

**TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,  
PART III, SECTION 4  
TELECOM REGULATORY AUTHORITY OF INDIA  
NOTIFICATION**

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES  
INTERCONNECTION (ADDRESSABLE SYSTEMS) (SECOND AMENDMENT)  
REGULATIONS, 2020  
(1 of 2020)**

New Delhi, 01/01/2020

F. No. 21-5/2019-B&CS.— In exercise of the powers conferred by section 36, read with sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Central Government, in the Ministry of Communication and Information Technology (Department of Telecommunications), No. 39, —

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9<sup>th</sup> January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,—

the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (1 of 2017), namely: -

1. (1) These regulations may be called the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020 (1 of 2020).

(2) (a) Except as otherwise provided in clause (b), these regulations shall come into force from 1<sup>st</sup> March, 2020

(b) Regulation 3 and regulation 5 shall come into force from 15<sup>th</sup> January, 2020.

2. In regulation 4 of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 (hereinafter referred to as the principal regulations),

(a) after the proviso and before the Explanation to sub-regulation (3), the following proviso shall be inserted, namely:-

“Provided further that for a multi-system operator or Internet Protocol Television Operator or Headend-in-the-Sky (HITS) operator the target market shall in no case be larger than a State or a Union Territory.”

(b) for sub-regulation (8), the following sub-regulation shall be substituted, namely: -

“(8) It shall be permissible to the distributor of television channels to discontinue carrying of a television channel in case the monthly subscription percentage for that channel is less than the discontinuation threshold calculated as per Schedule VIII, in each of the immediately preceding six consecutive months:

Provided that the language of the television channel shall be the language as published on its website and declared to the Authority by the broadcaster, and after 1<sup>st</sup> July, 2020, it shall be the language specified in the downlinking permission of the television channel issued by the government.

*Explanation:* In case the downlinking permission issued by the government specifies multiple languages as the language of the television channel, then the language proportion of the television channel shall be calculated by adding the proportionate percentage of all such languages together for a target market.”

3. In regulation 7 of the principal regulations,
  - (a) for proviso to sub-regulation (3), the following proviso shall be substituted, namely:-  
“Provided that the rate of distribution fee declared by the broadcaster shall be same for pay channel and bouquet of pay channels and shall be uniform across all the distribution platforms.”
  - (b) in sub-regulation (4), the words “or bouquet of pay channels” shall be omitted.
  - (c) in first proviso to sub-regulation (4), the words “or bouquet of pay channels, as the case may be” shall be omitted.
4. In regulation 8 of the principal regulations,
  - (a) in first proviso to sub-regulation (2), after the words “twenty paisa”, the following words shall be inserted, namely:-  
  
“and the total carriage fee payable for such television channel per month, by a broadcaster to a distributor of television channels, shall, in no case, exceed rupees four lakh”
  - (b) in second proviso to sub-regulation (2), after the words “forty paisa”, the following words shall be inserted, namely:-  
“and the total carriage fee payable for such television channel per month, by a broadcaster to a distributor of television channels, shall, in no case, exceed rupees eight lakh”
5. In the Explanation to sub-regulation (12) of regulation 10 of the principal regulations, the words “or the bouquet of pay channels” shall be omitted.
6. In regulation 18 of the principal regulations,
  - (a) for sub-regulation (2) and provisos thereto, the following sub-regulation shall be substituted, namely: -  
  
“(2) It shall be mandatory for the distributor to place all the television channels available on its platform in the electronic programme guide, in such a manner that all the television channels of a particular language in a genre are displayed together consecutively and one television channel shall appear at one place only.”
  - (b) in sub-regulation (4), for the words “for a period of at least one year from the date of such assignment”, the words “without prior approval of the Authority” shall be substituted.
  - (c) for second proviso to sub-regulation (4), the following proviso shall be substituted, namely:-  
“Provided further that if a broadcaster changes the genre or language of a channel then the channel number assigned to that particular television channel shall be changed in

order to place such channel with the channels of the new genre or language in the electronic program guide.”

7. In the principal regulations, after Schedule VII, the following schedule shall be inserted, namely: -

**“Schedule VIII**

*(Refer sub-regulation (8) of regulation 4)*

**Calculating the discontinuation threshold for a television channel**

1. The ‘discontinuation threshold’ for a channel shall be the number arrived at by multiplying the average active subscriber base of the concerned distributor in its declared target market with the ‘discontinuation multiplier’ for the language of that channel.
2. The ‘discontinuation multiplier’ for a language shall be five percent of the total percentage of the population speaking that language in the declared target market of the concerned distributor as per the latest Census data.
  - (a) In case the declared target market of the concerned distributor is ‘All India’, the ‘discontinuation multiplier’ shall be calculated as per the following table (until more recent Census data is available):

<b>S no</b>	<b>Language</b>	<b>Total Population</b>	<b>Speakers' strength of the language (in percentage)</b>	<b>Discontinuation Multiplier (in percentage)</b>
1	Hindi	691564035	57.11	<b>2.856</b>
2	English	128539090	10.62	<b>0.531</b>
3	Bengali	107472243	8.88	<b>0.444</b>
4	Telugu	94501603	7.8	<b>0.390</b>
5	Marathi	99058786	8.18	<b>0.409</b>
6	Tamil	76595866	6.33	<b>0.317</b>
7	Urdu	63239445	5.22	<b>0.261</b>
8	Gujarati	60289309	4.98	<b>0.249</b>
9	Kannada	58750799	4.85	<b>0.243</b>
10	Malayalam	35639342	2.94	<b>0.147</b>
11	Odia	42589333	3.52	<b>0.176</b>
12	Punjabi	36081753	2.98	<b>0.149</b>
13	Assamese	23629076	1.95	<b>0.098</b>
14	Any other language	14284294	1	<b>0.050</b>

*Source: Census 2011 data: C-17 Population by bilingualism and trilingualism*

(b) In case a distributor declares multiple states as target market under the provisions of the regulations, the discontinuation multiplier shall be calculated in proportion to the speaking strength of the language of that television channel in all the states constituting the target market.

(c) In case a distributor declares a State or a Union Territory as the target market under the provisions of the regulations, the discontinuation multiplier shall be calculated in proportion to the speaking strength of the language of the television channel in that state or Union Territory. (Refer Census Data of India, Statement 3: Distribution of 10,000 persons by language – India, States and Union Territories-2011; <http://censusindia.gov.in/2011Census/Language-2011/Statement-3.pdf> or latest census data)

3. The following illustrations explain the criteria for determining the continuance or otherwise of a television channel.

### **ILLUSTRATION-I**

**Target Market: All India:** - Let us assume that the distributor has declared all India as its target market and its monthly average active subscriber base is 1,00,00,000 in each of the immediately preceding six consecutive months. Now, for a distributor, to check whether it has flexibility to continue or discontinue a television channel based on the ‘discontinuation threshold’ one has to look at the language(s) declared by the broadcaster and the number of subscribers in constituent of target market areas [state(s) and/or Union Territory(ies)] for a given television channel. Assuming in this case a broadcaster of a television channel that has declared Bengali as its language. One can note that as per the Census Data table (above), the speakers' strength of the Bengali language (in %) is 8.88.

The distributor will calculate 8.88% of its subscriber base (i.e. 8.88% of 1,00,00,000 = 8,88,000). If the monthly subscription of the above-mentioned television channel of Bengali language is less than 5% of 8,88,000 i.e. 44,400 in each of the immediately preceding six months in the target market specified by the distributor in the interconnection agreement (i.e. all India in this case), then it may discontinue carrying the channel on its platform.

