

**TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART III, SECTION 4**

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 3rd March 2017

F. No. 21-1/2016-B&CS.---- In exercise of the powers conferred by sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Central Government, in the Ministry of Communication and Information Technology (Department of Telecommunications), No. 39 , ----

- (a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and
- (b) published under notification No. S.O. 44 (E) and 45 (E) dated 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,----

the Telecom Regulatory Authority of India hereby makes the following Order, namely:-

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES
(EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2017
(No. 1 of 2017)**

PART I
PRELIMINARY

1. Short title, extent and commencement.--- (1) This Order may be called the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017.

(2) This Order shall be applicable to broadcasting services relating to television provided to subscribers, through addressable systems, throughout the territory of India.

(3) (a) Except as otherwise provided in sub-clause (b), this Order shall come into force after one hundred eighty days from the date of publication of this Order in the Official Gazette.

(b) Clauses 3, 6 and 8 of this Order shall come into force after thirty days from the date of publication of this Order in the Official Gazette.

2. Definitions. --- (1) In this Order, unless the context otherwise requires, -

(a) “Act” means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(b) “addressable system” means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which transmission of programmes including re-transmission of signals of television channels can be done in encrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of the authorization made, on the choice and request of such subscriber, by the distributor of television channels;

(c) “a-la-carte” or “a-la-carte channel” with reference to offering of a television channel means offering the channel individually on a standalone basis;

(d) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(e) “bouquet” or “bouquet of channels” means an assortment of distinct channels offered together as a group or as a bundle and all its grammatical variations and cognate expressions

shall be construed accordingly;

(f) “broadcaster” means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, downlinking permission for its channels, from the Central Government, is providing programming services;

(g) “broadcaster’s share of maximum retail price” with reference to a pay channel or a bouquet of pay channels means any fee payable by a distributor of television channels to a broadcaster for signals of pay channel or bouquet of pay channels, as the case may be, and for which due authorization has been obtained by such distributor from that broadcaster;

(h) “broadcasting services” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(i) “cable service” or “cable TV service” means the transmission of programmes including re-transmission of signals of television channels through cables;

(j) “cable television network” or “cable TV network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

(k) “compliance officer” means any person designated so, who is capable of appreciating requirements for regulatory compliance under this Order, by a service provider;

(l) “direct to home operator” or “DTH operator” means any person who has been granted licence by the Central Government to provide direct to home (DTH) service;

(m) “direct to home service” or “DTH service” means re-transmission of signals of television channels, by using a satellite system, directly to subscriber’s premises without passing through an intermediary such as local cable operator or any other distributor of television channels;

(n) “distribution platform” means distribution network of a DTH operator, multi-system

operator, HITS operator or IPTV operator;

(o) “distributor of television channels” or “distributor” means any DTH operator, multi-system operator, HITS operator or IPTV operator;

(p) “distributor retail price” or “DRP” for the purpose of this Order, means the price, excluding taxes, declared by a distributor of television channels and payable by a subscriber for a-la-carte pay channel or bouquet of pay channels, as the case may be;

(q) “free-to-air channel” or “free-to-air television channel” means a channel which is declared as such by the broadcaster and for which no fee is to be paid by a distributor of television channels to the broadcaster for signals of such channel;

(r) “head end in the sky operator” or “HITS operator” means any person permitted by the Central Government to provide head end in the sky (HITS) service;

(s) “head end in the sky service” or “HITS service” means transmission of programmes including re-transmission of signals of television channels---

(i) to intermediaries like local cable operators or multi-system operators by using a satellite system and not directly to subscribers; and

(ii) to the subscribers by using satellite system and its own cable networks;

(t) “internet protocol television operator” or “IPTV operator” means a person permitted by the Central Government to provide IPTV service;

(u) “internet protocol television service” or “IPTV service” means delivery of multi channel television programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;

(v) “local cable operator” or “LCO” means a person registered under rule 5 of the Cable Television Networks Rules, 1994;

(w) “maximum retail price” or “MRP” for the purpose of this Order, means the maximum price, excluding taxes, payable by a subscriber, for a-la-carte pay channel or bouquet of pay channels, as the case may be;

(x) “multi-system operator” or “MSO” means a cable operator who has been granted registration under rule 11 of the Cable Television Networks Rules, 1994 and who receives a programming service from a broadcaster and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;

(y) “network capacity fee” means the amount, excluding taxes, payable by a subscriber to the distributor of television channels for distribution network capacity subscribed by that subscriber to receive the signals of subscribed television channels and it does not include subscription fee for pay channel or bouquet of pay channels, as the case may be;

(z) “Order” means the Telecommunication (Broadcasting and Cable) Services (Eighth (Addressable Systems) Tariff Order, 2017;

(za) “pay channel” means a channel which is declared as such by the broadcaster and for which broadcaster’s share of maximum retail price is to be paid to the broadcaster by the distributor of television channels and for which due authorization needs to be obtained from the broadcaster for distribution of such channel to subscribers;

(zb) “programme” means any television broadcast and includes -

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation,

and the expression “programming service” shall be construed accordingly;

(zc) “reference interconnection offer” or “RIO” means a document published by a service provider specifying terms and conditions on which the other service provider may seek interconnection with such service provider;

(zd) “Regulations” means the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017;

(ze) “service provider” means the Government as a service provider and includes a licensee as

well as any broadcaster, distributor of television channels or local cable operator;

(zf) “set top box” means a device, which is connected to or is part of a television receiver and which enables a subscriber to view subscribed channels;

(zg) “subscriber” for the purpose of this Order, means a person who receives broadcasting services relating to television from a distributor of television channels, at a place indicated by such person without further transmitting it to any other person and who does not cause the signals of television channels to be heard or seen by any person for a specific sum of money to be paid by such person, and each set top box located at such place, for receiving the subscribed broadcasting services relating to television, shall constitute one subscriber;

(zh) “television channel” means a channel, which has been granted downlinking permission by the Central Government under the policy guidelines issued or amended by it from time to time and reference to the term “channel” shall be construed as a reference to “television channel”.

(2) all other words and expressions used in this Order but not defined, and defined in the Act and rules and regulations made thereunder or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

Part II

TARIFF

3. Manner of offering of channels by broadcasters.--- (1) Every broadcaster shall offer all its channels on a-la-carte basis to all distributors of television channels.

(2) Every broadcaster shall declare ----

(a) the nature of each of its channel either as 'free-to-air' or 'pay'; and

(b) the maximum retail price, per month, payable by a subscriber for each of its pay channel offered on a-la-carte basis:

Provided that the maximum retail price of a pay channel shall be more than 'zero':

Provided further that the maximum retail price of a channel shall be uniform for all distribution platforms.

(3) It shall be permissible for a broadcaster to offer its pay channels in the form of bouquet(s) and declare the maximum retail price(s), per month, of such bouquet(s) payable by a subscriber:

Provided that, while making a bouquet of pay channels, it shall be permissible for a broadcaster to combine pay channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the downlinking permission for its television channels, from the Central Government, after written authorization by them, and declare maximum retail price, per month, for such bouquet of pay channels payable by a subscriber:

Provided that such bouquet shall not contain any pay channel for which maximum retail price per month is more than rupees nineteen:

Provided further that the maximum retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of maximum retail prices per month of the a-la-carte pay channels forming part of that bouquet:

Provided further that the maximum retail price per month of such bouquet of pay channels shall be uniform for all distribution platforms:

Provided further that such bouquet shall not contain any free-to-air channel:

Provided also that such bouquet shall not contain both HD and SD variants of the same channel.

Explanation: For the purpose of this Order, the definition of “subsidiary company” and “holding company” shall be the same as assigned to them in the Companies Act, 2013 (18 of 2013).

(4) It shall be permissible for a broadcaster to offer promotional schemes on maximum retail price(s) per month of its a-la-carte pay channel(s):

Provided that period of any such scheme shall not exceed ninety days at a time:

Provided further that the frequency of any such scheme by the broadcaster shall not exceed twice in a calendar year:

Provided further that the price(s) of a-la-carte pay channel(s) offered under any such promotional scheme shall be considered as maximum retail price(s) during the period of such promotional scheme:

Provided also that the provisions of Regulations and Tariff Orders notified by the Authority shall be applicable on the price(s) of a-la-carte pay channel(s) offered under any such promotional scheme.

(5) Every broadcaster, before making any change in the nature of a channel or in the maximum retail price of a pay channel or in the maximum retail price of a bouquet of pay channels or in the composition of a bouquet of pay channels, as the case may be, shall follow the provisions of all the applicable Regulations and Orders notified by the Authority, including but not limited to the publication of Reference Interconnection Offer.

4. Declaration of network capacity fee and manner of offering of channels by distributors of television channels.--- (1) Every distributor of television channels shall declare network capacity fee, per month, payable by a subscriber for availing a distribution network capacity so as to receive the signals of television channels:

Provided that the network capacity fee, per month, for network capacity upto initial one hundred SD channels, shall, in no case, exceed rupees one hundred and thirty, excluding taxes:

Provided further that the network capacity fee, per month, for network capacity in the slabs of twenty five SD channels each, beyond initial one hundred channels capacity referred to in first proviso to sub-clause (1), shall, in no case, exceed rupees twenty excluding taxes:

Provided also that one HD channel shall be treated equal to two SD channels for the purpose of calculating number of channels within the distribution network capacity subscribed.

(2) Every distributor of television channels shall offer all channels available on its network to all subscribers on a-la-carte basis and declare distributor retail price, per month, of each pay channel payable by a subscriber:

Provided that the distributor retail price, per month, payable by a subscriber to a distributor of television channels for subscribing to a pay channel shall, in no case, exceed the maximum retail price, per month, declared by the broadcasters for such pay channel.

(3) Every distributor of television channels shall offer to all subscribers each bouquet of pay channels offered by a broadcaster, and for which interconnection agreement has been signed with that broadcaster, without any alteration in its composition and declare the distributor retail price, per month, for such bouquet payable by a subscriber:

Provided that the distributor retail price, per month, payable by a subscriber to a distributor of television channels for subscribing to a bouquet of pay channels offered by the broadcaster shall in no case exceed the maximum retail price, per month, declared by the broadcasters for such bouquet of pay channels:

Provided further that such bouquet shall not contain any pay channel for which maximum retail price per month declared by the broadcaster is more than rupees nineteen:

Provided further that such bouquet shall not contain any free-to-air channel:

Provided also that such bouquet shall not contain both HD and SD variants of the same channel.

(4) It shall be permissible for a distributor of television channels to offer bouquet(s) formed from pay channels of one or more broadcasters and declare distributor retail price(s) , per month, of such bouquet(s) payable by a subscriber:

Provided that such bouquet shall not contain any pay channel for which maximum retail price per month declared by the broadcaster is more than rupees nineteen:

Provided further that the distributor retail price per month of such bouquet of pay channels shall not be less than eighty five percent of the sum of distributor retail prices per month of a-la-carte pay channels and bouquet(s) of pay channels forming part of that bouquet:

Provided further that the distributor retail price per month of a bouquet of pay channels offered by a distributor of television channels shall, in no case, exceed the sum of maximum retail prices per month of a-la-carte pay channels and bouquet(s) of pay channels, declared by broadcasters, forming part of that bouquet:

Provided further that such bouquet shall not contain any free-to-air channel:

Provided also that such bouquet shall not contain both HD and SD variants of the same channel.

