

July 3, 2013

Submissions of ESPN Software India Pvt. Ltd. ("ESI") to Telecom Regulatory Authority of India ("Authority") in response to the draft Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013 ("Draft Regulations") and the draft Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Second Amendment) Order, 2013 ("Draft Tariff Order") dated June 4, 2013.

Submissions

A. Submissions on Draft Regulations

The Draft Regulations appears to bring in alignment of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 with the existing The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004.

Also, the removal of clause regarding minimum channel carrying capacity will provide the discretion of operators who would ordinarily be guided by commercial considerations and relevant market forces in this regard and therefore will automatically work towards increasing the channel carrying capacity.

B. Submissions on Draft Tariff Order

We have reservations to only two of the proposed amendments.

Proposed amendment:

In clause 6 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, (1 of 2010),--

(b) in sub-clause (1), for the second proviso, the following proviso shall be substituted, namely:--

“Provided further that in case a multi-system operator or direct to home operator or Internet Protocol service provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system, offers channels as a part of a bouquet, the a-la-carte rate of such channels forming part of that bouquet shall be subject to the following conditions, namely:-

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times the a-la-carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems; and

(b) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed three times the ascribed value of the pay channel in the bouquet;

Explanation: Ascribed value of a pay channel in a bouquet means the value arrived at by multiplying the proportionate value of the pay channels in the bouquet with the a-la-carte rate of the same pay channel and divided by the sum of a-la-carte rates of all the pay channels in the bouquet, and proportionate value of the pay channels in the bouquet shall be calculated in the following manner:-

[Bouquet rate x sum of a-la-carte rate of pay channels]/[sum of a-la-carte rate of pay channels + sum of a-la-carte rate of free-to-air channels taking rate of free-to-air channel as Rs. 1];

Comments:

At the outset, it is submitted that regulation of retail tariffs at this stage is not necessary or desirable and forbearance may continue so that market forces govern. The retail tariff should be linked to market mechanism. The following points should be considered in this regard:

- i. It is submitted that the proposed formula is complex to be applied across the board. For arriving effective a-la carte rate of a particular channel, its ascribed value will have to be calculated in all the bouquets/packs containing the said channel.
- ii. The formula is ambiguous and vague as operators will have to arrive at the ascribed value based on their current a-la carte rates and current bouquet rates.
- iii. Introduction of any new channel(s) or deletion of any channel(s) in the retail bouquet will also distort retail a-la carte pricing of all channels and all calculations will have to be numerously reworked.
- iv. The formula does not fix a specific retail price across the platforms. It will vary from bouquet to bouquet and operator to operator leading to a chaotic price regime. Even a consumer would not be able to take any advantage as none of the prices arrived at would be certain.
- v. The formula is circular and the final price is dependent on so many variables. Even if for a particular channel, the rates are arrived at using the above formula to be Rs. X. Applying Rs. X as a-la carte rate in the formula will give a new rate which again will have to be factored in the formula to arrive at revised rates, thus making it a never ending process.
- vi. Since the price of FTA is mentioned in the bouquet, it decreases the proportionate bouquet rate substantially. Therefore, operators will have no incentives to insert FTA channels in retail bouquets and would carve out bouquets which contain only pay channels.
- vii. The formula has to be applied to all the retail bouquets offered by any operator and several values can be arrived at under various bouquets offered by the broadcaster. Since the formula is silent, the operator will be compelled to take the lowest of the values as the applicable rate. On the whole the formula is complicated and unworkable.
- viii. It is practically impossible to monitor the effective implementation of this formula even by the Authority.

- ix. It is impossible for a consumer to ever check whether the operator is offering him the channel at the price which meets the test of this formula. The consumer can never collect all the information required to calculate the a-la carte price.
- x. The Tariff Order shall discourages bouquet offerings at the retail and operators will be compelled to offer only a-la carte channels at high prices to consumers, and/or have numerous bouquets (comprising only of only pay channels) in order to ensure that their cash flows do not have an adverse impact. This will be detrimental to consumer interest in long run.
- xi. The linkage of the a-la carte price of with wholesale price serves no purpose. The whole sale rates have hardly been revised in last several years. The wholesale rates of channels were never allowed to reflect the true value proposition of the content offerings. Thus, to link the effective a-la carte retail rates with wholesale rate is irrational and will stifle the market growth in long term.

In this context, we again reiterate 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.

Therefore, it is submitted that fixing of a-la carte rates of the channels based upon this formula will lead to an utter chaotic and ambiguous price fixing mechanism which will serve no purpose except for increasing the ambiguity and consequently working towards consumer disadvantage. Furthermore, if the a-la carte retail prices of rates of operators will come down significantly from the existing rates, the operators will reopen negotiations with broadcasters. Currently, the industry has been working towards stability for the market forces to take over. However, proposed amendment to fix the retail price will bring uncertainty and will not be beneficiary for the growth of the sector.

Proposed amendment:

(e) after sub-clause (4), the following sub-clause shall be inserted, namely:--

“(5) if a service provider offers a bouquet consisting of standard definition channels and high definition channels or three-dimensional channels or both, requiring special type of set top box, it shall:---

(a)ensure that such bouquet is provided to only those subscribers who have set-top-box compatible to receive the channels contained in the said bouquet; and

(b) offer the same bouquet to other subscribers after excluding high definition and three dimensional channels from the bouquet; and

(c)fix the rate of bouquet, referred to in para (b), after deducting the ascribed value of the high definition and the three dimensional channels forming part of the bouquet referred to in para (a).”

Comments:

The Draft Tariff Order also seeks to fix the rate of bouquet (which contains standard definition channels and high definition channels/three dimensional channels) after deducting the ascribed value of the high definition channels. As you are aware, the pricing of high definition channels and three dimensional channels is under forbearance. The attempt to work out ascribed value of niche channels like high definition channels and three dimensional channel is completely moving away from the existing regulatory regime. The proposed amendment will disincentivise operators from including niche channels like high definition channels and three dimensional channels in packs containing standard definition channels and thereby impacting the uptake of these channels. Therefore, these channels will face an adverse impact and their demand will be adversely affected.