

November 15, 2016

Telecom Regulatory Authority of India ("TRAI")
Mahanagar Doorsanchar Bhawan,
Jawaharlal Lal Nehru Marg
New Delhi – 110002

Ref: Consultation paper dated 10.10.2016 on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 ("Consultation Paper").

Dear Sir,

We, IndiaCast Distribution Private Limited, show our appreciation to the opportunity extended to the stakeholders to participate, by way of this Consultation Paper and the cause thereof.

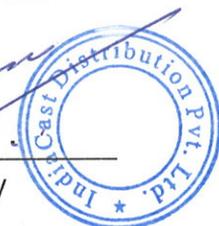
We underline our preliminary response and views taking into consideration the immediate interest of the subscribers, of which TRAI is the custodian.

In context of the same and due to paucity of time (in view of TRAI's deadline to file responses to Consultation Paper), please find attached herewith our preliminary response on the issues as present in the present Consultation Paper for your kind consideration.

For any further clarification you may write to us or contact us.

By way of abundant caution we state that the present response is not, and is not intended to be, a complete statement of the facts or law as they may pertain to this matter or of our position, rights or remedies, legal or equitable, all of which are specifically reserved by us.

Yours Sincerely,
For IndiaCast Distribution Private Limited


Authorized Signatory 



**PELIMINARY COMMENTS OF INDIACAST DISTRIBUTION PRIVATE
LIMITED TO THE CONSULTATION PAPER**

**ON DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE
SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016**

DATED OCTOBER 10, 2016

PRELIMINARY COMMENTS OF INDIACAST DISTRIBUTION PRIVATE LIMITED ON THE DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016 DATED OCTOBER 10, 2016

TRAI had issued Consultation Paper on Tariff Issues related to TV services dated January 29, 2016 and sought comments from the stakeholders on a number of issues Tariff models, channel pricing framework, channel pricing methodologies, niche channel and its tariff, pricing of HD channels, manner of offerings and other related issues to broadcasting tariff including carriage fee, variant channels, channel visibility and Electronic Program Guide (EPG), audit and reporting issues etc. IndiaCast Distribution Private Limited (“**IndiaCast**”) had submitted its response dated March 11, 2016, and had given its perspective and in detail the reasoning behind the issue wise response.

In furtherance of the responses received by TRAI from various stakeholders, TRAI has issued the present Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 (“**Draft Tariff Order**”) dated October 10, 2016 and has invited further comments on the draft tariff order, which postulates the different provisions pertaining to tariff issues like manner of offering channels by broadcasters, genres of television channels, cap on the maximum retail prices for pay channels in addressable systems, manner of offering of channels by the distributors of television channels, etc.

We wish to respond to the points raised by TRAI in the present Draft Tariff Order in order to suggest TRAI for further deliberation on the shortcomings of the present Draft Tariff Order and the manner in which it will affect the rights and choices of the consumers and other stakeholders.

Our comments on Draft Tariff Order are without prejudice to the submissions and contentions of IndiaCast, including without limitation the submissions in relation to the pending/ongoing litigations. We reserve our rights to modify, change and/or submit further comments to clarify our position in this regard. Further, our comments to the Draft Tariff Order are in addition to and not in derogation of our submissions made in our response dated March 11, 2016 that was filed by us to TRAI’s consultation paper titled ‘Consultation Paper on Tariff Issues related

to TV Services' dated January 29, 2016. By way of abundant caution, we state that submissions made in the said response are reiterated and may be deemed to be forming part of the present comments, and that they are not being repeated herein for the sake of brevity.

TRAI has issued the present Draft Tariff Order prescribing the manner of offering channels by broadcasters, genre of television channels, cap on the Maximum Retail price ("**MRP**") of the channel in addressable systems, manner of offering of channels by the distributor of television channels to subscribers, uniformity in distribution of channels to all the distributors within the relevant geographical areas, re-classification of genres, genre based price cap, reporting requirements and appointment of compliance officer and its obligations.

