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To,

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**Subject:** Counter- Comments on behalf of All India Digital Cable Federation on the Consultation Paper on "*Review of Regulatory Framework for Broadcasting and Cable Services*" dated 08.08.2023 ("CP").

At the outset, we thank TRAI for providing us with an opportunity to submit our comments on the Consultation Paper. Before responding with counter-comments, we emphasize the critical need for a comprehensive examination of the regulatory framework. As emphasized in our response to the Consultation Paper, the DPO industry is facing an unprecedented decline. This is evident in the data presented by us in our response wherein revenues and subscriber base of leading MSOs and DTH operators have shown a declining trend in the last few years.

The diminishing appeal of the television industry can be primarily attributed to the current regulatory framework, which has resulted in escalating cable TV tariffs. In the data presented in our response to Consultation Paper, it is evident that average subscriber outgo for Cable TV and DTH Industry has risen significantly (by around 20% to 50%) post implementation of NTO. This is due to a rise in subscription cost of pay channels charged by broadcasters.

Within the current regulatory framework, broadcasters have taken undue advantage of their authority to decide the retail pricing of channels and forming bouquets. Arbitrary and discriminatory discounting practices and no adjustment of their advertising revenues while fixing consumer tariffs has resulted in double dipping. All this has happened due to the short-term goal of broadcasters to maximize revenues at the cost of cable industry.

Broadcasters have been manipulating not only consumer choice by pushing their bouquets ahead of a-la-carte channels, but also instigating huge opportunity losses for carrying of non-popular channels, pushed as part of discounted bouquets. This has been possible only because of faulty regulation that allows the broadcaster to set their price, allow them to form bouquet against the license condition, but regulates DPOs in setting the market determined carriage charge. It is ironic that, TRAI, while regulating carriage charge for licensed DPOs have allowed DD free dish to determine its carriage charge through tendering mechanism thereby creating a non-level playing field. Further, the broadcasters have been allowed to declare a channel "paid channel" for licensed DPOs but "free to air" for DD free dish. Further, DD free dish does not allow any broadcaster to bundle or create any kind of paid bouquet whereas broadcasters have been allowed such practice for licensed DPOs.

The current regulations, in the form of NTO, are completely one sided, discriminatory, and therefore need to be modified ab-initio. The new regulation should be framed while considering critical factors such as industry structure, investments by various stakeholders, consumer choice, competition, license conditions including the scope and the rights and liabilities of DPOs and broadcasters, inclusive growth of all industry players, and the national objective of increasing broadband growth through cable operators, among others.

Therefore, the situation requires urgent intervention to correct the foundational inconsistencies in the current regulatory framework. Merely implementing incremental changes to the current framework, which has contributed to the industry's decline, will be ineffective in addressing the industry issues and would have a catastrophic impact on the prospects of the entire DPO industry. Having carefully reviewed the inputs of various stakeholders and with the above context, we are now presenting our counter-comments on their submissions:

### **1. Retail Pricing and bundling of channels:**

Certain stakeholders have asserted that the pricing and bundling of channels is the exclusive prerogative of broadcasters, as they are the owners of channel content. Additionally, it has been argued by one stakeholder that DPOs serve as mere intermediaries, limited to the re-transmission of TV channels.

We disagree with the above submission, as these are misconceptions stemming from foundational inconsistencies within the current regulatory framework. In our response to the consultation paper, we have explained these matters. We are briefly summarizing these below:

- Within the licensing framework, broadcasters' role is limited to operating their channels, a process that involves aggregating content from content providers to form a channel and obtaining up linking and downlinking licenses/permissions for such channel from the MIB. Further, each channel is individually licensed by MIB and there is no relationship between the two channels obtained by one legal entity. On the other hand, the scope of the DPO's license includes bundling of channels to create the transmission stream including addition of Electronic Program Guide (EPG), encryption/decryption etc., to meet the consumer's requirement.
- **Consequently, broadcasters do not possess any authority to bundle their channels into bouquets, as their licensing privileges are confined to individual channel operation. The bundling of channels falls under the purview of licensed DPOs, who offer services to subscribers by aggregating channels from various broadcasters into a unified stream.**

Furthermore, we have explained in our response that broadcasters lack the privilege to set the retail prices of their channels. The same is briefly explained below:

- Broadcasters are prohibited from selling any licensed broadcast channel directly to subscribers and are, by regulation, obligated to supply their channels only and only to

licensed DPOs in accordance with Downlinking Guidelines. Broadcasters' role in the broadcasting services value chain ends when they transfer their channel to licensed DPOs.

