Response of Indian Broadcasting Foundation (IBF) to the Consultations of Telecom Regulatory Authority India on Draft:

- **(i) Telecommunication (Broadcasting and Cable Services) Interconnection (Addressable Systems) Regulations 2016 (Tariff Order)**
- **(ii) Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order 2016 (Interconnection Regulations)**
- **(iii) Standards of Quality of Service) and Consumer Protection (Digital Addressable Systems) Regulations, 2016 ("QOS")**

We refer to the aforesaid Consultations and have set out below our consolidated response thereto. At the very outset in Section 1 of the response below, we have identified certain core threshold issues. Without prejudice to these issues, we have in the subsequent sections set out our objections specifically in relation to the Consultations.

Section 1 - Threshold Issues

All broadcasting organizations, like members of the IBF have been accorded certain rights under the Copyright Act, 1957 (the "**Act**"). The Act is a complete code which deals with all rights, liabilities and limitations in respect of the subject matter covered thereunder, including the broadcast reproduction right. The Copyright Act has been amended from time to time (the latest being an amendment of 2012) so as to be compliant with the Indian Republic's obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights and to reflect the evolving position of various aspects of copyright through international conventions such as the *Berne Convention for the Protection of Literary and Artistic Works*, the *Universal Copyright Convention, 1952* etc. Any sectoral regulations to the contrary not only will result in violation of the Act but also a breach of the Indian Republic's obligations under its international agreements. Accordingly it is imperative to have harmonisation between the Copyright Act 1957 and Sectoral Regulations to avoid potential disputes.

At present the Copyright Act comprehensively covers all aspects of licensing, assignment, payment of royalties and other considerations, tariff fixation and distribution schemes by Copyright Societies, provisions for enforcement against infringements/piracy and implementation of technological protection measures in respect of works of authors and BRR of Broadcast Organisations.

Additionally, the Copyright Board is fully empowered to adjudicate upon disputes between any person and Content or Broadcast Reproduction Rights owners. Hence the Copyright Act and Rules provide for protection, monetization, enforcement and adjudication procedures for all copyrightable work and broadcast reproduction rights.

In line with the above submissions, we believe that the following identified areas of the Tariff Order and Regulations are in conflict with the provisions of the Copyright Act and hence needs to be harmonized.:

a. The proposed Tariff Order(s) that impose restrictions on nature of content, prices of channels, mandated discount caps and commissions, manner of offering, etc have to be reviewed and modified in the light of specific Copyright Laws providing freedom to Broadcast Organisations to charge royalties and any other consideration/fees for their works and BRR in accordance with the market demands and contract laws.
b. The draft Interconnect Regulations issued by TRAI that take away the Broadcast Organisations' exclusive rights to deal and imposes restrictions on their contractual abilities and takes away their ability to negotiate the terms of trade need to be reviewed and modified to harmonise the same with the provisions of the Copyright Act pertaining to voluntary licensing and assignments by Broadcast Organisations by permitting mutual negotiations.
c. The existing commercial Tariff Orders and Regulations issued by TRAI in relation to commercial establishments is also at odds with Copyright Laws in as much as the Copyright Act clearly provides Broadcast Organisations the right to charge differential rates of royalties and license fees on commercial establishments vis-à-vis domestic/residential subscribers.

The above mentioned areas of conflict need to be harmonized urgently since not only do they impact Broadcast Organisations but they also directly impact royalty pay outs to other stakeholders like production houses who would be entitled to royalties from Broadcast Organisations.

Separately it is imperative that such harmonization of the two statutes is done so as to ensure that the obligations under International Treaties with regard to protection of rights of Broadcasting Organisations are duly complied with.

<u>Section 2 : Preliminary objections to the Distribution Network Model:</u>

I. Non-transparent exercise:

The draft Consultations do not meet the threshold of transparency mandated by Section 11(4) of the TRAI Act, 1997, which requires that the Authority shall ensure transparency while exercising its powers and discharging its functions. Further, the drafts also do not meet the ratio of the judgment of the Supreme Court in **Cellular Operators Association of India vs. TRAI**, which held that:

> *"The finding that a transparent process was followed by TRAI in making the Impugned Regulation is only partly correct. While it is true that all stakeholders were consulted, <u>but unfortunately nothing is disclosed as to why service providers were incorrect</u> when they said that call drops were due to various reasons, some of which cannot be said to be because of the fault of the service provider. Indeed, the Regulation, in assuming that every call drop is a deficiency of service on the part of the service provider, is plainly incorrect."*

