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**Consultation Paper on Consultation on the Draft Telecommunication
(Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order,
2016**

In response to TRAI's consultation paper on the above mentioned 'Draft Tariff Order', please find below our views and response to said order. You may kindly note that below comments are without prejudice to our rights and contentions, including any ongoing or future litigations and we reserve our rights to modify, change and submit further comments or counter comments to clarify our position on the issues under this consultation paper.

I. Clause-wise views and inputs on Draft Tariff Order

A. Definition Clause:

i. (zh) "Subscriber"

The definition of "*Subscriber*" does not mention commercial subscriber(s). Although the prevailing regulations promulgates the 'commercial subscribers' and 'Tariff for Commercial Subscribers', the Draft Tariff Order, does not define commercial subscribers and tariff related to commercial subscribers.

Time and again, it has been submitted that ordinary subscriber includes primarily domestic household and that ordinary subscriber and commercial subscribers, are fundamentally incomparable and different by the way they consume the service. An ordinary subscriber would consume TV service for its own pleasure and use, whereas the commercial subscriber will further sell that service to its consumer and make profit from it.

On September 08, 2015, the Authority has issued The Telecommunication (Broadcasting And Cable) Services (Fourth) (Addressable Systems) Tariff (Fifth Amendment) Order, 2015 (Commercial Tariff Order 2015), whereby the authority had defined the commercial subscriber to mean and include a subscriber who causes the signal of TV channels to be heard or seen by any person for a specific sum of money by such persons.

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The provisions of Commercial Tariff Order 2015 are under challenge before the court and the Authority is defending the new definition of Commercial Subscriber, however now it feels that in the addressable systems the definition of commercial Subscriber is not relevant and has completely been away with in the Draft Tariff Order.

The Authority while issuing a generic definition for ‘Subscribers’ in the draft Tariff Order has made an fundamental error of treating distinct and separate classes or groups as equals hence, violative of Article 19 (1) (g) (*Fundamental Right to Practice any Profession or to Carry on any Occupation, Trade or Business*) of the Constitution of India.

TRAI has arbitrarily obliterated the distinction between commercial subscriber and ordinary subscriber, without following the due process of law.

No consultation was done by TRAI on this aspect as if there is a need to completely destroy the distinction that legally exists between the commercial subscriber and the ordinary subscriber.

In fact, there are certain registered DPOs who have been approaching broadcasters for their channels to cater only to commercial subscribers & establishments viz. hotels, restaurants, hospitals, commercial areas and offices, etc. The Authority may make regulatory framework that allows such DPOs to enter into subscription arrangements with broadcasters fees calculations based on “no ceiling rates” and fixed rates basis.

B. Manner of offering channels by broadcasters:

i. Clause 3(1)(a):

The draft order provides that the broadcaster may declare its channels and their bouquet MRPs based on the ‘relevant geographical areas’ as specified in Schedule I of the draft order. The Schedule I has 30 categories of geographical areas consisting of States and Union Territories. Further, the draft order provides that the declared MRP be platform agnostic i.e. uniform across the platforms (cable TV, DTH, HITS and IPTV) across a relevant geographical market. We have studied these provisions in detail and submit that there are following issues that may likely to crop up from these provisions in the draft order.

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The idea of classifying geographical areas based on the preferred language is notable, however, we are of the view that the classification of various categories falls short of its mark, as it has not identified the seven of the eight metro cities of India viz. Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune & Ahmedabad, separately in Schedule I of the draft order. The inclusion of these metro cities as separate categories is a basic requisite because of the pre-dominance of people speaking local regional and English languages. Moreover, these metro cities have become melting pot of various languages & cultures, which makes them a good mix cosmopolitan people with relatively different paying capacity than in other non-metro cities. Even the Authority in its recommendations for 'Implementation of Digital Addressable Cable TV Systems in India' dated August 5, 2010 has classified the above cities as top eight cities/ metros of India on the basis of their population. There has also been a long practice of separate interconnect agreement between Broadcasters and DPOs (cable) for each metropolitan areas, which has proven over the time to be practical and fruitful, owing to the end-users different paying capacity due to economics of the working class, relevance of certain products for these markets only, higher ARPUs, etc. Thus, it would be pertinent to include these cities as a region viz. Greater Metropolitan Mumbai Region, Kolkata Metropolitan Area and likewise, as was done for phase I areas under DAS notification under the Cable Television Network (Regulation) Amendment Act, 2011

