

# Cable Operators Federation of India

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**Without Prejudice**  
(by Speed Post/E-mail)

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The Chairman,  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg  
New Delhi-110002

**Kind Attn: Mr. S.K. Gupta, Pr. Advisor (B&CS) and Gp Captain Umesh Kumar**

**Sub: Comments on TRAI Consultation Paper No 1 of 2016, on  
Tariff Issues Related to TV Services**

Dear Sir,

This is in reference to your Consultation Paper and Tariff Issues related to TV services dated 29 January 2016.

At the outset, we wish to compliment TRAI for bringing such an elaborate consultation on Tariff Issues related to TV services. It is well known that we may write the success of Digitisation in cable TV industry on paper, in reality very little has been achieved in the last five years, much contrary to what time period TRAI had earmarked to complete the process. We have already added two years to the deadlines and if no immediate action is taken to rectify the situation, many more will be added. All TRAI regulations are in the courts and consumers are the biggest losers.

- FDI is below expectations.
- The sector has been facing numerous litigations on regulatory and tariff issues.
- In spite of TRAI declaring that 60% digitisation has done, except seeding STBs against consumer's will nothing has been achieved.
- None of the TRAI recommendations on incentivising digital migration has been accepted by the government till date.
- Since all regulations and tariff orders are subjudice and broadcasters refuse to obey any regulation, be it concerning tariff or quality of service, the industry progress has become static.
- Broadcasters refuse to provide their revenue sources and income details for their

channels to the regulator to understand if the rates of the channels are reasonable and commensurate with the content they provide. On the other hand they try to influence the Government and the Regulator to make rules and regulations only to benefit them, blaming cable operators for leaking out their revenue. Some of them also exploit their political clout to create their dominance which even the TDSAT has now recognized but the Regulator did not take any action when complaints were sent.

- Small stake holders including LCOs, small MSOs and small broadcasters, all are suffering losses, only the corporate DTH players and some large media groups having interest in content production, broadcasting as well as distribution are gaining and increasing their monopolies under the very nose of the Regulator.

**Under such conditions no market forces are working in this industry and it is only the 'Might is Right' policy that works.**

To date, consumer does not know the cost of each channel that he is made to pay for. Since TRAI has not insisted on declaration of retail price of TV channels, leaving sufficient loopholes for rampant manipulations at the wholesale level, leading to discriminatory practices, consumers are being cheated openly. The last mile operator, who faces the consumers is worrying for his survival rather than think of investing in his business for better service.

The existing tariffs orders and regulations have become the source of most of the disputes between stakeholders where the smaller networks are being forced to close down. **It is irony that the last mile operators are asked to cooperate with the government in ushering mandatory digitization and persuade their consumers to pay more and after making the market ready, government wants them to handover their business to large players because the government thinks that as the only way to organize the industry.**

### **Tariff Exercise must start from 2004 as the Base**

In the last 12 years of TRAI's control, the industry instead of getting restructured and organised has remained in square one. It is a waste of 12 years of the industry. Whatever growth is projected in the consultation, it is due to continuous hardwork of LCOs, their ingenuity to provide affordable services to consumers inspite of all odds.

Any exercise done to regulate the tariff in the cable Television industry must take into consideration, the ground realities as the industry is already in existence for the last 26 years and whatever tariff system existed till now has made every stake holder including broadcasters, MSOs, Cable operators and consumers benefit.

Broadcasters who started with just one channel riding on the already existing cable networks have added dozens of more channels over these years because whatever revenue they were getting was more than adequate. Similarly even the MSOs came to business in 1994 without having any last mile connections and still managed to expand their reach in all major cities making money from the LCOs, by just providing the aggregated Pay TV channels. As far as consumers are concerned their number grew exponentially because they were getting the

services at affordable price from the last mile operators.

LCOs, although were restricted in their own small areas, were running their business well, earning their livelihood all these years, working day and night involving their complete families.

**Even the government started charging service tax without giving a penny of relief or incentive to the industry in any manner like it had given to the private telecom operators or like our PM is promising to the start-ups now. We forgot these cable operators are the start ups of yesteryears.** State governments made enough money collecting entertainment tax for Cable TV services that included even the government mandated Doordarshan channels, ranging from Rs 5 to 40% per month per household.

It is unfortunate that complaints from the last mile owners are shunted between the Ministry and TRAI, each pitting the onus on the other, where TRAI says go to MIB since they have made the laws and MIB tells to go to TRAI since deadlines of four phases, Tariff, Interconnection and revenue share has been framed by TRAI. The result is, there is no option for them to approach TDSAT or other courts, for resolution since the courts operate within the legal boundaries.

This is what has unbalanced the whole industry in the last four years.

