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*By E-mail / By Hand*

27th August, 2013

Mr. Wasi Ahmad,
Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg (Old Minto Road),
New Delhi – 110 002

Dear Sir,

Sub: Response to Consultation Paper No. 8/2013 on "Distribution of TV Channels from Broadcasters to Platform Operators".

At the outset we wish to thank the Telecom Regulatory Authority of India (**Authority**) for issuing and inviting stakeholders' comments on Consultation Paper No. 08/2013 titled "Distribution of TV Channels from Broadcasters to Platform Operators" (**Consultation Paper**).

We enclose our comments on the various key issues raised in the Consultation Paper. Should you require any clarifications / elucidations, please do let us know and we would be glad to assist.

Thanking you,

Yours faithfully,

**For Hathway Cable & Datacom Limited**

**N. K. Rouse**
***Executive Vice President***

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## HATHWAY'S COMMENTS ON CONSULTATION PAPER NO. 8/2013

### *A. General Comments*

1.1 We really appreciate the effort on the part of the Authority in analyzing the market/business scenario and business practices that are and have been in vogue in the Cable & Broadcasting business. On reading the Consultation Paper we must state that there has been a commendable effort on the part of the Authority in not only analyzing but thereafter recognizing the unfair business practices being adopted by the Broadcasters and the Authorized Distribution Agencies of Broadcasters and that these Agencies wield substantial negotiating power, leading to several market distortions and monopolistic situations in the cable television market. The Consultation Paper also highlights various key issues that have arisen out of the present role assumed byAuthorized Distribution Agencies of Broadcasters (**Agencies**), under the current regulatory framework governing the cable television sector.The role and responsibilities that can be assigned by the Broadcasters to their Agencies have not been specified under any statutory rules. Further, these Agencies, as a separate entity, have not been defined anywhere under the legal framework governing the cable television sector. In contrast to this, Broadcasters, Multi System Operators (**MSOs**), Cable Operators, Direct-to-Home (**DTH**) platforms, Headend-in-the-Sky (**HITS**) platforms and Internet Protocol Television (**IPTV**) operators are all recognized as entities under the current regulatory framework. Thus, as opposed to other players in the supply chain of cable television distribution, Agencies are currently unregulated players functioning in this sector.

1.2 Therefore, it is respectfully submitted that in absence of any framework regulating the operations of Agencies, it is essential to amend the current regulatory regime to clearly demarcate what roles and responsibilities may be assigned by Broadcasters to such Agencies. Owing to the lack of any regulatory checks, it is humbly submitted that the Authority's interference in this regard is highly warranted.

1.3 The preamble of the TRAI Act states that one of the purposes of the act is to "*protect the interests of service providers and consumers of the telecom sector...*" In the absence of any regulatory framework governing operations of Agencies, other players in the cable television market such as MSOs and Local Cable Operators (**LCOs**) are forced to subscribe to bundled packages being offered by Agencies at unfair prices, on account of the substantial negotiating powers held by such Agencies. Further the discriminatory practices of some Agencies, which blatantly favor certain MSOs and/or DTH platforms, who are investors in such Agencies, are also distorting the competitiveness of the Cable TV sector. Consequently, this is causing a detrimental effect to the business operations of MSOs and LCOs as well as limiting the choice of consumers in terms of content and delivery platforms. Thus, it is humbly submitted that the Authority has a duty to amend the current regulatory regime to protect the interests of both consumers as well as cable television distributors.

1.4 Additionally, under section 11 (1) (iv) of the TRAI Act, the Authority has powers to facilitate competition and promote efficiency in the operation of telecommunication services, so as to facilitate growth in these services. As has been observed under the Consultation Paper, 73% of the total available pay television market is controlled by the top four Agencies. These Agencies wield substantial negotiating power, leading to several market distortions and impediment of competition in the cable television market. It is humbly submitted that interference by the Authority is required, to introduce regulations which would outline the framework of operations of Agencies, and would in turn, keep in check monopolistic situations from arising in the cable television market, thereby fulfilling the Authority's duties under section 11 (1) (iv) of the TRAI Act.

1.5 It may be noted that in *Sea TV Network Ltd v. Star India Pvt. Ltd*[1], a case involving a dispute of jurisdiction between the Authority and the erstwhile Monopolies and Restrictive Trade Practices Commission, the Telecom Disputes Settlement and Appellate Tribunal laid down that the Authority would have jurisdiction for disputes arising out of regulations under the TRAI Act, even though the regulation incidentally trenches on the subject of a monopoly or restrictive trade practice. Thus, it is humbly submitted that involvement by the Authority is warranted to put in place effective regulatory mechanisms, which would outline the law regarding Agencies, even if, as a consequence, the regulations keep in check monopolistic situations arising in the cable television market.

