

3/25/2016

AIDCF

**COUNTER COMMENTS FOR CONSULTATION
PAPER ON TARIFF ISSUES RELATED TO TV
SERVICES**

At the outset we would once again like to congratulate TRAI for taking up this tariff exercise which will pave the way forward for the entire Broadcasting Industry. We have gone through the comments furnished by various stakeholders and while appreciating the varied views of each stakeholder and the challenges mentioned by them as well as after considering the various models/ hybrid models proposed, as well as interim arrangements suggested by the various stakeholders, we are of the opinion that in today's scenario, being well aware of the past practices (mentioned in detail in the Consultation Paper and our response to the same) and radical changes that the future holds in store (in view of the march of technology), we maintain that the Distribution Network Model proposed by TRAI with a few modifications is the one and only way forward.

Chapter 4 - Tariff Model

We would once again like to mention the salient features of the **Distribution Network Model** as suggested by the authority along with the additions proposed by the Federation. The same are:

1. Separation of charges for distribution networks and subscription of pay TV channels.
2. Independent source of revenue could be in the form of "*Basic Subscription*" from subscribers depending upon the quantum of bandwidth used.
3. Broadcasters are free to price channels directly to consumers under the Regulatory caps fixed by TRAI.
4. Revenue share between MSO and LCO (which should be in the form of "*Additional Subscription*" of a minimum of Rs. 150/- for the Basic Services in a ratio of 70:30 (where 70 is for MSOs and 30 is for LCOs).
5. The Revenue Share so fixed between MSO and LCO should be made mandatory.
6. The revenue in the form of additional subscription from the pay channels should be distributed in ratio of 40:30:30 (Broadcaster: MSO: LCO).
7. The Broadcaster should necessarily provide all its pay channels on à la carte basis. There should be no option of bundling or packaging allowed to the Broadcaster either for Pay channels or a combination of Pay and Free to Air.
8. Payment should be from Consumer to MSO and that too on pre-paid basis only. MSO would disburse the share of the Broadcaster and LCO in the ratio mentioned above as well as the relevant taxes to the concerned departments.

That in the comments received from the Broadcasters and the various Associations/ Industry Bodies in response to the Consultation Paper, there is almost a unanimous demand for forbearance at the wholesale level as well as the retail level. Further various comments also go on to state that regulations qua pricing should be completely done away with and the market forces would shape the cable and broadcasting industry.

Although the various reasons given in support of forbearance may seem appealing at first brush, however, the same is milesaway from reality on the ground.

Forbearance means complete autonomy of pricing at the wholesale level being in the hands of the Broadcasters i.e. to increase/decrease/discount, favor in any manner and for any DPO platform as per their choice. The DPOs thereafter on the basis of the wholesale prices received (which will differ from DPO to DPO) will thereafter have to competitively price at the retail level to the consumer and in the case of the MSO also factor in the share of the LCO.

Thus, apart from a few favored DPOs, the others would be in a situation of utter dismay and rather than promoting competition and level playing field as proposed by the authority, there will be chaos and anarchy which even as on date exists with certain Regulations in place.

It is not to be lost sight of, that even as on date there is *per se* forbearance when it comes to pricing of the pay channels albeit under the price cap fixed by the authority and the business dealings at present are either predatory or discriminatory from one DPO to another as has been observed by the Hon'ble TDSAT time and again as well as mentioned in the Consultation Paper. For Forbearance as a concept or a tariff model in the Broadcasting sector to become feasible, the pricing of all pay channels by Broadcasters should necessarily be done directly to the consumer. It is then and only then, that the true and correct picture as to the real price of the channel based on the demand and content would be brought to light.

The Broadcaster cannot demand forbearance and fix its rates only at wholesale level and expect that all DPOs irrespective of the mode and manner of operations as well as size and strength, would fix competitive rates at retail level which would be suitable or beneficial to the consumers. Thus, forbearance if at all permitted should be based on pricing to be fixed by the Broadcasters to the Consumers with a revenue share as proposed for the link in the middle i.e. the DPOs.

