

May 3, 2010

By Hand & Email to bcs@traf.gov.in & traicable@yahoo.co.in

The Secretary,
The Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110001

Dear Sir,

Sub: Consultation Paper No. 06/2010 dated April 6, 2010 on Interconnection and Tariff Issues related to HITS Services ("Tariff Consultation")

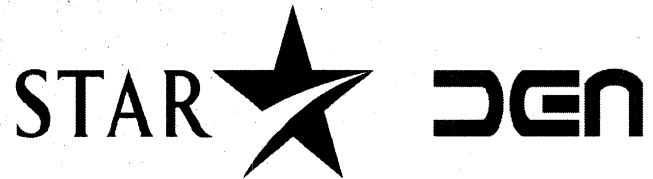
Enclosed is our preliminary response to and recommendations regarding the above referenced Tariff Consultation.

Thanking you,
Yours truly,
FOR STAR DEN Media Services Private Limited



V. SHYAMALA
Head - Legal & Regulatory

Encl.: As above



**TARIFF CONSULTATION
ON INTERCONNECTION AND TARIFF ISSUES RELATED TO
HITS SERVICES**

**ISSUED BY THE
TELECOM REGULATORY AUTHORITY OF INDIA**

DATED APRIL 6, 2010

**RESPONSE OF STAR DEN MEDIA SERVICES PRIVATE
LIMITED**

**CONTACT PERSON : V. SHYAMALA – HEAD LEGAL &
REGULATORY**

RESPONSE of STAR DEN MEDIA SERVICES PRIVATE LIMITED ON THE CONSULTATION PAPER NO 06/2010 ON INTERCONNECTION AND TARIFF ISSUES RELATED TO HITS SERVICES DATED APRIL 6, 2010.

Preamble

STAR DEN Media Services Private Limited ("**STAR DEN**") welcomes the initiatives of the Telecom Regulatory Authority of India ("Regulator") for providing an opportunity to the stakeholders to provide their views on the issues raised in the Consultation Paper No. 06/2010 dated April 6, 2010 on Interconnection and Tariff Related to HITS Services ("**Consultation Paper**").

In view of the fact that the Regulator is reviewing the tariff issues with respect to non CAS, CAS, DTH and HITS concurrently, we request the Authority that this response be read together with our responses to the Authority's Consultation Papers listed below and also be construed harmoniously:

- (i) Consultation Paper No 151/2008 dated December 15, 2008 on Interconnection Issues Relating to Broadcasting and Cable Services
- (ii) Consultation Paper No 4/2009 On DTH Issues Relating to Tariff Regulation and New Issues Under Reference and Supplementary Consultation Paper No 7/2009;
- (iii) Consultation Paper No 5/2010 on Tariff Issues Related to Cable TV Services in NON CAS Areas;

No Need to Fix Tariff and Revenue share arrangements for HITS:

At the outset, we would like to stress our belief that market forces provide the best form of regulation in an industry such as broadcasting, and legislative intervention in the form of tariff fixation should be restricted to incidences of proven market failure or when public protections are absolutely necessary.

In this context, it is also necessary to review the extent of protection already available to all "distributor of TV Channels" including the HITS operators under the provisions of the Interconnection Regulations which is briefly enumerated below:

- Broadcasters to make available all channels to all "distributors of TV Channels" including HITS operators within 60 days of request on "must provide" basis on non discriminatory terms.
- No parallel obligation on HITS operators to carry the channels of broadcasters.

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- No minimum eligibility criteria laid down in the Regulations vis-à-vis “distributors of TV Channels” for seeking signals under “Must Provide”.
 - Broadcasters to publish Reference Interconnect Offers for all Addressable Platforms including HITS.
 - Imposition of packaging restrictions on HITS Operators by broadcasters shall be deemed to be imposition of unreasonable terms and hence denial of access.
 - HITS operators have full freedom to place channels on any tier and design customer packages
 - Mandates broadcasters to make available channels on a a-la-carte basis to HITS operators
 - No parallel obligation on the HITS operators to offer the same on a-la-carte basis to consumers.
 - The Authority has been empowered to intervene in the interests of stakeholders in the event any terms of the RIO of any broadcaster is unreasonable
- A mere glance of the aforesaid provisions clearly establishes that HITS operators are already given adequate protection, and in fact the provisions are highly skewed in their favor with no scope for negotiations on any issues.
 - In fact, as rightly observed by the Authority in the Consultation Paper, STAR DEN had made available the signals of three of its channels on a-la-carte basis to Dish TV, the sole HITS Licensor, at DTH RIO terms and rates filed by STAR DEN with the Authority. Despite this the platform could not take off and DISH TV has suspended their HITS operations for reasons not attributable to unreasonable conduct of broadcasters.
 - In the light of the above, to impose additional restrictions in the form of tariff fixation would adversely impact broadcaster’s subscription revenue and give absolute control to the distributor of TV channels with no benefit to consumers as well. In any event in the current stiff competitive environment where hundreds of channels compete, broadcasters cannot afford to over price themselves.

