COMMENTS/ RESPONSE OF

INDIACAST DISTRIBUTION

PRIVATE LIMITED TO THE

CONSULTATION PAPER ON TARIFF

ISSUES RELATED TO TV SERVICES

DATED JANUARY 29, 2016

INTRODUCTION

1. IndiaCast Distribution Pvt. Ltd. welcomes the initiative taken by the Telecom Regulatory Authority of India ("**TRAI**") in releasing the Consultation Paper No. 01/2016 dated January 29, 2016 on Tariff Issues related to TV Services ("**Consultation Paper**") and seeking views of the stakeholders on issues addressed therein.

2. We agree that there is a need to examine the tariff dispensation in holistic manner in light of the emerging trends in the TV broadcasting sector and changing consumption patterns of the consumers. Additionally, a new tariff dispensation is also required at the earliest as the tariffs for addressable systems are currently linked to the tariffs of non-addressable systems, which are likely to be extinct soon with the implementation of DAS Phase IV.

BACKGROUND

On 09.01.2004 Government of India issued a Notification No.39 bearing Order No. SO 44(E) dated January 9, 2004, amending the definition of "Telecommunication Services" in Section 2 of TRAI Act to include broadcasting services and cable services also. By Notification dated January 15, 2004, TRAI declared that the prices of pay channels would be as were prevalent on December 26, 2003. While the said Notification was without any basis, it was also indicated in the said Notification that this intervention by the TRAI and cap on the rates of pay channels for both CAS and Non- CAS areas will continue until a final determination in this regard by TRAI. On 01.10.2004 TRAI issued Recommendations on issues relation to Broadcasting and distribution of television channels which was forwarded to the Government of India. Subsequently on 01.12.2004 TRAI issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Second Amendment) Order, 2004, (8 of 2004)[1] permitting

[1] Published under notification No.1-29/2004-B&CS dated 1st December, 2004.

broadcasters of pay channels an increase of 7% on the price prevalent as on 26.12.2003, which was effective from 01.01.2005. Again, on 29.11.2005 TRAI issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Third Amendment) Order 2005, (8 of 2005)[1], permitting for a 4% inflationary increase. The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Third Amendment) Order 2005, (8 of 2005) was challenged before the Hon'ble TDSAT and the inflationary increase was stayed by the Hon'ble TDSAT vide order dated 20.12.2005[2]. The Hon'ble TDSAT disposed of the petition vide order dated 21.12.2006 holding that the TRAI was free to consider if it requires to pass any orders on the revision of rates for the next year. TRAI further issued Consultation Paper No. 6 of 2007 dated 21.05.2007 on issues relation to tariff for cable television services in Non-CAS areas. On 04.10.2007 TRAI issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007[3], vide which TRAI changed the date of prevailing prices from 26.12.2003 to 01.12.2007 and allowed an inflationary increase of 4% on the rates prevailing on 01.12.2007 for pay and Free-to-Air Channels. TRAI on 26.12.2008 issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Ninth Amendment) Order, 2008[4], permitting an increase of 7% on account of inflation. Vide order dated 15.01.2009, the Hon'ble TDSAT was pleased to set aside Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007. Vide order dated 30.04.2009, this Hon'ble Court directed the TRAI to consider the matter de novo. TRAI issued the Telecommunications (Broadcasting

[1] Published under notification No. 1-13/2005 – B & CS dated 29th November 2005.
[2] Grahak Hitvardhini Sarvajanik Sanstha Vs. Telecom Regulatory Authority of India vide TDSAT order dated 20.12.2005 in the Appeal No.12(C) of 2005.
[3] Published under notification No 1-1/2007-B&CS dated 4th October, 2007 in the Gazette of India, Extraordinary, Part III, Section 4.
[4] Published under notification No. 1-31/2008-B&CS dated 26th December, 2008 in the Gazette of India, Extraordinary, Part III, Section 4.

and Cable) Services (Fourth) (Addressable Systems) Tariff Order 2010[1], providing that the a la carte rates for pay channels in the addressable systems shall not be more than 35% of the a la carte rate of the channels for non-addressable systems. On 21.07.2010 TRAI submitted its report to Hon'ble Supreme Court. The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (No. 1 of 2010) was challenged before the Hon'ble TDSAT and the Hon'ble Tribunal vide judgment dated 16.12.2010[2] was pleased to set aside the proviso appended to clause 4 of the said tariff order thereby setting aside the method / mechanism for determining the a-la-carte rates / prices for television channels in addressable systems. The judgment and order passed by the Hon'ble Tribunal was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 18.4.2011 was pleased to stay the operation of the judgment dated 16.12.2010, and also directed the ceiling was to be increased to 42% from 35% as mandated by the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (No. 1 of 2010). The TRAI filed an application before the Hon'ble Supreme Court seeking permission to review the tariff ceiling, which had not been adjusted for inflation for 5 years. This Application was allowed vide order dated 28.2.2014, whereby the Hon'ble Supreme Court permitted the TRAI to review the tariff ceiling to provide adjustment for inflation and also to notify such increases in exercise of TRAI's power and functions under Section 11(2) of the Act. TRAI issued the Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 dated 31.3.2014[3] effectuating an increase of 27.5% in two installments – 15% with effect from 1.4.2014 and

[1] Published under notification No. 11-14/2009-B&CS dated 21st July, 2010 in the Gazette of India, Extraordinary, Part III, Section 4.

[2] M/s. Sun TV Network Ltd. Vs. Telecom Regulatory Authority of India vide TDSAT judgement dated 16.12.2010 in the Appeal No. 7 (C) of 2010.

[3] Published under notification No. 1-6/2014 - B&CS dated 31st March, 2014 in the Gazette of India, Extraordinary, Part III, Section 4.

balance 12.5% with effect from 1.1.2015. In May 2014 The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 dated 31.3.2014 effectuating an increase of 27.5% in two installments – 15% with effect from 1.4.2014 and balance 12.5% with effect from 1.1.2015 was challenged before the Hon'ble TDSAT. Civil Appeal Nos. 829 – 833 of 2009 (in the matter of TRAI vs. M/s Set Discovery Pvt. Ltd & Ors.) were disposed of by the Hon'ble Supreme Court, vide order dated 17.9.2014, directing the TRAI to fix tariff for the non-DAS areas. TRAI issued The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 dated 31.12.2014. Vide Judgment and Order dated 28.04.2015, the Hon'ble TDSAT was pleased to set aside the Tariff Orders i.e. The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 dated 31.3.2014 and The Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 dated 31.12.2014. Further, in an Appeal filed before the Hon'ble Supreme Court the Hon'ble Supreme Court was pleased to pass an order dated August 4, 2015[1] wherein the Hon'ble Supreme Court has held that "*At this stage we are not inclined to interfere with the impugned order of remand passed by the Telecom Disputes Settlement and Appellate Tribunal. Needless to say that the Telecom Regulatory Authority of India shall reconsider the matter, in the light of the observations made in the order impugned and pass a fresh order. Till the matter is finally adjudicated, the respondents shall not insist for refund of the amount already collected by the appellants.*"

[1] Indian Broadcasting Foundation and Another Vs. Centre For Transforming India and Another Etc. Etc. vide S.C. order dated 04.08.2015 in the Civil Appeal Nos. 5159-5164 of 2015.

Again in Noida Software Technology Private Limited matter, vide Judgment dated December 7, 2015[1] the Hon'ble TDSAT has held " *In the meanwhile it will be open to TRAI, if it elects to do so, to undertake a comprehensive restructuring of the Regulations which would hopefully clarify many of the issues that arise in these proceedings. We make it clear that this Tribunal is issuing no such direction to TRAI. The delayed operation of the judgment is only to afford an opportunity to TRAI to consider the matter and act in the intervening period, if appropriate."* The Hon'ble Tribunal has also observed that *"Needless to add that in case TRAI issues any fresh Regulations before 1 April 2016, the petitioner and the broadcasters would be obliged to execute agreements on that basis. In case, however, no fresh Regulations are issued by TRAI, this judgment and order will come into effect from the aforesaid date and the parties would be obliged to follow the directions give above".*

It seems that in view of the aforesaid observations of the Court and Tribunal, TRAI has undertaken this exercise.

We hereby giving our response/ comments on issues raised by TRAI:-

1. **Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**
2. **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.**

[1] M/s Noida Software Technology Park Ltd. Vs. M/s Media Pro Enterprise India Pvt. Ltd. & Ors. vide TDSAT order dated 07.12.2015 in the Petition No.295(C) of 2014 (M.A. No.166 of 2015, M.A. Nos. 223-232, 240-245, 256, 261, 266 of 2015).

3. **How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.**
4. **How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.**
5. **Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications**.
6. **How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification**.
7. **How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications**.

In Question No. 1 to Question No. 7 the issues raised are with respect to pricing of a channel (at wholesale and retail level), distribution models including integrated distribution models, transparency & non-discrimination and consumer choice including budgeting of expenses by the consumers. We understand that by aforesaid issues TRAI intend to achieve most beneficial structure which will work best between the Broadcaster and the DPOs and at the same time beneficial to the consumers by taking care of consumer's choice and budget at the same time.

PRICING

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 considered all these models in one light, and are of the view that certain models in their order of priority and workability would be most suited for the broadcasting & Cable TV industry. It is though true that since 2004 till date, we have been working in the price regulated regime at wholesale level while price forbearance has existed at the retail level until now when TRAI has introduced ***Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Sixth Amendment) Order, 2015***[1] where twin conditions are specified for addressable platform . We are, thus, considering only those models, which we feel will work best, in the order of priority in the industry, and will not comment upon other proposed models.

PRINCIPAL POSITION

Price forbearance model

[1] Published under notification F. No. 1-9/2012- B&CS dated 28th December, 2015 in the Gazette of India, Extraordinary, Part III, Section 4.

It has always been the stated position of the TRAI that the price freeze is an interim measure and will be withdrawn upon (i) evidence of effective competition, and (ii) introduction of addressability. With the evidence of effective competition both at wholesale level *(with 830 private satellite channels and 35 TV channels of public service broadcaster)* and retail level *(with 60,000 Local Cable Operators, 6,000 Multi System Operators, 7 Direct-to-Home operators, 2 Headend-In-The-Sky operators and few IPTV operators)* as well as introduction of addressability (with the implementation of DAS), the TRAI must ideally withdraw price freeze and allow the market forces decide the tariffs of channels. Price forbearance will not only enable the channels will find its correct price basis the demand and supply of such channels, it will also bring innovation and price competitiveness at the wholesale level.

The TRAI need not be concerned of the scenario under the price forbearance regime at the wholesale level. The tariffs have always been under forbearance at the retail level, which in fact is more complex. This has not resulted in the prices sky rocketing. Despite the price forbearance, the tariffs at the retail level have been under control purely because of effective competition. However, if it is still unsure of successful implementation under the price forbearance regime, it may consider withdrawing the price freeze with a condition to revisit the same, at the end of the 1st year of its implementation, if there are evidences to establish that such regime has negatively impacted growth of the industry.

