BY COURIER/EMAIL

March 11, 2016

Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
Jawahar Lal Nehru Marg,
(Old Minto Road)
New Delhi-110002

Kind Attention: **Mr. S.K. Gupta, Pr. Advisor (B&CS)**

Dear Sir,

Please find enclosed our response to the consultation paper no. 1/2016 on "*Tariff issues related to TV services*" dated January 29, 2016, on which comments have been sought from stakeholders.

Please note that this response is without prejudice to our rights and contentions with regards to the matters discussed. We reserve the right to furnish additional comments/ counter comments for the purpose of further clarifying our position on the proposals set out in the consultation paper.

Yours truly,

For Sun Direct TV (P) Ltd

Authorised Signatory

Encl: Our response to the consultation paper no. 11/2016 on "**Tariff issues related to TV services**" dated January 29, 2016.

March 11, 2016

Submissions of Sun Direct TV (P) Ltd ("Sun Direct") to Telecom Regulatory Authority of India ("Authority) in response to the Consultation Paper no. 1/2016 on Tariff Issues Related to TV Services" dated January 29, 2016. ("Consultation Paper")

RESPONSE TO ISSUES FOR CONSULTATION

Q.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.

Comment:

The cost based model and in the alternative regulated RIO model would be suitable at wholesale level in broadcasting sector. We do not suggest any modified/alternate model.

Submissions in favour of cost based model:

Hon'ble TDSAT in its judgment dated 28th April, 2015 in Appeal No. 1(C) of 2014 (M.A.No.6 of 2015) in the matter of:

Centre for Transforming India ... Appellant

Vs.

Telecom Regulatory Authority of India. In this matter, TDSAT set aside the 27.5 % inflation linked hike in wholesale prices of pay channels and observed that cost plus model is the most relevant for Indian market. The relevant portions of the judgment are quoted below:

> *"... a cost based tariff may be difficult in the absence of comprehensive data but TRAI being an expert body could have identified the various cost elements. At least the major elements of cost should not be difficult to identify. If it had done so, the WPI could have been applied in a much more meaningful way. How can the increase in cost of agricultural products for example has the same weightage as increase in the cost of electricity, communication equipment, etc. which has a direct bearing on the broadcasting service...*

> *The TRAI in its own report submitted to the Hon'ble Supreme Court acknowledged that the cost plus model was considered to be the most relevant to the Indian Market. Yet it did not go for the cost based model citing lack of comprehensive information. We are aware of the complexity of determining costs of a broadcast channel especially if the broadcasters do not share the information freely. We also understand the difficulties faced by TRAI as the regulation of the broadcasting sector is not easy. We, however, observe that it definitely has access to a lot of data available in the agreements being signed between the various stakeholders. As per " The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004", all broadcasters are required to register with the TRAI all the interconnect agreements entered into by them including modifications/amendments thereto. These are to be provided to the TRAI within the time frame as specified in clause 5(b) of these regulations. These agreements can give a fairly good idea of the market realities. We do not find that TRAI has done any analysis of the rates at which the agreements are being executed. Nothing has been shown to us in this regard. Both the Tribunal and the Hon'ble Supreme Court have been time and again asking the TRAI to conduct a fresh tariff fixation exercise.*

It is submitted that the Reference Interconnect Offers (RIOs) are completely divorced from the market rates. In reality the signals are given to most parties at rates far lower than those stated in the RIO.

The Tribunal had reiterated the need for TRAI to examine RIOs submitted to it, especially the rate quoted by broadcasters and MSOs to make these serve the purpose as intended in the regulations. The observations of the Tribunal in this regard are reproduced as under:

> *"But in reality the maker of the reference would be giving signals to most parties, or at least its favoured ones, at rates far lower than those stated in the RIO. In other words, the RIO rates are completely divorced from the market rates. The vast difference between the realistic market prices and the rate in the RIO gives the provider a free hand to quote a price much higher than the market price to a new seeker or one in disfavour, a price that would be commercially unviable and force the seeker either to accept that price or to accept the RIO. We reiterate the urgent need for TRAI to examine the RIOs submitted to it, especially the rates quoted by broadcasters and MSOs, to make these serve the purpose as intended in the regulations."*

It is submitted that TRAI needs to identify the major cost components of broadcasters by calling for data from the broadcasters so that increase or decrease in such costs may be suitably factored while working the tariff.

We completely support the judgment of TDSAT in the above matter which has been upheld by the Supreme court as well and submit that cost plus model is the only relevant model for the Indian market. Therefore we are in favour of Cost based model.

