CONSULTATION ON DRAFT TARIFF ORDER APPLICABLE FOR NON-ADDRESSABLE CABLE TV SYSTEMS December 01, 2014

It is submitted that we have perused in detail the draft 'The Telecommunication (Broadcasting and Cable) Services (Seventh) (Non-addressable Systems) Tariff Order, 2014 under the above said consultation ("Draft Tariff Order"), the Report submitted by the Authority on Tariff issues related to Cable TV services in non-CAS areas ("TRAI Report") before the Hon'ble Supreme Court of India in Civil Appeal Nos.829-833 of 2009 ("Civil Appeal") and the various letters from the stakeholders' representations in pursuance of the Hon'ble Supreme Court order dated September 17, 2014, in the Civil Appeal.

On the basis of the above, our comments in the present consultation are as herein under. You may kindly note that our views and opinion, expressed herein and participation in this consultation process are without prejudice to our rights and contentions. We reserve our right to submit our counter and/ or additional comments, wherein deemed necessary by us to clarify our position on the envisaged issues under the consultation, whether in writing and orally, as part of this consultation process or otherwise.

I. Preliminary Objections to the Draft Tariff Order:

a. Issue of Regulating Carriage and Placement Fee not included:

The Issue of regulation of Carriage Fee and Placement Fee has long been impending upon the Authority. As you are aware that the broadcasting services are highly regulated in terms of rates & manner of offering of channels & bouquets and advertisement minutage & restriction of direct service to commercial subscribers, etc.

Whilst the broadcasting and cable services solely thrive on content, whereas the harbinger of content i.e. the broadcaster has been put

numerous restrictions by way of regulations. On the other hand the intermediaries viz. MSO is relatively unregulated on their wholesale pricing to the cable operators and offering of channels at the retail level. In our view the present regulatory freedom to the MSO/cable operator has confirmed the last mile monopoly for them and is encouraging the carriage fee regime and is facilitating the MSOs to seek exorbitant carriage fee.

Today, the present regulations allow intermediaries to enjoy very comfortable position by getting services at a highly regulated/ capped wholesale rates and selling them at liberally regulated retail rates and to add to this, some of them also indulge in unaccounted subscription & local advertisement sales and murky carriage deals. Moreover, the Authority should also consider the fact that the high returns in cable business are disproportionately advantageous to the LCO's/intermediaries vis-à-vis their investments. Whereas for the broadcasters there is a huge investments in terms of capital investment, manpower and resources, initial and recurring, to sustain its business till it reaches the break-even point, which takes atleast couple of years to reach.

Unlike for pay channel broadcasters, there are no reporting obligation for the MSOs and cable operators to furnish their revenues from carriage fee, subscription and advertisement sales, which in turn encourages them to stay unorganized- This may also leads to a huge loss to the government due to non-payment of statutory taxes. We suggest that in order to get a holistic view of inflow and outflow of the revenues in broadcasting & cable service industry, the Authority should also make it obligatory for the intermediaries like MSOs and Cable Operators to file their revenues from carriage, subscription, local advertisement sales, etc. with it.

The regulatory disparity also imposes a double strain on the Broadcasters to provide channels only in prescribed manner in terms of the regulations to MSOs/cable operators without any mechanism to ensure that they get the subscription money for the actual number of subscribers in a non-addressable regime. The situation for News Channels & Regional channels is even worse, even if they choose to be pay channels, the subscription revenue is minimal when compared to the carriage fee paid to the MSOs.

The broadcasters, individually and through their associations have been asking for carriage and placement fee regulations at various fora and platforms, consultations, etc. During the hearings in the Civil Appeal, the Hon'ble Supreme Court has directed in its order dated May 13, 2009, that *"…The TRAI shall also consider the feasibility of putting a cap on carriage and placement charges."* In the same case, the Hon'ble Supreme Court while disposing off the appeal vide its order dated September 17, 2014, has directed, "…*We make it clear that we have left all questions of law open and also make it clear that the status quo as on today will continue ….. In case any of the stakeholders intend to make representations to the TRAI, they may do so positively within ten days and in any case on or before 30.09.2014…"* In pursuance of this order various broadcasters, including Times Television Network, and broadcaster associations have requested the Authority to utilize the opportunity & mandate and bring in the issue of regulation of carriage and placement fee charged by the DPOs for public consultation. But surprisingly, the Authority has neither considered the said issue of regulation of carriage and placement fee and nor placed any reasons in the Consultation Paper for not doing so-.

Since the dates for mandatory DAS for Phase III & Phase IV has been deferred to Dec 2015 & December 2016 respectively, it is an absolute necessity to bring the regulation on carriage fee as early

as possible. What the broadcasters demand is not for a stark reduction in the carriage and placement fee but a cap to limit the carriage and placement fees demands by a MSO to a reasonable, rationalistic and non-discriminatory limits. Undoubtedly, regulation of carriage and placement fee will create a level playing field for the stakeholders and ensure equal opportunity especially for news, small and regional broadcasters.

b. Consultation on pre-defined issues only

TRAI Report is dated July 21, 2010 and information and data used in it is even before that. There have been several new developments after the said report was furnished before the Hon'ble Supreme Court. Unarguably, certain contents and findings of the TRAI Report have become out of reference in the present day scenario. The same has been submitted before the Hon'ble Supreme Court's in above referred civil appeal, which it has recorded in its order dated September 17, 2014 as: "*....We may note the submissions made by learned counsel for the TRAI that since the report was prepared in 2010, there may be a necessity of holding further consultations....*" However, on perusal of the Draft Tariff Order, we see there is not much change to Draft Tariff Order, except for fixation of recent orders and regulation of the Authority in it and marginal change in retail tariffs based on the inflation survey. Such modification would not have required any consultation in any case, as these regulations and orders are already in effect. The Authority's submission that there is a necessity of holding further consultations and the Hon'ble Court upholding the same is a clear direction for a constructive and material involvement of the stakeholders on impending issues and not just asking for opinion from the stakeholders on the Draft Tariff Order with predefined issues.

