ZEN
ZOOM ENTERTAINMENT NETWORK

April 28, 2010

Mr. Subodh Kumar Gupta
Advisor (B&CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi 110 002

Dear Sir,

Sub: Consultation Paper no. 5/2010 on Tariff Issues in Cable TV Services in Non-CAS Areas

We, Zoom Entertainment Network Limited (ZEN) refer to the Consultation Paper on Tariff Issues in Cable TV Services in Non-CAS areas. We would like to commend TRAI on the detailed approach to this consultation paper

Please find below our response to the Issues raised under Chapter 7 of the Consultation Paper.

Our Views on the Issues for Consultation are as follows:-

Issue no. 1. Are the figures in Annexure B3 representative for the different genres of broadcasters? What according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company.

Comments of ZEN

As the figures provided are average figures based on the data provided by various stakeholders, it is not meant to be representative of any channel/company, hence we are not offering our comments on these figures.

As pointed out in our earlier submission, carriage/placement cost is a major cost component incurred by the Broadcasters. In the figures provided in Annexure B3 while the figures on Revenue have been divided into advertising and subscription, there is no such division shown against operational costs to be subdivided into programming cost , marketing cost and distribution cost, amongst others.

Being Niche channel, we classify ourselves under NICHE CATEGORY. However, on perusal of the data with respect to Niche Category 1 & 2 furnished we are of the view that the data arrived at by TRAI is not representative in respect of our company as we don't fall within the said classifications.

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ssue no.2. Are the figures in Annexure B5 representative for aggregators? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

Comments of ZEN

We are unable to offer any comments on the issue at hand, inview of the fact that we are not privy to the figures and data provided by the other stakeholders in the value chain

Issue no. 3. Are the figures in Annexure B7 representative for the national MSOs? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

Comments of ZEN

We are unable to offer any comments on the issue at hand, inview of the fact that we are not privy to the figures and data provided by the other stakeholders in the value chain

Issue no. 4. Are the figures in Annexure B7 representative for the regional MSOs? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

Comments of ZEN

We are unable to offer any comments on the issue at hand, inview of the fact that we are not privy to the figures and data provided by the other stakeholders in the value chain

Issue no. 5. Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

Comments of ZEN

We are unable to offer any comments on the issue at hand, inview of the fact that we are not privy to the figures and data provided by the other stakeholders in the value chain

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Issue no.6. Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

Comments of ZEN

We are unable to offer any comments on the issue at hand, inview of the fact that we are not privy to the figures and data provided by the other stakeholders in the value chain

Issue no.7. What according to you is the average analog monthly cable bill in your state or at an all India level?

Comments of ZEN

We are of the opinion that the average analog monthly cable bill for an end consumer incurs for cable services in the state or at an all India level would range between Rs. 150/- to Rs. 400/- per month mark.

Issue no.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

Comments of ZEN

Yes, the abovementioned issues are characterized in market for cable services in Non-CAS areas, of which the biggest hurdle, in our is the under declaration of subscriber numbers, lack of transparency and arbitrary carriage and placement fees being levied .

Issue no. 9. Are these issues adversely impacting efficiency in the market and leading to market failure?

Comments of ZEN

Yes, the above mentioned issues are having a grave adverse effect in the Non-Cas areas resulting in lack of discipline and control. Under reporting of numbers results in less revenue for stakeholders in the value chain and there by directly impacting their businesses.

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Issue no. 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

Comments of ZEN

We do not recommend any regulations on the basis of any of the aforesaid models. We are of the opinion that there should be no tariff regulation at the wholesale levels. Tariff regulation should be best left to market forces.

Unless and until addressability with actual declaration of numbers and mandatory digitization of cable services in Non-CAS areas is implemented, the Revenue share model would be ineffective due to fragmentation of LCOs in the value chain

The Cost Plus model does not take in to account the fluctuating costs that operate in the entire value chain, as a result of which, many expenses would not be covered. Costs vary from broadcaster to broadcaster hence, it would be impossible for this model to spell out a formula that can take into account such fluctuating factors.

Issue no.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.

Comments of ZEN

We reiterate what we have stated above i.e. in the absence of addressability and mandatory digitalization of cable services in Non- CAS areas the revenue model would be ineffective

Issue no.12. If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?

Comments of ZEN

We reiterate what we have stated in clause 10 above

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Issue no. 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.

Comments of ZEN

Yes forbearance can be an option. As stated above we do not recommend any tariff regulations at wholesale level and these are at best left to market forces. The ever increasing competition with the approximately 460 channels and many more awaiting permission, with new platforms of content distribution such as DTH, IPTV etc., and market conditions have ensured that the prices of channels are reasonable.

We rely on what Hon'ble Authority stated in consultation paper No. 4/2009, competitive play of market forces [are] likely to lead to discovery of efficient prices in the market in the interest of all stakeholders."

Issue no. 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.

Comments of ZEN

The proposal of the Authority that broadcasters recover content cost from advertising revenue and carriage cost from subscription revenue is without basis and reasoning. In our view there is no rationale in drawing up a ratio between advertising revenue and subscription revenue of broadcasters. Besides Content costs and Carriage cost, it is very pertinent to note that broadcasters incur significant other costs

Issue no. 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.