As pointed out by TRAI itself, Cost based model envisages that the price of a channel would be regulated on the basis of actual input costs incurred on creating content. Thereafter the average unit outflow of a channel will be determined considering total cost of the content production, revenue from advertisements and number of total subscribers subscribing to that channel. The broadcaster can then fix the price of the channel and bouquets by adding their profit margins. The details of calculation would be made available to regulatory authorities who may vet the reasonableness and fairness in arriving at the price of the channel.

Cost based model will have the following advantages:

a. *It is a scientific method for price calculation and regulation.*
b. *This would be transparent.*
c. *Provides reasonable rate of return on investments.*

Our submissions in favour of Regulated RIO model:

Hon'ble TDSAT in its recent judgment dated 7th December, 2015 in Petition No.295(C) of 2014 (M.A. No.166 of 2015, M.A. Nos. 223-232, 240-245, 256, 261, 266 of 2015) in the matter of

M/s Noida Software Technology Park Ltd. ... Petitioner

Vs.

M/s Media Pro Enterprise India Pvt. Ltd. & Ors. ... TDSAT has held that Broadcasters RIO should form the starting point for negotiations between broadcasters and platforms. In a nut shell, the judgment lays down the following:

1. *RIO must reflect the rates of channels and bouquets.*
2. *A la carte rate and the bouquet rates must abide by the ratio mandated in Clause 13.2A.12.*
3. *RIO must clearly spell out any bulk discount schemes or any special schemes based on regional, cultural, or linguistics considerations.*

4. *The RIO must enumerate all the formats along with their respective prices in which the broadcaster may enter into a negotiated agreement with any distributor.*

So, from the NSTPL judgment which has also been upheld by the Hon'ble Supreme court, the recent law laid down is clearly in favour of RIO. So, the only question arises as to which RIO model will be best suited for industry.

Our submissions are as below:

We are not in favor of Universal RIO model as this model gives complete freedom to Broadcasters in deciding the price of each channel and no mutual agreements are permitted in this model. Moreover, Broadcasters cannot offer bouquet of channels in this model. Also, Complete freedom to broadcasters to price the channels even after acknowledging that content is monopolistic in nature will be anti-consumer and abnormally increase the ultimate price to customer.

We are also not in favour of flexible RIO model as it is very similar to Universal RIO model. In this model, while the broadcaster has the freedom in notifying the price of the channel both for a-la-carte and bouquets and can also enter into mutual agreements on certain issues as indicated in the RIO, this model will lead to discrimination against DPOs as flexibility of mutual agreements can be used against the smaller DPOs and result in differential treatment to consumers served through different DPOs.

As an alternative to the cost based model, we support the Regulated RIO model. In this model, TRAI based on data available with it can specify price cap for channels of each genre, linkage between prices of a-la-carte and bouquet of channels, framework for discounts to be offered by broadcasters to ensure non-discrimination, transparency, measures for *transparent declaration of number of subscribers of each channel/ bouquet, manner of providing TV channel signals to DPOs, checks for piracy etc. The following are the advantages of the Regulated RIO model:*

i. *It will provide a level playing field with non-discrimination and transparency amongst various stakeholders in the value chain.*
ii. *It will provide flexibility to broadcasters to price their channels within the prescribed price caps while controlling risk of exorbitantly high price due to their monopolistic behaviour.*
iii. *It will protect the interests of distributors and consumers.*
iv. *It will encourage the broadcasters to offer niche channels.*
v. *It will enables price discovery of a category of pay channels based on competitive market principles.*
vi. *It will reduce Disputes among stakeholders and enhance sector growth.*

We also submit that there should be further rationalization of tariff for DTH operators to ensure level playing field between DTH operators and MSO's. Currently, DTH operators are burdened with additional costs of entry fee, bank guarantee, license fee which costs are not incurred by the MSO's thus giving MSO's an unfair advantage over the DTH operators.

Q2. Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.

Comment: The ***price forbearance model would be suitable at retail level*** *in broadcasting sector. There is enough competition between the various DPOs comprising of DTH operators, MSO's, HITS, IPTV, Cable operators to ensure that prices are competitive and in consumer interest. As stated by TRAI itself, this model envisages minimal regulatory intervention in fixing the retail price and also the manner of packaging and distribution of a-la-carte channels and bouquet being offered to subscribers.*

This model shall have the following advantages:

a. DPOs have the freedom to market TV channels in both ala-carte and bouquet form.

b. DPOs would be free to innovate suitable pricing model and business strategies.

c. Foreign direct investment may increase in the modernization of TV distribution infrastructure sector.

We further submit that ***the Exclusive a-la-carte-model is not feasible*** *for the following reasons:*

a. Defining price caps on the MRP at retail level by the regulator is not only a cumbersome exercise but impossible to implement at ground level.

b. Price cap may be detrimental to the development of quality content and totally eliminate niche channels.

c. Variety of the channels may be reduced and most of the broadcasters start competing for similar content.

d. Growth of the sector and FDI may adversely be impacted in long term.

e. DPOs' flexibility to price and package the channels will be adversely impacted.

