

November 14, 2016

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Ref: Consultation Paper dated 14.10.2016 on the Draft Telecommunication Broadcasting And Cable Services) (Eighth) (Addressable Systems) Tariff Order dated 10.10.2016 ("Draft Tariff Order").

Dear Sir,

We wish to thank the Hon'ble Authority for giving us the opportunity to express our views and extend our suggestions on the Draft Telecommunication Broadcasting And Cable Services) (Eighth) (Addressable Systems) Tariff Order dated 10.10.2016.

We underline our response and views taking into consideration the immediate interest of the subscribers, of which TRAI is the custodian.

In context of the same, please find attached herewith our response on the issues as present in the present Consultation Paper for your kind perusal.

For any further clarification, you may write to us or contact us.

Yours Sincerely,

For B4U

Authorized Signatory

COMMENTS

OF

B4U BROADBAND (INDIA) PVT. LTD. TO THE CONSULTATION PAPER

ON

**DRAFT TELECOMMUNICATION BROADCASTING AND CABLE SERVICES) (EIGHTH)
(ADDRESSABLE SYSTEMS) TARIFF ORDER DATED OCTOBER 10, 2016**

COMMENTS OF B4U ON THE DRAFT TELECOMMUNICATION BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER DATED OCTOBER 10, 2016

INTRODUCTION

We write to you in response to the consultation paper promulgated by TRAI on the Draft Tariff Orders for the addressable systems.

B4U as a group is an international conglomerate, operating channels like B4U Music, B4U Movies, B4U Aflam, B4U Plus and is available in various countries like USA, UK, Asia Pacific, Canada, South Africa, Europe, Middle East, Australia etc.

In India, B4U is a small broadcaster and has been operating since 1999, and currently, has two channels namely B4U Music and B4U Movies. B4U Music is a FTA channel while B4U Movies is a pay channel having negligible subscription. B4U is mainly dependent on its advertisement revenue for sustenance. Thus, we write to from the perspective of a broadcaster running smaller/niche channels, and the challenges faced by Broadcasters like us.

The biggest challenge faced by broadcasters like us relates to carriage, placement and marketing fee, and/or by whatever name called, relating to carriage and placement of channels. We highlight here, the basic issues that concern the smaller broadcasters like us, and which issues need thorough deliberation by the authority before finalizing the present Draft Tariff Order.

ANTI CONSUMER AND ARBITRARY APPROACH OF THE TRAI

Anti-Consumer approach

1. The distributors have been given the right to charge a maximum rental amount of Rs. 130/- exclusive of taxes, per month per set top boxes from the subscribers for a band of 100 channels;
2. The distributor of television channel can charge an additional rental amount of Rs. 20/- for 25 additional channels;
3. The additional rental channels will be exclusive of the a-la-carte rates that a subscriber will have to pay for the respective channels subscribed;
4. Further, the genre pricing is attempted to be capped at an arbitrary cap of 1.2 times the current genre pricing, without any basis. Assuming that the genre capping is followed, and a broadcaster offers a particular channel at the MRP, while the retail price on a-la-carte cannot be more than 35% lesser than the MRP, and hence, the subscriber will be forced to pay at 65% of the MRP, that too, if the entire discount is passed on by the distributor to the subscriber, which is unlikely. To take an example of a General Entertainment Channel, the genre capping is Rs. 12, and 20% discount (if the entire discount is passed onto the subscriber by the distributor), then the rate to the subscriber on a-la-carte basis would be Rs. 9.60, and if the same is part of the package created by the broadcaster itself, then the price of the channel would be Rs. 10.2 (since there would be a 15% compliance discount in the bouquet). Considering both the scenarios, the rate of the channel is surely on a higher side than what was being charged by the broadcasters earlier.
5. While the intent of the draft Tariff Order is to provide the consumer with the benefit of choice, but it seems that TRAI has not considered that in the event that this draft tariff order is passed and notified, the consumer will view lesser number of channels at a higher price. Further, there is no study available that the consumer is interested in watching or exercising choice of a lesser number of channels. It further assumes that the consumer is desirous of exercising a reduction in the number of channels. In fact, it seems that TRAI is desirous of imposing its arbitrary view on the consumer that the consumer must choose lesser number of channels.
6. TRAI does not consider the mindset of a consumer. In a household, generally speaking, there are 4 members, i.e. husband, wife and 2 children, each having diverse interest. The male members of the house may have an interest in news, and sports, wife in general entertainment, infotainment and other niche channels like cooking channels, grown up children in English GECs, movies, and younger children in cartoon channels. Even if 2 channels of each genre is opted by the subscriber, then it would be about 10-12 channels. Hence, in addition to the rental fee of Rs. 130 for 100 FTA channels, and a-la-carte rate of 10 channels on an

