



SUN TV NETWORK LIMITED

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BY SPEED POST WITH ACK.DUE

September 23, 2019

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Re: Consultation Paper on Tariff related issues for Broadcasting and Cable Services

Dear Sir,

Please find enclosed comments of Sun TV Network Limited to the Consultation Paper on Tariff related issues for Broadcasting and Cable Services.

Yours sincerely,
For Sun TV Network Ltd.

Authorized Signatory

Encl: As above

**SUN TV'S COMMENTS ON THE CONSULTATION PAPER ON
TARIFF RELATED ISSUES FOR BROADCASTING AND CABLE SERVICES**

INTRODUCTION

1. It is the view of Sun TV Network Ltd. that there is no merit in the Consultation Paper No. 10/2019 dated August 16, 2019 on Tariff related issues for Broadcasting and Cable Services ("**Consultation Paper**") and we oppose the same for the reasons mentioned below.

PRELIMINARY OBJECTION

2. While the present / New Tariff Regime was sought to be made effective from December 28, 2018, however, the extended deadline for a smooth transition of subscribers was considered as 31.01.2019. The TRAI itself noticed in February 2019, that a lot of the subscribers were yet to opt for their choice of channels. The TRAI, accordingly, issued a direction asking DPOs to offer a "best fit plan" to those subscribers who had not yet availed the benefit of exercising their option of channels that they had decided to view.
3. This "best-fit plan" was to be decided "by the DPO" according to the previous watching preferences of the subscriber and was to be implemented by 31.03.2019. What is noteworthy is that whereas on the one hand, the TRAI sought to support its defence of the 2017 Regulations on the basis that these were notified to maximise consumer choice and preference, and further that the TRAI has also used consumer choice, as the basis of the impugned CP, on the other hand, it is the same TRAI, that directed the DPOs to implement, what the DPOs *thought* would be the "best-fit" from a consumer point of view, rather than let the consumer decide for itself.
4. It is submitted that ideally, the TRAI, having itself propounded the 2017 Regulations, ought to have given some time for the New Regulatory Regime to settle down before even deciding to re-look at the Regulations. The TRAI is aware that the effect of the New Regulatory/MRP regime caused disruption in the broadcasting industry, as the extant regulations were completely overhauled and a totally new business model,



hitherto unknown and untested since the beginning of the broadcasting and cable industry more than 20 years ago, was implemented, over a 6-8 month period.

5. This disruption, however, was based on the experience and data collected by the TRAI, over 12 years, between January 2004 and November 2016. It was also implemented over a period of time so that the stakeholders are not disadvantaged. The present attempt in the CP shall, once again have the effect of disrupting the business. What is pertinent to note is that the business is just about settling down, with the specifics and nuances of the New Regulatory and Tariff Regime being understood by more and more stakeholders, the implementation taking effect with individual aspects of the New Regulations such as listing of pool of auditors to audit the networks of the DPOs, etc. being notified. In the middle of such implementation, the proposed CP will have consequences that may be disastrous not only for the just-about-settling-industry, but also the individual constituents thereof.
6. It is evident from the foregoing that the true implementation of the New Tariff Regime did not take place prior to 01.04.2019. For an effective implementation of any new regime, the Regulator is supposed to receive data, confirm from the stakeholders is all data has actually been submitted, then analyse the data submitted and only thereafter proceed to verify whether or not the analysis matches the reality on ground.
7. The foregoing clearly establishes the hastiness in approach of the TRAI, especially given that despite multiple directions given by the Hon'ble TDSAT and the Supreme Court, it took the TRAI, approximately 13 years to overhaul the previous system, which, by the TRAI's own statements, was ad hoc and needed change.
8. Given also that the New Tariff Regime has been upheld in most respects, by the Madras High Court as well as the Supreme Court of India, it is even more important for the TRAI to recognize that the Madras High Court struck down as arbitrary, the attempt of the TRAI to cap the discount that a Broadcaster or DPO could give on its MRP, and the said finding was not interfered with by the SC. It would, therefore, be incorrect for the TRAI to now seek to revive such restriction/cap on discounts being



given by the Broadcasters and/or DPO, especially as the said discounting subserves consumer interest.

