



RESPONSE BY
DEN NETWORKS LIMITED
ON THE CONSULTATION
PAPER
“ON TARIFF ISSUES
RELATED TO TV
SERVICES”

INDEX

S. No.	Particulars	Page No.
1	Preamble	3
2	The Current Scenario/ Background/ Concerns	4
(a)	Contribution by MSOs to Digitization	4
(b)	Substantial Investments with Negative Returns	5
(c)	MSO squeezed between the Broadcasters and LCOs	6
(d)	Broadcaster have grown in leaps and bounds....etc.	7
(e)	Employment Opportunities to Several Lakhs of People	7
(f)	Broadcasters force channels on MSOs	7
(g)	MSOs to be treated differently with that of DTH Operators	8
(h)	Objective of MSOs to be the drivers of Broadband Policy	8
(i)	Legal and Regulatory framework to prevent abusive etc.	9
(j)	TDSAT Order in the matter of NSTPL Vs Media Pro/ Taj	9
(k)	Advertisement Fee to be shared with MSOs	11
(l)	Free Content to OTTs etc.	12
(m)	Sports Channels	13
(n)	MSOs are B2B and not B2C	
(o)	Implementation of Electronic Payment Collection Model	
(p)	Continuation of Forbearance towards Carriage Fee	15
(q)	Time Bound completion of the Exercise	16
3	DEN Proposed Model (Distribution Network) <ul style="list-style-type: none"> • Pros • Cons • Workability • Challenges 	18
4	Other Models <ul style="list-style-type: none"> • Wholesale Model • Retail Model 	23
5	Response to Issues for Consultation	26

1. Preamble

At the outset, we at **DEN NETWORKS LIMITED** (DEN) wish to express our sincere gratitude to the Telecom Regulatory Authority of India (the Authority) for its support, cooperation in the establishment and growth of Broadcasting & Cable TV industry in India and also resolving various issues, which have arisen from time to time.

In continuation with its vision for growth, streamlining and revamping the said industry, the Authority has now come up with a “*well-researched*”, “*all exhaustive*” and “*outstanding*” consultation on Tariff issues related to TV services. We congratulate the Authority and its officials on all the hard work put behind the in-depth study and research and for having come up with a thoroughly informative Consultation Paper.

The models and various proposals enumerated are commendable and is a step towards the right direction to enable the revamping of the entire Broadcasting & Cable TV industry which would enable to make it more *streamlined* and *robust*. We especially congratulate the Authority for having suggested the “**Distribution Network Model**” which we at DEN fully support and endorse and feel the same to be the “*need of the hour*”. Adoption of the same would be a “*stitch in time which saves nine*”. The Authority has rightly identified it as “highly workable” and “extremely consumer friendly”. We also request the Authority to kindly consider bringing in a compulsory and mandatory *pre-paid model for Cable TV services* as a mode of collection and which is being prevalent and practiced by the Direct-to-home (DTH) industry to ensure that not only all the stakeholders are rightfully compensated but also to ensure that the dues to Government Exchequer is also fully safeguarded.

It is also heartening to note that the Consultation Paper also appreciates the various difficulties faced by the service providers especially the Multi System Operators (MSOs) in the distribution chain under the present regime. We further appreciate the effort made by the Authority in proactively identifying the “*pros*”, “*cons*”, “*workability*”, “*challenges*” and succinctly summarizing the snapshot of the models as being proposed.

We specially thank the Authority for providing us an opportunity to submit our response on the same.

2. The Current Scenario/ Background/ Concerns

While the Authority has very well captured the background and have rightly identified and captured the current prevailing scenario and the difficulties faced by MSOs at various places however to add up to the same which is “*must know*” and a “*prerequisite*” and “*essential*” before undertaking of the current exercise, we would like to additionally state and bring to the knowledge of the Authority (some of them at the cost of repetition) the following factors for its kind consideration:

(a) **Contribution by MSOs to Digitization by way of having made huge Investments on a standalone and exclusive basis to convert Analog into Digital:**

The Government of India introduced Digital Addressable System (DAS) in 4 (four) phases with a view to bring digitization across the country of which the main objective was to bring greater transparency in the entire value chain, protect the interest of all the stakeholders and delivery of better quality services to the consumers etc. With digitization having been mandated in a phased manner from 2012 for analog markets whereby every cable operator was required to transmit or retransmit programs of any channel in an encrypted form through DAS, the cost associated with respect to the said digitization was exclusively spearheaded and borne by the MSOs. At the cost of repetition, it needs to be appreciated that the entire cost of upgradation of the “Analog Network” to a “Digital Network” and giving digital signals to the consumers has been undertaken, borne and fully incurred by the MSOs and not by the Broadcasters. The implementation of DAS also required additional efforts and costs by the MSOs into their business in the form of funding and/ or otherwise.

The said challenge was not casted upon the DTH Operators who by virtue of technology are blessed with addressability and being a digitalized network since inception. They had no baggage to carry the burden of converting the analog networks to digital networks and had the benefit of being digitalized and having a head start right from 2003.

Similarly no other stakeholder in the entire sector whether the Broadcasters, Local Cable Operators (LCOs) or for that matter any other stakeholder had any obligation or had to incur any expenditure towards



the digitization of analog. However, on the contrary the Broadcasters had been the biggest beneficiary of the digitization.

(b) Substantial Investments with Negative Returns threatening the very Survival of MSOs:

The MSOs in order to comply with the said requirement and to ensure digitization have already invested several thousands of crores in setting up

- i. Digital Control Rooms.
- ii. Procuring Set Top Boxes.
- iii. Establishing, Operating and Maintaining Network and Cable lines.
- iv. Getting contents from the Broadcaster etc.

All the MSOs together have invested around 8000 crores into digitization having their Balance Sheets over stretched because of the costs involved and therefore, debt burden of DEN has also considerably shot up during the past years. Further the setting up of digital infrastructure in itself had been a herculean task. It is pertinent to mention that out of the total 33 million boxes (9 million in Phase – I, 12 million in Phase II and 12 Million in Phase – III) which have been seeded by Major MSOs as on date, we at DEN have contributed to the digitization of over 8 million analog networks. It is a well-known fact that not only small independent MSOs but even big Pan India MSOs are facing huge difficulties in meeting up with the financial requirements. Thus, with the advent of digitization it was the MSOs who had a huge challenge as also the responsibility of converting the analog market (which it had inherited) to a digital market.

It is also pertinent to note that the said cost burden incurred has not fetched any returns to the MSOs and on the contrary, the Balance Sheets of the MSOs are continuing to be in losses. This has also disturbed the Blue-chip investors who are extremely disappointed with the kind of returns over last few years. MSOs are struggling to find investments and if the current trend goes on the very business model would become questionable and the same would have no takers.

This has further created distrust among the foreign investors because the MSOs are mostly debt ridden and thus, the MSOs are also unable to take the benefit of relaxed foreign investment norms.

Also, going by the current trends there is hardly any visibility towards the healthy signs of recovery. Indeed, the current trajectory threatens and jeopardizes the very survival of MSOs and if immediate steps are not being taken to address the same the would sound the death knell of this sector and which would also result in jeopardizing the prospect of advancing of the Broadband vision through Cable TV networks as envisaged in Digital India and Make in India Policy.

The MSOs at present are not even able to generate reasonable return on their investments and are also casted with the responsibility of making further investments to achieve digitization with no certainty of any expected return on investments being made. It is evident that digitization has resulted in huge expenditure of CAPEX and for which the MSOs were constrained to take the burden of heavy loans / huge debts. The MSOs would need several years to get over the same to deflate the swollen debt burdens and they also are additionally saddled with the responsibility of servicing of these debts which also results in interest cost.

