

**ISPAI Response to TRAI Consultation Paper on  
Review of Regulatory Framework for Broadcasting and Cable services**

**A. Introduction:**

1. ISPAI is a leading industry association representing Internet Service Providers (ISPs) in India. Some of ISPAI members are also involved in providing Multiple System Operators (MSOs)/IPTV services.
2. The Government of India in its various policies, including National Digital Communications Policy (NDCP-2018), has recognized the importance of convergence in telecommunications and broadcasting infrastructure. ISPAI members play a crucial role at the crossroads of telecommunications and broadcasting services, actively contributing to infrastructure convergence—an effort strongly emphasized and supported in multiple policy initiatives.
3. In view of the above, ISPAI is a significant stakeholder in the current policy consultation. While ISPAI did not participate in previous consultations conducted by TRAI for the broadcasting sector, we are hereby submitting our comments on this consultation paper considering that the outcome of this consultation will be crucial in deciding the fate of the sector as it is undergoing through a critical phase of consistently declining subscriber base. The latest EY FICC Report on Media and Entertainment Industry also sheds light on declining paid TV subscriptions across Cable and DTH Industry in India:

	2020	2021	2022
Cable*	72	68	64
DTH*	56	55	54
HITS*	2	2	2
Free TV**	40	43	45
<b>Total</b>	<b>171</b>	<b>168</b>	<b>165</b>

Television subscriptions in millions | Industry discussions, billing reports, TRAI data, EY estimates

**Source: EY FICCI report<sup>1</sup>**

4. The Regulatory framework has had a deep impact on the financial health of the sector and thus, this consultation presents an opportunity for its revival and must resolve the Industry issues holistically through a comprehensive consultative process.

<sup>1</sup> /https://assets.ey.com/content/dam/ey-sites/ey-com/en\_in/topics/media-and-entertainment/2023/05/ey-me-report.pdf

5. In this vein, before offering our comments on the specific regulatory aspects discussed in the consultation paper, we find it pertinent to look into the licensing framework of the broadcasting sector that acts as the foundation of broadcasting sector and the regulatory framework governing it. The licensing framework of broadcasting sector has meticulously defined the Industry's structure into layers of different services providers, wherein each layer performs distinct functions.
6. The first layer consists of content providers who are outside the licensing framework. Their role is to generate video content and supply it to broadcasters. Broadcasters that form the second layer aggregate the content into a linear TV channel and operationalize it after obtaining license under the uplinking/downlinking guidelines, from Ministry of Information and Broadcasting (MIB) for each TV channel separately
7. Distribution Platform Operators (DPOs) comprising of MSOs/Cable TV, DTH, IPTV and HITS operate at the third layer. DPOs' role is to aggregate the TV channels from various broadcasters and multiplex these into an encrypted stream to be broadcasted to their subscribers. In addition to multiplex encrypted stream of channels, DPOs' service comprises of CPEs, billing subscription management, consumer interface in form of EPG.
8. The key takeaways of the above analysis is that Broadcasters and DPOs have distinct roles in framework. Broadcasters' TV channel are an input for the DPO service that is availed by the customers.

#### **B. Retail pricing of channels by broadcasters:**

1. The New Regulatory framework published in the year 2017 (i.e. NRF-2017) and came into force in the year 2019, brought significant changes in the sector. It changed the fundamental aspect of the sector that had been thriving well in the previous regulatory regime. Notably, NRF-2017 empowered broadcasters with the authority to determine the retail prices of their pay channels. Furthermore, it mandated DPOs to carry the broadcasters' channel bouquets at the retail prices set by the broadcasters themselves
2. However, the above changes do not comply with the licensing framework. First, we deal with the issue of authority given to broadcasters to decide the retail price of their channels.
3. As described in the preceding section, broadcasters' channels act an input to the DPO service. DPO service is availed by the end consumer and hence, DPO should decide the retail price of the service provided by it. The prices prescribed by broadcasters should serve as wholesale price of channels, i.e. the price at which these can be bought by DPOs who should be able to further sell these to their customers at the retail price

decided by them. The retail price determined by DPOs can be either below or above the wholesale price determined by the broadcaster.

4. The definition of pay channel as given in the Cable TV Network (Regulation) Act, 1995 also supports this. It defines pay channel as the one for which cable TV operator (i.e. DPO) pays to the broadcaster. This establishes that broadcaster can maintain relationship only with the DPO not the end customer and consequently, broadcasters cannot decide the retail price of the service that it does not provide.

