSO share of NCF or does it include LCO share of NCF also as assumed by them. Since customer billing is done by LCO, how does any MSO have any idea of what NCF is charged by LCOs and what ultimate customer discounts LCOs provide to customers?

So a limit which has been set in 2016 sees zero impact of inflationary trends. There can be no business where prices have remained the same for such a long period and which are unaffected by inflationary trends. As LCOs we have seem our incomes dropping with each passing year due to competition from OTT apps mainly in the last few years. This is impacting DTH players too. With fierce competition why should NCF be capped at all and why not let market forces apply ? To us it seems you have bought into the Broadcasters arguments that NCF has been the sole reason for consumer price price, where as even as per NTO 1.0 terms for a full HD pack, NCF component formed 42% to 33% to 27% (varying from smaller SD to full HD packs)of the consumer bill only.

Below is a small comparison of the 2007 CAS regime which is similar to the current regime.

	CAS 2007	Proposed system
Basic Charge	Rs. 77/- further increased to 82/-	Rs.130/- for 100 channels If more than 100 channels chosen by subscriber, additional Rs.20/- payable for 25 channels selected 1 HD channel = 2 SD channels
Fixed Pay Channel cost	Rs.5/- further increased to Rs5.35	Free market pricing but with genre wise price caps
Taxes	As applicable	As applicable
FTA Channels	Included as part of Basic No choice to choose for subscriber	Subscriber has to chose from a la carte or Bouquet created by Distributor of TV channels(DOTC) Only Mandated FTA channels available to every subscriber
Pay Channels	Subscriber had to select only PAY channels on either a la carte basis or package basis	Subscriber to choose from Broadcaster a la carte or bouquets Subscriber to choose from DOTC a la carte or bouquets
Premium channels	Did not exist	Premium channels out of price control
Revenue Share	Broadcaster : 45% of pay revenue MSO : 30% of pay revenue + carriage LCO : 25% of pay revenue + Basic Charge	Broadcaster : 65%-80% of pay channel revenue MSO : Share of Basic Rental + 20%-35% of pay channel revenue to be shared with LCO + Carriage + Placement + Marketing fees LCO : Share of Basic Rental + 20%-35% of pay channel revenue wiich is shared between MSO & LCO

In the circumstances, we would definitely like that determination of NCF should be left to market forces as there is enough competition prevailing in the market. If it is still decided to lay ceilings, then ceiling should be set of Rs.170/- for SD channels irrespective of number of channels and Rs.210/- for HD channels irrespective of number of channels. Since these are upper limits, you can implement the same for another 2 years before removing all ceiling caps on NCF charges. NCF based on Bandwidth used in DVB has been a flawed concept used by previous Regulators, since all that the STB does is, lock and unlock the channels subscribed. So all channels reach the customers home in all DVB systems. There is no significant increase in expenditure incurred by LCOs with additional channels being demanded by a customer, however, the base expenses having increased, the base NCF amount is definitely required to be increased as costs of distribution have also gone up.

We have calculated the NCF Based on Consumer Price Index (CPI) released by National Statistical Office (NSO). We have used CPI data as we are talking of consumer pricing, and CPI captures the prices of services whereas WPI does not capture prices of services and has a tilt towards manufacturing sectors. Calculation is as shown below.

Year	CPI	Effective NCF
31-12-2016	4.9482	130
31-12-2017	3.3282	134.32666
31-12-2018	3.9388	139.6175185
31-12-2019	3.7295	144.8245538
31-12-2020	6.6234	154.4168633
31-12-2021	5.1314	162.3406103
31-12-2022	6.699	173.2158077

https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG

However, we still maintain that not having any cap for NCF will benefit the entire industry and result in competitive forces determining prices, which will also work to the advantage of the customer.

Though we are not against the idea of a variable NCF for Urban and Rural areas in principal, we apprehend that the same will be prone to misuse. If variable NCF is applicable, variable Broadcaster tariffs can also be considered to ensure systemic parity. Besides, there is no way you can control the usage of this in SMS. You need very sophisticated systems to do PIN code level mapping to achieve this. Will this not lead to a big hike in disputes and TDSAT cases, when some Broadcasters even currently talk of piracy amongst some DPOs. Already we are seeing that different package rates are being offered by some MSOs to different LCOs in the same city. Hence it is best to disregard this idea and go with our suggestions on NCF given earlier..