(c) MSO squeezed between the Broadcasters and LCOs:

It is also a given fact and has also rightly being identified at various places in the Consultation Paper that MSOs are squeezed both at the Broadcasters level and at the LCOs level. It has been rightly observed in Para 4.5 that the price of the Pay channels is increasing however the revenue realization from the ground remains low. We are extremely thankful to the Authority for being so conscious and aware of the ground realities. Further, revenue realization at ground requires adequate cooperation from the LCOs which it is needless to mention and which the Authority is well aware has faced stiff opposition and has always been an extremely difficult task. Accordingly, the MSOs are not able to collect their due share from the LCOs and thus have to struggle a lot in managing their operations. The MSOs are already under huge debt burden and associated costs which have been borrowed to cater the investments required to be made into digitization. Thus, the MSOs are at the receiving end from both the Broadcasters as well as the LCOs and coupled with this, they have to compete with other market operators.

The Authority should immediately intervene and come up with measures which can ensure the collections from the ground and therefore, should try to build up an electronic mechanism in the

market for ensuring collections from ground along with making the revenue sharing between a LCO and an MSO mandatory under the Distribution Network model. The Best way forward to fix this would be to have a mandatory pre-paid model.

(d) **Broadcaster have grown in leaps and bounds and the biggest beneficiary of Digitization:**

It is a well-known fact and it is indisputable that the Broadcasters have continued to grow (despite not having made a single rupee investment on digitization) and are ensuring to get more from the MSOs (who have borne the entire cost of digitization/ CAPEX/ interest cost) and they expect a growth rate of 25-30% Year on Year at every point of negotiation. The Broadcasters therefore, continue to be in profits and the MSOs continue to be in losses and continue to bleed. The revenues of the Broadcasters from subscription of Cable TV have grown up by 25% – 30% over the past years. It is therefore high time for the Authority to intervene and save this sector.

(e) **Employment Opportunities to Several Lakhs of People:**

Another aspect which needs to be kept in the mind is that even going by the numbers and it has been rightly being provided by the Authority (i.e., 600 MSOs and 60,000 LCOs) are the major element of stakeholders in the entire distribution chain and are also providing, contributing and catering to the needs of several lakhs of people by providing them the employment opportunities that will be severely threatened with the MSOs going out of business.

(f) **Broadcasters force channels on MSOs who then are constrained to offer it to end consumers:**

It is also rightly appreciated by the Authority that the Broadcasters continue to force upon in the name of so called negotiated deals to the MSOs 30 channels when actually speaking there is only 1 driver channel as a result of which the MSOs are forced, constrained and compelled to pass it on to the consumers as they are hardly left with any choice. *It is also to be noted that the Broadcaster's benefit substantially from advertising revenue accruing from this approach without sharing this revenue with the MSOs.*

(g) **MSOs to be treated differently with that of DTH Operators:**

The tariff exercise should also keep in mind and take into account the input cost and a different business model adopted by MSO *vis-a-vis* DTH Operators and thus, any model which would be finalized needs to be differently made applicable to MSOs and DTH Operators. In other words, MSOs deserve to be treated more favorably *vis-a-vis* DTH Operators. This would also be in consonance with the well-established principle of law enshrined in the Constitution of India under Article 14 namely, the Right to Equality which in the present example would mean equality before laws and equal protection of laws. In other words, different stakeholders can be treated differently as long as there is an intelligible differentia with respect to the said classification or creating a distinction.

(h) **Objective of MSOs to be the drivers of Broadband Policy and also Digital India, Make in India:**

In the Recommendations of the Authority dated 26th Nov, 2013 on “Monopoly/ Market dominance on Cable TV services” in Para 1.14, it was observed that the Cable TV networks can become an alternate and convenient way of providing voice and Broadband services as Cable TV networks already have reach to a large number of households. Further the “**Digital India initiative**” also envisions transforming our nation and creating opportunities for all citizens by harnessing digital technologies. The MSOs also have an expectation under the current policy regime to contribute and further invest and divest in the Broadband penetration which can only happen once the Cable sector is being fixed rightfully.

However, going by the current trends in the Broadcasting & Cable TV industry the vision of “**Digital India**” and “**Make in India**” through the medium of Cable sector will also be jeopardized. If MSOs are not adequately taken care off at this juncture the digital infrastructure which has been created would collapse and all the effort & labour put forth would go in vain. Further, the same would also hamper the delivering of services digitally and also the promotion of digital literacy. Any other situation would not only grossly hamper the growth but also would result in failure to achieve the expected Broadband penetration at national level.

(i) **Legal and Regulatory framework to prevent abusive and anti-competitive practice *inter se* MSOs:**

Another important aspect which needs to be kept in mind and which needs to be appreciated is the prevalent practice of swapping of boxes which are not consumer driven but on the contrary is MSOs/ LCOs driven. To keep a tab on the same, processes also need to be built to ensure that no consumer is allowed to move to another operator until and unless the consumer confirms the movement of operator through a confirmation message from his Registered Mobile Number by way of SMS or through email. Further, the new MSO shall not be permitted to install box unless and until it does not get a sign off as to the clearance of the dues from the previous MSO and also gets a consumer's consent to the said effect that he/ she has agreed to be migrated to the new MSO.

(j) **TDSAT Order dated 7th Dec 2015 in the matter of NSTPL Vs Media Pro / Taj & others:**

The current prevailing scenario is also well captured and noted in a recent order/ judgement which has been passed by Hon'ble Telecom Disputes Settlement & Appellate Tribunal (TDSAT) in the matter of M/s Noida Software Technology Park Ltd dated on 7th Dec, 2015. Apparently the said judgement has also attained finality (as a result of dismissal of appeal filed by the Broadcasters). The said order envisages the fundamental principles, at which Reference Interconnect Offer(s) (RIOs) should be offered by the Broadcasters to Distribution Platform Operators (DPOs) including the MSOs and to the world at large considering the ground realities in mind.

(a) It is pertinent to mention that in the operative directions of said order, the Hon'ble TDSAT has directed the Broadcasters to issue fresh RIOs in compliance with The Telecommunication (Broadcasting and Cable Services) Interconnect Regulations, 2004 as issued by the Authority (hereinafter referred to as the Interconnect Regulations) and has further left open to the MSOs to negotiate/ renegotiate on the basis of these RIOs. The same has to be effective post expiry of 30 days from 1st April, 2016 (thus, 1st May, 2016). Additionally, the Hon'ble TDSAT in the said order has laid down vital parameters and has interpreted the Interconnect Regulations in unbiased manner thereby, establishing the following principles which are summarized in the subsequent paras.

(b) **RIOs:** The Hon'ble TDSAT has rejected the argument of Broadcasters that mutual negotiated agreements and RIOs based agreements are two parallel regimes. In other words, the mutual negotiated agreements have also to be within the regulatory framework as prescribed under the Interconnect Regulations. It has also been observed that no Broadcaster is making RIOs as per the current regulatory regime as there has been a vast diversion in the rates of negotiated agreements and the RIOs rates. Accordingly, the RIOs have been found not in conformity with the present regulations on account of the following factors recognized by the Hon'ble TDSAT:

The Current RIOs offered by every Broadcaster to the MSOs have three main *limitations*:

- a. Give only a list of individual channels with the a-la-carte rates.
- b. Do not give any bouquets of channels or the prices thereof.
- c. Even the a-la-carte rates of channels are fixed with no regard to the market realities as reflected in the negotiated deals but at the highest permissible rate under the relevant Tariff Order framed by Authority.

