

## RESPONSE BY SITI CABLE NETWORK LIMITED

With reference to

### **Consultation paper on tariff issues related to TV services dated 29 January 2016**

We would like to thank TRAI and its officials for the painstaking work done and the in depth analysis of the issues related to TV services for bringing out this comprehensive consultation paper which will go a long way in resolving disputes in this sector. All the issues concerning this sector have been brought to fore enabling stakeholders voice their concerns and suggestions which is commendable.

While implementing digitization MSOs have made huge investment on development of infrastructure and services for upgradation of infrastructure for digitization and the return in terms of revenue has been very marginal thus making it difficult to meet the operational cost of business on the existing framework.

It should be appreciated though the revenue of broadcasters has increased in terms of increased subscriber base due to effect of digitization and resultant transparency, still MSOs continue to lose money due to various factors including higher pay out to broadcasters and challenge in subscription collection from the operators.

It is evident from the broadcasters RIO that A La Carte rates declared by broadcasters are unrealistic and not in line with the deals done by them on commercial negotiations which has been recognised by TRAI also in this consultation paper. This has resulted in less choice to the consumers since MSOs have no choice but to offer bundled services only due to the compulsions of content deal which normally thrive on take it or leave it policy.

MSOs have become dependent on pay channels to survive as there are no margins available to them other than the commission / revenue share from pay channels which

is also illusory due to complex content deals offered by the broadcasters. LCOs at the same time keeps the major part of the subscription revenue thus depriving MSOs for their fair revenue share. Carriage fee revenue is also under pressure and is declining making MSO business unviable and unsustainable. MSOs have been further burdened with upgrading the network for digitization and value added services which has added to their woes. The benefits of digitization have percolated to customers, LCOs, broadcasters and Government for increased taxes, however, MSOs are yet to see the benefits of same in their financial statement most of which are in public domain.

While we offer point wise reply to the issues raised by TRAI in the consultation paper we request the Authority to keep in mind the above facts while finalising the tariff;

**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**

- The most suitable model is the Regulated RIO Model of Distribution Network Model.
- Indisputably, the RIOs as they stand today are unsustainable and thus have to be realistic and keeping in mind the ground realities. It has been rightly noted by the TRAI in Para 4.14.7 that the prices in the market are currently hovering around 10% of the notified RIO Rates. In substance the same therefore needs to be in sync and in close proximity to the prevailing rates.
- In addition to above, the authority should also consider to cap the number of Channels in a Bouquet to a maximum of 6 to 7 as per the number of genres defined alternatively one bouquet should not have more than one channel of each genre.
- Integrated distribution model would be successful only if the same is mandated for all the platforms and not on choice of platform as otherwise it will defeat the very purpose of this model.

- Any model will be successful only if there is transparency at all levels and TRAI takes effective control with enough checks to avoid discrimination in the name of commercial negotiations.
- In case Regulated RIO Model is not found suitable then the next model of choice is Integrated Distribution Model.

**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.**

- The preferred model for retail level is Price Forbearance Model.
- It is a given fact that at present there is sufficient competition in the market between the various DPOs which protects the consumer interest, as because of the competition it will not be possible for the DPOs to charge the exorbitant retail tariff as in such an event the subscribers would shift to the other competitive platform and thus the prices at the retail level are sufficiently regulated which is despite the fact of being burdened with unsustainable prices at the wholesale level.
- Also, TRAI has put in some regulatory restrictions to regulate the prices in terms of BST. The DPOs are free to decide their price as per market conditions. All broadcast TV channels (FTA and Pay) are mandated to be provided to customers on a-la-carte basis so that customers can choose any channel. The DPOs are free to form bouquet of channels and price them.
- In view of the regulatory stipulations taking care of consumer interest, we are of the considered opinion that in view of the prevalent competition in the market in the form of availability of the various delivery platforms such as digital cable, DTH, IPTV etc., the tariff at retail level must be left open to the market forces.
- There is no need for any further regulatory intervention because the same is needed in case there is no competition in the market or there is a market failure resulting in the situation, which may cause prejudice to the interest of the

consumer at large. There is enough evidence to prove the severe competition in the market and which is evident from a report published by Media Partners Asia which stated that “The direct-to-home (DTH) operators are set to capture 72 per cent of the 25 million new subscribers in the next three years through intense competition between the cable and DTH firms”.

