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Comments on the Consultation paper No: 10/2019 issued on 16.08.2019 by the Telecom Regulatory Authority of India on Tariff related issues for Broadcasting and Cable services.

The issues being faced today and as are also enumerated in the aforesaid consultation paper are mostly related to an ongoing regulatory imbalance, consequence of sheer shortsightedness of the Authority and its deliberate dilution of the implementation of key provisions that have been duly notified under Part-II – TARIFF (3) of The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable System) Tariff Order, 2017 (No. 1 of 2017) as has been published in the Official Gazette. Makes It imperative to reproduce here, the relevant provision(s) of the aforesaid T.O.

Moreover, the Honourable Supreme Court of India in its detailed judgement passed dated 30.10.2018 has also addressed this issue with the following observations made.

“...37. It can thus be seen that both the Regulation as well as the Tariff Order have been the subject matter of extensive discussions between TRAI, all stake holders and consumers, pursuant to which most of the suggestions given by the broadcasters themselves have been accepted and incorporated into the Regulation and the Tariff Order. The Explanatory Memorandum shows that the focus of the Authority has always been the provision of a level playing field to both broadcaster and subscriber. For example, when high discounts are offered for bouquets that

*are offered by the broadcasters, the effect is that subscribers are forced to take bouquets only, as the a-la-carte rates of the pay channels that are found in these bouquets are much higher. This results in perverse pricing of bouquets vis-à-vis individual pay channels. In the process, the public ends up paying for unwanted channels, thereby blocking newer and better TV channels and restricting subscribers' choice. It is for this reason that discounts are capped. While doing so, however, full flexibility has been given to broadcasters to declare the prices of their pay channels on an a-la-carte basis. The Authority has shown that it does not encroach upon the freedom of broadcasters to arrange their business as they choose. Also, when such discounts are limited, a subscriber can then be free to choose a-la-carte channels of his choice. Thus, the flexibility of formation of a bouquet, i.e., the choice of channels to be included in the bouquet together with the content of such channels, is not touched by the Authority. It is only efforts aimed at thwarting competition and reducing a-la-carte choice that are, therefore, being interfered with. Equally, when a ceiling of INR 19 on the maximum retail price of pay channels which can be provided as a part of a bouquet is fixed by the Authority, the Authority's focus is to be fair to both the subscribers as well as the broadcasters. INR 19 is an improvement over the erstwhile ceiling of INR *5.00 fixed by the earlier regulation which nobody has challenged. To maintain the balance between the subscribers' interests and broadcasters' interests, again the Authority makes it clear that broadcasters have complete freedom to price channels which do not form part of any bouquet and are offered only on an a-la-carte basis. As market regulator, the Authority states that the impugned Regulation and Tariff Order are not written in stone but will be reviewed keeping a watch on the developments in the market. We are, therefore, clearly of the view that the Regulation and the Tariff Order have been made keeping the interests of the stakeholders and the consumers in mind and are intra vires the regulation power contained in Section 36 of the TRAI Act. Consequently, we agree with the conclusion of the learned Chief Justice and the third learned Judge of the Madras High Court that these writ petitions deserve to be dismissed ...”*

However, in order to really protect the interests of the stakeholders and the consumers at large a cost based tariff fixation exercise was much desirable, whereas this 8th Tariff Order is much against the Hon'ble Apex Court directions in appeal being CA No. 829-833 of 2009, titled TRAI vs. SET

Discovery and others. Where the Hon'ble Apex Court directed the TRAI vide its order dated 13.05.2009 to carry out the de novo exercise of cost based tariff fixation and submit its report before the Court and another judgement dated 28.04.2015 rendered by Hon'ble TDSAT in Appeal No. 01/2014, wherein Telecom Regulatory Authority of India (TRAI) was directed to consider relevant factor including the cost of providing the service and to come out with the cost based tariff. The said judgement also got confirmed by the Hon'ble Supreme Court of India by order dated 04.08.2015 in Appeal No. 5159-5164/2015 This Eighth tariff order nowhere even refers to the cost based tariff and not even a single effort has been made in this direction.

