Indian Broadcasting
& Digital Foundation

IBDF's COUNTER COMMENTS TO THE CONSULTATION PAPER ISSUED BY THE TRAI ON REVIEW OF REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES DATED 08.08.2023

1. The regulatory regime in the broadcasting sector has been a dynamic and evolving process. We acknowledge and extend our appreciation for the efforts of the Telecom Regulatory Authority of India (**TRAI**/**Authority**) to address the grievances raised by the stakeholders from time to time. We had submitted our comments on 10.10.2023 to the Consultation Paper on Review of Regulatory Framework for Broadcasting and Cable Services dated 08.08.2023 ("**Consultation Paper**"). We have noticed that some of the stakeholders in their response to the Consultation Paper have demanded that they should be allowed to reorganize broadcasters' bouquets even though the said issue is not a part of the present consultation process. We strongly recommend that the said demand raised by the stakeholders should not be considered. We are hereby submitting our counter comments alongwith other additional issues for the Authority's consideration.

2. On 07.05.2022, the Authority had initiated a fresh consultation process in respect of broadcasting and cable services, at the behest of few stakeholders including the All India Digital Cable Federation ("**AIDCF**") to deliberate upon the issues relating to New Regulatory Framework for Broadcasting and Cable Services. The Authority post multiple rounds of consultation with all the stakeholders restored the MRP ceiling for ala carte channels forming part of a bouquet to Rs. 19/-. After considering inputs received from the stakeholders, the Authority notified the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fourth Amendment) Regulations, 2022 ("**2022 Regulations**") and the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order, 2022 ("**2022 Tariff Order**") (collectively referred to as the "**2022 Regime**").

3. The Authority, in the 2022 Regime recognized that bundling of services and products is a widely accepted practice and creates economic efficiencies, reduces operational expenses, provides consumers with wider choices and access. The Authority further recognized that availability of a television channel in a bouquet offering enhances the number of consumers subscribing such a channel. The Authority, while acknowledging that a broadcaster is the owner of a television channel, has every right to arrange its business in the manner that it chooses to, has given the flexibility to the broadcasters to create bouquets of their television channels. The broadcasters incur huge expenses towards acquiring/ producing content. The distributors of television channels are only intermediaries who transmit the signals of the channels of the broadcasters to the subscribers. Accordingly, the distributors have no role in the manner in which a broadcaster should organize and conduct its business. We, therefore, urge that the distributors should not be permitted to break broadcasters' bouquet as any such unbundling of channels will be misused by the distributors and will distort the present regulatory framework governing the broadcasting sector.

4. Broadcasters are the owners of television channels which is a medium of free speech and expression as envisaged under Article 19(1)(a) of the Constitution. As such broadcasters are entitled to choose the content being shown on their respective TV channels, circulate and disseminate the same to the widest extent possible and in the manner that is best suited for the broadcaster's business. The broadcasters are free to offer their channels either in ala-carte form or in the form of bouquets. Broadcasters create these bouquets keeping in mind the viewing requirements of a household, as a family could comprise of members of different age groups with different viewing preferences. These bouquets cater to the viewing preferences of the different family members and are cost effective for the subscribers.

5. Creating a bouquet of channels is a means through which the broadcaster exercises its right to free speech and uses it to achieve maximum reach and any restriction on this would be an encroachment upon the broadcasters' right under Article 19(1)(a). The broadcasters invest enormous sums of money in producing/ acquiring/ creating content as the television channels are driven by content and the programmes they offer. The cost of production/ acquisition of such content depends upon various factors such as the actors, script, set-up cost, copyright, etc. As acknowledged by the Authority in the Explanatory Memorandum of the 2022 Tariff Order –

"Hence, determining the cost of production of a channel at all times is an extremely difficult process, perhaps almost impossible. Moreover, such determination of price would be dynamic in nature and may vary with change in programs in a channel. Programs on television channels change dynamically and as such it is impractical to determine the price of a television channel on cost plus basis."

Thus the broadcaster is best placed to decide the optimal price of a TV channel and decide the manner in which the same may be offered i.e. a la carte /bouquet basis.

6. Further, bundling of channels provides better service to subscribers allowing more consumer choice, variety and differentiation for subscribers, while bringing the necessary advertising revenue to the producer's and the broadcasters to cross-subsidize the costs of production, which would otherwise increase the burden on the consumer.

7. Broadcasters have two sources of revenue, i.e., subscription and advertisement revenue which depend upon the number of subscribers who subscribe to the broadcaster's TV channel. The number of subscribers depend upon the quality of the content offered by the broadcaster for which significant investment is made by the broadcaster. The more the number of subscribers, the more attractive a TV channel becomes to an advertiser, thereby increasing the value of the TV Channel.

