



**TARIFF CONSULTATION  
ON TARIFF ISSUES RELATED TO CABLE TV  
SERVICES IN NON-CAS AREAS**

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

**DATED MARCH 25, 2010**

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

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REGULATORY**

**RESPONSE OF STAR DEN MEDIA SERVICES PRIVATE LIMITED (“STAR DEN”) TO THE TARIFF CONSULTATION OF THE TELECOM REGULATORY AUTHORITY OF INDIA (“TRAI”) ON TARIFF ISSUES RELATED TO CABLE TV SERVICES IN NON-CAS AREAS DATED MARCH 25, 2010**

STAR DEN appreciates the opportunity to respond to the TRAI’s Tariff Consultation on Tariff Issues related to Cable TV Services in NON-CAS Areas dated March 25, 2010 (“Tariff Consultation”).

At the outset, we request the TRAI to consider the representations made by us during the pre-consultation process vide our letters dated July 2, 2009, November 25 and 30, 2009, February 15, 2010 and that of the Indian Broadcasting Federation (IBF) dated 26<sup>th</sup> November 2010, as part of this response.

**Limitations of the Tariff Consultation**

Before we dwell upon the specific issues raised in the Tariff Consultation, we wish to highlight and place on record that the Tariff Consultation has failed to address the issue of subscriber base, which is germane to the present consultation.

- a) Even while the TRAI has cited lack of transparency in subscriber base and under declaration as the major impediment and limiting factor in the growth of the sector, we regret to note that the Authority has yet again failed to address this issue in the Tariff Consultation. It is pertinent to note that while the paper delves deep into the issues that pertain to “rate” and has discussed the several approaches to wholesale and retail tariff fixation at length, the issue of subscriber base has been completely overlooked.
- b) In fact, it is surprising to note that Annexure E to the paper which presents a sample Calculation Methodology for wholesale Cost Plus Tariff has attempted to arrive at the corresponding monthly tariff – Genre based and Case to Case Basis on the basis of subscriber base reported by the broadcasters in its interconnect filings, even while acknowledging that these numbers are notional/derived numbers and have no connection whatsoever to the actual subscribers.
- c) It is indeed disheartening to note that the TRAI has once again failed to appreciate that subscription revenue is the factor of both rate and subscriber numbers and have come up with paper which is far too one sided and delves deep into issues that relate to “rate” and left the issue of subscriber base wide open. In this context it is pertinent to point out that surprisingly, TRAI has chosen to disregard the issue of subscriber base, despite recognizing that lack of transparency in subscriber base as the limiting factor in implementing any of the proposed approaches to wholesale tariff fixation discussed in the Tariff Consultation.

- d) From the Tariff Consultation it appears that the TRAI has formed a view that the issue of subscriber base can be resolved only through digitalization and addressability. However, they have failed to recognize that the issue of “subscriber base” is the root cause for all the disputes in analog market and a disincentive to digitalization and addressability. Hence, it is imperative that the TRAI address the ills of under declaration in the interim.
- e) We wish to point out that this key issue has been disregarded by the TRAI and not even posed as an issue for consultation despite:
- (i) directives to the TRAI by the Hon’ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) to look into the issue of subscriber base in non addressable system;
  - (ii) repeated representations by broadcasters including STAR DEN to the TRAI during the pre consultation process, which commenced as early as June 2009;
  - (iii) material finding that lack of transparency in subscriber base/under declaration is the root cause of disputes amongst stake holders in non addressable systems; and
  - (iv) conclusive evidence that the government is losing tax revenues to the extent of INR 1400 crores because of under declaration

We submit that the entire tariff exercise will be futile unless the TRAI deals with the issue of subscriber base. As the sector regulator, TRAI cannot distance itself from the ills of under declaration and have to throw up feasible solutions.

In this context we wish to draw the attention of the Authority to our letter dated July 2, 2009, whereby we had forwarded to the Authority the issues that the TRAI must incorporate in the Tariff Consultation. This was pursuant to the first pre-consultation meeting held by the TRAI on June 24, 2009. Vide this letter we had requested the TRAI to review the methodology prescribed for finalizing the subscribers base between Broadcasters and MSO’s and between MSOs and LCO’s vide clauses 9 to 12 of the Interconnect Regulation Dated as amended on 4<sup>th</sup> September 2006. These regulations currently restrict the rights of broadcasters to seek subscription fee based on actual connectivity and sanctifies under declaration.

**In the light of the above, we request the TRAI to take a holistic view and enlarge the scope of this Consultation and issue a supplementary paper to address the issue of subscriber base.**

## EXECUTIVE SUMMARY

In this response, STAR DEN makes the following key comments in relation to the Tariff Consultation:

- a) TRAI should forbear from regulating cable TV tariffs in non-CAS areas.
- b) Market forces best promote competition and consumer interests.
- c) Relevant markets including the supply of cable TV are subject to competition.
- d) TRAI must recognize that with the emergence of multiple alternate delivery platforms viz DTH, IPTV, internet, mobile television etc., there is “Effective competition” in the sector and move towards deregulation in a phased manner;
- e) Cable TV is not in any event a suitable target of regulation as it is not an essential service nor a commodity suited to any sort of standard pricing.
- f) In the absence of addressability and the lack of transparency at the LCO level, the TRAI should forbear from regulation rather than over-regulating based on notional/derived connectivity.
- g) If TRAI nevertheless continues to impose tariff regulation, this must have a soundly derived framework.
- h) It is essential that any regime going forward includes sunset provisions (whether specific periods, competition benchmarks or specific digitalization and addressability plans) to provide industry certainty.
- i) Any regulation should only apply at the retail level.
- j) Given the fundamental nature of the industry where costs are highly volatile and varies across channels/genres coupled with lack of transparency in subscriber numbers, TRAI should refrain from cost based wholesale pricing regulations;
- k) TRAI should make a definitive road map for digitalization and addressability and take steps to implement the same within a reasonable time frame;
- l) Until implementation of digitalization and addressability, TRAI must in the interim, take serious steps to discourage under declaration and promote transparency in subscriber base;
- m) TRAI must refrain from restricting broadcasters’ fundamental right of freedom to trade, by regulating their business model and fixing the ratio of costs to be recovered from advertisement and subscription revenue;
- n) TRAI should abstain from imposing a ceiling on the revenue and return of broadcasters or for that matter any stakeholder and allow negotiations, competition and free market play determine profitability of stakeholders; this gains credence given the fact that the TRAI has no control over broadcasters

costs of acquiring the Bollywood, international and sports content which have been rapidly increasing and remain unregulated.

