ESPN STAR SPORTS

(By Hand)

January 23, 2009

Submissions of ESPN Software India Private Limited ("ESIPL") to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper No. 15/2008 dated December 15, 2008 Interconnection Issues relating to Broadcasting and Cable Services ("Consultation Paper")

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

We welcome the initiative taken by the Hon'ble Authority in releasing the Consultation Paper and seeking views of the stakeholders on issues addressed therein. However, given the importance of the issues, it is necessary for the Hon'ble Authority to follow a transparent process and carry out a full review of the relevant markets and the impact of any proposed changes on the various markets comprising the Indian pay television ("Pay-TV") industry and, most importantly, on consumers. In the absence of a comprehensive review, we apprehend that the Hon'ble Authority could significantly harm the "Pay-TV" industry.

The Pay-TV industry has shown considerable growth over several years as a result of increasing consumption. In 2002, 40 million households

ESPN Software India Pvt. Ltd. Regd.Office : F-40, South Extn., Part-I, New Delhi-110049
Head Office : 7th Floor, Tower C, Infinity Towers, DLF Phase 2, Gurgaon - 122002 India Tel: +91-124-4147777-87 Fax: +91-124-4147788
espnstar.com

subscribed to pay television.[1] By 2006, that figure had increased to 71 million,[2] and by the end of 2007 to 82 million.[3]

The Pay-TV industry is diversifying with the development and roll-out of new delivery platforms such as Direct To Home (DTH), Internet Protocol Television (IPTV) and mobile television. The Hon'ble Authority has noted in its Consultation Paper that the competition between DTH operators and non-CAS cable operators is already stimulating the roll-out of voluntary CAS in non-CAS areas.

However, despite the size of the Pay-TV industry, it performs comparatively poorly in terms of digitization and investment. In a CASBAA survey of 14 jurisdictions in Asia as well as the two "benchmark" jurisdictions of the United Kingdom and the United States of America, India ranked towards the top for pay television penetration and revenue as proportion of GDP but lagged in last or second-last position in terms of programming investment and infrastructure and technology investment. CASBAA's cross-jurisdictional study concluded that there was a direct link between investment and a market-focused regulatory environment.[4]

The link between regulation and investment may also be seen in the United States of America. In the 1980s and again in the 1990s, deregulation of the sector was followed by more infrastructure investment, higher quality of service, more subscribers and new programming. When regulation was increased, there was a corresponding decrease in infrastructure and programming investment.

---

[1] CASBAA, *The Power of Pay TV 2007*, 36

[2] CASBAA, *The Power of Pay TV 2007*, 36; see also Telecom Regulatory Authority of India *Annual Report 2006-2007*

[3] Media Partners Asia, *Asia Pacific Pay-TV & Broadband Markets 2008* at 274.

[4] CASBAA, *Regulating for Growth: A Regulatory Regime Index for Asia Pacific Multichannel Television 2008* at 67-68

The Hon'ble Authority recognizes that, at present, it heavily regulates the Pay-TV industry. It has stated in its Consultation Paper that its vision is "to promote addressability on all TV channel distribution platforms so that as competition increases and the consumer has multiple choices, the tariff and other regulations can be softened." Elsewhere it has regarded price regulation in particular as being an interim measure.[5]

Further, the Hon'ble Authority has said in its Consultation Paper that its guiding principles for regulating the broadcasting sector are:

"i) To promote digital transmission;
ii) Restructuring of the sector so as to encourage investment for financial viability and technological upgradation;
iii) Quality service at an affordable price to the consumer; and
iv) To enhance competition."

We respectfully submit that the level of regulation is presently too high and is hindering the achievement of the very objectives that regulation is intended to achieve. In particular, the extremely low tariffs make it difficult for industry participants to invest in quality programming, digitization and infrastructure. Without investment, the industry will not be able to keep pace with technological developments, to the detriment of consumers.