**Thus any exercises to align the present system with a little organised one must have the sole aim of providing a similar tariff to the consumers, as far as content is concerned else, it will be rejected .**

### **Wrong Perception of the Ground Level working**

One basic wrong in our system is the perception in the mind of the government as well as the regulator, influenced by the powerful media conglomerate with their deep pockets, political clout and even the backing of their home country, who were literally dictating to the Ministry as well as the regulator in framing rules and regulations, that only the large players can work in organized manner to bring digitization faster. This has already been proved wrong because none of the big players have succeeded in consolidating the industry in a real sense working in complete compliance with the rules and regulations. The present chaotic stage has reached only because the ground realities in terms of millions of subscribers and thousands of small stakeholders that is LCOs who were serving the people till date has been ignored by all.

**Once DAS was implemented every stakeholder tried to get the maximum benefit out of it by lobbying with the government and the regulator. This resulted in each stake holder blackmailing the other in extracting maximum revenue rather than care for the consumers by providing services as per the regulations. LCOs being the weakest stake holder and closest to the subscriber suffered from both sides, Broadcasters and MSOs forcing him to push all the channels to the subscriber and subscriber resisting to pay the demanded subscription if it was much higher than his analogue subscription.**

## **Pay TV must not be thrust upon the subscriber**

We talk of 6000 MSOs and 60000 LCOs serving about 100 million households. This means on the average on LCO serves 1700 households which is not true. The 40% rural market is served by very small LCOs who have about 300 subscribers on the average. Most of them did not carry any pay channel or had just five to six popular channels. There was no demand of more channels in these areas. So an LCO could survive with a rate of Rs 100 or less. **Equating a rural or economically weaker subscriber with an urban or a Metro subscriber for tariff is not justified.**

The 6000 MSO figure came from the maximum number of Pay channel decoders in the market of a single TV channel. It was only the sports channel ESPN that boasted of this number. Most of other channels had 3000 to 4000 decoders out in the market. Also, all these operators were not MSOs. Many were independent operators in far off places. Considering the size and geography of the market, this is not a very big number, Hence Pay TV broadcasters cannot claim the 100 million Indian subscribers as their 'Pay TV' subscribers. Pay channels came much later in the market, mainly after 2000. And mostly it were the FTA channels turning pay in an unregulated way, forcing LCOs to make increased payments even if subscribers were not willing and there was no addressability. **Hence to make the tariff workable, pay channels should not be thrust upon the subscribers.**

## **Make MSO independent of Broadcasters**

Control of these pay channel groups on the distribution platforms must be curbed to the maximum if we want broadband to succeed on Cable Networks.

Moreover, pay channels these days have many other options of making money like OTT platforms, distribution of same content in the international market, different types of advertisement and sponsorships etc. Thus they are not dependent solely on the MSOs or Cable Operators. Hence MSOs and Cable Operators must be given support for upgrading to broadband NextGen networks so that they can provide all broadband services.

## **ARPUs not affected by digitisation of Cable TV**

At present every stakeholder particularly, the DTH and broadcasters, are expecting ARPUs to rise considerably after digitization is completed. We feel ARPUs depend more on the paying capacity of subscribers. If a subscriber cannot afford to pay, he will not accept the high end digital services. Even if there is slight improvement in the digital quality, he will resist paying more, particularly in Digital Cable many popular channels may not be delivered in the packages and given only as a-la-carte at additional payment, not accepted by a consumer.

Cable TV Business survived only by giving differential pricing and not undeclaration, which is the normal perception among the broadcasters.

Only 25 million subscribers in India might be willing to pay more for better services, because

they understand these services and have LED/ LCD TV sets to receive the digital quality signals. 50% of Cable TV households may fall in the poor categories of subscribers, having outdated TV sets that cannot provide any benefit of digital signals. They will resist paying more. The rest of 25% CATV households will try to get low cost packages only. This is the main reason why Broadcasters and MSOs avoid giving a basic package of Rs 100 and a-la-carte channels, else they will get even lesser ARPU than before.

We should not forget the ARPUs in the digital market that have shown an increase are mostly due to service tax and entertainment tax which many LCOs were not collecting from subscribers, as they were not in the bracket of service tax. As far as entertainment tax is concerned, there was definitely an under-declaration, mostly as an understanding between the tax inspector and LCO/MSO and mostly it depended on the negotiated number of subscribers with the pay broadcasters.

