

AIDCF's response to Consultation Paper on Tariff related issues for Broadcasting and Cable services.

PREAMBLE:

At the outset we would like to express our deepest gratitude to Telecom Regulatory Authority of India (TRAI) for coming out with the subject consultation paper in order to deliberate upon queries and quandaries that has surfaced post implementation of the new regulatory regime and for giving us an opportunity to furnish our inputs on the same.

The present response being submitted by us caters to issues highlighted by the Authority, including flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets in pursuance to the provision of discount enshrined in the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order,2017 (tariff order), being misused; maximum ceiling of Rs. 19/- for a-la-carte channel forming part of the bouquets and discount on Network Capacity Fee (NCF) and Distributor Retail Price (DRP) declared by distributors etc.

RESPONSE:

Q1. Do you agree that flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets has been misused to push their channels to consumers? Please suggest remedial measures.

AIDCF RESPONSE:

Yes, it has been misused and accordingly there is a need to revisit the enforcement of proviso to Clause 3(3) of the Tariff Order 2017 which has not been enforced by TRAI till date. The proviso to clause 3(3) of the Tariff Order reads as under:

“Provided further that the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet”

The non-implementation of the said proviso has given a leverage to the broadcasters to offer their bouquets at discount which is as high as 70 % of the sum of a-la carte channels forming part of such bouquets. This flexibility of giving discounts without a cap, created a non-level playing field for the distributors because the bouquets were priced on a discriminatory basis.

It may be noted that, in terms of proviso to Regulation 4(4) of the Tariff Order, DPOs are required to ensure that bouquet of pay channel offered by them shall not be less than eighty five percent of the sum of distributor retail prices per month of a-la-carte pay channels and bouquet(s) of pay channels forming part of that bouquet, whereas the same has not been enforced by TRAI for the broadcasters' bouquets, which is not only contrary to the very intentions of Authority to maintain a parity amongst the constituent of broadcasting and cable sector but also in violation of Article 14 and 19 (1) (g) of Constitution of India. Moreover, the broadcasters as a practice have tried to push unpopular channels with a few popular/driver channels by offering bouquets at a highly discounted rate which starkly is against the ethos of the new regulatory framework introduced by the Authority, viz. consumer choice. It is stated that highly discounted bouquets and disproportionately high prices of the a-la carte channels creates an impediment in the freedom of consumers to make

a choice of their own and accordingly the same discourages the uptake of a-la carte channels which is completely against the spirit of the new regulatory framework. Therefore, it is apparent on the face of it that the flexibility permitted to broadcasters of offering discounts without a cap has been grossly misused and needs to be stamped out by fixing a cap on the maximum permissible limit on discount of 15 %. The Authority is requested to ensure that the same channels are not put in multiple bouquets by the broadcasters.

Further, we would like to bring to the notice of the Authority the twin conditions (reproduced below) which were introduced vide Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 on 04.10.2007:

“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.”

To ensure that the prices of the a-la-carte Channels have a direct-correlation with the price of the Bouquets being offered by the Broadcasters, thereby leading to appropriate pricing of the a-la-carte Channels by the Broadcasters, we propose that the above twin condition which was introduced at wholesale level , may now be introduced with below modification at retail level :

“a) the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet ; and

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

This will help in ensuring the price linkage between the a-la carte and bouquet and which will allow the subscribers to make an effective choice.

For illustration purpose consider a bouquet consisting of 5 channels whose a-la carte prices is as below (Refer table below):

S. No.	Channels	Price (Rs.)
1.	Channel A	19
2.	Channel B	13
3.	Channel C	11
4.	Channel D	11
5.	Channel E	10

Total sum of a-la carte channels listed above is Rs. 64/- The price of the bouquet for the channels listed above based on the twin conditions should not be less than Rs. 54.40/-. Further, according to twin conditions, the average price of the channel is Rs. 10.88 and therefore the maximum price of any a la carte channel cannot exceed Rs. 16.32/-.

