

Study Group on Broadcast Retransmission by Cable Broadcasters—2nd Meeting
Summary of Minutes

1. Date and Time

Thursday, November 8, 2007, 10:00 to 12:00

2. Location

Main conference room, 3rd floor, Mita Kaigisyo

3. Attendees (honorifics omitted)

(1) Study Group Members

Niimi (chair), Ito (vice chair), Oto, Kikuchi, Takahashi, Tosa, Osada, Nohara, Hasebe, Hayasaka, Yamashita

(2) MIC Representatives

Ogasawara (Director-General, Information and Communications Policy Bureau), Kawauchi (Deputy Director-General, Minister's Secretariat), Imabayashi (Director, General Affairs Division, Information and Communications Policy Bureau), Yoshida (Director, Broadcasting Policy Division), Yoshida (Director, Terrestrial Broadcasting Division), Fujishima (Director, Regional Broadcasting Division), Nagashio (Senior Planning Officer, Broadcasting Policy Division)

(3) Invited Speakers

(i) Japan Cable and Telecommunications Association (JCTA)

Ishibashi (Executive Managing Director), Sato (Chair, External Retransmission Special Committee), Sato (Member, External Retransmission Special Committee)

(ii) National Association of Commercial Broadcasters in Japan (NAB)

Fukuda (Member, Digital Terrestrial Broadcasting Special Committee), Inaba (Member, Digital Terrestrial Broadcasting Special Committee), Sasao (Member, Cable TV Retransmission Working Group, Digital Television Broadcasting Special Committee)

4. Proceedings

(1) The Secretariat explained the current situation of external retransmission and the broadband situation in the 47 prefectures of Japan (Document 2-1) and the differences between regulations on broadcasting and cable broadcasting (Document 2-2), and a question-and-answer session was held.

(2) The Japan Cable and Telecommunications Association and the National Association of

Commercial Broadcasters in Japan explained their views on external transmission, and a question-and-answer session was held.

(3) Following this, a general discussion took place.

The main remarks about (2) and (3) made by members are as follows. (Remarks made by study group members are indicated by a hyphen.)

Remarks made following the explanation by the Japan Cable and Telecommunications Association (JCTA)'

- What is the reasoning behind the decision to conduct retransmission in spite of opposition?

JCTA: Retransmission was started with approval, but in some cases is opposed at present. One broadcaster had periodically reconfirmed approval and then refused to give approval on one occasion. Another broadcaster could not sign a consent form but was in favor of retransmission.

- Silent approval?

JCTA: Yes. A different broadcaster returned our written application without indicating either approval or opposition and yet another broadcaster recently clearly stated its opposition accompanied by reasons. If a cable television broadcaster has to stop external retransmission, JCTA would rather not have to explain to the customers that the broadcasting must be stopped because of another broadcaster. JCTA would rather not oppose other broadcasters but would rather try to reach a consensus.

- Does JCTA require the retransmission approval system?

JCTA: JCTA requires the system. Each broadcaster has a right to oppose or approve. The arbitration system is also necessary to prevent the possibility of retransmission based just on the view of one broadcaster.

- Some countries do not have any approval system concerning broadcasting, relying solely on copyright legislation. What is JCTA's view about such a system?

JCTA: Fundamentally it comes down to the views of the broadcasters. Broadcasters are the ones who produce the programs. Should others be allowed to use those programs freely?

- It is said that JCTA withholds payment of compensation for copyright. Are there no cases in which compensation is paid as requested? Does JCTA consider that the copyright of the original proprietor is properly preserved?

JCTA: There are no demands on JCTA to pay compensation and it is our understanding that no compensation is paid. The copyright is preserved as far as possible. JCTA will go along

with any proposal from parties other than copyright organizations.

- If the payment of compensation is demanded, is JCTA inclined to pay it?

JCTA: If the compensation is appropriate, JCTA will pay it.

- Does JCTA intend to pay compensation for broadcasting costs other than those relating to copyright?

JCTA: If the request is reasonable, JCTA will consider the matter.

