

Summary of Issues for Consultation Issues related to Target Market

Preliminary Submissions

To begin with we wish to highlight the following key elements that need to be addressed at policy level with reference to this Consultation paper and the same is explained in three parts:

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- 1. Asymmetry in opportunities between Pay Channels and Free to Air Channels
- 2. Target Market definition
- 3. Need to dismantle Carriage Fee

Asymmetry in opportunities between Pay & Free to Air Channels

- 1) The introduction of the New Tariff Order (NTO) has increased the revenue earning capacity from Subscriptions for Pay Channels by as much as 40 to 50% in their earnings. The NTO has helped the Pay Channels by enabling packaging/bundling of channels offered by networks which has translated into better ARPU's per user, while the implementation on ground of the NTO has not impacted their reach when compared to the FTA Channels. This has poised Pay channels in a far more lucrative space because revenue on subscription has gone up. This significantly reduces the dependency of Pay Channel on Advertising Revenues, giving them much higher flexibility in terms of offering lower ad rates as compared to FTA.
- 2) However, for FTA channels the NTO measures have restrained their ability to be easily distributed.
- 3) This has caused a huge disadvantage to the business models of FTA channels, making it very difficult for FTA channels to operate. The challenge for FTA Channels in the News genre is much more acute even when compared to the FTA channels in the Entertainment genre as the volume of Viewership share enables the FTA channels in the Entertainment genre comes to their aid.
- 4) The average viewership data for various genres broken by language is tabulated as follows: -

Table: Average Weekly Viewership Numbers (Oct. 2018 to Sep. 2019)

Average Weekly Viewership Numbers (Oct'18 to Sep'19)

India NCCS 2+ Source: BARC

In Numbers

Genre	Hindi	Tamil	English	Kannada	Telugu	Malayalam	Bengali	Multi Lingual	Gujarati	Bhojpuri	Assamese	Punjabi	Oriya	Marathi	Others	Total
GEC	58,05,296	24,06,602	5,974	14,28,926	24,06,923	7,18,774	8,20,589	8,622	32,459	11,434	57,906	1,00,080	1,66,619	7,51,442	25,487	1,47,47,135
Movie	52,48,501	3,83,715	78,479	2,29,991	7,49,517	1,05,842	2,28,541		9,117	4,49,902		23,735	38,955	2,84,917		78,31,212
News	12,67,821	2,05,490	13,305	2,67,448	3,38,577	1,28,971	1,29,884		58,963		84,454	52,594	61,499	1,65,993	22,253	27,97,252
Music	10,04,509	5,02,747	6,470	1,78,650	2,35,450	28,633	15,782			36,990	8,964	57,074	1,73,028	55,063	1,22,253	24,25,612
Sports	6,08,191	56,460	2,25,111	15,850	26,825		1,096	1,40,308								10,73,841
Kids	1,50,424	66,611	302	31,325	53,080	40,279		16,31,827				34,298				20,08,146
Religious	54,238	923	1,524		43,346							16,369	25,658			1,42,059
Food & Lifestyle	6,904	830	6,671		3,709	11,432			11,182							40,728
Teleshopping	3,460															3,460
Info		8,396	33,609	5,466				1,09,847								1,57,318
Others															2,12,301	2,12,301
	1,41,49,345	36,31,774	3,71,444	21,61,365	38,65,151	10,22,500	11,95,892	19,01,787	1,00,539	4,98,326	1,51,323	2,84,150	4,65,759	12,57,415	3,82,294	3,14,39,064

In % age to total

GEC	18.5%	7.7%	0.0%	4.5%	7.7%	2.3%	2.6%	0.0%	0.1%	0.0%	0.2%	0.3%	0.5%	2.4%	0.1%	46.9%
Movie	16.7%	1.2%	0.2%	0.7%	2.4%	0.3%	0.7%	0.0%	0.0%	1.4%	0.0%	0.1%	0.1%	0.9%	0.0%	24.9%
News	4.0%	0.7%	0.0%	0.9%	1.1%	0.4%	0.4%	0.0%	0.2%	0.0%	0.3%	0.2%	0.2%	0.5%	0.1%	8.9%
Music	3.2%	1.6%	0.0%	0.6%	0.7%	0.1%	0.1%	0.0%	0.0%	0.1%	0.0%	0.2%	0.6%	0.2%	0.4%	7.7%
Sports	1.9%	0.2%	0.7%	0.1%	0.1%	0.0%	0.0%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	3.4%
Kids	0.5%	0.2%	0.0%	0.1%	0.2%	0.1%	0.0%	5.2%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	6.4%
Religious	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	0.0%	0.0%	0.5%
Food & Lifestyle	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Teleshopping	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Info	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.5%
Others	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%
	45.0%	11.6%	1.2%	6.9%	12.3%	3.3%	3.8%	6.0%	0.3%	1.6%	0.5%	0.9%	1.5%	4.0%	1.2%	100.0%