We suggest that price forbearance model works best for the industry both at wholesale and retail level. The economic dynamics works on the principle of *Laissez Faire*. The driving idea behind laissez-faire as a theory is that the less the government is involved in free enterprise and enterprise shall be allowed to be driven only by market forces which will develop a balance system based on mutual benefits and interest which will be extended to society as well. TRAI should let the market forces to decide the pricing of channels and there

should be complete forbearance from any type of regulation on channel pricing. TRAI's role is that of facilitator of the industry, it should ideally regulate the "conduct" and not the "economics" of the industry and thus follow the "soft touch" rule on tariff regulations by allowing the market forces to determine price discovery and shape the pricing regime. Also, bearing in mind the fact that there is hardly any instance of channel price regulation in any country apart from India. Given TRAI's own finding that television channels fulfil only "esteem needs" of consumers and are as such non-essential, there is all the more no reason whatsoever for regulating channel prices

Freedom of pricing in favour of the broadcaster will lead to better content production amongst the broadcasters, leading to better variety and quality of content, increase in investor confidence. If the broadcasters receive better advertisement fee, the subscription fee and prices of the channels will surely go down for the following reasons:

1. Broadcasters know 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. It could lead to effective price reduction in the rates, with innovative offers from the broadcasters.
2. TRAIs belief that the market is not ideal, matured and pluralistic is absolutely wrong. Consumer will be educated only if the schemes are offered and the consumer is driven to study these schemes. Merely stating that the consumer and the market is not mature will never help, as the market has never been tested. The market as it exists today thrives only on bouquets and no other innovative offering is available. Consumers simply opt

for bouquet and tend to take the entire bunch of channels in the bouquets. Hence, no independent mind is applied to the offers or offering on a-la-carte channels.

3. Transparency and non-discrimination shall maintain the level playing field. Vertical integration is also an aspect which has been taken care of by providing policing clauses for discrimination and non-transparency.

4. TRAIs 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. The monopolistic control of the broadcasters have already taken care by TRAI by content aggregator Regulations of February 10, 2014[1] and hence no further interference is required.

5. TRAI's belief that monopolistic control may lead to higher price of the content is also wrong due to the fact that even under price regulations, contents are being offered by the Broadcasters to the DPO at much lower price. It has also been observed by Hon'ble TDSAT that the contents of the Broadcasters are being made available at bulk discount[2]. Hence, forbearance of tariff would lead to reduction of price due to competition and choice of subscribers. It may also lead to conversion of many channels from "pay Channel" to "Free to air Channel" to reach out to customers. Thus, lead to an environment of consumerism where consumer choice will determine tariff of channels.

[1] The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (9 of 2012), published under notification No. 3-24/2012- B&CS dated 10th February, 2014 in the Gazette of India, Extraordinary, Part III, Section 4.

[2] M/s Noida Software Technology Park Ltd. Vs. M/s Media Pro Enterprise India Pvt. Ltd. & Ors. vide TDSAT order dated 7th December, 2015 in the Petition No.295(C) of 2014 (M.A. No.166 of 2015, M.A. Nos. 223-232, 240-245, 256, 261, 266 of 2015).

6. TRAIs belief that more bundling may take place has no basis whatsoever, and is neither backed by any facts and statistics. In fact, there will be higher degree of investment as certainty and lower prices will increase.

7. The Price forbearance would also be beneficial for new entrant as it allow them to determine the price of channel in accordance with consumer demand.

8. The market forces will not only reduce the uncertainty of the business at distribution level but also control the price of channels at real level thus encourage the investment both at broadcaster and distribution level .

9. TRAI may at least test this model of forbearance for at least a period of one year under broader regulatory framework and review the same periodically to evade any misuse by any stakeholder. In any event, if there is a proven market failure the Authority can always intervene and this fear of intervention shall itself create necessary checks and balances within the system that will address all tariffs and structural issues.

It is not out of context to mention at this juncture that in the "Prohibition of Discrimination Tariffs for Data services Regulations, 2016 dated February 8, 2016 TRAI has itself observed "*while the tariff regime has generally been left to forbearance, regulatory oversight is required so that the tariff framework follows the broad regulatory principles of non-discrimination, transparency, non- predatory, non-ambiguous, non-anti- competitive and not misleading."*[1] Hence, tariff has to be left under forbearance in broadcasting as well by applying the principles of non- discrimination and transparency.

ALTERNATIVE POSITION

[1] *Vide* TRAI notification No. 2 of 2016 dated 8th February, 2016, published in the Gazette of India, Extraordinary, Part III, Section 4.

In the event the TRAI is unable to withdraw the price freeze immediately (in either of the manners suggested in above paras), it may consider laying down conditions (say DTH reaching a threshold limit of 33% of C&S households) upon fulfillment of which the twin conditions will be deemed achieved and the price freeze will be withdrawn. Pending such eventuality, the TRAI may consider to adopt the following tariff models at the wholesale and retail levels:

TARIFF MODEL – WHOLESALE LEVEL

Broad contours of the Tariff Model at the wholesale level may be as under:

(i) The TRAI to provision for six (6) genres, namely (i) News & Current Affairs, and (ii) Infotainment, (iii) Sports, (iv) Kids, (v) Movies, (vi) Devotional, and (vii) General Entertainment.

(ii) The TRAI to fix genre-wise tariff ceiling of a-la-carte channels based on the maximum existing tariffs of a-la-carte channels. The maximum existing tariffs of a-la-carte channels needs to be considered as Broadcaster would offer discounts on such price as per the table below. Accordingly, the genre-wise tariff ceiling shall be as under:

Genres	Ceiling
News & Current Affairs	Rs. 3.86
Infotainment	Rs. 12.60
Sports	Rs. 18.90
Kids	Rs. 5.62
Movies	Rs. 9.66
Devotional	Rs. 2.10

General Entertainment	Rs. 10.58

Such ceiling shall be subject to inflation based increase or annual increase of 5%, whichever is higher.

(iii) Broadcasters to determine genre and fix tariffs of a-la-carte channels. Broadcaster to offer channels to DPOs on a-la-carte basis. Additionally, Broadcasters to offer bouquet of channels. The tariff of the bouquet of channels to be determined by Broadcasters shall be subject to the following twin conditions:

(a) the sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part.

In addition to above, Broadcasters to be permitted to revise (increase and decrease) the a-la-carte tariff of their channels (depending on demand-supply situation) and correspondingly the tariff of the relevant bouquets (in which such channel is part of) every year at the time of renewal of interconnection agreements.

(iv) Broadcasters to offer HD Channels and SD Channels as part of separate bouquets.

(v) Broadcasters to offer maximum 50% discount on a-la-carte rates and bouquet rates under different schemes offered to DPOs on non-discriminatory basis including but not limited to (i) number of channels subscribed by DPOs, (ii) reach of the

channels/placement of the channels on packages formed by DPOs, (iii) placement of the channels on particular LCN, etc.

(vi) Broadcasters to publish their respective RIOs within the above mentioned regulatory framework.

TARIFF MODEL – RETAIL LEVEL

Broad contours of the Tariff Model at the retail level may be as under:

(i) DPOs to place channels in the relevant genres published by Broadcaster.

(ii) DPOs to offer channels on a-la-carte basis. The tariff of a-la-carte channels at retail level not to exceed 2 times the tariff of such a-la-carte channel at wholesale level. However, to ensure uniformity of price of channels across DPOs, the TRAI may permit Broadcasters to fix the retail tariff of their channels and offer 50% distribution margin to DPOs.

(iii) Additionally, DPOs to offer bouquet of channels. The bouquet may comprise of Pay and FTA channels. The a-la-carte tariff of each FTA channels shall be Re. 1/-[1]. The tariff of the bouquet of channels to be determined by DPOs shall be subject to the following twin conditions:

(a) the sum of the a-la-carte rates of the pay and FTA channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

[1] As per Clause 6(1A) read with first proviso to Clause 6(1B) of the Telecommunication (Broadcasting and Cable Services) (Addressable Systems) Tariff Order, 2012 (as amended) ("Tariff Order") entitles the DPOs to offer 100 FTA channels for Rs. 100/-. Therefore, effectively, the price of each FTA channel is Re. 1/-. Accordingly, the first proviso to Clause 6(1) of the Tariff Order be amended to restrict it to Re. 1/-.

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a channel of that bouquet of which such pay channel is a part.

(iv) DPO to offer basic service tier comprising of 100 FTA channels for Rs. 100/-. The basic service tier to comprise of at least 5 channels from each genre in Hindi, English and regional language of the concerned region (if available).

(v) The minimum monthly subscription fees per subscriber per month to be increased from Rs. 150/- to Rs. 250/-.

We have borrowed ideas from all models suggested by the TRAI and suggested a modified/alternate model (both at wholesale and retail level), which we believe will be more prudent and easily implementable in the present context.

OTHER ALTERNATE POSITIONS

Flexible RIO model

If TRAI is still under the impression that the Principal model of forbearance or the alternative model will not be workable and may lead to concentration of power and lead to multiple disputes, we recommend flexible RIO model as the second best method to regulate the broadcasting sector. 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. TRAI's disbelief that discrimination will rise is misconceived, as the mutual deals will be executed between the parties on the broad contours provided in the RIO itself and will be based on the

principle of parity and non-discrimination as defined under Regulations and the Order of the Hon'ble Courts.

As regards deregulation of pricing, we feel that leaving the prices open to market forces can never result in increase of prices. Broadcasters are aware of the actual rates at which their channels would sell and hence, will never price channels at an adverse rate, and which would, in turn, reduce eye balls for the broadcaster's channels, as such reduction would adversely affect the advertisement rates for the broadcaster. Similarly, due to sufficient choices available to the consumers the pricing at retail level will automatically be controlled. The biggest fact in favour of forbearance at wholesale level is the fact that forbearance at retail level has existed for the longest time, and there has never been any complaint that the prices are obnoxiously high and /or leading to any kind of adverse situation for the consumer.

It is stated that the broadcasters and/or its authorized agent is absolutely ready and equipped to provide best prices of the channels, with best of minds working on the pricing formula.

The flexible RIO model has to be considered for the following reasons:-

1. 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. The monopolistic control of the broadcasters have already taken care by TRAI by content aggregator Regulations of February 10, 2014 and hence no further interference is required.
2. TRAI's belief that monopolistic control may lead to higher price of the content is also wrong due to the fact that even under price regulations, contents are being offered by the Broadcasters to the DPO at much lower price. It has also been observed by Hon'ble

TDSAT that the contents of the Broadcasters are being made available at bulk discount[1]. Hence, forbearance of tariff would lead to reduction of price due to competition and choice of subscribers. It may also lead to conversion of many channels from "pay Channel" to "Free to air Channel" to reach out to customers. Thus, lead to an environment of consumerism where consumer choice will determine tariff of channels.

3. Differential treatment to consumers are duly checked by TRAI under the Telecommunication (broadcasting and cable) services (fourth) (addressable systems) tariff (sixth amendment) order, 2015 where it is clearly mentioned that where DPOs providing broadcasting services or cable service to its subscribers, using a digital addressable system, offers pay channels as part of a bouquet, the a-la-carte rate of such pay channels forming part of a bouquet and the rate of such bouquet shall be subject to the following conditions, namely:

   (a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times its RIO rate offered by the broadcaster for addressable systems; and

   (b) sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate.

4. 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. The monopolistic control of the broadcasters have already taken care by TRAI by content aggregator Regulations of February 10, 2014 and hence no further interference is required.
5. TRAI's belief that monopolistic control may lead to higher price of the content is also wrong due to the fact that even under price regulations, contents are being offered by the

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Broadcasters to the DPO at much lower price. It has also been observed by Hon'ble TDSAT that the contents of the Broadcasters are being made available at bulk discount[1]. Hence, forbearance of tariff would lead to reduction of price due to competition and choice of subscribers. It may also lead to conversion of many channels from "pay Channel" to "Free to air Channel" to reach out to customers. Thus, lead to an environment of consumerism where consumer choice will determine tariff of channels.

