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Comments on TRAI's Consultation Paper on HITS

1. General Comments

1.1 The genesis of the consultation paper on Head-in-the-Sky (HITS) is the permission granted by Ministry of Information & Broadcasting (M/o I&B) to ASC Enterprises Ltd. in the year 2003 for HITS operation from their teleport at Noida and recommendations by a group constituted to go into the question of digitalization and voluntary CAS. Accordingly, a reference from M/o I&B has been made to TRAI to work out detailed policy framework on HITS.

1.2 It is estimated that there are 120 million TV Homes in the country. Out of this, 71 million are served by cable TV network, about 6 million by DTH and the rest by terrestrial TV. Except for DTH and CAS mandated areas, rest of the home are served by analogue signals either by cable or terrestrial TV. In another estimate only about 50% homes are presently covered by TV as compared to 98% in USA. The homes which do not have a TV are on account of affordability or non availability of service through cable or terrestrial media. DTH operators who have started the services so far either do not have the means to reach masses and busy with capturing the lucrative urban market or non- regulation on pricing of the content making the services un-affordable.

1.3 The experiences of implementing addressable systems, even when mandated, have not been very positive. The proliferation of pay channels and the existing system of bundled channels wherein less popular content is packed with the popular channels and pushed in the market needs to be confronted so that addressability becomes effective and popular amongst the consumer.

1.4 In the earlier phases of implementing addressable systems like HITS, IPTV, DTH etc it is important that channels are offered by the broadcasters on a-la-carte basis and operators are allowed repackage these channels as per the consumer needs. Unless regulations to offer channels on a-la-cart basis and provide price ceilings are put in place, voluntary addressability would not happen.

1.5 The Authority has issued a consultation paper on various issues concerning DTH operations. The most important issue of pricing of channels on DTH platform has been left out of consultation process. The Authority in its recommendations on digitalization and voluntary roll out of CAS recommended that CAS may be extended in 55 cities in a period of 4 years. Though technology is available to rollout digital services in the entire country. Similarly on issues related to IPTV are settled and services could be provide under UASL, However, respective rules allowing broadcasters to provide their channels to IPTV service providers are not in place. There is no policy framework of Mobile TV. DD/Prasar Bharti has already launched the service whereas private operators like UASL operators, who have the infrastructure, are holding their plans for want of clarity on the policy framework. Therefore the policy issues relating to the carriage need to be addressed on a holistic manner and not on the piecemeal basis. The interconnection issues should have been addressed in the current consultation so that investors have clear idea of the regulatory regime for this service.

1.6 Roll out of CAS through the cable systems is entirely dependent on financial strength of the MSOs and LCOs. Lack of availability of funds with MSOs and infrastructure of LCO has resulted in poor rollout of services in the metros. Rollout of services in other areas is also linked to availability of STBs, which MSOs are not able to finance and therefore, they recommended long drawn time period of four years for only 55 cities. Now alternate technologies are available to implement large scale digitalization and addressability on cable networks. To push such networks a more conducive regulatory regime is required.

1.7 Formulation of need based policies resulted in creation of fragmented and unviable capacities, uneconomical operations and higher cost to the consumer. Like in telecom sector, till the entire sector was opened up and level playing field was created; telecom services were operated by a few operators on regional basis resulted in high cost of service for the end customers. However, with the entry of larger pan-Indian players all the stakeholders have benefited. Subscriber base of small players and even PSUs have gone up. The economies of scale so achieved have benefited consumers. The tariffs in India are now are one of the lowest in the world.

1.8 The objective of the government should be to fix a target for digitalization of TV services, reduce entry level barriers and provide level playing field with technology neutrality. With HITS, if it is possible to introduce digital addressable system in entire country at a rapid pace, but competing technologies like DTH and IPTV are already there to serve the purpose. The need is to provide a level playing field.

1.9 The government should define entry level conditions, interconnection regulation, quality of service parameters, etc. for various platforms in one go and leave it on the market forces to decide the technology and roll out of the services.

1.10 HITS, like DTH, is another platform which has the capability to help digitalization of TV across the country at a rapid pace. Defining separate terms and conditions for HITS without addressing the problems of DTH operators regarding channel pricing will only further divide the industry and will restrain large investments. Such an attempt will only help existing MSOs/LCOs in expanding their business without addressing the need of serving over 100 million unconnected households and about 50 million households, which are being served by analogue terrestrial broadcasting systems.

1.11 Even in the areas, which are being served by cable networks, CAS or non-CAS areas, there is no competitive environment. Tariffs notified by TRAI are different for various delivery platforms in the same service area. Even TDSAT in its order has

requested the Authority to undertake the price regulation for DTH systems. It is evident from the long list of pending cases between DTH operators and broadcasters in the TDSAT that the this market needs regulation.

