Sub: ASCPL's Counter Comments to TRAI's Consultation Paper on Tariff Related Issues for Broadcasting and Cable Services dated 16th August 2019

Dear Sir,

We hereby endorse as ours the attached STAR India Pvt. Ltd.'s (SIPL) counter comments to TRAI's Consultation Paper on Tariff Related Issues for Broadcasting and Cable Services.

We shall always be available at the Authority's disposal if any queries or further assistance is required.

Best wishes,

Yours sincerely,

K. Aravamudhan
(Authorized Signatory)
For and on behalf of Asianet Star Communications Pvt. Ltd.

Star India's Counter Comments to TRAI's Consultation Paper on Tariff Issues related to Broadcasting and Cable Services dated 16th August 2019[1]

Dated: 07.10.19

INDEX

[1] We are filing these counter comments without prejudice to any rights and obligations, including in event of any action prior to our filing of the same. We humbly submit and unequivocally state that no part of our response or any suggestions may be deemed to be a consent on the part of Star on the issues raised by TRAI in Consultation Paper dated 16.08.19 or consent towards the piecemeal implementation of the suggestions.

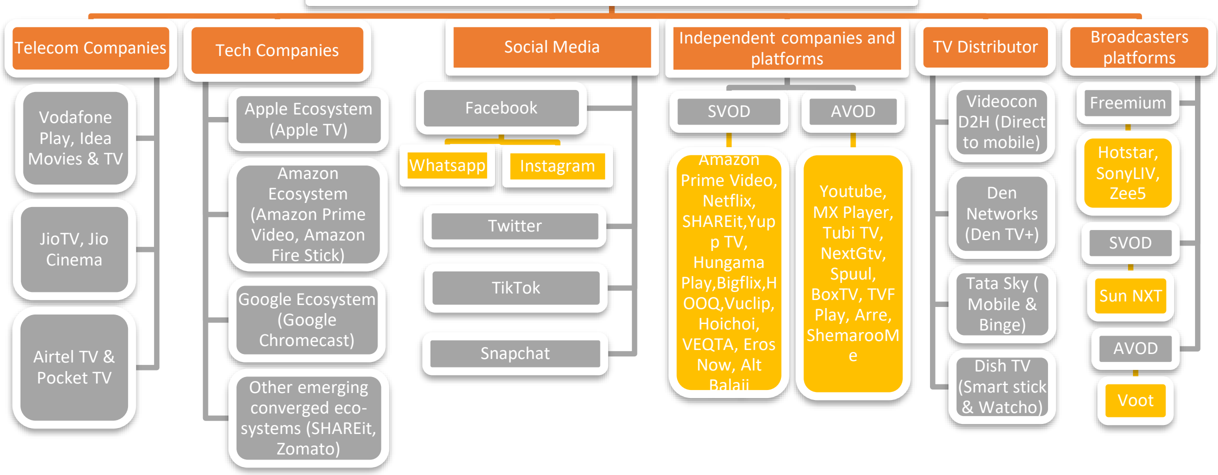
1. INTRODUCTION

1.1 Indian TV Consumers are spoilt for choice today

Indian TV subscribers can choose from over 901[2] channels, of which 573 FTA and 328 are pay channels. These channels are available under 9 different genres and available in more than 15 regional, national and international languages. For instance, under the movie genre, a consumer can choose from 72 pay channels and 48 FTA channels[3]. All this choice comes at a cost of INR 271[4] per month (or APRU), which is less than US$ 4. Internationally, monthly cable TV rates range between US$ 6 to US$ 88[5]. Hence, India has one of the lowest ARPU in the world, but by far much greater choice and variety of channels than its global counterparts. This reflects the huge amount of investment in terms of money, resources, and manpower that Indian broadcasters have deployed to create a variety of programming for their Indian audiences.

In addition to traditional broadcast mediums, the rapid increase in mobile penetration, driven by affordable smartphones and drastic fall in high-speed data since September 2016 have provided consumers with alternative mediums of content consumption. According to the India Mobile Broadband Index, the average price of an entry-level 4G-capable device fell from INR 3,000 in 2016 to INR 1,500 in 2018. Similarly, according to TRAI, the average cost of data (for GSM subscribers) fell from INR 205 per GB in the first quarter of FY17 to INR 15 per GB in the last quarter of FY 18. These developments since 2016 have triggered the growth of video consumption on mobile screens in India and has also brought the 400[6] million smartphone owners into the fold of digital video consumption with a monthly average data consumption of ~10 GB[7], the highest level seen anywhere in the world. Resultantly, much of video consumption today is happening in local languages and on social media platforms like YouTube and TikTok which have about 265 million[8] and 120 million[9] unique active users respectively.

