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BY FAX, SPEED POST AND COURIER

30 January, 2012

Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg, (Old Minto Road),
New Delhi – 110 002.

Kind Attention: Dr. J. S. Sarma, Chairman

Dear Sir,

Please find enclosed our response to the consultation paper on "Issues related to Implementation of Digital Addressable Cable TV System" dated 22 December, 2011, on which comments have been sought from stakeholders.

The comments and responses are submitted for your information and necessary action. However, we reserve the right to furnish comments/ counter comments for the purpose of further clarifying our position on the issues proposed in the consultation paper.

Yours faithfully,

For ESPN Software India Pvt. Ltd.

Vijay Rajput
Chief Operating Officer

Encl: Detailed response to the consultation paper on "Issues related to Implementation of Digital Addressable Cable TV System" dated 22 December, 2011

30 January, 2012

Submissions of ESPN Software India Pvt. Ltd. to Telecom Regulatory Authority of India ("TRAI") in response to the consultation paper on 'Issues related to Implementation of Digital Addressable Cable TV System' dated 22 December, 2011 ("Consultation Paper")

RESPONSE TO ISSUES

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?

Response – NO BST. It may be noted that in light of consumer choice being an inherent feature of a DAS regime, the CAS era compulsion that necessitated a basic service tier to provide the consumer with choice is no longer relevant. Therefore, there appears to be no reason or benefit to end consumers to retain a 'basic service tier' model.

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 – Not relevant in light of response to query 1.

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?

Response – Not relevant in light of response to query 1.

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?

Response – Not relevant in light of response to query 1.

Retail Tariff for the Digital Addressable Cable TV Systems

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?

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Response – Forbearance. Given that the experience so far with the tariff order for addressable systems dated 21 July, 2010 enforcing forbearance in retail tariff has been positive, such regulation of retail tariffs is not necessary or desirable and market forces may continue to govern.

(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?**

Response – Forbearance. Please refer to our response to query no. 5 above proposing no regulation on retail prices.

In this context, it is submitted that there is also an urgent need to deregulate wholesale prices which need to be freed for the reasons that such regulation is not required in a pricing regime where market forces may effectively control prices and there is no need for regulation when retail pricing is not regulated. Practically speaking, there is a historical anomaly that needs correction as well in terms of huge differences in pricing of channels in the same genre based on those launched earlier and later since the channels launched earlier are unable to increase their prices despite level of popularity or demand due to existing caps.

It must also be noted that niche channels such as sports channels which operate differently from GEC channels due to unique and periodic content availability, limited shelf life, mandatory sharing requirements, limited advertisement opportunities and huge content costs cannot be subject to the same pricing norms and guidelines.

(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?**

Response – Forbearance. Please refer to our response to query no. 5.

(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?**

Response – Forbearance. Please refer to our response to query no. 5.

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

Response – None

Interconnection in the Digital Addressable Cable TV Systems

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

Response – At the outset, we would propose that the approach should be to simplify and minimise the regulations. In any case, complete digitization would bring about a regime that does not require multiple regulations and tariff orders that may have been relevant before. We may also note that lesser regulation appears to allow better prospects for growth and evolution of the market in light of the past experiences with CAS (which was heavily regulated) and DTH (with comparatively lesser regulation) and not only without any detriment to the end consumers but in fact better pricing and more choice for the end consumer. For instance, the tariff order dated 31 August, 2006 intended for CAS areas and the associated



amendments made in the interconnect regulations may be repealed as it would not have relevance once the first phase of digitization is achieved.

