

Only by Email: advbcs-2@traf.gov.in, jtadvbcs-1@traf.gov.in

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Shri Anil Kumar Bhardwaj
Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi – 110002

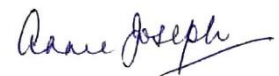
Dear Sir,

Re: NBDA Comments on TRAI Consultation Paper dated 8th August 2023 on Review of Regulatory Framework for Broadcasting and Cable Services

Attached please find comments of NBDA on the TRAI Consultation Paper dated 8.8.2023 on Review of Regulatory Framework for Broadcasting and Cable Services.

Thanking you,

Yours Faithfully,



Annie Joseph
Secretary General

Encl: As above

CC: Mr. Avinash Pandey, President, NBDA

NBDA Comments on TRAI Consultation Paper dated 8th August 2023 on Review of Regulatory Framework for Broadcasting and Cable Services

The News Broadcasters & Digital Association (NBDA) (formerly known as News Broadcasters Association (NBA), is an association of 24x7 television and digital broadcasters which broadcast and/or publish news and current affairs programmes.

NBDA represents several important and leading national and regional private news and current affairs broadcasters who run news channels and digital platforms in Hindi, English, and Regional languages.

At the outset, NBDA would like to appreciate this initiative by TRAI of circulating a Consultation Paper on '**Review of Regulatory Framework for Broadcasting and Cable Services**' ('**Consultation Paper**').

- i. The Regulatory Framework consisting of the Telecommunications (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017, the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, and the Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017, (collectively referred as NTO-1) was implemented by TRAI w.e.f. 1.02.2019.
- ii. NTO-1 was a result of a comprehensive review of the erstwhile regulations and the desire of TRAI to have a framework that ensures *inter alia* "transparency, non-discrimination and non-exclusivity for all stakeholders in the value chain".¹
- iii. NTO-1 empowered the broadcasters to determine the maximum retail price ('MRP') of their channels and bouquets, assured the Distribution Platform Operators ('DPOs') of a dedicated source of revenue² in the form of Network Capacity Fee ('NCF') and allowed subscribers to exercise their choice when selecting channels either on a la carte basis or from bouquets³.
- iv. NTO-1 was subject to extensive legal challenge and scrutiny and many concerns and apprehensions were raised by the industry and the consumers on the new regulations and its proper implementation. After holding numerous meetings, open house discussions in various

¹ Paragraph 15 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth)(Addressable Systems) Tariff Order, 2017

² Paragraph 77 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth)(Addressable Systems) Tariff Order, 2017

³ Paragraph 88 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth)(Addressable Systems) Tariff Order, 2017

parts of the country with all the stakeholders, NTO-1 was finally implemented by TRAI in February 2019.

- v. NTO-1 was subsequently amended in 2020 vide the NTO-2, which consisted of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020; Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020; and Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) (Third Amendment) Regulations, 2020.
- vi. The Regulatory Framework was further amended on 22.11.2022 and was implemented with effect from 1.02.2023 to address some difficulties faced by the broadcasters due to NTO-2 regulations.
- vii. Through the present Consultation Paper, TRAI now seeks to address *"the remaining issues pertaining to Tariff, Interconnection and Quality of Service of Broadcasting and Cable services"*⁴.
- viii. That the manner in which the emerging digital technologies of content distribution and dissemination are not regulated at present, NBDA seeks deregulation of the linear TV or broadcasting sector.
- ix. That the best recourse would be to adopt forbearance regime and permit the market forces to determine various issues including pricing of channels. The existing regulatory restraints are not only making the entire TV viewing experience unattractive but also unaffordable to the consumers.
- x. That in view of the above, the concerns are no longer confined to questions that have been raised by TRAI for consultation. The satellite TV broadcast industry is on the cusp of becoming extinct on account of onerous, and prescriptive regulations being made applicable to them in contrast to other content mediums, which are rightly left to be determined and run by market forces and by adopting the policy of forbearance.
- xi. That before answering the questions posed for consultation, NBDA would also like to draw the attention of TRAI to certain concerns which arise from the Consultation Paper, which require discussion as any incorrect assumptions may result in an inaccurate hypothesis, which will not serve the interest of any stakeholder. The concerns are given below:-

⁴ Paragraph 1.26 of TRAI Consultation Paper on Review of Regulatory Framework for Broadcasting and Cable services

An incorrect comparison has been drawn between the bouquets of the broadcasters and DPOs

