Discovery
COMMUNICATIONS INDIA

BY HAND/EMAIL

15th November, 2016

Advisor (B&CS)

Telecom Regulatory Authority of India,

Mahanagar Doorsanchar Bhawan,

Jawahar Lal Nehru Marg,

Old Minto Road,

New Delhi – 110 002

Dear Sir,

Re: Submissions to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016.

At the outset, we would like to thank the Authority for giving us an opportunity to tender our views on the **"Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016".**

In regard to the present consultation process, we submit that we have perused the said draft Tariff Order and hereby submit our comments attached as Annexure to this letter. The said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to appeal and/ or any such legal recourse or remedy available under the law.

The same are for your kind perusal and consideration.

Yours Sincerely,

For **Discovery Communications India**

DISCOVERY COMMUNICATIONS INDIA GURGAON

Amit Grover
Associate Director – Legal Affairs

Encl: As above

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Discovery Communications India - Submissions to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation on the draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 ("Draft Tariff Order')

INTRODUCTION

The Broadcasting Sector is a case-study of distorted and dogmatic regulations where conventional media continues to be bogged down and is at an unreasonable disadvantage with the weight of inherited policy. A classic contrary example is one of non-interventionist approach of the Government on the economics of print media which has enabled it to flourish and grow manifold in India when compared to their global counterparts who are on the verge of extinction. This brings about the well proven theory that regulating conduct and regulating economics are two distinct facets of regulations. An interventionist approach if not properly analysed can be extremely disparaging and counterproductive. It also highlights the fact that traditional media companies have so far been smothered and blanketed by a plethora of economic laws and regulations that have impeded their growth, profitability and have rendered them uncompetitive in this rapidly evolving eco-system. This is in stark contrast to the unregulated, free market models of new age media – be it OTT platforms or other new social media platforms – who have been able to innovate, disrupt and create new growth and revenue opportunities, while providing unbeatable consumer propositions.

TRAI suggests the Draft Tariff Order ensures to bring transparency, non- discrimination, non-exclusivity for all stakeholders in the value chain. It further promises affordable TV services for customers and seeks to balance the commercial interests of broadcasters and distributors of television channels to recover their network cost whilst ignoring the broadcaster's right to recover their content cost and ensure reach of their Channels whilst totally ignoring benefit and protection to the consumers / public at large. It also includes a proposal to put a price cap on different genres of channels for digital addressable system (DAS) platforms. TRAI has also suggests cutting down the number of genres from 11 to seven. Some of the existing genres have been grouped together to form a new genre, while some genres have been retained. Every broadcaster will have to declare a genre for each of its channels among any of the genres, including devotional, general entertainment, infotainment, kids, movies, news and current affairs and sports.

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We believe that the Broadcasting sector in India is generally over regulated and skewed against the broadcaster which is ironic given that they are the content creators and providers. TRAI itself has quoted examples of markets which have lesser levels of competition but have adopted price forbearance models with great success, so why not in a market like India.

As per the Draft Tariff Order and Interconnection Regulation it is the Operators who have been given the exclusive rights to package and also the right to price the Channels of the Broadcaster and offer the same to subscribers. In ordinary trade and commerce, distributors are encouraged to ensure wider distribution of products and services through suitable and structured incentives. However as per the Draft Tariff Order and Interconnection Regulation a blanket discount rate for the Broadcasters coupled with the ambiguous, unworkable and arbitrary "must carry provision" has been given, irrespective of the coverage the Operator affords to the Channels. Accordingly, we submit that TRAI has to calibrate the "visibility" factor more in tariff formulations. Addressability loses its significance if the visibility afforded by the Operator to the Channels is poor. This is an issue which has also been deliberated upon extensively by the Hon'ble TDSAT in numerous judgments which the Drafts for Consultation under reply completely choose to ignore.

The discretionary powers of placement of channels that the Distribution Platform Operator receives, visible vide a combined reading of the current Draft Tariff Order as well as the new proposed Interconnection regulations will become extraordinary and will neither serve the interests of the consumer nor the market. In the entire scenario, there will be few winners, namely the Operators, and the Broadcasters are sure to lose out a great deal including most of them being forced to be driven out of the market due to lack of access to the end subscriber.

The foremost consideration that TRAI must take into account is the position of the current broadcasting market. Despite TRAI's statement in Para 31 of the Explanatory Memorandum to the draft under response which alleges that perfectly competitive market due to product (channel) differentiation is not ideal competition, as on date there is active competition at all levels of the Pay TV industry to discourage perverse pricing. In the coming years, the digital addressability will increase further giving rise to greater competition thereby benefiting the consumer ultimately by providing them price efficient services. In an era where the regulator should be striving for a sunset date for lifting the ceiling on the tariff and letting the market forces determine the rates for themselves, TRAI is still involved in setting price ceilings. TRAI is cognizant of the fact that there is

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now effective competition at all levels in the Industry, signifying that the Indian Pay-TV industry is ready for ***forbearance***. Even a basic study of the International markets will go on to show that the regulators take a lenient view on regulation of prices thereby ensuring active competition in the market and leave decisions like wholesale rates, packaging choice to market players. TRAI must adopt forbearance when it comes to pricing as there is enough competition in the market and therefore there is no reason to put a cap on pricing of channels. A study of international markets has shown that the best regulated markets use a "light touch" approach, creating an open environment that creates a level playing field for all players in the value chain, fosters active competition, and results in increased consumer choice at competitive rates. The decisions regarding program distribution, content choice, packaging, retail and wholesale rates must be left to market players. Market-friendly regulation also benefits consumers, who, in the best regulated markets (efficient broadcasting markets like United Kingdom, United states, Australia and Singapore), have access to new forms of content, new technologies, and more choice in what they view on what device, and when. Huge investments are necessary to create these consumer benefits; and investments flow where regulations permits predictable, economically stable and sensible returns. Businesses need the freedom to operate; they need the trust and confidence of regulatory bodies that given the right operating environment, they will operate on terms that are mutually negotiated and beneficial for themselves as well as their stakeholders and trading partners.