8. The advertisers garner more eyeballs with the increase in number of subscribers, which in turn increases the advertisement revenue of the broadcasters. This allows broadcasters to cross subsidise subscription cost to consumers with advertisement revenue. Therefore, a broadcaster balances the interest of the subscribers by keeping a lower subscription price which is possible only if the broadcaster is able to earn more advertisement revenue.

9. Distributors, on the other hand, are intermediaries, who are required to pass on/ retransmit the signals of television channels of the broadcasters to the consumers. Their role is confined to acting as carriers of signals of television channels and have no say in the pricing of the end product, i.e., the TV Channel. The distributors do not bear any expenses towards production/ acquisition of content to be included in a TV Channel. The distributors under the regulatory regime have multiple sources of revenue including NCF, distribution fee, carriage fee, placement fee, etc.

10. In light of the above, we submit that the distributors should not be allowed to interfere with the broadcasters' bouquet as the constitution of bouquets is solely the prerogative of the broadcasters who are the owners of television channels. There is no restriction upon the distributors to create their own bouquet of television channels. In fact, the distributors are permitted to create a bouquet comprising of television channels of different broadcasters whereas a broadcaster can create a bouquet comprising of its own channels only. The

distributors' insistence that they should be permitted to unbundle the broadcasters' bouquet would adversely affect the interest of the consumers as this would dissuade the broadcasters from offering their bouquets. . We further submit that the said issue is not a part of the present consultation process. The issue in relation to formation of bouquets by the broadcasters and the DPOs has already been discussed in detail by the Authority in the Consultation Paper and the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ("2017 Regulations"). The Authority in Para 52 of the Explanatory Memorandum to the 2017 Regulations has noted that the freedom for formation of bouquets has been given to both the broadcasters as well as the distributors keeping in view the interest of the consumers and for orderly growth of the sector. Para 52 of the Explanatory Memorandum is reproduced herein below:

"Since the freedom for forming the bouquets has been given to both the stakeholders, therefore, it is expected that they will form the bouquets on the basis of consumers demand. Any kind of direct or indirect influence on DPOs for deciding composition of bouquet, other than the choice of consumers, affect the orderly growth of the sector. In order to ensure that choice of the consumers remain only guiding factor for determining the composition of bouquets, it is necessary to ensure that no broadcaster interferes with bouquet formation at the level of distributor."

11. The distributors have raised a claim that the 2017 Regulations have mistakenly applied the MRP concept to the broadcasting sector and the broadcasters should be permitted to declare only the wholesale price at which they sell the television channel to the distributor instead of setting the consumer price. The Authority, in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ("**2017 Tariff Order**") had noted that the wholesale transactions between the broadcasters and distributors of television channels were non-transparent and discriminatory and contrary to consumer interest. If the broadcasters are permitted to fix prices at wholesale level only then any reduction in price at wholesale level will not get passed on to the subscriber. As discussed above, the broadcasters' flexibility to optimize the retail price of their Pay TV Channels enables them to acquire/ create/ produce good quality content for the consumers. In addition to the above, if the distributors of television channels have complete freedom to price a channel at a retail level, they can influence the possibility of subscription to a channel by creating artificial price barrier upon which the broadcasters have no such control. Further, the Authority, in the Explanatory Memorandum to the 2017 Tariff Order has noted as under:

"Prescribing MRP by the broadcasters to subscribers will in a manner self regulate the pricing of pay channels as higher price will reduce the number of subscribers who will opt for such channels thereby impacting their advertisement revenue. It will provide flexibility to broadcasters so that they can optimise the price of pay channels in such a way that they can maximize their sum of revenue from subscription and advertisements. This will also give power to broadcasters to reduce the MRP of channels if they so desire to enhance its viewership."

12. The distributors also claim that under the Uplinking and Downlinking Guidelines, the broadcasters cannot sell their TV channels to the consumers directly and are prevented from creating bouquets. The aforesaid understanding of the distributors is entirely flawed as the broadcasters, being the copyright holders have a right to exploit their content as also affirmed by the Hon'ble Supreme Court in *Star India Private Limited v. Department of Industrial Policy and Promotion,* (2019) 2 SCC 104. It is for this reason that the broadcasters have the flexibility

to arrange their business as they choose. It is for the broadcasters to decide which channels to be included in the bouquet with the content of such channels. In any event, the Uplinking and Downlinking Guidelines do not regulate the manner in which the content of the broadcasters is priced and packaged.

Q1. Should the present ceiling of Rs. 130/- on NCF be reviewed and revised?

a. If yes, please provide justification for the review and revision.
b. If yes, please also suggest the methodology and provide details of calculation to arrive at such revised ceiling price.
c. If not, provide reasons with justification as to why NCF should not be revised.
d. Should TRAI consider and remove the NCF capping?