Without prejudice to the above, we propose the following changes to the existing regulations to ensure fair and reasonable terms to all stakeholders in an environment where broadcasters are under a 'must provide' requirement –

- i) Lock in period – We propose introduction of a mandatory minimum lock in period for end consumers of no less than three months (in light of the current optional minimum lock in period contemplated under the tariff order dated 21 July, 2010);
- ii) Audit and penalties – We propose introduction of detailed provisions for audit of subscriber management system ("SMS") and conditional access systems ("CAS") and logs of MSOs/cable operators by a nationally reputed independent audit agency with a defined scope of audits and findings at least once a quarter and stringent penalties in the event of discovery of any under reporting;
- iii) Qualified must provide – In order to ensure successful implementation of digitization, amendments to Clause 3.2 (Must Provide) of the Interconnect Regulations, 2004, as amended, should be considered, including to stipulate eligibility criteria for provision of signals to exclude operators (a) who have not cleared all outstanding amounts under the earlier regime; (b) who have failed to switch over to digital addressable systems within the stipulated timelines; (c) who have not obtained registration in terms of the rules laid down in this regard; (d) who have engaged in unauthorized retransmission or area transgressions; (e) who have not entered into agreements; or (f) who have not otherwise complied with the Cable Television Networks (Regulation) Act, 1995, as amended, or any applicable regulations;
- iv) Register of Interconnect - The regulations for 'Register of Interconnect Agreements' should equally apply to agreements entered between MSOs and LCOs. The rates charged by MSOs/LCOs in their respective area of operations, subscriber details, etc., should also be reported to the TRAI on a periodic basis in verifiable and auditable form and should be published by TRAI on its website;
- v) Anti - Piracy - MSOs and LCOs (where contracts are executed directly between broadcasters and LCOs) should be strictly made responsible for any kind of piracy carried out using the addressable / set top box system and clear norms for piracy control has to be laid down. For instance, original finger printing of the channel, both overt and covert should be passed through to the end subscriber by the MSO's/LCO's system. MSOs/LCOs should have separate facility of frequent finger printing system and OSD messaging in their CAS system to combat piracy;
- vi) Set top box - It should be made mandatory that the digital set top boxes used by the MSO / LCOs should be designed to carry all channels and not only FTA channels;
- vii) Portability - It should be made mandatory that STBs are portable in nature. However, all prescribed content / signal security features must continue to be available after porting to another MSO's network;
- viii) Certified providers of Set Top Boxes - Providers of STBs should be recognized by appropriate authority certifying the STB and Headend system to be complying with all prescribed content / signal security requirements;

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ix) Lesser notice period for switch off - Since there will be addressability, the extent of disputes which resulted in deactivation is likely to decrease rapidly. Therefore, disputes are likely to be of such nature that may not require 21 days' notice and 7 days' notice is sufficient. In the event of piracy / breach of addressable system by the MSO/ LCO however, the broadcaster should be free to switch off without notice;

x) SMS reports - Monthly SMS reports must be provided to the broadcasters by all MSOs with detailed subscriber report containing, name, address, telephone no., e-mail address and the channels opted for by the subscriber. The monthly SMS reports (subscriber reports) should be authenticated by the CAS vendor since it is the CAS that does the actual activation / deactivation. The CAS is under operational control of the CAS vendor at all times and provides the count of subscribers. This independent authentication will act as a deterrent towards under-reporting of subscriber numbers by the MSOs. Accurate reporting of subscribers is an important objective of the digitisation programme;

xi) Public notice requirements - Regulation 4.3 that provides for public notice for disconnection of TV channel signals in "two national newspapers" with one in local language, ought to be amended because newspapers in vernacular generally tend to be regional and it may be difficult to meet the criterion of national newspaper and local language in all regions.

7. **Should the subscription revenue share between the MSO and LCO be determined by TRAI or should it be left to the negotiations between the two?**

Response - **Forbearance.** We propose that this aspect should be left to market forces and should be under forbearance since this would be similar to a DTH Operator contending with its own or outsourced distribution network or sharing margins with retailers.

8. **If it is to be prescribed by TRAI what should be the revenue share? Should it be same for BST and rest of the offerings?**

Response - Not relevant in light of our response to query no. 7.