- (a) That Paragraph 1.23 (a) of the Consultation Paper, states that *"when MSOs form bouquets, they are costlier as compared to bouquets formed by broadcasters as they get channels on a-la-carte price or MRP. Hence, there is no parity in bouquets formed by broadcasters and MSOs."*
- (b) That in this regard, it is relevant to note that DPOs generally makes DPO bouquets/packs by combining the a-la-carte pay channel(s) and/or the bouquet(s) of pay channels made by different broadcasters. For example, if a bouquet offered by a DPO has 100 Pay TV channels, there may be a-la-carte channels as well in such DPO bouquet. Most channels in the bouquet will be composed of the broadcaster's bouquet(s), which is already discounted. Hence, it is incorrect to suggest that the bouquets formed by DPOs are expensive as they get channels at a-la-carte price or MRP. In fact, by offering an additional discount of 15%, the bouquets formed by DPOs can be even more discounted when compared with the standalone prices of such a-la-carte channels and the broadcaster bouquets forming part of such DPO bouquets.
- (c) That it is also incorrect on the part of the DPOs to suggest that they understand consumer preferences better than the broadcasters as they interact with the consumers. To assume that the consumer is a passive stakeholder and depends on DPOs' advice for subscribing to channels/bouquets is a flawed assumption. The New Regulatory Framework is based on certain basic premises and any compromise with such premises will adversely affect the entire framework. The DPO acts as an intermediary as the role of DPOs is to re-transmit the signals of TV channels to the consumers. It is the broadcaster who, as owner of content, decides channel packaging and its pricing and is allowed to bundle TV channels and declare bouquet prices as per the prescribed framework. The DPOs are required to make available a-la-carte channels and the broadcasters' bouquets to their subscribers.
- (d) That therefore, it is not correct for the DPOs to suggest that they should be allowed to offer a discount of 45% akin to the discount allowed to be offered by the broadcasters while forming their bouquets. The broadcasters are owners of content and have the freedom to price their offering as per their business model. However, the DPOs role as stated herein above is that of an intermediary i.e., re-seller. If the cost of a TV channel or bouquet to DPO is approximately 100-35%(based

on the maximum payout to DPO), the question arises as to how it would be economically possible for the DPO to offer the same at 100-45%.

- (e) That further, if the DPOs are really interested in passing on the benefits to the consumers, then the same can be done by way of reduced NCF as the Regulations prescribe maximum NCF, and the DPOs are allowed to offer any reduced NCF. The same is also seen in the industry, wherein there is up to 50% reduction in the NCF by some players.
- (f) That the DPOs demand greater flexibility in bouquet formation and are driven by some motive wherein they may be willing to undermine the broadcaster's bouquets by pushing their packs/bouquets, which are made of hundreds of channels, making it difficult for the consumer to actually compare the prices and exercise his/her choice. This may completely distort the MRP regime as envisaged by the NRF.
- (g) That in Paragraph 1.23 of the Consultation Paper, it is also noted that DPOs have objected to formation of Multi Broadcaster bouquet.
- (h) That such an objection of the DPOs does not appear to be logical, when according to recent reports the DPOs themselves have through the Ministry of Information & Broadcasting (MoI&B) requested for the TRAI to include the issue of granting autonomy to TV distributors in bouquet formation in the Consultation Paper.
- (i) That there is no reason why such autonomy is being sought by DPOs for the purpose of forming a distributor bouquet, when the same cannot be offered at a stage before by the broadcasters by collaborating with other broadcasters and offering multi-broadcaster bouquets.

The hypothesis that broadcasters push for unwanted channels is incorrect:

- (j) That there is no pushing of 'unwanted channels' by broadcasters, as pointed out by DPOs. The broadcasters bundle channels, keeping in view various aspects like viewer requirement, variety of content, cost, region, language, right mix etc. and comply with the bundling conditions prescribed in the regulatory framework for bouquet formation. Hence, it is incorrect to state that the broadcasters push 'unwanted' or 'unpopular' channels.

- (k) That the DPOs have essentially declared the Distributor Retail Price ('DRP') which is same as the MRP declared by the broadcaster, in spite of the fact that they are allowed to offer DRP which is lower than MRP in the interest of the consumers. The DPOs can adjust such discounts from the distribution fee and the incentives that the DPO gets from the broadcaster. On the one hand, the DPOs have requested for flexibility in offering discounts up to 45%, similar to the broadcaster, but on the other hand, they have failed to offer discounts on the DRP vis à vis the MRP. The dichotomy on the part of the DPOs is apparent wherein their ask for higher discounts appears to be an eyewash, which has been raised with ulterior motives to gain control over bouquet formation and make pricing opaque for the consumers.

