Indian Broadcasting & Digital Foundation's ("IBDF") response to Telecom Regulatory Authority of India's Consultation Paper on Review of Regulatory Framework for Broadcasting and Cable services (B&CS) dated 8 Aug 2023

Preliminary Submissions

At the outset, we would like to extend our sincere appreciation to the Telecom Regulatory Authority of India (TRAI) for recognizing the issues being faced by stakeholders in the current regulatory regime for B&CS and providing an opportunity to further submit inputs through the ongoing consultation process.

We would also like to take this opportunity to thank TRAI for the initial steps taken towards recognizing the advantage of deregulation and forbearance for consumer choice and toward driving the sector to furthering quality, growth and innovation. The consumer has received the benefits of progressive guidance such as (a) continued forbearance on prices of a-la-carte TV channels offered by broadcasters (b) light-touch oversight in respect of the broadcasters' offering of TV channels in their bouquets (c) the recognition of the viability of the original ceiling on the MRP of a-la-carte channels that form part of bouquet at INR 19 via the 2022 amendment to the Tariff Order and Interconnection Regulations.

Though preliminary, these are important steps in the de-regulation of the sector. However, there are still many economic regulations that prescribe how each stakeholder must conduct their economic activities. For instance, the regulations still prescribe the manner in which the broadcasters are to price / discount their bouquets, including the composition of channels forming part of the bouquets. As acknowledged by TRAI in the Explanatory Memorandum of the Tariff Order dated November 22, 2022 on the benefits of bundling, we take this opportunity to recommend more deregulation with respect to the pricing and packaging of TV channels by broadcasters.

"The bundling discount is a norm across all the products including consumer goods, white goods etc. It provides flexibility to service providers in their offerings. ***Sometimes, bundles offer better value proposition to consumers****."*

"The Authority recognizes that bundling of services and products in various forms is widely practiced across sectors and markets. ***It is also accepted that bundling of products and services, if done in a fair manner, can create economic efficiencies, reduce operational expenses, provide consumers with wider choices and access to products and services.****"*

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As also acknowledged by TRAI Chairman himself in public forums, ***"It would be best if the industry moved towards forbearance together. It would be best for market forces to take over completely.[1]"***

With these introductory remarks and in the spirit of furthering the process of de-regulation, IBDF would like to reiterate its advocacy for the deregulation of the entire sector/industry including the issues that are highlighted in the current Consultation Paper. **This position is premised on the condition that the pending issues around prescriptive regulation are also resolved and similar de-regulation for broadcasters is brought about with regard to pricing and discounts of bouquets, formation of bouquets and the restrictions on broadcasters' incentives to DPOs**.

It is also important to recall that TRAI, in 2004, introduced economic regulations to bring about effective competition in the sector. However, in its recommendations dated October 1, 2004, TRAI also recommended a **sunset date for all price regulations** once there is sufficient competition in the market. The relevant excerpt is as given below -

> *"Sunset date of price regulation clause*
> *4.43 It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through competition.* ***Therefore, as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn.*** *TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."*

Recently, TRAI in its recommendations on "Market Structure/Competition in Cable TV services" dated September 7, 2022 opined that there is sufficient competition in the market. Given the existence of sufficient competition in the market, **we strongly recommend the removal of all economic regulations (like price caps, ceilings, discount caps and restrictions in the formation of bouquets for both broadcasters as well as DPOs) and that service providers be allowed to fix the prices of their TV channels and distribution service, and negotiate the terms and conditions of their interconnection based on market forces.**

With the availability of a variety of platforms and content, viewer choice is getting increasingly heterogenous and unpredictable. Accordingly, there is demand for more varied content, even within the same household.

With this background, and the fact that all data pertaining to the industry point to the fact that the industry is highly competitive, the next regulatory decision from TRAI will have a lasting

[1] https://www.livemint.com/industry/telecom/trai-chairman-advocates-minimal-regulation-in-broadcasting-sector-11683106410707.html

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impact on the growth prospects of service providers across the B&CS value chain and the manner of consumption of TV channels. Therefore, the time is ripe for TRAI to unlock the potential of the industry by furthering the deregulatory reforms, starting with forbearance vis-à-vis the offering, packaging and pricing of TV channels. In respect of areas where forbearance may best be implemented in a phased manner, then the framework for sunset provisions relating to interconnection and related regulatory principles should be identified and notified.

As TRAI implements more regulatory reforms, we recommend that market-driven agreements/deals/arrangements between broadcasters and DPOs be allowed/permitted. In the event the DPO and the broadcaster are not able to execute a market-driven agreement/arrangement, the option of executing a Reference Interconnect Offer is to be provided. Such RIO-based agreements should be based on the RIOs/rate cards published by the broadcasters and the subscriber numbers and target markets published by the DPOs. Importantly, there should not be any restriction on the pricing and packaging of broadcasters' RIOs. It is of utmost importance that DPOs should not be permitted to break broadcasters' bouquets as is the case currently so that inter-alia level playing field is maintained, which is in the best interests of all stakeholders including broadcasters and specially the consumers. Any such unbundling is inter-alia susceptible to misuse by DPOs, will dissuade broadcasters from providing channels in bouquets and will completely distort the present regulatory framework as there will be no sanctity of pricing of the channels / bouquets as declared by the broadcasters. As recognized by TRAI, there is adequate competition in the sector, which will ensure competitive prices for consumers. This will allow TRAI to focus its regulatory efforts towards ensuring a better quality of services.

