October 10th, 2023

To,

Shri Anil Kumar Bhardwaj,
Advisor (B & CS),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg New Delhi -110002

Subject: Comments/Observations on behalf of DEN Enjoy Cable Networks Pvt.Ltd. on the Consultation Paper on ''Review of Regulatory Framework for Broadcasting and Cable Services'' dated 08.08.2022 **("CP").**

Dear Sir,

We would like to express our gratitude for providing us with the opportunity to share our observations on the Consultation Paper.

At the outset, it is noted that the comments in this paper are premised on our understanding of the broadcasting and cable TV industry practices, its gradual growth over the decade and the current legislative structure.

We would like to express our gratitude for providing us with the opportunity to share our observations on the Consultation Paper.

We humbly acknowledge and appreciate the efforts that the Authority has put forth in initiating a CP on such a significant issue that is in relation to Review of Regulatory Framework for Broadcasting and Cable Services. It appears that the present CP suffers from a lack of 'transparency' that constitutes an imperative requirement towards any consultation process. It is stated that as the It is stated that as the Authority has itself acknowledged that before issuing the CP and inviting comments from all the stakeholders concerned, the Authority had undertaken several formal and informal discussions, including the Stakeholders' Committee Discussions/ Record of Discussions dated 23.12.2021 (which has been categorised as the first phase of consultation involving discussions and deliberations on certain critical aspects pursuant to which the Authority had published its CP dated 07.05.2022 ("*CP Published after First Phase of*

Consultation"), meetings dated 23.02.2023 and 17.03.2023 with the members of Indian Broadcasting Federation (IBDF) and AIDCF respectively; pursuant to which the instant second phase of CP has been published by the Authority. It is further stated that pursuant to the CP Published after the First Phase of Consultations and the present CP, we have addressed multiple letters of communication, including letters dated 06.06.2022, 07.07.2023, 19.07.2023, 17.08.2023, 28.08.2023, 06.09.2023, 11.09.2023 and 15.09.2023, urging the Authority to include and initiate corresponding consultation vide a supplementary CP/ a corrigendum to the existing CP towards yet another critical issue, i.e**. *"DPOs right to offer channels by reorganizing broadcaster's bouquets."*** ". The said issue has been persistently raised by us in all its discussions since the CP Published after First Phase of Consultation, with the Authority; and the concurrence of AIDCF with the Phase I consultation process was always subject to the Authority taking all the issues raised by us into consideration in the Phase II of the consultation process. However, the Authority which has always claimed to be driven with the objective of creating a balanced, level-playing, transparent and non-discriminatory regulatory framework, has deliberately ignored to include the aforesaid critical issue in the consultation process and has, till this date, failed to take any affirmative action towards resolution of concerns highlighted by us. It is stated that inaction coupled with the pre-determined approach on part of the Authority in the guise of the namesake CP has also constrained us to exercise judicial remedies and in pursuance to the same, we have filed a writ petition ("Petition") W P No 12906 of 2023. before the High Court of Delhi (All India Digital Cable Federation versus Telecom Regulatory Authority of India) in which Hon'ble Court has been pleased to issue notice on 3rd October 2023. It is brought to the kind attention of the Authority that the comments submitted to the questions listed in the present CP, is without prejudice to our rights before the High Court of Delhi and/or the outcome of the Petition, which the Authority, may please take kind note of. We state that since the Authority has failed to include the critical aspect pertaining to the 'DPOs right to offer channels by reorganizing broadcaster's bouquets' for consultation, we are constrained to reiterate on our own, and yet again pursue the said issue before the Authority vide our response to the present CP which is as under:

We state that since the Authority has failed to include the critical aspect pertaining to the **'DPOs right to offer channels by reorganizing broadcaster's bouquets'** for consultation, we are constrained to reiterate on our own, and yet again pursue the said issue before the Authority vide our response to the present CP which is as under

Foreward:

1. We would first want to express our gratitude to the Authority for providing us with the chance to respond to this Consultation Paper. The country's thriving broadcasting industry, which comprises of over 900 licenced TV channels and is viewed by millions of subscribers via the networks of five DTH operators and thousands of Cable TV operators, depends on the results of the present consultation.

A. The Regulatory Framework and Structure of the Broadcasting Sector

2. The success of the Indian broadcasting industry is due to its well constructed structure, which principally derives from its licencing framework. This licencing structure not only makes the roles of each stakeholder clear, but it also supports the entire regulatory and commercial environment of the industry.

3. It's important to comprehend the structure of the broadcasting business before delving into the problems raised in the consultation paper:

a. Content: Content is at the top of the broadcasting value chain. While both content producers and broadcasters are capable of creating material, only the latter is covered by the licencing structure.

b. TV Channels: A TV channel is a collection of different types of content that has been stitched together in a linear fashion and uplinked under the broadcasting registration or licence issued by MIB. A broadcaster launches a TV channel with programming that was either created by them or obtained from other content owners. Each channel's registration is distinct, and the Ministry of Information and Broadcasting (MIB) must grant approval for uplinking and downlinking.

A TV channel is one which is licenced by MIB to a Broadcaster in accordance with the terms of the Uplinking and Downlinking Guidelines and can **only** be transmitted to customers through authorised service providers like DTH, MSO/LCO/HITS, and IPTV **(also called Distribution Platform Operators (DPOs)** service providers.

As a result, all requirements in the Uplinking and Downlinking Guidelines, including monitoring, record-keeping, and compliance with the Cable Television Networks (Regulation) Act of 1995's Programming Code, apply to licenced TV channels transmitted to DPOs.

c. Distribution Platform Operators (DPO) Service : After receiving the requisite approvals from the MIB, broadcasters transmit their channels to distribution platform operators (DPOs), who subsequently rebroadcast them to subscribers. DPOs include Headend in the Sky (HITS), Internet Protocol TV (IPTV), Direct to Home (DTH), and Multi System Operators (MSOs)/Cable TV. Their services go beyond simple transmission; they use sophisticated multiplexing techniques to combine many TV channels into a single stream that is then transmitted to clients via a set-top box in encrypted form. The DPO also provides several platform services, including electronic programme guides (EPGs), resolving client complaints, managing billing, and more.

4. Therefore, TV channels combine specific content and advertise in a sequential format. Broadcasters curate content for individual TV channels, whereas DPOs bundle these channels in a single stream to deliver an enhanced and specialized service to their subscribers.

B. Current Regulatory Framework on tariffs (NTO) is not in compliance to the licensing structure:

5. To ensure the continuing success of the Indian broadcasting sector, its regulatory framework for pricing/tariffs must reflect the industry structure, and clearly delineate each stakeholder's roles and responsibilities. In broadcasting, TRAI's regulations and directions acknowledged the structure of the sector prior to 2017

6. The publication of the new regulatory framework for the sector in 2017, also known as the New Tariff Order (NTO), forced a deviation from the established and proven industry structure. Upon NTOs enforcement, broadcasters were allowed to determine retail prices for TV channels, as well as determine the composition and retail prices for bouquets of channels. DPOs, in turn, were obligated to carry these bouquets without changes.

7. Prior to the NTO's introduction in 2017, DPOs set the retail prices for their services, including the costs of the channels, in accordance with the licencing regime, under which broadcasters were prohibited from selling TV channels directly to consumers and were only permitted to do so through DPOs. By treating DPOs as agents of broadcasters, NTO upended the licencing system because the broadcaster sets the price of the TV channel, and the DPOs only receive a commission on that price. Unexpectedly, broadcasters—who aren't even allowed to interact directly with customers—now have the authority to choose retail prices and bouquet compositions. This role is exclusively reserved for DPOs under the license..

8. The licensing framework envisages a multi-sided market for both broadcasters and DPOs. Broadcasters generate revenue by selling airtime to advertisers on one side and levying wholesale subscription charges on DPOs on the other. Conversely, DPOs derive their income from broadcasters through channel carriage/placement fees and subscription charges from consumers for services, which encompass a-la-carte channels and bouquets (***Figure 1).***

Present Licensing Framework

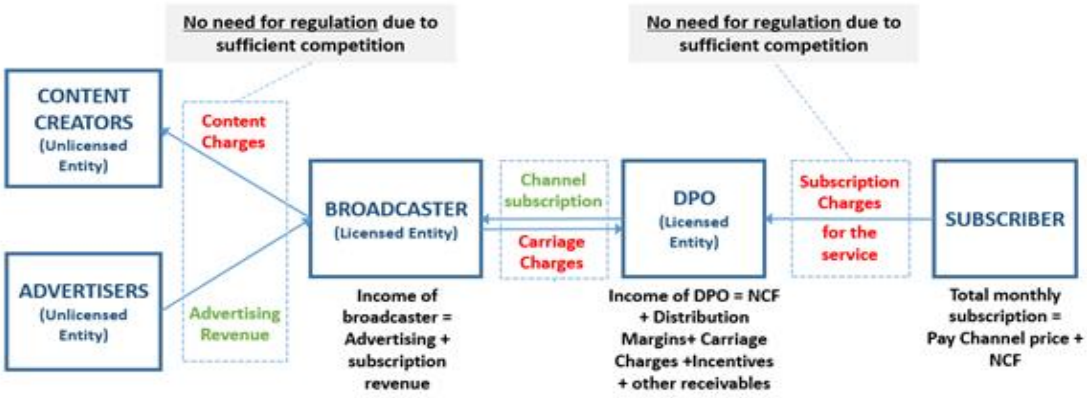

Figure 1

9. There is an urgent need to revisit and appropriately adjust the NTO 2017 provisions to align it with the overarching licensing framework. This can be accomplished by requiring broadcasters to cap their individual channel MRPs at the DPO wholesale price. Additionally, DPOs should regain the autonomy to set retail prices and design bouquet compositions, restoring the pre-2017 status before the NTO's implementation.

C. Formation of Bouquets by Broadcasters is against the licensing regime:

10.As mentioned above, the role of the Broadcaster is to aggregate content to create a TV channel and to transmit it to DPOs after obtaining Uplinking and Downlinking permissions, relevant sections of which state the following.

> *m) The company has paid Security deposit of ____ on Bharat Kosh Portal in respect of its **TV channel namely** "_____". .....*
>
> *5. With this permission, _____.. must operationalize the **News and Current Affairs TV Channel, namely,** "_____" within a period of one year from the date of obtaining all necessary clearances from WPC and NOCC.....*

11. It is clear that the right to run a television channel only applies to the channel that is specifically mentioned. Each channel in a broadcaster's portfolio requires registration or permission.

12. The broadcaster is only allowed to run the proposed channel with this permission. It prohibits broadcasters from creating TV channel bouquets tailored to individual consumers and selling those bouquets to DPOs for a price they choose.

13. Because each and every channel must have a separate registration or licence, and because they cannot sell their services to customers directly, they have to provide each channel to the DPO in the form it is licensed i.e. on individual channel basis only.

14. In contrast, DPOs are required to bundle different channels as part of their services under the terms of their licence because they aggregate channels from different broadcasters into a single stream in accordance with customer needs and pricing plans.

