Response to the Telecom Regulatory Authority of India Consultation on "Issues related to Implementation of Digital Addressable Cable TV Systems"

January 16, 2012

CASBAA (the Cable and Satellite Broadcasting Association of Asia) thanks the TRAI for its Consultation Paper dated December 22, 2011 on the above topic. The paper raises a number of important issues connected with India's transition to digital cable TV, and we are pleased to offer to the TRAI our views, based on the extensive international experience of CASBAA and our member companies.

CASBAA is a non-profit, industry-based trade association dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Member organizations include some 130 Asia-focused companies building, operating, and providing content for pay-TV systems, and include operators of cable, satellite, mobile and IPTV systems, as well as content providers to India, the Asian region and the world. Members are physically located in 17 jurisdictions in the Asia-Pacific region, and have broad experience in building a dynamic industry to meet the rapidly-growing demands of the region's over 400 million pay-TV households.

Our member companies are greatly encouraged by the progress India is making toward the goal of full digitization of the nation's cable TV networks, as proposed by the TRAI. The leadership of the TRAI, and the MIB, in pressing for this fundamental, "game-changing" advance, has been visionary, and we applaud it.

That said, there are a myriad of difficult related issues that must be handled in connection with the digitization mandate, and the TRAI's Consultation Paper rightly brings many of them out for complete public discussion. CASBAA's submission, below, offers views on some of the fundamental issues. The answers below are keyed to the questions in the TRAI Consultation Paper.

I. Basic Service Tier for the Digital Addressable Cable TV Systems

1. **What should be the minimum number of free-to-air (FTA) channels that a cable operator should offer in the basic-service-tier (BST)? Should this number be different for different states, cities, towns or areas of the country? If so, what should be the number and criteria for determination of the same?**

2. **In the composition of BST, what should be the genre-wise (entertainment, information, education etc.) mix of channels? Should the mix of channels and/or the composition of BST be different for different states, cities, towns? If so, how should it be?**

3. **What should be the price of BST? Should this price be different for different states, cities, towns or areas of the country? If so, what should be the price and criteria for determination of the same?**

We believe that policy with respect to basic television services should take account of three key factors:

A. India has provided its people with a basic television service at considerable public expense. The extensive public services offered by Doordarshan, on multiple channels and in multiple languages, should be recognized for the essential public service they provide. Those channels make up the basic television service for the Indian population.
B. The diversity of languages and preferences across India's many states and regions mitigate against any attempt by the central government to specify in detail the size or composition of the channels in a cable operator's basic tier. The composition of this tier is best left to operators, who know their customer's tastes and preferences. **Leaving this decision to operators is in keeping with best international practice: except in Taiwan (which is grievously and counter-productively overregulated) governments in Asia have not attempted to specify the composition of cable operators' basic tier offerings.**
C. There is now, as the TRAI has recognized, adequate competition at the retail level to serve all Indian consumers. Availability of content has never been an issue. There is therefore no convincing rationale for increased regulation of basic television services.

If, notwithstanding these important factors, the government feels it necessary to ensure provision of a basic service tier, we urge that the basic tier mandate be kept as minimal as possible. There should be no more than 15 channels in the basic tier, and it should include the mandated Doordarshan channels. Finally, the basic tier, if one exists, must pass through the addressable box, and should not be allowed to escape from the transparency/auditability that the new digital system offers.

If a basic tier is required, the regulation should be technology-agnostic, and should apply to all television service providers, whether based on cable, satellite, or telco technologies. As the TRAI will be aware, as a result of the Chairman's participation at the CEO Roundtable on the Broadcast and Cable Amendment Bill 2011 (14 Dec 2011, New Delhi), there was an in depth convergence discussion and consensus that the various distribution platforms such as DTH must no longer be regulated separately and inconsistently. We suggest that the tariff for such a tier not be fixed – competition among operators will ensure that such tariffs remain low. (Indeed if a regulated tariff is not introduced and the tier is kept small, we believe that some operators are likely to offer the basic channels for free or nearly-free as an incentive for consumers to take their service. A regulated tariff would likely have the perverse effect of ensuring all operators charge the (perhaps higher) regulated rate.)