Explanation: For the removal of doubt it is hereby clarified that a distributor of television channels while forming bouquet under this clause shall not break a bouquet of pay channels offered by a broadcaster to form two or more bouquet(s) at distribution level.

(5) It shall be permissible for a distributor of television channels to offer bouquet(s) formed from free-to-air channels of one or more broadcasters.

(6) No distributor of television channels shall charge any amount, other than the network capacity fee, from its subscribers for subscribing to free-to-air channels or bouquet(s) of free-to-air channels.

(7) Within the distribution network capacity subscribed, in addition to channels notified by Central Government to be mandatorily provided to all the subscribers, a subscriber shall be free to choose any free-to-air channel(s), pay channel(s), or bouquet(s) of channels offered by the broadcaster(s) or bouquet(s) of channels offered by distributors of television channels or a combination thereof:

Provided that if a subscriber opts for pay channels or bouquet of pay channels, he shall be liable to pay an amount equal to sum of distributor retail price(s) for such channel(s) and bouquets in addition to network capacity fee.

(8) Subject to sub-clause (1) of clause 4, a distributor of television channels shall not increase the network capacity fee for a period of six months from the date of such notification:

Provided that a distributor of television channels, before making any change in the network capacity fee, shall at least thirty days prior to the scheduled change ---

(a) inform the Authority; and

(b) inform the subscribers by running scroll on the channel.

5. Offering of basic service tier by distributors of television channels.--- (1) Every distributor of television channels shall offer at least one bouquet, referred to as basic service tier, of one hundred free-to-air channels including all the channels to be mandatorily provided as notified by the Central Government to all the subscribers and such bouquet shall contain at least five channels of each genre as referred to in the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017:

Provided that in case sufficient number of free-to-air channels of a particular genre are not available on the network, the distributor of television channels shall be free to include the channels of other genres.

Explanation: For removal of any doubt it is hereby clarified that such bouquet shall be one of the options available to a subscriber. However, the subscriber, as per his requirement, shall have complete freedom to choose either bouquet of basic service tier or any other bouquet of pay channels or any other bouquet of free-to-air channels or a-la-carte pay channels or a-la-carte free-to-air channels available on the platform of the distributor of television channels or a combination thereof.

PART III

REPORTING BY SERVICE PROVIDERS

6. Reporting requirement by broadcasters.--- (1) Every broadcaster shall, within ninety days from the date of commencement of this clause, furnish the following information to the Authority, namely:-

- (a) name, nature, language of each channel offered by the broadcaster;
- (b) maximum retail price, per month, of each pay channel, if any, offered by the broadcaster;
- (c) list of all bouquets of pay channels, if any, offered by the broadcaster along with respective maximum retail prices, per month, of each bouquet and names of all the pay channels contained in each such bouquet:

Provided that first such report shall be simultaneously published on the website of the broadcaster:

Provided further that any subsequent change in, name, nature, language, maximum retail prices, per month, of channels and maximum retail price, per month, or composition of bouquets, as the case may be,--

- (a) shall be reported to the Authority at least thirty days prior to such change; and
- (b) shall also be simultaneously published on the website of the broadcaster.

(2) Every broadcaster who, after the commencement of this Order,-----

- (a) introduces any new channel; or
- (b) introduces any new bouquet of pay channels ; or
- (c) discontinues any channel ; or
- (d) discontinues any bouquet of pay channels;

shall, at least thirty days prior to such introduction or discontinuation, furnish to the Authority, the following information, namely:-

- (i) name, nature, language of the channel to be introduced or discontinued;
- (ii) the date on which such channel is to be introduced or discontinued;
- (iii) the maximum retail price, per month, of the pay channel;
- (iv) names of all the constituent pay channels of the bouquet to be introduced or discontinued along with maximum retail price, per month, of such bouquet:

Provided that such information relating to introduction or discontinuation of channel(s) or bouquet(s) shall be simultaneously published on the website of the broadcaster:

Provided further that any subsequent change in, name, nature, language, maximum retail prices of channels so introduced and maximum retail price or composition of bouquet so introduced, as the case may be,--

- (a) shall be reported to the Authority at least thirty days prior to the change; and
- (b) shall also be simultaneously published on the website of the broadcaster.

7. Reporting requirement by distributors of television channels.--- (1) Every distributor of television channels shall, within thirty days from the date of commencement of this Order, furnish the following information to the Authority, namely:-

- (a) network capacity fee, per month, payable by a subscriber for 100 SD channels;
- (b) network capacity fee, per month, payable by a subscriber for each additional 25 SD channels;
- (c) list of all channels along with their respective name, nature, language available on its distribution platform;
- (d) distributor retail price, per month, of each pay channel available on its distribution platform;
- (e) list of all the bouquets of pay channels formed by broadcasters which are available on its distribution platform, along with their respective distributor retail price , per month, and names of constituent pay channels thereof;
- (f) list of all the bouquets of pay channels formed by it which are available on its distribution platform, along with their respective distributor retail price, per month, and names of constituent pay channels thereof;

- (g) list of all the bouquets of free-to-air channels available on its distribution platform along with names of constituent free-to-air channels thereof;

Provided that first such report shall also be simultaneously published on the website of the distributor of television channels:

Provided further that any subsequent change in network capacity fee, name, nature, language, distributor retail prices of pay channels, distributor retail price or composition of bouquet of pay channels and composition of bouquet of free-to-air channels, as the case may be,---

- (a) shall be reported to the Authority at least fifteen days prior to the change; and
- (b) shall also be simultaneously published on the website of the distributor.

(2) Every distributor of television channels who commences its services after coming into force of this Order shall submit to the Authority, the report containing the information as required under sub-clause (1) of this clause, before commencement of its services and thereafter any changes in respect of such information shall be reported at least fifteen days prior to the change.

PART IV

MISCELLANEOUS

8. Designation of compliance officer and his obligations.--- (1) Every broadcaster and distributor of television channels shall, within thirty days from the date of commencement of this clause, designate a compliance officer.

(2) Every broadcaster and distributor of television channels who commences its operations after the coming into effect of this Order shall, within thirty days from the date of commencement of its operations, designate a compliance officer.

(3) Every broadcaster or distributor of television channels, as the case may be, shall, within thirty days from the date of designation of the compliance officer under the provisions of this clause, furnish to the Authority the name, complete address, contact number and e-mail address of the compliance officer along with authenticated copy of the board's resolution authorizing the designation of such compliance officer:

Provided that the distributor of television channel, which is not a company, shall, within thirty days from the date of designation of the compliance officer under the provisions of this clause, furnish to the Authority the name, full address, contact number and e-mail address of the compliance officer along with authenticated copy of the authorization letter authorizing the designation of such compliance officer.

(4) In the event of any change in the name of the compliance officer so designated under provisions of this clause, the same shall be reported to the Authority by the service provider within thirty days from the date of occurrence of such change along with authenticated copy of the board's resolution or authorization letter, as the case may be.

(5) In the event of any change in the address or contact number or email address of the compliance officer, the same shall be reported to the Authority by the service provider within ten days from the date of occurrence of such change.

(6) The compliance officer shall be responsible for --

- (a) generating awareness for ensuring compliance with the provisions of this Order;
- (b) reporting to the Authority, with respect to compliance with this Order and directions of the Authority issued under this Order; and
- (c) ensuring that proper procedures have been established and are being followed for compliance of this Order.

(7) The provisions contained in the sub-clause (6) shall be in addition to the liability of the service provider to comply with the requirements laid down under this Order.

9. Power of Authority to intervene.--- (1) The Authority may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services, or facilitate competition and promote efficiency in the operation of broadcasting services and cable services so as to facilitate growth in such services.

10. Repeal and Saving.--- (1) The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006, along with all its amendments and directions issued there under are hereby repealed.

(2) All the provisions of, the Telecommunication (Broadcasting and Cable) Services (Second) (Addressable Systems) Tariff Order, 2010 and all its amendments and directions issued there under, except the provisions applicable to commercial subscribers are hereby repealed.

(3) The Telecommunication (Broadcasting and Cable) Services (Fifth) (Digital Addressable Cable TV Systems) Tariff Order, 2013 along with all its amendments and directions issued there under are hereby repealed.

(4) The repeal under sub-clause (1), (2) and (3) of this clause shall not affect-

- (a) the previous operation of the repealed order(s) or anything done or any action taken under the repealed order(s); or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the

order(s) so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the order(s) so repealed; or,

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture and punishment may be imposed, as if the aforesaid order(s) had not been repealed.

(Sudhir Gupta)

Secretary, TRAI

Note.----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017.

EXPLNATORY MEMORANDUM

I. Background

1. Regulation of broadcasting and cable services was entrusted to the Telecom Regulatory Authority of India (hereinafter referred to as the Authority) in 2004. The sector then was analogue, *non-addressable*, and looked largely unregulated, without operational transparency, experienced price fluctuations and had conflict of interests amongst the stakeholders. Television channels were offered to subscribers in pre-determined bouquets of channels. TRAI issued the first tariff order for broadcasting and cable services on 15th January 2004 wherein the prices of TV channels and bouquets that existed in the non-addressable regime as on 26th December, 2003 were frozen.
2. The legacy analogue systems in the non-addressable era lacked transparency. While broadcasters were holding a view that distributors of television channels were under reporting the total number of subscribers viewing their channels, distributors of television channels argued that broadcasters demanded an unjustified hike in subscriber base year on year. Further their demand for charges per channel was unjustifiably high. These differences of opinion frequently turned in litigations adversely impacting smooth business resulting in adverse consumers experience. The distribution models were heavily skewed in favour of advertisement driven revenues due to difficulties in maintaining transparency in the flow of subscription revenues across the analog value chain. The major thrust by the broadcasters was to ensure that their channels reached the large number of viewers in order to maximize advertisement revenue. This approach encouraged broadcasters to provide their channels to MSOs/LCOs in a bouquet form. The bouquets were sometimes formed so as to contain only few popular channels, while rest of the channels in the bouquet did not offer value for money to the subscribers. The price of these not so popular channels was usually passed on by the MSOs/LCOs to the subscribers. While doing so, no consideration was given to subscriber choice. This skewed model was fraught with discrimination and non-transparent practices and resulted in a large number of disputes affecting growth of the broadcasting sector relating to television as a whole.

