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Ref No: RP/FY 16-17/087/084
Dated: 15th November 2016

To,
Pr. Advisor (B&CS),
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
J.L. Nehru Marg, Old Minto Road
New Delhi – 110002

Subject: Consultation on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016

Kind Attention: Sh. S.K. Gupta

Dear Sir

This is with reference to the above mentioned draft Tariff Order. In this regard, please find enclosed our response for your kind consideration.

Thanking you
Yours sincerely
For Bharti Telemedia Limited

Ravi P. Gandhi
Authorized Signatory

Enclosed: mentioned above

Bharti Telemedia Limited's Response to TRAI's Consultation on the Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016

At the outset, we sincerely thank you for providing us with the opportunity to submit our response on the draft TTO. We hope that TRAI will consider our submissions favourably.

We wish to submit that internationally, regulatory authorities allow free play of market forces and do not intervene where retail tariffs are competitive and the end customer has the right to choose among many service providers. The regulatory authorities intervene in order to protect the interests of the consumers, only when the retail market is monopolistic in nature, or when there is inadequate competition and limited choices that result in prejudice to the customers.

TRAI has always followed this principle and left retail tariffs under forbearance in both the broadcasting and telecommunication sectors. This policy of forbearance, along with other progressive steps taken by TRAI and the Government, have shaped a highly competitive and customer-oriented industry, wherein services and infrastructure are world-class across the country and retail tariffs are affordable and continue to decline even in a high and rising taxation regime.

Today, the broadcasting distribution sector comprises[1] 60,000 LCOs, 6,000 MSOs, 7 DTH, 2 HITS and a few IPTV operators. There is no dominant distribution platform in the market and there are 7 DTH operators, including Prasar Bharati's Free Dish. Further, there is at least one LCO offering its services in most parts of the country, including in remote areas. DTH operators have made substantial investments in the infrastructure and continue to do so even though the tariffs may not increase correspondingly. The retail tariffs for DTH customers are as low as Rs.99, for a base pack having 125 channels.

The commitment and confidence in the retail forbearance regime has time and again been reaffirmed by TRAI. For example, in September 2015[2], TRAI had stated that it did not intend to hamper the flexibility available to platform operators to price channels <u>individually</u> and <u>as a bouquet</u> in a manner best-suited to their business plans. TRAI had

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[1] TRAI's consultation paper on Tariff Issues related to TV services dated 29th January 2016

[2] http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/Draft=twin-condition-Tariff-order-30092015.pdf

also stated that it did not want to impinge upon the freedom of platform operators by deciding the a-la-carte and bouquet rates for their consumers.

In contrast, TRAI has always regulated the interconnect charges (herein referred as 'wholesale tariffs') in the broadcasting sector. Since the content is monopolistic in nature and the customers of any DTH/cable operator have the right to access any content, a regulated wholesale tariff is therefore the appropriate policy framework.

If wholesale tariffs are not regulated, broadcasters could demand exorbitant price for their content, and DTH operators and their end customers would be forced to pay such an inflated price (as seen in the forbearance regime for wholesale tariffs of HD channels). Further, this leads to the violation of the 'must provide' principle as broadcasters could always prevent DPOs and their end customers from accessing their content by demanding an inflated price.

While the above-mentioned policy framework (both for retail and wholesale) created a conducive policy environment for intensive competition, substantial investments, affordable tariffs, world-class infrastructure and services and innovations across the country, DTH operators have been requesting TRAI to review the wholesale tariff regime primarily for two reasons:

> *First,* the RIO rates should be corrected in keeping with new market realities; and
>
> S*econd*, the wholesale tariffs for HD channels should now be regulated since they are no longer considered a niche and premium segment.

For instance, in 2010, TRAI decided that the wholesale tariff of pay TV channel(s) and bouquets for all addressable systems should not be more than 35% (later changed to 42%) of corresponding channel(s) and bouquets in cable TV services in the non-addressable market. During that time, the cable was completely analogue and the under-reporting of customers was as high as 80-85%[3]. Thus, the prevailing wholesale tariffs fixed by broadcasters and later frozen by TRAI, was based on these market realities.

However, because of large-scale digitalization and addressability, the under-reporting of subscribers is no longer a concern. Further, the wholesale price of a channel as per fixed fee/CPS agreement, which covers more than 95% of the agreements with broadcasters, is less than 4% of the corresponding RIO rate. Thus, the RIO rates were required to be adjusted to pass on the actual benefits of digitalization to the end customers.