- The retail prices of services can be determined only by the entities directly serving the customers. **Thus, broadcasters can prescribe only the wholesale prices of channels, i.e., the rates at which they offer their channels to interconnecting licensed service providers, i.e., DPOs. Beyond that point, it is the right of DPOs to decide the retail prices of aggregated cable TV services which is inclusive of the retail subscription price of the individual channel. Since the DPO is not acting as a mere trader of the channel and doing much more than trading a channel, the end consumer price of the channel which is part of aggregated service must be sole prerogative of DPO only.**
- The regulatory framework appears to have inappropriately applied the concept of MRP by comparing it with the scenario of producers and distributors for pre-packaged goods, treating broadcasters as producers and DPOs as their distributors. However, DPOs are licensed service providers who have substantially invested in building their network to create TV distribution services for the consumers. DPOs' roles extend far beyond retransmission or distribution of channels as received from the broadcaster but encompasses functions such as channel aggregation into a stream, Electronic Program Guide (EPG) provisioning, Customer Premises Equipment (CPE), subscription management, billing, resolution of consumer grievances etc.

The aforementioned aspects have been overlooked within the regulatory framework. Thus, we submit that broadcasters have incorrectly concluded in their responses that they can exclusively decide the retail price of channels and decide their packaging.

## **2. Broadcasters' Bouquets:**

Broadcasters, in their responses, have argued against the unbundling of their bouquets by DPOs. They have supported this contention by asserting that the breakup of broadcaster's bouquets would disrupt a level playing field, reduce the significance of a-la-carte and bouquet pricing, and expose the potential for misuse by DPOs.

At the outset, we reiterate that under the licensing framework broadcasters do not even have the privilege to form bouquets. Therefore, they should not be entitled to form a bouquet of channels.

Nevertheless, it is noteworthy that broadcasters have employed the privilege to form bouquets to boost their subscription and advertising revenues and, in the process, have harmed the interests of subscribers and DPOs. The below table gives a glimpse of how broadcasters have maximized their revenues post NTO that has harmed the interests of subscribers and DPOs:

Head	Cumulative Income Figures for Star India, ZEEL and Culver Max (Sony)*			
	FY 21-22	FY 20- 21	FY 19-20	FY 18-19
Advertisement Income (INR Cr)	16,465.44	12,036.76	14,225.66	14,607.34
Subscription Income (INR Cr)	10,078.56	9,817.27	9,472.85	7,375.79
Total Operating Income (INR Cr.)	29,660.83	23,954.07	26,561.25	24,759.75
Growth in Advertising Income from the pre-NTO revenue in FY 18-19	13%	-18%	-3%	
Growth in Subscription Income from the pre-NTO revenue FY 18-19	37%	33%	28%	
Growth in Operating Income from the pre-NTO revenue FY 18-19	20%	-3%	7%	
<b>Conclusions:</b>				
<ul style="list-style-type: none"> <li>• Post implementation of NTO, subscription revenues of broadcasters jumped up to 37% in the FY 22 as compared to the pre-NTO year (i.e. FY 18-19)</li> <li>• The advertising revenues of broadcasters have registered growth up to 13% in FY 22 as compared with the pre-NTO year (i.e. FY 18-19)</li> <li>• Overall, broadcasters have reaped substantial benefits under NTO regime by taking advantage of undue privileges granted to them and have registered increase in operational income by 20% in FY 22 as compared with the pre-NTO year (i.e. FY 18-19)</li> </ul>				
<i>*Source: Annual reports filed by companies in MCA</i>				
Head	Cumulative revenue figures for 4 leading MSOs (DEN, Hathaway, GTPL Hathaway and Siti Cable) and four Pay DTH Operators			
	21-22	20-21	19-20	18-19
<b>Net Revenue*</b> Net Revenue (i.e. by excluding broadcasters' share from revenue of DTH/MSO) (in INR Cr.)	15611.5	16289.1	16622.1	14535.6
Growth in Net Revenue from the pre-NTO revenue in FY 18-19	7.40%	12.06%	14.35%	
<b>Conclusions:</b>				
<ul style="list-style-type: none"> <li>• The above table reflects revenues of four MSOs and four DTH operators after subtracting cost paid to broadcasters.</li> <li>• Overall, the DPOs have registered consistent decline in their revenues (after initial increase) due to the channel pricing strategies employed by broadcasters and the effect of subsequent amendments in NTOs that have impaired revenue potential of DPOs.</li> </ul>				

