Counter Comments on the comments received to the Consultation paper No: 10/2019 issued on 16.08.2019 by the Telecom Regulatory Authority of India on Tariff related issues for Broadcasting and Cable services.

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

Counter Comment

Mostly all the DPOs not-aligned to the Broadcasters and the consumer's at large have agreed to; " that the flexibility available to broadcasters to give discount on the sum of a-la-carte channels forming part of bouquets have been misused to push their unwanted channels to the consumers." However, this flexibility was itself allowed by the Authority for some unknown and mysterious reasons by deliberately not implementing the key provision of limiting the discount to 85% on sum of a-la-carte channels forming part of bouquets. As been notified under the Eighth T.O of 2017.

Hence, bouquets that should have served the purpose of convenience to end Consumers are being deliberately misused to be a predatory mechanism against everyone's interest with the blatant misuse of the flexibility that the Authority for some mysterious reasons have extended to the Pay TV Broadcasters, that they have been enjoying to the detriment of millions of end consumers / subscribers and the stake-holders in this distribution value chain.

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

Counter Comment

What is to the detriment of millions of end-users and also the various stake-holders (Not directly / indirectly aligned to the Pay TV Broadcasters) being an integral part of this distribution value chain, ought to experience the various difficulties in conducting business, due to the Authority itself creating a non-level playing field for some unknown and mysterious reasons.

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

Counter Comment

Upon going through the various comments received on the aforesaid consultation paper issued by the Authority within few months of this partial implementation of the Eighth T.O . It becomes imperative, to pinpoint here that somehow, now an attempt is been made by few select Pay TV Broadcasters, through themselves, as well through their directly and indirectly aligned DPOs / associates / employees / distributors / consumer groups and various lobbyists on hire, to either having a regulatory environment of " Forbearance " w.r.t tariff (That would mean no tariff regulation is required whatsoever) or otherwise to somehow increasing the cap on discount on sum of a-la carte channels forming part of bouquets. Whereas this important provision of 15 % cap on discount as prescribed in 2017 regulation(s) (Eighth T.O) was never implemented for some unknown and mysterious reasons by the Authority itself.

However, these Regulations and Tariff Orders are not written in stone, the same can and will be reviewed by the Authority keeping a watch on the developments in the market, if the need arise, but the need of the hour is to first implement, what have been prescribed and notified in the Official Gazette. i.e. *15% maximum permissible cap on discount*. That too have been arrived only after undergoing almost a year and half long consultation process initiated by the Authority, hence the said proviso cannot be termed arbitrary or have been notified in the official gazette without an application of a sound mind.

There is no reason to stall, circumvent or somehow dilute this most important provision in the prescribed regulation(s) notified by the Authority in March 2017 thereafter only passing all the legal scrutiny this new regulatory framework have finally came into effect from 29.12.2018.

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

Counter Comment

The Honorable Supreme Court of India have already made it's observation and comments, raising this issue in its detailed judgement passed dated 30.10.2018 the relevant portion is being again reproduced here :-

"*For example, when high discounts are offered for bouquets that are offered by the broadcasters, the effect is that subscribers are forced to take bouquets only, as the a-la-carte rates of the pay channels that are found in these bouquets are much higher. This results in perverse pricing of bouquets vis-à-vis individual pay channels. In the process, the public ends up paying for unwanted channels, thereby blocking newer and better TV channels and restricting subscribers' choice"*

Hence, the whole essence behind DAS implementation and thereafter, the Authority after following a due consultation process notifying the Eighth T.O was to empower the end consumers to exercise a-la carte selection of channels. Hence, bundling of pay TV channels and any illusory distinction amongst Bouquets is undesirable and against the essence and spirit behind the Digitization and TRAI prescribed new regulatory framework and its implementation in true letter and spirit.

The most appropriate corrective measure would be to now strictly implement the provision that's already been notified but yet to be implemented in its letter and spirit of law; "*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":*

Q9. Does the ceiling of Rs. 19/- on MRP of a a-la-carte channel to be part of a bouquet need to be reviewed? If so, what should be the ceiling for the same and why?

Counter Comment

As now finally with the MRPs been declared to the Authority of the respective pay TV channel(s) by the respective Pay TV broadcasters, which clearly indicates that the total cost to operate a pay TV channel can be as low as paisa 0.10 – 0.50 per subscriber / month, that also must be inclusive of reasonable profits accruing to the Broadcasters given the huge 250 – 300 Million + C&S homes market in the country.

However, a super-premium along with super profits are being charged upon dissemination of popular Pay TV channels vis -a -vis the not so popular Pay TV channels.

Moreover, the Pay TV channels having their MRP priced at Rs. 5 and more should be completely advertisement free, where if the revenue requirement is met from subscription. The Pay TV Broadcaster do not have any right to insert unwanted advertisements / commercials.

It is also important to note that with every increase in the subscriber base cost of operation or any other cost of providing the service goes down and advertising revenue gets increased. Thereafter at certain point, the cost to provide the service to additional subscribers is marginal. In such given economic conditions it is important that the Authority adopt an economic interpretation of the existing provisions in the law.

Also, the Authority ought to consider that when a particular channels once disseminated in a shared household through a common wire, then the price of such channel shall not be severally charged for each STB under the same subscriber ID. because the RF signals involved in distributing the said channel is passed through a single common wire/instrumentality connected with the rest of STB's under the same subscriber ID.

Requisite ammendment needs to be made by the Authority, in the prescribed "Subscriber" definition, as whatsoever is being subscribed by a household is a "Family Subscription". This includes both NCF and DRP. A wireline service signal receiving device is just another household good(s) used within a household and is not by itself; an end consumer / subscriber/ household.