15. In addition, DPOs are the ones who offer services to final customers. The service that DPOs offer to consumers is a package that includes installation, network upkeep in a secure, encrypted format, accounting and billing, uptime and quality of service maintenance, buying the channels from the broadcaster, and including those TV channels in the transmission stream created for the specific customer based on their subscription.

16. **In conclusion, broadcasters are only permitted to sell a particular channel on an individual basis. A subscription-specific package can only be made by DPOs, who then offer it to customers as a service. In order to prevent market distortion, the tariff legislation must forbid broadcasters from constructing bouquets and compelling DPOs to buy them.**

D. Broadcasters can set only the wholesale price and not the retail price:

17. According to the licencing system, broadcasters are only permitted to sell their TV channels to DPOs and cannot offer their TV channels directly to consumers. Because of this, they are only able to set the wholesale pricing at which the channel is made available to DPOs, not the retail price at which it will be offered to customers. By multiplexing several channels, adding EPG, and transmitting it across their network to the STB placed with the customer, the DPOs further establish a distinctive and specialised service. As a result, only the DPOs have the authority to determine the retail price of the service, including the cost of the TV channel that is included in it.

18. To explain this, we wish to draw the attention of the Authority to the relevant sections of the Policy Guidelines for Uplinking and Downlinking of Satellite TV Channels, 2022, and the Cable TV Network Regulation Act, 1995.

A. Policy Guidelines for Uplinking and Downlinking of Satellite TV Channels, 2022[1]:

11. Grant of permission

…

(3) The Grant of permission to a company! LLP shall be subject to the following conditions

…

c) It shall provide Satellite TV Channel signal reception decoders to MSOs/ Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by the Ministry.

In a subsequent clarification[2], the ministry made clear the following

*2. Accordingly, it is reaffirmed that the permitted entities may **only** provide TV Channel Signal Decoders to the following:*

i. MSOs/ Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995.

[1] https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/nov/doc2022119122101.pdf
[2] https://mib.gov.in/sites/default/files/Clarification%20regarding%20Policy%20Guidelines%20for%20Uplinking%20and%20Downlinking%20of%20Satellite%20TV%20Channels%2C%202022%20dated%2009.11.2022-reg..pdf

ii. DTH Operators registered under the DTH guidelines issued by Government of India. Iii. Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications.

iv. HITS Operator duly permitted under the Policy Guidelines for HITS operators issued by the Ministry of Information & Broadcasting.

B. **Definition of Pay Channel**

The definition of Pay Channel in the Cable TV Network Regulation Act, 1995 clearly explains that a Pay Channel is one for which the **broadcaster receives a subscription fee from a cable operator**.

C. Cable TV Network (Regulation) Act, 1995:

4A. Transmission of programmes through digital addressable systems, etc.

……

(e) ***"pay channel****", in respect of a cable television network, means a channel for which* ***subscription fees is to be paid to the broadcaster by the cable operator*** *and due authorisation needs to be taken from the broadcaster for its re-transmission on cable;*

19. It is evident from the definition and requirements of the Uplinking and Downlinking guidelines stated above that

a. broadcasters cannot sell their TV channel directly to subscribers; and

b. broadcasters only receive subscription fees for their pay channels via DPOs and not directly from subscribers.

c. DPOs may, as part of their service, retransmit the channel. As a result, the DPO ceases to serve as merely the broadcaster's agent and instead assumes the role of the retransmitted channel's major provider as part of their service to the customer.

d.Therefore, only the DPO may determine how much a TV channel costs to retransmit to customers as part of their subscription service.

e. The Broadcaster's responsibility stops once they give DPOs a channel (or channels) at wholesale prices, and that they must not have any influence on the DPO's retail pricing or the bundling of such channels.

E. Present tariff regime (NTO), allowing Broadcasters to set consumer MRP is based upon flawed comparison of the broadcasting services with the general trade of goods:

20. The MRP idea, which is normally important for FMCG and manufactured items, appears to have been incorrectly applied by the NTO to the broadcasting service sector. This has led to the mistaken positioning of DPOs as service retailers and broadcasters as service makers. The Legal Metrology (Packaged Commodities) Rules, 2011) allow the producer to set the maximum retail price for pre-packaged items in the case of manufactured commodities. Then, distributors or retailers are required to charge retail consumers a price for these products that is equal to or less than the manufacturer's listed retail price.

21. However, in these circumstances, the manufacturer is free to sell their goods through any channels of commerce. Additionally, manufacturers are free to offer their products directly to customers. The consumer is not required by such arrangements to purchase the product or service only from the authorised parties, in this example the DTH/Cable/ITPV licensee. Additionally, in such circumstances, the regulator has no influence over the commission or discount given by the manufacturer to the distributor or retailer.

22. The NTO also fails to take into account the fact that the broadcasting industry is bound by certain legislative requirements, such as "Must Provide" and "Must Carry." These clauses don't apply to the general commerce of goods. Given these disparities, making comparisons between the FMCG or manufacturing sectors and the broadcasting industry, particularly in the setting of the MRP concept, is both inaccurate and unsuitable.

23. In contrast, there is a direct contact between the service provider and the customer in the case of the service sector, and any intermediary only serves as an agent of the service provider. Broadcasters are required to sell their TV channels to the DPO only because they are unable to sell their services to consumers directly through their own technical arrangements or by designating any intermediaries.

Broadcasters cannot establish the retail price of a service they do not actually supply since they are not the ones who actually provide it to the consumer.

24. In the broadcasting industry, DPOs, such as DTH, Cable, and IPTV, are responsible for providing services to the consumer and thus have the authority to choose the price. However, this right has been improperly transferred from DPOs to Broadcasters by the existing tariff regime through NTO. This differs from the traditional definition of the services sector, which assumes that services are offered to customers directly by service providers. Additionally, because of the licencing system, it is not possible for broadcasters to provide any services, such as TV channels, directly to consumers.

25. To summarize, broadcasters' role is to aggregate content to create a TV channel, whereas the DPOs role is to aggregate the channels of various Broadcasters and transmit these in the form of a single stream to its subscribers through its network and STB. A stream of channels transmitted by a DPO is the end service that is desired by and subscribed to by customers. This service also consists of additional significant value additions such as Electronic Program Guides, Set-Top Boxes, dedicated customer support and other platform benefits. The channels provided by broadcasters are only one component of the DPOs services and are provisioned in on the basis of consumer choice and subscription.

26. The aforementioned points highlight that DPOs are creators of a distinct service, rather than mere distributors or resellers for TV channels of licensed broadcasters. Consequently, only DPOs should possess the authority to determine retail prices of the TV channels contained in its service to consumers. The prices set by broadcasters for individual channels should merely act as the wholesale price at which DPOs acquire the channels from the broadcasters.

27. Therefore, the present regime needs to be corrected to one in which broadcasters declare the wholesale price at which they sell the TV channel to the DPO instead of setting the consumer price. The DPOs in turn should be allowed to set the retail price by adding their margin and cost of other services provided by them.

F. The NTO has caused economic distortion:

28. The broadcasting Industry consists of DPOs in the form of DTH, MSO/LCO, HITS/LCO, IPTV operators who provide their services directly to the consumers. These DPO's are not mere distributors or agents of broadcaster but are the service providers who establish the transmission and distribution network including the building of the cable access and backhaul network, satellite transponders, installation of set top boxes, installation of headend that include multiplexers and other infra such as billing, accounting, auditing, monitoring etc.

29. The Cable Industry which consists of MSOs and LCOs have done CAPEX of around Rs 50,000 crore and DTH industry would have spent over Rs 20,000 crore as CAPEX. In addition, they also incur substantial amounts as OPEX for continued and seamless operation. On the other hand, all broadcasters licensed for around 900 TV channels would have invested around Rs 2000 crore.

30. As a result, the DPO industry has incurred 35 times more CAPEX than broadcasters (Cable 25 times, and DTH 10 times) and hence faces 35 times greater economic risk. Furthermore, for the purposes of tariff regulation, an industry cannot be referred to as the broadcaster's agent if it has installed network capex that is more than 35 times greater than the broadcaster's. Similar to broadcasters, the DPO sector needs the ability to decide how much to charge for all of its services and how to recoup its costs. They cannot merely operate as a revenue collector for the broadcasters by relying on the broadcaster to establish the price for its customers.

31. After the NTO went into effect, broadcasters were given the power to choose the retail price of their TV channels, a decision that had previously been left up to the DPOs. Despite DPO making significant expenditures in the industry, this quirk allows broadcasters total price control over DPO's company.

32. It is clear that the aforesaid important factors were not properly taken into account when the NTO was published. The NTO appears to benefit the commercial interests of broadcasters by allowing them to set channel retail prices and create channel bouquets. DPOs are badly impacted by this transfer of power to broadcasters because it revokes their jurisdiction to set rates for the services they offer via their networks and and the right to design their business strategy to earn income on their investments.

33. The above-mentioned distortion created due to tariff regime enabling the

broadcasters to set the retail price has led to fulfillment of broadcaster's greed in which they have increased the prices even it meant reduction in subscription. Following table/graph shows the subscriber growth of net revenue.

Subscriber Trend of Major MSOs (Hathway, DEN, Siti and GTPL)				
(In Cr), FY	**18-19**	**19-20**	**20-21**	**21-22**
Hathway	**0.7**	0.5	0.6	0.5
DEN	**0.6***	0.5	0.5	0.4
Siti Networks	**0.8**	0.9	0.8	0.7
GTPL	**0.7**	0.8	0.8	0.8
Total	**2.8**	**2.7**	**2.6**	**2.5**

****Approximate count***

Revenue and EBITDA of Major MSOs (Den, Hathway, Siti and GTPL)

P&L (In INR Cr.), FY	**18-19**	**19-20**	**20-21**	**21-22**
Gross Revenue (inclusive of broadcaster's subscription revenue)	5,053.2	6,697.8	6,713.1	6,467.1
Cost of Content (Broadcasters' revenue)	2,264.7	2,821.8	3,053.5	3,219.0
ARPU (INR) per month (Inclusive of Content charges paid to the broadcasters)	150	207	215	216

Note: The ARPU figure shows the increase in consumer price by 50% ever since the implementation of New Tariff Order (NTO) due to increase in broadcaster's tariffs.