Comments of ZEN

We once again reiterate what we have stated in Issue no. 10 above.

Issue no. 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

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iii) Affordability linked

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

Comments of ZEN

We once again reiterate that there should be no tariff regulation at the retail or wholesale level. Tariff regulation should be best left to market forces. Hence, we do we do not wish to offer any comments on any of the aforesaid models. With increased competition in the market and with approximately 460+ channels in 2010, and with the rise of new distribution platforms such as DTH, IPTV etc., market conditions have ensured that the prices of channels are reasonable. Published statistics show with subscription revenues of approx. Rs. 15,600+ crore being collected from cable via 134 tv households for the 460+ channels available, the average household would therefore spend less than a rupee per hour per household to enjoy such services. This signifies that despite cable TV being one of the cheapest forms of service available in the country today, the industry continues to be heavily regulated.

<u>**Issue no. 17.**</u> 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

Comments of ZEN

We are of the firm view that there should be no tariff regulation at the wholesale or retail levels. These are best left to market forces. We do not recommend any regulations on the basis of any of the aforesaid models. An "affordability" approach is justified only where the product is essential for daily survival/ living. India today provides for basic television services free of charge by the national broadcaster however, there is no law that stipulates other pay channels as a basic necessity.

<u>**Issue no. 18**</u>. 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?

Comments of ZEN

As we are of the opinion that there should be no tariff regulation at the wholesale or retail levels, we submit that there should be no fixed ratio to determine the minimum number of pay and FTA channels. However, it would not be out of place to mention that the initiative undertaken by the Authority in respect of CAS areas mandating FTA channels, maybe considered for determining this ratio.

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Issue no. 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?

Comments of ZEN

As reiterated in our earlier submissions, in terms of the 'must provide' clause of the Interconnect Regulations, broadcasters are required to provide their channels on a 'non-discriminatory' basis to operators, without a similar obligation being cast on the operators to compulsorily carry the broadcasters' channels. In our view, it is extremely important to ensure that every digital platform must carry channels of the same genre in the same bundle. The bundling of channels can be brought about on the basis of genre and other parameters such as viewership base, market share, reach etc. This would reduce the pressure on the broadcasters to pay exorbitant placement fees to place their channels in a specific path.

Issue no. 20. How can it be ensured that the benefit of a-la-carte provisioning is passed on the subscribers?

Comments of ZEN

In our view any benefit arising out of a-la-carte provisioning of channels can be passed on to subscribers only if there exists a 'must carry' obligation on the operators. With lack of transparency and addressability it will be difficult to measure the benefit that an end consumer can avail from such provisioning.

Issue no.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?

Comments of ZEN

We are not able to comment on this since ZEN was operating only a single channel during the period being reviewed for this exercise.

Issue no. 22. Should the carriage and placement fee be regulated? If yes, how should it be regulated?

Comments of ZEN

Market conditions have ensured that the prices of channels are reasonable (and have been kept down). The distributors (MSOs) however are demanding and extracting carriage and placement fees from broadcasters to distribute the channels on their network and for placement of channels at a particular frequency/band.

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In most parts of India, the cable system is still analogue and is not yet digitized. Since the total channels' signal carrying capacity of the analogue cable is only about 100, more than 400 channels are vying for the 100 available slots, which has resulted in a capacity constraint. There has been an unprecedented increase of more than 300% in carriage and placement fees between the period 2005-2006 and 2008-2009, which along with the ceiling imposed by the Authority on charges payable at the subscriber level has had an adverse effect and impact on stakeholders. This has affected the level playing conditions for the stakeholders, particularly broadcasters.

Moreover, there is no co-relation between the change in subscription revenue for pay channels and the carriage / placement fees over the years. There are no corresponding benefits accruing to the Broadcasters in respect of the placement and carriage fees being extracted from them.

The only solution to this, in our view, is digitization of cable services within a 'sunset' date, which will free up the spectrum space and provide more transparency to subscriber numbers.

Issue no. 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?

Comments of ZEN

Without prejudice to its submissions above, ZEN is of the view that the MSOs/COs should be paid carriage/placement fees based on, amongst other things,

a. Number of households serviced (or no of digitized boxes)
b. Price paid per household
c. Channel placement

This would ensure that the broadcasters get value for their money spent on carriage / placement fees. The regulation of carriage/placement fees should also prescribe a suitable formula that caps the increase on such fees up to a maximum & reasonable % based on various factors that influence such increase. This increase should also be linked to the increase in the number of households serviced and level of digitization achieved. A cut off year (e.g. 2005-06) can be considered as the benchmark fees or the base year for carriage / placement charges, and increase calculated from that year. This should be linked to the subscription increase percentage prescribed.

It is our view that every digital platform must carry all the channels and bundling of channels should be based on the genre as well as other parameters e.g. viewership, Market Share, Reach etc.

Issue no. 24. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?

Comments of ZEN

Please refer to our comments to Issue no. 23 above

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Issue no. 25. Is there a need for a separate definition of commercial subscriber in the tariff order?