Q2. Should TRAI follow any indices (like CPI/WPI/GDP Deflator) for revision of NCF on a periodic basis to arrive at the revised ceiling? If yes, what should be the periodicity and index? Please provide your comments with detailed justification.

Q3. Whether DPOs should be allowed to have variable NCF for different bouquets/plans for and within a state/ City/ Town/ Village? If yes, should there be some defined parameters for such variable NCF? Please provide detailed reasons/ justification. Will there be any adverse impact on any stakeholder, if variable NCF is considered?

1. The Authority had permitted distributors to charge NCF as the distributors provide a network capacity which a subscriber utilises to receive the signals of subscribed television channels. NCF has been fixed for the amount of bandwidth and resources being used to deliver the signals at subscriber's home. Further the type of channels does not make any difference on the utilization of such resources. The Authority had noted that the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs. 80/- per month and cost of other activities like subscriber management, billing, complaint redressal, call center etc., comes out to be approximately Rs. 50/- per month. Accordingly, the Authority permitted the distributors of television channels to charge a maximum fixed amount of up to Rs. 130/- per month, excluding taxes, from its subscribers towards its distribution network cost to carry 100 SD channels.

2. Some DPOs have stated that NCF should be reviewed, revised and linked to different indices. It is submitted that the Authority had introduced NCF of up to Rs. 130/- to ensure that DPOs have a dedicated source of revenue for providing infrastructure and ensuring better quality of services. However, this dedicated revenue is yet to be deployed effectively toward ensuring the quality of distribution services that is essential to support a dynamic, consumer choice ecosystem, for example, expanded channel carrying capacity and enabling app-enabled channel selection.

3. NCF constitutes a substantial part of consumer price which contributes more than 50% of average end-consumer payout and any increase in NCF will burden the end consumer. We, therefore, recommend that instead of revising NCF, the entire sector be de-regulated and the concept of NCF be removed entirely. Pending implementation of forbearance on price and offering, there is no cause to revise the NCF or related provisions. As the broadcasting industry is facing stiff competition and the number of subscribers is declining, any increment as sought by the DPOs in the cost of the NCF will be an additional burden on the consumers compelling them to migrate to other platforms which will be detrimental for the entire broadcasting industry.

4. In any event, the expenditure/cost incurred by any DPO for carrying channels on its platform is a one-time capital expenditure and non-recurring in nature and therefore, there is no rationale for continuing with NCF. Further, over a period of time, DPOs have already recovered the cost of their expenditure and therefore there is no need to continue with the concept of NCF any further.

Q4. Should TRAI revise the current provision that NCF for 2nd TV connection and onwards in multi-TV homes should not be more than 40% of declared NCF per additional TV?

a. If yes, provide suggestions on quantitative rationale to be followed to arrive at an optimal discount rate.

b. If no, why? Please provide justification for not reconsidering the discount.

c. Should TRAI consider removing the NCF capping for multi-TV homes? Please provide justification.

Q5. In the case of multi-TV homes, should the pay television channels for each additional TV connection be also made available at a discounted price?

a. If yes, please suggest the quantum of discount on MRP of television channel/ Bouquet for 2nd and subsequent television connection in a multi-TV home. Does multi-TV home or single TV home make a difference to the broadcaster? What mechanism should be available to pay-channel broadcasters to verify the number of subscribers reported for multi-TV homes?

b. If not, the reasons thereof?

1. Some of the stakeholders have suggested that the broadcasters should give a discount on the price of additional television connection. The said suggestion is entirely misconceived in a multi-TV household, different members of the family have different viewing preferences and choices. They may choose to subscribe to different channels / packages depending upon the viewing preferences of individual members of the family.

2. We recommend that each set-top box should be counted as one subscriber irrespective of the number of connections in a household. As we had stated earlier, it is not feasible for the broadcasters to identify the number of subscribers in a multi-TV connection even by way of audit. The distributors do not share the details of the consumers of multi-TV household with the broadcasters. In any event, it is the choice of the consumers to opt for an additional connection based upon their viewing requirements and choices.

3. In our view, there is no requirement of a discount on MRP of TV Channels as in a Multi TV household, a subscriber is watching different channels and consuming different content at the same time depending upon the profile of the viewer. Consumers opt for multiple connections within same home to view channels of their choice at their convenience. Hence, such consumers of multi-home TV households should be treated as separate individual subscribers and accordingly should be required to pay the full subscription charges.

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Q6. Is there a need to review the ceiling on discount on sum of MRP of a-la-carte channels in a bouquet (as prescribed through the second proviso to clause 4 (4) of the Tariff Order 2017) while fixing the MRP of that bouquet by DPOs?

a. If yes, what should be the ceiling on such discount? Justify with reasons.

b. If not, why? Please provide justification for not reviewing the ceiling.