4. **What should be a-la-carte rate of channels that form part of BST? Should there be a linkage between a-la-carte rate of channels in the BST to the BST price or average price of a channel in the BST? If so, what should be the linkage and why?**

We urge the TRAI to forbear from micro-managing the industry, and to avoid a la carte price mandates. Such mandates ignore the major difference among channels, stifle creativity, and reduce the overall welfare of consumers. We are aware of no international precedent for broad a la carte mandates; certainly there is no government in Asia that requires a la carte pricing of basic channels by cable operators[1]. (We stress that some a la carte pricing can and does form a part of many pay-TV operators' commercial offers, but these are decided and implemented by the operators' themselves in keeping with their assessments of the commercial and consumer environment. Following this non-regulated approach will yield the best results for India, as well.)

II. Retail Tariff for the Digital Addressable Cable TV Systems

1. **Should the retail tariff be determined by TRAI or left to the market forces? If it is to be determined by TRAI, how should it be determined?**

In keeping with its longstanding position that there is substantial retail competition in India that will restrain tariffs, CASBAA believes that the TRAI should forbear from regulating retail tariffs now and in the future. Market forces can and should govern rates in an industry that offers just one of many competing entertainment products, and which in any case now has multiple competing suppliers within the pay-TV industry. Retail rate regulation has stifled competition and hampered the development of the Indian cable industry, and is one of the reasons that the previous CAS experiment failed (in contrast to the rapid development of the competitive DTH sector which has enjoyed no retail rate regulation). Internationally[2], the South Korean example is revealing: **the South Korean government removed mandated rate caps from cable TV operators two years ago, at the time it introduced major new competitive forces (multiple competing IPTV platforms). Under the impact of the aggressive competition from well-financed telcos (as is the case for Indian DTH operations), the cable industry has not been able to raise its rates significantly, and indeed cable operators complain bitterly about "excessive" competition. Consumers, however, are enjoying more content options, more network capabilities (on digital cable as well as IPTV systems) and restrained rate increases.**

The TRAI Tariff Order of July 21 2010 sets out a policy of forbearance rather than retail rate regulation for addressable systems. This is an important part of the digitization initiative, and we urge the TRAI to maintain this policy, so that rate regulation does not become a permanent feature of the new digitized landscape. Consumers should not be led to believe that their cable rates will be forever more constrained than the prices of other entertainment products. As noted in the consultation paper, India's pay-TV industry has become highly competitive, with a wealth of suppliers at all levels. The TRAI drew the correct conclusions from this competition when it decided that all digital addressable platforms should be able to fix their own charges as determined by market forces.

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[1] Table of Asian practices with respect to mandated a la carte pricing attached as part of Appendix I.

[2] A summary of rate regulation practices in Asian markets can be found at Appendix II.

III. Interconnection in the Digital Addressable Cable TV Systems

1. **Does any of the existing clauses of the Interconnection Regulations require modifications? If so, please mention the same with appropriate reasoning?**

   A. **Should the 'must carry' provision be mandated for the MSOs, operating in the DAS areas?**
   B. **In case the 'must carry' is mandated, what qualifying conditions should be attached when a broadcaster seeks access to the MSO network under the provision of 'must carry'?**
   C. **In case the 'must carry' is mandated, what should be the manner in which an MSO should offer access of its network, for the carriage of TV channel, on nondiscriminatory terms to the broadcasters?**

With all due respect to the TRAI's diligent efforts to maintain a balance between the various conflicting interests within the Indian television industry, CASBAA believes these questions point in precisely the wrong direction: the unstated trade-off here is that because under current regulations broadcasters "must provide" their programming to distributors on nondiscriminatory terms, then for balance TRAI should consider instituting a "must carry" obligation for distributors to carry broadcasters' channels on a nondiscriminatory basis.

