USINDIA BUSINESS COUNCIL

September 23, 2019

Shri Arvind Kumar
Advisor (B&CS)
Telecom Regulatory Authority of India (TRAI)
Mahanagar Door Sanchar Bhawan
New Delhi - 110002

Re: USIBC Recommendations on Tariff Related Issues for Broadcasting and Cable Services

Dear Shri Kumar,

Let me start by thanking you for giving us the opportunity to provide recommendation on TRAI's consultation paper on tariff related issues for broadcasting and cable services. The U.S.-India Business Council (USIBC) appreciates the Telecom Regulatory Authority of India (TRAI)'s willingness to engage and consult with industry stakeholders on such key issues. The media and entertainment (M&E) industry is a key growth driver for the Indian economy. The Indian M&E sector totalled $23.9 billion in 2018, a growth of 13.4% over 2017. With its current trajectory, the sector is expected to grow to $33.6 billion by 2021. *Broadcasting is one the largest sectors in the M&E industry and is poised to grow at 8.8% CAGR to reach $13.4 billion by 2021.*[1] *Broadcast content is a key driver of this growth as it caters to a diverse regional audience with an appetite to watch multiple genres ranging from music, movies, lifestyle, sports, etc*. Many of these are smaller, niche channels catering to regional and local audiences, often in vernacular languages.

As you may know, USIBC is an integral part of the U.S. Chamber of Commerce, the world's largest business federation representing more than 3 million businesses of all sizes, and sectors, as well as U.S. state and local chambers, and other industry association members. Internationally, USIBC is one of 25 country and regional business councils, and we directly represent 250+ companies based in India, the United States, Europe, and Asia. Our membership includes entrepreneurial, small, medium and large corporations from across sectors highly critical to the digital economy and the M&E industry. Our membership also includes leading global and Indian information technology (IT) companies, as well as an innovative array of financial investors, global software, equipment, IT services, telcos, e-commerce, social media, and sharing economy innovators, all of which are central to India's digital transformation. Together, we strongly support the *Digital India* initiative, and related efforts around *Make-in-India* and *Start-up India* programs.

USIBC acknowledges TRAI's intent in launching the New Tariff Order (NTO) which has empowered consumers with more choices and has brought transparency in the Indian broadcast industry. However, the present TRAI consultation paper comes at an

[1] EY- A billion screens of opportunity – India's Media & Entertainment sector, March 2019

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inopportune time when the entire broadcast value chain is still consolidating post implementation of the NTO issued in February 2019. In this letter, USIBC would like to draw your kind attention to our concerns with some of the provisions mentioned in the consultation paper. The new consultation paper seeks to review the Maximum Retails Price (MRP) regime introduced by the authority in the NTO. Given the fact that the new tariff regime introduced in February has made the stakeholders change their business models, USIBC believes that changing anything again, within a span of just six months and without giving stakeholders and consumers sufficient time to adapt to new MRP based tariff regime, would negatively impact the viability of the broadcasting sector in India.

USIBC strongly believes that a light touch regulatory approach is the way forward to build a robust broadcast industry which is the bedrock for a vibrant M&E sector in India, and hence, we urge the TRAI to consider regulatory forbearance and defer any further intervention. The following represent USIBC's top recommendations on the issues raised in the consultation paper:

a) The Indian M&E sector is headed towards becoming a world-class media-tech sector on the back of access to global audiences, its large talent pool, excellent storytelling capabilities, production and post-production capabilities, animation, and visual effects (VFX) expertise. All this is largely driven by ***strong private investments and entrepreneurial capabilities*** which can be further strengthened by policy and ***regulatory certainty, and limited regulaton***.

b) ***Soft touch regulatory oversight*** is an absolute necessity for the health of the broadcast industry. Rapid regulatory interventions are resulting in confusion and economic slow-down. Given India's consumer centric and competitive environment, it's time to allow for a ***period of regulatory forbearance for the new tariff order regime to stabilize*** and base the next set of reforms on data and market assessments.

c) The focus should be on ensuring ***transparency, hygiene and quality of service at the last mile***. This is not just beneficial for consumers but will also help the Indian government ***realize tax revenue*** accrued from the sector.

