

Consultation Paper No. 01/2016

RESPONSE TO TRAI CONSULTATION PAPER

ON

TARIFF ISSUES RELATED TO TV SERVICES



|| VASUDHAIVA KUTUMBAKAM ||
THE WORLD IS MY FAMILY

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1. **INTRODUCTORY COMMENTS**

We are thankful to TRAI for initiating the present consultation exercise for review of tariff framework in digital addressable systems which was long overdue. In this context we would like to mention that as the entire country is heading for complete digitalization, it is imperative for TRAI to carry out a comprehensive review of the following Regulations/Tariff Orders also:

- (i) Various Interconnect Regulations including DAS Regulations issued from time to time
- (ii) Quality of Service Regulations for addressable systems including DTH
- (iii) Register of Interconnect Regulations
- (iv) Tariff for Commercial Subscribers

We accordingly urge the Authority to initiate the consultation process for the above mentioned Regulations as well so that a comprehensive Tariff and Interconnect regime be put in place for addressable systems.

2. **OBJECTIVES OF THE PRESENT EXERCISE**

TRAI in paragraph 1.2 of the CP has outlined the objectives of the current consultation which read as under:

- i. To carry out a review of existing Tariff arrangements and developing a Comprehensive Tariff Structure for Addressable TV Distribution of “TV Broadcasting Services” across Digital Broadcasting Delivery Platforms (DTH/ Cable TV/ HITS/ IPTV) at wholesale and retail level.
- ii. To ensure that the tariff structure is simplified and rationalized so as to ensure transparency and equity across the value chain.
- iii. To reduce the incidence of disputes amongst stakeholders across the value chain encouraging healthy growth in the sector.
- iv. To ensure that subscribers have adequate choice in the broadcast TV services while they are also protected against irrational tariff structures and price hikes.

- v. To encourage the investment in the TV sector
- vi. To encourage production of good quality content across different genres.

3. **ALLEGED CONCERNS WITH THE PRESENT TARIFF FRAMEWORK**

3.1 Certain set of stakeholders have expressed the following concerns in respect of the present tariff framework:

- (i) The framework is non-transparent and the possibility of discrimination is not ruled out.
- (ii) The RIO rates for a-la carte channels are very high. This renders the option of a-la carte illusory.
- (iii) While entering into contracts with the distribution platforms, heavy discounting is done by the broadcasters from the RIO rates and the contracted rates are much lower than the RIO rates.
- (iv) Bundling gets encouraged in the present framework.

3.2 Accordingly, it has been desired that the proposed tariff framework should not only address the above mentioned concerns but also result in

- *effective consumer choice and protection from irrational price hikes*
- *creation of high quality and differentiated content*
- *transparency and equity across the value chain*
- *reduction in disputes and litigation among stakeholders*

4. **TARIFF FREEZE NO LONGER REQUIRED – FORBEARANCE IS THE WAY FORWARD**

4.1 Zee Network is of the view that the existing price freeze on the tariffs of pay channels as well as on the composition of Bouquets is no longer necessary as it is hampering the growth of the broadcasting sector. The tariff freeze was initially introduced by the Regulator as a temporary measure and that too in the analogue regime which had

been plagued by non-transparency, capacity constraints and lack of consumer choice. The TRAI itself in its Recommendations dated 1/10/2004 has observed

“It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through effective competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct reviews of the extent of competition and the need for price regulation in consultation with all stakeholders.”

- 4.2 It is our submission that now the entire country is moving towards addressability. The addressable systems are not only transparent but also offer meaningful choice of channels – both in the form of a-la carte as well as bouquet to the consumers. In other words, a consumer has been empowered to choose the channels which it wishes to watch. In addition, the capacity constraints which were prevalent in the analogue regime have also disappeared with the digitalization of cable networks.

The existing tariff regime in which the rates have been frozen is causing huge revenue losses to the broadcasters. The cost of programming for example sports, movies and general entertainment depends to a large extent on the type of content acquired or rights of telecast obtained from time to time and placing a cap of pricing can hinder a channel from going in for new programming which could only be supported by hike in subscription. It is pertinent to point out that the input cost for the broadcasters is continuously increasing in the form of increase in the cost of procurement of programmes from production houses, increase in the cost of IPR procurements, phenomenal increase in the cost of movie rights, increase in overhead costs, operational costs in the form of hiring of transponders etc. events rights and sports broadcasting rights etc. This has resulted in total imbalance as the broadcasters have to absorb all these increased costs themselves. This has caused significant dent in their revenues.

- 4.3 Zee Network is of the considered view that the rate regulation and price controls distort the market and lead to misallocation of resources. Artificially low prices deter any further investment in new channels & programming which in turn affects consumers' choices because of shortage of quality channels and lack of variety in

programming. In this regard it is useful to refer to the extract of the Explanatory Memorandum to the Tariff Order dated 1/10/2004 which reads as under:.

*“Fixation of price charged for new pay channels to consumers is difficult because of large variations for these prices **and of the difficulty in linking these to costs.** Further, this is a localized issue which is not easily amenable to centralized regulations. Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. **Many of these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnect agreements more transparent.**”*

Thus TRAI itself has acknowledged that once the addressability is introduced in the sector giving consumer choice and making the Interconnect agreements more transparent, the tariff freeze would be withdrawn.

- 4.4 In this context, we would like to point out that there have been significant development and changes both at the content level as well as on the distribution side. More and more channels of different genres such as entertainment, news & current affairs, sports, life styles, infotainment etc. are available to the Indian consumers and in fact more channels are likely to be launched in the coming months. Accordingly, ample choice is available to the consumers in terms of content in each genre. At present more than 800 channels of different genres are available to the Indian consumers. Availability of such a high number of channels in the market ensures that no individual broadcaster can dominate the market. The competition is so intense in the market that in case a broadcaster tries to take the advantage of its market position by following anti competitive practices, the consumers always have option to switch over to alternate product (channel).

Similarly, on the distribution side there are 7 DTH players (including DD Direct of Prasar Bharti), approx 800 DAS registered MSOs, 2 HITS operators and 60,000 LCOs engaged in distribution of channels to the consumers. There is an intense competition amongst these distribution platforms. If a consumer is not satisfied with a particular distribution platform, it can easily switch over to another. The DTH subscriber base (active) of 60 million in itself is an indication that consumers are opting for the delivery distribution platforms which

offer them digital quality service at affordable price. Thus, both at content level as well as distribution level there is intense competition and market forces are operating efficiently.

5. **MARKET IS COMPETITIVE - REGULATION OF TARIFF NOT WARRANTED**

- 5.1 The market is mature enough to reach its equilibrium level. The continuity of price regulation & controls will not only distort the market but will also lead to down gradation of quality of services and reduction of investment in the sector. It is to be noted that selling the channels at low prices will discourage any further investment in new channels and programming which is bound to affect the consumer choice and creating a shortage of quality channels and variety in programming content.
- 5.2 Since market is mature and the economic principal of equilibrium has made its inroad into the industry, if any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the channel is under priced, the market forces will effect necessary correction based on its demand & popularity by increase in price. Hence no economic rationale exists for placing price controls in addressable systems.
- 5.3 In fact, under the free market conditions of competition, the cable television market has grown rapidly and a wider choice of approx. 120-140 channels of different genres is available to consumer at around Rs. 175/- to Rs. 190/- per month . If the price controls are persisted with, it will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved towards deregulation, thereby choosing to remove any restrictions on pricing.
- 5.4 As already submitted hereinabove the market forces should be allowed to operate freely which would ultimately self-regulate the system and optimum level price would be achieved. So far as the checks & balances are concerned, the TRAI can have a continuous monitoring of the market and can also initiate a system of regular reporting of pay channel prices by various broadcasters. If TRAI at any stage is of the opinion that market forces are not able to throw up the appropriate level and in fact the interest of subscribers is being compromised, it can immediately intervene and effect necessary corrections.

- 5.5 The TRAI has statutory power to regulate if the deregulation results in creation of some kind of imbalance in the market to the detriment of consumers. The fact that there is an intense competition on the ground and coupled with the reality that Regulator can intervene as & when the market tends to behave erratically, in our opinion are effective deterrents in preventing the broadcasters from acting in a whimsical manner to the detriment of consumers at large.
- 5.6 It may be reiterated that the fierce competition present in the market shall ensure that the broadcasters do not increase the price of popular channels arbitrarily. In case any broadcaster does increase the price of a channel arbitrarily then the demand/viewership of that particular channel will go down and with that also the Advertisement revenue which too forms a significant chunk of the broadcaster's revenue. The rating of various channels change with the ever dynamic preferences of the subscribers. This shows that there is enough variety and competition prevalent in the market and people are able to make the intelligent choice of shifting the viewership from one channel to another channel depending upon its popularity.

Therefore forbearance should be the most preferred option for regulating both Wholesale and Retail Tariff.

6. COST BASED TARIFF FRAMEWORK NOT SUITABLE FOR BROADCASTING SECTOR

- 6.1 The cost based tariff model is not at all suitable for the Broadcasting sector as it is almost impossible to calculate the cost of content for the following reasons:
- (i) Cost plus model to regulate the wholesale tariff, requires detailed information regarding one time cost incurred for creating infrastructure and recurring cost for procuring the content and transmitting content. This method shall not be valid for broadcasting industry as the media products are not standard in nature and there cannot be standard assumptions vis-à-vis costs. Different channels of different genres vary in their characteristics. It is practically impossible to calculate the content prices by the regulator, as the content developed by the content providers is dependent on numerous factors.