Without prejudice to the foregoing position that "price forbearance" should be the norm across all genres of broadcasters, channels operated by entities like DCI which mainly fall under categories like Infotainment, Kids and Lifestyle should certainly fall under forbearance category. There genres constitute a relatively smaller part of the overall universe of television audience when compared to a genre like GEC. The unique content channels distributed by DCI offer distinguished non-fiction content to their dedicated viewers, empowers people to explore their world and satisfy their curiosity. A lot of content aired on DCI's channels is created after months, and at times years, of research and hard labour, at costs which are much higher than GEC programming, with superb production values with the objective of treating our esteemed viewers with programming on leading edge subjects. For a broadcaster like DCI to continually invest in creating such content, it needs access and visibility to the subscriber, predictability of business models and encouragement in terms of minimal regulation governing prices and reaching the subscriber. Unfortunately, the proposed Draft Tariff Order and Interconnection Regulations will work as a disincentive to discourage new investments to produce quality content.

Even where TRAI attempts to reflect the market in its Regulatory formulations, the enactments tend to make assumptions that may or may not be reflected in fact. For example, the Regulations assume addressable systems are inviolable and sacrosanct, irrespective of whether or not such addressability actually exists on the ground. Yardsticks of measurement of effective competition are a must and we may take example from the United States wherein competition is as big a determining factor in Tariffs as is the demand-supply itself.

REPRESENTATION ON PERTINENT ISSUES

The following preliminary submissions / objections in regard of the Draft Tariff Order are without prejudice and are independent of each other:

1. The Draft Tariff Order contains the genre wise MRP of the channels (capped arbitrarily without any analytical study / data by TRAI) in DAS areas coupled with the fact that offering of bouquets on as is basis by Operators is without basis, making it impossible for the Broadcasters to operate in an economically viable and predictable model. We are of the view that any tariff formulation should take into account these basis and, without prejudice to our support for "price forbearance", the prices should be brought in line with current market realities given the fact that the rates have been stagnating over the years since 2003, courtesy the price freeze. TRAI would appreciate that broadcasters shall in their own interest ensure that pricing of channels reflect market reality, knowing very well that arbitrary pricing would not find favour with consumers. Economists of the world are unanimous in their view that that ala carte pricing does not favour consumers nor does it suit broadcasters. There is no point in having a system which though allowed by technology is bereft of economic merit.

2. A graded discounting model should be allowed depending upon the declaration of subscriber base by the Operators. TRAI itself recognized "volume based discounts" as a key element in the existing regulations. If the Channel is accorded a Subscriber Base which is very low broadcasters should not be obliged to provide signals on a must provide basis and negotiations should be the only way forward. TRAI should make it mandatory for Operators to declare their connectivity to the Authority on a monthly basis in a fairly detailed manner for the broadcasters to cross reference the same with the declarations made by the

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Operators to them. The particulars submitted by the Operators to the Authority should be uploaded on the website of TRAI.

3. The Draft Tariff Order is premised on the assumption that 100% digitization has been achieved. However, the situation on ground is far removed from this assumption:
   - The DAS systems across the country are not ready to move to the proposed model
   - It's taken months to get CAF forms from consumers from DAS 1 and DAS 2. Status is still incomplete.
   - This model is dependent to subscribers choosing the channels, and proper data being captured in the MSO systems, which is not the case as of now even in DAS 1 and DAS 2 towns. Consumer choice on ground is illusionary and the CAF forms are either not being filled up, or are being filled up by the Operator.
   - In several areas, DPOs digital headends, CAS and SMS systems are inadequate and do not comply with regulatory obligations.
   - CAS and SMS reports are not being received from MSOs on a regular basis. There is lack of transparency on ground. Assuming, without admitting, that this model were to be the right model, there are serious doubts on its workability given the lack of transparency and infrastructure. The digitization process is expected to be complete only in the next 2-3 years. This model is being set up to fail in the current situation, and any overzealousness by TRAI to implement this model will end up (i) hurting the consumer interest rather than advancing it; and (ii) shutting down smaller networks due to entry / access barriers.
4. TRAI ought to take into account the concerns of the Broadcasters with regard to genuine addressability at the ground and those with regard to middleware vendors who are suppliers of CAS and SMS. These vendors should also be brought within the regulatory scanner so that best practices can be uniformly ensured/enforced. These middle ware vendors should regularly report "Failure Data" to TRAI and the measures taken by them to rectify the same. This vital information should be uploaded on the TRAI website for Broadcasters to identify the Operator whose CAS/SMS had failed, the exact causes for the same, the remedial measures undertaken and the nature and extent of revenue loss. In the event an audit reveals any shortcoming of such CAS/SMS, which the vendor had failed to report, suitable penal provisions should follow.

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5. TRAI should to ensure declaration of tier wise subscriber base by the operators, as has been the practice in the Telecom sector, to bring about transparency.