Such twin conditions should be for only those channels which broadcasters wishes to include in the bouquet.

Q2. Do you feel that some broadcasters by indulging in heavy discounting of bouquets by taking advantage of non-implementation of 15% cap on discount, have created a non-level field vis-a-vis other broadcasters?

AIDCF RESPONSE:

Yes, some of the broadcasters are indulging in heavy discounting of bouquets by taking advantage of non-implementation of 15% cap on discount which has created a non-level field vis-a-vis other broadcasters. The broadcasters who have large number of channels in their repertoire, are engaging in a practice of forming large number of heavily discounted bouquets (with minor changes) to push popular/driver channels by combining not so popular/non-driver channels. It can be seen that the channels which were FTA before the implementation of the new regulatory framework have been converted into pay channels with the price range of Rs. 0.10-0.50/- just to push them with in a bouquet with popular/driver channel of the broadcaster. The non-implementation of 15% cap on discount clubbed with the higher ceiling of Rs. 19/- on the price of MRP of a-la carte channels forming part of such bouquets is responsible for pushing unwanted channels along with popular channels.

For illustration purpose, if we look at Sony's Bouquet Happy India 31, the total value of the a-la carte channels is Rs. 63/-. After giving a discount of 50.8%, the bouquet is offered at Rs. 31/- (mentioned at Pg. No. 36 of the consultation on tariff order notified by TRAI). In the said bouquet the driver channels are- Sony Entertainment (SET), SAB and SET MAX, the value of these three channels is Rs. 53/- which is in itself more than the price of the entire bouquet, which shadows the spirit of the regulations and restricts the consumers to choose these channels on a-la carte basis and in turn are forced to take the bouquet which also contains undesirable/unrequired channels. This exercise on part of broadcasters results in a non-level playing field among the broadcasters and other stakeholders in the value chain resulting in unwanted channels being thrust upon the consumers.

Q3. Is there a need to reintroduce a cap on discount on sum of a-la-carte channels forming part of bouquets while forming bouquets by broadcasters? If so, what should be the

appropriate methodology to work out the permissible discount? What should be the value of such discount?

AIDCF RESPONSE:

In order to protect the interest of subscribers and distributors, it is suggested that the Authority should re-introduce the cap on discount on the sum of a-la carte channels forming part of the bouquet. The cap of 15% as provided for in the Tariff Order 2017 is good enough. Please also refer to the response as submitted for Ques. No. 1.

Q4. Is there a need to review the cap on discount permissible to DPOs while forming the bouquet? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

AIDCF RESPONSE:

There is no need to revisit the discount permissible to DPOs as of now. However, if TRAI post this consultation paper, comes out with a provision for discounts at a particular % on bouquets offered by the broadcasters, the same should be made applicable to DPOs at a retail level also in parity. However, if the authority post consultation continues with the non-implementation of proviso to Regulation 3(3) with regard to discount being offered by Broadcasters, the proviso to Regulation 4(4) should be also be revised accordingly.

Q5. What other measures may be taken to ensure that unwanted channels are not pushed to the consumers?

AIDCF RESPONSE:

In order to ensure that unwanted channels are not pushed to the consumers, TRAI should introduce formation of bouquets based on the a-la carte price of the channels forming part of the bouquet. The channels whose a-la carte price falls between Rs. 0.01 to Rs. 7/- should be kept in one bouquet.

The channels having a-la carte price between Rs. 7.01/-- Rs. 12/- should be kept in a separate bouquet and accordingly channels whose a la carte price is between Rs. 12.01/- Rs. 19/- should be kept in a separate bouquet. This will ensure and keep a check that non-driver/non popular /low priced channels are not pushed with popular/driver channels in the same bouquet.

Q6. Do you think the number of bouquets being offered by broadcasters and DPOs to subscribers is too large? If so, should the limit on number of bouquets be prescribed on the basis of state, region, target market?