Alternatively, distributor may calculate the threshold by multiplying ‘Discontinuation Multiplier (in %)’ with the monthly average active subscriber base of a distributor i.e., 0.444% of 1,00,00,000 = 44,400. If the monthly subscription of the above-mentioned television channel of Bengali language is less than 44,400 in each of the immediately preceding six months in the target market specified by the distributor in the interconnection agreement (i.e. all India in this case), then it may discontinue carrying the channel on its platform.

### **ILLUSTRATION-II**

**Target Market: Combination of State(s) & Union Territory(ies):-** Let us assume that the distributor has declared Gujarat, Daman & Diu and Dadra & Nagar Haveli as its target market and its monthly average active subscriber base is 2,00,000 in the target market in each of the immediately preceding six consecutive months. The subscriber base is sub-divided as 1,50,000 in Gujarat, 40,000 in Daman & Diu and 10,000 in Dadra & Nagar Haveli. Now, for a distributor, to check whether it has flexibility to continue or discontinue a television channel based on the ‘discontinuation threshold’, one has to look at the language(s) declared by the broadcaster for a given television channel in respective target market [state(s) and/or Union Territories]. Assuming in this case a broadcaster of a television channel that has declared Gujarati as its language.

The distributor will calculate the speakers' strength of the Gujarati language in Gujarat, Daman & Diu and Dadra & Nagar Haveli (in %) using census 2011 data (Statement - 3 - Distribution of 10,000 persons by language - India, States and Union Territories – 2011) which is 85.97%, 50.83% and 21.48% respectively.

The distributor will calculate the threshold for his above-mentioned target market as follows:

$$\begin{aligned} &= 5\% \text{ of } (85.97\% \text{ of its subscriber base in Gujarat}) + 5\% \text{ of } (50.83\% \text{ of its subscriber base in Daman \& Diu}) + 5\% \text{ of } (21.48\% \text{ of its subscriber base in Dadra \& Nagar Haveli}) \\ &= 5\% \times (85.97\% \times 1,50,000) + 5\% \times (50.83\% \times 40,000) + 5\% \times (21.48\% \times 10,000) \\ &= 6448 + 1017 + 107 \\ &= 7572 \end{aligned}$$

If the monthly subscription of television channel of Gujarati Language is less than 7,572 in each of the immediately preceding six months in the target market specified by the distributor in the interconnection agreement, i.e. Gujarat, Daman & Diu and Dadra & Nagar Haveli in this case, then it may discontinue carrying the given channel on its platform.

### **ILLUSTRATION-III**

**Target Market: All India- Multiple: Languages:** - Let us assume that the distributor has declared 'all India' as its target market and the monthly average active subscriber base of the distributor is 1,00,00,000 in the target market in each of the immediately preceding six consecutive months. Now, for a distributor, to check whether it has flexibility to continue or discontinue a television channel based on the 'discontinuation threshold' one has to look at the language(s) declared by the broadcaster for a given television channel. Assuming in this case a broadcaster of a television channel that has declared English and Hindi as its languages.

The distributor will calculate the speakers' strength of the Hindi & English language (in %) using census 2011 data (Statement - 3 - Distribution of 10,000 persons by language - India, States and Union Territories – 2011) which is 57.11% and 10.62% respectively.

The distributor will calculate the threshold for his above-mentioned target market as follows:

$$\begin{aligned} &= 5\% \text{ of } (57.11\% \text{ of its subscriber base}) + 5\% \text{ of } (10.62\% \text{ of its subscriber base}) \\ &= 5\% \times [(57.11+10.62)\% \text{ of } 1,00,00,000] \\ &= 3,38,650 \end{aligned}$$

If the monthly subscription of television channel, of English and Hindi language, is less than 3,38,650 in each of the immediately preceding six months in the target market specified by the distributor in the interconnection agreement, i.e. all India in this case, then it may discontinue carrying the given channel on its platform.”

**(Sunil Kumar Gupta)**  
**Secretary, TRAI**

Note 1----- The principal regulations were published in the Gazette of India, extraordinary, Part III, Section 4 vide notification No. 21-4/2016-B&CS dated the 3rd March, 2017.

Note 2: The principal regulations were amended vide notification No. 21-6/2019-B&CS dated 30th October, 2019 (7 of 2019).

Note 3----- The Explanatory Memorandum explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020.

## **Explanatory Memorandum**

1. Keeping in view the implementation of Digital Addressable Systems (DAS) and to enable the sector to realize its benefits, the Telecom Regulatory Authority of India (TRAI), after due consultation process, published a 'new regulatory framework' for digital addressable systems on 3rd March 2017. This framework comprises of the Telecommunication (Broadcasting and Cable ) Services Interconnection (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 for providing broadcasting services relating to television through the digital addressable systems. The new regulatory framework was notified in March 2017. However, pursuant to legal challenges to the said regulations, the regulations were notified on 3<sup>rd</sup> July 2018 and came into effect from 29<sup>th</sup> December 2018 after satisfying legal pronouncements.
2. During the past few months, the Authority received several representations from many regional/ FTA broadcasters on issues related to exorbitant carriage fee due to large area declared as the target market and undue threat of removal as the subscription of regional channels continue to remain lower than the minimum prescribed subscription threshold.
3. Accordingly, the Authority issued a consultation paper on 'Issues related to Interconnection Regulation, 2017' on 25<sup>th</sup> September 2019. The main objective of this consultation process was to consult all the stakeholders on issues related to charging of exorbitant carriage fee by the distributors of television channels (DPOs) and removal of channels with subscription lower than the minimum prescribed threshold and to review the provisions of the existing Interconnection Regulation 2017, if so required.
4. The comments of the stakeholders were invited by 23<sup>rd</sup> October 2019 and counter comments by 6<sup>th</sup> November 2019. On the request of stakeholders, the deadline to submit the comments was extended till 4<sup>th</sup> November 2019 and counter comments by 13<sup>th</sup> November 2019. Thirty comments and one counter comment were received from stakeholders. Subsequently, an Open House Discussion (OHD) was held on 28<sup>th</sup> November, 2019 in Delhi, which was attended by large number of stakeholders. A few additional comments were also received after OHD.
5. After taking into consideration the comments received from the stakeholders and in-house analysis, the Authority has finalized the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020 [hereinafter referred to as the 'Second Amendment Regulations']. The subsequent paragraphs explain the objects and reasons of the Second Amendment Regulations.

### **Carriage fee and Target Market**

6. Quite a few broadcasters of regional or niche channels have submitted representations regarding the declaration of bigger target market by DPOs. The regulations provide freedom to the DPOs to declare their target market for the purpose of ascertaining the carriage fee. Some of the distribution platform operators (particularly DTH operators) have declared PAN India as their target market. In case these regional broadcasters desire that their channel(s) is carried on such distribution platforms, they are required to pay carriage fee on national subscription figures of such distributors. Whereas, such regional

channels have a clear strategy to create content suited to certain regional markets or specific audience genre. Due to this mismatch of the channel's focus (on a regional or niche market) and carriage fee payment on the basis of the national market, such channels are constrained to pay a much higher carriage fee and find it difficult to survive.

