

By Email, Fax, Courier, Hand Delivery

Date: 28/01/2012

To

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Sub: Response to issues raised in TRAI's C.P. no. 8/11 dated 24th January 2012

Dear Sir,

The Ministry of Information and Broadcasting (MIB) has commendably acted upon the well-considered recommendations of TRAI and has taken epochal steps towards wholesome reform of the cable sector by bringing about the recent Cable Television Networks (Regulation) Amendment Ordinance, 2011 ("The CTN Act") and issuing the Notification dated 11th November 2011 thereunder that has spelled out the timelines for complete switch off of analog cable in a phase wise manner by the year 2014.

The extant Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 as amended from time to time ("Interconnection Regulations") and The Telecommunication (Broadcasting and Cable Services) Addressable Systems Tariff Order 2010 ("Addressable Tariff Order") dated 21.07.2010 are the regulatory bedrocks for Digital Addressable Systems ("DAS"), and with the exception of wholesale rate regulation these two enabling formulations have been well received by the industry and have contributed to the unprecedented growth of addressable platforms including but not limited to DTH.

Accordingly we believe that rather than a complete overhaul, only well targeted and minimalistic changes in the Interconnection Regulations and the Addressable Tariff Order are called for to ensure necessary alignments with the recently promulgated CTN Act and further to cure the systemic and structural maladies that were endemic in the earlier CAS regime. This is because the Addressable Tariff Orders and the Interconnect Regulations were all formalized by the Authority after extensive consultations with necessary stakeholders at relevant points in time. Also our recommendations have duly adhered to the primordial principle of ensuring level playing fields for all Digital Addressable Systems and at the same time being completely agnostic of technology or platforms. Our policy prescriptions have also adverted to TRAI's reasoning in paragraph 15 and 47 of the Explanatory Memorandum to the Addressable Tariff Order dated

21.07.2010 which very correctly pointed out that the provisions of the Tariff Order shall apply to all Addressable Systems including those in the CAS Notified areas after necessary amendments are carried out in Rule 10 of the Cable Television Network Rules.

We further submit that our submissions herein are preliminary and without prejudice to the rights, contentions and averments of Broadcasters/entities inter alia in Civil Appeal No's 2847 to 2854 of 2011 and D-8827/2011 that are pending adjudication before the Hon'ble Supreme Court or any other legal proceedings initiated by any other Broadcasters/entities in relation to the Addressable Tariff Order (including in relation to the wholesale rates applicable to Add-On Packages) in the Hon'ble TDSAT or otherwise and Civil Appeal Nos 829-833 of 2009 together with Civil Appeal Nos. 1166 -1169 of 2009 pending adjudication before the Hon'ble Supreme Court or any other legal proceedings initiated by any other Broadcasters/entities inter alia in relation to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4th October 2007 in any court including but not limited to the Hon'ble Supreme Court or the Hon'ble TDSAT.

We further submit that the instant response be read and construed harmoniously with our earlier communications with and submissions to your kindself on the subject. Our earlier submissions or communications are neither in derogation to nor in supercession of any of the submissions made herein. In the unlikely event of any ambiguity, our instant response hereto shall prevail. We also reserve our right and request the Hon'ble Authority's leave and indulgence to submit any further representations, evidence or findings for its kind consideration including but not limited to counter submissions to be filed by the 6th of February as contemplated vide Press Release dated January 16,2012.

A hard copy of these instant presents, shall be duly reaching your good offices.

We remain,

Yours Truly,

Pulak Bagchi

V.P. – Legal and Regulatory

Star India Private Limited.

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?

A.