- o) TRAI must recognize that the very purpose of regulatory intervention will be frustrated unless, there is an effective enforcement mechanism/machinery to ensure compliance;

The conclusion that should be reached is that market forces will be more effective in promoting cable TV competition and consumer interests than any of the proposals put forward for price regulation

### **ISSUES FOR CONSULTATION**

- 1. Are the figures in Annexure B3 representative for the different genres of broadcasters? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company.**

**STAR DEN Comments :**

We submit that, we would rely on the response of our channel partners on this issue.

- 2. Are the figures in Annexure B5 representative for aggregators? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.**

**STAR DEN Comments :**

We do not agree with the figures in Annexure B5 representative for aggregators, for the reasons cited below:

- a) The explanatory statement fails to satisfactorily disclose the criteria adopted by the TRAI to check aberrations arising on account of diverse accounting principles and models adopted by aggregators;
- b) Deriving genre-wise connectivity based on interconnect filings is fundamentally flawed for the reason that each aggregator adopts different methods to derive the notional subscriber base. This notional subscriber base as recognized by the TRAI in the TARIFF CONSULTATION , has no direct co-relation whatsoever with the actual connectivity of the channels;
- c) Since, we do not have any knowledge of the operational and financial results of the other aggregators or for that matter the accounting models and principles adopted by them, we will not be in a position to provide figures for “aggregators”.

3. Are the figures in Annexure B7 representative for the national MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
4. Are the figures in Annexure B7 representative for the regional MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

**STAR DEN Comments :**

We are unable to provide any comments on the figures in annexure B7

- a) in the absence of satisfactory explanation by the TRAI on the criteria adopted by them to check the several aberrations; and
  - b) lack of information on the number of MSO's (out of the approximately 6000 MSO's), whose figures have been used in the sample to derive the representative figures,
5. Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
  6. Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

**STAR DEN Comments :**

We submit that a mere glance of the figures in Annexure B9, confirms that the same is not in sync with the ground realities, for the following reasons :

- a) The Paper fails to satisfactorily explain the criteria adopted by the TRAI to check aberrations arising on account of absence of financial information from LCO's.
- b) The Tariff Consultation fails to clarify the number of LCO's whose data has been used in the sample to derive the representative figures;
- c) In this context it is pertinent to note that the representative figures contained in Annexure B9 is identical to the figures contained in TRAI's Press Release dated 10/11/2010, which was based on information provided by merely 27 LCO's out of the 60,000 LCO's (approximately 0.045%). This is clearly cannot be regarded as the representative sample of the universe. As a result,

we are of the view that the representative figures in Annexure B9 does not reflect the actual financial and operational health of the LCO's.

- d) While the representative figures released on 10.11.2009, shows the collection cost per subscriber per month at INR 30 as paid to MSO, the Tariff Consultation is silent on the issue. It is surprising to note that the collection cost of INR 30/- has been silently shifted from MSO to LCO between the figures released on 10.11.2009 to the Tariff Consultation , without any explanation.
- e) It is indeed bizarre to note that the collection costs of the LCO per subscriber per month is 75% of the content cost and their non content costs is 175% of the content costs. If that be the case, there is no reason for the LCO's to make baseless allegations against the broadcasters for charging unreasonable rates. In fact if this figure is true representative of the LCO's, it clearly paves the way for deregulating tariff at the wholesale level!!.
- f) In fact, the very finding in the Tariff Consultation, that there is an estimated service tax evasion of Rs 1400 crores on account of under declaration, contradicts the findings contradicts, the figures contained in Annexure B9.

**7. What according to you is the average analog monthly cable bill in your state or at an all India level?**

**STAR DEN COMMENTS :**

- In our view that average analog monthly cable bill at an all India level would be in the range of INR 175 to INR 200/- (excluding taxes).

**8. Is the market for cable services in non-CAS characterized by the following issues:**

- (i) Under-reporting of the analog cable subscriber base**
- (ii) Lack of transparency in business and transaction models**
- (iii) Differential pricing at the retail level**
- (iv) Incidence of carriage and placement fee**
- (v) Incidence of state and region based monopolies**
- (vi) Frequent disputes and lack of collaboration among stakeholders**

**STAR DEN Comments :**

Yes, the market for cable services in non-CAS is characterized by the above issues. We would also like to highlight the following other issues that are prevalent:

**(a) MSO's complacent attitude towards subscription revenue :**

MSO's do not make any efforts to enhance subscriber declarations and revenues from the LCO's. While the MSO's relentlessly complain about the LCO's under reporting, they extend no support to the broadcasters to combat the same. On the contrary, the MSO's encourage under declaration by making base less allegations of "arm twisting" against the broadcasters.

To elaborate this further, hypothetically, if a particular MSO claims to reach 1000 homes, they refuse to pay broadcasters subscription revenue basis the number of homes reached by them, on the ground that the LCO's are under reporting to them.

The lack of efforts on the part of the MSO's (who are the only link between the broadcasters and the LCO's) to demand subscription revenues from the LCO's on the basis of actual subscriber base of the LCO, has a direct adverse impact on the subscription revenues of the broadcasters.