- The attention in this regard is also invited to para 18 of the Explanatory Memorandum to TRAI Tariff Order dated 30<sup>th</sup> April 2012 wherein TRAI agrees with the idea of forbearance at the retail level for DAS areas and the same reads as under:

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

- In light of the above, “forbearance” at retail should continue and it should be left open to the market forces since once the issue of present Broadcaster RIO gets addressed by way of rationalization (by way of a corrected RIO as suggested in response to Q1) the existing competition will result in extending the price equilibrium at the retail level.
- Thus forbearance model with freedom of pricing and packaging at the DPO level should continue.
- This may be considered to be reviewed at appropriate time intervals.

**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 Regulated RIO Model by its very nature is fully transparent with sufficient checks and balances in place.
- Further the same has also been found to be in full conformity with the existing framework of Regulations.
- Further the retail model of forbearance as proposed has inbuilt regulations in the form of BST and al-a-carte provisions. Additionally, the FTA price is already transparent and regulated.
- In any event as already mentioned in the light of ample competition at DPOs level there is hardly any need for the same to be regulated at retail level.
- This can also be subjected to review at appropriate stage.

**Q4. 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.**

- The regulated RIO model at wholesale level and forbearance at retail level will ensure that the customer would have the widest possible choice.
- The rationalization of RIOs as proposed and bringing it in closer proximity to the end consumer rates would also enable the customer to exercise the choice of al-a carte.
- Further when the RIOs are brought in line with the competition amongst the DPO is likely to have it further extended to the end customers at the retail level. Thus both the choice of channels and budgeting of expenses would be taken care off.

**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.**

- Out of the proposed Integrated Models the “**Conventional MRP Model**” cannot be adopted as the same has got full dependency and freedom of pricing with the Broadcasters. Further the broadcaster has also been given the liberty to prescribe revenue share to be paid to DPOs (failing which the default option prescribed by TRAI can be adopted). In effect it is propagating the forbearance model with packaging power in the hands of Broadcasters The “**Flexible MRP Model**” is more or less similar to the current prevailing regime for which the need for change has been felt necessary. The same can only be by way of “Regulated RIO Model” as proposed at the Broadcaster level and” forbearance” at the Retail level.
- Lastly with respect to “**Distribution Network Model**” which is a unique proposition and the most innovative and preferred model and which can be a workable model however the workability of the same also needs to be further tested keeping in mind the current market conditions. The model needs to be further 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 DPOs would be compensated by way of rentals for the bandwidth needs to be determined) vis –a-vis (the current prevailing price and also keeping in mind the B2B Model (Recovery from LCO with respect to the MSOs). In the said Model what needs to be ensured and fixed is the revenue share between MSO and LCO. The Revenue Share so fixed between MSO and LCO should be mandatory. The Pay Channels can be distributed in ratio of 30:40:30 for Broadcasters: MSO: LCO.
- It is reiterated over here that for this model to be successful it should be mandatory for all platforms to follow the same.

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

- In the regulated RIO model at Wholesale level, the same will provide transparent and non-discriminatory rates to the DPOs and once the RIO rates are declared by the broadcasters and revenue share arrangement between the broadcaster and DPOs is regulated, there will not be much room left for non-discrimination.

**Q7. 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 Integrated Model of 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

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

- No need at this stage for DPOs.

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

- Sports Channels and General Entertainment Channels. It should also include any event of national importance.

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

- No need at this stage.