Introduction:

- *CTN AMENDMENTS : A per Section 4A (3) of the CTN amendments - the Central Government is required to direct TRAI to determine tariff for Basic Service Tier, only if it has not already done so,*
- *DAS T.O. However the DAS T.O. already allows for a “minimum subscription service” at an MRP of INR 150/-; this is akin to a Basic Service Tier and the tariff ceiling in respect thereof has already been specified in relation thereto*
- *INDUSTRY PRACTICE: All addressable operators have pegged entry level prices in or around this rate; as such a minimum subscription pack worth INR 150/- or less is now a well-established industry practice. Operators are providing packages containing both Pay and FTA within this price.*

- NO DIFFERENTIATING BENCHMARKS: *No reason for prices to be differentiated among states, cities, towns, etc. TDSAT has turned down HRA earned by Central Government employees as a basis for regulating/benchmarking retail tariff, the matter is still pending before Supreme Court*
- LEVEL OF COMPETITION: *Today there is adequate competition at retail as found by none other than TRAI.*

Our Recommendations with Rationale:

- *It should be left to operators to determine and decide retail offerings based on regional tastes preferences and aspirations. Historically operators have always enjoyed the freedom of packaging and while this has admittedly resulted in some curtailment of the freedom to negotiate for broadcasters - this has however worked to the benefit and advantage for addressable platforms like DTH. Healthy and effective competition among players in the distribution space has ensured reasonable offerings in terms of pricing and composition. The Government or the Authority however should steer clear of determining packages to be offered by DTH or for that matter any other platform and leave this entirely for businesses to decide.*
- *Any dispensation that is sought to be ushered in should be technology or platform agnostic, Regulations should not skew level playing fields between DTH and cable. There is no requirement for DTH to offer such basic services excepting the minimum subscription service to be provided in terms of the 21st July 2010 Tariff Order. The said Tariff Order is also applicable to cable platforms that are addressable; accordingly there is no reason for any further regulation in this regard.*
- *India is too diverse a country - to be amenable to such micro management of retail offerings – there can never be any logical/rational/reasonable predetermination of such nature pertaining to number of channels or genre mix of BST and any such move by the government is likely to trigger litigations by disgruntled players who would be left out of the BST.*
- *Availability of content was never really an issue. Today the consumer not only has choice with regard to content but also multiple distribution pipelines for availing such*

content. In fact there is effective competition among cable; six private DTH operators and Doordarshan's 'Subscription Free' DTH service "DD Direct",

- Restricting numbers/genres/mix shall again result in carriage and placement issues with channels and operators competing unhealthily to secure carriage within the narrow band of offerings that may be prescribed by the Government.

- Such a prescription would also result in anti-competitive packaging with new entrants being denied carriage/placement.

- Identifying or even defining genres/mix would tantamount to predetermining and by logical corollary, pre-empting creativity – there can never be an exhaustive list of genres for governments to determine 'mix' as broadcasters/content providers shall always evolve more innovative and radically different content over – time. Accordingly associating content with any existing genres as we know them today would lead to stifling innovation and only serve to ensure uniformity of content within limited predefined genres. Further, if there are no free to air channels in a particular genre then any mandates regarding 'mix' would be rendered otiose.

- It may be pertinent to mention that such an attempt of determining number of channels and genre mix in the BST was not even undertaken during the erstwhile CAS, regime, accordingly therefore, there is no reason for doing it now.

- Such government mandated Basic Service Tier and that too only comprising of Free To Air Channels is unheard of in global context – there are no international precedents of such government fiat in this regard. Worldwide, these are primarily commercial decisions taken by concerned stakeholders based on arm's length negotiations.

- As noted in the CP - Addressable operators of the likes of Tata Sky/Dish/etc, are in any event offering more than 80 channels in their entry level packs comprising both FTA and Pay whereas the study conducted by Center For Media Studies ("CMS") has shown that audiences generally watch 7- 15 channels; Also several operators have been pricing their entry level packs far below INR 150/-.

- Accordingly the Minimum Subscription Service as provided for in the Tariff Order dated 21st July 2010 should be left as it is and there is no need to create a tier below this service. In case of any instances of adverse or predatory pricing at the retail level, the

Authority can in any event intervene under its existing powers as enshrined in the TRAI Act 1997 as amended from time to time and Regulations framed thereunder.

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?

A.

