

Cable Operators Federation of India

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Without Prejudice
(By Mail/ speed post)

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14 December 2014

The Chairman
Telecom Regulatory Authority of India
New Delhi-110002

Kind Attention: Mr. Wasi Ahmad, Advisor (B&CS)
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**Sub: Comments on TRAI consultation on Draft
Telecommunication (Broadcasting and Cable) Services
(Seventh) (Non-Addressable Systems) Tariff Order, 2014**

Sir,

Reference your consultation on Draft Tariff Order for Non-Addressable Systems.

At the outset we appreciate TRAI for taking this step to regulate the Tariff in Non-Addressable Markets and make it as affordable to consumers as possible.

However, we wish to submit that whatever the Ministry or TRAI may think and give statements in the media about the success of digitisation, it has been a failure so far, as even after three years, **no benefits to consumers are visible**. No broadcaster has dared to make a programme, public debate or discussion on the subject involving consumers. Fearing backlash from consumers, even the last government

had strictly prohibited the print media to report any unfavourable reactions to the mandatory implementation. We have been mentioning since the beginning that two years time is not at all adequate to bring such a large scale change affecting 120 million households where 70% are from poor or lower income groups. Also, TRAI knew very well that STBs are not manufactured in India and we cannot depend on international suppliers in a given time frame. Also, there is no check on quality of imported STBs or even quality of service. Everything is on papers and both TRAI and MIB think everything has gone according to their plan. What we have achieved is **further increase in monopoly of one or two players who already enjoyed vertical monopoly even before the implementation started and TRAI has already given recommendation against these monopolies.**

Phase I and II are over according to government and now deadlines for Phase III and IV have been extended because the new government thinks that STB must be indigenously manufactured. Neither TRAI nor MIB is thinking of the poor consumers and are not even talking of introspecting what has gone wrong till now and how can that be rectified.

Consumers are not even aware what is FTA, Pay channel, a-la-carte, bouquets, basic package etc. They still get channels full of disturbing advertisements, poor signals, poor quality STBs with no repair or replacement facility, no interoperability, non-availability of STBs in open market. They are being charged activation fee, inspite of TRAI declaring it illegal.

TRAI has drafted this Tariff Order for the Non-DAS areas that cover more than 70% of the market. Majority of the population is in villages and semi-urban areas where cable operators are operating very small networks, providing only a few channels (20-50). Only in towns, there may be some MSOs extending their services with 80-100 channels. There is also not much demand of so called 'Pay' channels as cultural values and languages are very different in these regions. Thus, it is very important to keep in mind that apart from aspect of affordability of the cable TV services to these subscribers, TRAI must make them aware of the 'Pay' Channels and the new digital system including the concept of a-la-carte system so that they are ready for the digital cable in an year or

two. We should not forget that mere Advertising in a few 'Pay' channels in a threatening language by broadcasters does not change the whole system. Considering the vastness of the country, lack of communication infrastructure and access to internet, it will take years before all people adopt the new change.

In view of the above, we have the following comments to make: -

1. **Extention of DAS must be utilized to better organize the industry.** It is good that the government has extended the deadline for Phase III and IV. Extended time will enable the Phase-III & IV markets to get matured in an organised way, so that consumers get used to pay channels before they are forced with pay channel bouquets through DAS, like it happened in the Phase I and II where even after three years consumers are not getting their choice nor are they getting computerized bills with details.
2. **Pay broadcasters must not be permitted to encroach upon the domain of Local Video Channels.** Pay channels are trying to encroach upon the viewership of cable operators run video channels that have been their means to earn livelihood for the last 25 years or more, making their subscribers stick to them. Pay channels came illegally, much later through the backdoor route of FTA channels. These channels came to India as FTA channels and then started forcing cable operators to pay, stating that they have turned pay channels overnight, knowing well that there was no addressability for distributing pay channels like it existed in other parts of the world.
3. **Quality of Service standards should be mandated for Broadcasters too.** TRAI has not drafted any QoS regulations for the broadcasters. They are compressing their channels to fit more in the same bandwidth to make more money compromising the quality to consumers. Same is the case of advertisement duration which broadcasters have challenged in the courts, refusing to accept that, knowing well that it is against consumer interest. Sound level of Advts, frequent repeats of the same programme, Dubbing in different languages and breaking up the same channel into two or more with different names just to increase their market domination.

