

ATRIA CONVERGENCE TECHNOLOGIES PRIVATE LIMITED

Reg. Office : 2nd & 3rd Floor, No.1, Indian Express Building,
Queens Road, Bangalore, Karnataka 560 001
Tel : 080-4288 4288 Fax : 080 4288 4200
Website : www.acttv.in

CIN : U72900KA2000PTC027290

Introduction

We at first thank the Authority for consultation that proposing for the comprehensive code/tariff structure for the addressable TV distribution of "TV Broadcasting Service" across broadcasting delivery platforms.

We, Atria Convergence Technologies Private Limited (ACT), is in the business of providing Broadband internet services along with Cable TV services through its Subsidiaries (ACT Group Companies – herein after referred as "ACT Group"). We are an Independent distributor in the field of Cable TV Service and unlike some of the Major players in the market who are vertically integrated i.e. both broadcaster and distributor. We are always in support of the TRAI who have advocated for separation between Broadcaster and Distributor. But these important recommendations of TRAI has so far not considered by the Government. We would strongly urge TRAI to pursue the issue with Government. Any Tariff related regulation in the long run should ensure a level playing field between integrated distributors and independent distributors. We are of the view that the regulations of TRAI has to be more with regard to regulating the integrated distributor.

We are one of the first Distributors certified by BECIL. We are also a major player in the wired Broadband sector in South India. We provide Broadband internet services along with Cable TV services. Ensuring level playing field for such independent distributor will encourage the growth of Broadband internet services.

We would also like to bring to the notice of the Authority the some of the aberrations in the present system which the new tariff regime should try to address

- i) Fixed fee deals and CPS deals should be completely stopped, all Subscription deals would be based on RIO rates published.
- ii) TDSAT in its judgment, dated 07.12.2015 that has been upheld by Supreme Court, delivered in the petition filed by Noida Software Technology Park Limited" has evaluated, in detail, the present regulations and RIO that has been published by Broadcasters and held as follows:

"A proper RIO, true to its nature as envisaged in the Regulations, is meant to go a long way in introducing/bringing about fairness, reasonableness and non-discrimination in interconnect arrangements between a broadcaster and distributors.

*A proper RIO would, thus, form the **starting point for any negotiations** which would be within the limits allowed by the ratio between the a la carte and the bouquet rates as stipulated under clause 13.2A.12 and the margins between different negotiated agreements would be such as they would hardly be any requirement for disclosures."*

- iii) TDSAT in its judgement, dated 25th Sep 2014, delivered in the petition filed by Hathway held that

"The "Reference Interconnect Offer", as defined under the Regulations, is a positive concept and if framed properly it should go a long way in ensuring a level playing ground. In Europe, and in an increasing number of jurisdictions worldwide,

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incumbent operators and/or those with significant market power are required to produce a Reference Interconnect Offer. "This Specimen offer provides a common and transparent basis for all agreements for the provision of interconnection services subject to regulation. It also helps to ensure that new entrant operators can be confident of gaining terms which will not be less favourable to those applied to others (including the interconnection provider's own retail operation)". Seen thus the RIO may be said to define the parameter of negotiations for arriving at an agreement on mutually acceptable terms. It may be argued that the RIO must contain the details and rates relating to all the bases on which the maker of the RIO intends to enter into a negotiated agreement."

- iv) Time and again, TDSAT has advocated that TRAI has to examine the rates quoted in the RIO, by the broadcasters, to ensure that the same should provide level playing field to all the distributors more over beneficial to the consumers viewing those channels. RIO rates should be actual market rates for those channels so that the discrimination in mutually negotiated agreement between Broadcasters and integrated distributors/independent distributors/new entrants can be curtailed.
- v) Addressing LCO related issues
 - a. Moving of a LCO from one MSO to another without taking the NO OBJECTION CERTIFICATE should be disallowed. All previous dues must be cleared before any such movement. Non-compliance of this should have financial disincentives imposed on the LCO and the MSO who has connected/provided signal to such LCO.
 - b. Revenue share must be mandated and ensured by the Authority as per the relevant regulations. A transparent system be introduced and financial disincentives be imposed on the LCOs not sharing revenue as per mandated regulations.