**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;*

5. Further, the Uplinking and Downlinking guidelines also state that the broadcasters can provide their TV channels only to DPOs. This infers that broadcasters cannot reach the customers directly. Thus, the broadcasters’ role in the chain ends at a point where it hands over its TV channel signals to the DPOs. From there onwards, only DPOs can carry the channels and consequently can decide the retail price of their services that also includes various constituents like Pay TV channel, CPEs, etc.
6. It appears that while framing NRF-2017 the concept of MRP prevalent in the pre-packaged products has been misapplied on broadcasting sector. In this concept, the manufacturer that packages the goods also puts the MRP on the product and the retailer is bound to sell the product at a price equal to or less than the MRP prescribed on it. However, this concept is not applicable in case of broadcasting sector due to the following reasons:
  - a. DPOs are not the retailers or distributors of the broadcasters. DPOs are providers of their own services. The understanding of nature of DPO service amplifies this aspect as DPO service is not just retransmission of TV channel, it includes various other essential aspects, such as multiplexing, encryption, EPG, subscription management etc. Without these essential elements, this service cannot be provided.
  - b. Unlike the distribution of pre-packaged products, broadcasting sector, places regulatory obligations on stakeholders. Both broadcasters and DPOs are under obligation of ensuring non-exclusivity and must adhere to Must Provide and Must

Carry. Further, broadcasters are obligated to not to access the end customers directly and must provide their TV channels only to DPOs.

#### **C. Bouquet formation by broadcasters:**

1. The second foundational fallacy of the NRF-2017 is the privilege given to the broadcasters to sell their channels in form of bouquets at the retail price decided by broadcasters themselves. This privilege granted to broadcasters also does not conform to the licensing provisions, as the license/registration of one TV channel is independent of the others', even if the same broadcaster operates these channels. The scope of the TV channel license/registration does not grant any privileges to bundle the channels.
2. Whereas on the other hand, DPOs' license/registration grants it privilege to aggregate the channels and transmit by these to customers in an encrypted stream. Therefore, only DPOs can curate bouquets of channels as per the privileges granted to them.

#### **D. Hardships brought onto the DPOs by the NRF-2017:**

##### **Impact of Broadcasters' Pricing Authority on DPO Autonomy and Investment Disparity:**

1. The authority vested in broadcasters to determine both the retail pricing of individual channels and the composition of channel bundles, along with the power to set their respective retail prices, has adversely affected the fundamental autonomy of DPOs in conducting their business. **This situation presents an anomaly in which a service provider i.e. DPO, having invested substantial sums, in the billions of rupees, finds its ability to efficiently utilize its network for service provision compromised, as retail pricing decisions have been entrusted to broadcasters.** It is also worth noting that broadcasters typically make minimal capital expenditures in infrastructure and consequently bear comparatively minimal business risk compared to DPOs. From an economic standpoint, it is incongruous for an entity that has invested billions to be subject to the decisions of another that has invested substantially less.

##### **Rise in consumer prices leading to consumer churn:**

2. In the aftermath of NRF-2017 implementation, broadcasters have set steep channel prices, leading to increased subscription costs for consumers. **This trend is substantiated by the financial results released by DPOs, which reveal a significant uptick in payouts to broadcasters post NRF-2017, ultimately driving up consumer prices.** The rise in consumer prices has ultimately affected the entire industry with DPOs losing millions of subscribers quarter after every quarter.

### **Misuse of privileges by broadcasters:**

3. Since the introduction of NRF-2017, broadcasters have consistently prioritized their business objectives over the welfare of subscribers and the entire broadcasting industry. They have grossly abused their privileges by promoting their channel bouquets by pricing these at significant discounts compared to individual a-la-carte channel rates. This strategic pricing has led customers to opt for the bouquets, inadvertently resulting in higher costs rather than savings, especially when subscribing to bouquets with less popular channels. As a result, broadcasters not only gain additional subscription revenue but also benefit from advertising revenue generated by these less popular channels.
4. The potential for earning supplementary revenue has incentivized broadcasters to introduce television channels that predominantly feature repetitive content. These less popular channels consume network capacity on the DPO network, without the DPOs receiving any carriage fee for them. These channels are classified as pay channels to enable their inclusion in channel bouquets with other pay channels. Following the implementation of NRF-2017, several broadcasters have transitioned their Free-to-Air (FTA) channels into pay channels, strategically bundling them with more popular channels. This shift has resulted in DPOs losing the carriage fees they previously earned prior to NRF-2017.

### **Heavy-handed regulations on DPOs:**

1. DPOs have not only been subject to retail pricing strategies of broadcasters, but most of their sources of revenues, such as Network Capacity Fee, Carriage Fee, visiting, installation and relocation charges etc., are also regulated with price ceilings. This is despite the fact that there is a high degree of competition amongst the DPOs due to the existence of five DTH operators and lakhs of cable operators.
2. This has further suppressed the business autonomy of DPOs. On the other hand, broadcasters enjoy monopoly, as the content is non-substitutable. Despite this, broadcasters have been allowed to set the retail prices of channels without prescribing any regulatory ceilings. This is a double whammy for DPOs as they have been squeezed between broadcasters and regulatory price ceilings.

### **E. DD free Dish- Issue of Non-level Playing field:**

1. The consultation also raises relevant questions relating to issue of non-level playing field between DD free dish and other DPOs. DD Free Dish is a unique DPO in the country since operates outside the TRAI's Regulatory framework. Further, DD free Dish operates as a non-addressable system, whereas addressability is a statutory mandate for other DPOs.