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

- Yes, the price freeze cap is required in order to ensure that certain niche channels are not priced exorbitantly high. Price freeze should continue till the time new framework is established to avoid any discontinuity / disconnect in services at the platform level.

**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.**

- Yes, they are adequate. However, the Music could be a separate genre.

**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.**

- Yes, to the extent of determining genre price cap.

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

- In the regulated RIO the price would be based on the realistic basis and keeping in mind the ground realities.
- In the event of caps being fixed per genre the same would be within the permissible caps.

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

- The caps have to be determined keeping in mind the fact the prevailing prices in the market which are at round 10% of the notified RIOs. Thus appropriate

working is required to determine the maximum and minimum 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?**

- The price cap post taking the average of the current RIO Prices in a particular genre would bring down the price closer to 70 to 80% of the maximum RIO rates. The CAP can be further discounted around 50% to bring it nearer to the present deals.
- **Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?**
- We are fine with the proposed revisit to genre price caps at a frequency of two years.

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

- The volume based discounts should be the criteria. Other criteria, if any, should also be offered to all DPOs on non-discriminatory basis.

**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?**

- The maximum percentage need not be determined and should be left open as the requirement of transparency would automatically address upon the same.

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

- In our view the HD should be taken out of the purview of Niche channels and the same should be now confined to “Ad free” and “3D” channels.

- Any other criteria based on nature of content would be difficult to identify or manage.

**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.**

- Niche channels should not be given complete forbearance. The same can be regulated to the limited extent by categorizing them under a separate genre and also fixing up the caps as being done for other genre.

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

- We are fine with proposed timelines of 12 – 18 months however the same should be also subject to crossing of 1 million subscriber base.

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

- Once the subscriber base of such niche channels crosses 1 million the same should be brought out of the niche channel genre.

**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”?**

- Once the subscriber base of such niche channels crosses 1 million the same should be brought out of the niche channel genre.

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

- Since the HD and SD are only formats and there is no linkage of the formats with the copyright of content. Thus the HD channels too should be regulated to the same extent as the SD format.

- Further it should be mandated upon the broadcaster to compulsorily provide the HD format signals to DPOs for retransmissions in the HD or SD format.

**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?**

- Yes. The HD channels of the same name can be priced higher to the tune of differential bandwidth price or any other cost incurred.

**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?**

- The same can be pushed to the customer so long as the customer is charged for one channel only and other format is not charged.

**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.**

- We Agree. With the regulated RIO model customers will be able to budget their expenses on pay channels. However, this should be left to the DPOs to decide. In any case customer has to pay even for Free to Air channels as per DAS regulations.

**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 agree with the suggestion of registered mobile number and app based channel selection method which can be promoted for package and channel selection to simplify and make it user friendly.

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

- The same can be done by using the above methods and also converting the subscriber to prepaid billing.

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

- Carriage fee should not be regulated any further and whatever regulations with regard to the same are adequate and subsisting under DAS regulations and there is no further need to regulate carriage fee.
- As a matter of fact, the Authority has to appreciate the fact that like any other business, in broadcasting industry, an MSO has to substantially invest on the infrastructure, maintenance, establishing head ends and other related expenses which are required to provide digital cable services to the subscribers and as such they are entitled to ask for the necessary carriage charges from the channels who are willing to utilize the said carriage/delivery infrastructure for reaching the consumers.
- Carriage/placement fees is akin to toll charges which are collected by the toll collector from all such persons who utilize the road developed and maintained by the said toll collector. Likewise, in cable business the vast cable TV infrastructure which is laid by the MSO which is created and maintained by it after spending huge amount of investment and it has every right to recover the said cost by charging appropriate amount of money from all such broadcasters which wishes to utilize the said infrastructure to reach out the subscribers. In any case, these broadcasters also earn through the advertisement and the same is higher if they have maximum viewership.
- In any case, carriage fees is a commercial negotiation between the distribution platforms and the Broadcaster which does not have an impact on the subscriber and accordingly the same should be left between the Broadcasters and the MSO to finalize. There are around 842 channels permitted by MIB out of which 262 are pay channels and 580 are FTA channels. The capacity of most of the headends installed by digital cable service providers is in the range of 450-500

channels. Therefore, there is a competition amongst the broadcasters to reach and penetrate amongst the subscribers which is possible only by utilizing the cable TV infrastructure built by the MSOs for which they pay the carriage fees on mutually agreed term.