3. In view of limitations of analogue TV distribution platforms both in terms of channel carrying capacity and quality of the television signals vis-a-vis the advantages of digital addressable platforms, TRAI initiated efforts towards digitalization of cable TV distribution networks. TRAI recommended in August 2010 that the process of digitisation may be executed in four phases for creating a conducive regulatory framework. The Government amended the Cable TV Act on 25th October 2011 and the rules made thereunder on 28th April 2012 which led to the implementation of the Digital Addressable Cable TV System in India. The digitalization process was envisaged to be completed in four phases. Of these, the first three phases have been completed to a large extent and the final phase is slated for completion by March 2017.
4. During the discussions in the Parliament on the motion for consideration of the Cable Television Networks (Regulation) Amendment Bill, 2011, the then Minister of Information and Broadcasting, Smt. Ambika Soni, *inter-alia* stated:

*“Digitalization will carry with it a large number of benefits for every stakeholder. The most important benefit flows to the common man, who is the most important stakeholder of course. **Digitalization will enable the consumer to exercise a la carte selection of channels, get better picture quality, access to Value Added Services like Triple Play, Video on Demand, etc.** For the Broadcasters and Cable Operators, who are both Service Providers, the system will ensure transparency, fairness and allow complete addressability, resulting in increase in subscription revenue and reducing their dependence on TRPs as also advertising revenue.”*(emphasis provided)
5. With digitalisation, though the addressability, capacity and quality of signal of cable TV networks have improved. However, the real benefits of digitalisation such as, choice of selecting channels on a-la-carte basis and availability of multimedia services have yet not reached the subscribers. Bundling of channels by broadcasters and pushing their channels to maximum number of subscribers continue even in the present digital addressable domain as the broadcasters continue to offer huge discounts on bouquets. Broadcasters very often provide incentives to distributors of television channels for carrying all their channels in a particular bouquet. MSOs, who did not agree to the conditions for availing such discounts, end up getting signals only on RIO rates, which are very high resulting in

discrimination and non-transparency. As such the issues related to availability of channels on a-la-carte basis, transparency in pricing, non-discrimination and level playing field continued even after introduction of addressability.

6. Further there are concerns about maintaining transparency in the flow of subscription revenues across the value chain. Collection of subscription revenue from subscribers is not reflected transparently in Subscriber Management System (SMS) resulting in non-transparent flow of revenue between LCOs, MSOs and broadcasters. Huge pendency of payments to different stakeholders results in disconnection of signals impacting quality of experience of viewers and resulting in litigations at various levels.
7. Due to non transparent and discriminatory practices, a large number of disputes have taken place among the various stakeholders and channels are frequently blocked or discontinued from the platforms without any intimation to subscribers. This results in viewer dissatisfaction and in avoidable complaints.
8. TV has become an important entertainment tool and it has transcended across different social strata of society. While subscribers want freedom to choose affordable a-la-carte channels and bundled TV broadcast services as per their preferences and paying capacity, broadcasters generally want to ensure maximum eyeballs to ensure higher advertisement revenues. In order to address these complex and conflicting issues, a comprehensive review of the existing regulatory framework was undertaken by TRAI to create an enabling environment ensuring transparency, non-discrimination, subscriber protection and growth of the sector, which includes tariff, interconnection and quality of service. As a part of this exercise, TRAI issued a consultation paper on “Tariff issues related to TV services” on 29th January 2016. The objectives of the consultation were:-
 - i. To carry out a review of existing Tariff framework and developing a Comprehensive Tariff Structure for Addressable TV Distribution of “TV Broadcasting Services” across Digital Broadcasting Delivery Platforms (DTH/ Cable TV/ HITS/ IPTV) at wholesale and retail level.
 - ii. To ensure that the tariff structure is simplified and rationalized so as to ensure transparency and equity across the value chain.

- iii. To reduce the incidence of disputes amongst stakeholders across the value chain encouraging healthy growth in the sector.
 - iv. To ensure that subscribers have adequate choice in the broadcast TV services while they are also protected against irrational tariff structures and price hikes.
 - v. To encourage the investment in the TV sector
 - vi. To encourage production of good quality channels across different genres.
9. In response, a total of 60 comments and 10 counter-comments were received from stakeholders including consumers. Subsequently, two Open House Discussions (OHDs) were held, first on 8th April 2016 in New Delhi and second on 21st April 2016 at Raipur, Chhattisgarh, where the issues were discussed at length with the stakeholders present.
10. TRAI issued the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 (draft TTO) on 10th October 2016 to maintain complete transparency while bringing change in existing regulatory framework. Stakeholders were asked to offer their comments, if any, on proposed tariff framework by 24th October, 2016. However, on the request from stakeholders, last date for receiving comments was extended to 15th November 2016. In response a total of 135 comments were received from stakeholders. Based on the comments/views of the stakeholders and the analysis, various provisions of the Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2017 (hereinafter referred to as Tariff Order) have been finalised.
11. While finalising the tariff framework, the Authority noted that in the broadcasting service relating to television value chain, there are three main stakeholders – broadcasters, distributors of television channels including LCOs and subscribers/viewers. Broadcasters provide channels. Distributors of television channels including LCOs establish their networks for distributing TV signals obtained from broadcasters to their subscribers/viewers. Subscribers pay price for the TV services they get from distributors of television channels. Broadcasters tend to recover the price of their channels; distributors of television channels tend to recover the capital and operational expenditure on their networks and subscribers/viewers look for uninterrupted service, good quality of channels,

affordable pricing and adequate choice in a transparent manner.

12. As discussed in para 2 above, existing tariff model has resulted in revenue of the broadcasters being heavily skewed from advertisements. Heavy dependence of broadcasters on advertisement revenue has influenced type of channels being developed for increasing eyeballs. This has resulted in minimal investments in niche channels having lesser eyeballs, and also bundling of not so popular channels in basic service tier package to widen its reach. While doing so, the subscriber choice has been greatly neglected.
13. In the current scenario (prior to notification of this TTO) , the wholesale transactions between broadcasters and distributors of television channels are being carried out in different modes such as:
 - (a) Fixed fee (lump sum) deals in which either entire/all TV channels of the broadcaster (including its group companies) or for a part of their channels are taken at the fixed annual price irrespective of the number of subscribers viewing such channels.
 - (b) Cost per subscriber (CPS) deals in which a broadcaster gives all or a group of its channels to a distributor of television channels at a fixed charge per subscriber irrespective of the fact that whether subscribers opt for all or few of the channels.
 - (c) RIO based deals as per notified RIO by broadcasters. In these deals the broadcasters ask for the RIO price per channel notified by it. Such prices are pitched very high as compared to those offered under a CPS deal or a fixed fee deal. As a result distributors of television channels are generally forced to negotiate with the broadcasters, and/or settle for a CPS or a fixed fee deal which in effect translate into non transparent deals.
14. All these deals are generally non-transparent and discriminatory in pretext of mutual negotiations thus in a way flouting the regulatory framework. Further, hugely discounted prices under fixed fee deal or CPS deal ensure that most of the channels are pushed to the customers irrespective of their choice. It is due to this fact that a common basic bouquet presently consists of approximately 200 channels whereas a subscriber usually does not view/ flip through more than 30 to 40 channels. This scenario negates the very purpose and intent of the legislature placing the Broadcasting and Cable Service Industry in the hands

of a Regulator with specific power to notify the rates at which Broadcasting Services are to be made available.

15. In view of above, the Authority envisions that the new regulatory framework must ensure-
 - (i) transparency, non-discrimination, non-exclusivity for all stakeholders in value chain,
 - (ii) affordable TV services for subscribers/ customers,
 - (iii) adequate and real choice to subscribers/customers and,
 - (iv) alignment of commercial interests of broadcasters and distributors of television channels to enable the distributors of television channels to recover their network and distribution cost and the broadcasters to monetize their channel prices.

16. In response to the draft TTO, in addition to comments on the specific provisions, stakeholders have provided some general comments on the overall tariff framework, which are discussed in the following section:

II. General comments of stakeholders on draft TTO

17. In response to the draft TTO, most of the broadcasters including one of their associations mentioned that broadcasters are akin to broadcast organizations, which come under the purview of the Copyright Act. They further mentioned that the Copyright Act is a complete code and comprehensively covers all aspects of licensing, assignment, payment of royalties, tariff fixation, distribution schemes and other considerations by Copyright Societies. It also encompasses provisions for enforcement against infringements/piracy and implementation of technological protection measures in respect of works of authors and broadcasting reproduction rights (BRR) of broadcast organisations. They are of the opinion that various provisions of the draft TTO are in conflict with the provisions of the Copyright Act, 1957 as they impose limitations and restrictions on the nature of content, prices of channels, discounting, commissions, manner of offering, ability to classify subscribers (e.g. commercial establishments) and seek differential tariff, duration of license, the geographical territory of operation etc. They further suggested that any provision of draft TTO which impinge on the rights granted under the Copyright Act ought to be harmonised.

18. Some broadcasters have also argued that the draft TTO is in the nature of sub-ordinate legislation/delegated legislation and it should yield to the statute i.e. Copyright Act because they are violating the provisions of Copyright Act.
19. Having considered the aforesaid view, it appears that the aforementioned objectors seem to harbor a misconception that there is an overlap of the Copyright Act and the TRAI Act. The jurisdictions set out in both the Copyright Act and TRAI Act are completely different for the reasons stated in below paragraph.
20. TRAI is a statutory body established under sub-section (1) of Section 3 of the TRAI Act, 1997 and has been mandated to discharge the statutory functions prescribed under the said Act. The Act, as originally enacted, did not include “Broadcasting Services” within its ambit. However, the Parliament realizing the importance and the need to regulate this industry amended the TRAI Act and included the Proviso to section 2(1)(k) that enabled the Central Government to notify Broadcasting Services as a “telecommunication service”. Pursuant to the said amendment in 2004, the Central Government issued two Notifications both dated 09.01.2004 that, among other things, notified “Broadcasting Services” as telecommunication service and affirmed the jurisdiction of the TRAI to regulate the said sector with regard to certain matters in addition to the powers available to it in terms of the Act. Moreover, S.O. 45 (E) issued as part of the Notification No. 39 dated 09.01.2004 in express terms entrusted the additional function to the TRAI of specifying standard norms for and periodicity of revision of rates of pay channels including interim measures.
21. The main functions entrusted to TRAI under the TRAI Act are to regulate tariff, interconnection and quality of service of telecommunications services. The regulations and orders to regulate tariff, interconnection and quality of service are issued after wide public consultations. The regulations, orders and directions to regulate tariff, interconnection and quality of service of “Broadcasting Services” sector are in place since 2004 and broadcasters are complying with the provisions contained therein.
22. Broadcasters are also required to obtain permission from Ministry of Information and Broadcasting (MIB) before broadcasting their channels in India in accordance with the Policy guidelines for downlinking of television channels dated 5th December, 2011 issued

by MIB. The clause 5.10 of the said policy guidelines clearly states as under:

“The company/channel shall adhere to the norms, rules and regulations prescribed by any regulatory authority set up to regulate and monitor the Broadcast Services in the country.”

