

March 25, 2016



Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan,

Jawaharlal Lal Nehru Marg, New Delhi – 110002

Ref: Consultation paper dated January 29, 2016, on tariff issues related to TV services ("**Consultation Paper**").

Dear Sir,

With an objective to assist TRAI in concluding a flexible regulatory standards and an adaptive framework encompassing addressability of the challenges that may arise in future Cable TV industry, we, IndiaCast Distribution Private Limited, in continuation of the comments received from various stakeholders on the Consultation Paper, would like to submit our view points (as enclosed herewith).

We are sure that our counter-comments would further enhance the analysis of the fundamental Cable TV practices and the issues as iterated by TRAI.

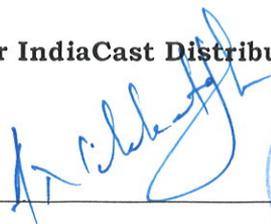
We are hopeful that the outcome of this Consultation Paper would set out an elaborate tariff architecture in the best interest of all in the value chain, clarify many issues to set a clear path and make ease of doing business in the Cable Television and Broadcasting sector.

In context of the same, we hereby attach our counter comments on the issues raised in this Consultation Paper for your kind perusal.

For any further clarification you may write to us or contact us.

Yours Sincerely,

For IndiaCast Distribution Private Limited



Authorized Signatory



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TRAI has raised important issues through this Consultation Paper dated January 29, 2016 on ‘Tariff Issues related to TV Services’ (“Consultation Paper”) and the approach adopted is much appreciated. We express our commitment towards supporting the principle functionality based on non-discrimination and fair growth of the Cable TV services in the country. Considering the complex cable TV industry structure that has emerged and the challenges thrown up requiring due consideration, we feel there is a compelling need to review the norms and standards in a consolidated and dispassionate manner. Our submission relating to the counter comments are hereinafter summarised as below:

1. Tariff Model:

Few of the stakeholders have suggested Distribution Network Model which may not be feasible till the time of complete digitisation.

- a. The model will work only when the infrastructure at all level is fully developed to address the demand of subscribers. This includes setting up of call centers and managing the subscriber’s account at DPO level which unfortunately has not happened as of now. Hence, this model is a little premature against time.
- b. Since there is no bundling of channels at DPO level, the offering of various broadcasters may confuse the subscribers rather helping him in suitable choice of channels.
- c. The interest of the broadcaster and DPO may be under conflict as DPO plays major role in persuading the subscribers on the choice of channels/ bouquet of the broadcaster.
- d. The diversity and quality of content may not improve due to limited demand of larger channels.

- e. Since, the DPO will not be allowed to form a bouquet, it may lose interest in marketing of channels.
- f. In this model the bouquets are being offered by the Broadcasters and the DPOs are not allowed to form bouquet. Hence, different bouquets from different Broadcasters would not be favourable to the Consumers.
- g. Free FTA channels shall be provided to the Consumers with a cost which is again not in the best interest to the Consumers.

One of the Stakeholder has suggested forbearance in a phase manner, in which the four metros to begin with, which itself is not tenable since it amounts to discrimination which is against the very basis of the TRAI's mandate in the manner of channel offering.

One of the Stakeholder has also suggested cost base model. Same is not feasible as cost of the contents varies from channel to channel and is not static. It would not be possible to determine the cost of the contents of a particular channel as it is not a standardized commodity and same should not be concluded on a best effort basis. Channel contents and programming quality is very difficult to measure objectively, and their costs are changing rapidly. The price determination would be redundant and shall be subjected to changes frequently. No elaborate regulatory regime can be identified to capture the fixed cost of the content of the

channels owing to its diversity as well. Revenues are also earned from advertisement also and it is not clear how much of the cost would be recovered through subscription fee.