7. This has created an economic barrier for regional channels thereby limiting their presence on smaller distribution platforms. The proposition to pay carriage fee for national market makes it unviable for such channels.
8. According to regulation 4 of the Interconnection Regulation, 2017

*“(3) Every distributor of television channels shall declare coverage area of each distribution network as a target market:*

*Provided that it shall be permissible for a distributor to declare, in non-discriminatory manner, any area within the coverage area of distribution network as a target market.*

*Explanation: For the purpose of this regulation, each Head-end or Earth Station, as the case may be, and its associated network used for distribution of signals of television channels shall constitute one distribution network.”*

*“(4) Every distributor of television channels shall, within thirty days from the commencement of these regulations or within thirty days from the commencement of its operations, as the case may be, on its website, publish—*

*(a) target markets as declared under sub-regulation (3) of this regulation;.....”*

9. As per regulation 8 of the Interconnection Regulation, 2017

*“(2) The reference interconnection offer, referred to in sub-regulation (1), shall contain the technical and commercial terms and conditions relating to, including but not limited to, target market, rate of carriage fee per month, average active subscriber base of standard definition set top boxes and high definition set top boxes at the time of publication of the reference interconnection offer, discounts, if any, offered on the rate of carriage fee, manner of calculation of carriage fee payable to the distributor and other necessary conditions:*

*Provided that the rate of carriage fee per standard definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed twenty paisa:*

*Provided further that the rate of carriage fee per high definition channel per subscriber per month to be declared by a distributor of television channels shall not exceed forty paisa:*

*Provided also that a distributor of television channels shall calculate the carriage fee amount for television channels as per the provisions specified in the Schedule I, which shall change with the changes in monthly subscription percentage of such television channels.....”*

10. As per Schedule I of Interconnection Regulation 2017, the carriage fee amount, for each month or part thereof, during the term of the interconnection agreement shall be calculated as given below:
  - a. If monthly subscription for a channel in the target market is less than five percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by the average active subscriber base of the distributor in that month in the target market
  - b. If monthly subscription for a channel in the target market is greater than or equal to five percent but less than ten percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.75 times of the average active subscriber base of the distributor in that month in the target market.
  - c. If monthly subscription for a channel in the target market is greater than or equal to ten percent but less than fifteen percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.5 times of the average active subscriber base of the distributor in that month in the target market.
  - d. If monthly subscription for a channel in the target market is greater than or equal to fifteen percent but less than twenty percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.25 times of the average active subscriber base of the distributor in that month in the target market.
  - e. If the monthly subscription for a channel in the target market is greater than or equal to twenty percent of the average active subscriber base of the distributor in that month in the target market, then the carriage fee amount shall be equal to 'Nil'.
11. In the existing regime, the broadcasters are required to pay monthly carriage fee depending upon the average active subscriber base of the DPO in the target market declared by the DPO.
12. The regulations provides flexibility to the DPOs to declare their target market for the purpose of ascertaining the carriage fee. The only guiding factor for target market is on the basis of the Head-end of a DPO. The target market should be confined to an area covered by a single head-end or a sub-set of such area covered by a single head-end. This in-turn means that based on coverage of satellite foot-print of their signals, DTH and HITS operators can declare whole of India as their target market.
13. Many regional broadcasters have represented to TRAI that several distributors have declared either 'the whole country' or 'combination of some states together' as their target market. As a result they are required to pay exorbitant carriage fee since the active subscriber base of the DPO in entire India is taken into account for the purpose of determining carriage fee. In such cases, the Reference Interconnect Offer based carriage fee agreements become unviable for regional channels. Accordingly the regional

channels are constrained to enter into negotiations for signing alternate agreements, terming these as placement or marketing arrangements. Such alternative agreements render the carriage fee regulations expendable.

14. Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) also recommended the Authority to examine the issue. TDSAT vide its order dated 29.07.2019 in broadcasting petition no. 165/2019 adjudicated, "*the main challenge appears to be to the wisdom of the Regulator in giving liberty to DTH operators to declare their target areas*".
15. The Authority held several meetings with each group of stakeholders in the industry including News Broadcasters, Broadcasters, DTH operators, MSOs and regional broadcasters to discuss the issues arising out of flexibility provided to distributors on declaring the target market. In these meeting the viewpoints and suggestions of each group/ type of the stakeholders were heard. On the basis of the representation, the stakeholders' meetings and the analysis, it became apparent that the regulatory provisions related to the target market area and the carriage fee entail a comprehensive review.
16. Accordingly, consultation paper on 'Issues related to Interconnection Regulation, 2017' was issued on 25<sup>th</sup> September 2019. Vide this paper, the Authority sought specific comments on the aspect regarding the flexibility available to the DPO in defining the target market. Stakeholders were enjoined to provide detailed comments on the distortions (if any) arising out of the available freedom with the DPO. The authority also solicited the requisite facts from stakeholders duly supported with the documents/ data. The scheme, of the questions in the consultation paper, makes it incumbent upon stakeholders to suggest possible solutions.
17. In response quite-a-few broadcasters commented that the flexibility, of defining the target market, is in-fact being misused by the DPOs. While almost all the DPOs considered the available flexibility as the necessary freedom to carry out their business, none of the DPOs accepted any misuse of the flexibility or adopting any unfair practice. The DPOs rather justified the declaration of the target market as a natural consequence of the technology choice of the distribution platform. Some broadcasters also stated that they are not aware of any instance(s) of misuse of the flexibility by DPOs while defining the target market.
18. A group of stakeholders opined that the broadcaster is in the best position to determine its own target market, keeping in mind the kind of content being programmed for the TV channels. Similarly, one stakeholder suggested that the Target Market should always be decided by demand side rather than supply side economics. Target Market should be decided based on the demand for such channel from its consumers (i.e. demand side) rather than where a channel can be supplied by the DPOs (supply side). In their opinion, it is the broadcaster, as the creator of content, who is aware of the demand side target market. Therefore, it should be left to the broadcasters to declare the Target Market. Another stakeholder opined that target market and active subscribers for Regional language channels in the DTH platform may be re-defined as the linguistic geography / State. Alternatively the average monthly subscriber base, used for calculating the carriage fee for a regional language television channel, may be limited to the actual subscription of the regional language packs offered by such DPO. One of the stakeholders suggested that the demand for regional language channels may traverse beyond the state(s) where the particular language is widely spoken. However, the definition of Target Market for

regional channels ought to be restricted to such state(s) where its language is predominantly spoken. Another stakeholder commented that Carriage Fee in whatever form should be completely eliminated especially for FTA News channel. If the same is to continue then the same should be substantially brought down from 20/15/10 paisa. One individual stakeholder questioned the legality of charging of carriage fee by MSOs in the light of provisions of the Cable Television. Networks (Regulation) Act, 1995 and the Rules thereunder.