### **TDSAT Order Dated 07 December in the case of NSTPL Vs Media Pro, Star TV and Ten Sports**

TDSAT in its 7 December 2015 judgment, has noted very important aspect of regulations, how they are being misused by powerful big players and suggested that TRAI should take care of these aspects while framing fresh regulations. It had ruled that –

- a) RIO would form the starting point for any negotiations between broadcasters and distributors of TV channels.**
- b) Headend-in-the-Sky (HITS) operator is akin to a national MSO. Hence, it will be governed by the same commercial terms for an interconnection arrangement as a national MSO.**
- c) RIO must reflect not only the rates of channels but also the different bouquets in which a broadcaster wished to offer its channels for distribution, along with the rates of each of the formation or bouquet.**
- d) The a-la-carte and the bouquet rates must conform to the ratio mandated in Clause 13.2A.12, which states that the sum of the a la carte rates of the pay channels should not exceed one and a half times the rate of that bouquet and the a la carte rates of each pay channel should in no case exceed three times the average rate of a pay channel of that bouquet.**
- e) RIO must clearly spell out any bulk discount schemes or any special schemes based on regional, cultural or linguistic considerations that would be available on a non-discriminatory basis to all seekers of signals.**
- f) The RIO must enumerate all the formats along with their respective prices in which the broadcaster might enter into a negotiated agreement with any distributor.**

The main implication of the TDSAT judgment is that broadcasters cannot enter into any negotiated deal with any distributors unless the template of the arrangement, along with its price, consistent with the ratio prescribed under Clause 13.2A.12, is mentioned in the RIO.

**The TDSAT has also held that –**

- i) It is wrong to assume that publication of the RIO on the website satisfies the condition to act non-discriminatingly and besides the RIO, the broadcaster or the MSO (as the case may be) has full freedom of negotiations including the right to not maintain parity and discriminate between comparable seekers of signals;
- ii) The conditions of reasonableness, parity, non-exclusiveness and non-discrimination stipulated in regulation 3 of the DAS Regulations commence from the stage a seeker makes request for provision of signals and goes right up-to the execution of the agreement followed by the actual provision of signals;

**iii) TDSAT noted --**

- a) That while the main provision of clause 5 of the Tariff Order of 2010 gives the (illusory) right to mutual negotiations, the proviso fixes the respective shares of the MSO and the LCO. It is not difficult to imagine that normally neither the MSO nor LCO would agree for anything less than their shares fixed under the proviso. In reality, therefore, though there may be an illusion of mutual negotiation, the sharing of revenue between the MSO and the LCO is more rigidly fixed than in the upper tier between the broadcaster and the MSO as the broadcaster is given the right to frame its own RIO.
- b) That the very object and purpose of Regulation is to promote competition. It, therefore, follows that **at the level where there is little or no competition, the degree of Regulation would be much higher and the level at which competition is sufficient or near sufficient there might be less or even no Regulation.** Keeping in mind this premise, if one looks at the broadcasting sector, it would be evident that the broadcasters enjoy a virtually monopolistic position. A popular TV programme may be available only with one particular broadcaster and no one else; a movie picture or a popular sporting event likewise may be available with only one or two broadcasters. But when the broadcast comes to the distribution platforms, its availability gets widely spread out. The same programme, movie picture or the sporting event may be available to more than half a dozen pan-India MSOs, apart from several DTH operators and HITS operators. Thus there may not be any reason for objection if the Regulations allow the players at the lower tiers of the broadcasting sector more leeway for mutual negotiations.
- c) **RIO:** A proper RIO, true to its nature as envisaged in the Regulations, is meant to go a long way in introducing/bringing about fairness, reasonableness and nondiscrimination in interconnect arrangements between a broadcaster and distributors. But what is passed off by the broadcasters as RIO, instead of doing away with non-discrimination actually becomes a device to perpetuate discrimination

The “Reference Interconnect Offer”, as defined under the Regulations, is a positive concept and if framed properly it should go a long way in ensuring a level playing ground. In Europe, and in an increasing number of jurisdictions worldwide, incumbent operators and/or those with significant market power are required to produce a Reference Interconnect Offer. “This Specimen offer provides a common and transparent basis for all agreements for the provision of interconnection services subject to regulation. It also helps to ensure that new entrant operators can be confident of gaining terms which will not be less favourable to those applied to others (including the interconnection provider’s own retail operation)”. Seen thus the **RIO may be said to define the parametre of negotiations for arriving at an agreement on mutually acceptable terms. It may be argued that the RIO must contain the details and rates relating to all the bases on which the maker of the RIO intends to enter into a negotiated agreement.**

**The RIO** is used by the broadcaster as a coercive tool and a threat to the seeker of TV channels and it undermines the essence of the Regulations, which is to promote healthy competition by providing a level playing field.

The RIO offered by every broadcaster to the distributors has three main features: i) It gives only a list of individual channels with their a la carte rates ii) It does not give any bouquets of channels or the prices thereof iii) Even the a la carte rates of channels are fixed with no regard to the market realities, as reflected in the negotiated deals, but at the highest permissible rate under the tariff order framed by TRAI

**The non-discrimination obligation, which TRAI acknowledges as the pivot of those Regulations, appears inconsistent with a regime where parties are allowed full latitude to mutually negotiate their agreements** and also not disclose the commercial terms of the agreement to other market participants.

