

**Response of Dish TV India Limited**

**to the**

**Consultation Paper**

**on**

**Tariff Issues related to TV Services**

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## **Response of Dish TV India Limited to the Consultation Paper on Tariff Issues related to TV Services:**

At the outset, we would like to thank the Authority for undertaking the extensive exercise to look into the various facets of the Television Broadcast industry which was the need of the hour. Dish TV has repeatedly been highlighting the disparities in the Industry, largely owing to the huge amount paid by the Broadcasters under various heads, whether it be carriage fee or marketing fee. Effectively, various nomenclature were being given to the said payments to keep them out of the Regulatory ambit. The direct effect of these payments was creating of disparity in the market and not creating a level playing field, which is till now heavily tilted towards the Cable Operators / MSO's.

Another major issue which has been plaguing this industry has been the transparency of the deals which a Broadcaster has with the Distributor of Television channels. The direct impact of non-transparency is discrimination between two operators. There are other major and critical issues like pricing of the Channels at wholesale level which prices have never been regulated till date despite repeated advise from various courts at various occasions, pricing of HD Channels, cloning of channels etc.

We strongly believe the upon completion of the current exercise, TRAI will lay down such norms which would remove the disparity in the market, bring level playing field among all operators which will not only benefit the sector but also the subscribers.

### **Background**

Section 2 (k) of the Telecom Regulatory Authority of India Act, 1997 as amended by the Telecom Regulatory Authority of India (Amendment) Act, 2000 defines 'telecommunication service' as follows:

*“telecommunication service’ means service of any description (including electronic mail, voicemail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services;*

*Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.”*

In accordance with the above definition, Government of India issued Order S.O.44 (E) notifying the broadcasting services and cable services to be 'telecommunication service' and issued the Notification No. 39 dated 9.1.2004. Simultaneously, by another Order S.O.45 (E) dated 9.1.2004, the Central Government entrusted the Telecom Regulatory Authority of India (hereinafter referred to as '**Authority**'), with certain additional functions. The Order entrusting these functions reads as follows:

*"(1) without prejudice to the provisions contained in clause (a) of sub-section (1) of section 11 of the Act of to make recommendation regarding-*

*(a) ...*

*(b) ...*

*(2) without prejudice to the provisions of sub-section (2) of section 11 of the Act, also to specify standard norms for, and periodicity of, revision of rates of pay channels, including interim measures."*

Pursuant to the notification dated 09.01.2004, a Tariff order Telecommunication (Broadcasting and Cable) Services Tariff Order, dated 15.01.2004 was issued by the TRAI freezing the charges payable by a subscriber to a cable operator, a cable operator to an MSO and MSO to a broadcaster prevalent as on 26.12.2003.

Under the provisions of Section 11(2) of the TRAI Act, the Authority is under an obligation to fix the rates for Telecommunication (Broadcasting Services). However while issuing the First and Second Tariff Order, the Authority did not have sufficient time to study and analyze the industry and adopted the price freeze mechanism which was purely a temporary measure. But despite that all the subsequent tariff Orders issued by TRAI only remained interim Orders. This practice adopted by the TRAI came under consideration by the Hon'ble TDSAT in the appeals filed against the Eighth Amendment of the Second Tariff Order wherein the Hon'ble Tribunal observed as under:

*"The Respondent is required to carry out the extensive exercise involving study of costing of different elements for the purpose of determining the charges therefore such task has been assigned to an expert body like TRAI. However, the Respondent instead of fixing the charges, has issued the adhoc interim measures by imposing price freeze. The Respondent is entrusted with the task of tariff fixation and as part of its duty to regulate the industry. It has at its disposal the necessary means, statutory, administrative and financial – to call for information and study the various aspects. It can be understood that while issuing the tariff order dated 01.10.2004 the Respondent did not have sufficient time to study the matter which undoubtedly was complex and to arrive at a reasonable and fair tariff.*

*Therefore, the Respondent went by historic prices to quickly intervene in unregulated scenario but this ground is not available in 2014 when the Respondent had sufficient time to study the matter in depth. However, the Respondent still continued to rely upon the ad hoc measure of price freeze on the basis of historical information and not doing the tariff fixation. Therefore when the Eighth Amendment of the Second Tariff Order was challenged before the Hon'ble TDSAT, the Hon'ble Tribunal observed as under:*

*49. Reading all this together, it follows that what is to be determined is the charges payable by different persons at different levels. It is true that this is an exercise involving study of costing of different elements, which is why it has been entrusted to an expert body such as TRAI. And, the Authority has on 15.1.2004, and purely as an interim measure, imposed a price freeze. This was followed, as indicated above, by the consultation paper dated 20.4.2004 which was formulated keeping in view the comments of different stakeholders received in response to the earlier consultation paper of 15.1.2004. The consultation paper of 20.4.2004 explores different methodologies in arriving at a suitable price. But, the Order of 1.10.2004 continues to rely on the prices as on 26.12.2003, which imposes a ceiling for existing channels and expects the new channels to have similar rates to those of similar channels existing as on 26.12.2003. In other words, while the consultation paper started with the promise of arriving at an appropriate 'tariff', the same did not materialise. As we stated in Para33, while this is the background, we are concerned here only with the Order that is assailed before us.*

*50. The consultation paper dated 21.5.2007 starts with the premise that there is need to revisit the issue of tariff regulation for non-CAS areas in a holistic manner, and that it would be useful to take stock of 'this tariff regime' (the one flowing from the Order of 1.10.2004). Chapter 2 of the consultation paper deals with the experience from the perspective of different stakeholders. As can be seen from Para 15 above, none of the stakeholders, be it subscribers/LCO/MSO/broadcaster was happy with the tariff regime. Under the circumstances, we would expect that an expert body such as TRAI, charged specifically with the task of tariff fixation, and as part of its duty to regulate the industry, would arrive at a tariff based on data. The TRAI has at its disposal the necessary means -- statutory, administrative and financial -- to call for information and study the various aspects. In fact, one can understand that in issuing the Order of 1.10.2004, the Authority did not have sufficient time to study the matter, which is no doubt complex, and arrive at a logically fixed tariff. And that, therefore, it went again by the historic prices, perhaps since it had to issue an Order quickly in an otherwise unregulated scenario. But this ground is not available in 2007, when the Authority had ample time to study the matter in depth. As already mentioned, the consultation paper of 21.5.2007 starts with the promise of*

*taking a holistic look at the tariff regime but does not examine the possible options. It advocates the imposition of a ceiling for the cable charges (cable subscriber to cable operator) and in so far as the tariff at other levels of distribution namely, between broadcaster and MSO and between MSO and cable operator, it arrives at a judgement that such a ceiling is impractical, leaving the matter to continue to be decided by way of negotiation between the parties, within the framework of the guidelines issued by it on determination of subscriber base.*

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Citing the above, the Hon’ble Tribunal held as under:

*“52. Thus, we hold that in adopting the rates existing as on 1.12.2007 and a rate of 4% thereon, the Authority merely went by convenience of arriving at an easy decision rather than straining itself to be founded on facts and figures. To that extent, we hold that the exercise carried out by the Authority is not the one envisaged under section 11 (2) of the Act, under which it has issued the impugned Order.”*

Despite such an observation by the Hon’ble TDSAT, the TRAI went on proceeding with the practices of giving inflationary increases and it is a matter of record that whenever any subsequent increases were challenged, it resulted into setting aside of such tariff inflationary amendments, this includes the recent increases given by the 11<sup>th</sup> and 13<sup>th</sup> Tariff Amendment Orders which were set aside by the Hon’ble Tribunal vide its judgment and order dated 28.04.2015.

In view of the above, it was therefore imperative for the TRAI to undertake the exercise of fixation of wholesale tariff since the entire C&S universe is heading for complete digitalization in next two years or so. In fact more than 60% of the C&S homes have already been digitized under the mandatory DAS implementation schedule notified by the Government.

The exercise of price freeze of channel prices by the TRAI in 2004 was only an interim measure and the TRAI had to undertake the process of price fixation of the channels however the said process has never been concluded till date, primarily on account of the resistance of the Broadcasters to provide the information to the TRAI using which the price fixation could be done.

It is also a matter of record that the Hon'ble Telecom Dispute Appellate Tribunal ("TDSAT") has at various occasions directed that the RIO prices declared by the Broadcasters are de'hors of the real rates at which the deals are entered into and that the said RIO rates are only used as coercive tool by the Broadcasters.

