

GTPL Hathway Limited's Response to the Draft Telecommunication (Broadcasting And Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016

15th November 2016

To,

Mr. S.K. Gupta

Pr. Advisor (B&CS)

Telecom Regulatory Authority of India (TRAI)

New Delhi

Sub: Comments on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 (Draft Tariff Order of 2016)

Sir,

We thank the Authority for providing us with the opportunity to share our comments on the Draft Tariff Order of 2016.

As desired by the authority, we are limiting our response to only those provisions of the Draft Tariff Order of 2016, which in our opinion require some modification, in order to protect the interests of consumers and further help in reducing disputes between the stakeholders, in the following manner:

S. No.	Existing Draft Tariff Order	Modification/Addition/Deletion proposed by GTPL Hathway Limited to the Draft Tariff Order	Detailed Reasons for the proposals by GTPL Hathway Limited
1	<p>Clause 2(O) reads as under:</p> <p>“distribution platform” means distribution network of a DTH operator, multi-system operator, HITS operator or IPTV operator</p>	<p>It is proposed that the Clause 2(o) should be amended to the following:</p> <p>“distribution platform” means distribution network of a DTH operator, multi-system operator, HITS operator, IPTV operator, OTT operator, Doordarshan DTH or any platform that distributes content to the subscriber</p>	<p>By leaving out the emerging platform from the ambit of the tariff regime, the authority is leaving it prone to litigation. In near future, various new platforms are going to emerge for distributing content to the subscribers and keeping them in forbearance would again give rise to non-playing field and which in our views must be avoided to otherwise very competitive regime proposed by the authority.</p>
2	<p>Clause 2(p) reads as under:</p> <p>“distributor of television channels “means any DTH operator, multi system operator, HITS operator or IPTV operator</p>	<p>It is proposed that the Clause 2(p) should be amended to the following:</p> <p>“distributor of television channels “means any DTH operator, multi system operator, HITS operator, IPTV operator, OTT operator, Doordarshan DTH or any platform that distributes content to the subscriber</p>	<p>Unencrypted signals provided by Doordarshan DTH may jeopardize the entire DAS regime, especially under MRP regime wherein many pay channels could convert to free to air as also adopt rationalized MRPs. This would result in non-level playing fields across distribution platforms.</p>

3	<p>Clause 2(q) reads as under:</p> <p>electronic programme guide “or “EPG” means a program guide maintained by the distributors of television that lists television channels and programmes, and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs</p>	<p>It is proposed that the Clause 2(q) should be amended to the following:</p> <p>“electronic programme guide “or “EPG” means a program guide maintained by the distributors of television that lists television channels and programmes, subject to furnishing of the information regarding the programmes by the broadcasters to the distributors in a specified standard format and scheduling and programming information therein and includes any enhanced guide that allows subscribers to navigate and select such available channels and programs</p>	<p>The EPG is maintained by a third party vendor on behalf of the Multisystem operator (MSO) and can be updated only based on the information forwarded by the Broadcasters. In case the Broadcasters do not share the information with the MSO, the EPG cannot be updated by the MSO. Hence it is important to include the addition in the definition requested for.</p>
4	<p>Clause 2(x) reads as under:</p> <p>“maximum retail price” or “MRP” with reference to a-la-carte channel or bouquet of channels means the maximum price, excluding taxes, payable by a subscriber for that a-la carte channel or bouquet of channels, declared by the broadcaster;</p>	<p>It is proposed that the Clause 2(x) should be amended to the following:</p> <p>“maximum retail price” or “MRP” with reference to a-la-carte channel or bouquet of channels means the maximum price, including taxes, rounded-off to the next higher rupee,</p>	<p>The term ‘Maximum Retail Price’ in general means such price at which the product shall be sold in retail and such price shall include all taxes levied on the product. If the same term is used to mean a price excluding taxes, then it</p>

		payable by a subscriber for that a-la carte channel or bouquet of channels, declared by the broadcaster or distribution platforms ;	will create confusion. Further the distribution platform should be given flexibility to ROUND-OFF the retail price inclusive of taxes to the next higher rupee.
5.	<p>Clause 2(zh) reads as under:</p> <p>“subscriber” means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber;</p>	<p>It is proposed that the Clause 2(zh) should be amended to the following:</p> <p>“subscriber” means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person, and shall constitute one subscriber;</p>	<p>The definition given under the Regulations treat each Set-Top Box as an independent customer. A subscriber cannot be defined with respect to a Set Top Box, which is only a means to receive the services. Treating a Set Top Boz as a Subscriber removes the concept of an individual and entails a long process of multiple KYC, billing and CAF compliance, resulting in unnecessary burden on the system. The DTH regime already follows the system of single subscriber with parent and child STBs. The same system should be adopted across all distribution platforms.</p>
6.	<p>Clause 3(1) and 3(4) reads as under:</p> <p>3. Manner of offering channels by broadcasters. – (1) Every broadcaster shall</p>	<p>It is proposed that Clause 3 should be amended to the following:</p>	<p>It is suggested that maximum retail price of a channel should not be permitted to be differentiated on the basis of geographical areas, as it leaves</p>