1.6 It has been pointed out in the Consultation Paper, that broadcasting companies are venturing into the aggregation segments of cable television, while leading platform operators have cross-holdings in the aggregators, leading to vertical integration in the cable television market. The issue of vertical integration in the cable television market had previously been addressed under the Telecom Regulatory Authority of India Consultation Paper on Issues relating to Media Ownership, 2013 (**Consultation Paper on Media Ownership, 2013**), wherein it was stated that:

*"6.2 Though the vertical integration of various entities within a particular sector results in reduction in cost to the company as well as offers economies of scale, it often manifests in the form of ills of monopolies viz. higher cost to the consumers, blocking of competition, higher entry barriers for the new players to venture into the sector, deter innovations, deterioration of the quality of service to the consumer in the long run etc..*

*6.4 Therefore there is a need to address such vertical integration. The competition law basically addresses economic issues only. Most of the leading democratic countries have media ownership safeguards in one form or another to address these issues. Thus measures are required to be put in place to address the issues arising out of vertical integration in order to provide a level playing field to all the service providers and ensure fair growth of broadcasting sector."*

1.7 It was further stated that the rationale of restrictions on cross ownership between broadcasters and distributors would be to ensure that the Broadcaster and Distributor do not have common ownership control which would perpetuate the ills of vertical integration. Thus the ills of vertical integration in the cable television market have been recognized by the Authority.

1.8 Under the Guidelines for Obtaining License for providing DTH Broadcasting Service in India (**DTH Guidelines**), a broadcasting company cannot hold more than 20% of the total paid up capital in the DTH distribution company. Similarly, under the Guidelines for providing HITS Broadcasting Services in India (**HITS Guidelines**), a broadcasting company cannot hold more than 20% of the total paid up capital in the HITS distribution company. It is humbly submitted, that such restrictions may also be placed with regard to vertical integration between Broadcasters and Agencies, in order to curb the ill effects of vertical integration that have been highlighted above. Sufficient time may be provided to parties who are in violation of this 20% cap to restructure accordingly.

1.9 Further, as was suggested in the Telecom Regulatory Authority of India Consultation Paper on Issues relating to Media Ownership, dated 25.02.2009 (**Consultation Paper on Media Ownership, 2009**), there is a need to move from 'company based' restrictions to a system of 'entity' based restrictions in view of the fact that the restrictions based on company holdings can be easily subverted by creating another company by the same entities. This is evident from the fact that even though there is a control/ ownership restriction between DTH operators and the broadcasters, the effectiveness of these restrictions in the present form is

[1]Petition 41(c) of 2005

questionable. Thus, it is humbly submitted that 'entity' based restrictions be incorporated with regard to vertical integration between broadcasters and agencies.

1.10 The restrictions in relation to vertical integration should also be made applicable to Distribution Platforms (i.e. MSO's and DTH) investing whether directly or indirectly in Agencies. This kind of vertical integration is prevalent in the market .The noticeable ills that it has given rise to are:

(i) Unfair and discriminatory pricing wherein the privileged Distribution Platform is given a price advantage in the subscription cost of a channel which makes the Distribution Platform more cost effective vis-à-vis other competing Distribution Platforms.

(ii) The Agencies give the privileged Distribution Platform the most favoured treatment wherein new content is made immediately available to it and at subsidized prices whereas the other competing Distribution Platforms are provided the same content after deliberately delayed and protracted negotiations and at unfair prices so that the privileged Distribution Platform is given first mover advantage with the subscriber.

(iii) Arm twisting and pressure tactics are used by the Agencies vis a vis the other competing Distribution Platforms. The common pressure tactics used are On Screen Displays (OSD), which are prominently displayed on the centre of the screen making it impossible for the consumer to watch the programme. These OSDs threaten disconnection bringing about a state of uncertainty amongst that Platform's consumers.

1.11 So far as the definition of Broadcaster is concerned we are of the view that the current draft definition is too broad and can and will bring within its ambit entities such as Agencies and MSOs, which would defeat the very purpose and intent of defining a Broadcaster. In our view, in a digitized and addressable regime a Broadcaster should be recognized as a Pay or FTA Channel provider who has been duly licensed in this behalf by the Ministry of Information & Broadcasting. Hence the definition should be qualified with the words "*duly licensed by the Ministry of Information & Broadcasting*".