[3] https://www.indiaratings.co.in/upload/research/specialReports/2014/2/12/indra12Media.pdf

Therefore, during the consultation process, Airtel had suggested a cost-based model, which is the most scientific method for fixing the wholesale tariff of a channel in a monopolistic scenario, in order to protect the interests of all stakeholders. Our submission was in line with TRAI's own report dated 24.07.2010 submitted to the Hon'ble Supreme Court, wherein the Authority inter-alia stated that among all the identified mechanisms of price control (*for wholesale tariffs*), the cost plus model was considered to be the most relevant to the Indian market.

Furthermore, in 2010, TRAI had decided against regulating the wholesale tariffs for HD channels as it was considered a niche and premium segment. Thereafter, the market witnessed an increased proliferation of HD televisions and a rapidly growing HD subscriber base, which meant that it was no longer a niche and premium segment. Since the broadcasters continued to demand exorbitant wholesale tariffs for HD channels, the industry has been requesting TRAI to look into regulating the same.

However, instead of prescribing a cost-based wholesale tariff for TV channels, the draft regulation proposes to introduce a completely new model, which would micromanage the business of DTH operators in a competitive market by way of a uniform upper ceiling of monthly rental and discounts as well as fixed business margins. Thus, the draft regulation effectively proposes to *equalize* (*average out*) all distribution platform operators (DPOs), while overlooking their varied investments, scales of operation, QoS, service levels, costs, regulatory levies & taxation, innovation, efficiency of operation, categories of products, etc.

Further, TRAI intends to completely overhaul the business models of DTH operators even though the overall regulatory framework is running smoothly. Such a proposal, if implemented, will penalize DPOs who have made significant investments in the sector to create a world-class infrastructure and service platform and, instead, will incentivize those who have made lesser investments in the sector. This will lead to a downsizing of the investments in the sector, promote sub-optimal infrastructure/service and dis-incentivize innovations. DPOs will no longer have any incentive to promote innovation, enhance customer satisfaction, provide superior QoS or adopt new technologies. Instead, they will be forced to focus on volumes and maximization of revenue, with inferior QoS and minimal investments, since they will not be able to recover their costs.

Such a step is also counterproductive to the government's efforts to promote the 'ease of doing' business. While on one hand, the government has deregulated the retail prices of diesel, LPG, etc., on the other hand, TRAI is proposing to introduce price control of TV services, that too, in a highly competitive sector.

Thus, we believe that in a competitive market, the retail prices should continue to be market-driven and that DTH operators should have the freedom to price their services based on their level of investments, efficiency of operations and innovation, because of the following reasons:

1. **A tariff forbearance regime is a prerequisite for creating a world-class infrastructure, promoting competition and benefiting consumers:**

    a. The retail tariffs of TV services have been under forbearance for more than a decade. On various occasions, TRAI has itself recognized that retail tariffs are competitive and that market forces are operating effectively. Customers have the option to exercise their choice and preferences and there is wide proliferation of technology and services in the market. However, TRAI's proposal of mandating the fixed business margins and upper ceiling of rentals will effectively result in bringing an end to the forbearance regime for retail tariffs.

    b. It is a settled position that the intervention of the regulator is required only when there is monopoly or market failure or when the supplier is in a position to exploit buyers owing to the uniqueness of the product. Effective competition[4] is said to occur when:
        i. Buyers have access to alternative sellers for the products they desire (or reasonable substitutes) at competitive prices, which they are willing to pay.
        ii. Sellers have access to buyers for their products without undue hindrance or restraint from other firms, interest groups, government agencies, or existing laws or regulations.
        iii. The market price of a product is determined by the interaction of consumers and firms. No single consumer or firm (or group of consumers or firms) can determine, or unduly influence the price.
        iv. Differences in prices charged by different firms (and paid by different consumers) only reflect differences in cost or product quality/attributes.

    c. If the above is taken into account, the Indian broadcasting distribution sector surpasses all benchmarks of effective competition. There are a large number of DPOs across the nation today, to the extent that they have become substitutable

[4] http://www.ictregulationtoolkit.org/en/toolkit/notes/PracticeNote/3285

for each other (e.g., digital cable versus DTH). Consumers have multiple platform choices from which they can opt to avail TV services and packages. Every DPO offers affordable, innovative and customer-friendly tariffs and services. TV services are available for all segments of customers, from price-conscious customers who demand basic services to premium customers who demand the latest technology and best quality.

d. All DPOs aim to differentiate their services in the marketplace through various innovations, value-added services, enhanced service experience, etc. as the content they offer is the same. In contrast, each broadcaster has its own exclusive content, which can be classified as a monopolistic product. However, the same content is made available across all distribution platforms, which then compete for viewership, making the distribution platform highly competitive. Thus, while the sector has witnessed instances of market distortions and unfair pricing at the wholesale level, no such instance exists on the retail front, specifically for DTH operators. In fact, all legal disputes till now have pertained to wholesale pricing alone.