1. Some of the stakeholders have suggested that the broadcasters should be prevented from creating any bouquets as the broadcasters seek to push their less popular channels to the subscribers . In this regard, it is our submission that bundling of TV channels as bouquets, widens the subscribers' choice and base. This enables broadcasters, who operate in a two-sided market, to earn higher advertisement revenues which is used to cross-subsidize price paid by subscribers for either bouquet or a-la-carte channels. We recommend that the market should be de-regulated and the broadcasters and DPOs be allowed to execute market driven agreements. However, till the time this forbearance is achieved there is no reason why the broadcasters should not be permitted to create their bouquets. Besides, in the creative/manufacturing, the price for the end consumer is determined by the creator/manufacturer. The Authority has also stated in the Explanatory Memorandum of the 2022 Tariff Order that the "*broadcasters should be given full freedom and business flexibility to monetize their channels*." It is reiterated that such bouquets comprise of different channels bundled together keeping in view the choices of the household.

2. The Authority, after due consideration had allowed the broadcasters to offer a discount of 45% to the DPOs. The Authority in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order, 2022 ("**2022 Tariff Order**"), had stated as under:

   "*87. The Authority after due consideration of all these factors has prescribed a maximum discount of 45% on the sum of a-la-carte channels for arriving at the bouquet prices. A careful analysis of existing bouquets reflects that the prescribed maximum discount will cover almost 70% of existing bouquet offerings. In effect broadcasters will not be required to alter their bouquet composition or prices.*"

3. In any event, the distributors are entitled to get a mandatory 20% distribution fees on MRP of pay channels and an additional 15% incentive on MRP. If at all the distributors are allowed to offer discounts, the same should be from the discounts/incentive (i.e. 20% Distribution fee and 15% incentive) the distributors get from the broadcasters, without interfering with the composition and price of the bouquets created by the broadcasters.

Q7. Whether the total channel carrying capacity of a DPO be defined in terms of bandwidth (in MBPS) assigned to specific channel(s). If yes, what should be the quantum of bandwidth assigned to SD and HD channels. Please provide your comments with proper justification and examples.

Q8. Whether the extant prescribed HD/SD ratio which treats 1HD channel equivalent to 2SD channels for the purpose of counting number of channels in NCF should also be reviewed?

a. If yes, should there be a ratio/quantum? Or alternatively should each channel be considered as one channel irrespective of its type (HD or SD or any other type like 4K channel)? Justify with reasons.

b. If no, please justify your response.

Q9. What measures should be taken to ensure similar reception quality to subscribers for similar genre of channels? Please suggest the parameter(s) that should be monitored/ checked to ensure that no television channel is discriminated against by a DPO. Please provide detailed response with technical details and justification.

1. Some of the stakeholders have suggested that the channel carrying capacity in terms of bandwidth may not be the most effective approach considering that the DPOs employ various technologies and methods. The said stakeholders are also of the view that there is no evidence to suggest that the DPOs have engaged in any practice to degrade the reception quality of any channel. In this regard, we submit that, with the advent of new technologies for compression of channels, there is no requirement to define channel carrying capacity in terms of bandwidth however, the DPOs registration should be evaluated against an enhanced channel carrying capacity. We further recommend that DPOs should be mandated to maintain same reception quality for different channels as the broadcasters invest significant amounts towards provisioning of signals of a television channel and it is important that the consumers are offered the best viewing experience which is not possible if the same reception quality is not maintained by the distributor. Further, some of the stakeholders have suggested that there should be an auction process for carrying TV channels. In this regard we emphasize that auction process should not be allowed as the same would lead to abuse of process of law and will hinder the consumer interest.

2. Further certain DPOs have suggested that the present bandwidth ratio between HD and SD channels should be retained. We recommend that an SD channel cannot be the basis for defining the amount of space consumed by an HD channel as both these channels are compressed to different levels depending upon the technologies employed by the DPOs. In addition to the above, it should be mandated that the privilege of "*must provide*" can only be availed by the DPO if the DPO has the capacity to carry all registered TV channels.

Q10. Should there be a provision to mandatorily provide the Free to Air News / Non-News / Newly Launched channels available on the platform of a DPO to all the subscribers?

a. If yes, please provide your justification for the same with detailed terms and conditions.

b. If not, please substantiate your response with detailed reasoning.

1. The distributors have suggested that they should not be compelled to carry specific channels on their platform as no commercial organization can be directed to provide their product/ service for free without adequate compensation.

2. We, reiterate our request that the broadcasting sector should be deregulated and the agreements executed between the broadcasters and the DPOs should be market driven. However, till such time that the B&CS sector gets de-regulated, all the permitted channels whether FTA/non-news/ newly launched channels shall be mandatorily available on the DPOs platform as it is for the consumer to decide the channels they choose to watch. Any restriction on the viewing choices of the consumers would amount to interfering with the choice of the consumer.