**(b) Rampant Piracy at the MSO as well as LCO level**

Rampant piracy is a cause of huge concern in the sector which not only results in infringement of valuable intellectual property rights, but, also impacts the commercial interests of the broadcasters. Many of the operators today indulge in rampant piracy by extending their signals beyond their authorized area of operations without any prior written contract with broadcasters. Unauthorized area expansion leads to chain of event on ground having a cascading effect on the commercial interests of the broadcasters. To illustrate by way of example, if Operator A is authorized to operate in say "Niti Bagh" in Delhi and accordingly a subscription fee is agreed between the broadcaster and the operator. If the operator extends the signals of the channels to the neighborhood area "Gulmohar Park" and connects the LCO's in Gulmohar Park, the existing Operator B of broadcaster who operates in Gulmohar Park, stops paying the subscription fee on the ground that their LCO's have migrated to Operator A after leaving huge outstanding with Operator B. Operator A also refuse enhance the subscription fee to broadcasters for the additional area of Gulmohar Park. This deprives the broadcasters of revenues from both Operator A and B.

Moreover, the existing regulations requires broadcasters to give a three week notice to pirating operators before disconnecting signals, which adds to the woes. By the time the broadcasters can disconnect the signals after three weeks, significant damage would have already happened on ground. This is more so in the case of sports broadcasters telecasting events of short duration and cannot disconnect pirating operators because of the three week statutory



notice period. Since cases of ground piracy are very difficult to establish in court with evidence, the operators prevent disconnection even after the notice period by obtaining injunctions from courts on grounds of consumer interest. However, it is pertinent to note on ground because of the multiple feeds that are available to LCO's, consumers always get uninterrupted supply of signals of the disconnected channels. In the result, the broadcasters bears the brunt of the ground issues.

In several cases, even after disconnection of signals, the operators continue to steal signals resulting in huge losses to broadcasters.

**(c) Multiple feeds and rampant migration of LCO's :**

Another typical feature which has an adverse impact on the commercial interests of the broadcasters in non-cas areas, is the multiple feed and rampant and frequent migration of LCO's from one MSO to another.

An LCO maintains multiple feeds of competing MSO's and changes feeds frequently to evade payment of subscription fee.

Frequent migration of LCO's from one MSO to another upsets the working in the ground to a large extent since the LCO's migrate frequently between MSO's without clearing outstanding. As a result they accumulate huge amount of outstanding in the market which ultimately devolves upon the broadcasters as bad debts.

Lack of constructive collaboration amongst the MSO's on ground, aggravates the issue, since the MSO's are very liberal in connecting the LCO's who has defaulted to the competing MSO.

In many parts of the country, LCO's receive multiple feeds of signals from MSO's. Lack of collaboration amongst MSO's to combat the same, results in unauthorized cable casting and accumulation of huge debts in the market, which impacts broadcasters revenues and results in blatant infringement of broadcaster's valuable intellectual property rights.

**(d) Unchecked under cutting/predatory pricing at the LCO level**

**(e) Absence of enforcement machinery:** The absence of effective mechanism for enforcement is a serious impediment and has rendered the existing regulations ineffective and counter productive.

Even while the Tariff Order of the TRAI requires the MSO's and LCO's to issue bills and receipts to consumers and casts an obligation on the LCO's to maintain records relating to the names and charges pertaining to all its subscribers, the LCO's are flouting the same.

The MSO's don't provide monthly subscriber statements to the broadcasters as envisaged in the Interconnection Regulations.

The Quality of Service Standards notified by the TRAI in 2009 is a mere piece of legislations with no associated benefits flowing.

**9. Are these issues adversely impacting efficiency in the market and leading to market failure?**

**STAR DEN COMMENTS :**

We do not feel that these issues impact efficiency in the market and lead to market failure. On the contrary, we feel that these issues have arisen on account of ineffective regulations which fail to deal with these issues. Unfortunately, the existing Regulations are highly skewed towards broadcasters and do not focus on the LCO's who are an integral part of the value chain and custodian of the subscription revenues collected from the end subscribers.

In fact, the Regulations does not even lay down minimum eligibility criteria for any distributor of TV channels to seek signals of the channels from the broadcasters on "Must Provide" basis.

The existing regulations are highly superfluous and do not focus on these real issues. The operators take advantage of these one sided regulations to unjustly enrich themselves with no benefit to consumers.

**10. Which of the following methodology should be followed to regulate the wholesale tariff in the non-CAS areas and why?**

**i) Revenue share**

**ii) Retail minus**

**iii) Cost Plus**

**iv) Any other method/approach you would like to suggest**

**STAR DEN Comments :**

We would strongly recommend the TRAI to abstain from (i) Revenue Share (ii) Retail Minus (iii) Cost Plus for the following reasons.

- a) With respect to cost-plus, we submit that the sample methodology suggested by the TRAI in Annexure E is unworkable for, it is based on illogical assumptions and connectivity based on interconnect filings which are admittedly derived and have no direct co-relation to the actual connectivity of the channels.

Further, the cost plus model is based on representative figures which itself is unreliable and incomplete and does not take into account the diverse business models of broadcasters as well as the different accounting principles and policies adopted by them.

The model assumes costs of the broadcasters to be constant over a period of 5 years when in reality, there is significant volatility in costs of broadcasters. For instance, expenses relating to programming, artists, marketing and distribution vary significantly from quarter to quarter and no economic formula can be devised to capture such elasticity.

The model also assumes debt/equity ratio, return on equity at a specified percentage and relies on notional allocation of subscription and advertisement revenues which are not consistent with general cost plus models.

- b) Revenue Share and Retail Minus approaches will be highly ineffective in the absence of addressability and CAS as has been rightly recognized by the TRAI in the Tariff Consultation .