e. The DTH industry offers the most competitive and affordable tariffs to its consumers. For example, Airtel itself offers one of the cheapest plans in the country at Rs.99 only, for a base pack having 125 channels. Indian customers have benefited by having access to almost twice the number of channels at 1/10th of the price in comparison to DTH services worldwide, as illustrated below:

DTH Provider	Country	Pack Name	Channels	Price(USD)
Airtel	India	My Plan 99+Tamil Top up	156	2.2
Indovision	Indonesia	Mars	101	20
Astro	Malaysia	Family	41	10.24
Truevision	Thailand	Happy Family	57	8.5
Sky	UK	Original	51	22.8
DirecTV	USA	Select	145	20

f. DTH operators have made substantial investments in the sector in the last 15 years. Further, an amount of approximately Rs.1800-2000 per set top box (STB)[5] on account of the subsidization of STBs is also being borne by the DTH operators. The industry is also subject to multiple taxes and levies amounting to approximately 33%-35% of the revenue. The industry's accumulated losses[6] (after tax) stand at Rs. 11,400 crores (from 2008-09 to 2012-13). Despite this, the DTH industry continues to invest significantly in the belief that they will continue to have the freedom to run their business in a light-touch regulatory regime.

g. **In light of the mature behaviour of DTH operators, as well as the intense competition, affordable tariffs, and declining financial health of the DTH industry, the tariff forbearance regime should not be tampered with and should be allowed to continue as is. DTH operators should be given complete freedom to fix the price of their services without any regulatory restrictions.**

h. We would also like to request TRAI that the wholesale and retail tariffs in the broadcasting sector be dealt with through separate regulations/tariff orders. We believe the wholesale and retail tariffs should be kept completely independent of each other and ought to be analysed independently by TRAI.

2. **Business margins between two entities should not be regulated**

a. Because of their substantial investments in the sector and the competitive nature of the market, DTH operators should have the legitimate right to conduct their business and negotiate their business margins freely. Business margins are sacrosanct in a free economy and for ensuring the viability of a company and the industry as a whole. However, TRAI's fixing of the business margins of DTH operators would lead to micromanagement of their business, which is unwarranted. The fixing of the margins of all DPOs at a uniform level would mean disregarding their varying levels of investments, scale, technology, innovations, differentiated offerings, regulatory levies and taxation and costs of businesses.

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[5] Internal estimates

[6] http://www.trai.gov.in/WriteReadData/Recommendation/Documents/DTH%20Reco%20%28New%20Licensing%20Regime%29%20as%20uploaded.pdf

b. In the FMCG sector, the business margins of a small kirana store/outlet or small/regional chain will vastly differ from that of a national hypermarket chain (say, Big Bazaar) due to the different levels of investments, reach, level of service, scale and brand image, despite selling the same product that bears the same MRP. Similarly, it would be unfair to assume that the margins of a small LCO, who has made substantially less investments and has a lower operational cost, would be the same as that of a DTH operator who operates on a much larger scale and has substantial investments. Further, there is a huge cost and service offering variance amongst the DTH operators themselves.

c. **Thus, we humbly request that business margins, which are sacrosanct for any business, should be left to mutual negotiations between the parties and should not be regulated. In a free economy, businesses should be allowed to decide their margins based on the scale and efficiency of their operations, investments, costs of operation, regulatory levies and taxation, reach, service level, etc., which will vary from one platform to another platform (cable versus DTH) and within the same platform (say between two DTH operators).**

3. **<u>A uniform rental for all platforms will dis-incentivize DTH operators who have made significant investments in the sector:</u>**

   a. TRAI has fixed a uniform upper ceiling of monthly rental for all DPOs to help them recover their network costs. While any government policy should incentivize more investments in infrastructure, the draft TTO, once implemented, will penalize the DTH operators who have made significant investments, by restricting their capability to recover the cost of their business and infrastructure. This will dis-incentivize DTH operators from making investments going forward. It would be erroneous to assume that a uniform rental would enable all DPOs to recover the cost of their network on the basis of volume alone, while disregarding the different levels of investments, costs, technology, service levels, QoS, offerings, etc.

   b. As stated above, the investments and costs of various DPOs vary significantly within the same category of platform and between two different platforms, as demonstrated below:

Description	Unit of Measurement	DTH Operator				Cable	
		Airtel FY16	Dish FY16	Tata FY16	D2H FY16	Hathway FY16	Siti FY16
Cumulative Investment	Rs. (Mn)	64,848	63,728	76,866	49,344	10,080	11,538
Gross Base	No. (Mn)	17.23	22.01	19.07	15.74	12.00	13.70
Investment/Sub	Rs.	3,765	2,895	4,031	3,135	840	842

Note:
Cumulative Investment for Airtel, Dish, D2H is as per published results.
Cumulative Investment for Tata, Hathway and Siti is as per internal estimates.
Gross Base of Tata is as per internal estimates and for rest is as per published numbers.

