

RESPONSE OF ZEE NETWORK
ON
CONSULTATION PAPER
ON
“ISSUES RELATED TO IMPLEMENTATION OF
DIGITAL ADDRESSABLE CABLE TV SYSTEMS”
ISSUED ON 22ND DECEMBER, 2011



From :

Avnindra Mohan
amohan@siti.esselgroup.com

**COMMENTS ON CONSULTATION PAPER ON “ISSUES RELATED TO
IMPLEMENTATION OF DIGITAL ADDRESSABLE CABLE TV SYSTEMS”
ISSUED ON 22ND DECEMBER 2011.**

At the very out-set we would express our gratitude to Telecom Regulatory Authority of India for their laudable efforts for coming out with the consultation paper on Issues related to implementation of Digital Addressable Cable Systems. We are quite hopeful that the Authority shall consider our suggestions and come out with necessary Regulations/Tariff Order which will ensure the smooth migration from the analogue regime to digital era in the notified areas and would result in the equitable accrual of revenue to various stakeholders in the value chain, in the most transparent and effective manner.

We would also like to mention that the Tariff Order dated 21/7/2010 issued by TRAI as read with and modified by the order dated 18/4/2011 of Hon'ble Supreme Court of India, appropriately deals with various tariff issues applicable to addressable systems both at wholesale level and at retail level and can be and should be made applicable to the mandated cable digital addressable systems in the notified areas w.e.f. the notified dates subject to the further order of Supreme Court in this regard 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.

It may be pertinent to mention that in order to create level playing field amongst the different addressable platforms, the TRAI had come out with the Tariff Order dated 21/7/2010, the provisions whereof uniformly apply to all the addressable platforms (except CAS notified areas) irrespective of the mode of distribution of channels. In other words, the tariff dispensation both at wholesale level and at retail level is intended to be same for various addressable systems such as DTH, HITS, IPTV, digital addressable cable etc. It may also be mentioned that the said Tariff Order was brought out after holding extensive consultations with the stakeholders wherein the various alternative methods of fixing tariffs were explored and deliberated in detail. It is only after long and elaborate exhaustive exercise which was conducted by TRAI under the directions of Hon'ble Supreme Court that the Authority had come out with the said Tariff Order.

The attention in this regard is invited to the following paragraphs of the Explanatory Memorandum attached to the said Tariff Order dt 21/7/2010 :

15. *Having decided to regulate the tariff for addressable systems, the next issue is regarding the framework of tariff regulation. It is felt that within a single tariff framework, the different addressable systems can be accommodated with suitable provisions. **Thus, the tariff dispensation can follow two frameworks – one meant for addressable systems and other meant for non-addressable systems. This approach is further supported by the extant Interconnection Regulations which deal with the overall TV market on single distinction basis. This Tariff Order is meant for addressable systems.***

47. *As already indicated in paragraph 15 supra, the Authority is of the view that the tariff dispensation for broadcasting and cable services can follow two broad frameworks, one for addressable systems and the other for non-addressable systems. **The general principles of tariff determination under the present tariff order are, thus, intended to be applicable to all addressable systems, including cable services provided through conditional access systems (CAS) in areas notified by the Central Government under section 4A of the Cable Television Networks (Regulation) Act, 1995.** However, the immediate application of the present tariff order to cable services in such notified areas may lead to an anomaly as regards specification of wholesale and retail rates for pay channels. This is on account the fact that there are certain existing provisions in the Cable Television Networks Rules, 2004 relating to fixation of prices of channels. Rule 10 of the said Rules provides, inter alia, that every broadcaster shall declare the nature of each of its channels as “pay” or “free-to-air” as well as the maximum retail price of each of its pay channels to be charged by the multi system operators or local cable operators from the subscribers in areas notified by the Central Government under section 4A. The tariff dispensation provided in the present order for addressable systems, on the other hand, mandates that a broadcaster shall specify its “wholesale” rates for addressable platforms. In case, the tariff dispensation in the present tariff order is immediately extended to cable services in such CAS notified areas, it may result in a situation where a broadcaster would be required to define retail price as well as wholesale price of its channels in respect of such notified areas. In order to prevent this anomaly, a separate recommendation is being*

made to the Government for amending Rule 10 of the Cable Television Networks Rules. Till the required amendment is carried out by the Government, the existing tariff dispensation for cable services in areas notified by the Central Government under section 4A of the Cable Act, i.e., under the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006) and the revenue sharing arrangements under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004” (13 of 2004), as they stand at present, shall continue to apply. The tariff dispensation under the present tariff order will be extended, mutatis mutandis, to cable services in such CAS notified areas after the Central Government makes requisite amendments in the relevant provisions of the Cable Rules.

