

RESPONSE OF DISH TV INDIA LIMITED
TO
CONSULTATION PAPER
ON
TARIFF RELATED ISSUES
FOR
BROADCASTING AND CABLE SERVICES

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We, Dish TV India Limited (Dish TV), welcome the Authority for undertaking this exercise to look into the various facets of “The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017” (hereinafter the “New Tariff Order”) under the new regulatory framework.

The intent and the objective of the New Tariff Order, apart from providing a level playing field for all the stakeholders in the distribution segment, was to provide the real choice to the consumers. In the erstwhile regime, it was a known fact that the existence of choice was decimated by forcing bouquets to the consumers and not providing any choice to pick only those channels/bouquets which the consumers wanted. The New Tariff Order aimed at removing this anomaly. The Authority believed that the new regime which proscribed any arrangement between the DPO and the broadcaster other than the RIO arrangements would ensure that customers will get a real choice and the ultimate objective of customer benefit as well as orderly growth of the industry will be met.

The regulatory regime came into effect from 01.02.2019 and the entire distribution industry got into the humongous task of migrating millions of customers from the old regime to the new regime. The said period was, least to say, turbulent. This was the time when a large section of the distribution industry worked their hearts out to inform, educate and migrate the customers to the new regime. While undertaking this migration, we believed that after the initial period of 2-3 months, the ultimate objective of the Authority and the new tariff regime will get implemented on the ground – but it was not to be! It is been a period of almost 8 months since the new regulatory regime has been implemented and in this short period of 8 months, common factor of the old regulatory regime and the new regulatory regime has come to fort – which is, negligible uptake of ala carte channels and maximum usage of bouquets. Again the intention of the Authority and the New Tariff Order seems to be getting defeated. A parallel can be very

comfortably drawn for the reason of low uptake of ala carte channels and high penetration of bouquets – in both regimes, rate of ala carte channels was much higher and there was no relationship between the rate of the channels and the rate of the bouquets.

Dish TV has repeatedly been highlighting the blatant and glaring issues in the Industry even in the new regime, largely owing to the non-existence of any linkage between the prices of the bouquets and its constituent channels as provided in third proviso of Clause 3(3) of the Tariff Order. This has in affect reinforced the very menace which prevalent in the earlier regime and thereby nullifying the very objective behind issuance of the new framework.

TRAI has noted that in the old regime because of the high rates of a-la-carte channels, they has become illusive and subscribers were left with no choice but to opt for bouquets. Further, the bouquets formed by the broadcasters contained only few popular channels and the DPOs were given no option but to take the entire bouquet containing the less popular channels or to take the channels at high ala carte rates. Due to this, the customers were forced to subscribe to bouquets rather than subscribing to a-la-carte channels of their choice. Therefore in the entire process, the customers end up paying for “unwanted” channels.

The regulations, it its original framework had enough meats and bounds, check and balances with proper mechanism to ensure that the framework benefits all the stakeholders of the industry. It prescribed a linkage between ala carte price of a channel with the bouquet to ensure that prices do not go haywire and it also provided for opportunities of discounts to be given by the broadcasters to the DPOs for the bouquets so that the broadcasters and DPO’s business interest are also taken care of. Further, since there was a linkage between the bouquets and ala caret prices, any discount on the bouquet would be resulted in decrease in ala care price thereby keeping the mandate of the regulation alive. However, with the linkage being disallowed in leading

dispute the entire balance has tilted and the “new regulations” have taken the form of “old regulations”.

We would like to use this opportunity to invite the indulgence of TRAI to their thoughts of having a relook on to the NCF cap of Rs. 130/- as it barely covers the operating costs of a DTH player, having varied financial obligations like entry fee, the bank guarantee, the 10% annual license fee, annual NOCC charges, annual WPC charges, annual satellite charges which are governed by the dollar rates which has gone up by a good 11% since then, and urge TRAI to allow us the inflation linked hike, since it's been a good 2.5 years since this NCF was mandated, and as per TRAI's own admission they had agreed to revisit this in a span of 2 years.

Immediate requirement to bring OTT platform within the ambit of the new framework:

The Authority is aware that OTT services have been proliferating at a very rapid pace and have become a part of life of a large sections of society in India. These are the services where the subscribers can avail the channels and content through internet on their mobile handset/computer or any digital display device through an application (app) e.g. Netflix, Amazon Prime Video, Hotstar, Voot, ZEE5, Sony Liv etc. With advent in the technology, now the subscribers are even streaming and projecting the content available through OTT from their mobile handset on the television screens. It is critical to note that the broadcasters/OTT service providers are making their content / channels available on other OTT platform wherein the same content / channels are being made available to the subscribers completely significantly lower than what is being charged from DTH and cable.