Further, TRAI has also indicated the following disadvantages in this model:

- a. Media content is a creative product for which the production cost may vary significantly across time, location, genres and channels etc.
- b. There is a possibility of huge variation in content production cost within given genre. Hence, vetting the price of individual channel would be a huge regulatory burden.
- c. The methodology condones inefficiencies and allows payment in lieu of that also.
- d. Discourage the further investment at registered broadcaster level.
- e. It goes against the pricing principles where pricing of product at different stages of its lifecycle may be based on different criteria's to maximise overall gain.

This model would only stifle development of quality of content of the channels.

Intermediaries or agents, who are acting as a facilitators of the principals, have also been suggested to be removed from the value chain

which itself is a violation of the rights granted under 19 (1) (g) of the Constitution of India.

One of the stakeholder has suggested similar model as CAS with price fixed at Rs. 6/- as MRP for all the pay channels which is also running advertisement. The revenue sharing between Broadcasters, MSO & LCO to be in the same ratio of 45%, 30% & 25% as in CAS. A Fixed monthly charge of Rs. 100/- to be levied on the subscriber for FTA Bouquet and this money to be split in the ratio of 30:70 between MSO & LCO.

A price cap form of regulation avoids the problems of measuring and controlling programming costs, but introduces the problem of controlling quality. Moreover at a particular price, a broadcaster may still be able to exercise market power and increase profits, but reduce overall economic efficiency by reducing programming quality. Further, having a uniform price cap across the genres ignores the variant costs of the content of the channels. This model qualified under CAS regime due to fact that only pay channels were routed through addressable system without any classification of any genres. However, under DAS regime and the regulated RIO model, the subscribers have the option to subscribe to bouquets of pay and FTA channels and same are retransmitted through addressable systems only.

Hence, we wish to reiterate that freedom of pricing in favour of the broadcaster will lead to better content production amongst the

broadcasters, leading to better variety and quality of content, and an increase in investor's confidence, ultimately to the best interest of the public. In the event if TRAI feels tariff forbearance is still premature, a regulated RIO model may be adopted for the time being. However, upon complete digitization after implementation of DAS IV TRAI may consider complete forbearance in tariff keeping in mind addressability and competition in market.

2. Channel pricing framework: -

Bouquets: Under the regulated RIO model both Broadcaster and the DPO have the option to form of bouquets and such formation of bouquets is regulated by the applicable twin conditions.

Discounts: Also the discounts offered by the Broadcasters cannot exceed 50% and the same shall be provided to the DPO's on a non-discriminatory basis.

Restrictions on discounting of tariff less than 50 % for promotions/marketing of channel may not be restricted as suggested by various stakeholders. This may serve as an impediment to the broadcaster with respect to launch of new channel and also in designing its marketing and promotion activities. It is submitted that TRAI should lay down the broader tariff framework and freedom may be granted to broadcaster to take such decisions based on their own estimates and analysis. The

purpose of TRAI should be limited to controlling the conduct of stakeholders and not the economics of business.

3. Market Power:

Some of the Stakeholders are of the opinions that the market power needs to be identified and regulated through restrictions on mergers and vertical integrations. It needs to be highlighted that the dominant issues is the abuse of the significant market power which shall be adequately addressed and is protected by the Competition Commission of India (“**CCI**”). The CCI established under the Competition Act, 2002 to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests the consumers and to ensure freedom of trade carried on by other participants in the markets in India, and for matters connected therewith and incidental thereto. In view thereof, the issues relating to the ‘significant market power’ squarely falls within the jurisdiction of the CCI.

4. Niche Channels:

Some of the Stakeholder are of the opinion that Niche Channels should be classified based on audience attributes, gestation period or nature of content. TRAI must note that it may be extremely difficult to categorize niche channel genre basis audience attributes, gestation period or nature of content, production, distribution and marketing costs. Such

categorization may unnecessarily create ambiguity in genre classification. E.g. (i) Kids channels may be categorized as Niche Channels as these are accessed by special interest groups (kids), (ii) a new GEC channels may qualify as Niche Channels for the gestation period of 12-18 months despite having standard GEC content, and (iii) no channel will be classified as Niche Channel because of the 'cons' highlighted in 'Cost Based Model'. In view thereof, we suggest that Niche Channels be restricted to Ad-Free Channels, HD Channels and 3D Channels as noted in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable Services) (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012. This will arrest the misuse in the name of 'Niche Channel Genre'. We also believe that in order to promote and facilitate introduction of more 'Niche Channels', the price forbearance for Niche Channels must continue till such time the subscription for Niche Channels crosses a defined threshold.

