No. 10-4(217)Tech-2010/1

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Pakistan Electronic Media Regulatory Authority

Consultation paper

On

Regulating the Carriage & Placement Fee for the carriage of Satellite TV Channels on Distribution Networks

Closing date for comments: 25th August 2010

PEMRA Headquarters, Mauve Area G-8/1 Islamabad

Table of Contents

Section 1

Executive Summary

This Consultation Paper focuses on the issues of regulating carriage and placement charges of channels on distribution networks besides other issues e.g. digitalization etc. The paper aims at stimulating discussion and seeking comments of all stake holders on the policy for regulating the carriage and placement charges for satellite TV Channels on distribution service networks.

The paper is divided into the following sections:

Section 1: Executive Summary

Section 2: Summary of evolution of Distribution services in Pakistan, an overview of broadcasting and distribution services chain.

Section 3: It is the main section and deals with the issues regarding Carriage and placement Fee while distributing TV channels to end users.

Comments on the issues indicated as well as any other relevant point may be mailed electronically or in written form to General Manager (Technical) at wakeel.khan@pemra.gov.pk (Ph:051-9107117 Fax: 051-9107165) till **4.00 PM, 25th August 2010**. In case of any query GM (Tech) PEMRA HQ may be contacted.

Section 2: Evolution of Distribution Services in Pakistan

2.1Cable TV

The Cable TV trend started in Pakistan in the 1990s. Initially Pakistan Telecommunication Authority (PTA) started regulating this service under Pakistan Telecommunication Act 1996. Later on, when PEMRA was established in 2002 under PEMRA Ordinance, it took over licensing of all distribution services and broadcasting media in Pakistan.

(i) Cable TV Licensing Regime

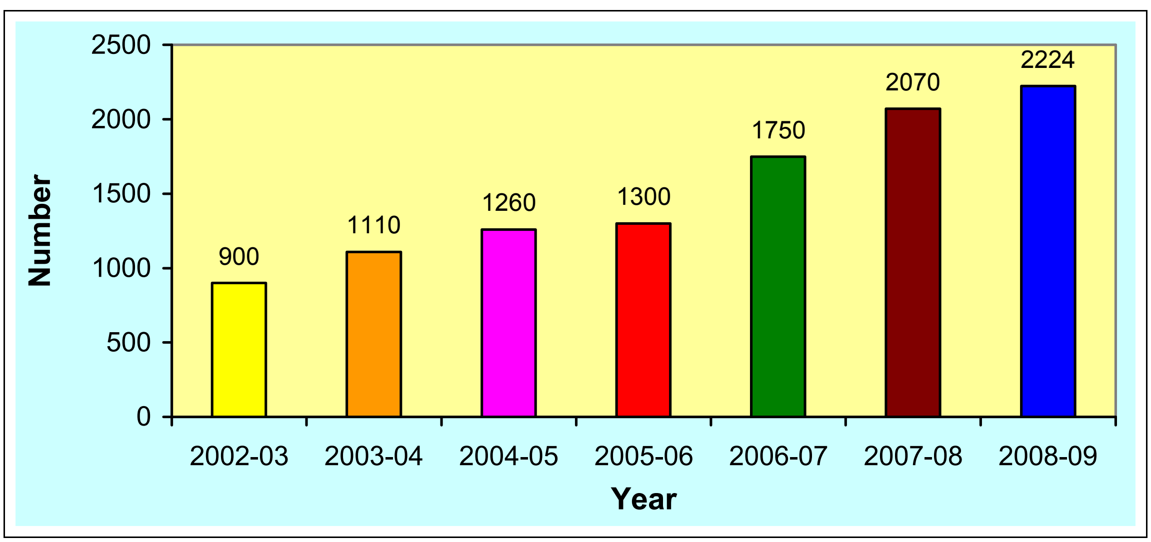
Cable TV industry in Pakistan is regulated by the provisions of Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002. There are various categories of licences based on the number of subscribers in a particular area and licences are issued for a particular service area. Licence fee depends on the size of network.

(ii). Cable TV Licensng

Figure-2.1 shows the number of Cable TV licenses for the years 2002-03 to 2008-09.