6. TRAI ought to make it mandatory for operators not to treat channels with discrimination, i.e, operators having vertical integration with broadcasters should not discriminate against channels of other broadcasters. Non-discrimination should be analysed on the basis of language, genre, ownership of the channels.

   For eg. A Operator vertically integrated with a broadcaster, puts all the channels of such broadcaster in all the tiers and then complains about lack of transponder space when it comes to giving access to the platform to channels of other broadcasters.

7. We request TRAI to conduct a thorough analysis of Operators penetration in DAS areas and upload the data on its website.

8. In our humble view, TRAI has not provided proper rationale behind fixing the genre wise MRP price caps, for the following reasons:
   - Existing wholesale price structure was relevant for the existing wholesale model
   - TRAI has used the same pricing in an MRP model despite differences in 2 models, without giving any rationale based on research or empirical data.
   - Existing wholesale model allows broadcasters to give discounts based on several criteria, including ensuring reach of its channels which meant availability of channels and varied choices for consumers at discounted rates (Cable ARPUs are 4 dollars/ Rs. 180 – 200 /– a great bargain for the number of channels on offer)
   - Broadcasting has been equated with FMCG sector without TRAI appreciating the differences
   - Current model takes away any flexibility that is available to broadcasters / operators to negotiate, even within the four corners of the RIOs that were published post the NSTPL judgment.
   - TRAI has not shared the reasoning behind the *1.2*existing genre cap* formula for setting the MRP caps. TRAI has not articulated whether there are benchmarks, prior research, or precedents of this model in any market. TRAI has also not evaluated whether this model been tested anywhere, and the results of such a model.

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9. We submit that TRAI has not done any impact assessment of the proposed model, or an assessment of a "No price cap / regulation" scenario where prices are not regulated and left to market forces (which is our preferred position), given the increasing competition in the market.

10. Broadcasting services cannot be equated with essential services / products which needs price regulation. The present Draft Tariff Order proceeds on the erroneous premise that Pay TV channels are essential services, while TRAI itself has in the past affirmatively concluded in its various prior papers and consultations that TV Channels are "esteemed" needs for consumers. It is worth mentioning that TV consumers in India can avail of the FTA services of the Public Broadcaster (DD Free Dish) which provides over 100 FTA channels and currently has around 30 million subscribers making it the largest platform in the country. Therefore the real question that arises for consideration by TRAI is that with over 830 channels for consumers to choose from and a large Public Broadcasting Service offering of over 100 private and public TV channels, is there really a need to regulate all aspects of a set of 200 odd pay TV channels. Conversely, the question for the Authority would be, is there proven evidence of market failure that a dire need has arisen to over-regulate these 200 odd Pay TV Channels. We are of the firm belief that there is no compelling reason to regulate these channels and accordingly, only a light touch regulation, if at all ought to have been proposed.

11. TRAI's move will effectively kill smaller channels / niche channels, and create entry barriers for new channels – since without reach they will not be able to survive. Effectively – only the big channels will survive. It kills competition while projecting that it is increasing consumer choice, ultimately leading to leaving the market open for big, monopolistic broadcasters with vertical integration in the long run.

12. The proposed tariff structure would mean that no broadcaster can predict its business model, since distribution / reach of a channel, which is a key element, is now uncertain. There will be uncertainty on subscription as well as advertisement revenues, discouraging investment (including FDI) and innovation in the sector. Even in FMCG markets, manufacturer can ensure availability / distribution (place on the shelf), giving consumers the choice to sample the product.

13. A bare comparison with the FMCG model reveals stark differences in the 2 models, as follows:

- In the FMCG model, the goods are tangible and the stock can be measured. A manufacturer is able to measure and map his supply to a distributor at the point of supply. However, in the

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broadcasting sector, the services are intangible and there is no way of measuring demand for a channel at the time of supply to a distributor, if a model similar to FMCG sector is imposed.

- In the FMCG model, a manufacturer is able to ensure wide distribution of his product by tying up with his distributor and offering discounts. He is therefore able to ensure that his targeted consumer is atleast able to sample his product and build demand after taking into account feedback (if any). By virtue of the Draft Tariff Order, a broadcaster would be at the mercy of the operator for accessing subscribers, who would control visibility of the channels.
- As a corollary to the above, while a FMCG manufacturer is able to predict demand for his products and accordingly make investments, an uncertain market would discourage a broadcaster to make investments to create / acquire content for its channels, which would ultimately be to the detriment of the consumers who wish to get access to good quality content.
- We have already elaborated above that this model is dependent on transparency and proper infrastructure, both of which are not completely guaranteed in the present scenario.

TRAI should reconsider the Draft Tariff Order and the pricing model proposed by it in light of the above said differentiators.

14. We submit that while Operators may be having valid and genuine concerns with regard to their outlays on account of taxation, infrastructure cost and license fees, it is requested that broadcasters should not be asked to subsidize the same. Even broadcasters are saddled with license fees and taxation regime.

15. We note with concern that while on the one hand Operators complain about limited transponder space while providing carriage to channels, yet in the same breath they are pushing their own content services in the guise of Value Added Services.