C. Genres of television channels:

i. Clause 4(1):

We are of the view that music channels should not be clubbed with infotainment channels, since Music genre is a prominent genre for broadcasters and since a long time there are numerous channels that are dedicated completely to the 'Music' genre. In fact, over the years, Music channels have their own fanfare and cult following and are keenly watched by people at home and outside. We, therefore, suggest that music being an independent and a complete genre on its own should be given equal prominence along with other channels and identified as a separate genre in the list of genres.

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Similarly, Business News Channels have also created unique identity for themselves and have a dedicated audience. In view of this, we are of the opinion that 'Business News' genre should be separately identified among the list of channel genres.

In view of above, and for sake of consistency, genres should be prescribed in the Draft Tariff Order and should not be left at DPOs discretion.

D. Manner of offering of channels by the distributor of television channels:

Clause 6:

i. Maximum Rental for Providing a Capacity

The provision of charge of maximum rental of rupees one hundred and thirty only for providing a 'capacity' so as to enable the subscriber to receive the signals of up to one hundred SD channels (where one HD channel shall be treated equal to two SD channels) is adequate even for any additional channels and therefore no incremental cost on over and above maximum rental cost is required. Moreover the term 'capacity' remains abstract and subjective. This provision seems susceptible to manipulation and extracting higher prices, illegally. In the interest of consumer it is pertinent that TRAI keeps a control on the rental charged to keep the service affordable.

We suggest that a fixed & reasonable charge would be easy to implement and keep consumer's interest intact.

ii. Retail Pricing:

While the draft order mandates for retail price payable by a subscriber to a distributor of television channels shall in no case exceed the maximum retail price declared by the broadcasters for such pay channels or bouquets, however the discount at the retail pricing bears absolute forbearance.

There is a great concern that the vertical integration between certain DPOs and broadcasters is abundantly prevalent, this results in issue of favorable access and undue promotion to such integrated broadcasters of the DPOs. One of the means

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of such access and promotion is by offering lower channel and bouquet prices to its subscribers.

Such offering of lower bouquet prices offered by DPOs, selectively for their preferred or integrated broadcasters channels/ bouquets, may result into disadvantage for other non-aligned stakeholders.

In view of this, we should suggest if a DPO is offering lower price by giving discount from his side, then it should be mandatory for that DPO to offer the same discount to all channels/ bouquets in that genre. This would help in enduring fair play among all stakeholders and ensuring non-discriminatory treatment to all broadcasters.

E. Miscellaneous

- i. Reporting requirement for advertisement revenue:

We recommend that the disclosure and reporting requirement of advertisement revenue should be done away with, as the same is irrelevant in context of implementation of the regulation and the objectives of TRAI.

F. Regarding Premium Channel:

- i. The definition of '*Premium channels*' is not detailed enough, there are likely to be loose interpretations by a Service Provider to self-serve itself. In view of this we suggest that TRAI should clarify on the following points:
 - Does the definition of '*Premium Channels*' imply that any channel may be declared as Premium Channel.
 - With reference to the seventh proviso to the clause 3(3), please clarify that can a bouquet be offered by a broadcasters consisting of Premium Channels exclusively or is there a restriction on forming bouquets consisting of only Premium Channels.

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- Does the restriction on retail price of bouquet of a pay channels, being not be less than eighty five percent of the sum of retail prices of the a-la-carte pay channels forming part of the bouquet, apply to Premium Channels.

G. Intra-draft order conflicts:

i. Explanatory Memorandum:

The paragraph 64 of the explanatory memorandum suggests that there will be no change in genre and MRP of a channel within one year from the date of declaration of genre, whereas in the draft order in Regulation 3 (5) and regulation 4 (2) the time limit prescribed is six months. We, therefore, request Authority to maintain consistency by keeping time limits for the above section to six months and rectify the apparent discrepancy from the paragraph 64 of the explanatory memorandum.