

RESPONSE OF DISH TV INDIA LIMITED
TO DRAFT TELECOMMUNICATION (BROADCASTING
AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS)
TARIFF ORDER, 2016
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Submitted by:

Ranjit Singh

e-mail: ranjitsingh@dishtv.in

Response of Dish TV India Limited to Consultation on draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016:

At the outset we wish to state that while the above draft Regulation of TRAI aims at laying down a comprehensive and uniform regulatory regime for Broadcasters and the delivery platforms however even the present set of Regulations and Tariff Orders being proposed by the TRAI does not achieve the objective of laying down a level playing field amongst all the Distribution Platform Operators. We reiterate that until uniformity in the business opportunity is provided, any and all attempts for uniformity in the nature of services would continue to be discriminatory for the DTH operators. As stated repeatedly in various responses and representation, the imposition of License Fee – exclusively on DTH platform, was and continues to be discriminatory on the DTH platform. Such discrimination is not being corrected even in the present set of Regulation & Tariff Order. It is an undisputed fact that the present regime for the license fee is discriminatory against the DTH Operators and is designed to provide the leveraged position to Cable Operator, HITS, IPTV, and MSO etc. in the market place as they are not required to pay any annual license fee. On account of such additional burden the DTH subscriber is discriminated who has to bear higher burden, compared to cable/HITS subscriber. The DTH industry has been raising this issue from the time the industry has come into being. It is a matter of record that in the month of March 2008, the Ministry of Information and Broadcasting had taken a decision to fix the License Fee @ 6% of the Gross Revenue which decision had the concurrence of the TRAI also. However, for reasons best known to the Government, the said decision is yet to be put into effect. The TRAI and the Ministry of Information & Broadcasting is well aware that the DTH has played a very critical role in making the Digitisation dream a success in addition to providing a world class experience to the consumers. Despite this, the DTH industry has always been accorded a step motherly treatment. There is an urgent need to remove these anomalies and create a level playing field for the DTH operator. Dish TV seeks the support of the TRAI in rationalization of the License Fee so that even the DTH may be granted a level playing field which has all along been given step motherly treatment by the Government and the TRAI.

Regarding license fee it may be noted that on 01.10.2004, the TRAI while issuing its recommendations on 'Issues relating to Broadcasting and Distribution of TV channels' where it recommended reduction in license fee to 8% of Adjusted Gross Revenue (AGR) also recommended that the amount paid by the DTH operators to the broadcasters towards content should be deducted for the purpose of calculation of license fee. The relevant extract of the said TRAI Recommendation is extracted hereunder:

“The principle of application of license fee on Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH as reduced by

- (i) Subscription fee charges passed on to the pay channel broadcasters;
- (ii) Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise;
- (iii) Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them.”

However in a complete departure from the abovementioned view, TRAI, on its recommendation dated 23.07.2014 recommended that the license fee should be calculated @8% of AGR where AGR is to be calculated by excluding only Entertainment Tax, Service Tax & VAT. This was done when the Government did not seek the recommendation of the TRAI on the quantum of License Fee to be paid by the DTH operators and when there was huge opposition by the DTH industry. The role of TRAI towards the DTH industry is therefore not very supportive.

In addition to the above, while TRAI has vowed to achieve the ultimate objective of creating an environment ensuring transparency, non-discrimination, it has completely ignored the most critical aspect creating huge disparity amongst the distributions platform i.e. taxes and levies. Dish TV has repeatedly been highlighting the disparities in the Industry. While the main reason for the same was due to preferential treatment by the broadcasters, the legal and regulatory

framework also ensured that the already less privileged DTH industry had to shell out more from its pockets. This is evident that the regulations till date have allowed the MSOs and DAS operators to continue demand the carriage, marketing, placement and packaging fee from the broadcasters no such provisions have been made for the DTH operators. This, while creating a large gap between the revenue generation capacities of the MSOs vis-à-vis the DTH operators, has also caused further prejudice to the DTH operators considering the fact that the MSOs and DAS operators and also the HITS operator are not required to pay any Entry Fee, Bank Guarantee and Annual License fee which are required to be paid by the DTH operators. Clearly therefore there is no level playing field for the DTH operators and the DTH operators are competing with the operators who are much better placed. This is despite the DTH services brought transparency in the sector giving the much needed boost which was required by the sector to tackle the persisting problem of under declaration by the cable operators.