Thus, in the interpretation that we have placed on the Regulation, there is the obligation to frame a meaningful **RIO in which all bouquet and a la carte rates are specified, and there is also some room for mutual negotiation (even on rates) within certain specified parameters. This will achieve the objective of introducing a transparent non-discriminatory regime** whereby distributors can obtain access to content, while still retaining some latitude to mutually negotiate the terms and conditions of access. **It will also make the nexus between a la carte and bouquet rates, which the regulator thought fit to introduce, applicable to all mutually negotiated agreements.** Negotiations must be within the parameters to those mandatory 79 conditions specified in the Regulations that cannot be avoided or waived, and the **mutual negotiation course cannot be used as the means to completely step out of the Regulations. It would be plainly opposed to any common sense principle to first set out an elaborate cumbersome regulatory architecture, only to allow parties to opt out of it at will.**

- d) Having regard to the fact that the greater part of the country would come under the DAS regime with effect from 1.1.2016, it would be advisable that **TRAI should try to frame a consolidated Broadcasting Code instead of the large number of Regulations dealing with different aspects of the service and each having undergone numerous amendments. In order to make a serious effort in that direction, TRAI would be required to get hold of all the negotiated interconnect agreements between the broadcasters and the distributors of channels, which the broadcasters are in any event obliged to submit to TRAI.**
- e) The analysis of the commercial terms of the negotiated agreements would give TRAI a clear picture of the market prices of the broadcasters' channels. A comparison of the prices in the negotiated agreements and those shown in the current RIOs will then show how far the RIOs are removed from market realities. Having examined the negotiated agreements between the broadcasters and the distributors of channels, TRAI may even feel the need to take a re-look at the tariff orders framed by it. **But for any 82 meaningful exercise for reviewing and consolidating the broadcasting Regulations it would be imperative for TRAI to get hold of the negotiated agreement between the broadcasters and distributors which alone would give the correct picture of the market reality.**
- f) The Regulations demand non-discrimination 22Clause 3.6 of the Interconnect Regulations, 2004 62 among similar distributors. **If a certain broadcaster is given lower rates, having regard to its larger viewership that might lead to larger advertisement revenue, there is no reason why another distributor with a similar reach to viewers may not be given the same commercial terms.** In the same way if certain rates are given to a particular distributor on any regional, cultural, linguistic or any other special consideration, there is no reason why another distributor operating in the same regional, cultural, linguistic zone and offering to deliver similar returns to the broadcaster may not be given the same special rates. But in order that another similar distributor should be able to claim the same commercial terms, promising, in return, to give similar paybacks to the broadcaster it is crucial for it to know the special deal given to another distributor.
- g) **The commercial terms of the interconnect agreement cannot be held to be exempt from disclosure under the Access Regulations. In view of the "must provide & non-discrimination" obligation there can be no secrecy in the commercial terms, because they cannot be permitted to be the source of any comparative or competitive advantage. In our considered opinion, therefore, the broadcasters cannot hide behind the Access Regulations on the plea that the distributor must first obtain an order of disclosure from TRAI**

### Models at Wholesale and Retail Level

**Q1. Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

Ans. **We suggest a Regulated RIO Model after fixing the retail price.** The Models suggested by TRAI at the wholesale level will never work in the practical sense reaching the goal of transparency, non-discrimination and reasonableness. The tariff structure is basically meant for the subscribers so that they get same content at the same rate, irrespective of their service provider. Also the price should be affordable to all existing consumers giving them their choice of content. The wholesale model without fixing the retail price amounts to cheating the consumers as at the wholesale level, channels are given at widely varying rates to different DPOs and they may sell the same content at different rates in the same market which is not desired. **Once the retail price is regulated under the Regulated RIO model, the wholesale price, incentives and margins can be worked out backwards.**

**Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

Ans. Basically there are three types of tariff in the industry that need to be regulated.

1. **Basic service tariff** to cover the network operational expenses of different distribution platforms like Cable TV, DTH, IPTV etc to cover their network expenses. These basic service charges will differ from platform to platform as the technology and the system to deliver the services are different like in Telecom we have different service charges for Landline and mobile services.

2. **Content charges** which may differ from channel to channel depending on the category of content:-

a) **Free to Air Channels.** FTA channels may be priced at Rs 1 for all purposes including bouquet and a-la-carte.

b) **Low Cost pay channels,** may include news and other pay channels existing before 2004, that were offered in a complete package to consumers. They may have MRP of Rs 5/- per channel.

c) **Pay channels** that may include channels launched between 2004- 2011 before total addressability was introduced. These channels could have an MRP of Rs 10.

d) **Premium pay channels,** including high cost channels of all genres, niche channels, HD channels etc. They may be placed under forbearance.

3. **Value additions.** This will include charges for server based applications like VoD, Middleware based applications like EPG, recommendation engine and e-commerce services,

internet and OTT services.