Demand for unbundling of broadcaster bouquets is untenable and against the founding pillars of the NRF:

- (l) That at present, the subscriber can choose from the following options or a mix of any :-
- A-la-carte channels.
 - Bouquets offered by the Broadcasters.
 - Bouquets offered by the DPO.
- (m) That the DPO, who has signed an agreement with the broadcaster is mandated to carry the broadcaster's channels on an a-la-carte basis. To ensure that the real choice of selection remains with the subscribers, the DPO is also not allowed to break the broadcaster's bouquet. In addition, a DPO can form his bouquets, keeping in view the preferences of his target viewers. There is clear information on the MRP and DRP of the channel and bouquets being made available to the consumer. The subscriber has complete freedom to select and choose his package except for the mandatory Doordarshan channels being carried in national interest. A subscriber's choice is not affected rather, his choice is widened as bouquets are also available to him along with a-la-carte, and he can make an informed choice and selection based on his requirements and costs.
- (n) That the present mechanism of offering bouquets, whether of broadcasters or DPOs is to facilitate the consumer in availing his choice at favourable price points. The consumers who do not want to pay more are already going with the lower-price bouquet or a-la-carte selection to keep their payout in control.
- (o) That the entire regulatory framework will be jeopardised if unbundling of broadcaster's bouquet is allowed. It may be noted that any unbundling is *inter-alia* susceptible to misuse by

DPOs, will dissuade broadcasters from providing channels in bouquets and the relevance of a-la-carte / bouquet pricing will disappear, and the situation will be similar to the one that existed before the implementation of NTO.

- (p) That this will be a double whammy for the viewer, if a viewer needs say, channel X on an a-la-carte basis, then he will be required to pay MRP/DRP of that channel, say Rs. 10/-. But the same will be available to the DPO for Rs.5.5 if a 45% discount applies to that broadcaster's bouquet. The DPO will not only be giving non-transparent pricing to the viewer but will also take away the business flexibility of the broadcaster and start indulging in arm-twisting tactics by picking and choosing channels as per his whims and fancies, leaving out the other channels of the broadcasters. The situation will again push back the market to the old system that was prevalent prior to NTO. The choice of consumer will be highly restricted, and he will be forced to go for DPO packs only due to opaque and complicated pricing.

Issues for Consultation

A. Tariff related issues

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?

NBDA Comment:

That without prejudice to the submissions made by NBDA in the Consultation Paper with regard to implementing forbearance in the broadcasting sector, NBDA submits as under:-

1. That the distributors of television channels have multiple sources of revenue, of which NCF is one such stream. TRAI introduced NCF as a "*dedicated source of revenue*" for the DPOs, which was "*independent of revenue share*" from the subscription revenue of pay channels⁵. NCF was introduced to ensure better quality of services to the subscribers and assure the DPOs of a reasonable rate of return for their investments. DPOs are the only stakeholders in the entire value chain with such guaranteed revenue for each subscriber.
2. That NCF accounts for a significant portion of the monthly charges payable by the consumer. Even consumers opting only for Free-To-Air ('FTA') channels are required to pay the NCF charges compulsorily.
3. That the DPOs must be free to determine the NCF subject to the precondition that they shall be required to carry all the FTA channels by not making any additional imposition levy upon the FTA broadcasters in the form of Carriage Fee, Marketing, Promotional expenses, etc.
4. That freedom must be given to DPOs to fix NCF and compete. However, DPOs must ensure that all FTA channels especially the regional channels catering to any State, Town, Village are mandatorily carried and offered on their platform as a part of the NCF charged by the DPOs from the subscribers. This principal must be applied with greater strength and force in the case of News Channels which are in the nature of "essential services" and must therefore be subject to "must carry" obligation.
5. That DPOs may be allowed to offer variable NCF for different State/Cities/Towns/Villages. However, such variable NCF should not be allowed on parameters such as choosing any particular DPO pack, broadcaster packs, a-la-carte channels etc. It should be purely based on Region/State/City/Town/Village, and the DPO should file such variable NCFs with the Authority at least 30 days before making such modifications.
6. That since the business risk of having a variable NCF would solely be upon the DPOs, i.e., MSO & DTH operator, they should be permitted to decide upon the same. In case variable NCF is considered, there shall be no impact on any stakeholder.

⁵ Paragraph 77 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017

7. That the need of the hour is to ensure that the TV services aim to reach the unserved consumers, which constitute nearly 30% of the households.

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?

NBDA Comments:

1. That there should be forbearance, and DPOs must have full freedom to determine the NCF being charged for multi-TV home connection. However, the same should be subject to the condition that DPOs shall, as part of the NCF, mandatorily carry and offer all the FTA channels to the end customers.

