

January 30, 2011

**Submissions of MSM Discovery Pvt. Ltd. (“MSMD”) to Telecom Regulatory Authority of India (“TRAI”) in response to the Consultation Paper (No. 8/2011) on Issues related to Implementation of Digital Addressable Cable TV Systems (“Consultation Paper”)**

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**Kind Attention: Chairman  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
New Delhi – 110002.**

We welcome TRAI’s initiative in releasing the Consultation Paper and seeking views of the stakeholders on issues relating to implementation of Digital Addressable Cable TV Systems.

The following response is without prejudice to any of our rights. In particular we reserve our right to challenge any directions, tariff orders, regulations, recommendations or any other order(s) that may be made/passed by TRAI on the subject matter. The following response is also without prejudice to MSMD’s rights and contentions in Civil Appeal Nos. 2487-2854 of 2011, which are pending adjudication before the Supreme Court.

The diversity and the continuous growth in the Indian Pay-TV Industry have been a matter of curiosity for global observers. This industry today comprises of close to 800 television channels<sup>1</sup>, 24 pay TV broadcasters/aggregators<sup>2</sup>, 6000 multi system operators<sup>3</sup>, approximately 60,000 LCOs<sup>4</sup>, 7 DTH/Satellite TV operators and several IPTV operators<sup>5</sup>. This is complimented by extra-ordinary growth in the subscriber number from 40 million subscribers in 2002 to a 100 million at the end of 2011<sup>6</sup>.

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<sup>1</sup> TRAI Consultation Paper 8/2011 on *Issues related to Implementation of Digital Addressable Cable TV Systems*

<sup>2</sup> TRAI *Annual Report 2010-11*

<sup>3</sup> *ibid*

<sup>4</sup> *ibid*

<sup>5</sup> *ibid*

<sup>6</sup> Media partners Asia, *Asia Pacific Pay-TV & Broadband Market 2011*

From 2004, when broadcasting and cable services came under the purview of TRAI, to 2011 when TRAI releases this Consultation paper, market dynamics have changed significantly, with the advent of new platform such as DTH, IPTV, and now addressable digitalization. What is required at this point is that TRAI takes note of the dramatic transformation in the Pay-TV industry over the past few years and determine whether continued regulation of tariff is even warranted.

In 2004 pursuant to the Tariff Order dated October 1, 2004<sup>7</sup>, TRAI's own position on price regulation was that *"the regulation of prices as outlined above is only intended to be a temporary measure and till such time there is no effective competition. The best regulation of price is done through competition. Therefore, as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn."*<sup>8</sup>

The industry data submitted above evidences, that there is now effective competition at all levels, signifying that the Indian Pay-TV industry is ready for forbearance. In line with TRAI's promise as aforesaid, the "price regulation" should now be withdrawn.

Market-oriented regulation, without outdated and unnecessary constraints will further foster the growth of Pay-TV industry, benefitting all stakeholders. A cross-jurisdictional study of 15 markets in Asia and Australasia, and two international benchmarks, the United Kingdom and the United States of America, has shown that the best regulated markets use a "light touch", creating an open environment that fosters active competition. They, leave decisions regarding program distribution, content choice, packaging, retail and wholesale rates, to market players<sup>9</sup>.

Market-friendly regulation also benefits consumers, who, in the best regulated markets (such as the United Kingdom and the United states), have access to new forms of content, new

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<sup>7</sup> TRAI *The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004*

<sup>8</sup> TRAI, *Recommendations on Issues relating to Broadcasting and Distribution of TV channels* October 1, 2004.

<sup>9</sup> CASBAA, *Regulating for Growth: a Regulatory Regime Index for Asia Pacific Multichannel Television*, 2011

technologies, and more choice in what they view on what device, and when. Huge investments are necessary to create these consumer benefits; and investments flow where regulations permits predictable, economically sensible returns. The above mentioned cross-jurisdictional study has also shown a direct relationship between investment and a market-focused effective regulatory environment.

We agree with TRAI, that the primary objective of a regulation is to protect consumer interests, “at the same time it is apprehended that over-regulation in a sector that is growing rapidly might have unforeseen consequences.”<sup>10</sup> But the present level of regulation of Indian Pay-TV industry is hindering the achievement of the very objectives that the regulations are intended to achieve. In particular, heavy regulation is likely to distort market uptake of new technologies. For this reason, many regulators adopt a more flexible attitude in respect of emerging technologies, such as IPTV in Singapore and Korea and mobile TV in Hong Kong<sup>11</sup>.

There is also a direct relationship between addressable digitalisation of the Pay-TV industry and an effective, market-oriented regulatory environment. A comprehensive study of relationship between the Pay-TV pricing regulation and digitalisation, in various countries shows that countries, such as Australia, UK, Singapore, Malaysia, Japan and New Zealand, using flexible and free-market oriented rate regulation systems have amongst the highest rates of digital Pay-TV penetration. Study also shows that stringent and un-called for restrictions on pricing and packaging as imposed in countries like India and Taiwan affect the entire value chain with an adverse impact on digitalisation of, and network investment in, the Pay-TV industry.<sup>12</sup>

In light of the above, we submit that on the date of the phase IV<sup>13</sup> of implementation of addressable digitalization i.e. December 31, 2014, the wholesale non-CAS ceiling currently

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<sup>10</sup> TRAI *Consultation Paper on Issues relating to Broadcasting and Distribution of TV Channels*, 2004

<sup>11</sup> CASBAA, *Regulating for Growth: a Regulatory Regime Index for Asia Pacific Multichannel Television*, 2008

<sup>12</sup> CASBAA, *Regulating for Growth: a Regulatory Regime Index for Asia Pacific Multichannel Television*, 2011

<sup>13</sup> Ref. Ministry of Information and Broadcasting , *Notification dated November 11, 2011*, pursuant to *The Cable Television Network (Regulations) Act 1995*, as amended from time to time.

applicable to analogue platforms, and used as reference point for addressable systems, should be withdrawn, leaving tariffs to be determined by market forces.