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Q11. Should Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 be made applicable to nonaddressable distribution platforms such as DD Free Dish also?

Q12. Should the channels available on DD Free Dish platform be mandatorily made available as Free to Air Channels for all the platforms including all the DPOs?

Q13. Whether there is a need to consider upgradation of DD Free Dish as an addressable platform? If yes, what technology/ mechanism is suggested for making all the STBs addressable? What would be the cost implications for existing and new consumers? Elaborate the suggested migration methodology with suggested time-period for proposed plan. Please provide your response, with justification.

1. Some of the stakeholders have suggested that DD Free Dish is a DTH operator and is bound by the extant TRAI Regulations which provide that a broadcaster cannot discriminate between the distributors of television channels. They further stated that broadcasters are offering their Pay channels for free to DD Free Dish and charging distributors for the same channels. They have also placed reliance on the judgment of the TDSAT in *Videocon D2H v. Culver Max* to submit that DD Free Dish is like any other service provider is amenable to TRAI Regulations. They further suggested that the signals of DD Free Dish should be transcripted in addressable format.

2. It is our submission that Prasar Bharati cannot be equated with private distributors of television channels as it forms a distinct class/has an important, distinct mandate. DPOs are seeking parity with Prasar Bharati, which stands on a completely different footing.

3. Prasar Bharati is a statutory autonomous body created under the Prasar Bharati Act with the objective to establish a Broadcasting Corporation for India (to be known as Prasar Bharati), to define its composition, functions and powers and to provide for matters connected therewith or incidental thereto. Section 12 of the Prasar Bharati Act vests Prasar Bharati with wide powers and functions to organize and conduct public broadcasting services and lays down objectives which guide Prasar Bharati in carrying out the public broadcasting services.

4. Prasar Bharati is not equal and similarly placed to other distributors. Prasar Bharati is a statutory autonomous body created under the Prasar Bharati Act and a public service broadcaster created for providing television channels free of cost to the viewers.

5. Prasar Bharati ought to be treated differently as a distinct and separate class from those in the private sector and there exists an intelligible differentia which has a rational nexus with the main objects as per Section 12 of the Prasar Bharati Act. Treating Prasar Bharati at par with other private distributors would amount to treating '*unequals equally*'.

6. Prasar Bharati is providing its DTH services to the public for free. Prasar Bharati pursuant to its policy framed under the Prasar Bharati Act offers vacant slots on its DTH platform for bidding by private broadcasters regardless of whether such channels are pay channels or free to air channels. Such channels become available on the Prasar Bharati's DTH platform and are available for viewing by the general public who are not required to make any monthly recurring payment for watching channels shown on Prasar Bharati's DD DTH service.

7. Private broadcasters who secure slots as per the Prasar Bharati's slot sale policy, pay monetary consideration to Prasar Bharati for carrying their TV channel on its DTH service. As per the scheme of the Prasar Bharati Act, the revenue generated by Prasar Bharati by offering vacant slots is used in achieving the objectives as laid down in the Prasar Bharati Act. Any interference with the current working model of Prasar Bharati would render the objective of the Prasar Bharati Act as well as the E-auction policy otiose.

8. Private broadcasters pay carriage fees to Prasar Bharati for carrying their TV channels on its DTH platform. In case the mere provisioning of TV channels on Prasar Bharati's DTH Platform would be deemed to make a channel as a Free-to-Air Channel for private distribution platform operators, broadcasters will not participate in e-auction of the vacant slots of the Prasar Bharati's DTH Platform, thus adversely affecting the operations of Prasar Bharati.

9. It is also important to mention here that the aforesaid judgment of the TDSAT has been challenged before the Hon'ble Supreme Court and is pending adjudication.

10. Further as regards the suggestion made by some DPOs that DD Free Dish should offer its signals in encrypted form, we are of the view that the same will have cost implications for existing and new consumers since presently the signals of DD Free Dish are unencrypted, the consumers are able to access DD Free Dish at a minimal cost. The purpose of DD Free Dish is to offer public broadcasting services to the consumers in every nook and corner of the country who have no financial capacity to access television channels. If the signals of DD Free Dish are encrypted, it will be an additional burden upon the consumers and will defeat the objective of constitution of Prasar Bharati.

Q14. In case of amendment to the RIO by the broadcaster, the extant provision provides an option to DPO to continue with the unamended RIO agreement. Should this option continue to be available for the DPO?

a. If yes, how the issue of differential pricing of television channel by different DPOs be addressed?

b. If no, then how should the business continuity interest of DPO be protected?

Q15. Sometimes, the amendment in RIO becomes expedient due to amendment in extant Regulation/ Tariff order. Should such amendment of RIO be treated in a different manner? Please elaborate and provide full justification for your comment.