By setting prices so low, it is also difficult for new entrants to compete by offering better value propositions for consumers. At the same time, high-quality and niche content is priced out, so new entrants can't compete by offering a different content proposition to consumers. Consumers will have less choice as a result.

[5] See for example, TRAI recommendations on broadcasting and cable services dated 1 October 2004 at 5.

Further, the setting of prices in the Pay-TV sector does not adequately take into account the rate of growth in India's economy, the rapidly escalating costs of sourcing content and the diversity of cost structures for Indian broadcasters.

For all of these reasons, we do not support price regulation of the sector, particularly price regulation which has been described as being amongst "the most restrictive in the world".[6]

Consumer choice is further reduced if broadcasters are required to offer channels on an a-la-carte basis. Launching a channel is expensive, involving a significant up-front investment in programming and production costs. Without the ability to secure wide distribution (and therefore, exposure) as part of a bouquet of channels, the risks in launching a new channel are increased. Similarly, existing channels are discouraged from continuing to invest in costly programming in the absence of wide distribution through a bouquet arrangement and the economies of scale offered by bundling. This is particularly the case for channels with niche, innovative or premium content.

A requirement to offer channels on an a-la-carte basis also affects the economics of broadcasting in other ways: the decrease in audience reach affects advertising revenue (by far the most important revenue stream for broadcasters in India), which in turn affects the ability of a channel to re-invest in programming and stay in business. To counter any drop in advertising revenue, the channel would have to lift its subscription fee charges to the cable operator or fail. With pricing so tightly controlled by regulation, the channel's options become very limited.

---

[6] CASBAA, *Regulating for Growth: A Regulatory Regime Index for Asia Pacific Multichannel Television 2008* at 31.

Further, heavy regulation is likely to distort market uptake (or otherwise) of new technologies. As the Hon'ble Authority has noted, although a primary objective of 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."[7]

Intervention in a nascent market creates disruption. The potential for damage is greater when it is applied to an industry with fast technological change, such as IPTV, Mobile TV and HITS. Intervention now, during the early developmental stages of these technologies, will have unforeseen long term implications. Accordingly, many regulators apply a less stringent approach to new technologies – see for example IPTV in Singapore and Korea and mobile TV in Hong Kong.

To demonstrate the impact of regulation on the uptake of new technologies we give the examples of conditional address systems (CAS) and direct to home (DTH) systems. CAS was mandated by the government and is tightly controlled in terms of pricing and packaging. As at the end of 2007, there were around 800,000 CAS subscribers. By comparison, DTH operators are minimally regulated and yet subscriber numbers reached 3,200,000 at the end of 2007, after only two years.[8] Such data provides a compelling argument for deregulation.

We humbly submit that the existing high level of regulation is typical of sectors involving essential services such as energy utilities or industries where there is little effective competition, for example, when there are one or two players with substantial market power. We humbly submit

---

[7] Telecom Regulatory Authority of India, *Consultation Paper on Issues relating to Broadcasting and Distribution of TV Channels*, 2004

[8] Media Partners Asia, *Asia Pacific Pay-TV & Broadband Markets 2008* at 284

that pay television is not an essential service requiring rigorous regulation and that such regulation is unjustified in comparison with other sectors and given the competition already existing in the Pay-TV industry.

There is no other entertainment or media sector in India which is subject to such stringent controls, particularly in relation to price. It is also inconsistent with international practice in relation to the pay television sector: the Hon'ble Authority has itself noted that "[g]lobally, where pay channels and pay tiers have been offered, they are generally not capped or regulated".[9] It is also an anomaly when compared with other sectors (other than essential services) within India, such as fast moving consumer goods, automobiles and consumer durables.

Within the Pay-TV industry itself, and as the Hon'ble Authority would be aware, there are: [10]

- 350 channels, with more coming online each month, competing for inclusion in the limited suite of channels offered to consumers by cable operators;
- 10 multi-system operators including Hathway, Digital Entertainment Network, Digicable, You Telecom, In Cable and WWIL;
- Around 25,000 local cable operators;
- Six DTH operators either already in operation or about to launch;
- A range of delivery systems including analog cable, digital cable and DTH, with new platforms entering the market (HITS and IPTV being two examples); and
- A transparent system for measuring viewership (TAM), facilitating a highly competitive advertising market.