II. Pay TV Channels are not Essential Services; no evidence of market failure:

TRAI has in the past affirmatively concluded in its various prior papers and consultations that TV Channels are "esteemed" needs for consumers. However, the present Tariff Order proceeds on the erroneous premise that Pay TV channels are essential services. Further the Authority has not considered the fact that TV consumers in India can avail of the FTA services of the Public Broadcaster DD Free Dish which provides over 100 FTA channels and currently has around 30 million subscribers making it the largest platform in the country. Therefore the real question that arises for consideration by the Authority is that with over 830 channels for consumers to choose from and a large Public Broadcasting Service offering of over 100 private and public TV channels, is there really a need to regulate all aspects of a set of 200 odd pay TV channels. Conversely, the question for the Authority would be, is there proven evidence of market failure that a dire need has arisen to over-regulate these 200 odd Pay TV Channels. We are of the firm belief that there is no compelling reason to regulate these channels and accordingly, only a light touch regulation, if at all ought to have been proposed.

III. Regulated RIO is the preferred choice of majority stakeholders:

We submit that significant number of stakeholders including us recommended a wholesale regulated RIO Model in response to the Consultations issued by TRAI which met the criteria of transparency, non-discrimination and the other objectives of consultations sought to be achieved by the Authority. However, we are surprised to note that Authority has chosen to not consider the same and has instead proposed an MRP based Distribution Network Model which was which was not properly articulated in the Consultation paper and recommended by very few of the stakeholders. In fact the majority of the stakeholders had recommended the wholesale Regulated RIO Model given that the industry has over the last decade already settled down to the same and was functioning smoothly. Hence, minimum changes to the current wholesale model to bring in greater amount of transparency would have sufficiently addressed the set objectives and at the same time would enable a smoother transition without causing any major disruptions and uncertainty across the value chain.

<u>(Illustration: break-up of stakeholders responses supporting wholesale Regulated RIO set out below)</u>

Broadcasters	DTH	MSOs
Zee, Sony, Viacom18, Star, ABP	Videocon, Dish, Reliance, Sun Direct	Siti, IMCL, Asianet, Ortel, NSTPL

IV. New Regime will lead to de-growth of the industry and discourage investments and production of good quality content in the television industry:

We believe that the proposed regime is skewed hugely in favour of the DPOs and gives them enormous advantage over the consumers and other stakeholders. The regime confers on the DPOs unbridled powers which will severely restrict sampling and access to variety of content which is critical for innovative content and will ultimately lead to closure of many channels. It seeks to almost encourage curbing viewership and adversely impact advertising revenues without providing any opportunity to balance returns on investments through subscription. Unless both advertising and subscription are balanced there will be very little incentives for investing in creating diverse & quality content. The proposed forbearance for Premium Channels would not serve its purpose as there is no mechanism in the proposed structure which will enable viewers to access or even sample such kind of content.

V. Regulatory regime regresses rather than advances

The industry had hoped that in keeping with TRAI's stated policies the present exercise will result in a light touch regulatory regime given that digitalization has ushered in a highly competitive pay TV market with multiple digital platforms offering diverse content and choice to consumers. However, instead, in our humble view the proposed regime seek to introduce more stringent, onerous and intrusive regulatory dispensation virtually micromanaging the activities and that too only in respect of one stakeholder, i.e. broadcasters, by regulating pricing, discounting, manner of offering, bundling and legitimizing carriage fee leaving total uncertainty in both advertisement and subscription revenues. This would also create a fertile ground for disputes and avoidable litigation that was never the intent of the instant exercise.

VI. Implementation challenges of cable digitization across DAS markets continue to remain

The proposed Distribution Network model assumes existence of 100% cable digitization and accordingly pre-supposes the existence of the requisite infrastructure to enable smooth implementation thus realizing the stated objectives of transparency, good conduct translating into consumer interest. However, it has failed to consider the current market realities and especially the poor state of implementation of cable digitization across DAS markets. In fact approximately 36% of DAS III (9 million analog homes) and 80% of DAS IV (27 million analog subs) is still pending. Even in markets where DAS is implemented, QOS Regulations are yet to be executed in letter and spirit with no visibility to consumers on billing and adequate re-dressal of complaints. Even Broadcasters have no visibility on the actual subscribers for their as DPO's continue to not share the subscriber report. In several areas DPOs digital headends, CAS and SMS systems are inadequate and do not comply with regulatory obligations. The Authority will appreciate that despite its own efforts to correct these ills, there has been no change and the state of implementation continues to be in a state of mess. Hence, it would be highly unrealistic to introduce the proposed model at this stage knowing fully well that the market is currently not in a state of readiness to implement it in letter and spirit and thus fail achieve the stated objectives and will only result in more chaos, disputes and non-transparency which will ultimately impact consumer interest and industry growth.