DTH (4 Service Providers)					
	17-18	**18-19**	**19-20**	**20-21**	**21-22**
Subscribers (in Cr)	6.7	7.2	7.0	7.0	6.7
Revenue ((in Rs Cr)*	15,563.9	18,072.5	12,746.1	12,629.5	12,363.4
Pay out to Broadcasters** (INR CR)	5447.4	6325.4	8539.9	8461.8	8283.5
Revenue *(including broadcasters' share*) (INR CR)***	15,563.9	18,072.5	21,286	21,091.3	20,646.9
ARPU (INR) per month	193.6	209.2	253.4	251.1	256.8

**For FY 17-18 and FY 18-19, the revenue includes payout to broadcasters, for FY 19-20 onwards, broadcasters'' share of revenue was excluded from DTH revenue due to change in reporting methodology by DTH operators*

***estimate as per data available for two DTH operators for FY 17-18 and FY 18-19. For FY 19-20 to FY 21-22, estimate is based on available data for one DTH operator*

**** Revenues from 19-20 onwards have been derived by adding estimated values for broadcaster content costs*

Note: The ARPU figure shows the increase in consumer price by 20% ever since the implementation of New Tariff Order(NTO) due to increase in broadcaster's tariffs

34. The technique utilised by broadcasters to increase their revenue from Cable and DTH subscriptions by raising the price and packaging of the subscriptions has stunted Cable's growth and irreparably damaged the DPO business.

35. In addition, TRAI anticipated that broadcasters would advance their commercial objectives while upholding the principles of transparency, non-discrimination, and protecting subscriber interests. Broadcasters were also expected to pass on the benefits of increased revenue to the consumer by lowering costs. The following is an excerpt from the NTO that is relevant:

> *"However, the Authority expects that the broadcasters will ensure complete transparency, non-discriminatory behavior and protection of subscriber interests while pricing their channels. It is also expected that broadcasters will price their channels reasonably and benefits of higher revenue realization due to digitisation and addressability shall be shared with subscribers also."*

36. Regrettably, actual developments have not gone as planned, with broadcasters taking advantage of the latitude provided by the NTO to put their profit margins ahead of everything else.

a. Broadcasters abuse their power to get viewers to subscribe to bouquets rather than single channels. Customers are given the impression that the bouquets are worth more because they are priced much lower than the total of the various channel charges. **Because of this, customers pay more and are forced to subscribe to channels they don't want**.

b. By employing such tactics, broadcasters **can grow** both their subscription and **advertising earnings**, which rise in tandem with the number of subscribers to their channels. In theory, they should pass on the benefits of higher ad revenue by lowering the cost of TV channels, but they have instead raised rates and used the situation to boost their revenue on both sides.

c. Broadcasters frequently develop numerous channels that feature redundant

content in an effort to maximise the utility of their programming. Due of their repetitious content, these channels don't appeal to consumers. Broadcasters boost the subscription counts of generally less popular channels by grouping these with highly coveted channels in bouquets. By grouping these channels with their main channels, they are able to increase their advertising and subscription earnings without paying carriage fees for those channels.

d. Broadcasters' actions not only disadvantage subscribers but also DPOs. Low-demand channels use up valuable bandwidth on DPO networks, yet because they are classified as pay channels, DPOs don't get paid for hosting them.

e. Furthermore, broadcasters have switched several low-demand channels from Free-To-Air (FTA) to Pay status because FTA programmes cannot be combined with pay channels in bouquets. DPOs lose out on prospective carriage revenues from these channels as a result of this change. DPO has suffered losses as a result of the inclusion of these channels in the bouquet because they are required to carry them without being compensated for doing so.

37. The Broadcasters' aforementioned strategies have not gone ignored. Through several regulatory framework revisions, TRAI has attempted to stop these practises. However, despite all of these efforts, broadcasters have continued to price their services improperly. **The authority need to fundamentally correct the tariff regime and align it with licensing regime that requires the broadcaster's to sell each channel on individual basis (ala-a-carte) only and allows only the DPO's to create a consumer specific packages. Further, the broadcaster must decide only the wholesale price at which it sells the channel to DPO and should not have any control over end consumer pricing.**

G. Reforms needed in the sector:

38.In the current NTO, Broadcasters have full control on their business by controlling advertisement revenue, subscription revenues of TV channels and subscription revenue through OTT and are able to develop their business strategy. On the other hand, the DPOs are fully dependent on broadcasters in terms of TV channel pricing and TRAI regulations on other revenues such as carriage charge, NCF and other service charges.

39.The below table summarizes the NTOs application of inequitable rules on DPOs and broadcasters:

Broadcasters	
Item	**Status**
Advertising Revenues	Not Regulated
Channel Prices (subscription revenue)	Not Regulated (except that channels up to MRP 19 can be included in bouquets) *(though formation of bouquet itself is irregular)*
Max discount between bouquet price vs ala-carte price	45%
Incentives to promote channels	Not Regulated

DPOs	
Item	**Status**
Network Capacity Fee (NCF) / NCF for Multi-TV Connections	Regulated
Carriage Fee	Regulated
MRP set by broadcaster Acts as ceiling for the DPO. Any discount to consumer by DPO must be borne out of its commission.	Regulated
Max discount between bouquet price vs ala-carte price	15%
Visiting/ Installation/ Relocation Charges	Regulated
Re-activation Fee	Regulated

40. It is clear that almost every aspect of DPOs' services is constrained by regulatory requirements, leaving them with limited commercial autonomy. Given the presence of five DTH operators (including four paid operators and DD Free Dish) and **Lakhs of cable operators, this lack of independence persists despite fierce competition among DPOs. Additionally, there are roughly 6-7 operators offering the same services to customers in each locality. The DPOs' retail tariffs should be completely forgivable given the degree of competition.**

41. In contrast, under the NTO, broadcasters get to keep many of their economic rights, like pricing forbearance, even though they have a content monopoly because of the distinctiveness and non-substitutability of their content. Because DPOs have little to no business discretion, **broadcasters' pricing methods have a significant impact on the whole value chain of broadcasting**. Because of this, the current regulatory system needs to be altered right away.

42. As discussed in the paragraphs before, tariffs have grown steadily under the NTO as a result of broadcasters' pricing strategies. Following the most recent adjustment, known as NTO 3.0, in November 2022, the bouquet rates for some broadcasters increased by up to 50%, increasing the cost of subscribers' subscriptions. This will probably result in a further 25–35% increase in consumer prices.

43. **Escalating subscription costs have resulted in DPOs losing millions of subscribers each quarter. This trend casts doubt on the sustainability of the DPO's business model under the current regulatory framework. No new entity would be willing to be a DPO and invest in an industry where they lack essential business freedoms and are subjected to rigorous regulations, combined with the control exerted by broadcasters over retail pricing. The latter group, driven by their own profit motives, often acts to the detriment of DPOs.**

44. As was already mentioned, TRAI's attempts to alter the NTO have failed. This ineffectiveness is primarily due to the fact that the modifications made (such as the Amendment of 2020, or NTO 2.0, and the Amendment un 2022, or NTO 3.0) were merely minor updates to the original NTO. Due to a fundamental shortcoming in the NTO, which gives broadcasters the power to compose bouquets and set retail rates, the DPO business is currently facing difficulties.

45. It is noteworthy that each change to the NTO has focused on specific price components that have an impact on particular value chain segments. The overall regulatory structure was intended to be improved by each modification, but this incremental approach has led to a disjointed strategy. We consider it essential to conduct a thorough engagement that covers all stakeholders and how they interact with one another along the value chain. The accompanying interventions provide a fundamental viewpoint for this all-encompassing strategy.

a. Retail prices of channels to be decided by DPOs and not by broadcasters:

i. The authority for DPOs to set the retail price of channels must be reinstated. As the primary service providers, DPOs should have the autonomy to determine the retail price of their services to effectively cater to their customers' needs. Broadcasters have exploited their power to dictate retail prices, focusing primarily on maximizing their advertising revenues while neglecting both consumer preferences and the financial sustainability of DPOs.

ii. Due to monopolistic nature of TV channels, the channel pricing set by broadcasters should be capped at the wholesale cost at which DPOs acquire channels. DPOs in turn should to have the flexibility to offer channels at a rate either below or above this wholesale price on the basis of their business strategy and to maximize benefit to the consumers.

b. The broadcaster's should not be allowed to form

i. According to licensing conditions, broadcasters are not granted the privilege to create bouquets, and should be strictly prevented from creating channel bundles. Further, broadcasters must be prevented from pushing their less popular channels, which otherwise would have been free to air channels, in bouquets or otherwise.

ii. Although licensing stipulations currently prevent broadcasters from bundling channels, if TRAI were to still allow them to continue to do so in the future, it will be vital to ensure that these bouquets aren't used as a mechanism for broadcasters to force their offerings onto DPOs/Consumers by pricing them attractively compared to ala-carte rates

iii. The broadcaster's should be allowed to form bouquet only and only if they provide the channel to DPO at proportional price of the channel in broadcaster's bouquet. ***For example***, let us consider a bouquet offered by a certain broadcaster comprising of 10 channels with an announced Maximum Retail Price (MRP) of Rs. 30/-. If, a DPO has subscribed to such aforesaid bouquet of the broadcaster and has formed a DPO package comprising of only 3 channels out of the 10 channels from such broadcaster bouquet, then the DPO shall be subjected to make a proportionate payment of Rs.9/- for the selected 3 channels, after deducting the applicable distribution fee plus incentive (as applicable), to such broadcaster.

c. Ceiling on wholesale price of channels:

i. TRAI should implement caps on the wholesale prices of channels (i.e., the rates at which broadcasters charge DPOs). This measure would deter broadcasters from leveraging their content monopoly for undue advantage.

ii. Broadcaster's must set the wholesale price in a transparent and non-discriminatory manner by publishing the RIO which becomes the fallback price in case of use of must provide regime.

iii. Not setting limits on the wholesale prices of channels would undermine the "Must Provide" regime. Exorbitant channel prices act as a virtual barrier, preventing channels from being accessible to subscribers.

iv. TRAI has the capability to determine the cost of a channel using any established costing methodology. Over time, TRAI has effectively ascertained costs in various complex issues, such as interconnection etc. The determination of the wholesale price is critical due to present state of market failure in which it is becoming difficult to implement must provide provision. Disconnection of channels by broadcasters to the cable industry during the year 2023 is a typical example of such market failure.

v. Similarly, to effectively implement 'must carry' which is required in case the DPO does not want to carry any channel because its price is too high or does not have demand, the ceiling price of the channel should be

determined instead of regulating the carriage price itself. Further, in case of use of must carry provision, the broadcaster must declare its channel either free to air or at a mutually agreed price so DPOs are not forced to block their capacity for a exorbitantly high priced channel at the cost of a meagre carriage charge.

H. Scope of the Present Consultation Paper:

46. For the sector to undergo the necessary reforms, TRAI should initiate a comprehensive consultation on the overarching regulatory framework. The declining subscriber base of DPOs suggests that, due to escalating subscription costs chiefly propelled by broadcasters' pricing tactics, the broadcasting industry is swiftly diminishing in market significance.

47. Moreover, the ineffectiveness of both NTO 2.0 and NTO 3.0 in addressing the industry's persistent challenges signals that mere incremental changes to the NTO won't suffice. A comprehensive re-evaluation of the NTO framework to eliminate inconsistencies with the licensing and regulatory structure of the sector is warranted.

48. Hence, the breadth of the current consultation paper should be expanded to encompass all pertinent issues. Several matters have been omitted from the current consultation's purview, based on the assumption that they were already deliberated in the May-2022 consultation and hence did not require revisitation.