[9] TRAI, recommendations on Broadcasting & Cable Services 1 October 2004 at 66.
[10] Media Partners Asia, *Asia Pacific Pay-TV & Broadband Markets 2008* at 275-280.

Externally, competitive pressure is also exerted by other content platforms such as free to air television and the Internet (as opposed to IPTV, a pay television platform). Accordingly, we humbly submit that the TRAI should review its position that there is a lack of effective competition in the Pay-TV industry.

The high level of regulation in the Pay-TV industry may be contrasted with the successful deregulation of telecommunication services in India and with the approach of industry regulators in other jurisdictions. For example, the regulatory principles published by the relevant regulator in the United Kingdom, Ofcom, include a bias against intervention and a preference for the least intrusive regulatory mechanisms to achieve policy objectives. In such jurisdictions, there is little regulation of pricing and packaging as market forces and competition law are regarded as sufficient to prevent perverse pricing and other conditions.

In the United States of America, deregulation has been accompanied by increased pay television penetration and, driven by a proliferation of programming choices, total pay television ratings now outperform those of free-to-air broadcasters. Market forces have maintained subscription costs at a reasonable level compared to other forms of entertainment.

In addition, a large part of Pay-TV industry regulation is based on the telecom industry notion of "interconnection". In the telecom industry, the existence of "network effects" (a situation where the value of service increases with the size of the network) means that it sometimes necessary to require competing operators to give access to each other's networks in order to ensure the relevant market remains competitive. However, in the broadcasting industry, such "network effects" are not present and there is no "interconnection" in the telecom sense. We are

not aware of any other regulator around the world which applies the notion of "interconnection" to the pay television sector.

The Pay-TV industry does not have the issue of "network" access as in the telecom industry. Unlike telecoms, it is in broadcasters' interests to supply their content to as many distributors as possible in order to maximize revenue. There is also an abundant supply of content. The relationships between broadcasters and operators are not "interconnection" relationships and should not be regulated as if they were.

It would be clear from the above discussion that we are of the view that regulation should be decreased, not increased. We respectfully submit that the Pay-TV industry be deregulated, as a TRAI official foreshadowed at a meeting of industry representatives in March 2008.[11] We support the Hon'ble Authority conducting a transparent and comprehensive review of the sector, including a consideration of international best practice, to determine the necessary reforms.

We believe that, should the Hon'ble Authority conduct a thorough review of the impact on the relevant markets and consumers, something which it is obliged to do for the sake of all stakeholders before adopting any of the proposed regulatory changes, the Hon'ble Authority would find the dramatically increased regulatory burden proposed in the consultation paper to be detrimental for the industry and consumers alike.

We agree with the Hon'ble Authority's vision of more competition and less regulation. Whether or not the Authority conducts a review as we have proposed above, we suggest that the Authority at the very least consider

[11] CASBAA media release, "New horizons, new opportunities for India's satellite & cable markets", 25 March 2008

the Pay-TV industry trends over recent years and set a date in a few years by which time the current regulatory framework will cease. Such a "sunset" provision will encourage Pay-TV industry participants to plan for and invest in the future of pay television in India.

Below are our responses to the specific questions raised in the Consultation Paper.

6.2 Interconnection for Addressable Platform

6.2.1 Whether the Interconnection Regulation should make it mandatory for the broadcasters to publish Reference Interconnect Offers (RIOs) for all addressable systems, and whether such RIOs should be same for all addressable systems or whether a broadcaster should be permitted to offer different RIOs for different platforms?

6.2.2 Is there any other methodology which will ensure availability of content to all addressable platforms on non-discriminatory basis?