- 5) The primary issue for FTA Channels has been due to the 100 Channels for Rs 130 pm to subscribers includes 27 odd DD Channels and thus leaves 1 slot for every 6 Licensed FTA Channel. The Carriage/ Placement menace is back in full swing. The undeniable fact is the FTA Channels make investments almost on par with the Pay Channels, but the NTO has not provided sufficient safeguards to enable incentives for their availability to the subscribers. These restrictive covenants need to be examined and corrected for a healthy broadcaster ecosystem as FTA Channels outnumber Pay Channels by a factor of 2 is to 1, and they require careful consideration from the Regulator to function under the NTO.
- 6) Finally, FTA Channels, unlike Pay Channels lack the scope or opportunity under the NTO for being available in multiple bundles, when the Channels are offered to the subscribers. The Distribution Platform Owners (DPO) are not inclined to support the FTA channels by providing any options outside of the basic tier of 100 Channels for Rs 130 pm. To address this
 - i) TRAI would need to come up with a formula for more FTAs to be offered to the viewers. Most MSO's have pre decided bundles of basic tier channels which provide less options to the viewers to opt for FTA Channels. This leads to opening the prospect for extracting more carriage fee from the FTA channel providers, as they are jostling for the artificially limited 100 Channel slots, which includes 27 Doordarshan slots as well.
 - ii) TRAI should make changes to the NTO such that both the FTA broadcasters and MSO run a concerted campaign to inform the users of the choices of FTA Channels they can access and the modalities for the same.
 - iii) Instead of providing for all the DD's channels to be available across all the markets, without considering their relevance (say DD Kashmir in Tamil Nadu for instance) there should be a mandate for restricting this in a logical manner, which will help freeing up the slots for Region specific Channels to be available. Certain DD channels are national channels and should be part of all packages, however the selection of the other regional DD channels should be left to the viewers discretion.

Target Market Definition

- 1) The consultation paper provides information on Market cluster as defined by DPOs as follows:-
 - a) In the case of DTH operators - whole of India
 - b) In the case of MSO - A State or a set of States
- 2) The issues with the above definition of Target market are: -
 - a) It is too broad-based and the current manner of target market clustering would at best work only for National Broadcasters/ some large Regional Broadcasters
 - b) Not suitable for niche broadcasters, as they may seek to reach out to a much smaller subset of the target market. For e.g., Hathway defines their Headend Located in Kolkata as catering to the target market comprising of Odisha, West Bengal & Sikkim. An Oriya Channel may be greatly disadvantaged as given the width of the target market, they becoming over 20% subscribed in the target market may be a challenge & hence they stay in the Carriage Fee applicable state for the MSO.
- 3) To avoid the potential for the aforesaid dissonance, the target market definition can be modified on the following lines:-
 - a) Use the PIN Code as Proxy for Market Cluster

- b) The area covered by a PIN Code is available from the Indian Postal Service, who defined it. It is an essential location identifier for any Indian physical Address, all across India
 - c) Since Address of each connection will be available with the DPOs be it DTH/MSO/LCO, getting PIN Code wise reach should not take any serious effort
- 4) Advantages due to above suggested change:-
- a) It will be easy for a Broadcaster to choose which all PIN Codes it wants to reach to base its Target Market
- 5) Additional thought and care is needed in order to ensure the target market definition is objective and precise so that it eliminates any scope for varying interpretation. Also the definition should take cognizance of the marketing hurdles for niche channels in the interest of enabling a variety and dept in the content availability. The following additional measures are suggested to meet this objective:-