Further, it has been specifically observed by the Hon'ble TDSAT that:

- d. **MSOs are forced to buy channels in bouquets and not on a-la-carte on account of unsustainable and higher rates of RIOs.**
- e. By not giving bouquet rates of RIOs in all negotiated deals, the Broadcasters are able to bypass the mandate of the Interconnect Regulations, *per se* Sub Clause 12 of Clause 13.2(A) of the Interconnect Regulations, whereby the ratio between a-la-carte of channels and bouquet has been fixed.
- f. The unfair advantage of bargaining power which a Broadcaster enjoys has also been recognized as the a-la-carte rates are divorced/ deviated from the actual market rates of channels.
- g. **The RIOs in the current form also defeat the objectives of consumers' ability to exercise the choice of few channels as against being burdened with a very large number of channels in the form of bouquets.**

(c) **Transparency & Disclosures:** It is also to be noted that in the said order, it has been observed that if a Broadcaster has given lower rates having regard to its larger viewership that might lead to large advertisement revenue, there is no reason why another MSOs

with a similar reach to viewers may not be given the same commercial terms. In the same way if certain rates are given to a particular MSO on any regional, cultural, linguistic or on the basis of any other special consideration, there is no reason why another MSO operating in the same regional, cultural, linguistic zone and offering to deliver similar returns to the Broadcaster may not be given the same special rates. Accordingly, such things should also be subjected to disclosure to ensure that a similarly placed MSO is also in a position to avail the same rates.

(d) The Interconnect Regulations have been interpreted to the effect that commercial terms of interconnect agreements should not be held to be exempted from disclosure.

- (i) Therefore, it has been upheld that RIOs of Broadcasters must reflect not only channel rates but also different formations and bouquets in which Broadcasters wish to offer along rates of each of the formation or bouquet.
- (ii) The a-la-carte rate of channels should bear the ratio as being mandated.
- (iii) RIOs must also clearly spell out the bulk discount/ special schemes based on regional/ cultural/ linguistic factors and to be made available on non-discriminatory basis to all MSOs across the market. In short, it must enumerate all formats along with the respective prices. Conversely, the Broadcasters should not enter into any negotiated deal with any MSOs unless the template of the arrangement along with the price and ratio prescribed the relevant regulations are not followed along with respect to various discount/ volume related price schemes.
- (iv) **It has also been suggested that proper RIOs should form the starting point and the same should lead to a situation where there is hardly any need for disclosure.**

(k) **Advertisement Fee to be shared with MSOs:**

As has been noted in the Consultation Paper, the Revenue of the Broadcasters is from 2 sources i.e. Advertisement and Subscription (applicable only in the case of Pay channel Broadcasters), out of which the Revenue from Advertisements is much higher than from Subscription Fee. Furthermore, a Broadcaster gets advertisement revenue depending on number of consumers watching the channel

i.e., the Television Rating Point (TRP) rating of the channel. The number of consumers watching a channel is directly dependent on the availability of the channel, which is because of its availability on the Network of the MSOs. In the event, a channel is unavailable on all MSOs, it would not earn any Advertisement Revenue as no advertiser would buy airtime on a channel which has no reach. As a sequitur, the **Advertising Revenue earned by a Broadcaster is a result of its availability on the Network of an MSO, for which the MSO is not compensated**. In such a scenario, *it is necessary and imperative* that a framework be worked out, whereby the MSOs are given a share of the Advertising Revenue earned by the Broadcasters for the use of the Networks of the MSOs by the Broadcasters. It is also pertinent to mention that the Advertisement Revenue as well as the Subscription Revenue has steadily increased to the tune of ~40% and ~58% from 2012 to 2015 which has been noticed by the Authority in the present Consultation Paper.

(1) **Free Content to OTTs and the same content being priced to MSOs:**

In the last 2 years or so, most of the Broadcasters have started their own websites, You Tube Channels, Apps for Mobile Phones etc., which are providing the same content on demand, which is being made available on their Pay channels to the consumers. The consumers in view of the same, have also started questioning as to why the MSOs are charging for content which is freely available otherwise and that on demand. In fact, the advertising revenue earned by the Broadcasters through websites, You Tube Channels, Apps for Mobile Phones etc. is minuscule compared to the Advertising Revenue earned by them through Television Advertisements. Furthermore, even live sporting events are made available on the websites, Apps etc., for free with there being a delay of only 1-2 minutes. It is a highly anomalous situation wherein MSOs are paying for content, which is freely available otherwise. There is thus also a need for the Authority to review the matter at the earliest, and to take the same into account to ascertain whether Pay channels should be permitted to make available the same content free of cost on other mediums or that there should be cross-platform non-discrimination. It is suggested that cross-platform non-discrimination is essential to ensure the orderly and sustained growth of the Broadcasting sector failing which consumers shall start migrating to platforms which are providing the same services free of cost to the detriment of the MSOs.

(m) **Sports Channels:**

As far as Sports Channels are concerned, the same are the highest priced channels but are only watched by consumers when some specific sporting event is happening and not otherwise. The consumers do not have an option of subscribing to the channels only for the duration of the event of their choice. It is therefore proposed that Sports Channels should be treated on a different footing from the Regular Channels under any genre and their price should be calculated on the basis of the number of days it is actively viewed rather than the standard practice of monthly subscriber numbers.

(n) **MSOs are B2B and not B2C:**

We would however, like to highlight a concern that the retail models which have been proposed are apparently on the assumption that MSOs are directly controlling the consumers. However, it is a well-known fact MSOs have a little or extremely limited control over the consumers served by them and is already facing the issue of reduced Average Revenue per User (ARPU) because of lesser ground realizations / collections. We must keep in mind that MSOs are connected to the consumers through LCOs only and thus, the retail price for the purpose of an MSO as of today and which might remain and continue in future shall be that of an MSO to the LCO. Though in the absence of mutually agreed terms, the revenue sharing arrangement with an MSO and LCO has been mandated but it has not been enforced at ground in true letter and spirit. Therefore, before regulating the retail price, there has to be adequate strong regulatory intervention by the Authority to ensure stricter compliance to the various applicable regulations with respect to the revenue sharing arrangement between an MSO and LCO in case of any conflict. In the event of further non-compliance, the same can also be enforced by way of issuance of necessary directions by the Authority whereby the MSOs may be mandated to necessarily deactivate all the LCOs who do not pay upon the revenue share as being prescribed in the relevant Tariff Order. In the Distribution Network Model it has therefore to be necessarily ensured that this problem is fixed once and for all by mandating the revenue share of 70:30.

(o) **Implementation of Electronic Payment Collection Model (pre-paid):**

Apart from the above, it is also important for the payment mode should compulsorily be made pre-paid rather than postpaid atleast for

some period of time. The Authority in the Consultation Paper has rightly recognized the concept of a pre-paid model for both the LCOs and the consumers. In the present scenario, a LCO is the ultimate beneficiary of the collection from the ground as they willfully retain the amounts collected from the consumers and do not part with the same to the MSOs which leads to a situation where an MSO and the consumers due to the actions of the LCOs suffers disconnection of signals of the channels of the Broadcasters. Further, the Broadcasters are not concerned with the plight of the MSOs and demand their subscription amount and are solely concerned with their collections (irrespective of collections by the MSOs from the LCOs).