As arrangements between broadcasters and distributors are not "interconnection agreements" as such, we submit that broadcasters should not be required to enter into Reference Interconnect Agreements or publish Reference Interconnect Offers.

If the Hon'ble Authority were to continue to require broadcasters to publish Reference Interconnect Offers (a position we do not support), we submit that any such requirement should not be extended to apply to all addressable systems. To require the publication of Reference Interconnect Offers for all addressable

systems would limit broadcasters' and distributors' ability to deal flexibly with emerging technologies.

Even if the Hon'ble Authority were to require broadcasters to publish Reference Interconnect Offers in respect of all addressable systems (a position we do not support), we submit that the terms of such offers cannot be the same across all addressable systems. Addressable systems vary in respect of:

- Content suitable for the particular delivery platform;
- Formatting and other technical requirements for both the content and the delivery platform;
- Security requirements;
- Scope of distribution;
- Costs incurred by broadcaster and distributor; and
- Distributor's commercial model.

In addition, such a requirement would wholly frustrate the contracting process between a broadcaster and a distributor.

In the Consultation Paper, TRAI states it is important for addressable platforms to be able to "acquire content at competitive terms and there is a reasonable degree of level playing field among different addressable platforms". However, in the heavily regulated Pay-TV industry no party is able to transact on "competitive terms". We humbly submit that deregulation is required in order for this to occur.

The concerns of TRAI in this area are already addressed by clause 3 of the *Telecommunications (Broadcasting and Cable Services) Interconnection Regulations, 2004* which set out the principle of

non-discrimination. In addition, competition legislation including Part A of Chapter V of the *Monopolies and Restrictive Trade Practices Act, 1969* and the soon to be effective *Competition Act, 2002* will, provide a legislative remedy against agreements with any "appreciable adverse effect" on competition in India.

We understand from the Consultation Paper, that "[t]he HITS permission holder and one major IPTV service provider have already informed the Authority about difficulties being faced by these addressable platforms in getting content from broadcasters". We most humbly submit that TRAI should not consider such self-serving statements of industry participants, but rather should itself define the relevant markets and investigate the impact of the proposed regulation on the various participants in those markets.

Although TRAI states that it wants to help develop new technologies, by making the same content available on all platforms on the same terms, to do so would mean that operators can't differentiate their service and, as a result, there would be no compelling reason for consumers to adopt new technologies.

This will reduce competition and discourage investment and development of new technologies. In the long term, consumers will be adversely impacted and will not receive a quality service at an affordable price.

6.2.3 What should be the minimum specifications/ conditions that any TV channel distribution system must satisfy to be able to get signals on terms at par with other addressable platforms? Are the specifications indicated in the Annexure adequate in this regard?

As a general principle, we don't believe that it is possible to determine a "generic" set of minimum specifications/conditions that can be applied to any addressable platform. TRAI should work with the industry to determine measures necessary to discourage piracy and promote quality of services.

However, if the Hon'ble Authority were to apply minimum conditions (a position we do not support), we submit that it should consider including conditions to countermeasure the latest piracy methods. By way of example only, we suggest that a condition such as the following be added in clause (B) of Annexure C to the report submitted by the Group on Digitalization and Introduction of Voluntary CAS, included in the Consultation Paper as Annexure:

"11. Overt FP should be programmable in at least 10 (ten) different color background boxes including "no background". The alpha-numeric characters in the FP should be available in a minimum of 8(eight) different selectable colors and 5 (five) or more font size".

Further, regulation should mandatc that any TV channel distribution system desiring signals on terms at par with addressable systems should build capacities to carry a minimum of 350 video channels.

6.2.4 What should be the methodology to ensure and verify that any distribution network seeking to get signals on terms at par with other addressable platforms satisfies the minimum specified conditions for addressable systems?

As mentioned above, we don't believe that it is possible to determine a "generic" set of minimum specifications/conditions that can be applied to any addressable platform.