Impact: While TRAI has sought to remove the remove disparity on the regulatory front, no level playing field can be achieved without changing the statutory regime of paying differential tax/levy. The present draft regulation, being completely silent on this issues, cannot be enforced in the present form and even if the same is implemented without seriously considering the issues and impacts thereof, it might result into huge loss of the operators and the entire distribution industry might get ruined.

In addition to the above, the Draft Tariff Order also does not address the issue of 'cloned channel'. It is stated that the said issue formed part of the consultation paper where most of the operators have opined against the practice adopted by the broadcaster to keep the cloned channels in a single bouquet and which fact has also been acknowledged by TRAI, however the same has not been addressed in a way which would be in the interest of the consumers. The only reason for not regulating this aspect, as mentioned in the Draft Tariff is that TRAI does not intend to regulate the same at present. Accordingly, we strongly believe that the Draft Tariff Order should regulate the issue of cloned channel, define the Cloned Channels and it must be mandated that the Cloned

channel should not be bundled with the original channel. We reiterate our comments made in this regard in the Consultation Paper issued by TRAI in this regard.

In the above backdrop, our response to the draft Tariff Order under consultation is as under:

A. Regulation 3: Manner of Offering by Broadcasters. By prescribing integrated model and introducing the concept of MRP of the channels, TRAI has again given sole discretion on the broadcasters to price its channels. This proposed arrangement suffers from the following defect:

- a. **Concept of MRP, Monopoly of broadcasters:** It is a matter of record and TRAI has also acknowledged the fact that even in the present digital addressable domain the broadcasters continue to offer a discounts on bouquets which is up to 90%. Clearly therefore the channels prices need to be rationalised considering this aspect. This fact coupled with the fact that the broadcasters also earn huge amount of sum as advertising revenue, the same also needs to be factored while determining/fixing the channels prices. Further, while responding to the Consultation Paper we had stated that even since its evolution in India, the broadcasting industry has always been driven by the Broadcasters. Since each channel is unique in itself and hence a monopoly can be created around it and because of this monopolistic nature of the content, the broadcasters have always been engaged in imposing its terms on the distributors. With this arrangement where the broadcaster gets the complete discretion to price the channels, it shall continue to behave in a monopolistic manner and shall have the scope and opportunity to discriminate amongst the operators.

In this regard, it is pertinent to note that prior the rates of the Channels declared by the Broadcaster to the TRAI in 2004 upon TRAI being made the Regulator of the Broadcasting industry was under forbearance. The said declaration of the prices by the Broadcaster was done keeping in mind the under declaration prevailing at that time to the extent of 90%. Accordingly, the Broadcasters increased the rates of their channels to counter the

under declaration and the increased rates were notified to TRAI. Subsequently, the said rates were frozen and were also given inflation based increase by the TRAI from time to time. It is also a matter of record that no price fixation of channels has taken place till now which was required to be done to arrive at the correct prices of the channels.

Despite the anomaly in the channel rates, as explained in the preceding paragraph, the current Draft Tariff has preceded with the same rates as existing and as declared by the Broadcasters during the forbearance regime. In fact, the Draft Tariff Order has granted an increase in the rates of the channels which rates were already on the higher side. Accordingly, it is stated that the rates so prescribed by the TRAI needs re-working and has to be rationalised to reflect the correct rates of the channels.