Thus, we are of the view that in principle, the provisions of the Tariff Order dated 21/7/2010 being applicable for all the addressable platforms, would also govern the tariff regime applicable for cable digital addressable systems (DAS) in notified areas – both at wholesale level and at retail level with some minor medications/clarifications.

In the light of above, our response to various issues raised in the consultation paper is under;

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?***

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

- (i) There is a provision in the Cable Television Networks (Regulation) Amendment Act, 2011 that the Central Government or the Authority **may** in the public interest by Notification in the Official Gazette specify the Basic Service Tier and the number of Free to Air (FTA) channels to be included in the said package. From the reading of the said stipulation, it is clear that it is only an enabling provision and that the Basic Service Tier & other related stipulations thereto can be notified if the same is required to be done in the public interest. In other words, it is not mandatory as per the provisions of the amended Cable TV Act to necessarily notify the Basic Tier, if the Central Government or the Authority is satisfied that the public interest is otherwise taken care of through other stipulations which essentially satisfy the intent and objective of notifying the Basic Tier and fulfill the basic requirement of protection of consumers.
- (ii) Although, at the time of implementation of CAS in 2006, the Basic Tier package consisting of minimum 30 Free to Air channels (FTA) was notified which is being delivered in the analogue mode, however subsequent to the same, there have been lot of developments in the distribution sector. In view of these developments and the notification of a transparent tariff and interconnection regime in the addressable distribution sector which are discussed in detail in the subsequent paragraphs, the notification/prescription of the Basic Tier consisting of certain number of only FTA channels as contemplated in the Amendment Act in our view is not necessary.
- (iii) In the Tariff Order dated 21/7/2010 issued by TRAI, in Part-III under the head “Retail Tariff” the following has been provided for:

6. Mandatory offering of pay channels on a-la-carte basis to ordinary subscribers and charges therefor.

(1).....

(2).....

(3).....

(4) *It shall be open to the service provider to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month per subscriber, towards channels chosen by the subscriber, either a-la-carte or bouquet, for availing the services of such service provider.*

Thus, vide Clause 6(4) of the above mentioned Tariff Order, it has been provided that a service provider is entitled to charge a minimum monthly subscription of not exceeding Rs. 150/- plus applicable taxes towards the channels chosen by the subscriber either on a-la carte basis or on bouquet for availing the services of such service provider. In the explanation it has been further provided that :

Explanation: It shall be mandatory for all service providers, who are providing broadcasting services or cable services to subscribers through addressable systems, to transmit or retransmit the channels of Doordarshan required to be transmitted compulsorily under section 8 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), to each subscriber on its network.

- (iv) Thus, it is clear that a **Basic Entry Level Tier** has been provided for in the said Tariff Order by the TRAI in order to ensure that not only the Doordarshan channels but also the other channels whether FTA or pay, either in the form of package or a-la carte, are made available to the consumers of an addressable platform on the one hand and the service provider is also able to cover the basic cost of providing access to the consumer by charging the amount stipulated by TRAI in this behalf on the other. Thus, the concept of Basic Tier as contemplated under the amended Cable TV Act, 2011 stands incorporated in the retail Tariff Order already issued by TRAI in this regard and therefore it is not necessary to stipulate any other tier at entry level as that would not only be a duplication but would also create lot of confusion, thereby leading to practical problems in implementing the same at the ground level.

- (v) It may also be mentioned that prescription of any other Basic Tier consisting of purely FTA channels as contemplated under the amended Cable Act 2011 would be contradictory to the Entry Level Tier prescribed by the Authority in the Tariff Order dated 21/7/2010 and would create lot of confusion in the mind of subscribers as well. There is another anomaly which would creep in by notification of Basic Tier as contemplated by the amended Cable Act 2011 as it has been provided in sub-section 3 of section 4A of the said Act that while it would be mandatory for a service provider to offer the said Basic Tier to the subscriber, it will not be mandatory and in fact would be optional for a subscriber to subscribe to the said Basic Tier. It may be noted that under the Tariff Order dated 21/7/2010 the Entry Level Tier prescribed at the price of not exceeding Rs. 150/- is required to be compulsorily subscribed by the subscriber for accessing the addressable services, as this stipulation is intended to ensure the recovery of transmission cost of such services by the service provider on the one hand and also to provide a wholesome package of channels of different genres (consisting of both pay or FTA) to the subscriber at an affordable price, on the other. This anomaly can be addressed by way of clarification by TRAI that the Entry Level Tier priced at not exceeding Rs. 150/- plus taxes being the minimum charges required to be paid by a subscriber for availing the addressable services in the notified areas, is to be compulsorily subscribed by the subscriber as a precondition for availing the Digital addressable cable services.
- (vi) It may be noted that the said stipulation of Entry Level Tier has worked very well in the DTH sector which is substantiated by the fact that in DTH sector, different DTH operators are offering different monthly packs ranging from Rs. 90/- per month per subscriber for 132 channels pack to Rs. 150/- per month per subscriber for 186 channels pack. As observed by TRAI itself in para 1.16 of the consultation paper that these packs also include a sizeable number of pay channels. It is therefore, suggested that no separate Basic Tier is required to be notified in this behalf and the provisions already made in the Tariff Order dated 21/7/2010 being applicable to all the addressable platforms including addressable digital cable are adequate.
- (vii) In this context, it is also pertinent to point out that the DTH service namely DD Direct Plus launched by the Prasar Bharati offers free of