- a) DTH/MSO to provide a real-time data in their website giving details on No. of connections in each of the PIN Code cluster it has its signals on. In the case of MSO it has to in addition provide the No of connections broken down by each LCO connected to their head ends
- b) DTH/ MSO should be required to be open for a time-to-time audit/validation process on the No of connection data, either by TRAI or by any agency empowered by TRAI
- c) TRAI to define the %age of penetration in each Market cluster for different Genres at annual interval, based on parameters applicable for each Genre Viz., English language Content, Regional Language Content, HSM Market etc. (**Market Penetration Factor-MPF**). This is required and the need can be discerned upon reviewing the table below. This table shows the Channel shares taken for the period Oct. 2018 to Sep 2019 in relative %age terms and is the basis for advertisement investments in each genre/ channel by the market. As is highlighted in Yellow shade, the Reach of the Channels vary considerably between Genre and Language so what is a large volume for Hindi language Channel or a GEC Genre will not apply for English News Channel

Average Weekly Viewership Numbers (Oct'18 to Sep'19) - In %age to total																
GEC	18.5%	7.7%	0.0%	4.5%	7.7%	2.3%	2.6%	0.0%	0.1%	0.0%	0.2%	0.3%	0.5%	2.4%	0.1%	46.9%
Movie	16.7%	1.2%	0.2%	0.7%	2.4%	0.3%	0.7%	0.0%	0.0%	1.4%	0.0%	0.1%	0.1%	0.9%	0.0%	24.9%
News	4.0%	0.7%	0.0%	0.9%	1.1%	0.4%	0.4%	0.0%	0.2%	0.0%	0.3%	0.2%	0.2%	0.5%	0.1%	8.9%
Music	3.2%	1.6%	0.0%	0.6%	0.7%	0.1%	0.1%	0.0%	0.0%	0.1%	0.0%	0.2%	0.6%	0.2%	0.4%	7.7%
Sports	1.9%	0.2%	0.7%	0.1%	0.1%	0.0%	0.0%	0.4%	0.4%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	3.4%
Kids	0.5%	0.2%	0.0%	0.1%	0.2%	0.1%	0.0%	5.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	6.4%
Religious	0.2%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	0.0%	0.5%
Food & Lifestyle	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Teleshopping	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Info	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.5%
Others	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%
	45.0%	11.6%	1.2%	6.9%	12.3%	3.3%	3.8%	6.0%	0.3%	1.6%	0.5%	0.9%	1.5%	4.0%	1.2%	100.0%

India NCCS 2+ Source: BARC

- d) If TRAIs audit findings indicates an overstated connection in any target market, TRAI to issue a warning to the DPO, make the same public and after 3 such warnings may impose such fine as it may deem appropriate.
- e) If despite the action as above, there exists continuing non-compliance, TRAI may suspend cancel license or order that the DPO shall not be entitled to the Network Operating Fee for such periods as it may order.
 - i) We further feel that there has to be a transparent mechanism of monitoring when a channel has reached 20% viewership. Right now, there is no such mechanism and the broadcaster has to go by what the MSO is declaring. A suitable mechanism has to be evolved where by a infrastructure is developed for identifying and monitoring the market reach and the broadcaster/content provider should pay for supporting the maintenance of such an infrastructure.
 - ii) Republic TV is the only English FTA channel available in the country today and has helped the younger population develop an understanding of the English language thereby increasing their employability. Other Genes may have similar cases of lone or handful of FTA offering in an otherwise Pay offering and the Regulator may accord a special benefit as such channels are foregoing

subscription revenues and enlarging the options for DOPs to have offerings in their bouquet.

Need to dismantle Carriage Fee

- 1) The foremost aim of Digitization was to open up the capacity for the number of Channels that can be carried, which was a major bottle-neck under the analogue model. This objective of increasing carrying capacity has been largely achieved. However, Carriage Fee remains to be eased out.
- 2) The fact is the regulator correctly stipulated that it cannot vanish abruptly as the infrastructure to make free of carriage availability would require time and hence it was understood that Carriage Fee is an interim and transitory measure for the smooth progression to a free and transparent relationship and revenue sharing between broadcasters and DPOs.
- 3) It is time the Regulator begins the process of dismantling the Carriage Fee entitlement.
- 4) Time and again, the Broadcasters in their response to various consultation papers and draft regulations of TRAI have impressed upon the fact that if must carry is mandated; the question of carriage fee does not arise
- 5) We accordingly request TRAI to set the tone for systematically dismantling Carriage Fee
- 6) To address the DPOs cost parameters the Regulator may arrive at an equitable fee model taking into account the DPOs cost for providing the infrastructure to distribute across India. The charge can be named **Network Operating Fee (NOF)**; which may work as following manner.
 - i) The Broadcaster upon choosing the market cluster; to pay [Rs 0.01 TBD] per subscribing consumer per month in the market cluster if it is an FTA and [Rs 0.02 TBD] per subscribing consumer per month if it is a Pay Channel, as NOF
 - ii) No Carriage
 - iii) Further, as a deterrent in case the DPO fails to update the No of Connection data for each defined market cluster at least every quarter or has been notified by TRAI for non-compliance on data updating etc, the DPO will not be entitled to charge the NOF, for the period of such non-compliance
- 7) It is also submitted that the Regulator may first stipulate that FTA Channels in the nationally important genres like News given the dissemination service role they are contributing to, Regional Language Channels in their base geography but with low penetration and channels disseminating educational information should be first kept either out of the ambit of NOF or a discount to the regular NOF taking cognizance of their audience being limited. Further, based on the prevailing MPF for a Genre the weightage for NOF charge can be discounted to offset for the FTA Channels not extracting and subscription income

