

DEN NETWORK'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 TRAI for floating this consultation paper in order to deliberate upon certain issues that surfaced post implementation of the new regime and for giving us an opportunity to furnish our inputs on the same. The instant response being submitted by us is with respect 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 tariff order, being misused; maximum ceiling of Rs. 19/- of a-la-carte channel forming part of the bouquets.

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.

DEN'S RESPONSE:

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. 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 permitted the broadcasters to offer their bouquets at a discount as high as 80-90 % 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. However, DPOs, in accordance with the new regulatory framework, are required to offer bouquets not at a price which is not less than 85% of the sum prices of a-la carte channels and the same not being enforced by TRAI for the broadcasters' bouquets is violative of Article 14 and 19 (1) (g) of Constitution of India. Further, it may be noted that the broadcasters tried to push unpopular channels with a few popular channels by offering bouquets at a highly discounted rate which goes starkly against the ethos of the new regulatory framework introduced by the Authority, viz. consumer choice. Highly discounted bouquets and disproportionately high prices of the a-la carte channels comes in the way of consumers making a choice of their own. It discourages the uptake of a-la carte channels which is totally against the spirit of the new regulatory framework. Therefore, it is observed 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 of discount of 15 %. Moreover, the broadcasters should be directed not to put same channels in multiple bouquets.

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

“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.”

Since it was introduced at wholesale level and everything in the new regulatory framework is at a retail level, therefore we propose the introduction of the twin conditions with amendment at a retail level in the new regime and the same would accordingly read as under:

- “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 twin conditions is for those channels which are also going to be included in bouquet made by Broadcasters.

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 there is a bouquet consisting of 5 channels whose current a-la carte price is as below (Refer table below):

S. No.	Channels	Price (Rs.)
1.	Channel A	19
2.	Channel B	12
3.	Channel C	11
4.	Channel D	10
5.	Channel E	8

Total sum of a-la carte channels listed above is Rs. 60/- The price of the bouquet if the channels listed above based on the twin conditions should not be less than Rs. 51/-. Further, according to twin conditions, the average price of the channel is Rs. 12/- and therefore the maximum price of a la carte channel cannot exceed Rs. 18/-.

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?

DEN'S 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-à-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 channels with 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 channel of the broadcaster. The non-implementation of 15% cap on discount clubbed with the 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, kindly take note of Sony's Bouquet- Happy India 31. The total value of the a-la carte channels forming part of this bouquet is Rs. 63/-. After giving a discount of 50.8%, the bouquet is offered at Rs. 31/- (the same has also been 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 and the value of these channels is Rs. 53/-, which in itself is more than the price of the entire bouquet, which strikes at the spirit of the regulations and restricts the consumers to choose these channels on a-la carte basis and are forced to take bouquet with undesirable channels. This exercise on part of broadcasters results in a non-level playing field among the broadcasters and other stakeholders in the value chain.

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?

DEN'S RESPONSE:

In order to protect the interests of subscribers and distributors, it is suggested that the Authority may 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 Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 is good enough. Further, the comments furnished by DEN to Ques. No. 1 may also be referred to.

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?

DEN'S 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 on bouquets offered by the broadcasters, so as to maintain parity, the same shall also be made applicable to DPOs at a retail level.

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

DEN'S 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 prices between Rs. 7.01/-- Rs. 12/- should be kept in a separate bouquet and accordingly and the channels whose a la carte prices between Rs. 12.01/- Rs. 19/- should be kept in a separate bouquet. This will ensure that non-driver/less priced channels will not be pushed with popular 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?

DEN'S RESPONSE:

Yes, there should be a limitation on the number of bouquets being offered by the broadcasters. It can be seen that large number of bouquets offered by the broadcasters has caused confusion in the mind of the consumers and the same has also been pointed out by the Authority in the consultation paper. There should a flat ceiling on number of bouquet offered by broadcasters. The broadcaster should not be allowed to form bouquets beyond 20% of the total number of channels distributed by them. For instance, 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?

DEN'S RESPONSE:

Kindly refer to our comments furnished to Ques. No. 6 above.

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?

DEN'S 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?

DEN's 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 the fully addressable system therefore TRAI directed all Broadcaster to disclose MRP of a-la-carte as well as bouquet of channels. The TRAI received no MRP hence it fixed Rs. 5 per channel as a-la-carte rate in which sharing among the Broadcaster, MSO and LCO was 45:30:25 respectively hence Broadcaster was getting Rs.2.25 per channel. The same was challenged before TDSAT but TDSAT dismissed the Appeal filed by Broadcasters and uphold the TRAI tariff order for CAS areas. It can 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 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 in the previous regime, then except few channels (sports channels), most of the channels were priced below Rs.10/-. For illustration purpose, refer the table given 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 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?

DEN'S RESPONSE:

One of the main objectives of the Authority to introduce the new regulatory framework was allow the consumers to pay for channels they wanted to watch by increasing the uptake of a-la carte channels. The consumers were instead 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 bundled with non-driver channels were pushed to consumers in form of heavily discounted bouquets. The said exercise defeats TRAI's objective envisaged in the regulations and Tariff order- 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 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/ to Rs. 12/- should be kept in a separate bouquet and accordingly and the channels whose a la carte prices between Rs. 12.01/- Rs. 19/- should be kept in a separate bouquet. This will ensure that non-driver/less priced channels will not be 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?

DEN'S 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 a-la carte channels. 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 also refer to our response to Ques. No. 2 above.

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

DEN'S 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 channel distributed by them. Whereas, the subscribers demand channels of various broadcasters. Therefore, only

DPOs can meet the demand of the subscribers by forming its bouquets consisting of popular channels of various broadcaster keeping in view subscriber's needs.

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

DEN'S RESPONSE:

The subscribers find it inconvenient to choose from the sheer number of options in the form of bouquets being made available by the broadcasters. As on date, the number of bouquets offered by top six broadcasters totals to 351. Therefore, there is a 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?

DEN'S RESPONSE:

The current regulations give the flexibility of deciding the price of NCF and DRP and it is upto the DPO that NCF to be charged or not. Therefore, there is no need to revisit the same. The same should be left 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.

DEN'S RESPONSE:

No, the current regulations gives the flexibility of deciding the price of NCF and DRP and it is upto the DPO that NCF to be charged or not.

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?

DEN'S RESPONSE:

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

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

DEN'S RESPONSE:

Yes, the distributors should be mandated to provide choice of channels for each TV separately in Multi TV connection home.

Q18. How should a long term subscription be defined?

DEN'S 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?

DEN'S RESPONSE:

No, there is no need to allow DPO to offer discounts on Long term subscriptions as there is already discount of 15% given by DPOs 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?

DEN'S RESPONSE:

No, the Broadcasters should not be allowed to offer discount on MRP for long term subscriptions.

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?

DEN'S 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 in accordance with 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)?

DEN'S RESPONSE:

The national language channels should be listed genre wise and regional language should be put together, as it exists presently.

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

DEN'S RESPONSE:

NO, the distributors should not be permitted to offer promotional schemes on NCF, DRP of the channels and bouquet of the channels.

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?

DEN'S RESPONSE:

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 distributors.

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

DEN'S RESPONSE:

Kindly refer to our comments to Ques. 24 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?

DEN'S RESPONSE:

No, the current regulations provides for 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/-?

DEN'S RESPONSE:

No, the DPOs are already offering as per the market needs 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/-?

DEN'S 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?

DEN'S 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.