**11. If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder? Please provide supporting data.**

**STAR DEN Comments :**

We feel that the Revenue Share model best reflects the ground realities in the analog market. However, transparency in subscriber base is fundamental to successfully implement this model as has been observed by the TRAI in the Tariff Consultation. In the event the TRAI decides to regulate the wholesale tariff through this approach, we would support the same, only if TRAI ensures the following to enable fair and equitable distribution of subscription revenue across the distribution chain :

- a) 50% revenue share to the pay broadcasters as has been highlighted by the TRAI in the Tariff Consultation in paragraph 2.4.12, and 50% to MSO's and LCO's.
- b) Broadcasters share should be based on the subscription revenues collected by the LCO's from the end subscribers and not the subscription revenues of MSO's
- c) Full declaration of subscriber base, complete disclosure by LCO's and MSO's and de notification of the existing regulatory restrictions as contained in the Interconnection Regulations of 4<sup>th</sup>

September 2006, which restricts the rights of broadcasters to seek revenues based on actual connectivity;

- d) Responsibility of billing consumers to shift to MSO's and LCO's to act merely as agents/franchisees of the MSO's ; this will ensure transparency and provides the necessary impetus to the MSO's to enhance their subscription revenue and foster digitalization.
- e) Unfettered audit rights to broadcasters
- f) Effective enforcement machinery and regulatory support to combat under declaration.
- g) Implementation of cable licensing laws immediately;

**12. If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?**

**STAR DEN Comments :**

- For the reasons explained in preceding paragraphs, we do not recommend cost plus model of any kind. We once gain reiterate that the illustrative model proposed by the TRAI in Annexure E is highly illogical and based on unrealistic assumptions. Further, it is based on derived connectivity which is a fundamental flaw in the approach.

**13. Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.**

**STAR DEN Comments :**

We strongly recommend a case for forbearance at the wholesale level and a system of self regulation for the following reasons:

**Market Forces best promote competition and consumer interests**

- a) Over six years have elapsed since implementation of tariff regulation by TRAI. Any extension would hardly be consistent with a temporary measure. Most temporary regulatory measures have more explicit sunset clauses such as one or two years or a clear measure for sunset such as a market share benchmark. TRAI should stand by its position in 2004 and provide industry with the certainty expected of a regulator. It should not be bound to the status quo.

- b) An open-minded approach to deregulation is critical given the dynamic nature of the broadcast industry in India and in particular the rapid and bold entrance of new alternatives such as DTH, IPTV, internet and mobile TV.
- c) We also highlight that the current regulated tariffs are based on the market driven tariffs prevailing in 2003, including all variations in geography and consumer profile. These variations show how the market most effectively creates pricing to increase consumer demand. A price set by regulation cannot move with consumer demand, even if initially based on consumer driven pricing.
- d) STAR DEN considers it would be incorrect for TRAI to retain tariff regulation on the basis that cable TV business has been growing in spite of it. This is not a justification for retention of regulation, although damage or potential damage to competition is relevant to the need to remove regulation. In any event, while the industry has been growing, TRAI is not in a position to determine how much better the situation may have been without regulation. As the Tariff Consultation recognizes, revenue growth may be due to factors other than price like introduction of new pay channels and growth in number of homes. Growth in channels may be a business strategy to remain a player in the market, and does not represent what the long term impacts of regulation might be.

#### **Relevant Markets are subject to Effective Competition .**

- a) Indian television markets are becoming increasingly competitive and this change is rapid. In this competitive environment, the tariff regime imposed to date is no longer appropriate.
- b) With technological innovations and the development and deployment of new delivery mechanisms, most notably DTH and IPTV, cable players are feeling constrained in their decisions by the need to be competitive. The competition from DTH has been particularly evident during the roll out of CAS, with aggressive marketing tactics in play. In fact, the latest report of research firm, Media Partner Asia has observed that India is poised to become the world's largest direct-to-home (DTH) satellite pay TV market with 36.1 million subscribers by 2012, overtaking the US.
- c) We further submit that there is adequate competition at the level of broadcasters in terms of number of channels available and the number of players. For example, there are many FTA channels in each genre available from various broadcasters including the public broadcaster.
- d) In fact, cable television market has grown rapidly and provides the consumer an array of choice of 30 to 90 television channels containing entertainment, movies, sports, news and other programming at less than Rs. 6 to Rs. 8 per day per household. As noted in the Tariff Consultation, over 485 channels are competing for those limited slots, and more channels are added everyday.

- e) Furthermore, the costs of cable television compare very favorably with the costs of other competing entertainment options available to the Indian consumer. For example, the cost of taking the average Indian family of four to a movie in Mumbai costs as much as Rs.600. Cable television competes with a large variety of entertainment and leisure options, from movies to sports to the Internet, and its pricing is impacted and limited by that competition.
- f) Cable television will have difficulty competing if its prices are controlled while other entertainment alternatives are free to adjust according to market principles.

**Lack of addressability and transparency in subscriber base calls for deregulation:**

- a) We submit that lack of transparency in subscriber base and the existence of under declaration, makes it impossible to set wholesale tariff in the analog market. In fact, the TRAI have in the Tariff Consultation recognized the lack of addressability as the limiting factor in the implementation of the three suggested methodologies for determination of wholesale tariff i.e revenue share, retail minus model and Cost Plus Model.
- b) Fixing wholesale rate with no transparency in subscriber numbers will be highly inequitable and counter productive and will encourage unequal distribution of the subscription revenue.
- c) If the regulatory environment removes the wholesale ceiling and encourage transparency in subscriber declaration, MSO's will be able to enhance their subscription revenue by negotiating for a better revenue share with the LCO's. This will automatically eliminate the current carriage driven business model of the MSO's and generate funds for digitalization.

**Cable TV not a suitable target of regulation**

- a) We reiterate the point often made that cable TV is not an essential commodity justifying tariff regulation. There may well be an enormous number of households in India using cable TV, but it would send a terrible social message to further entrench any idea that watching cable TV is an essential activity that people in India need to function.
- b) In fact, the Tariff Consultation in Annexure F which deals with calculation method for retail affordability linked tariff, cable services have been understood to meet "esteem needs" and "cognitive needs" in a household and compared to goods and services such as "consumer goods" and "durable goods".
- c) We recommend the following measures to ensure (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.

