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**WITHOUT PREJUDICE**

Date: 26/06/2013

To

Mr. Wasi Ahmad, Advisor (B&CS),

Telecom Regulatory Authority of India, ("**Authority**")

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Sub: STAR's submissions on "Draft Telecommunication (Broadcasting And Cable) Services (Fourth) (Addressable Systems) Tariff (Second Amendment) Order, 2013 ("**Draft Tariff Order**") AND "Draft Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second Amendment) Regulations, 2013. ("**Draft Interconnect Regulations**") "

Dear Sir,

The Ministry of Information and Broadcasting (MIB) and the Authority have taken commendable steps towards wholesome reform of the cable sector by bringing about the amendments to The Cable Television Networks (Regulation) Act 1995 as amended from time to time together with the Rules framed thereunder ("The CTN Act") and by issuing the Notification dated 11<sup>th</sup> November 2011 that has spelled out the timelines for complete switch off of analog cable in a phase wise manner by the year 2014.

The extant Telecommunication (Broadcasting and Cable Services) Interconnection Regulations 2004 ("**Interconnection Regulations**") and The Telecommunication (Broadcasting and Cable Services) Addressable Systems Tariff Order 2010 ("**Addressable Tariff Order**") dated 21.07.2010, both as amended from time to time, are admittedly the regulatory bedrocks for Digital Addressable Systems ("DAS") and DTH services in this country. With the exception of wholesale rate regulation and some amendments made by the Authority with regard to minimum channel carrying capacity and placement of channels - these two enabling formulations have been well received by the industry.

Accordingly, as communicated earlier vide our various responses, we believe that rather than a complete overhaul, only well targeted and minimalistic changes in the Interconnection Regulations and the Addressable Tariff Order are called for to ensure necessary alignments with the recently

promulgated CTN Act, the Judgment of the Hon'ble TDSAT besides curing the systemic and structural maladies that were endemic in the earlier Non CAS and CAS regime. The Addressable Tariff Orders and the Interconnect Regulations were all formalized by the Authority after going through a rigorous consultation process with necessary stakeholders. These regulations and orders being not even a year old - should be allowed to play out for atleast a few years and frequently tweaking it around on an annual basis will not help at all. Such frequent changes to ground rules would only serve to create regulatory uncertainty and confusion in the mind of investors that would surely not augur well at this juncture when massive investments are required and particularly when the government is trying to bring in much needed funding by even liberalizing the FDI regime in the Distribution sector.

We however confine our submissions herein to the Draft Tariff Order for which comments have been sought. Our responses are hereby appended herein as **Annexure "A"**. We have no comments to offer on the Draft Interconnect Regulations. We appreciate that the same has been necessitated by the Judgment of the Hon'ble TDSAT. However we do believe as communicated earlier that the DAS Interconnect Regulations should be integrated, merged and rendered in sync with The Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004(13 of 2004) ("**Main Regulations**") as amended from time by making necessary additions and alterations to the Amendments to the Main Regulation dated 17<sup>th</sup> March 2009. If this is not done we will be having anomalies and ambiguities arising from two parallel interconnect regulations. We also believe that the earlier Regulations pertaining to the erstwhile CAS regime needs to be taken off the statute books. We further make certain limited additional representations for the Authority's kind consideration that we believe would help in ushering some much needed hygiene in our run up to complete digitalization in the not so distant future. These are as follows:

1. Every Multi system operator, direct to home operator, Internet Protocol Television Service Provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system should report to the authority the details of the tariff packages including the channels comprised therein and all other terms and conditions of offering of channels. It should also be mandated that all the Tariff Packs are disclosed at the Operator's respective website. TRAI should monitor such filings and also analyse operator tariff data as available in such operator's website. These can be provided for by making necessary amendments to the Draft Tariff Order by adding suitable clauses to Clause 6 in the Addressable Tariff Order in order to incorporate the requirements as stated. This will ensure that TRAI has the necessary wherewithal to monitor retail tariff. Today the requirement exists in very generic terms vide Clause 9 (5) of the Addressable Tariff Order. The same needs to be strengthened by making obligations time bound and in the manner as aforesaid.