- b. **Restriction on maximum discount to be given by the Broadcaster:** It is submitted that the restriction on the maximum discount to be given by the Broadcaster is neither in the interest of the Distribution Platforms nor in the interest of the Consumers. It is common knowledge that in any trade, the discounts are common norm and are given to ensure that the rates of the product reflect their acceptable market price. The only requirement in respect of granting the discounts was to ensure that the discounts are offered on uniform and transparent basis. There was no need to cap the discount level. The regulation should have provided for proper transparency and declaration of the manner of giving the discounts as well as the parameters on which the discount could have been given rather than fixing the same at a particular level.

- c. **Fixation of price of channels on the basis of Geography:** It is stated that the concept of fixing a price of the channel basis the Geography is not in the interest of the consumer. It is a matter of common knowledge that resident of any particular state may be residing in various parts of the country. In fact, as per the statistics available, almost 20% of residents of a particular state are spread across the country. Fixation of prices of channel basis geography will deprive the residents of that geography who are spread across the country. For eg, rates of a Channel for the Geography of Tami Nadu will be available only

for the subscribers residing in Tamil Nadu and those residing outside Tamil Nadu will be deprived of these rates. Accordingly, it is suggested that the declaration of the rates should not be on the basis of Geography but on the basis of language so that the geographical boundaries do not become a hindrance to the people of the said geography staying across India.

- d. **HD Channel Pricing**: On the issue of pricing of HD Channels, we would like to refer to our response to the consultation paper on the subject. It is stated that HD channels were introduced into the Indian TV market in 2010 with only 3 HD pay channels. Presently there are about 50 HD channels on offer in the market with around 10 Million households subscribing to HD channels and every growing at a continuous speed. However while regulating the conventional Standard Definition (SD) channels, TRAI preferred to keep the tariff for the HD channels under 'forbearance' i.e. based on market forces and on mutually negotiated agreements between the service providers. The primary reason for TRAI to keep the tariff of the HD channels under forbearance, as it can be seen from the above was for two major reasons (i) the HD channels were relatively new which needed specialized set top boxes as well as HD TV which are costlier as compared to the normal STBs and TV respectively and (ii) these niche channels were viewed only by elite section and there is thus no general public interest involved. TRAI thus citing the said reasons refrained from bringing in any regulation on the HD channels while mandating provision for ala carte channels at the retail level by the DPOs. TRAI however did observe that it would review the position at the appropriate time.

While TRAI refrained from regulating the tariff for HD channels, the number of the HD channels grew from 3 in 2010 to 50 in 2016 and the number of HD subscriber also rose to 10 Million during period. TRAI itself has mentioned that some platform operators are reporting HD subscriptions as high as 30% of their total subscriber base. With the passage of the time, the cost of HD TV has fallen drastically which has led to significant growth of HD TVs and nowadays almost every company is aggressively promoting and selling the HD TV rather than conventional television sets. To top it all, the DTH operators and the MSOs

are making the HD STBs at a very affordable prices. Cumulatively therefore, the access for any subscriber to the HD content has become much cheaper and easier in terms of the hardware.

However, despite the fall in the prices of the hardware, the uptake of the HD channels has not increased significantly because the broadcasters have not lowered the prices of HD channels being provided by them and the prices of the HD channels are still exorbitant which has remained the sole and primary reason of the fact that the HD channels have not yet reached the masses. It may be noted that right from the beginning, the tariff of the HD Channels is under forbearance because of which the RIO rates of the HD channels declared by the broadcaster are too high which is a deterrent factor in their penetration in India. The rates of the HD Channels have been declared by the Broadcasters to the TRAI and the Authority is aware that the RIO rates of certain sports channels are more than Rs. 100 per subscriber per month. Similar pattern can be seen in the RIO pricing of almost all the HD channels. The Broadcasters have been able to do such an arbitrary pricing only to force the DPOs to enter into fixed fee deals with the Broadcasters. Such pricing is not only unreasonable but also totally arbitrary and against the interest of the subscribers. There is no regulation at present to control HD pricing which is being exploited by the broadcasters to deny and discriminate between the platforms. It is also important to note that the chaos in the wholesale price of SD channel has happened for last 20 years only because of the absence of any effective regulation despite the fact the industry has been in the regulatory environment from 2004 in terms of Tariff, Channel cloning.

