



abpananda.in abpnews.in abpmajha.in

## BY HAND/ELECTRONIC MAIL

December 15<sup>th</sup>, 2014

To,  
Advisor (B&CS)  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi - 110 002

*SAW I*  
*[Signature]*  
*16/12*

Dear Sir,

**Re: Submissions of Media Content & Communications Services (I) Private Limited to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on the Draft Tariff Order applicable for Non-Addressable Cable TV systems**

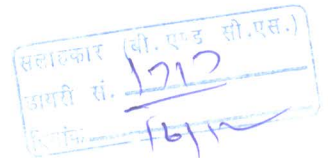
At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the Draft Tariff Order applicable for Non-Addressable Cable TV systems.

In regard to the present consultation process, we submit that we have perused the Draft Tariff Order carefully, specifically, with respect to the wholesale tariff and reporting requirement by Broadcasters, contained therein. We hereby submit our comments attached as Annexure. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to (a) appeal and/ or any such legal recourse or remedy available under the law against the Tariff Order.

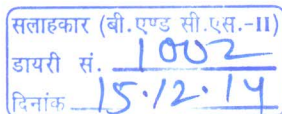
The same are for your kind perusal and consideration.

Yours Sincerely,

*[Signature]*  
Media Content & Communications Services (I) Private Limited



Encl: As above



*Adv (B&CS) - I*  
*[Signature]*  
*16/12/14*

*TRAI (M)*



abpananda.in abpnews.in abpmajha.in

BY HAND/ELECTRONIC MAIL

December 15<sup>th</sup>, 2014

**Re: Submissions of Media Content & Communications Services (I) Private Limited to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on the Draft Tariff Order applicable for Non-Addressable Cable TV systems**

Kind Attention:

**Advisor (B&CS)**

**Telecom Regulatory Authority of India,**

**Mahanagar Doorsanchar Bhawan,**

**Jawahar Lal Nehru Marg,**

**Old Minto Road,**

**New Delhi - 110 002**

**SUBMISSIONS:**

The Indian Pay-TV Industry as of today has grown manifold and is one of the most competitive and diverse pay TV markets in the world with thousands of MSOs and cable operators, private operating DTH systems, IPTV offerings, HITs Offerings, Mobile Television etc. The cable and satellite TV industry operates in a highly competitive marketplace where there is furious competition among the channels and various TV delivery systems for eyeballs and consumer rupees. The ever-

**Media Content & Communications Services (India) Pvt. Ltd**

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0211



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY



abpananda.in abpnews.in abpmajha.in

increasing competition has led to high growth of subscribers and has put pressure on tariffs, which have seen a sharp drop over the years. From 2004, when broadcasting and cable services came under the purview of TRAI, to 2014 when TRAI has released this Draft Tariff Order, market dynamics have changed significantly, with the advent of 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. As per the current market situation it is the Platform Operators who have the exclusive right to price and package the Channels of the Broadcasters and offer the same to subscribers. In accordance with the existing Regulations it is seen that the Channels of the Broadcasters are available to the Platform operators at a massive discount irrespective of the coverage the Operator affords to the Channels. As on date there is active competition at all levels of the Pay TV industry to discourage perverse pricing. In the coming two years, the digital addressability will increase further giving rise to greater competition thereby, benefiting the consumer ultimately by providing him price efficient services. Therefore it becomes pertinent that a sunset date be set for lifting the ceiling on the tariff letting the market forces determine the rates for themselves. That TRAI is cognized of the fact that there is now effective competition at all levels in the Industry, signifying that the Indian Pay-TV industry is ready for **forbearance**. Even a study of the International markets will go on to show that the Regulators take a lenient view thereby ensuring active competition in the market and leave decisions like wholesale rates, packaging choice to market players. It is submitted that the wholesale Non DAS ceiling currently applicable to analogue platforms, and used as reference point for addressable systems, should be withdrawn, leaving tariffs to be determined by market forces. TRAI should adopt forbearance when it comes to pricing as there is enough competition in the market and therefore there is no reason to put a cap on pricing of channels; the intervention by the Regulator should only be when it is felt that the consumer is being affected.

## ISSUE WISE REPRESENTATION

### A. WHOLESALE TARIFF:

The Regulator as on date needs to appreciate that there is enough competition in the market and therefore consumers are already protected against any price increase. The A-la-carte option is only enjoyed by MSOs and does not percolate down to the consumers. However, on the other hand the Broadcasters continue to be over regulated by the existing Tariff orders and other Regulations like Price Ceilings, advertisement capping etc.