Considering the growth of the Sector and consumer power of choice, ACT group (Independent distributor) would prefer the **Integrated Models** more specifically **Flexible MRP Model** that would prevail over a longer run. Having said that, considering the ground situation where there are major vertically integrated players and the relationship / deals between various service providers we feel that the present market is not mature for an integrated price model. Hence we request the Authority may frame the regulations that may lead to Integrated Model over a period of time. Meanwhile TRAI may consider one Tariff model at the Wholesale level (Regulated RIO Model) coupled with another model at Retail level (Price Forbearance Model) for the present market to get stabilise and which will have to eventually lead to **Flexible MRP Model in Integrated Models**. Once the digitisation is complete and reasonable gestation time given for the markets to be stable, the Authority may contemplate the introduction of an **Integrated Model i.e. Flexible MRP Model**.

Summary of issues for consultation

Q1. 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.

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As discussed in the introduction we feel at the wholesale level the **Regulated RIO model** is the most optimum under the present business circumstances and market conditions. We feel that this model is the most ideal at the wholesale level because it protects the interests of distributors and consumers and enables price discovery for a category of pay channels. We also believe price discrimination by the Broadcasters can be curbed with this model. The Authority can also have a better control on the prices as it can :

- i) Specify a Price cap of channels of each genre.
- ii) Linkage between prices of Ala carte & Bouquet of channels.
- iii) Framework of discounts offered by broadcasters should be published in their website to ensure Non-discrimination.
- iv) Niche channels can be encouraged by following forbearance in their pricing.
- v) Issue guidelines and take measures for transparent declaration of number of subscribers of each channel/bouquet.
- vi) Packing power is evenly distributed between Broadcasters and DPO to benefit consumers at large.

While TRAI prescribing the regulations for the **Regulated RIO model**, the prices of channel should be affordable to the consumers and as per the market requirement. Further there can be no other agreement to be executed between the service providers if regulated RIO model is prescribed by TRAI. We request the Authority to consider the observation made by TDSAT in their judgment, referred above, that ***"A proper RIO would, thus, form the starting point for any negotiations which would be within the limits allowed by the ratio between the a la carte and the bouquet rates"*** while framing / prescribing the prices of the channels.

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.

We are of the opinion that **Price forbearance model** and letting of retail prices being decided by the market forces is the most suitable at the retail level. DPOs would have the freedom to market the channels in a-la-carte and Bouquets as per the local market conditions. This model also leaves room for innovation to suitable pricing models. The model would also encourage modernisation of TV distribution sector, which shall be ultimately benefit the end customers by way of better quality services. The Distributor would be able to offer services based on the regional, cultural and linguistic diversity of the market.

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.

We are of the opinion that at the wholesale level there is an utter lack of transparency as there is no organized method to ascertain whether broadcasters are giving channels in a non-discriminatory

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basis. So the regulated RIO model would ensure that the Authority has better control on the prices of the channels along with other aspects.

At a retail level Price forbearance model is the best as it is left to market forces to decide the price of channels. The DPOs will be forced to innovate pricing models and business strategies depending on the market conditions thereby ensuring transparency to the subscribers. The customer choice and viewing of channels are depend on regional, cultural and linguistic needs of the customer. The Distributor can devolve the price of the channels / bouquets based on market requirement.

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.

At a wholesale level the regulated RIO model would ensure that the Channel prices are regulated effectively. Also niche channels are encouraged in this model which would give the customers further choice. This model exercises control over the monopolistic pricing pattern of Broadcasters. Forbearance at the retail level would ensure that the a-la-carte and Bouquet rates are competitive in the market thereby allowing the Customers to choose the DPO within his area that suit his requirement and preference of channels. Since the pricing in this model is fixed by market forces, it will benefit the Consumers.

Q5. 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.

As mentioned in the introduction given we are of the opinion that from a long term perspective once the market gets stabilized after the implementation of all the phases of DAS, the Authority may contemplate the introduction of an integrated business model. We feel at this moment the market is not mature enough for the introduction of an integrated business model. However among the integrated business platforms the **Flexible MRP model** is the best as gives the DPOs and the Broadcasters space to adapt to different market conditions.

We however feel that the discounts and margins offered by broadcaster to the DPOs should be regulated, transparent and not left for Forbearance to avoid monopolistic pricing pattern of broadcasters. Customer awareness should be increased to enable customer take full advantage.

Under the flexible MRP model the consumer will have full flexibility to choose channels of his own choice. The quality of content of TV channels may improve to increase acceptability by customers. The customers will also have a chance to choose niche channels.

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

We presume that with the Flexible MRP model, the Authority would ensure that the discounts and Margins offered by the broadcasters to the DPOs are regulated and mandatorily notified. This would ensure non-discrimination by the broadcasters.

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.