**We now proceed to our responses to the specific questions raised in the Consultation Paper.**

### **Basic Service Tier for the Digital Addressable Cable TV Systems**

- 1. What should be the minimum number of free-to-air (FTA) channels that a cable operator should offer in the basic-service-tier (BST)? Should this number be different for different states, cities, towns or areas of the country? If so, what should be the number and criteria for determination of the same?**

Digital Addressable Cable Platform (“DAS”) by virtue of the technology deployed, is at par with platforms such as DTH, and is therefore included within the purview of the Tariff Order dated July 21, 2010<sup>14</sup>. The said Tariff Order does not prescribe a BST, and allows the service providers to specify a minimum monthly subscription not exceeding Rs. 150/- per month towards channels chosen by the subscribers, either a-la-carte or bouquet

While the said Tariff Order does not mandate a BST including only FTA channels, it is seen that many DTH operators are packaging both FTA and pay channels in their entry level packs. TRAI has itself observed that the said packs include a sizable number of pay channels.<sup>15</sup>

Further, if the primary objective of the regulation is to protect consumer interests<sup>16</sup>, then it is obvious that consumers will benefit more when they are offered both FTA as well as pay channels, in entry level packs.

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<sup>14</sup> TRAI, *The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, applicable to all addressable systems except CAS*

<sup>15</sup> TRAI *Consultation Paper on Issues related to Implementation of Digital Addressable Cable TV Systems.*

<sup>16</sup> Articulated by TRAI in *Consultation Paper on Issues relating to Broadcasting and Distribution of TV Channels, 2004*

Therefore, we submit that there is no need for TRAI to prescribe any basic service tier (“BST”) of FTA channels, and to mandate minimum number of FTA channels to be included therein. At the same time, competition will also ensure that the operators offer maximum number of channels they can, and as such there is no need for prescribing minimum number of channels.

**2. In the composition of BST, what should be the genre-wise (entertainment, information, education etc.) mix of channels? Should the mix of channels and/or the composition of BST be different for different states, cities, towns? If so, how should it be?**

We reiterate our view expressed under issue (1) hereinabove, and state that the existing regime *vis-a-vis* BST, as prescribed in the Tariff Order dated July 21, 2010, should continue, and as such there is no need for a BST. Having said that, we do agree with TRAI, to the extent, that the area of operation of a cable operator is localized and as such it would be in the interest of the consumers as well as the operators that the channels included in the BST are chosen to reflect the choice of the consumers.

Therefore, if TRAI decides to provide for BST in DAS areas (a position we do not support), it should let the composition of BST be driven by demand and local interest, allowing the MSOs to decide the composition of BST for area of operation. TRAI may also specify that the composition of a channels’ package, be it BST or any other, should be framed bearing in mind the general preference of the consumers of an area. Since the area of a cable operation is fairly localized, only the operator can best gauge the general preference of the consumers in its area.

**3. What should be the price of BST? Should this price be different for different states, cities, towns or areas of the country? If so, what should be the price and criteria for determination of the same?**

As submitted earlier, there is sufficient competition in the market, (800 channels, 6000 MSOs and around 60000 LCOs) to prevent an operator from charging perversely. We refer to our reply to issue (1) above and submit that instead of mandating a BST and fixing the price of BST, TRAI

should prescribe the a minimum monthly subscription for DAS areas, starting at Rs. 150/- per month, instead of currently applicable minimum monthly subscription not exceeding Rs. 150/- per month.

If TRAI decides to fix the price of BST (a position we do not support), then we are of the view that the price need not be different for different states, cities towns areas etc.

**4. What should be a-la-carte rate of channels that form part of BST? Should there be a linkage between a-la-carte rate of channels in the BST to the BST price or average price of a channel in the BST? If so, what should be the linkage and why?**

We reiterate that there is no need for BST in DTH and DAS platform. Currently, without a BST requirement, DTH platform is offering more consumer friendly entry level packages to its subscribers than, a BST ridden, CAS platform. We also reiterate our position on price regulation, and submit that there is no need for a price regulation, and prices at all levels for a-la-carte as well as bouquet offerings be left to market forces.

Thousands of cable operators operating in DAS areas or converting to DAS, as the notified dates<sup>17</sup> set in, together with other addressable platforms- DTH et al., will ensure sufficient competition, to control unfair pricing.