The cost-based tariff is desirable, since it ensures fair pricing and preserves the return on investment. Broadcasting is a natural monopoly and administered price is the most desirable regulatory regime. Broadcasting is a platform-based economy having network impact, where the cost of providing the service decreases with every next addition of a consumer. Whereas Eighth T.O only confers legitimacy on such unrealistic prices, having been declared as MRP of popular pay TV channels causing steep increase in the price of the television service.

However, the regulators have recognized various methods of administered pricing across the globe including the method of 'Long Run Marginal or Average Cost'. Hence the MRP declared for the popular Pay TV channels are flawed and unrealistic when the declared Maximum retail price is a manufacturer calculated price that is the highest price that can be charged for a product sold, that's inclusive of reasonable profits.

Whereas It is a well known fact to everyone who is even little versed, with the administered prices that cost of the providing the services has decreased by 70 to 80% since December 2003 (refer to price freeze 26.12.2003) and cost of providing service to one subscriber is under deflation and cannot be even in single digit.

Please refer to Annexure I of the Consultation Paper (Comparison of Prices of channels declared by broadcasters in Old framework and New framework)

Where the popular Pay TV Channels have seen more that 200 % change in pricing as compared to the not so popular Pay TV channels that are now priced at Re.1 or even less. Therefore it can be construed that more than 500% premium is being

charged on subscribing to popular Pay TV channels and the not so popular Pay TV channels are being bundled together along with them by the Pay TV Broadcasters and are being forced upon the consumers through the DPOs.

However, the Authority also being an expert body, remains under an illusion claiming that HD channel prices have been reduced under the new regulatory framework where It tend to conveniently forget that HD channel price was deliberately kept under forbearance (*In other words un-regulated, outside the regulatory framework*). Where HD format is inherent in MPEG -4 and all the programming since 2009-2010 being only produced on HD format.

Q1. Do you agree that flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets has been misused to push their channels to consumers? Please suggest remedial measures.

Ans.1. This key provision in the Eighth T.O was deliberately diluted by the Authority itself, to provide flexibility to few Pay TV Broadcasters, which they, in turn, misused to thrust and push their unwanted pay channels upon the consumers.

Had this key provision of limiting the discount to 85% on sum of a-la-carte channels forming part of bouquets not been deliberately diluted by the Authority there was no need to revisit this Eighth T.O within just few months of its implementation. The remedy lies in strictly implementing this key provision in its true letter and spirit as been envisaged and notified under the Eight T.O of 2017. Bouquets that should serve the purpose of convenience to end Consumers appear to be a predatory mechanism against everyone's interest with the misuse of flexibility that the Broadcasters have been enjoying to the detriment of millions of end users.

Q2. Do you feel that some broadcasters by indulging in heavy discounting of bouquets by taking advantage of non-implementation of 15% cap on discount, have created a non-level field vis-a-vis other broadcasters?

Ans.2. As an informed, expert body the Authority should be more aware on how this regulatory imbalance and non-implementation of 15% cap on discount have further created a havoc on the overall Broadcasting & Cable Industry vis-à-vis

other broadcasters, vis-à-vis other DPOs and more importantly the consumers at large been taken for a ride with perverse pricing of bouquets vis-à-vis pay channels offered on a-la-carte. In the process, the end consumer ended up paying for unwanted channels, thereby blocking newer and better TV channels and restricting the end consumers' choice.

Q3. Is there a need to reintroduce a cap on discount on sum of a-la carte channels forming part of bouquets while forming bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Ans.3. This cap on discount as prescribed in the 2017 regulation(s) (Eight T.O) was never implemented for some unknown and mysterious reasons, even though the Honorable Supreme Court have made the following amply clear in its Judgement passed dated 30.10.2018 thereafter only passing all the legal scrutiny the new regulatory framework finally came into effect from 29.12.2018.

“....67. We are, therefore, clearly of the view that if in exercise of its regulatory power under the TRAI Act, TRAI were to impinge upon compensation payable for copyright, the best way in which both statutes can be harmonized is to state that, the TRAI Act, being a statute conceived in public interest, which is to serve the interest of both broadcasters and consumers, must prevail, to the extent of any inconsistency, over the Copyright Act which is an Act which protects the property rights of broadcasters. We are, therefore, of the view that, to the extent royalties/compensation payable to the broadcasters under the Copyright Act are regulated in public interest by TRAI under the TRAI Act, the former shall give way to the latter....”