23. Further Rule 9 and Rule 10 of Cable Television Networks Rules, 1994 clearly empowers TRAI to specify the tariff, interconnection and quality of services standards for service providers which include broadcasters.
24. The regulatory measures taken by the TRAI have been tested time and again before the Hon’ble Courts. While, upholding the jurisdiction of the TRAI in the matter of fixation and revision of tariffs, the Hon’ble Courts have, however, thought it fit to remand the matter back to TRAI for fresh consideration in given cases. In this regard, some of the judicial pronouncements may be taken note of:-
 - (i) Shortly after the Notifications dated 09.01.2004 were issued, the TRAI in exercise of the powers conferred by section 11(2) as well as the said Notifications issued The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 freezing the rates of TV channels as on 26.12.2003. Subsequently, further orders were issued permitting hikes in the said rates. Section 2(1)(k) Proviso as well as the aforementioned Tariff Orders came to be challenged before the Hon’ble Delhi High Court by M/s. Star India Pvt. Ltd. By a judgment dated 09.07.2007 reported as 146 (2008) DLT 455, the Hon’ble Delhi High Court was pleased to uphold the validity of section 2(1)(k) Proviso, the jurisdiction of the TRAI to regulate the “Broadcasting Services” sector and the impugned Tariff Orders themselves. The aforementioned judgment was challenged before the Hon’ble Supreme Court which rejected the challenge vide order dated 03.01.2008.
 - (ii) Vide Notification dated 03.08.2006, the TRAI had prescribed a tariff ceiling of Rs.5 per pay channel per month per subscriber in the CAS Areas. Again, this was challenged before the Hon’ble TDSAT. By a judgment titled as SET Discovery Pvt. Ltd. v. TRAI & Ors. in Appeal No. 10(C) of 2006 dated 27.02.2007 in , the Hon’ble TDSAT was pleased to uphold the jurisdiction of the TRAI to fix tariff

and prescribe a ceiling as well as lay down a ratio of 45:55 of distributing revenue between the broadcaster and the DPOs/LCOs. Subsequently, in Noida Software Technology Park vs. Media Pro Enterprises India Pvt. Ltd. in Petition No.295 (C) of 2014 dated 07.12.2015 – the Hon’ble TDSAT was pleased to reiterate the aforesaid pronouncement. A Statutory Appeal carried from the Hon’ble TDSAT judgment in Noida Software Technology Park vs. Media Pro Enterprises India Pvt. Ltd. was dismissed by the Hon’ble Supreme Court vide order dated 26.02.2016 in Civil Appeal No. 1446 of 2016.

(iii) In certain other cases, the Hon’ble Courts while finding fault with the Tariff Orders issued by the TRAI have been pleased to remand the matter back to the TRAI for fresh consideration. In this regard, the judgment titled as MSO Alliance Industrial Area v. TRAI in Appeal No. 9(C) of 2006 dated 15.01.2009 and Centre for Transforming India vs. TRAI in Appeal No.1(C) of 2014 dated 28.04.2015 of the TDSAT as well as orders of the Hon’ble Supreme Court in TRAI vs. Set Discovery Pvt. Ltd. dated 28.02.2014 in Civil Appeal No.829-833/2009 and Indian Broadcasting Federation and Anr. vs. Center for Transforming India & Anr. dated 04.08.2015 in Civil Appeal No.5159-5164 / 2015 may be taken note of.

25. It is, therefore, apparent that there can be no doubt whatsoever that the TRAI has the jurisdiction to regulate the “Broadcasting Services” sector; in fact it is the stakeholders themselves who have pressed and obtained orders time and again from Hon’ble Courts directing the TRAI to consider matters afresh including on aspects of fixation of pay channel tariff. In the circumstances, objections raised by various stakeholders to the jurisdiction of the TRAI to regulate the “Broadcasting Services” sector are clearly misconceived. This in fact is also affirmed by Rule 9 of the Cable Television Network (Regulation) Rules, 1994.

26. It has also been argued, that notwithstanding the authority of the TRAI as set out above, since the regulatory measures proposed to be undertaken would interfere with the exercise of their rights and entitlements under the Copyright Act, 1957, these measures to the aforesaid extent, therefore, are ultra vires the Act and, therefore, the powers of the TRAI.

This objection has two distinct though connected heads :-

- (i) The regulatory measures which mandate the provision of channels on a non-discriminatory basis to all DPOs are violative of the rights of Broadcasters under, inter alia, section 37 of the Copyright Act, 1957, as well as Article 19 (1)(g) of the Constitution. In other words, these regulatory measures unlawfully interfered with their “freedom to contract” as protected under section 37 and Article 19(1)(g).
- (ii) Connected with this assertion is the contention on behalf of Broadcasters that the prescription of ceiling of tariff as well as the “must provide” regulatory measures prevents them from monetizing the content of their broadcast and the exercise of their broadcasting reproduction right under section 37 of the Copyright Act, 1957.

27. The authority has considered these objections, and after due consideration, has arrived at a conclusion that since the Copyright Act, 1957 and the TRAI Act operate in two different fields altogether, there is no question either of an overlap or a conflict as is being made out by some of the stakeholders. Whereas the Copyright Act, 1957 deals with “content” and the rights emanating from and associated with the same, the TRAI Act and the powers conferred on the authority thereunder operate in a completely distinct field inasmuch as by the regulatory measures, the authority is proposing to regulate the manner in which services are provided by the various entities in this sector and that ultimately must be for the benefit of the subscriber and growth of the industry.

28. Perhaps, the most crucial factor in the regulation of broadcasting services is the transparent declaration of rates of television channels and manner in which such services are made available to the end subscriber/viewer. Manner of offering of pay channels is, therefore, central to effective and meaningful regulation of the Broadcasting Services. The TRAI is conscious, however, of the scope and ambit of its regulatory power is in relation to channel pricing (a-la-carte and bouquet pricing) and the correlation between pay channels being offered as a-la-carte and bouquet in order to ensure transparent and meaningful and not a forced or truncated choice to the end users/ subscribers. The TRAI does not, therefore, enter upon the domain of pricing individual components of content that comprise a pay channel, such individual components being the domain of content

producers (including broadcasters) who may exploit their works under the Copyright Law, whether in the form of Broadcast Reproduction Rights or any other right.

29. With regard to the objections pertaining to 'must provide' it is relevant to mention, that these provisions that have been in existence since 2004 and in fact, were tested before the Hon'ble TDSAT in the context of various arguments of the Copyright Act, 1957 in Noida Software Technology Park vs. Media Pro Enterprises India Pvt. Ltd. The Hon'ble TDSAT was pleased to reject the aforementioned contentions and was pleased to hold that these "must provide" provisions are not in any way vitiated on account of any of the rights and entitlements of the Broadcasters under the Copyright Act, 1957 including Broadcasting Reproduction Rights under section 37 of the Act and as stated above the Statutory Appeal preferred against the Hon'ble TDSAT judgment in NSTPL was dismissed by the Hon'ble Supreme Court vide order dated 26.02.2016 in Civil Appeal No. 1446 of 2016 .
30. It has also been asserted that, notwithstanding all the above, with the amendment of Copyright Act, 1957 in 2012, the jurisdiction of the TRAI has been ousted inasmuch as the Copyright Act, 1957 now clearly occupies the areas that had previously been covered by the regulatory measures of TRAI i.e. by the introduction of section 33A and Rule 56 of the Copyright Rules, 2013, there is now the provision for a "tariff scheme". This arises from a flawed understanding of the distinct subject matters and areas of operation of the TRAI Act and the Copyright Act. A perusal of section 33A and Rule 56 of the Copyright Act clearly establishes that this "tariff scheme" deals with "royalty" payable to the actual owners of a copyright. This has nothing to do with the prescription of tariff of TV channels. At best, this is only another argument of monetization which, as explained above, operates in a different sphere altogether and does not in fact survive in the regulatory regime being introduced presently.
31. As such, there is no ambiguity as regards the powers entrusted to the Authority under the TRAI Act to regulate the broadcasting and cable service providers in order to carry out the assigned mandate including that of protecting the interests of viewers of the sector. The issue of jurisdiction of the TRAI over broadcasters has been well settled by judgments of Hon'ble Courts from time to time. The power for fixation of tariff is well within the

competence of the Authority with regard to broadcasters also.

32. Some stakeholders are of the view that the draft TTO does not meet the threshold of transparency mandated by Section 11(4) of the TRAI Act, 1997, as TRAI has in the past affirmatively concluded in its various prior papers and consultations that TV Channels are “esteemed” needs for viewers. According to them, the present draft TTO proceeds on the erroneous premise that Pay TV channels are essential services and there is no evidence of market failure.
33. The contention of the stakeholders is wrong and has no basis as there exist no such presumption that Pay TV channels are essential services either in the Consultation paper dated 29th January 2016 or in the draft TTO. Further it is not necessary that a regulator can regulate only essential services. There is no legal or constitutional bar or limit that only essential services can be regulated. The Parliament of India by its own wisdom has established TRAI under TRAI Act to regulate telecommunications services including broadcasting and cable services. In fact, a bare reading of Section 11(1) of the TRAI Act clears the position that TRAI has been given wide powers to regulate the Broadcasting industry without any limitation being imposed with respect to regulation of only essential services. Further, Hon’ble TDSAT in its judgment dated. 27th February 2007 in the case of Set Discovery Vs. TRAI & Others observed that:

*“Cable broadcasting may not be an essential commodity in the sense that it is not an item of food without which one cannot survive, yet looking to the figures of TV viewership in this country its importance cannot be underestimated. Available figures suggest a TV viewership of 68 million for the whole country. **This shows that television viewing has almost attained the status of an essential service in this country.**”* (emphasis provided)

34. As far as the market failure is concerned, it is a well established fact that the main purpose for which addressability introduced was to ensure transparency across the value chain and to ensure adequate choice and better quality services to subscribers at affordable rates. While the broadcasting industry has witnessed tremendous growth in the last decade in terms of increase in number of channels, exponential increase in revenues of broadcasters and distributors of television channels but still the effective choice is not

made available to the subscribers. Number of disputes among stakeholders has also grown. This indicates that all is not well within the industry. Even today, a-la-carte choice of TV channels for subscriber is illusory either because a-la-carte rates of TV channels are disproportionately high in comparison to bouquets which forces subscribers to opt for bouquets or they are simply denied the a-la-carte choice by distributors of television channels. The main reason for this cited by the distributors of television channels is the economic un-viability as they usually do not get a-la-carte channels from broadcasters simply because the wholesale a-la-carte rates of channels are too high and the bouquets are heavily discounted even to the extent of 90% of the sum of a-la-carte rates of channels. Even cursory reading of data submitted to TRAI under Register of Interconnection Agreement Regulations and RIOs by broadcasters reveals that there is a huge difference between the rates declared in RIO and the rates at which actual deals are taking place in the market. This is even acknowledged by Hon'ble TDSAT in NSTPL judgment that actual deals are happening at much lower prices than that of RIO prices, rendering the RIO as a meaningless exercise. Even after the NSTPL judgment, the RIOs submitted by broadcasters continues to have unrealistically high a-la-carte rates and heavily subsidized bouquet rates. This is forcing distributors of television channels to opt for bouquets for their economic survival and thus they are not offering a-la-carte choice of channels to the subscribers. Therefore it is evident that fruits of addressability have not been passed on to the subscribers and subscribers are not able to exercise their choice in subscribing to channels. This clearly indicates to market failure. Therefore, it was incumbent on TRAI to issue a tariff order which protects the interests of subscribers and service providers and at the same time ensures orderly growth of the sector. It is worth noting here that there is no legal bar that TRAI cannot make regulation or issue a tariff order without the evidence of market failure. Even in absence of market failure, TRAI can issue tariff orders and regulations for orderly growth of the sector and to ensure customer/ subscriber protection.

35. Some broadcasters have stated that the provisions of draft TTO will negatively impact their advertising revenues. No specific reasons as to how it will adversely impact the advertisement revenue have been indicated in the comments. As such, they wanted that TTO should be modified to protect their interests.