As per the above data,

i. The capex/sub varies substantially within DTH, for instance, Dish TV is 70% of Airtel capex/sub, Videocon is 80% of Airtel capex/sub and Tata is higher by 7% over Airtel capex/sub. This is due to a variation in features such as the quality of the set top box and ODU items as well as the variance in HD/SD acquisition, MPEG 2 Setup Box vs. MPEG 4 Setup boxes, etc.

ii. The cable capex cost/subscriber is at 25% of DTH, due to the quality and features of the set top box and the fact that they have no ODU items.

c. Among all DPOs, DTH operators are the first to have invested significantly in creating a world-class infrastructure, bringing much-needed innovation and value creation in the TV sector. Some such innovations are DVR, EPG, Dolby Stereo, 4K content recording features, HD variants and CAM models. They offer 24x7 customer care service, multiple connect options (call centre, internet, etc), enhanced TV services experience with superior QoS, etc. They offer exclusive content/VAS to their customers. All DTH operators are adopting new technologies and are incentivizing their customers to migrate their STB from old technologies to new ones (for instance, from SD to HD) at negligible or zero prices to enhance their TV experience. **Thus, DTH operators ought to have flexibility to fix their tariffs for their services/network in such a way that they can plan the recovery of the capex/opex they have made.**

d. In light of the above, we humbly request TRAI to allow DTH operators the flexibility to recover the cost of their network from their customers without any regulatory intervention.

In light of the above, we humbly submit that in line with the Government's stated vision of rapid digitisation and promotion of huge capital investments in the sector, the regulatory framework should continue to embrace retail price forbearance without restricting the ability of DPOs to decide their tariffs or business margins. In a highly competitive market, the best approach would be to leave such matters to market forces.

Furthermore, while fixing the wholesale tariffs for content that is monopolistic in nature, TRAI should look at all the contracts that have been signed between the broadcasters and DPOs over the last five years and adjust the prevailing RIO rates, which are currently artificially inflated and serve no purpose except giving broadcasters an undue advantage over DPOs.

We sincerely hope that TRAI will consider our submissions favourably and continue to show faith and trust in DTH operators, who have never misused the forbearance regime in the past or acted against consumer interests or taken any action that adversely affects competition.

Notwithstanding the above and without any prejudice, we hereby submit our response on the draft regulation:

<u>Airtel's specific comments on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016</u>

A. <u>Only DPOs have the right to fix retail tariffs and approach customers, and not broadcasters:</u>

1. Under the current licensing framework, the broadcasting sector has been broadly divided into:
    a. Broadcasters, who provide content to various distribution platforms at a wholesale price.
    b. Distribution platforms such as DTH, IPTV, MSOs/LCOs, who obtain the channels at a wholesale price from broadcasters and sell the same to their customers at a retail price.

2. The above policy framework has been enunciated in various guidelines. For example, the relevant provisions given in the downlinking guidelines are as below:

    *"5.6. The **<u>applicant company</u>** shall provide Satellite TV Channel signal reception decoders **<u>only</u>** to **<u>MSOs/Cable Operators</u>** registered under the Cable Television Networks (Regulation) Act 1995 or to a **<u>DTH operator</u>** registered under the DTH guidelines issued by Government of India or to an **<u>Internet Protocol Television (IPTV) Service Provider</u>** duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a **<u>HITS operator</u>** duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service."*

3. As per the guidelines for the issuance of a DTH licence, a DTH operator is required to provide TV services directly to their customers. The relevant extracts of the guidelines are as under:

    *Direct-to-Home (DTH) Broadcasting Service, refers to distribution of multi-channel TV programmes in Ku Band by using a satellite system **<u>by providing TV signals direct to subscribers' premises</u>** without passing through an intermediary such as cable operator.*

4. The Cable Television Networks Rules, 1994 (as amended), also provide that a cable operator is required to receive the signals from the broadcasters and, thereafter, offer them to end customers. The relevant extracts of the Act are as under:

   *"Multi-System Operator (MSO)" means a cable operator **<u>who receives a programming service from a broadcaster</u>** and/or his authorized agencies and **<u>re-transmits the same or transmits</u>** his own programming service for simultaneous reception **<u>either by multiple subscribers directly or</u>** **<u>through one or more local cable operators (LCOs),</u>** and includes his authorized distribution agencies by whatever name called;*

   A broadcaster is defined as "*any person or a group of persons, or body corporate, or any organisation or body **<u>providing programming services</u>** and includes his or its authorized distribution agencies*".