- What is the view of JCTA on something like compensation for a local broadcaster suffering from a fall in market share because of external retransmission?

JCTA: If a local broadcaster suffers a loss, appropriate compensation by the cable broadcaster should be discussed.

- What is the view of JCTA concerning the possibility that external transmission turns the prefectural licensing system into an empty formality?

JCTA: In my personal view, the prefectural licensing system should be maintained. There are some regions where prefectural or cultural borders do not agree with the broadcast service area. External transmission requires flexible measures.

- What are the grounds for claiming that external transmission is necessary, apart from viewer demand?

JCTA: Viewer demand is the only reason.

- What would JCTA do if retransmission to a remote area is desired?

JCTA: Cable broadcasters do business only in their limited regions and will not serve remote areas. Remote service does not pay, either.

Remarks made following the explanation by the National Association of Commercial Broadcasters in Japan (NAB):

- Which part of the views of the National Association of Commercial Broadcasters in Japan (NAB) benefits viewers or the general public?

NAB: Each commercial broadcaster broadcasts under the regional licensing system and puts priority on offering the best service to viewers in its region.

- How will the interests of viewers in the original broadcasting region be damaged by external retransmission?

NAB: There will be no particular damage.

- In Nagano Prefecture, for example, people have received external transmission from key stations in Tokyo for 20 years. Is it appropriate to say that the service area of the key station should be limited to the Kanto region and that people in Nagano should receive commercial broadcasts originating in Nagano?

NAB: Nagano has a four-channel system. Seventy percent of broadcasts are the same as those in Tokyo, and the remaining thirty percent is original programs intended for local residents. NAB wants people in Nagano to be able to view their local TV broadcasts.

- People, however, require external transmission to receive the information contained in the remaining thirty percent, which cannot be obtained from the local commercial broadcasters in Nagano. Should the requirement be neglected?

NAB: NAB cannot permit people to view information from an external area in the vicinity by coincidence, just by paying certain fees.

- NAB's claim is based on Article 29 of the Constitution, which ensures the protection of copyright and related rights. Article 21, however, holds the right of freedom to refrain from expression. Does NAB dare to raise the point for discussion?

NAB: The report about the Oita arbitration, one of the reasons this study group was formed, contained the suggestion that the relationship with copyright should be examined closely. The focus of discussion can be copyright. NAB wonders whether the disposition to violate property rights aligns with the public interest. For example, we think that a small difference should be allowed between an area with a small number of channels and an area satisfying the conditions of the Basic Broadcasting Plan.

We will examine Article 21 of the Constitution.

- Information is moved by a wide range of means these days. How is the interregional digital divide addressed while the current regional licensing system is maintained?

NAB: NAB understands that terrestrial broadcasting maintains regional characteristics while satellite broadcasting maintains national integrity. It would be better if at least the normal terrestrial broadcasting was regional in nature. The disparity between channels should be considered, but NAB will not simply agree with whatever we are told in order to abolish disparities.

- NAB wants to determine the view of the commercial broadcaster at the destination of retransmission when considering whether retransmission can be approved of. What would be the reason for doing this?

NAB: When broadcasts retransmitted from external sources are available, the viewing rates of

local broadcasts decrease, affecting earnings. Even if retransmission is approved of in an area with a small number of channels, the work is conducted on the basis of trying to achieve a mutual understanding among the local broadcaster, the broadcaster at the source of retransmission and the local CATV broadcaster.

- How many commercial broadcasters at the destination of retransmission are actually suffering from a decline in profit? It can readily be imagined that external retransmission would lower the viewing rates of the local broadcasts, but the fall or increase in advertising income might be another matter.

NAB: It is reported that the total annual loss of three local broadcasters corresponds to earnings of 1.8 billion yen.

- Is that the estimated amount?

NAB: Yes, it is. The advertising rate and unit price per advertisement were reduced.

- Is the estimate based on specific data on viewing rates? If radio waves can be received over a prefectural border, it could be assumed as the basis of business. The way viewing rates are calculated differs between prefectures and the viewing rates of cable television broadcasters are calculated in yet another manner. Therefore, the basis of the figure of 1.8 billion yen is questionable. As for the regional characteristics, some regional programs in the Kanto region are broadcast simultaneously by satellite. The facts differ greatly from the strict interpretation of "regional characteristics." The actual situation seems to be different from the theory.