Need of the hour is to first implement what have been prescribed and notified in the Official Gazette. i.e. 15% maximum permissible cap on discount. That too have been arrived only after undergoing almost a year and half long consultation process initiated by the Authority sometime in January 2016. Hence without even implementing what have been prescribed in the Eighth T.O and again seeking a new formulae for arriving at a methodology is futile and sheer waste of time and waste of valuable national resources.

Q4. Is there a need to review the cap on discount permissible to DPOs while forming the bouquet? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Ans 4. The prescribed and duly notified 15% maximum permissible cap on discount should also be made applicable to DPOs while forming the bouquets and offering such bouquets to the end consumers.

Q5. What other measures may be taken to ensure that unwanted channels are not pushed to the consumers?

Ans.5. The cornerstone of this new regulatory framework was to enable consumers to select channels of their choice. However, the intended choice for consumers to select what they want, has got scuttled due to various issues during its implementation. The declared MRP of the Pay Channel(s) needs to be re-evaluated by the Authority where the Rs. 19 ceiling fixed is without any application of mind in absence of cost based tariff fixation exercise been conducted and for some mysterious reasons a subscriber is being construed basis the D2A (Digital-to-Analogue) convertor device(s) being deployed. The declared MRP ought to be a family subscription vis-à-vis a device subscription as the services offered by the DPOs are wireline services and the same cannot be extended or transported outside of the subscribers premise.

Q6. Do you think the number of bouquets being offered by broadcasters and DPOs to subscribers is too large? If so, should the limit on number of bouquets be prescribed on the basis of state, region, target market?

Ans. 6: Yes, there should be a limitation on the number of bouquets being offered by the broadcasters. It can be evidently felt that a large number of bouquets by the broadcasters has caused chaos and confusion in the mind of the consumers and the same has also been highlighted by the Authority in the consultation paper. There should be a flat ceiling on number of bouquets offered by broadcasters and same shall be proportionate to the number of channels being distributed by the broadcaster. The broadcasters should not be allowed to form bouquets beyond 20% of the total number of channels distributed by them. For e.g., if the broadcaster is distributing 50 channels, then the broadcaster should not publish more than 10 bouquets. The same

formula should be applicable to the DPOs i.e. the DPOs should not form bouquets beyond 20% of its total channel carrying capacity.

Q7. What should be the methodology to limit number of bouquets which can be offered by broadcasters and DPOs?

Ans 7. In view of the aforesaid (A6) It's very important to limit the number of bouquets offered to the minimum. A broadcaster can be allowed to offer very few basic bouquets that only comprises of some of its wholesome popular but distinct pay TV channels under different genres but of the same language i.e. Hindi GEC, Hindi Cinema, Hindi Music, Hindi News, Hindi Kids, Hindi Religious, Hindi Sports and Hindi Infotainment etc. However, *Provided further that the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet:*

(Clone Channels of the same Genre i.e. Hindi Cinema 1 and Hindi Cinema 2 or Hindi Sports-1 and Hindi Sports -2 shall not be forming part of the same Bouquet. As the consumer have an informed choice of subscribing them separately as A-la-carte selection in case they “really” want to subscribe)

Q8. Do you agree that price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers? If so, what corrective measures do you suggest?

Ans 8 Yes, price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers. In order to rectify the same, the twin conditions, as under, may be introduced:-

a) the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet; and

b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed one and half times the average rate of a pay channel of that bouquet of which such pay channel is a part.

Q9. Does the ceiling of Rs. 19/- on MRP of a a-la-carte channel to be part of a bouquet need to be reviewed? If so, what should be the ceiling for the same and why?