5. The above provisions clearly stipulate a '<u>two-sided market' for DPOs with retail customers on one side and the broadcasters on the other. While DPOs have exclusive privilege under their license to sell retail services to consumers, the broadcasters can sell their services only to the DPOs.</u> Therefore, the present policy and licensing guidelines completely isolate the retail consumers from the broadcasters and limit their relationship with only DPOs. Fixation of the MRP, which is the retail consumer price, by broadcasters is not in line with the present policy framework or the license agreement.

6. Further, to avoid monopoly over any specific entity/domain, the government also ensured that neither the broadcaster nor the DPO could venture into each other's domain, through cross-holding restrictions.

7. As per the <u>draft TTO</u> (para 51), broadcasters are mandated to declare the MRPs of their pay channels for customers, despite the fact that the channels will be provided to customers by DPOs only. Such a proposal is contrary to the prevailing licensing framework, undermines the business interests of DTH operators and is not in sync with ground realities, as explained below:

   a. Under the current licensing framework, broadcasters can sell their content to DPOs only as part of a principal-to-principal arrangement and are not allowed to deal with the end customers directly. However, TRAI's draft TTO would give broadcasters undue control over the end customers by fixing the MRPs of their individual channels and bouquets. The draft TTO proposes to treat DPOs as broadcasters' agents and limit their role to <u>merely technical provisioning of TV services,</u> while taking away their freedom to run the business. This would lead to the DPOs being driven out of the market and having no incentive to carry out business. It would also be violative of the Constitution of India which provides for the right to conduct business.

b. As per the draft regulations, the role of the DPOs would be reduced to that of mere technical provisioning of services. As a result, their commercial rights would be taken away. However, on the other hand, we submit that the broadcaster being the party who does not provide signals to the end consumers directly, should also not have the right to fix the price for the end customers.

c. DPOs have invested significantly in the sector as compared to broadcasters. It is the entrepreneurial spirit of these DPOs that has helped lay the foundations of digital infrastructure in every nook and corner of the country. Therefore, they should not be treated merely as the agents of the broadcasters, i.e., only for technical provisioning of TV services, and without having the rights to fix the price for their own services. It is unfair that the broadcasters, who have significantly lesser investments in the sector, are proposed to be given complete freedom to run their business as they see fit and to exercise full control over the sector. This is clearly discriminative and against the interests and rights of the DPOs who have made significant investments in the sector. For instance, they can decide the MRP of their channels, convert any channel into a premium channel, convert any pay channel to FTA and vice versa, and do not have to adhere to any policy with respect to cloned channels.

d. The draft TTO, once implemented, will seriously undermine the business prospects of the DTH operators as well as jeopardize the already substantial investments they have made.

e. It is unfair and discriminatory that a DTH operator should have to obtain a licence and pay licence fee to the Government over its revenue while merely acting as an agent of the broadcasters, while the broadcaster (the principal itself), who is proposed to be given all rights to control the end pricing of TV channels, is not required to either obtain any license or pay any license fee.

f. Under the natural rule of law, it is usually the principal who invests in the sector and the agent who works on a commission basis. As illustrated in the table below, DPOs have invested significantly in the sector as compared to broadcasters. Therefore, they should not be made to act as agents of the broadcasters and put in a detrimental position.

Average Risk capital per operator	**Per operator (Rs. mn)**	**No. of Operators**	**Cumulative Investment (Rs. mn)**	**% Share Risk Capital**
DTH Operator	63,696	6	382,178	67%
Cable Operator	10,809	12	129,708	23%
Broadcaster	6,353	9	57,178	10%
Total			**569,064**	

Note:
Average Risk Capital per operator for all the three segments is based on the average of the cumulative investment of the respective players in each segment for whom the information is available.

8. Since the proposed framework is completely contrary to the licensing framework under which the DTH operators have been operating for the last 15 years, we humbly request TRAI to review its draft TTO. This sudden proposed departure is against the interests of the industry and the DTH operators.

B. <u>No data/methodology for determining the rental has been shared:</u>

1. In the draft TTO (para 6), TRAI has inter-alia stated that no distributor of television channels shall charge a monthly <u>rental amount exceeding Rs.130/-</u> excluding taxes, per set top box, from a subscriber for providing capacity that enables the subscriber to receive signals for up to 100 SD channels.