- (ii) Moreover the cost of content is a dynamic factor and depends upon the nature of programming in a channel. The viewership pattern of content varies based on Linguistic, Regional and subscriber choice. The reality shows, latest movies acquisition and event based rights are normally acquired on varying rates and no straight jacket formula can be applied.
- (iii) Even if it is assumed that the content prices can be calculated, the same cannot be divided by the number of subscribers subscribing the content per month to derive some mathematical formula for rate per Subscriber per month, as fixing of prices of the individual channels is a complex phenomena and in fact it is difficult to achieve because of the dynamic nature of content in a channel. It is an admitted position that it is not possible to determine the price for the content as it is an intellectual property which is not amenable to any straight jacket formula of pricing.
- (iv) Considering the present eco system in the Broadcasting and Distribution Sector where large areas under Phase-III & Phase-IV are yet to be digitized, it would not be appropriate to introduce any new regime which may be significantly different from the existing one such as MRP based regime etc. at this stage. Even in case of CAS notified areas (which were very small as compared to the areas covered under the DAS notification), it was clearly stated by TRAI that the MRP based tariff stipulations are temporary in nature and are to be withdrawn. Accordingly, during the consultation process pertaining to the formulation of the tariff stipulations for digital addressable systems both in 2010 as well in 2012 (DAS tariff), this suggestion was duly considered but being impracticable and not capable of being implemented, was ruled out.

7. ARGUMENTS AGAINST THE FORBEARANCE AND RECOMMENDED FRAMEWORK

- 7.1 Apart from various cons listed by TRAI in para 4.10.3 of the CP, certain stakeholders specially the distribution platforms are of the view that at present the sector has not matured enough as to introduce forbearance. They have expressed the view that since the

sector at present is undergoing digitalization, it would not be prudent to introduce forbearance at this stage as it may disrupt the digitization process. They are apprehensive that forbearance may lead to high prices both at wholesale level and retail level and may encourage bundling etc. which may not be in the consumers' interest. Accordingly, in order to ensure the smooth transition from analogue to digital regime, the suggested tariff model should be such as would encourage digitalization and take care of the concerns of all the stakeholders.

Keeping in view such apprehensions, although Zee Network is of the considered view that forbearance is the way forward, it for the time being is suggesting the regulated RIO model at wholesale level (with a sunset clause of 2 years) and forbearance at retail level with some modifications as detailed in subsequent paragraphs as an interim tariff framework till the sector moves towards forbearance. After 2 years, a comprehensive review may be carried out regarding the digitalization status and the competition prevalent in sector so as to assess the possibility of introducing complete forbearance in the sector.

8. **TRAI ASSUMPTIONS THAT BOUQUETS ARE HARMFUL FOR CONSUMERS IS ERRONEOUS**

- 8.1 There seems to be an implicit belief in TRAI that bouquet offering/pricings are always harmful for customers. This is reflected by its own statements in the consultation paper. However it is but natural that distribution platforms (DPOs) make bouquets (such as Family, Cinema Kids etc) to provide diversified contents from many broadcasters available in a single package.

This is the case with all distribution platforms worldwide, and the situation will get complicated in India if A-La-Carte is pushed beyond a limit as the customers will be left with just a handful of channels to watch.

- 8.2 The attention in this regard is invited to certain extracts of a detailed study by Benjamin J. Bates, Professor, School of Journalism & Electronic Media, *University of Tennessee, Knoxville, USA* - ***The Future of Multichannel Video Distribution in the U.S.: Bundling vs. A La Carte, a Theoretical Examination of Marketing and Pricing Options***

“Economic theory shows that risk and uncertainty leads to lower expected values for products, so content such as TV programs and channels tend to be undervalued. This is particularly true when the content or service is new, and has yet to establish its value for the consumer. Aggregation of individual components into a bundled product allows consumers also aggregate their expected values and pool risks for the individual components of highly variable and/or low-value pieces of content. To use the newspaper metaphor, instead of the reader looking at each element (article/ad) separately and assigning value and making purchase consumption decisions individually, the reader makes a much simpler evaluation – do they expect to find enough value in the various elements of the newspaper, over time, to purchase a subscription?”

Under these circumstances, bundling and subscriptions can be advantageous for the consumer. First, rather than having to evaluate and make purchase and consumption decisions separately for content that is highly variable in value, the consumer can estimate the expected value of the aggregated content in the bundle and make a single purchase/consumption decision. Bundling reduces transaction costs, and also ameliorates risk and uncertainty by spreading it over a range of information components. In addition, while the consumption decision is based on estimates of the value of content that the consumer finds value, the bundle also includes content that the consumer initially had little or no expected value for. This permits the consumer to sample that content and discover its potential value – helping to reduce uncertainty and risk even further.

The advantage of bundling is that it can accommodate a wide range of value choices and ways to hit that aggregate value target - for one consumer, access to sports channels and content may create that aggregated value, to another, it may be a combination of access to news, science, and history channels; to another, it could be PBS, Nickelodeon, Cartoon Network and Disney. In all of these cases, the consumers base their purchase decision on getting the content they want, and everything else just comes along with the bundle.

In contrast to political claims of consumers being forced to pay for channels they don't want, economic and market theory show that isn't the case. Consumption decisions are based on aggregated value – and if some content has no value for a consumer, its

presence or absence in the bundle is irrelevant. The bundle value is based on the expected values of the channels that the consumer does want and expects to watch. At worst, if the consumer perceives the presence of a channel to be so undesirable that its inclusion creates negative expected value, that may lower the consumer's aggregated value, but the consumer isn't "forced" into anything. The consumer may be "paying for" the channel in the sense that part of their payments go through to that channel, but their decision to subscribe or not is based on the expected value of the channels they do want.

Now the presence of unwanted content elements will have some impact on net consumer surplus for subscribers. The net consumer surplus is the difference between the consumer's total expected value for the bundled product and the cost of that bundle. The presence of unwanted content does not add to the individual's expected value, but may raise the cost of the bundle. In that case one of two things happens – the raised cost exceeds the bundle's value and the consumer ceases to purchase it (losing any previous consumer surplus), or the bundle's value remains higher than its cost and the consumer continues to purchase the bundle, but their consumer surplus is reduced by the increased cost.

On the other hand, bundling can also increase total consumer surplus, as well as generate social value more broadly. One way that this happens is through the ability to access content of unknown or unexpected value that is contained in the bundle. Such explorations aren't only helpful in terms of providing better estimates of expected value, they may result in serendipitous viewing – stumbling across content that viewers find valuable. Because that value is unexpected, it's not part of the basic consumer surplus in the purchase decision, but because it turned out to be of value, it adds to the overall value achieved by the consumer and thus increases their consumer surplus (since it came at no added cost). Since much content deemed to be of high social value is not highly valued by consumers, the access afforded by bundling provides wider access to, and potentially higher use of, such socially desirable content. In a way, bundling can be looked at as the high-value and mass-appeal channels cross-subsidizing low-demand yet potentially (socially) valuable channels.

Bundling could also be advantageous for the bundler. Since bundling expanded the potential content mixes generating expected value for consumers, it tended to maximize total consumption in markets with heterogeneous audiences. By maximizing potential audience, it spread distribution fixed costs (which tend to be quite high among multichannel distributors) over larger numbers of subscribers, thus reducing the per-subscriber cost of distribution. It also increased the potential audience base for advertisers (while reducing transaction costs), allowing them to generate more revenues from that source.

Let me close this piece by referring back to the social side-benefits of bundling. With bundling, the consumer retains most of the consumer surplus value, instead of it going to the distributor (with mini bundling) or the network (with a la carte). Bundling maximizes consumer access to the broad range of content choices; giving new content and channels the opportunity to establish value with consumers, and allowing for viewers to benefit from serendipity or to access the occasional valued content a channel might present. Finally, bundling maximizes potential audience for channels, allowing them to benefit from audience-based revenue sources, and lower per-subscriber distribution costs.

Single-Unit Pricing & Versioning

The economics of information suggests that single-unit pricing (pure "a la carte") works best for information goods and services where knowledge about the information good, and its market, is high. That is, when an identifiable set of consumers has established a reliable, and relatively high, set of expected values for the specific set of information goods or services - and where distribution of that content can be restricted to only those consumers. In such cases, the risk and uncertainty reduction of bundling doesn't add much value to the primary product, while the costs of the additional bundled information goods cut into consumer and producer surplus. On the other hand, pricing on a per-unit basis enhances producers' ability to extract maximal value for their information goods and services.

While a la carte is more viable, the key question is whether it is economically beneficial. One additional factor driving the push towards per-unit is the impact that significant jumps in

programming and licensing costs are having on the cost and price of large bundles of channels. Many broadcast outlets, cable networks, and TV content producers have jumped on the licensing revenues bandwagon. They see this additional revenue stream as a potential major additional revenue stream, and seem determined to exploit it fully. With program production, rights, and licensing costs continuing their rapid growth (especially in sports), network content costs are rising at a time when advertising revenues for TV and cable remain static, or at best slowly growing. Demands for increased licensing fees are seen as the best option to cover higher programming costs.

After a la carte, network programming costs are likely to go higher, as they seek to establish higher expected values – but with reduced audiences and subscribers, there will be less revenue available to cover network costs. Networks will be faced with tough choices – do they raise subscription rates, hope that more narrowly targeted audiences will make their advertisements more valuable (at least for some advertisers), or try to trim costs? Trimming costs isn't a useful long-term strategy, as it tends to lower the value of the channel and its content to consumers. Increasing subscription prices narrows demand.

With the above mentioned preliminary comments, we proceed to answer various questions/issues raised in CP.

PROPOSED TARIFF FRAMEWORK FOR WHOLESALE AND RETAIL

Q.1 Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Response:

- As pointed out hereinabove, we are of the considered view that the model as outlined in para 4.10.3 i.e. the price forbearance model with minimum regulatory intervention is the ideal model at the wholesale level in B 2 B transaction. However, considering the fact that cable distribution sector is undergoing a complete digitalization, there may be certain apprehensions on the part of distribution platforms such as high prices, bundling etc. qua this model.