Comments of ZEN

Yes, there is a need for a separate definition of 'commercial subscriber' in the tariff order.

Issue no 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?

Comments of ZEN

We suggest that the existing definition of 'commercial subscriber' be modified to read as an all inclusive definition that covers all categories of subscribers except residential subscribers. In other words there is no need in our view to categorize commercial subscribers

Issue no. 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?

Comments of ZEN

In our view, the category of commercial subscribers identified in the Tariff order of November, 2006 should be dispensed with and they be redefined as stated in Issue no. 26 above.

Issue no 28. Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?

Comments of ZEN

As stated earlier, we do not recommend any tariff regulations for cable services either at wholesale or retail levels, including for commercial subscribers and these are at best left to market forces.

Issue no. 29. Do you agree that complete digitization with addressability (a box in every household) is the way forward?

Comments of ZEN

Yes, digitization with addressability of Cable Services is the way forward. Condition Access Sytem (CAS) would encourage cable networks to move from analogue to digital mode of services and will enable subscribers to make an informed programming choice.

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We refer to the phased manner in which the Authority had planned the implementation of CAS across the country. We recommend that a similar framework be drawn up for implementation and be put into effect within a 'sunset' date.

CAS should be rolled out in at least the top 100 cities in the country. Digital Feeds should be made available to cities with over 1 Lac population and customer awareness on the availability of such a digital platform should be created by not only by the Government but also by the stakeholders involved i.e. the broadcasters, Multi System Operators and the Cable Operators

Issue no.30. What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.

Comments of ZEN

In furtherance to our comments to Issue no. 29 above, we are of the opinion that CAS should be implemented in a time bound manner and with a sense of urgency.

Issue no. 31. What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs and Customers)?

Comments of ZEN

Being a broadcaster we are not in a position to offer any comments.

Issue no. 32. Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?

Comments of ZEN

In our view, there should be adherence to the technical standards by all cable operators as prescribed by the Authority under the Interconnect Regulations of March 2009.

We are of the view that the regulatory provisions for Quality of Standards (QoS) regulations in the Non-CAS areas should compliment the existing QoS regulations for CAS notified areas and should also cover the Voluntary CAS networks in Non-CAS areas. Some of the parameters covered by the existing QoS regulations in CAS areas, which would be worthy, implementing in Non-CAS areas, are as under:

a) Complaint handling and redressal mechanism
b) Proper documentation for connection, disconnection, transfer and shifting of cable services
c) Proper billing systems and handling of billing related complaints
d) Monitoring of performance of quality of service standards by the Authority

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Issue no. 33. What could be the possible incentives that can be offered to various stakeholders to implement digitalization with addressability in the shortest possible time or make a sustainable transition?

Comments of ZEN

In our view, any measure or initiative undertaken by the Government that would encourage and help speed up the digitization process in the country is welcomed.

Issue no. 34. What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?

Comments of ZEN

The cable industry has been predominantly unregulated which has led to considerable fragmentation in the distribution chain. There is no firm data available on the number of players and the extent of their subscriber base. Also the absence of addressability has lead to low transparency levels of disclosure and compliance. With the concept of digitization gaining ground, it is also important to bring out a sound regulation of licensing of cable operators.

The licensing of digital services would facilitate the setting of high standards business practices and operating conditions. Licenses could also be a major factor of consideration for operators to claim concessions, incentives etc., from the Government. Licensing would also act as an important tool of control mechanism in the cable services sector.

In this regard we urge the Authority to make it mandatory for MSOs and LCOs to comply with the Interconnect Regulations, to be eligible to be granted license and/or its suspension or cancellation.

Issue no. 35. What would be the best disclosure scheme that can ensure transparency at all levels?

Comments of ZEN

As far as effectiveness and transparency of operations of cable operators is concerned, we are of the view that the QoS codes and Guidelines of the Authority in relation to Broadcasting and Distribution of TV Channels dated October 01, 2004, need to be strictly adhered to.

In addition, the Government should consider setting up call centres with adequate support facilities to handle customer complaints, on-line billing process, review of systems by conducting periodic mandatory audits, etc to ensure consumer interests are protected. This mechanism can be supervised and managed by a nodal agency such as the District collector or Superintendent of Police of a District, or an equivalent authority, who should also be vested with certain powers for licensing and regulating the cable operators.

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Issue no. 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?

Comments of ZEN

In our view, if the Authority intends prescribing a basic service to all subscribers, we are of the opinion that such group of channels should include channels of national public broadcasters.

Issue no 37. Do you think there is a need for a communication programme to educate LCOs and customers to ensure effective participation? If so, what do you suggest?

Comments of ZEN

Yes, in our view, there is need for better and effective communication to educate LCOs and customers to bring about effective participation. We suggest that the Authority consider open house discussions on relevant subjects, information availability on Authority's websites and local communication means through agencies etc.

We request you to kindly on record our views/suggestions as submitted above.

For Zoom Entertainment Network Limited

ZOOM ENTERTAINMENT NETWORK LTD. MUMBAI

Amit Sen
General Manager –Operations & Technology

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