- (i) TRAI can intervene on a case to case basis in the event any broadcaster over prices channels or creates packages of channels which are anti competitive.
- (ii) Fix cable charges at the retail/consumer level on the basis of affordability test ;

This will ensure that consumer interests are protected and they are not penalized by higher charges. At the same time it will allow market forces to determine the share of the broadcasters, MSO's and LCO and give them the freedom to negotiate given the market conditions.

Intense competition amongst competing channels and fear of re regulation will put an automatic check on the broadcasters and will prevent them from over pricing themselves.

The fight for visibility in the analog environment struggling with limited band width capacity coupled with rising placement/carriage costs will work as an additional check on unreasonable price increases.

This would also bring about an automatic balance between rate and declaration of subscriber numbers through negotiations amongst Broadcasters, MSO's and LCO's.

However, the retail price caps should also should be considered only as an interim measure and be removed once cable digitalization gains/acquires a critical mass, equivalent to a certain percentage of the cable households.

The TRAI should also bear in mind that any decision to rely on market forces to control prices of cable TV does not completely exclude regulatory influence. The threat of re-regulation will always place a very significant restraint on industry players. It is difficult to envisage players "whimsically" increasing prices to unjustifiable levels after removal of tariff regulation as it would be counter-productive to their preference for pricing flexibility to risk re-regulation.

14. **What is your view on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both, advertisement and subscription revenue, what according to you should be the ratio between the two? Please indicate this ratio at the genre levels.**

**STAR DEN Comments :**

- a) We respectfully submit that it is highly preposterous on the part of the TRAI to even propound this issue for consultation. This cuts into the

heart of broadcasters' fundamental right of freedom to trade and devise their business model.

- b) The TRAI will agree that nowhere in the world has any Regulator even considered micro managing affairs of any sector in such a manner which effectively dictates the manner of recovering costs of business.
- c) It is an internally accepted position that Broadcasters' business model is based on two streams of revenue – advertisement and subscription. Broadcasters have complete freedom and flexibility across the world to recover their content and other costs through both streams of revenue. It is highly illogical and perverse to fix the ratio of costs that are to be recovered from advertisement and subscription revenue.
- d) It would be highly absurd if film producers are directed in law, to recover the costs incurred on artists/stars from theater ticket sales/screening and recover their distribution and other production costs from broadcast and music rights. Alternatively, it would be highly irrational to require the publishers in print sector to recover content/royalty costs from advertising and distribution costs from subscription revenues.
- e) It is indeed disheartening to note that the TRAI after having been the sector regulator for over 6 years now, have failed to understand the fundamental business model of broadcasters which varies across genres, channels and programs. Unlike other sectors like telecom, which deals with standardized services, broadcasting thrives on creativity and valuable intellectual property rights.

In the light of the above, we urge the TRAI to refrain from carrying forward this issue any further. The TRAI must be indifferent to this whimsical proposition which is nothing but reflection of the self serving intent of the MSO's and LCO's with a view to unjustly enrich themselves.

15. **What is your view on continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level? You may also suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.**
16. **Which of the following methodologies should be followed to regulate the retail tariff in non-CAS areas and why?**
- i) **Cost Plus**
  - ii) **Consultative approach**
  - iii) **Affordability linked**



**iv) Any other method/approach you would like to suggest**

**STAR DEN Comments :**

- We recommend that in the event TRAI decided to regulate retail tariff, it must, adopt the Affordability linked approach.

**17. In case the affordability linked approach is to be used for retail tariff then should the tariff ceilings be prescribed (i) single at national level or (ii) different ceilings at State level or (iii) A tiered ceiling (3 tiers) as discussed in paragraph 5.3.23 or (iv) Any other**

- We recommend a tiered ceiling (3 tiers).

**18. In case of retail tariff ceiling, should a ratio between pay and FTA channels or a minimum number of FTA/pay channels be prescribed? If so, what should be the ratio/number?**

**19. Should the broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs? If yes, should the existing system continue or should there be any modification to the existing condition associated with it?**

**20. How can it be ensured that the benefit of a-la-carte provisioning is passed on the subscribers?**

**21. Are the MSOs opting for a-la-carte after it was mandated for the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10.2007. If not, why?**

**STAR DEN Comments :**

No. We do not believe that the broadcasters should be mandated to offer their channels on a-la-carte basis for the following reasons :

- a) In the absence of addressability, it provides no consumer benefit and would in fact be adverse to consumer interest.
- b) Offering of channels by broadcasters to operators on a stand-alone basis would not give consumers the option to refuse channels that they do not wish to watch. On the contrary, in the absence of addressability, this would only create more confusion in the market and impose additional costs and problems on consumers. The situation would result in additional marketing costs, additional technical costs, and additional customer service costs. Furthermore, consumer preferences vary significantly, even within the same locality. Some consumers would prefer a sports channel over a general entertainment channel, and vice-versa. To illustrate, if an MSO

decides to opt only for two channels of a particular broadcaster, then all the consumers serviced by the franchisees or sub-operators of the MSO would be limited to receiving those two channels and deprived of the other channels offered by the same broadcaster even if they wish to see them. The consumer would actually be faced with a situation where he would not be able to view the channels of his choice and yet be compelled to pay the cable operator the same price for the channels selected and provided by the cable operator.

- c) In most countries , even where full addressability exists, bundling and tiering of pay channels at both the wholesale level (from broadcaster/distributor to operator) and retail level (from operator to consumer) is generally allowed and not regulated. This fact has helped drive pay television channel growth globally on both cable and DTH satellite platforms. Even in India, the DTH players do not offer a-la-carte options to customers.
- d) Channel packaging provides vital economies of scale that keep prices low and innovation high. Bundling and channel packaging should be allowed as these methods ultimately provide the end consumer with tremendous benefits. In fact, there should be no restrictions on the packaging of television channels by (i) broadcasters to cable operators and by (ii) cable operators to consumers. Bulk pricing of channels through bouquets allows consumers to afford the wide variety of channels they seek, and also permits broadcasters to offer new channels that need time and sufficient distribution in order to develop an audience. Competition will naturally limit ineffectual bundling. Normally, packaging or bundling provides economies of scale for the purchaser so that costs on a per unit (or in this case a per channel) basis are reduced. In this manner, the packaging of channels into bouquets merely represents a form of volume discounts that is common throughout many industries, and, therefore, it should be permitted as it benefits consumers.
- e) As TRAI knows well, although many market analysts originally thought that consumers would prefer to receive mobile telephone and Internet services on an a la carte or user fee basis, most consumers have instead chosen flat fee subscription services for administrative ease and in order to lower costs. The same principles often apply to cable and satellite television, where in many parts of the world consumers prefer to receive a large package of channels for a fixed price rather than to select fewer channels on an a la carte basis for the same cost. The free market is once again probably the best determinant of what type of packaging works best for consumers.
- f) The benefits of a-la-carte provisioning can never be passed on to the consumers in a non addressable market where there is rampant under declaration of subscriber numbers. In fact, if the MSO's are unable to