However, if the Hon'ble Authority were to apply minimum conditions (a position we do not support), then we submit that any such TV channel distribution systems desiring signals on terms at par with other addressable platforms should be required to obtain a separate license from the Government as required for other operators in other addressable platforms like DTH and CAS. Such license should be granted only *inter alia* upon submission of an undertaking from the cable operator as to fulfilment of all the requisite conditions and broadcasters should not be obliged to provide signals to such distributors unless the distributors satisfy all requisite conditions.

To ensure transparency on the part of "hybrid" cable networks, broadcasters should be permitted to audit networks periodicially to confirm compliance with minimum specified conditions.

6.2.5 What should be the treatment of hybrid cable networks in non-CAS areas which provide both types of service, i.e., analogue (without encryption) and digital (with encryption) services?

We, at ESPN, support Regulator's efforts towards digitization and encourage the cable networks in the non-CAS area to go digital. In that direction, if any price regulation is required by Regulator (a position we do not support), we propose that any such regulation treat hybrid cable operators consistently with DTH operators (as opposed to the CAS regime) in respect of the hybrid operators' digital services only. Such an approach should not apply to a

hybrid cable network's non-addressable subscriber base, given the admitted under-declaration of non-addressable subscribers by up to 80%. We refer the Hon'ble Authority to our comments on under-declaration at the end of these submissions.

Further, hybrid cable networks should also be prohibited from using on addressable platforms the IRDs provided to them for non-addressable platforms .

As submitted above, if the Hon'ble Authority were to prescribe minimum conditions (a position we do not support), such hybrid cable networks should also be required to obtain a separate license from the Government as required for other operators in other addressable platforms like DTH and CAS. Such license should be granted only *inter alia* upon submission of an undertaking from the cable operator as to fulfilment of all the requisite conditions.

6.2.6 Whether there is a need to define "Commercial Subscribers", and what should be that definition?

We submit that there should be no price regulation of pay television services. However, if the Hon'ble Authority were to continue regulating price (a position we do not support), we respectfully submit that prices for commercial subscribers should not be regulated. Arrangements with commercial subscribers are not typically regulated in other countries, and there does not appear to be any compelling reason to justify such regulation in India.

If it is necessary to define the term "commercial subscriber" (a position we do not support), it should be defined in an all inclusive manner to include all subscribers except residential subscribers.

Broadcasters execute rights agreements with various rights holders and the definition of "commercial subscribers" would differ in the various rights agreements. If the Hon'ble Authority were to issue a standard definition of "commercial subscribers", it will cause difficulties with broadcasters' existing, long term rights deals.

The differentiation/categorisation provided by Tariff Order dated November 21, 2006 issued for commercial subscribers should be removed and, if the Hon'ble Authority continues to make tariff orders (a position we do not support), no commercial subscriber should be allowed the benefit of any tariff order for residential/domestic subscribers.

6.2.7 Whether the Broadcasters may be mandated to publish RIOs for all addressable platforms for Commercial Subscribers as distinct from broadcasters' RIOs for non-Commercial Subscribers?

As mentioned above, broadcasters should not be required to publish Reference Interconnect Offers nor enter into Reference Interconnect Agreements.

If broadcasters must publish RIOs (a position we do not support), it should not be mandatory for a broadcaster to publish Reference Interconnect Offer for all addressable systems for commercial subscribers. The terms and conditions on which a commercial subscriber is provided services by a broadcaster are a result of

negotiations between a broadcaster and commercial subscribers and such terms cannot be uniform.

Further, as submitted above, Authority needs to clearly distinguish between a residential and commercial subscriber. It is most respectfully submitted that Authority's objective of according protection to consumers should not be extended to commercial subscribers who, unlike consumers, have sufficient bargaining power to negotiate in their own interests.

6.2.8 Whether the regulation should mandate publishing of Reference Interconnect Agreements (RIAs) for addressable systems instead of Reference Interconnect Offers (RIOs)?

6.2.9 Whether the time period of 45 days prescribed for signing of Interconnection Agreements should be reduced if RIOs are replaced by RIAs as suggested above?