**Retail Tariff for the Digital Addressable Cable TV Systems**

**5. Should the retail tariff be determined by TRAI or left to the market forces? If it is to be determined by TRAI, how should it be determined?**

**(a) Should the a-la-carte channel price at the retail be linked to its wholesale price? If yes, what should be the relation between the two prices and the rationale for the same?**

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<sup>17</sup> Ref. Ministry of Information and Broadcasting *Notification dated November 11, 2011, pursuant to The Cable Television Network (Regulations) Act 1995*, as amended from time to time.

- (b) Should there be a common ceiling across all genres for the pay channels or different ceilings for different genres? What should be the ceilings in each case and the reasons thereof?
- (c) Should there be a common ceiling across all genres for the FTA channels or different ceilings for different genres? What should be the ceilings in each case and the reasons thereof?
- (d) Any other method you may like to suggest?

As would be clear from our introductory comments, we support forbearance at all levels. As submitted earlier, there now exists adequate competition, at all levels, to discourage perverse pricing. Therefore there is no need for TRAI to fix retail or wholesale tariff, for that matter, for example, there are:

- Multiple platforms- Analogue and then DAS, DTH, IPTV:
- 6000 MSOs
- 7 DTH operators and
- 60000 local cable operators
- More than 800 channels available, competing for inclusion in the limited suite of channels offered to consumers on various platforms;

TRAI also recognizes the positive role played by market forces in controlling the prices, in its 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”.<sup>18</sup>

We further refer to the Hon’ble Supreme Court’s decision in the case of *Ashoka Smokeless Coal India Pvt. Ltd. v. Union of India*<sup>19</sup> where the Apex Court observed “In a market governed by free economy where competition is the buzzword, producers may fix their

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<sup>18</sup> TRAI, *Consultation Paper on DTH Issues relating to Tariff Regulation and new issues under reference*, 2009

<sup>19</sup> (2007) 2 SCC 640

*own price. Prices are required to be fixed having regard to the market forces, demand and supply is a relevant factor as regards fixation of the price.”*

The currently applicable Tariff Order dated July 21, 2010 rightly prescribes forbearance at the retail level, and we are of the view that the same should continue i.e. the retail price of channels, in DAS areas, be left to the market forces.

TRAI itself admits, that the retail tariff in the DTH sector was left to forbearance, observing that the DTH retail tariffs prevailing in the market were quite competitive and the market forces appeared to be operating effectively.<sup>20</sup> This competition will become more active with DAS coming in; hence there is no need for the retail prices in DAS to be regulated.

### **Interconnection in the Digital Addressable Cable TV Systems**

#### **6. Does any of the existing clauses of the Interconnection Regulations require modifications? If so, please mention the same with appropriate reasoning?**

The interconnection regulation issued on December 10, 2004<sup>21</sup>, as amended from time to time (“Interconnection Regulations”), deals with various important aspects of interconnection, between different players of the distribution chain of broadcasting. It is therefore very important these regulations are abreast with market developments, and ready to address the issues currently faced by the Pay-TV industry.

We suggest that TRAI review the Interconnection Regulations as aforesaid, from the perspective of complete addressable digitalisation of existing analogue services, and consider the following suggestions:

#### **(i) Definitions:**

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<sup>20</sup> TRAI Consultation Paper on Issues related to Implementation of Digital Addressable Cable TV Systems

<sup>21</sup> TRAI The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

Definitions in Interconnect Regulations of the terms, “addressable systems”, “cable operator” and “free to air channel” need to be aligned with the definitions of these terms, as provided in the Cable TV Act<sup>22</sup>,

**(ii) Disconnection of Signals:**

- The incumbent regulation 4.3 requires issuance of public notice in newspapers, before disconnection of TV channel signals. The clause requires that one of the public notices should be taken out in local language in a national newspaper (in cases where the operator is operating in more than one district), when generally the local language newspapers are confined to a region and are seldom national newspapers. It is therefore suggested that TRAI should revise the current clause 4.3 to clarify, that for operators operating in more than one district, one notice is to be in local language in a local news paper, and the other in national language in a national news paper.
- Since there will be addressability and the kind of disputes, which resulted in deactivation should decrease rapidly, and going forward the disputes may largely be of such nature that may challenge addressability, we recommend that notice period under regulation 4.1 and 4.3 be reduced to from 21 to 7 days.
- In the event of piracy / breach of technical conditions, regarding addressable system i.e. subscriber management system (“SMS”), by the MSO/ LCO, the broadcaster should be free to switch off without any notice.

**(iii) Audits:**

- Effective and comprehensive auditing rights should be given to the broadcaster.
- Minimum of 2 audits of SMS, by the broadcasters independently, should be recommended in a year along with one surprise audit with minimal or no notice.
- Separate audit rights for ensuring compliance with anti-piracy measures.
- In case MSO has passed any of its obligations to the LCO in any form, then

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<sup>22</sup> The Cable Television (Networks) Regulation Act, 1995, as amended by The Cable Television (Networks) Regulation Amendment Act, 2011.

broadcaster shall have the right to audit the system and infrastructure of the LCO. I.e. Separate audit of LCOs by the broadcaster should be mandated. However, MSO should always remain liable for the actions of the LCOs.