To give a broad conspectus to understand the gravity of the situation and the extent of revenue loss not only to the MSOs but also to the Government Exchequer, it is stated that going by the numbers given in the Consultation Paper, the MSO/ Cable TV universe today consists of around 10 crores subscribers (approx.). Assuming a LCO collection to be Rs 200 per subscriber - per month the money so generated would be around Rs. 2000 crores per month (which would mean Rs. 24,000 crores annually). Out of the above, an MSO is only able to secure around 30% of the money collected from the ground which comes out to Rs 600 Crores per month (which would mean around Rs 7200 crores annually). The balance amount of around Rs 1400 crores per month (which is Rs 16,800 crores annually is retained by the LCOs) and on which any tax such as Service Tax or Entertainment Tax hardly get paid and which results in grave loss to the Government Exchequer. Applying a rate of 14.5% to the said financials (primarily the money retained by the LCOs i.e., Rs 1400 crores per month) a Service Tax of Rs 200 crores per month (approx.) amounting to Rs 2400 crores (approx.) annually gets unpaid or evaded causing grave tax evasion. It is our respectful submission that all this could be secured and reasonably safeguarded if the collection model is compulsorily mandated to be a pre-paid model. In addition to this, there are repercussions such as non-implementation of packaging by the MSOs due to lesser collection as well.

It can be foreseen that no business model will be effective until & unless it is made mandatory that the subscription money from the end consumers is paid directly to the MSOs through pre-paid mechanism and MSOs shall simultaneously deposit the due share of LCOs into their respective accounts within the defined timelines. This will further ensure that appropriate taxes be it Service Tax or Entertainment Tax and any other taxes are duly paid to the concerned

authorities by the MSOs and are expected to solve majority of the prevailing problems faced by the industry.

Further under the current prevailing regulatory regime an MSO must:

- a. Compulsorily offer his services at both post-paid and pre-paid models. It is to be noted that such mandate however is not present in the case of DTH Operators.
- b. Provision of itemized usage in both post-paid and pre-paid models **(considering the present difficulties, an MSO will be better placed to comply with these requirements if a pre-paid model is mandated and ensure package implementation along with billing)**
- c. Penalty / financial disincentive provisions in the event of failure to comply **(the need for imposition of any penalty would not arise and the relevant regulations can be complied in letter & spirit)**

(p) **Continuation of Forbearance towards Carriage Fee:**

Under the present regulatory regime, Carriage Fee is regulated in view of Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 which provides for a must-carry obligation on the part of the MSOs. In terms of Clause 3(10) under the said regulations, an MSO has to give non-discriminatory access to its Network. Carriage Fee must continue on the basis of the must- carry obligation and providing non-discriminatory access to the Network. Carriage Fee is necessary to incentivize the MSOs to upgrade their Networks and increase channel capacity otherwise there would be no investment on the part of MSOs to improve infrastructure.

As already described in detail hereinabove, the MSOs have spent a considerable amount of money towards digitization. The network cost has been borne at the cost of huge debt burden and the Balance sheet of the MSOs as a result continues to be in red. The same can only be compensated by way of ensuring that the revenue streams of the MSOs are fully safeguarded. The Carriage regime as it exists today shall continue as the same constitutes 35 - 40% of the total revenue of the MSOs. Carriage is a legitimate and transparent revenue stream, and the same would be clear from the fact that the Broadcasters pay such carriage fees to DPOs around the world. It is because of the MSOs that the Broadcasters get reach/access to a large consumer base which they would other-wise not have. This reach allows the Broadcasters to generate ratings which then get translated into

advertising revenue. MSOs at present do not get any share of advertising despite being one of the major contributors to creating this advertising revenue.

We therefore, request the Authority to ensure that the new Distribution Network model is implemented in such a way so that it sets the industry right. We are also aware that as with any new model, it will take time to become operational and for the revenue from it to come through the system to the various stakeholders. However, in the meanwhile, any threat to the carriage revenue stream will be doubly destabilizing. Hence, we reiterate that giving the Distribution Network model a minimum of 3 years to settle and then take into account its positives and negatives before defining the regulations.

It is also to be kept in mind that since last three years of digitization, carriage has already declined manifold due to market forces and unreasonable restrictions put by the Broadcasters. It has already reduced from 55 - 60% of MSOs revenue to 35 - 40%. Any change in this will threaten the very existence of the MSOs and hence the Cable industry as a whole.

(q) **Time Bound completion of the Exercise:**

We would, request the Authority to also keep in mind the fact that though the current exercise of reviewing the tariff has not made any reference to the order of the Hon'ble TDSAT dated 7th Dec, 2015 (*which has also attained finality in the light of dismissal of the Broadcasters' appeal by the Hon'ble Supreme Court*), it should be kept in mind that the binding observations as contained in the said order would become operational w.e.f 1st April, 2016. It was being expected by the Hon'ble TDSAT without any binding directions leaving it open to the Authority to undertake a comprehensive restructure of the issues to clarify the concerns which had arisen in the said proceedings. Though, the same has not been issued by way of a direction by the Hon'ble TDSAT but the current exercise should essentially be completed with an outcome before the said order comes into effect (1st April, 2016). It would also be required to ensure a stable and consistent regulatory regime as against a rapidly changing regulatory regime.

It is acknowledged that though the Consultation Paper is just the beginning of a long journey of the Authority as well as all stake holders in coming up with the final Tariff Order. In view of the said

passed by the Hon'ble TDSAT, all Broadcasters are to issue fresh RIOs and provide signals to all the DPOs including MSOs on the new terms.

The present RIO rates are found to be unsustainable and far from the ground reality as enumerated in the Consultation Paper and if the new RIO rates are similar in nature, there would be an urgent need for a stop gap arrangement or an arrangement temporary in nature for the benefit of the Broadcasting & Cable TV industry. The Authority thus, also have to look into this issue on an urgent basis and provide a viable solution to all DPOs at the earliest.

Additionally, the Authority may in its wisdom consider taking appropriate legal steps to avoid any legal complications/ hurdles. Any misuse/ abuse by stakeholders shall not be permitted by way of taking any hyper-technical ground to get away with the new regulatory regime which is to come into force. Further, the modalities of implementing the Integrated Distribution Network Model (*being proposed by DEN*) also need to be finalized. Thus, it is necessary to take timely steps to protect, safeguard the proposed model and take preventive measures to avoid any legal complications.

In light of the aforesaid, we wish to submit to the Authority that any tariff exercise should only be done keeping in mind all the above factors including the ones already identified by the Authority and also the ground realities in terms of implementation of DAS, revenue collection by MSOs at ground and the basic principles as established by the Hon'ble TDSAT.

With the above, we once again welcome and congratulate the initiative of the Authority to come out with the exhaustive Consultation Paper covering broadly overall aspects of the Indian Broadcasting Sector. The Authority has endeavored to discuss all elements of tariff including *wholesale, retail, integrated models, channel pricing methodologies and other related issues*. It must however be borne in mind that in the current market scenarios the actual and realistic data pertaining to DAS and the current prevailing arrangements/ business models which clearly have been identified/ recognized as are highlighted above and affirmed in the aforesaid order of the Hon'ble TDSAT. The same also lays down certain basic principles to be kept in mind which have already been enumerated/ summarized herein above.

3. DEN Proposed Model (Distribution Network)

DEN is in full support and proposes to adopt the “Integrated Model” of **Distribution Network Model** as the most preferred. As already submitted hereinabove the said model meets the “*need of the hour*” and is an “*extremely innovative step*” to deal with the current market situations and would ensure orderly growth of the sector. An MSO role in the distribution chain primarily being that of doing the encryption and decryption through its established digitized network and thus it deserves to be fully compensated on a cost plus basis for the said task and for the investments made:

- DEN appreciates that this model envisages separation of charges for distribution networks and subscription of Pay TV channels which would help in having some realistic and assured returns on the investments made towards the digitization. While on the other hand, it also helps the Broadcasters giving them the freedom to notify the price of Pay channels to consumers under broader regulatory framework on a-la-carte basis. Further, the powers to decide the price of Free-to-Air (FTA) channels should be given to MSOs (as prevailing in the current regime). This would enable to ensure that a Broadcasters price their Pay channels in fair, reasonable and non-discriminatory manner so as to ensure maximum viewership. Significantly, the viewership factor will be determined by the viewer itself. The success of this will be solely dependent upon the ability of a Broadcaster to decide the price of those channels rightfully and consumer who is the king of the market will decide the fate of the viewership.
- The Broadcaster while fixing up such price would automatically be disciplined since it is getting done for the end consumer who can ensure any unwarranted channels are not forced upon him and that he is also priced reasonably. Therefore, it will be upon the Broadcasters to market the channel content in such a manner so that it gets sold to the consumers easily. The Broadcasters will have to carry out a proper extensive research to understand the taste & preferences of the consumers from market to market and will have to come out with best content *vis-à-vis* price so that their channels enjoy maximum viewership.
- MSOs will get assured amounts for the bandwidth used based on the number of channels subscribed by the consumer. We would also request the authority to kindly rephrase the term “rental” as “*basic subscription*”. This is especially as the same can have unwarranted

taxation implications upon the already bleeding MSOs. The pricing model is therefore a combo of “basic subscription payments” for FTA channels and “content subscription” or “additional subscription payments” for pay channels.