NCF on Multi TV homes (Q. 4 and 5)

We have pointed out the flaws in your assumptions in our challenge to the NTO2.0 in our Writ petition(L) No 547 of 2020. Your assumption that the cost includes only distribution of cable wire into another room is grossly incorrect as that is a one time cost only. It is not correct that the rent of the office or staff salaries and all other establishment/operational costs are also lower by the same %. When the currency of the business is each STB, then the total cost for any DPO does not come down by the logic applied by you.

If we are to extrapolate your logic, then why is Content cost not reduced in same proportion ? Surely the customer who is paying full price of the channel per month should be able to use the same in any room of his house as they do with any newspaper or magazine. After all Brodcasters face no additional incremental cost of creating the said content and also distributing the same channel/packages. Today already they are monetising the same TV channel content also on their own OTT platforms and earning in Rupees and Dollars in international markets.

Today OTT Apps allow same content to be viewed on multiple devices, surely you should regulate that OTT rates be also regulated to a per active device tariff. Broadcasters collect on per STB basis so they should be forced to do the same with their OTT Apps.

If you are to offer content cost reduction to 50% for each additional STB in same house, the question is how will you build systems to ensure no misuse? Discounts can be passed to Hospitals/Hotels etc and same can be misused by unscrupulous DPOs. This is going to lead to disputes between Broadcasters and DPOs and hence avoided. DTH has better SMS controls and they used to offer the same earlier but cant say the same about all MSOs. But at that time Broadcasters had negotiated deals with DTH and would not bother to check if any misuse was happening as this did not impact their revenues.

We have seen that MSOs continue to charge their share of NCF on additional TVs as though it is a Main TV. If they claim they have followed your Regulations and implemented the same, we can prove that they do not follow this even in their own Primary Points. MSOs levy a full share of NCF even on additional TVs currently to all LCOs Hence it is best that you do away with this as this is not practical and commercially viable for all stakeholders.

Apart from what is stated above, we would like to add here that a person with two or more TV sets in his or her residence is not the customer who cannot afford to pay for each TV.

Discount on 15% on sum of ala carte for fixing Bouquet price (Q. 6)

We would not like to tinker with this as prices have just been revised and people are getting used to the same.

SD/HD ratio/quantum (Q.7 to 9)

In view of our suggestion above to have a uniform NCF without restriction on number of channels, this question is not relevant. We still maintain that NCF should not be capped and should be allowed to be determined by market forces. This will also aid the automatic facilitation of differential NCF in rural and urban areas as you have sought consultation on in Q.3, as demand and supply will determine the NCF payable by customers, and natural tendency will be to have lower NCF in rural areas.

Pre NTO days a customer who bought HD package got the SD versions included in the HD pack. Customers still demand the same and you should explore methods of how this can be achieved given your regulations regarding channel and bouquet pricing. When the same customer buys an OTT pack they automatically get different versions of streaming resolutions at no additional cost, **so why not in digital cable** ?

Mandatory FTA/newly launched channels to all subscribers (Q.10)

We recommend that 1 - 2% of channels on any DPO platform be kept for newly launched channels. This capacity can be used for any channel for a maximum period of three months only as a sampling for consumers to experience. This will encourage new content providers to come forth which is something Cable needs in the days of OTT. After the period of 3 months both parties can negotiate their commercials at mutually agreed rates. Broadcasters can submit their applications where FIFO rules are applicable in case of excess capacity at that moment. In case there is no demand for this, the DPO can utilise the channel for any other purposes.

FREE DISH (Q.11 and 12)

We are not opposed to Free Dish subject to certain safeguards.

Since Free Dish is an un addressable platform, we cannot count the actual number of users. In our opinion, the estimated numbers are on the higher side and disregard the fact that there exists another FREE platform – JIO TV that is available to JIO SIM users which dishes out not only a few PAY channels but almost the vast majority of TV channels. These show TV channels with full EPG like any Digital STB and is a reason why there is a huge gap in the combined numbers of digital cable and the estimated TV homes. DTB Free Dish is made the scapegoat so that JIO TV goes un noticed. FTTH users of JIO get JIO TV+ where LIVE TV channels are shown which is said to show LIVE TV channels sourced from OTT Apps.