Even since its evolution in India, the broadcasting industry has always been driven by the Broadcasters. Because of the monopolistic nature of the content, the broadcasters have always been engaged in imposing its terms which inter alia included bundling of channels by piggybacking the lesser popular channels with the driver channels. This has been well observed by the Authority in the Consultation Paper.

In addition to the above, the broadcasters have ostensibly kept the prices on a much higher side. This has been observed by the Hon'ble TSDAT in the petition filed by Hathway Cable & Datacom Ltd. This fact has also been observed by the TRAI in the present consultation paper that the price in the market are currently hovering at around 10% of the notified RIO rates. While this is the practice adopted by the broadcasters, it cannot therefore be contended by them 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. We therefore are of the view that the present prices of the channels as fixed by the pay broadcaster should be looked into thoroughly and a cost based exercise should be done by the TRAI in furtherance of its obligations under Section 11(2) to determine the prices of the channels in a realistic manner. The TRAI has rightly observed that in present scenario due to the large gap between RIO and mutually agreed price, the broadcaster have always been compelling the DPOs to sign and pay for all/most channels whether or not the DPO intended to opt for the same.

The regulation requires the broadcasters to offer all its channels on a-la-carte basis. In addition, the broadcaster may offer bouquet of channels, subject to the twin conditions prescribed by them. However in clear violation of the said provision, after the notification of the "The Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014 dated 10th February, 2014", the broadcasters while filing their RIOs have been filed only the A-la-carte rates of their channels and have not filed any bouquet of their channels nor have they declared the rates of the same. Such an attempt by the Broadcaster was clearly in breach of the regulatory requirement in respect of the rates at which the channels are mandatorily required to be offered by the Broadcasters to the Distributors of the TV Channels. This was also an apparent attempt by the Broadcasters to force the Distributors of TV Channels to only enter into a fixed fee deals and not to opt for the RIO based Agreement. The broadcaster may contend that the regulations requires filing of only ala carte rates. However no justification was provided for sudden removal of the prevailing bouquets provided by them. The situation did

not change even after notification of the 14<sup>th</sup> Tariff Amendment of the Second Tariff Order vide which the TRAI mandated that bouquets which were being provided as on 01.12.2007 shall continue to be provided by the broadcasters subject to the changes required in terms of the amendment required in view of the regulation dated 10.02.2014. The relevant proviso of the 14<sup>th</sup> Tariff Amendment Order dated 06.01.2015 is reproduced below:

***“Provided that the composition of a bouquet existing as on the 1st day of December, 2007, in so far as pay channels are concerned in that bouquet, shall not be changed:”***

In view of the above it becomes more than clear that the broadcasters have continued to mutilate the Bouquets existing as on the date of the price freeze which were required to be compulsorily offered by the Broadcasters. While this has had negative impact on the DPOs, the ultimate impact has always been on the customer who was forced to pay for the channels which he would never have viewed. For this reason also, the present initiative by the TRAI is a welcome step as it aims at removing this very practice prevailing in the industry which is not only monopolistic but also impacts the industry very dearly.

As a DTH operator, Dish TV has always been endeavoring towards the overall growth of each and every entity in the value chain. In fact it was the petition filed by Dish TV only which paved the way for the provision of payment by the addressable platform @ 50% of the non-addressable platform, which has now been fixed at 42% vide the Supreme Court order dated 18.04.2012. We hope the present initiative of TRAI would remove the ambiguities prevalent in the industry leading to orderly growth of the industry.

In the above backdrop, our response to the various consultation sought by the TRAI are as under:

**A. Models at wholesale level:**

- a. **Price Forbearance model:** The price forbearance at the Wholesale Level is totally against the Industry as well as against the Subscribers. Any forbearance at the Wholesale level will certainly create monopolistic positions in the market more so owing to the monopolistic nature of the Channels. Each channel is unique in itself and hence a monopoly can be created around it. The price forbearance will also would give ample power to the already powerful broadcasters to price their channel which will be very derogatory for the health of the industry. We agree with the apprehension drawn by the Authority in the Consultation Paper and state that such a model would not be advisable for the B&CS industry in India at present.

- b. **Cost Based Model:** Dish TV strongly supports for cost based model for determination of the prices of the channel. In fact this is the mechanism which has been envisaged under Section 11(2) of the TRAI Act under which TRAI has the obligation to fix the rates for Telecommunication (Broadcasting Services). Though we appreciate the challenges that may come while implementing this mechanism, as has been observed by the Hon'ble Tribunal, this is why this has been vested with an expert body like TRAI. The relevant portion of the said judgment is as under:

***49. Reading all this together, it follows that what is to be determined is the charges payable by different persons at different levels. It is true that this is an exercise involving study of costing of different elements, which is why it has been entrusted to an expert body such as TRAI.***

- c. **RIO Based Model:** Having stated so, we would like to state that if at all and despite exhaustion of all possible efforts, the TRAI comes to the conclusion that determination of the prices of the channels through the Cost Based Model is not possible and decides to adopt the RIO model at the wholesale level, we would support the Regulated RIO Model.

It is stated that the other two model viz. Universal RIO model and Flexible RIO model shall give complete freedom to broadcasters to determine the prices of their channels and bouquets which shall only further their self-serving interest and shall be completely detrimental for the DPOs and the customers and overall be disparaging for the industry. This will in a way amount to Price forbearance at wholesale level which has been clearly established to be not in the interest of the industry as well as the subscribers, This practice being close to the current practices being followed, would be difficult to be accepted and worked by the stakeholders.

We suggest that this Regulated RIO model should be subject to the following three conditions:

- a. The prices at the Wholesale Level must be regulated and fixed by the TRAI. The TRAI is well aware that the deals are being entered into by the Broadcaster @ 10% of the RIO rates. This is reflected in all the Agreements which have been filed by the Broadcasters and the distributors with the TRAI. This rate is further reduced when the Carriage Fee / Marketing Fee is paid by the Broadcaster to the MSO's as reverse charge. In addition, the Broadcaster also resort to giving carriage to the MSO's by not raising the invoices even for those subscribers to whom the channels of the said broadcaster is provided. We strongly believe that all such factors shall



be considered by the TRAI while fixing the prices of the channels. Such a price fixation would not only ensure overall growth and development of the industry but also remove disparity and bring transparency in the industry.

- b. The Regulated ROI model must provide the flexibility to the Broadcasters and Distributors of the TV Channels to enter into Fixed Fee Arrangements. In this regard, it is submitted that Freedom to contract and not to contract is a liberty and a property right and when an owner is deprived of one of the attributes of property like the right to make contracts, he is deprived of his property. Freedom to contract is common law civil liberty enjoyed by all persons. It being a property right is protected under Article 301 of the constitution of India. The public policy of interference with the said property rights is desirable only in the case the said freedom is detrimental to public generally, however any restriction not based on the said ground is curbed by constitution to protect natural rights of citizen. In addition right to freedom of trade and profession also includes freedom to negotiate for the purpose of furthering trade and profession on the commercial terms to meet and ability business and marketing requirements of a natural person or a business entity which is protected under Article 19(1)(g) and restriction is only unexceptional for public order under Article 19(5) the restriction under Article 19(5) is to be tested on the proportionality.

Further, the TRAI is also aware that the Broadcasters and the Distribution Platform Operators (DPO's) were entering into the interconnect agreements on the basis of mutually agreed terms from the very start. It is also a matter of fact that all Distributors as well as Distributors have been submitting their Interconnect Agreements with the TRAI which have been accepted by the TRAI all along. In terms of the judicial pronouncements, it is a settled position that the behaviour of the Regulator is the most critical factor in interpreting a Regulation.

The said negotiated agreements not only provides the freedom of the contract as provided for under Article 19 (1) (g) of the Constitution, it has also enabled the Distributors to provide the channels to the customers at very reasonable rates.

However, the said negotiated deals should always be done in a transparent manner. All such deals / agreements should be submitted by the parties to the TRAI. In order to ensure full transparency and ensure non-discrimination, the parties should be directed to submit all the Agreements for whatever purpose, whether Subscription / Carriage / Marketing / Support or any other name entered

into them. This will ensure that no Agreement remains outside the realms of the Regulator and will also remove any possibility of providing any favourable treatment to any party. Further, the regulations should also provide the parties shall submit on quarterly basis, the amount paid to each other, duly certified by their respective Statutory Auditor.

As the entire thrust of the exercise is to ensure transparency and non-discrimination, it is imperative all relevant information be submitted to the TRAI.

- c. The Regulation should provide that the TRAI should have the power to conduct Audit of all the stake holders so as to verify the compliance of the regulations by the said stakeholders.