- *An ala carte mandate is very rarely resorted to by governments except in cases and instances of proven market failure/anti-competition/abuse of dominance,*
- *Globally there are no instances of an ex ante mandatory requirement of ala carte offering of channels that too at a ceiling,*
- *Studies have shown that ala carte offerings reduce over all welfare,*
- *In the US while the FCC had proposed an ala carte mandate the Government Accountability Office had shot it down contending that ala carte offerings tend to restrict consumer choice, reduce over all welfare and are inherently inefficient and anticompetitive.*
- *However, given the recent amendments, if one were to simply go by the letters of the law, a consumer would have to scrutinize and pore over more than 500 FTA channels before exercising his ala carte option,*
- *If notwithstanding all these reasonings that weigh against such mandates, ala carte is here to stay then customers should be given the option to pick and choose channels of their preference subject to the minimum subscription service as defined in the 21st July 2010 Tariff Order (i.e. MRP of 150/-),*
- *We therefore do not recommend fixation of ala carte rates for channels by the Government or the authority nor any linkages with average rates of channels comprised in a Basic Service Tier.*
- *In support of our contentions we refer to some authoritative findings of renowned economists, as mentioned herein below :*

(a) *An article authored by Jeffrey Eisenach and Adam Thierer – Ala Carte Regulation of Pay TV – Good Intentions Vs Good Economics. The same is marked herein as Annexure I*

(b) *An article by Adam Thierer – “Cable Con”. The same is marked herein as Annexure II*

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?

A. THE TARIFF ORDER DATED 21ST JULY 2010: *This T.O. that kept retail rates under forbearance for all addressable systems is only more than a year old. Content availability at retail is also not an issue. Intermittent tweaks to the regulatory regime are best avoided as it creates uncertainty in the industry. As held by the Hon’ble Supreme Court- “Certainty is integral to rule of law... ..Investors should know where they stand.”¹ It is submitted that the said Tariff Order was a product of an extensive consultation process that was undertaken by TRAI at that time. Nothing has changed in the last two years that would justify TRAI having a different opinion today about existing state of markets or competition. However businesses have already made short to long term plans on the basis of such tariff orders which would be unsettled if TRAI now decides to revise the same. In any event TRAI has consistently held and found competition to be adequate at the retail level particularly in addressable platforms.*

THE TRENDING OF RETAIL RATES: *The recently concluded CMS study reveals how retail rates have been going down over the years, inspite of rising inflation and greater content availability. The Report says:*

“3.1 Monthly Subscription Fee

¹ Para 91 of the Judgment of the Hon’ble Supreme Court in Vodafone International Holdings B.V. Vs Union of India & Another. In Civil Appeal No. 733 of 2012 arising out of SLP © 26529 of 2010, Decided on 20th January 2012.

*A decreasing trend in cable subscription fee is noticed across the cities. One of the reasons observed by the study team is expansion and availability of C&S channels through Direct to Home (DTH) service. This has made the market more competitive thereby compelling the Local Cable Operators (LCO) to bring down the monthly subscription fee. (See Table 1.0)... At national level, a decline in the average amount is noticed. On an average, the households are paying INR 185/- per month as against INR 200/- per month reported in 2007. The highest being reported in Shillong (INR 319/-) and lowest in Chennai (INR 106/-). (See Table 2.0)."*²

India also has the lowest ARPU in the world – as contended by none other than TRAI.³ That too after holding cable television is a matter of "esteem needs".

"India's monthly ARPU (International \$11) is lower than the average across developing countries (around International \$ 22). This highlights the vast difference in India's current retail pricing to international benchmarks..... If India was to increase its retail price to the average of International \$ 22, then it would come to about INR 325, which is close to the all-India average of INR 313 that was established through Option 2 of the retail affordability methodology as well.....".

INTERNATIONAL PRECEDENTS: *In the global context, retail rate fixation is hardly ever resorted to by governments except for countries like Taiwan and China. In the US, FCC regulates basic cable rates for a small and ever decreasing number of households in "relevant markets" where it is objectively judged that there is no "effective competition" to cable as yet. As nationwide DTH has brought competition almost everywhere, there are very few local markets subject to this minimal form of retail rate regulation. In the UK, there is no general regulation of retail rates. However in early 2010, Ofcom required a DTH platform to offer two of its exclusive premium channels to other retailers at prices set by Ofcom. An appeal against this decision is pending. Likewise in Australia, rate regulation is undertaken only as an exception in cases where an attempt is first made by the authorities to objectively determine whether mergers/combinations between*

² Page 2-4 of A Follow-up Rapid Assessment of C&S Subscribers in 22 Cities done by Centre For Media Studies, commissioned by TRAI

³ TRAI Consultation Paper No. 16/2010 at pg no 162 dated 25th March 2010

broadcasting entities have resulted in competition or market failure which could in turn impact availability of content and only one such instance has been reported since 2002.⁴

- (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?

