

23.09.2019

Mr. Arvind Kumar  
Advisor (B&CS)  
The Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg  
(Old Minto Road)  
New Delhi - 110 002.

Dear Sir,

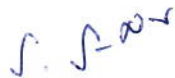
**Subject: Consultation Paper on Tariff related issues for Broadcasting and Cable services dated 16<sup>th</sup> August 2019**

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Please find enclosed the responses from Sun Direct on the above mentioned subject

Thanking You,

Yours truly,  
For Sun Direct TV Private Limited



Sankara Narayanan S  
Compliance Officer for TRAI



Encl: 10 pages.

**RESPONSE ON BEHALF OF SUN DIRECT TV PRIVATE LIMITED TO THE  
CONSULTATION PAPER ON TARIFF ISSUED BY TELECOM REGULATORY  
AUTHORITY OF INDIA**

**I. PRELIMINARY OBJECTION**

1. TRAI is trying to re-introduce capping of discount on a-la carte channels which are a part of the bouquets, in the present Consultation Paper. This issue has been decided by the Hon'ble Madras High Court and Hon'ble Supreme Court against TRAI. TRAI by way of the present Consultation Process is attempting to re-agitate the same issue which has been decided by the highest court in the country. The decision of Hon'ble Supreme Court is binding on TRAI.
2. TRAI has failed to take note of the fact that a large number of viewers in the state of Tamil Nadu are still being provided channels under analogue technology, which creates a serious challenge for broadcasters and DPOs who are operating through digitally addressable system, in compliance of TRAI regulations. Sun Direct has already raised this issue with TRAI on earlier occasions. However, this aspect has not been dealt by TRAI while reviewing the working of the NTO regulations.
3. TRAI should appreciate that the development and smooth working of the broadcasting sector requires a free market approach for all stakeholders, to allow market forces to determine the quality and price of channels. India has one of the lowest broadcasting charges in the world, which has been achieved on account of free play of market forces in terms of negotiations between DPOs and broadcasters based on the requirement of their consumer base, and the intense competition between different DPOs operating in the same area. This ecosystem has been completely disrupted by the NTO regulations leading to higher broadcasting charges. This is attributable to a great extent to the limitations placed on broadcasters and DPOs alike in providing discounts.
4. The broadcasting and DPO sector are also facing increasing competition from other service providers e.g. Amazon, Netflix and other OTT platforms who are providing very competitive alternative content to viewers. Many of such services are not subject to the heavy handed regulation that are faced by the broadcasting industry. In these circumstances, it would benefit the industry if they are allowed to operate without restrictions. In any case, TRAI and TDSAT are well equipped to address any anti-competitive conduct or unfair trade practices by any of the stakeholders.
5. It is important to note that the need for regulation arises in case of lack of competition or market failure. With almost 900 channels and over 3000 DPOs of various kinds and 60000 LCOs, there is no dearth of competition in the broadcasting sector at either broadcaster or DPO level. Similarly, there is no instance of market failure that has been established by TRAI through evidence. In such circumstances, TRAI should have a light touch approach, as earlier envisaged by TRAI. Excessive regulation without proper study of market behavior and counterfactual situations can have adverse effect on the industry, which consists of small and large players.



6. The Consultation Paper has clearly proceeded on the assumption that a-la carte regime is in absolute interest of consumers, and that bouquets with their discounted prices is a necessary evil that needs to be curbed. Sun Direct objects to such approach of TRAI. Bouquet choices are more convenient to consumers as it is a laborious and time consuming process of choosing individual channels of preference from a choice of close to 900 channels. Moreover, additional channels offered by DPOs/ broadcasters in a pack often arouse interest of viewers in other channels.
7. It is also a fact that it becomes cheaper for DPOs/ broadcasters to offer channels in bouquet. Broadcasters are able to offer multiple channels at a lower price due to economies of scale, distribution of marketing and other costs, higher viewership and ad revenue, etc. These factors suffer in case of a-la carte offerings. Consequently, DPOs find it more expensive to avail a-la carte channels from broadcasters to provide the same to consumers.
8. TRAI has made various allegations and rendered conclusive findings in the Consultation Paper about the malafide and unfair practices of broadcasters and DPOs. Sun Direct is not in a position to respond to any of these allegations and conclusions since the Consultation Paper does not disclose the factual basis or material evidence in support of the same.
9. The right to broadcast is a valuable and inviolable right of broadcasters and DPOs as part of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The freedom of speech and expression includes the right to decide the manner of expression, the content, and the way in which such content is offered to the viewers at large. Such right can be curtailed by law only to the extent provided under Article 19(2) of the Constitution of India. TRAI should appreciate that any attempt on its part to dictate the terms of offering of content by broadcasters, whether as a-la carte or as bouquet or the price thereof, amounts to impinging upon the rights of the broadcasters / DPOs under Article 19(1)(a) unless the same is justified in law under Article 19(2).