For the growth of any sector, it is essential that the interest of all service providers is protected. However, protecting the interests of all service providers (both broadcasters and DPOs) should not be equated with protecting them from competition. Rather, from a regulator's point of view, protecting the interest of service providers should mean creating an enabling market that provides them the opportunities to survive in a highly innovative, hyper competitive and price sensitive market. For example, startup incubators are useful to recognize the risks and opportunities, providing support and levelling playing fields towards creating a business and growth-enabling environment. However, initial support mechanisms must be withdrawn in a timely manner to allow the startups to mature and be able to efficiently and independently function in competitive markets. Prescriptions in the current regulatory framework have created inefficiencies in the market by allowing a less efficient DPO to also get the same benefits/incentives as compared to a more efficient DPO. Allowing market-driven agreements/deals will incentivize broadcasters to innovate in high quality of content and DPOs to innovate and upgrade their services, both of which are in the interest of the consumers, which in turn will result in investments to the sector and the long-term growth of the sector.

As noted above, most of the regulations introduced in the B&CS sector aim to address competition-related issues and issues relating to consumer interests / choice. TRAI would still need to manage these issues and address specific instances of misconduct (if any) in a deregulated environment as well. Any allegations or complaints related to antitrust or competition issues in specific target markets/geographical areas can then be investigated by TRAI. If there is any instance of misconduct, TRAI can then introduce suitable remedial measures specific to the affected parties in these specific areas, instead of regulation which cuts across the entire industry. Such remedial measures would then be removed once effective competition is restored in the given area.

Recommendation: We, therefore, recommend that TRAI further de-regulates the sector to allow the competitive market forces to playout in the sector for the benefit of consumers and all service providers.

Keeping in mind the aforesaid, please find below our responses to the issues raised in the Consultation Paper. Unless specifically responded to, any query or issue that indicates no comment, or is left without any comment, should not be treated or deemed as acceptance of the issue by the IBDF and /or the broadcaster members, or allow any presumption on the query.

REPONSES TO ISSUES FOR CONSULTATION

Issue.1 Should the present ceiling of Rs.130/- on NCF be reviewed and revised?

- **a. If yes, please provide justification for the review and revision.**
- **b. If yes, please also suggest the methodology and provide details of calculation to arrive at such revised ceiling price.**
- **c. If not, provide reasons with justification as to why NCF should not be revised.**
- **d. Should TRAI consider and remove the NCF capping?**

Issue.2 Should TRAI follow any indices (like CPI/WPI/GDP Deflator) for revision of NCF on a periodic basis to arrive at the revised ceiling? If yes, what should be the periodicity and index? Please provide your comments with detailed justification.

Issue.3 Whether DPOs should be allowed to have variable NCF for different bouquets/plans for and within a state/ City/ Town/ Village? If yes, should there be some defined parameters for such variable NCF? Please provide detailed reasons/ justification. Will there be any adverse impact on any stakeholder, if variable NCF is considered?

Issue.4 Should TRAI revise the current provision that NCF for 2nd TV connection and onwards in multi-TV homes should not be more than 40% of declared NCF per additional TV?

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a) **If yes, provide suggestions on quantitative rationale to be followed to arrive at an optimal discount rate.**
b) **If no, why? Please provide justification for not reconsidering the discount.**
c) **Should TRAI consider removing the NCF capping for multi-TV homes? Please provide justification?**

IBDF Response – We recommend that the entire sector should be de-regulated and the concept of NCF be removed in its entirety. Initially, the concept of NCF was introduced to ensure that DPOs have a dedicated source of revenue for providing infrastructure and ensuring better quality of services.[2] However, this dedicated revenue is yet to be deployed effectively toward ensuring the quality of distribution services that is essential to support a dynamic, consumer choice ecosystem, for example, expanded channel carrying capacity and enabling app-enabled channel selection. Instead, it has resulted in a substantial increase in the share of NCF in consumer bills, accounting for 57% of the consumer bill, which leaves no or little room for the consumer to subscribe to pay TV channels. It has created an arbitrage opportunity for DPOs to charge carriage fees from smaller broadcasters and disincentivizes the DPO from carrying pay TV channels.

It is recommended that the entire sector be de-regulated, and broadcasters and DPOs be allowed to execute market-driven agreements/deals and structure their services and offerings accordingly. Market driven agreements/deals will allow DPOs to structure the subscription plans offered to consumers as per their business requirements, including different rates or plans for different markets, taking into account the broadcasters' de-regulated price and offerings, eliminating the need for charging NCF separately.

DPOs should have flexibility to structure their business in a manner where they are able to deliver the consumer's choice of TV channels, while maximizing the value and the revenue in offering the broadcasters' TV channels, across bouquets and a la carte channels as per consumer demands. This will ensure that the consumers get their choice of channels at the best possible price.

Given the competition in the market, de-regulation by removing the concept of NCF, allowing market forces to determine prices, and lifting bundling restrictions will ensure that the prices offered by broadcasters and DPOs are competitive and will also bring down the cost to the consumer substantially.

[2] In the explanatory Memorandum of the Tariff Order dated March 3, 2017, TRAI has stated that "*distributors of television channels should have dedicated sources of revenue, independent of revenue share from pay channels' subscription revenue. Accordingly, the Authority has decided to separate the charges for TV channels and network. This will ensure reasonable rate of return on investments in the existing distribution networks as well as ramp up further investment to ensure better quality of service to the subscribers.*"

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Further, market-driven pricing will automatically account for inflation, removing the need to continuously account for a revised infrastructure/service cost, and bringing about certainty in the market.