A. *Please see answer to 5 supra; Further, we do not recommend genre wise ceilings at all. Identifying or even defining genres/mix would tantamount to predetermining and by logical corollary pre-empting creativity – there can never be an exhaustive list of genres as broadcasters/content providers shall always evolve more innovative and radically different content over – time. Accordingly associating content with any existing genres as we know them today would lead to stifling innovation by ensuring uniformity of content within predefined genres. It may be pertinent to mention that such an attempt was not even undertaken during CAS, accordingly therefore, there is no reason for doing it now.*

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?

⁴ CASBAA “Regulating for Growth 2011”

A.

- DEFINITIONS: Aligning definitions in Interconnect Regulations like “addressable systems”, “cable operator”, “free to air channel” with that of the CTN amendments,
- QUALIFIED MUST PROVIDE: Insert appropriate provisos to Clause 3.2 (Must Provide) of the Interconnect Regulations to exclude operators (i) who have failed to switch over to digital addressable systems within the stipulated timelines, or (ii) who have not obtained registration in terms of the rules laid down in this regard or (iii) who have engaged in unauthorized retransmission or area transgressions or (iv) who have not disclosed their universe or (vii) who seek signals for retransmission through non addressable digital set top boxes (v) who have not entered into agreements or (vi) who have not otherwise complied with Regulations
- TRAI RECOS ON RIO (REVIEW): Implement TRAI recommendations of 25th July 2008 at para 3.9.15.4 in pages 52-54 by suitably amending Clause 13 of the Interconnect Regulations and the Compulsory Terms as per the 17th March 2009 amendments. For example the regulations/Compulsory Terms may provide that:
 - The MSOs shall incorporate provision in RIO to review the subscriber base of such LCOs on half yearly basis.
 - The Broadcaster shall incorporate provision in RIO to review the subscriber base of such MSOs on half yearly basis.
- AUDIT: Effective and comprehensive auditing rights should be given to the broadcaster. Minimum of 2 audits by the broadcasters independently should be recommended in a year along with one surprise audit with minimal notice. Separate audit of LCOs by the broadcaster should be mandated. In case MSO has passed any of its obligations to the LCO in any form then broadcaster should have the right to audit the system and infrastructure of the LCO. Broadcasters should be allowed to appoint

independent auditors of their choice (even from abroad if necessary) and BECIL auditors may also be one of the alternatives. It should not however be mandated that BECIL alone shall have the final say in determining whether addressable systems comply with the regulations. A recent case in the Hon'ble TDSAT whereby an operator was found to be communicating directly with BECIL officers pendente lite in a dispute with broadcasters - illustrates the need for mandating alternatives.⁵ Every act(deact)ivation and billing points should be amenable to audits by broadcasters and the Authority.

- ENFORCEMENT OF QOS: *The interconnect regulations should be aligned with the Quality of Service Regulations; Accordingly broadcasters and MSO's should be allowed to review and enforce the Quality of Service Regulations through their Reference Interconnect offers that are published under the Interconnect Regulations.*
- LEGACY T.OS TO BE TAKEN OFF THE STATUTE BOOK: *Denotify Tariff Order dated 31st August 2006 and repeal amendments to the Interconnect Regulation dated 24th August 2006,*
- DISCONNECTION OF SIGNALS: *Clause 4.3 of the Regulation provides for the public notice for disconnection of TV channel signals in the newspapers. The whole clause requires re-phrasing and should be simplified to do away with ambiguity, especially the words "in two national newspapers" require change. Whilst, the clause requires that one of the public notice should be taken out in a local newspaper in local language, when generally the local language newspapers are confined to a region and are seldom national newspapers. In this regard TRAI should mandate publishing of notices, one in a local newspaper in local language and the other in a national newspaper in national language. Since with the advent of addressability the kind of legacy disputes which resulted in deactivation will decrease rapidly and new disputes*

⁵ Ortel Communication Limited Vs Taj Television RA Ltd. Decided by the Hon'ble TDSAT on 19.01.2012 in MA Nos.247/2011 & 250/2011 in Petition No.427 (C)/2010.

that challenge addressability is likely to emerge, we recommend that 7 days' notice is sufficient to be given. In the event of piracy / breach of /not switching to addressable system by the MSO/ LCO the broadcaster should be free to switch off without notice on filing a General Diary Entry or FIR. In the event such complaint is found to be baseless adequate compensation should be awarded to the aggrieved operator as may be determined by the Hon'ble TDSAT.