It is noteworthy in this regard that while the TRAI regulations have been made applicable for IPTV services by bringing them under the definition of distributor of TV channels, the OTT broadcasting services have completely

been left untouched. It is pertinent to note that OTT services are a small segment of IPTV services.

It is important to note in this regard that the Broadcasters, 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 / channel available to the consumers at significantly lower rates whereas the DTH/cable has to pay higher rates for the same channel.

It is important to note that the content being provided by them 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.

We strongly believe that the ultimate objective of the regulations cannot be achieved until and unless the OTT platforms are brought within the ambit of the TRAI regulations. The Authority must understand the need of the hour and take proactive steps towards this direction as any delay with respect to the same will only perpetuate the wrong being committed by the broadcasters under the garb of the same.

The above has resulted in huge loss in terms of business opportunities for DPOs. We would thus again urge and state that all OTT players should be brought under the ambit of the TRAI regulations now as the OTT industry is now well passed its diaper stage and is now robust enough to sustain its

growth path and it's about time it too should be regulated to enable a level playing field and to ensure a free and fair atmosphere for all M&E Industry's DPO's, and to ensure an orderly growth of the sector

The above submissions of Dish TV India Limited are response to majority of the questions raised in the consultation papers, however the same have not been reproduced in the respective query response for the sake of brevity.

In the above backdrop, we submit our response to the present consultation as under:

Q1. Do you agree that flexibility available to broadcasters to give discount on sum of a-la-carte channels forming part of bouquets has been misused to push their channels to consumers? Please suggest remedial measures.

Q2. Do you feel that some broadcasters by indulging in heavy discounting of bouquets by taking advantage of non-implementation of 15% cap on discount, have created a non-level field vis-a-vis other broadcasters?

Q3. Is there a need to reintroduce a cap on discount on sum of a-la carte channels forming part of bouquets while forming bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Response: Due to the reasons explained in the preliminary submission made hereinabove, it is evident that even in the new regime, there has been a propensity to push low rating channels or new channels into a bouquet with then objective to increase the viewership of high rating channels.

The current offerings of the broadcasters clearly evidence that channels having very low rating as well as having very low ala carte prices have been

placed by the broadcasters in the bouquets with some popular channels and thereby pushing these unpopular channels.

The inducing effects of bundling vis-à-vis single pricing or a la carte pricing has been examined for TV broadcasting and distribution services across several countries. Various countries including the United States and Canada had proposed and implemented an à la carte regulation for TV broadcasting and distribution. In the United States, both politicians and consumers proposed elimination of the cable bundling model because they believed offering channels in this manner effectively forces people to pay for products they do not want.

One of the remedial measure is to lay down a linkage between the bouquet and the ala carte prices of the channel. This will result into the broadcasters declaring a reasonable rate so that bouquet prices are competitive and enable consumers to choose a la carte also. In fact, in the absence of the linkage, the regulation has not been tested in its complete format. As always contended by TRAI, the regulation should be implemented in entirety by enforcing the linkage both at wholesale and retail level. This will bring about the much needed course correction.

There are two facets to the linkage between the ala carte price and the bouquets –

1. A linkage between ala carte rates of the channels forming part of the bouquet; and
2. A consequent reduction in the price of the ala carte channel in case of reduction in the price of the bouquet

A conjoint reading and understanding of the above two facets of the linkage result into a mechanism where the prices remain under control and the propensity of pushing of bouquets is also under control. In effect the linkage

prescribed in the original form of the regulation was the fulcrum around which the entire tariff mechanism was to operate.

Q4. Is there a need to review the cap on discount permissible to DPOs while forming the bouquet? If so, what should be appropriate methodology to work out the permissible discount? What should be value of such discount?

Response: The discount at the DPO level should be in proportion to the discount being allowed in the broadcaster level. At present, since the linkage/discount formula has not been implemented at the broadcaster level, the corresponding linkage/discount formula at the DPO level should not be implemented. It is stated that when the linkage has not been implemented at the input level, the same can never be implemented at the output level.

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

Q6. Do you think the number of bouquets being offered by broadcasters and DPOs to subscribers is too large? If so, should the limit on number of bouquets be prescribed on the basis of state, region, target market?