**B. Models at retail level:** Unlike at the broadcaster level, the competition at the retail level is already at maximum with 6 major DTH operators and around 576 major MSOs which calls for complete forbearance 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 reached 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

This current practice will only improve if the prices of the channels are rationalized and regulated RIO be placed at the wholesale level as in such a conditions the DPO shall be able to package the channels in a much better manner in the absence of imposition of any pre-conditions upon them by the broadcasters to bundle their other channels in the basic bouquet along with the driver channels.

The authority however has rightly pointed out the concerns of the broadcasters that the DPOs demand huge sums of money in the form of carriage, marketing, placement and packaging. It is pertinent to point out in this regard that such DPO against whom these concerns have been raised are not the DTH operators and the complaints are solely against the MSO. It is therefore suggested that the DTH operators should not be weighed in the same manner as that of the MSOs. Having said that it is also important to point out that the present regulatory regime is heavily tilted towards the MSOs and cable operators as compared to the DTH operators. This is evident from the fact that the regulation 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 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.

We therefore suggest that while forbearance should be allowed to be continued at the retail level, the same should be subject to the following conditions:

- a. The provision of carriage fee, marketing fee, placement fee and packaging fee should be regulated, made transparent and uniform for all the DPO without discriminating the DTH operators.
- b. The licensing/regulatory regime should be made uniform for all the DPO and the provision of paying the Entry Fee, Bank Guarantee and Annual License fee should be made applicable for all the DPO without singularly targeting the DTH operators.

In view of the above, our response to the first set of issue for consultation are as under:

**Q. 1: Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

A. 1: As stated above, the Regulated RIO model with the following three conditions is suited for the Industry:

- a. The prices at the Wholesale Level must be regulated and fixed by the TRAI. The TRAI is well aware that the deals are being entered into by the Broadcaster @ 10% of the RIO rates. This is reflected in all the Agreements which have been filed by the Broadcasters and the distributors with the TRAI. This rate is further reduced when the Carriage Fee / Marketing Fee is paid by the Broadcaster to the MSO's as reverse charge. We strongly believe that all such factors shall be considered by the TRAI will fixing the prices of the channels. Such a price fixation would not ensure overall growth and development of the industry but also remove disparity and bring transparency in the industry.
- b. The Regulated ROI model must provide the flexibility to the Broadcasters and Distributors of the TV Channels to enter into Fixed Fee Arrangements. In this regard, it is submitted that Freedom to contract and not to contract is a liberty and a property right and when an owner is deprived of one of the attributes of property like the right to make contracts, he is deprived of his property. Freedom to contract is common law civil liberty enjoyed by all persons. It being a property right is protected under Article 301 of the constitution of India. The public policy of interference with the said property rights is desirable only in the case the said freedom is detrimental to public generally, however any restriction not based on the said ground is curved by constitution to protect natural rights of citizen. In addition right to freedom of trade and profession also includes freedom to negotiate for the purpose of further in trade and profession on the commercial terms to meet and ability business and marketing requirements of a natural person or a business sanctity which is protected under Article 19(1)(g) and restriction is only unexceptional for public order under Article 19(5) the restriction under Article 19(5) is to be tested on the proportionality.

Further, the TRAI is also aware that the Broadcasters and the Distribution Platform Operators (DPO's) were entering into the interconnect agreements on the basis of mutually agreed terms from the very start. It is also a matter of fact that all Distributors as well as Distributors have been submitting their Interconnect Agreements with the TRAI which have been accepted by the TRAI all along. In terms of the judicial pronouncements, it is a settled position that the behaviour of the Regulator is the most critical factor in interpreting a Regulation.

The said negotiated agreements not only provides the freedom of the contract as provided for under Article 19 (1) (g) of the Constitution, it has also enabled the Distributors to provide the channels to the customers at very reasonable rates.

However, the said negotiated deals should always be done in a transparent manner. All such deals should be submitted by the parties to the TRAI. In order to ensure full transparency and ensure non-discrimination, the parties should be directed to submit all the Agreements for whatever purpose, whether Subscription / Carriage / Marketing / Support or any other name entered into them. This will ensure that no Agreement remains outside the realms of the Regulator and will also remove any possibility of providing any favourable treatment to any party. Further, the regulations should also provide the parties shall submit on quarterly basis, the amount paid to each other, duly certified by their respective Statutory Auditor.

As the entire thrust of the exercise is to ensure transparency and non-discrimination, it is imperative all relevant information be submitted to the TRAI.

**Q. 2: Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

A. 2: As detailed above, Dish TV supports forbearance at the retail level. Owing to the intense competition, effective market, non-monopolistic products and behavior of the Distributors, freedom of the subscriber to choose the operators and freedom of the subscribers to enter & exit as per their choice, the retail pricing does not require any Regulation. The submissions of Dish TV made in preceding paragraph regarding the retail forbearance are reiterated and not being repeated for the sake of brevity.

**Q.3: How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.**

A. 3: Applicability of the provision of Regulated RIO model at the wholesale level with the rates of the channels being rationalized would automatically ensure transparency at the wholesale level which will percolate down to the retail level.

In addition, as suggested above, all such deals / agreements should be submitted by the parties to the TRAI. In order to ensure full transparency and ensure non-discrimination, the parties should be directed to submit all the Agreements for whatever purpose, whether Subscription / Carriage / Marketing / Support or any other name entered into them. This will ensure that no Agreement remains outside the realms of the Regulator and will also remove any possibility of providing any favourable treatment to any party. Further, the regulations should also provide the

parties shall submit on quarterly basis, the amount paid to each other, duly certified by their respective Statutory Auditor.

The compliance of the above shall not only ensure transparency but will also enable the TRAI to be in possession of all the relevant information which will assist them in periodic review of the industry.

**Q.4: How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.**

A. 4: It is the submission of Dish TV that owing to the intense competition, effective market, non-monopolistic products and behavior of the Distributors, freedom of the subscriber to choose the operators and freedom of the subscribers to enter & exit as per their choice, the subscribers are the most benefitted segment. The consumers have the option to choose such package of channel or channels on ala carte basis as they deem fit in addition to budgeting their expenses.

It is a matter of record that no operator has been able to charge or increase the prices of the products at his whims and fancies because of the various options of exit available to the consumers. This is of the basic reason which has resulted into slow ARPU growth of the operators. It would be totally correct to state that the ARPU in our country is lowest amount all the countries.

However, the prices of al carte channels were on the higher side only because of the fact that the RIO rates of the channels as published by the Broadcaster are on the higher side. Even the TRAI, in its draft Tariff order for providing channel on ala carte basis has repeated suggested the prices to be at 2 times of the RIO rate. Once the TRAI has concluded the current exercise and has rationalized the highly irrational RIO rates of the channels, the ala carte rates of the channels will automatically get corrected and rationalized at the retail level.

Another important factor the TRAI needs to consider while fixing the ala carte rates of the channel at retail level will be the costs which are incurred by the DTH operators to provide the signals to the subscribers. As the TRAI is aware, a DTH operator has to incur various costs – ranging from cost of CAS, SMS, middleware, satellite, call center etc even when a customer takes a single channel, the cost per subscriber more or less remains the same. In these circumstances, the TRAI has to ensure that the operator, while offering the channels on ala carte basis is able to recover its cost and is able to make certain margin.

### **Integrated Models:**

Dish TV does not support any of the options provided under the integrated model as this will lead to huge problems in the market while continue giving more powers to the broadcasters and reduce the bargaining power of the DPOs.

The most critical ingredient of the Integrated Model is the proposal of price forbearance at the wholesale level. It is an established fact that the growth of the industry has been possible only because of the fact that there has not been any price forbearance. The price forbearance has the power to create huge disparities in the market as well as can result into predatory pricing. Accordingly, any model which has price forbearance at the wholesale level is any consumers.

Further, the said model has the inbuilt feature of giving rise to carriage fee which has plagued the entire industry. Any market which needs to have an orderly growth should provide easy entry to the new entrants. However, the proposed integrated model will give rise to the carriage fee which will restrict flow of new players / broadcasters in the market which will certainly result into derogation of the entire industry.

**Q5. Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.**

**Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.**

**Q7. How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.**

A. 5 – 7 : As stated above, the distribution model is not in the interest of any of the stakeholders. In all circumstances, it is certainly against the consumers who will have to pay a fixed sum of money for FTA Channels plus high cost for the pay channels since the prices will be on forbearance. A customer of today is able to get Digital / DTH signals at an entry cost of Rs. 99 and with another Rs. 40 – Rs. 50, he is able to receive all the popular channels of a particular genre which shall not be possible in the integrated models. Further, the model will also give growth to carriage fee hence will act as a deterrent for the new entrant.