9. Accordingly, it is submitted that the Consultation Paper is legally untenable and factual data is inadequate to support an amendment to the recently notified Tariff Regime.
10. It is submitted that after due consultative process and several rounds of subsequent litigations, the new regulatory framework is just getting over its initial teething issues, and the Broadcasting & Cable sector is just about settling down. Close to 1 lakh contracts have had to be negotiated afresh, deals that had been going on for many years have been modified. The business dynamics have changed, inasmuch as the wholesale pricing regime has been substituted with a retail pricing regime.
11. In light of the above, it is completely against public interest for the TRAI to, display undue haste, and without so much as a tangible and explicable basis, seek to alter status quo once again and that too, in a matter of less than 150 days of implementation. It is interesting to note that 180 days were prescribed by the TRAI under the Tariff Order and Regulations, to effectuate implementation thereof, given the complete change being brought about in the sector. On this occasion, however, the TRAI itself has chosen to wait not even for those 180 days before suggesting another massive overhaul of the manner in which the business is carried out.
12. The TRAI has been entrusted, inter alia, (i) to promote or ensure orderly growth of the Broadcasting & Cable sector, and (ii) to protect the interests of service providers and consumers of the Broadcasting & Cable sector. It is submitted that such initiative by the TRAI will not only impinge orderly growth of the Broadcasting & Cable sector, but will also disregard the interests of the service providers (while only focusing on the so called interests of the consumers), which is completely contrary to the objectives.
13. It is submitted that as per the TRAI mandate, the Broadcasters have fixed MRP for each of their channels (on the basis of perceived demand for such channels) and also offered all such channels to the consumers on a-la-carte basis. In the last few months



of the implementation of the new regulatory framework, what has been witnessed (and unfortunately, not captured in the Consultation Paper), is that few Broadcasters have reduced the declared MRPs of some of their channels as they deemed fit to revise. With passage of time, as in the case of any industry, the impact of a sea change in the regulation takes some time for the businesses to react and settle down. Thus, all Broadcasters are confident that the true price of all channels will be determined on the basis of supply/demand for such channels by the consumers. It is accordingly submitted that, as was the stated purpose of the TRAI, when it took over the regulation of the Broadcasting sector, this aspect of pricing of MRP of the channels should be left to the market and complete forbearance should be exercised in this regard by the TRAI.

14. What is also noteworthy that the TRAI has completely failed to address and given a go-by to the continued reports of the broadcast sector losing customers to the OTT platforms such as Netflix and Amazon Prime. It is these platforms, that are totally unregulated and ubiquitously available with the proliferation of broadband and cheap data access being made available in the country, that are really threatening the business models of not only the broadcasters but also the DPOs. In fact, a case in point is that a known DTH operator has tied up with Amazon Prime to offer a bundled service with its connection. In so doing, while the DTH operator is retaining the loyalty of its customers who are being serviced directly by it, the traditional broadcasters are losing their revenue on account of a substitution of their domain / business by these unregulated services. Rather than concentrating on bringing about parity in the manner of doing business between the older TV platforms and the new-age OTT ones, the TRAI is unnecessarily getting involved in issues that the TRAI itself had tried to resolve with the New Tariff Regime of 2107 and implemented this year.
15. In view of the foregoing, it is urged that the TRAI should not disrupt the Broadcasting & Cable sector by introducing yet another regulatory framework and allow the existing regulatory framework to survive at least for three-five (3-5) years, before making any further alterations to the business environment.



ISSUES FOR CONSULTATION

16. Without prejudice to our preliminary objection, our comments to the issues for consultation are as follows:

Issues related to pricing, formation of bouquets and discounts

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

At the outset, it is submitted that whereas the role of the regulator is to take a neutral position and to seek responses to non-loaded questions, the TRAI has failed in this task by asking questions that are, on the face of it, conclusion oriented and make a presumption that the flexibility to give discounts *has, in fact, resulted in misuse*. This hypothesis, itself is subject to challenge and vitiates the purpose of the consultation process.

The reason for regulating the pricing of bouquets and to introduce the twin conditions was that there was a limitation in channel carrying capacity for the DPOs at the relevant point in time. That limitation no longer exists in view of digitization of the networks and channels. Accordingly, this fetter is not only violative of the fundamental right of the broadcasters and the DPOs to carry on their respective businesses (under Article 19(1)(g) of the Constitution of India), but also is anti-consumer.

The TRAI is requested to view this issue objectively rather than the standpoint that offer of channels through bouquets necessarily is against public interest. What the TRAI needs to notice, is that a new channel may contain good quality content. Every broadcaster who launches a new or even a niche channel would naturally seek a return on that investment. For that purpose, and also given that the creativity abounds in our country, the offering would seemingly be of a good quality. However, it is also natural to expect that the subscriber would be unaware of the



said channel and its content. Accordingly, the subscriber would not want to subscribe to the new channel in the ordinary course. The system of offering multiple channels in a bouquet offers a solution by allowing the broadcaster to make the channel “reach” the consumer via the DPO. If, as the TRAI seems to suggest, all the channels are only offered a la carte, or there is an impediment on offering discounts on the bouquets, new content would be more difficult to create and to make it reach the consumer, which, in the end, would harm consumer interest, instead of protecting it, as the TRAI, erroneously seems to suggest and presume .