It is suggested that the focus at present should be on de-regulating the sector and enforcement of Quality of Service by DPOs as prescribed under the extant regulations. While we recommend flexibility and freedom for DPOs to structure their business, it is essential that such forbearance be implemented upon exercise of similar flexibility and freedom in price and offering by the broadcasters. Pending implementation of forbearance on price and offering, there is no cause to revise the NCF or related provisions.

It may be noted that TRAI in its EM to the 2020 Amendment Regulations had stated that they had examined the issue and that the distribution cost, which can be directly attributed to the second TV connection and onwards, is not more than 40% of the cost incurred by a DPO for primary connection. Accordingly, the Authority stipulated that DPOs would not charge more than 40% of the declared NCF for first TV connection, for any additional TV, i.e. for the 2nd TV connection, and onwards in a multi-TV home.

Issue.5 In the case of multi-TV homes, should the pay television channels for each additional TV connection be also made available at a discounted price?

- **a) If yes, please suggest the quantum of discount on MRP of television channel/ Bouquet for 2nd and subsequent television connection in a multi-TV home. Does multi-TV home or single TV home make a difference to the broadcaster? What mechanism should be available to pay-channel broadcasters to verify the number of subscribers reported for multi-TV homes?**
- **b) If not, the reasons thereof?**

IBDF Response –

In consideration of the observations on the merits that the entire sector should be de-regulated, it would allow market forces to determine the rates of bouquets and a-la-carte channels, and give broadcasters and DPOs the freedom to structure their respective services and offerings based on mutual agreements.

For the purpose of MRP of the pay TV channel, it is recommended that each set-top box (STB) should continue to be counted as one subscriber irrespective of the number of connections in each home. It is not technically feasible for broadcasters to identify the true and correct subscriber numbers for a multi-TV connection home even by way of audit. Furthermore, in case of multi-TV homes, Pay TV channels should not be made available at a discounted price. Since it

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is at the discretion of the consumers/subscribers to opt for multiple connections within the same home, therefore, there should not be any discount on MRP of pay channels on multi-TV homes.

Until such time as forbearance on price and offering is implemented for both broadcasters and DPOs, it is essential that the composition and pricing of bouquets offered by broadcasters to DPOs be maintained as per the broadcasters' offering, without any adjustment or unbundling by the DPO, to protect the value of the bouquets and their component channels.

In view of the digital addressable system, each STB is considered as a separate connection and is capable of receiving a different set of channels meaning thereby that each STB can be configured as per individual consumer's choice.

In a multi-TV home, viewers of each of the TV sets have different choice of channels and therefore, each multi-TV connection should continue to be considered as a separate and distinct additional subscriber for reporting in the MSR by the DPO.

The regulatory framework rightly recognizes each STB as one subscriber. The distributor does not share the details of the customers with the broadcasters. It is very difficult for the broadcaster to verify the multi-TV connections as the SMS-CAS systems are at the distributor level. In other words, the control is with the distributor. Further, the consumer has a right to choose separate channels for the multi-tv homes, hence it is not necessary that the customer opt for the same channels/broadcaster bouquets for his second or third TV connection. Hence, there is no rationale for offering a discount on second or subsequent connections.

Issue.6- Is there a need to review the ceiling on discount on sum of MRP of a-la-carte channels in a bouquet (as prescribed through the second proviso to clause 4 (4) of the Tariff Order 2017) while fixing the MRP of that bouquet by DPOs?

a) **If yes, what should be the ceiling on such discount? Justify with reasons.**

b) **If not, why? Please provide justification for not reviewing the ceiling**

IBDF Response –

We recommend that the B&CS sector be de-regulated and the broadcasters and DPOs be allowed to execute market-driven agreements/deals that would allow both the parties to structure their services and offerings based on their respective requirements, including negotiated discounts. De-regulation with respect to pricing of pay channels and formation and pricing of bouquet of channels by both the broadcasters as well as the DPOs, along with enforcement of QoS regulations prescribed by TRAI, will ensure that the consumers get the choice of their channels at the best price and safeguards the interest of the service providers by allowing them to negotiate.

Until the regulatory framework supports de-regulated offerings, and market-driven negotiations, it is crucial that the composition and pricing of bouquets offered by broadcasters to DPOs be maintained as per the Broadcasters' offering(s), without any adjustment or unbundling by the DPO, to protect the value of the bouquets and their component channels.

Further, until the implementation of forbearance on price and offering, there is no cause to revise the provision of discounts on DPO bouquets. The distributor gets a mandatory 20% Distribution Fee on MRP of pay channels from the broadcasters of pay TV channels as distribution fee. In addition, a distributor may also be entitled to get up to 15% incentive on the MRP of the pay channels / bouquets, based on objective and identifiable parameters. Even if the distributor gets a full 15% incentive, then also the total of the distribution fees and the incentives add up to maximum 35% of the MRP of pay channels.

The distributor should be allowed to offer discounts, but the discounts should be from the discounts the distributor gets from the broadcaster. Hence, fixation of 15% discount (assuming that distributor gets minimum 20% and a maximum 35% discount from broadcaster) is logical. Any increase in discount by distributors is not logical.

A distributor enjoys greater pricing power while distributing channels since it is allowed to offer Distributor Retail Price lower than the MRP declared by the broadcaster.

