Retail Consumer Response to CP dtd. 16.08.19 on Tariff related issues for BCS

First & foremost aspect, I request Hon'ble Chairman TRAI and his team of learned advisers is - to accord more weightage & importance to the CP responses received from retail consumers. Reason being, retail consumer voice often carries least weight in terms of number or extent of responses, quality of information & argument etc., simply for the fact that most of them are busy with their daily grind & lives and professionally not so informed in this domain area. This reality is open for everyone to see in all CP responses, in contrast with numerous, selectively presented & calibrated, often opportunistic & biased views/ responses presented by organized business entities like broadcasters, DPOs, lobby groups and other agencies, who employ paid staff including legal brains, social media campaigners and other resources to do a professional quality job. It would also be incorrect for anyone to take a view that retail consumers want only a one sided deal purely in their favour. All that is expected by consumers is 'Fruits of conditional access & digital addressability' and enabling regulation to encourage fair & full choice in selecting content or medium, with unfettered mechanism for market price discovery of content, for which retail consumers have undergone a series of inconveniences over years and also extra costs. Even consumers wish for an all round development of the BCS industry and eco system in their own interest, to get quality & diverse content and an inviting platform for new content providers, who otherwise would take recourse to alternate medium like OTT. Though I am reasonably confident that TRAI is fully aware in this regard and also the ground realities post NRF-2017 roll out., I take this opportunity to recollect words of a highly learned and respected former regulator Mr. M Damodaran., ex-Chairman SEBI., who on multiple occasions said that 'Regulation should always precede innovation'. Point to note here is that regulation is not to pre-empt innovation but catch up and be a step ahead of innovation, which is need of the hour in making changes to NRF 2017 .

Response to Question no. 30 of CP :

Key facts and observations to consider for designing any kind of corrective steps to suitably modify/ fine-tune New regulatory Framework (NRF) 2017 comprising of three components i.e., Eighth tariff order, IC regulations, QoS & CP regulations., even while maintaining the broad frame work as recently clarified by Chairman TRAI.

1. It is a well known fact that there has been a lot of adverse consumer reaction and pent up public resentment on pan India basis., after roll out of NRF 2017 w.e.f. 01.02.19. The consumer pain is essentially due to abnormal increase in their monthly expenditure in

post NRF 2017 regime, even to view similar set of channels and in many cases even lesser no. of channels of their relevance as compared to what they were viewing in pre NRF 2017 regime through DPO Bouquets and/or ala-carte channel (ALC) selection. This increase has been more than even 40-50% in many segments, which hardly left any scope to scale down end user costs **as NCF itself has been Rs. 130+ 18% GST = Rs. 153 , which brings hardly any fresh content worthy of majority user interest except for some news, re-run music channels etc. Virtually most of the content is being purchased via pay channels which are priced lopsidedly. This make a fit & compelling case to review the price and structure of NCF itself as a first step, which has become a dud fixed cost for most of the viewers, while DPOs earn not just from full NCF component, but also earn revenue on bulk discounts on channel MRPs from broadcasters, DPO bouquets, and also through their share in pay channel subscriptions**. ***It is not for the industry to justify any price or escalation comparing with some other markets or countries, as BCS being a discretionary spend, it would be dynamically decided by the market based on consumers 'willingness and ability to pay'***

Hence please reprice the fixed NCF component with approx. Rs. 75 - 80 + taxes for first 50 channels exclusively opted for by consumers and such channel universe should not contain any DD channels which can be selected by the consumer as per their relevance in terms of language, genre, content etc. DPOs need not and should not provide any FTA channels against this NCF payment, unless subscriber specifically opts for them on ala-carte basis. (since they will be invariably considered for channel count of 50 towards NCF for which consumer is indirectly paying a cost. There could be no issue if they are not counted for NCF as the consumer may or may not watch such channels) It is worthwhile not to ignore that prior to NTO roll out, many DPOs were providing a minimum tier at Rs. 99/- inclusive of all taxes so that they do not lose out on lower most segments of the market as seen with an affordability perspective of small towns and village homes or businesses. In fact even overall ARPUs of most of the players in pre NTO regime were in the range of Rs. 150 - Rs. 180 per month. In such a scenario is it fair and justifiable to saddle all consumers with a minimum NCF of Rs. 153 which does not even bring minimum priced entertainment channels the consumer would be glad enough to watch and instead required to shell out steep extra charges for most of the popular content as engineered by the broadcasters ?