Q7. What should be the methodology to limit number of bouquets which can be offered by broadcasters and DPOs?

Response: As stated above, apart from implementing the linkage at the wholesale level, the following measures may be taken by the Authority:

- a. Limit the number of bouquets in proportion to the number of the channels of the broadcasters
- b. Ensure that no two bouquets should be more than 60-70% similarity in terms of composition

- c. Direct that no channel should form part of more than 30% of the bouquets in the relevant market
- d. Direct that channels of different genres and different languages should not be placed in one single bouquet.

As already stated hereinabove, each of the major broadcasters have published numerous bouquets solely in order to push their less popular channels along with the driver channels. Further, in the absence of linkage, while the ala carte channels have become illusionary due to high prices, the compositions of broadcaster bouquets are such that the consumer are left with no other option but to opt for the bouquets with unwanted channels. This very practice has defeated the very purpose of the new framework. Since the number of bouquets offered by the broadcasters are high, it naturally results into higher number of DPO bouquets and the DPOs offer additional bouquets.

Q8. Do you agree that price of individual channels in a bouquet get hedged while opting for a bouquet by subscribers? If so, what corrective measures do you suggest?

Response: We strongly believe that the price of a driver channel in a bouquets looks hedged in contrast to the price of the complete bouquets. This holds true across all genres for all broadcasters. This is purely because of the fact that in a bouquet such driver channels are mixed with many laggard channels which absorb the overall cost of the bouquets because of their marginal pricing in comparison.

We reiterate our above responses.

Q10. How well the consumer interests have been served by the provisions in the new regime which allows the Broadcasters/Distributors to offer bouquets to the subscribers?

Response: We believe that the job of distribution and bouquets creation for the end consumer should always be entrusted with the DPOs being experts having knowledge and sense of pulse of the consumers. With the broadcasters having got the same opportunity, they have created plethora of bouquets solely to suit their own for pushing their less popular channels to the consumers with one or two driver channels for generating more eyeballs and thereby gain in advertisement revenue.

We reiterate our above responses.

Q11. How this provision has affected the ability and freedom of the subscribers to choose TV channels of their choice?

Response: As stated above, the freedom given to the broadcaster has totally been misused specifically in the absence of much need linkage formula as envisaged by TRAI under third proviso of clause 3(3) of the Tariff Order. The Authority must specify a linkage formula to avoid further commercial exploitation of the consumers at the hands of the broadcasters.

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

Response: We reiterate our above responses.

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

Response: It is matter of record that it was DTH industry only which first set up call centres for effective resolution of the grievances of its subscribers. Huge amount of money has been invested by the DTH sector towards providing a quality entertainment to the subscribers and towards this end the DTH industry from time to time came up with various value added services,

improved the quality of its set top boxes, providing online recharge facilities etc. during this process and with consumers getting more attuned to web / applications, the DTH industry invested in launching applications on handheld devices which over the years have totally stabilized and are being used by the consumers in high numbers. Therefore provision of choice and options to the subscribers is not new to the DTH industry and the DTH industry has all along been providing various choices to its subscribers through website, applications and call centres.

The effort by the DTH service providers to achieve overall satisfaction level of the subscribers continued during the implementation of the new regulatory regime of the Authority and in accordance with the prescribed mechanism suggested by the Authority in the Quality of Service Regulation, all the options were provided by the DTH industry. In line with the requirement of the new regime, the DTH subscribers have been provided with all the option including but not limited to the option to change / modify their packs through various modes like call centre, website, apps etc.

It is thus stated that the DTH industry is already providing every possible option to the consumers for their information, exercising their choice etc. and that there is no need to reinvent the wheel for the DTH industry.

Q14. Should regulatory provisions enable discount in NCF and DRP for multiple TV in a home?

Response: Discounted NCF and DRP for the multiple TV connection, being in the consumer interest, should definitely be allowed. To facilitate the same by the DPOs, provision should accordingly be made in the regulation that the broadcasters should also extend discounted priced for its channels/bouquets provided for such multiple connection in their RIOs.

Q15. Is there a need to fix the cap on NCF for 2nd and subsequent TV connections in a home in multi-TV scenario? If yes, what should be the cap? Please provide your suggestions with justification.