1. Some of the stakeholders have suggested that DPOs should be allowed to choose if they wish to continue with the existing RIO or to shift to the new RIO. They have further raised a grievance that the broadcasters RIO are not approved by TRAI whereas the DPOs RIO are to be approved by TRAI. They have also suggested that in case changes have been carried out in the RIO due to amendment in TRAI Regulations/ Tariff Order, an addendum can be signed between the broadcasters and the DPOs modifying only the relevant clauses of the existing RIO. It is important to note that the DPOs on one hand want to retain the right to choose the between the existing RIO and the amended RIO, while on the other hand they have been seeking uniformity against differential pricing in RIOs. Accordingly, we recommend that in case of amendment of RIO by the broadcasters, the DPOs should mandatorily shift to the amended RIO to maintain uniformity and to ensure that similar benefits reach the consumers. In case the amendment is to be carried out due to change in regulations, the expiry date of the amendment shall be co-terminus with the prevailing RIO.

2. The submission of the distributors that the broadcaster's RIO is not approved by TRAI is incorrect as the extant TRAI Regulations mandate that the broadcasters should submit their RIO to the Authority. In case the broadcasters RIO is not in accordance with the TRAI Regulations, the Authority may direct the broadcaster to modify their RIO..

Q16. Should it be mandated that the validity of any RIO issued by a broadcaster or DPO may be for say 1 year and all the Interconnection agreement may end on a common date say 31st December every year. Please justify your response.

1. The distributors have suggested that the term of the Interconnection Agreement should not be fixed as it would deprive the service provider of their flexibility. In this regard, we also suggest that though the agreement between the broadcaster and the DPO should be for a fixed term, the same should not have a common expiry date as it is very difficult for the broadcasters and the DPOs to give effect to any amendment to the agreement including change in channel launch, pricing, etc.

Q17. Should flexibility be given to DPOs for listing of channels in EPG?

a) If yes, how should the interest of broadcasters (especially small ones) be safeguarded?
b) If no, what criteria should be followed so that it promotes level playing field and safeguard interest of each stakeholder?

Q18. Since MIB generally gives permission to a channel in multiple languages, how the placement of such channels may be regulated so that interests of all stakeholders are protected?

1. The distributors have suggested that the placement of channels on EPG should not be regulated and the flexibility should be with the DPOs to place any channel on the EPG. In our view, the Authority, in order to protect the interest of the stakeholders has mandated that the channels of the same language within the same genre shall appear together consecutively on the EPG. The Authority has given adequate flexibility to the DPOs to place their channel on their EPG once their language and genre is defined by the broadcaster. It is important that the Authority continues to monitor the same to prevent the DPOs for misusing the flexibility granted to them. For example, it has been noticed that the DPOs place their channels on different LCNs while leaving huge gaps between them which causes inconvenience to the consumers to search for a channel. This also causes discrimination between different channels as the DPOs allocate arbitrary LCN to the broadcasters with whom they have a dispute.

Q19. Should the revenue share between an MSO (including HITS Operator) and LCO as prescribed in Standard Interconnect Agreement be considered for a review?

a. If yes:

i. Should the current revenue share on NCF be considered for a revision?

ii. Should the regulations prescribe revenue share on other revenue components like Distribution Fee for Pay Channels, Discount on pay channels etc.? Please list all the revenue components along with the suggested revenue share that should accrue to LCO.

Please provide quantitative calculations made for arriving at suggested revenue share along-with detailed comments /justification.

b. If no, please justify your comments.

1. No Comments

Q20. Should there be review of capping on carriage fee?

a. If yes, how much it should be so that the interests of all stakeholders be safeguarded. Please provide rationale along with supporting data for the same.
b. If no, please justify how the interest of all stakeholders especially the small broadcasters can be safeguarded?

Q21. To increase penetration of HD channels, should the rate of carriage fee on HD channels and the cap on carriage fee on HD channels may be reduced. If yes, please specify the modified rate of carriage fee and the cap on carriage fee on HD channels. Please support your response with proper justification.

Q22. Should TRAI consider removing capping on carriage fee for introducing forbearance? Please justify your response.

1. Some of the stakeholders have suggested that the DPOs should be allowed to charge carriage fees in line of the carriage fees shared by DD Free Dish. In our view, the concept of carriage fee should be removed completely. Until this is achieved, capping on carriage fees should continue as DPOs demand unusually high carriage fees. The Authority should endeavor to phase out the concept of carriage fees. In any event, the distributors have multiple sources of revenue such as incentive, distribution fee, marketing fee, placement fee, etc., in addition to NCF.