36. In order to understand the concerns of the broadcasters, it is important to understand the prevailing business model. Broadcasters get revenue from two streams viz advertisements from advertisers and subscription revenue from the subscribers. The advertisement revenue directly depends on the eye balls linked with a given program. Broadcasters during discussions on tariff issue pointed out that they lack control on pricing of channels to customers. They argued that since retail level pricing remains with the distributors of television channels and they offer their channels at wholesale level to distributors of television channels, any reduction in price at wholesale level does not get passed on to subscriber impacting their power to maximize advertisement revenue. They requested the Authority to give them freedom so that broadcasters can maximize the revenue by optimizing their advertisement revenue and subscription revenue. Accordingly, the Authority, in the Tariff Order, has given flexibility to broadcasters to decide retail price directly to the customers/ subscriber in the form of maximum retail price of their channels, which is at present decided by the distributors of television channels. It will provide flexibility to broadcasters to optimise the retail price of their pay channels in such a way that they can maximise their sum of revenue from subscription and advertisements. This will also empower broadcasters to provide good quality channel or reduce the price of the channel if they so desire to enhance its viewership and get better advertisements revenues.
37. Most of the broadcasters and their associations have mentioned that in the definition of subscriber mentioned in the draft TTO differentiation between ordinary and commercial subscriber has been done away with. They have further mentioned that the TRAI has not undertaken any consultation on whether there is a need to completely do away with the distinction that legally exists between a ‘commercial subscriber’ and an ‘ordinary subscriber’. Broadcasters have stated that the issue of commercial establishments is at odds with Copyright Laws in as much as the Copyright Act clearly provides Broadcast Organisations the right to charge differential rates of royalties and license fees on commercial establishments vis-à-vis domestic/residential subscribers.
38. The provisions relating to commercial subscribers are prescribed in Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010. However, the provisions applicable to commercial subscribers were challenged by some

broadcasters in TDSAT. The petitions are pending before Hon'ble TDSAT. Accordingly the Authority has decided to continue with the provisions applicable for commercial subscribers specified in the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010. The present TTO does not deal with commercial subscriber.

39. Some stakeholders are of the view that definition of 'distribution platform' should include OTT and Doordarshan. They further suggested that definition of 'distribution platform operators' should include OTT operator, Doordarshan or any platform that distributes channels to the subscriber.
40. In this regard, this tariff order is applicable to only those distribution platforms and distribution platform operators for which any permission or license is granted by the MIB. Since OTT operators and Doordarshan are not covered under any permission or license granted by the MIB, the Authority is not in agreement with these suggestions of stakeholders as they are not covered under present framework.

III. Analysis of issues

A. Tariff models

41. In chapter 4 of the consultation paper, possible tariff models were broadly categorized into three categories for a holistic re-examination of the existing business model of digital addressable TV broadcasting sector viz - Models at wholesale level, Models at retail level and integrated models. Comments of the stakeholders were solicited on these suggested models.

Models at wholesale level

42. At wholesale level, signals of TV channels are provided by the broadcasters to the distributors of television channels. Distributors of television channels receive the FTA channels free from broadcasters (Without any payment). Pay channels are provided to distributors of television channels at the wholesale prices declared by Broadcasters.
43. Various models for wholesale level tariff were suggested in the consultation paper. Most

of the broadcasters favoured forbearance as their first choice as a tariff model at wholesale level. Some broadcasters favoured 'regulated RIO model' or a blend of 'regulated and flexible RIO model'. Most of the large distributors of television channels favoured 'integrated distribution model'. They further submitted that the option of bundling or packaging should not lie with the broadcasters and maximum discounts which can be provided by broadcasters on non-discriminatory basis should also be defined by TRAI. Majority of other distributors of television channels favoured 'regulated RIO model' while, a few of the DTH operators favoured 'cost-based model' at wholesale level.

Models at retail level

44. At the retail level, TV channels are distributed to subscribers by the distributors of television channels either directly or through LCOs. The distributors of television channels aggregate TV channels from different broadcasters and provide them on a-la-carte and bouquets basis to the subscribers. At present the retail tariff in addressable system for both FTA and Pay channels is under forbearance i.e. the distributors of television channels are free to decide their price as per market conditions.
45. Various models for retail level tariff were suggested in the consultation paper. Most of the broadcasters favoured continuation of price forbearance at retail level. One of the broadcasters suggested exclusive a-la-carte model. Most of the distributors of television channels favoured price forbearance at the retail level. A few of the distributors of television channels have favoured integrated distribution model and exclusive a-la-carte model. One of the federations of the cable operators has favoured exclusive a-la-carte model with pay TV channels offered in different slabs and price each free-to-air channel at Re. 1/-. Consumer organizations, individuals and associations expressed mixed opinion regarding the tariff model at retail level favouring price forbearance or a-la-carte model or MRP based model.

Integrated model

46. In the integrated model there are no separate wholesale and retail level tariffs. Broadcasters declare the price of their pay channels and bouquets of channels directly for customers.

47. Most of the broadcasters were not in favour of integrated distribution model. Majority of the MSOs and few DTH operators favoured integrated distribution models. They submitted that the broadcasters should provide all its pay channels on a-la-carte basis with rates of each channel directly prescribed for customers/ subscribers. They also opined that FTA channels should be bundled by the distributors of television channels and hence provided to the subscribers. Also, the option of bundling or packaging should lie with the distributors of television channels and not the broadcasters. The a-la-carte rate prescribed by the broadcasters should be consistent with the regulated genre-wise caps as decided by TRAI.

Manner of offering- Exclusive Pay and FTA bouquet

48. In the consultation paper stakeholders were asked to suggest whether separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will it be more users friendly.
49. In response, majority of broadcasters suggested that flexibility to package channels should lie with the distributors of television channels and there should not be any separate bouquets for pay and FTA channels. They have pointed out that separate bouquets may result in higher subscription revenue to be paid by subscribers for same number of channels. Majority of distributors of television channels and associations of cable operators were in agreement with separate bouquets for pay and FTA channels for greater customer choice and transparency. A few distributors of television channels and an individual were of the opinion that it should be left to the distributors of television channels to decide.
50. After holistic examination of responses from the stakeholders, received in response to the consultation paper, the Authority proposed a tariff framework in the draft TTO. While doing so, Authority noted the concerns of all the stakeholders in the value chain expressed in written submissions in response to consultation paper or during OHD. The shortcomings of present framework were also analyzed. Accordingly, in the draft TTO it was proposed that broadcasters would declare maximum retail price (MRP) (excluding taxes) of their a-la-carte pay channels for subscribers. Broadcasters would also offer

bouquets of their pay channels and declare MRP (excluding taxes) of bouquets for subscribers. However, MRP of such bouquets of pay channels would not be less than 85% of the sum of maximum retail price of the a-la-carte pay channels forming part of the bouquet. It was further proposed that distributors of television channels would charge a monthly rental amount of maximum Rs. 130/- (excluding taxes) per month from a subscriber for subscribing a network capacity of 100 SD channels. Distributors would be permitted to form their own bouquets by including only a-la-carte pay channels of different broadcasters. It was also proposed that within the capacity of 100 SD channels, in addition to channels mandatorily provided to subscribers as notified by the Central Government, a subscriber would be free to choose any free-to-air channel, pay channel, premium channel or bouquet of channels offered by the broadcasters or bouquet of channels offered by the distributor of television channels.

51. Some stakeholders mentioned that in some other countries, the Regulators take a lenient view on regulation of prices for ensuring active competition in the market and leave decisions like wholesale rates, packaging choice to market players. They further suggested that forbearance may be allowed at the wholesale level tariff as there is sufficient competition at all levels of the pay TV industry and broadcasters should be permitted to price their channels as per market dynamics. Few stakeholders suggested that in case forbearance is offered, the rates of the channels will be market and competition driven, and actual demand and supply will control the pricing, which could lead to effective price reduction in the rates, with innovative offers.
52. The Authority has considered the views of stakeholders in this regard and is of the view that full freedom and business flexibility should be given to the broadcasters to monetize their channels. Accordingly, the Authority has decided not to prescribe genre wise ceiling on the MRP of pay channels. However, the Authority expects that the broadcasters will ensure complete transparency, non-discriminatory behavior and protection of subscriber interests while pricing their channels. It is also expected that broadcasters will price their channels reasonably and benefits of higher revenue realization due to digitisation and addressability shall be shared with subscribers also.

53. Some stakeholders suggested that TRAI should determine prices of channels on cost plus basis.
54. In this regard it is important to understand that generally a channel consists of number of the programs. The cost of the production of different programs drastically varies based on the actors, setup cost, script, copy rights, and other miscellaneous factors. The various programs in a given channel also frequently change based on their Television Rating Points (TRP), advertisement potential and other ground reports. Hence, determining the cost of production of a channel at all times is an extremely difficult process, perhaps almost impossible. Moreover, such determination of price would be dynamic in nature and may vary with change in programs in a channel. Programs on television channels change dynamically and as such it is impractical to determine the price of a television channel on cost plus basis.
55. The broadcasters have also flagged that many a times a given channel has been priced by distributors of television channels differently at different distribution platforms. It is alleged that distributors of television channels by having freedom to price a channel at retail level can influence the possibility of subscription to a channel by creating artificial price barrier whereas the broadcasters have no such control.
56. The distributors of television channels on the contrary are of the view that several channels are priced very high by the broadcasters which have no demand by subscribers at that price. However, broadcasters use their dominance or power of driver channels to force such channels to subscribers without them opting for such channels.
57. It is noticed that a broadcaster gets revenue for a channel from two visibly distinct streams, subscription and advertisements. Broadcasters usually provide popular channels for mass viewing to get large viewership of their channels and hence more revenue from advertisements. The Authority, after considering various issues, is of the view that regulatory framework should be such 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 price of a channel, still a value perceived by a customer can be taken as true value of a channel.

58. It may not be out of place to mention that during the discussions in the Parliament on the motion for consideration of the Cable Television Networks (Regulation) Amendment Bill, 2011, the then Minister of Information and Broadcasting stated that **TRAI will establish a system wherein consumers will be free to choose a-la-carte channels of choice and they will not be required to subscribe to bouquets.** Hence, it will be in fitness of things if broadcasters prescribe the MRP of their pay channels to subscribers who should be free to choose channels of their choice. These rates will be platform agnostic i.e. uniform across the platforms (cable TV, DTH, HITS and IPTV).
59. Prescribing MRP by the broadcasters to subscribers will in a manner self regulate the pricing of pay channels as higher price will reduce the number of subscribers who will opt for such channels thereby impacting their advertisement revenue. It will provide flexibility to broadcasters so that they can optimise the price of pay channels in such a way that they can maximize their sum of revenue from subscription and advertisements. This will also give power to broadcasters to reduce the MRP of channels if they so desire to enhance its viewership.
60. In the draft TTO the broadcasters were permitted to declare different MRPs of their channels for different geographical areas. The broadcasters were also permitted to declare a channel as pay in one geographical market and as free-to-air in another geographical market.
61. On the above mentioned issue, some broadcasters are of the view that differential pricing would help broadcasters in giving discounts in the target geographical area while maintaining revenues from those geographical areas where a particular channel is popular. However, they have further mentioned that geographical area does not take into account inherent difference that exists within the same State owing to different language, preference of the subscribers in different parts of the State. They have also suggested that metro & big cities of Mumbai, Chennai, Kolkata, Hyderabad, Bangalore, Pune and Ahmadabad should be classified as separate geographical areas.
62. On the other hand most of the distributors of television channels are of the view that MRP of a channel should be uniform across India instead of different prices across geographical

areas. They have mentioned that variation in pricing on the basis of geographical area may result in discriminatory pricing. They have further stated that prescription of geographical areas in the draft TTO is not based on any study or data and these have been specified without giving any opportunity to the stakeholders to offer their comments on the same. Some MSOs are of the view that fixing of different tariff for different geographical areas will create system related issues since most of the distributors of television channels have single head-end catering to more than one different geographies. According to them it would not be possible to define and control movement of STBs from one location to another and pass on appropriate changes in tariff plans to the subscribers based on the geographical situation of the STB. They further stated that it will also be very difficult to manage and control the different rates of channels mentioned in the EPG for different geographies. DTH operators also mentioned that they do not have any mechanism to exactly know the location of the user. They are of the opinion that differential pricing on the basis of geographical areas can be misused and it may result in disputes relating to payment settlements among stakeholders.