VI. Commercial Subscriber Issue:

Broadcasters have been making specific representation to the Authority to consider and address the long pending issue of commercial subscribers which are already treated as distinct and different class from the ordinary residential subscribers. On the contrary, in the proposed regime, TRAI has removed that distinction and has treated commercial subscribers at par with ordinary subscribers for the purpose of payment of subscription thereby causing severe financial loss to the broadcasters.

Section 3 : Specific Objections to the Distribution Network Model

I. Draft Tariff, Interconnect & QOS fails to meet the objectives sought to be achieved by the Authority through the consultation:

The Authority's stated objectives while initiating the instant consultation in January was to achieve the following objectives:

1. To carry out a review of existing Tariff arrangements and developing a Comprehensive Tariff Structure for Addressable TV Distribution of "TV Broadcasting Services" across Digital Broadcasting Delivery Platforms (DTH/ Cable TV/ HITS/ IPTV) at wholesale and retail level

2. To ensure that the tariff structure is simplified and rationalized so as to ensure **transparency and equity** across the value chain;

3. To reduce the **incidence of disputes** amongst stakeholders across the value chain **encouraging healthy growth** in the sector;

4. To ensure that subscribers have **adequate choice in the broadcast TV services** while they are also **protected against irrational tariff structures and price hikes;**

5. To **encourage the investment** in the TV sector;

6. To **encourage production of good quality content across different genres**;

However, for the reasons set out below, the Authority has failed to achieve the aforesaid objectives.

A. Anti-consumer

1. **Affordability:** The stipulation of a rental cap of Rs 130 for 100 channels and an additional rent of Rs 20 for every 25 channels over and above the 100 channels by consumers to DPOs acts as a huge entry cost for the consumers and thus severely hampers affordability. For example, if we assume that on an average consumers will subscribe to a minimum of 200 channels which is the preferred choice of consumer across all DPOs - vide the instant Tariff Order, the consumer will either end up paying substantially more for the same set of channels that they avail today or will end up receiving significantly lesser number of channels for the same price of which

Rent alone will constitute Rs 230. This will impact approximately 3.5 Cr rural households who today enjoy a wide variety of pay content at low market based prices.

In this context it is pertinent to note that at present the Direct-to-Home (DTH) services of Doordarshan is offering around 100-110 FTA channels. In other words, it is absolutely free with no rentals. Hence, there is no rationale for enabling DPOs to charge a rental of Rs 130 from the consumers for delivering 100 FTA channels. This creates a non-level playing field and will result in discrimination amongst the same set of consumers.

Moreover, for the same set of basic services the DPOs would be able to enjoy double revenue streams i.e. Rs.130/- per subscriber per month access fee to consumers and carriage fee from the broadcasters. On the other hand the public broadcaster, DD Freedish DTH, provides basic services to consumers for free while charging a carriage fee from the broadcasters through a transparent e-auction process without resorting to any first-come-first serve basis.

2. **Diversity:** By imposing artificial limits on bundling discounts, the choice and diversity available to consumers will be adversely impacted. The consumer proposition of TV as an audio-video medium has always been to deliver diverse content at reasonable prices through bundles. By pushing an *a-la-carte* mandate and rendering bouquets illusory the strength of broadcaster bouquets will be significantly diluted leading to the survival of only fewer larger channels. **(Illustration – restricting discounts, impacting diversity at reasonable prices, by pushing *ala carte* will end up killing a large number of small channels and thus impact plurality and diversity of view point)**

   Moreover, the Authority has capped the MRP rates at half the current retail prices which it believes is realistic which makes a-la-carte price a real market based choice. Hence there is no logical reason to fix a correlation between bouquet rates and a-la carte pricing and must be best left to market forces.