- We further submit that an MSO also needs to be compensated by way of carriage (detailed submissions made hereinabove and in response to the questions) to compensate for the cost of network augmentation and expansion. Thus, the concept of carriage also needs to be built into the same with the continuation of current regulatory framework. DEN additionally proposes to also build in and recognize the carriage, placement and marketing fee cost within the said model.
- It is pertinent to mention that the success of this model will also be dependent upon fixing up of revenue sharing between an MSO and the LCO. This should be ensured by ensuring that pre-paid model is followed for DAS Areas. Detailed submissions made hereinabove on compulsory/ mandatory pre-paid payment model are reiterated and relied upon. Further, in case of any instance of non-payment of due share by an LCO to an MSO, the Broadcaster can direct the concerned MSO to switch of the LCOs and further, in the absence of collection from ground by the MSOs, Broadcasters should instruct the MSO to disconnect the LCOs and it can have the remedies against the defaulting party. The Authority should also be able to intervene in such instances.
- DEN fully supports that this model gains importance from the fact that today, MSOs do not have any fixed source of revenue and to a large extent depends on the revenue share earned from the Pay channels of Broadcasters distributed to consumers.
- The Distribution Network Model would be the best suitable to meet the current market condition however, after taking into account certain desirable changes/ modifications. The aspect of this model which has to further worked upon would be the manner of re-transmission of all DPOs including the MSOs and the resultant revenue distribution to each link in distribution chain. It should be done in such a manner as to ensure that MSOs are not worse off, in view of MSOs being part of the distribution chain which revenue share would not arise in the case of the DTH and IPTV (Internet Protocol Television) Operators.

- In addition to the above, the Broadcaster should necessarily provide all its pay channels on à la carte with rates of each channel prescribed directly to the consumers. There should be no option of bundling or packaging allowed to the Broadcaster either for Pay channels or a combination of Pay and FTA.
- This will thus lead to a situation wherein the revenue for each Pay channel is guaranteed to the Broadcasters as well as the MSOs and would depend entirely on the choice of the consumer which is a key to the success of this Model.
- If packaging is allowed, then the Broadcaster would definitely push the non-driver channels with the driver channels for attractive rates to consumers. The same will again restrict the choice of the consumers to choose channels and view the content of their choice. This would thus lead to the current situation where consumers would be saddled with unnecessary channels which they would not like to view but have to eventually pay for.
- The workability of this model also needs to be further tested keeping in mind the current market conditions and the said model may also be examined with facts and figures i.e. between the proposed model (wherein the pricing which the Broadcasters are likely to notify and the basis of price at which MSOs would be compensated by way of basic subscription for the bandwidth needs to be determined) vis-a-vis (the current prevailing price to the end consumer and also keeping in mind the B2B (Business to Business) Model i.e. recovery from LCOs with respect to the MSOs. In the said Model, what needs to be ensured and fixed is the revenue share between an MSO and LCO (which should be at least Rs 150/- for the Basic Services on a ratio of 70: 30 in the favour of an MSO).
- The revenue share so fixed between an MSO and LCO **should be mandatory** and *not an indicative revenue share* or by way of *any fall back options* as is the situation prevailing today. The revenue from the Pay channels should be distributed in ratio of 40(Broadcaster): 30(LCO): 30(MSO). This could be similar to the revenue share prescribed under the Conditional Access System regime wherein the revenue share was to the tune of 45(Broadcaster): 30(MSO): 25 (LCO). Further, adequate mechanism should be brought into the relevant regulations by the Authority to ensure that the LCOs do pass on the due share to the MSOs out of the revenue collected from the

consumers from ground under the said model. It is pertinent to note that at present the collection from the LCOs are much less than 40 despite the Authority has prescribed rates of 65: 35.

- The success of the model is also to be seen from the perspective that the investments requirement of these networks is independent of a Broadcaster's requirements. Huge amount of additional investment is still needed in the distribution networks to expand their reach and upgrade their capabilities. The MSOs should also have sources of revenue independent of revenue share from Pay channels subscription revenue, to ensure reasonable rate of return on investment in the existing distribution networks and to ramp up further investment. This independent source of revenue could be in the form of monthly basic subscription from consumers depending upon the quantum of bandwidth used.
- It has been rightly observed by the Authority that to protect the interest of the consumers, a uniform price cap across the distribution platforms on basic subscription amounts can be specified for initial pack of, say, minimum 100 channels or part thereof and then an additional amount of, pre-specified, can be charged by the distributor for each pack of, say, 25 channels or part thereof (additional subscription). This amount may be independent of type of channels, i.e., Pay or FTA, chosen by the consumers, as the distribution expenses do not vary because of the type or nature of channel.
- Under this model, the Broadcasters can also have control in their hand to decide the retail price of their product i.e. the Pay channel and need not depend upon the distributor. It will help them in optimizing the retail price of Pay channels in such a way that they can maximize their sum of revenue from subscription and advertisements. This will be in line with the demand of Broadcasters to get flexibility to price their content directly to consumers. The Pay channels shall be distributed through the DPOs only as per existing guidelines. It can be considered that the subscription amount for Pay channels collected, accounted and consolidated by DPOs may continue as being done presently. The Broadcasters can pay handling charges to the DPOs including MSOs at the percentage mentioned hereinabove.
- A Broadcaster may notify the retail price of its Pay channels on a-la-carte basis only. In addition to basic subscription charges towards the network, the consumers shall also pay charges to the MSOs for content of Pay and FTA channels chosen by the consumers.

- **Pros:** DEN appreciates and feels that this model may also be consumer friendly as competition at broadcast as well as distribution level will reduce the effective price to consumers. Further, interests of the Broadcasters and MSOs are not in conflict under this model which would be resulting into reduced litigations. The model also provides flexibility to Broadcasters to price their Pay channels within the prescribed regulatory framework. The Model may also improve diversity and quality of content. Further, the MSOs would be at liberty to market FTA channels, decide their prices along with other platform services. The model also provides full freedom to consumers to choose the channels of its choice on a-la-carte basis as offered by the Broadcasters. *It is submitted that this model is a standalone viable model for MSOs and LCOs to improve the network infrastructure.* This will further improve the quality of the services and capacity of network and it will ensure the reasonable rate of return to investors. In turn, it may help in attracting investment in the sector. It further ensures level playing field amongst various stakeholders in the value chain including protecting the interests of consumers. It encourages the Broadcasters to offer niche channels and enables price discovery of a category of channels based on competitive market principles. Further, an increase in investment would bring more direct/ indirect employment.
- **Cons:** DEN also recognizes that the freedom to form bouquets by MSOs at retail level will be reduced which needs to be addressed and taken care of by the Authority by providing some freedom to MSOs.
- **Workability:** There is no doubt to the fact that this is a highly workable model. The success of the model will depend on proper pricing of the content by the Broadcasters to consumers without exercising significant market power to over-price the monopolistic content. However, the chances of the same are less as the end consumer is bound to reject any unreasonable price attempted to be enforced by Broadcasters. In the current scenario, the Broadcasters have an assured buyer in the form of an MSO who is running the business who is left with no option and are forced to buy the channels on take it or leave it. The said approach cannot be adopted against the end consumers by a Broadcaster who will reject it.
- **Challenges:** MSO at the outset would whole heartedly support to make this model a success and also to deal with all challenges that