Our submissions on each of the Questions mentioned in the Consultation paper follows: -

1. Do you think that the flexibility of defining the target market is being misused by the distribution platform operators for determining carriage fee? Provide requisite details and facts supported by documents/ data. If yes, please provide your comments on possible solution to address this issue?

The Concept of Target Market has not been given any attention in terms of how the same can be structured. In the absence the default position taken is define either the whole of India or a state or combination of states as Target market. Broadcasters create content some of which will cater to specific regions or ‘diaspora’. In the absence of due recognition for the same, the current structure makes it unviable for niche channels to operate. Also, the 5% and 20% limits specified for number of subscribers reached for the Carriage Fee determination, is not only skewed against the broadcasters, but causes a conflict in purpose between the two protagonists – DPOs and Broadcasters; Broadcaster’s wish to reach beyond 20%, whilst

DPOs have no incentive to help that cause as it will cut their Revenue lines. The Preliminary remarks provides our view on the possible review and reset to address this matter.

2. Should there be a cap on the amount of carriage fee that a broadcaster may be required to pay to a DPO? If yes, what should be the amount of this cap and the basis of arriving at the same?

As elaborated in our preliminary observations, it is high time Carriage Fee as a concept is completely withdrawn. We have submitted an alternative model of compensating the DPOs for Network Operating Fee, which is determined based on the technical infrastructure cost for enabling the signals reaching their subscribers, which shall be overseen by the Regulator and fixed or revised as required after taking inputs from all stake holders.

In addition we wish to submit that small but very impactful content broadcasters like News need to be given some cost concessions. News Channels play the role of information providers and hence the right of way to subscribers should be made smoother, especially where the broadcaster has defined itself to be an FTA service. The NOF in their case should be defined taking into account the low proportion to the overall %age of their target market and MPF as defined earlier in the Preliminary submissions section above.

3. How should cost of carrying a channel may be determined both for DTH platform and MSO platform? Please provide detailed justification and facts supported by documents/ data.

Please refer to the response to Question No 2 above for the conceptual position. Recognizing that the changes have to be gradual, we recommend the following measure in the transition phase: -

Despite the risk of repetition we wish to elaborate as follows: -

With regard to the Carriage Fee to DPO by Broadcasters the concept of Carriage Fee should be replaced by a more transparent model of Network Operating Fee (NOF)

Instead of Rs 0.20 per consumer and thresholds of 5%-20% etc for removing/sustaining a broadcaster and recognizing that the DPOs have infrastructure spends the following maybe considered:-

- A discount factor for small penetration Channels and FTA Channels based on their MPF as defined by the Regulator
- Broadcaster upon choosing the market cluster; to pay Rs 0.01 per subscribing consumer per month in the market cluster if it is an FTA and Rs 0.02 per subscribing consumer per month if it is a Pay Channel, as NOF.
- No Carriage Fee concept
- In case the DPO fails to update the No of Connection data for each defined market cluster at least every quarter or has been notified by TRAI for non-compliance on data updation etc, the DPO will not be entitled to charge the NOF

Economics:-

- No of Reported Connections 107 Million

- No of Channels – Pay 229 SD 99 HD; FTA 614
- Network Operating Fee per month
 - o FTA 614 Channels @ Rs0.01 per/month per subscriber going to 107 Million = Rs 66 Cr p.m.
 - o Pay Channels 328 Channels @ Rs 0.02 per/month per subscriber going to 107 Million = Rs 70 Cr p.m.
 - o So Total monthly collection to DPOs as Network Operating Fee Rs. 136 Cr p.m.
- The collection as above should be adequate as the DPOs will have Revenues share from Pay Channel which could be 20% of the Total Revenues