Fig. No. 1 The evolving online streaming eco-system in India

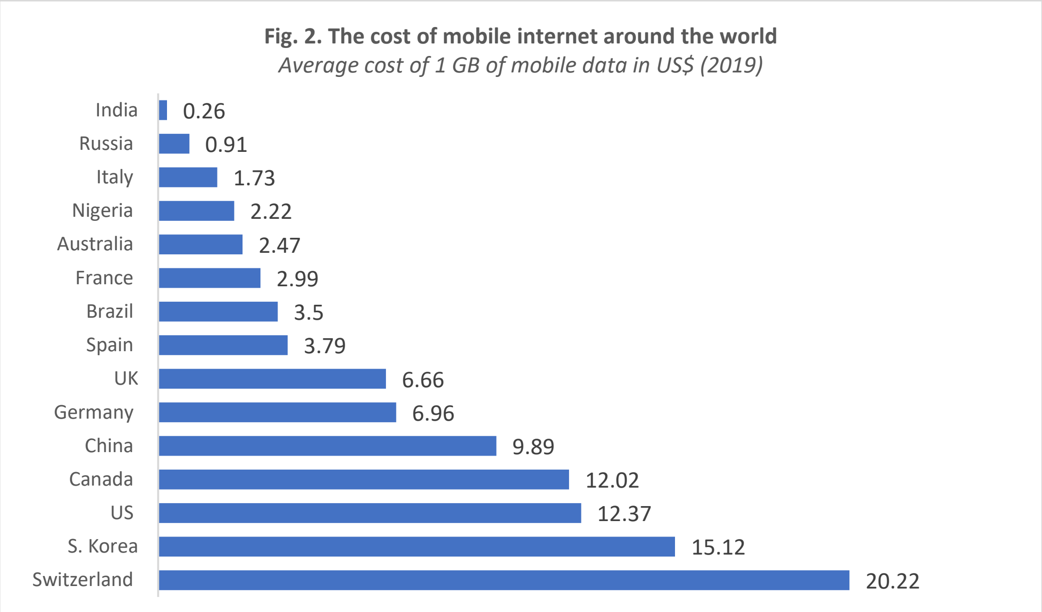


---

[2] https://main.trai.gov.in
[3] TRAI and ChromeDM
[4] ChromeDM
[5] http://www.careratings.com/upload/NewsFiles/Studies/Media%20and%20entertainment%20Television%20Segment.pdf
[6] KPMG - India Media and Entertainment Report 2019
[7] Ericsson Mobility Report -- June 2019
[8] KPMG - India Media and Entertainment Report 2019
[9] https://economictimes.indiatimes.com/magazines/panache/with-over-120-mn-monthly-active-users-in-india-how-effective-will-the-tiktok-ban-be/articleshow/68922231.cms?from=mdr

The consumer is undoubtedly the winner as these technological developments have empowered them with more control on what they view/consume, along with the choice of device and time of consumption and these services are Direct-to-Consumer services, without any middlemen or intermediaries, that can act as gatekeepers.

As such, the Indian M&E is moving closer the ultimate goal provisioning ubiquitous choice, convenience and control to the Indian consumer at a cost that is one of the lowest in the world.



Source: cable.co.uk; 6313 mobile plans in 230 countries were gathered and analyzed by cable.co.uk

1.2 The content development eco-system is hyper-competitive

Given the rapid rise in online video streaming, almost all technology media companies (such as Youtube), Telcos and Internet Service Providers (ISPs) (such as Jio, Vodafone, and Airtel), e-commerce players (such as Flipkart, Ola) are all getting into the video streaming business.

In this highly competitive environment, all players have made massive investments to build their own library of online content or are acquiring video streaming rights from content production businesses. According to a report by PWC published in December 2018, Netflix is expected to invest INR 500-600 crore per annum in original content in India. Similarly, in early 2018, Amazon announced that it would be investing about INR 2,000 crore on original content in India. Similarly, telecom players are jumping into the online video streaming and digital content library bandwagon by developing their own content platform such as Vodafone Play, Airtel Xstream, and Jio Tv. As a result, the competitive pressures for traditional broadcasters has increased primarily on the back of an exponential rise in the cost of content production and acquisition.