49. **Firstly,** it is imperative to note that the previous year's consultation did not produce a conclusive resolution on the topics debated. The outcome of that consultation, NTO 3.0, essentially negated the provisions of NTO 2.0, due to industry disagreements on its implementation. This reversal is evident in the changes made in NTO 3.0, such as the MRP ceiling adjustment from Rs. 12 to Rs. 19 for inclusion in a bouquet and the elimination of the second twin condition.

50. Records from the meeting on 23rd December, 2021, also suggest that participating stakeholders concurred on an immediate intervention to specifically address the urgent concerns related to NTO 2.0. This consensus led to the May, 2022 consultation. The pertinent excerpt from that meeting reads as follows:

"6. The stakeholders opined that review of all the issues is required. The stakeholders, however, requested TRAI to address critical issues mainly related to implementation of NTO-2.0 Tariff Orders immediately by appropriate action. *Other issues may be considered by TRAI later-on. Urgent action is necessary to manage steep rise in tariffs due to proposed RIOs and also to avoid inconvenience for consumers arising out of impending new tariff offers."*

51. However, during that same meeting, the opening remarks highlighted TRAI's dual objectives: firstly, to address the concerns surrounding NTO 2.0, and secondly, to pinpoint the issues hindering the overall growth of the industry.

52. Hence, it would be incorrect to interpret the results of last year's consultation (i.e. NTO 3.0) as the ultimate resolution of the issues discussed therein. As it was primarily designed to mitigate the issues with NTO 2.0, it should be seen as a provisional measure until a comprehensive resolution of all issues and alignment of the regulatory framework with the licensing framework and that leads to the growth of the sector is reached.

53. **Secondly**, a consultation paper that focuses on just a few topics is unlikely to yield an optimal result, especially when most of the issues under this consultation's paper are intrinsically linked to other issues either raised during the last consultation paper or are not included in the consultation paper.

54. For instance, if the current consultation explores topics like NCF and Carriage Fee, it must also delve into channel pricing, creation of bouquet, linkage of ala-a-carte price with bouquet and the complete tariff framework itself. This is because every entity in the broadcasting sector grapples with an array of charges, and modifications to one particular charge inevitably affect the costs and sources of revenue on both sides of market.

55. The broadcasting sector is characterized by sophisticated interconnected charges that affect all stakeholders. From each stakeholder's viewpoint, a shift in one factor invariably influences others. For example, for a subscriber with a set budget for cable services, any alteration in the NCF might prompt changes in their decisions to subscribe or unsubscribe from certain pay channels.

56. The profitability of DPOs is intertwined with multiple revenue streams such as NCF, carriage fee, and channel pricing, which in turn determines their margins.

Consequently, adjustments to one of these elements can have ripple effects on others.

57. Furthermore, it is evident that both NTO 2.0 and NTO 3.0 failed to meet intended goals and have resulted in legal disputes within the sector. Although these are popularly referred to as NTO 2.0 and NTO 3.0, they are essentially minor amendments to the original NTO. **The shortcomings of these amendments underscore the challenges of addressing interconnected issues in a compartmentalized manner, leading to outcomes that fall short of industry needs**.

Therefore, it is essential to address all interrelated concerns jointly in order to reach a comprehensive and successful settlement. With the aforementioned context in mind, we offer our solutions to the concerns put out by the Authority.

Thanking You
Yours Faithfully

DEN Enjoy Cable Networks Pvt. Ltd.

Specific responses to the issues raised in the Consultation Paper are detailed below for your perusal:

A. Tariff related issues

Q.1 Should the present ceiling of Rs.130/- on NCF be reviewed and revised?

a. If yes, please provide justification for the review and revision.

b. If yes, please also suggest the methodology and provide details of calculation to arrive at such revised ceiling price.

c. If not, provide reasons with justification as to why NCF should not be revised.

d. Should TRAI consider and remove the NCF capping?

&

Q.2 Should TRAI follow any indices (like CPI/WPI/GDP Deflator) for revision of NCF on a periodic basis to arrive at the revised ceiling? If yes, what should be the periodicity and index? Please provide your comments with detailed justification.

&

Q.3 Whether DPOs should be allowed to have variable NCF for different bouquets/plans for and within a state/ City/ Town/ Village? If yes, should there be some defined parameters for such variable NCF? Please provide detailed reasons/ justification. Will there be any adverse impact on any stakeholder, if variable NCF is considered?

&

Q.4 Should TRAI revise the current provision that NCF for 2nd TV connection and onwards in multi-TV homes should not be more than 40% of declared NCF per additional TV?

a. If yes, provide suggestions on quantitative rationale to be followed to arrive at an optimal discount rate.

b. If no, why? Please provide justification for not reconsidering the discount.

c. Should TRAI consider removing the NCF capping for multi TV homes?

Please provide justification?

Response: The present ceiling on NCF shall be definitely reviewed and revised. In this regard, we would like to highlight the old regulations and reasoning which lead to the current NCF:

1. The Tariff Amendment Regulations 2020 replaced Clause 4(1), as contained in the 2017 Tariff Order. The un-amended Clause 4(1) of the Principal Tariff Order states as:

   "*Provided that the network capacity fee, per month, for network capacity* ***up to initial one hundred SD channels, shall, in no case, exceed rupees one hundred and thirty****, excluding taxes.*

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

2. After amendment, the amended Clause 4(1) in the Tariff Amendment Order 2020 states as:

   "Provided that the network capacity fee, per month, for network ***capacity up to initial two hundred SD channels, shall, in no case, exceed rupees one hundred and thirty****, excluding taxes.*

   Provided further that ***the network capacity fee, per month, for network capacity for receiving more than two hundred SD channels, shall, in no case, exceed rupees one hundred and sixty****, excluding taxes".*

3. In addition to above, we would also like to highlight Clause 82 of Explanatory memorandum of the Tariff amendment 2020, which states as:

> *"Now the question arises what the ceiling on NCF should be for offering more than 200 channels by a DPO.* ***The Authority has noted that on any platform generally on average 300 relevant channels are available for viewing by a consumer. Therefore, it will be sufficient to prescribe a ceiling of Rs 160 as a ceiling on NCF for more than 200 channels. As it is a ceiling, DPOs will be free to declare NCF lower than Rs. 160 for more than 200 channels.*** *These two ceilings, one for less than 200 channels and another for more than 200 channels will not only protect the interests of DPOs but also simplify the process for consumers.* ***Accordingly, it has been decided that a DPO cannot charge NCF more than Rs. 160/- for more than 200 channels. Consequently, the existing provision for additional NCF of Rs.20 for every slab of 25 channels is being dispensed with."***

4. **With the aforementioned clause 82 of the EM, Authority while fixing a ceiling has taken an assumption that on an average DPOs were providing 300 channels to the customers, however, in present situation, this is in complete contrast to the practice on the ground, where almost every DPOs is providing more than 450 +channels, and in many case 550 channels also to its customers due to significant change in prevailing regulatory framework and consumer demand**.

5. Authority itself in para 80 of its explanatory memorandum dated 3rd March 2017, has clearly stated that:

> *Authority noted* ***that the cost of carrying 100 SD channels by a distributor of television channels comes to approximately Rs 80/-***

per month and cost of other activities like subscriber management, billing, complaint redressal, call center etc. comes out to be approximately Rs. 50/- per month

6. The above para 80, was recommended by the Authority, after thorough research on data collected from 2004 till the finalization of NTO 1.0 and thus they concluded that Rs**. 80 was needed for carrying the 100 SD channel and Rs. 50 for the other activities.**

7. Post above studies and due analysis from 2004 to 2017, Authority has come out with 2017 regulations, which prescribed NCF of Rs. 130 for 100 SD channels and an additional NCF of Rs. 20 for 25 SD channels, however with 2020 regulations, the Authority has ignored its previous research and basis on the assumption of 300 channels has capped NCF at 160 Rs.

8. As Authority would be aware that operational business costing has been significantly increased from 2017 onwards, wherein Authority has calculated 130 Rs. The effective increase in operational cost vs- a -vs compared to 2017 is more than 40% now.

9. **As mentioned above, it is evident that at least 40% cost has been increased of all the major cost components, then capping the NCF at Rs. 160 will be unjustified for the Cable TV industry, which is already suffering with huge churn in subscriber base.**

10. In addition to above, in 2017, Cable TV subscribers were 110 million, and in 2023 the Cable TV subscribers have been reduced to 65 million. Considering this the cost per subscriber, has already been increased by 70% compounded with the increase in operational cost, which is nearly 40% as stated above.

11. Regulatory framework should address the real reasons for increase in retail tariffs. The primary reason behind setting regulatory controls such as price ceilings is to regulate consumer tariffs. However, that is not possible if TV channel prices, which are large part of retail tariff, continue to remain under forbearance. Therefore, a regulation of wholesale price of the TV channel is

most important especially when such TV channels are monopolistic and the only source to procure any TV channel is the licensed broadcaster who is the owner of such TV channel.

12. As highlighted in the preamble to this response, the major driving force behind the surge in subscription costs is the retail channel pricing tactics adopted by broadcasters. With DPOs having little to no business autonomy, broadcasters dominate nearly the entire broadcasting value chain. They've leveraged their retail pricing strategies to optimize both subscription and advertising revenues, side-lining consumer preferences and undermining the financial viability of DPOs. It is evident from the new RIO that the conditions incorporated by the Broadcasters for incentives are such that no MSO can achieve it and eventually MSO gets 20% margin. Which means if the MRP is Rs. 100, out of that Rs. 80 goes to broadcaster and out of Rs. 20 fifty per cent (Rupees 10 goes to LCO) which means that the MSO has to run its business only on 10% margin and on the meagre income of NCF. It is therefore suggested to remove capping on NCF.
13. Moreover, broadcasters often bundle their low-demand channels within bundles, skewing consumer choices by offering substantial discounts on bouquet rates compared to individual channel prices. This not only results in consumers paying for undesired channels, but it also consumes valuable bandwidth on DPO networks without corresponding compensation in the form of carriage fees.
14. Additionally, as previously detailed, the existing regulatory framework's allowance for broadcasters—who essentially provide content inputs for DPO services—to determine the MRP of TV channels presents an incongruity. The service provided by DPOs to retail customers is distinct from the input (TV channel signal/(s)) they receive from broadcasters. This service includes diverse and significant value additions, each with an associated cost. Therefore, DPOs, as licensed service providers and creators of their own services, should possess the authority to set the retail prices of their offerings, including pay channels.
15. Therefore, to make broadcast services more affordable for consumers and to align with the sector's structure, it's crucial that broadcasters should not be

setting the MRPs for consumers and it should only be done by the DPO to whom the customer belong. It is further suggested that let market forces would determine the NCF and the capping be removed.