19. In the consultation paper the authority had also sought comments as regards the necessity of a cap on the amount of carriage fee. Stakeholders were also prompted to suggest suitable amount of such capping, if considered expedient, that a broadcaster may be required to pay to a DPO and the basis of arriving at the same.
20. In response to this question some of the broadcasters have submitted that there should be a cap on the amount of carriage fee. On the other hand some of the DPOs have opined against any cap on the amount of carriage fee. One stakeholder suggested that the new regulatory framework must not provide any enabling provisions for a DPO to charge a carriage fee. A group of stakeholders opined that carriage fees should not be permitted to continue in the DAS regime, since bandwidth constraints cannot be an excuse for DPOs to seek rental arbitrage. As the authority has already provisioned Network Capacity Fee (NCF) @Rs. 130 per STB in order to address recovery of capacity cost and also 20% commission per channel per month for any other overheads associated with DPO operations. One stakeholder commented that DPOs are already charging NCF from the consumers to recover the infrastructure and other related costs. Hence, further carriage fees on the pretext to recover the cost for carrying channels is not warranted.
21. During the consultation process the authority had also sought comments of the stakeholders on how should cost of carrying a channel be determined both for DTH platform and MSO platform. The authority had asked the stakeholders to provide detailed justification and facts supported by documents/ data.
22. In response, a group of stakeholders opined that it may be feasible to determine the cost of carrying a channel by working out the capital and operational cost of the DPO's network. An endeavor may be made to consider – cost attributable to one-time establishment, and recurring costs with respect to maintenance / upkeep of the systems, operational issues and retransmission of channels. A group of DPOs commented that the cost of carrying a channel may be determined after taking into consideration the OPEX and CAPEX of the DPOs. Another DPO while agreeing with OPEX and CAPEX based calculations, observed that the same may have wide variance depending on the quality of the equipment used and the size and spread of the network. Hence, no specific formula can be derived for arriving at a uniform cost of carrying a channel across DPO(s). Some DPOs mentioned that the carriage fee has been fixed by the Authority after due consideration and consultation, the same needs no fresh intervention at present.
23. As mentioned in the consultation paper, there is a cost associated with the development of DPO's infrastructure. Such as, for seeking transponder capacity, the DTH operators are required to pay satellite bandwidth charges or the transponder costs. Similarly, the MSOs also create the infrastructure at their Head-end to transmit a given number of channels by deploying encoders and related equipment. In addition, there are recurring costs in the form of bandwidth charges paid to the bandwidth providers or the cost of OFC network to transmit signal from Head-end to LCOs. Thus, every DPO makes

proportionate investments (one-time establishment cost as-well-as recurring costs) to transmit TV channels.

24. Provisions of the Cable Television. Networks (Regulation) Act, 1995 and rules thereunder were reviewed from legal perspective. There are no provisions that prohibit the carriage fee agreements. The Authority expected that in the new regulatory framework the DPOs would design their RIO's so as to create a reasonable carriage fee regime. However, by resorting to declaring largest possible target markets, small and regional broadcasters have been put in commercially difficult situation. By exploiting the flexibility as provided for the target market, DPOs are looking at maximizing the carriage fee receivables without balancing interests with the broadcasters. This has created an economic barrier for regional channels thereby limiting their presence on large distribution platforms. It is not viable for a regional channel to pay a carriage fee on the basis of national target market. As the small MSOs do not cater to areas bigger than a state, the carriage fee/ Target market related issues mainly arise on account of multi-state MSOs and the DTH operators.
25. The carriage fee regime owes its origins to the limited capacity of erstwhile analogue platforms that had limited capacities in terms of carrying a channel. Additional channel capacities entailed additional investments. The implementation of Digital Addressable System (DAS) has reduced such expenses to a great extent. Post DAS implementation, the number of channels available of MSO platforms have increased. An average MSO now provides around four hundred (400) TV channels. For DTH sector also there's a cost of additional transponders and associated expenses for providing additional channels.
26. The regulatory framework provides a comprehensive revenue structure for DPOs. There are multiple revenue streams that accrue from subscribers or broadcasters. For the revenue analysis it is important to consider all the available revenue sources for a DPO. For a remunerative business model, one has to examine as to whether the revenue from all sources sufficiently covers all the costs and provides reasonable return on investments. A detailed examination was undertaken on the basis of financial data of previous financial year with respect to all the major MSOs and the DTH service providers. In addition to the published data, information related to balance sheet and profit and Loss Account was sought from Ministry of Corporate Affairs. This data provided sufficient insights of the cost structures and expenses of these major MSOs and DTH providers.
27. For further analysis, more details as regards the revenue from various streams (NCF, Distribution Fee/ Discounts, carriage fee, other revenues) for the recent quarters was obtained from DTH service providers and major MSOs. On the expenses side, the cost structure vis-à-vis expenses on account of Set-Top-Box (STB) were also obtained. The expenditure was sifted further by breaking down the depreciation vis-à-vis the STB (or the Customer Premises Equipment) and others capital costs, as per the information provided by the DTH service providers. Broad analysis of revenue and expenses suggest that the Network Capacity Fee and the revenue received from broadcasters covers major expenses and a fair return on equity. However, incremental expense need to be reimbursed for carrying additional channel under must carry provisions.
28. The Authority also sought the details of cost of carrying a channel from all DTH operators and fifteen large MSO. Despite several reminders, few DPOs did not submit the information citing that in a multiple head-end scenario with different number of channels being provisioned under different head-end, arriving at this cost is extremely cumbersome. Yet the data was provided by the DTH service providers and quite-a-few

MSOs. The cost data pertaining to transmission/ transponder cost on per channel basis was also obtained from few DPOs.

29. The actual receipt with respect to carriage fee by various DPOs were also considered. Many stakeholders (DPOs as-well-as the broadcasters) though shared that due to prohibitive carriage fee costs, most of the agreements are being signed as Placements fee agreements or other agreements. Therefore the authority needs to take into account all the revenues being accrued from carriage fee, placement fee and other agreements together.
30. Having analyzed the cost and expense data in sync with the regulations and tariff order, it is clear that the framework provides flexibility to DPOs to create an independent revenue structure for STBs. The framework provides for outright purchase model, the rent based model or a combination of the two to recover the cost/ expenditure ascribable to STBs/ CPE. Therefore, the expenses/ depreciation in respect of STBs must be taken out of consideration while analyzing the revenue and expenses from operations.
31. Various analysis reflect that the market related to carriage fee agreements operate independent of other revenue stream for a DPOs. There are many factors that are applied by a DPO while deciding whether to carry a channel on its network or not. The demand pull of any channel is an important factor in this decision. Many a times the decision to carry a local/ regional channel is made by the DPOs, if it wants to expand its consumer base in the said region. In such cases, as the DPO approaches the television channel with an aim to provide the same to its consumers, the broadcaster does not pay any carriage fee.
32. The Authority also considered the current stipulation of declaring target market areas with a view to consider target market on the basis of spoken language-wise regions or states. However, almost all DTH service providers have made submissions against such stipulation. DTH service providers have averred that it is due to the technology choice that they cover whole of the country with one feed. In line with this technological restraint they have declared all India as their target market. Large MSOs, however, in-principal agreed to declare target market on the basis of linguistic regions/ state during the consultations. Many of them cited that the target markets declared by them are already aligned to a state or to an area having similar linguistic and cultural essence. Considering that there are many channels, specially New and GEC channels that are aligned to states, it seems prudent to define target market area on the basis of a state. Therefore, the Authority is of the view that in case of MSO, IPTV operator or a HITS operator the target market shall be a State or a Union Territory or any area within a State or a Union Territory covered by the head-end.
33. Considering all the different factors as above, especially conclusion in para 27 above, it is pertinent to consider the need/ rationale of carriage fee. Normally a DPO carries those channels that are in-demand by its subscribers. The 'carriage fee' is demanded from such channels that, in the opinion of DPOs do not have adequate demand pull. It is therefore DPOs mechanism to get compensation for carrying a channel that is not in high demand by consumers. While deciding the issue of carriage fee, one must respect the market principle of demand and supply. More than Nine Hundred channels in India are operational and many more are under consideration for downlinking permission. An average MSO platform carries four hundred television channels whilst the big DTH service providers are carrying around five hundred and eighty television channels. Therefore, by the principle of demand and supply, carriage fee is the markets' way of

remuneration of DPOs who provide the visibility to such channels using their limited channel carrying capacity.