**(iv) SMS & CAS:**

- SMS and CAS should be reversely integrated to avoid any difference in active subscriber numbers. . In the unlikely event that reverse integration is not possible due to technological constraints then, it should be obligatory for the CAS vendor to remove Operator's access to CAS. This is necessary so as to ensure that Operators do not resort in activating subscribers directly in CAS and the same not being reflected in SMS.
- Channels activation/ deactivation should be updated on SMS, besides the CAS.
- Mandatory submission of monthly SMS report to the broadcaster within 7 days of the end of each month.
- A detailed package wise and channel wise subscriber report containing, name, address, telephone no., e-mail address and the channels opted for by the subscriber should be submitted to the broadcaster along with the monthly SMS report. The said report and the monthly subscriber report to be certified by Chief Financial Officer or Chief Operating Officer or Director of MSO outfit.
- The aforesaid reports to be certified by the statutory auditors on bi-annual basis
- Operators should share with broadcasters, Log reports of CAS and SMS *inter-alia* showing activation and de-activation of channels and subscribers.

**(v) Anti Piracy Obligation & Fingerprinting:**

- Original finger printing of the channel, both overt and covert should be passed through to the end subscriber by the MSO's system.
- MSOs should have separate facility of frequent finger printing system & OSD messaging in their CAS system to combat piracy.

**(vi) Qualified Must Provide:**

Insert appropriate provisos to Clause 3.2 (Must Provide) of the Interconnect Regulations, to exclude operators (i) who have failed to switch over to digital addressable systems within the stipulated timelines, or (ii) who have not obtained registration in terms of the rules laid down in this regard or (iii) who have engaged in unauthorized retransmission or area transgressions or (iv) who have not disclosed their subscriber base or (vii) who seek signals for retransmission through non addressable digital set top boxes (v) who have not entered into written agreements or (vi) who have not otherwise complied with TRAI regulations

**(vii) CAS Areas:**

As per Notification dated November 11, 2011 issued by Ministry of Information and Broadcasting, date of compulsory digitization for 4 metro cities (i.e. Municipal Council of Greater Mumbai area, National Capital Territory of Delhi, Kolkata Metropolitan area, Chennai Metropolitan area) is June 30, 2012. Once the cable TV system in these 4 cities are all digitalised, there shall be no CAS area, and no CAS tariff will be required.

It is, therefore, required that TRAI, w.e.f. June 30, 2012, (i) withdraws the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006, dated 31<sup>st</sup> August 2006 and (ii) repeals amendments to the Interconnect Regulation dated 24<sup>th</sup> August 2006 concerning CAS areas.

**(viii) Register of Interconnect:**

The regulations for maintenance of the register of Interconnect Agreements<sup>23</sup> should be amended, to apply to agreements entered into between MSOs and LCOs, reflecting the commercial arrangement between them. As TRAI is responsible for protection of consumers interest at large<sup>24</sup>, it is imperative that the rates charged by MSOs/LCOs in their respective area of operations should also be reported to TRAI on a periodic basis<sup>25</sup>, which should then (for the benefit of the consumers) be published on TRAI website.

- 7. Should the subscription revenue share between the MSO and LCO be determined by TRAI or should it be left to the negotiations between the two?**
- 8. If it is to be prescribed by TRAI what should be the revenue share? Should it be same for BST and rest of the offerings?**

In the DAS regime, all the channels are to be carried in the digital and encrypted form which would be delivered through the MSO network, as against the CAS scenario where the FTA channels in form of BST are carried directly by the LCO network. In DAS, SMS would be maintained by the MSO, so the generation of consolidated bill to the consumer will also be by MSO. Thus, the revenue share, of subscription revenue, for MSO should be higher, proportionate to costs incurred by a MSO in carrying the channels on its network.

Since in the DAS areas, LCO will be a mere agent/dealer/franchisee of the MSO and it can be entitled to a commission in the range of 15 to 20 %, a trend prevailing in many other sectors. Nonetheless, the exact percentage of this revenue share can be left to market forces, i.e. to be mutually determined /agreed by and between concerned MSOs and LCOs..

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<sup>23</sup> TRAI, *The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004, as amended from time to time.*

<sup>24</sup> TRAI *Consultation Paper on Issues related to Implementation of Digital Addressable Cable TV Systems*

<sup>25</sup> Section 4A of The Cable TV Networks (Regulation) Act, 1995 makes it mandatory for a cable operator to provide such information relating to its cable services and networks, at such periodic intervals, as may be specified by TRAI from time to time.

Unlike CAS in DAS areas, mode of delivery for both pay channel and BST (should TRAI decide to provide for it, a position we do not support), are identical. Therefore, if TRAI prescribes a revenue share formula for division of subscription revenue between a MSO and a LCO, it can make it uniform for both pay channels and BST.

- 9. Should the 'must carry' provision be mandated for the MSOs, operating in the DAS areas?**
- 10. In case the 'must carry' is mandated, what qualifying conditions should be attached when a broadcaster seeks access to the MSO network under the provision of 'must carry'?**
- 11. In case the 'must carry' is mandated, what should be the manner in which an MSO should offer access of its network, for the carriage of TV channel, on nondiscriminatory terms to the broadcasters?**

It is commonly known that "must carry" is closely linked to the channel carrying capacity of the cable TV networks, which is why it was understandable for TRAI to not provide for "must carry" in analogue cable TV services due to capacity constraints.

However, with forthcoming digitization of all existing analogue cable TV systems, there shall be no bandwidth limitations, therefore, it is time for TRAI to provide for "must carry" regulation. It is feared that in the absence of a "must carry" regulation, the MSOs may create an artificial capacity constraint, by projecting a limited carrying capacity based network and then demand carriage fee.