**Q8. Is there a need to identify significant market powers?**

A. 8 : As per “The Telecommunication Interconnection (Reference Interconnect Offer) Regulation, 2002, TRAI has already classified an operator having market share greater or equal to 30% of the relevant market as one having “Significant Market Power” (SMP). In case the merged entity becomes an SMP post-merger, then the extant rules & regulations applicable to SMPs would also apply to the merged entity.

By virtue of being a Significant Market Power, a player has therefore considerably large infrastructure, and therefore the opportunity to distort the market by its influence. The situation becomes all the more grave when such a player acts to further increase his share in the market by getting hold of the lions share in the supply to the market and thereby creating an entry barrier for other operators and especially new entrant. This further leads to a situation where an already dominant player becomes all the more dominant to completely resist any entry of other players in the market and therefore making all the competitors extinct. Such monopolistic practices should therefore be stopped by specifically defining the responsibilities and obligations of such SMP.

On this issue, we welcome the idea of TRAI for appreciating the need to identify the Significant Market Power. TRAI has rightly pointed out that the identification of such power at DPO level is easier as compared to the broadcaster level. This in itself reflects the urgency for determining such power at the broadcaster level since the DPO having declared their subscriber numbers are fairly transparent. On the contrary the content being already monopolistic and exclusive to a particular broadcaster, the opportunity for such broadcaster to distort the market is considerably high.

**Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.**

A. 9 : The European Commission defines SMP as the ability of a firm to act independently of competitors and customers. Under the European model, firms that are found to have SMP are subject to additional ex ante regulatory obligations. This allows telecommunications regulators to impose ex ante regulatory obligations on firms with SMP, such as:

- Obligations to align interconnection prices with costs,
- Accounting separation requirements, and
- Mandatory publication of reference interconnection offer

From the above, it is apparently clear that the developed countries consider that extra Regulation is needed for the SMP's since they have the ability to distort the market in which they operate.

We therefore suggest that in order to ensure that there is healthy competition in the market and sufficient opportunity is available for any new player, the criteria for identifying a Significant Market Power should be based on the following basis:

The SMP in the Television Industry is created generally through Sports content when the live telecast rights of such popular content are acquired on exclusive basis from the right holders / federations / clubs / sports bodies. As an example, Cricket is the most popular sport in India which is viewed by all sections of the society because of which it has acquired almost a status of religion. Accordingly, a Broadcaster holding exclusive live rights for the Cricket matches / events to be played by Indian team specially when playing in India holds the SMP as the viewership of such events / matches breaks all the past records. This market power is exploited by the rights holders not only through high advertisement rates but through subscription also, directly as well as indirectly. This significant market power or dominance may be able to implement a range of strategies to reduce competition, and enhance their position in the market

Such parties use the said SMP to force its less popular content to the DPO's which in-turn gets pushed to the subscribers.

The identification of a Broadcaster as SMP on above basis is of prime importance since each genre is a different market in itself. The entire objective of the TRAI has been to regulate the industry in such a way that all the stakeholders are equally benefitted. Presence of an SMP in any market, whether overall or in a particular genre gives the ability to the concerned SMP to profitably raise the market price without losing any customer to the competitors because of the monopolistic nature of the products / channels.

**Q10. Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?**

A. 10 : As stated above, owing to the nature of the broadcast products, each product / channel is a monopoly itself. This issue gets further accentuated when the said monopolistic product creates a SMP which has the capacity and inclination to increase its market power by all means possible. To eradicate any such possibility, the Authority has to immediately undertake necessary steps which may include restricting any particular entity from controlling more than 30% of any relevant market. As stated above, an SMP should be allowed to control more than 30 % of any genre.

The TRAI, either through the Tariff framework and / or through interconnect regulations should build in sufficient safeguards to prevent any kind of market abuse by the SMP, specially the right holders of live telecast rights of such popular content are acquired on exclusive basis from the right holders / federations / clubs / sports bodies. This is imperative in view of the fact that there is neither any regulation nor any authority to supervise / monitor either such right holders / federations / clubs / sports bodies or the parties to whom the telecast rights are granted. The recent controversy surrounding the BCCI / ICC / FIFA are the live examples of such misconduct and abuse.

### **Channel Pricing methodologies:**

At the outset and before responding to the issues raised under this head, we wish to make it clear that, while dealing with the issue regarding the market distorting practices, as alleged to have been followed by the DPO and the consequence of the same it should be made clear by the Authority that the same is being addressed qua the MSOs and DAS operators only and the same does not include the DTH operators. It may be noted that since inception in 2003 with Dish TV being the first DTH operator, the DTH services has always been very transparent and none of the DTH operators in the market are accused of any monopolistic practices viz. demand of any carriage, marketing, placement and packaging fee etc. and that none of the DTH operators are engaged in the kind of disputes which has long drawn the attention and ire of the Hon'ble TDSAT for looking into the structure of the regulatory regime.

This is despite the fact that the DTH operators are made to pay huge amount in the shape of Entry Fee, Bank Guarantee and License fee which are not required to be paid by the other similarly placed entities in the value chain and the DTH operator have been made to bleed out their hard earned revenue as compared to the other. However neither the Ministry nor the TRAI has given any serious thought on this issue.

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.

It is therefore imperative and imminent for the Authority to start initiative of rationalizing the rates of the channels in order to ensure exercise of effective choice by the stakeholders on the value chain.

**Q. 11: Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?**

A. 11 : The TRAI for the purpose of orderly growth and to protect the interest of the consumers and of the service provider thought it appropriate to immediately intervene to regulate the unregulated area and provided for ad-hoc measure by freezing the price as on 26.12.2003 vide Tariff order Telecommunication (Broadcasting and Cable) Services Tariff Order, dated 15.01.2004. Even while freezing the prices, it was adequately made clear by the TRAI that it is an ad-hoc measure to be continued only till the final determination by the TRAI. Accordingly, it was always the intention of the TRAI to complete the price determination exercise and do away with the price freeze which was only an ad-hoc measure.

Another important factor which needs to be considered is that during the Year 2003 and the period prior to 2003, there was no addressability in the distribution chain. Further, there was no regulation for the manner in which the rates of the channels are to be declared by the broadcasters. Since the declaration of subscriber numbers during those years was not more than 10%-15%, the Broadcasters had increased the rates by 10 times so that they are able to recover the money and counter the effect of under declaration. Further, in the absence of any regulation, the rates were declared by the Broadcaster as they thought fit. Accordingly, the price freeze of 2003 in fact gave a protection to the so inflated prices which has continued till date.

The TRAI is duty bound under an obligation to fix the rates for Telecommunication (Broadcasting Services) under the provisions of Section 11(2) of the TRAI Act, for the orderly growth of the sector and for the protection of interest of consumers and service providers.

It is also a matter of record that the Hon'ble TDSAT, at various occasions, have required the TRAI to undertake the price fixation. The first such observation was made by the Hon'ble TDSAT in the Year 2006 while giving its judgment in ASC Vs. Star where the Hon'ble TDSAT had directed the channels to be provided to ASC at 50% of the Analog rates. It was made amply clear that it was an interim measure till the TRAI complete the exercise of price fixation. In this regard, we would

like to bring to your attention that the Hon'ble TDSAT and the Hon'ble Supreme Courts at various occasions have required the TRAI to undertake the exercise of fixation of the whole sale price however the same has not been done till date. We would like to specifically highlight the following orders of the Hon'ble TDSAT and the Hon'ble Supreme Court:

- (i) TDSAT Judgment dated 14<sup>th</sup> July 2006 in Petition No.136 (C) of 2006 – ASC Enterprises Limited Vs. Star India Private Limited
- (ii) TDSAT Judgment dated 25<sup>th</sup> September 2014 in Petition No.335(C) of 2014 -Hathway Cable & Datacom Ltd., Mumbai Vs. Taj Television (India) Pvt. Ltd., Mumbai
- (iii) TDSAT Judgment dated 28<sup>th</sup> April 2015 in Petition No. 1(C) of 2014 – Centre for Transforming India vs. TRAI
- (iv) Supreme Court Order dated 4<sup>th</sup> August 2015 in Civil Appeal No. 5159-5164/2015 – IBF vs. CFTI

A bare perusal of all the above orders including the recent order dated 04.08.2015 of the Hon'ble Supreme Court would clearly indicate that it is imperative for the TRAI to undertake the exercise of fixation of wholesale tariff since the entire C&S universe is heading for complete digitalization in next two years or so

In addition to the fact that the price fixation is the prime duty of the TRAI under the Act and also the fact that the same has been advised / required / directed by the Hon'ble TDSAT at various occasions, even the TRAI itself is aware that the current RIO prices (even after the applicability price freeze) is way beyond the actual rates on which the deals are being entered into. These RIO rates are only a coercive toll in the hands of the broadcasters to force a DPO to enter into fixed fee deals and force the DPO to distribute even the non-popular / non warranted channels.