2. The key legal justification and argument of TRAI in all fresh changes will have to be solely attributable to ***'Denial of Fruits of Digital addressability to Retail consumers'***, especially since consumers have undergone so much of pain and indirect costs incurred at various stages of CAS roll out, digitization, purchase of new hardware and portability costs & effects of past tariff orders and NTO 2017.

3. Judiciary has consistently upheld TRAI's Jurisdiction and power to regulate tariffs for broadcasting services, issue interconnect regulations and tariff orders. This has to be eminently applied & quoted as reason for all fresh changes. TRAI should take first lead in favour of retail consumers in extending free and fair choice unless courts have explicitly prohibited on such specific issues and let aggrieved parties challenge it later in a court of law, which was unfortunately not applied in the matter of '15% capping of bouquet discounts'.

4. Cl. 3(3) of NTO 2017, which the Madras HC has struck down has apparently no basis of support backed by an arithmetic formula or detailed work out and termed 'arbitrary' possibly based on the same, even while they upheld full powers of TRAI on regulating tariffs. Going by the history, TRAI has not gone ahead with channel prices based on genre or content as envisaged in pre NTO consultations, which could have been interpreted as a 'price control' & fail to hold good in a court of law, as basis of arriving at such prices for content is simply neither feasible nor logical. Going by the same extension & logic, even max. discounts on price of channels included in bouquets as mandated by cl. 3(3) of NTO 2017 would also tantamount to 'price control' in absence of arithmetic or any logical formula and as such difficult for a court of law to accept it as a regulation in course of adjudication. Reason being, future litigation cannot be ruled out from a prospective new stake holder, even when existing stakeholders raise no objections at consultation stage facilitating TRAI to make it a part of NTO 2017. Hence nothing much in favour of consumers can be expected in all litigations on 'quantified' bouquet discount aspect. i.e., 15% cap etc, unless it is converted into a condition/ rule based formula.

5. Essential self fulfilling requirement of dynamic interlinking between three variables i.e., (1) the quantity of channels included in a bouquet, (2) their ala-carte price-DRP OR difference of highest & lowest DRP of channels included in a bouquet OR average DRP of all included channels in a bouquet and (3) the price of Bouquet itself without applying any discount, is grossly missing., which was recommended by TRAI committee of 2004 with two variables on price aspects only, without giving consideration to

bouquet sizes. It was also adopted in subsequent tariff order revisions with necessary modifications.

6. Essence of Twin conditions of 2007 tariff order envisaged between broadcasters and DPOs is **now to be extended to retail level end consumers also** (i.e., with the bouquet price condition of 1.5x & 3x) if some check on end user price is required with a uniform binding of RIO prices to all i.e, both DPOs and retail users., i.e., instead of MRP & DRP, there should only be one price MRP for a channel which is also the ala carte price for end consumer. The DPOs may get a quantity discount on such MRPs from broadcaster, however all retail consumers will be applied this unified price MRP irrespective of DPO through which they watch. End user discount if any will have to be extended only via long term packs to leave no room for market distortions across broadcasters / DPOs,which is answered in detail in my response to Q.18, Q19 & Q.20.

7. Essence of changes in Twin conditions of Tariff (amendment) order 2012 also need to be taken into consideration in making fresh changes.

8. Essence and Idea behind designing a formula of Twin conditions of tariff (amendment) order 2015 (i.e., with the bouquet price condition of (2xRIO-price & 3x)., in any form which can stand in a court of law and which cannot be interpreted as 'price controls'. Any formula with unsubstantiated quantifications (like 15% cap on discounts etc) can be legally interpreted as 'arbitrary'. ***Instead, similar end results can be achieved based on formula design using dynamically inter linked conditions on Bouquet price, quantity of channels included and channel price as per RIO uniformly applied across DPOs and Retail consumers (without applying / allowing any discounts between broadcasters/DPOs).*** Such a regulation would legally fall very much under the scope of regulation of tariff by TRAI in line with the mandate of TRAI act