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?

NBDA Comments:

1. That in view of the Digital Addressable System ('DAS'), each Set Top Box ('STB') is considered a separate connection and is technically capable of receiving a different set of channels meaning that each STB can be configured as per individual consumer choices.
2. That in a multi-TV home, viewers of each TV sets have different choices of channels therefore, each multi-TV connection should also be considered as a separate and distinct additional subscriber for reporting in the MSR by the DPO.
3. That the present regulatory framework accurately identifies each STB as one subscriber.

4. That since the distributors do not share the details of the subscribers with the broadcasters therefore, any such stipulation is susceptible to be misused specially by smaller / independent DPOs. Further, even if subscriber details were to be provided it would be impossible for the DPOs and/or broadcasters to ascertain veracity of such multi-TV connections *inter-alia* as the SMS-CAS systems are at the distributor level only. In other words, the control is with the distributor.
5. That consumers have a right to choose separate channels for the multi-tv homes. The consumer does not need to opt for the same channels/broadcaster bouquets for his second or third TV connection. Therefore, there is no rationale for Pay TV channels to offer discounts for each additional TV connection.

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

NBDA Comments:

1. That there is no need to review the ceiling on discount on sum of MRP of a-la-carte channels in a bouquet while fixing the MRP of that bouquet by DPOs.
2. That under the Interconnection Regulations, broadcasters must pay 20% of the MRP of a pay channel as Distribution Fees to the DPOs. In addition, broadcasters may offer DPOs a discount of up to 15% of the MRP of the pay channels. However, distribution fees along with the discounts cannot exceed the maximum threshold i.e., 35% of the MRP of pay channels.
3. That distributor should be allowed to offer discounts, however the same should be within the discounts that the distributor gets from the broadcaster. Hence, fixation of discount at 15% would be logical, assuming that the distributor is granted discount between 20% to 35% from the broadcaster.
4. That any increase in the discount offered by distributors would not be logical as distributors act as resellers and are not expected to sell the services below cost. Allowing distributors to offer discounts beyond 20% would raise questions as to how such discounting is possible

unless the distributors undermine competition by engaging in predatory pricing to gain undue share in market as the cost of their purchase will be higher than the sales price. Such practices if allowed, would not only distort competition but would also hamper the bouquet offerings by the broadcasters.

5. That under the New Regulatory Framework utmost importance is given to the choice of consumers wherein a consumer can opt for a-la-carte channels, broadcaster's bouquets, bouquets formed by the distributors or a mix thereof. This allows for the regulations to work in a fair and transparent manner for all the stakeholders in the value chain.
6. That the distributors enjoy greater pricing power while distributing channels and are allowed to offer channels at DRP, which may be lower than the MRP declared by the broadcasters and are entitled to offer genuine discounts in the normal business activities. For example, while broadcasters are not allowed to offer discounts on the MRP declared for a-la-carte Pay channels sold separately however, distributors are allowed to offer upto 15% discount, if they combine a-la-carte channels. The regulations ensures that there are no predatory discounts offered by any stakeholder which undermine competition and harm consumer interest in the long term.
7. That therefore, if a distributor is genuinely interested in offering more discount to the consumer, it can offer first level discount on the DRP followed by second level discount in terms of offering up to 15% discount on the bouquets. Hence, 15% discount is a fair discount which can be offered by the DPOs from their profit margin.
8. That there is no rationale or logic behind the demand of the distributors, who are seeking a review of the ceiling of 15 % discount on the sum of MRP of a-la-carte channels in a bouquet on account of broadcasters being allowed to offer 45% discount on their bouquets. The demand is not only devoid of any logic but also seeks to compare apples with oranges.
9. That this issue has been dealt with by TRAI. Para 42 of the Explanatory Memorandum of 2020 Tariff Order summarises the issue correctly and is reproduced below:

"The Authority has noted that in the new framework DPOs have flexibility to fix the DRP of pay channels with a condition that DRP of a channel should not be more than the MRP of that channel declared by the broadcaster. In case DPOs want to offer further discount on the bouquets, they can meet this objective by reducing the DRPs of pay channels forming the bouquet. Accordingly, the Authority has

decided to continue with the cap of 15% on maximum discount permissible to DPOs while forming their bouquets of pay channels”.

10. That therefore, it is clear that there is no merit in the demand of the DPOs for higher discounts or unbundling of broadcaster’s bouquets.
11. That there should be no ceiling on discounts on MRP on a la carte channels; on the contrary, there should be complete freedom of pricing given to pay broadcasters to effectively compete in the market.