As already stated, we are of the opinion that a cost based tariff exercise should be carried by the TRAI or in the alternative the existing RIO prices of the channels should be rationalized considering all the relevant information which is available with the Authority.

**Q. 12: Do you feel that list of the Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition/ deletion of genres with justification.**

**And**

**Q. 13: Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional language) etc.? Give your suggestions with justification.**

A. 13-14: We are of the opinion that the list of genres should be based both on category as well as language. For example there should be different genre for Hindi GEC, English GEC and same for all regional language. While this may lead to increase in the number of genres, however doing the same would ensure that the channels forming part of any particular genre are comparable on almost all aspects.

However price cap of the channels in any genre should be done only after rationalizing the notified RIO prices of the channels with the market reality.

**Q. 14: What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?**

A. 14: We have already stated that with the implementation of cost based exercise for determination of real and actual price of the channels vis-à-vis market reality or in alternative with introduction of Regulated RIO with the rationalization of the channels prices, there would be greater transparency in the deals executed which will minimize the distortion of the channel pricing by the significant powers.

However to further ensure this practice on transparent and non-discrimination is followed by all, we propose that some stricter provision may be introduced by the Authority which may inter alia include the restriction on the maximum portion of a relevant market which a particular SMP can control.

**Q. 15: What should be the basis to derive the price cap for each genre?**

A. 15: A cost based model or in the alternative the Regulated RIO with the prices of the channels being rationalized in accordance with the market scenario, would lead to real and actual channel prices. The limits for any genre can then be fixed in accordance with the current practice of taking the values of most and least priced channels.

**Q. 16: What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?**

A. 16: As stated above, the RIO rates of the channels should be determined on the basis of the actual deals which have been entered into by the Broadcasters with various DPO's information of which is already available with the TRAI.

While undertaking the exercise and fixing the prices of each of the channel, it is critical for the TRAI to evaluate as to whether 2 X "NEW RIO" is the fair and reasonable ala carte price of the channel at the retail level. It has been the contention of the TRAI that the ala carte rates of the channel at retail level is at extremely high rate. However, the same is high only on account of unreasonably high RIO rates.

**Q. 17: What should be the frequency to revisit genre ceilings prescribed by the Authority and why?**

A. 16: The period for revisit can be taken as 2-3 years subject to actual determination of the prices of the channels. However, we believe that no provision of this sort should be made in the tariff order. TRAI has the authority to review the prices at any time it may deem fit. Before undertaking any exercise of revisiting the prices, the TRAI should complete the consultation process, consider all the responses made by the stakeholders and then decrease or increase the prices basis all the relevant factors.

**Q. 18: What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?**

**Q. 19: What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?**

A. 18 – 19 : At the outset, we would like to state that the nature of discounts to be given by the Broadcasters to the DPO's have to be on transparent and non-discriminatory basis. No Broadcaster should be allowed to pass on any discount to a DPO which may be specifically availed only by a particular set of DPO'S.

It is critical to mention the parameters basis which the negotiated agreements are being entered into between the Broadcaster and a DPO. The factors which determine the subscription fee payable by a DPO to a Broadcaster are:

- Size of the Operator, i.e., the subscriber numbers available with a DPO
- Placement of the Channels as per the choice of the Broadcaster

- Carriage of “Dead wood” channels by the DPO’s, i.e., a DPO willing to carry even non relevant / non popular channels of a Broadcaster
- Timely Payment of subscription fee by the DPO

Upon consideration of the above elements, the negotiated deals between the parties are concluded.

In addition, the negotiated deals are heavily influenced by the reverse fee paid by the Broadcasters to the MSO’s. These reverse fee are generally named as Carriage Fee / Marketing Fee / Placement fee, and in lot of case, the reverse fee are also provided in ‘Kind’ by offering various lucrative foreign tours and club memberships. Taking the Reverse Fee factor in consideration, the “Net Subscription Fee” actually paid by the MSO is heavily lop sided in their favour as compared to the Subscription Fee paid by a DTH Operator.

In view of the above, it is suggested that the Discounts should be allowed to be offered only on account of:

- Size of the Operator, i.e., the subscriber numbers available with a DPO
- Placement / Tiering of the Channels as per the choice of the Broadcaster for pushing the content
- Timely Payment of subscription fee by the DPO
- EPG / LCN
- Marketing of channels by the DPO to its subscriber base through barker channel, print media, website etc.
- Neighbor- hood in the genre

The regulation should specifically prohibit any condition where a Discount is allowed to a DPO for carrying “ALL” channels of a Broadcaster which includes the non-relevant / non popular channels. Such a prohibition is necessary as a DPO, only to avail the discount, would agree to carry the channels. This would force the DPO to provide these channels to the customers and the customers will have to pay for such Dead Wood Channels. In addition, this also has a impact on the scarce resource, i.e., the satellite capacity available with the DTH operator. If such a condition is prohibited, the DTH operator would carry only relevant channels which would result in best use of the Satellite Capacity.

The level of the Discount which can be offered by the Broadcaster should be left open for the Broadcaster to decide. Once the above parameters have been laid down and the Broadcaster declares the discounts on a transparent basis, the level playing field will be created in the



industry. At the cost of repetition, it is stated that in case the Broadcaster makes “ANY PAYMENT” to a DPO or spends “ANY AMOUNT” on a DPO in kind, the same should be considered as a discount offered to the DPO which should be then available to all the DPO’s.

Failure to declare the actual discount offered to DPO’s / Payments made in cash or kind to DPO’s by the Broadcaster should attract severe penalty in addition to making refund to the DPO’s to whom the Broadcaster has not offered the said discount.

### **Niche Channels:**

Dish TV as a DTH operator strongly supports the idea of complete forbearance of the niche channels. This, while pave the way for continuous implementation of innovations in the newer channels, shall also give the right to the broadcasters to determine the prices of such channels. Since the return of production of such channels would mostly depend on the subscription of the same by the customers it would be a better idea if the broadcaster determine the prices of the same considering the estimated eyeball.

However in order to ensure that the prices are not distorted, we suggest intervention by the authority after a fixed period of time from the date of launch which should be capped a maximum of 2 years when the Authority should assess the real and actual value of the channels and take necessary steps towards resurrecting the prices of the channels if need be considering the prevailing market scenario.

Dish TV in this regard has been advocating to bring the prices of the HD channels under regulatory regime, however no proactive steps has yet been taken by the Authority.

In view of the above, our response to the first set of issue for consultation are as under:

### **Q. 20: What should be parameters for categorization of channels under the “Niche Channel Genre”?**

A. We suggest the nature of content as the criteria for branding any channel as a niche channel. This will obviously be a channels for a particular set of subscribers. 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

**Q. 21: Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.**

A. 21: For the reason and conditions stated above, a Broadcaster can be allowed to fix the price of its channels. The TRAI can have a light touch approach to ensure that the concept of forbearance in Niche channel category is not being misused by a Broadcaster / DPO.

**Q. 22: What should the maximum gestation period permitted for a niche channel and why?**

A. 22: As stated above, a light touch approach is needed by the Authority. A channel which is a Niche channel as per the conditions prescriber in our Response to Query 20, may not necessary convert into a non – niche or popular channel within any fixed period of time. It has to be under constant evaluation by the Authority. It shall always be the prerogative of the Authority to re-categorize a Niche channel as a non niche channel once it is not meeting the conditions prescribed by the Authority in this regard.

**Q. 23: How misuse in the name of “Niche Channel Genre” can be controlled?**

A. 24: The misuse in the name of Niche Channel genre can be controlled by fixing the following conditions:

- 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

In addition, it has to be under constant evaluation by the Authority. It shall always be the prerogative of the Authority to re-categorize a Niche channel as a non niche channel once it is not meeting the conditions prescribed by the Authority in this regard

**Q. 24: Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?**

A. 24: Response give to Question 20 to 24 may be read in response to this Question.

**Pricing of High Definition (HD) channels:**

As stated in the previous section, Dish TV has been advocating for bringing the prices of the HD channels under regulatory regime. We shall deal with this issues at length.