***B. Specific comments***

2.1 We submit that the amendments as proposed by the Authority are fair, reasonable and rational. However in addition to the amendments as proposed by the Authority we are of the view that there are a few additional responsibilities/restrictions that the Agencies and Broadcasters should adhere to. These are enumerated below:

2.2 An Agency should have no role to play in the pricing of a channel and that the Broadcasters' A-la-carte pricing of a channel should be fair and reasonable keeping in mind the present market Average Revenue Per User (ARPU) of MSO or DTH players. This is a very important factor in bringing about a level playing field in the market and to correct and set right the monopolistic distortions that the Agencies have created in the market. For e.g. An Agency like MediaPro, which distributes 75 plus channels. If one were to add up the A-la-carte prices of all their channels then it would add up to approximately Rs. 319.70/-. Whereas the same Agency is today offering all its channels in the price range of Rs. 35/- to Rs. 45/- per subscriber per month. The anomaly in this arrangement is that the Distribution Platform is forced to subscribe to all the 75 channels to enable the Platform to get a subsidized price of Rs. 35/- to Rs. 45/- per subscriber per month. In order to maintain its ARPU of around Rs. 200/- per subscriber per month, the Distribution Platform has no choice but to avail of this

"forced bouquet" as buying all the popular channels from the Agency would cost it more than Rs. 200/- per subscriber per month. Consequently the Distribution Platform is forced to distribute even the most unpopular channels to its consumers who do not even wish to watch such channels. Thus the fundamental principle on which Digitsation has been based which is **"choice to the consumer"** is never achieved. Reasonable and fair A-la-carte pricing is the cure to all the evils portrayed in the Consultation Paper.

Set out herein below is an illustrative example of the unviability and impracticality of the A-la-carte prices announced by Broadcasters/Agencies:

| CONTENT AGGREGATOR | Full Bouquet on RIO Rate (Rs.) Sub/Month | Best available Bouquet rate + RIO Rate for non-bouquet channels (Rs.) Sub/Month | Number of Channels | Range of Bouquet Rates Signed by MSOs Approx in CPS (Rs.) Sub/ Month |
|---|---|---|---|---|
| MEDIA PRO | 319.70 | 292.46 | 72 | 35.00 - 45.00 |
| INDAI CAST UTV | 145.21 | 124.97 | 33 | 10.00 - 15.00 |
| MSMD | 93.00 | 85.56 | 21 | 10.00 - 15.00 |
| ESS | 46.18 | 36.25 | 4 | 7.00 - 10.00 |
| TAJ | 36.33 | 36.33 | 3 | 4.50 - 6.00 |

2.3 An Agency should not be allowed to distribute channels of more than one Broadcaster. This will put an end to the cartels that the Agencies have created by collecting a bagful of popular channels from more than one Broadcaster and thereafter engaging in unfair and extortionist bargaining.

2.4 An Agency should not have the right to create or compose channel bouquets on its own. The proposed amendments in the Consultation Paper rightfully restricts Agencies from changing the composition of the Broadcasters bouquets. However there is a possibility that an Agency would create a bouquet of its own. In order to obviate such a situation we propose an amendment, which prohibits Agencies from creating their own new channel bouquets

2.5 Arm twisting and pressure tactics are used by the Agencies vis a vis the other Distribution Platforms. The common pressure tactics used are On Screen Displays (OSDs), which are prominently displayed on the centre of the screen making it impossible for the consumer to watch the programme. These OSDs threaten disconnection bringing about a state of dis-satisfaction amongst that Platforms' consumers, some of whom may decide to shift to Distributors Platforms, which are unduly favored by such Agencies due to ownership interests. Ironically, these OSDs that are to be used in consumer interest to inform the public about discontinuance of channels are now being misused to the detriment of consumers. Therefore there should be an amendment to the existing Regulations in a manner to prevent misuse of such OSD messages.

2.6 Transition period contracts: We have observed that in the first two phases of DAS, the Agencies have been unfair in negotiating DAS contracts with the Distribution Platforms (other than the privileged ones). At the twilight of both Phases I and II, the Agencies did not give any opportunity to the Distribution Platforms to justly negotiate their Interconnect Agreements. The normal three month window period was done away with, giving the Distribution Platforms an unfair bargain.The Authority should keep this in mind and bring about regulation in order to protect the Distribution Platforms during this transition period in the next two Phases.

2.7 We humbly request the Authority to grant us an opportunity to discuss our response in a meeting.