are proposed. A consumer's habit for the selection of channels is presently for choosing a large bouquet. However, in this model, emphasis has been given on smaller bouquets and a-la-carte channels. Therefore, awareness of consumers becomes important for success of this model. This can be achieved by creating consumer awareness before actual implementation in the same manner as was being done for the digitalization. The MSOs assured return on investments would automatically help in protecting the interest of the consumers. Further, ensuring reasonable content pricing at retail level by the Broadcasters would also need to be addressed. Discussions can also happen to lay down a proper framework for selecting the channels of choice by consumers. The aspect of this model which has to further worked upon would be the manner of re-transmission of each MSO and the resultant revenue distribution to each link in distribution chain. It should be done in such a manner so as to ensure that MSOs are not worse off, in view of LCOs being part of the distribution chain, which revenue share would not arise in the case of the DTH and IPTV Operators. This factor needs to be addressed while fixing up the revenue shares.

- **It is our respectful view that this model would be a super successful model and should be adopted at the earliest with proposed changes. This will ensure that the revenue for each Pay channel is guaranteed to the Broadcasters and the MSOs (who can also be compensated by way of basic subscription, carriage, placement and marketing) and the choice of the consumer would be paramount and would determine the market and the pricing, which is key to the success of this model.**

4. Other Models

Wholesale Model:

- Any other model like *Price Forbearance Model* or the *Universal RIO Model* or the *Conventional MRP Model* or the *Flexible RIO Model* which in effect perpetuates the currently identified monopolistic control of TV channels by large Broadcasters has been seriously found objectionable by the Hon'ble TDSAT and also by the Authority and also is a prevailing fact must be avoided.
- The same would also be giving powers at the disposal of Broadcasters (which have mostly been abused) and at the cost of MSOs and

thereby, bringing an imbalance solely to the advantage of Broadcasters and totally skewed against the MSOs.

- Further, with respect to the *Cost based Model*, though it is a scientific method which is transparent and also provides reasonable rate of return on investments. But we agree that the same also suffers from the difficulties in carrying out the complicated exercise of determining cost.
- **Since the DPOs are free to come up with own model, we at DEN would suggest the Distribution Network Model to be adopted along with a compulsory prepaid collection model and also safeguarding the continuity of carriage, placement and marketing fees.**

Retail Model:

- It is respectfully submitted that before fixing the models at retail level and/ or regulating the retail price, there are certain distinctions among the MSOs which need to be acknowledged by the Authority. The MSOs unlike the DTH/ IPTV operators do not work on a B2C model in its correct sense. The services are provided through the engagement of LCOs at ground to the end consumers, a different entity altogether and work on principal to principal basis with the MSOs
- The retail price to the end consumers is affected by them as they are the only one who collect subscription money from the end consumers and share the balance money with the MSOs after retaining their own share. In this situation, the prices to the end consumers are thus fully controlled by the LCOs at ground who have their deep presence across various markets in India. Thus, it is imperative to say that while the retail price may get regulated through various regulations and despite all regulatory obligations casted upon the MSOs such as the generation of bills, issuance of receipts to consumers etc, the price to the end consumers in substance is fully controlled both in terms of implementation and as well as collection by the LCOs only.
- At the cost of repetition, we once again submit that with the implementation of digitization, the cost of infrastructure, overhead expenses and man-power has increased manifold whereas the revenue has steadily reduced. There are various factors at play which has led to this downward trend for the MSOs mainly being the lopsided

agreements with Broadcasters who have continued to extort more and more money from the MSOs regardless of the ground conditions and completely *de-hors* the regulatory regime in operation whether of tariff or quality of service to the consumers.

- The LCOs on the other hand despite collecting money from the consumers are reluctant to share the same in a fair and just manner with the MSOs without realizing that if the money does not come from the LCOs then it would be impossible for the MSOs to share the same with the Broadcaster. Therefore, the MSOs are bombarded with more and more monetary demands from the Broadcaster and are suffering from less and less collection from the LCOs.
- Accordingly, until the LCOs who come in between the MSOs and the end consumers are also being regulated with respect to their obligations, the regulations at retail price at the MSOs level (*on the assumption as if they are similarly placed like DTH/ IPTV and are being directly linked to consumers*) are likely to fail and can only be counter-productive to the very sustainability of the MSOs business. In this regard, it is also pertinent to mention that the regulations at wholesale level will only work when the regulations at retail level are being actually implemented and enforced.
- It is also being rightly noted by the Authority in the Consultation Paper that the Broadcasters in the name of mutual agreements are using their dominant position and thus, are able to impose conditions whereby the MSOs are being constrained to bundle the undesired channels along with driver channels in the basic bouquets. This also restricts the MSOs from freely packaging and pricing the channels to the end consumers. It is not because of lack of will by the MSOs to provide options to the consumers. However, it is because of the compulsion made by the Broadcasters for the bundling the driver channels in the base pack and thereby, restricting MSOs' ability to offer better packages to the consumers.
- **The Integrated Model of Distribution Network Model is the best way forward and would address all the issues once and for ever. We once again support the Distribution Network Model which would be the right step to address the concerns of the industry.**

5. RESPONSE TO ISSUES FOR CONSULTATION

- i. 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.**

The preferred model is the Distribution Network Model. Detailed submissions made hereinabove are reiterated and relied upon.

- ii. 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.**

The preferred model is the Distribution Network Model. Detailed submissions made hereinabove are reiterated and relied upon.

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

The preferred model is the Distribution Network Model. Transparency and non-discrimination fully gets addressed in the same. Detailed submission made herein above are reiterated and relied upon.

- iv. How will the consumer's 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 present the DPOs are providing a large number of channels to the consumer in bouquet form, irrespective of whether such channels are being demanded/ viewed by the consumer. The reason for the same is the nature of the deals which are being forced onto the MSOs by the Broadcaster. The deals being offered to the MSOs by the Broadcaster are usually on fixed fee/ cost per subscriber basis, so as to force the DPOs to provide all the channels of the Broadcaster to the consumers, so that the advertising revenue of the Broadcaster is protected. Furthermore, the MSOs are not in a position to execute agreements for channels on a-la-carte basis, as the channel prices offered by the Broadcaster on a-la-carte basis are very high and deviate from the ground realities as already mentioned above. The consumers are being forced to buy large number of channels against their will and which are not even viewed by them. In case the Distribution Network model

is adopted, this would enable a better choice among the consumers. The detailed comments hereinabove (especially under the Distribution Network Model) are reiterated and relied upon.

- v. 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 being mentioned hereinabove, Distribution Network model should be the best model after adopting the desired changes while considering the ground situation. Detailed submission made herein above are reiterated and relied upon.

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

The response to Question iii and v be read in response to this question also. Further, in the Distribution Network model the basic subscription amount to be charged by the DPOs, would be in terms of a formula prescribed or fixed by the Authority and the consumer would also pay only for those channels which it wishes to subscribe to thereby ensuring transparency and non-discrimination.