- SMS & CAS: SMS and CAS should be integrated to avoid any difference in active subscriber numbers. Channels activation/ deactivation should be updated on SMS, besides the CAS. Mandatory submissions of monthly SMS report to the broadcaster within 15 days of the end of each month should be the order of the day. A detailed subscriber report containing, name, address, telephone no., e-mail address and the channels opted for by the subscriber should be submitted to the broadcaster along with the monthly SMS report. Broadcasters should be made aware of every scheme/package wherein bundled services are offered by the MSO. The subscriber base of all such schemes and packages should be disclosed to the broadcaster along with the composition thereof i.e. the channels comprised therein.

- SCHEDULE IV TO THE AMENDMENTS TO THE INTERCONNECT REGULATIONS DATED 17TH MARCH 2009: We suggest revisiting the Fifth Amendment to the Interconnect Regulations dated 17th March 2009, particularly Schedule IV in the light of some practical issues that have since emerged while implementing the same, these are as follows:
 - (a) Adding four new STB Requirements, 12 to 15:

“12. The STB should be from an organization of proven repute, which should not have any prior record of supplying boxes, cards, software, middleware, hardware, services or platforms that are capable of content piracy, theft, hacking, manipulating or otherwise misusing television or any other telecommunication signals.

13. *The STBs must incorporate a Secure Boot Loader that shall verify the authenticity and genuineness of any software before permitting it to be loaded or installed or executed.*
14. *All middleware, hardware and software within the STBs should be licensed from competent licensors.*
15. *All STBs alongwith inbuilt CAS should have proven capability to prevent control word or card sharing. Accordingly, all STBs must establish a secure connection with the Viewing Card and allow decryption only inside the secure hardware of the descrambling unit by a locally, uniquely encrypted Control Word that is delivered by the Viewing Card."*
- (b) *Extending two of the existing Fingerprinting Requirements 5 and 8 as indicated:*
5. *The background and foreground colours and the location of the Fingerprinting should be changeable from the Headend and should be random on the viewing device*
8. *The Overt finger printing and On screen display (OSD) messages of the respective broadcasters should be displayed by the MSO/LCO without any alteration with regard to the time, location, duration and frequency. Original finger printing of the channel, both overt and covert must pass through to the end subscriber by the distributor's system. Distributors should have separate facility of frequent finger printing system & OSD messaging in their CAS system"*
- (c) *And two new CAS and SMS Requirements, 15 and 16:*
15. *CAS or SMS should not be one for which the following apply in relation thereto:*
- (i) *any unauthorised devices or modifications or software, methods, procedures or processes are available that can be used in conjunction with such CAS and SMS to avoid payment of subscription fees to the distributor, and*
- (ii) *these are capable of being exploited in a manner that the distributor's subscription revenues are or will be significantly impaired, and*
- (iii) *timely and efficacious anti-piracy measures are not being prepared in respect thereof or cannot be applied therein or deployed thereto.*

16. *All CAS systems within the STBs must have proven capability to prevent control word/card sharing. To this end, all CAS systems and Viewing Cards must establish a secure connection with the STB and allow decryption only inside the secure hardware of the descrambling unit by a locally, uniquely encrypted Control Word that is delivered by the Viewing Card."*