16. Furthermore, given the monopolistic advantage broadcasters have due to the unique nature of their content, it's essential to establish ceilings on the wholesale prices of channels (i.e., the rates at which broadcasters offer their channels to DPOs). Implementing this measure would counteract content monopolies and pave the way for more reasonably priced services for consumers. Further, such wholesale price shall be done only for individual channel and not for bouquets of channels.
17. **In light of above, we would request Honourable Authority to remove the capping on NCF and it shall be linked to number of channels as was prescribed in 2017 Regulation for the incremental NCF along with its linkage to CPI index.**

Q.5 In the case of multi-TV homes, should the pay television channels for each additional TV connection be also made available at a discounted price?
a) If yes, please suggest the quantum of discount on MRP of television channel/ Bouquet for 2nd and subsequent television connection in a multi-TV home. Does multi-TV home or single TV home make a difference to the broadcaster? What mechanism should be available to pay-channel broadcasters to verify the number of subscribers reported for multi-TV homes?
b) If not, the reasons thereof?

Response: 1. **To facilitate consumers to use their subscription on multiple TV sets installed in the same home,** it is a good idea to offer discounts on the additional TV sets installed in the same home.

2. For this, the broadcaster's need to align their wholesale price in such a way that there is a price for the first TV and the lowered price for further TV sets. Additionally, a system of interconnection invoicing that includes variable rates for extra TV sets in the same home must be agreed upon with broadcasters.

Q.6 Is there a need to review the ceiling on discount on sum of MRP of a-la

carte channels in a bouquet (as prescribed through the second proviso to clause 4 (4) of the Tariff Order 2017) while fixing the MRP of that bouquet by DPOs?

a. If yes, what should be the ceiling on such discount? Justify with reasons.

b. If not, why? Please provide justification for not reviewing the ceiling

- **Response:**

1. Setting of the price of bouquets by broadcasters is the root cause of the present problem in the industry. The broadcasters push the FTAs (by converting them into pay channels) and/or the less popular pay channel in the network of DPOs and forces them to carry such channels without paying any carriage charges.
2. Further, by providing huge discounts on the bouquets, they discourage DPOs from procuring the a-la-carte channel and further sell the channels in the form of bouquets. This way, the broadcasters push the subscription of channels which are otherwise not required by consumers just to earn advertisement revenue on such channels. Further, by providing huge discounts on the bouquet vis a vis ala-a-carte they push all such channel free of cost without paying any carriage charges.
3. All this is done against the licensing framework. The license granted by Ministry of Information and Broadcasting (MIB) to the TV channel operator neither allows them to sell their channels to consumer directly nor allow the creation of bouquets. They are supposed to sell/provide each of their channels on individual (a-la-carte) basis to the DPOs only.

4. The channel pricing strategy introduced by broadcasters following NTO 3.0, which allows for up to a 45% discount on bouquet prices compared to ala-carte rates, has intensified this issue and practically killed the sale of channels on ala-a-carte basis, which was a key objective of TRAI while framing the NTO in the year 2017.
5. In a hypercompetitive market, no DPO can afford to procure channels on a-la-carte basis and make it a part of consumer's subscription at the a-la-carte

price when the same channel is available in bouquets at 45% of the a-la -carte price. Such a situation forces DPOs to buy and only promote the bouquets created by the broadcasters so that they remain competitive. This arrangement completely defeated the authority's objective of promoting the a-la-carte option for consumers.

6. **If broadcasters have the capability to reduce their price by 45%, then why should they not be mandated to reduce their price by the same margin all such channels at a-la-carte basis? If they do so, the benefit of such reduction gets passed on to consumers without forcing consumers to buy the channels which they do not wish to subscribe to. Not providing the same discount on a-la-carte channel establishes the following: -**
   - **(i) they want to force the less popular/undesired TV channels to consumers against the TRAI's objective of promoting the a-la-carte subscription; and**
   - **(ii) they want to save on carriage charges which they might otherwise pay to the DPOs to carry such undesired channels which are in low demand; and**
   - **(iii) they want to increase the penetration of such undesired channels to increase their revenue at the cost of DPOs.**
7. **In the process, they end up pushing their less popular channels which should have otherwise been free to air (FTA) channels without paying carriage charges, and get adequate subscription and maximise the advertisement revenue.**
8. **Allowing them to continue with creation of such bouquets through regulation is also anti-competitive against smaller broadcasters with standalone channels who do not have the advantage of getting them pushed along with the leading TV channels of the large broadcasters. Therefore, new stand-alone broadcasters are at huge competitive disadvantage vis-à-vis large broadcasters in pushing the newer channels with the few established channels.**
9. **Therefore, for protecting competition, protecting the rights of consumers as well as for protecting the exclusive right of bundling provided to the DPOs under their license, broadcaster's need to be**

immediately prevented from creating bouquets.

10. **Alternately, if the authority feels that the creation of bouquets by broadcasters needs to be continued for the ease of consumer in subscription process, then the discount of 45% should be reduced to ZERO. This will help the broadcaster to reduce the ala-a-carte price by 45% and also provide flexibility to DPOs and consumers to opt for either a-la-carte or bouquets without being worried about the huge price difference between the two.**

Q.7 Whether the total channel carrying capacity of a DPO be defined in terms of bandwidth (in MBPS) assigned to specific channel(s). If yes, what should be the quantum of bandwidth assigned to SD and HD channels. Please provide your comments with proper justification and examples.

Response:

1. **Considering the various technologies and procedures DPOs use, it may not be the most practical to define channel carrying capacity in terms of Mbps. The same capacity in Mbps can result in varying channel capacities across DPOs because DPOs may use different transmission or compression technologies.**

2. In order to provide DPOs **to provide flexibility to the DPOs to optimally monetize their bandwidth**, the first cum first policy suggested in the regulation for carriage needs to be replaced by the auction/bidding policy. Such a policy is already in place at DD Free Dish.

3. As a result, we suggest that rather than any regulated policy, the DPOs should be permitted to offer their capacity for carriage through an open market-based process. Additionally, similar to subscription fees, the carriage fees should also be put under complete forbearance.

4. **Once the pricing freedom for carriage is provided to the DPO and they are mandated to publish RIO and provide such carriage in transparent manner, there would not be any need to declare the capacity in any form. The authority would be relived from the burden of micro-manging the carriage of the channel the way it has relived itself from determination of wholesale subscription charges**.

Q.8 Whether the extant prescribed HD/SD ratio which treats 1HD channel equivalent to 2 SD channels for the purpose of counting number of channels in NCF should also be reviewed?

a. If yes, should there be a ratio/quantum? Or alternatively should each channel be considered as one channel irrespective of its type (HD or SD or any other type like 4K channel)? Justify with reasons.

b. If no, please justify your response

- **Response:** As discussed in the previous section, this is a hyper-competitive market and there is no need to regulate retail tariffs and should be put under forbearance.
- Once the channel prices by the broadcasters is limited to the wholesale price, the retail price would be completely delinked and the DPOs would be in a position to fix the retail tariff in the given competitive landscape, which would obviate the need of regulation of a component of retail tariff i.e. NCF.
- Notwithstanding the above, in case TRAI decides to **fix a bandwidth ration between SD and HD, the existing HD:SD ratio should be retained as it was designed based on consumption of bandwidth by the SD and HD Channels.**

Q.9 What measures should be taken to ensure similar reception quality to subscribers for similar genre of channels? Please suggest the parameter(s) that should be monitored/ checked to ensure that no television channel is discriminated against by a DPO.

Please provide detailed response with technical details and justification.

Response: 1. Most of the current headend of the DPOs are working on VBR (Variable Bit Rate) mode. This ensures the maximum utilization of bandwidth with better picture quality. Therefore, there should not be any measures to be prescribed for this purpose. At this point, it doesn't appear that there is any conclusive evidence that a DPO has participated in actions that would lower the reception quality of any channel. At least for the Cable TV Operators, the assertion made by one of the parties that necessitated the inclusion of this subject in the

consultation remains unsupported.

For a number of reasons, allegations of such biased conduct by DPOs go against standard DPO business practises.

a. Firstly, a DPO should avoid lowering the quality of any channel's reception because doing so would surely result in unhappy customers.

b. Secondly, setting up and maintaining a system that permits such discriminating treatment would make running a DPO's network operations unnecessarily hard.

c. Third, considering the intense rivalry in the DPO sector, no DPO would take a chance on alienating its clientele by using such tactics.

3. Due to the abovementioned reasons, **there seems to be no valid reason to introduce measures to monitor reception quality. However, if the authority still feels the necessary to monitor the reception quality, it may prescribe methods to do so post adequate deliberation and discussion on such a methodology**.

Q. 10 Should there be a provision to mandatorily provide the Free to Air News / Non-News / Newly Launched channels available on the platform of a DPO to all the subscribers?

a. If yes, please provide your justification for the same with detailed terms and conditions.

b. If not, please substantiate your response with detailed reasoning.

Response: 1.The suggestion by certain stakeholders to compel DPOs to carry specific channels (whether Free-to-Air, Non-News, or Newly Launched) is fundamentally misguided.

2. The rationale behind this proposal seems to be to present these channels under the umbrella of public service. However, this argument doesn't hold water, as broadcasters operate their private channels primarily for commercial gain. They cannot expect a free pass on networks solely to further their own commercial interests. The proposal is completely contrary to the basic tenets of consumer

choice and places further burdens on DPOs. Even the public broadcaster i.e. DD free dish does not carry any channel free of cost and auctions their capacity. There is no reason why the private DPO is not allowed to follow the same methodology and monetize their assets created with investors' money.

3. No commercial organization can be asked to provide their product/service to customers free of cost without adequate compensation. Therefore, any such a proposal would be viewed negatively by the investors in this sector and will be against the growth of the sector.

4. It is further stated that any such private channel **cannot be equated to the mandatory channels of Prasar Bharti being carried by DPOs. If any channel apart from as mandated under Section 8 of Cable TV Regulation Act is made to be available to every subscriber, then the DPOs loses opportunity to monetize the assets created on private investments.**

Therefore, the proposed idea lacks substantial merit and seems to be geared more towards sidestepping the payment of carriage fees and hence need to be discarded ab-initio.nitio.

Q. 11 Should Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 be made applicable to non-addressable distribution platforms such as DD Free Dish also?

1. **Response:** DD Free Dish has grown phenomenally, emerging as the dominant DTH operator in India with a remarkable 45 million connections. To offer some context, the combined subscriber base of the entire DTH industry, which includes Pay DTH Operators, is 65 million. This positions DD Free Dish as a major force in the Indian DPO landscape.
2. The meteoric rise of DD Free Dish can be attributed to its free service model, which naturally attracts a large number of customers. This poses a significant challenge for other DPOs, as competing with a perpetually free DTH service is a challenging proposition.
3. Originally envisioned to cater to regions that lacked adequate service, DD Free Dish has expanded its reach nationwide. Its capacity has also seen significant enhancement, now including even private pay channels.

