

Pointers on the Consultation Paper on behalf of 9X MEDIA PRIVATE LIMITED

We write to you in response to the consultation paper promulgated by TRAI on 29.01.2016 on Tariff issues related to TV Services.

At outset, 9XM Media Pvt. Ltd. (9XM) is a company incorporated under the Companies Act, 1956, for running, transmitting and broadcasting various channels namely, 9XM, 9XO, 9X Jalwa, 9X Jhakaas, 9X Bajao and 9X Tashan. We operate 9X Tashan through our subsidiary Company. These channels are available across the cable and satellite network and DTH operators. Through these channels, we offer music content. Our channels target different genres of audience with a variety of music – 9XM , the latest popular Bollywood hits, 9X Jalwa, classic Bollywood hits of the sixties to early twentieth Century , 9XO, the contemporary and up-tempo English and International Music and local regional music in 9X Jhakaas Marathi and 9X Tashan Punjabi. Primarily, the channels which are broadcasted by us have a huge pay out towards carriage and placement fee, and negligible subscription fee receipts. In this light, we have considered all the issues raised in the consultation paper.

We have answered the questions taking the larger issues affecting the broadcaster of our stature in the market, some of the questions which are related to one another in one way or the other.

1. PRICING AND PRICING MODEL

This would cover Question Nos. 1 to 7 together as the issues raised are similar relating to both wholesale and retail pricing of channels and can be answered together. TRAI has proposed the following structures/models for pricing:

Wholesale Pricing

1. Price forbearance model
2. Cost based model
3. RIO based model – Universal, Flexible or Regulated

Retail Pricing

1. Price forbearance model
2. Exclusive a-la-carte model.

Integrated model

1. Conventional MRP model
2. Flexible MRP model
3. Distribution network model

We have taken into consideration the models in question, specifically keeping in mind the status and standing of our channels in the market. Accordingly, we are suggesting in the order of priority the most beneficial models, and the models which we feel need not suit our kind of channels, has not been discussed at all.

Price forbearance model

At the outset, we feel that the price forbearance model will work best for the Industry at wholesale and retail level. We feel that it is time that TRAI should allow the market forces to take over, and let the market forces decide the channel pricing, thereby adopting a soft approach towards regulations. We are not for a moment suggesting that TRAI should not regulate, but it should regulate the conduct of the parties rather than the economics of the parties. The advantages that forbearance in pricing are as under:

1. It will lead to better content being produced in the industry, and availability of high class content. Better content will lead to better advertisements and better advertisement fee, thereby bringing down the burden of the broadcaster on subscription fee, hence, lowering the prices.
2. Broadcasters are best aware of the rates at which their channels will sell best and to a higher number of subscribers. The prices, (to the contrary of TRAI's belief) will go lower than the current prices, as effective competition will keep the prices under check. The rates of the channels will be market and competition driven, and actual demand and supply will control the pricing.
3. TRAI's belief that the market is not ideal matured or pluralistic is not correct. The consumer will be educated through various schemes that would be available. It is a

known fact that any person would like to maximise its profits by higher sales, and higher sales can be achieved only through the most effective pricing.

4. TRAI's belief that this may lead to monopolistic control of TV channels is absolutely wrong. There is no channel or broadcaster that controls absolute monopoly in the market. For e.g., news of all kinds is available on innumerable channels and no single news channel can be considered to be monopolistic.
5. In fact, this will help the new entrants in the market, who can offer their channels at a price which is most beneficial to all including the consumer.

Flexible RIO model

If TRAI believes that price forbearance model will not work for any reason whatsoever, we would recommend flexible RIO model as the second method to be adopted in priority. In fact, it has the contours of no price regulation i.e. price forbearance, both for a-la-carte and bouquets and at the same time, the broadcaster is allowed to execute mutual agreements, for details provided in the RIO. This, in effect will take best note of transparency and discrimination issue raised by TRAI time and again.