The basic goal of this consultation paper is consumer benefit above all and to protect the interests of all tiers of the distribution hierarchy. The consumer in the forbearance regime as proposed by the Broadcasters would be the ultimate sufferers who would once again be saddled with unnecessary channels only because the DPOs are unable to provide channels of the consumer's choice at competitive rates and as per consumer's choice. Packaging and Bundling would be predominant and a la carte offerings would be a dream.

The Federation once again reiterates that with the implementation of digitalization, MSOs cost of infrastructure, overhead expenses and manpower has increased manifold whereas the revenue has steadily nose-dived.

It is to be noted that in the whole process of digitization which has been implemented till date, MSO's have played substantial role in the form of:

1. Doing capital investment of approximately ~Rs. 8,000 Crores for Network Building and Set Top Boxes which are solely attributable to the MSOs and that too, without any assistance from the Broadcasters or the LCOs.
2. Physical effort of building a state of the art Digital Network mainly by the MSOs leading to increased man power and investments without any projected revenue generation mechanism proposed or prescribed by the Ministry of Information and Broadcasting.
3. The colossal task of convincing and aligning with the unorganized LCO sector, which historically and even till date are resistant to support digitization. It should be restated that only MSOs have invested in building the network, infrastructure or purchase of the Set Top Boxes without which the whole process of digitization would not have even taken off.

Digitization has affected the three stakeholders (Broadcasters, MSOs and LCOs) in different ways:

1. Revenue increase for Broadcasters: The Advertisement Revenue as well as the Subscription Revenue has steadily increased to the tune of ~40% and ~58% from 2012 to 2015 which has been noticed by TRAI in the present Consultation Paper.
2. Increase in revenue for LCOs: The cost of subscription to the Consumer has increased by ~Rs. 100/- versus the analog regime thereby helping the LCOs to retain the same or higher net realization from the ground despite the MSOs having to shell out more and more subscription revenue to the Broadcasters.
3. Decrease in revenue of MSOs: Out of the total revenue generated from Subscription from the consumers, 67% of the revenue share still evades the MSOs and we have to make our ends meet within the 33% revenue that is actually available for the MSOs. The collection of the MSO from the ground is in fact of a lesser percentage than what has been prescribed by the TRAI. On the other hand, the Broadcasters de hors the ground reality or popularity of content has increased their cost of channels. In all of this, the operating costs of the MSOs are going through the roof as demand for more and more boxes coupled with network repair and maintenance is steadily increasing without the resultant returns. Further with the investments already made for setting up of the head end and infrastructure, this has led to a huge debt burden on the MSOs.

Therefore, in light of the above, if forbearance would become the new regime, then DPOs will slowly but surely become extinct.

On the other hand, it is highly imperative to draw attention to the fact that almost all MSOs and one DTH Operator in response to the Consultation Paper has supported the integrated model i.e. the Distribution Network Model whereas the Broadcasters have found various flaws with the same.

What now needs to be further highlighted is that in the proposed Distribution Network Model, the pricing to the consumers solely vests with the Broadcasters which means that within the genre caps set by TRAI or in the alternative forbearance as mentioned above, the Broadcasters dehors any external factor, be it the MSOs, IPTV, HITS or DTH Operators or the ground conditions and can price each and every one of their channels directly to the consumer. Further the consumer in addition to the pricing directly provided by the Broadcaster would have to pay certain additional amounts to the DPOs as contemplated in the Consultation Paper.

Therefore, the concerns of the Broadcasters may not be fair keeping in mind that the content which is sought after, would be viewed at the rates at which they are proposing and a certain percentage of the revenue generated would be passed on to the DPOs. In this light, we would also like to lay emphasis on the fact that most of the individuals as well as the consumer groups in their responses to the Consultation Paper have either supported the Distribution Network Model or proposed a model similar to the CAS Regime wherein the pricing was fixed directly to the consumers. The Federation appreciates and appeals to TRAI that the consumers who are going to be the actual beneficiaries of the present Tariff Exercise are either commenting in favor of or suggesting a model which is in line with the Distribution Network Model thereby, the intention is that the pricing should be to the consumer directly for him to be in control of what he wants to view and at what price.