Specifically in response to question 1, therefore, it is submitted that under the new regulatory framework the Broadcasters are mandated to fix the MRPs of their channels and offer their channels to the consumers (through the DPOs) on a-la-carte basis. Accordingly, the Broadcasters have fixed the MRPs of their channels (basis perceived demand) and offered the same to the consumers, the consumers are at liberty to subscribe select channels on a-la-carte basis.

The new regulatory framework does not mandate the Broadcasters to offer bouquet; rather, it is merely optional. By offering bouquets, the Broadcasters are actually making their channels more affordable and giving the more options to the consumers. There is no compulsion on the consumers to avail such bouquets. It is also noteworthy that not every channel is a popular channel on day 1. In fact, it often takes a long time for the channel to gain popularity. Offering of such newer channels as part of a bouquet at a low price gives the opportunity to the channel content to be distributed along with the more popular content. However, it is noteworthy that a channel that is popular in the current scenario may give way to consumer preferences of future. If another channel is able to provide new and fresh and different content, the consumer should not be robbed of the experience of watching it, only because there is only an a la carte option.

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?

The answer is an emphatic NO. While the contents of the previous answer are reiterated, it is also noteworthy that the non-implementation of the cap of 15% is



not only available to one or more broadcasters, it extends across the board. Thus, there is no basis to claim that such non-implementation of the 15% cap has created a non-level playing field. In fact, the argument is fallacious, because the alleged 15% cap is non-existent.

- 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?**

The need to reintroduce a cap on discount for bouquets is uncalled for and hence there is no question of suggesting any other methodology. We reiterate the reasoning given in our reply to question 1.

- 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?**

There is neither a need to review the cap on permissible discounts being offered by DPOs either. Thus, there is no question of suggesting any other methodology. We reiterate the reasoning given in our reply to question 1.

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

Allegation of allegedly unwanted channels being “pushed” to the consumer are unfounded and incorrect. There is no evidence of the same. Subscribers continue to have the liberty and freedom to subscribe to channels on a-la-carte basis.

Number of Bouquet offered by Distributors/Broadcasters

- 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?**



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

In response to questions 6 and 7, it is submitted that the Broadcasters and DPOs have created bouquets on the basis of state, region, target market. Any initiative by the TRAI to limit the number of bouquets which can be offered by Broadcasters and DPOs will be violative of the Broadcasters' and DPOs' fundamental rights of freedom to carry on business and hence, illegal. One of the bases of deciding in favour of the TRAI in respect of the New Regulatory/Tariff Regime was the flexibility available to broadcasters within the scope of the Tariff Order and Regulations. This cannot now be sought to be taken away by TRAI, without there being any basis therefor. Further, it is noteworthy that as the stated reason for implementing the New Regime was consumer choice and preference, the said choice becomes effective and relevant only when choices are made available by the Broadcasters and DPOs. Further, every consumer is unique and thus would have preferences that are different from the other. While it is not possible to create hundreds and thousands of packs/bouquets to address every demand, the greater the number of such bouquet, the better it would be to serve consumer interest. Any curtailment by the TRAI (as is suggested in the CP), would impact the very basis on which the TRAI seeks to do this – i.e., betterment of consumer interest.

Ceiling on MRP of channels provided as part of Bouquet

Q.8 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?

Q.9 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?

In response to questions 8-9, it is submitted that the MRPs and the composition of bouquets is the outcome of the existing regulatory framework. If (i) there was no artificial ceiling on MRP of a-la-carte channel to be part of a bouquet, and (ii) the



pay channels and FTA channels were allowed to be part of the same bouquet, the outcome probably would have been much fairer.

Need to form Bouquets by Broadcasters/Distributors

- Q.10** 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?
- Q.11** How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?
- Q.12** Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?
- Q.13** How will the whole process of selection of channels by consumers be simplified to facilitate easy, informed choice?

In response to questions 10-13, it is submitted that under the new regulatory regime the consumers' interests are very well protected as they have complete freedom to subscribe to channels of his/her own choice on a-la-carte basis. The bouquets offered by Broadcasters/DPOs are just optional. Where the consumer/subscriber sees merit in subscribing to a bouquet, the choice is exercised by him/her. It is submitted that the data set out in the CP does not support the TRAI's conclusion that the consumer is being forced to subscribe to bouquets because it is a *fate accompli*.

NCF for multi TV home

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



- 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.**

In response to questions 14-15, it is submitted that discounts (unless predatory) is legal and being in the interest of the consumers, must always be encouraged. Hence, there is no need (i) for any regulatory provisions to enable such discounts and/or (ii) for fixing any cap on NCF for 2nd and subsequent TV connections. All provisions restricting offering of such discounts must be removed.