Existence of Effective Competition warrants deregulation

The broadcasters' submissions have always been that the Regulator should leave price fixation, revenue sharing and related issues to market forces, more so now, with effective competition through Cable, DTH, IPTV, and other new technologies becoming a reality. In fact, there have been significant developments in the sector in the last few years. The sector has grown tremendously across all delivery platforms. The market has matured swiftly with effective competition at all levels of the distribution chain. Today, there is intense competition amongst broadcasters as well, in terms of manifold increase in the number of channels. Pay channels not only compete with each other but also compete with FTA channels. Competition at all levels has thrown open a whole lot of choice to the consumers in terms of channels as well as delivery platforms.

The reasons for which the Regulator thought it necessary to intervene does not exist anymore. These developments clearly call for deregulation of the sector and pave the way for free market forces to take over the sector. We respectfully submit that continued over regulation will undo the growth that has ensued over the years.

In the light of the above, we recommend that the Regulator must now work towards gradual phase out the current regulatory controls and create a robust system which encourages stakeholders to embrace a self regulatory regime.

Regulatory Intervention not justified for Addressable Platforms

While we share the Authority's concerns for the consumer interest and its initiative to promote digitalization and addressability, it has to be borne in mind that the very purpose of addressability is to provide choice to the consumers to opt for channels of their choice, and not lower charges to consumers. Digital premium content cannot be made available to consumers at historical prices with increases fixed on the basis of whole sale price increase. The consumer has to incur some additional expenditure to receive premium and niche content. The objective here is to create a system which allows consumers an array of diverse content to choose from depending upon his needs and financial budgets. **The Authority must digress from creating an environment where the end consumer seeks more and more channels for the same charges as the same would virtually amount to offering all consumers "mercedes" at the cost of "santro". Once addressability allows choice, consumers are free to opt for channels according to their means.** In order that the consumer gets variety of channels to choose from, the Authority must allow market forces of demand, supply and consumer choice to determine prices which will automatically put constraints across the distribution chain, given the competitive market environment.

The Authority has to recognize that Indian consumers pay the lowest charges for content which at the current Average Revenue Per User (“ARPU”) of Rs 165/- (followed by the Authority) works out to Rs 5.50 per day for a minimum of 90 channels. If this were to be compared with print medium which is synonymous to the broadcasting sector in terms of working model, a consumer on an average pays Rs 4/- per newspaper per day for just one news paper.

To elaborate by way of an example, if a consumer today were to pick up a mix of magazines and newspapers for his family he will have to incur approximately a minimum of Rs 395 per month as detailed below:

Times of India	Rs 4.50 X 30 days	= Rs 135
Business Standard	Rs 3.00 X 30 days	= Rs 90
Business World	Rs 10.00 X 4	= Rs 40
Femina	Rs 20 X 2	= Rs 40
Filmfare	Rs 20 X 2	= Rs 40
Comics for children		= Rs 50

Total Rs 395/- per month

If the consumer wants to spend less he can accordingly amend his requirement and do away with some magazines. However, the consumer cannot expect the public authorities to make available all the magazines at uniform prices to fit his household/financial budgets.

Similarly, the Authority must appreciate that in addressable systems, where the consumers have the freedom to choose channels as per their choice and affordability, regulatory intervention is not justified.

Uniform Regulations for all Addressable Platforms

Despite our above submissions, if the Authority’s decision tilts in favor of continued intervention, the same should be on the basis of sound regulatory principles and framework with fixed sunset provisions.