5. HD Channels:

Further one of the Stakeholder has also commented to conduct a cost based exercise to regulate the pricing of HD channels. Cost based regulation of the pricing is not practical as the cost of content transmission is not uniform and deriving a fixed cap would prejudice the rights of the Broadcasters. We feel that HD channel is premium quality

content aimed at a specific (high ARPU) audience and hence, it should continue to exist under the same category. The prices should also remain under forbearance, and the market forces would determine the prices. In fact, it needs to be added that if the forbearance is allowed to exist at all levels and in respect of all channels, in that event, market forces will better control the prices of the channels.

Reiterating that the number of HD channels are miniscule and not even 5 % of total number of channels. Similarly, the subscribers receiving such HD channels are not even the 5 % of total cable TV subscribers. The growth of HD channels in India is at very nascent state and there is a need to encourage production of HD channels by relaxing the price restrictions so that such channels gain higher viewership. It is also noteworthy that till now broadcasters have largely not started monetizing HD channels for its uniform growth in market. Similarly DPOs are also making investment in the form of HD Set Top Boxes to develop the taste and choice of end subscriber. All these activities are at embryonic stage and hence any regulation in tariff at this juncture may exasperate not only stakeholders but may also lead to waning of initiatives taken by the stakeholders for HD channels.

6. Manner of Offering of channels:

With respect to the manner of offering of the channels, some of the Stakeholders have suggested that FTA and pay channels should not be

bundled together and further have also suggested HD channel to be separately offered. We feel that DPOs must be given the flexibility to package the channels, subject to the conditions specified below:-

- (i) DPOs to offer bouquet of channels. The bouquet may comprise of Pay and FTA channels. The a-la-carte tariff of each FTA channels shall be Re. 1/-. The tariff of the bouquet of channels to be determined by DPOs shall be subject to the following twin conditions:
 - a. the sum of the a-la-carte rates of the pay and FTA channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and
 - b. the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a channel of that bouquet of which such pay channel is a part.

This would foster further enhancement of better choice at lesser cost at the consumer level and at a minimal compliance effects on the part of the service providers.

7. Carriage, Placement and Marketing Fee:

Few Stakeholders have suggested regulation of the Carriage, Placement and Marketing Fees. Due to the bandwidth constraints, the cable

operator allocates certain frequencies to the highest paying channels. This phenomenon can be interpreted in simple economic terms as a “demand supply” mismatch. With supply remaining unchanged and the total number of channels having risen steadily, carriage, placement and marketing fee reflects the entry barrier posed.

We feel that placement and marketing fees should be left to market forces. A broadcaster is free to choose different options for marketing its channels. The manner of conducting business cannot be regulated unless it hampers the general interests of the other stakeholders. Placement and marketing services are desired by different broadcasters and DPOs as per their need and requirement. In return for the fee, a separate and distinct service is given by the DPO to the broadcaster, which is not a factor of the subscription fee. TRAI has although been of the view that placement should remain unregulated and as such, at this stage also, it should remain unregulated depending on the market forces.

In fact, as the market scenario would portray, the broadcasting industry substantially reduce carriage fee and as such, it would be our suggestion that there is no need to regulate or otherwise deal with the issue of carriage fee. However, if at all carriage fee has to be regulated, the same should be left to market forces to govern the same, and on the basis of parity, non-discrimination and transparency. It is also important that carriage/ placement has to be independently recognized and shall not be

seen as a measure to set off subscription fee as the factors for determination of carriage/ placement fee are independent of subscription and purely based on requirement including market factors and budget of the Broadcaster.