Ans 9 On 09.01.2004, the Central Government declared the Broadcasting and Cable Services as Telecommunication Services and entrusted TRAI with the reigns of the sector. Accordingly, TRAI in October 2004, issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, for cable services, wherein the charges excluding taxes, in respect of both FTA and pay channels, payable by Subscribers to Cable Operators, Cable Operators to Multi System Operators/ Broadcasters, Multi System Operators to Broadcasters, prevailing as on 26th December 2003 were frozen and made as the ceiling. In 2006 High Court of Delhi directed Central Government to implement CAS. Since this was a fully addressable system therefore, TRAI directed all Broadcasters to disclose the MRP of a-la-carte as well as bouquet of channels. However, since TRAI did not get the desired response on MRP, hence it fixed a price of Rs. 5 per channel as a-la-carte rate wherein sharing amongst the Broadcaster, MSO and LCO was 45:30: 25 respectively and accordingly Broadcaster was getting Rs.2.25 per channel. The same was challenged before TDSAT but TDSAT dismissed the Appeal filed by Broadcasters and upheld the tariff order of TRAI for CAS areas. It may be noted that while deciding this case TDSAT has inter-alia observed that Cable TV services has now become like essential commodities and it should be made available to everyone. This CAS price continued till the implementation of DAS. Post the implementation of DAS, i.e. under 2012 Regulations when the broadcaster was given the freedom to price the a-la carte channel, then except few channels (sports channels), most of the channels were priced below Rs.10/-. For E.g. Refer the table below.

S.no.	Channels	Price (Rs.)
1.	Star Plus	7.87/-
2.	ZEE TV	5.83/-
3.	SET	8.9/-
4.	SAB TV	6.17/-
5.	&TV	9.20/-
6.	ZEE Cinema	5.83/-

All these channels were priced far below Rs. 19/-. Therefore, the appropriate ceiling should be a maximum of Rs. 10/- as there has been no change which necessitates such drastic jump/change in the price of channel by the broadcasters.

Q10. How well the consumer interests have been served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers?

Ans10. The Authority by diluting and not-implementing the key provisions of the new regime have not been able to serve the purpose of protecting consumer interest as have been envisaged of Digitization as well the Eighth Tariff Order (T.O) and other 2017 Regulations including Quality of Service Regulation. The entire exercise been conducted have only been able to enlighten the consumers for the first time, on which are the Pay TV Channels and how much these pay TV channel actually costs if subscribed. The overall monthly expense of the consumers have increased as they been forced to subscribe to only the bouquets as the MRP been declared for the popular Pay TV channels have been astronomically priced with a ceiling prescribed of Rs.19 excluding the GST by the Authority and whereas no efforts been made to derive to a much more realistic and affordable cost based tariff fixation by the Authority.

Q11. How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

Ans.11. The end consumers and subscribers are now much more aware and informed. However under the new regime there has also been an exponential increase seen in subscriber bills but under this new regulatory framework some respite have also come to the consumers w.r.t to their subscribing to the HD channels those were before outside the ambit of any regulations framed by the Authority.

Q12. Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?

Ans. 12:

The Authority has rightfully observed in the consultation paper that distributors are in the best position to form bouquets as they are in constant touch with the consumers and know their choices (Pg. 55 para 3.56 of the consultation paper). Accordingly, the distributors should be permitted to frame their own bouquets as the broadcasters can only offer the channels distributed by them, whereas, the subscribers demand channels of various broadcasters. Therefore, only the DPOs can meet the demand/justify the actual requirement of the subscribers by forming their own bouquets comprising of popular channels of various broadcaster as per the demands and requirement of subscribers..

Q13. How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?

Ans. 13:

The subscribers find it inconvenient to choose from the bulk of options in the form of bouquets being made available by the broadcasters. As on date, the number of bouquets being offered by top six broadcasters is about 351. Therefore, there is an urgent need to limit the number of bouquets offered by the broadcasters based on the formula referred to in comments to Ques. No. 6.

Q14. Should regulatory provisions enable discount in NCF and DRP for multiple TV in a home?

Ans. 14:

The current Regulations gives the flexibility of deciding the price of NCF and DRP and it is upto the DPO's basis the market situation to decide whether to charge NCF or not. Therefore, there is no need to revisit the same. The same should be left purely to the market forces.

Q15. Is there a need to fix the cap on NCF for 2nd and subsequent TV connections in a home in multi-TV scenario? If yes, what should be the cap? Please provide your suggestions with justification.

Ans. 15:

No, the current Regulations gives the flexibility of deciding the price of NCF and DRP and it is upto the DPO's basis the market situation to decide whether to charge NCF or not. Therefore, there is no need to revisit the same. The same should be left to the market forces.

Q16. Whether broadcasters may also be allowed to offer different MRP for a multi-home TV connection? If yes, is it technically feasible for broadcaster to identify multi TV connection home?