- In FY-22, revenues of DPOs have risen to around just 7% as compared with the pre-NTO revenue (i.e. FY 18-19). Since, revenue of DPOs is on a declining trajectory this would decline even further.

Source/Notes:

*Based on annual reports of companies*

*\*broadcaster share paid by DTH is based on estimate as per data available for two DTH operators for FY 18-19. For FY 19-20 to FY 21-22, revenue reported by DTH operators excludes broadcaster share due to change in reporting methodology*

The above figures underscore the impact of broadcasters' strategy wherein they have maximized their revenues and profit at the cost of DPOs declining subscriptions and net revenue and has also resulted in substantial increase in tariff for the consumers.

Broadcasters have maximized their profit by substantially discounting the bouquet prices in comparison to a-la-carte channels, thereby pushing their non-popular channel without paying the carriage free and by increasing the DPO's cost which has also lead to increase in their advertisement revenue. Our analysis indicates that, post the introduction of NTO 3.0, pay channels within broadcasters' bouquets are at an average discounted by approximately 40%<sup>1</sup> when compared to a-la-carte prices. For lower-cost channels, priced below INR 5, this average discount rate rises to 63%, thereby, defeating the very objective of NTO, as the NTO envisaged that with its implementation the price difference between the bouquet and a-la -carte would be reduced and consumers will be able to buy the channel on a-la -carte basis at a reduced price.

**It is evident that broadcasters have employed substantial discounting on bouquets to push their less popular channels while keeping their a-la- carte price very high. This strategy entices customers to subscribe to bouquets instead of selecting individual channels, thereby contradicting the regulatory framework's objectives. Additionally, this leads customers to subscribe to channels beyond their actual preferences, resulting in higher expenses.**

**To address this issue and ensure compliance with the licensing framework, it is crucial to restrict broadcasters from creating bouquets.** However, if broadcasters are still permitted to form bouquets, it is imperative that they provide their channels to DPOs at proportionate channel's price within the bouquet. This measure is necessary to curb the issue of aggressive discounting within broadcasters' bouquets, as described above.

### 3. Discounting allowed to DPOs Bouquets:

Certain broadcasters have suggested in their responses that DPOs should not be allowed to offer discounts exceeding 15% on their bouquets compared to ala-carte prices. To substantiate their stance, they have argued that DPOs are already permitted discounts of up to 35% (in the form of distribution fees and incentives) and have also asserted that DPOs' bouquets differ from those

<sup>1</sup> Calculated by comparing averaging the proportionate price of channels in bouquets. Average proportionate price of a channel in a bouquet has been calculated as the average of its proportionate prices across different bouquets. Proportionate price of channel in a bouquet has been derived by calculating its weighted average (w.r.t. ala-carte prices of channels in bouquets)



of broadcasters. Some broadcasters and associations have gone so far as to claim that only broadcasters should be allowed to create bouquets due to their ownership of the content.

It is essential to underline that the broadcasters above comments lack merit and should be promptly dismissed. These comments reflect their intention to maximize their own profits while showing a total disregard for customer preferences.