Response: We do not think that there should be any additional cap on NCF for the subsequent connection and that the cap on NCF even for such connections should be governed by the existing Rs. 130 plus taxes as provided in the regulation. However the DPOs should enjoy the freedom to prescribe any reduced NCF within the permissible limit as per their business requirement. It is submitted that offering of discounts by the broadcasters for the multi-TV connections has been an industry practice. During the previous regime, the broadcasters while entering a CPS deal with DPOs were offering discounts on the multi-TV connections and the same practice can be followed even now.

Q16. Whether broadcasters may also be allowed to offer different MRP for a multi-home TV connection? If yes, is it technically feasible for broadcaster to identify multi TV connection home?

Response: We reiterate our response to the question no. 15 above.

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

Response: This facility is already being provided by Dish TV. Howsoever this should be mandated keeping in view the overall objective of effective consumer choice prevailing.

Q18. How should a long term subscription be defined?

Response: Though there is no fixed formula to define the long term subscription, the behaviour and recharge pattern of the subscriber shows that

a subscription period of more than 3 months should be treated as long term subscription.

Q19. Is there a need to allow DPO to offer discounts on Long term subscriptions? If yes, should it be limited to NCF only or it could be on DRP also? Should any cap be prescribed while giving discount on long term subscriptions?

Q20. Whether Broadcasters also be allowed to offer discount on MRP for long term subscriptions?

Response: Long term recharge is not only in the interest of the consumers but are also beneficial for the DPOs and broadcasters as the same helps arrest churn and provides assured eyeballs. Therefore we believe that the regulations should provide for forbearance in this respect. The DPO as well as the broadcasters should be permitted to offer such discounts as they may deem fit for long term recharges. We strongly believe that the Authority should give free hand to the industry in cases where the industry is offering benefits and discounts to the consumers.

Q21. Is the freedom of placement of channels on EPG available to DPOs being misused to ask for placement fees? If so, how this problem can be addressed particularly by regulating placement of channels on EPG?

Response: There is no misuse of the freedom by the DTH operators. If the broadcasters are given the EPG of their choice, the same should come with a cost as the very demand by the broadcasters for a specific LCN is backed up by their own plan of generating huge advertising revenue against the same. Therefore fee charged by the DPOs for allocation of a specific LCN is totally justified vis-à-vis the returns to the broadcasters in getting their desired LCN.

Q22. How the channels should be listed in the Electronic Program Guide (EPG)?

Response: The Channel listing by the DPO's are being done basis their understanding of the consumer and area of operation. The channel listing is done in such a manner that it is convenient to the customers. All the DTH operators and the large MSO's have been in operation for more than 10-15 years and their respective customer base has become acquainted with the manner of listing of each operator. Further, the regulations prescribe that channels of the same genre have to be placed together and this requirement is being followed by the DTH operators. Accordingly, we believe there is no requirement for regulatory intervention as the customers do not have any concerns regarding the same. Dish TV has always believed that a light hand touch should be applied by the regulator in cases where the current practice of the operators are neither in detriment to the industry nor to the customers. Such aspects should be left to be decided by the operators.

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

Response: Definitely yes. The DPOs being the last mile operator and the face of the industry to the consumers need to amplify and manifest its offerings based on the consumer needs and viewing patterns. Also, with the advent of new technology and player like OTT and others, to compete in the market and stay relevant, the DPOs should be allowed the freedom to practice and profess their business calls to the end consumers. As stated above, the DPO's should be allowed to give such offers to the customers as they deem fit since the same is only for the benefit of the customers.

Q24. In case distributors are to be permitted, what should be the maximum time period of such schemes? How much frequency should be allowed in a calendar year?

Response: As stated above, since the media and entertainment industry becoming more and more competitive with the advent and mushrooming of

new technology and players, the very fundamental right to protect one's business interest should not be denied on any pretext. For this very reason there should not be any cap on the time period for the promotional offers and schemes by the DPOs and the same should be left to the market forces to govern.

Q26. Whether DPOs should be allowed to have variable NCF for different regions? How the regions should be categorized for the purpose of NCF?

Response: It is submitted that the current regulations have prescribed a maximum NCF which a DPO can charge from the customer. We believe that the DPO's should be given the freedom to charge such NCF as they may deem fit within the maximum permissible limit prescribed by the Tariff Order. The concept of segmented offers to the customers – i.e., different offers for different segments of the customers has been allowed by the regulator in the Telecom Sector. These offers are based on the requirements of the customers of the particular segment and competitive scenario. In all these circumstance, the benefit is always passed on to the consumer. We believe the Authority will always permit any offer of the DPO which is in the interest of the consumers.