16. **<u>Anti - Consumer</u>**: We submit that that proposed pricing model is Anti-consumer for the following reasons:
    - Despite TRAI propagating the "consumer friendliness" of the proposed tariff in terms of increasing their choice, it will raise a consumer's cable / DTH bills.
    - The assumption that a consumer wants to access only a limited number of channels is erroneous. The consumer needs to access wide variety of content to make an informed choice in order to exercise consumer preference. This choice is critical from a consumer perspective which we believe has been taken away in the

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recommended model since the option of sampling in the true sense is not being given to the consumers. It also gives away one of the benefits of digitization –access to a number of channels across genres to suit the viewing habits of entire household, especially in single TV homes.

- By imposing artificial limits on bundling discounts, the choice and diversity available to consumers will be adversely impacted. The consumer proposition of TV as an audio-video medium has always been to deliver diverse content at reasonable prices through bundles. By pushing an *a-la-carte* mandate and rendering bouquets illusory the strength of broadcaster bouquets will be significantly diluted leading to the survival of only fewer larger channels.
- TRAI has not given rationale for fixing a price for Rs. 130 /- as the price for basic tier – have other revenue streams of an MSO (ads etc) been taken into account?

Without prejudice to the above submissions, we have sought to analyse the Draft Tariff Order with the below perspective to offer clarity and ensure that our comments and their underlying logic is clear in terms of industry processes and potential individual stakeholder impact. The perspectives discussed are enumerated herein below for ease of reference:

1. Regulator Objectives from the Draft Tariff Order and whether they are being met
2. Our solutions in terms of change in regulations pertaining to Broadcasters
3. Our solutions in terms of change in regulations pertaining to others
4. Offering of content by broadcasters
5. Forbearance regimes abroad

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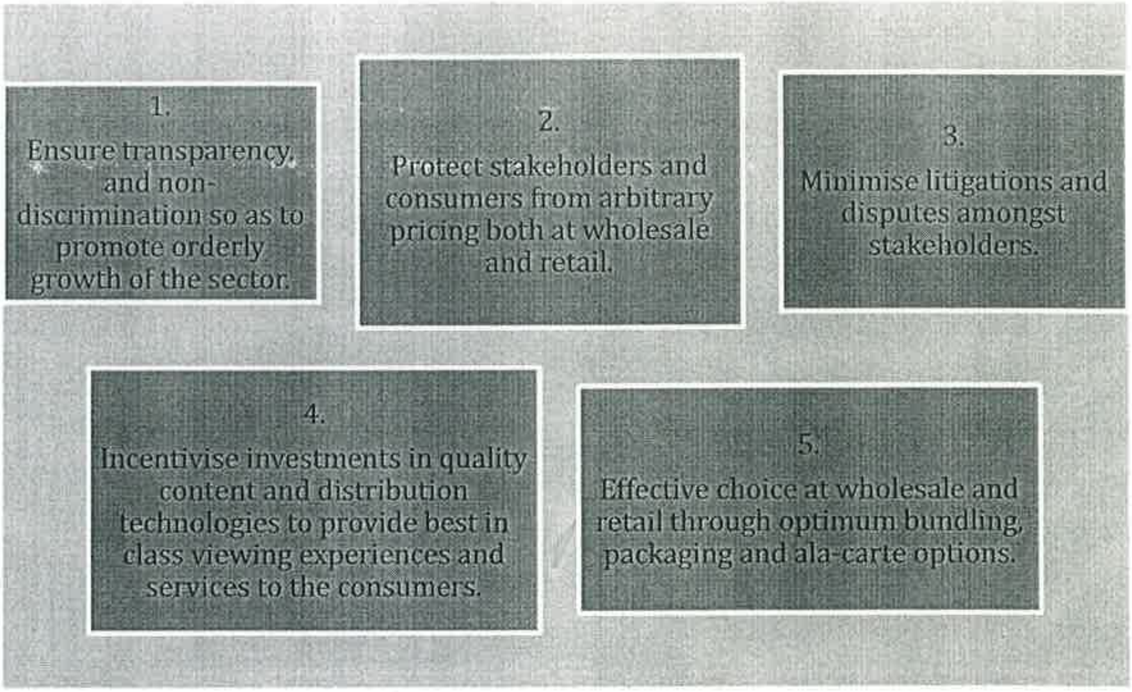
REGULATOR OBJECTIVES



In regard to point 1 and 2 of the Regulator objectives, according to the Draft Tariff Order, broadcasters must declare the maximum retail price (MRP) of channels being offered on an a la carte basis for their subscribers & TRAI has also proposed a genre-wise ceiling on channel prices. This MRP model of pricing restricts the broadcasters to price their MRP based on the genre of the channels. Broadcasters may be allowed to form bouquets but the price of bouquet cannot be less than 85% of the channel's ala carte price sum. The proposed pricing scheme will create barriers for the broadcasters- the real content creators- to effectively price their content. This will thus result in them receiving inefficient rates for their offerings which in turn will compromise on the quality of content in the long run. Thus, the policy will be discriminatory, will not protect stakeholders from arbitrary pricing and not lead to orderly growth in the long run. In regard to the proposed tariff order, TRAI must keep in mind that any price cap is anti-efficiency, anti-competition and anti-innovation.

In regard to point 3, in the proposed regime, a disgruntled broadcaster will have issues in respect to the arbitrary pricing by TRAI and the unfair advantage given to the Distributors. Plus, the constant invasion by regulator in respect of rights of freedom of contract and broadcasting rights of the Broadcaster will lead to constant disputes which will in no way minimize litigation but only further it.

