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Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
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Re: Responses to TRAI on Consultation Paper dated 22nd December 2011 on “Issues related to Implementation of Digital Addressable Cable TV Systems.”

Dear Sir,

We wish to acknowledge the great strides made by TRAI in setting ambitious and achievable goals for the implementation of Digitally Addressable Cable TV Systems (“DAS”) across the country. As TRAI has pointed out, the DAS rollout will result in greater consumer choice and stem losses from the use of non-addressable systems by cable operators.

This is the even playing field envisioned by DTH operators from the beginning of the industry in India. We look forward to implementation of TRAI’s schedule and the rollout of DAS across the country. The DTH Industry directly compete with the Cable both CAS and Non CAS. Consequently, a level playing field for all like competitors should be one of the primary objectives of regulation.

- **RESPONSES TO THE QUERIES IN THE CONSULTATION PAPER**

27. Any other relevant issue that you may like to raise or comment upon.

We wish to raise the following issues:

- (i) **Industry Support.**

Press reports suggest that the Government is considering subsidies, duty drawback on set top box imports or other support to the cable industry as part of the digitalisation program. Our industry strongly requests equal treatment in this regard. Any such

facilities should be provided to DTH providers as well. An industry that has played by the rules from its inception, and which continues to experience heavy losses, should be at least be eligible for the same support that may be extended to an industry that has a less than stellar record for compliance.

Specifically, we request:

- **Taxation of cable and DTH providers should be equally levied and placed at a rational level to reflect the suffering state of a DTH industry that has played by the rules and regulation of the land. Any disparity or preferential treatment in favour of MSOs/Cable operators on taxation will adversely impact the viability of DTH business.**
- **Duty exemption (both basic and CENVAT) on importation of Digital Addressable Set Top boxes by DTH and cable/MSOs providers.**
- **License fee for DTH providers should be reduced as per the earlier recommendations of the TRAI. In fact, with the introduction of DAS, there should be parity with regard to taxation between DTH and MSOs/Cable operators and annual license fee should be reduced from present 10% to 2%.**
- **Due to monopolistic nature of the content, the determination of cost based wholesale tariff should be the second objective of the regulation.**
- **To bring in the parity between the DTH and MSO business it is essential that License fee calculations for the DTH operators be moved to AGR at the earliest.**
- **Entertainment Tax should be subsumed in GST. Until GST is implemented, DTH and DAS providers should be exempted from service tax so as to avoid double taxation by State governments (entertainment tax) and central government (service tax) on the same service.**

(ii) **Implementation Milestone Incentives.**

The deadline for digitalization is ambitious but realistic. However, this extraordinary exercise may require special incentives to ensure compliance with the schedule. We suggest that a clear and substantial enforcement mechanism be introduced for the digitalisation rollout to properly incentivize the participants. In the same manner that builders face penalties when construction milestones are not met, the authority should consider a wide range of penalties to ensure compliance with the rollout schedule. For instance, any incentives extended to the industry should be contingent on meeting the roll-out schedule. Some incentives can be extended on meeting certain criteria, while others might be extended initially and subject to a clawback for non-performance. Penalties for users and producers of non-addressable boxes should be introduced for use of such boxes in roll-out territories. A roll-out schedule without such mechanisms will not be as effective as a rollout that provides clear, rational and enforceable penalties and incentives for compliance. Must-provide rule should be withdrawn from

cable operators who fail to perform and to meet the goals of the digitization program. After the deadlines, no operator should be able to rely on the must-provide rules. This will help incentivize the cable operators and not reward poor planning and execution.

The distribution in the analogue format after the sunset date has to be dealt with strictly else the whole essence and the spirit of the digitalisation will be lost. Appropriate monitoring and then actions be spelt out so that it is clear that any one indulging in the efforts to sabotage the roll out plan is dealt with appropriately.

- **Basic Tier Service.**

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?

Response:

TRAI's tariff order dated 21st July 2010 for the addressable system has removed the distinction between basic pack and add-on pack along with implementation of ala carte offerings in the retail segment. Since DAS would squarely fall in the category of addressable system therefore the concept of BST is not applicable. Therefore the DTH association recommends implementation of the tariff order of 21st July 2010 for the DAS.

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?

Response:

Consumers are vocal and particular about their entertainment options. The service providers are closest to the consumers and are best placed to determine the mix of genres that consumers will purchase. Regulations already require mandatory carriage of notified channels. Any new regulations in this regard will unnecessarily burden the service provider without any corresponding benefit to the consumer. Regulation that burdens a business without any corresponding benefit stands a strong chance of successful challenge as an unconstitutional. Mandatory carriage of notified channels strikes a proper balance between the needs of consumers and restriction on a business to conduct its affairs. In addition, the ala carte offering of channel as per the tariff order dated 21 July 2010 also obviate the need of any regulation on the composition of the any service/retail bouquet.

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?

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?

5. 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?

(a) Should the a-la-carte channel price at the retail be linked to its wholesale price? If yes, what should be the relation between the two prices and the rationale for the same?

(b) Should there be a common ceiling across all genres for the pay channels or different ceilings for different genres? What should be the ceilings in each case and the reasons thereof?

(c) Should there be a common ceiling across all genres for the FTA channels or different ceilings for different genres? What should be the ceilings in each case and the reasons thereof?

(d) Any other method you may like to suggest?

Response to 3,4 and 5:

Given that there is already a healthy competition in the market with the presence of multiple DTH as well as Cable Operators offering the same services / Channels, the retail price fixation should be left to market forces. No Service Provider would price his service which would drive him out of business as he would lose subscribers. At the same time, regulating the prices by fixing the tariff, in effect amounts to curbing the freedom of a Service Provider to do his business with the freedom that he should be in a position to do. Regulation of tariffs in this area is not appropriate.