To summarize, for more than 10 years now, the regulator has ensured complete forbearance in retail pricing and this needs to be continued. The Regulator is aware that the rates at which the channels are provided in India are the lowest compared to anywhere else in the world. There is more than enough competition amongst stakeholders which also ensures that the consumers are getting the best quality content at the best prices.

To bring in any regulation on retail pricing will only make impact the growth of the DTH sector which is playing an important role in digitization and affect the DTH operators flexibility to price and package the channels, and make the exercise of creating new and varied packages difficult.

Q3. How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification. Q4. How will the consumers' interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.

Comment: As stated above, we propose cost plus model with further rationalization of tariffs by the regulator for the DTH industry to ensure level playing field. Cost based model will ensure that the transparency and non-discrimination requirements are fulfilled and the consumers' interests like choice of channels and budgeting their expenses are protected. In the alternative, we propose Regulated RIO model

Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications. Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification. Q7. How will the consumers' interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.

Comment: ***We do not support any of the integrated distribution models for the following reasons:***

(a) *In this model, Broadcasters will continue to have an upper hand and use their monopolistic position to over price channels.*

(b) *Broadcasters may still try to push their non-driver channels in bouquets along with driver channels.*

(c) *Customer may find it difficult to choose various pay channels/ bouquets of channels from each broadcaster.*

(d) *The distributor's dependence on pay channels revenue share.*

(e) *The flexibility of DPOs for packaging gets limited.*

(f) *Forbearance to price FTA channels has potential to create non-level playing field for FTA channels.*

(g) *Price of driver channels may be jacked-up by broadcasters adversely impacting consumer interest.*

Q8. Is there a need to identify significant market powers? Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

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

*Comment: **There is no need to identify significant market powers**. Once the cost based model or regulated RIO model is implemented, the models themselves shall ensure that any monopolistic behavior is brought under check.*

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

*Comment: As stated above, **there is no need to continue with the price freeze prescribed in 2004**. The price for digital platforms need not be derived from analog prices but should be derived independently based on actual inputs costs incurred by broadcasters in procuring the content i.e we are in favour of cost based model with tariff further rationalized for DTH based on currently available industry figures.*

Q12. Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.

Comment: ***We are in favour of classifying all available channels into different genres with a regulated genre price cap placed on each genre. However, there need to be detailed genres based not only on nature of content but also language.***

So in addition to GEC (Hindi) and GEC (English) there should also be GEC (Tamil) GEC (Telugu) GEC (Malayalam) etc

As rightly pointed out by TRAI, calculations based on industry figures clearly indicate that the prices in the market are currently hovering at around 10% of the notified RIO rates and therefore retaining the highest prevailing RIO rates as genre ceilings will be against the interest of the consumers. As per quality of service norms, the price protection needs to be there for atleast 6 months, so we propose that the genre price caps be visited at a pre-defined frequency of anywhere between 6 months to two years.

Broadcasters can offer further discounts basis number of subscribers subscribing the channels, number of broadcast TV channels subscribed on the platform etc.

Q13. Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc? Give your suggestions with justification.

Comment: ***There is no need to create a common GEC genre. Having multiple GEC genres gives more choice and flexibility to consumer and reduces his costs.***

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

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

Comment: There should be complete transparency by broadcasters in disclosing their input costs for procuring/creating content. This should be balanced by TRAI notifying price cap based on current industry figures to ensure that there are no hidden costs which increase the costs of the channels.

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

Comment: The percentage of discount will vary from genre to genre based on channels in the packs. The current data available with TRAI that fixed fee deals are generally at 10% of individual a la carte channel prices can be the taken as the price cap.

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

Comment: As per Quality of service regulations, DTH operators are required to provide price and pack protection for atleast six months. So any time frame between 6 months to 2 years may be prescribed.

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

Comment: Discounts should be provided based on criteria such as number of subscribers, number of channels being carried on the platform,

Q19. What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?

Comment: We leave this to TRAI to determine. As TRAI has all relevant data before it, it is in the best position to ascertain the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO

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

Comment: Currently, ad-free channels, HD channels and 3D channels generally known as niche channels are in forbearance.

We recommend that all channels including HD Channels which are available in SD format should be excluded from Niche Channel Genre. Also, all channels once they are firmly entrenched in the market and consumers have been exposed to the niche content of such channels, then say after a time frame of 6 months, the channels should be de-categorized as 'niche channel genre'

Q21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.