1.12 It is, therefore, recommended that TRAI should make an attempt to bringing in uniformity and level playing field among various delivery platforms for the digital addressable systems i.e. CAS through cable network, DTH systems, HITS, etc. Define entry level conditions (networth, FDI, entry fee, revenue share, crossholding restrictions, etc), interconnection regulations, quality of service parameters, etc. for these platforms. **It is suggested that present regulations for cable TV networks in CAS notified areas, which is in the interest of the consumers, be made applicable to all the delivery platforms for a period of two years and carryout a comprehensive review thereafter.**

1.13 License conditions for HITS should be similar to DTH platforms and a liberal approach of allowing HITS operators to serve end customers directly and DTH operators to serve clusters by using MDU technology / LCOs should be allowed for healthy competitive environment. HITS operators can not equated with MSOs for simple reason that MSOs at present serve only small geographic areas whereas HITS operators will have nationwide reach. Further, an entry fee of Rs.10 crore, bank guarantee of Rs. 40 crore and revenue share of 10% presently applicable for DTH services should also be made applicable for HITS operators and revenue should be calculated in a similar manner i.e. subscription from the subscribers (collected through LCOs) should be taken into account for the purpose of payment of revenue share of 10%.

1.14 For introducing digital addressable system in the country, there is a need to reduce entry barriers. Taxes and levy on DTH services, including 10% revenue share as license fee, service tax and customs duty on set top box are the highest compared to any service sector and is deterrent to the growth of digital addressable system in the country. Present import duties on STBs is about 34% (10% basic + 16% CVD, 4% additional duty and cess on duties). Like in telecom sector, customs duty on set-top-boxes should be reduced to zero with nil CVD i.e. at par with mobile phones and license fee should only

cover the administrative cost and should not be more than 5%. DTH and HITS operations have the potential to generate large scale employment in the areas installation of DTH equipment at the customer's premises, after sale service, bill collection, etc. These are potentially most promising platforms to voluntarily push addressable digital systems. **Therefore, TRAI may consider recommending lowering of license fee and customs duties on STBs for DTH services and other addressable systems.**

1.15 As per the existing policy HITS operators are to ensure that the cable operators through whom channels are distributed makes available Free To Air Channels without STBs. In case HITS operator does not find it feasible, STB free of cost will have to be provided to the subscriber. This policy need to be reviewed as it will result in continuation of the non-transparent operation on cable systems as number of subscribers is not verifiable. In that system not only government loses revenue on account of service tax and entertainment tax but consumers are also affected due to poor quality of service. The system of payment of carriage fees for carrying channels on prime bands, frequent shifting channels from one band to another would continue. **Therefore it is suggested that the present policy of making available of FTA channels on analogue mode be discontinued.**

2. Comments on various issues raised in the consultation paper

4.53.1 What should be the scope of the HITS operations? Whether the scope of the HITS operator should include both the models as stated under heading "scope of HITS operation" in paras 4.5 and 4.6 ?

(i) In the first case (para 4.5) HITS operators acts as a content aggregator and provides the signals to LCOs across the country where as in the other case (para 4.6), HITS operator acts as an infrastructure provider to MSOs thereby increasing the reach of MSOs nationwide. However, in the first case, HITS operators would be responsible for content as well as delivery of the channels to the end customers. Only end to end players

would be able to provide quality service at competitive rates. In the second case, no single entity would be responsible for maintaining quality of service on an end to end basis. This would result in poor service levels and would not be in the interest of customers. Also, operations will not be economically viable as another player is being added in the value chain. **It is, therefore, recommended that only first model mentioned in para 4.5 may be considered for HITS operation.**

4.53.2 Whether HITS operations should be allowed in C-Band or in Ku band or in both?

(i) The suggestion that HITS should be restricted to C Band and DTH to Ku band seeks to create an artificial compartmentalization of services. There is neither technical necessity for this nor does it serve public interest. As such, there is no justification on any grounds for such separation. Restrictions on the customer segments that can be addressed would result in fragmentation of services and reduction of economic viability of both HITS and DTH. Such restrictions would also violate the principles of technology neutrality.

(ii) HITS operations should hence be allowed in both C-band and Ku-band **with a proviso that it is subject to DTH operators also being allowed to operate in C-band and they are allowed to provide feed to the LCOs.**

(iii) This would enable technologies to compete based on their intrinsic strength with a level playing field for both. Customers would also obtain the best value due to competition between service providers

4.53.3 Whether a HITS operator should be restricted to offer services only to the cable operator? Alternatively, should HITS operator be allowed to serve the end customer also directly? If yes, then whether the restriction on DTH to service end customer only needs any review?