While keeping the high end prices of the HD channels the major reason put forth by the broadcasters was that the production of HD content was quite costly as the entire content was to be shot in HD format only, which required specialized cameras and other equipment. The production and delivery of HD content in India was at nascent stage. However with the advancement in the technology, from past few years, all the content forming part of a channel is shot only in HD and the content shot in HD is made compatible

for being telecast in SD format also. Therefore the broadcasters are not required to pay any extra charges towards any additional shooting of the content and the only additional cost being incurred by the Broadcasters is the transponder cost, which is also not significant. Therefore, there is no reasons for the broadcasters to continue with the high prices of the HD channels and it is evident that the broadcasters are taking undue advantage of the continuing forbearance on the prices of the HD channels by TRAI.

It is stated that the Content is a matter of copyright and the copyright cannot be charged twice in the name of HD or any other format. Improvement in the quality of the channels because of the technical advancement does not entitle the broadcaster to increase the price of the channels. On the contrary, it is a matter of record that technology advances have brought down the prices in every sphere. There is therefore no justification whatsoever for the broadcasters to double charge for the same content and that too in the garb of better quality provision.

It is submitted that in addition to the above, Dish TV had given a detailed response on the manner of pricing of HD Channels however the same has not been considered while finalising the Draft Tariff Order. It is submitted that there is no reasonable justification for fixing the price of an HD channel @ 3 times of the rate of corresponding SD channels. The reason given out in the Tariff Order is that it consumes more bandwidth however the TRAI has missed to consider the concept of Decreasing Marginal utility wherein with increase in every unit of consumption decreases the cost of the product. Accordingly, it is stated that if a Broadcaster is having same version of SD and HD Channels, no extra rate should be allowed to be charged for the HD channel. Further, if an HD Channel is a clone of a SD channel (implying that only a certain percentage of content is different) then also the Broadcaster should not be allowed to charge extra for the HD content. In case of a HD channels which is not a cloned channel, there is no rationale for allowing any rate other than what is being allowed for a SD Channel of the similar genre.

e. **Premium / Niche Channels:** The concept of Niche / Premium channel has to be handled by the TRAI with a soft touch approach. Even though the broadcaster may be allowed forbearance for the Niche channel however the same has to be continuously reviewed by the TRAI to ensure that there is no misuse of the right granted to the Broadcasters. The Broadcaster of the Channel should be allowed the right to categorize its channel as Niche channel which categorization should be reviewed by the TRAI. While reviewing and confirming a channel to be a Niche channel, the TRAI should *inter alia* consider the following:

- Content of the Channel, i.e., whether the content is unique in nature and is for the interest of specific set of customers
- Content should be entirely different and new from the content already available in the market
- The content of the niche channel should not be shared with any other channel
- Number of customers subscribing to the channel
- Such channel should not be sold, either by the Broadcaster or the DPO in any bouquet
- The channels should be available only on an addressable platform so that the channel be made available to only those subscribers who make a request for the same
- To avoid any issue of predatory pricing, any DPO should not be allowed to sell the channel at a price less than twice the RIO rate published by the Broadcaster.
- Fixing a maximum cap on the number of Niche channel a Broadcaster can have
- Once the channel is subscribed a particular number of customer, which number can be identified by the Authority, the said channel shall cease to be a Niche channel

f. **Distribution Fee:** It is stated that the Draft Tariff Order refers to the Distribution Fee which a Distribution Platform operator will be entitled to however the rate / percentage has

been provided for in the Draft Interconnect Regulations. Accordingly, our detailed response in this regard is being submitted with the response to the Draft Interconnect Regulations.