That we find it pertinent to get to the kind attention of the TRAI that such water tight approach followed by TRAI as in the present Tariff order under consideration, will only lead to failure in achieving the desired results and discourage investment in this sector. We therefore take this opportunity to point out the Regulator's own observations over the past few years which have not been considered while issuing this Draft Tariff Order.

1. In 2004 pursuant to the Tariff Order dated October 1, 2004, 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."

Media Content & Communications Services (India) Pvt. Ltd

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0000



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY



2. TRAI has itself observed and noted in its various studies that the international regulatory practices in the broadcasting and distribution industry are guided by market conditions to ensure that there is effective competition and that the supply and demand forces act freely and prices are automatically aligned to the value attached by the consumer for particular products and services.
3. It has always been the stand of TRAI that price control is only an interim measure and will be withdrawn once there is effective competition. However it can be seen for past sometime now that despite there being effective competition the Regulation at the whole sale level has become even more stringent.
4. That TRAI has all along observed and noted that the strongest advocacy for forbearance has been from the broadcasters, and the major arguments in support thereof are: (i) Price regulation impedes the introduction of quality content, investment flows and impact the revenue and bottom lines of the broadcasters; (ii) There is adequate competition at the level of content and now even at the delivery platform level; (iii) TV channels and content are matters of intellectual property, and not an essential commodity requiring control; (iv) Even if a decision is taken to control tariff, there has to be some criterion for determining sufficiency of level of competition and sunset date for lifting of control.

Thus it is not out of place to mention here that just because a particular state of affairs was allowed to continue for a period of time does not render such state of affairs sacrosanct or inviolable. In fact from a practical approach the Subscribers do not have the option of changing their cable operator owing to monopoly on ground nor do they have an option to choose channels which they would like to view. Thus while the Operator is free to pick and choose the channel it desires, there is little choice available to the viewers. Operators being guided by profit motive are choosing channels that are not only cheap but also entail higher pay outs from broadcasters in the form and shape of carriage/placement fees.

The broadcasters are at the receiving end because not only do they have to pay huge amounts as carriage/placement fees to Operators for running their channels, but they also lose out on subscription revenue as Operators invariably under declare their subscriber base in Non Das regime in order to deprive Broadcasters of their legitimate dues. ***Underdeclaration by Operators is a sad reality and this the Hon'ble Regulator has not addressed in this Tariff order. While on one hand the TRAI has introduced the billing mechanism on the other hand there is no corresponding audit mechanism or compliance mechanism in place, thereby concluding that the concerns of the Broadcasters have not been taken into account with regard to genuine addressability at the ground. Broadcasters finding the present regulatory regime not conducive enough to invest in generating quality content are being compelled to spend huge sums on carriage money as even when it comes to advertising there has been a cap introduced by the Hon'ble regulator in the year 2013. In effect, it can be said that as on date the revenues of the Broadcasters are being crippled both at the Subscription as well at the Advertising level.***





abpananda.in abpnews.in abpmajha.in

That as on date there is no monitoring or enforcement mechanism at the ground and the Operators are thus charging subscribers well above the mandated ceilings and are not even issuing any receipt to the subscribers for the fees so collected. On the other hand broadcasters being largely compliant have been cast with stringent reporting obligations by this Draft Tariff Order thereby compromising the basic commercial confidentiality that any business in India is entitled to. The tariff order has not touched upon regulating the unreasonable carriage fee that the MSO's/LCO's charge the Broadcaster.

The tariff order purports to continue with the status quo/ceiling and further resorts to laying down the manner of pricing of packaging, instead of declaring areas of forbearance and this is least to say not a proper discharge of functioning of Statutory Duty. That we are in disagreement with the proposal of ceiling of tariffs as wholesale level in totality as the same will lead to distortion of the market, create imbalances, confusion and merely create a scenario tilted in favor of the Operators. That TRAI has not looked into the concerns voiced by the broadcasters from time to time in relation to issue of Monopoly by the MSO's, issue of piracy, pricing tariff etc. Another point to be noticed is that the Hon'ble Regulator has the entire financial details in respect of the collection of subscription fees as well as the carriage money paid by the broadcasters. A basic examination of these financial details would demonstrate that there has been hardly any change in the Average Revenue Per User (ARPU). That the Hon'ble Regulator while issuing this Draft Tariff Order has not taken into consideration the appeal pending before the Hon'ble TDSAT titled Indian Broadcasting Federation and Ors. versus TRAI (Appeal No. 7C of 2014) vide which the regulation pertaining to commercial subscribers/establishment has been challenged that is to say that the very basis of equating an ordinary cable subscriber with a commercial subscriber is not justified.