(i) Yes, if technology permits to serve end customers using HITS platform, the same should be allowed. Technology neutral policy should be followed for growth of the sector. The only need is to review the DTH licensing condition pertaining to restrictions on DTH services to the cable operators. The scope of DTH operators can be expanded to

provide services to the cable operators. The license conditions to provide services only to the end customers are restrictive and limit the expansion of market. The expansion of scope of the both licenses would help achieve the economies of scale, digitalise cable networks, bring in addressability on the cable networks besides other inherent benefits like vastly improved quality of service.

Therefore it is suggested that both HITS and DTH operators be allowed to provide services to cable operators and end customers.

4.53.4 What should be the limit of Foreign Direct Investment (FDI) for HITS licenses? Should there be any restriction on the maximum limit on the composite figure of FDI and FII?

(i) The existing licensing conditions of DTH services ipso-facto should be made applicable for HITS operations.

(ii) However, the Authority in its various papers has already stated the existing FDI guidelines in the broadcasting sector are not conducive to investments and should be reviewed. New guidelines should be framed to encourage investment in the sector. **Till a review of FDI limits in the broadcasting sector is carried, the existing FDI limits, as applicable to DTH services may be applied for HITS services.**

4.53.5 What should be the entry fee and the annual license fee for HITS?

(i) **The entry fee and annual license fee as percentage of revenue for the common HITS and DTH license should remain at Rs 10 crore and 10% respectively.** In the past, a large number of cable operators and MSOs have entered in the field without paying any license fee or entry fee thereby government has already lost considerable amount of revenue. Unorganized cable industry is also avoiding service tax and income tax due to lack of accounting of subscribers and revenue. The government now has an opportunity to regulate the sector with the introduction of digital addressable system and has a potential to earn large revenue of over Rs.5,000 crore.

(ii) The suggestion that MSOs currently do not pay entry fee and the same should be extended to HITS is untenable. The current business model of MSOs are very different with localized infrastructure and customers. As mentioned in clause 2.19 of the consultation paper, HITS is a national model with infrastructure at a single place for All India operations facilitating customer acquisition across the country and large savings compared to the MSO model. In view of the above HITS is more akin to DTH than to MSO.

(iii) Similar to the above is the argument to have NIL annual license fee for HITS, on the lines of MSO. HITS is a national service model and necessarily has to work on the same methodology as DTH

(iv) Any move to differentiate between HITS and DTH vis a vis these two parameters viz. entry fee and annual license fee would be unfair and discriminatory to DTH operators.

(v) While keeping HITS and DTH services at par, there is a larger need to review the annual license fee structure. Broadcasting network services such as DTH and HITS are essentially resellers of content with a very high proportion of their cost (50% - 60%) being attributable to content cost. (This is in contrast to telecom services). This results in the annual license fee becoming 25% of the value added by the network services, which is very high. This high cost is passed on to the customers and results in addressable systems (such as DTH and HITS) becoming uncompetitive vis a vis analog systems. Addressable systems bring in transparency and accountability in the system through accurate customer accounting, payment of service tax, entertainment tax and income taxes. Hence, they should be encouraged, rather than being burdened with additional 25% license fee on value added by them.

(v) Therefore it is suggested that the entry fee and annual license fee should be at par for the DTH/HITS licenses. The annual license fee needs to be reviewed such that content costs are netted out from gross revenue, for the purpose of calculation of annual license fee.

4.53.6 Whether HITS operator should be allowed to uplink from outside India also?

(i) HITS operators **should not be allowed** to up-link from outside India. In case, they are allowed to up-link from outside India, the government will lose revenue on spectrum charges and will also lead to discrimination vis a vis DTH services

(ii) Clause 13.1 and clause 7.5 of the licensing conditions of DTH stipulate that the uplinking should be from an earth station situated in India. All the HITS operator licensed to serve Indian territory are going to be Indian Companies, with majority shareholding, managed by Indian management. HITS operator should also be mandated to uplink from Indian territory (as mandatory in DTH License). *Therefore the permission to uplink HITS services from outside India should not be permitted.*

4.53.7 If yes, what are the safeguards needed for monitoring the system? What are the checks and balances required to be put in place to address the level playing field issue with the operators uplinking form India?

(i) Up-linking from outside India should not be allowed. All existing monitoring and inspection guidelines of DTH license which include continuous monitoring of DTH broadcasting services, recording of programme and advertisement for a period of 90 days shall remain applicable for HITS licensees also

4.53.8 Should any interconnection issues be addressed in licensing conditions?

(i) The interconnection issue is most important and crucial issue for all addressable channel delivery systems. The broadcasters do not provide content on a-la-carte basis and insist that their complete bouquet of channels be included in the basic bouquet. This defeats the whole purpose of introducing addressability on delivery platform. All channels in the basic bouquet would make the service unaffordable to larger section of the consumers and therefore services would remain unattractive. The addressable market can be expanded in case broadcasters agree to provide channels on a-la-carte basis at a

regulated price. Otherwise alternate addressable system cannot give effective competition to the incumbent cable operators.