demand their fair share from the LCO's and are suffering the ills of under declaration, there is no way that they can ensure that the benefit can be passed on the consumers.

- g) None of the MSO's have opted to exercise the a-la-carte option after it was mandated for the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10.2007. If the TRAI were to review the interconnect filings of the Broadcasters, it will reveal that none of the MSO's have exercised the a-la-carte option mandated by TRAI. The reason for the same is clearly the reasons explained above and the competition from DTH market.

**22. Should the carriage and placement fee be regulated? If yes, how should it be regulated?**

**23. 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?**

**24. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?**

**STAR DEN Comments :**

- a) We do not recommend any regulatory controls on carriage/placement fee and request that the same be left to market forces. We strongly feel that if TRAI puts a check on under declaration and promote digitalization, this will automatically provide a check on the increasing carriage/placement fee.
- b) We submit that in the United States, in the 1970s, 80s and 1990s, in a predominantly analogue marketplace similar to India's today, cable operators often received fees from broadcasters to ensure carriage because of limited analogue bandwidth, making cable carriage valuable real estate. This occurrence continued for certain channels even after the growth of cable digitization after 1996 as competition for distribution eyeballs, advertising dollars and affiliate fees increased with the growth of mainstream and niche channels. The volume of carriage fees has however sequentially declined as digital pay-TV adoption has increased and competition to cable has increased from DTH and IPTV platforms.
- c) In Japan, it remains a reality of the marketplace that new channel entrants that do not have significant brand recognition typically pay marketing or distribution fees to cable and satellite operators in order to gain placement and carriage. In Taiwan, it is a prevalent market reality that given limited digital penetration thus far, carriage fees are a consideration. However, cable operators are pushing digital pay services since January 2009, providing a platform for the launch of new HD and SD digital channels without carriage fee considerations.

25. Is there a need for a separate definition of commercial subscriber in the tariff order?
26. If the commercial subscriber is to be defined in the tariff order, then does the existing definition of 'commercial subscriber' need to be revised? If yes, then what should be the new definition for the commercial subscriber?
27. In case the commercial subscriber is defined separately, then does the present categorization of identified commercial subscribers, who are not treated at par with the ordinary subscriber for tariff dispensation need to be revised? If yes, how should it be revised?
28. Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?

#### STAR DEN Comments

- (a) STAR DEN feels that there is a definite need for a separate definition of 'commercial subscriber' in the tariff order. The existing definition of 'commercial (cable) subscriber' as contained in the Tariff Order is as under:

*“(ddd) ‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.*

#### *Explanatory note*

*The distinction between an ordinary cable subscriber and a commercial cable subscriber is in terms of the difference in the use to which such signals are put. The former would use it for his/her own use or the use of his/her family, guests etc. while the latter would over commercial and other establishments like hotels, restaurants, clubs, guest houses etc. which use the signals for the benefit of their customers, clients, members or other permitted visitors to the establishment.”*

- b) We feel that the aforesaid definition needs to be changed slightly to make it more explicit. The changes / revised definition suggested by us in the definition of 'commercial (cable) subscriber' are as under. The changes are underlined and in bold. It may be noted that the changes are being suggested in view of Ministry of Information &

Broadcasting's notification / Order dated 15.12.2009 bearing reference No.1501/47/2009(TV)-I.

“(ddd) ‘Commercial **cable** subscriber’ means any person, other than a multi system operator or a cable operator or a DTH operator or a IPTV operator or a HITS operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator or DTH operator or IPTV operator or HITS operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.

*Explanatory note*

*The distinction between an ordinary **cable** subscriber and a commercial **cable** subscriber is in terms of the difference in the use to which such signals are put. The former would use it for his/her own use or the use of his/her family, guests etc. while the latter would over commercial and other establishments like hotels, restaurants, clubs, guest houses etc. which use the signals for the benefit of their customers, clients, members or other permitted visitors to the establishment.”*

- c) Further, we strongly feel that the TRAI should add the below suggested Explanation 2’ to the definition of ‘commercial subscriber’. The proposed Explanation 2 is as under:

*“Explanation21: For the purposes of definition of ‘commercial subscriber’, the same would mean and include all commercial establishments such as –*

- (a) *Hotel (including but not limited to boutique hotels, Inns, motels, resorts, heritage hotels, hostels, guests houses, Spa, retreat hotels, lodges, clubs, hospitals, etc.).*
- (b) *Hospitals.*
- (c) *Public / Common Viewing Areas (including but not limited to restaurants, Pubs, bars, discotheques, nightclubs, cinema halls, tavern, etc.)*
- (d) *Establishments (including but not limited to organizations / entities such as – Banks, trading centers, professional training institutes, Airlines, Malls, etc). who have installed more than one television set in their premises.”*

- d) It is submitted that tariff for the ‘commercial subscribers’ should not be regulated and should be left to market forces. It is submitted that ‘commercial subscribers’ have sufficient negotiation power and also

capacity to protect their interests. As such, the Tariff Order should ensure that Charges in respect of broadcasting and cable services provided to 'all' commercial subscribers would be as mutually determined by the parties.