As submitted above, broadcasters should not be required to enter into Reference Interconnect Agreements nor to publish Reference Interconnect Offers.

Even if the regulatory requirements relating to Reference Interconnect Agreements and Reference Interconnect Offers were retained (a position we do not support), they should not be amended to require publication of Reference Interconnect Agreements.

The contractual process - including mutual negotiation of terms – is fundamental to trade and commerce. The regulation and publication of commercial terms frustrates this process.

In particular, broadcasters need flexibility to include different types of terms in their agreements with different distributors depending on the particular content being licensed, formatting, security and other technical requirements and applicable costs (for both broadcaster and distributor).

There is little justification for the Hon'ble Authority to prescribe the time period (nor to reduced the currently prescribed period) for signing of Reference Interconnect Agreements. This matter should now be left to the contracting parties.

6.2.10 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on packaging of channels on an addressable platform?

The Hon'ble Authority has recognised on a previous occasion that globally, bundling and tiering of pay channels is not regulated and that "tiering and bundling of pay channels has typically driven pay television growth globally, on both cable TV and DTH satellite platform".[12]

It has also been noted by the Hon'ble Telecom Disputes Settlement & Appellate Tribunal (TDSAT) that the requirement of broadcasters to offer channels on an a-la-carte basis did not result in subscriber choice and that none of the MSOs involved in the relevant proceedings had in fact made an a-la-carte selection.[13]

---

[12] TRAI, recommendations on Broadcasting & Cable Services dated 1 October 2004 at 70.

[13] Order of Telecom Disputes Settlement & Appellate Tribunal dated 15 January 2009 in Appeal Nos 9(c) of 2006 (MSO Alliance v TRAI & Ors); 10(c) of 2007 (SET Discovery Private Limited v TRAI); 11(c) of 2007 (Zee Turner Ltd v TRAI & Ors); 12(c) of 2007 (Star India Pvt Ltd v TRAI & Ors); 13(c) of 2007 (Intermedia cable communications Pvt Ltd v TRAI) and 15 of 2007 (Sun TV network Ltd v TRAI).

To impose bundling restrictions on broadcasters, without corresponding restrictions further down the supply chain, will not have the desired effect of increasing consumer choice.

It is in consumers' interests that there be no prohibition on packaging, at any point in the supply chain. In respect of the requirement to provide all channels on an a-la-carte basis, we referred in our introductory remarks to the economic impact of such a regulation as well as its effect on diversity of content.

In relation to tiering, it is in the interests of broadcasters and consumers that, in their contractual arrangements with distributors, broadcasters be able to specify the appropriate tier for their channels. Otherwise, distributors would be able to strip popular channels out of their basic offering, forcing consumers to pay an extra charge to watch those channels. In addition to the immediate effect on consumers, tiering restrictions have a similar impact on programming and business models as a-la-carte requirements as referred to in our introductory remarks.

In addition, packaging rules limit the ability of broadcasters and distributors to develop packages containing new value or content propositions for consumers. Accordingly, the regulation of packaging should be decreased, not increased.

6.2.11 Whether the regulation should specifically prohibit the broadcasters from imposing any kind of restrictions on pricing of channels on an addressable platform?

As mentioned above, we do not support price regulation. Restrictions on broadcasters regarding the pricing of channels on

addressable platforms are unjustified, particularly if the relevant distributors are not similarly subject to price controls.

Market forces, particularly the sheer quantity of content available for consumption over various platforms, will control the price that a content provider is able to charge for its content. To the extent government regulation is required, India's competition legislation should be sufficient to ensure that any arrangements do not have an "appreciable adverse effect" on competition in India.

6.3 Interconnection for non-addressable platforms

6.3.1 Whether the terms & conditions and details to be specifically included in the RIO for non-addressable systems should be specified by the Regulation as has been done for DTH?

6.3.2 What terms & conditions and details should be specified for inclusion in the RIO for non-addressable systems?

As submitted above, it is in the interests of the broadcaster to offer its channel(s) to various distributors across all platforms. Regulations mandating publication of broadcasters' terms and conditions are not required.