6. The investment at distribution level will increase due to freedom to determine the price at wholesale level.
7. It is noteworthy that existing price level at which the contents are provided to the DPOs demonstrates that the maturity of market in determining the price of contents/ channels and at the same time fundamental principles of parity and non-discrimination will ensure transparency in terms and conditions for interconnections.

Regulated RIO model

If TRAI does not find favours with flexible RIO model, then TRAI could look at an alternative of regulated RIO model, which is akin to the position existing as on date, except in addition to the provisioning of discounts offered by broadcasters in the framework provided. TRAI believes that this would take care of non-discrimination, transparency, and transparent declaration of number of subscribers of each channel/bouquet, manner of providing TV channel signals to DPOs etc. In fact, an additional proposal by TRAI is welcome whereby a window is being opened to allow forbearance for certain category of channels, however, currently, the said position continues to exist, as Niche channels including High Definition channels are under forbearance. However, we would like to make

[1] M/s Noida Software Technology Park Ltd. Vs. M/s Media Pro Enterprise India Pvt. Ltd. & Ors. vide TDSAT order dated 7th December, 2015 in the Petition No.295(C) of 2014 (M.A. No.166 of 2015, M.A. Nos. 223-232, 240-245, 256, 261, 266 of 2015).

certain additional suggestions, which may be considered by TRAI, while taking a decision on the structure of the pricing mechanism. We feel that this model could work well as the industry is mature to handle this formulation, and partly acquainted with the manner of its working.

Though TRAI feels that periodic interventions to re-adjust pricing is a challenge, however, we feel that TRAI is well acquainted with the system of adjusting inflation from time to time based on market conditions and development status of the sector.

The Regulated RIO model has to be considered with the adoption of following changes:-

1. TRAI should consider allowing mutual negotiations under this model with application of the fundamental principles of parity and non-discrimination that will lead to transparency in entire value chain.
2. The Broadcasters may be allowed to execute cost per subscriber (CPS) deals which is not only the easiest method of offering but also commercially works best between the value chain.
3. Since, cost per subscriber (CPS) deals are mutually negotiated deals within the framework of RIO where incentives are transparently defined, twin-conditions should not be made mandatory for the same.
4. Ceiling on retail prices may be checked by TRAI under the Telecommunication (Broadcasting And Cable) Services (Fourth) (Addressable Systems) Tariff (Sixth Amendment) Order, 2015 where it is clearly mentioned that where DPOs providing broadcasting services or cable service to its subscribers, using a digital addressable system, offers pay channels as part of a bouquet, the a-la-carte rate of such pay channels forming part of a bouquet and the rate of such bouquet shall be subject to the following conditions, namely:

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times its RIO rate offered by the broadcaster for addressable systems; and

(b) sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate.

5. In this model TRAI may consider Price Cap for all genres – preferably the existing ceiling which is around Rs. 19/- keeping in mind the following:

- Existing price cap for GEC Hindi – Rs. 10.58
- Existing price cap for Lifestyle - Rs. 12.60
- Existing price cap for Sports – Rs. 18.90

6. The *alternate* could be the existing genre wise price ceilings which are as under:

Genres	**Maximum RIO price**
GEC (English)	6.52
GEC (Hindi)	10.58
GEC (Regional)	6.72
Infotainment	6.74
Kids	5.62
Lifestyle	12.60
Movies	9.66
Music	3.47
News	3.86
Religious	2.10
Sports	18.90

For the fixation of price, Genre like lifestyle, Music and infotainment may be clubbed together to form Infotainment genre with maximum wholesale price of Rs.12.60 following genre may be defined and maximum RIO rate of such genre may be applied :-

Genres	**Maximum RIO price**
GEC	10.58
Infotainment	12.60
Kids	5.62
Movies	9.66
News & Current Affairs	3.86
Devotional	2.10
Sports	18.90

7. The maximum discount applicable to RIO rates may not be allowed to beyond 45-50%. The quantum of incentive on each parameter should be the prerogative of individual broadcasters. Different broadcasters can have different incentives for the same parameter.
8. The model in a revised form as mentioned above, will ensure level playing field with non-discrimination and transparency in the value chain.
9. While it protect the interest of distributors and end consumers, it also provides flexibility to broadcaster to price their channel within the prescribed price cap.
10. The apprehension of TRAI that Broadcaster's monopolistic behavior may lead to the risk of exorbitant high price is duly controlled under this model.

11. Due to flexibility of pricing in the genre the rate of channel ay be determined based on competitive market principles and demand-supply rule of economics.
12. The principle of parity and non-discrimination will lead to transparency and further reduce the disputes among stakeholders.
13. This model may be prescribed for a limited period of one to two year post which TRAI may reconsider the price regulations based on effective competition in the market upon implementation of Digital Addressable System (DAS) in whole India. TRAI may also consider granting inflationary increase in the wholesale tariff of channels based on consumer price index (CPI) during this period.
14. Considering the present status of stakeholders the model with the proposed changes will work smoothly as it will be close to the existing business and regulatory framework.

Distribution network model

Our Understanding of the model: We understand that the model will work in the following manner:

1. The broadcasters notify their maximum retail price i.e. MRP for the subscriber, and offer channels a-la-carte along with various bouquets.
2. These a-la-carte channels, and bouquets will be opted by the distribution platforms like MSOs, DTH, IPTV and other platforms, depending upon the popularity of the channels.
3. These a-la-carte and/or bouquets will be offered by the distribution platforms to the subscribers. Important fact to be kept in mind is that the broadcaster will notify the rates of its a-la-carte channels and bouquets, and the distribution platform cannot increase and/or decrease the same or bundle the same.

4. TRAI will provide a linkage between the pricing of a-la-carte channels, and bouquet pricing.
5. In return, distribution platforms will be paid a fixed sum of handling charges by the broadcasters, only for pay channels, which could be in the form of a percentage of collections handed over by the distribution platform to the broadcaster.
6. The distribution platform is also allowed to charge an escalating rental from the subscribers depending upon the number of channels opted by the subscribers.

   For e.g. for 100 free to air channels, distribution platform may collect Rs. 100 from the subscriber. Any additional channels opted by the subscriber, say for first 50 channels, rental could be fixed at Rs. 10, and for every additional 50 channels, Rs. 10 is paid. Hence, for 200 channels comprising of 100 free to air channels, and 100 pay channels, the subscriber will bear a cost of Rs. 120 payable to the distribution platform by the subscriber, along with the cost of the channel payable to the broadcaster.
7. The model will work only when the infrastructure at all level is fully developed to address the demand of subscribers. This includes setting up of call centers and managing the subscriber's account at DPO level which unfortunately has not happened as of now. Hence, this model is a little premature against time.

Additional suggestions: We feel that this model will not work only on the understanding above. Alongwith the distribution network method, following additional measures will have to be taken by TRAI, which aspects have been covered in the later part of this consultation paper:

1. The model will be consumer friendly only when the offerings are duly communicated/ advertised to end consumers and as per the demand and choice of consumers channels are offered to subscribers. However, at this juncture it is not clear whether the

infrastructure at cable TV level is developed enough to address the need of consumers. Also, since there is no bundling of channels at DPO level, the offering of various broadcasters may confuse the subscribers rather helping him in suitable choice of channels.

2. The interest of the broadcaster and DPO may be under conflict as DPO plays major role in persuading the subscribers on the choice of channels/ bouquet of the broadcaster.
3. The diversity and quality of content may not improve due to limited demand of larger channels.
4. Since, the DPO will not be allowed to form a bouquet, it may not lose interest in marketing of channels.
5. Consumer will be educated only if the schemes are offered and the consumer is driven to study these schemes. Merely stating that the consumer and the market is not mature will never help, as the market has never been tested.
6. TRAI has stated that this offer will subject to prescribed regulatory framework. It is important the prescribed regulatory framework is made known to the stakeholders well in time, so that the effect of the same can be considered by the broadcasters.
7. **No genre wise pricing needed:** If this method is followed, then there would not be any need to define genre wise pricing as well. Reason being that
    a. Actual demand and supply, and competition will decide prices. A channel will know its true worth and price channels at a price so that maximum subscribers can subscribe. The issue of transparency, level playing field and such related aspects will get absolutely controlled, by effective competition.
    b. There is no basis on which the genre wise pricing can be arrived at by TRAI and /or even the TRAI.

c. Rationalization and transparent choices would be made by the consumers.

5. Parity at all levels must be seen to exist, and the distribution network shall treat all channels equally and on equal footing.

8. The distribution platform may also be mandated to provide equal opportunities for all broadcasters, and apply parity across all broadcasters. It is settled phenomena that the distribution platforms being the last mile operator, connects with the subscriber and has the wherewithal to treat broadcaster differently. Even though the concept may not be prohibited at one instance, the same could be prohibited in a phased wise manner, in order to allow digitization to achieve its goal of complete transparency.
9. One factor against its workability, as mentioned by TRAI, is the proper pricing of the content to consumers without exercising significant market power to over-price the monopolistic content. We feel that this will not happen, as the pricing will be determined by effective competition in the market and with more than 800 channels available in the market, there is no content which commands any monopoly or there does not exist any broadcaster which can claim to be a super monopolistic broadcaster.
10. One factor that could work against this model is the fact that it could act as a deterrent to the entry level broadcasters.

We, thus, request you to look into the additional suggestions, and accordingly, work with us to better the above method rather than accepting the method as it is. It is also imperative that before this method is implemented with additional suggestions, a detailed working of the same is understood by giving examples, so that there is no lack of communication between us and TRAI.

Retail Level- Price Forbearance model

If TRAI is not agreeing with the retail tariff model suggested above, we feel that if price forbearance is provided at the wholesale level then price forbearance as is existing shall continue to be applied at the retail level, except with partial restrictions.

8. **Is there a need to identify significant market powers?**
9. **What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.**
10. **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?**

The Consultation paper seeks recommendations to regulate possible monopoly/ significant market power in broadcasting and cable TV services which we believe is adequately covered under the competition Act 2002.

The provisions of the TRAI Act also stipulates under section 14(a)(iii)(A) that TDSAT does not have the power to adjudicate any dispute relating to Monopolies and Restrictive Trade Practices Act , 1969 (which was repealed by Competition Act). The corollary extension is that whatever cannot be adjudicated by the Appellate Tribunal also *ipso facto* cannot be examined by the authority. Further , the Competition Act came into effect after TRAI Act and provides under Section 60 that it shall have effect notwithstanding anything inconsistent contained in any law for the time being in force. The Competition Commission of India ("**CCI**") established under the Competition Act, 2002 ("**Competition Act**") to prevent practices having adverse effect on competition, to promote and sustain competition in

markets, to protect the interests the consumers and to ensure freedom of trade carried on by other participants in the markets in India, and for matters connected therewith and incidental thereto. In view thereof, the issues relating to the 'significant market power' squarely falls within the jurisdiction of the CCI.

Moreover, as per Section 60 of the Competition Act, 2002[1], reads as "*The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force*". Hence, framing any new regulations may conflict with the provisions of the Competition Act.

The Competition Act empowers the CCI to examine any alleged violation of the Competition Act which cause or likely to cause appreciable adverse effect on competition in India (AAEC). The statutory duty of the CCI is to *inter alia* promote and sustain competition, protect the interest of consumers, and ensure freedom of trade carried on by other participants, in market in India.