Therefore, it is clear that the MSOs, LCOs and the consumers find the said model favorable as it would be in the business and commercial interests of all parties concerned.

Chapter 5 – Other Issues Related to Broadcasting Tariffs

On a review of the comments received from the stakeholders, it appears that the Broadcasters favor abolition of Carriage Fee or in the alternative, regulating the same. It is pertinent to mention, that even under the existing regime, Carriage Fee is regulated in view of Regulation 3(10) of the Interconnect Regulations, 2012, which provides for a must-carry obligation on the part of the MSO.

In terms of Clause 3(10), the MSO has to give non-discriminatory access to its Network. Even under the present Regulatory System, there have not been complaints made to TRAI or the Hon'ble TDSAT with regard to nonfulfillment of Regulatory obligations, which leads to the conclusion that the present regulatory regime has worked as intended and does not require interference.

Though, it has been stated by some Broadcasters that the provision is illusory and the Carriage Rates fixed by the DPOs are very high and hence, gives an opportunity to the DPOs to abuse the same. However, no specific instances regarding the same have been pointed out to the authority nor have such aggrieved parties approached the Hon'ble TDSAT, leading us to believe that the same is only a way to somehow get the Regulator to change the existing regime.

The publication of the Carriage Fee RIO by the DPOs, itself makes the process transparent and non-discriminatory. Each DPO has to be given some leeway in deciding the RIO Rates for Carriage, as they operate in different markets, having different demographics and different infrastructure facilities as also varying reach and capacity. There is already intense competition at the DPO level, which automatically corrects the RIO pricing of the DPO, as the Broadcaster can get similar reach by moving to another DPO at a cheaper price.

Some of the responses received have advocated a 'must carry' obligation on the part of DPOs and have proposed that the DPOs have a minimum channel capacity of 500 channels. In so far, the minimum channel capacity is concerned, the same was proposed by the Regulator and was set-aside by the Hon'ble TDSAT vide judgment dated 10.10.2012 in Appeal 3(C) of 2012-United Cable Operators Welfare Association vs TRAI.

It is necessary to point out that it is the DPO, who has to decide as to what infrastructure and bandwidth etc. is to be requisitioned for running of its Networks and the same cannot be dictated by 3rd parties. By way of an example, it would amount to the DPO dictating what content is to be produced/ aired by the Broadcaster.

In the event, a DPO is providing less channels, the consumers would shift to another DPO. The DPO market is highly competitive, resulting in DPOs trying to provide the best possible consumer experience at the cheapest cost to the consumer.

As far as the 'must carry' obligation is concerned, the same is already provided for under Clause 3(10). However, it is necessary to point out that the 'must carry' cannot be free of cost to the Broadcaster, as even under the 'must provide' the DPO is to pay the Broadcaster and not receive channels free of cost. The availability of channels on the Network of the DPO, results in increased advertising revenue for the Broadcaster. At present, there are more than 830 channels available and no DPO can keep increasing its capacity to add unlimited channels to its Network. It has to be kept in mind that for the channels not sought for by the DPO, the Broadcaster has to compensate the DPO for using its Network, Reach, loss of opportunity etc. to the DPO. Any DPO is not liable to share/ utilize its Network free of any charge for the benefit of a 3rd party.

Various Pay Channel Broadcasters have commented on the aspect of either regulating carriage and/or completely doing away with the same. It is pertinent to note that even under the present Interconnect Regulations there is clearly a bar on a DPO demanding any amounts towards carriage in case the DPO wants to show the said channel on their networks i.e. under the 'MUST PROVIDE' obligation, therefore, any opposition from Pay Channels for carriage fees is unfounded.