First and foremost, we have clarified that broadcasters do not possess any privileges under the licensing framework to form bouquets. Consequently, they should not be granted the right to create bouquets. Furthermore, as elaborated earlier:

- Broadcasters have included their less popular channels within their bouquets, severely restricting the consumer's right to select only the channels they desire.
- **Broadcasters have inflated ala-carte channel prices artificially to increase the appeal of their bouquets.**
- Broadcasters have also avoided paying carriage fees to DPOs by converting their FTA channels to pay channels and pushing such channels as part of bouquets.

Therefore, if broadcasters are still permitted to create bouquets, the current 45% discount allowance (to broadcasters) should be reduced to zero. This adjustment will benefit consumers by rectifying channel prices that have been artificially increased by broadcasters in their effort to promote bouquets.

As far as discount (bouquet vs ala-carte) allowed to DPOs is concerned, we submit that complete pricing forbearance should be allowed to DPOs in forming bouquets in order to address subscriber requirements due to hyper competition in the DPO's retail market.

**Further, the data presented in the above table shows that broadcasters have cushion to decrease their a-la -carte prices by 37% and eliminate the discount provided on bouquet to maintain consumer prices at the pre-NTO level. The proportionate price of a-la -carte channel derived from the bouquets price will also lead to similar savings for the consumers.**

#### **4. De-regulation of the Industry:**

Certain stakeholders have stated that there should be complete de-regulation in the Industry for both broadcasters and DPOs on aspects such as price caps, discounts, formation of bouquets etc. Furthermore, service providers should be allowed to negotiate interconnection as per market forces.

We support the idea of de-regulation of the Industry and negotiation of interconnection under the market forces. However, following needs to be considered:

- a. The retail prices of channels should be determined only by DPOs and broadcasters should be allowed to decide only the wholesale price. DPOs should be allowed to sell channels to subscribers below or above the wholesale price prescribed by broadcasters.
- b. In compliance with their license, Broadcasters should set only the a-la-carte prices and should not be allowed to form bouquets of different channels having different separate license/(s).
- c. Due to hyper-competition in retail market with DD Free dish, 4 DTH players and multiple cable operators, retail prices/tariffs should not be regulated.
- d. Since broadcaster's channels are in monopolistic position due to non-substitutability of channel's content, TRAI should mandate them to publish the RIO for their individual licensed channel and regulate wholesale price of such channels in case of market failure
- e. For the reasons already explained, broadcasters should not be allowed to form bouquets.
- f. Notwithstanding the licensing conditions, broadcasters to be allowed to form bouquets only and only if they provide their channels to DPOs at proportional price of channel in broadcasters' bouquets or keep the channel price in bouquet same as a-la -carte price.
- g. Carriage charges shall be kept under forbearance and the DPO should be allowed to maximize their revenue from the scarce capacity created by them. This practice is already adopted by DD free dish who provide carriage service through the bidding process

#### 5. Network Capacity Fee (NCF):

Certain broadcasters have proposed that the NCF can be placed under forbearance, on the condition that DPOs are obligated to carry and offer all FTA and News channels as part of the NCF. One broadcaster has argued that there is no rationale for revising the NCF since DPOs' platforms involve a one-time cost that has already been amortized. Another broadcaster has suggested that the NCF should be incorporated into pay channel prices.

**We disagree with the above comments. Firstly, it is the fundamental right of DPO's to set the price of carriage on the network created by their own capital. Therefore, like broadcaster's content charges, DPO's must be provided freedom to set their own price. This regulatory disability created in the current regulation need to be removed immediately as it is against their constitutional right which are not inferior to the broadcasters. Mandating any free carriage, directly or indirectly, would infringe upon the DPOs freedom to conduct their business.**

Secondly, the stakeholder who asserts that the platform cost is a one-time expense that DPOs have already amortized appears to lack an understanding of the DPOs' business and amount of capital expenditure carried out by DPOs. The DPO platform entails ongoing expenses for

maintenance and network expansion. The notion that the one-time cost has been fully amortized by DPOs appears to be based on purely hypothetical assumptions.

Since NCF is just a component of retail tariff, completely de-linked from the wholesale price, complete forbearance of retail price will end the debate around NCF as this would no longer be a separate component. Further, a hyper-competitive retail market warrants complete forbearance of retail tariffs.