Given these new economic realities, we request the Authority to consider the following submissions so as to enable the Broadcasting and Cable (B&C) sector retain its loyal subscriber base.

a) Deregulate the TV broadcasting sector: Deregulation will enable and improve the sector's competitiveness against telecom companies and new media platforms.

b) Allow the New Regulatory Framework to play out in the market: The New Regulatory Framework ("NRF"[10]) must be allowed to play out in the market, especially on aspect of channel pricing for both a-la-carte prices of pay channels and bouquet of pay channels, discounts on bouquets and consumer-based bouquet formations and offerings.

c) Minimal restrictions on discounts benefit consumers: Permit discounting of a-la-carte prices of pay channels and bouquet of pay channels that benefits consumers with minimal restrictions.

d) Network Capacity Fee is the primary reason for the hike in consumer bills: As such, we request the Authority to permit the discounting of Network Capacity Fee (NCF) as this has been the primary reason for the rise or increase in consumer's monthly TV bills.

e) DPOs must pass broadcaster discounts to consumers: Ensure that consumer-based discounts from the broadcasters are passed on to the consumers by the DPOs.

f) Monitor and ensure compliance of the DPOs in providing effective consumer choice of up to 100 channels under the INR 130 NCF: The current practice of DPOs in pushing pre-determined NCF packages/bouquets are not in consumer's interest as consumer are not being given effective choice.

g) Ensure that the NCF is not misused to charge carriage fees from the broadcasters.

h) Ensure the adoption of "network neutrality" principles in the B&C sector similar to the "net neutrality" principle in the telecom sector: In the absence of such principles DPOs, who are the gatekeepers of the subscribers on one hand and broadcasters on the other, are able to deny broadcasters access to the DPOs network unless carriage fees are paid, and on the other hand also control consumer choice by denying access of TV channels that consumers actually want. This is akin to blocking and throttling and paid prioritization under net neutrality principles.

[10] Telecommunication (Broadcast and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ("NTO"), Telecommunication (Broadcast & Cable) Services Interconnect (Addressable Systems) Regulations 2017 ("NIR") and Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017 ("NQoS") (collectively the New Regulatory Framework, 2017, or "NRF")

2. COUNTER COMMENTS

With this introduction we submit our counter-comments to the stakeholder's comments on the "Consultation Paper on Tariff related issues for Broadcasting and Cable services" dated 16th August 2019.

2.1 Broadcasters have not misused the flexibility available to them to give discount on sum of a-la-carte channels forming part of bouquets push their channels to consumers

Some of the stakeholders in their responses to the consultation paper's question No. 1 have said that broadcasters have misused the flexibility available to them to give discount on sum of a-la-carte channels forming part of bouquets to push their channels to consumers. Select responses issue are reproduced below.

Cable Association	**AIDCF - "***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."*
LCO	**SaptaK Digital Pvt. Ltd. -** *"Yes, the flexibility on main controlling key factor of NTO has helped them to find a way around."*
MSO	**Fastway -** *"We agree with TRAI as few of the broadcasters have misused the flexibility."*
	GTPL Hathway - *"The flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets, has been grossly misused by the broadcasters"*
	Reliance Jio Media Limited - "*In fact, broadcasters have misused this flexibility provided to them and continue to push unwanted channels to customers by bundling then with their popular channels***."**
	Den Networks - *"Yes, the flexibility available to broadcasters to give discounts on sum of a-la carte channels forming part of bouquets has been misused and accordingly there is a need to revisit the proviso to Clause 3(3) of the Tariff Order 2017 which has not been enforced by TRAI till date."*

Our counter comments:

a) Broadcasters do not have privity of contract with consumers and hence cannot push channels on the latter**:** Section 2(zg) of the NTO defines subscriber as *""subscriber" for the purpose of this Order, means a person who receives broadcasting services relating to television from a distributor of television channels, at a place indicated by such person without further transmitting it to any other person and who does not cause the signals of television channels to be heard or seen by any person for a specific sum of money to be paid by such person, and each set top box located at such place, for receiving the subscribed broadcasting services relating to television, shall constitute one subscriber."* Section 2(o) of the NTO defines *""distributor of television channels" or "distributor" means any DTH operator, multisystem operator, HITS operator or IPTV operator."* Similar definitions for subscribers are found in the NIR and the NQoS. Given the legally concrete nature of these definitions, broadcasters cannot push channels to the subscribers. It is the DPOs who aggregate TV channels from multiple broadcasters, and package them as per their convenience and discretion and make them available to the subscribers.

b) Broadcasters offer all their pay channels at uniform MRPs to all DPOs: Sections 3(1) and 3(2) of the NTO mandates all broadcasters to offer their pay channels, on a-la-carte and bouquets basis, at uniform MRPs to all DPOs.