2. Every Multi system operator, direct to home operator or Internet Protocol Television Service Provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system should report to the authority any change in the tariff of any package (s) or a-la-carte channel offerings, 15 days in advance before effecting such change. This is essential for the Regulator to ensure compliance with the Quality of Service Regulations. This will ensure that TRAI has complete visibility on the retail tariff and any changes thereof and whether they are being made in

accordance with the regulations. It should also be stipulated that such changes are fully disclosed in the Operator's website.

3. Every Multi system operator, direct to home operator or Internet Protocol Television Service Provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system should report to the authority all its subscribers of packages and a-al carte channels. The report should be submitted to the TRAI on a quarterly basis and contain package wise subscriber base among other particulars. TRAI should disclose these in its website by way of a detailed report in the same manner that it does for the telecom sector. It may be pertinent to mention that TRAI publishes the "**Performance Indicator Reports**" on a regular basis, however the space devoted to the cable and satellite broadcasting sector leaves a lot to be desired as the major bulk of the report is devoted towards an analysis of the telecom sector. We request the Authority to replicate the manner of detailed reporting that is done for telecom - in the case of cable and satellite broadcasting as well. This information will be valuable to attract investments into the sector particularly with the government liberalising the FDI limits in the carriage services.

4. We also request the Authority to mandate compulsory audit of all addressable systems in the same manner as has been provided for telecom companies vide the Quality of Service (Code of Practice for Metering and Billing Accuracy) Regulation 2006 as amended from time to time. This will enable the Authority to have necessary assurances of the technical robustness of the systems deployed by the Operators and would also help in detection of system errors and instances of non-compliance for timely remedial action.

5. In Regulation 5 of the "Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012)", it must be clarified as follows

**"5. Response time and time limit for providing connection.--** (1) Every application from an applicant, submitted under sub-regulation (3) of regulation 3, shall be acted upon immediately by the multi-system operator or its linked local cable operator, as the case may be, **by activating the services to the said subscriber in the addressable system** and shortcoming or deficiency, if any, shall be communicated in writing to the applicant within two days of receipt of the application. (Emphasis in bold underlined italics is recommended to be added)

This will ensure timely uploading of customer application forms into the Operator's systems.

We further submit that our submissions herein are preliminary and without prejudice to the rights, contentions and averments of Broadcasters/entities including ourselves inter alia in Civil Appeal No's 2847 to 2854 of 2011 and D-8827/2011 that are pending adjudication before the Hon'ble Supreme Court or any other legal proceedings initiated by any other Broadcasters/entities in relation to the Addressable Tariff Order (including in relation to the wholesale rates applicable to Add-On Packages) in the Hon'ble TDSAT or otherwise and Civil Appeal Nos 829-833 of 2009 together with Civil Appeal Nos. 1166 -1169 of 2009 pending adjudication before the Hon'ble Supreme Court or any other legal proceedings initiated by any other Broadcasters/entities inter alia in relation to the Telecommunication

(Broadcasting and Cable ) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4th October 2007 in any court including but not limited to the Hon'ble Supreme Court or the Hon'ble TDSAT.

We further submit that the instant response be read and construed harmoniously with our earlier communications to your kindself on the subject. Our earlier submissions to the Authority are neither in derogation nor in supercession of any of the contentions made herein. In the unlikely event of any ambiguity, our instant response hereto shall prevail. We also reserve our right and request the Hon'ble Authority's leave to submit any further representations, evidence or findings for its kind consideration including but not limited to counter submissions as may be required. A hard copy of this instant communique, shall be duly reaching your good offices by tomorrow.

We remain,

Yours Truly,

For STAR India Private Limited

Sd/ Pulak Bagchi

Vice President – Legal and Regulatory

**ANNEXURE "A"**

**STAR'S SUBMISSIONS ON THE DRAFT TARIFF ORDER:**

A. TRAI has proposed the following amendment:

" In clause 6 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, (1 of 2010) .....

in sub-clause (1), for the second proviso, the following proviso shall be substituted, namely:-  
-"Provided further that in case a multi-system operator or direct to home operator or Internet Protocol service provider or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system, offers channels as a part of a bouquet, the a-la-carte rate of such channels forming part of that bouquet shall be subject to the following conditions, namely :-

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times the a-la carte rate of the channel offered by the broadcaster at wholesale rates for addressable systems; and

(b) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed three times the ascribed value of the pay channel in the bouquet;