#### 6. Carriage Fee:

Certain broadcasters, in their submissions, have argued against the need to review the caps on Carriage Fee. Some have stated that there cannot be forbearance on Carriage Fee until DPOs upgrade their capacity to accommodate 100% of channels. Others have asked mandatory carriage of FTA channels and sought clarification that Carriage Fee includes charges related to placement, marketing, or any other arrangements.

We disagree with the aforementioned comments for the following reasons.

Firstly, the Carriage Charges established by TRAI have restricted DPOs from effectively monetizing their assets. As elucidated in our response to the Consultation Paper, just as wholesale pricing is tied to the "Must Provide" concept, Carriage Fee corresponds to the "Must Carry" principle. Under "Must Provide," broadcasters have the liberty to determine the pricing of their channels in which no carriage fee is payable to the DPO. **Conversely, under "Must Carry," DPOs must have the right to decide the Carriage Fee in which no subscription fee is payable to the broadcaster.** The charges imposed by TRAI Regulations on DPOs are significantly lower than the Carriage Fee levied by DD Free Dish. It also infringes upon the freedom of DPO's to carry out their business. It is high time that DPOs are permitted to set the Carriage Fees based on market-determined rates in a transparent manner, akin to the DD Free Dish, rather than relying on a "First Come, First Serve" basis at the rates decided by TRAI.

The viewpoint expressed by broadcasters, suggesting that DPOs should be mandated to enhance their capacity to carry 100% of the channels, reflects a discriminatory stance that seeks to burden DPOs. On one hand, broadcasters engage in competitive bidding during DD Free Dish auctions to secure limited slots due to their scarcity. Simultaneously, they advocate that other DPOs should boost their capacity to accommodate 100% of the channels. To rectify this disparity, we reiterate that other DPOs should also be allowed to allocate their capacity transparently, based on market-determined prices, akin to DD Free Dish, instead of using the "First Come, First Serve" method.

#### 7. Issue of DD Free Dish:

Certain stakeholders have argued that DD Free Dish should continue to operate outside the regulatory framework, contending that it is a free-to-air platform and not a paid service like other DPOs. They have also pointed out that DD Free Dish is regulated under the Prasar Bharati



Act and is intended to fulfill the objectives of Public Service Broadcasting. As such, these stakeholders believe that DD Free Dish should not be subject to the same regulatory framework as other DPOs.

We disagree with the assertions made by these stakeholders. Over the years, DD Free Dish has expanded its ambitions with a commercial focus, extending its coverage to the entire country rather than limiting its services to states underserved by commercial broadcasting services. Additionally, it has increased its channel carrying capacity to accommodate commercial TV channels for revenue generation.

The assertion then by some stakeholders that Quality of Service Regulations are incompatible with a free-to-air platform like DD Free Dish is tantamount to a disservice to the millions of DD Free Dish consumers. Regardless of the platform's free nature, consumers are entitled to receive a certain standard of quality and service. By claiming exclusion from these regulations, Prasar Bharati is essentially placing its DTH service outside the purview of quality checks that are designed to protect consumers. This position assumes that a free service is somehow immune to quality degradation, consumer grievances, and service interruptions.

### **DD Free Dish - Commercial Model**

The services provided by DD Free Dish have evolved into commercial broadcasting services and should no longer be classified as Public Broadcasting Services. Just because DD Free Dish does not charge a subscription fee does not mean it is not engaged in commercial activities and also does not negate the pertinent fact that it is a substitutable service that competes with the service of private DPOs. It operates as a commercial platform, similar to other DPOs, with the only distinction being that it collects revenue from broadcasters rather than subscribers.

In the annual auctions held in March 2023, DD Free Dish generated revenue of approximately INR 1,070 Crores, translating to roughly INR 16.5 Crores per channel. Broadcasters are willing to pay such carriage charges to DD Free Dish but wants TRAI to limit the carriage fee to almost NIL.