Regulated RIO model

If the above two models do not find favour with TRAI, then TRAI may consider Regulated RIO model to be applied. This model would be similar to the model existing as on date except in addition to the provisioning of discounts offered by broadcasters in the framework provided, thereby taking care of non-discrimination, and transparency.

2. Price Freeze

We feel that the price framework must be transparent, flexible and growth oriented to ensure a balance between freedom of the broadcasters to price their content, and to protect the interests of the consumer. TRAI also recognizes that the pricing framework must be designed in a manner that it ensures flexibility to broadcasters to prescribe content price. We are of the view this intent could only be achieved by leaving the prices under forbearance. Further it is important that to allow the broadcasters to better the quality of contents, the pricing is based on the principle of parity and non-discrimination, while at the same time, maintaining the concept of carriage fee, placement fee and marketing fee on the

principle of parity, non discrimination and fairness. Thus, we feel that while forbearance will perfectly govern the market and bring down the prices, allowing the market forces to act on such prices, no price freeze may be required. It is common/industry knowledge that while price freeze has been tested by TRAI since 2004, the rates at which the offerings are made by the broadcasters to the platform operators is much lower than the price freeze thereby failing the concept of RIO.

Further, when the entire broadcasting industry is under the digitization process, proposed to be completed by the end of 2016, using the prices for analog network of 2004 as the reference point will not be a feasible option. It is a known fact that there cannot be any comparison between addressability systems which was rendered during the analogue regime since 2004 till date and the addressable regime existing in DTH market since about 2007-08 and cable industry since 2012. Hence, the broadcasters should be given the flexibility to fix the prices of the channels as per the demand in the market.

3. Carriage Fee

We feel that the concept of carriage fee has lost its relevance in the era of digitization, especially when complete digitization is likely to be achieved by the end of the year, 2016. The bandwidth issue that existed during the regime of analogue cable has ended, and as such, higher number of channels can be carried by the DPOs. Hence, it is time for TRAI to mandate a true, active, non discriminatory must carry access to the DPOs must be provided.

TRAI has considered this issue in the past while discussing the process of consultation on the said subject in its consultation paper titled "Issues related to Implementation of Digital Addressable Cable TV Systems" dated 22.12.2011 and later on, brought into force the clause 3(12) of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated 30.04.2012 which mandated the publication by the MSO in its RIO the carriage fee for carrying the channel of a broadcaster for which no request has been made by the MSO, which shall be uniform for all the broadcasters and not to be revised for a period of 2 years from the date of publication of the RIO.

Thus, though an attempt was made by TRAI but the regulation relating to carriage fee was grossly misused, and in fact not even a single deal on RIO basis for carriage of channels, has been executed in the Industry. The reason is simple that the RIO has been prepared merely to discourage invocation of the must carry provisions. While subscription fee being completely regulated since 2004, the practice of leaving placement and carriage completely unregulated leads to unhealthy and unfair practices by the MSOs by their continued arm twisting the broadcasters on the ground level. This is especially true for the smaller broadcasters like us, who are unable to have better deals for carriage and placement fee, due to the smaller number of channels available in the kitty.

Other than that exorbitant carriage, the placement fee also becomes an entry barrier for a new broadcaster thereby, restricting availability of better content and better channels.

Regarding Marketing Fee, we feel that even though it could be left to the market forces to determine the pricing and the rates, it is important that the concept of transparency, fairness, parity and non-discrimination shall apply with the same rigours and contours as it applies to subscription of channels i.e. must provide. Once the channels are carried, placed and marketed keeping in mind the concept of parity, the smaller channels will not be left out of the fray, and can seek better charges from DPOs leading to better content in the market, thereby leading to effective competition.