Another progressive view to be considered is that assurance of carriage of channel, will encourage broadcasters to bring in more of niche channels, which in turn benefits the consumers, in terms of quality of programming.

Therefore, in line with our submission for a qualified “must provide” (ref. our response to issue (6) hereinabove), we submit that should be a qualified “must carry” provision, with the following qualifying conditions:

- (i) If a MSO takes a bouquet of channels from a broadcaster, then it must carry all channels of that bouquet. Rationale being, if a MSO wants to take advantage of the discount that comes with a bouquet, then it should not be allowed to drop and disadvantage any channel that forms of such bouquet.
- (ii) MSO should be made to “must carry” all channels relevant to the region it is operating in. To facilitate the foregoing, MSO should be given an option to not “must carry” regional channels which are not material for a particular region, i.e. only the channels relevant to a region should qualify for “must carry”. For example in the city of Lucknow, Uttar Pradesh (a predominately Hindi speaking city), MSO need not “must carry” a Tamil channel. Such exclusion will create sufficient capacity for an MSO to “must carry” all channels relevant to that region.

- 12. Should the carriage fee be regulated for the digital addressable cable TV systems in India? If yes, how should it be regulated?**
- 13. Should the quantum of carriage fee be linked to some parameters? If so what are these parameters and how can they be linked to the carriage fee?**
- 14. Can a cap be placed on the quantum of carriage fee? If so, how should the cap be fixed?**

Carriage fee is relevant in an analogue market, where there are capacity constraints and only a limited number of channels can be carried on a network, and a carriage fee provided broadcaster access to MSO’s capacity constrained network. Now in the upcoming digitization era, where there shall be no capacity constraints and where there shall be a “must carry” regulation, the concept of carriage fee shall become obsolete. With no capacity constraints, there shall no longer be a demand-supply mismatch.

Even TRAI has observed that an increase in capacity, through digitization, is the only sustainable way of addressing the carriage fee issue<sup>26</sup> *“With the implementation of DAS, the issue of capacity constraint as well as transparency in business transactions in the cable TV distribution systems, shall get addressed for all practical purposes, and the market dynamics with respect to the carriage fee is also likely to transform drastically thereby addressing the carriage fee related issues to a large extent.”*<sup>27</sup>

We are of the view that DAS being transparent, and without any capacity constraints, carriage fee should become irrelevant, and in any case requires no regulation, i.e. the quantum of carriage fee (if payable) should be market forces. Similarly, placement fee should also be left to market forces.

**15. Should TRAI prescribe a standard interconnection agreement between service providers on similar lines as that for notified CAS areas with conditions as applicable for DAS areas? If yes, why?**

Terms of interconnection for DAS areas are currently covered in the Interconnection Regulation, 2004<sup>28</sup>, which requires broadcasters to publish a reference interconnect offer (“RIO”) for DAS, and compulsorily include, in that RIO, terms and conditions provided in Schedule III thereto. This RIO contains the interconnection terms which form the basis of an interconnection agreement, unless parties arrive at mutually agreed terms, different from the RIO.

It is to be noted that the terms and conditions as provided in Schedule III<sup>29</sup> as aforesaid cover all critical and contentious aspects of an interconnection agreement, such as

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<sup>26</sup> Draft Tariff Order filed by TRAI with Supreme Court on July 21, 2010.

<sup>27</sup> TRAI Consultation Paper on Issues related to Implementation of Digital Addressable Cable TV Systems

<sup>28</sup> As amended by The Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulation, 2009

<sup>29</sup> TRAI The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004

“calculation of license fee”, “payment terms”, “subscriber reports”, “audit”, “anti-piracy” and “term of the agreement” and “termination” et.al.<sup>30</sup> We, therefore, do not see a need for TRAI to regulate or prescribe a standard interconnection agreement, on similar lines as that for notified CAS areas.

The above regime is also applicable to all other addressable platforms such as DTH and IPTV, and it is known to be working smoothly for all such other platforms. We are of the view, that TRAI should let status quo be, and continue with the aforesaid regime in DAS areas.

### **Quality of Service Standards for the Digital Addressable Cable TV System**

- 16. Do you agree with the norms proposed for the Quality of Service and redressal of consumer grievances for the digital addressable cable TV systems? In case of disagreement, please give your proposed norms along with detailed justifications.**
- 17. Please specify any other norms/parameters you may like to add with the requisite justifications and proposed benchmarks.**

TRAI has, pursuant to its function as provided under section 11(1)(b)(v) of the Telecom Regulatory Authority of India Act, 1997<sup>31</sup>, already issued Quality of Service (“QOS”) regulations for the cable TV services in the notified CAS areas in the year 2006, for DTH services in the year 2007 and for cable TV services in non-CAS/analogue areas in the year 2009 (“QOS Regulations”).

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<sup>30</sup> Ref. Annexure III of the Consultation Paper

<sup>31</sup> Section 11(1)(b)(v) provides: [TRAI to] “lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication services.”