To the extent the Authority determines, it will continue to regulate tariff and interconnection issues, the principles of regulation must be uniform across all addressable delivery platforms. Since all addressable platforms work on similar business models, in order to ensure a level playing field, the regulations must apply uniformly across all addressable platforms with respect to commercial terms. The Authority may however, specify different norms to address the technical issues which are typical to the concerned platform.

Even while the HITS and the Multi System Operators (“MSO’s) operating Digital Cable Services argue that their systems involve an additional stake

holder i.e Local Cable Operator and hence a different commercial proposition, we submit that the LCO's are nothing but franchisees/agent of the MSO's which is also prevalent in DTH/IPTV business models. The function of LCO's is to seed Set Top Boxes ("STB's) of the MSO's and collect monies from consumer homes, which is what a franchisee typically does in the DTH/IPTV platform. We therefore see no reason to differentiate between different addressable platforms as far as the commercial terms are concerned.

Against the above background we are furnishing herewith our response to the issues raised in the Consultation Paper.

Issues for Consultation

The issues for consultation are:

- 1. Are the proposed amendments to the Interconnect Regulations to implement HITS policy in order?**
- 2. What further amendments are required to implement HITS policy?**

STAR DEN Comments

- a) We broadly agree with the proposed amendments to the Interconnect Regulations to implement HITS policy.
- b) However, we recommend that the Authority insert provisions clarifying that the MSO's/Cable operators who avail the signals of the channels from HIT's Platform or those using the infrastructure of HITS Operator shall not retransmit the signals through their hybrid networks in non -CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services
- c) We further take this opportunity to issue necessary clarification directing the Hybrid Networks in Non - CAS areas to execute separate agreements for their digital services with broadcasters.

Despite repeated requests, the MSO's are neither signing up a separate agreement for digital services nor providing any details of the STB's placed by them. The MSO's contend that since these digital services are not addressable at the consumer end, their hybrid networks cannot be treated as addressable systems and should be part of the analog agreement.

- d) The Authority would agree that this interpretation is completely misconceived and baseless. It is indeed disheartening to note that

despite providing digital services through the STB's the MSO's are alleging that it is not addressable and are not providing the list of the subscribers who are availing the signals of broadcasters' channels through the STB's.

- e) The Authority would further agree that the fact that the MSO's are not extending addressability and choice to their subscribers does not make the digital services provided by them "non addressable". If this interpretation were to be accepted, it would frustrate the very objective of digitalization and would in the contrary perpetuate under declaration of subscriber base despite digitalization.
- f) In the light of the above, we urge the Authority to amend the Interconnection Regulations to clarify that all Hybrid Networks, to the extent they provide digital services are addressable and must execute separate agreements for the same with broadcasters. This is much needed to ensure that digitalization does yield the desired results and addresses the issue of under declaration and does not result in mockery of addressability.

3. Can the tariff model for HITS services be based on CAS model? If yes¹,

- 3.1 What should be the revenue shares of Broadcaster, HITS operator, and Cable operator?**
- 3.2 What should be the retail tariff (i.e. tariff for subscribers) for pay channels?**
- 3.3 Should there be any minimum tariff for the subscribers? If so, how much should it be and what should be the basic service provided under this?**

STAR DEN Comments

- a) We vehemently oppose the application of the basics features of tariff order dated 31st August 2006, for cable services in CAS areas to HITS Operators, for the following reasons:
 - Mandatory CAS was rolled out in limited areas of Mumbai, Delhi, Kolkatta and whole of Chennai pursuant to the orders of the Hon'ble Delhi High Court, which constitutes approximately 3% of the 80 million cable homes and 2% of the 120 Indian TV homes (which is effectively potential pay TV homes).