2. In this regard, TRAI has argued in para 43 and 44 of the Explanatory Memorandum of the draft TTO:

43. *"distributors of television channels should have source of revenue independent of revenue share from pay channels subscription revenue to ensure <u>reasonable rate of return on investment in the existing distribution networks and to ramp up further investments to ensure better quality of service to the customers."</u>*

44. *"As per data available, the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs.80/- per month and cost of other*

activities like subscriber management, billing, compliant redressal, call centre, etc. comes out to be Rs.50/- per month.

3. The following issues pertain to TRAI's proposal of a uniform ceiling of monthly rental across all platforms:

    a. No cost, methodology, or assumptions on the basis of which these values have been arrived at, has been shared. No financial data from DTH operators has been sought prior to any such exercise either.

    b. No clarity has been given on how the rental charge can be uniform across all distribution platforms when the technology used, network cost, coverage areas and the levels of investments have huge differences from one platform to another (DTH versus cable) and between two operators within the same platform (e.g., one DTH operator vs. another).

    c. Given that the detailed calculations or the methodology followed has not been shared transparently and no fair opportunity been provided to the stakeholders to comment and provide inputs, this is against the principles of transparency and fairness that TRAI is bound by.

    d. No clarity has been provided on how a uniform rental will enable each and every DPO to have a reasonable rate of return despite varied investments and costs.

4. We humbly request TRAI to make all such data available in the public domain so that there is a reasonable opportunity to appropriately comment on the same. Further, we also request TRAI to share the name of the countries that follow this kind of model in the broadcasting sector with instances of similarity and comparison.

C. <u>Adverse impact on retail tariffs and impractical implementation:</u>

1. Currently, DTH operators offer a lot of value to their customers in the form of bouquets (high number of popular channels at a reasonable/discounted price) apart from the a-la-carte channels, which are available at higher prices. However,

in the proposed regime, customers who subscribe on a-la-carte basis to hundreds of channels will end up with higher bills than they currently have even if they switch to the bouquet system. Therefore, the draft TTO, once implemented, will not bring any true value to the customer and be against their interests as well. In fact, it will increase the cost of TV services significantly. Some of such scenarios are as follows:

a. If Airtel's customers subscribe to the same number of pay SD channels in the new regime, their costs will increase by 192–426%.

MRP prescribed by TRAI							
			Scenario- All paid channels available in a pack are subscribed				
Name of Pack	**Total Paid channels in current pack (No.s)**	**Current Price (Rs.)**	**Pack Price**	**Fixed Rental**	**Taxes (18%)**	**Total price paid by customer (Rs.)**	**TRAI MRP price Vs Current price**
My plan 99	7	**99**	50	130	32	**212**	214%
My plan 199	24	**199**	194	130	58	**383**	192%
Value Lite	34	**231**	269	130	72	**471**	204%
New VALUE PRIME -1	66	**285**	475	130	109	**714**	250%
New VALUE PRIME-2	66	**294**	475	130	109	**714**	243%
MY KIDS PACK	73	**321**	512	130	115	**757**	236%
MY SPORTS PACK	76	**366**	617	130	135	**882**	241%
MY FAMILY	95	**399**	699	130	149	**978**	245%
NEW MEGA	116	**456**	866	130	179	**1,175**	258%
JACKPOT	215	**777**	1,640	130	319	**2,088**	269%
SOUTH MAX	78	**193**	566	130	125	**822**	426%
SOUTH MY SPORTS	107	**276**	842	130	175	**1,147**	416%
SOUTH MY FAMILY	124	**333**	939	130	192	**1,261**	379%
SOUTH NEW MEGA	147	**456**	1,122	130	225	**1,477**	324%

Assumptions
The TRAI MRP is taken at 75% of Maximum price prescribed.
Taxes assumed at 18% considering GST regime

b. If Airtel's customers significantly reduce the number of their pay channels from existing bouquets (maximum 5 pay channels per genre), their costs will still be high.