Therefore it is suggested that the downlinking policy should clearly specify that the:

- Broadcasters shall provide channels on all addressable systems including HITS, DTH and IPTV on a-la-carte basis.
- The DTH/HITS/IPTV operators shall be permitted to make their own bouquet of channels and offer them to the consumers.
- Pricing of pay channels to be decided by the TRAI till addressable systems stabilize.

(ii) The consultation paper currently discusses the possibility of LCOs piping FTA channels directly to the customer in analog mode while retransmitting digital feed from HITS operator only for pay channels. This would defeat the very purpose of introduction of digitized and addressable systems. It would create a conflict for the LCO, who owns the last mile network, in terms of the bandwidth to be allocated for FTA and HITS feeds. The ultimate beneficiary of this policy would be the LCO, who would continue to bill and keep FTA channels and paying no taxes to the government. The ultimate sufferers of this policy would be customers (continue to get poor quality feed of FTAs only, still subject to whims and fancies of LCO in terms of price, quality of services), HITS operator (reduced revenue opportunity) and the Government (low / nil revenues from income tax, service tax or entertainment tax).

For every 1 crore subscribers who continue to receive analog signals from LCO, the potential revenue to the government is Rs 600 crores per annum on income tax (30% of revenues), service tax of Rs 180 crores per annum and entertainment tax in addition. A substantial part of this would not be realized due to continuation of a non-transparent analog transmission regime.

In lieu of the suggestion of allowing LCOs to continue providing FTA channels on analog basis, it may be a better option to reduce the import duties on STB to NIL. This would lower cost to customer, increased uptake of addressable services with minimal revenue impact to the Government (due to additional revenues from addressable systems).

The Authority could hence look at a framework of reduced cost of services for addressable platforms (reduced duties and gross revenue to be net of content cost), combined with regulatory mandated rentals for STB (say Rs 40-50 per month) and mandating LCO to provide either digital addressable services (in association with HITS) or analog services only.

It is suggested that any LCO who becomes an associate of HITS should transmit signals (including FTA & PAY channels) only from HITS operator and this should be made mandatory as part of the interconnection framework.

4.53.9 Should spectrum charges be recommended to be done away with for HITS service provider?

(i) Though TRAI had recommended that spectrum charges should not be levied on DTH operations, the recommendation has not been accepted by the Government, and, therefore, DTH operators have been paying spectrum charges.

In order to have a level playing field, HITS service providers should also pay spectrum charges on similar terms or otherwise such charges should be exempted for DTH operations.

4.53.10 Should there be any cross holding restriction? If yes, please suggest the nature and quantum of restrictions.

The Broadcast and network services should be separated. Therefore, the cross holding clause is very much required at least for initial time frame of 2-3 years. Thereafter, as and when the Industry stabilises, this clause could be reviewed.. Even now, after more than 2 years of operation of DTH, all DTH operators do not have all TV channels.

4.53.11 Should HITS operator be allowed to offer value added services?

(i) If technically feasible, HITS operators should also be allowed to offer value added services.

4.53.12 Whether "must carry/must provide" conditions be imposed on HITS operation?

(i) The 'interest of consumers' should be the guiding principle for all the regulations. And to that extent, it is imperative that consumers have freedom to choose channels of their choice. HITS operator should be allowed equitable access to all content available on any distribution platform. The broadcasters "must provide" the content on fair and equitable basis to all platforms to create a level playing field so that their content can be distributed by as many platforms as possible.

(ii) However for commercial feasibility considerations (and sometimes it could be genuine satellite capacity constraints), the platform should have an option to be selective for choosing the channels, which they want to carry on their platform, (which is actually driven from end customer demand). If a particular channel is popular and the end customer wants an access, HITS operator is bound to carry that channel in order to meet customer requirements and make his platform a commercial success. So, instead of having a "must carry" clause, the HITS operator should be given freedom to select the channels they want to carry. The current clause in DTH license, mandating non-discriminatory access to content should hence be stipulated in HITS also. As noted by the Authority and TDSAT, non-discriminatory provision is not the same as "Must Carry" and hence provides an equitable basis for the broadcasters and networks to work together.

(ii) "Must provide" regulation for Broadcasters already in place for other platforms, should be made applicable for HITS also. However, carrying all or partial channels on the HITS platform shall depend upon end customer demand / requirement and shall not be "MUST CARRY". There can be a provision for non-discriminatory treatment of broadcasters by HITS, just as in DTH license

4.53.13 Whether a stipulated networth of specified amount be made as an eligibility criteria to avoid any non-serious applicant?

(i) In case an entry fee of Rs. 10 crore, bank guarantee of Rs. 40 crore and revenue share of 10%, as applicable for DTH services, is prescribed, there may not be any need

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for minimum networth requirement for the license. These conditions will ensure entry of serious players in this business.