9. The MRP, DRPs have to be merged into one price and need to have only one price for a pay channel to be declared in RIO register as MRP, which needs to be applied in all kind of calculation of Bouquet prices uniformly across all stake holders i.e, DPOs & retail consumers , so that price declaration in RIO doesn't become a meaningless exercise limited to ala-carte channel prices only, without any scope for unofficial cut throat deals between Broadcasters and DPOs, **now that DPOs are enjoying an exclusive & unfettered NCF revenue stream, unlike pre NTO-2017 regime. Please note that this NCF is in addition to the DPO share of pay channel prices, which should be the sole area (other than quantity discount extended on pay channels to DPOs) for any kind of discounts between DPOs and broadcasters instead of Bouquet pricing /**

discounts which will have to be the same for both DPOs and Retail consumers. Further a fact not to forget is that DPOs also have other revenue streams like **quantity discounts on channel MRPs, Earnings from multi broadcaster bouquets, DPO share in pay channel prices, long term package advance payments etc.** Based on such discounts DPOs can also make their Bouquets which will have to be governed by the same previous formula applied between Broadcasters and DPOs. The scope for discounts in DPO bouquets will have to be allowed only from their NCF revenue stream, (without any further discounts between ALC DRP prices and DPO bouquets) OR by allowing broadcaster bouquets within DPO bouquets also, but treating such DPO bouquets as one channel for NCF count.

Response to the other Questions in CP;

Q1. Yes – Addressed and answered in details as above

Q2. Yes – Addressed and answered in details as above

Q3. Yes . And based on formula or set of dynamically interlinked conditions in line with tariff and regulatory mandate of TRAI upheld by the Supreme court which cannot be legally interpreted as 'price control' or 'arbitrarily' designed or 'pricing the content'. In other words, a self controlling & dynamically interlinked fashion short of explicitly prohibiting bouquets or bouquet level discounts. An additional condition of restricting total no. of bouquets based on total no. of uncloned channels offered by broadcasters need to be brought in. And DPOs should be allowed to either include broadcaster bouquets in their own bouquets or limit DPO bouquets to half of the no. allowed at broadcaster level

Q4. Yes – Addressed and answered in details as above

Q5. – Difficult to define 'unwanted' channels uniformly across all retail consumer segments so long as identical language channels are included in a bouquet and any extra language channel in a bouquet can simply be termed as 'unwanted' channel limited to that Bouquet. Language should be the only basis for such purposes and no consideration need to be given for state, target audience etc., which will only bloat no. of bouquets. Further a viewer of channels of a specific language of interest may be residing anywhere in the country and should have equal access irrespective of their geographical location, but no other considerations.

Q6 & Q7. A 'Bouquet' is far different from 'permutations & combinations' of alacarte channels often with a lot of content overlap almost like cloned channels, as being done now. **A Bouquet is essentially a package of limited channel count & of same language (to remove scope for**

unwanted channels), and ideally without repetition of genres., so that a family can watch in 'simpler method of selection'. And if such a bouquet is created by a DPO across multiple broadcasters it would serve consumer needs all the better., ***which can carry a small incentive of being counted as a single channel for NCF count.*** ***Discount is not an essential element of a bouquet, which is primarily designed for ease of consumer selection,. However it serves as a 'pull factor' to attract retail consumer to try a few more channels for similar price, and serves as a 'business promotion' & 'marginal extra quantity discount' for broadcasters . So at best it can be limited to 1x (to max. 2x) of average price of channels included.,without carrying a risk of being described as 'arbitrary' by a court of law., while the over arching principle of 'extending the benefits of conditional access to the consumer' prevails above all.***

This aspect is addressed & answered in detail in my responses furnished for earlier questions, to design a self controlling mechanism by adding a third variable of channel quantity, to the past versions of 'Twin condition' methods, which were acceptable to all players and implemented in past without disputes. If the DPOs are liberated from the mandatory obligation to configure and provide all the bouquets of broadcasters, the problem of too many bouquets will solve itself to a fair extent as DPOs would prefer to push their own Bouquets. This problem will further reduce if DPOs are made free to add broadcaster bouquets also to their own DPO bouquets, but treat one broadcaster bouquet as one channel for NCF channel count exclusively in respect of DPO bouquets