Q23. In respect of DPO's RIO based agreement, if the broadcaster and DPO fail to enter into new interconnection agreement before the expiry of the existing agreement, the extant Interconnection Regulation provide that if the parties fail to enter into new agreement, DPO shall not discontinue carrying a television channel, if the signals of such television channel remain available for distribution and the monthly subscription percentage for that television channel is more than twenty percent of the monthly average active subscriber base in the target market.

Does this specified percentage of 20 percent need a review? If yes, what should be the revised prescribed percentage of the monthly average active subscriber base of DPO. Please provide justification for your response.

1. This specified percentage of 20% does not need a review. In fact 20% threshold should be maintained and 6 months average shall be considered for deciding the threshold for removal of a channel as the DPO cannot decide on this threshold taking short term data of 1 day, 1 week or a month.

Q24. Whether the extant charges prescribed under the 'QoS Regulations' need any modification required for the same? If yes, justify with detailed explanation for the review of:
1. Installation and Activation Charges for a new connection
2. Temporary suspension of broadcasting services
3. Visiting Charge in respect of registered complaint in the case of DTH services
4. Relocation of connection
5. Any other charges that need to be reviewed or prescribed.

Q25. Should TRAI consider removing capping on the above-mentioned charges for introducing forbearance? Please justify your response.

1. No comments

Q26. Whether the Electronic Programme Guide (EPG) for consumer convenience should display

a. MRP only

b. MRP with DRP alongside

c. DRP only?

1. Few of the stakeholders have suggested that DRP should be displayed at EPG. In our view, EPG should only display the amount being charged to the consumer for subscribing to the said channel/ bouquet as multiple details will confuse the customers. However, in case DRP is lower than the MRP then the same should also be displayed on the EPG for the benefit of the consumer. Additionally, in case there is a promotional offer from the broadcaster, the promotional MRP should reflect in the EPG so that the benefit can be passed on to consumers.

Q27. What periodicity should be adopted in the case of pre-paid billing system. Please comment with detailed justification.

1. The distributors have suggested that the current billing period is working fine. However, we recommend that the periodicity of the billing system (pre-paid and post-paid) should be kept uniform, i.e., one calendar month, which is available to the DPOs. We also recommend that the broadcaster should have the ability of pre-paid billing.

Q28. Should the current periodicity for submitting subscriber channel viewership information to broadcasters be reviewed to ensure that the viewership data of every subscriber, even those who opt for the channel even for a day, is included in the reports? Please provide your comments in detail.

1. The distributors have suggested that the current practice should continue. In our view, the minimum subscription period should be one calendar month to maintain parity between billing cycle of broadcaster and DPOs. We further recommend that subscriber report should be submitted on a monthly basis displaying subscriber count for each channel/ bouquet for each day of the month instead of 7th/ 14th/ 21st and 28th of the month. There is no concept of daily subscription as the same is susceptible to misuse by the DPOs as they can choose to activate relevant channels only at the time when a particular content is being telecast.

Q29. MIB in its guidelines in respect of Platform Services has inter-alia stated the following:

a. The Platform Services Channels shall be categorised under the genre 'Platform Services' in the EPG.

b. Respective MRP of the platform service shall be displayed in the EPG against each platform service.

c. The DPO shall provide an option of activation /deactivation of platform services.

In view of the above, you are requested to provide your comments for suitable incorporation of the above mentioned or any other provisions w.r.t. Platform Services channels of DPOs in the 'QoS Regulations'.

1. The distributors have suggested that the conditions with respect to platform services can be included in QoS Regulations. In this regard, it is noted that the platform services are subject to light-touch regulations unlike the broadcasters' television channels which are highly regulated. We recommend that both the platform service channels and the broadcasters' television channel should not be subject to economic regulations. The platform services may be brought within the ambit of QoS Regulations only to the extent that the quality of the services and the EPG, the LCN listing and the related descriptors are regulated. The platform services should be listed together and numbered sequentially in both the LCN and EPG.

Q30. Is there a need to re-evaluate the provisions outlined in the 'QoS Regulations' in respect of:

a. Toll-free customer care number
b. Establishment of website
c. Consumer Corner
d. Subscriber Corner
e. Manual of Practice
f. Any other provision that needs to be re-assessed

Please justify your comments with detailed explanations.

1. The DPOs have suggested that the QoS Regulations should continue to maintain transparency and any non-compliance for a consecutive period of three years should amount to termination of license of the DPOs. In our view, the Authority should initiate action immediately in case of any regulatory non-compliance of the 'QoS' Regulations by the DPOs. Allowing the non-compliance to continue for consecutive three years would dilute the overall regulatory objective and will also impact the consumers.
2. We also suggest that the Authority should effectively implement the QoS Regulations so as to protect the interest of the consumers and maintain transparency.