cost, a package/bundle of about 58 number of FTA channels to the consumers. A consumer desirous of availing only FTA channels can subscribe to the said service by making one time investment of around Rs. 700-800. As pointed out hereinabove, the service is absolutely free and there are no recurring charges which are required to be paid by a consumer to Prasar Bharati. It has been recently announced by the Prasar Bharati that the offering of channels on DD Direct Plus is going to be increased from the present level of 58 number of channels to 200 number of channels shortly. Thus, an alternative is available in the form of DD Direct Plus service to the subscribers who wish to view only FTA channels and are not interested in subscribing to pay channels.

(viii) It may also be mentioned in this context that the necessity of notifying the Basic Tier consisting of FTA channels only in CAS regime arose on account of the fact that these FTA channels were required to be delivered to the subscribers in the analogue mode. Keeping in view the limited capacity available in the analogue mode, in order to ensure that certain number of FTA channels are also made available to the subscriber for spending the minimum amount required to access the cable services, such stipulations were made. However, in the proposed DAS regime, even the FTA channels would be delivered in encrypted digital mode. Thus, there would be neither any issue of capacity nor the issues pertaining to the inclusion of different genres etc. in the said Basic Tier package. In addition, since the service provider would also be required to incur certain expenditure in the form of encryption royalty, STB etc. there is no comparison between the Basic Tier delivery as notified in the CAS regime and the one which would be made in the DAS.

(ix) Accordingly we are of the view, that as pointed out hereinabove, since the dispensations qua Basic/Entry Level Tier as contained in the Tariff Order dated 21/7/2010 have worked well in case of DTH sector, the same be replicated in DAS regime as well. The number of channels, the mix of channels, the a-la carte rates thereof etc. should be left to the discretion of the service providers in their respective operational areas. The uniform ceiling of Rs. 150/- should be applicable across all notified DAS areas with a flexibility to the service providers to determine the composition of the said Entry Level Tier and also the a-la carte rates of the channels comprising the said tier. The market

forces would ensure that the service providers in their respective operational areas offer the Entry Level Tier in accordance with the choice, preference and requirements of the subscribers in that area and also keeping in view the offerings by the competing platforms such as DTH etc.

- (x) In the light of above, it is stated that:
- (a) The MSO shall have the prerogative of packaging FTA channels along with pay channels as per the demand of the Subscriber as prevailing in the market and accordingly the MSO would provide competitive and efficient service to the consumers. This would also ensure level playing field between MSO's and DTH operators.
 - (b) The composition of BST comprising of the genre-wise entertainment, information, education etc mix of channels should be left to the consumer demand and the Multi System Operators (MSOs), operating in their particular area in town/city and state, would offer such set of FTA channels as per the choice of their subscribers, as the operators are sensitive to the requirement of the subscribers in their areas and thus will ensure that they cater to the tastes and likings of the subscribers. Today the subscriber has a choice of 6 DTH operators and cable digitalisation will provide further choices to the consumers.
 - (c) It is suggested that retail tariff of a-la carte channels comprised in Entry Level Tier should be kept under forbearance. At present, retail tariff for DTH platform which is predominantly the addressable platform operating today, is also under forbearance. As there is enough competition in the market, at the present juncture there is no need for regulatory intervention for tariff fixation. Accordingly, in the present circumstances it would be most appropriate that the Tariff Order dated 21st July 2010 applicable for all addressable platforms be made applicable for DAS as well

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) **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

- (i) As pointed out hereinabove, the Tariff Order dated 21/7/2010 issued by TRAI intends to apply to all the addressable platforms. In the said Tariff Order, there is a forbearance at retail level with the stipulation that the service provider will have to offer all the channels that are available on its platform on a-la carte basis also in addition to the offerings in the form of bouquet. Clause 6 of the Part-III of the said Tariff Order under the head “Retail Tariff” reads as under:

6. Mandatory offering of pay channels on a-la-carte basis to ordinary subscribers and charges therefor.

(1) Every service provider providing broadcasting services or cable services to its subscribers using an addressable system shall, from the date of coming into force of this Order, offer or cause to offer all pay channels offered by it to its subscribers on a-la-carte basis and shall specify the maximum retail price for each pay channel, as payable by the ordinary subscriber:

Provided that in the case of direct to home service, a direct to home operator who is unable to offer all its pay channels to its subscribers on a-la-carte basis on the date of coming into force

of this order due to any technical reason, shall offer all its pay channels on a-la-carte basis to its subscribers with effect from a date not later than the 1st day of January, 2011.

(2) It shall be open to a service provider, while offering its pay channels on a-la carte basis and specifying a-la-carte rates for each of them under clause (1), to specify a minimum subscription period, not exceeding three months, for subscribing to a pay channel on a-la-carte basis by a subscriber.

(3) Every service provider providing broadcasting services or cable services to subscribers using an addressable system may, in addition to the offering of pay channels on a-la-carte basis under sub-clause (1), also offer bouquets of channels, in which case, it shall specify the maximum retail price for each such bouquet applicable to its ordinary subscribers.

We are of the view that in view of the prevalent competition in the market in the form of availability of the alternate delivery platforms such as DTH, IPTV etc., in order to create the level playing field, the tariff at retail level should be left to the market forces. The consumer interest would be duly taken care of, as because of the competition it will not be possible for the DAS cable service providers to charge the exorbitant retail tariff as in such an event the subscribers would shift to the other competitive platform viz. DTH.

- (ii) In this context, it is pertinent to mention that during pre-consultation meeting, it has been suggested by certain cable service providers that for digital addressable systems in the notified areas, the tariff regime akin to CAS may be brought in whereby the ceiling be fixed on the maximum retail price of a channel and then a revenue share for various stakeholders be defined. It may be pointed out that such a suggestion deserves outright rejection as it has been repeatedly pointed out that:
 - (a) It is practically impossible to calculate the content prices by the regulator, as the content developed by the content providers is dependent on numerous factors. Even if the content prices can be calculated, the same cannot be divided by the number of subscribers subscribing the content per

month to derive some mathematical formula for rate per Subscriber per month, as the viewership pattern of content varies based on Linguistic, Regional and subscriber choice.

- (b) fixing of prices of the individual channels is a complex phenomena and in fact it is difficult to achieve because of the dynamic nature of content in a channel. It is an admitted position that it is not possible to determine the price for the content as it is an intellectual property which is not amenable to any straight jacket formula of pricing.
 - (c) even in respect of fixation of tariff in non CAS areas, in its report dated 21/7/2010 to Hon'ble Supreme Court, the TRAI after exploring various methodologies of fixing the cost based tariff, has categorically stated that it is not possible to fix up the price of a channel.
 - (d) even in case of CAS notified areas (which are very small as compared to the areas proposed to be covered under the DAS notification), it was clearly stated by TRAI that the MRP based tariff stipulations are temporary in nature and are to be withdrawn. Accordingly, during the consultation process pertaining to the formulation of the tariff stipulations for digital addressable systems, this suggestion was duly considered but being impracticable and not capable of being implemented, was ruled out.
- (iii) Thus, the provisions of Clause 6 of the Tariff Order dated 21st July 2010 which have been finalized after exhaustive consultations with all stakeholders being applicable for all the addressable distribution platforms, these would *mutatis mutandis* apply to the digital addressable cable platforms also. Accordingly, our response to various issues raised in the consultation paper in this regard is as under :
- (a) We strongly advocate a case for forbearance in deciding the price of channels in DAS areas at Retail level. The need for regulatory intervention occurs when it is observed that either there is no competition in the market or there is a market failure resulting in the situation which may cause prejudice to the consumers'

interest. The DTH experience indicates that the market forces are able to ensure adequate competition and availability of content to the consumers at an affordable price. In fact, DTH has been an example where the operators have been offering best of the packages to the consumers and consumer have so far no reason to complain. The pricing of the products are done on various assumptions and especially when there are enabling devices like STB etc involved, which also have a cost and it is an established fact that all the players have been subsidising it. Thus we are of the opinion that there is no need to determine the retail tariff and that it should be left to the market forces.

