



MSM Discovery

(An ISO 9001:2008 Certified Company)

18.01.2013

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

Dear Sir

Re: MSM Discovery's reply to Consultation Paper (No. 8/2012) on Amendments to the Interconnection Regulations applicable for DAS and Tariff Order applicable for Addressable Systems.

This has reference to the Consultation Paper on Amendments to the Interconnection Regulations applicable for in DAS and Tariff Order applicable for Addressable Systems.

Kindly find enclosed herewith, our response to the same, for your kind perusal and consideration.

Yours Sincerely,

For MSM Discovery Pvt. Ltd.,

Nidhi Arora
Senior Manager – Legal

Encl: As above

MSM Discovery Private Limited

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A Joint Venture Company



By Courier/Speed Post/Email

January 18, 2013

Submissions of MSM Discovery Pvt. Ltd. ("MSMD") to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper (No. 18/2012) on Issues Related to the Amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems and Tariff Order applicable for Addressable Systems (the "Consultation Paper")

**Kind Attention: Advisor (B&CS)
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 amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems, and the Tariff Order applicable for Addressable Systems.

Preliminary

We reiterate our response submitted to TRAI on 30.01.2012 on the consultation paper (No. 8/2011) on Issues related to Implementation of Digital Addressable Cable TV Systems, wherein we have submitted our views in detail on the issues raised therein. Our response to this Consultation paper does not in any way override our earlier response and is only in addition to it.

Reply to Consultation issues:

- A. Issues related to amendments to the Interconnection Regulations applicable for Digital Addressable Cable TV Systems.**

Carriage Fee

We do not agree with the amendment suggested by the Hon'ble Regulator. We are in principle against the levy of carriage or placement fees from broadcasters. We submit that such an amendment as suggested by TRAI now, shall result in Operators (especially those vertically integrated with broadcasters) placing certain channels at an advantageous position. Further by levying discretionary carriage fees, these Operators will be in a position to pick and choose individual channels of other Broadcasters to augment the visibility of their preferred channels through such discriminatory positioning.

As we see it Carriage fee in a Non CAS regime was a market pricing distortion which was created by the must provide obligation when there was no corresponding must carry requirement. Now that the distortion has been removed and the capacity constraint has been increased in the existing DAS regime, there should not be any demand for carriage fee and carriage fee should become irrelevant. In fact, with

due respect to the Hon'ble Tribunal, we are of the view that the very basis of the finding of the Hon'ble Tribunal vide its judgment dated 19.10.2012, is misplaced and erroneous.

It is submitted that the Broadcasters are gradually attempting to coming to terms with the present Regulatory regime for DAS and with phases 2 and 3 yet to get underway, it is not advisable to make changes at this stage.

Minimum Channel Carrying Capacity for MSO's

DAS has been implemented with a view that in the non addressable analogue cable TV system consumers were at a disadvantage as the consumer had a limited choice of channels. The minimum requirement has been prescribed keeping in mind that at all times it is ensured that the consumer is not deprived from viewing the entertainment that he wishes to view.

Telecom Disputes Settlement Appellate Tribunal ("TDSAT"), also by its own findings (judgment dated 19th October, 2012), confirms that DTH does not hold an advantageous position on cost and infrastructure vis-à-vis DAS cable. It specifically acknowledges that there is no capacity constraint to carry TV channels in DAS. When DAS allows for a greater number of channels, it is imperative to take advantage of this technology in the best interest of consumers and not equate it with DTH which inherently suffers from bandwidth constraints due to transponder non availability and a different licensing regime.

Greater channel carrying capacity increases content offerings from broadcasters and allows regional channels to reach out to their audiences. It is seen that even MSOs have launched/are launching their own channels with localized content to meet the local consumer demands. Increased capacity allows for this localization of content and its availability to consumers. Greater number of channels while increasing the choice for the consumer, will promote healthy competition and ultimately benefit consumers.

The Broadcasting Industry is a creativity driven industry where the broadcasters have to constantly produce quality content in order to survive in the present day competitive market place. This calls for huge investment in content as well as distribution of the channels. This minimum channel capacity will also ensure that such content gets an opportunity to be showcased. In addition, we wish to submit that this minimum channel capacity will ensure that only serious players (MSO's) will exist in the market ensuring that fly by night operators do not enter the market to the disadvantage of the consumers.

We are therefore of the view that a minimum channel carrying capacity for the MSO's in DAS should be prescribed in the Interconnection Regulations. Having said that, number of such minimum requirement of channels should be prescribed bearing in mind relevant factors such as different categories of areas i.e. cities/towns/rural areas etc. Not prescribing a minimum channel carrying requirement will not only be a disadvantage to the consumers, but also lead to a situation where there will be a complete imbalance and it will be the MSO's discretion to seek exorbitant carriage fee to the disadvantage of the Broadcaster.

Placement Fee

As in our past submissions to the TRAI, we reiterate that we do not favour Regulation of the Placement Fee in Digital Addressable Systems as there are no different bands in DAS like in the analogue market.