TRAI is aware that most of the stakeholders including the broadcasters, have recommended a regulated RIO model to the consultation paper issued by TRAI which also met the criteria of transparency and non-discrimination. On the contrary, TRAI has chosen to adopt, the Distribution Network Model without providing any justification/basis as to why a model preferred by few and opposed by most of the stakeholders has been proposed in the Draft Tariff Order. TRAI will appreciate that the industry has adopted the regulated RIO model and the agreements are being executed amongst stakeholder in a smooth manner. Implementation of the Draft Tariff Order will not only disrupt the present construct but will also introduce an untested regime creating uncertainty for the industry. There is hardly any precedence across the globe where a MRP based model is in practice.

TRAI should have considered that implementation of The Standard of Quality of Services and Consumer Protection (Digital Addressable System) Regulation, 2016 ("**Draft QoS**") is the pillar for the successful implementation of the Draft Tariff Order. Hence, unless the foundation is strengthened by implementation of the Draft QoS (with proposed amendments), the Draft Tariff Order (with proposed amendments) cannot be made effective, let alone be successful for the optimum benefit of all stakeholders, including end consumers. In this regard, it is submitted that verifiable implementation of the Draft QoS by TRAI ought to be a condition precedent before any attempt is made by TRAI to implement the Draft Tariff Order and/or the draft interconnection regulations. It is also submitted that unless TRAI ensures existence of proper infrastructure and compliance of Draft QoS at the end of distributors of TV channels,

any attempt to implement the Draft Tariff Order and/or draft interconnection regulations will have an adverse and cascading effecting on all stakeholders. In this regard, it is submitted that TRAI does not seem to have done any exercise on a pan-India level to ascertain whether or not distributors of TV channels are in a position to implement the Draft QoS Regulations, or for that matter to evaluate if distributors of TV channels are even following the existing QoS regulations framed by TRAI.

At the outset, we wish to express our view that the Draft Tariff Order has failed to address the concerns raised by various stakeholders during the first round of the consultation process. The Draft Tariff Order is not workable in its present form. There are various issues and concerns which have remained unaddressed and that may need further deliberation and clarification by TRAI, by taking into account the views and concerns raised by the stakeholders which have been detailed in the submissions below. Besides the issues raised by TRAI in its Consultation Paper dated January 29, 2016, some suggestions were also advanced by the broadcasters which ought to have been highlighted in this Consultation Paper (*such as, the issue of commercial subscriber*), but were not taken into consideration at that stage, however, it was anticipated that those suggestions will be appropriately examined and dealt with in the Draft Tariff Order. But, TRAI has once again not considered those suggestions and has not provided any explanation for not considering the same. On the contrary, TRAI has incorporated certain elements in the Draft Tariff Order which were not a part of consultation process (*such as the concept of 'relevant geographical area', 'Premium Channel', etc.*). The Draft Tariff Order in its present form is arbitrary and does not create an enabling environment ensuring transparency, non-discrimination, consumer protection and growth of the sector. Further, most of the observations in the Draft Tariff Order have not been backed by any relevant or verifiable data.

Whilst the intent of the Draft Tariff Order is to provide the consumer with the benefit of choice, but it seems that TRAI has not considered that in the event the Draft Tariff Order is passed and notified in its present form then, the majority of consumers may either have to pay more fees to subscribe to the same number of channels or be compelled to subscribe to less number of channels, thereby substantially decreasing the choice of both content and channels to the consumers. Further, there is no study available that the consumer is

interested in watching or exercising choice of a lesser number of channels. It further assumes that the consumer is desirous of exercising a reduction in the number of channels. Similarly, TRAI has proposed to curtail the right of sampling and choices of the subscriber. It is noteworthy that at a subscriber level, subscriber makes choices amongst various programs and samples various channel before finalizing the program it is keen to watch or the program of his choice. By way of this model, the right of subscriber of sampling and access to variety of content, which is critical for innovative content.

TRAI is also aware that the infrastructure at distributor of TV channel's level is not yet developed enough to address the need of subscribers. Also, since there is bundling of channels at all the level both at broadcaster and distributor of TV channels' level, the offering of various broadcasters and distributors of TV channels may confuse the subscribers rather than helping him in obtaining a suitable choice of channels.