- (b) There cannot be a single ceiling across all genres nor different ceilings for different genres, since there are multiple revenue models adopted by various broadcasters involving wide range of costs which vary on the basis of quality and content of programmes which are not uniform and consistent in nature. Any attempt to cap the cost would result in restraining or putting constraints on the broadcaster to procure diverse content which would result in fewer choice of channels to the customers at large.

Therefore, we suggest that forbearance at retail level be allowed as an effective option instead of regulating price in any form. Market forces should be allowed to determine the price of channels in DAS notified areas at retail level as the market has matured and there is enough competition between various addressable platforms.

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

In our view, in addition to existing clauses of the Interconnection Regulation, the following stipulations are required to be incorporated:

- (i) If an MSO opts for bouquet of channels of a broadcaster in order to take the advantage of discounted prices of the bouquet, it should be mandated that it must carry all the channels comprised in the said bouquet and should not drop any channel and demand any kind of carriage/placement fee for carrying the said channel.
- (ii) A lock in period of minimum 4 months be prescribed at the time of subscribing of sports channel as the cost of content of such channels is exponentially high.
- (iii) The prescribed period of 21 days for disconnection of signals after issuance of public notice should be reduced to 7 working days in case of piracy and unauthorized distribution of channels as stipulation of 21 days defeats the very purpose of effecting disconnection and the content is continuously pirated unabated by the distribution platforms thus causing financial and commercial prejudice to the broadcaster. This is specially true in case of sports broadcasters as by the time the period of 21 days expires, the relevant sporting event may get over.
- (iv) We would like to add certain norms/parameters pertaining to Technical Standards which needs to be added in Schedule IV of the Regulation dated 17th March 2009 relating to specifications for Set-Top- Boxes (STB's), Conditional access System (CAS) & Subscriber Management System (SMS) for implementation of Digital Addressable Systems.

More specifically we would like to suggest the following additions in certain parameters under Schedule IV (B) Fingerprinting Requirements which ultimately would help in curtailing piracy in addressable system in the current scenario:

(a) Covert Finger Printing : means the fingerprinting is hidden and cannot be viewed with a naked eye. In order to view the covert finger printing it is necessary to take a snap shot or recording to ascertain the source of the signal by using appropriate soft wares provided by CAS supplier. This fingerprinting will be useful in case MSOs/LCOs or any other unscrupulous person indulges in piracy by using some software

or device which masks and or invalidates the finger printing on screen.

(b) Additional features to be added in Overt Finger Printing

CAS and STB's should have certain additional capability to trigger finger printing :

- (i) The finger printing should be displayed with/ without background with multiple colour options having minimum eight (8) colour option.
- (ii) The finger printing should also display vertical format and font size can vary in vertical and horizontal formats.

(c) The monthly subscriber report to be submitted by the addressable system service provider should be certified by the “conditional access system (CAS)” service provider

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

(i) Clause 5 of the Tariff Order dated 21/7/2010, prescribes that the charges payable by LCO to MSO are to be governed by mutual agreement. The relevant extract of the said clause is reproduced as under:

5. Charges payable by cable operator to multi system operator or HITS operator to be governed by mutual agreement between them.----- The charges payable by a cable operator to a multi system operator or to a HITS operator, as the case may be, shall be as determined by mutual agreement.

(ii) We are of the view that the above mentioned stipulation be made applicable to digital addressable system also. The revenue share, both out of Basic Tier subscription and pay channel subscription be worked out by the MSOs and LCOs through mutual negotiations, since the

LCO manages the logistics for installation of STB's at the last mile subscriber and also facilitates collection from the subscribers as an agent of the MSO. Moreover, the LCO has ground intelligence which helps the MSO to expand their market share. Therefore, in our opinion it is the working relationship between the MSO and LCO which would ultimately establish the Business model for their co-existence. Hence, it should be left to MSO and LCO to decide their revenue share from the subscription revenue whether out of the Entry Level Tier or out of the other offerings. However, we would like to mention that considering the fact that all the investments in the DAS regime are to be made by the MSO in establishing the digital headend, the network, the encryption system, the SMS & STB etc. the revenue share of the MSO has to be significantly higher than that of LCO.