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.

NBDA Comments:

1. That with changes in the compression and encoding technologies, it is now possible to carry more TV channels on the same spectrum. The WPC and NOCC have also done away with the requirement of minimum bandwidth assignment for TV channels.

Hence, it is important that the distributors of TV channels adapt these latest compression technologies and update their system to carry more TV channels. It is suggested that distributors should make their platform suitable to carry all the permitted channels in the country.

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.

NBDA Comment:

1. That DPOs should be mandated to maintain similar reception quality for all the channels for same genre. Good quality signal transmission is one of the primary objectives of digital system. Any unfavourable treatment to any channel is not welcomed be it the private channel or the channels of Prasar Bharati as it affects viewer experience. The DPOs should declare the total bandwidth availability and the allocation of bandwidth for channels on their website apart from reporting the same to TRAI.

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.

NBDA Comment:

1. That news and current affairs channels are critical for disseminating news and information. They enable the public to form opinion on various issues of national importance. Most news channels are FTA channels, which earn their revenues solely through advertisements. The survival of such channels will be jeopardized if they are not given the opportunity to reach viewer's homes.
2. That while the extant TRAI Regulations prescribe "Must Carry" conditions, the situation is different in practice. In spite of the regulatory framework, News Channels face numerous difficulties in carriage and placement of their channels on the distributor's platforms and in reaching the targeted viewers. News Channels have to incur exorbitant costs in the form of carriage and placement fees, which is a well-known fact.

Hence, with the development of compression technologies which enable distributors to enhance the capacity of their network, all News Channels should be compulsorily made available on the platform of DPOs and particularly it should be mandated that all FTA News Channels should be made available immediately in the distributor platform's basic tier.

3. That distributors already have a guaranteed source of revenue in the form of NCF of Rs. 130/-, which covers their cost of operations and profit margin. Therefore, it should be the duty of the DPOs to upgrade the platform to carry all News Channels which have received downlink permission relevant to their region.
4. That the concerns of FTA News Channels have been adequately reproduced in Paragraph 2.30 of the Consultation Paper, which states that *'News channels especially FTA news channels should be made available to the consumers "free of cost". The FTA News Channels must be declared as "public service". It is to be appreciated that the word "FTA" in its true sense never gets implemented wherein the consumer can enjoy these channels free of cost and on the contrary, it is the DPOs who are able to get these channels free of cost. Further, to add to the above DPOs have created a huge unregulated revenue stream for themselves at the cost of FTA News Broadcasters by*

creating marketplace which offers carriage, placement, landing pages, boot up screen, LCN activities and various other network related cost on discriminatory, non-transparent and unfair pricing. On the contrary, all the FTA channels must compulsorily be made available to the end consumer within the NCF charged by the DPOs. The consumer has already paid a Network Capacity Fee (NCF) and deserves to be compensated by ensuring that all FTA channels are being available for the said fee. To implement the same, Network Capacity should be increased from existing 200 to unlimited or to the extent that all FTA channels are made available. DPO shall also be given an option to charge the end consumer any amount of NCF which is required for the purpose of ensuring all FTA channels. Alternatively, unless being opted out by the consumer, all the FTA channels or at least the top 15 FTA news channels of all national + regional / vernacular languages (BARC data could be one means to determine the same or the age of the channels could be another method) must be mandatorily carried and made available’.

5. In so far as FTA News channels are concerned, it must be borne in mind that what is offered by the broadcasters for free must be made available to the end consumer for free. The market has already seen that even the most premium content is offered for free at the whims and caprice of a distributor. Therefore, making an argument of any capacity constraint while simultaneously practising the offering of content free of cost would be an inconsistent and a self-contradictory practice.
6. That TRAI should make it mandatory for DPOs to include FTA News Channels in all packs, including the base pack to reach the complete subscriber base, considering that advertisement sales are the only source of revenue for FTA Channels. DPOs must also run a scroll and intimate to their subscriber through available means about such FTA News Channels to ensure access and availability.
7. That no prejudice would be caused to any stakeholder or subscribers if all FTA News Channels were mandatorily placed on the platform of DPOs. Rather, such a requirement will benefit all the stakeholders involved with the DPOs being able to offer more variety to the consumers at the same cost, the consumers being able to receive diverse and multiplicity of viewpoints by watching different News Channels, and the broadcaster being able to expand its reach. There will also be less cord-cutting by consumers.
8. That in order to address the apprehension raised by Prasar Bharati regarding better bandwidth being given to private broadcaster’s vis-à-vis the mandatory channels of Prasar Bharati, it is submitted that any regulation which mandates free carriage must also ensure that

same is done in a non-discriminatory manner and without compromising on the provision of bandwidth capacity/reception quality in any manner.