In any case, after much deliberation with the different stakeholders, pricing mechanism for digital addressable platforms had already been set by TRAI vide its Tariff Order dated 21.07.2010, a portion of which is sub judice before Hon'ble Supreme Court.

- **Interconnection in the Digital Addressable Cable TV Systems**

12. Should the carriage fee be regulated for the digital addressable cable TV systems in India? If yes, how should it be regulated?

Response:

TRAI has determined elsewhere that carriage fees are best fixed by the parties involved. This has been adequately set forth in the Explanatory Memorandum to the

Interconnection (Fifth Amendment) Regulations 2009. Fixing the carriage fee at a time of transition, when no party has a clear idea of the ultimate costs and efficiencies associated with digitization, seems inadvisable. Many service providers would face capacity constraints, initially, when it becomes mandatory to provide signals digitally. Carrying all the channels on offer may not be possible. It would then be left to the service provider to pick the channels he wishes to carry.

14. Can a cap be placed on the quantum of carriage fee? If so, how should the cap be fixed?

Response:

As has been stated by the authority in its Explanatory Memorandum to the Interconnection (Fifth Amendment) Regulations 2009, the issue is complex and requires consideration. Placing any cap at this stage would only add to the complication. We reiterate the response to question 12 above.

15. Should TRAI prescribe a standard interconnection agreement between service providers on similar lines as that for notified CAS areas with conditions as applicable for DAS areas? If yes, why?

Response:

We believe that TRAI should work with the industry to develop a model standard interconnection agreement as was done in the CAS regime (Regulation of August 2006). This would facilitate the signing of the agreement with minor changes between the parties, barring the changes in the commercials between them. In addition, to protect the DAS operators from any arbitrary increase in wholesale tariffs by the broadcasters, it should be mandatory for the Broadcasters to get their RIOs approved by authority in advance, which may entail a revisit to some existing regulations, and any wholesale tariff shall not be increased for at least a period of 6 months however they should be allowed decrease the tariff at any time.

- **Quality of Service Standards for the Digital Addressable Cable TV System**

17. Please specify any other norms/parameters you may like to add with the requisite justifications and proposed benchmarks.

We entirely agree with the proposed norms of the Hon. Authority for regulating the Quality of Service Standards for the DAS and the corresponding regulations currently prevailing in the DTH industry can be made the benchmark. The aspects of connection, disconnection, transfer, shifting, options of sale, hire purchase and rental, discontinuation of a channel and the process of it, billing, establishment of call centers, appointments of nodal officers for redressal of subscriber grievances, inspection and auditing etc can be covered in the quality of service standards for the DAS as being currently applied to the DTH industry so as to create equal standing and effective management. Whilst we state that both MSO and LCO need to be made responsible for

ensuring the standards of quality of services provided to the subscribers, in our view the MSO alone should be made accountable for billing the subscribers instead of the LCOs.

There are certain clauses in the QOS for DTH which are not practical in approach such as offering the consumer the same package for the six months from the date of enrolment of his with service provider. There are cases where channel go pay with a notice of 30 days which means the DTH operator or MSO cannot charge consumer for this additional charge but is compelled to pay to the broadcaster.

Similarly in the case of the Hire purchase of the STB or rental the service provider has to bear the cost of the repair and maintenance of the box, this is not a realistic situation as warranty cannot be given lifelong, though the box failure rate is very minimal. Hence, after the initial warranty of 6 months, the box repair and maintenance should with subscribers. We have seen operator offering attractive AMC schemes to the consumers which are in the interest of the consumer.

- Miscellaneous Issues

Broadcasting of Advertisement free (ad-free) channels

21. *Whether an ad-free channel is viable in the context of Indian television market?*

Response:

Advertising has evolved over many years as the primary market mechanism for supporting broadcast. There is no such thing as a free lunch - nor a free channel. The question is what entity would bear the cost of an ad-free channel. The cost of producing the channel, even if marginal, must be paid through some mechanism. Either the consumer will bear the cost or the channel will be sponsored by the content provider – such as an all “infomercial” channel. HD Content on DAS/ DTH/ IPTV Platform:

The Authority vide its TTO (ADDRESSABLE SYSTEMS) dated 21st July 2010 for Addressable System has left the wholesale tariffs for HD and 3D TV channels under forbearance considering them being niche channels requiring specialized set top box.

Since last year, a large number of HD channels are now being offered by the DTH operators. It is estimated that around 5-10% of the channels on the DTH platform are HD and approximately 5% of the set top boxes sold are HD.

With the increase in number of HDTVs and numbers of HD channels being offered by the DTH operators, the HD Channels are no more a niche segment. With implementation of Digital Addressable systems, the popularity of HD channel will increase manifold. The HD channels are just another linear channels like the SD channels. Also the registration of linear channels is technology agnostic. The absence of regulations governing the wholesale tariffs for HD channels make negotiations between the access operators and Broadcasters difficult and lead to opportunistic and arbitrary

pricing. It is therefore recommended that the Authority should reconsider its earlier decision of keeping the wholesale tariff for HD channel under forbearance and should regulate the wholesale tariffs of HD channels on the basis of cost.

- **Non-addressable Digital Set Top Boxes**

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

Response:

The continued existence of non-addressable boxes will defeat the basic goals of the digitalisation program. Such non-addressable boxes would introduce under-declaration in the digital regime, while one of the goals of digitization is to end this scourge. The cable act amendment itself mentions the transmission of channels in digital encrypted mode thus any such box without encryption will not be in line with the cable act. There should be stiff financial and potential criminal penalties established for any cable provider, box manufacturer or importer or consumer for using such boxes.

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Kind regards.

Mr. Harit Nagpal
For **DTH Operators Association of India**