Accordingly, for the **time being** we are suggesting a **regulated RIO model with certain modifications at wholesale level with a sunset clause of 2 years**. After 2 years, a comprehensive review may be carried out regarding the digitalization status and the competition prevalent in sector so as to assess the possibility of introducing complete forbearance in the sector.

- The brief details of the regulated RIO model as proposed by us are as under:
 - (i) The proposed tariff framework would apply to all addressable platforms irrespective of technology used. In other words, it would be technology neutral.
 - (ii) The channels would be classified into two categories:
 - (a) Mass genre
 - (b) Niche channels/genres
 - (iii) While the prices of mass genre would be regulated by TRAI through stipulation of RIO methodology and prices for the niche channel would be under forbearance.
 - (iv) It would be mandatory for the broadcasters to offer the channel on a-la carte basis to the distribution platforms. The broadcaster may in addition, at their option offer bouquets. However it may be clarified that in case the broadcasters choose to offer bouquets also, they should be allowed to form new bouquets which may be completely distinct and different from the existing frozen bouquets. In other words, the frozen bouquets be dismantled. The bouquet offerings would be subject to twin-condition.
 - (v) The RIO to be notified by the broadcasters would *inter alia* include the following:
 - (a) The specified price cap for the channels of each genre.
 - (b) The manner of offering of channel – a la carte and/or bouquet(s).
 - (c) The RIO would specify the data formations, assemblages and bouquets in which the broadcasters wish to offer its channels for distribution along with the rates of each

formation. In case the bouquets are to be offered, they should conform to twin-conditions prescribed under the Regulations.

- (d) The parameters for negotiations with DPOs. The broadcasters will be free to stipulate various parameters for negotiations.
- (e) Framework for discounts/incentives offered by the broadcasters to ensure non-discrimination and transparency. It would be the broadcasters prerogative to stipulate the quantum of discount for different parameters. In other words, for the same parameter, two broadcasters can offer different discount/incentive as per their business model and objective sought to be achieved.
- (f) The cumulative discount on the listed wholesale price on account of various parameters should not exceed 40%. Further the carriage fee/placement fee/marketing fee shall be subsumed in the discounting/incentive scheme and no separate payment would be made for the same.
- (vi) The RIO would also spell out any bulk discount or any specific scheme based on regional, cultural or linguistic considerations' that would be available on non-discriminatory basis to all seekers of the signals.
- (vii) The specified parameters may inter alia include the penetration of channel, size of distribution platforms (number of subscribers), the uptake of number of channels by the distribution platforms, the placement of channel in EPG, the regional considerations etc and/or any other parameters transparently listed in the RIO.
- (viii) The RIO can be universal RIO for the entire country and/or it may be region wise RIO.
- (ix) The RIO would be technology neutral i.e. it would apply to all addressable distribution platforms viz. DTH, digital cable, IPTV etc.
- (x) In case the broadcaster is willing to enter into an agreement with a distribution platform on CPS basis/fixed fee basis, it

would also form the part of RIO offerings and such deals would also be available to other distribution platforms on non-discriminatory basis.

- (xi) The niche channels would be under forbearance i.e. without any price regulation by TRAI. However these niche channels would be distributed on a-la carte basis and shall not form the part of any bouquet. The broadcasters will have to declare the category of channel at the beginning of the year and the same will not be changed at least for a period of 6 months.
- (xii) The prices declared in RIO would remain valid for an year. After expiry of an year a broadcaster would be entitled to change its prices. The necessary adjustment for cost revision on an acceptable criteria viz. consumer inflation index etc. can be prescribed.
- (xiii) The issue of price cap has been responded in subsequent paragraphs.

Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/alternate model with detailed justifications.

Response

- At present the tariffs at the retail level are under forbearance with some regulatory restrictions. The DPOs are free to decide their price as per market conditions. All broadcast TV channels (FTA and Pay) are mandated to be provided to customers on a-la-carte basis so that customers can choose any channel. The DPOs are free to form bouquet of channels and price them.
- Under the present regime applicable at the retail level.
 - (i) Basic Service Tier (BST) comprising of 100 FTA channels at Rs. 100 plus taxes is mandated. The subscribers can make selection of these hundred channels.
 - (ii) In case of the FTA channels, it is mandated that the price of FTA channels will be uniform.

- (iii) In case pay channel is also provided that at an entry level, it is open to the DPOs to specify a minimum monthly subscription limit of not exceeding Rs. 150/-
- In order to address the issue of giving meaningful a-la carte choice to the consumers the TRAI has come out with a Tariff Order dated 28th December 2015 which is applicable w.e.f. 1st April 2016. This Tariff Order inter alia provides for that:
 - (a) The a-la carte rates of a pay channel form the part of bouquet shall not exceed two times its RIO rate offered by the broadcasters for addressable systems and
 - (b) Sum of the ala carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate.
 - The attention is also invited to para 32,33 & 34 of the Explanatory Memorandum attached to the Tariff Order dated 28th December 2015 issued by TRAI for digital addressable systems which reads as under:
 - 32. *The Authority has carefully considered the maximum discount which can be permitted to the platform operators while forming the bouquets considering the sum of a-la-carte rates of channels constituting the bouquet. The Authority is of the view that the platform operators can provide a discount up to 66.66% while forming the bouquet over the sum of a-la-carte rates of channels constituting the bouquet in order to preserve innovation, efficiency and ingenuity of the platform operators.*
 - 33. *Any discount of more than 66.66% in forming the bouquet rates clearly indicates that a-la-carte rates have been fixed at unreasonable high price. In no case, a discount of more than 66.66% can be given over the sum of a-la-carte rates of channels in the bouquet. However, flexibility to re-notify a-la-carte rates of channels rests with the platform operators. In case, a platform operator reduces the a-la-carte rates of some channels to form a bouquet, the revised a-la-carte rates so notified must be considered to satisfy the twin conditions in all such bouquets where such channels form part of the bouquet.*
 - 34. *These 'Twin Conditions' have been prescribed to ensure that:*

- a. *The platform operators retain the flexibility to devise and offer innovative and attractive packages/bouquets of channels by offering discounts upto 66.66% over a-la-carte rates of channels forming the bouquet.*
- b. *The flexibility to notify a-la-carte rates of all the channels available at its platform rest with platform operator. He has flexibility to reduce a-la-carte rates of channels at any time to facilitate lower rates for a bouquet consisting of such on a-la-carte channels.*
- c. *The 'Twin Conditions' oblige the platform operator to extend a proportionate reduction in a-la-carte rates of the channels offered in the bouquet if he wants to reduce the bouquets rates further. Such reduction in the a-la-carte rates of channels shall be applicable across all bouquets.*

35. *It is hoped that with implementation of these 'Twin Conditions' at retail level, consumers will have better choice and freedom to exercise the option.*

- In view of the above mentioned regulatory stipulations taking care of consumer interest, we are of the considered opinion that considering the prevalent competition in the market in the form of availability of the various delivery platforms such as digital cable, DTH, IPTV etc., the tariff at retail level should be left to the market forces. The consumer interest would be duly taken care of, as because of the competition it will not be possible for the DPOs to charge the exorbitant retail tariff as in such an event the subscribers would shift to the other competitive platform. Secondly the twin-conditions as stipulated above would take care of the perverse pricing thereby ensuring the meaningful a-la carte choice to the consumers.
- **The only modification which is being suggested at the retail level is that while applying twin-condition to the bouquet offered to the consumers by a distribution platform which consists of both Pay & FTA channels, the FTA channels should be excluded as these channels being free for the DPOs, their numbers in a**

bouquet should not affect the calculation of a-la carte price of pay channels by applying the twin condition formulae.

- We strongly advocate the continuation of forbearance in deciding the price of channels at Retail level. The need for regulatory intervention occurs when it is observed that either there is no competition in the market or there is a market failure resulting in the situation which may cause prejudice to the consumers' interest. The experience of last 5 years indicates that the market forces are able to ensure adequate competition and availability of content to the consumers at an affordable price. In fact, DTH and digital cable have been the examples where the operators have been offering best of the packages to the consumers and consumer have so far no reason to complain. The pricing of the products are done on various assumptions and especially when the there are enabling devices like STB etc involved, which also have a cost and it is an established fact that all the players have been subsidising it. Thus we are of the opinion that there is no need to regulate the retail tariff and that it should be left to the market forces.
- The attention in this regard is also invited to para 18 of the Explanatory Memorandum to TRAI Tariff Order dated 30th April 2012 relating to DAS tariff which reads as under:

18. The instruments of addressability, a-la-carte choice to the consumer and availability of sufficient competition from other addressable platforms provide adequate checks and balances over the forbearance of retail pricing, wherein packaging and pricing is being determined by the operators. Additionally, forbearance at the retail level for DAS areas would maintain level playing field amongst various addressable TV platforms. Accordingly, the Authority has decided to continue with forbearance at the retail level tariff for the DAS areas also. However, in case of FTA channels, as there is no content cost involved, the Authority is of the view that the channel pricing at the retail level, as decided by the operator of the digital addressable system for his network, should be uniform for all the FTA channels.

Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.