Under the Indian legal system, all broadcasters are bound by the terms of the Uplinking and /or Downlinking licenses issued to them by the MIB and the policy guidelines laid down by the MIB and modified from time to time in addition to the other specific laws to which they are subject. TRAI cannot regulate arrangements between service providers in a manner which impinges directly on the fundamental rights of Broadcasters on freedom to trade in terms of Article 19(1) (g) of the Constitution. The time has perhaps come to ask the question whether continued existence of the current Regulatory Regime and the continuous limitation of role of the Broadcasters by TRAI is justified?? or one ought to look beyond existing Regulatory formulations. It is submitted that regulatory strictures curb the growth of the market.

Pay TV channels are non essential, discretionary services primarily intended for entertainment. Any methodology or principle used for unnecessary control is likely to result in a misallocation of resources and lead to market distortions. The broadcaster incurs huge expenditure in the development and procurement of the content. The broadcast market itself is very dynamic in nature. In order to have a clear financial visibility and budget support, the broadcaster needs to have an element of stability in revenue stream and projections.

The proposed Regulation will have the effect of reducing the ability of Broadcasters to fund development of both new types of content and new infrastructure and at the same time will constrain investment in content, and force the Broadcasters to continue to focus only on mass-market, advertising-supported content, severely limiting the number and type of content channels

  
Media Content & Communications Services (India) Pvt. Ltd

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0211



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY



abpananda.in abpnews.in abpmajha.in

available to consumers. In the long run, consumer choice will become the victim of the proposed Regulation. One of the objectives of Digitization was to reduce the broadcasters over dependence on advertisement revenue and shift focus to equitable distribution of subscription revenue amongst stakeholders resulting in broadcasters getting their fair share. The proposed Tariff order will on the contrary result in abnormal profits/revenue share in the hands of Platform Operators in terms of higher subscription revenue derived by them and higher carriage income.

The Hon'ble Regulator has failed to recognize that fact that the contracts between parties are mutually negotiated and in the event there arises any dispute the Hon'ble TDSAT has been constituted to look into resolution of the disputes between the service providers and infact there are compliances to be undertaken by the Broadcasters in terms of Annual filing of their entire commercial data.

## **B. REPORTING MECHANISM FOR BROADCASTERS**

The Draft Tariff Order contains a number of provisions/clauses which would require amendment/revision on account of them not being in sync with the object that is being sought to be achieved by the Draft Tariff Order. Among the several provisions/clauses of the Draft Tariff Order, the one that could be termed as the most draconian, anti-competition and regressive is 'Clause 8' and more importantly 'Clause 8(3)' which cast the onerous and burdensome reporting requirements of mandatory character upon the Broadcasters. The said Clause 8 of the Draft Tariff Order is reproduced below:

*8. Reporting Requirement.----- (1) Every broadcaster shall, within seven days from the coming into force of this order, furnish the following information to the Authority, namely:-*

- (a) names, genre and language of all free to air channels offered by the broadcaster;*
- (b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;*
- (c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein;*
- d) revenue share arrangement between owners of channels in the bouquet;*
- (e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state must be specified);*
- (f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);*
- (g) advertisement revenue for the last three financial years;*
- (h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.*



**Media Content & Communications Services (India) Pvt. Ltd**

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0211



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY



abpananda.in abpnews.in abpmajha.in

*Provided that information under sub-clauses (d) and (g) shall also be filed annually alongwith the filings done under the provisions of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004) (hereinafter called regulation).*

*(2) Every broadcaster who, after the commencement of this Order,--*

*(a) introduces any new pay channel or free to air channel; or*

*(b) converts any pay channel into free to air channel; or*

*(c) converts any free to air channel into pay channel; or*

*(d) discontinues any free to air channel or pay channel; or*

*(e) introduces any new bouquet or discontinues any bouquet or changes rate of existing bouquet; or*

*(f) changes a-la-carte rate, genre, language, name etc. of any existing channel,*

*shall, one month before such introduction or conversion or discontinuation or change, furnish to the Authority, the following information, namely:-*

*(i) name of the channel to be introduced, converted or discontinued,*

*(ii) the date on which it is to be introduced, converted or discontinued;*

*(iii) the a-la-carte rate of the pay channel if it is a newly introduced or converted pay channel;*

*(iv) composition of new bouquet or bouquets to be introduced along with rates for each such new bouquet;*

*(v) in the case of a new channel, the genre and language of the new channel;*

*(vi) changed rate of the existing bouquet;*

*(vii) changed a-la-carte rate, genre, language, name etc. of the existing channel.*

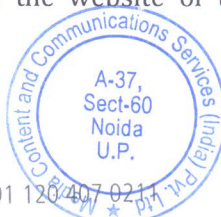
*(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2), simultaneously with its submission to the Authority.*

Thus 'Clause 8(1) & (2)' of the Draft Tariff Order not only mandates the disclosure of business information to the TRAI but "Clause 8(3)' further requires that the same information to be simultaneously published on the website of the Broadcaster which would expose the information, some of which is sensitive business and commercial information and in the nature of **Trade Secrets**, to be available not only to general public/consumers but also to the rival competitors and clients (both existing and prospective).