We have repeatedly asked for parity from all OTT platforms that show LIVE TV bypassing all your Tariff Regulations. Surely there needs to be some Regulations that need to be brought about to stop misusing the TV channel name and logo and its LIVE content on OTT Apps.

As regards Free Dish, there has to be a regulation that if a channel is PAY on any platform it cannot be given Free on any other platform. So no pay channels should be available on Free Dish. The same Broadcasters have been raising issues about demand for carriage/placement of their channels but can pay Free Dish hefty fees in an open auction. Hence if a channel is declared PAY it has to be the same across all platforms.

EPG Listing (Q.13)

Only enforce that channels are run in the genre that they have received as per the licence. We have received many complaints from customers that Hathway has started a Boot up channel which is different from the Landing channel and that customers are being forced to see a news channel forcibly and then re enter the Sports channel LCN that they wanted to see.

INTERCONNECT REGULATIONS (Q.14 – 16)

We highly recommend that TRAI prepare a standard interconnect agreement for all Stakeholders. After all there is no need to enter into fresh agreements each year when all that is changing is the commercial tariffs and tariff plans. We can surely have longer tenure agreements. In this industry the Broadcaster deals with same DPOs year after year barring the entry of a new player occasionally. Same happens between MSO and LCO. Hence there is a need to relook at the above thought. It will make life easier for all stakeholders except the legal teams, who may not be happy. It increases cost and also effort and time spent in reworking RIOs each year.

EPG Related questions (Q.17 and 18)

No comments

<u>Revenue Share Between MSO and LCO (Q.19)</u>

This is the biggest bone of contention in the entire NTO Regulations and we will explain why. But first let us look at the impact of the NTO regulations on different stakeholders as per attached Audited Annual Accounts as reported on www.moneycontrol.com and some sourced from RCA records. The same are attached in **Appendix – A**.

<u>Broadcasters</u> : This clearly shows that Broadcasters are in the positive. News Broadcasters are also reporting after tax (PAT) .

<u>DTH DPOs</u> : Here we find that DTH DPOs have not been faring well as they are faced with decreasing subscriber numbers and the threat of OTT. Here it is important to note that DTH DPOs have no sharing of revenues with LCOs and hence they retain 100% of subscriber revenues and revenues from all other sources. This proves that in spite of retaining full NCF and Full 20% Distribution Fee plus additional revenues from carriage/placement/marketing fees/landing page revenues/own channel revenues they are not able to recover enough to meet their expenses. With reducing subscriber nos, Tata Play has also reported a Profit last fiscal, but only due to reporting prior period and exceptional item revenues. Dish TV is also reporting a loss.

<u>MSO DPOs</u> : We know very well that MSOs prior to the NTO were all reporting losses. However now we find that post 2019, the large national MSOs are reporting profits year on year. We can only assume that, in spite of sharing revenues with LCOs, they still profitable means that their share of revenues is more than adequate to meet their expenses and still leave profits. Making sense ?

This happens because the Regulations are flawed and do not represent the correct working in the cable industry.

In your CP on Market structure/competition of Cable TV dtd 25.10.21 Table 2.3, your data clearly shows that 97.64% of the MSOs distribute the signals through

LCO owned networks, barring Asianet in Kerala where they have 45% primary points.

Every MSO's role is aggregating the signals of Broadcasters and employing CAS & SMS, creating DPOs and then distributing signals to LCOs for distribution to customers on their networks. They manage only their network which will form less than 10% of the total network deployed by LCOs to distribute signals to end customers. They staff on their payroll attends to the Headend and the IT infrastructure for CAS & SMS and their own fiber network. Customers call on the LCO helpline nos for complaints. You can check call records to see how many customer complaints from LCO customers land at MSO helplines.