9. **Should the 'must carry' provision be mandated for the MSOs, operating in the DAS areas?**

Response - **Yes,** 'must carry' should be made mandatory to the MSOs during the contract period agreed between any MSO and a broadcaster.

10. **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'?**

Response - These conditions should be as defined by the contract between the relevant MSO and broadcaster.

11. **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?**

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Response – These conditions should be as defined by the contract between the relevant MSO and broadcaster.

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

Response – Forbearance. There does not appear to be a need for regulation of carriage fee which will any way be dictated by market forces.

13. **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?**

Response – Not relevant in light of our response to query no. 12.

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

Response – Not relevant in light of our response to query no. 12.

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 – Forbearance. We propose that there is no need for a prescription similar to that mandated for CAS areas and it may be dealt with appropriately by individual entities and mutual negotiations. It may be noted that a complex standard agreement with detailed provisions that made compliance challenging in certain instances is one of the reasons cited for CAS not achieving the desired success.

Quality of Service Standards for the Digital Addressable Cable TV System

16. **Do you agree with the norms proposed for the Quality of Service and redressal of consumer grievances for the digital addressable cable TV systems? In case of disagreement, please give your proposed norms alongwith detailed justifications.**

Response – Please refer to our response to query 6 since most of the proposals would also entail relevant amendments to the QoS norms.

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

Response –

i) After the sunset date, there is a possibility that signals will continue to be available in analog mode (as was seen during CAS implementation). The regulations must have severe penalties to prevent this situation. If this is allowed to continue, it will derail the digitization process.

ii) Illegal / unauthorised streaming of content on websites is assuming alarming proportions and broadcasters stand to lose subscription revenue. The regulations must have provision to direct Indian ISPs / telecom companies to block access to such websites from Indian territory.

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18. Who should (MSO/LCO) be responsible for ensuring the standards of quality of service provided to the consumers with respect to connection, disconnection, transfer, shifting, handling of complaints relating to no signal, set top box, billing etc. and redressal of consumer grievances?

Response –

- i) The MSO alone should be responsible for ensuring all aspects of QoS to subscribers. One window responsibility will ensure superior quality service and prompt consumer grievance redressal.
- ii) Subscribers, in their contracts with MSOs, should be clearly made liable for legal action for any unauthorised use of their designated CPE (Customer Premises Equipment) or signals emanating from such CPE.

19. Whether Billing to the subscribers should be done by LCO or should it be done by MSO? In either case, please elaborate how system would work.

Response - Billing should be done by MSOs, as the MSO would own and operate the CAS/SMS and doing the relevant encryption.

20. Should pre-paid billing option be introduced in Digital Addressable Cable TV systems?

Response - Pre-paid billing option should be mandatory in Digital Addressable Cable TV systems.

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 – Yes, it is possible that there may be an end consumer market that may welcome such efforts.

22. Should there be a separate prescription in respect of tariff for ad-free channels at both the wholesale and retail level?

Response – Forbearance. We propose that tariff should be left to market forces and new endeavours should be allowed to grow and find their own space. In any event, this could well emerge as a *niche* area where regulation may not be desirable or necessary.

23. What should be the provisions in the interconnection regulations in respect of adfree channels?

Response – Forbearance. We propose that this new development may be permitted time and space to evolve and mature *sans* intervention.

24. What should be the revenue sharing arrangement between the broadcasters and distributors in respect of ad-free channels?

Response – Not relevant in light of our response to query no. 22.

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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 – Non-addressable STBs should no longer be used after the timelines stipulated to achieve digitization. The existing regulations and tariff orders may be amended to exclude references to such boxes accordingly.

Reference point for wholesale price post DAS implementation

26. 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?

Response - It may be premature to comment at this point in time.

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

Response – None at present

Unless otherwise defined herein, capitalised terms or abbreviations used in this response paper shall have the meanings ascribed to them in the Consultation Paper.

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