Thus, in view of the specific statutory provisions under the competition Act to deal with the abuse of dominant position read with the duty cast on CCI, it is respectfully submitted that the examination of any market powers in the broadcasting and cable TV services is under the exclusive domain of the CCI.

It is noteworthy that The Competition Act, 2002 ("**Competition Act**") was enacted to replace the archaic Monopolies Restrictive Trade Practices Act, 1966 ("**MRTP Act**"), which primarily dealt with monopolistic trade practices and restrictive trade practices.

[1] Published under notification No. 12 of 2003- dated 14th January, 2003 in the Gazette of India, Part II, Section 1.

The preamble of the Competition Act states that it is *"an Act to establish a Commission to prevent anti-competitive practices, promote and sustain competition, protect the interests of the consumers and ensure freedom of trade in markets in India."*

The regime set up under the Competition Act is, thus, entirely different from the erstwhile MRTP regime whereby only an **"abuse" of dominance is considered bad and not dominance in itself**, as was the case under the MRTP Act.

The Competition Act seeks to prohibit / regulate the following:

a) Anti-Competitive Agreements;

b) Abuse of Dominant Position; and

c) Mergers & Acquisitions.

In case of anti-competitive agreement / abuse of dominance, the Competition Commission of India ("**CCI**"), which is the nodal body set up under the Competition Act, may investigate violations on the basis of a complaint or may even do so *suo-moto*. In case an anti-competitive agreement / abuse of dominant position is proved, the CCI can impose heavy penalties and also direct entities to discontinue and not to re-enter into anti-competitive agreements or abuse their dominant position.

With respect to mergers and acquisitions ("**M&A**"), the CCI has very wide powers to not only regulate traditional M&A activities but also the acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified

in the Competition Act in terms of assets or turnover. Further, if a combination causes or is likely to cause an appreciable adverse effect ("**AAE**") on competition within the relevant market in India, it is prohibited and can be scrutinized by the CCI.

Therefore, the Competition Act is a comprehensive legislation that deals with anti-competitive practices and lays down stringent penalties for violation of the same. Importantly, the provisions of the Competition Act state that it will override all other provisions contained in any law and that its provisions are in addition to and not in derogation of any other law.

Thus, any restrictions that are proposed to be introduced to regulate anti-competitive activities in the cable industry may result in a conflicting jurisprudence or positions being developed. For example, a situation where an activity is permitted under the sectoral laws but such an activity is disallowed by the CCI, will only result in confusion, leading to the need for an amendment in the law or judicial intervention (through litigation) to resolve the conflict.

Therefore, the CCI is the best body to approve / disapprove any M&A activity in this sector and there is no requirement to introduce additional restrictions for imposing a market cap / restriction on M&A activity.

Further , it is respectfully pointed out that analysis relating to market power requires wherewithal in terms of capacity and resources which the authority may not have , and therefore the determination of issues relating to market power are better left to the authority mandated to carry out such analysis and exercise – in this case CCI.

In the past CCI has actively pursued complaints in this sector and also decided matters relating to abuse of dominant positions. The competition Act is a contemporary and complete legislation whose object is interalia to prevent practice having appreciable adverse effect on competition and to promote and sustain competition in markets. With such legislation already existent, there is neither a need to nor is it advisable to bring about amendments/ regulations. Such amendment/ regulations, if brought about, will only give rise to jurisdictional conflicts amongst regulators which is not good for the Broadcasting industry.

The Consultation Paper lays down the following grounds for proposing a differential regulatory framework:-

- The consumer pull for few driver channels made cable operators apprehensive about the viability of their business in absence of such channels on their platform.
- Broadcasters with powerful driver channels succeeded to piggy back their not so popular channel with the driver channel to their subscribers.
- Large number of bundled channels are being pushed to the subscribers as a bouquet with very little choice.
- Discounts were offered if the operator agreed to package all channels into their basic package.
- The distributors were enticed to surrender their privileges of placement and packaging under lure of monetary considerations without any regard to the consumer interests.
- The driver channels lead to indirect monopolistic power not only in terms of commanding content and pricing but also exercise significant control over the entire value chain.

- Significant market powers have also influenced distribution network. DPOs started demanding carriage fee and placement fee to carry broadcaster's channels due to limited carriage capacity in the network.
- Significant market power have the potential to adversely influence the value chain.
- Identification of significant market power is difficult and various criteria may be adopted to identify significant market power.

While there may be certain characteristic of market dominance, in the light of Competition Act along with the existing regulatory regime, we see no requirement for any additional regulations to address the issue of market power. Hence, competition and market power should be viewed from the perspective of consumer interest and choice.

a. Consumer Choice -both DPO and Channel: - the market, as it currently stands today comprises of 6000 MSOs, 60,000 LCOs, 7 DTH operators, 695 licensed MSOs operating in DAS notified areas apart from IPTV and HITS operators. Similarly, there are 857 Channels out of which 399 are news and current affairs channels, while 458 non-news Channels. Additionally, OTT (over the top) services have also been started as a distinct platform for distributing media content. A consumer, therefore, is able to choose the content/ channel and also the delivery platform through which it wishes to receive the services. It is not out of context to mention that even the offerings to the subscribers are very competitive as there are large number of channels falling under the same genre giving choices to end customer. Thus the market is extremely competitive.
b. Content, pricing & quality of services: - The contents are widely available across the platform including channels in multiple languages to meet the regional specific demand in various market across the country. Further, in a tariff regulated

environment and competition channels are been made available at the least cost. This is evident from the fact that India on one of the lowest ARPU (average revenue per user) country with respect to consumption of cable TV services. The standard of quality of services ensured that subscriber receive good quality of signals and consumer complaints are handled within prescribed time lines.

Thus, we feel that considering both the count i.e. conflict of law and also due to the fact that there is enough competition in market there is no need to identify the significant market power either at broadcasting level or at distribution level.

11. **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?**
12. **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.**
13. **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.**
14. **What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?**
15. **What should be the basis to derive the price cap for each genre?**
16. **What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?**
17. **What should be the frequency to revisit genre ceilings prescribed by the Authority and why?**

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

19. 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?

It is important to understand the circumstances when the TRAI intervened to regulate tariffs for after it has acquired regulatory over broadcasting and cable services in 2004.

We are of the view that the existing price freeze on the tariffs of pay channels in non-DAS areas is no longer necessary as it is hampering the growth of the broadcasting sector. The tariff freeze was initially introduced by the Regulator as a temporary measure. The TRAI itself in its Recommendations dated October 01, 2004[1] has observed:-

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

It is our submission that existing tariff regime in which the rates have been frozen is causing huge revenue losses to the broadcasters. The cost of programming for example sports, movies and general entertainment depends to a large extent on the type of content acquired or rights of telecast obtained from time to time and placing a cap of pricing can hinder a channel from going in for new programming which could only be supported by hike in subscription. It is pertinent to point out that the input cost for the broadcasters is

[1] TRAI's recommendations on "Issues relating to Broadcasting and Distribution of TV channels" dated October 01, 2004.

continuously increasing in the form of increase in the cost of procurement of programs from production houses, increase in the cost of IPR procurements, phenomenal increase in the cost of movie rights, increase in overhead costs, operational costs in the form of hiring of transponders etc. events rights and sports broadcasting rights etc. This has resulted in total imbalance as the broadcasters have to absorb all these increased costs themselves. This has caused significant dent in their revenues.

In this regard it is also pertinent to mention that in certain recent judicial pronouncements pertaining to DTH, the rates chargeable from DTH platforms have also been linked to the prevalent cable prices. This has caused considerable hardship in-as-much-as since the cable prices are frozen, the corresponding derived DTH prices from these cable prices are also in a manner stands indirectly frozen.

We are of the considered view that the rate regulation and price controls distort the market and lead to misallocation of resources. Artificially low prices deter any further investment in new channels & programming which in turn affects consumers' choices because of shortage of quality channels and lack of variety in programming. In this regard it is useful to refer to the extract of the relevant para in the Explanatory Memorandum to the Tariff Order dated 1/10/2004[1] which reads as under:-

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

[1] Vide TRAI notification bearing no. 1-29/2004-B&CS dated October 01, 2004.

addressability is introduced, giving consumers choice and making the interconnect agreements more transparent."

Thus TRAI itself has acknowledged that it is not possible to determine an appropriate price for a channel because of lot of variable and complexities involved in undertaking the said exercise.

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

The market is mature enough to reach its equilibrium level. The continuity of price regulation & controls will not only distort the market but will also lead to down gradation of quality of services and reduction of investment in the sector. It is to be noted that selling the channels at low prices will discourage any further investment in new channels and programming which is bound to affect the consumer choice and creating a shortage of quality channels and variety in programming content.

Since market is mature and the economic principal of equilibrium has made its inroad into the industry, if any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the channel is underpriced, the market forces will effect necessary correction based on its demand & popularity by increase in price. Hence no economic rationale exists for placing price controls.

In fact, under the free market conditions of competition, the cable television market has grown rapidly and a wider choice approx. 250-300 channels of different genres is available to consumer at less than Re. 1 per day per household in DAS areas. If the price controls are persisted with, it will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved towards deregulation of their cable television industries, thereby choosing to remove any restrictions on pricing.

As already submitted hereinabove the market forces should be allowed to operate freely which would ultimately self-regulate the system and optimum level price would be achieved. So far as the checks & balances are concerned, the TRAI can have a continuous monitoring of the market and can also initiate a system of regular reporting of pay channel prices by various broadcasters. If TRAI at any stage is of the opinion that market forces are not be able to throw up the appropriate level and in fact the interest of subscribers is being compromised, it can immediately intervene and effect necessary corrections.

The TRAI has statutory power to regulate if the deregulation results in creation of some kind of imbalance in the market to the detriment of consumers. The fact that there is an intense competition on the ground and coupled with the reality that Regulator can intervene as &

when the market tends to behave erratically, in our opinion are effective deterrents in preventing the broadcasters from acting in a whimsical manner to the detriment of consumers at large.

Regarding methods where price freeze/regulatory caps have been suggested by TRAI, TRAI may consider the views of the broadcasters. We feel that the TRAI should re-look at the price freeze prescribed in 2004 for the analog network. TRAI has been kind to provide certain inflations of 7%, 4%, and 7% up to 2007, and no inflation related hikes have been given since then. An attempt for the same was made by TRAI to provide Inflation related hikes up to 27.5% , which was set aside by TDSAT vide Judgment dated 28.04.2015[1] and affirmed by the Supreme Court vide Order dated 4.8.2015[2].

We also note in para no. 4.14.2 that TRAI recognizes 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 in the same paragraph also notes that the pricing framework must be designed in a manner that it ensures flexibility to broadcasters to prescribe content price. Having noted this aspect, the only form that can achieve the intent behind pricing is price forbearance. There is no method whatsoever which could take care of a balanced growth in the sector, and at the same time, keeping in mind the content growth as well.

Secondly, TRAI has proposed digitization of the entire cable industry, which will be completed by the end of 2016. Hence, using the prices for analog network of 2004 as the reference point will not be a feasible option. TRAI recognizes that the pricing framework

[1] Centre for Transforming India & Ors. Vs. Telecom Regulatory Authority of India vide TDSAT order dated 28th April, 2015 in the Appeal No. 1(C) of 2014 (M.A.No.6 of 2015).