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?

NBDA Comment:

1. That the stipulations pertaining to Carriage Fees and its capping under Tariff Order 2017 and Interconnection Regulations 2017 only should be applicable to the non-addressable distribution platform DD Free Dish.
2. That the Quality of Service Regulations 2017 should also be made applicable to the non-addressable distribution platform DD Free Dish in its entirety in order that the objective of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 ('Prasar Bharati Act') be achieved.
3. That the objectives of Prasar Bharati as enshrined under Prasar Bharati Act are as under:-
 - a. *"upholding the unity and integrity of the country and the values enshrined in the Constitution;*
 - b. *safeguarding the citizen's right to be informed freely, truthfully and objectively on all matters of public interest, national or international, and presenting a fair and balanced flow of information including contrasting views without advocating any opinion or ideology of its own;*
 - c. *paying special attention to the fields of education and spread of literacy, agriculture, rural development, environment, health and family welfare and science and technology;*
 - d. *providing adequate coverage to the diverse cultures and languages of the various regions of the country by broadcasting appropriate programmes;*
 - e. *providing adequate coverage to sports and games so as to encourage healthy competition and the spirit of sportsmanship;*
 - f. *providing appropriate programmes keeping in view the special needs of the youth;*
 - g. *informing and stimulating the national consciousness in regard to the status and problems of women and paying special attention to the upliftment of women;*
 - h. *promoting social justice and combating exploitation, inequality and such evils as untouchability and advancing the welfare of the weaker sections of the society;*

- i. safeguarding the rights of the working classes and advancing their welfare;*
- j. serving the rural and weaker sections of the people and those residing in border regions, backward or remote areas;*
- k. providing suitable programmes keeping in view the special needs of the minorities and tribal communities;*
- l. taking special steps to protect the interests of children, the blind, the aged, the handicapped and other vulnerable sections of the people;*
- m. promoting national integration by broadcasting in a manner that facilitates communication in the languages in India; and facilitating the distribution of regional broadcasting services in every State in the languages of that State;*
- n. providing comprehensive broadcast coverage through the choice of appropriate technology and the best utilisation of the broadcast frequencies available and ensuring high quality reception;*
- o. promoting research and development activities in order to ensure that radio and television broadcast technology are constantly updated; and*
- p. expanding broadcasting facilities by establishing additional channels of transmission at various levels.”⁶*

In view of the above, NBDA believes that Prasar Bharati was established to achieve the aforementioned objectives and is not a body which was established with any commercial interest or for revenue maximisation. Therefore, the aforementioned Regulations /Orders/ QoS as mentioned herein above should be harmoniously construed in line with the objectives herein above and the Regulations/Orders/ QoS should be made applicable to Prasar Bharati to the extent mentioned above.

B. Interconnection related issues

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?

NBDA Comment:

1. That the continuance of unamended RIO agreement by DPOs creates a situation in the market wherein effectively two different RIOs of a

⁶ Section 12(2) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990

broadcaster co-exist in the market at the same time, which is not desirable. Hence, it is important that after publication of the RIO by the broadcasters, all DPOs shall enter into a new RIO agreement with the broadcasters. Therefore, once amendment have been made to the RIO by the broadcasters the DPOs should not be allowed to continue with the unamended RIO agreement.

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.

NBDA Comment:

1. That whenever any change in RIO is necessitated on account of change in the regulatory framework, it is expedient that such changed RIO is signed by all the service providers as per the regulatory timelines.

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.

NBDA Comment:

1. That while it is reasonable to prescribe the validity of RIOs as being one year under the extant provision, however, no further conditions should be prescribed, as it will result in micro-management of the sector, which should be left open to the market forces.

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?

NBDA Comment:

1. That no further flexibility should be given to DPOs for listing of channels in EPG. Any EPG should have a logical numbering which should be easy for the viewers to understand.
2. That DPOs have sufficient flexibility in terms of arranging channels in genre-language combination and no further flexibility is required.

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?

NBDA Comment:

1. That the MIB grants permission to a channel in multiple languages, if so requested, however, the broadcaster is required to declare the genre and the language while declaring the channels under the RIO. Similarly, MoI&B puts all channels in news and non-news genres categories, however the broadcaster is required to declare the exact genre and the language at the time of reporting the same to TRAI. Hence, a single language should be declared by the broadcaster. In case, a channel has more than one language, then the primary language or the first language of the channel declared by the broadcaster should be considered by DPOs for placing the channel at appropriate place in the EPG.
2. That TRAI may, in consultation with broadcasters, prescribe a fair, reasonable, and non-discriminatory basis for allocation of EPG and LCN by DPOs in such a manner that there is no discrimination or arbitrariness being exercised by the DPO. While doing so, the existing broadcasters should be allowed to continue on same EPG and LCN since it would be disturbing viewers' experience as they have started recognizing presence of such channels in such EPG/LCN.