average being Rs. 5, and a further sum of Rs. 20 as rental for additional channels, the consumer will end up paying Rs. 200 per set top box and for each additional TV another sum of Rs. 200 per set top box. While for a large number of channels that the consumer watches, he pays only about Rs. 150 per STB, and about Rs. 250-300 per STB in urban areas. Hence, the economics, and the illusionary choice being offered is arbitrary, anti consumer, and anti competitive.

7. Further, though a choice has been given to consumers, TRAI has failed to appreciate that the consumer does not possess adequate knowledge of the plethora of channels available, the genre, etc. Hence making a choice of the channel being left to the consumer moreover to the rural consumer, who usually due to lack of knowledge and understanding selects the base pack provided by the distributor, seems unlikely and unfeasible, and likelihood of the consumer being adversely affected by the distributor is very high.

Arbitrary Approach

1. While the broadcasters have been directed to receive subscription on the basis of actual subscribers watching the channel, the carriage fee has to be paid on the basis of active subscribers of the DPO. This is clearly violative of Article 14 and 19(1)(g) of the Constitution of India, firstly because a class in a class is being created without any basis, and secondly, same class is not treated equally and there is no basis for creating such a differentia. More so, TRAI fails to give any reason for such a differentia.
2. There is no basis for prescribing the rate of carriage fee. No study has been undertaken by the authority in this regard and rates have been prescribed arbitrarily.
3. At many places in the Explanatory Memorandum, it has been stated that discussions are based on various studies and data available with TRAI but no discussion is available nor has TRAI shared such study and data to the stakeholders.
4. The subscription of a particular channel is dependent on the efforts and pricing of that channel by the DPO. This is absolutely arbitrary and could be a wall for a new broadcaster in the industry leading to concentration of power in the hands of a few and not allow a new broadcaster to enter the market.
5. The authority has failed to distinguish between commercial subscriber and ordinary subscriber. While the distributor may charge any amount from a commercial establishment, same benefit has not been given to the broadcasters.
6. There is no basis of statements and findings of TRAI in the explanatory memorandum. TRAI has not produced any study or discussed any statistics for coming to various decisions, and findings, for e.g. capping of the rate for each genre, at 1.2 times the current rate, rate for carriage fee, defining geographical area, obliterating distinction between ordinary and commercial subscriber, discounts being offered, determining the rates of HD and definition of premium channels etc. Hence, the draft Tariff Order are clearly in violation of Article 14, 19(1)(g) and the TRAI Act.

Wrong Geographical location created by TRAI

The authority has also prescribed the relevant geographical area in the Appendix I appended to the Draft Tariff Order, which is not based on any study or data, and has been promulgated on its own, without giving any opportunity to the stakeholders to comment on the same. The “relevant geographical area” does not take into account the inherent difference that exists within the same State owing to the different language, preference of the subscribers in different parts of the State. We are of the view that the geographical area should have been classified by taking into account the criterion of preferred language. The present classification identifying the “relevant geographical area” falls short of its mark, as it has not identified the seven of the eight metro cities of India viz. Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune & Ahmedabad, separately in Appendix I of the Draft Tariff Order. While the classification ought to have been to identify the relevant geographical differences, the authority has categorized the market more or less on the basis of the number of states and Union Territories, without giving due regard to the “relevant” difference between urban and rural areas. The inclusion of these metro cities as separate categories is a basic requisite because of the pre-dominance of the people speaking the local regional and English languages. Moreover, these metro cities have become the melting pot of various languages & cultures, which makes them a good mix cosmopolitan people with relatively high paying capacity. There has also been a long practice of separate interconnect agreement between Broadcasters and DPOs(cable) for each metropolitan areas, which has proven over the time to be practical and fruitful. Thus it would be pertinent to include these cities as a region viz. Greater Metropolitan Mumbai Region, Kolkata Metropolitan Area and likewise. It does not follow logically that the choice of the consumers will be uniform across the state.

