

Subject: **Fwd: Consultation Paper on Tariff Issues related to TV Services**

To: Manoj Verma <manoj@traf.gov.in>

Cc: Shreya Jain <shreya@traf.gov.in>

Date: 03/17/16 03:46 PM

From: Group Captain Umesh Kumar <umesh@traf.gov.in>

please move another combined note for these belated ones and upload

regards

umesh

----- Original Message -----

From: **Leena Jaisani** <leena.jaisani@ficci.com>

Date: Mar 17, 2016 3:42:07 PM

Subject: Consultation Paper on Tariff Issues related to TV Services

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Mr. S.K. Gupta

Pr. Advisor (B&CS)

Telecom Regulatory Authority of India

New Delhi

Dear Sir,

FICCI's media and entertainment committee are extremely appreciative of this effort by the Telecom Regulatory Authority of India (TRAI) for undertaking this consultation exercise on tariff structure for cable TV services.

Our member companies constitute multiple stakeholders from the Broadcasting, Distribution Networks, Film Sector, Radio, Advertising, Print, Animation, Gaming, Technology and New Media firms. The instant Consultation Paper directly or indirectly impacts the upstream and downstream economics of our member companies and has far reaching consequences on the overall health of the Media & Entertainment Sector.

A perusal of the list of our M&E Member Companies will indicate both traditional media players and new age digital and technology companies. It also highlights the fact that traditional media companies have so far been smothered and blanketed by a plethora of economic laws and regulations that have impeded their growth, profitability and have rendered them uncompetitive in this rapidly evolving eco-system. This is in stark contrast to the unregulated, free market models of new age media – be it OTT platforms or content providers – who have been able to innovate, disrupt and create new growth and revenue

opportunities, while providing unbeatable consumer propositions.

FICCI, as an industry association, has been at the forefront of working with successive governments in the area of policy and regulations. In this regard FICCI has advocated consistently for the creation of a level playing field in all areas of policies and regulations. Unfortunately, the M&E Sector is a case-study of skewed regulatory frameworks where traditional media continues to be bogged down and are at competitive disadvantage with the load of legacy regulations. Even within the realm of traditional media, a hands-off approach by the Government on the economics of print media has enabled it to flourish and grow manifold in India when compared to their global counterparts who are on the verge of extinction. This is a classic example of how regulating conduct and regulating economics are two distinct facets of regulations of which regulating the latter if not properly analysed can be extremely destructive and counterproductive.

The desperate need of hour, therefore, is for the regulator to conduct an impact analysis of the harmful effects of over-regulations and a comparative study of how “new digital media” has innovated and created opportunities for growth and profitability in an unregulated environment. The bottom-line is that in order to ensure the continued survivability of traditional media companies it is imperative that the regulator implements a calibrated approach to de-regulation which culminates in market forces being the prime driver of economics in these businesses and also provides them with all competitive levers to challenge “new digital media” platforms.

In the light of the above, we believe, that the regulator as facilitator, enabler and enforcer will promote competition and orderly growth of the Sector through this exercise.

Given that the Cable and Satellite Broadcasting Sector is making the journey towards full addressability we recommend an interim approach for the consideration of the Authority with a clear sunset date which is one year after the last cut-off date for pan-India Digitalization i.e. 31st December 2017.

Our recommended approach on the multiple issues stated in the Consultation Paper are articulated as below:

1. Interim Pricing Arrangement :

Since FICCI represents both the broadcasters and DPOs we suggest a model that meets the following objective:

- a. Ensure transparency, equity and non-discrimination across the value chain.
- b. Effective choice at wholesale and retail through optimum bundling, packaging and a-la-carte options.
- c. Protect stakeholders and consumers from arbitrary pricing both at wholesale and retail.

Incentivise investments in quality content and distribution technologies to provide best in class viewing experiences and services to the consumers.

Minimise litigations and disputes amongst stakeholders.

In order to achieve the above stated objectives, our suggested pricing model is as follows:

- i. The Price Forbearance Model combined with a regulated and flexible RIO model with the following modifications :
 - a. Maintain current genre price ceilings in line with the order passed by the Supreme Court on 18.4.2011 in C.A. No. 2847 -2854 of 2011
 - b. Mandate broadcasters to publish wholesale RIO prices and offer wholesale incentives/discounts to DPOs transparently and as part of RIO.
 - c. Broadcasters should be free to define discounts/incentives criteria within a range of 30-40 per cent on the listed price as well as the cumulative discount on bundles for all pay channels.
 - d. Annual resets in genre caps based on inflation to be permitted to broadcasters.
 - e. Broadcasters to offer channels on both a-la-carte and bouquet basis.
 - f. Allow platforms to create retail bouquets. Direct linkage of prices between a-la-carte & bouquets is required to reflect channel demand. Linkage can be achieved by capping the maximum retail a-la-carte price of a channel at 2.5 times the wholesale list price. Mandatory a-la-carte offer at retail level by DPOs.