Figure-2.1

Cable TV Licenses, Pakistan, 2002-03 to 2008-09



In 2002-03, there were only 900 CTV operators. The number rose to 1110 (23% increase), followed by 1260 in 2004-05 (13.5% increase) which ultimately rose to 2224 in 2009-08.

(ii) Cable TV Technologies

Currently majority of the cable networks in Pakistan are operating in analog mode, however, they are in transition to digital. Cable TV service is provided by re-transmitting audio-visual programs through cables or wireless media. A head-end is used for receiving and processing the programs for further transmission or distribution to the subscribers through a cable system comprising coaxial or fiber-optic cable, trunk amplifiers, line extender amplifiers, return amplifiers, line isolators, passive devices, connectors and subscriber-drops or wireless medium for reception by multiple subscribers via a roof top antenna and a set top box.

TV de-scramblers or decoders are used for reception of programs through satellite and set-top box are used for receiving digital signals for display on the ordinary TV receiver.

In the beginning cable TV operators were able to show only 6-14 analog channels through their networks. Since then, the channel providing capacity has been enhanced by extending the bandwidth of the cable TV distribution system. From a bandwidth of 225 MHz in the early days of cable TV, the networks progressively enhanced the bandwidth to 300 MHz, 450 MHz, 550 MHz, 750 MHz and now to 860 MHz, which is the largest available cable TV bandwidth worldwide. The bandwidth of cable systems and maximum possible analog channels on such systems are given in Table 2.2:

Table 2.2

Bandwidth and Channels

Bandwidth	Maximum Number of Channels
300 MHz	36
450 MHz	54
550 MHz	67
750 MHz	92
860 MHz	106

2.2 Multi-Channel Multi-Point Distribution System (MMDS)

MMDS is also known as Wireless Cable TV. This wireless technology started in Pakistan in 1996 as analogue Multi-channel Multi-point Distribution System (MMDS). Initially, it started off with 10 TV channels. Later, digital technology was introduced to distribute more than 50 channels. Karachi, Lahore, Islamabad, Sahiwal and Okara are covered at present. By March 2009, the network had reached to subscriber base of 237,700 and 6 licenses have been issued for establishing MMDS networks in the country.

2.3 Internet Protocol TV (IPTV) Channel Distribution Services

Internet Protocol Television is a new method of delivering and viewing television programming using an IP network and high speed broadband access technology. It provides triple play service i.e. TV, internet and telephone on a single medium.

For residential users, IPTV is often provided in conjunction with Video on Demand and may be bundled with Internet services such as Web access and VoIP. The commercial bundling of IPTV, VoIP and Internet access is referred to as "Triple Play" service (when these three are offered with mobility, the service is referred to as "Quadruple Play"). IPTV is typically supplied by a service provider using a closed network infrastructure. At the moment PEMRA has issued two licenses for providing this service.

2.4 Mobile TV

Mobile TV is the latest technology where the TV services are streamed on to the mobile or hand-held devices. Mobile TV is going to get more and more prevalent over the next couple of years. Presently three licenses of Mobile TV have been issued by PEMRA.

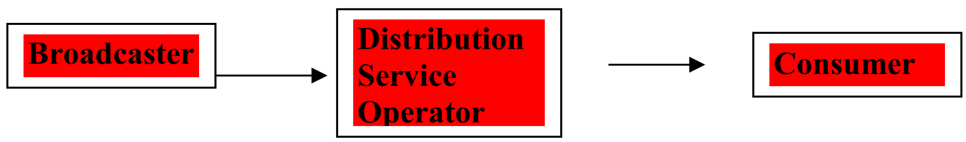
2.5 Overview of the Broadcasting and Distribution Value Chain

This section focuses on understanding the supply chain and the role of various stakeholders included within this supply chain.

2.2.1 The Value Chain

The value chain comprises three (03) main entities as shown in the figure below.

Figure 2.3: Cable services value chain



(a) <u>Broadcaster</u>

The broadcaster owns the content to be televised and received by the viewer. The broadcaster's role in the supply chain includes transmitting or "up-linking" the content signals/beams to the end user through the distribution services network via (a) satellite (this platform is being currently used by all PEMRA satellite TV licensees) or (b) terrestrial network (the platform is currently being used by National Broadcasters e.g. PTV only). So far 83 satellite TV licences have been issued by PEMRA while landing right permissions have been granted to 29 foreign channels i.e. they are permitted to be down linked in Pakistan. These channels provide a variety of content.