<p>declare ---_</p> <p>(a) the nature of each channel as ‘free to air’ or ‘pay’ for different relevant geographical areas as specified in Schedule I; and</p> <p>(b) the maximum retail price, excluding taxes, of each pay channel on a-la-carte basis, to be paid by the subscriber:</p> <p>Provided that the maximum retail price of a pay channel shall be more than ‘zero’:</p> <p>Provided further that the maximum retail price of a channel in a relevant geographical area shall be uniform for all distribution platforms in that area:</p> <p>Provided further that it shall be open for a broadcaster to declare any pay channel as a premium channel.</p> <p>...</p> <p>(4) The maximum retail price of a pay channel or a bouquet of pay channels may vary for different relevant geographical areas.</p>	<p>3. Manner of offering channels by broadcasters. – (1) Every broadcaster shall declare ---_</p> <p>(a) the nature of each channel as ‘free to air’ or ‘pay’; and</p> <p>(b) the maximum retail price, excluding taxes, of each pay channel on a-la-carte basis, to be paid by the subscriber availing signals in a DAS Phase I, II and III Areas:</p> <p>Provided that the maximum retail price of a pay channel shall be more than ‘zero’:</p> <p>Provided further that the maximum retail price of a shall be uniform for all distribution platforms in that area:</p> <p>Provided further that it shall be open for a broadcaster to declare any pay channel as a premium channel, and such premium channel shall be declared as a premium channel across India.</p> <p>...</p> <p>(4) The maximum retail price of a pay channel or a bouquet of pay channels applicable to subscriber in a DAS</p>	<p>room for exploitation by broadcasters.</p> <p>Rather the distinction must be based on the classification of urban areas, i.e. DAS Phase I, II and III Areas and rural areas i.e. DAS Phase IV Areas. Consumers in DAS Phase IV Areas because of low purchasing power will find it highly difficult and onerous to pay the same amounts towards pay channels as are being charged in urban areas.</p> <p>Also, in terms of the proposed Regulations a subscriber shall only subscribe to those channels which he wants to view, therefore there is no reason as to why a customer in Mumbai may be permitted to pay a higher/lower rate than a customer in Delhi, when the service being received in both places is identical.</p> <p>For a Broadcaster, the cost of providing signals throughout the country is the same. All Areas falling under DAS Phase I, II and III should be considered one contiguous market and only due to the lower purchasing power in the DAS Phase IV Areas a special concession towards pricing should be granted.</p>
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			renumbered accordingly as Schedule 1 would have been removed. Also, references made to relevant geographical area and corresponding changes to other clauses of the Regulations would also have to be made to bring the same in conformity.
7.	<p>1st Proviso to Clause 3(6) reads as under:</p> <p>Provided that a broadcaster, before making any change in the nature of any channel, shall at least ninety days prior to the scheduled change ---</p> <p>(a) inform the Authority;</p> <p>(b) inform the distributors of television channels; and</p> <p>(c) inform the subscribers by running scroll on the channel</p>	<p>Provided that a broadcaster, before making any change in the nature of any channel, shall at least ninety days prior to the scheduled change ---</p> <p>(a) inform the Authority;</p> <p>(b) inform the distributors of television channels; and</p> <p>(c) inform the subscribers by running scroll on the channel</p> <p>Provided further that any change in pricing/genre/ Pay / FTA by broadcaster should be made effective only from the first day of a calendar month following the 90-day notice period.</p>	<p>The above addition is required from an administrative convenience point of view. In case a broadcaster makes the changes during the month, it would be challenge for the distribution platform to implement it during the month.</p>
8.	Clause 4 reads as Under:	Further Genres of television channels must be introduced as	Music has emerged as a completely separate industry with lot of new