c) Broadcasters are obligated by law to provide their channels on a non-discriminatory and non-exclusive basis to DPOs: TRAI regulations under the interconnect framework have always mandated a *"must provide"* obligation for all broadcasters to provide signals of TV channels on non-discriminatory and non-exclusive basis to all DPOs. This obligation has been in force since the Principal Regulations of 2004 and continues in the NRF under Section 3(2) of the NIR.

d) Broadcasters are legally obligated "fair, transparent and non-discriminatory" incentives to all DPOs: Section 6(4) of the NIR mandates all broadcasters to offer discounts and dealer incentives to all distributors of TV channels on a "*fair, transparent and non-discriminatory terms."* Hence, all broadcasters are mandated under the must provide obligation to provide signals of TV channels on non-discriminatory and non-exclusive basis to all DPOs and also to offer dealers discounts and incentives on a "fair, transparent and non-discriminatory terms."

e) Broadcasters' promotional schemes are regulated by the NTO: Furthermore, all promotional schemes, offered by broadcaster to DPOs for pay channels are regulated by Section 3(4) of the NTO.

f) Regulation on the placement of a channel on Electronic Program Guide ("EPG"): Section 3(3) of the NIR prohibits broadcasters from proposing or stipulating for, directly or indirectly, placing of the channel in any specified position in the EPG or assigning a particular channel number, as a pre-condition for providing signals.

Therefore, in view of the above, both in fact and in law broadcasters in their current capacity do not have the ability to force TV channels on consumers nor do they have the ability to force TV channels on distribution platforms. Any statement or allegations to the contrary is erroneous and incorrect.

However, on the other hand, the DPOs who have a direct relationship with consumers through deployment of set top boxes in each consumer's home and provisioning of cable and satellite services on their networks are able to force consumers to take more TV channels as per the DPOs convenience and discretion. Additionally, consumers are not given effective choice by the distributors, especially special interest groups, niche/premium consumers. The DPOs effectively determine the choice for mass consumers as well.

g) Obligation of the DPOs to subscribers: Section 4(2) and 4(3) mandate DPOs to offer all channels available on its network on a-la-carte, including broadcasters' bouquets for which interconnection agreements have been signed, to the subscribers. In addition, Section 6 of the NQoS mandates DPOs to address all subscriber's grievances related to subscription of channels within 72 hours window. However, as highlighted in the Authority's Counter

Affidavit filed in the matter of *Discovery Communications vs. TRAI*[11] (where a niche broadcaster has challenged the *vires* of the NTO and NIR), and its directions on *"best fit plans"* serves as evidence that consumers are suffering primarily due the non-compliance of the DPOs with the provisions of the NRF.

h) Economic viability of the DPOs businesses: The DPOs are natural monopoly since they own the last mile network and hence the consumer is captive given the lack of set top box interoperability and high service provider switching costs. Further the DPOs have complete freedom and flexibility to choose their own business models and TRAI's regulations have ensured that broadcasters "must provide" signals of TV channels on a non-discriminatory basis to all the DPOs without a reciprocal "must carry" obligation. Hence, the DPOs' repeated narrative that broadcaster's discounts have made their business economically unviable as these discounts have made a-la-carte prices illusory is incorrect. The narrative also borders on fiction as broadcasters give all bouquet and a-la-carte options in a transparent and uniform manner on similar terms and conditions.

In the light of these facts, we request the Authority to ignore and exclude all such incorrect statements about broadcasters pushing channels to the consumers and making the businesses of DPOs economically unviable.

2.2 Non-implementation of the 15% discount cap or third proviso of Section 3 (3) of the NTO cannot create a non-level playing field among broadcasters

Certain stakeholders, in their responses to the consultation paper's questions No. 2, have said that broadcasters are taking advantage of non-implementation of the 15% cap on discount and that this has created a non-level playing field vis-a-vis other broadcasters. Select responses to the issue are reproduced below.