The broadcasting business in Pakistan is primarily driven by only one source of revenue – advertising. There are two main types of broadcasting business models:

(1) Free to Air (FTA) broadcasters rely on advertising revenue as their primary source of revenue, and thus are dependent on the distribution supply chain only to ensure reach to their target audience. This is the only broadcasting business model prevalent in Pakistan.

(2) Pay TV broadcasters have a dual source of income. The channels need to ensure reach not just to earn advertising revenue but are also dependent on

the distribution network to collect subscription revenue from the consumer. This model is prevalent in India and other countries but not in Pakistan.

(b) Distribution Service Operator

The role of the distribution service operator is to downlink the broadcasters' signals, decrypt any encrypted channels and provide a bundled feed consisting of multiple channels to the end user/ consumer through its network which can be wired or wireless.

(c) Consumer / End user

The key stakeholder in the supply chain is the end user /consumer – as the survival of all industry players is dependent on consumer using the products and services of the industry players. The consumer is the focal point of the broadcasting and distribution sector as both advertising revenue of broadcaster and subscription revenue of the cable / distribution network operator depend on it. .

It has been observed that there is a lack of standardized pricing of services to consumers. The consumers are currently receiving and paying for different types of analog cable services. The choice of channels lies with the cable operators and not with the end consumer. Discounting and non-payment of dues are also prevalent in analog cable markets. Different billing and collection practices followed by cable operators as well as competition in the market also lead to differences in pricing and services. Moreover there is no standardized tariff for the carriage of TV channels over the distribution network and no policy regarding who (the broadcaster or the distribution network operator) should pay.

It is because of these issues that we believe regulator should intervene and standardize the tariff / rates to be charged by the distribution services operators from the end users and the charges between the distribution services operator and the broadcasters.

Section 3: Carriage & Placement Fee

3.1 Price Issues On Distribution Services Networks

Carriage Fee refers to the fee charged on account of carriage / distribution of TV channels on distribution networks (cable TV, MMDS etc) while placement fee refers to the placing of channel in a particular slot on distribution network. In Pakistan all the channels licensed by PEMRA are free to air and the broadcaster is dependent on advertising revenue only. Hence ensuring reach to subscribers/ end users is critical for the TV channels as only in this way can they improve their rating and hence increase advertising revenue. The following observations are relevant, with respect to emergence of carriage and placement fee.

(a) Carriage and placement fee provides the broadcaster access to cable operators / distribution network. Due to the bandwidth constraints in the analog transmission mode, the cable operator "allocates" certain frequencies to the highest paying channels. This phenomenon can be interpreted in simple economic terms as a "demand supply" mismatch. With supply remaining unchanged at ~90 channels and the total number of channels (satellite TV licensees, landing rights permission holders and channels of national broadcasters) having risen steadily to 115, carriage fee reflects the entry barrier posed by analog transmission.

(b) The levy of carriage and placement fee is prevalent internationally. However, the rate and form are not standardized and can vary significantly. Pay channels/ networks typically enter into a 'net transaction' where carriage fee is settled against the content cost to be paid by the cable operators to the broadcaster, thereby leading to only one inflow or outflow for the channel/ network - depending on whether that party is a net gainer or loser from the supply chain. Further, carriage fee can also be paid through barter or exchange of some kind, such as equity stakes.

(c) Distribution service operators in Pakistan are of the view that carriage fee should be received by them as they provide a medium to TV channels / broadcasters for access to end users while broadcasters/ TV channels owners are of the view that part of the subscription fee should be paid to them by the distribution service operators as the broadcasters own the content which is being distributed by the distribution service operators and who are receiving the subscription fee.

3.2. Principles of Pricing

A monopoly or a dominant firm/ cable/ MMDS operator with significant market power/ wide subscriber base has an incentive to charge monopolistic prices. An important regulatory task has been to ensure that the prices charged to consumers are reasonable.