Additionally, TRAI has not considered certain other ambiguities which are as detailed below:-

A. The present Draft Tariff Order is violative of Article 14 & 19 of the Constitution of India, 1950:

- (i) TRAI, while issuing the present Draft Tariff Order, has failed to consider the issues relating to tariff freezing owing to the contentious litigations that have circumscribed these issues in the past. E.g., Appeal No. 1(C) of 2014 before the Hon'ble TDSAT and Civil Appeal Nos. 5159-5164 of 2015 before the Hon'ble Supreme Court of India, whereby vide Orders dated 04.08.2016, the Hon'ble Courts have, while setting aside the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014, directed TRAI to conduct the entire exercise de-novo especially in respect of the pricing of channels. TRAI, on the other hand, failing to comply with the said directions of the Hon'ble TDSAT and the Hon'ble Supreme Court of India, has once again relied upon the rates existing and frozen in the year 2004 with intermittent increases, and provided an arbitrary formula of 1.2 times of the said frozen rates. Hence, it is our submission that TRAI should have a re-look and re-consider the rates, failing

which, it would be violative of Article 14 of the Constitution of India, being arbitrary and baseless. TRAI should conduct a holistic and judicious exercise on tariff for television channels.

- (ii) TRAI has failed to consider that its Press Release No. 28/2016 dated May 9, 2016 (*wherein it has held that there is a healthy growth in the industry with rise in revenues outstripping the increasing inflation over the years and concluded that inflation linked provided earlier was not required*) is also pending adjudication before the Hon'ble TDSAT and TRAI should have refrained from touching upon the issue or should have waited till the adjudication of the dispute before the Hon'ble TDSAT.
- (iii) TRAI has defined the term "subscriber" to mean a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber. TRAI has erroneously ignored and has not considered the distinction between the 'commercial subscriber' and the 'ordinary subscriber' despite itself being a party to the adjudication which is pending before Hon'ble TDSAT on the said issue. Further, TRAI has not given any explanation whatsoever for deviating from its past understanding that there is a need to classify 'commercial subscribers' separately from 'ordinary subscribers'. Proper procedure has also not been followed for bringing in a new structure, de-hors the historic position adopted by TRAI nor has TRAI given any explanation as to why is it departing from the established regime which is pending adjudication.

B. The present Draft Tariff Order is arbitrary in nature:

- (i) TRAI has arbitrarily eliminated the distinction between 'commercial subscriber' and 'ordinary subscriber', without following the due process of law. TRAI has not done any consultation on whether there is a need to completely do away with the

distinction that legally exists between the 'commercial subscriber' and the 'ordinary subscriber'.

- (ii) TRAI has neither conducted nor published any study with respect to pricing of genre, maximum discounting of bouquet, rates of High Definition (HD) channels and minimum distribution fee. In the absence of any such study, the fixation of such rates/discounts seems arbitrary.
- (iii) No methodology has been adopted by TRAI to determine the rates of the HD channels. It is not clear as to how TRAI has arrived at the position of capping the rates of the HD channels at 3 times the rates of the corresponding Standard Definition (SD) channels.
- (iv) TRAI has neither conducted nor published any study to establish the need and basis for determining the rental charge of Rs. 130/- per STB per month, or for that matter basis for Rs.20/- payable for additional capacity for each slot of 25 SD channels. In any event, these charges are exorbitantly high. Furthermore, TRAI has not factored installation charges and activation charges payable by a subscriber to distributors of TV channels while determining need and quantum of rental of Rs.130/- per month payable by a subscriber to distributors of TV channels, or for that matter Rs.20/- payable for additional capacity for each slot of 25 SD channels.
- (v) TRAI has not justified or published any study as to how the rental of a slot of 25 SD channel shall be arrived at Rs. 20/- beyond 100 channels.
- (vi) The "relevant geographical area" determined in Schedule II is not based on any study or data, and has been specified without giving any opportunity to the stakeholders to comment on the same. The "relevant geographical area" does not take into account the inherent difference that exists within the same State owing to the different language, preference of the subscribers in different parts of the State. Notification of the relevant geographical areas thus lacks understanding and proper study. The present classification identifying "relevant geographical

area” falls short of its mark, as it has not identified the seven of the eight metro cities of India, viz., Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune & Ahmedabad in the Draft Tariff Order. While the classification ought to have been to identify the relevant geographical differences, TRAI has categorized the market more or less on the basis of the number of States and Union Territories, without giving due regard to the “relevant” differences between urban and rural areas within the same geographical area. The inclusion of these metro cities, as separate category, is a basic requisite because of the pre-dominance of the people speaking the local regional and English language. Moreover, these metro cities have become the melting pot of various languages and cultures, which makes them a good mix of cosmopolitan people with relatively high paying capacity. There has also been a long practice of separate interconnect agreement between broadcasters and distributor of TV channels (cable) for each metropolitan areas, which has proven over the time to be practical and fruitful. Thus, it would be pertinent to include these cities as a region, viz., Greater Metropolitan Mumbai Region, Kolkata Metropolitan Area and likewise. Further, the “relevant geographical area” should allow Broadcaster to offer schemes for different sets of target audiences.