4. WHOLESALE TARIFF

a) **Broadcasters to specify rates for channels and bouquets within specified ceilings**

Rates given in the three slabs in Tariff Order lead to an average price of a 'Pay' channel as about Rs. 5/-, same as was worked out for CAS. Whereas this is reasonable and consistent with CAS regime price that has been accepted by all without much problem, how will TRAI ensure this price as Pay channel costs in DAS areas average at about Rs 15, three times more than the rates in slabs made by TRAI? Sports channels costing between Rs 30-50 are out of reach of these 100 million households in that case.

b) **TRAI has recently allowed pay channel prices to increase by 27.5%** from 01 January 2015. TRAI has to clarify if the given slab rates already account for this increase or Broadcasters will still increase the price from next month onwards.

c) **No market force working.** Since there is no market force working in cable TV industry and Regulations have given all powers to the 'Pay' Broadcasters, they tend to dominate the market in every way. Because of them even HITS is struggling. There is no IPTV in the country. There is no competition as only survivors in the present scenario are 'Pay' Broadcasters, their DTH and MSO networks. Subscribers are not left with any choice for an affordable entertainment. Either subscriber takes the cable connection or DTH. Both these markets are dominated by the 'Pay' Broadcasters.

d) **A-la-carte offering of channels at the wholesale level.** TRAI so far, did everything to help the 'Pay' broadcasters **by equating FTA channels to 'Pay' channels forcing their encryption in DAS areas** and denying millions of subscribers easy access to these free to air channels that include even Doordarshan Channels. Pay broadcasters, by forcing their bouquets on consumers have denied easy access to stand alone FTA channels. Doordarshan is analogue and next to non-existent. Free Dish DTH

of Prasar Bharti has somehow, not grown in the last five years to be competitive enough in the market dominated by Pay Broadcasters.

TRAI should direct Pay broadcasters to give their channels in a-la-carte mode at extremely low rates to consumers so that consumers get used to the new system of pay channels and their content. Low pay channel rates will also encourage all FTA cable TV networks to show a few pay channels in the network.

In the mean time, TRAI should endeavour to provide all the benefits of DAS to consumers in DAS notified areas as it has listed in its submission to the Supreme Court so that it can justify mandatory digitization and also consumers in Non-DAS areas consider these advantages as incentives and willingly adopt DAS and pay channels. Thus, there is no need for the regulator to force consumers to subscribe to pay channels. It should be purely on the need basis.

Pay channels should not be allowed to be distributed in bouquets in non-DAS areas. Only a-la-carte distribution should be permitted. Bouquet distribution leads to arm-twisting as has been the modus operandi of pay channels in absence of addressability to increase their viewership and earn more Ad revenue. It also helps them to expand their monopolies through their DTH & MSO operations as TRAI has observed while recommending regulations to curb monopolies and market domination. It will also permit thousands of LCOs to retain their small business.

- e) **Some formula for subscriber numbers viewing pay channels must be worked out for non-DAS areas so that broadcasters do not blackmail cable operators accusing them of under-reporting.** Many Broadcasters and MSOs are forcing LCOs to pay for all pay channels available in the network, irrespective of whether all subscribers in LCO network watch them or not. **The toughest task in the industry is of collecting**

subscriptions from consumers who do not watch all pay channels delivered to them. Also every pay channel does not have the same viewership. TRAI must find a way for reasonable negotiations without using coercive methods by MSOs or broadcasters to avoid disputes.

- f) **Billing to Consumers** Cannot be sorted out till the issue of Revenue share, availability of Pay channels in bouquet or a-la-carte, sudden withdrawal of channels by MSO etc. is not resolved. This can be done only when both MSO and LCO have a mutually exclusive playing field. Only in such a situation, MSO and LCO will become business partners and not competitors as provided in the existing regulations where MSO can also be a last mile operator in his own area.

TRAI has stated in its explanatory memorandum that pricing mechanism at the wholesale level should be efficient and dynamic enough to mirror the complex nature of the broadcasting industry. As TRAI has noted, till date a differentiated mechanism is being followed by cable operators in non-DAS areas.

ARPU in these areas is only about Rs 150/- and broadcasters do not want to reveal the costing of channels on which their a-la-carte and bouquet prices are based. They have not even reported their ad revenues and revenue from the same content dubbed in different languages and its exploitation in international market. They also do not want TRAI to impose any cap on Ad duration. So, only data left with TRAI to work out the Tariff is-

- a) Cost of distribution in a cable network and
- b) ARPU

Cost of distribution can be worked out taking average 60 channels in a network of 500 connections. TRAI can work out the minimum share of the LCO from this data to ensure survival of his business. Deducting this from the ARPU will give the share of an MSO and Broadcasters. This can be applied till the country is fully digitised.

Broadcasters should accept this happily as they already have the TAM cities digitised, giving them the exact viewership, transparency and more than their due of subscription and Ad revenue as neither a-la-carte has been effective nor ad cap has been implemented enabling them to make as much money as they want.