[2] Indian Broadcasting Foundation & Another Vs. Centre for Transforming India & Another Etc. *vide* S.C. order dated 04th August, 2015 in the Civil Appeal No. 5159-5164/2015.

should be growth oriented. With the gradual increase in the broadcasting sector, the broadcasters should be given the flexibility to fix the prices of the channels as per the demand in the market.

Considering the aforesaid, TRAI could fix a maximum wholesale price (MWP) in the range of Rs. 20 or may also consider MWP for each genre of channels. The justification for Rs. 20 is as under:

Table 2 on page 22 under para 6 of Regulated RIO Model provides the highest RIO price as Rs. 18.90 in respect of sports genre channels.

(i) MWP will act as the maximum price for any channel. Demand and supply will actually control the pricing of the channels. Broadcasters, DPOs and consumer are well informed about the pricing, and the demand in the market.

(ii) Effective competition will lower the prices in the market.

(iii) While TRAI will be able to maintain a maximum wholesale price, at the same time, provide flexibility to the broadcasters to offer their channels at a rate which is most beneficial to all the stakeholders.

(iv) Bouquet of channels could be prepared by the broadcasters keeping in mind the actual prices of the channels, and twin condition could apply.

We feel that creating and notifying different genres will not work. There are innumerable genres, sub-genres which already exist, and the new genres are increasing by the day. It is very difficult to create all genres on day 1 and put all channels under those notified genres. For e.g. TRAI has recognizes that under the general entertainment genre, there are three sub-genres like GEC (Hindi), GEC (English) and GEC (Regional Languages). Taking an

example of GEC Tamil, we feel that the pricing for GEC Tamil would be much different in Tamil Nadu than in Delhi, based on its demand and supply. While the demand in Tamil Nadu for GEC Tamil channel will be very high, in Delhi, it may not be very high. The economics will demand and supply will automatically determine the prices for the same in different areas.

Similarly, News Business, News English and News Hindi would have a different demand in different areas. Hence, to provide a single genre for sub – genres, and to provide a pricing for these genres may not help at all, and with lead to dis-oriented, fragmented growth in the sector.

We reiterate that amongst the broadcasters, there is no market power existing. And even if its exists, the same can be adequately be taken care off under the Competition Act, which defines dominant position in a market, and the Act further provides that a sectoral regulator should assist the competition commission of India to determine if any player holds a dominant position.

We further feel that if the formula of MWP is created and demand and supply is allowed to control the prices, the issue of discounts will be taken care of between the parties without any further regulatory interference. Furthermore, transparent and non-discriminatory access to channels, being the basis of all regulations, and that being the intent of TRAI, we feel that stakeholders will be able to deal with the issue discounting, without any regulation existing in this regime.

The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006[1] issued by TRAI in clause 5.18 of its explanatory memorandum states as follows:

"*Genre Pricing*

5.18 - One of the frequent suggestions that have been made is that different tariff ceilings should be fixed for different genres of TV channels. The Authority has carefully considered this suggestion. It appreciates that there are certain sports and entertainment channels which have a different commercial model for transmission of their content. Often the costs of special programmes in such channels are dependent on competitive prices paid which may bear no relationship to the production cost. It has also been pointed out that the subscriber preference/choice for such channels is for a limited period of the event. Therefore any determination of regular revenue based on annual subscription is also not applicable in such cases. Similar advocacy was made on behalf of 24 hour film channels. One basic difficulty is that are channels which have got mixed programming and a puritanical approach to genre based classification is not possible. Moreover, commercial models in case of such channels are dependent on advertisement revenues in view of their higher popularity. Even a comparison of the bouquets of different channels shows that there is no uniformity amongst the broadcasters in their approach to the pricing of different genres. Therefore, the authority is of the view that an objective criteria to have a genre based MRP is not feasible. Instead the ceiling on MRP determined by the Authority is expected to take care of the interests of such specialized programmes within the overall ceiling.

[1] Vide TRAI notification no. 15-3/2006 – B&CS dated 31st August 2006.

Accordingly, only one MRP has been stipulated and this would apply to all types of channels. To take care of the concerns of the periodical and short terms choices made by subscribers, it has also been stipulated that any subscriber opting for a pay channel on a-la-carte basis must subscribe to the channel for a period of at least four months. A subscriber taking a channel for less than four months will have to pay the MRP of four months."

Thus, the concept of pricing similar channels similarly and genre based pricing does not hold good since two different channels belonging to the same genre may have varied contents and the costs incurred for procurement/creation of this content may also drastically vary. Hence, the proposed mandate of TRAI in treating all channels of the same genre at an equal footing is hit by the vice of arbitrariness as it seeks to treat unequals equally.

In our view, the Authority should observe complete forbearance with relation to pricing and modes of pricing per channel and its distribution thereof. It has been the general experience that the MSOs merely with a view to arm twist the Broadcaster take out the channels from a bouquet and put the same under the a-la-carte offering while it is impossible for the MSO to survive by offering channels on a-la-carte. The ultimate sufferer is the consumer.

TRAI's frozen Tariffs that were again based on a historical genre based approach has resulted in channels within the same genre adopting and charging the same range of prices regardless of the underpinning costs which would invariably vary from one channel to another. A channel therefore showing new Hindi movies have to be priced similarly as one showing old Hindi movies, though the cost of acquisition is far higher than the latter. A sports channel having no live content shall be priced similarly as a sports channel with live content though the latter pays a premium to acquire such live content. The Authority should embark and work on a roadmap to free up prices both at the whole sale and the retail.

In a market characterized by so many unknown variables and parameters as is the case in Non DAS areas, the Authority in its perspicacity would do well to allow the parties to address all issues and find all answers through market based negotiations and contracts. While TRAI has allowed operators to come up with declared subscriber bases it has frozen the other multiplier viz. the wholesale rates which is patently unfair. If subscriber bases can be a subject matter of negotiation or declaration on the part of the operator, likewise the wholesale rate should also be negotiated or declared by broadcasters. It could however hold a periodic review say once in every year to evaluate the state of the markets. In any event if there is a proven market failure the Authority can always intervene and this fear of intervention shall itself create necessary checks and balances within the system that will address all tariffs and structural issues till such time licensing and digitization (with addressability) sets in. Self-Regulation among stakeholders brought about by market dynamics and the inbuilt fear of Regulatory intervention is bound to usher in the required hygiene in cable TV market. Even today, TRAI has been doing a commendable job by intervening in appropriate cases where it has reason to suspect that there has been a market failure or in instances where it sees a just cause for its intervention. Directions have been passed on several stakeholders on many instances and those have been abided by, as well. There is no reason why such a practice cannot be continued, with the Authority perhaps taking a more pronounced step than before in settling disputes between parties rather than the parties approaching courts in the very first instance.

Forbearance shall work because of the fact that the distribution space today has acquired a level of maturity over the years. This is primarily due to:

- multiplicity of channels (both FTA and Pay) that are available
- multiplicity of platforms that a subscriber has access to

- equal bargaining power between stakeholders
- the indispensable requirement for "reach",
- Cable television being admittedly only an "Esteem Need" rather than a "Physiological need".

20. What should be parameters for categorization of channels under the "Niche Channel Genre"?

21. 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.

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

23. How misuse in the name of "Niche Channel Genre" can be controlled?

24. **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"?**

TRAI highlighted that niche channels have a specific demographic audience or interest group such as education, health programs, cookery etc. TRAI has also rightly pointed out that niche channels have a limited appeal by virtue of a specialized offering, the return on production of such channels broadly depends on the customer subscriptions and may not find adequate viewership to attract substantial subscription. Thus, the possibility of success of niche channel is bleak in an environment where channel pricing is regulated.

It would be relevant to draw attention of the TRAI on the following characteristics of niche channels:

1. Have a specific demographic audience or interest group;
2. Higher production cost;

3. HD and 3D channels requires high technology for retransmission; and
4. Revenue based on subscription and demand.

It is stated that under the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015)[1], hereinafter referred to as "TTO 2015 Non-CAS". TRAI has in fact analyzed the issue, however it is inconclusive of the category for such channels. An excerpt of the relevant para in the explanatory memorandum to the TTO 2015 Non-CAS reads as:

> *"The pricing mechanism on the similarity principle in no way requires that similar channels are to be priced equally. In fact, the channels can be priced anywhere within the range of prices of similar channels or below it, based on the business model of the concerned broadcaster and the uptake of the channel. Niche channels are primarily meant for targeted clients which, generally, constitute a relatively very small percentage of the total subscriber base of any particular MSO/cable operator. Since in non-addressable markets, subscribers do not have the wherewithal to choose specific channels on their own due to technological constraints, such channels, may not have any significant relevance in such markets."*

Reliance may also be placed on the explanatory memorandum to the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012 (NO. 3 of 2012)[2], where TRAI has elaborated on tariff relating to the niche channels, an excerpt of the relevant para is as below:

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[1] Published under notification No. 1-1/2014 - B&CS.- dated 6th January, 2015 in the Gazette of India, extraordinary, Part III, Section 4.

[2] Published under notification No. 1-9/2012 B&CS.- dated 30th April, 2012 in the Gazette of India, extraordinary, Part III, Section 4.

"*Explanatory Memorandum*

36. Offering of a channel in advertisement-free format (Ad-free channel) is a recent phenomenon in the Indian television market. These channels are driven by demand and generally cater to targeted segment of viewers. The ad-free channels, being solely dependent on the subscription revenue and demand based, in line with the view of a large majority of the stakeholders, the Authority has decided to keep the ad-free channels under complete forbearance. The niche channels e.g. HDTV channels and 3D channels, which require specialized STBs, are already under forbearance and would continue to remain under forbearance. The Authority will review the position at an appropriate time. As far as revenue share is concerned, it shall be shared between MSO and LCO in the same ratio as defined for other channels."

It is noteworthy that that among total number of channels there are 580 FTA channels and 262 pay channels. The number of niche channels are miniscule and not even 5 % of total number of channels. Similarly, the subscribers receiving such niche channels are not even the 5 % of total cable TV subscribers. The growth of niche channels in India is at very nascent state and there is a need to encourage production of niche channels by relaxing the price restrictions so that such channels gain higher viewership.

It is also important to note that as of now the broadcasters have also not started monetizing the niche channels and focusing more on growth of subscriber base of such channels. Hence, it is too early to regulate niche channels.

We are of the view that niche channel should also not be based on content, production, distribution and marketing cost based. The parameter of gestation period cannot be the criteria for defining niche channel for the reason that there could be various genres under the niche channel category. A single gestation period may or may not apply to each genre, and /

or there is no basis for prescribing this genre. There seems to be a lack of statistics and study to know the exact gestation period for any of these genres of the niche channels.

We are of the view that that it is not necessary to fix a gestation period but a regular yearly study of the costs and revenues in that particular genre could reveal whether the channel should be considered as a niche channel or not.

As has been discussed in response to Issue No. 20, the tag of Niche channel should be given only after the channel fulfils all the criteria and hence, there cannot be any misuse in the name of Niche Channel genre.

In our considered opinion, the Niche channel genre should continue to be exist under the same category. The categorization of any channel under niche channel genre is determined due to the technological difference, varied investment cost involved and marketing methods including provisioning of Niche channel under subscription based revenue model.