63. The Authority noted the concerns of stakeholders regarding difficulties in providing differential pricing of channels based on relevant geographical areas. The programs of a channel across the country remain same and therefore may not be priced differently. Further, it may be difficult for DTH operators to keep differential tariffs based on geography as their all channels are transmitted throughout the country. The provisions of differential pricing of channels in different areas exists in present regulations. However, based on the reports submitted by the broadcasters to TRAI, very few broadcasters are using this provision. Accordingly, the Authority has decided to do away with the differential pricing of channels based on geographical areas. However if a broadcaster wants to offer a lower price for a channel in a particular geographical area, he will be free to do so by offering similar discount to all the distributors of television channels in that area subject to ceiling on the discount prescribed in the interconnection regulations notified by the Authority.
64. The Authority has noted that at present the uptake of channels on a-la-carte basis is negligible as compared to the bouquet subscriptions. Analysis yields that the prime reason

for such poor uptake of a-la-carte channels is that the a-la-carte rates of channels are disproportionately high as compared to the bouquet rates and further, there is no well defined relationship between these two rates. As per data available with TRAI, some bouquets are being offered by the distributors of television channels at a discount of upto 80% -90% of the sum of a-la-carte rates of pay channels constituting those bouquets. These discounts are based on certain eligibility criteria/conditions to be fulfilled by the distributor of television channels in order to avail those discounts from broadcasters. Such high discounts force the subscribers to take bouquets only and thus reduce subscriber choice. As a result, while technically, a-la-carte rates of channels are declared, these are illusive and subscribers are left with no choice but to opt for bouquets. Bouquets formed by the broadcasters contain only few popular channels. The distributors of television channels are often asked to take the entire bouquet as otherwise they are denied the popular channels altogether or given such popular channels at RIO rates. To make the matters worse, the distributors of television channels have to pay as if all the channels in the bouquet are being watched by the entire subscriber base, when in fact only the popular channels will have high viewership. In such a scenario, at the retail end, the distributors of television channels somehow push these channels to maximum number of subscribers so as to recover costs. This marketing strategy based on bouquets essentially results in 'perverse pricing' of bouquets vis-à-vis the individual channels. As a result, the customers are forced to subscribe to bouquets rather than subscribing to a-la-carte channels of their choice. Thus, in the process, the public, in general, end up paying for "unwanted" channels and this, in effect, restricts subscriber choice. Bundling of large number of unwanted channels in bouquets also result in artificial occupation of distributors' network capacity. This acts as an entry barrier for newer TV channels.

65. In order to facilitate subscribers to exercise their options in line with intention of lawmakers to choose individual channels, in the new framework the broadcasters will declare to customers/subscribers the MRP of their a-la-carte channels and bouquets of pay channels. In order to ensure that prices of the a-la-carte channels are kept reasonable, the maximum discount permissible in formation of a bouquet has been linked with the sum of the a-la-carte prices of the of pay channels forming that bouquet. A broadcaster can offer a maximum discount of 15% while offering its bouquet of channels over the sum of MRP of

all the pay channels in that bouquet so as to enable customer choice through a-la-carte offering and also prevent skewed a-la-carte and bouquet pricing (refer example 1). The bouquet(s) offered by the broadcasters to subscribers shall be provided by the distributors of television channels to the subscribers without any alteration in composition of the bouquet(s). In case a broadcaster feels that more discount can be provided in formation of the bouquet, it indirectly means that a-la-carte prices at the first stage has been kept high and there is a need to revise such a-la-carte prices downwardly. Full flexibility has been given to broadcasters to declare price of their pay channels on a-la-carte basis to correct such situations, if it may come.

66. Some stakeholders are of the opinion that limiting the discount to subscribers while forming bouquets is anti subscriber. In this regard, while the Authority wants to facilitate the availability of a-la-carte choice to customers/ subscribers, it does not intend to encroach upon the freedom of broadcasters and distributors to do business. During the discussions in the Parliament on the motion for consideration of the Cable Television Networks (Regulation) Amendment Bill, 2011, the then Minister of Information and Broadcasting emphasised the need to establish a system for subscribers to choose a-la-carte channels of choice. The Authority has also made several attempts in this regard, but for one or the other reason could not succeed. Here it is important to understand that the Authority has not been able to do pricing of channels in the absence of pricing of content. Present trends indicate that majority of channels are priced much below the prevailing ceiling, but higher ceilings were prescribed to give flexibility to broadcasters to monetise their channels and freedom to do business. Further, different channels even in the same genre may have varying cost of production and potential to monetise, but within the framework. A broadcaster may price even non-driver channels at a much higher value that they can command. Non-discovery of reasonable price of a channel in a market is one of the constraints that can be manipulated and misused to price a channel in a-la-carte from which is illusory. Such high a-la-carte prices permits broadcasters/distributors to provide high discounts to push non-drivers channels in form of bouquets to the subscribers while reducing the probability of choosing the a-la-carte channels of choice as required by the lawmakers in the Parliament. The possibility to forcing bouquets over a-la-carte choice by using higher discounts can be further understood by following example, where a

broadcaster has a total of 35 pay channels out of which only 5 are driver channels :

Table 1: a-la-carte vs. Bouquet prices

Channel	Discount 75%	Discount 60%	Discount 45%	Discount 30%	Discount 15%
Channel 1 a-la-carte price	19	19	19	19	19
Channel 2 a-la-carte price	10	10	10	10	10
Channel 3 a-la-carte price	12	12	12	12	12
Channel 4 a-la-carte price	5	5	5	5	5
Channel 5 a-la-carte price	4	4	4	4	4
Sum of a-la-carte prices of 5 driver pay channels	50	50	50	50	50
Sum of a-la-carte prices of 30 non-driver pay channels (@ Re 1)	30	30	30	30	30
Total price of 35 a-la-carte pay channels	80	80	80	80	80
Price of bouquet of 35 pay channels (with discount on sum of a-la-carte prices)	20	32	44	56	68

The above table clearly indicates that in case the amount of discount offered by the broadcaster, over the sum of a-la-carte prices of pay channels, while forming the bouquet of those pay channels is very high (75%), the price of bouquet becomes much lower than the sum of a-la-carte prices to the extent that it is almost equal to a-la-carte price of one driver channel. Such amount of discount is anti customer/subscriber as it discourages a-la-carte selection of channels. As the amount of discount on formation of bouquet decreases, the difference between the prices of bouquet and the sum of a-la-carte prices also decreases. In case the amount of discount is fixed at 15%, the price of bouquet becomes higher than the sum of a-la-carte prices of driver channels; thereby encouraging a subscriber to choose a-la-carte channels of his choice.

67. In the present regulatory framework incidences have come to the knowledge where discount upto 90% on the declared RIO prices has been given by broadcasters. Obviously such efforts kill competition and reduce a-la-carte choice which is anti-subscriber. Accordingly, the Authority has prescribed a discount of 15% to be provided by

broadcasters at wholesale level and further 15% to be provided by distributors at retail level. The net effect to subscribers at retail level will be a discount of approximately 30% on the bouquets of channels. Therefore flexibility of formation of bouquet has been given to broadcasters and MSOs both to such an extent that total permissible discount does not kill the a-la-carte choice. The Authority has been careful in prescribing a framework which does not encourage non-driver channel to be pushed to subscribers against their choice. Non-driver channels which are provided as part of bouquets not only kill choice of the a-la-carte channels but also eat away the channel carrying capacity available with distributors which may result in artificial capacity constraints at distribution platforms for launch of new/competitive channels. Such restrictions are anti-subscriber and have to be carefully handled. Accordingly, the Authority has consciously decided the present framework of prescribing relationship between a-la-carte and bouquet prices to protect interest of customers/ viewers and as well as those of service providers. However, the Authority will keep a watch on the developments in the market and may review the maximum permissible discount while offering a bouquet, in a time period of about two years.

68. A broadcaster is free to offer its pay channels in the form of bouquet(s) to customers. While subscribing to bouquet, a customer may not be aware of the price of each channel forming the bouquet. Abnormal high price of a pay channel may result in higher price of a bouquet leading to adverse impact on subscribers' interests. It is an established fact that bundling of channels complicates and obscures their pricing. Prices are obscured because subscribers do not always understand the relationship between the bundle price and a price for each component. However, the bundling of channels offers convenience to the subscribers as well as services providers in subscription management. Keeping in view these realities and to protect the interests of subscribers, the Authority has prescribed a ceiling of Rs. 19/- on the MRP of pay channels which can be provided as part of a bouquet. Therefore, any pay channel having MRP of more than Rs. 19/- cannot become part of any bouquet. The amount of Rs. 19/- has been prescribed keeping in view the prevailing highest genre wise ceilings of Rs. 15.12 for all addressable systems between broadcaster & DPOs at wholesale level and further enhancing it 1.25 times to account for DPOs distribution fee. Broadcasters also have complete freedom to price their pay

channels which do not form part of any bouquet and offered only on a-la-carte basis. Similar conditions will also be applicable to DPOs for formation of the bouquets. However, the Authority will keep a watch on the developments in the market and may review the manner in which a channel can be provided as part of a bouquet, in a time period of about two years.

69. In the draft TTO it was proposed that a broadcaster can offer its pay channels on a-la-carte basis and in the form of bouquet also. A genre based ceiling for pricing of such channels was prescribed if such channels are proposed to be provided to subscribers as part of bouquet. In addition, in the draft TTO, it was also proposed to permit broadcasters to declare any of their channels under a separate category called Premium channels, which can be provided to subscribers only on a-la-carte basis and no ceiling was prescribed on the pricing of such channels.
70. In response some broadcasters are of the view that Premium channels and niche channels are different and only channels containing special type of content can be categorized under Premium channels. Some of them have suggested several criteria for categorization of channels under Premium channels.
71. After going through the comments of stakeholders, it appears that there is some misconception in the minds of stakeholders regarding the name of Premium channels. The intention of the Authority was to provide complete flexibility to a broadcaster to categorise any of its channel under Premium category irrespective of the genre of that channel. The only condition proposed for Premium channels was that such channels have to be provided only on a-la-carte basis throughout the value chain. This was decided to ensure that subscriber remained fully aware of price implication of such channels before opting for them. In order to overcome misconception, the Authority has decided to away with categorization of channels as Premium channels. Since broadcasters have already been given freedom to price their a-la-carte channels without any genre ceiling (refer para 52), removal of the concept of premium channel will not make any change as far as implementation on the ground is concern.
72. Some broadcasters suggested that they should be given complete flexibility to offer

discounts on MRP based on subscriber demand and make promotional offers for newly launched channels.