Ans. 16:

No, as it is not feasible to identify multiple TV connections and the same may lead to disputes between broadcasters, DPOs and LCOs.

Q17. Whether Distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home?

Ans. 17:

Yes, the distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home as the New Tariff Regime clearly identifies each STB as a separate Subscriber.

Q18. How should a long term subscription be defined?

Ans. 18:

Any subscription plan offered for 6 months and beyond may be categorised as long term subscription package.

Q19. Is there a need to allow DPO to offer discounts on Long term subscriptions? If yes, should it be limited to NCF only or it could be on DRP also? Should any cap be prescribed while giving discount on long term subscriptions?

Ans. 19:

No, there is no need to allow DPO to offer discounts on Long term subscriptions as the Regulation already enables the DPO's to provide discount of 15% on amount of bouquets vis-à-vis the price of a-la carte channels forming part of such bouquets.

Q20. Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

Ans. 20:

No, the Broadcasters should not be allowed to offer discount on MRP for long term subscriptions, as it may give rise to disputes between Broadcasters and DPO as to details of subscribers who are under such plan and may lead to issue with regard to invoicing by broadcasters.

Q21. Is the freedom of placement of channels on EPG available to DPOs being misused to ask for placement fees? If so, how this problem can be addressed particularly by regulating placement of channels on EPG?

Ans. 21:

No, the same is not being abused. The regulator may note that all the channels that were available on the DPO's platform prior to the implementation of the new regime continue to be on the same position as per the new regulatory framework the LCN cannot be changed before one year from the date of assignment of the channels and hence even the pay broadcasters who were paying the placement fees in the old regime have stopped paying any placement fee under the new regulatory framework. Hence, there is no problem as highlighted by the Authority with regard to placement of channels. Further, as pointed out in para 98 of the Explanatory Memorandum of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG and the same is reproduced below:

“In these regulations the broadcasters have been given a complete freedom to declare the genre of their channels and in terms of the regulations, it has been mandated that a DPO shall place the channels in the EPG under the respective genres so declared by the broadcasters. Further it has also been mandated that DPOs shall place the channels of the same genre in such a manner that all TV channels of same language within the same genre shall appear together consecutively in the EPG. In order to curb the practice to frequently change LCN number, it has been mandated that LCN number once allocated will not be changed for duration of at least one year. Therefore, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG. Hence as such there is no requirement for a broadcaster for asking for a specific position in the EPG.”

Q22. How the channels should be listed in the Electronic Program Guide (EPG)?

Ans. 22:

The national language channels should be listed genre wise and regional language channels should be put together as is continuing presently.

Q23. Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

Ans. 23:

NO, Distributors should not be permitted to offer promotional schemes on NCF and DRP of the channels and bouquet of the channels as it will result in unfair trade practice and may lead to various disputes and unhealthy competition among the distributor and LCOs.

Q24. In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency should be allowed in a calendar year?

Ans. 24:

Kindly refer to our response to Q.23.

Q25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

Ans. 25:

Kindly refer to our comments to Ques. 23 above.

Q26. Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorized for the purpose of NCF?

Ans. 26:

No, the current regulations already provides that a DPO can have different NCF for different target markets, so there is no need to revisit the same.

Q27. In view of the fact that DPOs are offering more FTA channels without any additional NCF, should the limit of one hundred channels in the prescribed NCF of Rs. 130/- to be increased? If so, how many channels should be permitted in the NCF cap of Rs 130/-?

Ans. 27:

No, there is no need to revisit the same as pointed out by us in response to Q14 & Q15 . The current regulation is flexible enough to enable DPO's to decide on the NCF as per the market needs and therefore it should be left to the market forces.

Q28. Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

Ans. 28:

No, it should be part of the 100 channels permitted in the NCF of Rs. 130/- because there is a cost involved in retransmission of the 25 DD mandatory channels.

Q29. In case of Recommendation to be made to the MIB in this regard, what recommendations should be made for mandatory 25 channels so that purpose of the Government to ensure reachability of these channels to masses is also served without any additional burden on the consumers?

Ans. 29:

The 25 DD mandatory channels should be part of the 100 channels permitted in the NCF of Rs. 130/- because there is a cost involved in retransmission of these channels.

Cable Operator Association of Gujarat

PRAMOD PANDYA

(PRESIDENT)