Further News Broadcasters as well as Free to Air Broadcasters have also stated in their response to the Consultation Paper that either carriage should be done away with or regulated, however, none of them have even mentioned the fact that the same FTA and News channels pay carriage fees to the tune of crores of rupees for being carried by the Free Dish i.e. DD Direct +. This goes to show that although the FTA and News Broadcasters want to be carried on the networks of the DPOs, however, they are not appreciating the fact that the cost of bandwidth, infrastructure and finally the eye balls (consumers) garnered by the said channels due to the DPOs has to be compensated for. It is only through these DPOs that the FTA and News Channels get ratings and hence comes the big chunk of advertisement revenue in their kitty. As mentioned in detail above, Carriage is sufficiently regulated and therefore the present regime does not require any change or further regulation.

Marketing and Placement Fee, by its very nature is a Fee paid by a Broadcaster to promote its channel and earn increased advertisement revenue in the process. A DPO has the unfettered right to package/ place channels on its Network subject to adherence of the Regulatory Framework. Even under a particular genre, the channels have to be placed in a specific order and the Broadcasters in order to be placed as per their choice, pay marketing/ placement fee. Under the existing Regulatory Framework, the same is unregulated and left to market conditions, which has worked well for all stakeholders. There is thus, no need to change the Regulatory Framework at this stage.

Other Issues for Consideration

1. Implementation of Pre-Paid Model of Subscription from Customer to MSO

From a review of the comments received, it appears that most Broadcasters and MSOs are ad-idem that the payment model between the consumers and MSOs should be pre-paid and not post-paid. A system similar to DTH should be implemented; whereby MSOs receive subscription payment in advance from the consumers. The payment can be made through electronic means either through websites of the MSOs or recharge cards purchased from the LCOs or local shops. The MSOs would thereafter disburse the share of the Broadcaster and LCOs. It would help in reduction of disputes between Broadcasters and MSOs, as usually the LCOs collect amount from subscribers but do not correctly pass on the same to the MSO, which results

in payment delay by MSOs to Broadcasters. The pre-paid model will ensure more generation of revenue for the three tiers as well as ensure more taxes being paid to the concerned authorities leading to the overall growth of the sector. Thus, a consumer who does not recharge does not get the channels. The Broadcaster thus does not get revenue for such subscriber and the MSO is not burdened for paying for the customer.

2. Non-Discrimination between DD Direct and DPOs

It has been pointed out by various stakeholders that some Broadcasters are providing 'pay' channels free of cost on DD Direct and are charging other DPOs for the same leading to a highly anomalous situation wherein some DPOs are paying for a channel and others are not. The same is a clear violation of Clause 3.2 of the Interconnect Regulations and needs to be addressed suitably. A channel can be either 'pay' or FTA, but cannot be FTA on one platform and 'pay' or another.

3. Broadcasters providing content free of cost on OTT/ Internet/ YouTube etc.

On a perusal of the comments received, it has become clear that almost all DPOs are facing problems due to the un-regulated nature of OTT/ App based content being offered by Broadcasters free of cost to consumers. The Telecom Service Providers have sent a response to the Consultation Paper seeking that the 'must provide' and non-discriminatory provisions be extended to Agreements between the Broadcasters and such service providers. There is thus a need for TRAI to review the matter at the earliest, and to take the same into account to ascertain whether pay channels should be permitted to make available the same content free of cost on other mediums, or that there should be cross-platform non-discrimination. It is suggested that cross-platform non-discrimination is essential to ensure the orderly and sustained growth of the Broadcasting Sector, failing which consumers shall start migrating to platforms which are providing the same services free of cost.

We hence request TRAI to look into the various issues faced by MSOs as highlighted above, as well as in our response to the Consultation Paper and are hopeful for a new regime that governs the Broadcasting Sector to come into force at the earliest.



Regus Level 5

SB Tower, Sector 16 – A

Noida – 201 301

Landline- +91 120 480 4940

Email – saharsh.damani@aidcf.com

Web – www.aidcf.com