Cable Association	**AIDCF -** *"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."*
LCO	**United Cable TV -** *"Yes, its creating non-level playing field for competing broadcasters as well as for DPOs, as the offer is not rational & totally based on under table understandings, which can't be the basis of an order."*
MSO	**Reliance Jio Media Limited -** *"Different broadcasters are giving different levels of discount depending on how they are competitively placed in the market…Hence, the smaller broadcasters are losing subscribers due to the non-level playing field crated by the absence of cap on the discount on bouquets"*
	Siti Networks - *"Yes. This has happened with those broadcasters who have less number of channels in comparison to broadcasters who have more channel in their bouquet."*
	Fastway - *"On the face of it, non-implementation of 15% cap on discount has given disadvantage to broadcasters with single channels or less number of channels"*

<u>Our counter comments:</u>

[11] WP(C) No. 6915 of 2017 before Hon'ble High Court of Delhi.

a) The non-implementation of Section 3 (3) of the NTO cannot create a non-level playing field among broadcasters**:** At the outset, we would like to reiterate that the non-implementation of the 15% discount cap or third proviso of Section 3 (3) of the NTO cannot create a non-level playing field among broadcasters.

b) The content creation and dissemination sector of the TV industry is highly competitive with a "regulated-playing-field" for all broadcasters**:** The *inter se* competition between broadcaster is an example of ideal market conditions where market share, viewership between different genre and language channels vary on a week-on-week basis as evidenced from BARC's weekly data. Just the sheer quantity of TV channels and the variety and quality of programming available to consumers shows that broadcast market remains thriving.

c) The bottlenecks if any in the bandwidth of DPOs are of their own making: Despite DPOs collecting rental for provisioning of Basic Service Tier (BST), they have failed to invest the monies appropriately in upgrading a fully digitalised head-end and cable system which has the bandwidth to carry 500+ TV channels. In fact, it was a mandate of TRAI in the earlier regime that all digital addressable systems needed to have minimum carrying capacity of 500+ channels. The real reason for a lack of level playing field for broadcasters is that there is an absence of "must carry" obligation to consumers. Further, this artificial bandwidth arbitrage is evidenced by the fact that carriage fees i.e. rent seeking from multiple broadcasters by DPOs causes further imbalances in an already skewed regulatory framework. In any event, post the 2012 digitalisation mandate passed by the Government which was completed in 2017, there can be no case for the DPOs to state there exist a bandwidth constraint.

d) Currently, there exists no "network neutrality" principles on the DPOs platforms**:** Therefore, DPOs indulge in unfair practices such as paid prioritization, choking of networks, channel throttling, disconnection of channels. These unfair practices are artificially built by the DPOs to carve out/charge exorbitant carriage fees from broadcasters. In India, TRAI has mandated a "must provide" clause on the broadcasters while there exist no "must carry" clause on the DPOs at the wholesale level. Globally, there exist a "must carry" clause with no mandate on "must provide" which is exact opposite to India's approach. Further, any bandwidth shortcomings from the DPO is anti-consumer as it restricts the choice available to the consumer.

e) Evidence from CCI's investigation on the related matter**:** More importantly, the suggestion that larger broadcasters crowd smaller ones out by providing deep discounts and "perverse pricing" is divorced from the ground realities in the sector. Evidentially, in the matter of *Shri Yogesh Ganeshlaji Somani vs. Zee Turner & Ors*[12], the DG of the CCI investigated the potential anti-competitive effects of a joint venture of two large broadcasters and a Multi-System Operator. The informant in the case alleged that the merger of these entities would grant them an inordinate amount of bargaining power against other entities and consumers. The investigation found that even though the merging entities were the two largest broadcasters in the country, their combined channel strength only accounted for 32% of the

[12] Case 31/2011 before CCI

pay TV channel market. Moreover, the investigation also established that MSOs were the entities holding most of the leverage in the market as they were able to extract 20% greater placement and carriage fees from the merged entity.

2.3 There is no need to introduce a cap on discount on the sum of a-la-carte channels forming part of bouquets while forming bouquets by broadcasters

Some DPOs in their responses to the consultation paper's questions No. 3 have suggested the imposition of a discount cap on broadcaster's bouquet. Majority of the MSOs recommended the re-introduction of twin conditions along with a 15 % discount caps. Select stakeholders' comments on the issue are reproduced below:

Cable Association	**AIDCF - "***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."*
	Kolkata Welfare Association of Broadband & Cable Tv Operators - *"Yes, the cap should be reintroduced and it should not be 15%, which should be nearer to 25% or may be 30% while keeping an eye that Broadcasters' interest to form, to offer and to sale their bouquets are not adversely affected."*
MSO	**Fastway** - *"We agree, there should be a cap on the discount on sum of prize of a la carte channels forming part of bouquet…Fastway suggest that we should calculate the average discount and should be reduced in brackets of 5%."*
	Reliance Jio Media Limited - "*The level of discount allowed on the sum of a-la-carte prices of the channels forming part of a bouquet should be 15% as prescribed under the earlier TRAI Tariff Order 2017."*
DTH	**Dish -** *"In effect the linkage prescribed in the original form of the regulation was the fulcrum around which the entire tariff mechanism was to operate."*