- 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 should also be reported to the Authority on a periodic basis which should be published by TRAI in its website. Accordingly the regulations may provide that:*
 - *Every Cable TV operator should be required to maintain a register giving details of its subscribers, details of bills, details of tax collected and paid with date, in verifiable & auditable form. Cable Operator should also be mandated to furnish these information in prescribed form to TRAI on quarterly basis.*
 - *Every MSO should be required to maintain a register giving details of its Local Cable Operators, their subscribers, subscribers directly served, details of bills, details of tax collected and paid with date, in verifiable & auditable form. MSO should also be mandated to furnish these information in prescribed form to TRAI on quarterly basis.*
 - *Every Cable TV operator should submit a quarterly statement to the authorized officer giving details of its subscribers, specific area of operations, details of application forms received, connection provided, invoices raised, rates charged & UID issued etc.*
 - *TRAI must on the basis of the data received from LCO's/MSO's upload on its website once in six months the names and addresses of LCO's connected to the MSO's, together with rates charged by such MSOs and LCOs which will enable greater transparency to deal with issues pertaining to migration of LCO's.*

(d) 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?

A. *The role of a LCO is primarily that of an agent/dealer of the MSO who is responsible for seeding STBs at consumer homes and collecting subscription charges. This is similar to the role of any dealer in any other service sectors like DTH/telecommunication/Internet etc. In fact, globally LCOs are recognized as dealers/franchisees of the MSOs.*

MSOs, on the other hand will be making substantial capital investments to implement digitization (currently estimated at a minimum of Rs. 22,000 to 25,000 crores). They will also be assuming the risks associated with such capital outlays/investments.

MSOs are best placed to negotiate the commission payable to the LCOs depending on several factors like responsibilities entrusted with the LCO, area of operation, number of homes serviced by LCOs etc. Ideally therefore these should be left to market forces, individual negotiations and forbearance, there is not much difference between an MSO who has LCOs to deal with and a DTH Operator contending with its own or outsourced distribution network or sharing margins with retailers, accordingly there is no business case for such micro managing regulations as posed in the query.

(e) 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?

A. *Ideally through negotiations but if TRAI at all prescribes a revenue share, then in so far as pay channels are concerned a greater amount of ground collections should go to*

MSOs as besides retransmission costs, they would also have to pay broadcasters. Thus while in case of BST (of only FTA channels) the LCO could end up having some share in the revenues, for pay channels however MSO's should be entitled to most of the revenues; The LCO is but the last mile dealer and he could be entitled to the standard dealership margin that's usually allowed in volume based trades. These margins would be akin to agency commissions, as being actuated by DAS, new business models including franchisee, P2A, arrangements etc would unfold.

(f) Should the 'must carry' provision be mandated for the MSOs, operating in the DAS areas?

A. *No. the carriage capacity of a cable network even in digital regime depends upon the kind of infrastructure established by the MSO. How a distributor would accord priority to various available channels, what kind of criteria is required to be laid down in this behalf are all such issues which may be difficult to address. This would give rise to various kinds of disputes.*

(g) 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'?

A. *Does not arise in view of response to 9*

(h) 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?

A. *Does not arise in view of response to 9 and 10*

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

A. "No"

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?

A. "No"

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

A. "No"

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?

A. *There is no reason to tinker with the interconnect regulations that inform DAS. While there is admittedly scope for further liberalizing extant regulations, RIOs published by broadcasters under the 17th March 2009 Regulations are well serving their stated objects while retaining the required flexibility. The mandate now needs to be made applicable to Cable Operators namely MSOs and LCOs. One of the main reason that was attributed for the failure of CAS was mainly the Standard Interconnect Agreement which had clauses prescribed in unenforceable detail. The same could not be specifically enforced as it would have required continuous supervision by courts.*

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.

A. *The integration suggested by TRAI of the various Quality of Service Regulations are in our opinion alright, subject to existing minimum subscription period of 3/4 months not militating against the suspension period as provided for in the DTH QOS (of calendar month(s) not exceeding 3) and our submissions under Query 17 infra.*

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

A.