In light of the above, we request TRAI to provide the cable and satellite sector a ***three-year moratorium from further regulatory interventions*** and prevent any further negative impact on consumers and business growth for both upstream and downstream players.

USIBC stands committed to assist you in your efforts and we hope that our comments will be given a timely and sympathetic consideration. We welcome an opportunity to meet you at your convenience, and are happy to provide further information or clarification in relation to the issues in this representation. In the meanwhile, please do not hesitate to contact me or my staff: Jay Gullish, jgullish@usibc.com and Abhishek Kishore, akishore@usibc.com. Once again, I would like to personally thank you for your leadership, and the Council and its members hope to discuss these recommendations at your convenience.

Sincerely,

Nisha Biswal
President, U.S.-India Business Council

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Introduction

1. India's vision to become a 5 Trillion-dollar economy by 2024 requires regulatory stability

The Government of India has set out an ambitious target of making India a $5 trillion economy by 2024.[2] To achieve this, India would need to sustain a 9% annual growth rate and increase the investment rate to ***38% of GDP*** (as against 31.3% realised in FY19).[3] Since early headwinds of economic slowdown are being seen in several sectors such as automobile, manufacturing, services and agriculture, attracting private sector investments would be key to infuse further growth into the Indian economy. At $1.9 billion, the United States is the 4th largest investor in India[4] and further scope for investments exists provided a stable/robust legal and regulatory regime can be offered to foreign investors.

American companies have consistently played a key role in building and advancing India's M&E landscape. The Indian TV broadcast industry, apart from Indian companies, also *comprises of a very large number of major American media conglomerates*. These include The Walt Disney Company, Sony Pictures, NBC Universal, Bloomberg, Warner Media, Viacom, Discovery, Leo Burnett, Lions Gate Entertainment, DreamWorks Pictures, Metro-Goldwyn-Mayer, *et al*. These media companies/studios have invested billions of dollars in creating local content in more than 15 languages across 29 Indian states and have engaged over 900 million TV viewers, giving consumers a plethora of choice and have been contributing to the Indian Government's *Make-in-India* initiatives for decades now. With most having long term commitments and a strong local presence in India, they have played a key role in bringing latest technologies and best practices to the sector.

2. Lack of regulatory forbearance could deter advancements and investments

In February 2019, TRAI introduced its consumer-centric NTO for the broadcasting industry which mandated that subscribers should only pay for the channels they wish to watch, leading to all channels getting priced individually. This was considered a positive development as the regime empowered subscribers to make informed choices and brought much needed transparency and hygiene into the sector. However, less than 6 months into implementation of this new regime (that impacts over 183 million TV households), this new consultation paper which deals with the several aspects of the NTO has been issued.

Regulatory instability can force instability in Indian broadcasting. While TRAI's introduction of a consumer-centric NTO for the broadcasting industry was considered a positive development by most stakeholders, initial implementation bottlenecks were observed and reported. To elucidate how complex this transition has been for the industry – the execution of the regulation has meant that 183 million consumer homes needed to be familiarized with pricing of more than 800 channels and bouquets thereof and communicate their choice of channels (*a-la-carte* and/or bouquets) to the 100,000 plus Multi System Operators (MSO)/Local Cable Operators (LCO) operators in the system. MSO/LCOs were expected to then completely change their back-end systems to be able to service specific choice sets made by consumers.

2 As presented in the Union Budget for 2019-20)

3 Economic Watch – July 2019, Ernst & Young

4 Reserve Bank of India 2018, Foreign Direct Investment Flows to India (available at: https://www.rbi.org.in/Scripts/AnnualReportPublications.aspx?Id=1249)

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We understand that the industry has already made significant investments in the (February 2019 – June 2019) time period to align to the NTO and stakeholders have already spent several million dollars in educating a massive consumer base on the current order. However, with this new consultation paper, it seems that there is serious inconsistency between several aspects of the earlier NTO (including discounts on bouquets, ceiling on MRP of channels, formation of bouquets by broadcasters and distribution platform operators (DPO) and the Network Capacity Fee (NCF) charged by the DPOs) and a new thought process. ***Hence, USIBC believes that at this time, any such review will be harmful for the health of the industry which is already witnessing a slow-down.***