- (iii) The attention in this regard is also invited to the judgment dated 12th May 2009 of Hon'ble TDSAT in Wire and Wireless India Ltd. Vs. TRAI in Appeal No. 11(C) of 2006 wherein it was held that the revenue share out of Basic Tier in notified CAS areas between MSO & LCO should be left to the mutual negotiations between the service providers and that it should not be specified by TRAI.
- (iv) In this context, it is also pertinent to mention that during pre consultation discussions, it was inter alia stated by certain MSOs that the stipulations contained in the Tariff Order dated 21/7/2010 issued by TRAI qua wholesale tariff (which at present is 42% of non-CAS rates) may work for DTH sector, but would not be implementable for DAS regime. It has been stated that since in digital addressable cable distribution there is an additional player in the form of local cable operators in the value chain with whom the revenue is required to be shared, the content should be made available to the MSO at further discount i.e. at a tariff lower than the presently stipulated 42% of non-CAS rates. The suggestion deserves to be rejected straightaway on account of the fact that :
 - (a) the said Tariff Order dated 21/7/2010 universally applies to all the addressable systems irrespective the mode of delivery.
 - (b) the justification advanced for concessional rate of tariff for digital addressable cable is flawed in as much as though

there may be an additional stakeholder in the cable sector in the form of LCO, in DTH sector, the DTH operator has to incur substantial recurring expenditure in the form of transponder charges, payment of license fee based on gross revenue, distributors commissions etc. which are absent in digital addressable cable. Thus, any attempt to accord any kind of preferential/concessional tariff dispensations to the digital addressable cable would be per se discriminatory to other addressable platforms viz. DTH etc. and would distort the level playing field in the sector.

- 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 applicable in view of our answer to 7 above.

- 9. Should the ‘must carry’ provision be mandated for the MSOs, operating in the DAS areas?**
- 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’?**
- 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 non-discriminatory terms to the broadcasters?**

Response

- (i) It is not possible to stipulate the “Must Carry” provisions even in the digital addressable cable. In this regard, it may be appreciated that although in digital addressable cable, the capacity to carry the channels is much more than that of analogue networks, however, the said capacity depends upon the headend infrastructure established by MSO. In this regard, it is pertinent to point out that by implementing the digital addressable system, the MSOs in their respective

operational areas would establish the headend which would have varying capacities to carry the number of channels. At present, there are about 800 channels registered with the MIB. Since there is no standard headend capacity, a typical digital addressable cable system usually established by MSO would carry at the most 250-300 channels. In order to ensure that sufficient number of channels are carried by the MSOs, a standard headend capacity may be prescribed (say 350-400 channels) either through Quality of Service Regulations or through Cable Network Rules for implementing DAS.

- (ii) Even if the “Must Carry” is mandated, it would not be possible to practically implement the same as there would be lot of issues regarding the criteria to be followed by an MSO to accord “Must Carry” status to a channel. It is not possible to lay down the basis upon which a channel would qualify to be carried mandatorily by an MSO on its network. It is submitted that the channels of Public Broadcaster already enjoy “Must Carry” status and as such all the addressable platforms are statutorily required to carry all these channels on their networks. It is thus, neither practical nor equitable to mandate the “Must Carry” in case of other channels

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

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?

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

Response

- (i) The existing provisions of Interconnect Regulations already mandate that in case the distribution platform invokes the “must provide” provisions contained in clause 3.2 of the Regulations, it is prohibited from demanding the carriage fee to carry the said channel. However, in case of other channels, i.e. the channels which are not demanded by the distribution platform(s), there is no such stipulation on the

premise that since the carriage infrastructure (headend and the cable network in case of MSO) belong to the distribution platform, they are entitled to ask for the necessary carriage charges from the channels willing to utilize the said carriage/delivery infrastructure for reaching the consumers. Thus, the carriage fee is a commercial negotiation between the distribution platforms and the Broadcaster which does not have an impact on the subscriber and accordingly the same should be left between the Broadcasters and the MSO to finalise. It may be mentioned that the existing digital addressable platform – DTH is also charging carriage/placement fee from the channels which are approaching DTH operators for utilizing their infrastructure in order to reach the ultimate viewer. The contention that subscribers are deprived of viewing their favourite channels because of stipulation of carriage fee by the carriers of channels is completely unsustainable. It is also important to note that as on date all the DTH operators are transmitting almost all the popular channels to the Subscribers and the Carriage/placement fee is in no way becoming a hindrance for the subscribers to get the popular channels. Accordingly, there is no justification for imposing any kind of blanket prohibition from charging carriage/placement fee in digital addressable platforms. In view of the high cost involved in distribution of the channels, it is suggested that the Carriage/placement fee should not be regulated and it should be left for the market forces to determine and decide.

- (ii) Accordingly, we are not in favour of prohibiting carriage fee even in digital addressable cable regime. If the content provider and the DTH operator agree through mutual negotiations for payment of carriage fee/placement charges or technical cost for carriage of the channels, there cannot and should not be any objection. It is purely a matter in the private contractual domain and no regulatory intervention is called for.
- (iii) However, in order to create a transparent mechanism even in the carriage/placement fee domain in digital addressable systems, we are of the view that certain stipulations are required to be incorporated in the Regulations. The contracts/agreements for carriage/placement fee between the broadcasters and distribution platforms including with MSOs and DTH operators be brought under the regime of Register of Interconnection Regulations thereby creating the obligations on

broadcasters and distribution platforms for filing these contracts/agreements with TRAI.