Response

- Since the RIO listing out all the parameters for negotiations would become the starting point for negotiations, it would ensure transparency and non-discrimination. Any distribution platform can avail discounts/incentives by fulfilling the stipulated criteria. Limiting overall discount on account of various factors/parameters to 40% would ensure that the gap between RIO a-la carte rates (without availing any incentive) and the effective rates after availing all the incentives would be narrowed down. This would facilitate the availment of channels on a-la carte basis by the distribution platforms if they so desire as per their business requirements. The limiting of discounting to 40% would also check the perverse pricing and the channels would be priced in accordance with the market reality.
- Similarly, at the retail level there will be a complete transparency in the form of listing of rates for both a-la carte channels and the bouquets of channels on the websites as well as through other means. This would enable the customers to exercise the meaningful choice either on a-la carte basis and/or on package basis.
- The stipulation that the retail a-la carte rate will not exceed twice the wholesale rates of the channel as well as the applicability of twin-condition in the Tariff Order applicable from 1st April 2016 would ensure the meaningful a-la carte choice to the consumers,

Thus all the objectives as outlined in paras 2 & 3.2 of the Introductory Comments would be achieved through the above mentioned pair of models.

Q4. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.

Q.5 Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.

Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.

Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

Response

- We have already recommended that the current prevalent model i.e. forbearance at the retail level with certain regulatory restrictions is the best model for the time being and therefore we would not like to suggest any of the models suggested in para 4.12 of the Consultation Paper.
- It may be mentioned that lot of characteristics of the distribution model viz. the basic access charges/the rentals etc for the network are already there in the present tariff dispensation at the retail level. A charge of Rs. 100/- per subscriber per month has been prescribed for basic tier consisting of 100 FTA channels. Similarly if a pay channel is subscribed by a consumer along with FTA basic tier bouquet, a tariff of Rs. 150/- per subscriber per month has been stipulated. This is nothing but basic access charges/rentals as contemplated under the distribution model. We have already mentioned that we are not in favour of introducing MRP regime in the sector at this stage as:
 - (i) the digitalization is still under progress and large part of the areas falling under Phase-III & Phase-IV are yet to be digitized.
 - (ii) Moving to any other regime which may be significantly different from an existing regime would cause unwanted disruption in the digitalization process and should be avoided. The MRP regime was introduced by the Authority in 2006 as a part of CAS tariff scheme, however because of various shortcomings in the tariff framework, the MRP based tariff regime could not succeed.
 - (iii) Even under present regime there has not been a smooth flow of ground collection to various stakeholders in the value chain. There are still various issues regarding timely and transparent reporting of the actual subscriber numbers by the distribution platforms to the broadcasters and by the LCOs to MSOs in digital addressable cable regime. The introduction of MRP based model at this stage would be premature.

- It has been the experience of the broadcasters that despite there being stipulations of monthly obligations to furnish the timely subscribers reports by the distribution platforms, the reports are not being submitted for the months together. In such circumstances there has not been a proper flow of subscription money from the distribution platforms especially from digital cable service providers to the broadcasters and accordingly it is suggested that it will not be prudent to introduce MRP based regime till the entire digitalization is completed and the sector has stabilized.
- As already pointed out hereinabove the present tariff framework in the form of regulated RIO is being suggested with a sunset date of 2 years. The same can be reviewed after a period of 2 years depending upon the success of digitalization.

SIGNIFICANT MARKET POWER

Q8. Is there a need to identify significant market powers?

Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

Response

- There is absolutely no need to identify the significant market power for the following reasons:
 - (a) The existing regulatory framework of TRAI which is based on the premise of non-discrimination and transparency already provides for the formulations to mitigate against any abuse/anti competitive behavior of any entity viz. broadcasters and/or distribution platforms.
 - (b) The proposed tariff formulations on implementation would further address all the concerns regarding non-discrimination, transparency, reasonable pricing, meaningful ala carte choice etc both at wholesale as well as retail level. The concerns regarding the powerful driver channels succeeding to piggy back not so popular channels are entirely misconceived and misplaced inasmuch as under the TRAI regulatory framework a clear choice is available both at the wholesale level and/or at

the retail level to procure/source the channels either on ala carte basis and/or on bouquet basis.

- (c) The proposed rationalization of RIOs with limiting of discounts etc as already explained in detail in above mentioned paragraphs would further take care of any alleged concern in this behalf.
- (d) There is no appropriate criteria to identify the entities with significant market power. The reliance on BARC data in terms of popularity for assessing the viewership etc so as to ascertain the popularity of channel is only subjective and may not be an appropriate yardstick as the same is also based on assumption and statistical sampling and extrapolation. Moreover, the so-called market share based on viewership criteria keeps changing rapidly depending upon the popularity of a particular show or a program. In addition, a channel may be popular in one region and may not be in another e.g Hindi channels, Tamil channels etc.
- In this regard it is pertinent to point out that the TRAI has already sent recommendations on Media Ownership to MIB which contain the application of various yardsticks such as HHI, indices etc. to calculate the market share of an entity. These recommendations are yet to be accepted by the government. It would be entirely premature to introduce any such criteria in the proposed tariff framework.
 - As pointed out hereinabove, the viewership pattern and the market share depend upon the content being shown at a particular point of time. It is dynamic and keep on changing which is reflected in the BARC rating itself. Hence it would be inappropriate to adopt any such criteria which is highly fluctuating in nature.
 - The CP itself identifies that significant market power is available at the DPO level as well. Therefore assuming that if there is any significant market power available with a broadcasting entity, it gets countered with the significant countervailing market power of DPOs.
 - In this context it is relevant to refer to the observations of TRAI in Consultation Paper No. 05/2013 dated 3rd June 2013 on cable monopoly wherein TRAI has categorically stated that there exists significant bargaining power and monopoly at the MSO/LCO level which is being abused. This is not only affecting the growth of this

sector, but also adversely affecting the consumer interest. The attention is invited to the following extracts of the said consultation paper.

1.12 The size of markets catered to (across States, cities and even localities) by an MSO determines its market power and influence. One of the ways in which MSOs have tried to expand and increase their size (and influence) is by buying out LCOs and smaller MSOs. The joint venture/ subsidiary model has emerged as a result of mergers and acquisitions (M&A) of LCOs/MSOs by large MSOs. The MSOs have varying levels of ownership interest in these LCOs. Typically, MSOs provide more favorable terms and financial assistance to joint venture companies and subsidiaries. The point is that, by way of acquisition, joint venture or subsidiary, some MSOs have been increasing their presence and size leading to a situation of market dominance.

1.13 There are instances where the dominant MSOs are misusing their market power to create barriers of entry for new players, providing unfair terms to other stakeholders in the value chain and distorting the competition. MSOs with significant reach (i.e. a large network and customer base) are leveraging their scale of operations to bargain with broadcasters for content at a lower price and also demand higher carriage and placement fees. Such MSOs are in a position to exercise market power in negotiations with the LCOs on the one hand, and with the broadcasters on the other.

1.14 Large MSOs, by virtue of securing content at a lower price and charging higher carriage and placement fee from broadcasters, are in a position to offer better revenue share to LCOs. They, therefore, can incentivize LCOs to move away from smaller MSOs and align with them. Such MSOs use their market power to provide unfavourable terms or make it difficult for the broadcasters to gain access to the distribution network for reaching the customers. There are instances where a dominant MSO has made it difficult for some broadcasters to have access to its distribution network for carrying content to consumers. Blocking content selectively can also become an obstacle to promoting plurality of viewpoints.

1.15 One such case of denial of market access was also brought to the notice of Competition Commission of India (CCI) in 2011,

when a broadcaster M/s Kansans News Private Limited alleged that a group of MSOs, operating in the State of Punjab, in which M/s Fastway Transmission Pvt. Ltd. holds majority shares, had acquired substantial market share in the cable TV distribution and denied market access to its channel. The CCI investigated the case and imposed penalties of Rs. 8.04 Crore on the MSOs for violating the provisions of sections 4(2)(c) of the Competition Act 2002, which states that there shall be an abuse of dominant position if an enterprise or a group indulges in a practice or practices resulting in denial of market access in any manner.

1.21 Though DTH has emerged as an alternate to Cable TV and its subscriber base is growing at a faster rate compared to cable TV, the percentage of cable TV homes is significantly larger vis-à-vis DTH subscribers. Cable TV subscribers constitute approximately 60% of the total TV homes in the country, whereas the share of DTH is about 35% (Figure 1.2). DTH operates on a national basis and transmits all channels throughout the country irrespective of variations in demand of channels in different markets. Cable TV networks on the other hand operate on a regional basis and can choose channels to be supplied according to the demand in the area served. In the pay DTH sector, there are six major players providing services on a national basis. In contrast, Cable TV operators are limited in a particular area and in most cases the customer is served by a single local cable operator. On the technical front also, there are differences between DTH and cable TV in terms of the number of channels the platform can support, acquisition cost for the consumer, type of services supported etc.

- The abuse of dominance/significant market power and/or their appreciable adverse effects on the competition are the issues within the domain of Competition Commission of India and the provisions of Competition Act, 2002 are sufficient to address the same on case to case basis.

The attention is particularly invited to the following provisions of the Competition Act:

- (i) The Competition Act, 2002 (the **Competition Act**) is entrusted with ensuring a level playing field and ensuring that there is no foreclosure in the market (which in turn ensures plurality and diversity).

The provisions of the Competition Act, prohibiting ‘*Anti-competitive Agreements*’ and ‘*Abuse of Dominant Position*’ were notified and the Competition Commission of India (the **CCI**) commenced its regulatory/enforcement activities in these two spheres on 20 May 2009. The provisions relating to merger control - the third critical regulatory limb of the Act - were notified by the Government of India on 4 March 2011 and these provisions are in force with effect from 01 June 2011.