- As a matter of fact, the TRAI has itself agreed and accepted the fact that carriage should not be regulated and itself gave reasons for the same which were captured in para 34 of the explanatory memorandum to the Interconnect Regulation dated 17-03-2009 and the same is reiterated as follows:

34. The Authority has decided against regulation of carriage fee at this stage for the following reasons:-

- a. Carriage Fee is a market driven phenomenon and the levels of carriage Fee are determined by play of market forces. Carriage fee is a direct result of demand-supply mismatch due to capacity constraints of distribution platforms.
- b. Payment of Carriage/ Placement/ Technical Fee by a broadcaster is intimately linked with the perceived benefit that the broadcaster would enjoy by way of increased advertising revenue. This linkage is manifested by higher levels of Carriage Fee in TAM cities (cities where the rating agencies have installed their metering devices in sample households). Therefore, regulation of Carriage Fee cannot be done in isolation without regulating the advertising revenue.

- c. Payment of Carriage Fee ultimately gets recovered from the advertisers on TV channels by way of higher advertisement charges. However, no objections have been made by any advertiser in this regard so far.
  
- d. Carriage Fee has emerged in the market primarily as a result of inadequate digitalization in the Broadcasting & Cable TV market in the country. A view has also been expressed by some distributors of TV channels that Carriage Fee is genuinely required to promote digitalization. Any attempt to regulate it by way of ceiling or specifying a charge on carriage may slow down deployment of digital networks.
  
- e. The payment of Carriage Fee is often done in cash or kind (equipment for head-end, foreign tours, gifts etc.). Moreover, many of the distributors of TV channels receiving Carriage Fee are small operators and their accounts are not subject to statutory audit. Therefore, any regulation of Carriage Fee is bound to be a very porous regulation. Further, enforcement problems are anticipated in Carriage Fee regulation which may lead to other distortions in the market.
  
- f. If some kind of ceiling is laid down for carriage fee, then there is a possibility that more channels may be willing to pay the maximum permissible Carriage Fee than the number of available channel slots. Selection of which channels to carry in such a situation would again result in covert deals.
  
- g. There are some distributors of TV channels having other businesses (such as newspapers, radio stations, amusement parks etc.) also. If such

distributors of TV channels start collecting carriage fee disguised as payments for other goods or services sold by other companies within the group, then it will be practically impossible to regulate carriage fee.

- h. Carriage Fee is also linked with popularity of a channel, which in turn is determined by the market. In such a scenario, laying down a carriage fee regime through regulation for channels of varying popularity will be extremely difficult.
- i. There is no suitable mechanism for enforcement of any regulation on carriage Fee.

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

- The “must carry” principles subject to the prevailing non-discriminatory price being offered to all in public domain should continue.
- Carriage compensates the costs of running the network instead of burdening the consumer with high subscription prices. It is nothing but a small portion of advertisement revenue pie which platform receive from broadcasters to provide them with the reach and numbers.

**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?**

- The same need not be capped and the rule of non-discriminatory offer would automatically take care of the same.

**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?**

- It should not be reduced. The broadcaster also gets benefitted with expanded reach and advertisement revenues. Since their revenue increase due to extended reach, there is no reason to reduce the carriage fee with the increased reach. It has already been explained in the earlier paragraph that carriage fee is nothing but a portion of advertisement revenue pie.