To quote your justification for the NCF *"As per data available, the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs 80/- per month and cost of other activities like subscriber management, billing, complaint redressal, call center etc comes out to be Rs.50/- per month."*

Whilst cost of distribution in 2009 was Rs.82/- this has not seen any inflation, but the Rs.50/- cost for other activities is based on inputs given by some MSOs and is on the higher side. Further, there is no justification regarding the data sources used to arrive at these figures.

In the interconnect Regulations you have mandated that Distribution Fee is to be shared with MSOs in the same sharing formula that you devised for the NCF.

Distribution Fee is being mandated to be shared. Distribution Fee as per the Explanatory Memo to the Interconnect Regulations states that ***"the distribution fee is required to be paid by Broadcaster to the distributor to compensate the distributor for his efforts put in place for collection of pay channels from subscribers, its accounting and payment of the same to Broadcasters"***

This collection cost is entirely borne by LCOs who have now to prepay MSO in their wallets to do any transactions in the SMS. If wallet balance is zero no new activation or renewal takes place. During the first Covid Lockdown, Associations had made appeals to the Regulators and MSOs to issue some form of credit to LCOs to tide this period. But things were stonewalled. Finally LCOs had to take the burden on their head and kept the MSOs and Broadcasters revenues going, bearing losses from some consumers who went to their hometowns not informing LCOs to shut their STBs. Please justify why this Distribution Fee should be shared with MSOs who get all their payments upfront and get default system credit as they have to pay Broadcaster well after a month or two.

Kindly justify why LCOs should share Distribution Fee of 20% with MSOs when they do all the legwork, employ staff for bill collections and the bear all risk of bad debts. What is the role of MSO in collecting Distribution Fee ?

MSOs like Hathway/DEN also recover the payment gateway fees from LCOs since past few years.

We list below sources of revenues for MSOs and LCOs

Revenue Sources	**MSO**	**LCO**
NCF	Yes	Yes
Distribution Fee	Yes	Yes
Carriage Fee	Yes	No
Placement Fee	Yes	No
Marketing Fees	Yes	No
Advtg on own channels	Yes	No
Landing Page	Yes	No
Boot Up Channel	Yes	No

As seen from above the LCO revenue streams are limited to mere 2 sources. Since the period of NTO implementation till NTO 3 rollout this financial year, LCO revenues have remained stagnant year on year in spite of rising costs and reduction of customer base. Whereas MSOs and Broadcaster revenues have kept rising as seen from Appendix A

Broadcasters have the ability to keep changing Bouquet compositions by adding or deleting channels or even by increasing prices of channels which are not hiked to the maximum ala carte rate. MSOs have been able to renegotiate their revenues for their own sources, but LCOs are stuck as they have no alternate revenue streams.

Broadcasters still seem to work on a CPS basis although unofficially. Revenues for Broadcasters and MSOs are renegotiated each year, as there are revenue streams that are out of Regulatory control. We would like you to mandate full 35% of the MRP as a Distribution Fee, which we recommend can be increased to 0% to 45%. As shown earlier in our table that Broadcasters were entitled to 45% revenue share only during the CAS regime in 2007 to 2012. Now if they get 655 – 60% they should still be happy as they are one stakeholder who has benefitted inspite of reducing nos in the distribution business.. The conditions for claiming the variable 15% Distribution Fee can hence be removed. The sharing of Distribution Fee can be defined as follows minimum 25% to LCO and balance to MSO if changes in NCF sharing are retained as is.

It Is not possible for any LCO to know what the revenues earned by their MSO from other sources is. Hence the revenue to the LCO should be defined as a % of the channel MRP/Bouquet MRP. Any package created by the MSO is based on a combination of Broadcaster packs and some ala carte channels. LCO margin is announced by the MSO based on what they feel they want to show. Yet we find that when MSO puts up the MRP of the DPO pack, it is easy to count the Distribution Fee the LCO is to get on the same. But there is no way for a LCO to know what is the MSO share of NCF in the MRP and how much of NCF has been assigned for the LCO.. This way MSOs reduce the revenues to LCOs and show that they are competitive. Hence we urge you to mandate that Full NCF is added to the MRP when MSO DPO pack prices are announced and leave it to each LCO to decide when and how much they wish to reduce prices to customers. After all the end customer billing is being done by the LCO and not the MSO as per MIA. Today almost all chemists offer 10% discounts on MRP. Some online apps offer even upto 20%. Customers like that a discount is given to them.