34. Having examined various cost and expense structures, the Authority is of the view that there is a need to rationalize the carriage fee payout especially in cases where the subscriber base is large. The marginal cost of carrying one additional channel with appropriate return can be one way to find the possible carriage fee. The DPOs cost structure are disparate for the DTH service provider and the MSOs. Even among the MSOs, the cost of small networks and the large networks are also very-very different. Sometimes the cost depends on the factors such as availability and cost of inter-city bandwidth and the dispersion of consumers across a given geographical area. Further, the current structure of carriage fee regulation vide the Schedule-I provides balance to the interest of broadcasters and the small MSOs. In case of MSOs with smaller subscriber base, it is easier for a local channel to achieve average subscription levels of Twenty percent and above. As soon as a television channels achieves a subscription level of twenty percent, the carriage fee reduces to zero. MSOs also do not loose in such case, as the consumers stick to the platform owing to availability of such local content. Similar situation occurs in case of multi-state MSOs if they declare multiple target markets comprising of smaller areas/ state. Simply put, MSOs in most of the cases will receive little/ no carriage fee as the regional television channels can easily achieve subscription level of 10%/ 15%/ 20%. The structure of carriage fee that reduces as a channel achieves higher subscription level acts as a countervailing force, thereby balancing the interests of stakeholders.
35. It is clear that existing regime balances the interest of both broadcasters and distributors in cases where the target market is aligned with the linguistic regions/ state. The cost structure requires examination with respect to large DPOs only. The Authority examined the marginal cost of providing one additional channel for each of the four DTH operators and few top MSOs. The cost of carriage has been estimated by adding the Transponder Cost, Spectrum Fee & WPC Cost. Given there are employee costs and other expenses over the direct cost, an estimated 15 % overheads were added. The return on equity and the tax on such returns was also taken into account. Over and above all the costs, it was noted that DTH service providers are required to pay license fee @ 10 %. By adding all the costs including the overheads, taxes, license fee etc. it was seen that effective cost with license fee and overheads per Standard Definition (SD) channel per month for DTH service providers varies between Rs. two lakhs fifty thousand (Rs. 2.50 Lakh) to three lakhs ninety-six thousand only (Rs. 3.96 Lakh). The difference among various service providers arises because of the different transponder cost of Indian and foreign satellite and also the period of hiring of transponders. In a similar way the marginal cost for few large MSOs was calculated. Almost in all cases the cost of carrying per channel per month is lower than the DTH service providers' cost.
36. Based on above, the Authority considers that while the existing methodology and basis of carriage fee is reasonably correct, there is a need to specify a capping on the maximum permissible carriage fee per channel per month for a DPO. In case of MSOs, the authority is of the view that the technology and commercial arrangement justifies limiting the target market area as a State or a Union Territory or within a State or a Union Territory, thereby limiting maximum payout. In principle, highest instance of carriage fee should not exceed the highest marginal cost of the network per channel. There can be various methods to fix the carriage fee at mean or median level of the marginal cost per channel per month. However, such capping will put some DPOs, whose marginal cost would be higher than such cap, into loss making situation. Accordingly, the authority is of the view

that the Carriage fee cap will be a maximum amount that a DPO can charge. Therefore, the authority, after considering all the factors views that carriage fee may be capped at Rs. four lakhs (Rs. 4 Lakh) per Standard Definition (SD) Channel per month for a DPO. Given that prescribed carriage fee for a High Definition (HD) Channel is two times that of SD channel, the Carriage fee cap for HD channel has been prescribed at Rs. Eight lakhs (Rs. 8 Lakh) per HD channel per month for a DPO. This cap shall be the maximum amount (cumulative sum) that a broadcaster may be required to pay to one DPO per channel irrespective of target area(s) declared by a DPO. This will enable a level-playing field among various DPOs viz HITS, IPTV, MSOs and DTH operators.

37. A suitable provision has been made in the regulation, limiting the assignment of target market to a State or a Union Territory or within a State or a Union Territory in case of an MSO, IPTV or HITS service provider. Suitable provisions have been included in the regulations making the cap applicable of SD or HD channels. The authority will continue to assess the actual carriage fee payout from time to time and review capping of carriage fee, if considered expedient.

### **Discontinuation of a channel**

38. Many regional broadcasters of regional/ niche channels have represented to TRAI that several distributors have declared either ‘the whole country’ or ‘combination of some states together’ as their target market. As a result, number of subscribers in notified target market is very high and hence the percentage of subscribers viewing their channel in the target market is likely to be far less than five (5) percent. As such, subscription of their channels on national level or in combination of states continues to be lower than the minimum threshold of 5% despite very high subscription in their respective regional market. This gives an opportunity to DPOs to misuse the existing provisions in the regulation to drop their channels from DPOs platform. These broadcasters have represented that they are left to the mercy of the distributors as the distributor is not mandated to carry such channels which have a subscription of less than five percent (5%) of monthly average active subscriber base, in each of the immediately preceding six consecutive months. Pertaining to this issue broadcasters have represented to the authority to review this unbridled right granted to the DPOs.

39. According to regulation 4 of the Interconnection Regulation, 2017

*“(8) It shall be permissible to the distributor of television channels to discontinue carrying of a television channel in case the monthly subscription percentage for that channel is less than five percent of the monthly average active subscriber base of that distributor in the target market specified in the interconnection agreement, in each of the immediately preceding six consecutive months.”*

*“(9) A distributor of television channels shall not be under obligation to carry a channel which has been discontinued as per sub-regulation (8), for a period of one year from the date of such discontinuation.”*

40. The Authority had noted that such provision existed in the Interconnections, 2012 which was applicable for DAS. The Authority was of the view that such provision would ensure that non-popular channels do not occupy the space on a distribution network. Therefore, the provision was retained in the Interconnection Regulation 2017 with slight modification.

41. Accordingly, in the consultation paper on 'Issues related to Interconnection Regulation, 2017' dated 25 September 2019, the Authority had sought comments of the stakeholders on the issue as to whether in their opinion the right granted to the DPO to decline to carry a channel having a subscriber base less than 5% in the immediately preceding six months is likely to be misused? If yes, what can be done to prevent such misuse?
42. During the consultation process some stakeholders were of the opinion that the provision that allows removal of a TV channel, if it does not attain the minimum subscription, is being misused by the DPOs. As a result Regional channels are facing undue uncertainty. Some of the stakeholders suggested that the viewing subscribers should have the flexibility and opportunity to watch the channel of their choice. A new channel launched takes time to pick up and be viewed/used by the subscribers/consumers at large therefore, a channel should be carried irrespective of the percentage of subscribers viewing it. Some stakeholders opined that no broadcaster's channel should be dropped from the DPO's platform on the basis of low penetration. In the consumer interest, as long as it makes business and commercial sense for a particular broadcaster to broadcast a particular channel, they should be allowed to do so without any intervention on the part of DPOs even if the viewership goes below 5%. Another group of stakeholders suggested that the time period of six consecutive months as prescribed is sufficient to ascertain whether or not a channel is being well-received and/ or demanded by the subscribers. Moreover, for channels that fail to garner less than 5% viewers on a platform, then carrying it for a longer time period results in blocking the entry of new channels. The criteria of a minimum subscription threshold is clearly on the basis of the consumer choice, which is the cornerstone of the current regulatory framework.
43. The Authority undertook the analysis on the basis of current channel-wise subscription of leading platforms that have declared large areas (including all India in some cases) as the target market. It is observed that a very large number of channels, amounting to more than 15 % channels (more than 90 channels), do not meet the minimum subscription threshold. This reflects that the concerns of broadcasters is correct as continuance of a large number of channels is dependent on the distribution platform operators. As per the basic principles, the regulation should strive to balance the interests and powers of various stakeholders in a regulated environment. Any provision that put one set of stakeholders in a commanding position may result in undue distortion of the market.
44. Further analysis of the type of channels that were not meeting the criteria of minimum threshold, reflected that list comprises mostly of the regional language channels. India is a nation of multiple languages. Regional language channels enable the local content and help promoting local artists and content developer. Plurality of content is important for a multi-lingual country like India.
45. The provision in existing regulatory framework regarding dropping a channel has been made to facilitate removal of such channels from a DPO platform which are not subscribed by minimum number of subscribers, so that such capacity may be utilized to give opportunity to other broadcasters. This provision does not envisage dropping or removing a regional or niche channel, popular in some region or area. Accordingly appropriate provisions have to be made to safeguard interest of regional / niche channels.
46. The language of a channel and its relevant market plays an important role. The authority considered various available data set for determining language based television market. The authority noted that the language-wise data as published under the Census Data is