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?

NBDA Comment:

1. That there is no need to review the capping of the carriage fee, which has been fixed by NTO-2 [Telecommunication (Broadcasting & Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020].⁷
2. That it appears that an artificial scarcity has been created on the part of the DPOs to command unrealistic and high carriage fees especially from the broadcasters. To ensure that this scarcity is maintained and artificial demand is created for carriage of the channels, the DPOs have not upgraded the system. Therefore, there is a requirement for the DPOs to be mandated to upgrade their systems to increase their channel carrying capacity to be able to carry all the channels which have received permission to downlink in the country.

⁷ Paragraph 36 of the Explanatory Memorandum to the Telecommunication (Broadcasting & Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020

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.

NBDA Comment:

1. That till such time the DPOs are not mandated to upgrade their system for 100% carriage of all the TV channels with Downlink permission in the country, the capping on the carriage fees should continue, which would act as a deterrent and prevent DPOs from demanding unusual high carriage fees.
2. That to increase penetration of HD channels, which have been adversely affected after NTO, the rate of carriage fees of HD channels and the cap on carriage fees of HD channels should be made equal to SD channels. There is no justification for making a higher threshold for HD channels merely due to advancements in compression and encoding technologies.
3. That it must further be appreciated that capping of Carriage Fee is not being implemented in its true letter and spirit because of MSOs being conglomerate of multiple MSOs and LCOs. Each of these MSOs are seeking a review of the cap on Carriage Fee and if the said provisions are implemented in a manner to unjustly enrich the MSOs, the same is likely to fail.

At the same time, it is reiterated that the capacity of DPOs should be enhanced to ensure carriage of all channels in the country, especially FTA News Channels, which must be mandatorily carried by the DPOs.

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

NBDA Comment:

1. That TRAI should move towards forbearance for all the stakeholders in the value chain in a planned manner. If forbearance is introduced in only selected fields, it can distort the regulatory framework.
2. That the need of the hour is for DPOs to be mandated to achieve 100% channel carrying capacity (with respect to channels with Downlinking permission) in a phased manner which will give a democratic right to every channel which has been granted Downlinking permission by MoI&B to get placed on DPO platforms and be viewed by people.

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.

NBDA Comment:

1. That in view of NBDA's comments in response to Question 10, the threshold of 20% active subscribers of DPO will have to be reviewed by the TRAI.

C. Quality of Service related issues

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:

- a. **Installation and Activation Charges for a new connection**
- b. **Temporary suspension of broadcasting services**
- c. **Visiting Charge in respect of registered complaint in the case of DTH services**
- d. **Relocation of connection**
- e. **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.

NBDA Comment:

1. That TRAI should move towards forbearance for all the stakeholders in the value chain in a phased manner. Hence, TRAI can remove the capping on the charges levied by DPOs. However, there should be an effective mechanism for consumer redressal of grievances and complaints.

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

- a. MRP only**
- b. MRP with DRP alongside**
- c. DRP only?**

Justify your response by giving appropriate explanations.

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

NBDA Comment:

1. That for consumer convenience, the EPG should only display the MRP declared by the broadcasters.
2. That the DPOs should be mandated to give pre-paid bills to their consumers on a monthly basis, as is done in the case of post-paid billing. The bill can be in the form of a soft copy or physical copy as per the option chosen by the consumer. Inclusion of multiple details will result in cluttering of the EPG and will not only cause inconvenience to the consumer but may also confuse the consumer. Having said that, in case DPO may have chosen DRP lower or different than the MRP, then it is imperative that the EPG should display MRP with DRP alongside.

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.

NBDA Comment:

1. That the current periodicity for submitting subscriber channel viewership information to broadcasters should 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, as this will help in checking any unethical practices and will further strengthen the CAS and SMS systems, it will also pave the way for a minimum subscription duration of one month for the subscriber.
2. That subscription for 1-day or 7-days is not practical for TV viewing in India as the TV channel rates are very reasonable and are considered affordable by most sections of people. Hence, the demand for such very short-term duration subscriptions will be minuscule.
3. That in view of the above, it is recommended that the periodicity of the billing system in case of both pre-paid as well as postpaid should be uniform, i.e., 1 calendar month.