- TRAI fixed the MRP of channels at Rs 5/- per channel and notified the Standard Interconnection Agreement prescribing revenue share arrangements, in order to ensure smooth roll out of CAS and to prevent a black out situation.
- The MRP of Rs 5/- per channel was derived by the Authority on the basis of ARPU of Rs 180/- and the number of channels viewed by the consumers. The Authority had further clearly stated that it had relied on the data contained in its survey report of 2004 with respect to the ARPU of Rs 180/- and the number of channels viewed by the consumers. The Authority had clearly mentioned in its Explanatory Memorandum that in order to ensure a smooth transition to mandatory CAS without any price shocks to the consumers in a short period of six months, the Authority was unable to conduct a scientific exercise of price fixation and had to fix the MRP at Rs 5/- on the basis of 2004 data.
- TRAI has in several forums reiterated that the over regulation in the CAS areas was for a very limited period and shall be subject to review within a year. This was reiterated by the TRAI in several forums and in their submissions before the Hon'ble TDSAT and the Hon'ble Supreme Court.
- As explained above, the circumstances which warranted extreme form of regulation for implementation of CAS do not exist anymore. In fact, CAS has proved to be a non-starter and a complete failure.
- Unlike CAS, which is a mandatory regime, HITS is a voluntary addressable system across the country and is free to compete with cable across the country.
- **To extend an over regulated and mandated CAS regime, which represents a meager 2% of the Indian TV homes, to HITS Operators who operate across the country, is highly irrational and unreasonable.**
- **In fact, the Authority must immediately take steps to dislodge the CAS pricing itself especially now that the over regulated CAS regime has proved to be a complete failure in the last two years.**

4. Can the tariff model for HITS services be based on DTH and /or Non-CAS model? If yes¹,

4.1 Should the wholesale tariff (i.e. Broadcaster to HITS operator) be a percentage of the wholesale tariff in non-CAS areas? If yes, what should be the percentage and why?

4.2 How should the retail tariff in this model be regulated? Should it be affordability linked as in Non-CAS or forbearance as in DTH or any other method?

STAR DEN Comments :

- a) While our submissions are not to fix tariffs for any addressable platform including HITS, in the event the Authority were to fix wholesale tariff, for the reasons explained above, we submit that the regulations for all addressable platforms should be uniform.
- b) We further submit that the tariff for HITS at wholesale level should not be in terms of laying down some relationship between the prices of channels/ bouquets for non-addressable platforms and the prices of such channels/ bouquets for DTH platform.
- c) In the non-CAS market deals are struck between the broadcasters on the basis of negotiated subscriber base depending upon the level of declarations made by the cable operators for different areas. In the absence of addressability the broadcasters are compelled to do a revenue deal with the MSO's/cable operators. Under declaration by the cable operators has created a system of cross subsidy in the market where charges to consumers for a maximum of 75 pay and free-to -air channels vary from Rs 350/- to Rs 80/- per month. In the absence of addressability coupled with band with constraint, the consumer has no choice in the non-CAS market. Effectively, the working of a non-CAS market is completely different and not comparable in any manner with HITS or any addressable platform. In addressable platform like HITS, the consumer has access to
 - choice of content
 - more number of channels
 - high quality digital content
 - high quality of services

- d) In the light of the above and in the light of the completely distinct nature of the working of addressable systems, it would be highly inappropriate to derive prices for addressable platforms like HITS, from the prices prevalent in the non-CAS market. The Authority cannot extend the defective and inadequate pricing mechanism that currently prevails in the non-CAS market to all TV homes in the country.

We therefore believe, that the Authority needs to address thus the issue of price fixation squarely with a futuristic approach, taking into account the characteristics and features of addressable platforms, to ensure that the concept of the price controls dose not become a mockery and huge disincentive for digitalization, content innovation and improvement.

- e) As for retail tariff, international precedent (such as in the US and Taiwan) suggests that any regulation of pay TV prices should be limited to basic tier bouquets at the retail level. The answer is not then to just regulate all programs regardless. It is completely inappropriate to fix the prices of high cost programming such as certain general entertainment, sports and movie channels. For example, rates need to reflect not only the rising cost of broadcasting professional sports, but the spiraling costs of operating professional sports teams as well.

5. **Would you like to suggest any other model to regulate the tariff for HITS service? If yes, please give details.**
6. **Should the carriage and placement fee be regulated? If yes, how should it be regulated?**
7. **Should the quantum of carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?**
8. **Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?**

STAR DEN Comments

We submit that in the event the Authority decides to impose price controls in the form of tariff fixation, it would be highly inequitable to not control the carriage fee. As we have explained in the foregoing paragraph, restraints if any will fail to achieve its objects if it is one sided. Therefore, in the event the Authority decides to impose any price restraints on the broadcasters, it must also regulate the carriage fee charged by the HITS operators.

- 9. Stakeholders are free to raise any other issue that they feel is relevant to the consultation and give their comments thereon.**