Therefore, we are of the opinion that current revenue sharing model must be revised and for the purposes of this revision, the following 2 options may be considered :

1. <u>If you make no changes in the total Distribution Fee of 35%</u>
   The entire existing distribution fee of 20% should come only to the LCO, since the entire machinery of distribution is operated by the LCO. Bad debts are solely incurred by the LCO since the MSO model is now 100% prepaid. Also Broadcasters should be mandated to pay entire 15% to DPOs. NCF capping suggestions of 170 for SD and 210 for HD will apply.
2. <u>Distribution Fee is enhanced to 45%</u>
   There is no change in existing NCF of 130 for 200 channels and 160 for 200+ channels, but multi TV NCF discount is removed. Here LCOs get 25% DF and MSOs get 20%. But DPOs cant charge carriage fees.

A relook of the Revenue Sharing is an absolute must as NO LCO is able to survive any longer on the meagre income which is like crumbs of bread left on the table for the unfortunate to eat. **Today LCOs are able to make ends meet solely due to the income generated from their internet business, in which there is no role of any MSO or Broadcasters. Those LCOs who are not doing that have no incentive to continue the business and continue to lose customers to competition or are selling out to neighbouring LCOs.**

SIA/MIA

There is no need for a SIA at all. It is not required at all. Can you get SIA from MSOs to understand how many such agreements have been signed till date. This industry everyone is known to each other, so things do not work on agreements alone and Broadcasters and MSOs take time to negotiate commercials, yet channels are not displaced immediately on the date of expiry of previous contract. Similarly MSOs don't immediately disconnect LCOs if agreement is not signed. However what the SIA is doing is that it is giving the MSO commercial terms that favour them.

We have taken up this so many times, that the revenue sharing based on the Interconnect Regulations of 2012, Basic Service Tier (BST) where only FTA channels were mandated is grossly incorrect. This part of the Regulation was never effective on the ground as everyone was running packages from MSOs and there were no takers for only FTA package. Secondly that a wholesaler(MSO) gets a larger revenue share than a retailer (LCO) is unheard of in any industry.

This fallback arrangement has led to MSOs being a profitable business post NTO at the cost of LCOs. In all these years you have received many representations from LOCs all across the country expressing the view that they have been forced to run their business on a virtual loss/meagre profit compared to pre NTO days. Its high time that errors of the past are rectified now.

QoS

IF you have brought all platforms on the same level then how come DTH is allowed to charge a visiting charge whilst cable is not permitted the same. In the case of DTH, this is outsourced to local electricians/installers to attend to the complaint and DTH does not employ these technicians on their payrolls..

Surely cable can charge a smaller fee for the same for attending to a complaint where there is no fault from the cable network, eg : customers do not know how to select the correct source on the TV. With smart TVs replacing older CRT/LCD/LEDs, the smart TV manufacturers are forcing their Home Page to open on booting up and then we get complaints that cable is not working or remote is not functioning.

Regarding charges for installation/activation/suspension/reconnection etc. should be left to forebearance.

But, the Regulator needs to ensure that MSOs when issuing STBs clearly state what the amounts paid for are for what purpose and what is the MRP for each STB. Is it an activation charge? Is it the cost of the cost ? What is the subsidy element, if at all. STB prices have drastically reduced since the imposition of mandated addressability. Without this it is leading to many disputes between LCOs and MSOs, especially when a LCO opts for another MSO, then cases are filed in TDSAT for recoveries of STBs at inflated rates or prices of new STBs. Who owns the STB ? How can MSOs claim full STB prices when the STB has been partly paid for and the same has been in use for years, earning revenues to the MSO. Earlier there was a transfer of ownership of box after 3 years of usage. No LCO has demanded STB subsidy, so if MSOs still want to do so they must do so fully transparently. Only when this is regulated, it will add a lot of clarity to our processes and business.

Lastly we wish that the Authority redoes a fair revenue so that all stakeholders can survive and not just a few.

Thanking you.

For DCOAM

Authorised Signatory