Explanation: Ascribed value of a pay channel in a bouquet means the value arrived at by multiplying the proportionate value of the pay channels in the bouquet with the a-la-carte rate of the same pay channel and divided by the sum of a-la-carte rates of all the pay channels in the bouquet, and proportionate value of the pay channels in the bouquet shall be calculated in the following manner:-

[Bouquet rate x sum of a-la-carte rate of pay channels]/[ sum of a-la-carte rate of pay channels + sum of a-la-carte rate of free-to-air channels taking rate of free-to-air channel as Rs. 1];

**STAR RESPONSE:**

- **I. Whole sale prices are not reflective of true valuation:** Having a multiple of the wholesale rate of a channel as a basis for the retail rate of that very channel is not advisable as the whole sale rates in themselves were never allowed to reflect the true value proposition of the content offerings in the very first place. It may be recalled that channels in India were never allowed to discover their price through a market mechanism owing to the price freeze that had been imposed by the Authority since 2004. Since then, apart from two occasional inflationary adjustments which were again far below the actual inflation rate, there has been no realistic

assessment of channel valuations at the wholesale level for almost an entire decade. **The pricing regime at the wholesale being therefore fundamentally flawed cannot and should not be allowed to spillover at the retail as then the true valuation of a channel shall continue to remain ever elusive. The distortions that were created by the whole sale price freeze will then get replicated at the retail level with the Authority merely extending and perpetuating the price stagnation at the last mile. Such a formulation would never allow a channel to find its own price via the market route.**

- **II. Prejudicial to older channels:** When the price freeze came into effect, channels of different companies within a particular genre were priced differentially as they were at varying intersections of their respective demand-supply curves. While market forces have changed drastically over the years, prices have however continued to stagnate thereby giving a completely false picture of contemporary demand and supply. Illustratively TRAI had come up with a range of genre based pricing which effectively operated as a defacto ceiling for the various genres.<sup>1</sup> This compelled new entrants to price their channels at the higher end of the range to the detriment of old players who were priced lower because of the price freeze. **For example Zee TV, a GEC, is priced at INR. 13.88/- and it cannot increase its prices as it has been subjected to a freeze since 2004. Colors, another GEC that came only in 2008 is today priced at INR 21.40/-.** In the event retail rates are now asked to replicate such distortions at the wholesale there will be no incentive left for channels to come up with innovative content absent market forces. Old channels that have built and sustained connects with audiences over the years will be permanently denied their rightful valuations.
  
- **III. Disincentivise innovative packaging:** The proposed amendments will kill the incentives for operators to come up with innovative packaging. Today given the “Must Provide”, operators have already lost the incentive to compete among themselves on the basis of content differentiation as each and every operator has an unprecedented ex-ante statutory access to all the channels. Till now they have been competing among themselves only by differentiating prices and packaging. **If market prices have to be now derived by mindlessly applying some regulations vide a predetermined mathematical formula, without affording any thought to consumers or their preferences, it would sound a death knell to the industry as a whole.**
  
- **IV. The twin conditions taken together are unworkable:** The proposed twin conditions have to be complied with simultaneously. Accordingly only the lower value of the two conditions will have to be taken as the effective retail ala carte rate for a particular channel. However the condition that requires the calculation of proportionate and ascribed values is auto-repetitive

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<sup>1</sup> TRAI's Direction Dated 5<sup>th</sup> June 2008 given herein as Exhibit 1.

and circular as operators are being asked to fix a rate on the basis of their own rates. Assume that the existing retail ala carte rate of a channel for an operator is factored in the formulas and the new retail ala carte rate is obtained being the lower of the twin conditions. However immediately when this new rate is plugged in the retail bouquet, it will automatically trigger a recalculation of the proportionate and ascribed values and the entire exercise would have to be repeated. This would result in a circular pattern of infinite iterations that would never cease until a point when the formulas would yield values that are completely illusory, impractical and meaningless. Further this is a formula which can never be static at any point of time as all the pay channels comprised in a retail bouquet will have to be undergoing these iterations simultaneously throwing up one value after another which in turn will influence the simultaneous calculation and recalculation of the formulas for that bouquet through a never ending loop.