The aforesaid QOS Regulations encompass major areas<sup>32</sup> concerning delivery of services, to consumers, by operators on various platforms. So far it was not a matter of grave concern that there were no QOS norms for DAS, because DAS as an addressable platform did not cover major cable TV market/area. However, in the wake of upcoming compulsory digitalization of all existing analogue services, the QOS Regulation currently applicable to non-CAS/analogue platform will no longer be relevant, and a QOS regulation for DAS shall be necessary.

Given that DAS is an addressable platform, alike DTH and CAS, we are of the view the existing DTH QOS and CAS QOS should be aligned and the combined QOS should be made applicable to all addressable systems (including DAS).

We are therefore, in agreement with the QOS norms proposed by TRAI in Annexure VI to the Consultation Paper, which is an apt combination of QOS Regulations for DTH and CAS areas.

To give desired effect to the QOS norms (proposed in Annexure VI of the Consultation Paper) in addition to inspection and audit of operator network, we suggest that TRAI in line with point (18) of Annexure VI<sup>33</sup>, require all operators of DAS areas to submit an annual compliance certificate, confirming that such operator's network is in conformity with all the applicable QOS regulations. This requirement will further increase operator's accountability *vis-a-vis* compliance with QOS norms.

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<sup>32</sup> a. Connection, disconnection, transfer and shifting of cable and satellite TV services.  
b. Complaint handling and redressal in respect of cable and satellite TV services.  
c. Billing Procedure and handling of billing related complaints.  
d. STB related issues and handling complaints thereof.  
e. Positioning of channels/taking the channel off-air etc.

<sup>33</sup>“18. **Monitoring of performance of quality of service standards:** -The Authority may, from time to time, issue directions, orders requiring service providers to furnish information in such form and at such intervals as may be required for the purpose of monitoring the performance of quality of service standards.”

Further, TRAI should also conduct random / surprise audits to check as to whether the Operators are ensuring compliance with technical and commercial QoS parameters or not.

- 18. Who should (MSO/LCO) be responsible for ensuring the standards of quality of service provided to the consumers with respect to connection, disconnection, transfer, shifting, handling of complaints relating to no signal, set top box, billing etc. and redressal of consumer grievances?**
- 19. Whether Billing to the subscribers should be done by LCO or should it be done by MSO? In either case, please elaborate how system would work.**

The upcoming addressable digitalisation will most affect the roles played by MSOs and LCOs in cable services' value chain. In the existing analogue Cable TV network, MSO's role is restricted to providing a bundled feed consisting of multiple channels to multiple LCOs. As a result, MSOs seldom interface with consumers.

LCO, upon receiving a feed from the MSO, retransmits it to subscribers/consumers in his area. In an analogue cable TV market, LCO is the local "cable guy" to whom, a consumer has immediate access for addressing issues such as connection/disconnection, shifting and transfer, billing etc.. Accordingly, in the existing analogue Cable TV networks, the obligation for aforesaid activities and billing at the consumer end, STB related issues etc are that of the LCO.

However, in DAS, the SMS, is an integral part of the cable TV system, storing all the subscriber records including *inter alia* information regarding invoicing/billing and payments of each subscriber for each billing period etc. This SMS is generally located in the premises of the MSO, where the headend has been setup.

Therefore, in DAS, all the responsibilities that are ascribed to a LCO in an analogue cable TV system, should now fall upon a MSO, which he may enforce either directly or through

its LCO. We are of the view that in DAS scenarios, MSO/LCO relationship should be that of a Principal and Agent, respectively i.e. LCO would be like a franchise of MSO.

In any event, the onus of compliance with the QOS regulations and other regulations, applicable to an operator in DAS areas, should singularly lie on the MSOs.

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

The pre-paid subscription model, currently in use in DTH sector, is running quite successfully. DAS like DTH is completely addressable and with increased usage of internet and telecommunication technologies, by consumers, for making on-line payment, it seems practical to introduce pre-paid subscription model (in addition to post paid subscription option) even in DAS areas.

**Miscellaneous Issues**

**Broadcasting of Advertisement free (ad-free) channels**

**21. Whether an ad-free channel is viable in the context of Indian television market? Please elaborate with appropriate reasoning.**

In so far as broadcasters are concerned, advertisements help in cross-subsidizing the content production and acquisition costs. Further, for consumers it is a great source of information about the products and services being advertised. Unlike other media, advertisements on TV channels help consumers to get a look and feel of the products and services being advertised inter-alia within the comforts of subscribers home.

Currently, one of the major concerns of a broadcaster, with an ad-free channel is that, is sole rely on the subscription revenue for recovery of costs, which is not a viable proposition given the exorbitant costs associated with broadcasting of a channel. Relying

solely on subscription becomes even more difficult in an analogue cable TV market, plagued by massive under-declaration of subscriber numbers.

With digitalization and the promise of transparency that comes with it, one can hope for subscription revenue to match the market size, thereby increasing the viability of an ad-free channel. This is of course possible once digitalization is effectively implemented across the country, and when that happens, an ad-free channel may become viable in the context of India television market, provided there is forbearance in tariff.

- 22. Should there be a separate prescription in respect of tariff for ad-free channels at both the wholesale and retail level?**
- 23. What should be the revenue sharing arrangement between the broadcasters and distributors in respect of ad-free channels?**

An ad-free channel is distinct from a regular channel, not only in term of viewing but also in terms of its business model. An ad-free channel's sole dependence on subscription revenue for recovery of costs, makes ad-free channels a tricky investment for a broadcaster.