most exhaustive and reliable. The Census data publishes a table of the population on the basis of spoken language using the bilingualism and tri-lingualism. The percentage of the population speaking a particular language is available in the census data. A DPO shall consider the percentage of the population speaking a particular language in the nation using latest census data, for determining the continuance or otherwise of a channel of that language on his platform. The DPO will multiply that percentage (obtained from census data of a particular language) with his/her monthly average active subscriber base in the target market specified in the interconnection agreement, in each of the immediately preceding six consecutive months. DPO may discontinue carrying of a television channel in case the monthly subscription percentage for that channel is less than specified percent as per the provisions specified in the Schedule VIII of the monthly average active subscriber base of that distributor in the target market specified in the interconnection agreement, in each of the immediately preceding six consecutive months. Considering projected subscribers knowing the language of the channel, the criteria for determining continuance or other wise of a television channel is described in Schedule VIII along with the illustrations thereunder.

47. Schedule VIII defines the ‘discontinuation threshold’ of a channel on the basis of its language(s). The ‘discontinuation threshold’ for a channel shall be the number arrived at by multiplying the average active subscriber base of the concerned DPO in its declared target market with the ‘discontinuation multiplier’ for the language of that channel. The ‘discontinuation multiplier’ for a language shall be five percent of the total percentage of the population speaking that language in the declared target market of the concerned DPO as per the latest Census data.
48. Stating in simple terms, the criteria for discontinuing a channel will take into account the actual proportion of the people, in a target market, who speak or understand a language. The proportion of people has been considered on the basis of *trilingualism*, i.e. for every person, upto the three languages she/ he can speak or understand. Such data is enumerated and published by Registrar General of Census of India vide table C-17 Population by bilingualism and trilingualism for all India basis. Furthermore, the language-wise distribution for each state is also available in other tables. For example the proportionate Hindi speaking population is 57.11%. The revised criteria suggest applying this proportion to arrive at the discontinuation threshold. Therefore, for a channel of Hindi language, with all India as target market the discontinuation threshold will be multiple of 5% with the proportionate Hindi speaking population i.e. 57.11%, hence 2.856%. The authority is of the view that this revised discontinuation threshold, as incorporated in Schedule VIII, fairly balances the criteria for regional language channels. The authority will continue its oversight on developments and will review the provisions as and when considered necessary.
49. The language of the channel shall be the language that the broadcaster has declared to MIB and which is mentioned in the uplinking/downlinking permission granted by MIB. In case a broadcaster has declared the language of channel as “English and Hindi” then percentage of the population speaking both the languages together in the census data shall be taken into consideration. There are cases where the broadcaster has declared the language of channel as “English, Hindi and all other language”. In such cases the percentage of the population speaking all the languages being 100 % shall be taken into consideration.
50. In case a broadcaster wants to change/ correct the language of a channel that specified in the permission granted by Ministry of Information and Broadcasting, (MIB),

Government of India, then the broadcaster can declare the specific language pursuant to TRAI framework. This language will be used for both the purpose of arriving at the minimum threshold for continuance of a channel as-well-as for placement of the channel in Electronic Program Guide of a platform. It will be incumbent upon the broadcaster to get its permission amended from the government. In case such broadcaster fails to get requisite revision in the permission by 30<sup>th</sup> June, 2020, then DPO shall calculate the threshold for determining continuance or otherwise of a channel as per the actual permission issued by the government for such television channel.

### **Placement of channels in Electronic Program Guide (EPG)**

51. The sequencing of channels in the electronic program guide (EPG) has been a topic of discussion. The current framework provides to put all television channels of one genre together with further classification within the genre on the basis of respective language of television channels. This classification methodology has been termed as genre-language based listing. Furthermore, the distributor of the televisions channels may place a channel under sub-genre within the genre declared for the channel by the broadcaster. In the first multi-stakeholders meeting held after the implementation of the new regime during February 2019, DPOs raised certain issues in adhering to the prescribed structure of EPG. The Authority constituted a stakeholders' committee in April 2019 to discuss issue and suggest possible alternatives. Pursuant to the recommendations of the said stakeholders' committee, further interactions were held with different DPOs.

52. According to regulation 18 of the Interconnection Regulation, 2017  
***“18. Listing of channels in electronic programme guide.— (1) Every broadcaster shall declare the genre of its channels and such genre shall be either ‘Devotional’ or ‘General Entertainment’ or ‘Infotainment’ or ‘Kids’ or ‘Movies’ or ‘Music’ or ‘News and Current Affairs’ or ‘Sports’ or ‘Miscellaneous’.***

*(2) It shall be mandatory for the distributor to place channels in the electronic programme guide, in such a way that the television channels of same genre, as declared by the broadcasters, are placed together consecutively and one channel shall appear at one place only:*

*Provided that all television channels of same language within the same genre shall appear together consecutively in the electronic programme guide:*

*Provided further that it shall be permissible to the distributor to place a channel under sub-genre within the genre declared for the channel by the broadcaster.*

*(3) Every distributor of television channels shall assign a unique channel number for each television channel available on the distribution network.*

*(4) The channel number once assigned to a particular television channel shall not be altered by the distributor for a period of at least one year from the date of such assignment:*

*Provided that this sub-regulation shall not apply in case the channel becomes unavailable on the distribution network:*

*Provided further that if a broadcaster changes the genre of a channel then the channel number assigned to that particular television channel shall be changed to place such channel together with the channels of new genre in the electronic program guide.”*