4. In its current state, DD Free Dish hosts numerous pay channels. While it offers these channels to subscribers at no cost, it generates revenue by charging broadcasters a fee to be part of its platform. The platform allocates channels based on auction procedures, optimizing its revenue potential. For broadcasters, associating with DD Free Dish provides an immediate gateway to its extensive 45 million subscribers, paving the way for increased advertising revenue.
5. The primary intent behind the government's launch of a complimentary platform like DD Free Dish was to meet national objectives. However, it is clear that DD Free Dish has ventured beyond its initial mission, transitioning into a commercial entity that capitalizes on its network capacity.

6. Despite its prominent role and commercial undertones in the DPO industry, DD Free Dish operates outside the regulatory ambit that governs all DPOs, creating an imbalance in the playing field.
7. Beyond the challenges posed to other DPOs, DD Free Dish restricts consumer choice. Subscribers are limited to viewing only those channels whose broadcasters have the financial clout to secure a spot on the DD Free Dish platform.
8. Given these dynamics, it is crucial that the Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 be enforced on DD Free Dish as these are applicable to it as much as on the other DPOs. This would include adherence to tariff orders, interconnection regulations, and quality of service standards.
9. There is no regulatory basis for DD Free Dish to carry pay channels and the same constitutes a violation of the regulatory framework. Pay channels and private television channels that carry advertisement should not be allowed on DD Free Dish service without complete and total compliance of the same regulatory requirements as applicable to all DPOs.
10. Further, DD free dish does not have to provide carriage at regulatory price as mandated to the private DPOs. Instead they auction their network capacity where the private DPOs are not allowed to auction their capacity but, through

regulation, are mandated to provide it on first cum first service basis. This is a completely inefficient way and may provide the carriage to the TV channel which may not provide the adequate revenue to the DPO thereby leading the sub-optimal utilization of limited bandwidth.

Q. 12 Should the channels available on DD Free Dish platform be mandatorily made available as Free to Air Channels for all the platforms including all the DPOs?

Response: 1. We submit that in terms of the Interconnection Regulations, 2017, a Broadcaster is required to declare a channel as a 'free-to-air channel' (hereinafter referred as "FTA") or 'pay channel' (hereinafter referred as "Pay Channel"). The definition of the same is re-produced as under:

"*2(1)(u). "free-to-air channel" or "free-to-air television channel" means a channel which is declared as such by the broadcaster and for which no fee is to be paid by the distributor of television channels to the broadcaster for signals of such channel"*
"2(1)(gg). "pay channel" means a channel which is declared as such by the broadcaster and for which a share of maximum retail price is to be paid to the broadcaster by the distributor of television channels and for which due authorization needs to be obtained from the broadcaster for distribution of such channel to subscribers;"

2. Therefore, a licensed broadcaster must necessarily declare a channel either as FTA or Pay Channel. Further, Authority in their affidavit dated 07.11.2017, filed before this Hon'ble Telecom Disputes Settlement and Appellate Tribunal has stated that "……as per the interconnection regulations and tariff orders, a channel at any given point of time can be either FTA channel or Pay channel only. Same channel cannot be a pay channel for some distributors of TV channel and FTA channel for other distributors of TV channels. Also for a pay channel, fee is to be paid by the distributors to the broadcaster for its re-transmission over the distributor's network……."

3. Regulation 7 of the Interconnect Regulations provides an obligation on broadcaster of every Pay Channel to declare a Reference Interconnect Offer or RIO. Regulation 7 is re-produced here under:

"7. Publication of reference interconnection offer by broadcaster for pay channels.—(1) Every broadcaster shall publish, on its website, reference interconnection offer, in conformance with the regulations and the tariff orders notified by the Authority, for providing signals of all its pay channels to the distributor of television channels— (a) within sixty days of commencement of these regulations; and (b) before launching of a pay channel. and simultaneously submit, for the purpose of record, a copy of the same to the Authority.

(2) The reference interconnection offer, referred to in sub-regulation (1), shall contain the technical and commercial terms and conditions relating to, including but not limited to, maximum retail price per month of pay channel, maximum retail price per month of bouquet of pay channels, discounts, if any, offered on the maximum retail price to distributors, distribution fee, manner of calculation of 'broadcaster's share of maximum retail price', genre of pay channel and other necessary conditions: Provided that a broadcaster may include in its reference interconnection offer, television channel or bouquet of pay channels of its subsidiary company or holding company or subsidiary company of the holding company, which has obtained, in its name, the downlinking permission for its television channels from the Central Government, after written authorization by them."

4. Regulation 3(2) of the Interconnect Regulations further impose an obligation on broadcasters to provide the television channels and signals on a non-discriminatory basis to all distributors (as defined as under:

"(2) Every broadcaster shall, within sixty days of receipt of written request from a distributor of television channels for obtaining signals of television channel or within thirty days of signing of interconnection agreement with the distributor, as the case may be, provide, on non-discriminatory basis, the signals of television channel to the distributor or convey the reasons in writing for rejection of the request if the signals of television channel are denied to such distributor:"

5. Regulation 2 (s) of the Interconnection Regulations defines a distributor of televisions channels as any DTH operator, multi-system operator, HITS operator or IPTV operator:

"*distributor of television channels" or "distributor" means any DTH operator, multi-system operator, HITS operator or IPTV operator;"*

6.The regulatory/licensing framework does not allow any broadcaster to be a

pay channel for a set of DPOs and become FTA for another set of DPO like DD Free dish.

7.Prasar Bharti which is providing "Free Dish" is a DTH operator as it uses the DTH platform to deliver television channels to subscribers. Therefore, in view of the regulations and in particular, Regulation 3(2) of the Interconnect Regulations a Broadcaster cannot discriminate between distributors of television channels. Further, once a channel is declared as a Pay Channel it must remain constant across all DPOs, public or privately owned, including DD Free Dish, DTH platform and cannot be made free to air/FTA for some platforms.

8.Indeed, recently, the TDSAT has reiterated the legal position that has been upheld upto Hon'ble Supreme Court of India, that Prasar Bharti is a service provider. The relevant extract from the TDSAT judgement dated 11 April 2023 in Broadcasting Petition No. 234 of 2017 titled as Videocon DTH Limited v. Culver Max Private Limited is as under:

> *"Meaning thereby considering the relevant legislation, Prasar Bharti Act, TRAI Act, Judgement of Hon'ble Apex Court and Indian Telegraph Act, this Tribunal has held and propounded that Prasar Bharti is a licensee and is a service provider, like other service providers. Hence, the very contention that there is no requirement of license for Doordarshan / Prasar Bharti is of no avail. As DD Free Dish/Prasar Bharti is like other service provider i.e., Petitioner, and is amenable to laws and regulations promulgated under TRAI Act. In terms of Clause 3.2 of Inter Connect Regulations of 2004, 2012 and presently 2017, Broadcasters like the Respondent No.1 is under and obligation to make available their channels on non-discriminatory basis."*

9.It is pertinent to note that as per Prasar Bharti own website, DD Free Dish is a DTH Service. The service is described as under:

> *"**DD Free Dish DTH service** is owned and operated by Public Service Broadcaster Prasar Bharati. It was launched in December, 2004. DD Free Dish is the only Free-to-Air (FTA) Direct-To-Home (DTH) Service where there is no monthly subscription fee from the*

viewers. It is very affordable for all as it requires only a small one time investment of about Rs. 2000/- for purchasing of Set-to-Box (STB) and small sized Dish Antenna with accessories. The unique free to air model has made DD Free Dish the largest DTH platform."

10.It is humbly submitted that Broadcasters are bound by TRAI's Regulatory framework and are accordingly obligated to provide all channels provided as FTA to DD Free dish as FTA to the private DPOs on non-discriminatory terms on principle of parity so as to comply with Article 14 of constitution of India.

In view of the above, TRAI must direct all the broadcaster to declare their channels as FTA for private DPOs, if such TV channels are provided on DD Free dish.

Q13. Whether there is a need to consider upgradation of DD Free Dish as an addressable platform? If yes, what technology/ mechanism is suggested for making all the STBs addressable? What would be the cost implications for existing and new consumers? Elaborate the suggested migration methodology with suggested time-period for proposed plan. Please provide your response, with justification.

Response: 1.To establish a level playing field regarding DD Free Dish, it's imperative to subject it to the TRAI regulatory framework. This necessitates transitioning DD Free Dish into an addressable platform. Other DPOs have already implemented such addressable systems for years, leveraging technologies that have demonstrated efficacy in the Indian context. As such, Prasar Bharati should strategize to evolve DD Free Dish into an addressable system, leveraging any of the commercially available technologies. **It is surprising how DD was allowed to launch a non-addressable system when the who cable industry was mandated to migrate to addressable system (CAS/DAS).**

2. This transition is unlikely to disadvantage customers. The DPO landscape is marked by robust competition, providing a plethora of options for consumers. In fact, many DPOs present new connections at economical rates, often absorbing the costs of set-top boxes.

3. As DD Free Dish transitions to an addressable format, it can embrace a market-responsive approach. This would ensure a seamless migration experience for its users. Moreover, in the event of any challenges post-migration, customers will be well-equipped with ample alternatives should they contemplate switching to another DPO.

Addressing affordability of services vs free services:

4. The allure of free platforms, such as DD Free Dish, stems largely from the provisions of the NTO, which have inadvertently escalated subscription costs. It's crucial to underline that the primary aim of any regulatory framework should be to enable cost-effective services for consumers. **Unfortunately, the same broadcasters who have increased the subscription charge their TV Channels for private DPOs are paying heavily to DD free dish as carriage charge for the same channels and TRAI has not taken any action to maintain a level playing field**.

5. As previously detailed, the chief catalyst for the uptick in subscription costs is the pricing tactics employed by broadcasters. Consequently, there is an urgent need for an exhaustive reassessment of the regulatory framework, particularly addressing the foundational aspects of the NTO that permit broadcasters to dictate retail prices of channels and create channel bouquets.

B. Interconnection related issues

Q14. In case of amendment to the RIO by the broadcaster, the extant provision provides an option to DPO to continue with the unamended RIO agreement. Should this option continue to be available for the DPO?

a. If yes, how the issue of differential pricing of television channel by different DPOs be addressed?

b. If no, then how should the business continuity interest of DPO be protected?

Q15. Sometimes, the amendment in RIO becomes expedient due to amendment in extant Regulation/ Tariff order. Should such amendment of RIO be treated in a different manner? Please elaborate and provide full justification for your comment.

1. **Response:** According to Indian Contract Act,1872, any changes to a contract has to be there with the consent of both the parties to a contract.

Therefore, the existing Regulatory Framework rightfully prescribes that the amendment proposed by the broadcaster may or may not be accepted by DPOs. Hence, in the event that broadcasters revise the RIO, the choice to either persist with the current agreement or transition to the new one should rest squarely with the DPOs.

