

**Study Group on Broadcast Retransmission by Cable Broadcasters—3rd Meeting**  
**Summary of Minutes**

1. Date and Time

Tuesday, November 20, 2007, 17:30 to 19:00

2. Location

Meeting Room No.1, 1st floor, Lower Building, Ministry of Internal Affairs and Communications

3. Attendees (honorifics omitted)

(1) Study Group Members

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

4. Proceedings

(1) The Secretariat gave an explanation of the main topics (draft) (Document 3-1) and reference materials (Document 3-2).

(2) The attendees had a discussion based on the materials.

The key remarks made by the members are as follows:

Meaning of the approval system

- One of the problems with the approval system is that the idea of the local neighborhood is not reflected while the management of the broadcaster at the destination of retransmission is becoming an issue. The Broadcast Law includes the phrase “the sound development [of broadcasting],” which can be used. The management of the broadcaster at the destination of retransmission can also be considered within the framework of the Broadcast Law.
- Freedom of expression of the broadcaster at the source of retransmission must be considered. The duty of the broadcaster is to broadcast throughout its service area. For the rest, the

broadcaster must be given a certain amount of freedom, which must be included as one of the interests that should be protected under the approval system. However, the interests of viewers at the destination of retransmission must also be considered under the approval system. Even if the broadcaster has constitutional rights including the freedom to refrain from making an expression, the freedom is not the type of right that must be protected above all else but rather should be balanced with the interests of viewers. It is doubtful that the criteria of the current arbitration are consistent with the objectives.

- The approval system based on the Cable Television Broadcast Law would not allow for the consideration of private interests. The interests of the viewers as a whole would require some coordination.
  
- That seems to be an exaggeration. The problem is not a grand issue such as freedom of expression but a matter of management. This problem can be solved if the cable television broadcaster pays compensation to the commercial broadcaster.
- If the commercial broadcaster that bears a responsibility cannot obtain profit, the entire network of the broadcasting system must be considered. Discussions must be held on whether the broadcasting system can be maintained.
- It is quite natural to worry about the management, but considering the broadcaster at the destination of retransmission is different from a discussion of the approval system. A system other than the approval system can be imagined. For example, the broadcasting network would give financial support to broadcasters belonging to the network or would compensate for an infringement of property rights.
- If freedom to refrain from expressing what you do not want to express is violated, the sense of being interfered with would go deep. However, the broadcasters are licensed parties. It is feared that the thought is not firmly established. Anyway, the system must be based on the fact that a terrestrial broadcaster broadcasts in its service area. The basis of the discussion is the idea of the service area.
- Freedom of expression and other rights must be balanced, and the way this is carried out is important. This would be connected to the issue of the arbitration system.

Meaning of the arbitration system and interests of cable television viewers.

- The interests of viewers that must be protected by the arbitration system could include the right to continue viewing broadcasts that they are currently able view on cable television. Another possible right is the right to view broadcasts that can be viewed in an adjacent prefecture.
- The first example can be considered as a vested right, but the desire to view broadcasts

shown in an adjacent prefecture is a different matter. They should be discussed separately.

- There can be strong demand to view the same broadcasts that are viewed in an adjacent prefecture or in the metropolitan area. Those demands should be considered. Discussion on justifiability would be difficult.
- The starting point of the discussion would be that the viewers want to view everything. There can be limitations on radio waves or facilities, but it would be hard to find other reasons for limitation in the Radio Law or the Broadcast Law.
- It is natural that viewers want to view broadcasts in areas associated with their life. Unlike satellite broadcasting that is nationally uniform, terrestrial broadcasting has a specified service area, and it would be hard for terrestrial broadcasters to offer everything to viewers.
- Since Tokyo has five terrestrial broadcasting channels, five broadcasting channels should be provided all over Japan. The viewers should be allowed to say that they want to view broadcasts that cannot be viewed in their prefectures.

If there are big differences in broadcasting among adjacent prefectures that have an impact on viewers' lifestyles, the viewers would be inconvenienced and dissatisfied.