3. **Sampling:** The draft Tariff Order proceeds with the assumption that the consumer wants to access a limited number of channels which, we humbly submit, is an erroneous assumption. Today consumer samples various channels across genres and decides to spend significant time on the content of his choice. Therefore the consumer needs to access wide variety of content to make an informed choice in order to exercise consumer preference. This choice is critical from a consumer perspective which we believe has been taken away in the recommended model since the option of sampling in the true sense is not being given to the consumers.

4. **Discrimination at Consumer Level:** In the proposed model there is a discount cap (15%+20%) at the wholesale level (MRP). However, at the retail level no cap has been stipulated for retail price of the DPOs vis-à-vis the MRP of the broadcasters. This will result in different retail prices for the same channel in the same geographical area, thereby resulting in discrimination at consumer level and defeating the purpose of MRP stipulations.

   The Authority has failed to create distinction between cap on incentives by broadcasters to DPOs and the discounts that a Broadcaster may offer to consumers on MRP. It has erred in assuming discounts to dealers/distributors in an MRP construct is based on the MRP of the product. Moreover, restricting the ability of the Broadcaster to offer discounts to the consumers on the MRP is in fact anti-consumer. The creators/producers of content should be given the complete flexibility to offer discounts on MRP based on consumer demand. Unlike FMCG or any other homogenous products, channels comprise diverse content with fluctuating demand and hence the discounting parameters for channels cannot be identical to other product markets.

II. Fails tests of Transparency & Non-Discrimination:

1. While the proposed regime strongly recommends for a must-carry provision, the non-stipulation of minimum channel capacity for DPOs to carry channels and the principle of first-come-first serve basis severely dilutes the same. This will also result in chaos and disputes at multiple levels which both the Authority and the industry are keen to avoid. Moreover it is very likely that because of this principle consumers may not even get the channels of their choice. Additionally access based on "first-come-first-serve" basis, will enable channels regardless of quality and innovation to gain access to DPOs network by merely timing the request. As a result, deserving channels will be denied access despite superior quality content. This also works against incentivizing DPOs to increase capacity. Further stakeholders would be left litigating to assert their rights under this new mandate.

2. In the present model, DPO is assured of multiple revenue streams such as - Distribution fees, Rental fees, Carriage charges, Placement fees and Marketing fees. Since the Draft proposes to charge rentals to the consumer purportedly for access and ROI for capacity enhancements, it completely obviates the need to charge carriage from the broadcasters for the very same purposes.

3. However, there is no assured revenue model for the broadcaster which creates an undue advantage for DPOs at the cost of other stakeholders in the value chain. By way of an illustration assuming the present ARPU to be INR 200 the DPO would end up cornering close to 75% of the ARPU and in addition will also earn carriage, placement and marketing fees. This will take away the incentive for broadcaster to continue investing in innovative content for consumers.

4. The Interconnections Regulations prohibits mutually negotiated contracts between DPOs and Broadcasters on the ground that it will lead to discriminatory and non-transparent dealings. However, by allowing mutually negotiated contracts between MSOs and LCOs (with RIO as a default mechanism), the principles of non-discrimination has been fully compromised.

5. **MARKETING AND PLACEMENT FEE, WHICH IS NON-REGULATED, CAN MAKE THE MODEL NON-TRANSPARENT**

   Since in the proposed model placement fee and marketing fee can be mutually negotiated and are outside the regulatory ambit this has the potential to completely distort and vitiate the entire non-discriminatory principles. This would create a back door entry for packaging and side-deals. While the Authority seeks to reduce the burden of carriage fee by capping the same, it has been rendered illusory by allowing negotiated agreements between DPOs and Broadcasters for LCN and Marketing. Hence these should also be brought within the regulatory ambit.

III. Genre Prices:

The Draft tariff order takes the historical non transparent whole sale genre caps and superimposes it on the retail in the new dispensation without offering any basis as to how these ceilings were arrived at in the first place. The genre caps are abysmally low which will prevent further investments from coming into the genres. It says that the historical genre ceilings have been working well, without for once disclosing what these ceilings were and how they had been arrived at. Also if such ceilings were indeed working well, the question that begs an answer is why then attempt a fresh review of the Tariff dispensation at all.

There is no consideration of the existing retail tariffs prevailing in the market basis the Tariff Order ('TO') dated 29th Dec 2015. The said TO was never challenged by any stakeholder nor has it come in for any questioning from any quarters. The ceilings that have been proposed amount to slashing almost 50 percent of existing retail rates for no reason. This will severely impair investments into content by broadcasters.