Furthermore, it is a well known fact that a new or a less popular channel of a popular and big broadcaster is required to pay much lesser carriage, placement and marketing fee than a popular channel of a small broadcaster. For e.g. a music channel belonging to a bigger Broadcaster would be paying much lesser carriage, placement and marketing fee than our channels. The reason for this is simple- the rate of carriage, placement and marketing fee gets decided on the basis of the number of channels and the wherewithal of the broadcaster. Thus, while a music channel is being offered on a platform, the corresponding GEC of the same Broadcaster would also be offered in the bouquet, thereby leading to bundling of channels at the must carry level. Hence, TRAI must prohibit bundling of channels and allow carriage, placement and marketing only on a-la-carte basis.

At the same time, we feel that EPG, and placement of channels be brought under proper regulation. It must be mandated that not only should EPG be done genre wise, but even the channel placement of channels should also be done genre wise, and it should not happen that one music channel appears on channel no. 14 and another at channel no. 792 while the EPG remains together. This leads to greater arm twisting of smaller broadcasters by the DPOs.

Further, the EPG should demonstrate the details of the channels, including the prices of the content/channel not subscribed to, in order to allow the subscriber to make an informed choice. Further, displaying the PIP for channels available on the platform of the DPOs but not subscribed by the customer will also be effective in this regard. No additional cost should be charged, since the said display is only informative and an invitation to the customer to opt for the said programme/channel.

4. Identification of Niche Channels

We feel that the channels having less subscription fee, and with large pay out of the carriage, placement and marketing fee should be one of the criteria for defining a channel as niche. Some other criteria's can also be formulated, like the nature and genre of channels, number of subscribers viewing the genre, content, production, advertising, marketing costs involved etc. Since the content generation is most expensive, and requires great deal of innovation, it is important that the niche channels should be kept outside the scope of price regulation and price forbearance must be applied.

5. Packaging of channels

We feel that till date the right to package the channels has been left to the whims and fancies of the DPOs leading to extreme discrimination by the DPOs of the smaller broadcasters/smaller channels. This discrimination has continued since the beginning and has led to arm twisting on a year-to-year basis and as and when the deals are to be renewed between such DPOs and smaller broadcasters. In fact, apart from giving a say in the packaging of channel to the broadcasters, it is important that the broadcasters should be

allowed to market their channels to the consumers directly and in the manner best suited to them. The basic principle of parity, non-discrimination and fairness should apply to all DPOs in these concepts as well. The broadcasters should be given a greater liberty to package their channels in the manner they feel best. Any restriction on the packaging of FTA and Pay channel would deprive the broadcasters their right to effectively market their content. The freedom to package the channels should not be curtailed as a number of factors are considered before deciding the ingredients of a package.

6. Review of genre and pricing

We feel that TRAI should review the genre, categorization of channels as niche and all other aspects every two years. We also feel that it is important to categorise Music as a separate and distinct genre and not be covered under the genre of 'infotainment'. In fact it may not be out of place to mention that music as a genre is subscribed by a very limited consumer and hence it should be treated as a Niche Channel. We also feel that certain exemptions for promotion for the Niche Channel should be made available like the following-

- i. Niche channels should be packaged in Basic Service Tier applicable to DAS cable operators and Basic Package of DTH operators
- ii. Placement of these channels on the network of the DPO should be well advertised and certain minutes in a day should be offered by the DPOs to advertise these channels on the local channels
- iii. Niche, Pay and FTA channels should be separated and in the case of FTA channel, it should be mandated that the same should be carried in the basic level/tier/packages.
- iv. Genre wise pricing should not be allowed.
- v. Niche channels should be categorised on the basis of the cost involved in creation, procurement, production and the availability of content
- vi. Control of misuse of the Niche Channel genre could be controlled by TRAI by reviewing the channel list on a bi-yearly basis.

We have presented our views on the most basic aspects that trouble a small broadcasters like ours, and as such, restricted our response to that.

7. Other Issues for consideration

- i. Transparency and non-discrimination must also be available to the broadcasters in relation to DPOs as well. While determining the parameters, all the factors like technological difference, addressability regime and territorial difference, amongst others should be addressed.
- ii. Authority should endeavour to encourage more investments in the broadcasting sector.
- iii. Only similarly placed players should be treated equally.