	<p>Genres of television channels:</p> <p>(1) Every broadcaster shall declare a genre for each of its channels under any one of the genres specified below:</p> <p>(a) Devotional</p> <p>(b) General Entertainment</p> <p>(c) Infotainment</p> <p>(d) Kids</p> <p>(e) Movies</p> <p>(f) News and Current Affairs</p> <p>(g) Sports</p>	<p>following:</p> <p>(h) Music</p> <p>(i) Regional</p>	<p>channels coming up and hence it is needed that there is a specific genre for Music. It is a separate industry segment catering to specific audiences. Clubbing music with GEC / Infotainment may result in diluting the offering to consumer. Similarly Regional channels must also be segregated from the GEC / Infotainment genre.</p>
9.	<p>Clause 6 reads as under:</p> <p>6. Manner of offering of channels by the distributor of television channels: (1) No distributor of television channels shall charge a rental amount exceeding rupees one hundred and thirty, excluding taxes, per month per set top box from a subscriber for providing a capacity so as to enable the subscriber to receive the signals of up to one hundred SD channels:</p>	<p>It is proposed that Clause 6 should be amended to the following:</p> <p>6. Manner of offering of channels by the distributor of television channels: (1) A distributor of television channels shall charge a rental amount of rupees one hundred and thirty, excluding taxes, per month per set top</p>	<p>It is submitted that it should be mandated that each distributor of television channels shall charge a fixed amount of Rs. 130/- excluding taxes per month per set-top box from a subscriber, rather than a maximum ceiling being prescribed. Once the rental amount is fixed there would be no scope for unfair trade practices, predatory pricing and/ or any</p>

	<p>Provided that one HD channel shall be treated equal to two SD channels for the purpose of calculating capacity of one hundred channels offered to the subscriber.</p> <p>...</p> <p>(11) A distributor of television channels shall not increase the rental amount for a period of six months from the date of subscription by the subscriber.</p>	<p>box from a subscriber for providing a capacity so as to enable the subscriber to receive the signals of up to one hundred SD channels:</p> <p>Provided that one HD channel shall be treated equal to 4 SD channels for the purpose of calculating capacity of one hundred channels offered to the subscriber.</p> <p>Further Clause 6(11) is suggested to be deleted.</p>	<p>restrictive trade practice. It would also ensure that all subscribers are assured parity in rental amounts and each subscriber irrespective of areas would be assured of services at a constant price without fear of change. It would also reduce the changes of distributors of TV channels trying to enter into anti-competitive agreements, so as to subvert the regulations.</p> <p>Secondly, it is proposed that one HD Channel should be treated equal to 4 SD Channels, rather than 2. Most distributor of TV channels have already installed a large number of MPEG2 Set-Top Boxes and as per the compression standards available on the said Set-Top Boxes/ Equipment one HD Channel takes about 3.4-3.5 times the bandwidth of a SD Channel. Therefore, the Regulation should be amended accordingly to reflect the bandwidth utilization of a HD Channel.</p> <p>Once the rental charge of Rs. 130/- excluding taxes per month per set-top</p>
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			box from a subscriber is fixed, there is no need for a price increase clause and hence, sub-clause (11) needs to be deleted.
10.	<p>Clause 6(2) reads as Under:</p> <p>Every distributor of television channels shall offer all the channels available on its network</p> <p>on a-la-carte basis and declare retail prices of pay channels payable by the subscriber</p>	<p>Clause 6(2) is suggested to be amended as follows:</p> <p>Every distributor of television channels shall offer all the channels available on its network</p> <p>on a-la-carte basis and declare retail prices of pay channels payable by the subscriber subject to maximum discount of 15% on the ala carte price declared by the Broadcaster.</p>	Our understanding is that there is no lower cap on the retail price of ala-carte Channels pricing by distributor to consumer. To prevent misuse of this forbearance on ala-carte Channels pricing at distribution platform level by vertically integrated distributors who may resort to price cannibalization, it is recommended that the retail price should be subject to a 15% cap on the ala-carte Channels price declared by the Broadcaster.
11.	<p>Clause 7(1)(a) and 7(1)(b) reads as under:</p> <p>7. Reporting requirement. (1) Every broadcaster shall furnish the following information to the Authority, namely: -</p> <p>(a) names, genre, language and relevant geographical area of all free to air channels offered by the broadcaster;</p>	<p>It is proposed that from Clause 7 (1)(a), 7(1)(b) and 7(1)(d) the phrase “and relevant geographical area of” is to be removed.</p> <p>Clause 7 (1)(e) is proposed to be deleted</p> <p>Clause 7 (1)(g)(a) is proposed to be amended as following:</p> <p>(g) any other information relevant to</p>	<p>The references made to relevant geographical area of sub-clause (1) have been removed, as also changes made to bring the same in conformity to the proposed Clause 3.</p> <p>In the first proviso to sub-clause (1) the time period to declare the maximum retail price by the Broadcaster has been changed to January, 2017 instead of</p>