53. Vide the consultation paper on Tariff Related Issues, stakeholders were asked to suggest suitable methodology for listing of the television channels in the EPG. In response stakeholders have been divided in their opinion. Some stakeholders suggested that DPOs should get the flexibility to list the television channels either language-genre wise or genre-language wise. However, all the channels of a particular language and genre should be placed together. They also suggested that DPOs should not include platforms services, VAS, non-relevant services such as local channels, shopping channels within the regular genre listing of satellite TV channels.
54. Some stakeholders suggested that channels should be listed in the EPG first language wise and then within each language, genre wise, categorized as language-genre type listing. They mentioned that in such arrangement, consumers who understands specific language are not required to move all across the languages to watch his own language channel if he intends to watch GEC, News, Movies, etc. According to them this requires amendment to the present regulations.
55. Few stakeholders are of the view that channels should be listed genre wise like News, Entertainment, Movies, Infotainment, Kids etc. followed by classification in sub-genres like Hindi GEC, Regional GEC and Hindi news, English News etc.
56. Some stakeholders mentioned that structure of the EPG need not to be regulated by TRAI, except to ensure that any channel cannot be placed twice or more in the same EPG. They further suggested that the structure of the EPG and genres should be decided solely by the broadcasters and the DPO with an aim to provide the best customer experience.
57. Some stakeholders are of the view that the manner in which channels are presently listed on the EPG seems to be adequate and any change in EPG at this point may cause inconvenience to subscribers in locating channels in EPG as they have accepted / familiarized themselves with the present placement of channels on the EPG. Some of these stakeholders mentioned that the channel listing in EPG by the DPOs is being done on the basis of their understanding of the consumer requirements and area of operation. Given that all the major DPOs have been in operation since more than ten to fifteen years, their customer base has become acquainted with the manner of listing of channels on the EPG. Compliance to the regulations entails widespread changes that may cause inconvenience to consumers. Further, the regulations prescribe that channels of the same genre have to be placed together. This requirement is being followed by the DTH operators. According to them there are adequate measures already prescribed in the Interconnection Regulations, 2017 and hence there is no requirement for regulatory intervention at this stage as the customers do not have any concerns regarding the same.
58. The Authority has noted that DPOs have adopted different approaches for placement of channels in EPG. Some DPOs have arranged channels first language wise and then genre wise under each language. Whereas some DPOs have arranged channels first genre wise and then language wise under each genre. Furthermore, some DPOs have adopted a mixed approach where some combination of language-genre wise and genre-language wise has been used. To ensure ease of viewing channel listing for consumers while

maintaining a balance between interests of broadcasters and DPOs a standard arrangement for listing the channels on the EPG is essential.

59. In the current framework every distributor of television channels is required to list each channel under the respective genre of the channel as declared by the broadcaster and classify the channels under one genre into sub-genres based on language or region. Channels should be assigned unique logical channel numbers (LCN) within the sub-genres. The Authority noted that in this arrangement, a consumer who understand specific language is required to jump across various genres to watch different channels (pertaining to different genres) in one language. For example if a DPO has listed GEC from LCN 100 to 300 & movies from LCN 300 to 400, a consumer choosing to shift from a Punjabi/ Tamil GEC to a Punjabi or Tamil Movies will require to shift a long list of channels. Therefore, putting together all the television channels of Punjabi/ Tamil language will be more consumer friendly.
60. However, in case a pure alternative of language-genre based LCN allocation is considered, some DPOs will have to revisit their current plan of LCN allocation. Based on area of operation DPOs prefer a mix allocation where they may put all GEC channels together for two languages that may be popular in a given region. For example, in Maharashtra<sup>1</sup> state while Seventy Three percent (73.1) homes have Marathi as language most spoken at home, more than fifty five percent (55.6%) homes view Hindi Channels. In such cases, to provide easier options for consumer perhaps a DPO may place Hindi and Marathi channels of same genre together while placing television channels of other languages in distinct LCN groups separately. There are many other similar regional markets like Punjab<sup>1</sup>, where Punjabi language constitute as language most spoken at more than 80 % homes, the viewership of Hindi television channels is close to 60% with Punjabi Channels acquiring another 24 % viewership.
61. The primary objective to regulate the EPG is as given below:
- (a) To ensure ease of viewing the television channels by consumer.
  - (b) To provide flexibility to the distributors to arrange the television channels as per regional/local requirements.
  - (c) To ensure that fair treatment is given to broadcaster to place their channels appropriately in respective genre to get the viewership.
  - (d) To ensure that the DPOs wilfully doesn't place channel of few broadcasters out of genre to reduce their adoption by subscribers/viewership.
62. Considering these objectives, the Authority has decided that the distributors should have flexibility to list the channels in the EPG to some extent to meet the requirement of the subscribers while broadly protecting the interest of broadcaster. Accordingly, Authority has decided that DPOs will have flexibility to organise the channel on EPG based on Language(L) or Genre (G) ensuring that pair of a channel of the language and the genre remains together i.e. to say the combination of (L<sub>x</sub>G<sub>y</sub>) will remains together on the EPG. This framework will provide adequate flexibility to the DPOs in organising the channel in the EPG. To elaborate the provisions further, a DPO can assign language/genre on the LCN table with Language L<sub>1</sub> to L<sub>x</sub>. Similarly, genres can be assigned as genre G<sub>1</sub> to G<sub>9</sub>. Any channel be classified into combination of language as L<sub>n</sub>G<sub>m</sub> or G<sub>n</sub>L<sub>m</sub>. Now depending upon LCN assignment plan the DPO is required to put all channels with

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<sup>1</sup> As per analysis provided by Broadcast Audience Research Council on the basis of BARC India survey of TV Homes 2018 and viewership data.

assignment  $L_n G_m$  or  $G_n L_m$  together. The DPO can devise its own plan with a combination but should keep channels of same language & same genre together as a single group.

63. It will also ensure that broadcaster of each genre and language are given adequate protection from any malfeasance and arbitrariness. Authority has further decided that each DPO will report the EPG layout on their platform to Authority within 30 days from date of notification of this amendment. Once EPG is decided as per their own plans within the broad framework by the DPO, there will be no requirement to frequently change such plans unless there are compelling reasons arising out of technical difficulties or substantial increase in one type of television channels. In such case DPOs has to submit their revised plans for EPG layout to the Authority for prior approval before carrying out such modifications.
64. It will however, remain mandatory that each channel is allocated to a unique LCN only. It shall be mandatory for the distributor to declare its plan to place channels in the electronic programme guide to the Authority and on its website. Further, in order to ensure fairness to all broadcasters as far as placement of their channels is concerned, the Authority has decided that the LCN once allocated to a channel should not be changed by a DPO till that channel is available on the platform of DPO.
65. Accordingly, regulation 18 of the Interconnection Regulations 2017 dated the 3rd March, 2017, have been duly amended. The Telecommunication (Broadcasting and cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 are also being duly amended separately.

### **Placement and other agreements between broadcasters and Distributors**

66. In the Interconnection Regulation 2017, the provision related to listing of the channels in the Electronic Program Guide (EPG) were made so that visibility of a channel in given genre can be ensured. This was done primarily to protect the interest of the broadcaster. However, as per details herein-above there were certain issues with the allocation of LCN to various channels while following the regulatory provisions. Therefore, quite-a-few stakeholders did not fully implement the EPG regulations.
67. Quite a few complaints were received from various broadcasters whereby it was alleged that some DPOs are pushing for signing of marketing/ placement/promotion agreement. Such instances were also the result of very high carriage fee arising out of much larger target market, so declared by the DPOs.
68. Accordingly, in the consultation paper on 'Interconnection Issues' the authority had sought opinion of the stakeholders in regard to placement/ marketing agreement. Stakeholders were asked whether there should be a well-defined framework for Interconnection Agreements for placement, should placement fee be regulated and if yes, what should be the parameters for regulating such fee. In addition, the authority also asked the stakeholders on ways and means to restrain the possible misuse of flexibility presently available with DPOs as regards the placement and marketing agreements.
69. In response, a group of stakeholders submitted that there should be a framework for Interconnection Agreements for placement and the placement fee should be regulated as news channels are being forced to sign placement / marketing agreements. Further that in some instances exorbitant fees are being charged under these heads by the DPOs. The