Specific Considerations Seeking Regulatory Forbearance

- **98% of homes are single TV homes:**

As per the recent survey by Broadcast Audience Research Council of India (BARC), 98% of the 197 million TV homes in the country are single TV homes.[5] Television content caters to a family consisting of four members on an average, with different TV viewing choices, across genres and language. Channel bundles successfully cater to this TV viewing pattern offering every member of a family, a variety of content across languages and genres**.** The United States Federal Communications Commission (FCC)[6] had also raised the issue of mandatory *a-la-carte* offering to consumers but decided against implementing any such restriction as research and analysis concluded that consumers saw better value for money in bundles. Since U.S. is a country with multi-TV households, *a-la-carte* offerings of channels becomes extremely expensive for consumers and reduces consumer choice. That empirical research found that any discount cap or *a-la-carte* mandate is also known to be detrimental to consumers. ***Hence, USIBC believes that bouquet prices offer a diverse TV viewing experience at an optimum price point.***

- **Empirical data/analysis to substantiate recommendations:**

In the consultation paper, TRAI mentions that service providers push certain 'popular' channels on consumers which come with 'unwanted' channels, the ones not preferred by consumers. Consumer choice is hard to understand and a ***thorough empirical research*** on behavioral insights of the consumer goes a long way in this understanding. While certain channels may be preferred by a majority of consumers, niche channels may also be in demand. Without any such empirical study, any regulation of the broadcast sector will negatively impact jobs, growth of the sector and throttle consumer choice. ***Hence, USIBC requests TRAI to commission a national study for gathering granular insights into consumer behavior.*** This will help the stakeholders make an informed decision with respect to unpopular, unwanted channels or bundling of channels.

- **NCF and downstream issues seem to be the primary reason for rising consumer dissatisfaction:**

We want to draw TRAI's attention to the rising consumer bills due to the imposition of mandatory NCF which is priced at a ceiling of Rs130 plus taxes for the initial 100 channels. Imposition of a blanket NCF denies consumers the right to select and pay only for the channels they wish to watch.

[5] https://www.barcindia.co.in/resources/Impact_Of_Co_Viewing_on_TV_Viewership.pdf

[6] Report on Cable Industry Prices, FCC 2004 (available at : https://www.fcc.gov/reports-research/reports/cable-industry-prices-reports/report-cable-industry-prices-2004)

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Further, TRAI has mentioned that consumers are not subscribing to *a-la-carte* channels because broadcasters are pushing bouquets to them. However, it may very well be the case that the MSO/LSOs still act as gate keepers in limiting consumers' ability to choose their own channels/packs. ***Hence, we believe a report for studying the downstream concerns is of paramount importance at this point. We urge TRAI to commission a report and publish the results for the larger interests of the stakeholder community.***

- **Impact of the frequent regulatory interventions on ease of doing business and employment:**

Frequent changes in regulation can deter sectoral growth. ***For orderly growth of the sector, USIBC recommends the TRAI to conduct a research-based impact analysis of regulations before implementation of the same.*** This is to avoid negative consequences for the sector. India desires to become a $5 trillion economy by 2024 and improve its ease of doing business ranking. However, the regulatory environment in the country, particularly in the broadcasting industry, discourages new entrants to enter the field and incumbents to continue their business. In addition to the ease of doing business, the regulator may also kindly bear in mind that the broadcasting sector which consists of broadcasters, content production companies, operators and their allied service providers together employ more than three million people in the sector. Under the circumstances, regulations that offer prescriptions to micro aspects like pricing and discounts will negatively impact the financial health and viability of broadcast businesses, and have a knockdown effect on downstream production and consequently on employment avenues.

It is noteworthy that the industry has already made significant investments to migrate to the NTO regime. It has also spent significantly in educating consumers on regulatory changes, plans and the importance of self-choice. ***Any further revisions may not be affordable to the stakeholders across the value chain and may result in an era of concern and slow down if stability is not offered as an immediate priority.***

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