The key provisions relating to the Competition Act deal with:

- a) ***Prohibition on Anti-Competitive Agreements*** (Section 3):
Section 3 proscribes any agreement (vertical or horizontal) that has an Appreciable Adverse Effect on Competition (**AAEC**).
- b) ***Prohibition on Abuse of Dominant Position*** (Section 4):
Section 4 of proscribes abuse of dominance. Thus, any conduct by a dominant enterprise that are likely to have a harmful effect will be prohibited under this provision.
- c) ***Regulation of Combinations*** (Sections 5 & 6):
The Competition Act vide Section 5 & 6 prohibits any structural change in an enterprise (vertical, horizontal or otherwise) that causes or is likely to cause an AAEC.

- (ii) Thus, while Sections 3 and 4 of the Competition Act are *ex-post* measures to address competition concerns that arise from conclusion of an agreement or through conduct of a dominant enterprise, Sections 5 and 6 are *ex-ante* measures that address and contain competition concerns that are likely to arise from any structural change.

Further, the provisions of the Competition Act are applicable to all sectors, including the entertainment and media industry. In fact, the provisions of the Competition Act are more comprehensive and address all perceivable issues relating to competition in the market. Therefore, any issue arising with respect to vertical or horizontal integration is likely to be covered under the Competition Act.

- (iii) More importantly, the approach that is adopted under the Competition Act is based on the *effect* (presence of AAEC) on competition in the market. This standard is likely to be more effective than blanket restrictions as proposed regulations in the Consultation Paper, as this approach would not factor in the pro-competitive effects that may arise.
- The CCI, the regulatory body responsible for the enforcement of the Competition Act, has wide powers to assess, investigate and pass appropriate orders as it deems fit to ensure healthy competition in the market.
- (iv) As submitted hereinabove, the provisions of the Competition Act prohibiting ‘*Anti-competitive Agreements*’ and ‘*Abuse of Dominant Position*’ were notified and the Competition Commission of India (the CCI) commenced its regulatory/enforcement activities in these two spheres on May 20, 2009. Central to the first three enforcement/regulatory dimensions stated above is the concept of the “*market*”. In every enquiry under the Act, the ‘market’ in which competition is said to be appreciably adversely effected has to be identified since the *basic concern of the Act is with enterprises that are in a position to exercise a considerable amount of influence in the market*. This ‘market power’ is generally measured in relation to the product in question (includes ‘goods’ and ‘services’) and a geographic area for that product. The definition of market is more specific in cases relating to abuse of dominance where the conduct is assessed in the ‘relevant market’. In the Act therefore, the relevant market is defined in terms of the ‘relevant *geographic* market’ and the ‘relevant *product* market’.
- (v) Section 19 (4) of the Competition Act provides for various factors that the CCI is to take into consideration when assessing dominant position in the relevant market. As can be seen from the list of factors, in order to determine dominance, the level of concentration is not the only factor. Dominance is a rather dynamic concept that depends on the market structure such as entry barriers, countervailing buying power etc. Additionally, the CCI also has the power to assess any other factor that it may consider relevant. This gives immense power to the CCI to not be constricted/limited, if the facts and circumstances of the case require otherwise. Applying the provisions of the Competition Act with respect to the concerns through cross-media ownership, if an enterprise gains prominence in the

market through vertical or horizontal integration it is most likely to be in a position that is to put it in a position of economic power and it is likely to be considered a dominant enterprise.

Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?

Response

There should not be any differential regulatory framework and the notified regulatory framework should be universally applicable to all the entities. We have already pointed out that elaborate TRAI regulatory framework with tariff regulation as well as the regulations for access of the channels by the distribution platforms effectively rule out any kind of abusive behavior and/or distortion of market by so called 'SMP' entities.

CHANNEL PRICING METHODOLOGIES

Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?

Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/deletion of genres with justification.

Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc.? Give your suggestions with justification.

Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?

Q15. What should be the basis to derive the price cap for each genre?

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?

Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?

Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?

Response

- We have already elaborated in our preliminary comments that the price freeze as well as the freeze on the composition of the bouquet is no longer warranted and should be immediately removed.
- The price freeze was stipulated by TRAI in 2004 in analogue regime whereby the rates of the bouquets of channels prevalent on 26/12/2003 and the composition of these bouquets were frozen. The TRAI had itself indicated in the Tariff Orders that freeze is temporary and is likely to be lifted once there is an adequate competition and digitalization. However, tariff freeze has been continuing for about 12 years now.
- The continuation of the price freeze has caused distortion in the prices of channels inasmuch as where as prices of the channel which were existing in December 2003 have remained frozen. (as they have been derived from the bouquets which were frozen in December 2003), while the new channels in the same genre /category have been priced higher. This has led to heavy discounting in the case of newer channels thus causing distortion.
- Accordingly we are of the view that the said price freeze as well as the freeze on the composition of the bouquets need to be discontinued. In this regard it is pertinent to mention that the current prices in the addressable systems have been derived from these frozen prices. As per the tariff order dated 21st July 2010 issued by TRAI, the prices for addressable platforms have been stipulated to be @35% of the analogue prices which were subsequently modified to @42% of the

analogue prices vide order dated 18.04.2011 in an Appeal filed by TRAI. The said Appeal is still pending with Hon'ble Supreme Court.

- In view of the above mentioned factual position, we suggest the following:

- (a) Although the true value of our various popular and flagship channels is much more than the prevalent caps/ceiling, in the interest of ensuring the smooth transition from the analogue regime to digital regime in Phase-III and Phase-IV we suggest that in the proposed tariff framework, the current (maximum) cap/ceiling on the prices of the channels for Addressable Systems be stipulated as the ceiling for the channels in different genres (which should be language agnostic) as per the details given below:

Genres	Current Ceilings	Recommended ceilings
GEC	10.58	11.00*
Infotainment (including Lifestyle and Music)	12.60	13.00*
Kids	5.62	6.00*
Movies	9.66	10.00
News	3.86	4.00
Devotional	2.10	3.00*
Sports	18.90	19.00*

* If the broadcaster categorizes any of the channels falling in these genres under 'niche' category then 'forbearance' would apply.

- (b) The broadcasters should be allowed the necessary flexibility to price their channel within the prescribed genre/cap /ceiling. (e.g. the proposed cap for GEC genre is Rs. 11.00 Zee TV is presently priced at Rs. 5.83. With removal of tariff freeze, Zee should have flexibility to price the Zee TV up to Rs. 11.00 i.e. the proposed cap).
- (c) The present mutually negotiated contracts are based on number of parameters/criteria inter alia including the penetration offered, placement of channel, the size of platform, EPG positioning, the number of channels carried, length of the contract etc. Further the notion that the prevalent agreements

are being entered into at 10% of the RIO rates is also entirely misconceived and misplaced. It fails to take into account the weighted average criteria based on viewership as well as the penetration distinction between the national and regional channels. If all these factors are taken into account, the discounting qua RIO rates based on various factors even in the present RIO regime is to the extent of 50-55% only. In any event, in the proposed tariff regime all these parameters would form the part of RIO in transparent manner and the limiting of cumulative discount to 40% would indirectly bring so called rationalization in the RIO rates in tune with the market realities.

- (d) The present genre needs to be modified and classified into the following genres as suggested in para 4.14.6 which reads as under:

4.14.6 The market has clearly demonstrated that similar content in different languages only have different area of dominance but nature of uptake and popularity remains very similar. Therefore there is a need to club together similar genres of different language channels for fixation of the price cap. Such clubbing will also reduce the number of genres and give greater flexibility to the broadcasters in channel pricing. However, multiple genres may need to continue to be on the EPG so that it continues to be consumer friendly in finding a channel of the choice. It is suggested that the following genres for fixation of price cap be defined:

- a. News and Current Affairs*
- b. Infotainment*
- c. Sports*
- d. Kids*
- e. Movies*
- f. Devotional*
- g. General Entertainment*

Here GEC (Hindi), GEC (English) and GEC (Regional language) are clubbed with General Entertainment; and music and lifestyle are clubbed with Infotainment.

- (e) The niche channels should not be subjected to any price caps i.e. these channels should be under price forbearance. In this context we would like to clarify that a broadcaster may elect to categorize any new/existing channel under the non mass categories such as infotainment, lifestyle, specialized sport (excluding cricket), educational, cookery, health, real estate etc. as niche channel, thereby bringing it under tariff forbearance.
- In other words, the classification of a channel in a particular genre should be language agnostic e.g. all GEC irrespective of the language should be classified in one genre. Similarly, all the news and current affairs channels irrespective of language should be classified in one genre. Same is the case with Movie and Kids channels.
 - The maximum prices prevalent in the respective genre should be the cap/ceiling and no discount should be considered.
 - The ceiling/cap prescribed by the Authority should remain fixed for a year and should be reviewed every 12 months to adjust for the increase in input costs inflations etc.
 - As pointed out hereinabove, the criteria for providing the discounts to the DPO on the notified wholesale price of the channels should be based on the parameters clearly specified in the RIOS notified by the broadcasters on transparent and non-discrimination basis. The maximum percentage of cumulative discount that can be allowed on the aggregate subscription revenue due to the broadcasters from a DPO based transparent criteria should not exceed 40%. The limiting of discounting to 40% would also check the perverse pricing and the channels would be priced in accordance with the market reality.
 - The above mentioned tariff framework would take care of the issues pertaining to wide variations between the published RIO prices vis-à-vis contracted prices and would also make ala carte a viable option for the distribution platforms.
 - In this context, we would also like to point out that a reading of Question No. 16 posed in the CP gives the impression as if the Authority has already decided to cap the channel prices at 'average genre RIO prices' and asked for the suggestions regarding the further discount only. If the Authority is proceeding with this premise then this entire tariff exercise is meaningless and infructuous. The

suggestions sought from the stakeholders qua pricing methodology etc. under these circumstances would be an eye wash as it appears that Authority has already made up its mind in this behalf. We strongly urge the Authority to examine the response given by stakeholders with an open mind without pre-judging the said issue as otherwise it would lead to further disputes and litigations.