IV. Quality of Services:

There is no tooth to get any of the Quality of Service (QoS) mandates implemented on the ground as no effective penal consequences have been prescribed. Moreover, it is submitted that in order to achieve efficiency, transparency and neutrality at digital distribution platform's end *inter-alia* for ensuring protection of interests of all stakeholders in the value chain (including consumers) it is of paramount importance that QoS Regulations should be first implemented. It is respectfully submitted that verifiable implementation of QoS Regulations by TRAI ought to be a condition precedent before any attempt is made to implement the Tariff Order and/or the Interconnection Regulations.

It is also submitted that unless TRAI ensures existence of proper infrastructure and compliance of QoS Regulations at the end of DPOs, any attempt to implement the Tariff Order and/or the Interconnection Regulations will have an adverse and cascading effecting on all stakeholders.

V. Technological Constraints:

We believe the proposed model envisages delivery of channels based on choice of the consumers (both FTA and Pay) which is likely to result in countless combination which we believe are not supported by the technology and infrastructure of the DPOs (both MSOs and DTH). It may not be possible to practically implement the same and the choice mechanism so stipulated would only be illusory.

VI. Provision in connection with obligation on broadcasters to specify arrears in the invoices and waiving of broadcasters right to claim the same:

In the draft Interconnect Regulations, the Authority has mandated that broadcasters shall have no claim on any arrear amount which has not been specified by it in the immediate next three consecutive invoices issued after the due date for the invoice to which the arrears pertain.

While mandating this provision, we believe that the Authority has not appreciated the fact that this would be challenging especially in view of non-receipt of subscriber reports on time. Hence we suggest that there should not be any such provision. Anyways there is a law of limitation which prescribes a period of 3 years to recover the legal dues payable by one party to the other.

VII. TRAI in the draft Regulations under Reg 9(6) stated as follows:

"If a broadcaster, before providing signals of television channels, is of the opinion that the addressable systems, being used by the distributor for distribution of television channels, does not meet the requirements specified in Schedule III to these regulations, without prejudice to the time limit prescribed in sub-regulation (5) of the regulation 3, the broadcaster may cause audit of the addressable systems of the distributor by M/s. Broadcast Engineering Consultants India Limited, or any other auditor empanelled by the Authority for conducting such audit and provide a copy of the report issued by the auditor to the distributor. Provided that the findings of the auditor shall be final. Provided further that if the addressable systems of such distributor have been audited during the last one year by M/s. Broadcast Engineering Consultants India Ltd., or any other auditor empanelled by the Authority for conducting such audit and the distributer produces a report issued by the auditor as a proof of conformance to the requirements specified in Schedule III to these regulations.

The broadcasters feel that they should be given the right to conduct audit of the technical systems of the distributors through its own technical team and only in case of dispute between the parties, BECIL or empaneled auditor may be appointed to conduct the audit. TRAI has neither empaneled any auditor not has it ensured that BECIL has the bandwidth to conduct audits as is contemplated under the proposed Regulations. In any event, we feel that the stipulation that finding of BECIL's auditor shall be final is arbitrary and cannot be permitted. The Broadcasters should be given right to contest the said findings if it has documentary evidences to prove the contrary. Further, even in case the addressable system was audited in the last 1 year by BECIL or any other agency (as may be stipulated by the Authority), broadcaster should be granted the right to conduct an independent audit of the distributor of TV channels' addressable system to ensure technical compliance is in accordance with regulation and raise technical issues if the same is found during the audit. This would also ensure that the DPOs cannot unduly take advantage and tamper with the Systems later on the pretext that their Systems are audited by BECIL and cannot be challenged by the broadcasters since the same is valid for a period of one year as stipulated in the proposed draft regulations.

VIII. Under the proposed draft Regulations 3(12) and 3(13), the Authority has provided that:

(12) It shall be open for a distributor of television channels to discontinue carrying of a television channel in case the monthly subscription, in the immediate preceding six consecutive months, for that particular television channel is less than five percent of the subscriber base of that distributor, in the target market specified by the broadcaster in the interconnection agreement, in that particular month.

(13) A distributor of television channels shall not be under obligation to carry a channel which has been discontinued as per sub-regulation (12), for a period of one year from the date of such discontinuation.