Regulatory Authorities worldwide have considered a number of approaches to price regulation of services. Common approaches include:

3.2.1 Cost Based Price

Costing of pay channel like any other costing requires details of capital and expenditure but cost determination for pay channels become difficult because:

- Some Pay Channels are broadcast and viewed in more than one country making it difficult to apportion cost to a specific country/region.

- It is difficult to determine the cost of the content being broadcast, as it is not a standardized commodity. Video services are highly differentiated, programming quality is very difficult to measure objectively, and both services and their costs are changing rapidly.

- If revenues are being earned from advertisement also, then it is not clear how much of the cost would be recovered through subscription fee.

3.2.2 Price Cap

A price cap form of regulation avoids the problems of measuring and controlling programming costs, but introduces the problem of controlling quality. Moreover at a particular price, a broadcaster may still be able to exercise market power and increase profits, but reduce overall economic efficiency by reducing programming quality.

The prevailing price shows large variation in the charges levied. A common uniform price cap may not be reasonable if the market has to be extended to different segments. In such a situation flexibility is provided by the price cap mechanism.

3.2.3 Tariff Forbearance

A forbearance tariff regime allows for price determination based on mutually agreeable terms. In this regime, broadcasters and distributors would be free to decide the price of content, level of discount, payment terms etc.

3.4. International Practices on Regulating Prices

Following is a brief of the mechanism of price regulation prevalent in various countries:

3.4.1 USA

3.4.1.1 Channel positioning/ placement

(a) The cable operators are required to carry the licensed television stations on the cable system channel number/ frequency slot on which the station is broadcast over the air. The cable operator shall carry the information necessary to identify and tune to the broadcast television signal.

(b) Any broadcast station carried in fulfillment of the must-carry obligations may be carried on such other channel number as is mutually agreed upon by the station and the cable operator.

(c) A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network/ group. However, if a cable operator declines to carry duplicating signals, such cable operator shall carry the station whose community of license reference point is closest to the principal head-end of the cable system.

(d) Local commercial television stations carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.

3.4.1.2 Compensation for carriage.

A cable operator is prohibited from accepting or requesting monetary payment or other valuable consideration in exchange either for carriage or channel positioning of any broadcast television station carried in fulfillment of the must-carry requirements, except that (a) Any such station may be required to bear the costs associated with delivering a good quality signal or a base band video signal to the principal head-end of the cable system; or

(b) A cable operator may accept payments from stations which would be considered distant signals under the cable compulsory copyright license as indemnification for any increased copyright liability resulting from carriage of such signal.

3.4.2 India

In India the interconnection and revenue sharing between the broadcasters and cable operators / MSOs is regulated by TRAI as:

(i) The payment for Pay TV channels in analog (Non-Cas) areas is based on the principle of negotiated declaration recognized by the September 4, 2006 Interconnect Regulation.

(ii) Broadcasters are free to fix both a la carte and bouquet rates but MSOs can not charge more than IRs. 260/month for the entire bundle of pay TV and FTA channels.

(iii) August 2006 Tariff Order provides for 45:30:25 between

Broadcaster:MSO:LCO. Also LCO retains the entire basic tier FTA amount in CAS areas. The pricing for Basic FTA (at IRs. 83 plus taxes / month for a minimum of 30 channels) and pay channels at IRs. 5.35 per sub/ month plus taxes for a single channel has been fixed by TRAI.

(iv) On DTH and IPTV, there is no price regulation as such but Supreme Court of India has directed TRAI to regulate prices for DTH by June 30, 2010.

(v) A price cap has been placed on MSO/cable operators based on number of pay channels provided fixing maximum charges excluding taxes/ duties at IRs.260 plus taxes and also a la carte choice to MSO from broadcasters.

3.4.3 Canada

In Canada the cable and satellite / DTH operators are currently getting the on-air signals of the private broadcasters free of charge i.e. there is no carriage fee. However in March 2010 the Canadian Radio and Television Commission (CRTC) has, in principle, decided to support the private broadcasters in getting compensation for their on-air signals. However the Commission has left the final decision to the Federal Court regarding whether it has the authority under the Broadcasting Act 1991 to force both parties e.g. broadcasters and cable operators into negotiation.