## II. ISSUE WISE RESPONSE

### 1. **Bouquet v. A-la-carte: Deep discounting of bouquets leading to perverse pricing**

- 1.1. TRAI's entire approach in alleging that broadcasters indulge in "perverse pricing" of bouquets lacks a holistic understanding of the economic rationale of pricing of channels.
- 1.2. Compulsory provision of channels on a-la-carte basis would lead to a significant increase in the cost of the channels provided on a-la-carte basis. This will affect broadcasters and DPOs alike and they will end up losing market to other technologies / platforms/ services available to consumers.
- 1.3. The Hon'ble Supreme Court of India has upheld the judgment of the Madras High Court striking down Clause 3(3) of the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ("**Tariff Order**") and thereby has set aside any restriction on broadcasters to price its channels. TRAI is reiterating its stand and arguments that had been placed before the Hon'ble Madras High Court and the Hon'ble Supreme Court which have been rejected. TRAI is attempting to over-ride and disregard the



findings of the Hon'ble High Court of Madras, which have been affirmed by the Hon'ble Supreme Court of India.

## **2. “Unwanted” channels affecting consumer choice**

- 2.1. The notion of “unwanted” or “unpopular” channels adopted by TRAI while framing the present Consultation Paper, is vague and discriminatory. TRAI has not defined what they refer to as “unwanted” or “unpopular” channels.
- 2.2. It is a clear infringement of Article 19(1)(a) of the Constitution of India as it restricts the rights of broadcaster to circulate its programs / channels. The exclusion of unwanted / unpopular channels on grounds other than those provided under Article 19(2) of the Constitution of India, amounts to infringement of freedom of speech and expression.
- 2.3. TRAI has resorted to social regulation by advocating the cause of “popular channels”, thereby regulating what consumer should be allowed to watch. Such an approach is discriminatory against regional channels.
- 2.4. DPOs being aware of consumer choices and interests and having market based data of subscribers habits can create better mix of channels across broadcasters for the consumers which would help consumers to easily select channels of their choice with minimal effort.

## **3. Cap on number of bouquets**

- 3.1. TRAI has failed to disclose the details of analysis of consumers’ need which has prompted TRAI to expect “reasonable” number of bouquets from broadcasters and DPOs. TRAI has proceeded on the basis of an erroneous assumption that larger number of bouquets offered by broadcasters and DPOs makes it inconvenient for consumers to select channels of their choice while exercising their option.
- 3.2. Broadcasters as well as DPOs have the right to offer channels in the manner or form they want, including as part of a large number of bouquets. Capping of number of bouquets in this case will be arbitrary and will be in violation of Articles 19(1)(a) and 19(1)(g) of the Constitution of India.
- 3.3. Multiple a-la carte choice of channels by consumers, and their repeated change would result in increased cost of service for DPOs. It would create burden on IT, Call Center, billing systems and collection process of DPOs.

## **4. Cap on MRP of channels forming part of bouquet**

- 4.1. Increase in channel prices upto Rs.19/- has resulted due to working out per channel cost of service, which is higher than bundled channels. Decrease in channel prices to Rs.19/ is due to the fact that once the NTO Regulations came into force, the price of such individual channels had to be necessarily reduced, to retain the ability to bundle them with other channels.



4.2. The considerations for pricing structure for a-la-carte and bouquet are very different and based on market forces. TRAI has failed to consider the fact that subscribers still have the option of choosing channels on an a-la-carte basis.

4.3. TRAI's assumption that a bouquet is normally expected to have similarly priced channels is clearly erroneous and contrary to general tendency of prices for a-la carte and bundled channels. The very underlying notion for bouquet formation is to have different channels with variety of contents. Moreover, in a bouquet, no channel has a specific price. TRAI's approach shows complete disconnect with normal pricing and marketing strategy followed by businesses not only in broadcasting industry, but in any other industry.

#### **5. Flexibility to make bouquets should lie with DPOs**

5.1. Consumers do not exercise real and effective choice of channels under the new regime since DPOs choose channels/packs from which consumers pick their choice. The new regulations vest complete discretion on DPOs for carrying channels / bouquets of its choice.

5.2. The Consultation Paper fails to acknowledge that the new regulatory regime have brought about complete opacity between the broadcasters and the subscribers, thereby impeding true consumer choice.

#### **6. Promotional offers by DPOs**

6.1. Under the NTO regulations, broadcasters are permitted to offer promotional schemes on the MRP of the channels being provided a-la-carte. However, the same option is not available with DPOs. This affects the business of the DPOs as it limits the offers a DPO can make to attract consumers.