Our counter comments:

a) Discount cap on a-la-carte and bouquets already exists: Section 7(3) and 7(4) of the NIR already caps discounts that broadcasters can offer to DPOs on their MRP of pay channel or bouquet of pay channels at 35%, which is the sum of the 20% distribution fee and the 15% discounts on MRP of pay channel or bouquet of pay channels. Hence, there is no need to introduces a further discount cap on sum of a-la-carte channels forming part of bouquets as it already exists.

b) Cap on discount on the sum of a-la-carte channels forming broadcasters' bouquets is detrimental to consumer interests**:** For example, any hotel/restaurant offers buffets and a-la-carte options to a diverse mix of customers. Those customers who desire greater value for money choose the buffet option, while those who are more discerning and seek limited options choose from a-la-carte menu. If the buffet prices are determined from the sum of a-la-carte prices, then the prices of the buffet would increase significantly. Therefore, it is evident from the aforementioned example, any attempt at linking the price of bouquet of channels with its a-la-carte prices or cap the discount on the sum of a-la-carte is bound to adversely impact consumers who prefer bouquets. Thus, any restriction or imposition of a discount cap as envisaged in Section 3(3) of the NTO will neither be in consumers' interest nor in the interest of the growth of the industry. The data and facts show that more than 80% of the households in India have chosen bouquet as the preferred option.

c) Cap on discount on the sum of a-la-carte channels forming broadcasters' bouquets will limit freedom of speech and expression guaranteed under the Constitution**:** Any imposition of a discount cap will operate as limitation on the freedom of speech and expression guaranteed under the Constitution as consumers will be deprived of plurality and diversity of information and entertainment. Moreover, authors/content owners/broadcasters' right to communicate to public their commercial speech will be negatively impacted due to constraints imposed on the quality and quality of programming through direct or indirect price controls.

d) Cap on discount on the sum of a-la-carte channels forming broadcasters bouquets runs counter to the judgments and orders of the Hon'ble Madras High Court**:** Any discount cap on broadcaster's bouquet will run counter to the judgments and orders of the Hon'ble Madras High Court which struck down Section 3(3) of the NTO for being arbitrary and unenforceable.

e) Price discovery for a-la-carte and bouquet of channels are unique**:** Prices on bouquet of TV channels are not calculated by giving discount on the sum of a-la-carte prices. Each bouquet price is uniquely determined and hence has a different price discovery process than that of the simply sum of a-la-carte channels. For instance, when TV channels are bundled as bouquets, it widens the subscribers' choice and base. This enables broadcasters, who operate in a two-sided market, to earn higher advertisement revenues which is used to cross-subsidize price paid by subscribers for either bouquet or a-la-carte channels.

Hence, any restriction on discounts will not be in consumer's interest and in the interest of the growth and competitiveness of the industry vis-à-vis emerging digital M&E platforms.

2.4 There is no need to restrict the number of bouquets that is offered by broadcasters

Some DPOs in their responses to the consultation paper's question No. 6 have suggested for a restriction in the number of bouquet that a broadcaster can offer. Some DPOs recommend a restriction based on the number of channels that licensed to a broadcaster.

Cable Association	**AIDCF -** *"Yes, there should be a limitation on the number of bouquets being offered by the broadcasters…The broadcasters should not be allowed to form bouquets beyond 20% of the total number of channels distributed by them."*
MSO	**Fastway -** *"Yes, we agree with the same and there should be a limitation on the number of bouquets being offered by the broadcasters. The broadcaster should form bouquets equivalent to 20% of the total number of channels distributed by them."*
	Reliance Jio Media Limited - *"The number of bouquets that a broadcaster can offer at a given point of time should not exceed 25% of the number of channels that they are distributing as a group."*

	Siti Networks - *"Yes. The large number of bouquets make it difficult for the subscriber to exercise their choice. Also, the large number of bouquet make it difficult for the DPOs to carry and also confuse the customer."*
DTH	**Dish** - *"Limit the number of bouquets in proportion to the number of the channels of the broadcasters."*

Our counter comments:

a) Number of bouquets reflects the diversity of India and the diversity of TV household's taste and preferences for content: India has 22 official languages. This by itself reflects the diversity of India. In addition, each TV household today has diverse content preferences such as news, movies, GEC, infotainment, sports, regional etc. Hence, each bouquet created by broadcasters is tuned in such a way that it best serves the diverse preferences of a multi-cultural and multi-lingual consumer spread across the length and breadth of India.

b) A typical household samples 101 channels in a year**:** As each TV household watches 45 channels on an average in a month or 101 channels[13] in a year, an optimal condition exists for each broadcaster to create bouquets that matches these unique preferences of each household or a group of households**.**

c) Limiting the number of bouquet is violative of the fundamental right of free speech and expression**:** Any restriction on the number of bouquets would be akin to restrictions imposed on newsprint which were held to be unconstitutional and violation of fundamental rights protected under Article 19(1)(a) and 19(1)(g).