- (vii) Various provisions of the Draft Tariff Orders are in direct conflict with the provisions of the Copyright Act, 1957 as they impose limitations and restrictions on the commercial monetization of the Copyright available to broadcasters *inter alia* by way of (a) the categorization of the channel basis content into specific genres, (b) fixation of license fee, (c) duration of license, (d) the geographical territory of operation, (e) manner of offering the content, etc.
- (viii) It is respectfully submitted that verifiable implementation of QoS Regulations by TRAI ought to be a condition precedent before any attempt is made to implement Draft Tariff Order and/or Draft Interconnection Regulations. It is also submitted that unless TRAI ensures existence of proper infrastructure and compliance of QoS Regulations by distributors of TV channels, any attempt to implement the Draft Tariff Order and/or Draft Interconnection Regulations will have an adverse and

cascading effect on all stakeholders. In this regard, it is submitted that TRAI does not seem to have done any exercise on a pan-India level to ascertain whether or not distributors of TV channels are in a position to implement the Draft QoS Regulations, or for that matter to evaluate if distributors of TV channels are even following the existing QoS Regulations framed by TRAI.

Without prejudice to our rights and contentions that TRAI ought to implement the Draft QoS Regulations first before proceeding to make changes as sought to be made by TRAI, and in the alternative, we are submitting our response to the points suggested by TRAI in the present Draft Tariff Order. The same is being done with an aim to bring it to TRAI's attention that even the Draft Tariff Order has inherent shortcomings, which need to be addressed failing which, it will have adverse impact on all stakeholders.

1. SHORT TITLE AND COMMENCEMENT:

- (i) In Clause 1(2) of the Draft Tariff Order, TRAI has suggested that this Draft Tariff Order shall come into force with effect from April 1, 2017. It is pertinent to note that while TRAI is completely overhauling the existing regulatory regime with the present exercise, it has failed to consult stakeholders on the implementation on the process of migration of business/tariff model and has *suo moto* decided the date of implementation of the Draft Tariff Order will be April 1, 2017. It is reiterated that Draft Tariff Order ought not to be implemented till TRAI verifiably establish that the Draft QoS Regulations have been implemented by all distributors of TV channels and are being complied with. Further, in any event the proposed MRP model is a drastic change from the current market realities.
- (ii) TRAI is aware that DAS Phase IV is also due for implementation on December 31, 2016. TRAI is aware from its past experiences of DAS implementation that the transition into DAS in itself is a lengthy process where due to Courts' intervention the entire process gets withheld not only for a particular network but for multiple States and at times across India. Hence, TRAI should have waited till the complete

implementation of DAS Phase IV before finalizing the effective date of implementation of Draft Tariff Order.

- (iii) TRAI is aware that it is not only the implementation of DAS Phase IV which is crucial to the implementation of Draft Tariff Order, but the development of infrastructure at the level of distributors of TV channels and implementation of Draft QoS (with proposed amendments) is also vital for successful implementation of the Draft Tariff Order. Implementation of DAS Phase IV, development of infrastructure at distributor of TV channels' level and implementation of Draft QoS (with proposed amendments) requires substantial time period of not less than twelve to fifteen months. Hence, the date of implementation of the Draft Tariff Order, as it currently stands, is premature.

2. DEFINITION CLAUSE:

Definition of "subscribers" leads to de-classification of legally distinct classes of 'commercial subscribers' and 'ordinary subscribers'.