2. As prevalent in the current scenario DPOs have a choice to either continue with the previous agreement with its validity or enter into the new amended RIOs of the broadcasters afresh. The same practice should not be disturbed as the DPOs will consider the benefits of the subscribers and will take the informed decision basis the suitability of Broadcasters channel price and its market viability.
3. DPOs, when making such decisions, will consider pertinent factors, including the channel pricing available under the new or existing agreement. They will invariably opt for the choice that results in the most cost-effective rates for their customers.
4. Moreover, this flexibility of choosing between the existing agreement and transitioning to a new one is accessible to all DPOs. This ensures there is no bias or exclusivity in such scenarios. On the other hand, mandating a shift to a new agreement could introduce instability and unpredictability for the DPOs.
5. Therefore, the current provisions should be maintained, allowing DPOs the discretion to continue with the existing agreement when there is a modification in the RIO by a broadcaster.
6. It is also suggested that a standard RIO should be approved by TRAI, like that of an MIA/SIA RIO of cable landing station etc so that every DPOs gets the TV channels on same terms and conditions.
7. Further, to facilitate the "Must Carriage" regime, the RIO needs to be published by the DPOs also. This RIO should have reciprocal/similar terms and condition as the RIO published by the broadcaster for facilitating "Must Provide".
8. The primary objective of RIO published by Broadcaster is to facilitate the "Must Provide" regime for the pay channels because the FTA channels are available free of cost and do not require any commercial arrangements.

Therefore, such RIO cannot contain any component of carriage fee to be paid by broadcaster to the DPOs.

9. Similarly, the objective of RIO for carriage fee published by DPO is to facilitate the "Must Carry" regime for the FTA channels. The pay channel would be bought and carried by DPOs at the price set by broadcaster due to the demand of such channel at a subscription price. Further, the Broadcaster has freedom to set the price of such channel till the consumers are ready to pay as well as the DPO finds the sufficient demand to carry it free of cost. The carriage charge RIO is required only in case when any TV channel is not saleable even at zero price (FTA) and need to be pushed by using the paid carriage facility from the DPO. No broadcaster will be required to use the must carry provision for the pay channel. Therefore, the RIO published by DPO shall be only for the FTA channel and will not have any component of subscription fee.
10. At present, Broadcaster's RIOs are not approved by TRAI but the DPO's RIOs are. Therefore, in order to have a level playing field, both RIO's should have same regulatory status.

Q15. Sometimes, the amendment in RIO becomes expedient due to amendment in extant Regulation/ Tariff order. Should such amendment of RIO be treated in a different manner? Please elaborate and provide full justification for your comment.

Response: We would like to state that where changes are required in the RIO due to amendments in the extant Regulation /Tariff order, an addendum can be signed between the Broadcasters and the DPO'S , modifying only the clauses of the existing RIO, which would form a part of the Existing RIO and would be conterminous with the Existing RIO. However, those subscribers who have availed long term packs, their provisioning of Service and any amendment to RIO should be in accordance with provision of the extant Regulation/ Tariff order and protect the interest of long term pack customers.

Q16. Should it be mandated that the validity of any RIO issued by a

broadcaster or DPO may be for say 1 year and all the Interconnection agreement may end on a common date say 31st December every year. Please justify your response.

Response: 1.The above question is in reference to situation discussed in Q14, which deliberates upon the necessity for migration to a new agreement in the event of a broadcaster amending the RIO. As detailed in the response to Q14, the existing provisions already ensure adherence to the principles of non-exclusivity and non-discrimination.

2.As a result, imposing a fixed term for the duration of interconnection agreements is unwarranted. Such a restriction would deprive service providers of flexibility and infuse unpredictability in the sector. Longer-term agreements, by contrast, afford service providers a more stable framework to strategize their tariff structures and business models.

3.Furthermore, mandating a specific duration for interconnection agreements would not only be detrimental to business pursuits but also impose unnecessary operational challenges on service providers

Q17. Should flexibility be given to DPOs for listing of channels in EPG?

a. If yes, how should the interest of broadcasters (especially small ones) be safeguarded?

b. If no, what criteria should be followed so that it promotes level playing field and safeguard interest of each stakeholder?

Q18. Since MIB generally gives permission to a channel in multiple languages, how the placement of such channels may be regulated so that interests of all stakeholders are protected?

- Response : The move to regulate the Electronic Program Guide (EPG) channel placement infringes upon the fundamental business autonomy of DPOs. Essentially, it is an inherent right of any platform operator to optimize and monetize its platform.

- Drawing a parallel, broadcasters who curate content for their TV channels have the liberty to sequence programs and advertisements per their business strategies. Similarly, various online applications freely organize content, inclusive of promotional materials, based on their discretion.

- The autonomy that DPOs exercise in curating their EPG mirrors the liberty broadcasters have in structuring content on their channels. Consequently, imposing regulations on such matters equates to unnecessary micro-management of DPO operations**.**
- The push for EPG placement regulation stems from a desire to safeguard broadcasters' interests. However, the underlying assumption that EPG placement directly influences a channel's popularity is a misconception. Channel popularity predominantly hinges on content quality. For instance, regardless of EPG placement, viewers invariably navigate to their preferred channels.
- Further , we would like to highlight that certain broadcasters have several language feed(s) for the same channel(s) and are forcing the Distributors to carry the channel(s) in all target marketsFor eg. the broadcasters's who are operating channels related to kids and infotainment are asking for multiple LCNs.
- Through such unreasonable condition, the broadcaster is indirectly demanding multiple LCN(s) for different states, for the same channel, which has a direct impact on the DPO(s) with multistate presence.
- Additionally, the current digital landscape offers broadcasters a plethora of promotional platforms. Social media, for instance, is leveraged by diverse businesses, from established brands to budding startups, to amplify their reach. Such platforms have democratized promotion, enabling even entities with limited resources to enhance their visibility.
- It is pivotal to recognize the diversity within the DPO sector, characterized by the presence of multiple operators. Hence, the popularity of a broadcaster's channel is unlikely to be jeopardized due to EPG placements by a single DPO. Concerns about unequal playing fields arising from EPG placements are thus unfounded.

- **As far as protection of the right of small broadcasters is concerned, all TV channels have the same license, and it is because of bouquets that a broadcaster with only a few popular channels is able to secure better terms for their non-popular channels. Once broadcasters are prohibited**

from forming bouquets, smaller broadcasters with one or two channels will be able to effectively compete with the non-popular channels of the broadcasters with few popular channels. It is the anti-competitive practices of the large broadcasters which puts the smaller broadcasters at a disadvantageous position and not any practice of DPO. Therefore, it is essential to immediately prevent broadcasters from pushing bouquets and sell their channel as envisaged in the licensing regime i.e. in a-la-carte form.

In light of the above, it is submitted that the flexibility should be with the DPOs as the DPOs understands the consumer preferences with respect to the language/channel.

Q19. Should the revenue share between an MSO (including HITS Operator) and LCO as prescribed in Standard Interconnect Agreement be considered for a review?

a. If yes:

i. Should the current revenue share on NCF be considered for a revision?

ii. Should the regulations prescribe revenue share on other revenue components like Distribution Fee for Pay Channels, Discount on pay channels etc.? Please list all the revenue components along-with the suggested revenue share that should accrue to LCO. Please provide quantitative calculations made for arriving at suggested revenue share along-with detailed comments / justification.

iii. If no, please justify your comments.

Response: Its is stated that the revenue share arrangement between MSOs and LCOs is already established and there is no dispute regarding revenue share between MSO and LCO.

1. The dynamics between Multi System Operators (MSOs) and Cable Operators are inherently governed by market-driven factors, and there should not a binding regulatory prerequisite compelling either party to forge a mandatory partnership.

2. It is also crucial to understand that the network structures and associated costs are distinct for different operators. For instance, MSOs bear a variety of infrastructure-related expenses, ranging from headend costs to national long-

distance bandwidth charges. These expenses are contingent on the MSO's specific network design and the geographic position of the Cable TV networks. Conversely, individual cable operators might encounter varied costs, influenced by factors such as Right of Way (RoW) fees and the scope and scale of their cable infrastructure.

3. Given the absence of a regulatory directive mandating MSOs and Cable Operators to form alliances and the inherent variability in operational costs, it would be counterproductive to institute any obligatory revenue-sharing guidelines within the Standard Interconnection Agreement.

4. Further, a revenue share arrangement between MSOs and LCOs is already established and there is no dispute regarding revenue share between MSOs and LCOs. As per the information received from our members all LCOs have entered into MIA and hence there is a mutually agreed revenue share between LCOs, and MSOs and any change will disturb the market balance and will lead to new disputes amid this severe downfall in industry.

Q20. Should there be review of capping on carriage fee?

a. If yes, how much it should be so that the interests of all stakeholders be safeguarded. Please provide rationale along with supporting data for the same.

b. If no, please justify how the interest of all stakeholders especially the small broadcasters can be safeguarded?

Q21. To increase penetration of HD channels, should the rate of carriage fee on HD channels and the cap on carriage fee on HD channels may be reduced. If yes, please specify the modified rate of carriage fee and the cap on carriage fee on HD channels. Please support your response with proper justification.

Q22. Should TRAI consider removing capping on carriage fee for introducing forbearance? Please justify your response.

1. **Response :** As explained in previous sections, the major set of operational facets of DPOs are stringently regulated, severely curtailing their business autonomy. Moreover, by allowing broadcasters to dictate the retail pricing of channels, DPOs are stripped of their right to set prices for the services they offer via their networks to the consumers. **Further, by regulating the**

carriage fee, TRAI has disabled the DPOs from even monetizing the assets from broadcasters.

2. **Like wholesale subscription price is linked to "Must Provide" provision, the matter of carriage fee is intrinsically tied to the "Must Carry" provision. This directive obligates the broadcaster to provide the channel (*generally pay channel because that involve the price of the channel, for FTA it is just a technical arrangement*) in case the DPO seeks such TV channel, and similarly, a DPO is obliged to carry the licensed TV channel (*generally FTA as the pay channel will be the channel in demand and will be demanded by DPO under the broadcaster's RIO*) in case the broadcaster seeks the carriage of such channel. Such RIO's are published to ensure that no tariff barriers are created to deny the provisioning or carriage of any licensed TV channel by broadcasters or DPOs respectively.**
3. However in the NTO, while the broadcasters are free to set the price of subscription but the DPOs are regulated to set the carriage fee. This system, while providing full freedom to broadcaster's to price their TV channels, promotes broadcasters to utilize significant bandwidth on DPO platform at the regulated price which is far less and does not account for the cost of loss of business opportunity of DPO. The charges set by TRAI are much less than the carriage charges charged by the DD free dish, the public broadcaster's distribution platform.
4. Post the implementation of the NTO, a large number of broadcasters transitioned their Free-to-Air (FTA) channels to pay channels and have bundled such channels with few popular channels to avoid the carriage fee. This shift not only deprived DPOs of potential carriage fee revenue but, in many instances, compelled them to pay broadcasters for channels that do not have any demand from consumers.
5. To provide business flexibility to DPOs and for the purpose of level playing field, it is high time that DPOs are also allowed to choose the channel in a transparent way instead of first cum first serve and charge carriage fee in line with the carriage fee charged by DD free dish.