TRANSITION PROVISIONS

- TRAI intends to notify new tariff framework with effect from a particular date. In this context it may be relevant to point out that as on date of such notification, there would be subsisting contracts already entered into between the broadcasters and distribution platform operators. These subsisting contracts will have a life extending beyond notified dates.
- As per the extant TRAI regulations whenever a new tariff framework is notified, a broadcaster is required to give an option to a DPO to either migrate to the new framework and/or to continue with the existing contracts/agreements till its expiry (see Regulation 13.2A.7). It is the prerogative of the DPO to either migrate to the new regime by terminating the existing contract or to continue with the existing contract till its expiry. The said option is required to be exercised within a period of 45 days from the date of notification of the new RIO regime/any change in the RIO terms.
- Having exercised the option to continue the existing contracts till their expiry, a DPO cannot subsequently terminate such contracts in between and opt for the RIO based new tariff regime. Accordingly it is imperative for TRAI to provide for the transitional provisions in this regard inter alia stipulating that:
 - ✚ On notification of new tariff framework by way of an RIO, a DPO can either opt for the said tariff framework or can continue the existing contract till its validity
 - ✚ The continuation of existing contract shall be allowed till its expiry or till one year from the date of notification of new tariff framework whichever is earlier.
 - ✚ After expiry of one year from the date of notification of new tariff framework all contracts/agreements are to be aligned

to/executed in terms of the prevalent tariff framework universally applicable to all DPOs.

- ✚ The said option is to be exercised within a period of 45 days
- ✚ All the existing contracts are required to be filed with the Authority within a period of 45 days
- ✚ Having once exercised the option to continue the existing contract, it will not be open for a DPO to terminate the said contract before its expiry and/or till there is any amendment in the notified RIO by the broadcaster. In case any amendment is effected in the RIO by the broadcaster, again an option would be available with the DPO to continue its existing contract and/or to opt for amended RIO.
- ✚ If a DPO exercises its option to continue the existing contract it will not be open for such DPO to demand any kind of parity or similar contracts which the broadcaster may have with any other distribution platform.
- ✚ Similarly, if a DPO exercises its option to opt for new RIO based tariff regime, it will not be open for such DPO to demand any kind of parity with the distribution platform which has opted to continue its existing contract till its expiry.
- ✚ For the sake of clarity on the date of notification of new tariff framework, a DPO while exercising option to continue an already existing contract cannot demand parity with a contract of any other DPO. In other words, the option is limited for continuing its own existing contract.

NICHE CHANNELS

Q20. What should be parameters for categorization of channels under the “Niche Channel Genre”?

Response

- The channels (other than HD channels) which are not classified under mass regulated channels should be considered as the channels under “niche channel” genre. The channels may inter alia include the

Education Channels, Cookery Channels, Health channels, Real estate channels, Sports specific channels such as Golf etc. (except Cricket)

- The broadcasters should have the prerogative to classify a channel as a niche channel while reporting the launch of channel to TRAI. A channel falling under any of the following criteria may be classified as niche channel:
 - (a) A specialized channel up to subscriber base of 5 million (i.e. 5% of the existing C&S universe assuming the same to be 100 million)
 - (b) Newly introduced channel for a gestation period of 36 months subject to subscriber number condition as above.

The moment a channel crosses the threshold subscriber limit it would cease to be classified a niche channel.

Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.

Response

The niche channels are meant for specialized set to viewers. These channels involve significant investment which is required to be recovered mainly from subscription as being a new channel and/or the channel having a specialized content, the advertisement revenue stream is quite limited. Since the subscriber base is limited and the advertisements are also specific product based advertisements, the higher subscription charges are necessary to recover the investment in the niche channels. Accordingly, these channels should be out of the regulated tariff framework and should be given complete forbearance in fixation of their prices.

Q22. What should the maximum gestation period permitted for a niche channel and why?

Response

As pointed out hereinabove a channel may be categorized as niche channel at the option of broadcaster within a maximum gestation period of 36 months. This is for the reason that the new channel takes time to get itself established in the market. However a channel may

continue to be niche channel even after expiry of 36 months if it remains within the threshold limit of the number of subscribers.

Q23. How misuse in the name of “Niche Channel Genre” can be controlled?

Q24. Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?

Response

- The channel can remain under niche genre till the threshold subscriber base is reached. Once the stipulated subscriber base is reached, the channel would cease to be a niche channel and has to be placed under one of the classified genres with full regulatory price cap prescribed for such genre. It may be mentioned that it is entirely the prerogative of the broadcasters to classify a channel as niche. A broadcaster may at its option decide to treat a channel as a normal channel though it may have been initially classified under niche category even before the threshold subscriber limit is reached. Accordingly, there should be no regulatory bar in classifying a niche channel as an ordinary channel even though it may still qualify to be niche under the laid down parameters.

HD CHANNELS

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?

Response

- Presently the prices of HD channels are under forbearance both at wholesale level as well as retail level.
- Creation of HD content involves significant investment in equipment, shooting and transmission. The bandwidth requirement is also more vis-a-vis SD variant. HD channels have lesser advertisements as compared to SD channels. The subscription is the main source for recovering the investment in the channel.
- With the advancement of technology and awareness about the broadcasting services, consumer habits and demands are changing

towards television programs viewing. Certain segment of viewers is demanding high quality viewing experience even at a higher cost. HD channel is premium product and is meant for the section of subscribers who can afford specialized STB which is required to access these channels. In other words, this segment of consumers is prepared to pay a premium price for a better quality product.

- Accordingly we are of the view that no price regulation whatsoever is warranted in respect of HD channels. The HD channels in India are at a nascent stage. The market for HD channel is still evolving. So far there are just about 7 million number of HD subscribers out of the entire universe of C&S subscribers. It is an admitted position that cost for producing the HD channel content is more than that of SD content. The HD channel should be allowed to be sold both as a-la carte as well as in bouquet. Accordingly we are of the considered view that the tariff of HD channels should be left for forbearance as:
 - (i) it is a specialized product meant for section/segment of viewers who are willing to pay an extra/premium price for better quality viewing
 - (ii) for each HD channel there is a SD variant with the same content and accordingly those who do not wish to avail the HD quality and pay the price thereof, can very well subscribe to the SD channels.
 - (iii) Any attempt to regulate the wholesale and retail tariff for HD channels would amount to stipulating restrictions on the business model of the broadcasters and would directly affect the viability of these channels. This may result in dissuading the broadcasters from launching these kinds of channels, thus depriving the options otherwise being made available to the consumers.

Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?

Response

- We do not recommend any such formula. In fact no logical formula can be arrived as the dynamics of industry can change continuously. An HD channel when converted to an SD channel is

not the same content in form factor, audio and video attributes or the quantity of information carried on a screen. For example owing to the HD format and consequently a business channel(such as CNBC Prime HD) carries multiple sections on the screen with prices, tickers, world markets and other useful information. Such channel can not be converted to SD without severe degradation in viewership attributes. An HD channel is 1920x1080(2 MPixels or MP) Pixels as against 625x480(0.3 MP) for SD content. Thus an HD channel has 7 times more content pixels.



- However if at all the Authority has to regulate the price of the HD format, we suggest a price of Rs. 25/- per subscriber per month at wholesale level irrespective of the genre of channel. At the retail level the price should be two times the wholesale price.

Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

Response

We are of the view that if a consumer is subscribing to HD channels then the price of only HD channel should be charged. The service

provider may give both HD channel as well as its SD variant provided no additional charges are recovered for SD variant.

MANNER OF OFFERING

Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

Response

- We do not agree with the proposition that separation of FTA and pay channel bouquets will provide more flexibility to the subscribers.
- In this context it is relevant to point out that in so far as the consumer is concerned, there is no distinction between FTA channels and pay channels as both are subscription based channels for consumers. Even the FTA channels whether given as a part of basic tier or as a-la carte carry a price which is required to be paid by the subscriber.
- The distinction between 'Pay' and 'FTA' is only relevant at the wholesale stage. Accordingly it is entirely fallacious to introduce this kind of distinction at the retail level which in fact would constrict /narrow down the choice available to the subscribers.
- The distribution platforms viz DTH and digital cable service providers design the retail packages keeping in mind the requirements and the choice of an average consumer irrespective of whether the channel is FTA or pay. The endeavour is to present a wholesome bouquet or package of channels to a consumer which would satisfy all its requirements in terms of content. Separate FTA and pay bouquets would severely compromise these kinds of offering and in fact would hurt the consumers rather than providing them so called flexibility.
- In this context it is pertinent to mention that the concerns expressed by the Authority in this regard are entirely misplaced inasmuch as even under the present dispensation a digital cable service provider is mandatorily required to give a bouquet of 100 FTA channels described

as 'basic tier' as per the stipulation contained in the Cable Television Network Regulation Act. Moreover in case a pay channel is also provided along with basic tier bouquet the same are available to consumer at Rs. 150/- per month. Therefore the availability of a channel at reasonable price is ensured in the present dispensation. Similarly DTH operators are also providing packages mainly containing FTA channels at Rs. 90/- to Rs. 99/-.