- (i) The Draft Tariff Order has defined "subscribers" to mean any person receiving the television broadcasting services, provided by a service provider at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber. It is submitted that definition of subscriber needs to be revisited by TRAI since it has unilaterally done away with the distinction between two different and distinct classes of subscribers namely, 'ordinary subscribers' and 'commercial subscribers', which is currently in existence.
- (ii) In this regard, it may be noted that Explanatory Memorandum to the Draft Tariff Order also fails to provide any reasoning for providing a generic definition for "subscribers" and has also failed to deliberate upon the need for not maintaining the distinction between commercial subscribers and ordinary subscribers.

(iii) It is submitted that this action of TRAI of unilaterally doing away with the distinction between two different and distinct classes of subscribers namely, ordinary subscribers and commercial subscribers is impermissible inter-alia since, TRAI in its Consultation Paper dated January 29, 2016 on issues relating to television services, which forms the basis of the Draft Tariff Order, had not raised any issue relating to commercial subscribers. It is submitted that instead of making the said change, TRAI should consider all aspects relating to commercial subscribers. In this regard, it is submitted that we had suggested in our response to the said consultation paper, that TRAI should consider revisiting the definition of commercial subscribers/establishment. However, it is now seen that TRAI has not considered the said suggestion made by stakeholders. It is pertinent to mention here that TRAI, at this stage, cannot deviate from its own past understanding and shy away from dealing with one of the major issues that govern tariff dynamics in the broadcasting industry.

3. MANNER OF OFFERING CHANNELS BY THE BROADCASTERS:

In the Draft Tariff Order, TRAI has recommended the following mandate with respect to the manner of offering of the channels by broadcasters:-

(i) The “relevant geographical area” determined in Schedule II is not based on any study or data, and has been specified without giving any opportunity to the stakeholders to comment on the same. The “relevant geographical area” does not take into account the inherent difference that exists within the same State owing to the different language, preference of the subscribers in different parts of the State, not to mention different DAS areas within the same State. Notification of the relevant geographical area thus, lacks understanding and proper study. “Relevant geographical area” does not account for the difference in taste, preference, choice and requirement of consumers in urban and rural areas. Accordingly, the “relevant geographical area” should allow Broadcaster to offer schemes for different sets of target audiences.

- (ii) In Clause 3(a) of the Draft Tariff Order it is stated that the nature of each channel as 'free to air' or 'pay' for different relevant geographical areas may be ascertained by the broadcaster. The maximum retail price of a pay channel or a bouquet of pay channels may vary for different relevant geographical areas. This means that a broadcaster may decide a pay channel as Pay for a relevant geographical market and at the same time declare the same as FTA for another market. It is quite possible that an operator operating in both markets may declare more subscriber for the region where he has to pay less or nothing and disclose less number of subscriber for the region for which he has to pay more. Hence, considering this provision, TRAI should also incorporate provision relating to ground survey/information of STB in its audit to verify if the STB is actually located at the address mentioned in the SMS.
- (iii) In Clause 3(b) of the Draft Tariff Order it is mentioned that the maximum retail price of a pay channel shall be more than 'zero' and shall be uniform for all distribution platforms in that geographical area. It is stated that broadcasters ought to be allowed to offer schemes for its pay channel which may include reducing the price of channel (even up to Rs. 0) or offer additional channels for free in different markets even if the same is not converted into a FTA Channel. Broadcasters should continue to have liberty to make promotional offers for newly launched channels *sans* any restriction on packaging and/or tariff.
- (iv) In Clause 3(3) of the Draft Tariff Order it is proposed that maximum retail price of the bouquet of pay channel shall not be less than eighty five percent of the sum of maximum retail price of the a-la-carte pay channels comprised in the bouquet. It is submitted that TRAI has not conducted any study or data to fix the price of bouquet with a maximum discounting to 15%. The only purpose which TRAI has suggested for such pricing in para 39 of the Explanatory Memorandum to the Draft Tariff Order is to enable customer choice through a-la-carte offering and also prevent skewed a-la-carte and bouquet offering. It is submitted that such discount ought to be allowed to increase up to 25%-30% as such discounts are only meant for subscriber and directly passed onto the subscriber for its benefit. Hence,

restricting such discount also means restricting choice of subscribers to avail more number of channels at a reasonably lesser rate. It is noteworthy that at subscriber level, subscriber makes choices among various programs and sample various channels before finalizing the program he is keen to watch or the program of his choice. Discounts help subscribers to choose more channels which translates into helping them sample programs which they wish to watch.