6.2. TRAI has wrongly noted that subscribers become captive to the DPO due to non-interoperability of the set top boxes. There is ample competition in the television sector and the subscribers / consumers have adequate options amongst the various distributors available. Not only so, consumers today have options of multiple platforms on which they can avail similar services.

#### **7. NCF / separate choices for multiple connections**

7.1. Suggestion of reducing NCF for multiple connections in the same house is without any basis. The multiple connections in a house only deals with the last mile connectivity. However, in effect, it means larger number of subscribers and therefore, more investment in terms of capacity and infrastructure.

7.2. The suggestion of facilitating separate choices for different televisions in the same house would result in higher infrastructure, billing, IT and logistic costs for MSOs and LCOs.



### III. RESPONSE TO SPECIFIC QUERIES

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

**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.**

Bouquet of channels are provided by broadcasters and DPOs alike to reach out to the maximum number of consumers since, it is impossible for any broadcaster or DPO to assess exactly, the preference of channel for every household and viewer. Moreover, it is in the interest of broadcasters, DPOs and consumers that they are exposed to various contents and channels even while casually surfing channels, to generate interest for new, additional channels. It is not possible for consumers to sample contents of a channel merely on the basis of channel names and without seeing the contents thereof.

Sun Direct does not agree with that flexibility to give discounts on a-la carte channels has anything to do with bouquet prices.

**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 query is vague since (i) it does not specify who are the “some broadcasters” referred to; (ii) what is the manner in which they have taken advantage; (iii) how such conduct has created non-level playing field vis-à-vis other broadcasters; and (iv) what is the evidence thereof. In the absence of any specific details in this regard, it is not possible to respond to the query.

**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?**

In light of the judgment of the Hon'ble High Court of Madras, whose findings have been affirmed by the Hon'ble Supreme Court of India, it is not open to TRAI to reintroduce capping on discounts. In any case, any effort in this regard would infringe upon Article 19(1)(a) of the Constitution of India.

**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?**

As indicated earlier, it should be left to the discretion of DPOs to work out the best discounts for forming bouquet at their level based on market forces. Moreover, the limitation prescribed under Regulation 7(3) and 7(4) of the Interconnect Regulations, restrict the broadcaster's, and consequently, the DPO's ability to negotiate best rates for any channel having regard to its potential demand amongst various groups of consumers in its locality. TRAI has failed to appreciate one of the most basic truths of the broadcasting sector, that every state, every



region, every locality, every household and every individual's preference towards TV channels varies, and one uniform price cannot be applied to all.

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

In view of the discussion above, it is submitted that TRAI's suggestion that the so called "unwanted channels" are being pushed to consumers to their detriment, or that measures should be taken to avoid the same, is clearly misplaced and misconceived. The adverse inference of TRAI in relation to unwanted channels, and the effort to avoid unwanted channels, is violation of the principles of fairness and equality under Article 14 and 19(1)(a) of the Constitution of India in seeking to restrict so called 'unwanted channels' from being telecast.

**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?**

The suggestion of TRAI that the number of bouquets being offered by broadcasters and DPOs to subscribers is too large and that there should be a limit on number of bouquets be prescribed on the basis of state, region, target market, is a clear infringement of the fundamental rights of broadcasters and DPOs to freedom of speech and expression. The TRAI Act does not provide for any such restriction, nor does the Consultation Paper reveal any of the grounds under Article 19(2) for imposing any restriction on the broadcasters / DPOs.

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

Please see response to Q6.

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

Please refer to response in earlier queries.

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

As indicated earlier, TRAI has resorted to heavy handed and over regulation despite the presence of multiple players and healthy competition in the market. TRAI should allow free hand to broadcasters and DPOs to arrange their business based on market demand.

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

The NTO regulations have been framed without proper market study. The results have not proved encouraging to majority of the broadcasters, DPOs and consumers. However, consumer interests are not served by the provisions in the new regime. The new regulations



in fact serve to impede true consumer choice since consumer choice is contingent on the freedom of DPO to negotiate terms with the broadcasters without any restriction, based on its assessment of demand and whether to carry a particular channel/ bouquet.

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

Please see response to Q10.

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

Kindly see responses to Q10 and Q11 above.

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

TRAI has failed to provide any survey, studies or market data to support its claims that consumers are facing grievances in selection of channels and that channel selection through bouquets is adversely impacting consumers' right to select channels in an easy and informed manner. We reiterate that a large number of bouquets is more beneficial and convenient for consumers as it augments consumer choice and enables them to choose from a large number of channels of their choice. Further, bouquets offer a wide variety of channels across diverse genres at lower prices and therefore succeed in providing a greater number of channels to subscribers at lower and more affordable prices. Consumers generally prefer to complete their purchase in one easy swoop rather than purchase multiple products separately. Choosing a bundle offer diversity of products to a consumers rather than a consumer having to make a choice of channels individually will be more convenient to consumers.