This is regulatory creep, and it should be avoided. There is no need to institute "must carry" obligations, and doing so will introduce greater even greater complications into India's system of regulatory constraints. (The number of television channels available in India exceeds the capacity of even planned improvements in digital cable systems; there is no way a "must carry" obligation can be applied equitably across the vast range of content available in India.)

Rather, we urge the TRAI to go in the direction of "lighter-touch" regulation rather than "heavier touch" mandates. CASBAA has for years urged the TRAI to remove the "must provide" requirement, and we still believe that is the best way to create balance among the various players in the industry – remove the government's imposed framework of all-encompassing must-provide rules (which are in place in no other country in the world[3]) and allow willing buyers and willing sellers of TV channels to conclude commercial arrangements for channel carriage (or non-carriage, as the case may be).

As in other countries[4], "must-carry" should be instituted only for a very limited number of channels judged to be of overriding public interest – such as for example Doordarshan's leading national and/or regional channels.

Having said this, we also wish to note that if the TRAI maintains a "must provide" regulatory mandate, then balance should be sought by a different means**: the regulatory framework that obliges a broadcaster to provide his programming must be complemented by corollary obligations to oblige the distributors (MSOs and LCOs) to conduct their business in a**

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[3] Table of Asian practices with respect to "must provide" attached as part of Appendix I.

[4] Table of Asian practices with respect to "must carry" attached as part of Appendix I.

transparent manner, in accordance with all other aspects of the law and regulation, and with full respect of intellectual property rights.

To that end, we urge the TRAI, if it decides to maintain "must provide" regulations, to ensure that a programming distributor can only rely on the "must provide" mandate to acquire programming if it:
a) Has switched over to digital addressable systems in accordance with the government's mandate;
b) Maintains full openness to audit of the numbers of its digital subscribers;
c) Utilizes only network systems and boxes which are fully addressable;
d) Maintains legal registration and compliance with the requirements therefor,
e**) Has not engaged in unauthorized retransmission of channels or other video content (including unauthorized transmission of movies on "own-produced" channels.)**

We would also suggest that the interconnection regulations should incorporate specific antipiracy provisions:

a) **Distributors should be required to fully pass through to the end subscriber any fingerprinting of the channel, whether visible or invisible.** MSOs should be required to maintain a separate fingerprinting capability of their own, to facilitate switch-off of boxes being used for unauthorized retransmission, whether via cable systems or onto the internet. Any regulatory requirement for public notice of disconnection of signals should not apply where piracy or unauthorized breach of addressable systems is taking place; immediate disconnection must be authorized in such cases. This is particularly important where internet retransmission is taking place.

b) CAS systems should be from reputable suppliers, and content providers must be allowed to require that the CAS systems in use for pay-TV programming have not been compromised to the extent that revenues will be significantly impaired. **Distributors should not be able to claim the benefits of the interconnection regulations (e.g. "must provide") if they are operating compromised CA systems.**

c) Similarly, set-top boxes authorized for use on Indian digital networks should be from a reputed organization, which should not have any history of providing STBs, services or platforms that enable any form of pay TV content piracy, theft, hacking or misuse.

IV. Carriage Fees

1. **Should the carriage fee be regulated for the digital addressable cable TV systems in India? If yes, how should it be regulated?**
2. **Should the quantum of carriage fee be linked to some parameters? If so what are these parameters and how can they be linked to the carriage fee?**
3. **Can a cap be placed on the quantum of carriage fee? If so, how should the cap be fixed?**

As noted in the discussion above of “must provide” and “must carry,” CASBAA believes that willing buyers and willing sellers should be free to conclude – or not conclude – their own contractual carriage arrangements, including monetary compensation in either direction. As in our past submissions to the TRAI, we do not favour regulation of carriage fees.

V. Quality of Service Standards for the Digital Addressable Cable TV Systems

CASBAA does not take a position on most aspects of the proposed Quality of Service norms. **However, we would urge for antipiracy purposes that the proposed norms for QoS be enhanced by addition (to the list under 1.2) of an obligation of the subscriber not to allow the signal to be copied or retransmitted outside his premises.** Moreover, as discussed above, with respect to disconnection of signal, the cable service provider’s obligation (at 1.9) to provide advance notice of disconnection must be waived where piracy is taking place, particularly where the subscriber is authorizing or facilitating mass retransmission of signals, as on the internet for example. In such cases, immediate disconnection must be permissible.