We therefore don't concur with the Authority's view that the number of developments that have taken place since the time the draft tariff order were submitted to the Hon'ble Supreme Court as part of the TRAI Report, as the case is, it is more than four years since the TRAI report was furnished. The factors such multifold increase in carriage and placement fee charged by the MSOs, addition of commercial subscribers to MSOs and cable operators, restriction of bundling of multi-broadcaster channels, introduction of digital non-addressable cable systems, restriction on advertisement minutage, increase in metered cities, etc. have not been considered in TRAI Report. Further, the consultation process can't be mere taking opinion from the stakeholders on a revised draft tariff order, especially when Hon'ble Supreme Court in its order has categorically left all *'questions of law'* open for the consultation process.

II. Submissions:

a. Wholesale Tariff:

The a-la-carte offering obligation for the broadcasters should have not been mandatory. When there can't be a-la-carte offering at the retail level in a non-addressable cable systems, then the broadcasters shouldn't be mandated to offer a-la-carte at the wholesale level. The MSO doesn't represent the choice of the subscribers and therefore shouldn't be allowed to choose channels on a-la-carte basis for the subscribers. Moreover, such an obligation on the broadcasters takes away the negotiating power from the broadcasters and makes it susceptible to misuse by the MSOs. The impugned tariff order under the Civil Appeal for the first time in 2007 provided for mandatory offering of a-la-carte channels by the broadcasters, however it can easily ascertained by the Authority that till date only a handful of MSOs have actually opted for a-la-carte channels. Whereas the said provisions has so

far been used only as a tool for negotiation by the MSOs with the broadcasters.

b. Retail Tariff:

The Retail Tariff determines what subscription revenue will be injected in to cable and broadcasting industry. The subscription collected from the subscriber ultimately goes up to the broadcaster in contracted proportions. On the other hand, the ARPUs are directly proportionate to the cap on the maximum retail subscription tariff, if the cap is at lower levels, ARPUs will be automatically be lower than the cap. The Authority has done studies of the prevailing rates based on various surveys, it has discussed the range of cable subscription rates across the country, in all this, the affordability of subscription charges by a subscriber has never been questioned as the prevailing market forces & demand and supply defines & settles the rates in every area. Therefore it would not be a good idea to have a single national level ceiling for retail rates. In fact cable services are very affordable for somebody who owns a television all over the country.

In our view the proposed cap on retail tariffs is very conservative, either there should be no ceiling at the retail level or it should be no less than between a range of Rs. 400- Rs. 500 per month, so that the ARPU for cable services can go up to bolster the industry. The increased ARPUs will facilitate higher injected revenues in cable and broadcasting business, which in turn bring good value for investment for the MSOs, Cable Operators and the Broadcasters, improvement in QOS to the subscribers and curtailment of piracy & unaccounted monies.

c. Charges paid by Cable Operator to Multi System Operator:

The charges payable by cable operators to the MSOs can be left to mutual negotiations between the two. But more important is to

bring accountability and transparency by ensuring that the interconnect agreements between MSOs and cable Operators are in writing and details of which are submitted by the MSOs with the Authority, similar to the annual reporting of details of interconnect agreements done by the broadcasters. Billing & collection mechanism should be strictly adopted to ensure transparency in system & protect revenue.

d. Issue of receipt and bill:

It is the billing and collection of subscription dues where the most pilferation of revenue happens. The extant provisions for billing and collection are very comprehensive and robust, however it is the issue of enforcement of these regulations that has been letting these down. Besides the provisions for billing and receipt, the Authority should also ensure steps for effective implementation of these provisions. One measure can be mandatory online/ electronic billing and issuance of receipts to the subscribers.

e. Reporting Requirements

- **Reporting of revenue share arrangement between owners of channels in the bouquet:** Such reporting requirement should not be made mandatory in respect of the channels, forming part of a bouquet, that are of the broadcaster companies belonging to the same group. As such the TRAI's regulations and orders, dated February 17, 2014, allow the broadcasters of a group to bundle their channels.

- **Reporting of advertisement revenue for the last three financial years:** Details of business revenue of any kind is commercial sensitive information, including the advertisement revenue of a channel. Unlike the statutory

confidentiality for the annual reporting of details inter-connect agreements by the broadcasters, the details filed by the broadcaster under the reporting obligations, herein, are not protected by any confidentiality provisions. Further, no such information is sought from any other intermediaries/ Distribution Platform Operators whereas they also have significant advertisement and other revenues streams. In view thereof, the reporting obligation upon broadcasters for advertisement revenue for the last three financial years should be taken off the provisions under the Draft Tariff Order.

- **Compliance within Seven Days:** Broadcasters are already complying with the entire reporting requirements, as mentioned therein the Draft Tariff Order for both DAS and Non-DAS Areas. The requirement under the Draft Tariff Order that every broadcaster shall, within seven days from the coming into force of the order shall furnish the information to the Authority is unnecessary and will serve no real purpose. Therefore, the provisions in the Draft Tariff Order envisaging mandatory furnishing of scheduled information may be avoided and not made part of the final notified tariff order.