COST BASED INTEGRATED MODEL IS FLAWED

TRAI has failed to consider the comments given by various broadcasters to the consultation paper issued by TRAI on 4.5.2016 whereby the dis-advantages and evils of cost based integrated model were pointed out but none of the issues were dealt with by the TRAI.

It is important for the benefit of orderly growth and healthy competition that here should be least interference by the government in the business activities undertaken by the business entities, taking of course into consideration the corporate social responsibilities. The basic facet of non-interference would primarily mean freedom of pricing in order to support effective and perfect competition so that the best results are meted out to the customers.

While the authority defines the term “Maximum Retail Price” under Clause 2(x) of the Draft Tariff Order to mean the maximum price excluding taxes payable by a subscriber for the a-la-carte channel or bouquet of channels, declared by the broadcaster, it has also been prescribed under Clause 6 of the Draft Tariff Order that the maximum rental amount that could be charged by the distributor of television channels cannot exceed Rs. 130/- per month per set top box for upto 100 SD channels. We feel that in light of the cap prescribed under Schedule II appended to the Draft Tariff Order, there is a disconnect

between these clauses per se, besides the fact that this suggestion is not practical as well. The broadcasters in such a scenario, will have to first primarily take into consideration that while fixing the MRP for their channels, the monthly rental amount for the subscribers should not exceed Rs. 130/-. Apart from that, when the distributors have the liberty to bundle the channels of different broadcasters together, then prescription of any cap on the MRP of the channel will not have any workability.

The authority should consider the aspect that the manner in which the industry has marketed its channels, conducted deals, and provided services, it is clear that if forbearance is offered, the rates of the channels will be market and competition driven, and actual demand and supply will control the pricing. It could lead to effective price reduction in the rates, with innovative offers. Any prescription of any sort of cap on the right of the broadcasters to price their channels will ultimately restrict them to utilise the resources in order to cut costs and further the industry will be deprived of the technological advancements.

The cost of the production of a channel is at the initial stages much more than what is being recovered by the broadcasters by way of subscription and hence, any prescription of a cap on the MRP of a channel will adversely and directly affect the revenue of the broadcasters. Leaving the prices open to market forces can never result in increase of prices. Broadcasters are aware of the actual rates at which their channels would sell and hence, will never price channels at an adverse rate, and which would, in turn, reduce eye balls for their channels, as such reduction would adversely affect the advertisement rates for the broadcaster. Similarly, due to sufficient choices available to the consumers the pricing at retail level will automatically be controlled. The biggest fact in favour of forbearance at wholesale level is the fact that forbearance at retail level has existed for the longest time, and there has never been any complaint that the prices are obnoxiously high and /or leading to any kind of adverse situation for the subscriber.

RATIONALIZATION OF GENRES

The understanding of TRAI on the aspect of rationalization of the existing genre can be seen in the following words:

“53. The channels at present are divided into 11 genres. This classification has been done on the basis of similar type of content grouped into same genre. The existing categories of genres have resulted into some anomalies e.g. there are many common channels in different GEC genres but their prices are not uniform. The genre categorization was therefore proposed to be re-examined keeping in view the development of new and different type of content.

54. Few broadcasters and majority of the distributors of television channels along with few individuals agree with the genre classification as given in the consultation paper suggesting that there is no reason to discriminate channels on the basis of language. While, one stakeholder disagrees with this and has suggested that the channels should be classified into two genres

on basis of its target audience i.e. national channels and regional channels, both defined separately for News & Current Affairs and Non-News Channels. Another has suggested that the genre classification by Broadcast Audience Research Council (BARC) may be adopted by TRAI as well.