### **Basic service charges:-**

It is not difficult to calculate the basic service charge required to sustain the distribution network business, keeping average number of consumers, served by each entity and past experience prevalent for so many years. When CAS was implemented a finance committee had collected the data to determine the cost of operation of the network in case of Cable TV and worked out a basic tariff of Rs 78 for the Cable Operators. Although the average number of connections taken were very large that is 50000 in a network, which only an MSO could have, still this was accepted by the industry with resentment, hoping that an organised system will align the tariff with the market forces and inflation index.

**We suggest a modified Exclusive a-la-carte Model.** At retail level there must be fixation of the MRP for the Pay TV channels in different slabs and FTA channels can be priced at Rs 1, both in bouquet as well as a-la-carte, since the DPO does not pay anything to the broadcaster and the choice of basic package is also with the consumer. So rate of any FTA channels desired by the consumer in bouquet or in a-la-carte mode should remain the same. The regulator must ensure that all DPOs adhere to the twin conditions of the Tariff order, for making bouquets.

Also, it should be mandatory for every DPO to provide a basic service tier of 100 FTA channels at Rs 100 and the choice of the package for each LCO network should be given by the LCO himself after getting the choice from his consumers.

One basic package cannot serve every locality in a city and may lead to unfair practices where DPOs ignore the customer choice and make the package including channels from broadcasters who pay him a high carriage fee and also when large broadcast group force their channels on the DPO, ensuring that all his FTA channels are carried in the basic package. This is what has been happening in the networks of MSOs who are vertically integrated with broadcast groups or have a preferential relation with them for some reason.

Also, we should not compare distribution of FTA channels on Cable and DTH, because DTH has a limitation of Transponders which is not there for Cable to that extent.

The LCO while framing his basic package should get the choice from each consumer from a list of all the FTA channels in their CAF and select the 100 FTA channels for basic package selected by majority of the consumers in their CAF.

**Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.**

**Ans.** Since the MRP of most of the Pay channels will be fixed, there will be transparency and non discrimination built in the above model for distribution purpose.

**Q4. How will the consumers' interest like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.**

Ans. In the above suggested model, transparency and non-discrimination is built in as the choice of channels emanate from the consumers. Consumer can budget his service selecting only a basic package costing Rs 100 or add a few pay channels to keep within his budget. Pay channels could be offered in add on packages.

### **Integrated Models**

**Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.**

**Ans. Distribution Network Model is the best for the situation existing today.** MSOs and Cable Networks must be able to upgrade and exploit their networks for broadband services to increase their ARPUs. Their dependence only on TV channels must be reduced to the minimum.

However, we suggest that in consumer interest pay channels be distributed in different slabs as suggested earlier so that there is not much difference in subscription for a consumer to migrate from analogue to digital and adopting the new a-la-carte system getting his choice..

**Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.**

**Ans.** For Transparency all rates of channels at retail level must be declared by the broadcasters keeping them within the fixed MRPs of old pay channels.

Also, MSOs must form their packages taking choice of consumers from LCOs, filled in their CAF.

**Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.**

Ans. Consumers will be getting a basic FTA package of Rs 100, selected from the most demanded channels of the LCOs area and they will be able to pick and chose pay channels from their MRP slabs to budget their expenses getting almost the same channels as in the analogue era.

### **Channel Pricing**

**Today the subscription revenues are not realistic. They will be realistic only when**

**customers will be made to have their full choice. So far, it is the broadcasters who fire the shots. This must be checked in consumer interest.**

TRAI is aware that while implementing Digitisation, no consent was taken from subscribers for installing the STBs. No CAF were filled. Simply, number of analogue connections were converted into same number of digital connections.

Subscribers got a shock when they were asked to pay two to four times more than their analogue subscription. Many relented when they were titled that it is the government mandate but many didn't pay and kept paying the same as in analogue time. So dues against LCOs kept mounting.

Even now, there is no computerised billing and no choice given to consumers. Bouquets are being thrust upon the subscribers. All this will level out once proper packaging and a-la-carte system starts working. Hence **Regulator's intervention at every level is essential in consumer interest, at least for the next five years till the market force start acting in the right way.**

### **Channel Pricing Framework**

**Q8. Is there a need to identify significant market powers?**

**Ans.** Yes, there is a need to identify significant market powers. **Since the regulations have been framed in such a way, leaving wide gaps for the large players to dominate the market, they are trying to edge out all small players by misusing rules and regulations or buy them out using their deep pockets.** TRAI has not done enough to check these malpractices. However, on paper it keeps issuing directions without ensuring actual implementation.

Even the Ministry has not tried to check implementation of laws and regulations already in force, encouraging these two or three media groups to consolidate, buying out smaller channels, edging small broadcasters out of the market and increasing their bargaining power. Ad cap violation is just one example where consumer interest is being compromised by the broadcasters.

**Stake of these groups in different horizontals and verticals like TV channels, MSO Networks, DTH networks, OTT platforms, content production and film production etc must be curtailed and regulated strictly.**

**Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.**

**Ans.** Criteria for classifying an entity as a significant market power may be based on:-

- a) Number of channels in the group of different genres and languages.
- b) BARC ratings of each channel and market share.
- c) Number of regional channels in each market ( States).