We understand that it may be extremely difficult to categorize niche channel genre basis audience attributes, gestation period or nature of content, production, distribution and marketing costs. Such categorization may unnecessarily create ambiguity in genre classification. E.g. (i) Kids channels may be categorized as Niche Channels as these are accessed by special interest groups (kids), (ii) a new GEC channels may qualify as Niche Channels for the gestation period of 12-18 months despite having standard GEC content, and (iii) no channel will be classified as Niche Channel because of the 'cons' highlighted in 'Cost Based Model'. In view thereof, we suggest that Niche Channels be restricted to Ad-Free Channels, HD Channels and 3D Channels as noted in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable Services) (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012. This will arrest the misuse in the name of 'Niche Channel Genre'. We also believe that in order to promote and facilitate introduction of more

'Niche Channels', the price forbearance for Niche Channels must continue till such time the subscription for Niche Channels crosses a defined threshold.

25. **How should the price of the HD channel be regulated to protect the interest of subscribers?**
26. **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?**
27. **Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?**

We feel that HD channel is premium quality content aimed at a specific (high ARPU) audience and hence, it should continue to exist under the same category. The prices should also remain under forbearance, and the market forces would determine the prices. In fact, it needs to be added that if the forbearance is allowed to exist at all levels and in respect of all channels, in that event, market forces will better control the prices of the channels.

In our considered opinion, there cannot be a linkage between the prices of HD channel with its SD format. The production cost involved in HD channel is significantly high owing to the different technology used in order to provide better quality content.

HD TV broadcast systems are identified with three major parameters:

- **Frame size** in pixels is defined as *number of horizontal pixels* × *number of vertical pixels*, for example *1280* × *720* or *1920* × *1080*. Often the number of horizontal pixels is implied from context and is omitted, as in the case of *720p* and *1080p*.
- **Scanning system** is identified with the letter ***p*** for progressive scanning or ***i*** for interlaced scanning.

- **Frame rate** is identified as number of video frames per second. For interlaced systems, the number of frames per second should be specified, but it is not uncommon to see the field rate incorrectly used instead.

If all three parameters are used, they are specified in the following form: *[frame size] [scanning system] [frame or field rate]* or *[frame size]/ [frame or field rate] [scanning system]*. Often, frame size or frame rate can be dropped if its value is implied from context. In this case, the remaining numeric parameter is specified first, followed by the scanning system. For example, *1920×1080p25* identifies progressive scanning format with 25 frames per second, each frame being 1,920 pixels wide and 1,080 pixels high. The *1080i25* or *1080i50* notation identifies interlaced scanning format with 25 frames (50 fields) per second, each frame being 1,920 pixels wide and 1,080 pixels high. The *1080i30* or *1080i60* notation identifies interlaced scanning format with 30 frames (60 fields) per second, each frame being 1,920 pixels wide and 1,080 pixels high. The *720p60* notation identifies progressive scanning format with 60 frames per second, each frame being 720 pixels high; 1,280 pixels horizontally are implied. 50 Hz systems support three scanning rates: 50i, 25p and 50p. 60 Hz systems support a much wider set of frame rates: 59.94i, 60i, 23.976p, 24p, 29.97p, 30p, 59.94p and 60p. In the days of standard definition television, the fractional rates were often rounded up to whole numbers, e.g. 23.976p was often called 24p, or 59.94i was often called 60i. 60 Hz high definition television supports both fractional and slightly different integer rates, therefore strict usage of notation is required to avoid ambiguity. Nevertheless, 29.97i/59.94i is almost universally called 60i, likewise 23.976p is called 24p.

For the commercial naming of a product, the frame rate is often dropped and is implied from context (e.g., a *1080i television set*). A frame rate can also be specified without a resolution.

For example, 24p means 24 progressive scan frames per second, and 50i means 25 interlaced frames per second.

There is no single standard for HDTV color support. Colors are typically broadcast using a (10-bits per channel) YUV color space but, depending on the underlying image generating technologies of the receiver, are then subsequently converted to a RGB color space using standardized algorithms. When transmitted directly through the Internet, the colors are typically pre-converted to 8-bit RGB channels for additional storage savings with the assumption that it will only be viewed only on a (s RGB) computer screen. As an added benefit to the original broadcasters, the losses of the pre-conversion essentially make these files unsuitable for professional TV re-broadcasting.

In our considered opinion, putting the channels in bouquets cannot be limited to the format in which the channel is being produced. HD and SD channel can be put in the same genre for the ease and convenience of the subscribers.

It is respectfully submitted that HD channels should be under complete forbearance and the tariff rate should not be regulated at this stage.

HD channels which is at present under the category of niche channel, has very less producers. Considering the amount of initial investment and its demand, it is not viable for the developers or the broadcasters to actually draw any benefit as of now. Moreover, most of the HD channels currently are in a pilot phase and is being granted to the distributors on non – commercial basis. If TRAI at this juncture regulates and lifts forbearance then there would be less progress of HD Channels in the market. Indian market for HD channels needs an enhancement of quality of service, optimized investment, which will only be achieved if the price fairness is driven by the market force and not over the regulations. And even HD ready

TV are not so common currently when we take entire market as a base and hence the overall subscription of HD channels are also minuscule.

Further, TRAI vide its notification dated March 22, 2013 on Standard of Quality of Service (Duration of Advertisements in Television Channels) (Amendment) Regulations, 2013[1], has limited the advertisement slot by a maximum of twelve minutes in an hour, which had already restricted the revenue generation of the Broadcasters.

In fact, referring to the judgement of the Hon'ble Telecom Disputes Settlement & Appellate Tribunal dated February 03, 2011 in Appeal No. 11 (C)/2010 titled as Sun Direct TV Private Limited Vs. Telecom Regulatory Authority of India, it may be perceived to support the concept of forbearance. An excerpt of the judgement is as:

> "*21. In a Situation of the present nature, where a new and different technology is being used by the broadcasters for the aforementioned purpose, in our opinion the TRAI was justified in prescribing forbearance for the time being. It can also fix a rate or tariff at several stages.*
>
> *22. What would be affordable prices to viewers and subscribers would depend upon the fact situation obtaining in each case. Television on HD feed are watched by those who can afford to purchase specialized type of set-top boxes or a very costly TV set. They cannot prima facie be said to be falling within the category of viewers who require protection.*
>
> *The requirements of big operators like DTH operators need not be in our considered opinion equated with the need of the general and end consumers.*

[1] Published under notification F. No. 23-1/2012- B&CS.- dated 22nd March, 2013 in the Gazette of India, extraordinary, Part III, Section 4.

23. This Tribunal in ASC Enterprise (supra) and Tata Sky (supra) itself stated that fixation of the tariff is the prerogative of TRAI. We do not see any reason, as at present advised, to differ from the said view.

24. We do not agree with the contention of Mr. Jain that Regulator must regulate in all situations. It may or may not do so.

How much the DTH Operators have to pay to the broadcasters, therefore, need not always be a relevant criteria.

HD feed is not normal feed. The normal feed is also available to the DTH Operators. Every broadcaster on a request made by a distributor of TV Channel subject to just exceptions is legally obligated to supply signals of its channel on reasonable terms and on a non-discriminatory basis.

Both the categories of feed cannot be equated. Charges fixed for one cannot be equated with other.

This aspect of the matter has been considered in Appeal No. 1 (C)/2010. "

HD channels are premium channels having highest quality services enabled by additional expenditures borne by the Broadcasters in terms of equipment and infrastructures as well as the production costs which is substantially higher than that of the Standard Definition (SD) channels. No doubt the DPOs and the consumers do invest to procure compatible reception equipment in order to subscribe to HD channels. However, TRAI cannot have a one sided outlook and prejudicing the broadcasters. The Preamble of the Telecom Regulatory Authority of India Act, 1997, reads as:

> *"to provide for the establishment of the [Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector,] and for matters connected therewith or incidental thereto."*

The consultation paper prima facie comes across as TRAI regulating only the broadcaster and further bleeding it and have failed to safeguard the interest of the Broadcasters. TRAI must evidence the Broadcasters making excess profit from HD services and if any dissatisfactions from the subscribers relating to affordability and quality. TRAI must also consider that this does not form a part of the essential commodity and hence, regulating the same would only stunt progress. Referring to the international industry practice, the Federal Office of Communications, U.K. (OFCOM) has acknowledged that HD services are a recent innovation and have allowed flexible pricing.

Further, HD channel may have replication of contents in a SD channel, however the quality of the signals in HD format is higher and is opted by the customers on request to the DPOs. DPOs may be directed not to form HD and SD channel of similar contents in the same bouquet and provide HD as an upgrade with additional fee replacing the SD channel.
It is respectfully submitted that HD channels should be under complete forbearance and the tariff rate should not be regulated at this stage for the reasons as mentioned above.

Similarly HD channel may have replication of contents in a SD channel, however the quality of the signals in HD format is higher and is opted by the customers on request to the DPOs. DPOs may be directed not to form HD and SD channel of similar contents in the same

bouquet and provide HD as an upgrade with additional fee replacing the SD channel. Similarly, DPO may be directed not to compel subscriber to take SD channel with its HD channel format and formation of such bouquet may be restricted.

28. 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 feel that broadcasters should be provided a greater liberty to package their channels in the manner they feel best. Also, DPOs must be given the flexibility to package the channels subject to the conditions specified below:-

(i) DPOs to offer bouquet of channels. The bouquet may comprise of Pay and FTA channels. The a-la-carte tariff of each FTA channels shall be Re. 1/-[1]. The tariff of the bouquet of channels to be determined by DPOs shall be subject to the following twin conditions:

(a) the sum of the a-la-carte rates of the pay and FTA channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a channel of that bouquet of which such pay channel is a part.

[1] As per Clause 6(1A) read with first proviso to Clause 6(1B) of the Telecommunication (Broadcasting and Cable Services) (Addressable Systems) Tariff Order, 2012 (as amended) ("Tariff Order") entitles the DPOs to offer 100 FTA channels for Rs. 100/-. Therefore, effectively, the price of each FTA channel is Re. 1/-. Accordingly, the first proviso to Clause 6(1) of the Tariff Order be amended to restrict it to Re. 1/-.

29. 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.

Majority of the Subscribers are not aware of the channels / packages being offered by its DPO. The TRAI may consider mandating DPOs following processes would streamline the simplified subscription process:

(i) Simplified websites of DPOs with a format to be provided by the Regulator of the website designs, which should be followed largely as regards its offerings.

(ii) Website layout should be user-friendly.

(iii) TRAI should enforce Quality of Service (QoS) Regulations on DPOs to ensure consumer grievances are duly addressed.

(iv) TRAI may also develop applications which would help the subscribers to identify various DPOs and plans/ package to enable the subscriber to choose the one best suited to them.

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

We feel that the DPOs should set up operations closer to the consumer i.e. creating more customer service centers. The DPO may be directed to set up the call center in accordance with the size of its subscriber base. The automatic voice record systems to be encouraged to ensure that timings for activation of channels may be minimized. Similarly, consumers may also be educated to make requests through website or application based link.

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

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

33. 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?

34. 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?

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

We are of the view that in the current regime of digitization on the verge of being achieved by the end of the year 2016 and hence the concept of carriage fee no more requires consideration. The bandwidth issue that existed during the regime of analog cable has ended, and as such, higher number of channels can be carried by the DPOs. Thus, 'must carry' must be mandated. At the most, the same could be mandated in a phased manner.