55. On the contrary, few of the stakeholders including both broadcasters and distributors of television channels do not favour genre classification as given in the consultation paper. Some have opined that music and lifestyle should not be clubbed with infotainment channels and others have suggested that there should be separate genres for general entertainment i.e. GEC Hindi, GEC English and GEC Regional. Another suggestion that has emerged is that there should be complete clarity regarding the definition of a genre and inter-changeability of a channel between genres.

56. The market has clearly demonstrated that similar content in different languages only have different area of dominance but nature of uptake and popularity remains very similar.

Clubbing of such channels in one genre will reduce the number of genres and will give greater flexibility to the broadcasters in channel pricing. Therefore, the Authority has decided to club together similar genres of different language channels for fixation of the genre price cap. However, in order to provide adequate information to subscribers about the channels available on its network, the distributors of television channels may from sub categories of genres prescribed and display channels in these sub categories, on the EPG so that it continues to be consumer friendly in finding a channel of the choice.”

In this process, the authority has missed to address the aspect that music is a genre in itself, and cannot be clubbed within infotainment. Hence, the same need not be coupled with other genres. Music is currently made a part of Infotainment. This has a major impact as the distributor has been mandated to carry atleast 5 channels in each genre, and combining Music in infotainment will impact the growth of the channels in the music genre.

Music has a huge viewership genre share which is bigger than news and sports, and the following table is self explanatory:

Genre	Viewrship Share; TG 4+ BARC	
	HSM	India
	Avg. of 6 Months (May'16 to Oct'16)	Avg. of 6 Months (May'16 to Oct'16)
Hindi GEC	40.26	24.49
Hindi Movies	22.96	14.16

News – Hindi	4.53	2.71
Kids	6.16	5.18
Music	4.64	2.91
News – English	0.03	0.03
Sports	1.64	1.72
Infotainment	1.08	0.86
English Movies	0.29	0.43
Religious	0.03	0.10

If the visibility of the smaller channels is restricted by way of such regulatory framework, this would be nothing but violation of Article 14 and Article 19(1)(g) of the Constitution of India.

MANNER OF OFFERING-EXCLUSIVE PAY AND FTA CHANNELS

Clause 6 of the Draft Tariff Order provides that –

“(1) No distributor of television channels shall charge a rental amount exceeding rupees one hundred and thirty, excluding taxes, per month per set top box from a subscriber for providing a capacity so as to enable the subscriber to receive the signals of up to one hundred SD channels:

Provided that one HD channel shall be treated equal to two SD channels for the purpose of calculating capacity of one hundred channels offered to the subscriber.

(4) Every distributor of television channels shall offer its subscribers each bouquet of channels formed by the broadcasters, and which are available on its platform, without any alteration and declare the retail price for such bouquet(s) payable by the subscriber.”

It further provides under sub-clause 7 that-

“(7) Every distributor of television channels shall offer at least one bouquet, referred to as basic service tier, of one hundred free to air channels including all the channels notified by the Central Government to be mandatorily provided to the subscribers and such bouquet shall contain at least five channels of each genre as referred to in the sub-clause (1) of clause 4:”

It can be seen that in the Draft Tariff Order, the authority has given the liberty to the distributors to choose 100 channels while mandating the distributors to provide a minimum of 100 channels to the subscribers. The distributor is required to mandatorily offer 5 channels from each genre in any bouquet of channels that it offers. While this seems a reasonable prescription by the authority, but within the band of genres being prescribed here, it is quite possible that within the genres, in the name of one class of channels being offered, the other class of channels might be neglected.

TRAI has not given any justification for reducing the number of genre allegedly for keeping in view the development of new and different type of content. While proposing to reduce the number of genre, TRAI had suggested in the earlier consultation paper that multiple genre may need to continue to be on the EPG so that it continues to be consumer friendly in finding a channel of the choice. However, in the Draft Tariff Order TRAI has not mentioned that creation of genre is only for the purpose of genre wise tariff ceiling and multiple genre for the purpose of EPG is permitted.