If the Hon'ble Authority were to continue to require publication of Reference Interconnect Offers with prescribed terms (a position we do not support), those terms should only refer to those technical and security conditions for a broadcaster's services and those conditions required to address under-declaration and piracy (in

respect of which see our comments at the end of these submissions).

6.4 General Interconnection Issues

6.4.1 Whether it should be made mandatory that before a service provider becomes eligible to enjoy the benefits/ protections accorded under interconnect regulations, he must first establish that he fulfills all the requirements under quality of service regulations as applicable?

We do not support the retention of interconnect regulations. However, if they were to remain, consumers' interests would be best served by requiring a service provider to establish that it fulfils all requirements under quality of service regulations before enjoying the benefits of interconnect regulations.

6.4.2 Whether applicability of clause 3.2 of the Interconnect Regulation should be restricted so that a distributor of TV channels is barred from seeking signals in terms of clause 3.2 of the Interconnect Regulation from a broadcaster for those channels in respect of which carriage fee is being demanded by the distributor of TV channels from the broadcaster?

We do not support the retention of interconnect regulations. However, if they were to remain, we submit that a distribution network demanding a carriage fee should not be given the advantage of non-discriminatory provisions.

6.4.5 Whether the standard interconnect agreement between broadcasters and MSOs should be amended to enable the MSOs, which have been duly approved by the Government for providing services in CAS areas, to utilize the infrastructure of a HITS operator for carriage of signals to the MSO's affiliate cable operators in CAS areas?

6.4.6 Whether the standard interconnect agreement between broadcasters and HITS operators need to be prescribed by the Authority, and whether these should be broadly the same as prescribed between broadcasters and MSOs in CAS notified areas?

HITS is an evolving delivery platform with special considerations such as wide geographical coverage, the potential to interfere with existing distribution deals, the risk of piracy and the migration of subscribers. Imposing the proposed requirements on HITS operators would negatively impact the growth of this platform.

At this time broadcasters and HITS operators need flexibility in negotiating contracts rather than being subject to standard terms.

6.4.7 What further regulatory measures need to be taken to ensure that DTH operators are able to provide six month protection for subscribers as provided by Sub clause (1) of Clause 9 of the Direct to Home Broadcasting Services (Standards of Quality of Service and Reddressal of Grievances) Regulations, 2007?

6.4.8 Towards this objective, should it be made mandatory for broadcasters to continue to provide signals to DTH operators for a period of six months after the date of expiry of

interconnection agreement to enable the DTH operators to discharge obligation?

6.4.9 Is there any other regulatory measure which will achieve the same objective?

We wish to submit before the Authority that this 6-month protection period is too long, especially with no corresponding obligation on the subscriber to take a channel for any minimum period.

We understand that the objective of TRAI in proposing the above is to reduce frequent changes in subscription plans. We submit that no restriction need be imposed on DTH operators, prohibiting them from dropping a channel from a subscription package of a subscriber for six months from the date of enrolment of that subscriber, if the channel continues to be available on their platform.

We further submit that imposing the proposed obligation on broadcasters would not necessarily achieve the objective of ensuring that the DTH operator discharges any of its own regulatory obligations.

Instead, the above objective can be achieved by requiring DTH consumers, like CAS consumers, to subscribe to any channel for a minimum subscription period of six (6) months. This will protect the interests of both the consumers as well as service providers and will reduce frequent changes in subscription plans.

We note that the typical approach in the United States of America to this issue is that the cable operator must simply give its subscribers 30 days' notice of changes. There are no additional regulatory requirements on broadcasters in this regard, and no requirement that broadcasters provide channels to cable operators for any particular period. We submit that in such a situation market forces would not favour broadcasters or operators who frequently added or dropped channels from their lineup.