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 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'.

NBDA Comment:

Without prejudice to the submissions made in this Consultation Paper by NBDA, it is submitted:-

1. That the MoI&B Guidelines for Platform Services can be adopted as it is in QoS Regulations. In so far as issue 29(a) of the Consultation Paper is concerned, it is important to reiterate that mandate of the safeguards that are built into the Regulations should be reinforced to ensure that all platform services of the same genre and language are listed together and numbered consecutively / sequentially in both the LCN and EPG. This will ensure that platform services are not scattered in EPG and LCN in such a manner that they are scattered amongst channels being retransmitted pursuant to MoI&B's Downlinking Permission. Doing this will inter-alia ensure that the interests of broadcasters and consumers are protected, and that smaller and independent DPOs do not resort to discriminating broadcasters' channels vis-à-vis their own platform services.

It is submitted that in-line with MOI&B's Policy Guidelines for Platform Services, TRAI ought to mandate that all platform service channels are categorized separately under 'platform services' in the EPG. Further, they should be listed together at the end of all satellite TV channels operating pursuant to Downlinking Permissions granted by MoI&B.

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.

NBDA Comment:

1. That the impact of the QoS regulations can only be properly assessed once they have been implemented by the DPOs.
2. That TRAI should focus on ensuring effective implementation and compliance of the existing QoS before re-evaluating the provisions of the present QoS regulations. While further deregulating the Broadcasting & Cable Service sector, the aforesaid provisions are vital for ensuring that the interest of the consumers is protected and the same allows consumer choice and transparency.

D. Financial Disincentive

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?

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. In 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?

NBDA Comment:

1. That the present regulations provide for disincentives in case of non-compliance of audit provisions by DPOs. However, the monitoring and efficacy of these should be reviewed with the view to realize the regulatory objectives. No financial disincentives should be introduced for other areas as this will result in micro-management of the sector

wherein the objectives of the Regulations should to move towards de-regulation.

E. Any other issue

Q32. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.

NBDA comments:

1. Clubbing of FTA and Pay Channels in Bouquet

That Pay channels and FTA channels should be allowed to be clubbed in a bouquet. If certain FTA channels of the same broadcaster are provided without any cost in the broadcaster bouquets, then restriction on clubbing of FTA channels with Pay channels may not be warranted. When the Regulations clearly mandate the publication of MRP of Pay channels and declaration of channel as Pay or FTA , then there is no harm if the FTA channels are allowed to be clubbed in the bouquet of Pay channels.

This will ensure better carriage of the channels in bouquets and will also not force broadcasters to change their business models like converting an FTA channel into a Pay channel for the purpose of inclusion in bouquet.

2. TRAI should move towards forbearance

That TRAI should move towards light touch regulations in line with the policy of the Government and should not micro-manage the broadcasting sector. The regulator should move towards forbearance for all the stakeholders in the value chain.

That micro-management will result in pushing the sector backwards and the investment in state-of-the-art technology such as HD, 3D, 4K and other technologies which greatly enhance TV viewing experience of the viewers will not come forward. The broadcasting industry, which is a shining example of the liberalized economic era and built on the principles of "Atmanirbharta" will be pushed backwards and there will be no major capital investments by the companies. This may also deter foreign companies from investing in the broadcasting space, although the Government wishes to attract more foreign capital in this sector and has recently permitted higher FDI in the broadcasting sector.

Further, frequent and numerous changes in the key regulatory provisions have far reaching consequences and not only disturb the working of the industry but also result in consumer angst and ire towards the players in the industry and the consumer frustration also

results in migration of consumers to alternative medium or technology. Hence, TRAI should move towards light touch regulation wherein it promotes a healthy growth of the industry, and the consumers are benefitted by the state-of-the-art technological offerings, innovations at affordable costs.

The Indian broadcasting industry not only caters to the viewers in India, but also reaches the Indian diaspora in almost all the countries of the world. This is a shining example of globalization of the Indian business. Hence, the need is not to stem the growth of the industry but to give it an enabling environment where it can flourish and contribute to India's emerging position as a soft power in the changing world order.

3. **Commercial Subscribers.**

Bringing the commercial subscriber under the extant regulatory framework, and holding a consultation on this matter at the earliest.

In view of the fact that 'News and Current Affairs' Media forms a very important part of a democracy, therefore these submissions are being made on behalf of the Members of News Broadcasters and Digital Association. NBDA reiterates that it is important to implement 'forbearance' in the Broadcasting Sector.



Annie Joseph
Secretary General

October 9, 2023