- 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?**

It is submitted that each Television is required to have a separate Set-Top-Box attached thereto. The only way to ensure transparency in reporting of the subscriber numbers is through the Conditional Access Systems ("CAS") and Subscriber Management Systems ("SMS"). With the implementation of DAS in 2012, the mapping of subscriber numbers is only done through the CAS and SMS, which are integrated to the respective STBs. The billing for customers/subscribers and hence, the reporting of the said numbers is dependant only on this combination of CAS and SMS. Given the 125 million plus subscriber households in the country, it is operationally impossible for either the Broadcaster or the DPO to ascertain and distinguish between a single-STB and multi-STB household. Also, making any distinction between the two, as far as pricing is concerned, would lead to a continued conflict on transparency, because the DPO may want to increase the number of multi-STB households in the reports, as that may lead to a better margin of fees for them. This would lead to a constant suspicion in the approach of the broadcaster that the numbers being disclosed are not correct. In order to address the aforesaid two issues – operational challenge and continuing mistrust – it is submitted that there should be no differential pricing between the single-STB and multi-STB household, at least as far as the MRP is concerned.

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



This is a question for Distributors to respond to, subject to there being no interference with the Broadcasters' business model or offering.

Discounts on Long term subscriptions

Q.18 How should a long term subscription be defined?

Q.19 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?

This is a question for DPO to answer. In the view of the Broadcaster, even if the DPO wishes to offer such discounts, it should be from the DPOs own profits/revenue, without impacting the revenue share of the Broadcaster.

Q.20 Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

There is no question of allowance. The Broadcasters should not be compelled to offer discounts on long-term subscriptions. First of all, the long term engagement is not something that is the concern of the Broadcaster. It is the domain of the DPO, because whether one DPO is supplying the signal or another, the signal will continue to come from the same broadcaster. Secondly, there is clearly no simultaneous attempt to provide additional revenue or subscription fee for a short term subscription. Thus, there is no requirement to have only a one-sided attempt to levy a discount on allegedly long-term subscriptions.

Placement of channels in EPG

Q 21 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?



Q 22 How the channels should be listed in the Electronic Program Guide (EPG)?

In response to question 22, it is submitted that as per the existing regulatory framework, it is permissible for the DPOs to place the channels under sub-genres within the declared genre. Accordingly, the TRAI may consider mandating language based sub-genres within the declared genre. This will surely improve the consumers experience.

Promotional offers by DPOs

Q 23 Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

Q 24 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?

Q 25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

In response to questions 23-25, it is submitted that DPOs must be permitted to offer promotional schemes on NCF, DPR of the channels and bouquet of channels. There is no need to define maximum period and/or frequency of such schemes. In fact, the restrictions applicable on the Broadcasters to offer promotional schemes must also be removed. As mentioned above, discounts (unless predatory) in the interest of the consumers must always be encouraged.

Flexibility in offering NCF

Q 26 Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorised for the purpose of NCF?



In response to question 26, it is submitted that DPOs must be allowed to have variable NCF for different regions. The TRAI need not categorise regions for the purpose of NCF. As mentioned above, discounts (unless predatory) in the interest of the consumers must always be encouraged.

Q 27 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/-?

The TRAI had determined that the cost of carrying 100 SD channels comes to approximately Rs. 80/- per month and the cost of other activities like subscriber management, billing, compliant redressal, call centre etc. comes to approximately Rs. 50/- per month. Accordingly, the TRAI determined the Network Capacity Fee of Rs. 130/- per month (excluding taxes) for carrying 100 SD channels. Just because the DPOs, in the interest of the consumers, are offering more FTA channels without any additional NCF, they should not be penalised.

Mandatory DD channels

Q 28 Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

Q 29 In case of Recommendations 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?

In response to question 29, it is submitted that as per the notification issued by the Central Government under Section 8 of the Cable Television Network (Regulation) Act, 1995, the cable operators are obligated to mandatorily carry 26 DD channels. Hence, the consumers' complaints and/or their opinions cannot take precedence over the statutory obligations. In view thereof, we have the following suggestions:



- (a) The Network Capacity Fee must be limited to FTA channels only (including DD channels). As determined by the TRAI, the cost of carrying 100 SD channels comes to approximately Rs. 80/- per month and the cost of other activities like subscriber management, billing, compliant redressal, call centre etc. comes to approximately Rs. 50/- per month. Hence, a DPO operating a FTA network may be entitled to up to Rs. 130/- per month (excluding taxes) for carrying 100 SD FTA channels to recover costs. But if such DPO is also carrying pay channels and earning Distribution Fee from such pay channels, there is no reason why such DPO must additionally earn Network Capacity Fee for carrying such pay channels. Accordingly, a customer subscribing to only pay channels must not be liable to pay any Network Capacity Fee.

Any Other Issues

Q 30 Stakeholders may also provide their comments on any other issue relevant to the present consultation.

In response to question 30, we have no comments.

Overall, our comments in the preliminary objections and answer to Question 1 are reiterated