As stated in the consultation paper, 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. This is echoed in the Explanatory Memorandum of the “Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010” dated 21.07.2010 wherein TRAI inter alia observed as under:

***“G. Niche channels requiring specialized set top boxes:***

***44. In recent times, the market has witnessed the emergence of a number of niche channels such as HD and 3D TV channels that require special set top boxes. An issue that was posed for comments during consultation was whether tariff for niche channels requiring specialized set top boxes should be regulated.***

***45. In case of niche channels requiring specialized set top box e.g. HDTV channels, the stakeholders are generally of the view that such channels have recently appeared in the market and all equipment relating to HD programs including the set top box and TV set are relatively costly as compared to standard definition TV sets etc. Therefore, no regulation is necessary.***

***46. The niche TV channels can only be viewed in an addressable environment and that too with the help of specialized set top boxes. These channels which have been recently introduced employ advanced technology and therefore, can be considered premium in nature. As these channels are viewed by an elite section, the Authority is of the view that there is no general public interest involved and the tariff dispensation for niche channels requiring specialized set top box TV channels should be left to market forces. The Authority will review the position at an appropriate time.”***

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 etc. If immediate steps for fixation of the HD prices are not taken, the distribution sector will continue to be in shambles for next ten years.

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.

In addition to the above, most of the broadcasters are providing same content on both their SD and HD channels and there is no value addition by the broadcaster on providing HD channels in

terms of content. However while negotiating the deals, the broadcasters charge both for the SD and HD channels, thereby forcing the DPOs and ultimately, the subscribers to pay twice for the same content. It is a matter of commonsense that any subscriber who has subscribed to HD channels would not want to watch and pay for the SD version of the same channel. However because of the deals forced to be executed by the broadcasters, the DPO's are also forced to charge the subscribers for the same. Effectively, a subscriber ends up paying twice for the same content.

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 a matter of fact that there are various HD channels which do not have actual HD content and the broadcasters are providing the content in such channels by upscaling the same in the HD format. Therefore while the subscribers are forced to pay for the HD channels, in many cases, the content are not actual HD. At this juncture, it may be stated that the content delivery to the subscribers is a prerogative of the DPOs and the therefore it shall be left open for the DPOs to decide the format of the content to be delivered to the subscribers. This will ensure that while the broadcasters do not doubly charge for the same content, the subscribers are required to pay only for what they watch and are not unnecessarily forced to pay both for SD as well as HD channels.

As already pointed out above, the additional expenditure required to provide the HD signal is not significant as compare to the exorbitant pricing being charged by the Broadcasters for HD channels. In fact broadcaster can transmit content only in HD and avoid transmission in SD. In any case, even if we, as a delivery platform, receive content in any format, we have to decide on the format on which we wish to retransmit the channel, i.e., whether in HD format or SD format. In fact, the SD channels can be upscaled to HD also by the platform. It is also a matter of fact that some of the HD channels do not have actual content shot in HD and are transmitting content shot in other formats by upscaling it to HD.

Another reason put forth by the broadcasters to justify higher prices of the HD channels was the fact the same would be advertisement free channels. However it did not take much for them to digress from the said commitment and it can be seen that almost all the HD channels are now carrying advertisements. Therefore in addition to the subscription revenue, the broadcasters

have also started collecting advertisement revenue against the HD channels which all the more justifies lowering the prices of the HD channels which are too high for a normal subscriber to afford.

It is thus evident that the broadcasters have taken maximum advantage of continued forbearance allowed by TRAI in respect of the tariff of the HD channels. In the garb of this forbearance, the broadcasters by changing the format of the channels from SD to HD have been continuously circumventing the freeze on the channel pricing as enforced by TRAI way back in 2004. It is thus incumbent on the part of TRAI to intervene and review the situation prevailing as on date and regulate the prices of the HD channels.

With the Digitization phase III is already under process and the entire country entering a completely digital phase in a years' time, it is all the more required for TRAI to immediately take stock of the situation and regulate the prices for HD channel so that the advantage of the same may be passed onto the end consumers.

With the increase in number of HD TVs and numbers of HD channels being offered, the HD Channels are no more a niche segment. With implementation of Digital Addressable systems, the popularity of HD channel has been increasing manifold. The HD channels are just another linear channels like the SD channels. Also the registration of linear channels is technology agnostic. The absence of regulations governing the wholesale tariffs for HD channels make negotiations between the access operators and Broadcasters difficult and lead to opportunistic and arbitrary pricing. It is therefore recommended that the Authority should reconsider its earlier decision of keeping the wholesale tariff for HD channel under forbearance and should regulate the wholesale tariffs of HD channels.

In view of the above, our response to the first set of issue for consultation are as under:

**Q. 25: How should the price of the HD channel be regulated to protect the interest of subscribers?**

A. 26: For the reasons stated hereinabove, it is imperative for the Authority to regulate the prices of the HD Channel. Since almost all the channels are now being shot in High Definition format with no value addition by the Broadcasters, there is no reason why the Broadcaster should be charging a differential price between Standard Definition and High Definition Channels. As we have already submitted above in the preceding paragraphs regarding the price fixation of the channels, the same should apply to the High Definition Channels. So, both the version of a channel, i.e., High Definition as well as Standard Definition should have the same price.

**Q.26: Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?**

A. 26: The TRAI itself has considered this fact that the justification by the broadcasters that they have to bear additional expenditure towards incremental bandwidth cost for uplinking and hence the prices of HD channels are higher is not valid. On the contrary the DPOs and the consumers are required to bear extra cost for carrying an HD Channel on their platform. As stated above, there should not be any difference between HD and SD format of a channel.

In case of an HD channel, which does not have any SD version, the pricing should be done on cost basis or on the basis of the price of the similar genre channel.

**Q. 27: Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?**

A. 27: TRAI is in possession of the Agreements filed by the broadcasters and DPOs. A bare perusal of the said agreement would make it amply clear that the DPOs are making the HD and SD channels available to the subscribers purely due to the imposition of such condition by the Broadcasters. The imminent necessity for the TRAI is to curb this very practice adopted by the broadcasters.

To eradicate the menace of charging the subscribers double for the same channel, it is imperative that any such condition imposed by the Broadcaster, whether under its RIO terms or in negotiable deals should be considered as illegal. A subscriber should be provided both the versions only when there is a specific request in this regard by a subscriber.

**Manner of offering and Exclusive Pay and FTA bouquet:**

It is a matter of record and the agreements available with the TRAI would make it clear that the broadcasters have never cared for this condition which forms part of the interconnect regulation. It is already stated that due to the fact that the notified rates of the channels the broadcasters are much on a higher side whereas they execute deals at 10% of the said rates, the broadcasters have been able to coerce the DPOs to execute the CPS or fixed fee deals by piggybacking the lesser known channels along with the driver channels and forcing the DPOs to pay for most/all their channels. This ultimately has affected the customers.

It is also a matter of record that the DPOs have published the ala carte rate of the channels available on their platform at the value which is twice of the RIO rate notified by the broadcasters



of the said channels. This has been done in compliance with one of the conditions as prescribed under the twin conditions at retail level which was very much allowed by TRAI in the last tariff order. Therefore to conclude that lack of effective choice for the subscribers is due to fact that the DPOs have kept the ala carte rates of the channel on a higher side is not a correct analogy. It is submitted that the DPOs in this regard have always complied with the applicable regulatory provision.

However, it is also a matter of fact that all across the world, the most prevalent and acceptable form of distribution of the channels by DPO's is through bouquets only and such distribution is only in the interest of the subscribers. It will be totally impossible for each and every subscriber to choose channels from a list of 400. The operators are the last mile connectivity to the consumers and because of which they have been able to identify the exact requirement of the customers. It is also a matter of fact that the DTH operators have made region specific bouquets also to suit and cater to the requirement of the regional customers also. Accordingly, bouquets are the necessity of the industry as well for the consumers and the DPO's should be given the flexibility to offer the channels on bouquets to those who want to have it in bouquets. Further, a normal consumer would not know the difference between a FTA or a Pay channel. What a customer is interested in is the channels which he wants and the price he is willing to pay.

In view of the same we provide our response to the issues for consultation as under:

**Q. 28: Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.**

A. 28: We do not agree with that there is a need for separation of FTA and pay channel bouquets and that such separation will provide more flexibility to the subscribers. As stated above, when a customer has to pay even for the basic bouquet of FTA channels, these channels become a pay channel for the customer. The obligation to compulsorily separate the bouquets will only take away the freedom of the DPO to frame the bouquets in a manner which can suit the requirement of the customers at a reasonable price. More so, when a subscriber today has the option to avail the services through DD Direct which is offering only FTA. Further, even the DPO's are offering the bouquets of FTA Channels to the subscribers on their own volition and even before this consultation paper was floated.

