

Study Group on Broadcast Retransmission by Cable Broadcasters—4th Meeting
Summary of Minutes

1. Date and Time

Friday, December 7, 2007, 15:00 to 17:00

2. Location

Special Conference Room No. 4, 5th floor, Ministry of Internal Affairs and Communications (MIC)

3. Attendees (honorifics omitted)

(1) Study Group Members

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

(2) MIC Representatives

Suzuki (Vice-Minister for Policy Coordination), 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)

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

Fukuda (Member, Digital Terrestrial Broadcasting Special Committee)

Inaba (Member, Digital Terrestrial Broadcasting Special Committee)

Kataoka (Manager, Media Strategy Division, Nippon Television Network Corporation)

4. Proceedings

(1) The Japan Cable and Telecommunications Association (JCTA) and the National Association of Commercial Broadcasters in Japan (NAB) explained their discussion on approval of retransmission in accordance with Document 4-1 (confidential material), and a question-and-answer session was held.

(Following their explanation, JCTA and NAB left the room.)

(2) The Secretariat explained the draft interim report of the main points (Document 4-2), and a question-and-answer session was held.

The key remarks made by the study group members are as follows:

- The system assuming agreement arbitration is described on page 8. In my understanding, it says that an amendment to the Cable Television Broadcast Law is not required and that the system is included in the guideline. Is this understanding correct?

Secretariat: It is correct.

- It is said on page 9 that it is appropriate for the parties concerned to discuss within the private sector, as required, the payment of a certain amount equivalent to a retransmission service, and that this discussion should be separate from that about royalties. It may be better that this is mentioned in the guideline.

Secretariat: There may be some leeway for adding something to the guideline with regard to a procedure for discussion and the like.

- For example, if external transmission is approved of in prefecture B, which is adjacent to prefecture A, it would be possible that retransmission is allowed in prefecture C, which is on the opposite side of prefecture A, because of their economic and social connection.

- It would seem to be unreasonable to approve of external retransmission in one prefecture after another.

- It depends on the situation, but basically, retransmission should not be approved of in one area after another.

- For areas with a small number of channels, approval of retransmission should be considered, even if other requirements such as regional or historical integration are not fully satisfied.

- The two organizations seem to have different views on requirements such as geological and economic integration to expand or limit areas where retransmission is allowed.

- For areas with a small number of channels, retransmission should be allowed until the number of channels reaches four. NAB explains that seventy percent of broadcasts made by local stations are the same as the broadcasts made by the key station. It would be nice if at least seventy percent of them can be viewed nationwide.

- Should lack of terrestrial broadcasting due to the four-channel policy be made up by cable television broadcasting?

- Yes, it should.

Secretariat: Any retransmission factor that the broadcasters can approve of will not be rejected. The agreement arbitration forces the broadcasters to agree with each other in some aspects. The degree of justification of the grounds for limiting some intentions of broadcasters

is under discussion.

- The object of the Cable Television Broadcast Law is to protect the interests of viewers and to expand the industry while improving the public benefit. There is no other object. In that sense, the discussion of the national minimum of key broadcasting, freedom of expression, importance in the market and the foundation of democracy is understandable. However, the discussion would not be limited to the range of the Cable Television Broadcast Law, and to put it in extreme terms, all of the broadcasting policies should be considered as a whole.
- Is there actually a case in which an affiliated station cannot be brought to an area with a small number of channels from an adjacent prefecture?

Secretariat: Each prefecture with a small number of channels has an adjacent prefecture with four channels.

- Is the content of the guideline different from or the same as the criteria of the arbitration system?

Secretariat: It depends on the current discussion. The guideline would interpret justifiable reasons based on the Cable Television Broadcast Law. A great part of it will become predictable by stipulating the criteria. The discussion procedure guideline will specify from when, following what procedure and following what schedule the discussion should occur, and from whom views should be sought.

- Is the basis of regional characteristics included to prevent broadcasting from expanding too widely, in accordance with the local licensing system for broadcasting?

Secretariat: If an interpretation guideline is created, it would explain the justifiable reasons stipulated in the Cable Television Broadcast Law. The guideline will not go into the spirit of the law.

- The content seems to be right, but it is not clear how the description is connected with the object of the Cable Television Broadcast Law. Is that considered?

Secretariat: The interpretation guideline will explain each article of the law. In that way, the guideline will be linked with the object of the law. The explanation that would be easiest for the general public and viewers to understand will be considered along with the report to be put together here.

- That issue seems to be discussed on page 3, as part of the discussion on the meaning of the arbitration system. The basic idea is that the prefectural licensing system is used as the basis, and it would be better in terms of regional characteristics if broadcasting available in an adjacent prefecture can be viewed.
- The idea seems to be right, but a clear explanation is needed.
- Retransmission for an area with a small number of channels is approved of without any

explanation of regional integration in terms of lifestyle and economy if there is an adjacent prefecture with four channels. Is this understanding right?