NAB: The leakage of radio waves over a prefectural border could affect business, as has been pointed out. The amount of 1.8 billion yen was estimated from the data on viewing rates and other assumptions.

- External transmission would expand the service areas of some broadcasting stations. On the whole, the advantages and disadvantages to the commercial broadcasters would even out. If so, it becomes incomprehensible why NAB opposes retransmission or demands the abolition of the arbitration system.

NAB: The advantages and disadvantages would not even out. Estimated earnings from retransmission would not compensate for the loss caused by the fall in viewing rates due to retransmission.

General discussion

- Once it starts reception with approval, is it impossible for a cable broadcaster to stop retransmission because of its facilities, even if the approval is canceled?

JCTA: Retransmission can be stopped by the headend.

- If the commercial broadcaster refuses to renew the agreement after the period of agreement specified by the arbitration ends, the same thing could be repeated.

NAB: Repetition can occur.

- Compensation for commercial broadcasters, other than royalties, which was discussed in the middle, should be discussed in light of the competition policy and the Antimonopoly Law.

- Some broadcasters oppose retransmission of digital broadcasts although they agreed with retransmission of analog broadcasts. What is the reason?

NAB: Each broadcaster makes its own judgment. Some broadcasters who reluctantly agreed with retransmission of analog broadcasts would be determined to oppose retransmission by 2011 at the latest, when broadcasts are completely digitized. Other broadcasters would recognize a great disadvantage when an affiliated station is established in an adjacent prefecture because the demand for commercial broadcasting has increased in the region. The simultaneous occurrence of digitization or an increase in investment for digitization would cause some broadcasters to review their position on retransmission.

- It is reported that some cable broadcasters survive after they stop external retransmission. Cable broadcasters broadcasting in areas with poor reception should be excluded because cable TV broadcasting is the only option.

NAB: That point and other regional characteristics are considered in the determination of whether retransmission is approved. External transmission is not rejected as a whole.

- The commercial broadcaster side can agree with retransmission in accordance with the Cable Television Broadcast Law and can separately exercise its right to license in accordance with the Copyright Law. Why is the Cable Television Broadcast Law applied?

NAB: There is a mismatch between the Cable Television Broadcast Law and the Copyright Law. The Cable Television Broadcast Law gives the right of approval, but if a discussion ends in failure, the arbitration system actually forces an agreement. In those circumstances, a solution by the private sector should be discussed.

- NAB seems to have doubts about the current arbitration system. Does NAB have no doubts about the approval system according to the Cable Television Broadcast Law?

NAB: If the solution is developed by the private sector, adjustment could be made without the approval system.

- The private sector solution is preferred, but there will be some cases in which no solution can be arrived at. Solving the issues in the private sector means that matters that cannot be

settled would be put to trial.

NAB: A certain rule will be formed in the private sector and discussions will be held in accordance with the rule. The matter can then be settled out of court.

JCTA: A rule formed in the private sector would be the best option. When a matter cannot be settled within the private sector, it should not be put to trial directly. In that case, the current arbitration system or an alternative system will be needed.

- If a neutral forum for discussion can be set up, can NAB or JCTA carry out the tasks in preparation for it?

NAB: That course of action should be considered, but NAB is always taking a proactive approach and is ready to participate in discussions.

JCTA: The external transmission issue should be addressed promptly by this study group, but if it can be settled in the private sector, JCTA will participate in discussions.

- JCTA offers an annual blanket license agreement to original proprietors, but this seems to be limited in the range of approved retransmission. If this is considered to settle the copyright issue, there seems to be a conflict of opinions between the two parties.

JCTA: In our view, the copyright issue has been settled.

- Both parties are requested to take proactive measures to settle the issue promptly. Transparency is required in the process and conclusion of the discussion.

NAB: NAB agrees to do so.

JCTA: JCTA agrees with NAB.