6.5 Registration of Interconnection Agreements

6.5.1 Whether it should be made mandatory for all interconnect agreements to be reduced to writing?

6.5.2 Whether it should be made mandatory for the Broadcasters/ MSOs to provide signals to any distributor of TV channels only after duly executing a written interconnection agreement?

6.5.3 Whether no regulatory protection should be made available to distributors of TV channels who have not executed Interconnect Agreements in writing?

It is not necessary for the Hon'ble Authority to regulate the form of agreements between broadcaster and MSO/distributor.

6.5.5 Whether it should be the responsibility of the Broadcaster to hand over a copy of signed Interconnect Agreement to MSO or LCO as the case may be, and obtain an acknowledgement in this regard? Whether similar responsibility should also be cast on MSOs when they are executing interconnection agreements with their affiliate LCOs?

6.5.6 Whether the broadcasters should be required to furnish a certificate to the effect that a signed copy of the interconnect agreement has been handed over to all the distributors of television channels and an acknowledgement has been received from them in this regard while filing the details of interconnect agreements in compliance with the Regulation?

Any benefit of such regulation would be outweighed by the burden of compliance. In any event, we submit that regulation of these matters is not necessary.

6.5.7 Whether the periodicity of filing of Interconnect agreements be revised?

6.5.8 What should be the due date for filing of information in case the periodicity is revised?

As submitted above, parties should not be required to enter into, nor file, Reference Interconnect Agreements.

6.5.9 What should be a reasonable notice period to be given to the Broadcaster/ DTH operator as the case may be, by the Authority while asking for any specific interconnect agreements, signed subsequent to periodic filing of details of interconnect agreements?

As submitted above, parties should not be required to enter into, nor file, Reference Interconnect Agreements.

6.5.11 Whether the broadcasters and DTH operators should be required to file the data in scanned form in CDs/ DVDs?

It is not necessary for the Hon'ble Authority to regulate this matter and any benefit would be outweighed by the burden of compliance.

6.5.12 Whether the interconnection filings should be placed in public domain?

As submitted above, parties should not be required to enter into, nor file, Reference Interconnect Agreements.

Even if the Hon'ble Authority were to continue to require interconnection filings, such filings are confidential and should not be placed in the public domain. Placing them in the public domain would injure the commercial interests of the relevant parties without there being any corresponding, and compelling, public benefit.

We have carefully perused contents of paragraph 5.13 and 5.14 of the Consultation Paper and it is evident that the balance of equity is in favour of non disclosure of the information relating to terms and conditions on which the signals are being provided to different distributors of TV channels.

As a stakeholder concerned about the growth of broadcasting industry, we have done an in-depth study of this Consultation Paper and have submitted our comments on issues posed thereon.

However, we are surprised to note that the Consultation Paper, ignores two major issues impeding the growth of the pay television industry:

under declaration and piracy. These are matters in respect of which regulation is necessary and appropriate in order to ensure a level playing field for competition and to encourage investment.

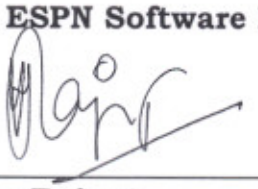
To this end, regulations should require multi-system operators and local cable operators to declare their whole subscriber base. The Hon'ble Authority would be aware that under-reporting by up to 80% is common.

The widescale piracy of pay television signals requires legislative intervention to provide effective enforcement mechanisms.

Existing legislation does provide for disconnection of an operator by a broadcaster in the event of piracy. Disconnection can occur without notice if there is no oral or written agreement between the relevant broadcaster and operator, However, following disconnection pirate operators approach the Hon'ble Authority, which re-connects them.

The legislation generally requires the broadcaster to give 21 days' notice of disconnection. This period is too long, particularly if the pirate operator is pirating live programming. We submit that the regulation be amended to provide that in cases of piracy, a broadcaster providing live programming may disconnect an operator without notice, and that the operator not be able to seek re-connection from the Authority.

For ESPN Software India Pvt. Ltd.



Vijay Rajput
Chief Operating Officer