MRP prescribed by TRAI			Scenario- If customers opts for 5 paid channels of each genre in the pack						
Name of Pack	Total Paid channels in current pack (no.s)	Current Price incl of all taxes (Rs.)	Total Paid Channels Subscribed (No.s)	Reduction in No. of Channels (No.s)	Price for channels subscribed (Rs.)	Fixed Rental (Rs.)	Taxes @ 18% (Rs.)	Total price paid by customer (Rs.)	TRAI MRP price (Al a carte) Vs Current price
My plan 99	7	**99**	7	0	50	130	32	**212**	214%
My plan 199	24	**199**	11	13	77	130	37	**245**	123%
Value Lite	34	**231**	15	19	107	130	43	**280**	121%
New VALUE PRIME -1	66	**285**	27	39	178	130	55	**363**	127%
New VALUE PRIME-2	66	**294**	27	39	178	130	55	**363**	124%
MY KIDS PACK	73	**321**	27	46	178	130	55	**363**	113%
MY SPORTS PACK	76	**366**	31	45	235	130	66	**430**	118%
MY FAMILY	95	**399**	31	64	235	130	66	**430**	108%
NEW MEGA	116	**456**	31	85	235	130	66	**430**	94%
JACKPOT	215	**777**	31	184	235	130	66	**430**	55%
SOUTH MAX	78	**193**	26	52	173	130	54	**357**	185%
SOUTH MY SPORTS	107	**276**	31	76	235	130	66	**430**	156%
SOUTH MY FAMILY	124	**333**	31	93	235	130	66	**430**	129%
SOUTH NEW MEGA	147	**456**	31	116	235	130	66	**430**	94%

Assumptions
The TRAI MRP is taken at 75% of Maximum price prescribed.
For Al a carte packs, the customer would subscribe to 5 channels or the channels available in the Genre whichever is lower.
Taxes assumed at 18% considering GST regime

c. The cost of HD channels will rise significantly in the proposed regime, as illustrated below:

MRP prescribed by TRAI				
Name of Pack	**Total Paid channels**	**Current Price**	**Price if TRAI MRP applies**	**TRAI MRP price Vs Current price**
Silver	5	80	128	160%
Gold	10	111	266	239%
Diamond	24	165	738	447%
Max	42	225	1,161	516%

Assumptions
The TRAI MRP is taken at 75% of Maximum price prescribed. For HD channels the MRP is 3 times SD channels

2. The above table clearly shows that the retail price of TV services will significantly increase in the proposed regime, even if such channels are offered as bouquets with the maximum discount possible, as prescribed by TRAI.

3. Based on our experience in the market, end customers always prefer bouquets due to an increase in value and the availability of multiple options. While the decision to provide consumers with the freedom to choose more than 100 channels from a

universe of 500+ channels is noble in intent, the practical implementation of such a process will be a huge challenge for retail service providers.

4. The proposed regime fails to recognize the current prepaid operating models of DTH operators. Today, a customer uses recharge vouchers for various services, including top-up additions and service visit charges, which have predefined rates that are simple to understand. The proposed charging model of "rental plus taxes" is impracticable to implement in a prepaid model, where the DTH operators sell the e-vouchers/RCVs to distributors who, in turn, sell these vouchers to end customers. The distribution system has no means to assess customer connection details while selling recharges and will only add to the cost. With varying taxes across states and municipalities, it will be impracticable to have a basic rentals plus taxes model. It seems the draft regulation has tried to propose a 'one size fits all' approach, without properly evaluating the current prepaid operating model of DTH operators.

5. DTH operators provide customers with the comfort of sachet recharges, enabling them to recharge for smaller denominations and avail services as per their specific viewing requirements. The charges are applied on a "per day" basis to facilitate customers with part payments so that they are not burdened with a "monthly charges, single payment" model. As such, the proposed rental model is not customer friendly and will be a drastic shift from the current convenient payment model.

6. **It is clear that the payment model as per the draft TTO has been designed keeping the cable TV/MSO platforms in mind, which operate on a post-paid model, whereas its implementation in prepaid DTH platforms will be a huge challenge, especially from a taxation point of view.**

7. Furthermore, as each customer may opt for a different set of channels and may change the same at regular intervals, there will be enormous challenges related to the IT back-end capabilities required to execute the same. The provisioning of channels on a-la-carte basis for millions of customers requires substantial investments to be made in infrastructure, which will increase the cost further. Also, it will be an operational nightmare to meet the personalized requirements of each customer. To do so, DTH operators would be required to seek the consent of each and every customer for individual channels and configure such requests in the system. This will not only increase the number of bouquets/packs (based on

the customers' choice) significantly, will lead to increased timelines for such configuration as well as put humongous pressure on the existing IT systems.

8. Apart from it being practically unfeasible, there is no international precedent of a system for the provisioning of TV services on the basis of individual preferences.

D. The draft TTO favours broadcasters at the cost of Distribution Platform Operators:

1. Under the proposed tariff order, the MRPs of channels can be decided by the broadcaster, which is contrary to the prevailing licensing framework and ignores the role and interests of the DPOs in the distribution of content.

2. Under the proposed regime, broadcasters would be free to declare any channel as a 'pay channel' in one geographical market and keep it as 'free to air' in another geographical market. They could convert any existing channel to a 'premium channel' and be able to command any price from DPOs. Also, there are no regulations pertaining to the advertisement revenue generated by them and the pricing of their premium channels.