<p>(b) name, maximum retail price, genre, language and relevant geographical area of each pay channel offered by the broadcaster;</p> <p>Clause 7(d) and (e) reads as under:</p> <p>(d) name, maximum retail price, language and relevant geographical area of each premium channel offered by the broadcaster;</p> <p>(e) whether the pay channels are pay channels in whole of the country or only in part of the country. (relevant geographical market(s) must be specified if a channel is a pay channel in part of the country);</p> <p>Clause 7(1)(g)(a) reads as under:</p> <p>(g)any other information relevant to free to air channels, pay channels, premium channels, maximum retail prices and bouquets offered by a broadcaster as called for by the Authority from time to time:</p> <p>Provided that the first such report, containing maximum retail prices effective from April 1, 2017, shall be submitted to the Authority by March 1, 2017 and, thereafter, any changes in such rates ---</p> <p>(a) shall be reported to the Authority</p>	<p>free to air channels, pay channels, premium channels, maximum retail prices and bouquets offered by a broadcaster as called for by the Authority from time to time:</p> <p>Provided that the first such report, containing maximum retail prices effective from April 1, 2017, shall be submitted to the Authority by January 1, 2017 and, thereafter, any changes in such rates ---</p> <p>(a) shall be reported to the Authority thirty days prior to the change; and</p>	<p>March, 2017 as only once the Broadcaster has declared the maximum retail price can the distributor of TV channels formulate the packages and publish the same and start its consumer awareness programs. Since, the Regulation is to come into effect from April, 2017 a minimum period of 2 months' prior thereto is required for the creating consumer awareness regarding the changes. Furthermore, the distributor of TV channels also requires some time to formulate packages and thereafter circulate the publicity material etc. In the case of MSOs, they also need to hold meetings with LCOs and educate them regarding the changes in the packaging etc., who in turn would have to educate the end consumer/ subscriber.</p> <p>In the first proviso to sub-clause (2) it has been added that any information with regard to introduction or conversion or discontinuation or change of a channel should also be furnished to the distributor of TV channels and the subscribers. The</p>
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	<p>ninety days prior to the change;</p>	<p>providing of such information to the distributor of TV channels is essential as only once the same has come to the knowledge of the distributor can it formulate packages and/ or modify its offerings to the consumers. The distributor would also in the case of new channels require time to decide whether or not it wishes to subscribe to the same.</p> <p>In sub-clause (a) of the first proviso to sub-clause (4) the time period to report changes to the Authority has been reduced from 90 days to 30 days. The same has been done as the Broadcaster has been given a period of 90 days to give information regarding the introduction or conversion or discontinuation or change of a channel. Once the Distributor of TV channels has received such information from the Broadcaster, it would have to change its offerings i.e. bouquets etc. Therefore, in order to provide some time to the distributor of TV channels to modify its offerings the time period has been reduced.</p>
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			<p>In sub-clause (5) the time period of 90 days given to a distributor of TV channels in the event of introduction or conversion or discontinuation or change of a channel/ bouquet has been reduced to 30 days. In the event of discontinuation of a channel due to non-payment of carriage fees etc., the proposed and extant Interconnect Regulations provide for a notice of 21 days. A period of 90 days in such situations is excessively long.</p>
12.	<p>Clause 8 (1) reads as under:</p> <p>8. Appointment of compliance officer and his obligations. -- (1) Every service provider shall, within thirty days from the date of commencement of this order, appoint a compliance officer:</p> <p>Provided that nothing contained in this sub-clause shall apply to a distributor of television channels having average subscribers base, over the immediately preceding calendar quarter, less than two</p>	<p>It is proposed that Clause 8(1) should be amended to the following:</p> <p>8. Appointment of compliance officer and his obligations. -- (1) Every service provider shall, within sixty days from the date of commencement of this order, appoint a compliance officer:</p> <p>Provided that nothing contained in this sub-clause shall apply to a distributor of television channels having average subscribers base, over the immediately</p>	<p>The time period of 30 days in sub-clause (1) has been increased to 60 days, as in most cases new hiring would have to be done by the service providers in terms of the Regulations. Any new hiring in an organization would be difficult to manage within a period of 30 days.</p> <p>The time period of 10 days in sub-clause (4) has been increased to 30 days. The same is on account of the fact</p>

	<p>lakh or such other number of subscribers which may be prescribed by the Authority through direction from time to time:</p> <p>Provided further that this sub-clause shall also not apply to a free to air broadcaster and a local cable operator.</p> <p>Clause 8(4) reads as under:</p> <p>(4) In the event of any change in the name of the compliance officer so appointed under subclause (1), the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change along with authenticated copy of board's resolution or authorization letter, as the case may be.</p>	<p>preceding calendar quarter, less than two lakh or such other number of subscribers which may be prescribed by the Authority through direction from time to time:</p> <p>Provided further that this sub-clause shall also not apply to a free to air broadcaster and a local cable operator.</p> <p>It is proposed that Clause 8(4) should be amended to the following:</p> <p>(4) In the event of any change in the name of the compliance officer so appointed under subclause (1), the same shall be reported to the Authority by the service provider within thirty days from the date of occurrence of such change along with authenticated copy of board's resolution or authorization letter, as the case may be.</p>	<p>that in the event of any change in the compliance officer, 10 days is not sufficient to recruit a replacement. Furthermore, at times employees can resign at very short notice period and therefore, sufficient time is required to appoint a replacement.</p>
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