- vii. How will the consumer's interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.**

In the Distribution Network Model, the consumer choice is maximum and thus, his interest in terms of choice of channels and budgeting is well taken care off. Further, the rates of channels notified by the Broadcaster are directly to the consumer and hence, the consumer is well aware of the cost of the channel and budgeting can be done on basis of the channels chosen by the consumer.

- viii. Is there a need to identify significant market powers?**

Not at this stage.

If the suggestions made above for Distribution Network Model are accepted, it would be a new direction for the entire industry and hence, the impact of the same may first be analysed before attempting to identify significant market powers. It is hopeful that in the new

regime, the unequal bargaining power enjoyed by the major Pay channel Broadcasters will be reduced and will give rise to a level playing field with respect to the MSOs.

Furthermore, as stated above at the level of the MSOs there is already intense competition with each consumer having a choice between various MSOs. In such a competitive market it is highly unlikely that an MSO will be able to have significant market powers.

It is however felt, that at this stage when a new regime is being ushered in, the need to identify significant market powers may be deferred till the effect of the new regulations is gauged.

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

Subject to the comments hereinabove the Authority may also like to consider the definition of “Dominant Position” under the Competition Act, 2002 which means a position of strength enjoyed by an enterprise in the relevant market in India which enables it to (i) operate independently of competitive forces prevailing in the relevant market or (ii) affect its competitors or consumers or the relevant market in its favour.

The Authority may however may take a note of caution that it does not transgress into the areas reserved for Competition Commission of India to avoid legal hurdles and challenges. The same however would also need to be modified in view of the different market conditions applicable in the Broadcasting sector.

x. 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?

In view of the answer given to Question viii above, no response is necessary. The issue can be taken up by the Authority at a later date, on identifying if there is a need for the same after implementation of the new regulations.

xi. 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?

As being mentioned hereinabove, Distribution Network model should be the best model after adopting the desired changes while considering the ground situation.

Yes, after taking into account the genre price cap, placed on each genre as prescribed in para 4.14.4 read with 4.14.6 of the Consultation Paper and coming up with a suitable mechanism for arriving at channel pricing. At this stage if the price of channels is unfrozen before the genre price caps are finalized, it would lead to an anomalous situation where there would be no factual/ market driven prices available for arriving at such conclusions. As has been noticed in the Consultation Paper, the current market price of Pay channels is around 10% of the published RIOs rates which clearly establishes that the rates set by the Broadcasters are exorbitant and deviate from the market conditions/ reality.

Further, any increase in price of channels is borne by the consumers. A perusal of the Balance Sheet of most Pay channel Broadcasters, shows that they have been making immense profits year on year, and even the subscription revenue has gone up tremendously as also observed by the Authority in its Consultation Paper and therefore, it is in consumer interest that till such time as genre price cap is established, the present rates continue.

xii. 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.

Yes, however with the addition of Music Channels as a separate genre. Channels which are majorly playing music videos, songs etc., can be categorized separately as at present they are usually falling in the GEC genre, even though the content being shown does not fall in the GEC Category. The creation of a separate GEC Genre would provide ease of access to the consumers.

xiii. 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.

Yes, for the purposes of determining genre price cap as mentioned in para 4.14.4 and 4.14.6 of the Consultation Paper.

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

As being mentioned hereinabove, Distribution Network model should be the best model after adopting the desired changes while considering the ground situation. The submissions made hereinabove are reiterated and relied upon.

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

The price caps have to be determined keeping in mind the fact that the prices of the channels of the Pay Broadcasters at wholesale level to the DPOs are around 10% of the presently notified RIO rates. An appropriate statistical formula has to be applied for determining the maximum and minimum ceiling on the basis of the prevalent wholesale price.

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

As mentioned above and as stated by the Authority in the Consultation Paper, the average cost of channels at wholesale rate is about 10% of the prevalent RIOs. Thus, the price cap can be ascertained after taking the average of the current RIOs in a particular genre and bringing it down closer to the current prevailing rates at wholesale level.

Thereafter, the price cap can be further discounted by 80% depending upon the genre to arrive at a realistic price for a channel and the resultant price cap.

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

The genre ceilings can be revisited every 2 years depending on the popularity of content amongst the consumers and the demand for the same which can result in an upward or downward revision of the genre cap ceiling.

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

MSOs should be given volume based discounts, so as to incentive each MSO to further expand its service areas and give increased competition to incumbent MSOs.

A Broadcaster should be permitted to devise other criterion, which shall form part of its RIO and be applicable for all MSOs on a non-discriminatory basis.

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

At present there is no requirement for determining the maximum percentage and the mandate of transparency would automatically address the issue at hand.

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

Only ‘Adult’, ‘Ad Free’ and ‘3D’ channels should be considered niche channels. High Definition (HD) channels should not be considered niche channels as observed in para 4.18 of the Consultation Paper.

Furthermore, any criteria to identify niche channels on the nature of the content would be very difficult to implement and monitor and would also result in misuse of the ‘Niche Channel Genre’.

Any other basis of classification would result in huge and constant regulatory monitoring by the Authority of all such Niche channels.

xxi. 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.

No. Niche channels should not be given complete forbearance in fixation of price. Niche channels can be considered under a separate category for the purposes of the fixation of the genre price cap.

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

The maximum gestation period permitted for a Niche Channel should be 12 – 18 months, however the same should be subject to crossing of 1 million consumers base. Once, the channel crosses the 1 million consumer mark, it should be removed from the niche genre and be considered in the genre as per its content and the price be governed as per the price cap of the genre.

The reasoning for a channel to be categorized as Niche is that it has less viewership and thus can seek higher subscription revenues to offset its low reach. Once the reach of the channel becomes significant i.e. 1 million consumers, it would no longer require higher subscription revenues to offset its costs.

It may be mentioned here that the criterion for a Niche Channel has to be objective and not subjective which would lead to a myriad of problems. The distinction has to be on the basis of the type of content being transmitted and not the nature of the content being retransmitted.

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

The criteria mentioned in response to Question xxii should help prevent the misuse of the niche channel genre.

xxiv. 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”?

No. The criteria mentioned in response to Question xxii should be applicable to ascertain, whether a channel continues to be a niche channel.

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

The price of HD Channels should be around 15% – 20% higher than the rates of SD (Standard Definition) Channels. HD and SD are only display resolutions/ formats and have no linkage to the copyright of the content. Furthermore, most content produced/ licensed by the

Broadcasters are shot in HD and no additional cost is incurred by the Broadcaster on account of providing HD Channels.

In fact, there is no reason or justification for pricing HD Content higher at the wholesale level by the Broadcaster. The present regime in which HD Channels are in forbearance is being abused by the Broadcasters to get higher amounts from the MSOs. Further, it should be mandated upon the Broadcasters to compulsorily provide the HD format signals to MSOs for retransmissions, which can be thereafter be retransmitted by the MSOs in the HD or SD format depending on the choice of the consumer.

This will also allow the consumer to choose the viewing format of the channel and thus would not be burdened with paying additionally for the HD Channels and/or be forced to subscribe to the SD Channels.

xxvi. 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?

Yes. It is reiterated that most content produced/ licensed by the Broadcasters are shot in HD and no additional cost is incurred by the Broadcaster on account of providing HD Channels. In fact, there is no reason or justification for pricing HD content higher at the wholesale level by the Broadcaster. The HD channels should only be kept higher at the rate of 15%-20% of the SD channels at maximum.

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

Yes. However, the same should be provided to consumers only if the consumers are being charged for either the HD or SD Channel and not for both channels.

xxviii. 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.

Yes, under the present regulatory regime, the MSOs are being forced to bundle Pay channels with FTA in view of the fixed fee/ cost per subscriber deals being executed with the Broadcasters. The

submissions made in the Distribution Network Model are reiterated and relied upon.

xxix. 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.