At the cost of repetition, it is stated that no regulation is required – either for pricing or the manner in which the offering of the channels has to be done on the DPO's because of the “Effective Market” being present. It has been established in the preceding paragraphs that the

customers have been the biggest beneficiary of the Effective Market where they are able to choose the Operators, various products of the Operators and even avail the channels of the Operator on ala carte basis if they do not want to avail the channels in package. Under these circumstance, when the market is operating in an effective manner and when the product / offering under question is already available to the subscribers at a very reasonable price, there is no need of regulatory intervention.

**Q.29: How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.**

**Q.30: How can the activation time be minimized for subscribing to additional channels/bouquets?**

A. 29 – 30 : As stated in the preceding paragraph, there is no need of regulatory intervention since the channel subscription process is totally simplified with the subscribers have all the options to choose such channels / bouquet as they may deem fit. It is a common knowledge that a DTH subscriber has various options to subscriber to the bouquet / channel of his choice some of which are through calling the call center or subscribing after giving a missed call or website or through apps or sending an SMS or calling the dealer of the DTH operator etc. Today a DTH subscriber is able to change / avail the pack / channel in seconds while enjoying his leisure time. In fact, in ten years of operation, we rarely come across a complaint from the customer which talks about difficulty in subscribing a pack or a channel.

**Q.31: Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?**

**Q.32: Under what circumstances, carriage fee be permitted and why?**

A. 31 - 32: At the outset, we would like to refer to Clause 5.2.2 of the Consultation Paper where the TRAI has erroneously mentioned that there is a “must carry” provision on DPO’s. We would like to state that there is no provision / regulation or law which mandates the DPO’s to compulsorily carry the channels and any insinuation to the contrary is totally wrong. The extant Regulations has the provision only for “Must Provide” to ensure that there is no discrimination meted out to any platform and that a consumer does not require to subscribe to multiple platforms to view the channels of his choice.

With regard to the Carriage Fee, have stated hereinbefore that the present regulatory framework has allowed the MSOs and DAS operators to continue demand the carriage, marketing, placement and packaging fee from the broadcasters and even the Broadcasters have happily supported the carriage fee model. It is a matter of fact that because of the huge carriage fee paid by the broadcaster, the subscription cost for the MSO is nil to negligible. A bare look at all the agreements entered into between a Broadcaster and an MSO will clearly establish that the subscription cost of an MSO ranges around Rs. 10 – Rs. 20 per subscriber where the same is in the range of Rs. 80 to Rs. 100 for a DTH operator. The TRAI being the regulator ought to be in possession of this data and needs to take urgent steps to remove this anomaly and create a level playing field between all the DPO's.

Such a practice has created a large gap between the revenue generation capacities of the MSOs vis-à-vis the DTH operators has 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.

The above is clearly in teeth of the Regulation which mandates that the Broadcaster has to offer its channel on non-discriminatory basis to all Distribution Platform Operators. By offering their channel at heavily discounted rates to the MSO's, the Broadcasters have been perennially discriminating against the DTH operator which discrimination needs to be removed now.

The basis for the Regulation of the Carriage Fee has to be the basis on which the entire Interconnect Regulation has been made – “NON DISCRIMINATION AND FULL TRANSPARENCY”. All the Broadcasters as well the DPO's must be required to submit full details of each and every transaction entered into them. The Broadcasters, while making any offer to the DPO's, must consider and take into account any Carriage fee paid to another DPO. Such a step will eradicate the issue of Non-discrimination and will create level playing field among the DPO's.

In order to ensure full transparency and ensure non-discrimination, the parties should be directed to submit all the Agreements for whatever purpose, whether Subscription / Carriage / Marketing / Support or any other name entered into them. This will ensure that no Agreement remains outside the realms of the Regulator and will also remove any possibility of providing any

favourable treatment to any party. Further, the regulations should also provide the parties shall submit on quarterly basis, the amount paid to each other, duly certified by their respective Statutory Auditor.

It should be clarified by the TRAI that the parties should submit "ALL" Agreements entered into between the parties or with their associate / related companies, whether interconnect agreement or any other agreement.

It is also important to bring to the notice of the Authority, certain Broadcaster, with an intention to defeat the DAS I and DAS II deadlines, had shifted their carriage agreements to DAS III and DAS IV area operators. The same also happened in DAS III deadline where the carriage agreements were shifted to DAS IV area operators.

**Q.33: Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?**

**Q.34: Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?**

A. 33-34: The criteria can be fixed by the TRAI which should be applicable to all DPO's.

**Q.35: Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?**

A. 35: The response of Dish TV to Query Number 18, 19, 31 and 32 should be considered as a response to this query. Briefly, placement fee or marketing fee are only nomenclatures given by the players of the market to provide for the "Reverse Fee" to the MSO and hence create discrimination in the market. They should be brought under the ambit of Regulation. The framework and workability has already been suggested in the preceding paragraphs.

**Q.36: Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?**

A.36: There is no need to regulate an illegality which has been perpetuated in the industry which has been totally ignored by the Regulator. On the contrary, the illegality of creating clones of the channel should immediately be scrapped.

The concept of creating clones of the channels have only been created by certain section of Broadcaster in order to evade the price freeze of the Regulator, to extort double money from the customer and to exploit the advertisement revenue stream. There is no reason or rationality of having the content of one channel on another more so when the Broadcaster is charging for both the channel. The table below clearly illustrates the impact of the cloned channel on the stakeholder:

<b>Stake Holder</b>	<b>Impact On the Stakeholder</b>	<b>Positive Impact / Negative Impact</b>
Broadcaster	<ul style="list-style-type: none"> <li>✓ circumvent the price freeze regulation of the TRAI by creating new channel with old product</li> <li>✓ Charge multiple times for the same production</li> <li>✓ Increase advertisement revenue around the same product</li> </ul>	POSITIVE
DPO	<ul style="list-style-type: none"> <li>✓ Additional use of bandwidth for the same product hence incur additional cost</li> <li>✓ Pay multiple subscription fee to the Broadcaster for the cloned product</li> </ul>	NEGATIVE
Consumer	<ul style="list-style-type: none"> <li>✓ Pay multiple subscription fee for the cloned product</li> </ul>	NEGATIVE

The above table clearly illustrates that the cloning of the channel is an illegality created by the Broadcaster which has been possible only because of absence of any restriction around it. It is well established fact that if an illegality is not stopped, it is considered as an acceptability and it becomes a norm which is used by the monopolistic player to undue benefit themselves. Till now, we have seen the channels being cloned and the next step is – ‘*Lo and behold*’ - same channel with 10 different language feeds being launched in the market. Same content channel with Tamil, Telugu, Kannad, Bengali etc feed is about to get launched. In such case, a subscriber in Tamil Nadu will want the channel of Tamil feed whereas the subscriber of Bengal would want the channel of Bengali feed. An MSO operating in a particular territory can live with one channel but the DTH operators, being national operators, will be forced to carry all the “Different Feed” Channels to cater to the entire country – another discrimination / disparity created on the DTH.

There is no reasonability, rationality and legal permissibility to charge a customer twice for the same product. Accordingly, the Regulation should provide for the following:

- Any channel which shows any sports content which has already been shown in any other sports channel should be considered as “Cloned Channel”. Cloning can happen from over to over, series to series, camera to camera and language to language.
- No sports content, which has been shown on a particular channel, should be shown on any other channel / medium for a particular period from the date of first display.
- If a Broadcaster wants to give more than one feed on a channel, it should provide all the audio feeds / text or any other technology in the same single feed. The DPO can give the option to the subscriber to choose the feed it wants without charging additional amount to the subscriber.

**Q.37: Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?**

A. 37: The very concept of providing the facility of EPG is to make the customer aware of the running and upcoming programs on a particular channel. This feature is only for the benefit of the consumer to enable him to make an informed choice. Dish TV believes that the EPG should have the option to include the details of the programs of channels not subscribed by the customer.

**Q.38: Can Electronic Program Guide (EPG) include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.**

A. 38: This feature is akin to the feature where the subscriber is informed about the details of the programs of the channels not subscribed by him. Once again, the facility of PIP is only a means / method to keep the subscribers informed about the offering on a particular channel which has not been subscribed by the consumer. This will also benefit those channels which have relevant and popular programs but have not been subscribed by the subscriber. The customers will not be charged for this facility unless the Broadcasters start charging the DPO's for this.

**Q39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.**

**Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?**

A. For the reasons as mentioned hereinabove, we do not support this idea of introducing the concept of pay-per-program for any particular program of a channel.