- **V. For Example:**

	<b>Hypothetical Retail Bouquet/Pack 1</b>	<b>Hypothetical Retail Bouquet Pack 2</b>
Total channels in a bouquet	100	130
Bouquet rate	120	195
Sum of a-la-carte rates of pay channels	450	500
Number of FTA channels	70	102
Number of pay channels	30	28
Uniform rate of FTA channels	1	1
Proportionate value of bouquet (A) *	103.85	161.96
<b>Channel X</b>		
Wholesale rate (42% of Non DAS rate)	6	6
Existing A-la carte rate	15	15
Ascribed Value **	3.46	4.85
Applicable a-la-carte rate as per condition (a) ^	12	12
Applicable a-la-carte rate as per condition (b) ^^	10.38	14.57
Effective a-la-carte rate	10.38	12

\*Calculation of proportionate value of bouquet (A)

$$A = \frac{\text{Bouquet rate} \times (\text{Sum of a-la carte rate of pay channels})}{(\text{Sum of a-la carte rate of pay channels} + \text{Number of FTA channels})}$$

\*\*Calculation of Ascribed Value

$$\text{Ascribed value} = \frac{[A] \times \text{a-la carte rate of the pay channel}}{(\text{Sum of a-la carte rate of pay channels})}$$

^ According to condition (a) effective a-la carte rate = 2 x wholesale rate of broadcaster

^^ According to condition (b) effective a-la carte rate = 3 x Ascribed Value

- **VI. Implications on retail packaging:**

**(a)** As the proposed regulations apply only to Pay Channels forming part of retail bouquets, the Tariff Order shall disincentivise operators from including pay channels in retail offerings. Operators would rather offer pay channels only as ala carte at steep prices to ensure that their cash flows do not have an adverse impact and they are in a position to cover costs. In the above example if Channel X is not made a part of any of the two hypothetical bouquets, the operator would be in a position to freely price its ala carte offering.

**(b)** With operators avoiding inclusion of pay channels in retail bouquets there is a possibility that only FTA channels shall be included in retail packs.

**(c)** In cases where ascribed value results in an ala carte price that is lower than the price which is twice the wholesale ala carte rate, operators shall be compelled to increase prices of such retail bouquet in order to ensure that the retail ala carte rate of the channel is atleast twice that of its whole sale ala carte rate - thereby making bouquet offerings unattractive to consumers.

**(d)** An Operator may have a particular channel appearing in numerous retail bouquets. In all such cases it would be an operational nightmare to arrive at the ascribed value for the channel in each such bouquet. For any single Operator, the ascribed value of the same channel shall differ from one retail bouquet to the other depending upon the channel composition in each such retail bouquet. The formulae shall have to be calculated for as many retail bouquets and even if we take the lowest of the values to become the applicable rate, the same will again result in fluctuating and circular iterations. as stated.

**(e)** If the lower of the two retail ala carte rates (arrived at on the basis of the two hypothetical bouquets ie. 10.38) is chosen as the new effective ala carte rate displacing the existing one (ie 15), the sum of retail ala carte rates of pay channels would have to be calculated afresh

for both the retail packs leading to a recalculation of both the ascribed and proportionate values for each of the retail packs to again arrive at newer rates. Any newer rate thus so arrived will again have to be subjected to the same never ending process of circular iterations as stated.

- (f)** Also as stated the same never ending process would have to be carried out simultaneously in respect of other pay channels comprised in that very retail bouquet, accordingly the formula for ascribed and proportionate values shall degenerate into an equation comprising only of variables. Thus in the above example for each of the hypothetical retail packs there being numerous pay channels, each of such pay channels will have to be solved for which would be an impossible task because of the circular iterations as stated.
- (g)** The fact that in both hypothetical bouquets the ala carte rates are coming down drastically from the earlier ones - could result in operators reopening negotiations with broadcasters in case they find other items of costs ie. non content costs to be too sticky to negotiate down. Just when the entire industry has been working towards stability by aligning their respective businesses around existing regulations that are not even a year old, such sudden changes in ground rules would only serve to bring in uncertainty, create widespread confusion in the market and reduce investor confidence. Operators would be compelled to unnecessarily renegotiate the terms of trade across the board and revisit their budgets. The costs of these inefficiencies arising out of frequent changes in regulations will have to be ultimately borne by the consumer in one way or the other.
- (h)** An operator needs to spread his totals costs (other than channel prices) across his entire subscriber base, in doing so he has to build in sufficient margin for those subscribers who choose only a few channels on ala carte. Therefore it might appear that a subscriber who is subscribing to only a few channels has to bear a disproportionate share of the costs compared to a subscriber who has subscribed to a bouquet but that is exactly what the economics of bundled offerings is all about. The regulator should not negate the economies of scale for a subscriber subscribing to a bouquet by holding that the same economies should be extended to those subscribing ala carte as then cost recoveries shall be adversely impacted and the entire business model of the operator will be ruined.
- (i)** Even assuming for argument's sake that such formula is indeed workable – any introduction of new FTA or pay channels, conversion from FTA to Pay Channels or vice versa within the