73. The Authority, after considering the above mentioned demand of some broadcasters, has decided that broadcasters can offer promotional schemes on MRP of their a-la-carte pay channels. However, in order to prevent misuse of such schemes, the Authority has also decided that the broadcasters are not allowed to offer any promotional scheme on bouquet of pay channels. Further, the duration of any such scheme shall not be more than ninety days at a time and such scheme shall not be offered by a broadcaster more than two times in a calendar year. The prices of a-la-carte pay channels offered under any such promotional scheme shall be considered as MRP of these channels during the period of such promotional scheme. Regulations and Tariff Orders notified by the Authority shall be applicable on the prices of a-la-carte pay channels offered under any such promotional scheme.
74. The Authority has considered the demand of distributors of television channels to let the price forbearance at retail level continue in the new framework also. The Authority has noted that distributors of television channels get channels or bouquets of channels from broadcasters within prescribed limits of discounts. In order to address this concern, the Authority has decided to continue the forbearance at the retail level and provided freedom to distributors of television channels to fix the distributor retail prices of a-la-carte pay channels for their customers by offering discount on the MRP of pay channels declared by the broadcasters. Distributors of television channels are also free to form and price the bouquets from a-la-carte pay channels of different broadcasters with a condition that the distributor retail price of such bouquet of pay channels shall not be less than eighty five percent of the sum of distributor retail prices of the a-la-carte pay channels and bouquet of pay channels formed by broadcasters forming part of that bouquet (refer example 2). Further, in order to protect customer/ viewer interests DPOs also have to ensure that any pay channel having MRP of more than Rs. 19/- cannot become part of any bouquet.
75. Some stakeholders mentioned that at the retail level no ceiling has been stipulated for distributor retail prices of the distributors of television channels vis-à-vis the MRP of the broadcasters. They are of the view that this will result in different distributor retail prices

for the same channel in the same area. Some stakeholders further stated that distributors of television channels may price the channel much lesser than its MRP and thus indulge in predatory pricing to acquire market share which needs to be checked. As per them this will result in unhealthy competition in the sector and will defeat the purpose of defining prices at the broadcaster level.

76. The discount to distributors of television channels is to be given on the MRP of a channel declared by the broadcasters. Further, the Authority has prescribed a ceiling on discount that can be offered by broadcasters to distributors of television channels based on the verifiable and nondiscriminatory parameters. Therefore, it may not be viable for a distributor of television channels to offer a discount on a channel more than the discount that it will get from the broadcaster on the MRP of that channel. The intention of the Authority while prescribing the cap on the discount is to ensure level playing field for all the DPOs and encourage competition. It is expected that DPOs while exercising forbearance will price the channels reasonably and will not indulge in predatory pricing. The Authority will keep a watch and will intervene, in case such a need arises. Next issue relates to monetization of investment in distribution networks.
77. Distributors of television channels have made significant investment in establishing and maintaining their networks which is independent of the broadcaster's requirements. Additional investment is further needed in the distribution networks to expand their reach and upgrade their capabilities to provide multi-media services including the broadband. In addition, distributors of television channels have to carry out various tasks such as subscriber management, billing, complaint redressal, collection of subscription revenue etc. In the present framework distributors of television channels do not have any fixed source of revenue and to a large extent depends on the revenue share earned from the pay channels of broadcasters distributed on their networks to subscribers. In order to recover network cost, distributor of TV channels also price the FTA channels to subscribers. The Authority has noted that in several cases the price of FTA channels notified to subscribers is higher than the prices of some pay channels. This is a wrong practice in principal. Broadcasters of FTA channels feel that such pricing to subscribers is detrimental to their business model which is totally dependent on advertisement revenue. Such prices to view

FTA channels reduce the viewership, directly impacting the advertisement revenue. As a result chances of mutual mistrust and litigations increase in value chain. Therefore, the Authority is of the view that the 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.

78. In draft TTO it was proposed that distributors of television channels would charge a monthly rental amount of maximum Rs. 130/- (excluding taxes) per month from a subscriber for subscribing to a network capacity of 100 SD channels.
79. In response to the draft TTO some broadcasters have mentioned that no rationale has been given for fixing a price for Rs. 130 /- as the price for basic tier. They are of the view that the rental amount should be reduced because cost of transmission reduces with increase in number of subscriber and also the cost of other activities like subscriber management, billing, complaint redressal, call centre, etc., will reduce over time. On the other hand most of the distributors of television channels have supported the prescription of rental amount. Some of them have suggested that instead of prescribing a ceiling rental amount, it should be fixed at Rs. 130/-. Few distributors of television channels have suggested that rental amount should be fixed at Rs. 130/- and a maximum discount of 15% may be allowed. Some distributors of television channels have suggested a rental amount should be Rs. 200/-. One stakeholder has suggested for changing the term rental amount to Minimum Subscription Fee or Basic Subscription charges or Basic Tier Fee as the term rental creates confusion with the rental amount for STB.
80. The Authority agreeing with the demand of stakeholders decided to rename the Rental amount as 'Network Capacity Fee' because the distributor provides a network capacity which a subscriber utilises to receive the signals of subscribed television channels. As per data available, the Authority noted that 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 center etc comes out to be approximately Rs. 50/- per month. Accordingly, the Authority has permitted the distributors of television channels to charge a maximum fixed amount of upto Rs 130/- per month, excluding taxes, from its subscribers towards its distribution network cost to carry 100 SD channels. A subscriber may request for additional network capacity in bundles or lots of 25 SD channels at a rate of Rs 20/- per month, excluding taxes, for subscribing to distribution network capacity for carrying more than 100 channels. This accounts for additional bandwidth cost by distributors of television channels.

81. The Authority has further noted that the Average Revenue Per User net of payments made to broadcasters for their pay channels per month for some distributors of television channels at present is approximately Rs 100/-. The Authority in the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 has mandated the MSOs to offer a package of a minimum of one hundred free-to-air channels as basic service tier (BST) and specify a minimum monthly subscription, not exceeding one hundred rupees (excluding taxes) per subscriber. The price of BST has never been questioned by any stakeholder so far. If we estimate the current price of BST applying the GDP deflator prepared by the World Bank, it comes out to be Rs. 110/-. The Authority has further noted that in Phase-III and Phase-IV areas, large number of small MSOs are providing services who have smaller networks and cater to small number of subscribers. In order to protect the interests of such MSOs, the amount of Rs. 130/ has been prescribed for Network Capacity Fee for the capacity of initial one hundred channels. In order to provide flexibility to distributors of television channels and protect the interests of customers/viewers the ceiling of Rs. 130/- has been prescribed. Distributors of television channels are free to fix Network Capacity Fee below this ceiling. However, the Network Capacity Fee will be agnostic to the type of the channel carried over the network. It cannot vary based on the channels subscribed by a subscriber. The Authority will keep a watch on the developments in the market and may review the ceiling on the Network Capacity Fee in a time period of about two years.
82. Now the issue will come as to how network capacity of HD channels will be counted.

According to industry estimates, on an average, one HD channel occupies a bandwidth that would otherwise accommodate 2 SD channels with appropriate compression processes in place. Accordingly, the Authority has decided that in case a subscriber subscribes to an HD channel, it will be considered equivalent to two SD channels for the purpose of counting of channels capacity. For example, in case a subscriber opts for capacity of 100 SD channels and subscribes to 1 HD channel, than he will get maximum 98 SD channels and 1 HD channel (1HD channel = 2 SD channels) in subscribed capacity. In case a subscriber subscribes to 2 HD channels, than he will get 96 SD channels and 2 HD channels (2HD channels = 4 SD channels).

83. The flexibility of packaging of channels at retail level is presently given to distributors of television channels. However, it is primarily being influenced by the broadcasters. The entry level bouquets are formed by distributors of television channels with both FTA and pay channels. Such formation of bouquets and restricted availability of a-la-carte channels due to higher prices has worked against the interest of the subscribers. Further, subscribers are not able to choose channels according to their choice. Here it is important that one of the primary objectives of digitalization is to serve the subscriber interest better, giving them better quality signals and more choice of the channels at a reasonable price. In view of above, the Authority has decided that subscribers should have freedom to choose the channels, both FTA and pay channels or combination of pay channels and FTA, of their choice other than mandatory channels of Prasar Bharti.
84. In the present framework customers are generally provided with bouquets of channels. They do not have adequate information about all the channels available on distributors of television channels network and their prices. As a result customers are not able to take an informed decision and exercise their choice in selecting the channels of their choice. In order to protect the interest of customers/ subscribers, the Central Government enacted the Consumer Protection Act 1986, the clause 6 of which lists out the six basic rights the consumers. The clause 6 of the Consumer Protection Act 1986 is reproduced below.

“6. Objects of the Central Council.—The objects of the Central Council shall be to promote and protect the rights of the consumers such as,—

- (a) *the right to be protected against the marketing of goods and services which are hazardous to life and property;*
- (b) *the **right to be informed** about the quality, quantity, potency, purity, standard and **price of goods or services**, as the case may be so as to protect the consumer against unfair trade practices;*
- (c) *the **right to be assured**, wherever possible, **access to a variety of goods and services at competitive prices**;*
- (d) *the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;*
- (e) *the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and*
- (f) *the right to consumer education.” (emphasis provided)*

85. In order to ensure that consumers get adequate information about all the channels available on the network of distributors of television channels and their prices enabling them to make informed choice, the Authority has decided that broadcasters shall publish the MRP of their pay channels on their website, report to the Authority and also inform to all the distributors of television channels. It is also decided that such MRP will be visible to all the subscribers in the Electronic Program Guide (EPG), details of which are discussed in the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017.
86. It may be possible that some customers/subscribers may not find it convenient to choose channels of their choice. Distributors of television channels interact with customers/subscribers either directly or through LCOs and are aware about their choices and interests. Therefore, distributors of television channels will be able to form bouquet(s) from the a-la-carte pay channels obtained from different broadcasters which suit the requirement of customers/subscribers. Distributors of television channels are also permitted to package bouquet(s) of the pay channels from different broadcasters to form a bigger bouquet of pay channels. The Authority has also permitted the distributors of television channels to form their bouquets containing a-la-carte pay channels and bouquets of pay channels offered by broadcasters. However, a distributor of television channels shall not break a bouquet of pay channels, offered by a broadcasters in any condition either while offering bigger bouquet, or to make two or more smaller bouquet(s) of pay channels at distribution level for subscribers.