**Q41. Do you agree with the approach suggested in para 5.8.6 for setting up of a central facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process of periodic reporting to broadcasters and audit of DPOs with justification.**

A. 41: At the outset, we would like to set the record correct in relation to the observations made by the Authority in para 8. The Authority has used the word “DPO” while stating the Broadcasters have in respect of maintenance of data, share of data and Audit of SMS by the DPO. We would like to mention that no such issue has ever been felt in the DTH industry. From the very beginning, the DTH has been totally transparent and has been sharing all the required information to the Broadcasters. In addition, the Audits are also very smooth and seamless. Accordingly, it is suggested that the reference of DTH from the said section be removed.

In view of the above, there is no need for appointing / nominating a central agency for the DTH industry.

## **Other Issues**

**Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

### **A.42 (1) – DISPARITY METED OUT TO THE DTH INDUSTRY BY THE REGULATOR AND THE LICENSOR**

#### **A. LICENSE FEE**

- TV Channels are distributed through various distribution platform operators (DPO) to the end consumers using various technologies, however, the content (TV Channel programme) remains unchanged. 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 licence fee. On account of such additional burden the DTH subscriber is discriminated who has to bear higher burden, compared to cable/HITS subscriber. Thus, from the stand point of consumer, the present regime is arbitrary and discriminatory.

- That the license regime with regard to similarly placed DPO's are tabulated in the table below:-

<b>Parameters</b>	<b>DTH</b>	<b>MSO</b>	<b>HITS</b>	<b>Cable</b>
<b>Entry fee</b>	<i>Rs 10 crores</i>	<i>Rs. 1 Lakh</i>	<i>Rs. 10 crores</i>	<i>Nil</i>
<b>Bank Guarantee (in Rs. crore)</b>	<i>Rs. 40 crore</i>	<i>Nil</i>	<i>Rs. 40 crore</i>	<i>Nil.</i>
<b>Annual License Fee</b>	<i>10 % of GR</i>	<i>Nil</i>	<i>Nil</i>	<i>500/-</i>
<b>WPC license fee and royalty</b>	<i>As prescribed.</i>	<i>Nil</i>	<i>As prescribed</i>	<i>Nil</i>
Average Entertainment Tax	<i>10%</i>	<i>10%</i>	<i>10%</i>	<i>10%</i>

- DTH operators fall into the same category as other operators such as MSO, HITS and LCO as all of them providing the same services and are competing for the same set of consumers. In such circumstances imposition of higher license fee on DTH operators and providing exemption for HITS and imposition on MSO (DAS area) a nominal fee of Rs. 1 lakh per year for the entire tenure and Rs. 500 per year on LCO, is highly discriminatory.
- Even the Authority being the Regulator of the industry has failed to support and provide the impetus to the DTH industry. The Authority has, in past 10 years, given 2 recommendation and one concurrence to the Government on the License Fee issue however the last recommendation dated 23.07.2014 of the Authority is totally devoid of any basis as well as it different from its previous stand on the subject. 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 Authority.

## **B. DISCRIMINATION BETWEEN A DTH SUBSCRIBER AND CABLE SUBSCRIBER**

The subscribers of the DTH platform, like subscriber of any other platform receive the same registered and permitted channels. The intent and purpose of the activity of broadcaster and that of the DTH operator and any other Distribution Platform Operator is same, i.e, making the same channel available for public viewing. The DTH operator as well as any other Distribution Platform Operator merely provides connectivity between content broadcaster and the consumer. Only the DTH subscribers are burdened with the License Fee and the subscribers of other distribution platform including cable operator, multi system operator, HITS operator are not subjected to the said fee and the tax compliance in case of Cable distribution and HITS is miniscule. Since the Cable and HITS platforms do not have the License Fee incidence ostensibly to promote digitization, the



levy of License Fee only on DTH platform is a clear cut policy discrimination resulting in non-level playing field. Thus the discrimination is hostile and arbitrary.

It is pertinent that out of the Total Cable & Satellite household of 135 Million, only 43 subscribers are meted out a discriminatory treatment who are burdened with the License Fee.

With the advent of Digitisation, it is imperative that a non-discriminatory License Fee regime for the subscribers is put in place which can be achieved through fixing the License Fee on the initial broadcast itself which will ensure that no subscriber is discriminate against the other.

The view of the TRAI regarding provision of level playing field to the DTH operators vis-à-vis cable operators was also echoed in its consultation paper titled as “Consultation Paper on DTH Issues relating to Tariff Regulation & new issues under reference” dated March 6, 2009 wherein the TRAI observed that there is no license fee on cable TV operation whereas license fee has to be paid by DTH operators. The DTH services on the other hand are subjected to multiple taxation which inter-alia includes service tax @ 12.36%, entertainment tax at different rates by State governments and VAT @ 12.5%. In addition, if license fee @ 10% is also added, the cumulative taxation would come to a significant amount which leads to high incidence of levies and taxes for DTH service. On the other hand, the incidence of taxes and levies in cable TV are much less because of two reasons. Firstly, there is no license fee payable by LCOs / MSOs / IPTV. Secondly, in the absence of addressability, there is always considerable scope for evasion of taxes in the cable TV segment.

#### **A.42 (2) – AVAILABILITY OF CONTENT ON OTT AT FREE OF COST**

The Broadcaster, who have obtained the permissions to uplink / downlink channels from the Ministry of Information and Broadcasting, have started using the internet platform to make their content / channel available. Furthermore, the broadcasters are themselves distributing the same content to the users. Accordingly, the Broadcaster is operating as “Broadcaster” as well as “distributor of televisions channels” on the internet platform. In this regards, the following points are important to note:

- In terms of the extant TRAI Regulations, a Broadcaster means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his/her authorized distribution agencies.

- Further, the Broadcasting services means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly.
- A bare perusal of the above two definitions clearly provide that the dissemination of the Television channel content even through internet will amount to broadcasting service and the person broadcasting the same would be broadcaster.

Further, it is also important to note that the content being provided by the broadcasters are free of cost with an intention to create a captive subscriber base and create a monopolistic situation. Because of 'free of cost' provision of the content by the broadcasters through OTT services, other distributor of TV Channels are heavily prejudiced. This method of streaming of content by the broadcasters directly to the customers, bypassing all the intermediaries would ultimately have the effect of potentially threatening the existence of the other distribution platforms. With the launch of 4G services this trend would only be more and more. Such provision of content completely at no cost would only induce the subscribers to shift their operators for the purpose of channel viewing.

#### Impacts of the provision of TV Channels / contents by the Broadcaster

- Since the Broadcaster are providing the channels / content directly to the consumers, that too without any charge, this would create a monopolistic situation where the Broadcaster, being the distributor also would also control the end mile solution.
- The TRAI Regulations clearly prohibits any distributors of TV channels or a broadcaster to enter into any exclusive contract. In the present case, on the internet platform, since the broadcaster is also a distributor of TV channel, the arrangement is clearly exclusive in nature. The reasons for prohibiting exclusivity under TRAI Regulations was to ensure an orderly and equal growth of all distribution platform.
- Furthermore, the instant situation, where the broadcaster is also a distributor of TV channels, is also in breach of the cross holding restrictions notified by the government which clearly prescribes cross holding restriction between broadcaster and distributor. In the absence of similar prescription for internet based provision of channels, the broadcasters are breaching the cross holding restriction while providing the channels directly to the subscriber.

In this regard, we would also like to state that the primary objective for establishment of the TRAI was to protect the interest of the service providers and consumers and to promote and ensure the orderly growth of the telecom sector which includes the DTH sector. This objective is enshrined in the preamble of the TRAI Act, and the same is mentioned as under:

*“To provide for the establishment of (Telecom Regulatory Authority India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector) and for matters connected therewith or incidental thereto.”*

With the enormous increase in the users availing the channels through internet, it is imperative that the TRAI steps in right now to notify certain regulation to cease the advent of monopolistic activities. We therefore expect that the TRAI would notify necessary regulations to ensure the orderly growth of the industry and also to provide a level playing field to the distributor of tv channels.

It is submitted that under the proposed tariff framework, if a channel is declared as a Pay channel by the Broadcaster, then the said channel should neither be allowed to be made available on any other distribution platform at a cost lower than the published price nor should the subscribers of the distribution platform should be able to receive the same free of cost. The regulation may provide for partial exemption of news channels

**A.42 (3) – FINALISATION THE DEFINITION OF THE FOLLOWING:**

Channel (standalone definition as well as definition on genre basis)

Tier

Carriage Fee

Sports series / events / matches

Episodic series

Feature Film