Comment: No, niche channels should not be given complete forbearance. Principles of transparency, consumer interest, nondiscriminatory treatment need to be applied to niche channels as well.

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

Comment: Maximum gestation period should not exceed 6 months because in 6 months, the newness and novelty of the channel will in any case wear off.

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

Comment: By rationalizing wholesale price of niche channels as well after it has crossed 6 months.

Q24. Can a channel under "Niche Channel Genre" continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the "Niche Channel Genre"?

Comment: By labeling a channel as niche channel, broadcaster should not be permitted to price such channel exorbitantly.

It should also be prohibited from being carried in a bouquet carrying variants of similar content such as SD and HD or channels which are the same only having different language audio etc. As a result, the consumers end up paying for all channels while they may actually not viewing all variants.

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers? Q26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

Comment: Number of HD Channels has gone up substantially from earlier when HD channel pricing was under forbearance, today with the rise in number of HD channels, there is no justification to keep HD pricing under forbearance. Most content production as of now is done in HD format, which is uplinked by broadcasters for providing to DPOs for further distribution to consumers. Thus, apart from production cost which may not be significantly different from that of SD production costs, broadcasters only have to bear additional expenditure towards incremental bandwidth cost for uplinking. Therefore, TRAI has rightly observed that there does not appear a valid justification for pricing HD channels abnormally high compared to their corresponding equivalent SD channels.

In view of the above, we submit that ***HD channels should be priced at same price as corresponding SD channel, further that same bouquet should not be allowed to carry the same HD and SD channel i.e. of same content as this increases the cost burden on the subscriber and is prejudicial to his interests.***

Q28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.

Comment: Once TRAI comes out with cost based model or regulated RIO model, the concern regarding over pricing of a la carte channel vis a vis channel bouquet will automatically get addressed. Packaging of channels (Whether FTA or pay) in a bouquet is determined by the DPO based on subscriber preferences, regional preferences, market trends and various other factors and therefore we do not 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. A bouquet should have a healthy mix of both FTA and pay channels and TRAI should leave packaging freedom to DPO's remaining secure in the knowledge that market forces and for DPOs to ensure growth in subscriber numbers , they will provide the most competitive priced and mix of channels in a particular bouquet.

Q29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification. Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

Comment: We are already providing subscribers with various modes for easy and fast subscription such as subscribing using their Registered Mobile Number, IVR facility, website facility, call center, ***sun shine stores****, mobile app etc*

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee? Q32. Under what circumstances, carriage fee be permitted and why? Q33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated? Q34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why? Q35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?

Comment: It is submitted that on DTH Platform there is major constraint on the network capacity to carry channels due to limited transponder capacity. Creating additional carriage capacity requires more transponder bandwidth and hence more cost.

We are in favour of continuing with forbearance on carriage fee however if this is not feasible, then we recommend arriving at a cap for carriage fee based on parameters such as:

a. Cost of the resources to provide adequate carriage capacity to carry a TV channel over the transmission network of the DPO.

b. Opportunity cost related to utilization of existing infrastructure.

c. Number of subscribers to which the channel will have reach, and accordingly the subscription and advertising revenue it will generate on account of being carried on the DPO platform.

We do not recommend any kind of regulation with respect to placement fees or marketing fees. Placement fee is a purely commercial understanding between Broadcaster and DPO and does not affect subscribers. Marketing fees or a fee for carrying a particular channel in *all the base packs ensures that a popular channel is available to the subscriber at low prices and as the marketing fee is not part of subscription fee, the subscriber is not burdened with any additional cost.*

Q36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?

Comment: The variant or cloned channels are provided because of consumer demand only. However, we agree that multiple channels from similar content should not be placed in the same bouquet as it increases the cost for subscribers.

Q37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?

Comment: Our EPG already includes details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels

Q38. Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.

Comment: We can carry such teaser feed if Broadcasters provide it to us

Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification. Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

Comment: Yes the option of Pay-per-program viewing by subscribers is feasible to implement.

The tariff of such viewing should not be regulated as it is a value added service which subscriber is under no compulsion to subscribe to unless he wishes to do so. There are no additional implementation cost to subscriber for pay-per-view service.

Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.

Comment: We are in support of standardizing the audit process and reporting formats as these currently vary from broadcaster to broadcaster and lead to confusion and hardship for the DPOs.

However, the solution is not to use the power of ICT to automate the process of data collection at a central facility as there could be security breaches. Moreover, a lot of data is sensitive and cannot be risked being disclosed to competitors.

Currently data is stored and available for audit at our facility and there is no need to outsource the data collection to a central facility as this will also increase costs for us.

We already follow best practices regarding the process of periodic reporting to broadcasters and audit process and the existing processes do not need any overhaul or changes.