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In regard to point 4, it is pertinent to note that the broadcaster creates its own content which is differentiated in each segment and requires an extraordinary amount of time, effort and costs to produce. We are perhaps the only industry where the wholesale tariff has almost remained the same since the year 2004 but content creation and procurement costs have increased manifold. Necessary checks have to be created in the current Interconnection framework in order to ensure that the Broadcast Reproduction Rights of the Broadcaster are safeguarded. A forbearance regime as opposed to the one proposed in the draft will incentivise investments in quality content and distribution technologies to provide best in class viewing experiences and services to the consumers.

In regard to point 5, the restriction on Broadcasters on bundling their channels will be an unfair proposition. In a scenario where Broadcasters aren't allowed to re-bundle their channels once bundled, it gives them little flexibility to react to changing market scenario. On the other hand, the Distributor may bundle the channels of a Broadcaster as it may please. In such a scenario, the Distributor may favour certain Broadcasters more than others and freely bundle favoured channels on a discretionary basis while others lose out. This regulation will not only encourage discrimination but also vertical agreements between Distributors and favoured broadcasters which are against the spirit of TRAI's preamble in the first place. Certain broadcasters are sure to lose out a great deal including most of them being forced to be driven out of the market. The biggest losers in this scenario will be consumers who lose out on effective choice at wholesale and retail through optimum bundling, packaging and ala-carte options.

In respect of the Draft Tariff Order, we would like to point out that the channel categories are not clearly defined. As an example, in a general entertainment channels, there is a categorization of general or premium channels but no demarcation for regional or niche channels. Secondly, TRAI in page 22 of its Draft Tariff Order has mentioned in points (v) & (vi) that the intention of the proposed order is to encourage investment in the TV Sector and encourage production of good quality content across different genres. While these two objectives sound ideal and are the most important requisite for a growing market, how must broadcasters achieve this goal in a regime which is excessively regulated in terms of pricing as well as marketing?

Thus, in a scenario where the proposed Draft tariff order becomes a reality, the Regulator will not be meeting but instead defeating the above stated objectives and be doing a disservice to all stakeholders in the sector. In line with the international practice, it has always been the stated position of the TRAI that the price regulation is an interim measure and will be withdrawn upon (i)

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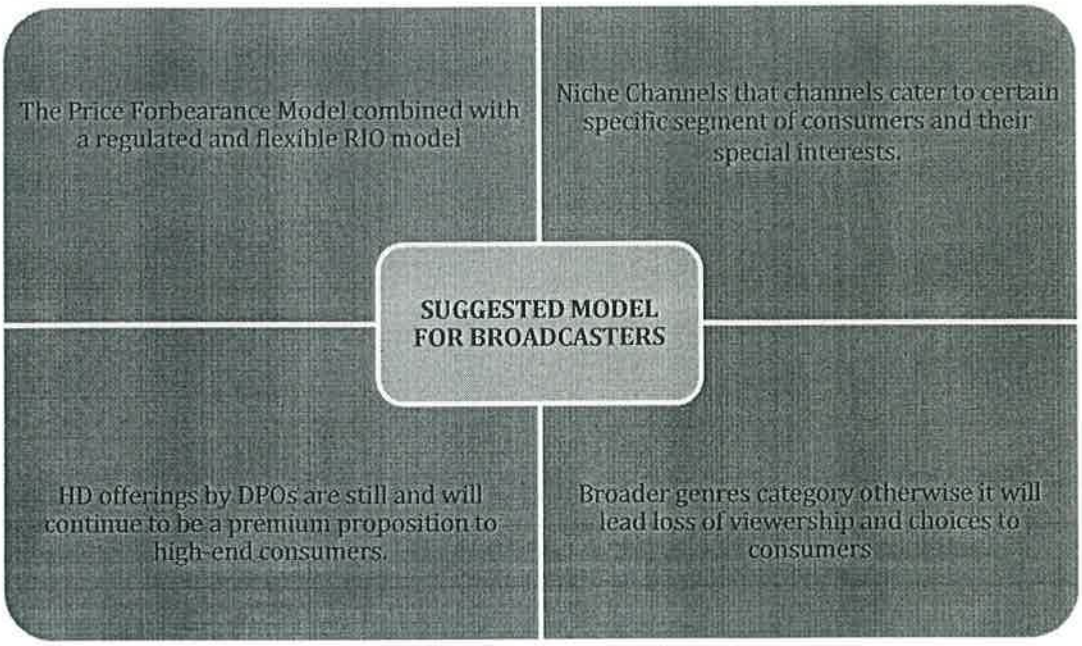
evidence of effective competition, and (ii) introduction of addressability. This position is stated in various tariff orders and recommendations issued by the TRAI from time to time, and we request TRAI to relook at the proposed Tariff Order in this context.

SUGGESTED MODEL FOR BROADCASTER SPECIFIC REGULATIONS



PRICE FORBEARANCE WITH MODIFICATIONS

- TRAI should revisit current genre price ceilings since they cause distortions in the market.
- Ala-carte prices of channels must be based on subscriber model with mutual negotiations allowed for parameters such as penetration/ placement / location based discounts in order to maintain the sanctity of the market forces. Such a provision will be balanced wherein consideration for both market forces and transparency has been made.
- Broadcasters should be freely allowed to bundle and re-bundle their channels to meet the changing market scenarios/ consumer demand.
- Broadcasters should be free to define discounts/incentives criteria within a range on the listed price as well as the cumulative discount on bundles for all pay channels.
- Allow operators to create retail bouquets, including create bouquets of bouquets. Direct linkage of prices between ala-carte & bouquets is required to reflect channel demand.