- (v) Clause 3(5) of the Draft Tariff Order provides for no increase in the MRP of a pay channel or a bouquet of channels for a period of six months from the date of declaration of MRP of such pay channel or bouquet of pay channels. It is stated that considering the dynamic market position and competition, such time period ought to be reduced to three months from six months.
- (vi) Clause 3(6) of the Draft Tariff Order provides that any change in the nature of the channel as declared “free to air” or “pay channel” shall not be made for a period of 6 months from the date of such declaration. TRAI ought to reduce such timeline to a period of 3 months from six months considering the dynamic market position and competition.
- (vii) TRAI should consider the aspect that the manner in which the industry has marketed its channels, conducted deals, and provided services, it is clear that if forbearance is offered, the rates of the channels will be market and competition driven, and actual demand and supply will control the pricing. It could lead to effective price reduction in the rates, with innovative offers. Any prescription or any sort of cap on the right of the broadcasters to price their channels will ultimately restrict them to utilise the resources in order to cut costs and further the industry will be deprived of the technological advancements. TRAI in para 35 of the Explanatory Memorandum to the Draft Tariff Order notes as follows:

“The Authority is of the view that a customer should be able to exercise his choice while selecting the channels at reasonable prices. While it is

difficult to determine the real cost of a channel, the true value of a channel is that as perceived by a customer.”

- (viii) While noting the above, TRAI has not considered the fact that customer will be able to determine the true value of the channel if it is given this option and not to choose from the prescriptions by TRAI. Any prescription of the MRP by TRAI will undermine the value that could best be determined by the customer itself.
- (ix) The noting of TRAI that prescription of a cap on the MRP will self-regulate the pricing of the pay channel is based on the incorrect premise that, firstly, the broadcasters will charge more in the absence of any such cap and secondly, that the customers will stop watching the channels and thus, the advertisement revenue will be affected. The broadcaster(s) primary motive is to reach out to the highest number of eye balls so that the revenue generation through advertisements is maximum. In order to reach out to the maximum number of eyeballs, broadcasters tend to provide the content at the lowest possible cost. With introduction of new content in the market each day, the competition in the market amongst broadcasters has also increased.
- (x) The cost of the production of a channel at the initial stages is much more than what is being recovered by broadcasters by way of subscription and hence, any prescription of cap on the MRP of a channel will adversely and directly affect the revenue of broadcasters. Leaving the prices open to market forces can never result in increase of prices. Broadcasters are aware of the actual rates at which their channels would sell and hence, will never price channels at an adverse rate, and which would, in turn, reduce viewership of their channels. Similarly, due to sufficient choices available to the consumers the pricing at retail level will automatically be controlled. The biggest fact in favour of forbearance at wholesale level is that forbearance at the retail level has existed for the longest time, and there has never been any complaint that the prices are obnoxiously high and/or leading to any kind of adverse situation for the subscriber.

4. GENRE OF TELEVISION CHANNELS:

- (i) While proposing to reduce the number of genres, TRAI had suggested in the earlier consultation paper that multiple genres may need to continue to be on the EPG so that it continues to be consumer friendly in finding a channel of its choice. However, in the draft regulations, TRAI has not mentioned that creation of genres is only for the purpose of specifying genre wise tariff ceiling only and multiple genres for the purpose of EPG is permitted. Thus, in our view, reduction in classification of genres will increase the number of channels in each genre causing inconvenience to the consumers while surfing and selecting channels if such classification of genres is also followed by DPOs while creating the EPG. In order to avoid any such inconvenience to consumers, TRAI must mandate more numbers of sub-classifications in each genre at par with those being followed by BARC, and ensure that a common EPG genre-wise categorization is followed by all distributors of TV channels.

- (ii) TRAI should consider that within the same genre, there are different kinds of content that are being showcased to the subscribers. For e.g., Business News Channels have created unique identity for themselves and have a dedicated audience. Rather than leaving it to broadcasters or distributors of television channels to sub-categorize the genres, TRAI should consider mandating sub-classification of genres to accommodate 'Music' genre channels, 'Lifestyle' genre channels, 'Regional News' genre channels, 'Business News' channels, etc., for the sole purpose of EPG. This will inter-alia help consumers to make informed choice and ensure ease of navigation.