Tiering / packaging fee inherently and intrinsically includes carriage and there is hardly a difference between the two apart from nomenclature. In the DAS regime the MSO is obligated to provide an Electronic Program to the consumer so the requirement of placement fee does not arise.

However, Broadcasters should have the flexibility to pay a reasonable amount towards Tiering / packaging fee, if they so desire, as part of their commercial negotiation. But this should be left to a price discovery process between individual broadcasters and MSOs and not mandated by TRAI. "Light touch" should be applied and pricing be left to market forces.

B. Issues related to amendments to the Tariff Order applicable for Addressable Systems.

Twin Conditions at Retail Level

We agree with the Hon'ble Regulator's observation that the revised twin conditions, as proposed in the Consultation Paper, if implemented should allow a DAS operator the flexibility to package the channels as per its business plan and at the same time ensure that the a-la-carte rate of a channels is not illusory for a channel offered in the bouquet.

Minimum Subscription Period

Broadcasters incur huge expenditure in the development and procurement of the content, and also on its distribution across various platforms. The Broadcast market itself is very dynamic in nature. In order to have clear financial visibility and budget support, the Broadcaster needs to have an element of stability in revenue stream and projections. To attain this objective we appreciate that a minimum subscription period has been prescribed by the Hon'ble Regulator. However as a secondary suggestion we would like to recommend that the minimum period for the Subscription of a channel be enhanced to 6 months to a year.

Further, we are in agreement with Hon'ble Regulator's view that the minimum commitment period should be applicable for all the channels, whether pay or FTA. Accordingly, the word "Pay" should be deleted from Clause 6 (2) of the Principle Tariff order dated 21.07.2010.

Freedom to choose the channels on a-la-carte and/or bouquet (s)

The Government's stated policy is for complete digitalization and it is pertinent that maximum choice should be made available to the consumer. Demand for information & entertainment has grown at a rapid pace. Accordingly, we are of the view that the consumer should be free to choose the channel(s) or bouquet(s), he/she wishes. Such a choice /offering will lead to healthy competition in the market and lead to opening up of the Industry by bringing competition, diversity, quality and fair price which has always been the primary mandate of TRAI. It will bring about organized growth to TV industry, where all stakeholders will derive a legitimate share of value and there will be an equitable platform to every player. DAS was implemented primarily for the reason that in the non addressable analogue cable TV system consumers as well as service providers were at a disadvantage as the consumer had a limited choice of channels. Therefore, we agree with the Authority that a provision allowing the consumer freedom to choose the channel(s) should be introduced for all the addressable systems to bring in parity as well as to ensure that consumers of these platforms are on equal footing.

Offerings of Bouquet (s) of channels which require special Set Top boxes (STB's) such as High Definition Television (HD TV) or Three Dimensional Television (3D TV) channels etc.

In recent times, the market has witnessed the emergence of a number of niche channels such as HD and 3D TV channels that require special set top boxes. Hon'ble Regulator has itself noted time and again noted that such niche channels are premium in nature and therefore the tariff dispensation for niche channels requiring specialized set top box TV channels should be left to market forces.

In case of niche channels requiring specialized set top box e.g. HDTV channels, all equipment relating to HD programs including the set top box and TV set are relatively costly as compared to standard definition TV sets, etc. Hence "affordability" for such customers is not an issue. Therefore, no regulation is necessary.

We reiterate that for the reasons stated above, there should be complete forbearance with respect to niche channels.

CONCLUSION: TRAI has always held a view that Regulatory mandates have been designed as a transitional measure to facilitate competition. The end result of the Regulations over these years has been a statutorily-mandated and sizeable subsidy for cable and satellite providers paid for by broadcasters who are copyright owners. We urge TRAI to give careful consideration to the suggestions made herein in light of past experience and the market as we know it today. TRAI needs to ensure that the existing Regulations not be expanded or tightened further resulting in incurring of further expenditure by the Broadcasters.

We further submit that during the course of next two years as addressable digitalization gets implemented across the country, TRAI may let the said Tariff Order dated July 21, 2010 (as amended) continue and post 31st 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 - Consultation Paper on Tariff Issues related to Cable TV Services in Non-CAS Areas), 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*".

Indian Pay-TV industry is now effectively competitive, and is sufficiently mature to self-regulate itself and allow market forces to operate. With triple play and convergence, content is now available not only on television screens but also on smartphones, tablets and many other digitally enabled devices. Television is no longer the only platform through which consumers' access audio visual content. In today's highly competitive digital age, tariff and pricing restrictions are anachronistic. It is time for TRAI to also recognize the foregoing, and withdraw these short-term pricing solution/interventions and let there be forbearance.

As we have submitted in our response to the consultation paper on Issues related to Implementation of Digital Addressable Cable TV Systems, there is active competition at all levels of the Pay-TV industry, to discourage perverse pricing. In the coming two 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, TRAI should set the sun on these tariff regulations, allowing the tariffs to be determined by market forces.

This 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.