- e) In this regard, it may be noted that the Hon'ble Regulator has itself in its Tariff Consultation under reply noted that – "... .. *It has been observed from the reports submitted by broadcasters to TRAI that the rates for commercial subscribers are typically in the range of 3 to 5 times than the rates charges for the ordinary subscribers for different pay channels distributed by various broadcasters. This has been observed since 2007. However, this ratio has been more or less the same over the past 3 years, which indicates that there has been stability in these negotiations*"
- f) We feel that 'commercial subscribers' cannot and ought not be treated at par with the ordinary subscriber for tariff dispensation. In every other sphere, be it electricity, water supply and/or even under the Consumer Protection Act or for that matter under the Income Tax Act, such classification is permitted. It is submitted that law permits reasonable classification, and classification suggested above is non-discriminatory and based on an intelligible differentia.
- g) It is submitted that ratings of a particular hotel for determining tariff of a particular hotel is misleading. Our experience shows that a lot of hotels are indirectly covered and protected under the existing Tariff Order. Such Hotels do not apply for 'star' accreditation and enjoy TRAI's tariff protection. In this regard, tariff / rate cards as downloaded from websites of some of the hotels who have not obtained 'star' accreditation are annexed hereto and marked as **ANNEXURE – 1.**
- h) It may be noted that all hotels show availability of satellite channels in their rooms as a key amenity to invite guests. As such, there is no reason as to why a hotel should not pay for satellite channels. In this regard, printouts of key hotels showing availability of satellite channels are being annexed hereto and marked as **ANNEXURE – 2.** The said annexure clearly shows that one of the important considerations for guests while selecting a hotel is availability of satellite channels. It is submitted that all 'Commercial subscribers' (i.e. Hotels, Hospitals, Public / Common Viewing Areas and Commercial Establishments) as explained above, collect television charges either directly or indirectly as forming part of room charges.
- i) It is submitted that there is no reason why 'Commercial subscribers' (i.e. Hotels, Hospitals, Public / Common Viewing Areas and Commercial Establishments) should shy away from paying commercial rates for satellite channels. It is submitted that the value

derived from TV Channels in case of 'commercial subscribers' is far higher than in case of an ordinary subscriber as such, they need to be distinguished from 'ordinary subscribers'.

- j) It is reiterated that the existing protection given to Commercial Subscribers should be removed..
- k) It is submitted that for the purposes of defining 'commercial subscriber' it is irrelevant as to whether or not a hotel, hospital, public / common viewing area, commercial establishment is charging its customers, guests, patients, clients, members or other permitted visitors. What is relevant is whether the persons who watch the television are required to make payment by way of contribution or subscription or any other charges collected in any manner whatsoever. In this regard, attention of the Hon'ble Regulator is also drawn to Hon'ble Bombay High Court's Judgment dated 18.12.2008, which was pronounced in Writ Petition No.2152 of 2008 titled Bombay Hospital Trust & Ors. vs. State of Maharashtra & Ors. In the said Judgment while dealing with an issue relating to liability of a charitable hospital for payment of entertainment tax, the Hon'ble Bombay High Court held that even though – "... *In the present case, though the hospital may not be charging its patients or visitors any amounts specially for viewing the television sets, it can hardly be said that the patients do not pay for the facility as a part of the room charges. ... .. Undisputably, the patients who are admitted in the hospital and are provided rooms have to pay for the rooms. ... .. It cannot, therefore, be stated that charges for television exhibition are not collected in any manner whatsoever....*". Relevant extracts of the said Judgment are as under:

"1. *By this Petition, the petitioner no.1, which is a public charitable trust, and others have questioned the liability to pay entertainment duty in respect of the cable television net-work in the premises of the Hospital.....*

2. *... .. the petitioner no.1 is a public charitable trust which runs the Bombay Hospital and Medical Research Centre without any motive of earning profit. A cable operator in the area is said to have offered its basic service of 32 channels free of charge as a special case for one year, to be renewed subsequently. In pursuance thereof, the petitioners have installed about 150 television sets with cable connection in some rooms and in common waiting areas where relatives/friends of patients wait in the hospital. According to the petitioners, the hospital does not charge any special fee from the patients in respect of the television sets installed by it. It, however, appears from the Information Booklet of the hospital that the rooms are*

*classified in terms of the facilities and conveniences available in it, including features such as television.*

... ..

4. *... .. All the authorities have held that the petitioners are liable to pay entertainment tax on 150 connections in the hospital. The said orders are impugned.*

5. *According to the petitioners, they are not liable to pay any entertainment duty since ... .. since it does not collect any contribution or admission fee from any of its patients or visitors viewing the cable T.V., which is a condition for the activity being classified as entertainment.*

... ..

7. *The first question that may be considered is whether the exhibition on the television sets installed by the petitioners is not entertainment because the petitioners do not collect charges for such exhibition, from their patients or visitors nor; do they make any payment to the cable operator, Aasia Industrial Technologies Private Limited, who is said to have donated its basic service to the petitioners.*

8. *On a construction of the definition, it appears that the payment made by the petitioners to the cable operator is not relevant. What is relevant is whether the persons who watch the television are required to make payment by way of contribution or subscription or any other charges collected in any manner whatsoever. According to the petitioners, the hospital does not charge any special fee from any of its patients or anyone else in respect of the television sets installed by them and, therefore, the services are provided by the hospital free of charge. It is, however, not possible to accept the contention that no charges are collected for the entertainment at all. Under section 2(a), such television exhibition by means of cable television is defined as entertainment when persons are required to make payment by way of contribution or subscription, etc. The provision does not appear to include only such charges which are made by way of contribution or subscription specially for being permitted to view the television exhibition. It contemplates payment of "any other charges collected in any manner whatsoever". In the present case, though the hospital may not be charging its patients or visitors any amounts specially for viewing the television sets, it can hardly be said that the patients do not pay for the facility as a part of the room charges. Barring 10%*



*of the treatment which is given free of charges to poor and needy patients under section 41AA of the Bombay Public Trusts Act and to certain out-patients, it is clear that services in the hospital are not rendered free of charge. Undisputably, the patients who are admitted in the hospital and are provided rooms have to pay for the rooms. As observed earlier, it is noteworthy that the rooms are graded from Ordinary to Deluxe class with proportionately increasing charges on the basis of the facilities and conveniences provided in the rooms which include television, vide the Information Booklet of the Bombay Hospital & Medical Research Centre. It cannot, therefore, be stated that charges for television exhibition are not collected in any manner whatsoever. We are of opinion, therefore, that the provision of television exhibition by means of cable television network in the hospital constitutes entertainment as defined under section 2(a).*

... .. In the result, we do not find any merit in the petition which is hereby dismissed.