3. TRAI, as per the draft tariff order, seeks to micromanage the business of DTH operators and take away the DPOs' right to freedom of trade and commerce in an era when the free market dynamic has become the established norm across all sectors. This is despite the fact that over the last 15 years, TRAI has maintained a position of forbearance on retail tariffs, under which DTH operators have made huge capital investments in promoting the penetration and development of digitalisation. Yet they are not able to cater to millions of potential subscribers across the country, especially in rural and semi-urban areas. In order to be at par with the current status and penetration of DAS, DTH operators have invested thousands of crores in infrastructure with negative returns, created their brands and offered differentiation in their services while never having misused the forbearance regime for retail tariffs.

4. Thus, it is evident that the draft TTO will largely benefit the broadcasters at the cost of the DPOs.

E. <u>Inconsistencies in the pricing of HD channels</u>

1. In the draft TTO {(Part-II, para 5(2)}, TRAI has inter-alia stated, "*The maximum retail price of a pay channel transmitted in **<u>HD format</u>** shall not be more than **<u>three times</u>** the maximum retail price of corresponding channel transmitted in SD format*"

2. In the Explanatory Memorandum of the Draft Regulation (para 79), TRAI has given the following justification to support the MRP of an HD channel. It states:

   *78. The **<u>pricing relation of HD channels with corresponding SD channels is to be worked out based on the differential in the bandwidth utilisation</u>**. A standard 36 MHz transponder for up-linking & down-linking of TV channels can accommodate around 24-28 SD channels. Industry estimates also indicate that **<u>on an average, one HD channel occupies a bandwidth that would otherwise accommodate 2-3 SD channels</u>** with appropriate compression processes in place. Accordingly, the Authority is of the view that the **<u>cost of an HD channel will not exceed 3 times the cost of a corresponding SD channel</u>**.*

3. While fixing the MRP of an HD Channel, the network capacity for carrying an HD channel has been considered as 3x of an SD channel and accordingly, the MRP of an HD channel has been fixed as 3x of an SD channel.

4. Thereafter, in Part-II, Para 6 of the draft regulation, TRAI has inter-alia stated "*Provided that **<u>one HD channel shall be treated equal to two SD channels</u>** for the purpose of **<u>calculating capacity of one hundred channels offered to the subscriber</u>***"

5. Thus, while determining the network capacity required for carrying an HD channel (and imposing carriage charge in a separate draft regulation) by DPOs, the capacity of an HD channel has been considered 2x that of an SD channel.

6. The above anomaly needs to be rectified immediately. Either the network capacity of the HD channel in the hands of the DPO should be considered as 3x of the SD channel or the MRP of an HD channel should be considered as 2x of the corresponding SD channel.

7. Furthermore, the proposed MRP of an HD channel as 2x of a SD channel is extremely high. With the advancement in technology, all the content for channels

is shot in the HD format itself, and is, thereafter, made compatible for being telecast in SD format. TRAI has also recognized this fact in para 77 of the Explanatory Memorandum of the draft TTO, which states that *"Today, it is a known fact the cost of HD content produced is a onetime cost and the SD feed is only a down-converted version of the same HD content at very little extra cost".* Therefore, broadcasters do not incur any additional cost for offering HD channels, except the satellite bandwidth cost for teleporting the channel, which is a fraction of the wholesale price. <u>Since the satellite bandwidth cost is not more than 15-20%[7] of the overall cost of a channel, the MRP of an HD channel should not be more than 1.2 times that of an equivalent SD channel.</u>

F. <u>Premium channels and pricing:</u>

1. As per the draft TTO[8], broadcasters shall have complete freedom to declare any channel as a 'premium channel' and fix the MRP of that channel without any consideration of an upper ceiling. Broadcasters have the freedom to convert any existing FTA and/or pay channel to a 'premium channel'.

2. We believe that the above freedom may be misused and any popular channel may be converted into a premium channel in order to seek any price from DPOs and customers. For instance, the broadcasters may convert all their sports channels or popular channels to premium channels and demand any price for the same.

3. Since such freedom has been misused by broadcasters in the past while determining the price for HD channels, we humbly request TRAI to reconsider the above provision and declare various categories based on specific content (say education, agriculture, etc., or channels without advertisement), according to which the broadcasters may declare a channel as a premium one. Broadcasters should not be allowed to declare just any channel (popular/sports channels) as a premium channel, in order to safeguard the interests of the consumers and DPOs.

[7] As per our estimates

[8] para 63 of the Explanatory Memorandum of the draft TTO