B. Regulation 4: Genres of television channel. The identification of genre of the channels for the purpose of fixation of price of a channel may serve the purpose of the Tariff, provided that the price fixation of the channels consider the submission made by Dish TV under the present response as well as the detailed response given during the consultation process.

C. Regulation 5: Fixation of MRP: As stated above, we do not support the idea of giving complete freedom to the broadcasters for determination of the prices of the channels. This is clear deviation from the statutory requirement where the right and obligation to determine the prices of the channels have been given solely to the regulator. While TRAI's justification for such deviation is not convincing, the prescription of cap on the basis of genre is also not very good for the DPOs, for the consumers and for the industry at large. We substantiate our contention as under:

a. **Genre price will lead to price hike of the channels:** In our response we had highlighted as under:

“Having said that we would like to highlight that the present prices of the channels are far from the market realities which is evident from the deals executed by the broadcasters and as has been observed by the TRAI the actual prices of the channels are around 10% of the notified rates. Because of the abnormally higher RIO rates, the price cap fixed by the TRAI for each of the genres are also at much higher value. With almost all the broadcasters keeping the rate of their channel at the highest of the genre cap, it does not lie in the mouth of the broadcaster to state that the present regulatory framework of price cap has not supported innovations in the content production and that due to such restrictive approach, the content quality has been degrading. On the

other hand it is also surprising that the same broadcaster while admitting the higher RIO rates justifies the same by saying that the blanket price ceiling imposed in 2004 has generated a fear in the sector that a channel price once notified and priced will continue to remain fixed at that level and they may not have any flexibility to re-notify the channel prices at a later date.”

While TRAI has chosen to ignore the abovementioned contention and prescribe for MRP of the channels falling in different genres, it has not provided any basis for the same. It is a matter of record that before TRAI was given the powers to regulate the broadcasting industry, the channels prices were already fixed by the broadcasters. Effected by the ill practice of under-declaration, the broadcasters of even not so popular channels had kept higher prices of their channels. Therefore in 2003 when TRAI froze the channels prices, the rates of the channels were on a higher side and it a matter of record that instead of setting the channels prices right, TRAI went ahead with inflationary increases on the same. Now when TRAI has prescribed for MRP for the channels of different genres, the said prices are even more than the present cap on the RIO prices of the channels prescribed on basis of the genres of the channels. For example, the existing cap on the RIO of a Hindi GEC channels is Rs. 10.58/-, the proposed MRP of a GEC channels is Rs. 12, i.e. an increase of almost 13.5%. This is when the RIO price of the Hindi GEC channels is considered. The increase would be much more, even almost double, for the regional GEC channels. The MRP cap so introduced by TRAI is not only arbitrary but is a device to provide hike on the channel prices without even mentioning. This is despite the recent set aside of the tariff inflation orders by the Hon’ble TDSAT.

- b. **HD pricing is excessive, without basis**: In our response to the Consultation Paper we had stated that while keeping the high end prices of the HD channels the major reason put forth by the broadcasters was that the production of HD content was quite costly as the entire content was to be shot in HD format only, which required specialized cameras and other equipment. The production and delivery of HD content in India was at nascent stage. However with the advancement in the technology, from past few years, all the

content forming part of a channel is shot only in HD and the content shot in HD is made compatible for being telecast in SD format also. Therefore the broadcasters are not required to pay any extra charges towards any additional shooting of the content and the only additional cost being incurred by the Broadcasters is the transponder cost, which is also not significant. Therefore, there is no reasons for the broadcasters to continue with the high prices of the HD channels and it is evident that the broadcasters are taking undue advantage of the continuing forbearance on the prices of the HD channels by TRAI.

This fact has also acknowledged by TRAI in the present draft tariff order where TRAI has also mentioned that nowadays the cost of HD content produced is a onetime cost and the SD feed is only a down-converted version of the same HD content at very little extra cost, pricing the HD channel rate at three times of the SD channel rates considering only the bandwidth utilization is arbitrary. TRAI just also acknowledge the fact that another reason put forth by the broadcasters to justify higher prices of the HD channels was absence of any advertisement in the said channels. However nowadays almost all the HD channels are now carrying advertisements and therefore in addition to the subscription revenue, the broadcasters have also started collecting advertisement revenue against the HD channels. This factors has also not been considered by TRAI.