Q8 YES & Q9. YES. Going by the price of Alacarte Channels (ALCs) right from the date of roll out of NTO 2017 till date, it can be clearly observed that hardly any channels - if not NONE if I am not mistaken -, were priced with MRP exceeding Rs. 19. ***What does that convey and what the regulators can take note from that piece of fact ?*** It would be crystal clear to anyone with a basic sense of logic that, as seen from a broadcasters perspective NONE of the pay channels were considered to be worthy enough or capable to command economically viable viewership, if they are priced beyond the maximum price of Rs. 19. Key point to note here is that TRAI has not imposed any price control on any channel and broadcasters are free to price their channels as high as they wish, much beyond Rs. 19., which is the control only for inclusion in any bouquet. In fact such channels would not have been priced even at Rs. 19 even in a bouquet, but for the fact that many broadcasters have either collectively decided tacitly to keep the price at max. limit of Rs. 19 as a cartel or they could have mustered courage to price themselves at the maximum price of Rs. 19 , going by the trends / max prices declared by other broadcasters, so that they will not be ignored by consumers vis-à-vis the competition. In fact many broadcasters have gamed and made a virtual mockery of this max. channel price of Rs. 19 (for bouquet inclusion only) by offering drastic discounts as high as 60-70% on such channels and effectively priced much less than Rs. 19 while including them in bouquets. This practice is directly or indirectly affecting fair market price discovery mechanism in the best interests of the market and also the retail consumers and thereby resulted in 'denial of fruits of conditional access and digital addressability' to the retail consumers. However retail consumers not being organized as a group due to time & cost constraints at a personal level, have not contested this in a court of law. And hence TRAI should vehemently support and regulate in their interests by always taking a first lead, even by facing protracted litigation later from broadcasters / DPOs. Without serving the lowermost and first building block of this value chain i.e, 'retail consumers' it makes no sense to care only for development of the BCS industry, which in first place was built on their contributions and regulated quite late in its evolution by the government. ***Hence this makes a fit and compelling case for a significant downward revision of the max. price limit of Rs. 19 for channels planned for inclusion in bouquets. As allowed by NTO 2017 any pay channel can always increase their prices as much as they wish and offer as an alacarte channel based on their popularity, pull factor and clear & explicit consumer willingness to pay.***

The ideal and uncomplicated method or criteria to arrive at such max. price and also to take into account periodic variation due to market dynamics is to go by the figure of "average pay channel price of all the broadcasters pay channels.", which could be subject to review at annual rests. However to prevent gaming of such a system by broadcasters only an average of 12 monthly averages of all broadcaster pay channel prices have to be adopted for annual periodic review of this max. price limit for inclusion of a channel in any bouquet

To address the issue of grossly dissimilar priced channels bundled together i.e, channels at max. price bundled with very low priced channels in bouquets (which are obviously quite less viewed channels going by the viewership data), ***a scientific and uncomplicated solution is to create conditions for forming a near normal distribution (popularly known as bell curve) of the ala-carte channel prices***, which is widely prevalent in any randomized data set (unlike a manipulated skewed distribution depicted at fig. 3.4 of CP). **This can be done in a simple and scientific way by mandating broadcasters to declare average channel price of each bouquet and allow only those channels to be included in such bouquets which carry an alacarte price of one half (50%) above or one half (50%) below the declared average price of bouquet, to reduce dissimilarity or imbalance and unwanted channel carry.** This will force them to price channels as much closer to the average price of the bouquet they wish to make, thereby bringing in similarly priced channels in bouquets.

Enforcing a perfect normal distribution would not be technically possible for two reasons one all the broadcasters may not be having large no. of channels to form a good Normal distribution, Secondly it will be difficult to draw statistical bunching to allow broadcasters to freely make multiple bouquets from their limited channel universe.

Q.10, Q.11, Q.12 & Q.13 – Covered and answered as above.

Q 14. & Q. 15 – Regulation should not control too many variables. Let market forces come into play and extend free hand to DPOs to decide on this. If they price themselves out, the consumer will buy an addition set of CPE and deal with it independently the way they prefer.

Q. 16 & Q. 17 – if the primary issue of bouquet level discounts on ALC prices and number of bouquets vis-à-vis no. of unique uncloned channels beamed by a broadcaster is fixed, the aspects raised in these questions can better be left to market dynamics and broadcaster are free to make their offerings for multiple connections as assessed by them. (However TRAI needs to define a cloned channel with extent of overlap etc). However the issues involved in identification of multi connection homes etc should be beyond regulators purview and better left to DPOs/ Broadcasters to deal with it as deemed fit. **However it should be mandated that in multi TV connections each STB should offer a mandatory flexibility to select different set of channels as the consumer prefers. The STB should not be configured to operate as a clone STB in respect of multi TV connections.**