6. However, to safeguard the interests of smaller broadcasters carrying the content of public importance some capacity can be reserved (say 10% of the total free capacity) and can be priced a lower price, say a percentage (*this can be derived once the market discovered carriage fee is known*) of the carriage fee charged from the commercial channels.
7. **Further, a broadcaster cannot be allowed to set arbitrarily high subscription prices at which there is low demand from consumers and seek carriage under the must provide regime and block the DPO's bandwidth for such TV channel. Therefore, as discussed in response to question 18, only FTA channels will be using the "Must Carry" provision and hence the carriage RIO shall be only for FTA channel and not for pay channels.**

Q23. In respect of DPO's RIO based agreement, if the broadcaster and DPO fail to enter into new interconnection agreement before the expiry of the existing agreement, the extant Interconnection Regulation provide that if the parties fail to enter into new agreement, DPO shall not discontinue carrying a television channel, if the signals of such television channel remain available for distribution and the monthly subscription percentage for that television channel is more than twenty percent of the monthly average active subscriber base in the target market. Does this specified percentage of 20 percent need a review? If yes, what should be the revised prescribed percentage of the monthly average active subscriber base of DPO. Please provide justification.

- **<u>Response:</u> This question has a fundamental flaw as it tends to put the onus of negotiating and closing the agreement on DPOs. Actually the onus of negotiating and closing a contract has to be on both parties**.
- In normal circumstances, neither the broadcaster nor any DPO is required to sign the RIO. It is expected for them to mutually agree upon commercial terms. RIO is only required in case both parties are unable to arrive at an agreement. So, the onus of failure to enter into an agreement is also on both and cannot be only on DPOs.
- In case the broadcaster's commercial offer or agreement is not agreeable to DPOs, then the broadcaster is free to declare its channel as FTA and seek

carriage under the terms and condition of the carriage RIO published by DPO. Conversely, if the DPO's carriage agreement is not agreeable by broadcaster, the broadcaster can enter into an RIO published by the broadcaster.

- Further, if neither the broadcaster is willing to agree on the DPO's RIO, nor the DPO is willing to agree on broadcaster's RIO, that particular platform will not carry that particular channel. Even today, each channel is not available on every platform.
- Only in exceptional circumstances in which the authority feels that the channel must be carried on a specific platform in public interest, it may intervene in the RIO of Broadcaster and RIO of DPO so that the agreement happens.
- **However, imposing any such constraints on DPOs as proposed in this question will be economically flawed and place the DPO at a competitively disadvantageous position vis-à-vis broadcasters and is therefore in violation to Article 14 and Article 19 of the constitution of India. No DPO can be forced to carry the channel at the price set the broadcaster unless it enter into the agreement because the broadcaster has an alternate remedy of declaring its channel as FTA and use the carriage RIO to place its channel on the platform.**

C. Quality of Service related issues

Q24. Whether the extant charges prescribed under the 'QoS Regulations' need any modification required for the same? If yes, justify with detailed explanation for the review of:

a. Installation and Activation Charges for a new connection

b. Temporary suspension of broadcasting services

c. Visiting Charge in respect of registered complaint in the case of DTH services.

d. Relocation of connection

e. Any other charges that need to be reviewed or prescribed.

Q25. Should TRAI consider removing capping on the above-mentioned charges for introducing forbearance? Please justify your response.

Response: The DPO industry operates in a highly competitive environment that is highlighted by the high substitutability of DPO services. Because of the increased level of competition, many DPOs naturally go above and beyond to provide value-added services to their clients. These incentives can take many different forms, from giving set-top boxes away for free to charging a Network Capacity Fee (NCF) that is significantly less than the allowed price cap.

2. As a result, it is not justified to impose price caps on some fees, especially when DPOs impose them largely to recoup their unique operational costs and to deter customers from abusing the services. It is unlikely that DPOs would see these fees as potential sources of income in the very competitive DPO market. Instead, they are more likely to see them as vital tools for recovering operational costs.

3. On the other hand, putting a cap on these operational costs can have unforeseen effects. It can make it difficult for DPOs to fully recoup their operational costs, inhibit creative thinking, and force them to turn to cost-cutting techniques. Customer dissatisfaction may follow from such actions and service quality may be compromised. Given these factors, it would be wise to choose forbearance with regard to the disputed charges.

4. For transparency, DPOs can be mandated to publish these charges as a part of the retail tariff package but TRAI should not regulate the quantum of these charges and allow complete forbearance on such charges.

Q26. Whether the Electronic Programme Guide (EPG) for consumer convenience should display

a. MRP only

b. MRP with DRP alongside

c. DRP only?

Justify your response by giving appropriate explanations.

Response: 1.The price displayed in EPG is for information of consumer the price at which the channel is available for subscription.

2. It is the DRP at which channel is available to the consumer so only DRP should be displayed at EPG.

3. Once the authority corrects the tariff regime and migrates back to wholesale and retail price regime, the DRP would be the only price relevant to the consumer. A price set by broadcaster will not have any relevance in that scenario.

Q27. What periodicity should be adopted in the case of pre-paid billing system. Please comment with detailed justification.

Response : Presently billing system in the extant Regulation is working fine and there is no issue raised and observed by any subscriber to DPOs regarding this.

Q28. Should the current periodicity for submitting subscriber channel viewership information to broadcasters be reviewed to ensure that the viewership data of every subscriber, even those who opt for the channel even for a day, is included in the reports? Please provide your comments in detail.

Response: The prevalent practice shall be continued as daily reporting will be cumbersome and will raise un-necessary disputes. Moreover, already SMS has been configured for extraction of data on 7th, 14th, 21 and 28 and any change will lead to substantial investments, which is not economically feasible.

Q29. MIB in its guidelines in respect of Platform Services has inter-alia stated the following:

a. The Platform Services Channels shall be categorised under the genre 'Platform Services' in the EPG.

b. Respective MRP of the platform service shall be displayed in the EPG against each platform service.

c. The DPO shall provide an option of activation /deactivation of platform services.

In view of above, you are requested to provide your comments for suitable incorporation of the above mentioned or any other provisions w.r.t. Platform Services channels of DPOs in the 'QoS Regulations'.

Response: Since the above conditions are part of MIB guidelines for Platform services, these can be included in the QoS Regulations as well. However the same shall be applicable to the boxes which are purchased after the commencement of new Regulatory framework of 2017, as there is a limitation of grouping and creation of number of genres of channels in EPG in some of the old set top boxes, which are still deployed at subscribers' premises

Q30. Is there a need to re-evaluate the provisions outlined in the 'QoS Regulations in respect of:

a. Toll-free customer care number

b. Establishment of website

c. Consumer Corner

d. Subscriber Corner

e. Manual of Practice

f. Any other provision that needs to be re-assessed

Please justify your comments with detailed explanations.

Response: It is submitted that the mandates with respect to (a-e) have been in sustenance since the implementation of the Regulatory Framework of 2017. It is stated that the DPOs have been subjected to the obligation of establishing and maintaining (a-e) for ease of subscribers and the Authority has issued several communications calling upon the DPOs to ensure compliance of the aforesaid requirements. These were introduced for transparency and for ease of the Consumers. Hence these needs to be continued as it is and there is no need to change the same.

Any instances of non-compliances by any DPO with respect to the aforesaid requisitions which have been in prevalence for a consecutive period of three years' time, should directly subject such DPOs to forthwith termination of license.

D. Financial Disincentive

Q31. Should a financial disincentive be levied in case a service provider is found in violation of any provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?

a. If yes, please provide answers to the following questions:

i. What should be the amount of financial disincentive for respective service provider? Should there be a category of major/ minor violations for prescription of differential financial disincentive? Please provide list of such violation and category thereof. Please provide justification for your response.

ii. How much time should be provided to the service provider to comply with regulation and payment of financial disincentive and taking with extant regulations/tariff order?

iii. In case the service provider does not comply within the stipulated time how much additional financial disincentive should be levied? Should there be a provision to levy interest on delayed payment of Financial Disincentive?

1. If yes, what should be the interest rate?

2. If no, what other measures should be taken to ensure recovery of financial disincentive and regulatory compliance?

iv. In case of loss to the consumer due to violation, how the consumer may be compensated for such default?

v. If no, then how should it be ensured that the service provider complies with the provisions of Tariff Order, Interconnection Regulations and Quality of service Regulations?

b. If no, then how should it be ensured that the service provider complies with the provisions of Tariff Order, Interconnection Regulations and Quality of Service Regulations?

Response: Financial sanctions frequently fail to achieve their intended goals, while being meant to compel compliance. Instead, they might unintentionally raise the expenses and constraints placed on service providers, which would make it harder for them to comply with laws.

2. When service providers face financial penalties, their first instinct may be to look for fast fixes rather than concentrating on long-term, sustainable solutions that are advantageous to both their business and their customers.

3.There are already several difficulties facing the cable TV industry. Broadcasters' pricing policies have led to rising subscription fees, which have significantly reduced their subscriber bases. The NTO complicates matters even further by controlling the majority of DPOs' sources of income while enabling broadcasters to set retail prices for channels and bouquets. Instead of encouraging improved compliance in such a setting, adding more financial disincentives would hasten the industry's demise.

4. Instead of encouraging improved compliance in such a setting, adding more financial disincentives would hasten the industry's demise.

5. Given the urgent problems the industry is facing, TRAI may find it more effective to instruct broadcasters to block signals from DPOs that fail to complete the required technical audit for two years in a row. A DPO should also be refused access to broadcaster channels if they are discovered to be involved in piracy. Such measures safeguard both broadcasters and complying DPOs without adding further financial burden to already overburdened DPOs.

Q32. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.

Response: 1.In our preamble and subsequent submission to the questions, we have categorically highlighted that as per the present licensing framework**, DPOs have all the right to offer channels by reorganizing broadcaster's bouquets, which was withdrawn from them in 2017 regulations.**

2. In our multiple letters submitted to Honorable Authority, we have demonstrated that by breaking the broadcaster's bouquet, DPOs will be able to reduce the consumer price by 20%, as they are

3. We would also like to highlight that one of the primary objectives of the 2017 NTO regulations is **"customer choice".** The Authority would be well aware that the DPOs, having direct connect with customers, are best suited to take their feedback and choice about the services which are required by them.

4. The Authority would also agree that the DPOs would form bouquets and packages of channels keeping in mind the choice of the customers and in the interest of the consumers and being well aware of the consumers' choice in the specific target markets concerned.

5. The intent of the DPOs has always been to create a better mix of channels across all broadcasters and across various genres in their respective target market as they are well aware of the consumer habits, choice and viewership pattern..

6. **Therefore, in light of above, we would like to reiterate that the issues of aligning the tariff regime with the licensing framework has been detailed in the preamble and in response to above questions. Further, the consultation of all interrelated issues cannot be in parts, therefore, we would request Honorable Authority to issue a holistic consulation paper/ 2nd consultation paper in this regard, wherein all the issues need to be discussed in a holistic manner.**