- It is not certain which party is responsible for verification. Generally speaking, the interests of viewers described on page 7 must be confirmed.
- There does not seem to be a consensus.
- In my view, retransmission should be approved of without taking the other requirements into consideration until four channels become available.
- My view is different. It would be too easy if the interests of viewers and performers are considered. A more flexible administrative interpretation of the criteria should be allowed. When advertising and performance are taken into consideration, it does not seem fair to approve retransmission of broadcasting automatically in an adjacent prefecture.
- I agree with the opinion that questions the validity of narrowing the arbitration on the administration side. The administration can be allowed a certain scope within which to make a decision. It is sufficient if consideration of areas with a small number of channels is included as one of the main factors to be considered.

- It is hard to put in writing that four channels are approved of as the default position. The concept will be used in specific cases.
- There is some reluctance about using the guideline as a format, rather than the content. The criteria for justifiable reasons should be put in writing as a matter of law. If possible, interim issues should be examined all together to improve the administrative guideline as needed.
- What will be done about current analog broadcasts?

Secretariat: In the previous discussion, it was stated that analog broadcasts are fundamentally the same as digital broadcasts. As described in the part concerning viewing habits, currently available programs, analog or digital, should be protected in terms of the interests of viewers, although the period of protection must be considered. Should continued protection for the time being be clearly indicated in the guideline?

- If the habit of viewing retransmission, which is not currently approved, is admitted, it seems that the present situation would not be maintained.

Secretariat: There are a variety of reasons for unapproved retransmission. Decisions have not been determined in some parts, but there would be at least a few phases. A lot of discussion has taken place to try and resolve the issue and the actual situation is understood. In some cases, it is hard to make a decision.

- Does it mean that not only the procedure but also the actual situation should be considered?
- It would be better to clearly indicate the viewing habits, the actual viewing situation and the past condition for approval concerning retransmission in the middle of page 7, where the

rights of viewers to view retransmission of terrestrial broadcasting in a different prefecture are discussed. The description indicates that the factors will be considered in the future.

- If there is a difference in the view concerning analog broadcasting and digital broadcasting between the interpretation guideline and the two organizations, will any settlement reached within the private sector take precedence?

Secretariat: Within the range of approval under the new system, both analog broadcasting and digital broadcasting would be protected. In an area outside the newly specified protected area, the right to be protected because it is currently available for viewing could be protected as the viewing habit. Though, the protection of the right would be limited to some extent. It is controversial.

- Based on the description that discussion should be viewed from many angles such as the protection of the interests of viewers, production and procurement of a wide range of information about meeting the regional needs and the promotion of distribution, it would be ideal if the production, procurement and distribution of a wide range of information is improved. The current talks, however, seem to indicate that it is difficult to preserve the status quo. No particular requirement need be changed, but the spirit should be incorporated somewhere.

Secretariat: The spirit could be incorporated in the discussion procedure guideline or a report.

- The idea that the current situation must always be preserved is questionable. There is one case in which external retransmission is received from two areas. In that case, retransmission from one of those areas could be stopped.
- If there is a strong request to cease retransmission, the current situation would not be maintained.
- If patently illegal retransmission is applied to be arbitrated according to the guideline, automatic approval will not be given.

Secretariat: The problem will be solved in that way. Arbitration will be made in accordance with the interpretation authorized by this study group.

- The discussion concerning copyright on page 10 should be improved. A proprietor could misunderstand it to mean not having the right to give consent but having the right to receive a royalty payment.
- A more detailed explanation would be needed to prevent that.
- This study group was formed to solve urgent problems on the basis of the current system. The system of telecommunications laws is under discussion and the current framework will be reviewed in the long term.
- The current issue is an urgent one and it will change, depending on the grand plans for

broadcasting and communication.

- The assumption system mentioned on page 8 could change when the broadcaster succeeds in disproving.

Secretariat: Individual circumstances as listed on page 7 should be examined carefully, but it is impossible to conduct a careful examination in each case. In a specific area, approval should be given first based on an assumption that there are connections between people living in adjoining prefectures, and arbitration is available to cable broadcasters in the region. Even in an area where agreement by arbitration is allowed, if it is proved that there is no integrated economy or the like and if the party reluctant to give the approval can offer evidence of disproof of the claim, no decision will be made. Contrary, in a non-specific area, if it is proved that there is a connection, the party that requires the approval can offer evidence of disproof.

- The assumption system should be explained in more detail so that there will be no confusion.
- Was the idea of stipulating arbitration criteria based on the Cable Television Broadcast Law examined and abandoned? Would the guideline be an adequate alternative?

Secretariat: An amendment to the law is recognized as being one option. However, the issue must be settled promptly because an application for arbitration has been made. Therefore, it is preferable if the issue can be settled by interpretation.

Secretariat: In addition, the phrase “justifiable reasons” is frequently used in legislation, and often every reason cannot be clearly articulated individually. In that case, the standard method actually uses an abstract term and provides a flexible interpretation depending on circumstances.

- If possible, it would be preferable if the draft interim report indicates that there was a request for stipulation in law.

(3) The draft interim report will be organized at the next meeting.