AIDCF RESPONSE:

Yes, there should be a limitation on the number of bouquets being offered by the broadcasters. It can be evidently felt that a large number of bouquets by the broadcasters has caused chaos and confusion in the mind of the consumers and the same has also been highlighted by the Authority in the consultation paper. There should be a flat ceiling on number of bouquets offered by broadcasters and same shall be proportionate to the number of channels being distributed by the broadcaster. The broadcasters should not be allowed to form bouquets beyond 20% of the total number of channels distributed by them. For e.g., if the broadcaster is distributing 50 channels, then the broadcaster should not publish more than 10 bouquets. The same formula should be applicable to the DPOs i.e. the DPOs should not form bouquets beyond 20% of its total channel carrying capacity.

Q7. What should be the methodology to limit number of bouquets which can be offered by broadcasters and DPOs?

AIDCF RESPONSE:

Kindly refer to our response to Ques. No. 6.

Q8. Do you agree that price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers? If so, what corrective measures do you suggest?

AIDCF RESPONSE:

Yes, price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers. In order to rectify the same, the twin conditions, as under, may be introduced:-

- a) the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet ; and
- b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed one and half times the average rate of a pay channel of that bouquet of which such pay channel is a part.

Q9. Does the ceiling of Rs. 19/- on MRP of a a-la-carte channel to be part of a bouquet need to be reviewed? If so, what should be the ceiling for the same and why?

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AIDCF Response:

On 09.01.2004, the Central Government declared the Broadcasting and Cable Services as Telecommunication Services and entrusted TRAI with the reigns of the sector. Accordingly, TRAI

in October 2004, issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, for cable services, wherein the charges excluding taxes, in respect of both FTA and pay channels, payable by Subscribers to Cable Operators, Cable Operators to Multi System Operators/ Broadcasters, Multi System Operators to Broadcasters, prevailing as on 26th December 2003 were frozen and made as the ceiling.

In 2006 High Court of Delhi directed Central Government to implement CAS. Since this was a fully addressable system therefore, TRAI directed all Broadcasters to disclose the MRP of a-la-carte as well as bouquet of channels. However, since TRAI did not get the desired response on MRP, hence it fixed a price of Rs. 5 per channel as a-la-carte rate wherein sharing amongst the Broadcaster, MSO and LCO was 45:30: 25 respectively and accordingly Broadcaster was getting Rs.2.25 per channel. The same was challenged before TDSAT but TDSAT dismissed the Appeal filed by Broadcasters and upheld the tariff order of TRAI for CAS areas. It may be noted that while deciding this case TDSAT has inter-alia observed that Cable TV services has now become like essential commodities and it should be made available to everyone. This CAS price continued till the implementation of DAS.

Post the implementation of DAS, i.e. under 2012 Regulations when the broadcaster was given the freedom to price the a-la carte channel, then except few channels (sports channels), most of the channels were priced below Rs.10/-. For E.g. Refer the table below.

S.no.	Channels	Price (Rs.)
1.	Star Plus	7.87/-

2.	ZEE TV	5.83/-
3.	SET	8.9/-
4.	SAB TV	6.17/-
5.	&TV	9.20/-
6.	ZEE Cinema	5.83/-

All these channels were priced far below Rs. 19/-. Therefore, the appropriate ceiling should be a maximum of Rs. 10/- as there has been no change which necessitates such drastic jump/change in the price of channel by the broadcasters.

Q10. How well the consumer interests have been served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers?