8. Variant/Cloned Channels:

Some of the Stakeholder have sought to regulate the content of the cloned channels. It is our humble submission that Regulation relating to the contents of the channels are beyond the jurisdiction of the TRAI. It is also pertinent to mention that linguistically modified channels are not cloned channels as different licenses are issued and Broadcasters have to acquire specific content rights for creating different language feeds. Broadcasters are free to put any content on their channel, as long as it is in conformity with programming and advertisement codes as enshrined in the Cable Television Network Regulation Act and the extant uplink/downlink guidelines issued by the Ministry of Information & Broadcasting. Moreover, banning of cloned channels is against the best interest of the end consumers.

9. EPG , Pay Per View and Tariff Options:

Contents of Pay Per View is in nature of VAS which a consumer may opt at his preferred time for viewing and voluntarily pays for the same. Hence, regulating such content is beyond the jurisdiction of the TRAI.

Regulating a-la-carte rate for each channels at retail level will have more meaning for subscribers over Pay Per View of individual programs.

10. Audit & reporting issues :-

Few of the Stakeholders are of the opinion that setting up of a centralised agency for audit and reporting issues are not feasible and have stated various ground, broadly concerns raised on the issues of confidentiality of core business information, trade secrets and one of the individual has also suggested restriction of audit for only once in a year.

TRAI is also aware and have acknowledged that audit and reporting has emerged as a point of disagreement between the broadcasters and DPOs and is the basis of numerous disputes between the parties. Hence, to address this issue there is a need of a transparent and robust mechanism to review and audit the subscriber management system. We are, therefore, of the view that an unbiased centralized agency shall work as an effective mechanism to avoid disputes between the parties. At the same time TRAI may also consider appointing/ recognizing 3 – 4 independent audit agencies for conducting audit till such time the effective mechanism of centralized agency is fully developed.

11. Other Issues: Other issues that require consideration of TRAI are as under:-

- a. Violation of QoS Regulations: Compliance of QoS regulations should therefore be mandated under the Interconnect Regulations and Interconnect Agreements and ensure that TRAI takes stringent action against the existing defaulting DPOs.
- b. Default in payments: We urge TRAI to tighten existing provisions so that DPOs perpetuate the default by unconscionably demanding instalment facilities after willfully and deliberately piling up outstanding. In many cases the defaulter has simply reorganized its business by opening another entity and then approached broadcasters under Must Provide, and the broadcasters have been compelled to give signals to the new entity including the one who procure new licenses from MIB. We would therefore urge the TRAI to plug all these loopholes so that the regulatory construct does not promote aid or abet default by DPOs.
- c. Disconnection of signals of TV Channel: Provision may be incorporated in the Regulation providing the manner for such disconnection scrolls for the TV channels qualifying the intent of the Regulation to make the consumers informed.
- d. Registration of Cable Television Operators: At present there is no valid statistic of the last mile operators neither any control over their operational compliances. TRAI may make provision directing the LCOs to have a mandatory central registration process with the MIB or TRAI

- or its allied offices, whereby the Authority would have information and data relating to the last mile operator including the LCOs and also of the MSOs operating in the Non-DAS areas.
- e. Separate tariff for commercial subscribers: It is suggested that it is a right time that TRAI resolves the issue revolving on the tariff applicable to commercial subscribers since the protection against abnormal price hike for the channels meant for bonafide residential subscribers cannot unreasonably be extended to commercial subscribers.
 - f. Mandatory prepaid model: In order to address the issue of timely payments by the stakeholders at the various levels, TRAI should explore the possibility of issuing Regulation for adoption of pre-paid model from consumers to MSOs as is prevalent in the DTH Sector.
 - g. NOC from the broadcaster shall be made compulsory for the MSO (having dues with such broadcaster) in case of any merger/ acquisition, consolidation or receiving of signals by such MSOs from any other DPO.
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