Both broadcasters and Prasar Bharati are utilizing DD Free Dish for commercial purposes. However, the continuation of such a model is detrimental to the rest of the DPO industry, which is burdened by extensive pricing regulations. DD Free Dish carries several channels that are pay channels for subscribers of other DPOs but are offered as free-to-air on DD Free Dish. Furthermore, regulations impose a carriage fee of INR 4 lakhs per month (i.e., INR 48 lakhs per annum) on other DPOs for carrying Free-to-Air channels. In contrast, DD Free Dish charges carriage fees exceeding INR 16 Crores per annum for the same Free-to-Air channels.

The regulatory disparity between DD Free Dish and other DPOs can be summarized as follows:

DD Free Dish	Pay DPOs
Pay Channels are Free to Air for DD free Dish's subscribers	Subscribers need to pay subscription fee for Pay Channels
DD Free Dish receives carriage charges for Pay Channels	DPOs need to pay to broadcasters for pay channels
There is no capping on carriage fee for FTA channels. DD free dish earns up to more than <b>INR 16 Crores per annum per channel which is over 33 times than the carriage fee fixed by TRAI for the licensed DPOs.</b>	The carriage fee is capped at <b>INR 48 lakhs per annum. The carriage charge fixed by TRAI is merge 3% of the carriage fee charged by DD free dish.</b>  <b>In the current regulation, this is a huge advantage provided to the broadcasters at the cost of DPOs.</b>
DD Free Dish can allocate channel capacity on auction method and can maximize its revenue through competitive bidding	Pay DPOs have to abide by First Come First Serve method for allocating channel capacity and have no recourse available if the channel uptake is poor due to applicability of must carry
QoS regulations are not enforced due to which DD Free dish does not incur operational expenses like maintaining call center etc.	QoS Regulation is enforced due which DPOs incur various expenses for handling consumer grievances, such as maintaining call center etc.
In the case of DD Free dish, the cost of STB and other installation accessories is borne by customer.	In the case of DPO's in order to reduce churn and hold their market share, the cost of addressable STB is subsidized by them.
The pay channels for private DPOs are FTA for DD free dish	The pay channels are increasing the price of the same channel which is being provided as FTA on DD Free dish.

Some stakeholders have also suggested that DD Free Dish does not require a CAS or SMS due to its non-addressable nature. In the era of digital transformation, consumer data is pivotal for enhancing service quality and improving viewer experience. By opting out of such systems, DD Free Dish is not only distancing itself from modernization but also from opportunities to understand viewer preferences, which are crucial for curating content and driving innovation in broadcasting.

DD Free Dish enjoys several advantages over other Pay DPOs, which significantly influences market dynamics. In fact, other DPOs, who pay subscription charges for Pay Channels to broadcasters, find themselves indirectly contributing to DD Free Dish. This occurs because broadcasters who receive subscription charges from other DPOs utilize these funds to cover

carriage charges for DD Free Dish. Thus, it is imperative that TRAI Regulations are enforced on DD Free Dish, and it is converted into an addressable platform, both in the interest of modernization of legacy technologies as well as in preserving a vibrant, competitive and fair marketplace for all stakeholders in the value chain.

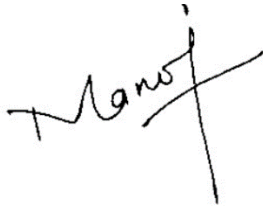
It is therefore imperative to reconsider the operational latitude granted to DD Free Dish, particularly concerning its exemption from rules and regulations applicable to every other DPO. This reconsideration is not just about maintaining regulatory consistency but also about preserving a fair and vibrant marketplace.

Alternatively, private DPOs may be afforded the same operational flexibility that DD Free Dish enjoys, specifically in terms of auctioning capacity on their platforms and broadcasters providing their channels to it only on a-la-carte basis. This practice will not only level the playing field but also stimulate a more dynamic market environment, encouraging all players to innovate. Additionally, extending the same regulatory exemptions to private DPOs, which are currently exclusive to DD Free Dish would be crucial to ensure the creation and preservation of an equitable market.

**Thanking You**

Yours Faithfully

For, **ALL INDIA DIGITAL CABLE FEDERATION**



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