In light of the proposed digitization of the entire cable industry, price cap being laid down by TRAI are not reasonable and without rationale. Given that TRAI's preamble states that overall framework

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should be growth oriented, the broadcasters should be given the flexibility to fix the prices of the channels per market forces of supply and demand.

TRAI's apprehension that a free market model may lead to monopoly control of TV channels is a parable especially in case of channels like Discovery. This is primarily because content is distinct and diversified. Pricing advantages can only arise in such a scenario due to extraordinary content which will be a direct consequence of extraordinary effort and resources on the part of the content creator. In cases where monopolistic arrangements are apprehended, the Competition Commission of India has adequate powers to act on suo moto cognizance as well as reporting of such issues and give a befitting response to those indulging in unfair trade practises. It is important to note that even the Competition Act does not prohibit any entity from being in a dominant position but it is abuse of dominant position which makes the CCI intervene. In that sense, it is opposite to the anticipatory, pre-emptive approach being looked at by TRAI.

Under the current and proposed regulated regime the broadcasters will face issues which lead to high price distortions. Additionally there are irrational restrictions based on genre not on the basis of rational studies of viewership but on the basis of irrational calculations. We also feel that genre definition is not scientific and the language based caps for genres like Kids and Infotainment across languages will not serve the market demand very well. Also given that our content is exclusive content and requires extraordinary skill, time, effort and expenses to develop, the price forbearance model works best for the our channels.

HD CHANNELS AND PREMIUM CHANNELS

Broadcasters creating HD content and channels require significant investment in technology and equipment. Hence for both broadcasters and DPOs, HD offerings create a high-end value proposition and potential driver of ARPUs which, in turn, can incentivize greater investments in innovative technologies like 4K etc. and encourage formation of niche packaging and tiering at the retail end. HD Channels are those meant for niche viewers who are willing to pay an extra charge for availing offerings of a much higher quality. In the proposed draft, tariffs of HD Channels have been linked to SD channels but this arrangement is not reasonable for two reasons. Firstly, the cost of uplinking HD channels is much higher than SD channels. Secondly, HD channels are meant for premium viewing which means at times that even the Broadcaster's Ad revenue is compromised. Thus, pricing of HD

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channels especially must be the complete discretion of the Broadcaster. Such channels must be kept under the forbearance rule to aid their growth and not subject them to "over-regulation".

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

GENRE DEFINITION TO BE BROADER

In the current Draft Tariff Order, genres that have been included are General Entertainment Television Channels, Sports Channels, Movie Channels, Kids and Infotainment channels, News Channels while usual genres such as music, youth, lifestyle and regional have been excluded. This curtails the choice that the consumer may have, especially in its basic subscriber package.

The list provided has clubbed the GEC (Hindi, English and Regional) as one. We are of the view that instead of clubbing genres and relying upon the DPOs to make sub-genres, TRAI should allow for more genres for the following reasons:

1. The digital infrastructure allows creation of distinct SETS (genres) which are easily identifiable and understandable by the consumer and goes with the larger common practice prevalent amongst the consumers.
2. In a highly competitive market like India, more investment in content is primarily going to be in channels offering differentiated content. With most of the seven identified genres being crowded, it makes sense to create greater segregation in type of content available to the consumer, rather than limiting it to seven.
3. More genres also will incentivize broadcasters to create targeted content and encourage DPOs to offer more marketable differentiated offering helping earnings of both.

OUR SUGGESTED MODEL FOR OTHER REGULATIONS

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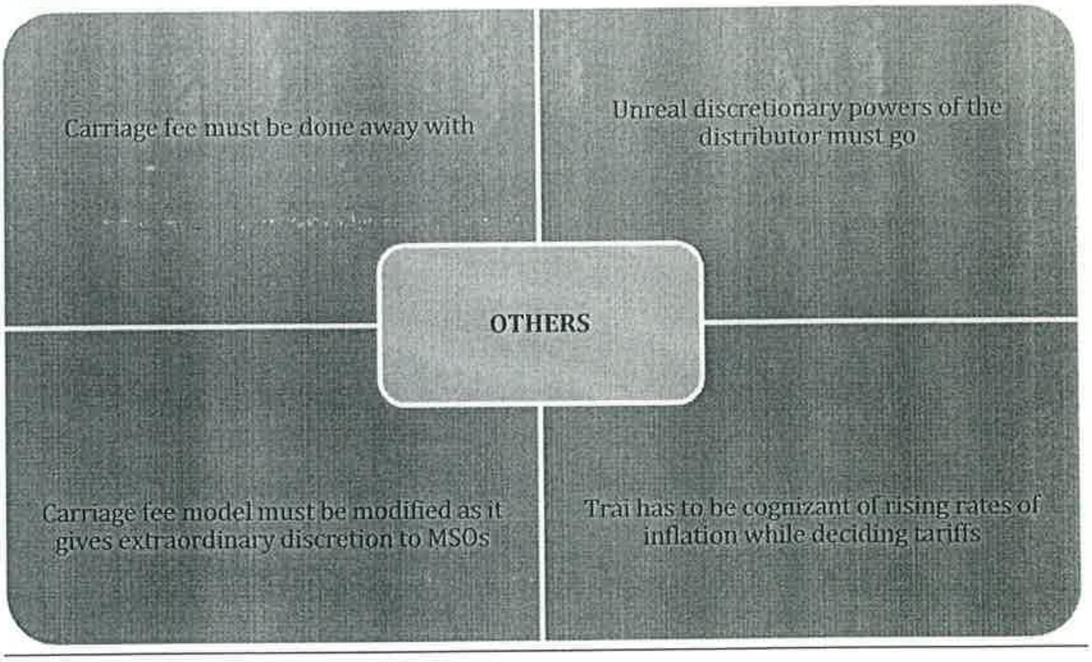