The Authority has already dealt with this issue. Para 42 of EM of 2020 Tariff Order, which summarizes the issue correctly is reproduced as below:

"The Authority has noted that in the new framework DPOs have flexibility to fix the DRP of pay channels with a condition that DRP of a channel should not be more than the MRP of that channel declared by the broadcaster. In case DPOs want to offer further discount on the bouquets, they can meet this objective by reducing the DRPs of pay channels forming the bouquet. Accordingly, the Authority has decided to continue with the cap of 15% on maximum discount permissible to DPOs while forming their bouquets of pay channels".

Hence, it can be clearly seen that there is no merit in the demand of the DPOs for higher discounts or unbundling of broadcaster's bouquets.

Issue.7 - Whether the total channel carrying capacity of a DPO be defined in terms of bandwidth (in MBPS) assigned to specific channel(s).

If yes, what should be the quantum of bandwidth assigned to SD and HD channels. Please provide your comments with proper justification and examples.

Issue.8 - Whether the extant prescribed HD/SD ratio which treats 1HD channel equivalent to 2SD channels for the purpose of counting number of channels in NCF should also be reviewed?

a. If yes, should there be a ratio/quantum? Or alternatively should each channel be considered as one channel irrespective of its type (HD or SD or any other type like 4K channel)? Justify with reasons.

b. If no, please justify your response.

Issue.9 - What measures should be taken to ensure similar reception quality to subscribers for similar genre of channels? Please suggest the parameter(s) that should be monitored/ checked to ensure that no television channel is discriminated against by a DPO. Please provide detailed response with technical details and justification.

IBDF Response – Innovations and advancements in technology today enable DPOs to further compress Standard Definition ("SD") and High Definition ("HD") channels, allowing more and more channels to be carried on the DPO's network. With digitization entering its tenth year, the capacity for distribution and quality of service is expected to have advanced commensurately. We recommend that the DPOs' registration as the primary distribution operator ought to be evaluated against an enhanced channel carrying capacity to ensure that all registered TV channels (i.e. TV channels which have been granted uplinking and/or downlinking permissions) can be carried by the DPO on its platform**. Additionally, it should be mandated that the privilege of "*must provide*" can only be availed by the DPO if the DPO has the capacity to carry all registered TV channels.**

The total channel carrying capacity in terms of bandwidth (in MBPS) assigned to specific SD and HD channel(s) does not need to be defined, since advancements in compression technologies in future may allow even more channels within the same bandwidth. Further, the availability of higher resolution content such as 4K UHD and 8K etc. may change the capacity and requirements from time to time. Therefore, it would be incorrect to prescribe any bandwidth requirements/fixed bit rates, to determine the channel carrying capacity.

SD and HD channels can be compressed to different levels depending upon the technology that a DPO uses to retransmit the channels on its platform. Therefore, an SD channel cannot be the basis for defining the amount of space (in terms of number of channels) that an HD channel would take on a DPO's network.

Rather, we recommend that the DPO be mandated to retransmit signals of broadcasters' channels in the quality as received by the DPO from the broadcasters, without any variance (i.e. input quality = output quality). The broadcasters invest heavily in technology to provide channels to consumers in the best possible quality, however the purpose is lost if the said quality is not maintained by the DPO while retransmitting the channels to the consumer.

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Issue.10- Should there be a provision to mandatorily provide the Free to Air News / Non-News / Newly Launched channels available on the platform of a DPO to all the subscribers?

a) **If yes, please provide your justification for the same with detailed terms and conditions.**
b) **If not, please substantiate your response with detailed reasoning.**

IBDF Response –

As highlighted above, we recommend that the broadcast television sector be de-regulated. Accordingly, the channels provided on a DPO's platform should be based on market-driven agreements between broadcasters and DPOs and in line with consumer demands.

In any event, with technological advancements today, the DPOs ought to have the ability to carry a large number of TV channels and have been incentivized to enhance their ability to carry and make available all TV channels, whether pay or free-to-air (FTA). The DPOs' registration for broadcast distribution ought to be evaluated against an enhanced channel carrying capacity to ensure that all registered TV channels (i.e., Pay and FTA channels which have been granted uplinking and/or downlinking permissions) can be carried by the DPO on its platform.

Either way, pending DPOs completion of upgrading their system to capacity for making available 100% of the TV channels in the country, there is NO reason to prioritize availability of one set or category of channels against others.

Any mandatory provisioning of TV channels would distort the offering(s), contradict the principles of neutrality and would result in not providing effective choice to consumers. It is inter-alia not in the consumer interests if only a certain category of channels are to be necessarily pushed to the DPOs / viewers.

As such, all the permitted channels including FTA News / Non-News / Newly Launched channels shall be mandatorily available on the DPO platform so that the consumer can avail the channels as per his/her choice.

Issue.11- Should Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 be made applicable to non-addressable distribution platforms such as DD Free Dish also?

Issue.12- Should the channels available on DD Free Dish platform be mandatorily made available as Free to Air Channels for all the platforms including all the DPOs?

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Issue.13- Whether there is a need to consider upgradation of DD Free Dish as an addressable platform? If yes, what technology/ mechanism is suggested for making all the STBs addressable? What would be the cost implications for existing and new consumers? Elaborate the suggested migration methodology with suggested time-period for proposed plan. Please provide your response, with justification.

IBDF Response –

We believe that the Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 should not be made applicable to non-addressable distribution platforms such as DD Free Dish. DD Free Dish is operated by Prasar Bharti which is a statutory autonomous body created under the Prasar Bharti Act, 1990. Under the said act, Prasar Bharti has been vested with wide powers and functions to organize and conduct public broadcasting services[3].