**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?**

- The practice of placement and marketing fees amongst the stakeholders should not be brought under the ambit of any kind of Regulations and should be left to forbearance.
- Even after digitization, there are broadcasters who want, a particular channel number on the electronic program guide. They pay a premium for that which can be termed as placement and marketing fees or anything else.
- We have to appreciate the fact, that there is nothing wrong in paying premium to get better facility or service in any business. E.g. In aviation industry, the charges for the business class seat are much more than the economy class. The infrastructure i.e. the plane belongs to the airline which spends huge amount of money on buying the plane, salaries and other infrastructure services and has the right to recover the same from the customer who agrees to buy the ticket. In case of cable tv industry, a broadcaster only comes to the DPO and requests them to provide certain LCN/ EPG no. for which they themselves are ready to pay the premium which is decided on mutual basis.
- If advertisement money is essential for the broadcasters to survive and thrive in the market, then the DPOs require the carriage/channel placement/marketing fees for their survival in the market and the same cannot be regulated. If there is demand to regulate the carriage/channel placement fees than there should be corresponding demand to regulate the advertisement revenue earned by the

broadcasters. Broadcasters should not be allowed to recover exorbitant sums of advertisement fees and should provide the content free to the subscribers.

**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?**

- Yes. The same should be regulated and the customer should not be charged for the same content again in the name of different language or format in the category of cloned channels.
- Cloning should be permitted only to an extent that pay channel content can be cloned to a Free to Air channel after a gap of first telecast and not vice-versa.

**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?**

- YES. This will enable the subscriber to make informed choice of content.

**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.**

- YES. A small preview of available channels can be made available to the subscribers with no additional cost subject to technical confirmation and content made available by the broadcasters at no additional cost to the platform.

**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.**

- Yes. It is feasible. Such programmes can be kept under the niche genre, however, this should not be misused by the broadcaster to offer sports or any other popular content.

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

- Yes. There would be additional cost of bandwidth and other network resources which may be required to implement pay per view.

**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.**

- Yes. Conceptually we are in agreement that there should be a central facility for reporting requirement, however, issues related to operational control and confidentiality of such data should be addressed before initiating any such action.
- The audit requirements as specified by TRAI should be the reference point for any audit conducted by the third party.

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

**Requirement of Regulatory framework for other platforms**

- With the advent of change in technology and penetration of broadband there have been development of other platforms namely OTT services which so far are outside the purview of TRAI regulations.
- These platforms compete with existing platforms and as of now are under no regulations. Some of the broadcasters have started sharing their content on these platforms at differential pricing (in some cases free of cost) in a B to C model bypassing platforms. This is a serious threat to the existing platforms and need to be necessarily brought in under the regulatory framework.

- While a comprehensive exercise is under way, this should also be included in the regulatory framework.

### **Pre-paid model for MSO to Subscriber**

- As it is evident that MSO is the key player in the whole TV services value chain. The MSOs should be allowed to offer only prepaid billing to the subscriber like DTH platform. This will enable the agreed flow of revenue from Subscriber to LCO and from LCO to MSO.
- In the present framework MSOs are bound to pay to the broadcaster by virtue of their content agreement with broadcasters, however, recovery of MSOs revenue is entirely based on the realisation of subscription revenue from the LCO. As per existing framework, MSOs get their money from the LCOs in the subsequent month and even if after one month if MSO doesn't get its money, it has to issue a 21 days' notice before taking any action of disconnection of the services.
- It is clear from the above that there remains an outstanding of average three months on the LCOs which is a major cause of disputes between MSOs and LCOs.
- This only prepaid option will also eliminate the issues with regard to delivery of bills to the subscriber by the MSOs and electronic acknowledgement of the recharge will flow to the subscriber.
- The QoS regulations mandate that bill and receipt to be issued to the subscriber and the same is only possible if the revenue flows to the MSO directly so as millions of entries requiring compliance can be done through a robust pre-paid billing module.
- This will reduce the dispute between subscriber, LCO, MSO and Broadcasters considerable. Most of the disputes are on account of payment issues only.