The Authority has prescribed in these provisions that if a particular channel does not attract the minimum prescribed subscriber base for a minimum period of six months, then the distributor shall have the liberty to disconnect the said channel. But for the purpose of reconnection of the same channel, a broadcaster will have to wait for one year and the distributor can keep on denying access to the said channel despite the fact that the said channel may have attained the prescribed limit, in a short span of time after the discontinuation of the channel by the distributor. This gives an arbitrary power in the hands of the distributors who shall have free hand in denying access to the channels of a new broadcaster or a new channel of an existing broadcaster. The Authority has also prescribed for doing away with the mandatory provision for carrying the regional channels by the distributor. Reading these provisions together would yield that the distributors can now deny the signals to the regional channels on the ground of the channel being not popular and, this power can be arbitrarily used and would be in the teeth of the "non-discrimination and parity" objective enshrined under the Regulations. .

IX. Geographical Areas:

The "relevant geographical area" determined in Schedule II is not based on any study or data, and has been promulgated on its own, without giving any opportunity to the stakeholders to comment on the same. The "relevant geographical area" does not take into account the inherent difference that exists within the same State owing to the different language, preference of the subscribers in different parts of the State. Notification of the relevant geographical area thus, lacks understanding and proper study. In this regard, it is submitted that "relevant geographical area" does not take into account the inherent differences that exists within the same State owing to the different language, preference of the subscribers in different parts of the State. We are of the view that relevant geographical area should have been classified by taking into account the criterion of preferred language. The present classification identifying "relevant geographical area" falls short of its mark, as it has not identified the seven of the eight metro cities of India, viz., Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune & Ahmedabad in Draft Tariff Order. While the classification ought to have been to identify the relevant geographical differences, TRAI has categorized the market more or less on the basis of the number of States and Union Territories, without giving due regard to the "relevant" differences between urban and rural areas. The inclusion of these metro cities, as separate category, is a basic requisite because of the pre-dominance of the people speaking the local regional and English language. Moreover, these metro cities have become the melting pot of various languages & cultures, which makes them a good mix of cosmopolitan people with relatively high paying capacity. There has also been a long practice of separate interconnect agreement between broadcasters and distributor of TV channels (cable) for each metropolitan areas, which has proven over the time to be practical and fruitful. Thus, it would be pertinent to include these cities as a region, viz., Greater Metropolitan Mumbai Region, Kolkata Metropolitan Area and likewise. Further, the "relevant geographical area" should allow Broadcaster to offer schemes for different sets of target audiences

X. Genre of Television Channels for EPG:

While proposing to reduce the number of genre, TRAI had suggested in the earlier consultation paper that multiple genres may need to continue to be on the EPG so that it continues to be consumer friendly in finding a channel of the choice. However, in the draft regulations TRAI has not mentioned that creation of genre is only for the purpose of genre wise tariff ceiling only, and multiple genre for the purpose of EPG is permitted. Thus, in our view, the reduction in classification of genres will increase the number of channels in each genre causing inconvenience to the consumers while surfing and selecting channels if such classification of genres is also followed by DPOs while creating the EPG. In order to avoid any such inconvenience to consumers, the TRAI must mandate more numbers of genre classifications on par with BARC and ensure that a common EPG genre-wise categorization is followed by all the DPOs.

XI. Clause 3(12) and 3(13) of the Draft Interconnection Regulation:

We are of the view that except for GEC and Movie genres, most of the other genres including English channels, Music channels, Premium channels and niche channels, would not meet the criteria of having penetration of more than 5% of subscriber base of any distributor of TV channels. Such a rule which imposes a restriction on majority of the channels is unreasonable and has to be done away with. Hence, it is suggested that the restriction should not be made applicable for genres other than GEC and/or Movies genre.

Moreover, the impracticability of the criteria of having penetration of more than 5% of subscriber base of any distributor of TV channels is more evident in the case of HD channels since the HD Channels do not meet the criteria of reaching more than 5% of the subscriber base of the distributor of TV channels. Hence, the calculation of penetration for a HD Channel should be basis the HD Subscriber Base of the relevant DPO, and not on the overall subscriber base of such DPO.