Prasar Bharti and private DPOs operate in a different regulatory space, cater to different markets and have different objectives. The basic differentiating factor between DD Free Dish[1] and private DPOs is that DD Free Dish provides its services to the public for free, under a public broadcast mandate and within the remit of a statute. Since the services provided by DD Free Dish are free of cost, they benefit consumers who are not able to afford pay TV services provided by DPOs. In our view, any mandate to provide channels which are available on DD Free Dish platform to private DPOs on an FTA basis would be erroneous and unfounded.

Treating Prasar Bharti the same as private DPOs would amount to treating unequals equally. DD Free Dish is a free-to-air satellite TV provider which enables any person to view channels without payment of monthly subscription fees unlike private DPOs. It requires only one-time infrastructural fees for procuring a Set-Top-Box. Since DD Free Dish is free for its subscribers, signals of the channels carried on it are unencrypted. Prasar Bharti is not a licensee under the MIB's licensing regime applicable to private DPOs and is regulated through the Prasar Bharti Act only. Private DPOs operate on an MIB license and charge recurring monthly fees from their subscribers, even for accessing FTA channels on a purchased STB. Private DPOs obtain rights to retransmit signals of broadcasting channels by executing RIOs with broadcasters and are governed by TRAI Regulations.

Upgradation of DD Free Dish to an addressable platform will have cost implications for existing and new consumers. Presently, the signals of DD Free Dish are unencrypted, and the STBs through which DD Free Dish services are accessed do not have decryption capabilities. This allows the

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[3] Section 12 of the Prasar Bharti Act -

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consumer to access DD Free Dish services at a minimal cost (small initial investment for the STB), while the channel signals are free. As observed in the Consultation Paper the main function of Prasar Bharati is to organize and conduct public broadcasting services to inform, educate and entertain the public. The additional cost to consumers of upgrading DD Free Dish to an addressable platform will hinder access to public broadcasting. The additional burden will not be in the interest of the consumers. The comparison between a private DPO and a platform whose primary aim is public broadcasting is untenable, erroneous and baseless.

Issue.14- **In case of amendment to the RIO by the broadcaster, the extant provision provides an option to DPO to continue with the unamended RIO agreement. Should this option continue to be available for the DPO?**

a) **If yes, how the issue of differential pricing of television channel by different DPOs be addressed?**
b) **If no, then how should the business continuity interest of DPO be protected?**

Issue.15 - **Sometimes, the amendment in RIO becomes expedient due to amendment in extant Regulation/ Tariff order. Should such amendment of RIO be treated in a different manner? Please elaborate and provide full justification for your comment.**

IBDF Response –

De-regulation of the entire sector and execution of market-driven agreements/deals between the broadcaster and DPO will enable the parties to incorporate any amendments that are required.

Until the complete de-regulation of the entire sector takes place, it is recommended that in case of amendment to the RIO by the broadcaster, the DPO should be required to transition to the amended RIO. This will ensure that there is no separate benefit accorded to any DPO under the garb of an un-amended RIO and will ensure uniform implementation of the amended regulations along with uniform benefits being available to all consumers. Further, if the amendment in RIO becomes expedient due to amendment in extant Regulation/ Tariff order (change-in-law), then it is imperative to ensure and mandate that such amendment to the RIO would not interfere with the end date / expiry date of interconnection agreements that are based on the prevailing RIO and that the agreements, basis amended RIO (due to any such change-in-law, shall be co-terminus with the agreement existing as on date of introduction of amendment to Regulation/ Tariff order).

Issue.16 - **Should it be mandated that the validity of any RIO issued by a broadcaster or DPO may be for say 1 year and all the Interconnection agreement may end on a common date say 31st December every year. Please justify your response.**

IBDF Response –

We recommend that the entire sector be de-regulated and accordingly the DPO and broadcaster be allowed to execute market-driven agreements/deals and the validity of such market-driven agreement/deals be for a 'term' as agreed between Broadcaster and DPO, unless amended. A common expiry date may make it difficult for any amendment, including change in channel launch, pricing etc. to be accommodated and given effect. It would also not be feasible for all DPOs and broadcasters to execute agreements/ amendments at such short intervals to accommodate all such changes.

Issue.17 - **Should flexibility be given to DPOs for listing of channels in EPG?**

a) **If yes, how should the interest of broadcasters (especially small ones) be safeguarded?**

b) **If no, what criteria should be followed so that it promotes level playing field and safeguard interest of each stakeholder?**

Issue.18 - **Since MIB generally gives permission to a channel in multiple languages, how the placement of such channels may be regulated so that interests of all stakeholders are protected?**

IBDF Response –

The extant regulations provide that all television channels of the same language within the same genre shall appear together consecutively in the electronic programme guide (EPG), while providing some flexibility to DPOs. We recommend that TRAI while monitoring the compliance of the existing regulations, should mandate the DPO to ensure that the interest of any broadcaster is not impacted adversely, nor does the flexibility become a tool in the hands of the DPO that enables the DPO to place the channel of one broadcaster favourably as compared to another broadcaster. It is imperative for the DPO to ensure that once channel language and genre is defined by the Broadcaster then the DPO shall put the channel as per the defined language and genre. In the event, DPO is in non-compliance of EPG regulations there has to be a mechanism to hold them responsible/liable for the same.