VI. Miscellaneous Issues

Ad-free channels

1. **Whether an ad-free channel is viable in the context of Indian television market?**
2. **Should there be a separate prescription in respect of tariff for ad-free channels at both the wholesale and retail level?**
3. **What should be the provisions in the interconnection regulations in respect of adfree channels?**
4. **What should be the revenue sharing arrangement between the broadcasters and distributors in respect of ad-free channels?**

Ad-free channels are a normal part of the pay-TV landscape in most other countries; CASBAA strongly supports leaving industry players free to market (or not), ad-free channels as part of their programming mix. Unfortunately India’s excessive regulatory constraints (e.g. retail and wholesale rate caps; “must provide,” together with widespread utilization of non-addressable systems) have to date made such a business model unviable in the Indian context. If the TRAI wishes to incentivize creation of ad-free channels, it should remove rate regulation and allow exclusive carriage arrangements for such channels, thus providing incentives for all players in the value chain to create, develop and market new innovative and non-mass-market-ad based television products.

Non addressable digital Set top boxes

1. **In case you have any view or comment on the non-addressable STBs, you may please provide the same with details.**

CASBAA views the addressability of all set-top boxes as a fundamental basis for successful digitization of the Indian cable-TV industry. TRAI has rightly said that a principle goal of digitization is improvement of the reliability and transparency of subscriber numbers; TRAI's economic rationale for a new digital cable eco-system reposes fundamentally on ensuring that all participants in the value chain can assess and respond to real levels of subscriptions. This will only be possible if every box in the system is fully addressable. **Therefore, we believe that TRAI's regulations should effectively rule out operation of a cable TV network with non-addressable boxes, and TRAI should take action to sensitize other relevant government bodies (including but not limited to the BIS) to the need to set standards that permit use of only addressable boxes.** It would not be fair to broadcasters, MSOs, or competing DTH platforms, if cable networks were allowed to use non-addressable boxes, and continue the malpractices of the current system.

Reference point for wholesale price post DAS implementation

1. **Would there be an impact on the wholesale channel rates after the sunset date i.e. 31st Dec 2014, when the non-addressable systems would cease to exist? If so, what would be the impact?**
2. **Any other relevant issue that you may like to raise or comment upon.**

CASBAA does not have any other comments to make. We believe it is premature to speculate on the impact of wholesale channel rates after the 2014 (or later) sunset date.

Appendices

Appendix I: Regulatory Policies in effect in major Asian markets. (US and UK also included as external benchmarks.)

Country or Region	Mandated a la Carte Retail Offer	Must Provide	Must Carry (for cable operators)
Australia	No requirement	No requirement	No requirement
China	No requirement	No requirement	National evening news must be carried
Hong Kong	No requirement	No requirement	No requirement
India	Required in CAS areas for cable and for DTH, with respect to "pay" channels	Full must-provide for all channels	Certain Doordarshan channels must be carried
Indonesia	No requirement	Requirement that limited "essential" programming be subject to a transparent tender process	Government channel TVRI must be carried.
Japan	No requirement	No requirement	Requirement to carry local terrestrial broadcasts
Malaysia	No requirement	No requirement	No requirement
New Zealand	No requirement	No requirement	No requirement
Philippines	No requirement	No requirement	Requirement to carry local terrestrial broadcasts
Singapore	No requirement	Limited "exclusive" content must be made available to customers on all platforms; thus far affects only sports events	Requirement to carry local terrestrial broadcasts
South Korea	No requirement	No requirement	Requirement to carry specified national channels
Taiwan	Required for IPTV, and for cable premium channels	No requirement	Requirement to carry four major terrestrial channels
Thailand	No requirement	No requirement	No requirement
Vietnam	No requirement	No requirement	Requirement to carry national news broadcasts
United Kingdom	No requirement	A specific regulatory order affects only two sports channels (owned by a major pay-TV platform)	No requirement
United States	No requirement	No requirement for independent content providers. (Antitrust rules require content providers who own pay-TV platforms to make content available to competing platforms.)	Requirement to carry one channel stream from each licensed local terrestrial broadcaster

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Appendix II -- Rate Regulation

CASBAA has prepared the following summary on practices with respect to regulation of rates charged by pay-TV services in Asia (and Australasia).