The advantages/ disadvantages are:-

- Advantages
 - o The payment of NOF will be based on No of subscribed connections, so both Broadcaster as well as DPO would gain by maximizing the connections
 - o Gives opportunity for more FTA Channels to be made available achieving Regulators objective of offering more content at lower cost to the consumers
 - o Minimizes scope for disagreement by either party
 - o Removes legitimacy for Carriage Fee/ Placement Fee from any discussions
- Disadvantages
 - o Potential for variance on number of actual subscribing customers, but will not exist as both Parties do not have conflicting motives

4. Do you think that the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse? Issues related to Placement and other agreements between broadcasters and Distributors

The 5% rule will be rendered redundant if Carriage Fee gets replaced by NOF as defined in this submission. Nevertheless, process of not carrying for legitimate reasons needs to be streamlined. The decision to stop carrying a channel should be confirmed by the Authority based on a show cause statement filed by the DPO along with an opportunity for the channel to present its side of the argument. The decision should be dispensed within 10 working days of the matter getting filed with the Authority.

5. Should there be a well-defined framework for Interconnection Agreements for placement? Should placement fee be regulated? If yes, what should be the parameters for regulating such fee? Support your answer with industry data/reasons.

FTA Channels should be given preference when it comes to working a standard for Placement process. One way to make the process transparent would be by introducing a bidding model, under the oversight of the Regulator with defined rules like priority for FTA Channels, norm for sequence etc, which would be binding on the DPO. Another process could be, the Channel Logos all appear on screen for each Genre and the subscriber finds it easy to access their channel of choice, instead of the listing method of display under which channels appearing lower in the list lose significant opportunity to be seen.

6. Do you think that the forbearance provided to the service providers for agreements related to placement, marketing or any other agreement is favouring DPOs? Does such

forbearance allow the service providers to distort the level playing field? Please provide facts and supporting data/ documents for your answer(s).

Yes, it is. Streamlining cost sharing based on NOF methodology as submitted in this note and also the bidding or logo display process for Placement will bring transparency to address the anomalies and abuse potential in the current practices.

7. Do you think that the Authority should intervene and regulate the interconnection agreements such as placement, marketing or other agreement in any name? Support your answer with justification?

As presented in this submission, a transparent mechanism like NOF in place of Carriage Fee duly factoring MPF and Placement options of either bidding under the aegis of the Regulator or its alternative of all Logos of a particular Genre in the display screen. If these or similar measures are in place the Regulator can let the process of the industry constituents operating in an orderly and transparent manner.

8. How can possibility of misuse of flexibility presently given to DPOs to enter into agreements such as marketing, placement or in any other name be curbed? Give your suggestions with justification.

Please refer to the response to Question No 2 above

9. Any other issue related to this consultation paper? Give your suggestion with justification.

To summarize this submission has offered alternatives for

- i) Target Market Definition – based on Postal PIN Code as a market cluster
- ii) Doing away with carriage Fee and work for a more justifiable cost compensation model, which can be borne by the Content providers – alternates suggested is a NOF with an MPF factor
- iii) Placement to be on a bid model or a display of all logo model with some priority ranking for FTA Channels over Pay Channels- The logic is since the Consumer is paying subscription for a Pay Channel, she will not need first display on the menu, but that is not the case for FTA

We wish to elaborate on the safeguards that will be necessary to streamline that the target market size determination. We suggest the following measures: -

- DTH/MSO to provide a real-time data in their website giving details on No. of connections in each of the PIN Code cluster it has its signals on. In the case of MSO, it has to in addition provide the No of connections broken down by each LCO connected to their head ends
- DTH/ MSO should be required to be open for a time-to-time audit/validation process on the No of connection data, either by TRAI or by any agency empowered by TRAI
- TRAI to define the %age of penetration in each Market cluster for different Genres at annual interval, based on parameters applicable for each Genre Viz., English language Content, Regional Language Content, HSM Market etc. (Market Penetration Factor-MPF)
- If TRAIs audit findings indicates an overstated connection in any target market, TRAI to issue a warning to the DPO, make the same public and after 3 such warnings may impose such fine as it may deem appropriate.

- If despite the action as above, there exists continuing non-compliance, TRAI may suspend cancel license or order that the DPO shall not be entitled to the Network Operating Fee for such periods as it may order.