- d) International Reach of the Group.
- e) Vertical and horizontal business of the Group.

**Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?**

**Ans.** There must be a separate regulatory framework for such market powers that should include restriction on number of channels, scrutiny of their mergers and acquisitions, total regulation of investments by vertically integrated companies and control of their new channel launches in a particular genre.

There should be a limit on market domination in each market. Also there should be a limit of number of channels in each such group. For example, should be less than 15 channels or a percentage of total number of channels in the country. Also group's accumulative market share is important.

These restrictions will limit the exploitation of the market by these powerful groups who wield a tremendous media power so as to even influence the governments and the bureaucracy. For example one such group managed to accompany TRAI chairman, I&B Secretary and CCI Chairman to the US for a regulatory exchange after all the regulations were framed.

### **Channel Pricing Methodologies**

**Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?**

**Ans.** There is definitely a need to derive the price of digital content from its analog past as millions of consumers are directly affected who have been using analog services for so many years.

**Need to move to the digital regime is the requirement of the government and not of the consumers.** Why consumer should be burdened to fulfill government's dream of '**digital India**'. Let us not forget that 74% households in India earn only Rs 5000 per month. The government cannot force these households to buy pay TV entertainment. Most of these households were getting only FTA channels and were happy paying Rs 30 to Rs 100. As their monthly entertainment even the basic package with taxes will cost more than Rs 150 for these people, which is not justified.

**Only 25% of TV households have flat screen LCD/ LED TVs that may provide experience of digital entertainment to the consumers.** Most of the other have old colour TV sets or even black and white TVs where digital entertainment will not have meaning. Many of these TV sets do not have even the AV socket necessary to connect a set top box. Digitisation has forced these people to spend another Rs 300 - 400 to buy a converter box. Thus, it is only about 25 percent of the TV households who may actually benefit from digital

TV services voluntarily, having able to afford them. However, the prices during the analogue regime had no basis as both broadcasters and Cable Operators did not trust each other and broadcaster' whimsical price was compensated by negotiating for lesser number of connections.

**It may be re-collected that pay channel price from 1994 to 2002 went up by 1100% indicating the greed of the pay channel broadcasters, trying to exploit the Indian masses. Since there was no addressability, this high price could not be demanded from the consumers and the ARPUs remained the same that is Rs 150 all these years.**

This is the reason that DTH did not flourish in India even after offering best of the digital services, till the time government forced the consumers to spend the same amount on digital cable.

Thus, to realize a **Digital India**, if the government can ask **MSOs and LCOs to spend crores to migrate to Digital Cable**, it should also ask the **broadcasters to reduce the cost of their content to level it with analogue ARPUs in the National Interest.**

**Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.**

**Ans.** There is no need to restrict pricing to genres. Genres will keep emerging as the market develops further. Also it may lead to overpricing of brand new channels launched by the large media groups who will distribute it clubbing with their driver channels. There should only be general price cap/slabs and broadcasters should be asked to declare under which price slab they wish to place their channel. Let the consumer decide whether he wishes to pay them or reject the channel.

**Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc? Give your suggestions with justification.**

**Ans.** No. As explained above there is no need for recognizing genres for tariff purpose.

**Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?**

**Ans.** Controls mentioned earlier on cross media holdings, vertical integration and market share etc. should be strictly implemented. All interconnect agreements must be submitted to TRAI. The regulator must have more powers to penalise the defaulters.

It should also be ensured that the legal most should not be easy to avoid adhering to regulations.

**Q15. What should be the basis to derive the price cap for each genre?**

**Ans.** Not needed. Should be kept within the MRP slabs suggested above and premium channels can be left free for pricing. Keeping track of all the genres and their prices is not a practical way. Since broadcasters have always blamed the cable operators for withholding their 80% revenue and after digitization every connection is out and payments are transparent, they should be made to bring down their prices by 80 % for the benefit of consumers. That should give an indication of the price cap needed for TV channels.

**Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?**

**Ans.** 80 per cent of the analogue price.

**Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?**

**Ans.** We have recommended fixed MRP slabs for pay TV channels, these could be reviewed every two years depending on the inflation index.

**Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?**

**Ans.** It should depend on the total number of subscribers (volume discount) for which the interconnection agreement is being signed.

**Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?**

**Ans.** Not more than 20 per cent cumulative discount should be allowed.

### **Criteria for defining Niche Channels**

**Q20. What should be parameters for categorization of channels under the “Niche Channel Genre”?**

**Ans.** We do not recommend any categorisation based on genres as it is not in consumer interest and may lead to unfair practices. TRAI has mandated the minimum number of channels of each genre in the basic FTA package of 100 channels and the large media groups have started launching new channels in each genre so that on their vertical integrated MSOs and DTH operations, all their channels of different genre could fill up the whole basic package, keeping all other channels in a-la-carte mode or in costlier packages. **Similarly we do not recommend any specific genre for the niche channels for pricing purpose.**

**Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.**

**Ans.** We have already said that the MRP slabs may be specified by TRAI including a package

of channels with forbearance. It should depend on a broadcaster as to which MRP slab he would like to place his channel.