- The interests of viewers must be given weight, but they do not have the highest priority. The interests of viewers are not the only thing to be considered.
- The rights of proprietors of terrestrial broadcasting should be respected, but whether retransmission is conducted or not is another story. They could be respected in another form.
- Are there any proprietors who say that broadcasting should be limited by prefectural boundaries? That idea seems to be far from realistic.
- Terrestrial broadcasters are requested to be responsible for broadcasting in their service areas. Should they be forced to broadcast outside their service areas? They have an option to sell their programs outside their service areas. If they are forced to broadcast, they should be provided with a reasonable explanation for why.
- Figuratively speaking, different regions naturally have special products local to them. In terms of broadcasting, people can buy everything in Tokyo and can a limited number of products in other regions. The discussion needs to be based on the concentration in Tokyo or a key station. Unlike local specialty products, broadcasting is public by nature. It can be asked why people cannot view programs that can be viewed in Tokyo.

It can also be asked why cable TV broadcasting must be viewed. There could be other options such as a package, and cable TV broadcasting should not be the only option.

- If broadcasting is allowed to cross prefectural borders, the Broadcast Law must be thoroughly reviewed. A thorough discussion would be needed in the future. At present, however, the approval system and arbitration system must be considered in terms of the

situation as it currently stands.

- Discussion will be based on the prefectural licensing system, but what is protected by the system should be considered. One important point is that local stations broadcast regional information. The best grounds for protecting rights are considered to be the prefectural licensing system, but this system is not the only option.

Regional broadcasting requires a certain business foundation, but people would not accept prohibition on retransmission. It can be made up by compensation to a local station. Anyway, protection of regional broadcasting should be considered.

#### Arbitration criteria

- If an attempt is made to solve issues with money, a system must be constructed that allows the station not at the source of retransmission but at the destination of retransmission to receive that money. Retransmission would hurt the business of the broadcasting station at the destination of retransmission.
- The approval system and arbitration system concern stations at the source of retransmission and cable television broadcasters. It is important to question whether this concern is sufficient. Money could be used to fine-tune.
- Generally speaking, many arbitration systems are based on compensation. Compensation is an acceptable solution for the current issue.
- Compensation is possible in civil matters. Does the administrative law allow compensation? How are problems in the telecommunications business solved?

Secretariat: Problems concerning the level of interconnection charges and the like can be solved by mediation or arbitration.

- Compensation is paid when a right is violated. Which right of a local station at the destination of retransmission would be violated? It can be a kind of exclusive right. Then, is the right worthy of legal protection? It is doubtful whether a kind of exclusive right of a local station meets the criteria of the "sound development" of broadcasting and whether violation of the exclusive right can be complained of.
- These kinds of big questions would not be discussed. The current criteria of arbitration are one-sided: If a certain technical standard and organizational conditions are satisfied, everything must be approved of. If a balance is to be struck with broadcasters' freedom of expression, more substantial requirements should be included and the freedom of expression of broadcasters should be protected.

Secretariat: The retransmission agreement system secures the right to protect broadcasters' intention to broadcast. The number of instances in which approval cannot be obtained has increased, and those cases cannot be settled through conciliation. The arbitration system has

been developed to secure the interests of viewers up to a certain point. The subject of whether the current criteria give too much weight to the interests of viewers is currently under discussion.

- Because broadcasters have a limited service area specified under the prefectural licensing system, it should also be considered whether retransmission can be allowed without being bounded.
  - The basic idea is that the general viewer is allowed to view all broadcasts, and the prefectural licensing system is put in place to establish regional broadcasting. In actual fact, there are areas with only a small number of channels and retransmission is permitted in order to bridge the gap.
  - It is most important to review the current uniform arbitration standard.
  - Measures that facilitate coordination should be incorporated.
  - The prefectural licensing system exists and does not align with the idea that people should be allowed to view everything all over the country. If there is freedom to view everything, the discussion does not hold.
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- In that case, what is the specific object of the prefectural licensing system?
  - The object is to make it possible to view the programs of four or five channels in all prefectures of Japan and consequently to protect the interests of viewers nationwide.
  - Many areas still do not have four channels. Cable TV broadcasting could be used as a supplement to provide four or four channels nationwide.
  - A discussion that sticks to the topic of prefectural licensing is meaningless while the areas of broadcasting and communication are merging, busily changing the world of media.
  - During that period of transition, discussions should be held on whether to anticipate the future or fine tune the current system.
  - Once established, the system would not change for a few years. During the period of transition, the system should be modified to suit the direction of change that can be expected in the near future. The idea that the present condition will change can be supported. It is understandable that the regional licensing system is used as a basis, but the stability of that basis must be questioned.
  - The current broadcasting service areas can be expanded in the future, but the regional licensing system will probably not disappear. The regional licensing system will continue to exist as the basis. The idea of allowing viewers to view everything could not become the basis.
  - The use of the regional licensing system as the basis is understandable. However, it is unlikely that areas currently having just one or two channels will have four channels soon.