- A bouquet consisting of both FTA and pay channels is beneficial for the distributor of channels inasmuch as the MSOs/DTH operators can avail the wholesome offering comprising of different genres of channels through these bouquets which otherwise may not be available in the bouquet offered by a single broadcaster. Even the bundling has lot of advantages as detailed in the Introductory Comments above. There is no coercion as such to force a consumer to subscribe to the package alone.
- Pay Channels and FTA channels are products of market dynamics. The same channel can be pay in the North and may need to pay carriage fees in the south and be FTA. Moreover these can also vary widely within the Cable network or MSO networks. So far as FTA bouquets are concerned, these will be severely undercut by DD-Direct and customers option for DTH(FTA) if the cables tend to price them.
- The customers who do not want any pay channel/bouquet can avail the basic tier and therefore can budget their expenses accordingly. In this context it is also pertinent to point out that in case a consumer exclusively wants to view the FTA channels the DD Direct Plus which is a DTH service of Prasar Bharti is available free of cost to the consumers. A consumer desirous of availing only FTA channels can subscribe to the said service by making one time investment of around Rs. 700-800. As pointed out hereinabove, the service is absolutely free and there are no recurring charges which are required to be paid by a consumer to Prasar Bharti. It has been recently announced by the Prasar Bharti that the offering of channels on DD Direct Plus is going to be increased from the present level of 58 number of channels to 250 number of channels shortly. Thus, an alternative is available in the form of DD Direct Plus service to the subscribers who wish to view only FTA channels and are not interested in subscribing to pay channels.
- It can be said that lot of certainty that no consumer will subscribe to a digital cable and/or to DTH to avail the FTA bouquet only. An

innovative package of channels which comprise of various genres whether pay or FTA is more likely to find acceptability with the consumers rather than separating the two. Accordingly it is our considered view that the present framework under which both FTA and pay channel can form the part of package at retail level be continued.

- The only modification which is being suggested at the retail level is that while applying twin-condition to the bouquet offered to the consumers by a distribution platform which consists of both Pay & FTA channels, the FTA channels should be excluded as these channels being free for the DPOs, their numbers in a bouquet should not affect the calculation of a-la carte price of pay channels by applying the twin condition formulae.

Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.

Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

Response

- A subscriber should have multiple options to subscribe to the channels and/or to effect any change in the subscribed channels such as ;
 - ✚ through call centre
 - ✚ through Web
 - ✚ through Mobile App
 - ✚ through e mail
 - ✚ through distributor of DPO
- Turnaround time for fulfilling any request from the subscriber should be specified in QOS.

REGULATION OF CARRIAGE FEE

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?

Q32. Under what circumstances, carriage fee be permitted and why?

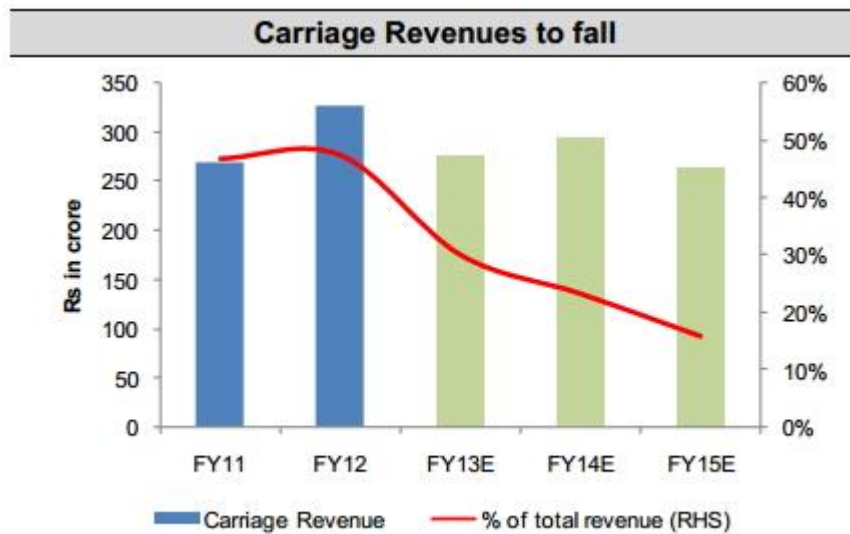
Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the “price Cap” and how is it to be calculated?

Response

- The existing provisions of Interconnect Regulations already mandate that in case the distribution platform invokes the “must provide” provisions contained in clause 3.2 of the Regulations, it is prohibited from demanding the carriage fee to carry the said channel.
- However, in case of other channels, i.e. the channels which are not demanded by the distribution platform(s), there is no such stipulation on the premise that since the carriage infrastructure (headend and the cable network in case of MSO) belong to the distribution platform, they are entitled to ask for the necessary carriage charges from the channels willing to utilize the said carriage/delivery infrastructure for reaching the consumers. Thus, even under digital cable systems where the capacity to carry the channels has increased many fold vis-à-vis analogue cable, the carriage fee is continuing on the premise that it is a commercial negotiation between the distribution platforms and the Broadcaster which does not have an impact on the subscriber and accordingly the same should be left between the Broadcasters and the MSO to finalise.
- In this context it is also pertinent to point out that the existing digital addressable platform – DTH is also charging carriage/ placement fee from the channels which are approaching DTH operators for utilizing their infrastructure in order to reach the ultimate viewer. This is because of the fact that in DTH also the capacity is limited because of the limited availability of transponders in Ku band. Accordingly, there is a mismatch between demand and supply thereby leading to the carriage phenomena.
- Carriage fees is a function of the Cable capacity or DTH capacity, pull of the channel and the number of subscribers reached. For example on DD Direct, which is estimated to have over 30 million customers, carriage fees are estimated to now hover around 7 Crores as so far they had only 60 channels. As they expand to 200

channels or more, the costs will come down due to greater availability and the ability of customers to only watch for a lesser time due to a larger availability universe.

- Some channels, such as movies today command free carriage, and they may be able to get some subscription revenues as well. This may however change as network launch Platform services with upto 10 movie channels running at the same time. In digital systems, the number of channels slots grows multifold, with lower carriage revenues.



Source: Den Networks, Ventura Research

In case of DTH networks, the carriage fees may be critically dependent on the number of channels as Satellite space is controlled by ISRO with little transparency.

- There is another aspect which is relevant in this context. The TRAI itself has observed in the CP that there are around 842 channels permitted by MIB out of which 262 are pay channels and 580 are FTA channels. The capacity of most of the headends installed by digital cable service providers is in the range of 450-500 channels. Out of the said capacity around 200 slots are captured by pay channels. Thus for remaining 250 slots there are about 580 FTA channels and around 50 pay channels. Thus even in digital era there is a mismatch between demand and supply of the carriage slots.
- Moreover most of the FTA channels wish to be a part of “basic tier” which is an entry level tier in order to secure their advertisement revenue through carriage on the platform. Accordingly they are willing to pay a fee for inclusion in basic tier which is termed as

“carriage fee/placement fee”. Accordingly by whatever name called, the phenomena of carriage fee would remain even in digital regime. It cannot be completely eliminated. However, in order to create a transparent and non discriminatory regime, it is imperative to create a framework to regulate the carriage/placement fee.

- In the proposed tariff framework for pay channels, we have already suggested the inclusion of various parameters such as the penetration offered, uptake no. of channels by the distribution platform, placement in EPG etc. as part of the RIO offerings which would be transparently available to all addressable distribution platforms on non-discriminatory basis. **Thus, the carriage/placement/marketing fee would stand subsumed in the discounting/incentive parameters stipulated in the RIO, thereby obviating any need to pay them separately.**
- In so far as FTA channels is concerned, in order to create a transparent mechanism even in the carriage/placement fee domain in digital addressable systems, we are of the view that certain stipulations are required to be incorporated in the Regulations. The contracts/agreements for carriage/placement fee between the broadcasters and distribution platforms including with MSOs and DTH operators be brought under the regime of Register of Interconnection Regulations thereby creating the obligations on broadcasters and distribution platforms for filing these contracts/agreements with TRAI.
- Further, the distribution platforms viz. MSO (digital addressable cable), DTH etc. be also brought under the purview of RIO Regulations on the lines of RIO published by Broadcasters for subscription of their channels. In other words, these distribution platforms should publish the Reference Interconnect Offers (RIOs) specifying the terms & conditions including commercial terms for the carriage/placement of the channels (Basic Tier, LCN Nos. etc) on non-discriminatory basis.
- As mentioned above in respect of FTA channels, there is a need to prescribe cap on maximum carriage fee to be charged by distribution platforms. In digital distribution platform it is possible to know the number of subscribers/STBs installed from the SMS system. Accordingly, a reasonable cap per subscriber/STB per year be stipulated. The carriage fee should be completely regulated by introducing the non-discrimination and transparent criteria. As

pointed out hereinabove, the distribution platform should be mandated to come out with their interconnect offers (RIOs) for charge of carriage fee /placement fee/marketing fee and the said charges should be on non-discriminatory basis i.e. uniform for all the channels seeking carriage/placement. Further TRAI should stipulate that all the broadcasters and distribution platforms are required to file their carriage/placement/marketing fee agreements also with the Regulator.

Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?

Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

Response

Since we are suggesting the carriage fee based on number of subscribers/STB, the issue of reduction in carriage fee with the increase in number of subscribers does not arise. Should the carriage fee be negotiated on lump sum basis with the assumption of a particular subscriber base, with the increase in number of subscriber the issue of reduction in the carriage fee would come which is not the case based on STB number based carriage fee.

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

Response

The CP has identified two kinds of channels in the cloned category:

- (i) Channels that have same video stream feed with different language audio feed
- (ii) SD channels that are exact replicas of original HD channels

In both the cases the channels should be treated as one. In other words, there should be no separate charges for the channels having same content but multiple audio feed. Similarly, if the SD channel is

the exact replica of HD channel then the tariff for only HD channel should be levied.

Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Response

Yes, it is a good suggestion. This would make consumers aware about the availability of various channels on the platform.

Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

Response

- This is an option which should be left to the Broadcasters, if they would like their channels to be made available for such viewing. There have been cases where cricket matches have been watched in a preview mode for considerable parts of the match, leading to a non-intended misuse of the facility.
- The EPG can include the purview of channels subject to technical feasibility. However, the purview could be limited to certain excerpts of the programs and that too for a duration of 2-3 minutes only.
- PIP viewing is only possible where the box has two tuners, which is applicable for only a few percent (less than 5% of the STBs) in the Indian markets. Hence for a majority of customers, such facility would not be available, even if regulations permit.

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.

Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

Response

1. Pay-per-program for all channels' programs is not suitable in case of traditional distribution platforms for the following reasons:
 - a. Presently in PPV service, a movie is shown prior to its TV-airing, thus it's a VAS for subscribers; it might not be a case for other types of programs like Sports or daily sops. Live Sports & many of the daily sops cannot be made available before TV-airing – hence it does not make any value proposition for the subscribers.
 - b. Providing any News or Sporting event/series on PPV basis can be explored, however subscribers always have the choice for selecting the particular channel on a-la-carte basis during the period.
 - c. Regulating a-la-carte rate for each channels at retail level will have more meaning for subscribers over PPV of individual programs.
 - d. Also there will be immense technical challenges for traditional DPO's to maintain program listings and thereafter catering each subscriber's choices.
2. This model is more suitable for new media (with 2-way technology) – specially digital operators on OTT technology

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

Response

- We welcome TRAI's initiative for taking up the issue of Audit in such a detailed manner in this consultation paper. The thought process of setting up of a central facility is indeed a step in the right direction to have authenticated data which can be relied upon by all the stakeholders. It will also ensure ease, correctness and transparency of the data with regards to reporting of Subscriber numbers from the

CAS and SMS systems of DPO's. Additionally, it will also ensure a baseline for Broadcasters to conduct their Audit of the DPO's by looking into specific areas of inconsistencies observed in the data fetched from the central facility and thereby improving the outcome of the audit exercise as well and also reduce the overall time for conducting audit.

- In our view the central facility can be set up maintained by the Industry body which can be floated by all stakeholders including Broadcasters and DPOs' coming together. A mechanism can be worked out to fund the Capex and Opex thru contribution from the stakeholders. Also, a rate card for different services including data, forms, formats and Reports could be made applicable by the central facility for ensuring complete transparent transactions.


- Existing Technological scenario

Broadcaster in current technology framework provides signals of its channels to DPO's which is essentially one way system. Broadcaster has to rely upon the report submitted by DPO relating to the channel wise subscriber count for all financial decisions and invoicing. Other than this reporting mechanism there is no way in which broadcaster can arrive at true and correct number of subscribers of a channel serviced through a DPO.

At DPO level all subscribers and their entitlements to avail channels are configured/provisioned in Conditional Access System (CAS). CAS is network element which actually decides which STB/VC will be able to avail any particular channel at any point in time. Depending on the inorganic growth of operator and based on technological and cost considerations a DPO generally has one or more CA systems and databases/instances at any point in time. Since CA system is a Network element, a BSS system generally called as SMS is used to manage the customer lifecycle process which in turn interfaces with CA system to Actual enablement of channel on a STB/VC.

- Suggested Guidelines for ensuring data availability in the Central facility

A central facility which is proposed to be created should have some essential principles for it to be effective and to ensure integrity of data.

-  Data Sources- Such central facility should access data from both:

- (i) CAS
- (ii) SMS

- ✚ From CAS the data that should be pulled from the DPO's should have the active VC's with the products/packages or entitlements on the daily basis.
- ✚ Daily logs of change in package to channel mapping must be part of data pulled.
- ✚ Daily logs having complete information about the command type, time of command, command syntax, user id/IP of sender of command should be captured.
- ✚ CA system should also provide the Inventory of VC's uploaded in the CAS system and status of those VC's on end of each data when data is pulled by Central facility.
- ✚ There should be a very high penalty in the regulation for not declaring any CA system/instance or database to the central facility or having facility of duplicate VC/STB numbers in the field.
- ✚ Similarly there should be extremely high penalty defined in regulation in case of any channel found running in unencrypted mode.
- ✚ Daily data pulled from SMS should have list of all VC's having packages active on that date along with package to channel mapping.
- ✚ Log of all activities done from SMS to CAS must also be captured
- ✚ Logs of package to channel mapping should also be obtained on daily basis.
- ✚ Details of all inventory uploaded in the system with their activation status on daily basis should also be captured.
- ✚ There should be provision of high penalty in case any SMS system/database or instance is not declared by the DPO.

- ✚ There should be penalty defined in the regulation in case of DPO is not allowing access or providing delayed information to central facility.
 - ✚ Data should be available for all packs and VC's/STB's activated and deactivated during the day.
- The confidentiality and security of the data are the major issues which are required to be effectively tackled.
 - In so far as the reporting of data by the DPOs is concerned, a common format for inclusion of various information required by the broadcaster can be developed which should be uniformly followed by all DPOs.
 - For the purpose of conducting the audit, a panel of reputed Chartered Accountants firms can be maintained by the industry body such as IBF etc. who can conduct the audit with the pre-defined audit scopes.

We are separately submitting a detailed note on various audit issues for the consideration of the Authority.

Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

1. ADOPTION OF PRE-PAID MODEL AT THE RETAIL LEVEL

- One of the major objectives of the proposed tariff framework is to reduce the disputes and litigations in the sector. A major reason for litigation between the broadcasters & MSOs and MSOs & LCOs is the default in subscription payment. Despite the implementation of digital addressable system neither the information about the subscribers availing the television services is transparently available in the subscriber management systems of the MSOs (digital cable service providers) nor the subscriber-wise payment is being accounted for in their system. It has been observed that despite the implementation of DAS in Phase-I & Phase-II and in major portions of Phase-III areas, the LCOs are still making the lump sum payments to the MSOs.
- TRAI has also observed in the CP that on a conservative estimate Rs. 32000 crores are being paid by the subscribers at retail level. Unfortunately, the said ground collection is not flowing back to the digital cable service providers (MSOs) and to the broadcasters, thereby

not only depriving them of their legitimate/equitable share in the value chain but also leading to default in the payments under their respective contractual obligations. This is leading to the disputes in the sector.

- An analysis of various matters pending in TDSAT would reveal that majority of the cases relate to the payment default, recovery, non-provision of signals because of alleged contractual violations etc. The analysis would further reveal that most of the disputes are in the digital addressable cable domain and there are hardly any such kind of disputes between the broadcasters and DTH service providers. One of the major reasons for absence of such kind of disputes in DTH sector is that DTH has successfully adopted the pre-paid model wherein a subscriber has to pay the subscription in advance in respect of the channels which he has subscribed from a DTH operator. Accordingly, in order to address this major issue of payment default in the digital addressable cable sector we suggest the following:

✚ In digital addressable cable services, an MSO plays a key role. The digital headend is established by an MSO which inter alia include the encryption systems and subscriber management systems. All the channels whether FTA or pay which are subscribed by the consumers, are encrypted at digital headend. Accordingly, the bills for cable services are also required to be raised by the MSO as the subscriber management system is maintained by them. Thus, in DAS an MSO becomes a central focal point for cable services. Thus, it is imperative that the payment mechanism in DAS should be such as would not only facilitate smooth flow of subscription from subscribers but also result in meeting the other necessary requirements of DAS i.e. implementing choice of channels by the customers, billing as per the channels subscribed by the subscribers, subscriber wise accounting so as to make available an updated individual subscriber account etc.

✚ In order to meet the above mentioned objectives , the pre-paid model be mandatorily introduced at the MSO level i.e. the subscriber of digital cable services should make the payments direct to the MSOs. This will not only ensure the smooth flow of subscription money from the subscribers to the MSOs but also facilitate the subscriber wise accounting

in the SMS, thereby leading to better subscriber centric services.

- ✚ In this context it is pertinent to point out that at subscriber level the system is already pre-paid i.e. a subscriber has to make payment in advance (usually at the start of a particular month) to its LCO in order to receive the cable services. Accordingly, in the new pre-paid system proposed instead of making an advance payment to the LCO the subscriber would make the payment to MSO.

The above methodology would address the default issues to a large extent and would also help in reducing the disputes and litigations in the sector.

2. SEPARATE TARIFF FRAMEWORK FOR COMMERCIAL SUBSCRIBERS

We are of the considered view that the present tariff exercise would be incomplete without including within its ambit the tariff for commercial subscribers. The Authority is well aware that this issue is one of the contentious issue on which the litigation is still continuing. It is therefore imperative for the Authority to take an appropriate view in the matter which would be acceptable to all the stakeholders. We have been reiterating that:

- The tariff framework for the commercial subscribers should be different from the ordinary subscribers.
- The said tariff framework should be based on commercial ‘usages’ of the television services in the commercial establishments on the lines of electricity charges, property and other taxes etc.
- The present dispensation pertaining to ‘separate charge’ criteria by commercial establishment is impracticable and unworkable as it is a common knowledge that none of the five star and other hotels gives a break up of various charges in their room tariffs. Various facilities enjoyed by the guests while staying in the hotels such as gym, swimming pool, internet etc. are factored while fixing the room tariffs. Similarly, the charges for television services are also considered while fixing the tariff by the hotels. Accordingly, the tariffs for television

services should be different for commercial usages irrespective of the charging mechanism by the commercial establishments.

- We suggest the following tariff schemes for commercial establishments:

- ✚ The commercial establishment can be classified into two categories

- ✚ The small commercial establishments and the hotels having the room tariff upto Rs. 1000/- shall continue to pay the tariff applicable to the ordinary subscribers.

- ✚ The restaurants and other hotels (with tariff more than Rs. 1000/-) :

- For SD channels – 5 times the ordinary subscribers rate (5x)
- For HD channels – under forbearance

We are submitting a separate detailed note on this issue.