- I. Local cable operators should be made franchisee/agents of multisystem operators (principals) for a given term,*
- II. During the term such LCO should avail only one feed per channel (including vernacular feeds if any) from the franchisor MSO with the franchisor MSO being made accountable to customers for Quality of Service.*
- III. In so far as subscriber obligations as contained in Section 1.2 (k) of the Proposed Norms, relating to the subscriber application form is concerned, we recommend that the subscriber is also suitably sensitized of his or her responsibilities to accord respect, protect and safeguard the proprietary commercial rights of LCO and/or MSO, in the television signals and the intellectual property rights of the broadcasters and/or content providers – in effect a covenant on ‘anti-piracy and content protection’ ought to be factored in the application form in order to prevent consumers from manipulating signals or retransmitting the same in an unauthorized manner.*

- IV. *The aforesaid covenants should also be reiterated in the Manual of Practice as stated in Section 3.1 of the Proposed Norms. The consequences for failure or non-compliance should be clearly mentioned including but not limited to disconnection of service.*
- V. *It may be pertinent to mention that the import and purport of Section 12.7 is technical interoperability of set top boxes. We recommend that this section be removed. As we have seen in the case of DTH – the requirement for interoperability does not sit well with the business case of operators given high subscriber acquisition costs in the form and shape of subsidies that go to make STBs affordable. Further the requirement of technical interoperability is also illusory given the high costs of interoperable Conditional Access Modules (CAMs). Also the present churn in the DTH industry is very much consistent with global standards and points to the fact that there is healthy competition among the six players. It is unlikely that cable would bear a different story. Given that commercial interoperability is already in place in some form or the other, technical interoperability should not be insisted upon.*
- VI. *The subscription fees for cable television services should be clearly demarcated from that of broadband services in case the operator is providing converged services. While broadcasters welcome the potential growth of broadband through large scale deployment of digital addressable cable, the regulator should not look at subsidizing broadband penetration by regulating tariffs in broadcasting. Such an attempt of subsidizing cable by regulating broadcast tariff in order to supposedly enable broadband penetration would be on the face of it, unjust and unfair and devoid of any international precedent in this regard.*

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?

A. *The MSO, given that the boxes seeded on the ground would be his.*

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.

A. *Billing to be done by MSOs, as it is the MSO who would be owning and operating CAS/SMS and doing the relevant encryption*

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

A. *Yes and the same should be allowed across the value chain subject ofcourse to reconciliations. By way of appropriate amendments in the Interconnect and Quality of Service Regulations, TRAI should grant explicit permission for prepaid subscription revenue models between Broadcasters/MSOs/LCOs.*

Miscellaneous Issues

Broadcasting of Advertisement free (ad-free) channels

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

A. *This is not very relevant in the current context and has been extensively dealt with in previous consultations. However be that as it may, please refer to our submissions in 22, 23 and 24, infra.*

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

A. *Broadcasters should have total freedom to negotiate retail rates, minimum guarantees and percentage share, this space should atleast be free of any kind of regulatory intervention*

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

A. *Exclusive deals and differential pricing should be permitted, such channels should not be bogged down by extant interconnect regulations if the government and the regulator is serious enough for Indian consumers to experience this new space and are keen to witness this segment grow and build on its own steam.*

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

A. *The should be entirely left for the parties to decide*

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.

A.

- *The Quality of Service Regulations (Non CAS) of 2009 should not make any reference to digital decoder boxes accordingly all references thereto should be suitably deleted particularly in the Definitions clause as well as in Chapter V.*
- *BIS should delete standards for analog set top boxes and ban digital devices with analog output. BIS should mandate the standard for digital set top box (that mandates activated CAS & duly enabled SMS) as the only standard for digital addressable systems. TRAI should suitably sensitize BIS in this regard.*

- *Qualify Clause 3.2 of the Interconnect Regulations by excluding those Operators who seek signals for retransmission through hybrid boxes/digital decoders.*
- *A notification/direction needs to be then issued to the effect that all digital non addressable decoders should have to compulsorily activate and enable conditional access systems and the subscriber management systems in any event not later than 30th June 2012.*
- *TRAI should direct/mandate that going forward, no non-addressable STBs should be ordered or seeded by operators. Large scale deployment of such boxes would have the potential of derailing the digitization mandate.*
- *Inter-city retransmissions should be prohibited in that signals from DAS areas should not be going to non DAS areas till the time pan India digitization is achieved.*

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?

A. *Unlikely that there would at all be any impact, as markets would have matured, the manner of television consumption and the nature of content would have changed together with multiple revenue streams opening up for operators through triple play thus infusing the required liquidity into the system. With consolidation and presence of serious players, the industry should be self propelling and coming of age. Having said that it is however too early to forecast and a review may be undertaken at an appropriate time.*

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