AIDCF RESPONSE:

One of the main objectives of the Authority to introduce the new regulatory framework was to allow the consumers to pay for channels they wanted to watch by increasing the feasibility/uptake of a-la carte channels. The consumers has instead been inundated with a choice of heavily discounted bouquets formed by the broadcasters creating confusion in their minds. The driver channels which were not priced @ Rs. 19/- in the old framework (Rs. 19/- being the cap on MRP of a-la carte channels forming a part of bouquet) were priced as high as the threshold limit and the said popular channels were bundled with non-driver channels and were pushed to consumers in form of heavily discounted bouquets. The said exercise defeats TRAI's objective envisaged in New Tariff Regime - allowing consumers to pay for what they want to watch. In order to rectify the same, TRAI may consider introducing bouquets where the channels, whose a-la carte price is between Rs. 0.01 to Rs. 7/- should be kept in one bouquet; the channels having a-la carte price between Rs. 7.01/ to Rs. 12/- should be kept in a separate bouquet and accordingly the channels whose a la carte price is between Rs. 12.01/- Rs. 19/- should be kept in a separate bouquet. This

will ensure and keep a check that non-driver/less priced channels are not be forced/pushed with popular channels in the same bouquet.

Q11. How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

AIDCF RESPONSE:

The number of heavily discounted bouquets being offered have made it inconvenient and confusing for the subscribers to make their choice. The same has also not furthered TRAI's objective of encouraging the uptake of the channels on a- la -carte. The individual channels are priced in such a manner by the broadcasters that selecting such highly priced individual channels has increased the consumer pay-out. The same leaves the subscribers with no option but to choose bouquets. Further, please refer to our response submitted in Ques. No. 2.

Q12. Do you feel the provision permitting the broadcasters/Distributors to offer bouquets to subscribers be reviewed and how will that impact subscriber choice?

AIDCF RESPONSE:

The Authority has rightfully observed in the consultation paper that distributors are in the best position to form bouquets as they are in constant touch with the consumers and know their choices (Pg. 55 para 3.56 of the consultation paper). Accordingly, the distributors should be permitted to frame their own bouquets as the broadcasters can only offer the channels distributed by them, whereas, the subscribers demand channels of various broadcasters. Therefore, only the DPOs can meet the demand/justify the actual requirement of the subscribers by forming their own bouquets

comprising of popular channels of various broadcaster as per the demands and requirement of the subscribers..

Q13. How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?

AIDCF RESPONSE:

The subscribers find it inconvenient to choose from the bulk of options in the form of bouquets being made available by the broadcasters. As on date, the number of bouquets being offered by top six broadcasters is about 351. Therefore, there is an urgent need to limit the number of bouquets offered by the broadcasters based on the formula referred to in comments to Ques. No. 6.

Q14. Should regulatory provisions enable discount in NCF and DRP for multiple TV in a home?

AIDCF RESPONSE:

The current Regulations gives the flexibility of deciding the price of NCF and DRP and it is upto the DPO's basis the market situation to decide whether to charge NCF or not. Therefore, there is no need to revisit the same. The same should be left purely to the market forces.

Q15. Is there a need to fix the cap on NCF for 2nd and subsequent TV connections in a home in multi-TV scenario? If yes, what should be the cap? Please provide your suggestions with justification.

AIDCF RESPONSE:

No, the current Regulations gives the flexibility of deciding the price of NCF and DRP and it is upto the DPO's basis the market situation to decide whether to charge NCF or not. Therefore, there is no need to revisit the same. The same should be left to the market forces.

Q16. Whether broadcasters may also be allowed to offer different MRP for a multi-home TV connection? If yes, is it technically feasible for broadcaster to identify multi TV connection home?

AIDCF RESPONSE:

No, as it is not feasible to identify multiple TV connections and the same may lead to disputes between broadcasters, DPOs and LCOs.

Q17. Whether Distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home?

AIDCF RESPONSE:

Yes, the distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home as the New Tariff Regime clearly identifies each STB as a separate Subscriber.

Q18. How should a long term subscription be defined?

AIDCF RESPONSE:

Any subscription plan offered for 6 months and beyond may be categorised as long term subscription package.

Q19. Is there a need to allow DPO to offer discounts on Long term subscriptions? If yes, should it be limited to NCF only or it could be on DRP also? Should any cap be prescribed while giving discount on long term subscriptions?