Hence, any restriction on the number of bouquets, including but not limited to basis factors such as state, region and target market, formed by the broadcasters would directly restrict and effect consumer choice.

2.5 There is no need to revisit the INR 19 ceiling on MRP of a-la-carte channel to be part of a bouquet.

Some DPOs in their responses to the consultation paper's question No. 9 have suggested for a need to re-view ceiling of INR 19 on MRP for an a-la-carte channel to be part of a bouquet and reduce it to prices below INR 19.

Cable Association	**AIDCF -** *"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."*
	COWF India - *"Channel priced above 9.99 Rs. should be kept out of the bouquet as these channels are period the highest."*
MSO	**KCCL** - *"Yes. The maximum price should be Rs. 10/- to be part of Bouqet. Those channels priced above Rs. 10/- should only be A-LA-CARTE and nor allowed to be part of Bouqet."*
	Reliance Jio Media Limited - *"Therefore, a-la-carte prices are not true reflection of true prices and ceiling on the MRP of channels which are eligible to be part of*

[13] Analysis of BARC viewership data FY-2018

	bouquets should be reviewed. The pre NTO 2017 channel prices could be used as a reference point for determining the ceiling on MRP of a-la-carte channels"
	Home Digital Networks - *"The declared MRP of the Pay Channel(s) needs to be re- evaluated by the Authority where the Rs. 19 ceiling fixed is without any application of mind in absence of cost based tariff fixation exercise been conducted and for some mysterious reasons a subscriber is being construed basis the D2A (Digital-to-Analogue) convertor device(s) being deployed."*
	Siti Networks Ltd - *"The ceiling of Rs. 19/- on MRP of a a-la-carte channel should be brought down to reasonably fair level for SD Channel...The discount offered in bouquet by the broadcaster should be capped to 15% to ensure the right pricing of a-la-carte channels."*

Our counter comments:

a) DPOs fail to provide an economic rationale for the reduction in INR 19 price ceiling on MRP of a-la-carte channel to be part of a bouquet**:** A detailed analysis of all the stakeholders' responses who've recommended for a reduction in the INR 19 price ceiling failed to give evidence, facts, reasoning or economic rationale for this specific recommendation. Even the Authority in the explanatory memorandum attached to the NTO had derived the INR 19 price ceiling from the highest genre wise ceilings of INR 15.12 prevailing earlier for addressable systems at the wholesale level by multiplying INR 15.12 with a factor of 1.25 to account for DPOs distribution fee. Thus, demands of the operators to reduce the ceiling of INR 19 does not have any basis or rational. Clearly, what all that the operators are seeking to do, by recommending a reduction in the price ceiling of INR 19, is to lower their own cost of acquisition of content from the broadcasters so that they can earn higher margins when distributing the content to the subscribers.

b) Prices (MRP) of all a-la-carte channels declared by broadcasters under the NRF are real**:** Prices of all a-la-carte channels declared by broadcasters under the NRF are real as they are outcomes of a complex interplay of consumer preferences and demand (*expressed by consumer's subscriptions*) and factors that determine cost[14] within the regulatory boundaries set by the NRF. According to our data, a total of 146 million units of Star channels have been sold on a-la-carte basis. Furthermore, as per Annexure II of the consultation paper, 19%[15] of consumers have chosen their channels on a-la-carte basis. This clearly indicates that prices of channels declared by broadcasters are real and not illusory.

c) Wholesale prices in the old regulatory regime cannot be compared with MRP under the NRF**:** Comparing wholesale and retail prices is akin to comparing apples and oranges. There's sufficient data placed on record to indicate that DRPs pre-NTO were at the similar price-points as broadcasters' current declared MRPs.

In the light of these facts, we request the Authority not to re-view INR 19 on MRP of an a-la-carte channel to be part of a bouquet.