The Commission has, however, stayed away from imposing "fee for carriage" – where cable companies pay networks a certain amount of money in exchange for the right to include their channels in their packages – by leaving it up to the market to decide what each signal is worth.

Once regulated by the Commission, the "value for signal" of "fee for carriage" can be monetary or non-monetary. Both sides e.g. broadcasters and the cable operators will have some leverage: the broadcasters could choose to delete their programming resulting in blackout in their systems for cable customers. Cable operators will hold the advantage of giving local stations / broadcasters a better slot than they might be able to get on their own resulting in more viewers and ultimately higher advertising revenue.

3.4.4 Taiwan

While Taiwan's cable TV law refers to pay channels and pay per view, it fails to authorize additional fees for such services and the government adopted the position that the basic rate is capped. In first quarter of 2003, the Government Information Office allowed cable operators to charge upto US$9 per channel for additional ala-carte channels, but it refused to allow tiered pricing of pay channel package.

3.4.5 South Africa

Regulation of pay channels is not prevalent in South Africa. However, as per section 30 (6) of the Broadcasting Act, 1999, subscription-broadcasting services may draw their revenues from subscriptions, advertising and sponsorships. In no case may advertising or sponsorships, or a combination thereof, be the largest source of revenue; a restriction is imposed that revenue from advertisement cannot exceed the revenue from the subscription.

3.4.6 European /OECD Countries (other than USA)

Specific regulation of Cable Television Pricing is not widespread in OECD countries. Countries that have specific regulation to regulate Cable Television pricing in some form or the other are Belgium, Canada, Germany and Turkey. In most of the countries price of only the Basic service tier are regulated.

3.5 Regulating the Carriage and Placement Fee

Distribution service operators in Pakistan are of the view that carriage fee should be received by them as they provide a medium to TV channels / broadcasters for access to end users while broadcasters/ TV channels owners are of the view that part of the subscription fee should be paid to them by the distribution service operators as the broadcasters own the content which is being distributed by the distribution service operators and who are receiving the subscription fee.

The levy of carriage fee by cable operators may lead to high costs of entry for new/ small TV channels. Also the amount of carriage and placement fee paid by a broadcaster to a cable operator depends on multiple parameters including but not limited to (1) target audience delivered, (2) rating / pull of channel (3) bouquet composition, and (4) competition intensity in the relevant genre / category. As the parameters affecting the negotiation differ in each transaction, and with each party, standardization of a value across markets is difficult. Carriage fee may be paid by the broadcaster in many forms, such as net transactions with subscription revenue, discounts to group companies, barter transactions, equity stake etc. This makes it difficult to devise a single ceiling/ level of control. Further, monitoring multiple forms of the transaction is difficult.

However to protect stakeholders from unfair market practices which may include unfair and unrealistic carriage fee being charged by certain operators, higher subscription fee to the subscribers / end users, we believe it is imperative for the regulator to intervene and regulate the carriage and placement charges rather than leaving it to the market to decide. It was for this reason that PEMRA considered it necessary to initiate consultation with all stakeholders so that recommendations can be finalized in the light of input received from the stakeholders.

3.6 In view of above the comments are requested on the following issues:

1. Should the carriage and placement fee be regulated? If yes, how & what should be the basis for regulation?

2. Should carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?

3. Should a cap be placed on the carriage and placement fee? If so, how should the cap be fixed?

4. Should the price regulation depend on the extent of competition in the market? If yes, then what should be the link between the price regulation and the extent of competition?

5. How & what should be the basis for pricing the La Carte pay channels (i.e. pay channels distributed alone and not in bouquet) and bundling of channels into bouquets while carrying the same through distribution networks? Should there be any discount on bundling of channels in bouquet?

6. If bundling of pay channels is allowed, should the ceiling rate on individual pay channels in relation to a bouquet price be specified? If so, what should be the ceiling rate of an individual channel?

7. How often should the Regulator review the tariff for Basic Tier service (subscription fee currently capped at Rs. 400/ month)?

8. Do you agree with the deadline of December 2011 fixed for Cable operators in metropolitan cities to convert to digital? If no, what should be the deadline and why?

9. Any other relevant views / comments.