MUST CARRY MUST BE MADE WORKABLE AND COMPULSARY

The Draft Tariff Order makes no mention of carriage fee but however the draft consultation paper on Interconnection Regulations released on 14th October, 2016 makes mention of proposed carriage regulations which have been explained in the paper above. Given the proposed regulations, we see no rationale in giving such immense discretionary powers to DPOs to affect a Broadcaster's channels. In our opinion, the carriage fee should be done away with altogether. The "Must Carry" provision needs to be brought in with full force in order to balance the equity and the must provide obligation on the broadcasters which may be done in a phased manner. DPOs should be obliged to increase their channel capacity to a minimum threshold, to enable the true benefits of digitization to be passed on to all stakeholders.

Without prejudice to as stated above it is submitted that it is important to analyze the manner of distribution of channels to also evaluate the calculation of carriage fee and the practicality of its implementation. The draft regulations make it a mandate provision of "must carry" for the DPOs while also giving a leniency subject to availability of channel capacity on the distribution network with an addition provision of first come first basis. This would result in difficulty in practical implementation of "Must Carry" and creates space for discrimination.

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UNREAL DISCRETIONARY POWERS OF THE DISTRIBUTOR MUST GO

The expected reach of channels placed on a-la-carte will be severely impacted. Thus, only the genre leaders in GEC, regional, sports and movies will be able to maintain their position thereby promoting unfair competition. Further, a premium channel, as decided by the broadcaster, will not form a part of any bouquet in the entire value chain and can only be subscribed by paying separately, thus losing visibility and reach. Given the current carriage regime and discretion at the hands of the DPOs, broadcasters under the new regime will find it very difficult to convince DPOs to carry mid-tier and niche, unique content channels in base packs, resulting in loss of their reach. In order to maintain reach, many broadcasters might also be forced to convert many channels to become Free to Air, thereby giving up on one source of revenue altogether thereby putting pressure on their businesses and creating disincentive for further investments in quality content.

CARRIAGE FEE MODEL AS PER DRAFT INTERCONNECTION RULES GIVES EXTRAORDINARY DISCRETION TO MSO'S

The Draft Tariff Order has not made any specific reference to carriage fee but the same is given in the **draft Interconnection Regulations** according to which the following arrangements are contemplated-

- The rate of carriage fee has been capped at 20 paisa per channel per subscriber per month. Further, the carriage fee amount will decrease with increase in subscription.
- The distributors of TV channels may offer discounts on the carriage fee rate declared by them not exceeding 35% of the rate of the carriage fee declared.

To add further, channel penetration of 5% of subscriber base has a carriage fee based on forbearance; channel penetration of 10% of subscriber base entails a carriage fee amount equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.75 times of the average subscriber base of the distributor in that month in the target market; channel penetration of 15% of subscriber base entails a carriage fee amount equal to the rate of carriage fee per channel per subscriber per month, as agreed under the interconnection agreement, multiplied by 0.5 times of the average subscriber base of the distributor in that month in the target market; channel penetration equal to fifteen percent but less than twenty percent of the average subscriber base of the distributor entails a carriage fee amount equal to the rate of carriage fee per channel per subscriber per month, as agreed under the

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interconnection agreement, multiplied by 0.25 times of the average subscriber base of the distributor in that month in the target market; and no carriage fee is to be paid by a broadcaster if the subscription of the channel is more than or equal to 20% of the subscriber base. **The said arrangement is set to benefit only vertically integrated players as the MSO has no incentive to carry any other channels that are competitor channels, thereby denying them an equal opportunity of eventually getting in a higher bracket despite quality content. This also gives large MSOs the option of cartelization against certain channels thereby affecting the purity of markets.** The power in the hands of a DPO in this case is quite discriminatory which is against the principles of ensuring transparency, protection of consumer interests and create an enabling environment for orderly growth of the sector. The consultation paper on the tariff order (issued on 29 January 2016) that had extensively discussed carriage fee and the need to regulate it fairly and thus, the present issue needs to be discussed and resolved for the stake of all stakeholders in the industry.

We submit that there should be no distinction made between carriage fees and placement fees. While TRAI proposes to regulate carriage fees, we request it to recognize that placement fees also invariably include carriage within its fold and accordingly broadcasters should be allowed to negotiate with the Operators for preferential placement of their Channels within defined and reasonable parameters, leaving no scope for ambiguity. Since in the proposed model placement fee and marketing fee can be mutually negotiated and are outside the regulatory ambit this has the potential to completely distort and vitiate the entire non-discriminatory principles. This would create a back door entry for packaging and side-deals. While TRAI seeks to regulate carriage fee by capping the same (albeit allowing for its potential abuse as pointed out above), it has been rendered illusory by allowing negotiated agreements between DPOs and broadcasters for LCN and Marketing. Hence these should also be brought within the regulatory ambit.