TRAI has missed out to mention some important genres. Hence, TRAI should consider mandating sub-classification of genres to accommodate 'Music' genre channels, 'Lifestyle' genre channels, 'Regional News' genre channels, 'Business News' channels, etc. TRAI should also creating a new genre/sub-genre for the shopping channels

Further, there is no mode and method of selection of these 100 channels or the 5 channels that would be part of the genre to be created by the distributor. Furthermore, its practical application in terms of the channels being selected by the subscriber seems minimal.

Since there exists an opportunity with the distributor to choose the 100 FTA channels, it creates an opportunity for big broadcasters to influence the distributor to have its channels in the 100 channels slab. Hence it is suggested that the FTA channels available with the distributor should be made available in all set top boxes. To create a parity with the pay channels, there should be ratio of FTA and pay channels that are being carried by the distributor, which for recommendation can be 60:40 for FTA and Pay channels respectively, as per the capacity of the distributor on a first come first serve basis in order to ensure protection to the FTA channels, for whom advertisement is the only source of revenue and to promote their visibility in its respective genre.

OTHER ISSUES IN THE TARIFF ORDER

1. The Draft Tariff Order make it necessary for a contact and compliance officer to be appointed in every target market. We suggest that small broadcasters should be allowed to have one contact and compliance officer combined for different areas, in order to cut costs, and achieve excellence in a highly competitive market
2. We feel that it should not be mandatory to publish the advertisement revenue of the last financial year.
3. There should be Maximum CAP on monthly STB rental from per household basis. Currently multiple STB cost are subsidized for the consumer, which is not taken care of in the proposed Tariff Order.
4. Consumption pattern of consumers vary based on their standard of living and exposure. This will help broadcaster to focus on their specific content. Channels where content is metro centric, may not be consumed in rural markets and vice versa, hence the 5% clause for continuation of a channel will be unfair if target markets are not distinguished basis the geographical differences. Example: Putting Maharashtra doesn't help. More consumption will be in Mumbai/Pune, but it will not be consumed in rural areas of Maharashtra and vice versa. This lead

to unnecessary spend in carriage as well as the channel occupies space in an unwanted target market.

Thus, to summarize the above issues raised, we feel that the following points would be relevant:

1. The Draft Tariff Order is anti-consumer, leading to diminishing the choice for a consumer/subscriber, and further allowing the consumer/subscriber to view lesser number of channels at a higher rate than as is prevalent.
2. There is no study or basis for capping the genre pricing at 1.2 the current price of the existing genres. TRAI has failed to conduct any study to arrive at the same.
3. There is no study, or data discussed by TRAI to arrive at many decisions like for e.g. capping of the rate for each genre, at 1.2 times the current rate, rate for carriage fee, defining geographical area, obliterating distinction between ordinary and commercial subscriber, discounts being offered, determining the rates of HD and definition of premium channels etc.
4. The authority has failed to distinguish between commercial subscriber and ordinary subscriber. While the distributor may charge any amount from a commercial establishment, same benefit has not been given to the broadcasters.
5. Rationalization of genre and inclusion of music genre within infotainment is flawed and has no scientific study for this action. Music should be treated as a separate genre.
6. Geographical location created by TRAI is arbitrary, has no basis, and unworkable. Rural, Urban, Semi Urban should be taken into consideration.
7. The consumer pays about Rs. 150 per set top box in rural areas, and Rs. 250-300 per set top box in urban areas. The pricing for rural, semi urban, urban differ, while the present Tariff Order has made all at par which is anti-consumer. Also the subsidized rate for multiple STB's is done away with, which is again a burden for the consumer. The present Draft Tariff Order creates an illusionary choice for the consumer thereby increasing the cost many fold, and making it anti competitive, thereby creating unhealthy environment in the industry.
8. The consumer is likely to adversely affected by the Distributor, who will brow beat the consumer to take such channels in which the distributor will get the highest commission, leading to monopolization of content and broadcasters.
9. A distributor should be considered a defaulter if payment to any service provider is due. Hence, there is no reasoning for deviating from the current regime.