CASBAA publishes this information regularly as part of its ongoing work to monitor pay-TV regulatory practices in the Asia-Pacific. The most recent summary "matrix" and further information can be found at http://www.casbaa.com/regulatory/regulatory-issues. (CASBAA will provide a full evaluation of all aspects of Asian pay-TV regulatory regimes in a new release of its "Regulating for Growth" study, to be issued in late September, 2011.)

The predominant regional practice is to avoid government control of retail pay-TV rates. Most administrations recognize that the days of pay-TV as a government-regulated utility have passed. In a digital environment, consumers obtain their entertainment products from a multitude of sources using different technologies at different price points. (These include free TV, DVDs (both legitimate and unauthorized), IPTV from Telcos and Internet TV.) "Traditional" pay-TV is only one of the content options available to consumers, and more options are developing constantly.

Thus, governments avoid intervening in market pricing for pay-TV just as for other entertainment products.

No government control of pay-TV rates exists in: Australia, Hong Kong, Indonesia, Japan, Malaysia, Philippines, New Zealand, Singapore, Thailand or Vietnam. (Several of these governments[5] require advance notification of rate changes.)

Within Asia, only India, Taiwan, and China enforce strict regulation of retail cable TV rates. (Even these governments do not regulate satellite DTH rates[6].) South Korea, which formerly had government-mandated rates, recently introduced a regime where prices are determined by cable and satellite operators, with government oversight. It is notable that the places where rate regulation is strongest also have the most technologically backward pay-TV systems, heavily reliant on low-quality analogue cable transmission. Strict rate regulation impedes investment into the industry, and in the long term lowers consumer benefits.

[5] Japan, Malaysia, Singapore, Thailand and Vietnam.

[6] China has no authorized retail DTH service yet; Taiwan and India both do, and their retail rates are unregulated.

Retail Rate Regulation Policies and Practices

Australia	No regulation of cable. No regulation of DTH. No regulation of IPTV.
China	Government sets/approves rates for cable. No retail DTH authorized. No regulation of IPTV.
Hong Kong	No regulation of cable. No regulation of DTH. No regulation of IPTV.
India	Government sets rate caps for cable. No regulation of DTH. No regulation of IPTV.
Indonesia	No regulation of cable. No regulation of DTH. No regulation of IPTV.
Japan	Light regulation of cable (filing of rates required). Light regulation of DTH (filing of rates required). Light regulation of IPTV (filing of rates required).
Malaysia	No cable currently operating. Light regulation of DTH (filing of rates required). Light regulation of IPTV (filing of rates required).
New Zealand	No regulation of cable. No regulation of DTH. No regulation of IPTV.
Philippines	No regulation of cable. No regulation of DTH. No regulation of IPTV.
Singapore	Light regulation of cable (filing of rates required). No retail DTH authorized. Light regulation of IPTV (filing of rates required).
South Korea	Moderate regulation of cable (government no longer sets rates, but must approve adjustments). Moderate regulation of DTH (government approves adjustments). Moderate regulation of IPTV (government approves adjustments).
Taiwan	Government sets rate caps for cable. No regulation of DTH. Moderate regulation of IPTV (government approves adjustments).
Thailand	Light regulation of cable (filing of rates theoretically required, but many operators are unlicensed and don't file). Light regulation of DTH (filing of rates theoretically required). No regulation of IPTV.
Vietnam	Light regulation of cable (filing of rates required). No regulation of DTH. No regulation of IPTV.