Date: 11th May 2010 "without Prejudice"

Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg
New Delhi- 110002.

Sub: Response to Telecom Regulatory Authority of India consultation paper dated 6th April 2010 on issues for HITS services

Dear Sir,

We write with reference to the aforementioned Consultation Paper issued by TRAI on related issues for HITS services. We would like to reproduce below our earlier submission to TRAI on on Broadcast TV Content Pricing and Carriage Fee Regulation.

Broadcast TV Content Pricing and Carriage Fee Regulation

This paper seeks to analyze and give suggestions on the following issues:

- What should be the objectives of a fair regulation in the area of Broadcast TV content pricing
- Should Broadcast TV content pricing be regulated or controlled
- Should carriage be regulated or controlled
- How can competition be encouraged

Objectives of a fair regulation on pricing of Broadcast TV content

- Pricing regulation, if required should be equitable to all participants in Value Chain and to the consumers i.e. it should provide under normal competitive environment just rewards (commensurate with underlying risks) to all participants in the value chain at a cost to consumer which not exploitative or unreasonable.

The parties in the Value chain are i) producers and sellers of the Broadcast TV content (Broadcasters and their agents or re-sellers such as MSM discovery, Zee Turner, and Star Den etc) and ii) the distributers of content to the consumers – this would include the DTH service providers, Cable MSOs, Local Cable operators(LCOs) and potentially web based service providers.

- It should be platform neutral- platform being Cable (both addressable and analog), DTH, HITS, IPTV or Direct from Web[1]. In other words, regulator should not seek to differentiate between the platforms on content pricing and allow consumers to choose the platform they prefer. However, adequate support should be provided to Cable during its transformation from a highly fragmented and unstructured environment to more competitive and technology intensive market place.

- It should encourage competition between the value chain participants so that consumers get a fair deal in the long term.

- It should be transparent, practical and implementable.

Should Broadcast TV content pricing be regulated or controlled?

Popular content is a natural monopoly. If not regulated, it can lead to a monopolistic or oligopolistic market. It is for this reason, regulators provide for safeguards such as i)delinking of ownership between content producers (and resellers or agents) on one side and content distributers (DTH, MSOs etc) on the other side and ii) a 'must connect' clause in favour of content distributers. However, without a fair and effective regulation of content pricing, 'must connect' clause will become a toothless provision. If we agree with this proposition, then there are probably the following alternatives:

- (a) Price Control: herein the regulator fixes the price at which the content is available to all content distributers. In India, we have been following a hybrid price control system whereby the content owner is free to fix price in the first instance with subsequent escalations being controlled by the regulator.

[1] Direct from Web: Broadcast TV content is increasingly being stored on Web from where it is streamed to the computers, laptops and TVs using a DRM software and Broadband connection.

- (b) Declared price with MFC clause: In this case the Content producer/ seller would be free to declare the price for content and will undertake the obligation of providing most favoured customer treatment to each one of the content distributers. In other words the content producers/sellers cannot give preferential treatment to any content distributer on terms of trade. The effective implementation of MFC clause will have be supported by audits by the regulator.

Our suggestion is as follows:

- Keep the existing TV Channels exceeding a certain threshold of TRPs for each genre (defined as - dominant Channels – see infra) under price control as hitherto (option (a) above). All other channels and new channels should be allowed to declare their price after undertaking obligation of MFC clause (option (b) above).
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- Based on the experience, and after plugging loopholes found during the actual implementation, all the channels should be allowed to move to option (b) in say 3 years with a firm commitment. However, the regulator should keep a watch on the pricing of dominant channels and intervene where the price premium of such channels is unreasonable with regard to that of other channels in the same genre.

- Going immediately for option (b) for existing TV Channels exceeding a certain threshold TRPs is not recommended on the consideration of practicability. In the immediate context, it may lead to unpredictable consequences including an increase in consumer prices leading to a potential backlash against this policy. A gradualism in movement from controlled pricing to free market is prudent and time tested.

- For an effective implementation of option (b) it is desirable that the there is a separation in ownership of content producers/sellers on one side and content distributers on the other side.

- However, to help unstructured and fragmented cable business to smoothly transition into competitive market place, 'voluntary CAS' pricing should be allowed as an option for the addressable cable platforms for a period of 3 years.