It is requested that the regulator enable the subscribers' convenience and monitor that some DPOs do not misuse the flexibility granted to them by the current regulations. Furthermore, While the regulations require all channels of the same language and genre to be stacked together in the

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EPG, this is not followed when stacking the Logical Channel Numbers (LCNs). For example, the EPG of a DPO may show all Tamil entertainment channels together, but when flipping through LCNs, the Tamil entertainment channels may be scattered on different LCNs i.e., amongst channels of different languages and genres. This misuse inter-alia creates the following problems:

(a) Subscribers find it difficult to browse channels of the same language and genre unless they use the EPG.

(b) This causes discrimination amongst channels of the same language and genre as some DPOs are able to discriminate between channels of the same language and genre by allocating arbitrary LCNs specially in case of a dispute with a broadcaster.

It is important to ensure that the flexibility given to DPOs is not misused and does not harm the interests of broadcasters or consumers. Further, it should not be used by some DPOs to discriminate between broadcasters. In view of the foregoing, we recommend that:

(a) Safeguards should be built into the regulations to mandate that all channels of the same genre and language be listed together and numbered consecutively / sequentially in both the LCN and EPG.

(b) TRAI should require DPOs to report their channel line-up in the EPG and LCN to TRAI and relevant broadcasters to monitor compliance and avoid misuse by smaller and independent DPOs.

Issue.19 – **Should the revenue share between an MSO (including HITS Operator) and LCO as prescribed in Standard Interconnect Agreement be considered for a review?**

a) If yes:

i. Should the current revenue share on NCF be considered for a revision?

ii. Should the regulations prescribe revenue share on other revenue components like Distribution Fee for Pay Channels, Discount on pay channels etc.? Please list all the revenue components along-with the suggested revenue share that should accrue to LCO.

Please provide quantitative calculations made for arriving at suggested revenue share along-with detailed comments /justification.

b) If no, please justify your comments.

IBDF Response –

No comment.

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Issue.20 – **Should there be review of capping on carriage fee?**

a. **If yes, how much it should be so that the interests of all stakeholders be safeguarded. Please provide rationale along with supporting data for the same.**
b. **If no, please justify how the interest of all stakeholders especially the small broadcasters can be safeguarded?**

Issue.21– To increase penetration of HD channels, should the rate of carriage fee on HD channels and the cap on carriage fee on HD channels may be reduced. If yes, please specify the modified rate of carriage fee and the cap on carriage fee on HD channels. Please support your response with proper justification.

Issue.22 – **Should TRAI consider removing capping on carriage fee for introducing forbearance? Please justify your response.**

IBDF Response –

Today with technological advancements, DPOs have the ability to carry a large number of channels. Artificial scarcity of channel carrying capacity created by DPOs forms the basis of carriage fees which in turn acts as a deterrent, disincentivizing DPOs from enhancing their ability to carry more channels. DPOs' registration as the distribution operator ought to be evaluated against an enhanced channel carrying capacity to ensure that all registered TV channels (i.e. TV channels which have been granted uplinking and/or downlinking permissions) can be carried by the DPO on its platform. It is not desirable for the sector regulator to provide for any prescription or restriction that allows for arbitrage. Therefore, we recommend that the concept of carriage fees should be removed.

Additionally, it should be mandated that the privilege of "*must provide*" can only be availed by the DPO if the DPO has the capacity to carry all registered TV channels. Until deregulation and forbearance are holistically implemented, and until DPOs are not mandated to upgrade their system to 100% carriage of all the TV channels in the country, capping on the carriage fees should continue as a deterrent against demands for unusually high carriage fees and the regulator strictly monitor the enforcement of this.

Pending forbearance, the regulator must ensure proper implementation of the mandate for DPO's upgraded systems and consider starting with phasing out the concept of carriage fees. Since the DPO has ample consideration from various sources of revenues (e.g., distribution fees for pay channels, incentives, revenue from platform services, marketing fees, placement fees, landing page fees, etc.), in addition to the NCF, which was in itself is meant to address needs *inter-alia* towards network, operational and technical investments and expenses. In view of the competition in the market, forbearance and a market-driven regime will allow the parties to correct imbalances caused by prescription on tariffs and interconnection.

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Issue.23 – **In respect of DPO's RIO based agreement, if the broadcaster and DPO fail to enter into new interconnection agreement before the expiry of the existing agreement, the extant Interconnection Regulation provide that if the parties fail to enter into new agreement, DPO shall not discontinue carrying a television channel, if the signals of such television channel remain available for distribution and the monthly subscription percentage for that television channel is more than twenty percent of the monthly average active subscriber base in the target market. Does this specified percentage of 20 percent need a review? If yes, what should be the revised prescribed percentage of the monthly average active subscriber base of DPO. Please provide justification for your response.**

IBDF Response –

No, there should not be any revision of the specified percentage.

Issue.24 – **Whether the extant charges prescribed under the 'QoS Regulations' need any modification required for the same? If yes, justify with detailed explanation for the review of:**

a. **Installation and Activation Charges for a new connection**

b. **Temporary suspension of broadcasting services**

c. **Visiting Charge in respect of registered complaint in the case of DTH services**

d. **Relocation of connection**

Any other charges that need to be reviewed or prescribed.

IBDF Response –

No comment.

Issue.25 – **Should TRAI consider removing capping on the above-mentioned charges for introducing forbearance? Please justify your response.**

IBDF Response –

No comment

Issue.26 – **Whether the Electronic Programme Guide (EPG) for consumer convenience should display**

a. MRP only

b. MRP with DRP alongside

c. DRP only?

Justify your response by giving appropriate explanations.