arbitrary demands of the DPOs by whatever label leads to the blackmailing of the news channel. News channels are expected to pay the fees as demanded or face removal from the platforms. One of the stakeholders commented that it is necessary to cover placement/marketing/any other arrangements under the Regulations to ensure a level-playing field amongst stakeholders and to ensure transparent and non-discriminatory arrangements between broadcasters and DPOs. The objective should be that, all business arrangements between a DPO and a broadcaster should be transparent and non-discriminatory. To ensure a fair and transparent distribution margin, the Authority should ensure that the total pay-out from broadcaster to DPO (under any head including distribution fee, incentives, placement, marketing or any other arrangements) should not exceed 35% of the MRP. Otherwise, the MRP to consumers will be illusory. However, one stakeholder has opined that there is no need for the Authority to define a framework for agreements for placement. Another group of stakeholders referred to the order of Hon'ble TDSAT dated May 29, 2019 regarding the issues related to the landing page. The said order held that the subject matter of placement of a channel of broadcaster, by the distributor on the landing page of a subscriber is not "interconnection" and hence outside the power and jurisdiction of the Authority. Since the appeal on said order is pending the matter remains sub-judice, the Authority should not proceed with the consultation process on these issues/agreements or define a framework for agreements for placement. One broadcaster suggested that in the new regulatory framework, the carriage and placement have been clearly distinguished. The carriage fee has been regulated and the must carry provisions are made to ensure access to the distribution networks in a transparent and non-discriminatory manner. Detailed provisions relating to placement are already provided, however, if a broadcaster still wishes to place its channel at a particular position or on a specific number, subject to the provisions of new regulations, the broadcaster may offer discount within the prescribed framework or pay the mutually agreed fee, after signing the interconnection agreement, to a distributor for placing the channel. The regulations already disallow placement as a precondition to provide signals. In view of the above, the stakeholder is of the opinion that the present provisions relating to placements are adequate and the Authority should not consider any further regulation in this aspect.

70. It is pertinent here that the regulations related to EPG have now been duly amended. The regulations so revised will ensure that no DPO changes the allocated LCN of a channel number unless it is approved by the authority. After the revisions, it is envisioned that there is hardly any instance where a DPO may force a broadcaster to seek any specific placement agreement. Though there are probable scenarios where a broadcaster may seek a certain easy to remember/ identify LCN within the allocation scheme adopted by a DPO. In such circumstance also, an LCN once allocated will remain allocated to such television channel in perpetuity. Therefore, the Authority is of the view that pursuant to amendments there is hardly any obligation for a broadcaster to enter into placement agreements.
71. Another factor driving the signing of placement agreements was occurring due to very high carriage fee instances or discontinuation of channels. As a commercial & pragmatic alternative to very high carriage fee agreement some stakeholders were signing the placement agreements. The authority having reviewed the carriage fee provisions has specified a ceiling on the maximum carriage fee. Similarly the provisions related to the 'discontinuation threshold' have been duly incorporated to address the concerns of regional/ niche channels. The authority is of the view that now broadcasters will have no reason to look for alternative arrangements. The framework explicitly provides that a channel can be provided to or removed from a customer only on the basis of an explicit

choice. Every DPO is required to provide and ensure complete freedom to its subscribers for making their choice(s). Therefore, it is envisioned that no packaging agreement can be done with the DPO with an intention to forcibly promote/ assign a channel to subscribers. Considering all the factors and provisions together, the instance of placement fee agreement will be minimal like cases where a broadcaster is keen on certain LCN. Therefore, the Authority does not consider it expedient to bring-in restrictions on the placement/ marketing agreements.

72. While prescribing the regulations, the authority is aware that two entities (The Broadcaster and the DPO) may wish to work together to promote/ advertise a channel. Having considered various submissions the Authority is of the view that marketing measures by a broadcaster may be of varied character and types. The present provisions seem sufficient to maintain a level playing field among the broadcasters and DPOs. In addition, the Register of Interconnection regulations provide for submission of placement/ marketing/ other agreements to the Authority. This will help the Authority to maintain an oversight over such agreements. The Authority is also of the view that marketing and other agreements may continue to be in forbearance as at present. The Authority will continue to keep an eye on markets and will review the situation as-and-when deemed necessary.

#### **Penetration incentive on bouquets**

73. One of the main objectives of the new regulatory framework is to ensure that consumer becomes the real decision maker and has complete freedom to choose what he/she wishes to watch and pay only for that. After a thorough analysis of the market it is believed that offer of penetration-based incentives on the bouquets, by the broadcasters to the DPOs, may lead to pushing of bouquets by DPOs to consumers, in order to avail penetration-based incentives. This defeats one of the main objectives of the new regulatory framework of promoting the consumer choice.

74. As per sub-regulation 12 of Regulation 10 of Interconnection Regulation 2017

*“(12) A broadcaster shall not incorporate any provision, directly or indirectly in its interconnection agreement with a distributor of television channels which requires such distributor of television channels to give a guarantee for a minimum subscriber base or a minimum subscription percentage for the channels offered by the broadcaster and any agreement to contrary shall be void.*

*Explanation: For removal of doubt, it is clarified that any discount, offered as an incentive by a broadcaster on the maximum retail price of the pay channel or the bouquet of pay channels, based on actual number of subscribers or actual subscription percentage, recorded in a month shall not amount to guarantee for a minimum subscriber base or a minimum subscription percentage for its channel.”*

75. The Consultation Paper on Tariff Related issues for Broadcasting and Cable services published on 16 August 2019 deals with issues related to pricing of Bouquets vis-à-vis a-la-carte channels, bundling of channels in a bouquet and the discounting structure. Pursuant to comprehensive analysis of stakeholders’ submission under that paper, it is explicit that the discount offered to the distributors (as part of distribution incentive in addition to the distribution fee) on the bouquets by the pay channel broadcasters is intertwined with the pricing structure and manner of offering of the bouquets. In-fact offering a discount of fifteen percent (15%) as an incentive on subscription of certain

minimum subscription of bouquets of pay channels to DPOs may align their commercial interests with the broadcasters. Prima-facie it is violative of the consumers' right to choose.

76. It is imperative to restrain practices that compromise the effective choice of customers. While reviewing the provisions related to the offering of bouquets and it is necessary to review the explanation to Sub-Regulation 12 of Regulation 10. Many of the concerns were shared with the stakeholders by the Authority in the consultation paper on Tariff Related Issues. In response the Broadcasters and their Associations have submitted well-articulated views, mostly countering concerns expressed by Consumers and their Groups. The Authority has carefully considered their submissions and with positive conviction. However, consumers' right to exercise choice is the cornerstone of the regulatory framework and cannot be compromised. The Authority is enjoined by the Statute to protect the interests of service providers and consumers while ensuring orderly growth.
77. The regulatory framework endeavors to ensure that consumer becomes the real decision maker and has complete freedom to choose what he/she wishes to watch and pay only for that. The discount offerings on bouquets are in addition to already reduced prices vis-à-vis the sum of a-la-carte channels. Further such discounts remain with the DPOs and do not pass-on to the consumers or shared with the local cable operators in most of the cases. The issue has been dealt in details in the matters regarding the 'Tariff related issues' and the authority has duly considered to provide higher discounting cap vis-à-vis the sum of a-la-carte price of the constituent channels while forming the bouquets so that such benefit can be passed on to subscribers. The primary objective for doing so is that the advantages of such discount (on bouquets) passes on to the consumers directly. Therefore, any discount to the DPOs defeats one of the prime objectives of the regulatory framework. It also distorts the market offerings further, thereby rendering a-la-carte prices inconsequential in most cases. To discourage this anti-consumer practice and to ensure that DPO do not have monetary incentives to push bouquets, the Authority is of the view that the broadcasters may be permitted to offer penetration-based incentives only for the a-la-carte channels. The authority expects that the revised provision will engender to promote the interest of the consumers and extend real choice(s). Appropriate modifications have been carried out in the relevant provision(s).

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