[14] Production costs, marketing costs and distribution costs

[15] Annexure II of TRAI CP on Tariff related issues for Broadcasting and Cable services dates 16th August 2019

3. ADDITIONAL ISSUES

3.1. Urgent need to audit the total pay tv subscriber base

One of the major issue that persists on the ground level is on the pay TV subscriber base of Cable and Satellite TV (C&S) sector. There exists no uniformity, clarity and transparency on the number of pay TV subscribers that exists in India. According to TRAI which uses BARC's data, there are 197[16] million TV homes. However, industry reports furnish a C&S pay subscriber base of only 150[17] million. But broadcasters get subscriptions from only 116 million subscribers. Hence, there is a difference of approximately 33.7 million subscribers. Additionally, there are about 4-5 million analog subscribers in Tamil Nadu for whom broadcasters do not get any subscription report. Clearly, there exists a case of under declaration, tax dodging, fudging of accounts and complete misuse of audit by the DPOs. The Authority should fix this issue by conducting a countrywide audit of the DPOs.

3.2. Are DPOs passing on their discounts and incentives to subscribers?

We would like to also bring to the notice of the Authority that a major question that arises is, whether broadcaster's discounts and incentives offered to DPOs are being passed on to the consumers. The NRF allows DPOs to declare Distributor Retail Price (DRP) of all channels and bouquets. Thus, DPOs have freedom to provide discount on the MRP declared by the broadcasters through their declared DRP. However, DPOs have kept the DRP same as MRP of channels and bouquets declared by the broadcasters, which clearly indicates that DPOs have no intention of extending the discounts and incentives to consumers. Further, the authority has not conducted any survey or revealed any data to show whether discounts given by broadcasters to DPOs are being passed on to consumers for their benefits.

3.3. Why should a subscriber who only want to subscribe to, say 5 channels, be forced to pay INR 130?

The NRF has enabled DPOs to charge a maximum of INR 130 for up to 100 SD channels as Network Capacity Fee (NCF). However, DPOs have used this opportunity to maximize their revenue by charging maximum NCF i.e. INR 130 and push FTA channels of the DPO choice to the subscribers. In fact, this is the major reason as to why the channels subscribed to (or push to in most of the cases) contain so many unwanted channels.

It is important to highlight that DTH operator through their comments have asked for the flexibility to offer discounts on NCF. On the contrary, cable operators have chosen to retain this NCF at INR 130 and push more channels to the consumers. According to recent media report[18], AIDCF, a cable association, has recently declared that they are going to provide 150 channels for the mandatory 130 NCF, thereby, forcing consumers with 150 channels of DPOs choice. Such decision defeats the true objective of the NRF, i.e. consumers to pick and pay only for channels of their choice.

[16] TRAI's White Paper on The Telecommunication (Broadcasting and Cable) Services Benefits of 'New Framework' for Small MSOs
[17] Data Source: KPMG - India Media and Entertainment Report 2019
[18] https://indianexpress.com/article/technology/tech-news-technology/cable-tv-subscribers-will-now-get-150-channels-at-rs-100-ncf-dth-subscribers-will-get-no-upgrade-6052246/

3.4. 100 channels offered as part of NCF are choking DPO's bandwidth

If there are any bandwidth related issues at the DPO's end, it is because the base pack of DPO is loaded with "unwanted" channels (which could be 100 or more than 100 channels), which leaves little or no room for consumers to pay for the channels they want.

For instance, in the earlier regime a consumer with a monthly TV bill of INR 222[19] (or Average ARPU) got 315 channels which comprises a mix of FTA and pay channels. However, under the NRF the consumer is forced to take 100 channels for INR 130 and an additional INR 20 for every additional 25 channels. This effectively means that the bill for these pre-determined DPO packs account for as high as 48%[20] of the consumer's new monthly bills. Therefore, it leaves little room for the subscriber to pick-and-pay for the channels he/she wants to watch.

The issue has also arisen due to lack of sensitization, education and awareness campaigns by DPOs for their subscribers. However, consumers are gradually beginning to become more aware of their rights and are moving away from cable TV services or are cutting the cord altogether. As a result, 12-15 million[21] subscribers have disappeared from the C&S ecosystem.

Hence, if there is any choking of DPO bandwidth, it is due to the actions of the DPOs themselves.

Therefore, we request the Authority to kindly focus on implementing NQoS rules, ensuring principles of transparency and hygiene through implementation of DPO audits, declaration of subscriber numbers, proper payments of tax to the exchequer and finally ensuring effective consumer choice.

[19] ChromeDM
[20] INR 130 from the new ARPU of INR 271
[21] Data Source: KPMG - India Media and Entertainment Report 2019