1. HD

HD offerings by DPOs are still and will continue to be a premium proposition to high-end consumers. For broadcasters creating HD content and channels requires significant investment in technology and equipment. Hence for both broadcasters and DPOs HD offerings create a high-end value proposition and potential driver of ARPUs which, in turn, can incentivize greater investments in innovative technologies 3D, 4K etc. and encourage formation of niche packaging and tiering at the retail end. In view of the above it would be in the interest of both broadcasters and DPOs that if the HD channel prices are rationalized both at the wholesale and retail ends through the mandated discount ceilings (within the range of 30-40%) as recommended above. This will ensure that prices are reflective of

market realities.

2. Niche Channels

These channels cater to certain specific segment of consumers and their special interests. Hence these channels should not be subjected to any threshold limits of subscribers nor there be any restriction on advertising on the said channels. FICCI strongly proposes absolute forbearance in “niche” category of channels to cater to special interest groups as well as incentivise broadcasters and DPOs to offer these channels as value addition to their existing a-la-carte and bouquet offerings.

3. Pay Per Programme Viewing (PPV):

Currently DPOs and broadcasters offer PPVs as Value Added Service (VAS) to an extremely niche and premium category of consumers. PPVs cannot be implemented by broadcasters or DPOs as mass offerings since the same will not be technologically or commercially feasible. Further, all research and evidence indicates that consumer choice is driven primarily by choice of TV channel and TV channel also the primary currency for transacting between all the stakeholders of the value chain. Any attempt to dis-aggregate or fragment the currency of TV channels will result in value destruction across the stakeholders value chain. Hence FICCI proposes no change or intervention in the existing VAS business model successfully operating between broadcasters, DPOs and consumers.

4. Audit Mechanism: The following methodology may be suggested:

A panel of 5-6 big CA firms be accredited and empanelled by the TRAI to conduct audits of DPOs twice a year in keeping with the industry best practices of conducting the audit.

Commercial Subscribers:

FICCI is of the view that for any exercise on tariff for cable and satellite TV services to be effectively comprehensive, it must include in its ambit the entire matter pertaining to tariff for commercial establishments. In the light of the judgements of the Hon’ble Supreme Court and TDSAT it would be binding on the TRAI to review the existing tariff for commercial subscribers including the regulatory construct. The relevant extracts from the judgements are being reiterated below for ease of reference.

Hon’ble Supreme Court vide its Order dated 16.4.2014 passed in Civil Appeal Nos. 6040-6041/2010, 8358-8359/2010 and 10476-10477/2010 against the TDSAT judgment dated 28/5/2010 directed “**TRAI shall look into the matter de novo, as directed in the impugned judgment, and shall re-determine the tariff after hearing the contents of all the stake holders.**”

Hon’ble TDSAT vide its judgment dated 09.03.2015 in Appeal No. 7(C) of 2014 quashed the 2014 Tariff Orders with the following relevant findings and binding directions:

“.....TRAI must now undertake a fresh exercise on a completely clean slate. It must put aside the earlier debates on the basis of which it has been making amendments in the three principal tariff orders none of which has so far passed judicial scrutiny. It must consider afresh the question whether commercial subscribers should be treated equally as home viewers for the purpose of broadcasting services tariff or there needs to be a different and separate tariff system for commercial subscribers...”

“..... despite two orders by the Supreme Court to consider the question of tariff in respect of commercial subscribers, within specified times periods, TRAI has not been able to produce the tariff that would satisfy judicial scrutiny.

“..... All the different kinds of commercial subscribers being put en block at par with the ordinary subscriber appears to be as arbitrary and unreasonable as the carving out of a very small segment of hotels [namely, (i) hotels with rating of three stars and above, (ii)

heritage hotels and (iii) any other hotel/motel, inn and such other commercial establishment providing board and lodging having 50 or more rooms] for exclusion from the tariff protection...We rather feel it is high time that TRAI should stop making any further amendments in the different tariff orders and take a completely fresh and holistic view on the question of tariff in broadcasting services. As a result of repeated amendments, the Second, Third and Fourth tariff orders have become so complicated that it has become difficult even to follow the exact import of a provision without examining all the amendments made earlier in the Principal tariff order. How much the tariff orders have become clumsy and unwieldy is evident from their very names as is sought be demonstrated in the opening lines of this judgment. We, accordingly, expect that as the whole country is now to come under the DAS regime, TRAI will undertake a fresh exercise and come out with a single consolidated instrument covering broadcasting services.”

On behalf of our members, we urge the Authority to kindly issue a supplementary Consultation Paper as part of the instant tariff exercise and in compliance of the orders of the Hon'ble TDSAT and the Supreme Court in pursuance thereto.

We therefore request the Authority to create an enabling regulatory framework for the cable and satellite TV sector to unlock its full potential.

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Your Attitude, not your Aptitude, will determine your Altitude - Zig Ziglar