- (iii) In addition to the existing genres proposed by TRAI and the sub-classification as proposed above, we also propose that considering the changing dynamics of the market, including development of e-commerce, there are various television shopping channels which have come into existence in the recent past and more may be expected in the near future. In view thereof, TRAI should consider creating a new genre/sub-genre for these shopping channels.

- (iv) TRAI has prescribed that the MRP of a channel to the customer in that genre will be 1.20 times the existing price cap for that genre for addressable systems, which again is not backed by any study or data for the specific prescription. For the reasons stated herein [including those in para A(i)], we suggest that TRAI should conduct a holistic and judicious exercise on tariff for television channels.

5. CAP ON RETIL PRICE OF PAY CHANNELS IN ADDRESSABLE SYSTEMS:

- (i) In Clause 5(1) of the Draft Tariff Order TRAI has suggested the maximum retail price of a pay channel transmitted in SD format in a given genre shall not exceed the rate specified in schedule II. For the reasons stated herein [including those in para A(i)], we suggest that TRAI should conduct a holistic and judicious exercise on tariff for television channels.
- (ii) In Clause 5(2) of the Draft Tariff Order it is mentioned that maximum retail price of a pay channel transmitted in HD format shall not be more than three times the maximum retail price of corresponding channel transmitted in SD format. The said provision could result in a HD format of a FTA channel to be priced at Rs. 0/-, thus being erroneous and devoid of merit. Hence it is proposed that TRAI should cap the price of a HD channel of a SD FTA channel by linking it to genre wise ceiling.
- (iii) TRAI has failed to consider or propose any mechanism for annual increment on the proposed tariff ceiling. Thus, it is imperative that TRAI should allow inflation-linked annual increment to the broadcasters on the proposed tariff ceilings.

6. MANNER OF OFFERING OF CHANNEL BY THE DISTRIBUTOR OF TELEVISION CHENNELS

- (i) In Clause 6(1) of the Draft Tariff Order it is mentioned that no distributor of television channels shall charge a rental amount exceeding Rs. 130/-, excluding taxes, per month per set top box from a subscriber to receive the signals of up to 100 SD channels. Unfortunately, TRAI has not suggested any reasoning for fixing

the rental amount at Rs. 130/-. In Explanatory Memorandum to the Draft Tariff Order (at para 43) it is stated that as per data available, the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs. 80/- per month and cost of other activities like subscriber management, billing, complaint redressal, call centre, etc., comes out to be Rs. 50/- per month. Accordingly, TRAI has proposed that distributors of television channels may charge a maximum fixed amount of up to Rs. 130/- per month, excluding taxes, from its subscribers towards its network cost to carry 100 SD channels including mandatory channels of Prasar Bharti, as notified by the Government from time to time. However, TRAI has not published any data which it claims to have considered while determining the rental amount of Rs. 130/- . The data appears to be flawed. The pricing is critical from the point of view of the customer's monthly liability and hence should be properly reasoned with published study/data. It is submitted that the cost of transmission reduces with increase in number of subscriber. Hence, the cost of carrying 100 SD channels by a distributor of television channels, and also the cost of other activities like subscriber management, billing, complaint redressal, call centre, etc., will reduce over a period of time and shall not remain Rs. 80/- and Rs. 50/-, respectively, as is stipulated by TRAI in the Draft Tariff Order. Such costs in any case should not exceed Rs. 50/- and Rs. 20/-, respectively, i.e., collectively amounting to Rs. 70/- per month.

- (ii) In Clause 6(3) of the Draft Tariff Order it is mentioned that distributor of television channels shall offer a-la-carte pay channels of one or more broadcasters in the form of bouquet(s) and declare the retail price of such bouquet(s) to be paid by the subscriber and the retail price of such bouquet of pay channels shall not be less than eighty five percent of the sum of retail prices of the a-la-carte pay channels forming such bouquet. Once again TRAI has not given any reasoning for the prescribed discounting percentage. The existing regulations provide for bouquet prices to be at about 65% of the sum of the a-la-carte rate of all channels in the bouquet, which variation is affordable and convenience for both distributors of TV channels and the subscribers. We also feel that TRAI should allow the

broadcasters to bundle FTA and Pay channels in the same bouquet. In the event, broadcasters are mandated to bundle FTA channels independently, it is highly unlikely that broadcasters will get enough requests from subscribers for providing the bouquet of FTA channels. Such prohibition are impractical by nature and are without any valid reasoning and hence, should not be mandated.