It is important to note that like telecom service providers (TSPs), DPOs are also custodian of public resource infrastructure and that should be made available without discrimination. In "Prohibition of Discrimination Tariffs for Data services Regulations, 2016 dated February 8, 2016 TRAI has itself observed that *" TSPs are custodian of public resource infrastructure that should be made available without discrimination. With differential pricing, the basic principles of internet as a neutral end to end carrier of information is violated and make the TSPs as gatekeeper. Such practices restrict consumer choice and is against the freedom of speech / expression and media pluralism."* Hence, principle of non-discrimination, parity and transparency should also be applicable on carriage services.

In fact, as the market scenario would portray, the broadcasting industry substantially reduce carriage fee and as such, it would be our suggestion that there is no need to regulate of

otherwise deal with the issue of carriage fee. However, if at all carriage fee has to be regulated, the same should be left to market forces to govern the same, and on the basis of parity, non-discrimination and transparency.

It is also important that carriage/ placement has to be independently recognized and shall not be seen as a measure to set off subscription fee as the factors for determination of carriage/ placement fee are independent of subscription and purely based on requirement including market factors and budget of the Broadcaster .

The authority in the past also had the occasion to consider the issue relating to carriage fee and had undergone the process of consultation on the said subject in its consultation paper ("CP") titles "Consultation Paper on digitization of Cable Television" dated 03.01.2005 and also "Issues related to Implementation of Digital Addressable Cable TV Systems" dated 22.12.2011. One important aspect that the CP dated 03.01.2005 discussed was the issue of Must Carry of TV Channels and the carriage issue. It discussed that –

"4.4 "Must Carry" is an important regulatory issue. Although it promotes competition, yet it is closely linked to digitalization of Cable networks. The MSOs/cable operators would have incentive to digitalise in case 'must carry' obligations do not affect their business model. The arguments in favour and against the 'must carry' obligations are discussed below:

Arguments in favour of 'must carry'

4.5 The programming and broadcasting industry is facing a growth constraint due to capacity limitation on cable networks. There is space for many niche and other channels in the market. Such channels would be launched in case they have an assurance that they would be carried on the cable networks. The 'must carry' obligations on Digital Cable

Networks would provide such assurance and confidence to the industry. Presently most of the channels are being launched from already established players.

4.6 There are strong vertically integrated Broadcasters and MSOs in the industry. The 'must carry' regulation would ensure that refusing carriage of channels of rival broadcasters does not scuttle competition.

4.7 Competition amongst broadcasters would increase. The consumer would be a direct beneficiary in terms of quality of programming and perhaps pricing. Arguments not in favour of 'must carry'

4.8 It has already been discussed in chapter 2 that many countries have adopted national plans to digitalise TV broadcasting. However complete digitalization remains a long drawn process. Even in the most developed countries there has been no city that has been able to convert 100% to digital transmission- except Berlin. Operators do simultaneous transmission in analogue and digital mode. Thus it is quite obvious that it would also take a considerable time for complete digitalization in India. Operators for a long period of time would have to transmit signals in both digital and analogue mode. Considerable bandwidth would be used to continue transmission of TV channels in an analogue mode and 'must carry' of all channels will be only restricted to these being carried in digital mode which will, at least to start with, have limited membership.

4.9 Digitalization is a capital intensive technology. Operators recoup this cost from various revenue streams like interactive services, internet services etc. Some bandwidth is also kept for the reverse path for such services. An operator may have a business plan to allocate more bandwidth for such services. Therefore considerable bandwidth would be required for analogue transmission and providing interactive services. The 'must carry' obligation may therefore act as a disincentive to digitalise networks. Further, at

any point of time capacity even on a digital network will be limited. If more channels came up additional investment will have to be made and therefore the "must carry" obligation may not be able to be complied with immediately.

4.10 For DTH operators it is obligatory under license conditions to provide access to various content providers/channels on a non-discriminatory basis. For level playing field it may be argued that such condition should also applied on cable operators. However the two platforms may not be comparable as cable operators would have to simulcast i.e carry same channels in two modes - analogue and digital but DTH operators would transmit in digital mode only.

Carriage issues

4.11 The carriage of channels on cable networks depend on the commercial agreement between a broadcaster and MSO. The 'must carry' obligation would also require that certain broad principles be also specified to arrive at terms of agreement.

4.12 Many free to air TV channel broadcasters have suggested in the past that these channels should be carried without any charge as they are not pay channels. However due to increasing demand for carriage and limited space on cables, many of these channels are paying carriage fees. Pay channels, which are generally more 24 popular do not pay carriage fees or share margins with the MSOs/cable operators. The margins come from the declaration on number of subscribers. "

Further, the CP also discussed the 'Must Carry' Rules in India as below-

4.15 As per section 8(1) of the Cable Television Network (Regulation) Act, 1995, Cable operators must carry 2 Doordarshan terrestrial channels and one regional channel of a state in the prime band. So far as DTH is concerned clause 7.6 of the DTH license says

that the " The Licensee shall provide access to various content providers/channels on a non-discriminatory basis".

4.16 The Authority had earlier also recommended that there should be legislation on the lines of clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster."

During the consultation process for CP dated 22.12.2011, it was also suggested by majority of the stakeholders that the provision of "must carry" should be mandated in order to balance the obligation on the broadcasters to "must provide". Further the manner of offering should be on non-discriminatory listing of channels and all channels should feature genre-wise in the EPG of the DPO. The authority after considering the suggestions, 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. However, this clause has been misused by the DPOs by resorting to the limited bandwidth excuses, and in fact, no one till date has exercised the RIO option for carriage fee, as the rates were exorbitant.

The issue of carriage and placement fees still remains unaddressed even vide the Tariff Order dated 01.12.2014. We submit that in the current "must provide" regime without a corresponding "must carry" obligation (except for a limited number of FTA channels), TRAI is well aware that the carriage and placement fees are charged indiscriminately by the MSO to carry and place broadcasters channels. Since tariffs are regulated but carriage and

placement is not, this practice of charging huge carriage and placement fees has negatively impacted the financial health of broadcasters.

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. However, over a period of time Broadcasters have been able to restrict/ reduce the carriage fees and may likely to do so in future as well. Hence, by way of regulating carriage fee, TRAI may not proceed to recognize the same. Must carry provision needs to be brought in with full force in order to balance the equity and the must provide obligation on the broadcasters. However, this could be done in a phased wise manner in order to allow digitization to get further deep rooted in the industry.

We feel that placement and marketing fees should be left to market forces. The agreements, as a whole are executed between the broadcasters and the DPOs, DPOs providing stated services in return, and as such, an agreement which can work by itself, without comparing the same with any agreement. A broadcaster is free to choose different options for marketing its channels. The manner of conducting business cannot be regulated unless it hampers the general interests of the other stakeholders. Placement and marketing services are desired by different broadcasters and DPOs as per their need and requirement. In return for the fee, a separate and distinct service is given by the DPO to the broadcaster, which is not a factor of the subscription fee. TRAI has although been of the view that placement should remain unregulated and as such, at this stage also, it should remain unregulated depending on the market forces.

With respect to placement and marketing fees, the following changes in the regulations would show that TRAI itself has always maintained the position of not regulating carriage, placement and marketing fees, as under:

Sl. No.	***Dated***	***Relevant Provision***
1.	*The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital*	***Cl. 2(n) "carriage fee"*** *means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters.*
2.		***Cl. 2(v)"placement fee"*** *means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels*
3.		***Cl. 3(6)*** *If a broadcaster before providing signals to a multi system operator insist for placement of its channel in a particulars lot as a pre-condition for providing signals, such pre- condition shall amount to imposition of unreasonable*

	Addressable Cable Television Systems) Regulations, 2012 (No.9 of 2012) dated 30.04.2012 (Principal DAS Regulation)	*terms.*
4.		***Cl. 3(11)** If a multi system operator before providing access to its network to a broadcaster insist on placement of the channel of such broadcaster in a particulars lot or bouquet, such precondition shall amount to imposition of unreasonable terms*
5.		***Cl. 9 (Reporting Requirement):** Every broadcaster shall furnish the details of carriage fee paid by him to the multi system operator along with the information furnished by him under the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation, 2004 (15 of 2004), as amended from time to time. Such information hence forth shall also include details of carriage fee paid to the multi system operator by the broadcaster.*
6.	*The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable*	***Cl. 3(11A)** No multi system operator shall demand from a broadcaster any placement fees. **(This Clause was inserted by First Amendment and deleted by the IInd Amendment in consonance with the Judgment of TDSAT dated 19.10.2012)***

	Television Systems) (First Amendment) Regulations, 2012 dated 14.05.2012 *(First Amendment to Principal DAS Regulation)*	
7.	*Hon'ble TDSAT's Judgment dated 19.10.2012*	*TDSAT was pleased to partly allow the challenge in Appeal Nos. 3(C), 5(C), 7(C) of 2012 challenging the provisions of the DAS Interconnect Regulations dated 30.4.2015 as amended by the First Amendment dated 14.5.2015. It was concluded as under:* *1. The Restriction placed on the MSO for demanding placement fees in terms of Ma 2012 Regulations are bad in law as the same restriction is not applicable for the DTH Regulations.* *2. Placement charges, if any, will depend upon the mutual agreement between the broadcasters and the MSO.* *3. Clause 3(5), 6(1A), (1B), 1(C) stand set aside.* *4. Direction to carrying minimum of 500 channels is also set aside.*

7.		***Cl. 3(11A)*** *was omitted pursuant to Hon'ble Tribunal's Judgment dated 19.10.2012, which set-aside the aforementioned provision on the ground that since no restriction is placed on DTH for placement, similarly no restriction w.r.t. placement should be placed on MSO's.*
8.	*The Telecommunication (Broadcasting And Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Second*	*Pursuant to Hon'ble Tribunal's Judgment dated 19.10.2012, TRAI commenced Consultation Process wherein the issue was raised whether there is a need for regulating the placement fees in all the Digital Addressable System, if so, how it should be regulated.* *Accordingly, Stake Holders have given their response on the aforesaid issue and majority of them stated that Placement should be left to market forces.* ***(Please refer to paras 26-29 of the Explanatory Memorandum to the IInd Amendment).*** *After the Consultation Process TRAI was of the following view -* ***Para 30 of Explanatory Memorandum:*** *The issue has been analysed. In DAS, the technology provides for an EPG wherein the channels being carried on an MSO's network can be arranged in a simple, easy to understand, manner so that the subscriber can easily go through this guide and select the*

	Amendment) Regulations, 2013 (No.12 of 2013) dated 20.09.2013 (Second Amendment to Principal DAS Regulation)	*channel of his choice instead of flipping through all the channels. The genre-wise display of channels in the EPG, where all the channels of a particular genre are listed under relevant genre, has been mandated through regulations. Moreover, in digital systems, signal quality of the channels is independent of the placement of the channel. Further, the Interconnection Regulation already has a provision [sub-regulation 3 (11)] that if an MSO, before providing access to its network, insists on placement of the channel in a particular slot or bouquet, such precondition amounts to imposition of unreasonable terms.* ***Thus, adequate provisions already exist in the regulations. Accordingly, sub-regulation 11A of regulation 3 of the interconnection regulation has been deleted.***

ANALOGUE INTERCONNECT REGULATIONS

	The Telecommunication (Broadcasting and	*Before coming out with the Third Amendment to the Principal Analogue Regulations, TRAI has commenced Consultation Process. In the said Consultation Process, wherein two issues arose which are as under –*