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

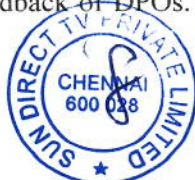
It may not be possible to provide discount by DTH service provider in NCF and DRP for multiple TVs in a home since the incremental cost of a second TV connection onwards in a given home is same as that of providing the first connection.

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

Kindly see response to Q14 above.

**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?**

In our opinion, broadcasters should be allowed to offer differential MRPs for different regions and localities based on the feedback of DPOs. Price fixing should be a function of market





forces. The query of TRAI regarding different MRP in a multi-home TV connection, in fact supports the case of bundling of channels to reduce price of channels for consumers. However, we cannot comment upon a broadcaster's technical feasibility to identify multi TV connection homes.

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

Under the new regulatory regime, each set top box is considered as one subscriber. We feel that DPOs should not be mandated to provide choice of channels for each TV separately in Multi TV connection home. This will only lead to further strain on a DPO's billing and IT systems as well as customer care services.

**Q18. How should a long term subscription be defined?**

In our view, any subscription with a minimum duration of 3 months or above may be treated as long term subscription.

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

In our opinion, DPO should be allowed to offer discounts on Long term subscriptions. As submitted hereinabove, the ability of DPOs to discount their products is a business tool available to a DPO which enables them to better market its products, capitalize on market demand, and operate its business in an efficient manner. A DPO should have the right to operate its business in an efficient and conducive manner and devise its own pricing and discounting strategy in order to be able to attract more consumers. Further, we are of the view that there should not be any cap prescribed while giving discount on long term subscriptions and that the same should be left for determination by market forces.

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

Yes, we are of the opinion that broadcasters should also be allowed to offer discount on MRP for long term subscriptions since it would enable DPOs to provide corresponding discount on DRP on long term subscriptions.

**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?**

We do not agree with, and categorically deny, TRAI's contention raised in the present Consultation Paper that freedom of placement of channels on EPG available to DPOs is being misused to ask for placement fees. TRAI has not disclosed any complaints or data to evidence such alleged "misuse" by DPOs of freedom of placement of channels. In the event of any complaint in this regard, TRAI can investigate into the facts of such specific case instead of drawing an assumption. Different DPOs use different approaches in placing channels in EPG,



i.e. genre-wise or language-wise, depending on the preferences of the consumers in their target market. Regulating placement of channels on EPG by a DPO will amount to directly interfering with a DPO's right to conduct business as well as freedom of contract, which is directly violative of Article 19(1)(g) of the Constitution of India.

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

Kindly see response to Q21 above.

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

Yes, in our view, distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels, more so since broadcasters are allowed to offer promotional scheme on MRP on their a-la-carte channels. Permitting DPOs to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels will enable DPOs to attract customers in a new market and further augment their revenue, besides being beneficial to consumers as well in terms of affordability of channels.

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

In our opinion, the maximum time period of such promotional schemes and their frequency in a calendar year should be left to be determined by market forces.

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

TRAI has proceeded on the erroneous assumption that consumers are gullible and easily deceived and are liable to get "trapped" under promotional schemes offered by DPOs on NCF, DRP and bouquets of channels. What TRAI has failed to consider is the fact that such promotional schemes will in fact lead to protection of interests of subscribers as it will lead to lowering of costs of channels and will enhance affordability and choice of channels for consumers. Therefore, we are of the opinion that there are no "safeguards" required for protecting consumers from promotional offers provided by DPOs.

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

Since the option of selecting and deselecting a particular FTA channel with in NCF is already available for consumers. Hence this query is not relevant.

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

We are of the opinion that there should be no increase in the limit of one hundred channels in the prescribed NCF of Rs. 130/-. It is respectfully submitted that satellite bandwidth is a scarce



resource, which makes it cost prohibitive for DTH operators to add requisite transponders and difficult to obtain. Presently, the DTH operators are able to carry only 700 channels due to limited transponder capacity and they are thus disabled from carrying all the available channels due to available capacity being much lower than the required capacity. Therefore, the carriage of additional FTA channels by DPOs only leads to squatting of available network capacity which can be used to provide pay TV channels of the consumer's choice which the consumers would actually prefer to watch. DPOs are thus unable to recover the huge costs they incur in investing substantially in specific technology and infrastructure for distribution of television content to consumers, including, for instance, payment of annual license fee to the Government of India by DTH operators due to, *inter alia*, mandatory carriage of 100 FTA channels.

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

In view of our submissions in response to Q27 above, we are of the opinion that the 25 DD mandatory channels should be included in the permitted 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?**

Kindly see response to Q28 above.