retail bouquet will again distort retail ala carte pricing of all channels and all calculations will have to be infinitely iterated as stated.

**(j)** Also operators will have no incentives to insert FTA channels in retail bouquets that already have pay channels as this would have the effect of the proportionate value being lesser than the Bouquet price and as a logical corollary the ascribed value would also get impacted resulting in the reduction of the retail ala carte rate for the pay channels.

**(k)** The FTA channels have been assumed at a uniform rate of INR 1/- for the purposes of calculating ascribed and proportionate values, whereas the actual rate charged by the Operator to subscribers could be anything. It may be pertinent to note the findings of the Hon'ble Authority in its Consultation paper No. 8/2011 dated 22<sup>nd</sup> Dec 2011 at page 13 para 1.18 :

*“However, majority of these FTA channels have been priced between Rs. 0 to Rs. 5, some are priced between Rs. 5 to Rs. 10 and only a few are priced more than Rs. 10 per subscriber per month. It has also been seen that there is almost uniformity in the a-la-carte channel rates of the FTA channels offered by any particular DTH operator.”*

- **VII. Data Unavailability:** Today the biggest bane of regulatory enforcement is unavailability of data. Operators are frequently coming up with one retail package after another which seldom gets reported much less disclosed to the Authority. Broadcasters and even the customers have no inkling of retail packages. Likewise Operators also discontinue retail offerings frequently owing to market related considerations. Neither does TRAI have the wherewithal to monitor this level of micromanagement of retail rates. It will be absolutely impossible for stakeholders to monitor and make such calculations as per the formula on a continuous sustained basis. **The need of the hour is for TRAI to create an enabling framework for collection and dissemination of retail tariff related information in the manner as suggested aforesaid.**
  
- **VIII. Retail Cable ARPU is lowest in India:** While prices of almost all essential commodities have gone up significantly in the same period; prices of channels on the other hand, though considered as 'esteem' by none other than the Authority<sup>2</sup>, has continued to languish and

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<sup>2</sup> Page 156, paragraph 7 of Consultation Paper on Tariff Issues related to Cable TV Services in Non-CAS Areas dated March 25, 2010.

*“India’s monthly ARPU (International \$11) is lower than the average across developing countries (around International \$ 22). This highlights the vast difference in India’s current retail pricing to international benchmarks.”*

stagnate over the years. However content costs and C&P<sup>3</sup> expenses increased manifold during the same period. **The average blended cost of pay-TV in India has grown at less than two per cent between 2006 and 2011, according to an analysis done by Media Partners Asia which is significantly below inflation.**<sup>4</sup>

- **IX. The Addressable Tariff Order and the CMS Study:** The Addressable Tariff Order that kept retail rates under forbearance for all addressable systems is only more than three years old. Content availability at retail is also not an issue. Intermittent tweaks to the regulatory regime are best avoided as it creates uncertainty in the industry. As held by the Hon'ble Supreme Court<sup>5</sup> "Certainty is integral to rule of law.....Investors should know where they stand." It is submitted that the said Tariff Order was a product of an extensive consultation process that was undertaken by TRAI at that time. **Nothing has changed in the last three years that would justify TRAI having a different opinion today about existing state of markets or competition. However businesses have already made short to long term plans on the basis of such tariff orders which would be unsettled if TRAI now decides to revise the same. In any event TRAI has consistently held and found competition to be adequate at the retail level particularly in addressable platforms.**

The Study done by the Center for Media Studies reveal how retail rates have been going down over the years, inspite of rising inflation and greater content availability. The Report says:

*"3.1 Monthly Subscription Fee*

*A decreasing trend in cable subscription fee is noticed across the cities. One of the reasons observed by the study team is expansion and availability of C&S channels through Direct to Home (DTH) service. This has made the market more competitive thereby compelling the Local Cable Operators (LCO) to bring down the monthly subscription fee. (See Table 1.0)... At national level, a decline in the average amount is noticed. On an average, the households are paying INR 185/- per month as against INR 200/- per month reported in 2007. The highest being reported in Shillong (INR 319/-) and lowest in Chennai (INR 106/-). (See Table 2.0)."*

- **X. International Precedents:** In the global context, retail rate fixation is hardly ever resorted to by governments except for countries like Taiwan and China. In the US, FCC regulates basic cable rates for a small and ever decreasing number of households in "relevant markets" where it is objectively judged that there is no "effective competition" to cable as yet. As nationwide DTH has brought competition almost everywhere, there are very few local markets subject to this minimal form of retail rate regulation. In the UK, there is no general regulation of retail rates.

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<sup>3</sup> Carriage and Placement expenses

<sup>4</sup> Media Partners Asia's Response to TRAI's consultation paper dated December 22, 2011, relating to the implementation of digital addressable cable TV systems.

<sup>5</sup> Para 91 of the Judgment of the Hon'ble Supreme Court in Vodafone International Holdings B.V. Vs Union of India & Another. In Civil Appeal No. 733 of 2012 arising out of SLP © 26529 of 2010, Decided on 20th January 2012.

However in early 2010, Ofcom required a DTH platform to offer two of its exclusive premium channels to other retailers at prices set by Ofcom. An appeal against this decision is pending. Likewise in Australia, rate regulation is undertaken only as an exception in cases where an attempt is first made by the authorities to objectively determine whether mergers/combinations between broadcasting entities have resulted in competition or market failure which could in turn impact availability of content and only one such instance has been reported since 2002. CASBAA a global association of Pay TV Operators after having conducted an extensive exercise of regulations across the globe summarized the position as hereunder<sup>6</sup>:

*“In keeping with its longstanding position that there is substantial retail competition in India that will restrain tariffs, CASBAA believes that the TRAI should forbear from regulating retail tariffs now and in the future. Market forces can and should govern rates in an industry that offers just one of many competing entertainment products, and which in any case now has multiple competing suppliers within the pay-TV industry. Retail rate regulation has stifled competition and hampered the development of the Indian cable industry, and is one of the reasons that the previous CAS experiment failed (in contrast to the rapid development of the competitive DTH sector which has enjoyed no retail rate regulation). Internationally, the South Korean example is revealing: the South Korean government removed mandated rate caps from cable TV operators two years ago, at the time it introduced major new competitive forces (multiple competing IPTV platforms). Under the impact of the aggressive competition from well-financed telcos (as is the case for Indian DTH operations), the cable industry has not been able to raise its rates significantly, and indeed cable operators complain bitterly about “excessive” competition. Consumers, however, are enjoying more content options, more network capabilities (on digital cable as well as IPTV systems) and restrained rate increases.*

*The TRAI Tariff Order of July 21 2010 sets out a policy of forbearance rather than retail rate regulation for addressable systems. This is an important part of the digitization initiative, and we urge the TRAI to maintain this policy, so that rate regulation does not become a permanent feature of the new digitized landscape. Consumers should not be led to believe that their cable rates will be forever more constrained than the prices of other entertainment products. As noted in the consultation paper, India’s pay-TV industry has become highly competitive, with a wealth of suppliers at all levels. The TRAI drew the correct conclusions from this competition when it decided that all digital addressable platforms should be able to fix their own charges as determined by market forces.”*

And further:<sup>7</sup>

*“The predominant regional practice is to avoid government control of retail pay-TV rates. Most administrations recognize that the days of pay-TV as a government-regulated utility have passed. In a digital environment, consumers obtain their entertainment products from a*

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<sup>6</sup> CASBAA’s Response dated 16<sup>th</sup> Jan 2012 to “Issues related to Implementation of Digital Addressable Cable TV Systems” , See p 3.