Q 18. Q. 19 & Q. 20 – <u>'Long duration subscription'</u> should be the ideal term to be defined by the regulation instead of **<u>'Long duration pack'</u>**. Reason being, such a definition allows scope for any change in channel selections or channel prices in the intervening duration. The customers are billed and their accounts debited on a daily debit rate (DDR) basis for the set of channels they have on their subscription list at the end of the day. This DDR could vary dynamically for each day based on the set of channels in subscriber list at end of the day and day rate of such channels. This practice as followed rightly by Tatasky & allows for changing channels any time and any day (24x7) using their website or mobile app and allows a lot of freedom to consumer. [Even DishTV follows the same practice for billing but locks channel selections for 30 days without scope for deletion, which is in direct contravention of NRF-2017 provisions, on which TRAI has to take action.] Further this practice takes care of variations in channel prices also unlike a long duration pack, where everything would be frozen for the intervening period and subscriber cannot exercise free choice as they wish. Long term in no way should result in binding the consumer not to add or delete other channels. **Regulation should allow only two Long duration subscriptions i.e., either a 6 month or 12 month**, which may credit a discount to consumer accounts at the end of such subscription. The exact discount would be a product of Average DDR for 6 or 12 months as subscribed -X- (multiplied with) No. of bonus days offered as a discount, which the DPOs declare beforehand. Tatasky has been offering such a long duration subscription. The subscription will have to be commenced by calling their customer care after maintaining a credit balance sufficient to cover 6 or 12 months as per DDR in effect on date of commencement. This way, more the average DDR computed on a daily dynamic basis for the entire 6 or 12 month subscription period, more would be the amount of discount in the form of bonus balance credit. **Hence this method of DPO discount adopted by Tatasky effectively & rightly covers both NCF and pay channels price for the entire subscription period.**

However broadcasters should not be allowed to offer discount on MRP for long subscription packs of their channels or bouquets to the retail consumers, because this will stifle free consumer choice during subscription period and also distorts the whole channel pricing for a regular/ normal subscriber. Broadcasters are allowed to extend only quantity discounts to DPOs and no direct discounts in any form to end consumer. This is the precise idea to have a uniform price MRP as declared in RIO register for both DPOs and retail consumers. instead of having MRPs and DRPs for channel / bouquet prices.

Q21 – NA

Q22 – Design & listing of channels in EPG is best left to DPOs. However TRAI should make it mandatory to provide a user defined **Multi user Favourites storage menu of min. 100 channels, counted across all users**, which will squarely address the consumer end issues on easy identification or location /convenience in channel selection, LCN /channel placement, EPG design issues etc. 'Multi users' is an essential element here, considering that a typical family would have multiple content viewers of diverse channel viewing preferences., and hence the favorites menu should be enabled to accommodate multiple users say 5 users with 20 channels each, that can be set under favorites menu for instant access similar to speed dial on phones. The issue of placement fee for choice broadcasters has lost relevance of late and best left ignored to avoid over regulation.

Q 23., Q 24 & Q 25: Sales promotion on broadcaster ALCs or Bouquets makes sense only for broadcasters., while a DPO could be allowed for sales promotion on any content other than the ALCs or broadcaster bouquets., which includes DPO bouquets, and based on the same terms, duration extended to broadcasters. The consumer end safeguard which needs to be followed here is that : such promo subscriptions should automatically expire at the end of promo duration, without requiring the consumer to call the DPO to stop continuation of subscription even if the same is offered on a daily debit basis., while continuation of the same at standard non-promo rates should be enabled by explicit consumer selection on website, app etc or by calling their consumer care to place a request.

Q 26 & Q 27; Variable NCF should not be permitted based on region which would not be fair as seen in legal perspective and could complicate offering by pan India DPOs like DTH operators. However to promote more affordability on a pan India basis as detailed in my submission on the opening page no. 1 of my response against Q 30., NCF should be reduced and reconfigured with Rs. 75 – Rs.80 + taxes for explicit consumer selection of first 50 channels in view of various reasons explained earlier. Hence the question posed at no. Q 27 becomes infructious and pointless in view of prevailing market dynamics where DPOs are already providing a large no. of FTA channels on complimentary basis.

Q 28. & Q 29. DD channels should not be counted for the purpose of NCF channel count. If it is so decided that DD would continue to be counted for NCF channel count, **in such case a consumer will explicitly select the specific DD channels they wish to view, as most of the DD channels other than those in their mother tongue, Hindi & English make no sense as they may not understand the language also** and will not be viewed as such even if offered free of NCF count.

Q 30 ; **Answered in detail at the opening page covering all broad issues and suggestions**

Thank you for extending your kind consideration to hear from retail end consumers
@@@ - Mr. SV Prasad., Hyderabad