Q27. In view of the fact that DPOs are offering more FTA channels without any additional NCF, should the limit of one hundred channels in the prescribed NCF of Rs. 130/- to be increased? If so, how many channels should be permitted in the NCF cap of Rs 130/-?

Response: As stated above, if any DPO is charging less NCF than the permitted cap or if the DPO is providing more than 100 channels within the permitted NCF, the same should not be read against the DPO. It is stated that the DPO's are offering higher channels or charging less NCF only because of the competitive scenario which is ultimately benefitting the customers. The existence of the competition will always force the DPO's to provide more channels or charge less NCF from the customers however the Authority

should not make it as the benchmark and punish the DPO for extending benefits to the consumers.

Q28. Whether 25 DD mandatory channels be over and above the One hundred channels permitted in the NCF of Rs. 130/-?

Response: As stated hereinabove, the very basis for fixing and capping the NCF by the Authority has been the operating cost of the operators. Therefore requiring the DPOs to carry additional 25 DD channels over and above the mandatory 100 channels against an NCF of Rs. 130/- would be additional burden on the DPOs and no such requirement should be mandated in this regard.

Q29. In case of Recommendation to be made to the MIB in this regard, what recommendations should be made for mandatory 25 channels so that purpose of the Government to ensure reachability of these channels to masses is also served without any additional burden on the consumers?

Response: The DPOs should not be mandated to carry any DD channels out of compulsion as the same is a cost incurring exercise and therefore the Authority must recommend doing away with such compulsory carriage of 25 DD channels by the DPOs. Having said that if at all, the Authority or the Licensor in their wisdom decide to continue with the same practice then the number of mandatory channels should be reduced to 8 channels as per Ministry of Information and Broadcasting Office Memorandum dated 26th November 2007.

Q30. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

Response: We take this opportunity to highlight certain other glaring issues prevailing in the industry which require immediate attention of the Authority.

- a. **Frequent changes in packaging by broadcasters**: The new regulatory framework does not prescribe any cap on the number of changes which a broadcaster should be entitled to make in its RIO in a particular time period. As a result of the same, almost all the major broadcasters have made number of changes in their RIO since publication of their first RIO with the advent of the new framework. The changes inter alia include changes in the composition of any bouquet(s), changes in the prices of any channel(s)/bouquet(s). With each changes, every broadcasters publish a new version of their RIO giving the option to the DPOs to sign the same. It is pertinent that the regulations provides the discretion to the DPOs to either accept or reject such new RIO. However if a DPO opts to not to sign the new version of the RIO and continue with the existing RIO, the website of the broadcasters and that of the DPO reflects different bouquets creating confusion in the minds of the subscribers about the offering of the DPOs. It is thus required that (i) there should be a cap on the number of changes which a broadcaster can make in their RIO and (ii) the old RIO should also be made available by the broadcaster on their website at least for a period of one year from the date of publication of the same.
- b. **DRP becomes more than MRP**: Another major flaw in the regulation which arises due to number of changes made the broadcasters in this RIO is the fact that due to lowering of the price of any bouquet whose composition remains the same in the revised RIO, the DRP of the said bouquets automatically become more than the MRP as declared/revised by the broadcasters. This is contrary to the provision of the Tariff Order which provides that the DRP cannot be more than the MRP of any channel/bouquet.

Suggestion: The Authority must prescribe a cap on the number of changes which a broadcaster can make in the RIO. It should also be mandated that if prices of any bouquets are changed while keeping the

same composition, the new prices so declared by the broadcasters should automatically be applicable for the DPOs.

- c. **One year lock in for LCN allocation:** The Regulations provide that once a particular LCN is assigned to a channel, the same cannot be changed for a period of one year. We wish to draw the attention of the Authority to the fact that most of the broadcasters have prescribed LCN as one of the criteria for extending the permissible discounts of 15% to the DPOs. What follows from the same is that if a DPOs assigns a particular LCN for the purpose of availing discounts from the particular broadcasters, such assignments automatically precludes the said DPOs for similar discounts from rest of the broadcasters. In such a scenario, the provision of 15% discounts becomes illusory for the DPOs which directly and adversely impacts the revenue generation capacity of the DPOs.

Suggestion: The broadcasters should be directed to do away with the practice of prescribing LCN incentive in their RIO for the purpose of provision of any discounts to the DPOs.