<sup>7</sup> See p 9 *ibid*

*multitude of sources using different technologies at different price points. (These include free TV, DVDs (both legitimate and unauthorized), IPTV from Telcos and Internet TV.) “Traditional” pay-TV is only one of the content options available to consumers, and more options are developing constantly.*

*Thus, governments avoid intervening in market pricing for pay-TV just as for other entertainment products. No government control of pay-TV rates exists in: Australia, Hong Kong, Indonesia, Japan, Malaysia, Philippines, New Zealand, Singapore, Thailand or Vietnam. (Several of these governments require advance notification of rate changes.)*

*Within Asia, only India, Taiwan, and China enforce strict regulation of retail cable TV rates. (Even these governments do not regulate satellite DTH rates.) South Korea, which formerly had government- mandated rates, recently introduced a regime where prices are determined by cable and satellite operators, with government oversight. It is notable that the places where rate regulation is strongest also have the most technologically backward pay-TV systems, heavily reliant on low-quality analogue cable transmission. Strict rate regulation impedes investment into the industry, and in the long term lowers consumer benefits.”*

**B. TRAI has proposed another amendment as follows:**

“ after sub-clause (4), the following sub-clause shall be inserted, namely:--

“(5) if a service provider offers a bouquet consisting of standard definition channels and high definition channels or three-dimensional channels or both, requiring special type of set top box, it shall:---

(a) ensure that such bouquet is provided to only those subscribers who have set-top-box compatible to receive the channels contained in the said bouquet; and (b) offer the same bouquet to other subscribers after excluding high definition and three dimensional channels from the bouquet; and

(c) fix the rate of bouquet, referred to in para (b), after deducting the ascribed value of the high definition and the three dimensional channels forming part of the bouquet referred to in para (a).”

**STAR RESPONSE:**

We believe this to be entirely unnecessary and cumbersome. It may be mentioned that retail packaging is entirely the prerogative of the Operator. We request the Authority to not stipulate such onerous retail packaging conditions on Operators who after having made huge investments and that too in a competitive distribution landscape that is unprecedented with 6000 MSOs competing with 6 DTH Operators are now being essentially told how to run their respective businesses. We find it to be an instance of misplaced and excessive micro regulatory intervention whereby operators are being told off to offer the same bouquet (comprising of HD, 3D and SD channels and hence requiring specialized set top boxes) to other subscribers not subscribing to such HD and 3 D channels after excluding the HD and 3 D Channels. We also find it unduly excessive and too restrictive that the said bouquet has to be offered to such other

subscribers after deducting the ascribed value of the HD and 3 D channels forming part of such bouquet. We see in this a clear attempt to regulate the prices of HD and 3 D channels which were after intensive discussions decided to be kept under forbearance given the present state of immaturity of their respective markets. **An operator today innovatively packs channels at the retail to encourage subscribers to sign up for HD and 3D channels. This might entail some discounts and facilitation on the SD channels' front which he somehow makes up from the recoveries on account of the HD and 3D channels being included in such bouquet. To say such discounts and facilitation has to be now extended and provided to subscribers not availing HD or 3D channels as well, will seriously disincentivise operators from including HD or 3D channels in packs containing SD channels and thereby the uptake of these channels based on entirely new technologies shall suffer. Before even having gathered any momentum or traction, the business case of these high end channels shall be finished once and for all if such regulations indeed come into actual operation.**

**C. RECOMMENDATION:**

**We recommend that while the Draft Interconnect Regulations have to be incorporated in the fitness of things, we believe that there is no requirement for a denovo tariff regulation exercise in the form and shape of the Draft Tariff Orders, in so far as addressable systems are concerned. Today the Tariff Regulations already provide for a Basic Service Tier of 100 free to air channels for INR 100/- and an entry level pack comprising of atleast one pay channel at a minimum price not exceeding INR 150/-. Further these issues have also not arisen out of the Hon'ble TDSAT Judgment and as such are not apposite at this juncture when Digital Cable is in the cusp of providing effective completion to other digital platforms like DTH, IPTV, etc. These could also have unwanted consequences like resulting in poor uptake of HD channels. The need for the hour is to build confidence amongst investors for funding digital addressable cable and providing much needed assurances to incumbent DTH and IPTV players that after prolonged years of battling with a powerfully privileged analog cable industry, the level playing fields are not yet again skewed against them when they gear up for the paradigm shift post 2014 – when analog signals are to be switched off once and for all.**

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