A copy of Hon'ble Bombay High Court's Judgment dated 18.12.2008 is annexed hereto and marked as ANNEXURE – 3.

**28. Do you agree that complete digitalization with addressability (a box in every household) is the way forward.**

**STAR DEN Comments**

- a) We agree that digitalization with addressability is the way forward, but with phased timelines over a 10-year period ending in 2020.
- b) The digitization of analogue cable infrastructure must also come with a tacit stipulation that:
  - (i) Billing points must be moved from local cable operators (LCOs) to multi system cable operators (MSOs);
  - (ii) all cable and satellite television channels - Free-to-air (FTA) and Pay are able to viewed through a set-top box (STB);
- c) Analog is switched off entirely in cities and zones switching over to Digital Television (DTV) therefore ensuring that all popular pay and FTA channels must be viewed through the STB.

**30. What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.**

- a) A ten year time framework with 100% switch off of analog occurring by December, 2020;
- b) Target complete 100% DTV conversion in metropolitan cities.
- c) National time-lines should be set as follows:
  - (i) 20% DTV conversion or 20 million DTV cable homes by December, 2012
  - (ii) 55%-plus DTV conversion or 60 million DTV cable homes by December, 2015
  - (iii) 100% DTV conversion or 110 million DTV cable homes by December, 2020
- (d) City / market wise time-lines as follows:
  - (i) Metropolitan cities Mumbai, Kolkatta, Delhi, Bangalore, Chennai and Hydrebad in Phase 1 (to 2012)
  - (ii) Phased out conversion in key people-meter cities and markets to 2015 and 2020

**31. What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs and Customers)?**

**STAR DEN Comments**

- a) According to consensus estimates from TAM Media Research, NRS, Media Partners Asia and FICCI – KPMG, there were approximately 133 million TV homes in India at the end of calendar year 2009. Out of these homes, analogue cable took up 84 million; digital cable 3 million; digital DTH pay-TV, 17 million (net, as opposed to gross numbers).
- b) The industry's immediate concern must be the digitization of 84 million cable homes in a phased manner. Exit subscription revenues from these 84 million homes amount to approximately 157 billion rupees per annum, a large portion of which is leaked and not fairly distributed to MSOs, broadcasters and the government via tax.
- c) A gradual phased-in conversion would cost the cable industry more than 130 billion rupees or USD 2.6 billion in cumulative capital expenditure over the next decade, according to an economic analysis from Media Partners Asia. The cost would need to be borne by both

MSOs and LCOs with MSOs bearing the brunt as the corporate link in the cable industry.

- d) Key cost items in the CapEx analysis include:
- (i) One-way CAS-enabled STBs, costing Rs 1,600 today, on average, dropping to Rs 1,000 over the next five years and Rs 850 over the next decade;
  - (ii) Network, head-end and billing costs, currently Rs 200 per subscriber today, dropping to Rs 130 over the next five years and Rs 80 by 2020.

**32. Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?**

**STAR DEN Comments**

No standards should be prescribed. India DTV deployment across cable and DTH platforms is already using a DVB standard, which is cost effective and efficient as opposed to the standard used in Korea (OCAP and Open Cable). Mandated standards typically slow the deployment of DTV in large scale markets. China, for instance, never fully mandated a standard though the authorities did recommend the DTV standard for cable deployment. The technology should be mandated as set-top box and CAS as both these technologies are the best suited to encrypting a large amount of television channels while advanced STB technology can also provide a foundation for interactive services.

**33. What could be the possible incentives that can be offered to various stakeholders to implement digitization with addressability in the shortest possible time or make a sustainable transition?**

**STAR DEN Comments**

There are some clear precedents from China, Korea and Japan to drive DTV transition:

- (i) Offer MSOs final incentives with favorable terms for bank loans and debt syndication;
- (ii) Classify DTV cable conversion as an India Infrastructural Initiative and set up a Mandatory Digital Fund for the financing and development of new digital content and new HDTV content; marketing and consumer education for DTV services; develop of indigenous DTV hardware facilities

- (iii) Allow MSOs to raise the rate chargeable for DTV services by 10 – 15% per annum over the first five years of migration
- (iv) Remove all duties on the import of STBs
- (v) Tax holiday to the MSO's and LCO's

**34. What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?**

**STAR DEN Comments**

This would be the ideal structure. However, this is an industry structure that will not be easily bypassed or eradicated – most MSOs are building up strong positions in the industry at the last mile through primary points and secondary joint ventures. The regulator must stipulate that as a condition of a license for DTV and therein, all billing points must be moved from the LCO to the MSO.

**35. What would be the best disclosure scheme that can ensure transparency at all levels?**

**STAR DEN Comments**

Make available subscriber rolls and billing information to all stakeholder after DTV is deployed.

**36. Should there be a 'basic service' (group of channels) available to all subscribers? What should constitute the 'basic service' that is available to all subscribers?**

**STAR DEN Comments :**

This is common in the United States and most other developed markets – a basic service should contain as per regulations, the two Doordarshan channels and various local community channels.

**37. Do you think there is a need for a communication program to educate LCOs and customers on digitization and addressability to ensure effective participation? If so, what do you suggest?**

**STAR DEN Comments**

Consumer education is vital and should be pursued aggressively to ensure that the transition to digital is smooth without much resistance.