Under the flexible MRP model the consumer will have full flexibility to choose channels of his own choice. The quality of content of TV channels may improve to enhance acceptability by customers. As the business model is dependent on the market forces the DPOs will have to give the best prices to the Consumers to retain them. The customers will also have a chance to choose niche channels of their choice as the model encourages niche channels. Since the Packaging power is with Broadcasters at wholesale level and DPO at retail level, the Consumers shall be benefited with wide variety of bundles / bouquets at the best price.

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

We don't feel there is a need to identify significant market forces.

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

No Comments in view of answer to Q8 above.

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

The Regulation always has to strive for Equality before law as enshrined in article 14 of the Indian Constitution. There should not be any differential Authority frame work for the significant market power.

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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?

There is no need to continue with the price freeze prescribed in 2004, basic pricing framework should be done as per the market forces and demand of the channel.

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.

Genres proposed for pricing cap are adequate. We also suggest that Authority can also have regional genres with same set of main genres.

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.

No in view of the answer to Question number 12.

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

The pricing models should not have any scope of mutual agreements and the same should be as per the Regulated RIO Models at Wholesale Tariff model. We request that TRAI should effectively enforce its regulations

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

The Authority may consider for calculating average CPS in analogue regime and take average CPS in digital markets and 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?

No comments

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

Frequency to revisit genre ceilings should be annually, as agreement period between stake holders is annual, this would facilitate for corrections during the renewal of agreements.

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

Volume discounts can be permitted.

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?

Once the criteria is fully transparent and enforced non-discriminately, there may not be any need to regulate maximum percentage of discount.

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

We are of the opinion that the categorization of Niche Channel Genre should be based on Nature of Content, caters to a specific interest group, targeting a specific audience demographic subgroup and the subscriber number for such a channel. A channel once classified as a niche channel should be moved to the regular bouquet only after a gestation period of 24 months or after the channel viewership reaches the criteria fixed by the Authority for niche channels, whichever is earlier. The niche channel should be made available to subscribers on ala carte basis only during the gestation period or till such time they reach criteria prescribed for Channel viewership of niche channels by the Authority.

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.

We believe that Niche channels need to be given forbearance till they are placed in the niche channel genre.

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

As Niche channels involve higher initial investments and as they mostly follow a subscription driven cost recovery model we believe that a gestation period of 24 months should be permitted for a niche channel.

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

The following steps can be contemplated by the Authority against misuse in the name of Niche channels.

- i) Authority should enact strict guidelines and/or regulations on the categorisation of a channel as a Niche channel.
- ii) Broadcasters be asked to file monthly compliance on the said guidelines/regulations. They should also publish the ala carte rates, Genre and a brief description on the intended audience in their website.
- iii) DPOs should also be asked to file compliance to ensure that Niche channels are provided to the Subscribers on ala carte only.
- iv) Suitable financial disincentives should be imposed for noncompliance by Broadcasters/DPOs.

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”?

Please refer to answer to question 20.

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

The HD channels should be brought under the Regulated RIO Model and the price should be done as per the market forces and demand of the channel.

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?

Please refer to answer to question 25.

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?

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We believe where the SD channels are downgraded versions of the HD channels and the customer is forced to take both the versions, regulations should be brought in by which the customer should have the option to offset his SD channel rate from the overall billing if he has availed for the HD channel. The customer can also be given a list of pay channels of a similar genre by the DPO to swap the SD channel without any additional cost to him. However the same may be initiated through a wide consumer awareness program through media as well as at distribution level once implemented.

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.

No. The Distributor / MSO shall be allowed to form the bouquets of channels as per the market requirement.

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.

We believe with the advent of new technology, newer methods of activation of channels quickly by way of :-

- i) Call to customer care Centre.
- ii) Development of phone based apps.
- iii) Mobile based activations.
- iv) Web-based integration platform
- v) Email based activations

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

Please refer to answer for Q.29.

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

We are of the opinion that the present regulations sufficiently covers the carriage deals and the same can be retained by the Authority. Carriage fees should be left to market forces and not be regulated as there are already adequate safeguards provided in the interconnection regulations in the form of prescription of uniform carriage fee to be charged by the MSOs for all broadcasters and restriction for upward revision of carriage fee for a minimum 2 years.

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

We believe that only if a DPO has asked for a channel under the “*must provide option*” then it should not be permitted to collect carriage fees.

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?

We are of the opinion that carriage fees should be left to market forces.

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?

We are of the opinion that carriage fees should be left to market forces.

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?

We are of the opinion that placement & marketing fees should be left to market forces.

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?