Assuming so as to effectively ensure the applicability of Clause 3(12) and Clause 3(13) towards GEC and Movies genres, we are of the view that once the distributor of TV channels drops the GEC/Movie channel of the broadcaster due to non-achievement of the prescribed 5% benchmark, it should ensure that it has also dropped channels of other broadcasters which have not achieved the prescribed 5% benchmark. Additionally, if the distributor of TV channels recommences retransmission of any such dropped channel within a period of 12 months from the date when such channel was dropped, then it shall ensure that it extends similar treatment to other dropped channels following the principals of parity and non-discrimination. TRAI should also consider reducing the prescribed period of 12 months to 6 months.

XII. Calculation of Carriage Fee:

Schedule I of the Draft Interconnection Regulation –As per a joint reading of Schedule I and Schedule VII, it seems that the monthly carriage fee is computed on the basis of the entire subscriber base of the distributor of TV Channels. This calculation for computation of the carriage fee is erroneous, misconceived and fundamentally against the principle of non-applicability of carriage fee of any channel which meets the threshold limit of 20%.

As per the current reading of Schedule I read with Schedule VII, a broadcaster is liable to pay progressively decreasing carriage fee to the distributor of TV channels, but to a limit of only 20% of the average subscriber base of the distributor of TV channel, viz. a broadcaster is not liable to pay the carriage fee if the channel has a penetration of more than 20% of the active subscriber base of the distributor of TV channel. Given this reasonable restriction, to mandate that a broadcaster who does not meet the threshold of 20% has to pay the carriage fee for the entire subscriber base of the distributor of TV channels would be erroneous and misconceived. This would result in a situation where a broadcaster who does not meet the 20% threshold has to pay carriage fee for the entire subscriber base of the distributor of TV channels, even when the principle of applicability of carriage fee has been capped at 20% of the entire subscriber base of the distributor of TV channels. Further, there is no reason why carriage fees should be payable on the entire subscriber base of a distributor of TV channels when the channel has been subscribed by only few subscribers of such distributor of TV channels.

In view of the aforesaid, it is important that the clause should be clarified to the extent that the broadcaster would be liable to pay the carriage fee towards the channel (which does not meet the 20% threshold) which shall be calculated on the basis of the rate of carriage fee as per the progressive decreasing slab set out in Schedule I multiplied by the average subscriber base of such channel. The average subscriber base of the distributor of TV channels cannot be taken into consideration for calculation of the carriage fee.

Further, the amount of Rs. 0.20/- for SD channel and Rs.0.40/- for HD channel is without any basis. TRAI has neither conducted any study nor has published any analysis to substantiate the same.

Section 4 - Issues not addressed by the Authority

1. Has not addressed transparency in subscribers declarations

2. The DPO can choose not to carry some broadcaster channels, hence, rendering broadcaster bouquets meaningless for consumers.

3. While most of the operators are operating under the pre-paid model by collecting the subscription fee in advance the draft Interconnect paper enables an operator to avail a credit period of 60 dates plus which is unfair and inequitable. Given the past precedents where the subscriber reports are either not submitted or submitted with a considerable delay, this credit period is likely to extend to 120 to 180 days. In other words the broadcasters are made to finance the funding requirements of the DPOs.

4. With the technological constraints as stated above, there is likely to be another problem of getting subscriber reports from DPOs. In this context it is pertinent to point out that even today it is a challenge to get subscriber reports out from DPOs. Now with thousands of packages for each DPOs, provisioning such packages will pose a huge challenge and so will subscriber reports to be generated therefrom. This will also impact billing by broadcasters and securing timely payments more so in the absence of any effective penal consequences being prescribed for non-compliance.

5. **Promotion of new channels**: Akin to the existing Regulations, the Broadcaster should continue to have the liberty to make promotional offers for newly launched channels *sans* any restriction on packaging and/or tariff

6. **Platform Services:** The Platform Services offered by the distributor of TV Channels are completely unregulated and the same gives the distributor of TV channels an undue advantage to place and/or offer the said channels in any manner of their choice. Further, several distributors of TV channels place their respective Platform Services in EPG listing in priority over the satellite television channels of the broadcasters.

   In lieu of the aforesaid and to ensure that consumer interest is protected, the Platform Services should be placed in separate genre in the EPG listing and must not be placed within the

Genres/sub-categories of satellite channels of the Broadcasters. We therefore submit that the Platform Services ought to be regulated so as to ensure that there is no major constraint on network capacity resulting in reduction in the number of channels that can be carried by such distributor of TV channels.

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