The wording of 'Clause 8' makes it mandatory in nature. The information required to be provided to the authority as well as to be published on the website of the Broadcaster is sensitive and

Media Content & Communications Services (India) Pvt. Ltd

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0211



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY



abpananda.in abpnews.in abpmajha.in

confidential commercial information that warrants protection from disclosure on the public platform. The term '**commercially sensitive information**' is generally understood to be any information that has economic value or could cause economic harm if known. A trade secret may include information which is used in one's business and which gives the holder an opportunity to obtain an advantage over competitors who do not know or use it. In all free market economies, any information determined to be a "trade secret" is protected from disclosure, in addition to a somewhat broader category of commercial or financial information that is deemed "**confidential**". Similarly, under most Information Laws, trade secrets and competitively sensitive confidential business information of private and public enterprises may be withheld from disclosure. Such an exception is clearly justified insofar as it aims to prevent unfair competitive advantages or disadvantages arising from access requests.

By requiring the Broadcaster to publish their commercially sensitive information on its websites, the authority is stifling the ability of the broadcaster to effectively conduct its business vis-à-vis its competitors and also puts the Broadcaster on a dis-advantageous position in its negotiations on advertisement rates with its clients and thereby causing competitive damage.

**Section 8(1) (d) of the Right to Information Act 2005** provides: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

No larger public interest shall be served by requiring the disclosure of 'advertisement revenue for the last three years' by the Broadcasters. It will not only not serve any public purpose but shall ultimately violate the fundamental rights of the Broadcasters as provided under Article 14, 19 and 21 of the Constitution of India.

Thus in the light of the above, it becomes imperative on the part of the authority to have a re-look and amend the provisions in the Draft Tariff Order which have no connection, whatsoever, in promoting and protecting the interest of the consumers and the service providers, as mandated by the Preamble to the Telecom Regulatory Authority of India Act 1997.

It is pertinent that the advertisement or other content related aspects, revenue share arrangements should be kept out of the purview of Regulations otherwise, it shall be resulting in the breakdown of the business model of the industry, trigger conflicts of interests, blur dividing lines between Distributors and Broadcasters, and lead to unhealthy competition between broadcasters on the one hand and distributors on the other hand.

## **CONCLUSION**

To conclude the TRAI has not taken into account the fact that pursuant to the report submitted to the Hon'ble Supreme Court, the Regulation on capping of advertisement time of the Broadcasters was also introduced. In effect, this over regulation at every level on the Broadcaster will only go on

Media Content & Communications Services (India) Pvt. Ltd

A-37 Sector 60 Noida U.P. 201 307 India T +91 120 407 0000 F +91 120 407 0211



**MCS**<sup>TM</sup>  
AN ABP GROUP COMPANY





to crippling their business. It is pertinent to mention here that it is the Broadcasters who take the entire credit risk and all other liabilities pertaining to the distribution of the channels. The Tariff order in effect ensures that there is no level playing field as the restrictions as well as reporting requirement is only on the Broadcasters. There is no corresponding reporting requirement for the Platform operators thus ensuring there are no checks and balances at the ground level. The mission of TRAI is to create and nurture an environment which will enable the quick growth of the telecommunication sector in the country. One of the major objectives of TRAI is to protect the interest of the Service providers, however it is respectfully submitted that this Tariff order curbs the development and growth of the Broadcasters by creating a non level playing field. That the Hon'ble Regulator has adopted the approach of micro management of the manner of functioning of the Broadcaster so much so that determination of the rate of a Pay Channel has been made dependent on the 'language' of the channel. Also the Hon'ble Regulator has not provided any justification even in the explanatory memorandum as to how the publishing of commercially sensitive data like advertisement revenue, revenue share arrangements is remotely linked to this tariff order and it is humbly submitted that no purpose is served by making the commercially sensitive data of the Broadcaster available in the public domain.

That the Tariff Order does not take into account the changed market dynamics and the inflation in costs being faced by the Broadcaster, as on date. In light of the above submissions, it is requested that the Hon'ble Regulator revisit the Draft Tariff Order by considering the submissions of the Broadcasters.