AIDCF RESPONSE:

No, there is no need to allow DPO to offer discounts on Long term subscriptions as the Regulation already enables the DPO's to provide discount of 15% on amount of bouquets vis-à-vis the price of a-la carte channels forming part of such bouquets.

Q20. Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

AIDCF RESPONSE:

No, the Broadcasters should not be allowed to offer discount on MRP for long term subscriptions, as it may give rise to disputes between Broadcasters and DPO as to details of subscribers who are under such plan and may lead to issue with regard to invoicing by broadcasters.

Q21. Is the freedom of placement of channels on EPG available to DPOs being misused to ask for placement fees? If so, how this problem can be addressed particularly by regulating placement of channels on EPG?

AIDCF RESPONSE:

No, the same is not being abused. The regulator may note that all the channels that were available on the DPO's platform prior to the implementation of the new regime continue to be on the same position as per the new regulatory framework the LCN cannot be changed before one year from the date of assignment of the channels and hence even the pay broadcasters who were paying the placement fees in the old regime have stopped paying any placement fee under the new regulatory framework. Hence, there is no problem as highlighted by the Authority with regard to placement of channels. Further, as pointed out in para 98 of the Explanatory Memorandum of the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG and the same is reproduced below:

“In these regulations the broadcasters have been given a complete freedom to declare the genre of their channels and in terms of the regulations, it has been mandated that a DPO shall place the channels in the EPG under the respective genres so declared by the broadcasters. Further it has also been mandated that DPOs shall place the channels of the same genre in such a manner that all TV channels of same language within the same genre shall appear together consecutively in the EPG. In order to curb the practice to frequently change LCN number, it has been mandated that LCN number once allocated will not be changed for duration of at least one year. Therefore, the placements of channels have been adequately regulated and necessary protection has been granted to the broadcaster so that their channels are not placed at any disadvantageous position in the EPG. Hence as such there is no requirement for a broadcaster for asking for a specific position in the EPG.”

Q22. How the channels should be listed in the Electronic Program Guide (EPG)?

AIDCF RESPONSE:

The national language channels should be listed genre wise and regional language channels should be put together as is continuing presently.

Q23. Whether distributors should also be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels?

AIDCF RESPONSE:

NO, Distributors should not be permitted to offer promotional schemes on NCF and DRP of the channels and bouquet of the channels as it will result in unfair trade practice and may lead to various disputes and unhealthy competition among the distributor and LCOs.

Q24. In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency should be allowed in a calendar year?

AIDCF RESPONSE:

Kindly refer to our response to Q.23.

Q25. What safeguards should be provided so that consumers are not trapped under such schemes and their interests are protected?

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AIDCF RESPONSE:

Kindly refer to our comments to Ques. 23 above.

Q26. Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorized for the purpose of NCF?

AIDCF RESPONSE:

No, the current regulations already provides that a DPO can have different NCF for different target markets, so there is no need to revisit the same.

Q27. In view of the fact that DPOs are offering more FTA channels without any additional NCF, should the limit of one hundred channels in the prescribed NCF of Rs. 130/- to be increased? If so, how many channels should be permitted in the NCF cap of Rs 130/-?

AIDCF RESPONSE:

No, there is no need to revisit the same as pointed out by us in response to Q14 & Q15 . The current regulation is flexible enough to enable DPO's to decide on the NCF as per the market needs and therefore it should be left to the market forces.

Q28. Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

AIDCF RESPONSE:

No, it should be part of the 100 channels permitted in the NCF of Rs. 130/- because there is a cost involved in retransmission of the 25 DD mandatory channels.

Q29. In case of Recommendation to be made to the MIB in this regard, what recommendations should be made for mandatory 25 channels so that purpose of the Government to ensure reachability of these channels to masses is also served without any additional burden on the consumers?

AIDCF RESPONSE:

The 25 DD mandatory channels should be part of the 100 channels permitted in the NCF of Rs. 130/- because there is a cost involved in retransmission of these channels.