- The regional licensing system is just the basis. According to the current criteria of arbitration, retransmission must be approved of if the minimum technical requirements and program organization are not affected. This is unwise. Without more substantial arbitration criteria, there will be more difficulties ahead.
- Since the right to view everything is one of the ultimate assumptions, the view does not seem to be totally different. Compensation, though, is another story.
- One simple question is why the seven prefectures in the Kanto region form a single broadcast service area.

Secretariat: The prefectures form a single wide range because of their social, economic and cultural integration.

- It is natural to assume that a different group of individual areas that are socially, economically and culturally integrated has been formed elsewhere as things change with time.
- According to the system, the broadcast service areas are created basically in accordance with the prefectural borders. Since the principle of decentralization of mass communication has been relaxed, all broadcasting stations in the Kyushu area are allowed to merge at present, for instance.
- The social, cultural and economic integration is a relative factor but still one of most important factors to consider, though it would be dangerous to make such a simple statement. The method used to divide would be important. It would be hard to take the Kyushu area or the Hokkaido area as a single area.
- There are three types of wants that can be considered: 1) People want to view broadcasts available in a prefecture adjacent to their own; 2) People in an area with a small number of channels want to see the same broadcasts that can be viewed in the area with the greatest number of channels; 3) People want to see the broadcasts that are available in the Tokyo area. Solutions corresponding to types 1) and 2) could be approved of, and, if possible, coordination for type 3) would be provided.
- Will areas where external retransmission has already been conducted be considered?
- New approvals would be different from updating. Vested rights must be considered separately. For a new approval, new criteria such as regional integration must be considered.
- How should an area where broadcasts aimed at an adjacent region can be ordinarily received be considered?
- Instances of leakage of radio waves can be a positive factor in recognizing that the areas are integrated culturally or in terms of lifestyle.
- The areas would be adjacent prefectures.

## Others

- The new criteria to be created could increase external retransmission. If it occurs, the business of the local station at the destination of retransmission could deteriorate. If possible, a countermeasure should be incorporated into the system as early as possible.
- There is some awkwardness about dealing with local stations, which are not concerned parties. Steps could be taken within the broadcasting network.
- Consideration of the business environment should not result in a policy whereby existing broadcasters are overly protected. Using the current system as the basis is different to protecting existing broadcasters.
- How much a broadcaster or a cable television broadcaster invests in content should also be considered.
- It must be noted that consideration differs from protection. A good balance will be needed.
- It is doubtful that people would really understand the interests of local broadcasting stations. Issues regarding the broadcasting network are management secrets. It is hard to incorporate those issues into the system.
- One view is to expand the broadcast service area. It seems strange to protect the present situation.
- The point has been alleviated a little since the principle of decentralization of mass communication has been relaxed. “*Doshusei*,” or a wide-area local government system, is also under discussion. Though, terrestrial broadcasting stations are operating under the current system.
- If a compensation system is to be included, attention must be paid to ensure existing broadcasters are not overly protected.
- Compensation is thought of as only the second best policy. Under the arbitration that would occur under the new criteria, the possibility that the broadcasting station at the destination of retransmission would experience financial difficulty cannot be eliminated. The compensation is provided as a countermeasure. All the coordination can be left to the broadcasting networks. However, it is doubtful whether the principle of competition is consistent with the spirit of the Broadcast Law.

(3) A member made a proposal to discuss the draft interim report of the main points at the next meeting, and the proposal was accepted.

The chair presented another proposal to hold the next meeting behind closed doors, and the proposal was accepted.