**Q22. What should the maximum gestation period permitted for a niche channel and why?**

**Ans.** We must remember that niche channels do not have All India Market and it should be left to the wisdom of the broadcaster how he wishes to price his channel in the gestation period. The channel may be free to air in the beginning and after a year or two, once its viewership picks up, it could be shifted to the slab of Rs 5 MRP and so on.

**Q23. How misuse in the name of “Niche Channel Genre” can be controlled?**

**Ans.** Since we do not recognise genre for pricing, there is no need to control any misuse. Let the consumer decide if he is ready to pay the price demanded by the channel. However, any niche channel, launched before 2012 when digitisation started, must be kept in the Rs 5 and Rs 10 MRP slabs as consumers were watching them in a single package.

**Q24. Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?**

**Ans.** It does not matter for pricing of the channel since we recommend not using genre criteria for pricing.

### **Pricing of High Definition (HD) channels**

**Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?**

**Ans.** It is correct that today broadcasters are exploiting consumers charging high cost for HD channels for which even SD is available. Since all production is done in HD these days, there should be no difference between HD and SD channel as far as wholesale price is concerned. For retail purpose, 25 per cent increase in price of the SD channel should suffice for an HD channel. A channel which is available only as HD should only be permitted in the premium package under forbearance.

**Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?**

**Ans.** As explained above.

**Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?**

**Ans.** HD channels should not be mixed with SD channels and should be given only as an add on package because every consumer does not have HDTV set.

## **Manner of Offering**

**Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.**

**Ans.** Yes, we have already explained this above while giving various packages and MRP slabs for offering to the consumers. It may be recalled that in CAS regime only 30 FTA channels were prescribed for Rs 82 but MSOs gave even 100 FTA channels at the same cost to make their services popular and fight the competition. This also benefited the consumer as they did not have to opt for any pay channel if their choice was adequately available at a lower rate in the basic package itself.

There are more than 600 FTA channels in India, TRAI has to be very firm in asking Broadcasters to declare their FTA channels and Pay channels. FTA channels served even in a-la-carte manner should have the same price of Rs 1 as fixed for a basic package of 100 channels because no additional distribution expense is involved. This will also provide choice to the subscribers for basic package as specified by TRAI in existing regulations. It has been seen that some MSOs have priced an FTA a-la-carte channel for Rs 3, to keep in tune with TRAI's twin conditions, which are same for FTA as well as Pay channels.

One of the cause of failure of Digitisation is that the regulations have not differentiated between pay channels and FTA channels, either in Tariff, interconnection or in Ad-caps, allowing the Pay TV broadcasters to earn as much as possible through advertisements and subscriptions, jeopardizing the interest of the consumers in whose benefit these regulations were made.

Keeping FTA channels separate from Pay TV channels will also stop the exploitation by large Pay TV groups, forcing MSOs to make a basic package with only their own FTA and Pay TV channels, giving no choice to consumers.

## **Ease of channels or Bouquet Subscription**

**Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.**

**Ans.** Channel subscription process can be simplified and made user friendly using a mobile app as we still do not have two way networks. Once two way networks are available, even the remote can be used to subscribe to a channel without any delay.

However, this cannot be made mandatory at this stage as we have not yet achieved proper digitalisation. Also **TRAI must make the Cable TV distribution platform free of pressure from the broadcasters so that while meeting the demands of their subscribers for TV channels. They can also start providing broadband services investing their own funds.**

**Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?**

**Ans.** Already explained in the previous answer.

### **Carriage, Placement and Marketing Fee**

**Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?**

**Ans.** Yes, carriage fee must be regulated. Misuse of carriage fee is mostly done by the vertically integrated MSOs who after putting their own group channels in the low cost packages, put other rival channels in either a-la-carte mode or in the costlier packages, not generally subscribed by the consumers. Thus to put these channels in low cost package, high carriage fee is demanded.

**Q32. Under what circumstances, carriage fee be permitted and why?**

**Ans.** Carriage fee may be permitted in a non-discriminatory way for any channel and should depend on the bandwidth and additional cost incurred by the MSO. **Since part of the network carrying a channel belongs to the LCO, he must get a share of it which he can utilise to upgrade his network.**

**Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the “price Cap” and how is it to be calculated?**

**Ans.** Yes, there should be a cap on maximum carriage fee charged. This should be a purely technical matter depending on the equipment used and bandwidth utilised . It should be charged on per subscriber basis.

**Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?**

**Ans.** Since carriage fee is charged based on technical parameters, there is no need to change it with the number of subscribers. If number of subscribers increase, cost of adding the new subscriber is also borne by the MSO.

**Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?**

**Ans.** There is no need to regulate the placement and marketing fees. These should be left to the mutual negotiations between the broadcaster and the MSO. However it should be ensured that placement of a channel in the basic FTA package should be left only to the LCO to decide, based on the demand of his subscribers.

## Variant Channels

**Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?**

**Ans.** There is definitely a need to regulate variant or cloned channels to protect consumer interest.

## Channel Visibility on Electronic Programme Guide (EPG)

**Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?**

**Ans.** EPG must include all channels offered by a DPO, genre wise.

**Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.**

**Ans.** Yes, EPG should include preview of new channels added on the platform. However, such facilities and also other developments in EPG like providing alternate preferences to the consumer should not be mandatory and depend on the DPOs personal choice as additional expense is required.

## Pay-per-programme viewing and Tariff Options

**Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.**

**Ans.** 'Pay per programme' is possible. However since such facility and even the VoD and other value additions are not demanded by majority of consumers. There is no need to regulate them. But there is definitely a need to register each platform service including VoD with the government and there must be guideline for such services.

**Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?**

**Ans.** This should be under forbearance.

## Audit and Reporting Issues related to Tariff

**Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such**

**entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.**

**Ans.** Yes, there should be a central monitoring and data facility to collect and analyse the information from all DPOs. Preferably it should be the responsibility of BECIL, a government agency that has been entrusted with the task of auditing the Headends and SMS system of the DPOs. However, they must be adequately trained to do so. Outcome of the audit done by BECIL must be accepted by all broadcasters and they should not insist on their own audit which mostly is done with malafide intentions to cause delay in providing the content for vested interests.

**Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

At the end, we wish to repeat what we have been requesting the TRAI since 2004, which is very important to organize/ restructure the industry for an organized growth and stability.

1. **Keep LCO as the last mile owner.** The Model interconnection agreement must keep the status of LCOs in tact as owners of the last mile networks and not leave a chance for the MSOs to exploit them in any way and take over their networks by coercion or other means.
2. **Protect LCO from forced takeovers.** As seen in the past, many MSOs who have strong political links conspire with the local administration to not renew his yearly registration in the post offices or registration is cancelled under a fabricated excuse like piracy. This gives the MSO an opportunity to cut off LCO's signals and destroy his business. There are hundreds of such cases reported to us from Punjab, Tamil Nadu and other states.
3. **Ensure a minimum revenue share to make LCO business viable.** We again reiterate that revenue share given to the LCOs, must have a minimum limit, enabling him to run just the basic services with reasonable profit providing quality of services, complying with the regulations. TRAI should not assume the revenue from Pay channels as that will depend on customer choice. The fall back regulations giving him a share of 35% must be reviewed in this context. All the parameters of operating an LCO network of an average size are well known to TRAI and financials can be easily worked out.
4. **MSO should not force his responsibility on the LCOs.** Set-Top-Box procurement and supply is the sole responsibility of the MSO. Keeping this in mind, there should be a well defined system of supplying the STBs to the consumers through LCOs with proper documents like invoice, warranty or hire purchase agreement etc. There should be no opportunity for MSO to make LCO compensate if a subscriber STB does not function properly or becomes faulty requiring replacement. Faulty STBs must be replaced immediately to avoid disruption in service.
5. **Non Payment of Subscription by Consumer.** Cases of non-payment by a subscriber

due to any reason must be investigated by the MSO when brought to his notice by the LCO. Effort should be made to retain the connection rather than disconnect at the first opportunity. In many cases MSOs who do not own the last mile, force the LCO to disconnect such subscribers due to which LCO loses business.

We submit that all subscribers may not understand the implication of government directive of going digital and they may not like to pay more subscription due to:-

- a) Cannot afford.
- b) Subscribers TV set is old and does not give any benefit of digital Cable to him.
- c) Subscriber does not get his choice of channels in the packages offered.
- d) Subscriber only wants FTA channels and MSO does not offer the Rs 100 basic package.

In all such cases it is the LCO who suffers, both in business as well as goodwill. For an MSO, it is a new business, so he can afford to wait and watch but for an LCO it is a loss of subscriber he acquired years ago.

In many cases, MSOs do not listen to the problems put forth by the LCO and demand full payment of dues which is detrimental to LCOs business. Such cases must be avoided.

6. **Encourage integrated networks.** regulations must bind MSOs and LCOs in a permanent or semi-permanent relationship so that together, they move towards building a well integrated network providing all broadband services and not just 300-400 TV channels.
7. **Do not make Pay channels mandatory.** TRAI must accept networks with only FTA channels. **This will create a level playing field with the Free Dish DTH of Prasar Bharati which has started accepting private broadcasters and even pay channels are being allowed on the platform in FTA mode.** Particularly in Phase-III and IV, many Cable Networks are operating only FTA networks, charging very low subscriptions, affordable by even the poor households.

Yours Faithfully,

(Roop Sharma)  
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