IBDF Response –

The fundamental purpose of the regulation is that all channels are made available on non-discriminatory basis on MRP as defined by the broadcaster. Hence, display of MRP on EPG makes it transparent to the consumer on the price being charged by the broadcaster. It is recommended that the EPG should only display the amount being charged to the customer for subscribing to the said channel/bouquet. Inclusion of multiple details will result in cluttering of the EPG and will not only cause inconvenience to the consumer but may also confuse the consumer. Having said that, in case DPO may have chosen DRP lower or different than the MRP, then it is imperative that the EPG should display MRP with DRP alongside.

Further, it should be made mandatory for DPOs to place each individual channel on the actual LCN number as LCN rank displayed in the EPG. This will enable the consumer/subscriber to have a seamless viewing experience.

Issue.27 – **What periodicity should be adopted in the case of pre-paid billing system. Please comment with detailed justification.**

IBDF Response –

It is recommended that the periodicity of the billing system in case of both pre-paid as well as postpaid should be uniform, i.e., 1 calendar month. The ability of pre-paid billing should also be available to the broadcaster, who makes substantial investments while acquiring content. Presently, the broadcaster has a postpaid monthly billing cycle *vis-a-vis* the 30-day pre-paid billing cycle available to the DPO. We recommend that this disparity be removed by prescribing a uniform period of 1 calendar month.

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Issue.28 – Should the current periodicity for submitting subscriber channel viewership information to broadcasters be reviewed to ensure that the viewership data of every subscriber, even those who opt for the channel even for a day, is included in the reports? Please provide your comments in detail.

IBDF Response –

To ensure that the monthly subscriber reports reflect the true and correct subscriber base, it is imperative that the minimum subscription period of 1 calendar month should be prescribed for any channel/bouquet at consumer level to maintain parity with the billing cycles of broadcasters & DPOs and DPOs & consumers.

Additionally, a period of 1 month will ensure that the subscriber base for a channel includes visibility to grasp subscribers who may have opted the said channel even for 1 day, which is not available in subscriber reports being submitted presently for the 7th, 14th, 21st and 28th of a month. Therefore:

1. Subscriber reports should be submitted on a monthly basis, displaying subscriber count for each channel/bouquet for each day/month.

2. Instead of subscriber report being declared on the 7th, 14th, 21st and 28th of the month, it should be amended to ensure that the report is being declared for each day of the month.

The extant regulatory framework as well as rates prescribed by broadcasters are in respect of channels / bouquets on a per subscriber 'per month' basis. These monthly rates are based on the expectation that a channel / bouquet would be subscribed to for at least a month. There is no concept of daily subscription / rates or scope to unbundle rates declared by broadcasters. It is submitted that any attempt to unbundle such rates or attempt to ascertain derived rates, to state the least, is unfair to broadcasters. Further, they are also susceptible to gross misuse and exploitation by some DPOs. In this regard, it may be noted that such DPOs may inter-alia resort to activation of relevant channels only at the time of broadcast of marquee properties (such as, movie premiers, award shows and specific matches) so that subscribers receiving relevant channels in such a manner are not required to be reported to broadcasters in their monthly subscriber reports. As such, minimum subscription of each channel and/or bouquet should be One (1) month from the date of commencement of relevant subscription. To ensure that such DPOs do not play mischief on broadcasters, they should be compelled to report daily subscribers as well, which should be subject to verification during audits.

Issue.29 – **MIB in its guidelines in respect of Platform Services has *inter-alia* stated the following:**

a. **The Platform Services Channels shall be categorised under the genre 'Platform Services' in the EPG.**

b. **Respective MRP of the platform service shall be displayed in the EPG against each platform service.**

c. **The DPO shall provide an option of activation /deactivation of platform services.**

In view of above, you are requested to provide your comments for suitable incorporation of the above mentioned or any other provisions w.r.t. Platform Services channels of DPOs in the 'QoS Regulations'.

IBDF Response –

Platform Services ("PS") are programming services offered by DPOs exclusively only to their own subscribers and are not subject to any economic regulations. PS channels compete directly with broadcasters' TV channels as both PS and broadcaster's TV channels are carried by the DPO over the DPO's network to the DPO's subscribers. The distinguishing factor between PS channels offered by DPOs and broadcasters' TV channels is the entity creating or acquiring the programme/content to be carried. While the PS are subject to light touch regulations, broadcaster's TV channels are highly regulated. We recommend that neither DPOs' PS channels nor broadcasters' TV channels be subject to economic regulations, and that the regulator rationalize to withdraw the restrictions that are presently applicable to broadcasters' TV channels and continue to de-regulate the entire sector.

It is recommended that the scope of bringing the Platform Services within the QoS should be restricted only to the quality of the service and the EPG, the LCN listing and the related descriptors. In addition, it has been observed that a broadcaster's channel is shown on the LCN meant for a PS in the EPG. This way, DPO avoids reporting of the pay channel in the subscriber report. It is important that DPOs adhere to the regulations and therefore suggest that the TRAI introduce penal provisions on DPOs who do not adhere to these provisions.

In so far as issue 29(a) of the Consultation Paper is concerned, it is important to mandate that safeguards are built in to ensure quality of service and that all platform services of the same genre and language are listed together and numbered consecutively / sequentially in both the LCN and EPG. This will ensure that platform services are not scattered in EPG and LCN in such a manner that they are scattered amongst channels being retransmitted pursuant to MIB's downlinking permission. Doing this will inter-alia ensure that the interests of broadcasters and consumers are protected, and that DPOs do not resort to discriminating broadcasters' channels vis-à-vis their own platform services.