10.	*Cable Services) Interconnection (Third Amendment) Regulation, 2006 (10 of 2006) dated 04.09.2006* *(Third Amendment to Principal Analogue Regulations)*	• *Whether carriage fees on cable networks should be regulated? If so, on what basis should this be done and how should carriage charges be calculated?* • *What should be the mechanism for ensuring that the ceiling for carriage charge is not exceeded?* *All the Stake Holders presented their views and majority were of the opinion that the carriage and placement fees should be left to market forces on the ground that broadcasters pay placement and carriage fee from their advertisement pie.*
11.	*The Telecommunication (Broadcasting And Cable Services) Interconnection (Fifth Amendment) Regulations, 2009 (4 Of 2009) dated 17.03.2009* *(Fifth Amendment to Principal*	***Cl. 2(ia)** "**carriage fee**" means any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters.*
12.		***Cl. 2(mc)** "**placement fee**" means any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels.*

13.	*Analogue Regulations)*	***Explanation 2 to Cl 3(2)**. The stipulation of "placement frequency" or "package/ tier" by the broadcaster from whom the signals have been sought by a distributor of TV channels, as a "pre-condition" for making available signals of the requested channel(s) shall also amount to imposition of unreasonable terms."*
14.		*TRAI while undergoing the Consultation Process for the Fifth Amendment has stated that "The Authority has decided that no regulation w.r.t. carriage fee is required at this stage for the following reasons:-* • *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. **[Para 34(b) of Explanatory Memorandum]*** *TRAI, w.r.t. placement fees in the Explanatory Memorandum has stated that "The 'placement fee 'is paid by the broadcasters to the distributors of TV channels for placing their channel(s) at the desired frequency/tier/package for maximizing viewership and*

		revenue of their channel(s). The placement fee is different from "carriage fee" and the said aspect has been explicitly recognized by the Authority by defining these two terms separately in the definition clause. The amendment seeks to address the issue of carriage fee only and not the placement fee, which is governed by the market force and mutual negotiations between the broadcaster(s) and distributor(s) of TV channel." ***[Para 36 of the Explanatory Memorandum].***

The above shows TRAI's stand since 2004 and hence, there is no reason why this mindset be changed without any drastic or substantial reason.

36. **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?**

We feel that variant channels have been introduced keeping in view different mass/ class of population and to increase the reach of content of broadcasters. This may be in the form of language audio feed or down conversion of HD Channel in SD Channel. Since, the subscribers are ultimate beneficiary of such practice which is solely consumer oriented, it may not be spun towards regulation which otherwise is effectively functioning.

37. **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?**
38. **Can 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.**

Electronic Program Guide (EPG) is schedule of the programs being broadcast over channel by the DPO. It helps the viewers to know about the programs and their timing in advance. This also helps consumer in easy navigation amongst various channels.

The EPG, which is man machine interface, need to be improvised and made more user friendly. The composition of the bouquet can also be made available. The preview may also indicate the cost of subscribing to such channels to enable the consumer to take an informed decision accordingly. This will enable better utilization of the platform operators' latent capacity, improved monetization to broadcasters and may also help enhance the ARPUs. Since the preview is to be made available only for providing information, no additional cost should be levied on such preview options. The regulator may also introduce a set format of offerings on websites of each DPO so that the DPOs are not able to offer the channel in their own format and as per their own requirements. The website layout should be made user friendly after being pre-approved from the regulator so that the offerings can be similar on all websites. Further user friendly apps should also be introduced so that the customer is properly informed about the offerings by the DPOs.

Hence, in principle, both the proposals of the TRAI, i.e. provision of EPG details and PIP of channels not subscribed by the customer, are acceptable provided there is no negative monetary implication on the Broadcasters.

39. **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.**
40. **Will there be any additional implementation cost to subscriber for pay-per-view service?**

TRAI is aware that DPOs offer their channels to the subscribers either on a-la-carte basis or on bouquet under different plans and offerings. The offerings like low denomination pre-paid packs or facility like movie on demand etc. are recent phenomena currently provided by DTH platform only. The recent offerings are at a very nascent stage with a limited subscriber base who avail such channels/ programs. The offerings may also be construed as appointment viewing where contents are made available to the subscribers on the prescribed time fixed by the viewer.

Pay per view obviously gives the viewer the option to watch one piece of video content for a one-off fee. This may be a perfect way of introducing people to broadcasting content without expecting them to immediately commit to a subscription package. It is also an excellent means by which to attract a casual viewer; someone who doesn't necessarily spend a lot of time on television In international scenario Pay Per View is extremely popular for sporting events it allows the viewer to watch a one-off event without having to subscribe to watch a whole range of sports they have no interest in. However, such offerings should be purely broadcaster prerogative. Hence, such services may be provided only upon the written agreement with the broadcasters which may allow distribution platform to offer such services.

The downside of pay per view is that subscribers are not committing to the channel brand in the long term, and this means that long term forecasting is not as accurate as it can be if the majority of viewing figures are subscription based. We are of the view that at this juncture, tariff viewing of such pay per viewing program is not required to be regulated as market forces are capable to manage the demand supply and the rates of such content being offered as pay per view.

41. 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 periodic reporting to broadcast and audit of DPOs with justification.

We agree with TRAI that audit and reporting has emerged as a point of disagreement between the broadcasters and DPOs and is the basis of numerous disputes between the parties. Hence, there is a need of transparent and robust mechanism to review and audit the subscriber management system. We agree that we can use the power of ICT to automate the process of data collection at a central facility. A standardized reporting framework can be prescribed which will lead to transparency and avert conflict. The online facility for collecting information from the SMS of DPOs automatically in real time using web services and sent periodically to the broadcasters in an electronic format is indeed a solution to a bigger issue. However, Broadcasters may be allowed to conduct audit of systems in case it has concern regarding veracity of data or the systems of DPOs. We feel that a centralized agency should be maintained by the broadcasters.

However, at the same time we feel that the proposed approach may be difficult to implement. Instead, we suggest that the TRAI empanels Big 4 audit firms (instead of M/s. Broadcast Engineering Consultants India Ltd.), whose services may be used by the Broadcasters to conduct the audit in terms of Schedule II of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (as amended) and Schedule III of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (as amended). The scope of audit may be standardized by Indian Broadcasting Federation to address DPOs' concerns.

The TRAI must consider getting more stringent regulations to ensure compliance of Schedule I of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (as amended) and Schedule IV of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (as amended) by DPOs. DPOs are grossly violating such requirements resulting in failed audits.

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

Transparency, non-discrimination and parity need not be limited between Broadcaster and MSO and vice versa but may also be extended at all the levels.

Apart from the tariff concerns, the regulator should also take other effective steps to encourage investment in the broadcasting sector by controlling the conduct and not the economics of the Broadcasting and cable TV services.

Other than the aforesaid few other issues that require consideration of TRAI are as under:-

a) **Violation of QoS Regulations** – DPOs have been found to be violating existing QoS regulations by arbitrarily changing the composition of retail packs, withdrawing retail packs, withdrawing channels from retail packs. DPOs have also been switching off channels, or taking them off and resorting to disconnection without adhering to applicable Regulations and mostly in order to secure favorable carriage and placement fees or extract further discounts on agreed subscription revenues. Also DPOs do no provide the basic service tier or the ala-carte option to consumers on the ground thereby defeating the very mandate of the law. We suggest that compliance of QoS regulations should therefore be mandated under the Interconnect Regulations and Interconnect Agreements.

b) **Default in payments** – We urge TRAI to tighten existing provisions so that DPOs perpetuate the default by unconscionably demanding instalment facilities after willfully and deliberately piling up outstanding. In many cases the defaulter has simply reorganized its business by opening another entity and then approached broadcasters under Must Provide, and the broadcasters have been compelled to give signals to the new entity including the one who procure new licenses from MIB. We would therefore urge the TRAI to plug all these loopholes so that the regulatory construct does not promote aid or abet default by DPOs.

c) **Unauthorized retransmission/piracy** – The Regulations do not explicitly provide for denial of signals in case DPOs is committing piracy or engaging in unauthorized retransmission or if he has committed transgression of the authorized area. Therefore, such DPOs should be debarred from availing the benefit of "Must Provide". The entire Regulations do not have any provisions defining piracy or consequences thereof. A definition has therefore been proposed to be inserted in the Regulations as "Piracy means reproduction, retransmission and distribution or the communication to the public; and making available on communication networks, any work or broadcast reproduction as defined in the Copyright Act, without the explicit authorization of the owner(s) or rights holders where such authorization is required by law". Financial disincentives may also be considered in addition to the right to disconnect/ refuse signals as stated above. Further, stringent actions may also be incorporated under the regulation to deal with piracy.

d) **Disconnection of signals of TV Channel** – TRAI's regulations *inter alia* the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital

Addressable Cable Television Systems) Regulations, 2012[1] and the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004[2], stipulates that every notice of disconnection of re-transmission of TV channel shall be published in two leading local newspapers of the State in which the service provider is providing the services, out of which one notice shall be published in the newspaper in local language. As also provide in the Explanatory memorandum, the intent is for the consumer to be informed of any disruption in signals of the TV channels. We are of the opinion that since there are additional cost involved in such publications and majority of the consumer are not even reached/informed through only two leading newspapers, the relevant notices would be better serviced if this notices are served via scrolls. Provision may be incorporated in the Regulation providing the manner for such disconnection scrolls for the TV channels qualifying the intent of the Regulation to make the consumers informed.

e) Registration of Cable Television Operators – TRAI has highlighted in the CP that at present the broadcasting distribution sector comprises of 60,000 Local Cable Operators (LCOs), 6000 Multi System Operators (MSOs), 7 Direct-to-Home operators, 2 Headend-In-The Sky operators and a few IPTV service providers. The number of LCOs as pointed out by TRAI is unconfirmed, as at present there is no mechanism to validate the same.

LCOs' registration, renewal of the registration and compliance are prescribed under the provisions of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995)[3] and

[1] Published under notification file. No. 3- 24/2012- B&CS dated 30th April, 2012 in the Gazette of India, Extraordinary, Part III, Section 4.

[2] Published under notification file no: 8-26/2004-B&CS dated 10th December, 2004.

[3] Act No. 7 of 1995. Act as enactment date on 25 March 1995. Published in Gazette of India Extraordinary Part II Section I, dated 25 March 1995.

the Cable Television Network Rules, 1994[1] and the registering authority is the head post-master of the head post office of the area as prescribed under Section 3 of the Cable Television Networks (Regulation) Act, 1995. TRAI's recommendation dated 25th July 2008[2] has already acknowledged the issues relating to the existing licensing framework and have pointed out various limitations. At present there is no valid statistic of the last mile operators neither any control over their operational compliances. Pertinent to reiterate the relevant paras in the recommendation:

> **"***The present procedure of registration has several weaknesses. There is no system to track renewal. The data regarding grant of registration are also not available in Ministry of Information & Broadcasting or its allied offices. There is no clarity regarding performance obligations of the cable operators. Accordingly, the scheme for de-registration or any other form of supervisory intervention is totally lacking. The Authority is of the view that the short-comings can be effectively addressed by replacing present registration procedure with a licensing regime.***"**

In light of the aforesaid, TRAI may make provision directing the LCOs to have a mandatory central registration process with the MIB or TRAI or its allied offices, whereby the Authority would have information and data relating to the last mile operator including the LCOs and also of the MSOs operating in the Non-DAS areas.

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[1] Notification No. GSR 729(E), published in the Gazette of India, Extraordinary, Part II, Section 3(i), dated 29 September, 1994.

[2] Recommendation on "Restructuring of Cable TV Services" dated 25th July, 2008.