Q31. Should a financial disincentive be levied in case a service provider is found in violation of any provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?

a. If yes, please provide answers to the following questions:

i. What should be the amount of financial disincentive for respective service provider? Should there be a category of major/ minor violations for prescription of differential financial disincentive? Please provide list of such violation and category thereof. Please provide justification for your response.

ii. How much time should be provided to the service provider to comply with regulation and payment of financial disincentive and taking with extant regulations/tariff order? Provider to comply with regulation and payment of financial disincentive. and taking with extant regulations/tariff order?

iii. In case the service provider does not comply within the stipulated time how much additional financial disincentive should be levied? Should there be a provision to levy interest on delayed payment of Financial Disincentive?

1. If yes, what should be the interest rate?
2. If no, what other measures should be taken to ensure recovery of financial disincentive and regulatory compliance?

iv. In case of loss to the consumer due to violation, how the consumer may be compensated for such default?

b. If no, then how should it be ensured that the service provider complies with the provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?

1. Distributors are of the view that introduction of financial disincentive would burden the stakeholders of the industry. Instead, they have suggested that the broadcasters should withhold signals of the DPOs who fail to undergo technical audit for two consecutive years. Any DPO engaging in piracy should also be denied access to broadcaster's channels.
2. We welcome the suggestion of introduction of financial disincentive as this will ensure compliance of the existing regulations. However, such financial disincentive should be without prejudice to other rights that the broadcaster may have against the DPO. It is recommended that the financial disincentives be preceded by comprehensive monitoring of compliance. For example, while the existing regulations provide for disincentives for core issues of audit, the monitoring and efficacy of these ought to be reviewed with the view to realizing their regulatory objectives.

Q.32 Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in the present consultation.

1. Some of the distributors have suggested that they should have the right to unbundle broadcaster's bouquets. We reiterate that the broadcasters being the owner of the television channels have the right to package their channels in the manner they wish to and any restriction on the said right would amount to violation of freedom of their speech and expression.

OTHER RELEVANT ISSUES FOR IMMEDIATE ATTENTION AND CONSIDERATION:

Amongst the issues raised in the present CP, we request TRAI to please also consider the following critical issues to address the challenges currently being faced by the broadcasting industry:

1. CAS SMS and MUX vendors should be brought under the ambit of TRAI.

2. Audit under regulation 15(1) should be done away with. The right to audit should remain with the broadcaster and in case of compelling circumstances, the Broadcaster should be allowed to re-audit a DPO more than once a year. We propose that each broadcaster shall endeavour to do 60% subscriber audits in a year. All related issues must be addressed appropriately in the Audit Manual.

    i. The provision for DPO caused Audit should be removed. This provision is being misused by a majority of the DPOs. In our experience of conducting Subscriber Audits in the last four years, almost all DPO caused Audits have not thrown any significant discrepancy, whereas majority of Broadcaster caused Audits show large discrepancy in subscriber reporting and System Fitness.
    ii. Our recommendation is that the Subscriber Audit should only be through a Broadcaster caused Audit, by TRAI empanelled Auditors.

3. It is reiterated that the minimum subscription period for a channel/bouquet subscribed by a subscriber should be a minimum for one month as the published MRP is on monthly basis.

4. Presently, in majority of cases DPOs are not allowing Broadcasters to audit under regulation 15(2). The rights remain on paper only. Strict penalty should be levied on DPOs for not allowing/delaying audit under regulation 15(2). Additionally, in such cases if the DPO resorts to delaying tactics, then the audit ought to convene from the date specified by the Broadcaster, failing which the Broadcaster may disconnect signals after giving notice.

5. We note that MSOs, DTH and HITS operators are required to preserve unedited data of CAS and SMS for a period of 2 years. It is recommended that the 2 year period should be increased to 3 years, as has been prescribed for IPTV operators in Schedule X of the Interconnection Regulations dated September 14, 2023. This is without prejudice to our right to make separate submissions in respect of the Interconnect Regulations dated September 14, 2023 issued by TRAI.

6. Regulation should be introduced to keep mandatory provision for DPO to provide State wise report.

7. A provision should be included in the regulations requiring DPOs to generate and provide MSR strictly from the system of the DPO and manually prepared MSR should not be allowed.

8. DPOs should be penalized for changing LCN of the channels without informing the broadcasters (in writing) in advance and prior to expiry of the prescribed period during which LCN cannot change.

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9. Any changes in the EPG related to channel LCN, rank and genre without prior intimation and approval from the broadcaster should not be permitted.

10. There are certain issues in the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Fifth Amendment) Regulations, 2023 dated September 14, 2023 ("DRM Regulation") that need to be addressed, in the absence of which the provisions of the DRM Regulation are susceptible to misunderstanding and incorrect application, including and not limited to the need for a clear, and legitimate definition for Unique Consumer Subscription. We request the TRAI to address this matter, considering the inputs and reservations of the Broadcasters, and we reserve the right to submit a separate representation, in this regard.

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