- (iii) Clause 6(8) of the Draft Tariff Order provides that a subscriber may request for additional network capacity in bundles or lots of 25 SD channels at a rate of Rs. 20/- per month for subscribing to more than 100 channels. This has been prescribed purportedly on account for additional bandwidth cost by distributors of television channels. However, there is no basis and/or study to support such conclusion, and as such, such charges need to be done away with.
- (iv) There is no restriction on minimum retail price of the channel offered by the distributor to the subscriber. This means that the distributor may price the channel much lesser than its MRP and thus indulge in predatory pricing to acquire market share which needs to be checked. TRAI should also cap the discount at retail level so that different retail prices for the same channel in the same relevant geographic area may be avoided which may cause discrimination at consumer level and consequently defeat the purpose of MRP stipulation. Hence, it is suggested that minimum retail price of the channel offered by the distributor to the subscriber shall not be less than discount on the MRP of the channel declared by the broadcaster. Moreover, any discount offered by a distributor of TV channels to subscribers should be uniform, i.e., the discount to the subscriber should be evenly applied by the distributor of TV channels for channels of all broadcasters, so as to ensure that the vertically integrated distributor of TV channels do not give undue to its vertically integrated broadcasters.

7. **REPORTING REQUIREMENT:**

- (i) We appreciate the recommendation of TRAI with regard to the furnishing of the information to TRAI by the stakeholders. However, TRAI should also mandate that

the distributors has to furnish the details of its revenue stream from platform services, value added services, ad sales, carriage fee revenue, etc. The information pertaining to advertisement revenue is not relevant and the same should not be mandated under reporting requirement on account of such information being commercially sensitive. Moreover, we also fail to understand as to how such information is required by TRAI for framing any tariff orders, interconnect regulation or quality of service regulations.

- (ii) In Clause 7(1) of the Draft Tariff Order TRAI has suggested that any change in the maximum retail price of a channel shall need to be reported by the broadcaster to TRAI at least 30 days prior to such change being brought into effect. In Clause 7(2) of the Draft Tariff Order TRAI has suggested that if the broadcaster wants to undertake any action as is contemplated in sub-clause (a) to (g) of Clause 7(2), the same shall need to be reported by the broadcaster to TRAI at least 90 days in advance. It is submitted that TRAI should consider thirty days prior reporting for events contemplated in sub-clause (a) to (g) of Clause 7(2) as well.
- (iii) The draft tariff has provided that that the MRP of channel may be fixed for the minimum period of 6 months and before making any change in the rate of channel, broadcaster has to provide 90 days prior notice. Hence, this exercise may be completed within a period of six months. However, in para 64 of the explanatory memorandum it is mentioned that there will be no change in genre and MRP of a channel within one year from the date of declaration of the genre and MRP by Broadcaster which is contradictory. In this regard, we submit that para 64 of the Explanatory Memorandum to the Draft Tariff Order has to be aligned with our comments mentioned in para 3(v) above.

8. CHANNEL VISIBILITY ON ELECTRONIC PROGRAM GUIDE (EPG):

- (i) In para 83 of the Explanatory Memorandum to the Draft Tariff Order TRAI expressed its view that to facilitate the consumer choice, EPG must display details of all the channels and their MRP, carried over the distributors of TV channels

network and the channels should be arranged genre wise for easy navigation by the subscribers and in order to enable them to make informed decision about the same. We welcome the view of TRAI in this regard.

9. PAY PER PROGRAM VIEWING AND TARIFF OPTIONS:

- (i) We fully support TRAI's recommendation on the pay per viewing option that at this stage, there is no need to regulate pay per program viewing option as it is at a nascent stage.

10. SIGNIFICANT MARKET POWER:

- (i) There is no need for TRAI to restrict any player in a competitive market as there will not be any requirement to identify any significant market power. Moreover, each broadcaster has its own distinct content and hence, the choice of the subscriber will be supreme as there will be no channel or broadcaster that controls absolute monopoly in the market. The monopolistic control of the broadcasters has already taken care by TRAI by Content Aggregator Regulations of February 10, 2014 and hence further need to identify and regulate the significant market power.
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