Issue.30 – Is there a need to re-evaluate the provisions outlined in the 'QoS Regulations' in respect of:

> **a. Toll-free customer care number**
> **b. Establishment of website**
> **c. Consumer Corner**
> **d. Subscriber Corner**
> **e. Manual of Practice**
> **f. Any other provision that needs to be re-assessed**
> **Please justify your comments with detailed explanations.**

IBDF Response –

The QoS Regulations provisions outlined above are important tools for consumers and the entire ecosystem (including broadcasters). They also help to increase transparency and reduce disputes between operators and consumers. Almost all large DPOs comply with these regulations, and TRAI should not allow non-compliant DPOs to dictate terms and force a rollback of such important stipulations.

It is recommended that TRAI should focus on ensuring effective implementation and compliance of the existing QoS before re-evaluating the provisions of the present QoS regulations. It would be premature to hold a re-evaluation without implementing the present regulations as the impact of the regulations can only be assessed once they have been implemented by the DPOs. While further deregulating the B&CS sector, the aforesaid provisions are vital for ensuring that the interest of the consumers is protected and the same allow consumer choice/transparency.

Issue.31– Should a financial disincentive be levied in case a service provider is found in violation of any provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?

a. **If yes, please provide answers to the following questions:**

i) What should be the amount of financial disincentive for respective service provider? Should there be a category of major/ minor violations for prescription of differential financial disincentive? Please provide list of such violation and category thereof. Please provide justification for your response.

ii) How much time should be provided to the service provider to comply with regulation and payment of financial disincentive. and taking with extant regulations/tariff order?

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iii) In case the service provider does not comply within the stipulated time how much additional financial disincentive should be levied? Should there be a provision to levy interest on delayed payment of Financial Disincentive?

1. **If yes, what should be the interest rate?**
2. **In no, what other measures should be taken to ensure recovery of financial disincentive and regulatory compliance?**

iv)In case of loss to the consumer due to violation, how the consumer may be compensated for such default?

b. **If no, then how should it be ensured that the service provider complies with the provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?**

IBDF Response –

Financial disincentives, when effectively implemented, can be a valuable tool to address violations of regulatory provisions by service providers. However, it is crucial that such disincentives be preceded by comprehensive monitoring of compliance. For example, while the existing regulations provide for disincentives for core issues of audit, the monitoring and efficacy of these ought to be reviewed with the view to realizing their regulatory objectives.

It is recommended that TRAI track and ensure adequate compliance and implementation of the existing regulations.

We believe that in order to ensure orderly growth of the sector and safeguard consumer interest, it is essential that the ecosystem be de-regulated. It is recommended that TRAI should move towards such de-regulation, where market forces are allowed to play, and ensure that the terms of the agreements executed between service providers are strictly complied with, with financial disincentives brought in to address other regulatory violations.

Further, where financial disincentives and blacklisting are provided for regulatory violations, it must be without prejudice to any other rights that the broadcaster may have, including but not limited to the broadcaster's right to disconnect under the Interconnect regulations). The financial disincentives/penalties to DPOs should be substantial for non-compliance.

Issue.32 – **Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.**

IBDF Response –

In addition to our responses, we would like TRAI to consider the following -

(a) Until such time that the sector is de-regulated we recommend that the broadcaster led audit under regulation 15(2) of Interconnection Regulations 2017 should not be subject to any conditions. This is essential as the broadcasters are dependent on DPOs for the number of subscribers for a channel/bouquet which in turn impacts the revenue of the broadcaster. Presently, Regulation 15 (2) of the Interconnection Regulations 2017 provides that in the event the broadcaster is not satisfied with the audit report received under sub-regulation (1) OR if in the opinion of a broadcaster the addressable system being used by the distributor does not meet requirements, it shall be permissible to the broadcaster to conduct an audit. It is recommended that the broadcaster should be allowed to conduct an audit under regulation 15 (2) of the Interconnect Regulations 2017 in case the broadcaster deems it essential to ascertain the true and correct subscriber base.

(b) Bringing the commercial subscriber under the extant regulatory framework, and holding a consultation on this matter at the earliest.

(c) We urge the Authority for removal of the restriction on clubbing FTA and pay channels in bouquets. This restriction is unnecessary, especially since FTA channels are already provided free of cost. Further, their inclusion in broadcaster bouquets and subsequent removal from broadcaster bouquet (say on account of discontinuation of such FTA channel) will have no impact on price of bouquet. Allowing inclusion of FTA channels in bouquets would *inter-alia* ensure better carriage of channels and eliminate the need for broadcasters to change their business models.

(d) HD and SD variants of the same channel should be allowed to be part of the same bouquet. This was allowed before the NTO, but the NTO disallowed it. Further, permitting HD and SD variants of the same channel to be part of the same bouquet would *inter-alia* reduce market distortion, increase choice for consumers, increase the number of HD subscribers, and eliminate the need for HD viewers to choose between HD and SD.

(e) The price and offerings of TV channels ought to be determined by the consumer choices and market-driven requirements and agreement. In line with this, there should be no restriction on the number of bouquets that a broadcaster can issue. It needs to be borne in mind that broadcasters operate in different regions and have channels in various languages. In the absence of restriction on number of bouquets, broadcasters will be able to curate need-based bouquets that are relevant to / cater to different regions and/or languages. It is submitted that ultimately, for a particular language / region, only certain specific bouquets are relevant, and that restriction on number of bouquets create hindrance for broadcasters to create varied channel offering. Further, restrictions on the number of bouquets stifle innovation as they are unable to offer new and different bouquets to meet the changing needs of consumers.