There is a definite need to curb variant & cloned channels, regulations need to be brought in by the Authority to protect the interests of the consumers and financial disincentives introduced if needed on the broadcasters.

- i) In the first instance where the same channel content is simulcast in different languages, we feel this does engage subscribers of different demographic areas by taking into consideration their language preferences. But care must be taken to ensure that the customers are not forced to take the cloned channels of all languages and they are not packaged in a way that is detrimental to the consumer interest. The customer should be given the choice of opting for one channel in a language preference of his choice and not be charged for the others.
- ii) In the second instance where the SD channels are downgraded versions of the HD channels and the customer is forced to take both the versions, regulations should be brought in by which the customer should have the option to offset his SD channel rate

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from the overall billing if he has availed for the HD channel. The customer can also be given a list of pay channels of a similar genre by the DPO to swap the SD channel without any additional cost to him.

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?

The EPG can include the details of the programs of the channels not subscribed by the customers so that the customer can take a conscious decision depending on the Genre whether to subscribe for the said channel or not.

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.

We believe that the preview of channels say Picture in Picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers may lead to misuse of the said provision of channels on PIP whereby the customer would watch the said programs on PIP and not pay for them. This misuse can be curbed by just previewing teasers of the channels not subscribed by the subscribers. Another facet that needs to be looked into is the treatment of those channels by the broadcasters, the DPO should not be burdened with additional cost by broadcaster for running the channel teasers on PIP. The DPO would also need to make a lot of investment in having PIP with no guaranteed returns. So we submit to the Authority that running of channels on PIP with no additional cost would neither be feasible nor financially viable without charging the subscribers for the said service.

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.

Pay per program viewing by Subscribers is fully feasible to implement. It is our view that the Pay-per-program viewing service is at a very nascent stage of development in the Indian market and the DPOs should have the freedom to opt for different platforms/technologies for Pay per Program service not only understand the market better but also to work out the cost involved. This would help them in working of the correct charges for viewing depending on the market conditions. So we believe tariff of such pay per view programs should be left to market forces as and when the Indian Market and the Service providers are ready with such technologies. This service should be encouraged at this stage.

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

Yes there will be additional implementation cost to subscriber for pay-per-view service, which can be built in the tariff for pay-per-view service.

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.

We are of the opinion that the current regulation on Interconnection adequately safeguards the Audit related interests of the Broadcaster. Most of the interconnect agreements between a DPO and Broadcaster have a clause which imposes financial disincentives on the DPO if there is a discrepancy between the Declared Subscriber figure and Subscriber figure in the SMS of the DPO. Hence we don't feel there is a need for a Central Facility to facilitate the audit process between the Broadcaster and the DPO.

However we do strongly feel that there is need for uniform guidelines to be laid down by the Authority for standardizing the reports and the data demanded by the broadcasters. We have observed from our experience that every broadcaster has his own reporting format & audit process which makes it difficult for the DPO to meet the audit expectations from the broadcasters. We submit that the Authority has to ensure strict adherence to the said guidelines by the Broadcaster by imposing financial disincentives for non-compliance. Effective implementation of TRAI regulations is the core for success.

It should also be made mandatory for all DPOs to have their Headend certified by M/s. Broadcast Engineering Consultants India Ltd (BECIL) or any other agency recognised by the Authority.

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

Infrastructure sharing between MSOs:

The DoT (Department of Telecommunications) has made recent amendments to the Unified License, allowing the telecom service providers to share active infrastructure based on the mutual agreements entered amongst them, this is a game changer in terms of carrier-to-carrier relationships and could greatly improve the service provided by the networks, thus directly impacting the end user.

On similar lines we feel that the MSO registration guidelines can be modified and equipment/Infrastructure used by the MSOs like the Headend, CAS & SMS of a MSO can be shared

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between two MSOs based on mutual agreements. The MSO availing the signal from another MSO (sharing Digital Headend, CAS & SMS) should be allowed to continue & maintain its MSO registration as the Broadcaster agreements would continue to be in the Individual MSOs name. This would greatly help in bringing down the operating costs of individual/independent MSOs and would directly impact the end users.

LCO related issues:

Regulate LCO related issues

- a. Moving of a LCO from one MSO to another without taking the NO OBJECTION CERTIFICATE should be disallowed. All previous dues must be cleared before any such movement. Non-compliance of this should have financial disincentives imposed on the LCO and the MSO who has connected/provided signal to such LCO.
- b. Revenue share must be mandated and ensured by the Authority as per the relevant regulations. A transparent system be introduced and financial disincentives be imposed on the LCOs not sharing revenue as per mandated regulations.