- c. **Anti-consumer**: With the increase in channels prices due to higher cap prescribed for different genres, the ultimate burden for payment shall be passed on to the consumers and therefore the same cannot be called to be consumer friendly approach in any manner whatsoever. Further, prescription of three times higher rates for the HD channels is also anti-consumer.
- d. **Advertisement revenue**: While fixing the cap on the basis of genre, TRAI has failed to consider the revenue generated by the broadcasters towards advertisement run on the channel. As stated hereinabove, Hon'ble TDSAT while rejecting the 11th and 13th tariff amendment orders had advised TAI to consider all the relevant aspect before finally arriving at the prices of the channels. However while TRAI has proceeded with putting a

genre wise ceiling and not fixing the channel prices itself, this aspect of rationalisation of the channels prices based on the advertisement revenue has completely been ignored by the TRAI.

D. Regulation 6: Manner of offering of channels by the distributor of television channels.

Unlike at the wholesale level, the competition at the retail level is already at maximum with 6 pay DTH operators and around 576 major MSOs which calls for complete forbearance at the retail level and therefore we had stated that there was no need to bring any regulation at the retail level.

It is a settled position that the intervention of the Regulator is required only when there is a monopoly or market failure or the supplier is in the position to exploit the buyers owing to the uniqueness of the product. A channel, which may be a monopolistic product at Broadcaster level since only one Broadcaster has the exclusive rights for the same, ceases to be so when it reaches the hands of a Distributor. The same Channels starts becoming available in the hands of 576 MSO's and 6 large DTH operators who are ensuring effective competition and effective market.

Effective competition occurs in economic markets when four major market conditions are present:

- Buyers have access to alternative sellers for the products they desire (or for reasonable substitutes) at prices they are willing to pay,
- Sellers have access to buyers for their products without undue hindrance or restraint from other firms, interest groups, government agencies, or existing laws or regulations,
- The market price of a product is determined by the interaction of consumers and firms. No single consumer or firm (or group of consumers or firms) can determine, or unduly influence, the level of the price, and

- Differences in prices charged by different firms (and paid by different consumers) reflect only differences in cost or product quality/attributes.

The Distribution industry is a classic case of effective competition since all the above factors are available. In effective competitive markets, which is the distribution industry, the consumers are protected degree from exploitative prices that any operator, acting unilaterally or as a collusive bloc, could charge. Competition occurs on the basis of both price and the quality or features of the product. One form of a product is usually a reasonable substitute for another form of that product. This is often referred to as —functional equivalence . Sellers may also offer product combinations or bundles that appeal to specific consumers or consumer segments.

Accordingly, it is submitted that Regulation is not always a panacea. In mature markets, effective competition will generally deliver better outcomes than regulation. Where regulation is necessary, regulatory forbearance is the key to good outcomes. Regulatory forbearance is about focusing regulation to where it is needed, and withdrawing regulation in those parts of the market where it is no longer necessary. In other words, the concept of regulatory forbearance rests on the goal of a gradual removal of ex ante regulation and an accompanying increase in the use of general ex post competition regulation.

It is also a matter of record that there has not been any complaint of any monopolistic practices at the retails level which is primarily because of the following:

- a. ample choice with the customers to switch over from one DPO to the other,
- b. must provide requirement of the broadcasters
- c. no scope of monopolizing any content by the DPOs,
- d. strong QoS regulation in place requiring the quarterly filing of performance monitoring report
- e. commercial interoperability

Despite the above observation made during the consultation process, TRAI chose to ignore the market reality and proceeded with regulating the retail level which will have huge adverse effect. The distributors of TV channels are practically left with no option but to play majorly as an agent of the broadcasters. The proposed arrangement will leave the distributor with no bargaining power at all and will have to be at the mercy of the broadcasters. The little scope given to the DPOs to package its channels to state continuance of 'forbearance' at the retail level is actually farce, as with offering all the bouquets opted by the DPOs from the broadcasters along with its own bouquets will pose huge difficulty for the DPOs. In view of the above, we strongly believe that there is neither reason nor justification for fixation of the retail price.