TRAI has expressed its concern in the Consultation Paper about broadcasters being more focused on the 'advertiser friendly' genres. *"This is reflected by the presence of a large number of channels in established 'adfriendly' genres like General Entertainment Channels (GEC), vis-à-vis variety in niche genres like education, infotainment, knowledge etc. where the number of channels are significantly smaller. This eventually restricts the variety in the content, more so the niche content with specific target audiences, being made available to the consumers, although such content may generally have a very positive impact on the public mind space."*

Since TRAI recognizes that niche content with specific target audience may have a “very positive impact on the public mind space”<sup>34</sup>, it can facilitate the increase of the same by effective implementation of addressable digitalization (refer to comments to issues (21) above), and by allowing forbearance in pricing and revenue sharing (between and distributors) of such ad-free channels. This will make ad-free channels (with niche content) a viable proposition for broadcasters. As such, TRAI should not prescribe tariff for ad-free channels at wholesale and/or retail levels. Also, TRAI should not specify any revenue share arrangement in respect of ad-free channels. These should be left to market forces. In fact, TRAI should take steps to promote carriage of ad-free channels.

**24. What should be the provisions in the interconnection regulations in respect of ads free channels?**

As long as TRAI allows pricing and revenue sharing in ad-free channels to be left to market forces, the existing Interconnection Regulation can be extended to ad-free channels.

**Non addressable digital Set top boxes**

**25. In case you have any view or comment on the non-addressable STBs, you may please provide the same with details.**

It is commonly know that in some of the non-CAS areas, the cable operators having a digital headend are providing digital signals to consumers through non-addressable digital STBs, to take advantage of higher capacity of digital systems. These non- addressable digital STBs allow un-encrypted feeds to pass through.

As a broadcaster, we share TRAI’s apprehension that during the implementation phase, proliferation of non addressable digital boxes may increase in the areas not covered in

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<sup>34</sup> TRAI Consultation Paper 8/2011 on Issues related to Implementation of Digital Addressable Cable TV Systems

phase I<sup>35</sup> of implementation of addressable digitization<sup>36</sup>. It is also feared that these non-addressable digital STBs may pose a challenge of replacement/upgradation, when it is time for addressable digitization to take effect in these areas.

The Cable Television Network (Regulations) Act 1995 makes it mandatory for cable operators, on/and from the date of expiry of a period of three years from the date of establishment and publication of Indian Standards by the Bureau of Indian Standards ("BIS"), to not use any equipments in its cable Television networks unless such equipment conforms to the said Indian Standards. Also, Tariff Order dated July 21, 2010, applicable to DAS, clearly lays down that, a DAS operator has to make available STBs conforming to BIS standards.

Since BIS has so far issued standards for analogue set top boxes, digital addressable set top box (addressable) and digital STB for DTH which is also addressable. Non-addressable digital set top boxes have no certification from BIS.

It is therefore clear that since BIS does not have any standard for non-addressable STBs, providing such boxes would be in violation of the Cable TV Act and TRAI orders. And to prevent this mass violation, TRAI should emphasise upon use of (only) addressable digital STBs in DAS, even in areas enlisted for implementation of addressable digitalization in phases II, III and IV<sup>37</sup>.

Pending implementation of addressable digitalization in any area, if a MSO sets up a digital headend deploying digital addressable STBs in such an area (i.e. paying as per applicable regulations), while continuing with its analogue network, it should continue to pay the broadcaster for such analogue transmission.

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<sup>35</sup> Ref. Notification dated November 11, 2011, Ministry of Information and Broadcasting, pursuant to The Cable Television Network (Regulations) Act 1995, as amended from time to time.

<sup>36</sup> TRAI Consultation Paper 8/2011 on *Issues related to Implementation of Digital Addressable Cable TV Systems*

<sup>37</sup> Ref. Ministry of Information and Broadcasting, *Notification dated November 11, 2011, pursuant to The Cable Television Network (Regulations) Act 1995*, as amended from time to time.

## Reference point for wholesale price post DAS implementation

- 26. Would there be an impact on the wholesale channel rates after the sunset date i.e. 31st Dec 2014, when the non-addressable systems would cease to exist? If so, what would be the impact?**

The wholesale rate of channels for DAS is governed by the provisions of Tariff Order dated 21st July, 2010<sup>38</sup>. The said Tariff Order uses the rate of a pay channel for non-addressable system as a reference point, and provides that rate of a pay channel for DAS cannot be more than 42%<sup>39</sup> of the rates of the channel for non-addressable systems.

We submit that during the course of next three years as addressable digitalization gets implemented across the country, TRAI may let the said Tariff Order dated July 21, 2010, (subject to the orders that have been/ may be passed by Supreme Court in in the Civil Appeal Nos. 2847-2854 of 2011) continue; and post 31<sup>st</sup> December, 2014, once the reference point of non-addressable cable TV systems ceases to exist, the wholesale tariff of all the channels (existing on December 31, 2014 and introduced after the said date) should be left to the market forces.