TRAI HAS TO BE COGNIZANT OF RISING RATES OF INFLATION WHILE DECIDING TARIFFS

In a capped pricing model, TRAI has to constantly be cognizant of the rising inflation rate. TRAI provided certain marginal inflation hikes of 7%, 4%, 4%, and 7% since 2004 ending in 2007, and no inflation related hikes have been given since then. This issue seriously needs to be looked at from time to time but a permanent solution is only on the lines of freedom to Broadcasters to price on their own. While the ground situation is quite cluttered and the market disjointed, attempts at regulation should not be pricing led. There are other mechanisms to regulate. Pricing regulation looks simple, but it distorts the market and works against the eventual interest of the consumer.

There is an urgent need to address the price freeze prescribed in 2004 which has resulted in the broadcasters notifying the highest possible prices for their channels under the apprehension that they may not be able to revise their prices with change in market scenario.

It is thus clear that implementation of this Draft Tariff Order will ensure that broadcasters further lose a lot of ground. Distributors stand to gain with the power of packaging and now are no longer worried of the Reference Interconnect Order (RIO) rates of channels. The arbitrary "must carry" provision on a first come first serve basis is completely devoid of merit, without logic, and it can be expected that on the date of implementation of the proposed Draft Tariff Order there will be severe blackouts for Broadcasters channels without any clarity from the ground. TRAI has surprisingly without as much as a market study created a grave imbalance whilst ensuring that the content provider is completely at a loss and their business model is in the hands of MSOs. Monopolistic MSOs will be able at gain from the much cheaper content all at the expense of the content creators who will any which way expend the same amount of resources to produce content if not more but will be forced to sell them at much cheaper / non-viable rates, thereby seriously affecting improvements by way of innovation in the industry.

FORBEARANCE REGIMES IN OTHER COUNTRIES

The regime in most successful international broadcasting markets has been one of Price Forbearance. This has been immensely successful in dense markets and the safeguards adopted by each country, be it through the regulator or competition authorities, give adequate adherence to principles of transparency and non-discrimination whilst maintaining the competitive edge that a market requires to keep growing. In the USA, FCC has adopted a rebuttable presumption that cable operators are subject to "effective competition," requiring local regulators to demonstrate that this competition does not exist before regulating basic cable rates. In the UK, Ofcom has the power to regulate pricing where there are specific competition concerns, such as the "wholesale must offer" ("WMO") obligation imposed on Sky in 2010 in light of a 'fair competition' concern concerning sports. In Australia, there are no safeguards other than under general competition law. In Singapore, there are reporting requirements ensuring transparency. India may not adopt models identical to the abovementioned given its differences but we will do well to adopt similar safeguards after providing sufficient freedom in the hands of market players so as to ensure orderly and efficient growth of the sector.

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CONCLUSION

Currently, there are 830 permitted private satellite TV channels, of which 256 pay channels are owned by 53 pay broadcasters. Not only have the number of TV channels increased over a period of time, even the distribution platforms have increased tremendously. The distribution platforms include 60,000 local cable operators (LCOs), 6,000 Multi-System Operators (MSOs), 7 Direct-to-Home (DTH) operators, 2 Headend-in-the Sky (HITS) operators and a few IPTV service providers (collectively hereinafter referred to as DPOs). In addition to the above, Over the Top (OTT) operators too have entered the TV distribution sector in recent times. Under each genre, there are several TV channels demonstrating enough number of TV channels with varied content to ensure healthy competition. The viewer can chose from various TV channels available under any genre depending upon their choice of content. No two TV channels have identical content available at the same time. Besides, a viewer can watch only one TV channel at a time. It is submitted that if broadcasters are permitted to fix their price of TV channels as per demand and quality of content, consumer will receive channels at competitive prices and also good quality content. We are of the opinion that currently there are a sufficient number of TV channels and DPOs ensuring competition and market forces could determine the competitive rates of TV channels. In the light of the development in the broadcasting sector, it is imperative that the TRAI grants forbearance and permits broadcasters to fix the rates of TV channels on their own.

Although the current draft of Interconnection Regulations and the Tariff Order, has been drafted with an intent keeping in mind addressing the difficulties faced by the Broadcasters, Operators and subscribers under the existing Regulations and Tariff orders with an attempt to evolve to keep pace with major developments in the sector and has accordingly decided to review in a complete and holistic manner and bring changes to the regulations, however in doing so the Authority **cannot completely change the present practice in totality.** The Regulations needed at this hour is to improvise on the existing practice and business model benefitting the stakeholders at all levels. The authority while developing new Regulations with an attempt to resolve difficulties faced by the industry has failed to provide a mechanism to curb these difficulties leaving several loose ends which in turn would give rise to further issues during implementation of the current drafts of Interconnection and Tariff Orders impacting the entire business model of the Broadcasting Industry.

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Given that the market today is highly competitive and there are clear obligations on the broadcasters for "must provide" and "non-discrimination", we strongly believe that tariff forbearance across the value chain is the way forward. However, since the industry is currently in transition phase to full addressability, we recommend an interim regulatory framework closer to price forbearance model that will facilitate this transition. In order to ensure that the transitory framework does not become a permanent fixture as is the case with the current tariff dispensation, we recommend that the Authority notify a clear "sunset date" for the transitory framework leading to total forbearance, not later than two years from the date of notification of interim regulatory framework.

We tried our best to comprehend the propositions articulated in the Draft Tariff Order and realize that the same are far reaching consequences and would have a huge impact on the industry going forward. Given the significance of the topic being deliberated herein and the sheer magnitude of the impact it can have on our industry together with the paucity of time we have attempted to put together a preliminary submission on the various queries posed in the Draft Tariff Order. We reserve the right to make further submissions in the matter.

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