Without prejudice to the submissions made out above, we state as under:

- a. **One HD for two SD channels:** The observation made by TRAI that one HD channel occupies a bandwidth that would otherwise accommodate 2 SD channels with appropriate compression processes in place is not correct. This was also was not brought for discussion by TRAI and hence inclusion of the same in the tariff order without consultation is not justified.
- b. **Fixation of Maximum discount:** As mentioned above, the distribution industry is heavily competitive and accordingly, any discount which is needed to be given arises out of market need and competitive situation. A DPO offers various discounts to the customers primarily with an intent to retain the customer for a longer period of time so that it is able to recover the capital expenditure incurred towards the acquisition of a customer. Further, during certain festival period also, as a feel good factor, discounts and incentives are offered to the customer. This is a normal practice in any service industry and any prescription restricting the flexibility of the DPO to engage with the customer freely is not only anti-competitive but also against the interest of the consumer. Even the Explanatory Memorandum to the Draft Tariff does not explain the judicious reasons for the linkage of

the ala carte price with the price of the bouquet as well as on the maximum discount which can be offered.

- c. **Provision of Ala Carte Channels:** All over the world, the channels by the DPO are provided in the form of bouquet – not only because of technical reasons but also because the bouquet offering is the preferred choice of the customer. However, the current Draft Tariff Order prescribing that the subscriber will have the right to change even the bouquet offered to him creates a technical nightmare for all the distribution platform. It is a settled principal that only such conditions should be imposed which should technical be possible to perform as well as the same should be in the interest of the consumer. The prescription of complete ala carte provisioning is in the interest of neither. The draft Tariff Order, TRAI has prescribed that (i) a subscriber shall be entitled to choose as many as 100 channels to form a pack of his own, (ii) the DPOs shall be obliged to provide a basic service tier containing 100 FTA channels and (iii) a subscriber shall be entitled to choose all the channels and or bouquets of the broadcasters which are carried by the DPOs on its platform. While doing so, the TRAI has completely ignored the fact that all this provision will include unlimited number of commands in the air which will have to be sent and executed by the CAS and SMS of the operator and this will ultimately result into humongous increase in the number of EMM's. Such increase will either adversely impact the speed at which the services are provided to the consumer or will result into the DTH operators being required to provide additional space for the EMM's thereby reducing the already less satellite space. It is submitted that the existing manner of provision of channels to the subscribers does not require any change. The subscribers are offering variety of options wherein they can choose the base pack, take ala carte channels or take add on small packs. All these have been created to suit the interest and requirements of the subscribers and no change is warranted in the same.
- d. **Prices of the FTA channels.** TRAI has mandated that FTA channels should be priced at 'zero' by the broadcasters and therefore the distributors have automatically be mandated to not to charge any amount towards distribution of the FTA channels from its platform.

It may be stated that since the DPOs incur teleport, bandwidth and other charges towards distribution of the FTA channels from its platform, there should be some nominal charges prescribed in case any FTA channels is availed on ala carte basis by the subscribers. It is worth noting in this regard that the definition of FTA channel as provided in the draft Tariff Order as well as in the draft Interconnection Regulation the FTA states that the FTA channel means “a channel for which no license fee is to be paid by a distributor of TV channel to the broadcaster for distribution of such channel to the subscriber” and not as the channel for which no amount is paid by the subscriber to a distributor of TV channel. Clearly therefore the objective of TRAI is not to prohibit the DPOs from collecting any subscription revenue against the FTA channels and a provision should be incorporated in the tariff order in this regard.