- (iv) Further, the distribution platforms viz. MSO (digital addressable cable), DTH etc. be also brought under the purview of RIO Regulations on the lines of RIO published by Broadcasters for subscription of their channels. In other words, these distribution platforms should publish the Reference Interconnect Offers (RIOs) specifying the terms & conditions including commercial terms for the carriage/placement of the channels (Basic Tier, LCN Nos. etc) on non-discriminatory basis.

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

The RIO methodology is working well in DTH sector which is the existing digital addressable system. We are of the view that the same stipulations could be extended for implementing mandated DAS. The TRAI has already come out with the required Regulations in this behalf through the amendment dated 17/3/2009 in the Interconnect Regulations. The schedule to the said Regulations also contains draft/model RIO for subscription of channels between broadcasters and service providers containing various terms & conditions that are required to be incorporated in the agreements in digital addressable regime.

Thus, the RIO methodology should be followed for facilitating the agreements between the broadcasters and the MSOs and also between the MSOs and LCOs. This would create a level playing field amongst different addressable systems as these would be subjected to the uniform regulatory stipulations. There is no need to prescribe the Standard Interconnection Agreements (SIA) on similar lines as they had notified for CAS area, as at that time the RIO Regulations were not incorporated in the Interconnect Regulations for broadcasting and cable sector.

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

Response

We are in agreement with proposed norms for Quality of Service and redressal of consumer grievances for the digital addressable cable TV systems.

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

MSO should be responsible for ensuring the standard of quality of service provided to the consumers with respect to billing as the MSO in digital Addressable Cable TV has the Subscriber Management System (SMS) and is responsible for generating the bill and activation and deactivation of STB's. Whereas, the LCO should be responsible for handling the connection, disconnection, transfer, shifting and of complaints relating to no signal due to fault arising out of branch cable terminating at subscribers dwelling unit. Where the activation/deactivation rights have been given to LCOs as well, they should be responsible for handling these issues. In fact there should

be collective responsibility shared between MSO and LCO for redressal of consumer grievances which should be clearly specified and demarcated so that the complaints of the consumers can be redressed with utmost efficiency to their entire satisfaction.

- 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

We suggest that Billing to the Subscribers should be generated by MSO in DAS as the MSO has the necessary encryption and Subscriber Management System (SMS) under its supervision and direct control. The LCO, depending upon the model adopted, can incorporate the necessary taxation levies (Entertainment Tax & Service Tax) and can accordingly, give the said bill to the end consumers. The modalities regarding the distribution of the bills etc. to the consumers can be mutually worked out between MSO and LCO.

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

Response

Yes, pre-paid billing options should be introduced in Digital Addressable Cable TV systems both at wholesale level and at retail level. This will help in reduction of disputes pertaining to outstanding dues and reconciliation of Accounts of subscribers. Moreover it will also ensure that monies are credited to the MSO's account as soon as the services are availed.

Miscellaneous Issues Broadcasting of Advertisement free (ad-free) channels

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

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

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

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

Response

- (i) The Ad-free channels are a kind of “niche channels” which would address only the targeted segment of viewers. With the advancement of technology and awareness about the broadcasting services, consumer habits and demands are changing towards the Television program viewing and certain section is demanding the interruption free viewing experience even at higher cost. The recent examples in this context are the HD channels which have been launched by certain broadcasters on digital addressable platforms and are being availed by a specific segment of viewers. These kinds of channels involve substantial investments. Unlike normal channels where there is dual revenue stream i.e. advertisement and subscription to recover the investment, in case of these niche channels, the entire investment is to be recovered from subscription fee only. The advertisement revenue enables a broadcaster to subsidize the cost and the consumer is able to have the said channel at an affordable price. However, in case of Ad-free channel since the subscription revenue stream is the only stream to recover the cost, the prices are bound to be higher and cannot be subjected to any kind of regulatory restrictions.
- (ii) In our opinion pricing of advertisement free channels should be left to market forces. Any attempt to regulate the wholesale and retail tariff for advertisement free channels would amount to stipulating restrictions on the business model of broadcaster(s) and would directly affect the viability of channel. This may result in dissuading the broadcasters from launching these kinds of channels, thus depriving the options otherwise being made available to the consumers.
- (iii) The various requirements/stipulations of Interconnect Regulations should not apply to Ad-free channels and the broadcasters & respective service providers should be free to enter into agreements on mutually acceptable terms. There is no need to prescribe any kind of

revenue share mechanism in this regard and the same should be left to the market forces. Any attempt to introduce any kind of regulatory intervention in this field would be counter-productive and would discourage the broadcasters from launching these kind of channels.