In its consultation paper (No. 5/2010)<sup>40</sup>, TRAI had articulated, that *Regulators view themselves as 'enablers' who support the market indirectly by encouraging effective competition. However if the market does not meet the conditions of effective competition then regulators have stepped in directly to protect the interests of the consumers. Such direct interventions act as "stop-gap or short term solutions" that control the market till it corrects itself and is mature enough to self-regulate.*

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<sup>38</sup> *ibid.*

<sup>39</sup> Increased from 35%, (the rate as per the Tariff Order dated July 21, 2010) to 42 %, by the Supreme Court of India interim order dated 18th April, 2011 in the Civil Appeal Nos. 2847-2854 of 2011

<sup>40</sup> TRAI Consultation Paper on Tariff Issues related to Cable TV Services in Non-CAS Areas

As submitted before, Indian Pay-TV industry is now effectively competitive, and is sufficiently mature to self-regulate<sup>41</sup>. It is time for TRAI to also recognize the foregoing, and withdraw these short-term pricing solution/interventions and let there be forbearance.

We refer to this analysis of 11 international markets<sup>42</sup> conducted by the TRAI as part of its international bench marking exercise<sup>43</sup>, which revealed that guiding principle for regulators of all these 11 jurisdictions is to promote growth through effective competition. It is interesting to note here one common element in all these markets, is, forbearance in wholesale tariff of channels. It can, therefore, be inferred that regulating tariff is not necessary for promoting of growth of an industry, in fact (as submitted earlier), unnecessary regulatory constraints only reduce the level of economic activity.

We reiterate that there is active competition at all levels of the Pay-TV industry, to discourage perverse pricing. In the coming three years, with complete penetration of digital addressability, the competition will further increase, translating into further price efficient services for consumers. Therefore, with the sunset date of December 31, 2014<sup>44</sup>, TRAI should set the sun on these tariff regulations, allowing the tariffs to be determined by market forces.

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

**i. Implementation of Addressable Digitalization:**

The Central Government, by enacting the law providing for addressable digitalization of existing analogue services, has taken a gigantic step towards

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<sup>41</sup> Ref. introductory comments

<sup>42</sup> United States, United Kingdom, Germany, France, Canada, Australia, Korea, Singapore, Taiwan, South Africa and Brazil.

<sup>43</sup> TRAI Consultation Paper 5/2010, *Tariff Issues related to Cable TV Services in Non-CAS Areas*

<sup>44</sup> Ref. Ministry of Information and Broadcasting, *Notification dated November 11, 2011, pursuant to The Cable Television Network (Regulations) Act 1995*, as amended from time to time

technological advancement of the Pay-TV industry. This law, if enforced in letter and spirit, will revolutionize the whole Pay-TV industry, taking it to even greater heights. Given the quantum of development this law will bring about, it is important that the TRAI undertakes necessary measures to implement it, and take it to its desired effect.

We would like to make the following suggestions for implementation of addressable digitalisation:

- TRAI to spread awareness about the forthcoming addressable digitalisation, *inter alia*, issue communications explaining the benefits of digitization to all stakeholders including cable operators and consumers.
- TRAI to clearly lay down action points for each stakeholder group to comply with, to ensure analogue switch-off, in line with the dates notified<sup>45</sup>.
- Most importantly, Government to enforce section 11 of The Cable Television (Networks) Regulation Act, 1995, and seize the equipment being used by a cable operator not complying with digitisation dates.

ii. **Piracy:**

In order to make TV viewing an even better experience, Broadcasters incur enormous costs and expense to put together the best of content for viewers. Be it sports or news or general entertainment, acquiring and producing any sort of content now attracts exorbitant costs. One of the major sources of revenue which helps broadcasters recover this cost is, subscription, but by piracy of a channel's signals, pirating operators not only violate the intellectual property rights of the broadcasters, but also steal from the broadcasters their rightful revenue. Be it analogue networks or addressable digital, piracy is a menace, plaguing the Pay-TV

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<sup>45</sup> Ref. Ministry of Information and Broadcasting, *Notification dated November 11, 2011, pursuant to The Cable Television Network (Regulations) Act 1995*, as amended from time to time

industry, hurting not only the broadcasters, but also causing substantial loss to Government revenues.

As the regulator of the Pay-TV industry, TRAI is urged to play a pro-active role in curbing piracy, vide stringent regulations and effective enforcement of the same.

In terms of regulations, we submit that TRAI make suitable amendments in the existing regime providing for regulations enabling TRAI to take action against pirating operators *suo motto* or upon receipt of complaint from a broadcaster.

With respect to enforcement of these regulations, Regulator needs to set up the requisite infrastructure across the country i.e. be personnel, offices etc., so as to take cognizance of acts of piracy and take necessary action against pirating MSOs. Regulator may also consider setting up an Addressable Digitalisation Anti Piracy Cell, a unit only for dealing with cases of piracy in DAS areas.

We submit that TRAI should also recommend to the Central Government, that a MSO's registration to operate in DAS area (as per section 4 of The Cable Television (Networks) Regulation Act, 1995<sup>46</sup>), should include a stipulation regarding piracy-providing that indulgence in piracy of a TV channel, should render:

- (a) MSO's registration liable for cancellation and/or
- (b) MSO's equipment liable for seizure.
- (c) MSO's liable for damages, compensation and penalty payable to broadcasters.
- (d) MSO's liable for hefty fine to the licensor as is the case in case of telecom operators.

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<sup>46</sup> As amended by *The Cable Television (Networks) Regulation Amendment Act, 2011*.