87. Many a times a subscriber does not know that FTA channels are given to distributors of television channels free of cost whereas subscription fee has to be given for pay channels only. When a bouquet contains both pay and FTA channels, customers/subscriber may not be able to appreciate the price difference due to lack of information. This need to be addressed. Accordingly, the Authority has decided that bouquets of pay channels and FTA channels have to be provided separately i.e. there can be no bundling of pay and FTA channels together both at the broadcaster as well as at the distributor of television channels level.
88. A subscriber will be free to choose any channel on a-la-carte basis out of the pay and FTA channels of different broadcasters available on the network of the distributor of TV channels. In addition to such a-la-carte choice, a subscriber will also be free to choose any bouquet of pay channels offered by a broadcaster or any bouquet of pay channels formed by distributor of TV channels from pay channels of different broadcasters or any bouquet formed by distributor of TV channels from FTA channels of different broadcasters or a combination thereof. This will ensure increased choice at effective prices. Here it is important to mention that subscribers will not be charged, other than the Network Capacity Fee, either by the broadcaster or distributors of TV channels for subscribing to any a-la-carte FTA channel or bouquet of FTA channels available on the network of the distributors of TV channels.
89. Some DTH operators have raised the issue of non-level playing field and mentioned that the draft TTO effectively proposes to equalize all distributors of television channels, while overlooking their varied investments, scales of operation, QoS, service levels, costs, regulatory levies & taxation, innovation, efficiency of operation, categories of products, etc. They have also stated DTH operators due to high input costs will only result in losses. They suggested that the DTH operators ought to have flexibility to fix their tariffs for their network in such a way that they can plan the recovery of the capex/opex they have made.
90. In this regard it is mentioned that the DTH operator while making the argument that the input cost is higher to them compared to MSOs, had ignored the fact that MSO also incurs cost of developing ground infrastructure and engaging with LCOs and handles manpower

on the ground infrastructure. Moreover, every technology is having its own advantages and disadvantages. It is pertinent to mention that while DTH operators use expensive transponder space then they also get the advantage of coverage and acquire subscriber base in any part of country whereas MSOs require to deploy and maintain the ground infrastructure that caters subscribers across the length and breadth of its service area involve huge efforts. At the end of the day both systems are addressable systems and they serve the same purpose. Further, it is observed that no DTH operator furnished cost figures in support of their argument at the stage of consultation on draft TTO despite specifically appealed in it. The Authority has given enough flexibility to distributors of television channels to innovate while protecting the interest of the customers. As such the prescribed ceilings have taken into consideration the cost of both the systems and leave enough margins to compete.

91. Though the Authority has prescribed the ceiling on network capacity fee, it expects that such ceilings will be in operation for a limited period. The Authority will keep a watch on the developments in market and once there is effective competition, it may consider deregulation and do away with the ceilings on network capacity fee in a time period of 3 to 4 years.

B. Rationalization of genres

92. The Authority in the draft TTO proposed to retain the following seven genres for the purpose of fixation of genre price cap:
 - (i) General Entertainment
 - (ii) News and Current Affairs
 - (iii) Infotainment
 - (iv) Sports
 - (v) Kids
 - (vi) Movies
 - (vii) Devotional
93. In response to the draft TTO some stakeholders are of the view that provision of genre will kill innovation and will force the broadcasters to develop channels only in limited areas as defined in given genre. Some other stakeholders submitted that Music should be retained as separate genre as Music has a huge viewership share which is bigger than news and

sports. Some other stakeholders suggested that there should be more additions in the categories of genre list such as Music, Regional, Business News and International etc.

94. The Authority has prescribed different genre to facilitate broadcasters to classify their channels in appropriate genre so that subscribers can scroll such channels easily. However, considering the view of the stakeholders against prescribing any genre in tariff framework, the Authority has decided to do away prescription of the genre in TTO.

C. Ceiling on Genre price

95. As discussed earlier in para 52, the Authority, after considering the comments of stakeholders in response to draft TTO, has decided not to prescribe any ceiling on the prices of pay channels.

D. Premium channels & pricing

96. As already discussed in para 71, the Authority, after considering the comments of stakeholders in response to draft TTO, has decided to do away with the categorization of pay channels as Premium channels.

E. HD channels pricing

97. As discussed earlier in para 52, the Authority has decided not to prescribe any ceiling on the prices of pay channels including HD channels. The Authority has prescribed that any channel having MRP more than Rs 19/- will not be permitted in any bouquet made by either broadcasters or the DPO to take care of obliquely pushing any high price channel into the bouquet. As such, price of the HD channels will get regulated as per the market demands and based on the subscriber choice.

F. Channel visibility on Electronic Program Guide (EPG)

98. Provisions related to channel visibility on EPG are prescribed in detail in QoS and Interconnection Regulations.

G. Variants or Cloned Channels

99. In the consultation paper comments of stakeholders were sought on the issue of definition and need for regulation of variant or cloned channels.
100. Majority of broadcasters are not in favour of regulating variant or cloned channels. They have opined that variant or cloned channels does not hamper subscriber interests as they have been introduced to cater different mass/class of population and to increase the reach of channels of broadcasters. They have further suggested that by regulating variant or cloned channels, TRAI would thereby be regulating content of channel which falls outside the purview of TRAI. On the other hand, some of the broadcasters are in favour of regulating variant or cloned channels with no separate charges for the channels having same content but multiple audio feed. One has suggested that the HD channels may however be exempted from the provisions of any such clause.
101. Distributors of television channels have submitted that variant or cloned channels should be clearly defined and it should definitely encompass two channels offering same or almost similar content in multiple languages. They believe that the subscribers should be able to make choice based on his preference of region, language, SD or HD mode and thus, variant or cloned channels may not be placed in the same bouquet.
102. One individual has suggested that two or more channels which has 60% of the same content and two or more channels offering same or almost similar content but in multiple languages should be categorized as a 'cloned channel'. Customers/subscribers should have the freedom to subscribe to any one variant of the cloned channels and should not be forced in same bouquet.
103. Presently variant or cloned channels are placed in the same bouquet of channels as original channel, thereby burdening the subscribers with additional tariffs. At present, no regulatory framework exists to check such activities. The Authority does not want to regulate the cloned or variant channels at present. However, it is desirable that broadcaster or distributor of TV channels should not bundle a cloned channel with the original channel in the same bouquet and, the customers/subscribers should have the option to select language based on his/her preference.

H. Pay-per-program viewing and tariff options

104. In the consultation paper, stakeholders were asked to suggest whether the option of Pay-per-program viewing (PPV) be made available to the subscribers and if so, whether the tariff of such viewing be regulated.
105. In response most of the stakeholders including broadcasters and distributors of television channels are not in favour of pay-per-viewing option. They suggested that it is not feasible to implement PPV because it will be difficult for the broadcasters and the MSOs to keep track in reference to such volatile changes.
106. While, some stakeholders believe that pay-per-program viewing should be allowed as it gives subscribers better choice and flexibility and, it may be an innovative way of introducing new programs. Distributors of television channels favouring pay-per-program viewing have suggested that it is technically feasible to implement and the price will be less than the monthly a-la-carte price of the channel. These stakeholders suggested that the PPV service should be left on forbearance and the Authority may intervene on case-to-case basis.
107. Digitalization has enabled implementation of value-added services (VAS) such as video-on-demand (VOD), pay-per-view, pay-per-program etc. Pay-per-program viewing will enable greater subscriber choice and flexibility. This may be conducive for a subscriber who wishes to selectively view only a particular program of his choice on a particular channel, which he may not have otherwise subscribed either on a-la-carte or as a part of a bouquet. This may also enable distributors of television channels and broadcasters to derive higher ARPUs.
108. Presently, the value-added-services are not very popular among the customers/subscribers. Hence, pay-per-programming seems a forward looking approach for ensuring greater customers/subscribers choice. Moreover, as pointed out by majority of the stakeholders, there will be an additional cost associated with it for increased investments in technology and manpower. In view of the above, the Authority is of the view that there is no need to regulate pay-per-program viewing at present as it is at a nascent stage and,

the industry may provide option to customers/ subscribers at an appropriate time when the stakeholders including subscribers and the infrastructure are ready to implement pay-per-program viewing.

I. Significant Market Power

109. In the consultation paper stakeholders were asked to suggest whether there is a need to identify significant market power. The stakeholders were also asked to suggest the criteria for classifying an entity as a significant market power.
110. Most broadcasters aver that the issue of identifying SMP's is in the purview of Competition Commission of India (CCI) and there is no need for TRAI to do so. Further that CCI provides adequate safeguards for preventing anti-competitive behavior. A few broadcasters however do favour the idea of SMP identification and have suggested criteria to identify SMPs. A few distributors of television channels submitted that there is no need to identify SMPs while the others do believe that such a distinction be made. Some distributors of television channels have suggested that vertically integrated entities in the distribution sector be subjected to additional regulation.
111. Apart from regulating the broadcasting and cable services, protecting the interest of service providers and customers/ subscribers, it is also duty of TRAI to facilitate competition, promote efficiency and ensure a level playing field. It must be borne in mind that one of the many objectives and purposes of TRAI and its various Regulations is to promote competition. The Authority has noted that the monopolistic behavior of significant market power is well demonstrated both by few broadcasters as well as few distributors of television channels. However, the Authority is prescribing a new framework for broadcasting sector relating to television and therefore does not want to indentify and regulate the significant market power at present. The Authority will keep a watch on the developments after implementation of new framework and in case any monopolistic behavior of significant market power is observed or brought to its notice, the Authority may intervene in future.

Example 1

(Refer para 65 of explanatory memorandum)

Determination of maximum retail price of Bouquet formed by the Broadcaster

1. Suppose, there are 10 pay channels (Ch-1 to Ch-10) offered by a broadcaster.
2. Suppose, the maximum retail price (MRP) of the pay channels declared by the broadcaster for the subscribers are as under:-
 - Ch-1= Rs. 5/-
 - Ch-2= Rs. 3/-
 - Ch-3= Rs. 4/-
 - Ch-4= Rs. 6/-
 - Ch-5= Rs. 7/-
 - Ch-6= Rs. 2/-
 - Ch-7= Rs. 1/-
 - Ch-8= Rs. 3/-
 - Ch-9= Rs. 4/-
 - Ch-10= Rs. 5/-

Sum of MRP of these 10 channels is Rs. 40/-

3. In case the broadcaster offers a bouquet of these 10 pay channels then MRP of such bouquet will not be less than 85 % of the sum of MRP of these 10 channels i.e. $Rs. 40 \times \frac{85}{100} = Rs. 34/-$

Example 2

(Refer para 74 of explanatory memorandum)

Determination of distributor retail price of bouquet formed by the distributor of television channels

1. Suppose, a distributor of television channels offers a bouquet of 10 pay channels (Ch-1 to Ch-10) offered by a broadcaster.
2. Suppose, the maximum retail price (MRP) of the pay channels declared by the broadcasters for the customers and their distributor retail price declared by the distributor of television channels are as under:-

S. No.	Maximum retail price of channels declared by broadcasters (in Rs.)	Distributor retail price of channels declared by the distributor of television channels (in Rs.)
1	5	4.50
2	6	5.50
3	8	7
4	6	5
5	7	6.50
6	8	7
7	10	9
8	12	10
9	9	8
10	4	3.50
SUM		66

3. In case the distributor of television channels forms a bouquet of these 10 channels then distributor retail price of such bouquet will not be less than 85 % of the sum of distributor retail prices of these 10 channels i.e. $Rs. 66 \times 85/100 = Rs. 56.10$