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

- (i) The non-addressable STBs are deployed by the MSOs in non-CAS (non-notified) areas, primarily to increase the channel carrying capacity of the networks. Through these STBs it is possible to deliver more number of channels than can be done through analogue cable networks. However, since these are non-addressable boxes, there is neither any encryption nor it is possible to ascertain the number of subscribers receiving a particular channel. However, when these non-notified areas would come within the purview of DAS notification, it may become difficult to trace these boxes and replace them with the addressable STBs. Moreover, the consumer may have to spend the additional money in order to acquire the DAS-compliant set top boxes and the money spent on the non addressable STBs would be wasted. It is therefore suggested that suitable directions be given by TRAI, in non-DAS areas, for discontinuance of deployment of these boxes and also the replacement of these boxes by the addressable STBs as per BIS specifications in next 6 months.
- (ii) Non addressable STB's should not be allowed in the entire country with immediate effect as since the phase-wise sun set dates for DAS have already been announced, if non addressable STB's are allowed it would result in rampant piracy and under declaration by the MSO's even in DAS areas. For example Delhi will be covered under DAS w.e.f 30th June 2012, whereas Ghaziabad, Faridabad and Gurgaon will covered w.e.f. 31st March 2013. Likelihood of transmitting the signals from Non-DAS areas to DAS areas would be high and more so if non addressable STB's are permitted in NON DAS areas. The same

possibility would arise all across the country wherever DAS and NON DAS areas are adjoining to each other. If non addressable STB's are allowed it would result in heavy losses to the Broadcasters, MSOs as well as the exchequer and defeat the intent and purpose of introducing DAS.

- (iii) In this context, it is also pertinent to mention that the provisions of Cable Television Networks (Regulation) Act mandate that the equipments and the network used by the cable operator for delivery of channels should conform to BIS standards. It may be noted that in the standards notified by BIS, there is no mention of the non-addressable STBs. Therefore, the non addressable STBs that are being deployed by the MSOs in the non CAS areas in fact constitute the breach of the provisions of The Cable Television Networks (Regulation) Act and hence should be immediately dis-continued. Any reference to the non-addressable STBs in the Quality of Service Regulations should also be deleted forthwith.

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

There would be no impact on the wholesale channel rates after the sunset date i.e 31st December, 2014, when non addressable system would cease to exist. If the need so arises and if it is considered appropriate by TRAI at that point of time to continue with some kind of regulatory intervention for some more time in a manner deem fit rather than permitting complete forbearance, the wholesale rates of the channels existing as on 31st December 2014, as per the tariff order dated 21st July 2010, with any increase as allowed by the Authority on account of inflation etc. would continue to serve as the benchmark/basis for wholesale tariff stipulations,. The whole sale rate of any channel coming into existence or channel(s) introduced after 31st December, 2014, can also be determined by the benchmark ceiling rates as prevalent on 31st December, 2014 for similar channel (s).

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

Response

- (i) We would like to stress that MSOs should adopt concrete and stringent steps for tackling Piracy cases by following a norm that as and when an STB is switched off for piracy, then in such an event, the said STB should be killed forever.
- (ii) It is also recommended that a separate authority be appointed to specifically tackle piracy cases in DAS with wide ranging powers to initiate prompt action and also with mandate to conclude and award punishment within a specific time frame. This will act as a deterrent as well as lower losses attributable to piracy borne by the Broadcasters as well the exchequer. As per recent MPA report, the loss on account of piracy in India for the year 2011 was US \$ 1.4 billion.
- (iii) Further we also suggest necessary amendment in the existing regulations in the following manner:
 - It should be made mandatory for the MSO's and LCO's to register the agreements executed between them with the Authority under the Register of Interconnection Agreement (Broadcasting and Cable Services) Regulation dated 31st December, 2004 as amended till date.
 - It should be made mandatory for an MSO to file information with the Authority on a monthly basis with regard to channels, offered in Bouquet(s)/ ala-carte basis to its subscribers along with the retail price charged in their respective areas of operation. Also it should be made mandatory to upload the said information on their respective web sites as has been mandated for the Broadcasters. Similarly TRAI should also upload the said details on its website.
 - All MSOs should be mandated to furnish Annual Statement to the designated authorized officer providing details of the number

of subscribers serviced during the year with month wise breakup
and area of operation along with rates charged.