If such an approach is implemented, then only equity can be established between the interest of Pay TV Broadcasters, Distributors and the Consumers.

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

Counter Comment

Prasar Bharati services are being operated on Indian tax payers' contribution made to the public exchequer where the government provides a budgetary support to Prasar Bharati. It pays the salaries of all the employees, which goes up to Rs.2,800 crore a year or even more. Since there is tax payers' money flowing into Prasar Bharati Corporation, the government is equally answerable to the Parliament and as well to the citizens of this country especially the tax payers, wherein the larger public interest ought to be preserved and bring some value to the consumers, especially the poor.

Where the Authority should recommend to the Ministry of Information and Broadcasting in the Government of India to amend the first provisio to the clause 1 of the notification S.O. No. 2693 (E) dated 5th September 2013 as under:

*Provided that every ~~cable operator~~ **Distribution Platform Operator duly permitted by the Central Government** shall provide the above channels to the subscribers irrespective of any bouquets (s) or a-la-carte channel(s), or both being subscribed by them; and without linking provisioning of above channels with any condition, including but not limited to, the network capacity of the operator, technology adopted by the platform, tariff plan offered by the operator to its subscribers, payment made by subscriber for continuing **with** ~~cable~~ **the** services **of the platform operator(s)** etc."*

The Authority can make the aforesaid recommendation to the Ministry of Information & Broadcasting that the present mandatory ~~25~~ 26 channels are to be carried mandatorily by all the DPOs over and above the NCF / BST or the Channel capacity fee etc. prescribed by the Authority. However, the aforesaid good intent of the Public Broadcaster in larger public interest, can only be feasible techno-commercially, if and when the carriage of these present 26 mandatory channels on a DPOs system are without an encryption; are unencrypted. For doing so the requisite amendments have to be made in the CTNR Act and the Rules framed thereunder or an amendment in the applicable TRAI prescribed DAS guidelines / regulations have to be made.

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

Another relevant para of the landmark Supreme Court judgement passed on 30.10.2018:

Per Jeevan Reddy J.:

201.1.(b) Airwaves constitute public property and must be utilised for advancing public good. No individual has a right to utilise them at his choice and pleasure and for purposes of his choice including profit…

Moreover, the Authority have been established upon enactment of the TRAI Act whereas the powers and functions of the Authority, inter alia, are- *to*

- *ensuring technical compatibility and effective inter-relationship between different service providers;*
- *regulation of arrangement amongst service providers of sharing their revenue derived from providing telecommunication service;*
- *ensuring compliance of licence conditions by all service providers;*
- *protection of the interest of the consumers of telecommunication service;*
- *settlement of disputes between service providers;*
- *fixation of rates for providing telecommunication service within India and outside India;*

The said Act was amended by Act 2 of 2000, which substituted the Preamble of the TRAI Act thus:

"An Act to provide for the establishment of the Telecom Regulatory Authority of India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector and for matters connected therewith or incidental thereto"

However, it have been continuously observed and is evident that the Authority " Telecom Regulatory Authority of India" have failed miserably in discharge of its functions specifically with respect to the inclusion of the Broadcasting Services vis-à-vis the prescribed functions of the Authority.

Where i.e.

- The Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations 2012 and an ammendment in the same (3 of 2013) both notified by the Authority only after undergoing a due consultation process, This regulation of 2012 have not got implemented till date.

- Arbitrarily without following the provisions of a due consultation process and any application of mind the Authority notified the 11th and 13th TAO. allowing Pay TV broadcasters to hike their subscription by 27.5% that too after misleading the Hon'ble Apex court, that there is an industry demand. However, this arbitrary act of the Authority got challenged and the impugned 11th and 13th TAOs were finally set aside by the Ld. TDSAT and the same was ratified by the Hon'ble Supreme Court of India. Whereas thousands of crores of this excess amount been collected from the millions of subscribers in the country on account of tariff hike, by the Pay TV broadcasters is till date lying in separate accounts to be maintained by them, on the explicit directions of the Ld. TDSAT.

- There have been explicit directions of the Apex Court and also of the Ld. TDSAT to carry out the de novo exercise of cost based tariff fixation, but the Authority conveniently choose to ignore these directions for some mysterious reasons.

- Key provision of the 2017 notified Eighth T.O is purposely diluted for some unknown and mysterious reason, thereafter the same is now being termed as flexibility available to the broadcasters and how it has conveniently been misused by them. *" Reference is being made to 15% cap on discount"*

— Since more than four years, non-permitted OTT IP TV distribution platforms have mushroomed unregulated in the country. Moreover, now these OTT IPTV platforms directly or indirectly owned by the Pay TV broadcasters are also disseminating without any charges the same pay TV channels for which MRP has to be declared under the Eighth T.O. Thus creating a non – level playing field with predatory pricing but again for some unknown and mysterious reasons the Authority chooses to conveniently ignore and for some unknown agenda to pursue, purposely not framing any regulations or taking any cohesive action against the perpetrators who have been flouting the license conditions, having scant regard for the law of the land as well the regulatory Authority.

Needless to say, the above briefly enumerated, does raises a strong needle of suspicion on the methodology been put in use or the suborn work culture at this regulatory Authority.

Therefore its again humbly requested the Authority being a well informed expert body should take lessons from its past and now timely remedy the mistakes been made knowingly and unknowingly, in case it becomes imperative for the Authority to weed out the few black sheep's within the organization then requisite actions be taken immediately, so to now work in the larger interest of the consumers and fellow citizens of our country.

The perception been somehow made that ***" regulators do not act as guardians of public welfare, but impose regulatory requirements only to favour particular interest groups"*** has to now finally change.

If the Authority may require any further clarification / information , the same can be requested via : -

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