The suggestions made by the Authority in para 4.20.1 of the Consultation Paper i.e. change of packages using Registered Mobile Number and development of Mobile Apps for selection/ change in bouquet or addition/ removal of channel can be implemented for simplification of the process.

Attempts have to be made by the Authority and all stake holders to educate and inform the consumers/subscribers of the various facilities available so that the consumer does not have to solely depend upon the MSOs.

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

In the event the suggestions made in response to Question xxix above are implemented, they would reduce the activation time for subscribing to additional channels/ bouquets.

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

At the outset detailed submissions made hereinabove on Carriage Fee is reiterated and relied upon. It is submitted that indisputably Carriage Fee is a legitimate revenue stream though conceptually different, it is also interchangeably used as “Placement” and “Marketing Fee” which are also to be protected.

In addition to the same, it should be noted that even under the present regulatory system, there have not been any complaints made to the Authority or the Hon’ble TDSAT with regard to non-fulfillment of regulatory obligations. Further, at present there are appropriate regulations in this regard and thus, it is requested to the Authority to leave this issue untouched now. The same needs to coexist along with the Distribution Network Model and with a pre-paid collection model.

It has been further rightly noted by the Authority in Para 5.2.3 of the Consultation Paper that with the implementation DAS, the network capacity for carrying digital channels has increased significantly to around 300 channels per Head-end. However, the number of permitted private satellite TV channels has also increased to around 800. The Head-end equipment installed by an MSO also places limits on the carrying capacity of the MSO's digital network. In order to increase the network capacity further, an MSO is required to upgrade/ modernize its Head-end infrastructure which entails additional costs for an MSO. In order to defray a part of such costs, carriage fee transactions took place between the Broadcasters and MSOs. It is therefore imperative that an MSO is being compensated against the cost incurred by it for upgrading its network due to addition of channels on its network as and when any Broadcaster approaches for carrying the same.

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

The answer to Question xxxi be read in response to this question also. Carriage Fee can continue on the basis of the must- carry obligation and providing non-discriminatory access to the Network. It is also to be noted, that Carriage Fee is an important possible source of revenue for the MSOs which helps in compensating for the cost of running and maintaining and expanding their networks. Furthermore, Carriage Fee is also necessary to incentive the MSOs to upgrade their networks and increase channel capacity, upgrading Head-ends etc, otherwise which there would be no investment on the part of MSOs to improve infrastructure. It is also to be appreciated that the Broadcaster gets advertisement revenue without any obligation to share the same and thus to compensate the MSOs additionally for providing an enabling infrastructure it would be necessary to have carriage in place to ensure an effective pricing mechanism.

xxxiii. 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?

No. The answer to Question xxxi be read in response to this question also. Further, detailed submission made hereinabove are reiterated and to be relied upon.

xxxiv. 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?

No. If there is an increase in the number of consumers of the TV channels, the TV channels gets consequential increase in advertising revenue. It should not be lost sight of that the majority of revenue earned by TV channels is on account of Advertising Revenues which is due to their wide reach on the networks of the MSOs. The MSOs are not compensated or given a share of the Advertising Revenue earned by a Broadcaster, by virtue of being available and made popular because of the MSOs Network. The same should also be done and fixed with a revenue share in favour of MSOs.

xxxv. 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?

No, the same should not be regulated and left to forbearance. In the event, the same is regulated it would interfere with the rights of the MSOs to package channels as per their choice and the choice of their consumers. It is also impossible to regulate the marketing activity as the same is subjective depending upon the product owner and marketing agencies involved and the type and nature of the target consumers. The MSOs are better placed to understand and implement consumer choices.

xxxvi. 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?

Variant Channels should be defined, however, not regulated if the same is provided to consumers and are charged for either of the channels and not for both channels.

In the event a DPO/ Broadcaster intends to charge separately for variants of the channels, then there would be a need to regulate cloned channels including giving choice to the consumers to choose from either of the cloned channels to better suit its need and budget.

Variant channels can be defined to mean those channels which do not have any original content and is only showing content which has been previously aired on a different channel by the same Broadcaster or is

showing the content being run simultaneously on another channel by the same Broadcaster. In case of channels which are showing the same video feed and audio in different languages, the consumers should be charged only for a single language and not multiple languages. The same further advances and validates our genuine claims to get a share of the Advertising revenues earned by the Broadcasters because of the same content aired by them on 2 or more cloned channels. It should be noted that the Broadcasters are incurring the content cost one time and are earning the Advertising Revenues multiple times on the cloned content with no additional cost being incurred in producing the content again.

xxxvii. 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?

Yes, this will promote consumer choice and would be a good step to increase consumer awareness of the various channels available for subscription.

xxxviii. 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.

Yes, but this depends on the feasibility of the same on each DPOs Network. It may not be possible for all DPOs to provide such a facility as the systems installed by them may or may not provide such facility/ capacity. In addition to this, the same should not be mandated at an additional cost to the DPOs, if the same is not technologically feasible for them, as it would unreasonably burden the DPOs to incur additional expenditure for a service from which there would no revenue.

The same would also result in use of additional bandwidth of the DPOs and hence, there should be some mechanism wherein the Broadcaster willing to promote its channel should compensate the DPO for the cost incurred by it.

Also, it may be taken into consideration that even in the PIP no audio can be made available to the consumer as the audio of the background channel would be playing.

xxxix. 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.

No, the addition of pay-per-program viewing would lead to increase in the cost of subscription payable by the end consumers.

In today's scenario, where pay-per-program viewing is not permitted, all content is made available by the Broadcasters to the consumers on their regular Channels, however, if the same would be permitted the Broadcasters would then demand additional amounts for the same content, terming it as pay-per-program.

It would lead to the removal of quality content from regular channels to Pay-per-program and the consumers would then be forced to pay for both, thus increasing their monthly expenses.

Further, for implementation of pay-per-program, MSOs would need to insist on pre-paid/upfront payments i.e. prior to the airing of the program and not post-paid payments as is the norm in the sector today.

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

Yes, the DPOs would have to provide additional bandwidth and network resources, as well as upgrading their present systems to provide pay-per-view service, which cost would have to be borne by the consumer. In any event, carrying of pay-per-view content should not be mandated on the DPOs and be left to their choice depending upon demand factor.

xli. 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.

Yes, however, this facility should be implemented post completion of Phase - IV in India when digitization will get completed and the focus of the industry shifts from completing digitization to other vital issues. Further, it has to be ensured that the privacy and confidentiality of the data of the DPOs is maintained and not provided to any third

party. Non-disclosure agreements between the DPO and the Broadcaster need to be mandated.

The central facility should be set-up by a well reputed technology company such as Infosys, TCS etc. or by a government department like the National Informatics Centre. Also, the central facility has to ensure that the data collected by it cannot be tampered with and cannot be accessed by any person other than the authorized individuals. It also has to be ensured that each Broadcaster should only be able to access the data relevant to its channels and not the data pertaining to other Broadcasters.

Strict punishments/Penal provisions have to be mentioned for breach of the non-confidentiality provisions.

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

There are 3 issues which have though not been specifically mentioned in the Consultation Paper but have a direct bearing on the issues being raised. The issues are as under:

- (a) The DPOs are not given a share in the Advertisement Revenue earned by the Broadcasters
- (b) Broadcasters providing content free of cost on OTT/ Internet/ You Tube etc., when the same is being provided as a Pay channel to a consumer.
- (c) Exorbitantly high prices of Sports Channels.

These have already been dealt in the paras above and which may kindly be considered.

To conclude our submissions, we once again express our deepest gratitude to the Authority for taking up such an exhaustive exercise and we request the Authority to consider our comments/suggestions made above.