5. RETAIL TARIFF

a) Charges payable by ordinary cable subscriber to cable operator or multi system operator.

Considering that ARPU in cable TV industry is not more than Rs 165/-, slab system as given in Tariff Order is meeting the requirements of the non-DAS areas. As stated above, no increase should be permitted for the next one year.

b) There should be a clear demarcation between FTA and Free to Air channels. Broadcasters were not even registered in India at the time pay channels were introduced and neither did they approach the government to bring addressability. They didn't even accept addressability for their pay channels when it was introduced in 2003 because, they knew consumers in India will not pay high cost they were demanding and will outright reject them, the way Chennai consumers did after CAS was implemented. So the easiest method they found to exploit the market was to arm-twist cable operators.

TRAI should now endeavour to make Indian subscribers understand the meaning of pay channels and get them used to paying for them only if they watch them. Since analogue networks do not have the addressability, **LCOs should be allowed to take only a few selected pay channels as demanded by their subscribers and that fit the pockets of the subscribers.**

c) **TRAI needs to come out with a fresh regulation for the handling of non-paying subscribers, penalties for defaulting subscribers, business protection policy of cable**

operators suffering out of public grievances risen because of malfunctioning of MSO's system etc.

6. **REVENUE SHARE BETWEEN MSO AND CABLE OPERATOR**

TRAI cannot delink revenue share from the minimum operational cost borne by the cable operators from subscription rates. Average connections in these areas, as stated by TRAI in its submission to the Supreme Court range from less than 100 to 500. It should workout the subscription rates accordingly and **ensure that revenue share of the LCO can enable him to survive his business.**

TRAI has not tried to **evolve a Business Model** for a stable operation between MSO & LCO in the process of restructuring the cable TV industry in a manner that no one feels threatened and there is a hope for future growth for both. At present the LCO feels that his investment and hardwork is not secured and his registration in post office and in MIB could be revoked on petty reasons. Providing a secured business environment is essential, atleast for the next five years, to let peaceful business consolidation takes place rather than hostile take-overs.

7. **Tariff for offering of cable TV services using addressable systems in the areas where the cut-off dates notified by the Central Government for DAS implementation are not yet over**

TRAI's recommendations on the subject are acceptable. Any cable operator installing a digital headend in Non-DAS areas voluntarily, must be given full help and protection by TRAI and MIB in getting the registration and the content without any hassle. Operators have faced many problems in Phase-I and II, causing disappointments, resulting in a very few registrations compared to the number of cable operators and independent MSOs present in DAS cities. **TRAI should also recommend to MIB to extend the date of Registration for Phase III from 21 December by at least six more months.**

8. **Reporting Requirement**

Although many reporting requirements are mandated but stake holders seldom do that. TRAI must have a strong monitoring system to ensure correct reports are made and strict action should be taken

against any violations. Also frequent changes of converting FTA channels to 'Pay' and vice-versa should not be permitted.

9. **TRAI should avoid long drawn litigations challenging its Regulations.** Every regulation is in the courts; mostly it is the broadcasters who are challenging various regulations including the 12 minutes ad cap, a law being flouted by the broadcasters against the public interest since many years.

Our past experience has shown TRAI does not have any mechanism to ensure implementation of its regulations at the grass-root level, **particularly where violating company is a large corporate, who can take the regulator to court, employ many senior experienced lawyers including ex-Law Ministers and ex- I&B Ministers to defend itself and take a stay on TRAI's action, delay the proceedings of the case to no length while continuing to violate the regulations.**

Quality of Service Regulations (12 of 2012) of 14 May 2012 along with Tariff (3 of 2012) and Interconnect Regulations (9 of 2012) dt. 30 Apr 2012, have also been challenged in the **Madhya Pradesh High Court**, Bombay High Court, Gujarat High Court and **Supreme Court** by LCOs as they infringe upon their fundamental rights of doing business **because they have put the control of LCO's business in the hands of MSOs spoiling the business model of LCOs/ LMOs.**

TRAI must do its best to let the courts decide fast on these matters otherwise by the time these regulations are implemented, scenario will change needing new regulations, like the present one. **This period of lawlessness in the Industry has given boost to large media groups to monopolise the markets with their money power and political clout creating a chaotic situation on the ground like in Phase I and II areas.**

10. **State Level Monitoring Committees**

Every state must have a monitoring committee or a task force comprising of representatives of all stake holders and state

departments to see the regulations are followed by all and facilitate MSOs and operators in getting Right of Way (RoW) and resolve other local issues.

Yours Faithfully,

Roop Sharma,
President
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