2. DD Free Dish was initially introduced in certain states where the percentage of TV broadcasting services was below National Average but was expanded later to cover the whole of India. Furthermore, its channel capacity has been periodically augmented to accommodate even private TV channels on commercial terms.
3. Due to its provision of free services to subscribers, DD Free Dish caters to more than 45 million households, while other pay DTH operators collectively have approximately 65 million connections. Contrary to its objective of serving the National broadcasting requirements, DD free dish has today transitioned into a commercial platform.
4. As highlighted in the Consultation Paper, for allocation of a slot on DD Free dish through tendering process, a reserve price of as much as INR 15 Crores has been set. Furthermore, **DD Free Dish has earned a revenue of nearly INR 1070 Crores from the auction of 65 slots this year.** This translates into average revenue of around INR 16.5 Crores per channel per annum. This **implies that if DD free Dish had built up a network comparable to the size of pay DTH operator carrying 500 channels, it would earn a revenue of over INR 8000 Crores.** This is more than the revenue earned by any pay DTH operator.
5. The above signifies that DD Free Dish enjoys several benefits over the pay DTH operators by operating outside the regulatory framework. This can be explained from the fact that DD Free Dish carries several pay channels and it not only gets these channels free of cost from broadcasters but also charges broadcasters for carrying their channels. However, other DPOs get these pay channels by paying subscription charges to the broadcasters and do not get any carriage charges from broadcasters.
6. Thus, broadcasters are effectively using the fees collected from other DPOs for funding their biggest competitor i.e. DD free Dish. This is nothing but a competitive distortion wherein other DPOs are losing their market share to a DPO who is also indirectly receiving funds from them.
7. In case of FTA channels, TRAI Regulations cap the carriage charges to four lakhs per month for a SD channel. Whereas DD free dish is free to charge carriage fee without any regulatory ceiling. **Thus, DD Free Dish enjoys regulatory arbitrage over the DPOs and is engaged in commercial activities in the name of public broadcasting services.**
8. **This has repercussions on competition in the sector as the other DPOs are steadily losing the subscriber base to DD Free Dish due to the availability of pay channels on the DD Free Dish free of cost. We humbly believe that the scope of Public**

**Broadcasting cannot be expanded to compete with the private DPOs on an unfair and non-level playing field.**

9. In Telecommunication sector, even though Government owns BSNL, but it is required to abide by the TRAI Regulations and compete with other Telecom Service Providers. This ensures equal market opportunities for all service providers, irrespective of whether they are state-owned entities or private entities. In the same manner, the TRAI Regulations should be made applicable to DD Free Dish services to ensure a level playing field for all DPOs.
  
10. The continuation of DD Free Dish operating outside the regulatory framework is against the basic principles laid down by Constitution of India in Article 19 ( 1) (g) of Constitution that provides Right to practice any profession or to carry on any occupation, trade or business. The Regulatory imbalance in favor of DD free dish impinges the right of other regulated DPOs to conduct their business freely. This is also against the Article 14 of the Constitution that guarantees equal rights and protection under the law.
  
11. Further, this is also against the principle of reasonableness as the current regulatory framework is discriminatory and favors DD free Dish over the interests of other DPOs.

**F. Reforms needed in the sector:**

1. Due to the foundational flaws in the regulatory framework, it needs to be completely overhauled. This can be achieved only through a holistic review of the regulatory framework instead of making incremental amendments to the existing regulatory framework that itself is responsible for the current state of the sector.
  
2. The evidence of the above lies in the fact that while TRAI has attempted to arrest the issues that emerged after implementation of NRF-2017 by making amendments to the NRF 2017. However, these amendments have been unable to fix these issues. TRAI has so far made two amendments to the regulatory framework but these have been ineffective in curbing the issues emanating from broadcasters' pricing decisions that have worked to the detriment of all stakeholders.
  
3. After the latest amendments to the regulatory framework in 2022, broadcasters have continued the trend of unreasonable pricing by increasing the channel and bouquet prices by approximately 15% - 55%.



4. The below excerpts from Explanatory Memorandums of the Tariffs amendments provide a perfect commentary of how the hopes of reasonable pricing by broadcasters have been repeatedly belied and every effort of TRAI to fix this through amendments in the Regulatory framework of 2017 has proved to be ineffective.

**Excerpts from The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020 (1 of 2020):**

*“However, the experience so far has demonstrated an altogether undesirable trend, that of a-la-carte rates of popular pay channels constituting the bouquet were kept at ceiling price by the broadcasters giving huge discounts on formation of bouquets with a view to force customers to subscribe bouquets only. **This very disappointing tendency considerably reduced the legitimate right of consumers to choose channels on a-la-carte basis as well. One can say that while technically a-la-carte rates of channels are declared to comply with the regulatory provisions, these are illusive, and customers are left with no choice but to opt for bouquets.** Huge discounts are offered on bouquets coupled with high a-la-carte prices of popular channels make it appealing to consumers to go for bouquets and making the a-la-carte choice of the popular channels a less attractive option. This marketing strategy has gone to the extreme of some broadcasters pricing some of their bouquets equal to or even less than the MRP of a single but popular channel present in that bouquet.”*

*“...The ability of some broadcasters, offering large number of channels, to form bouquets and offer huge discounts on such bouquets is forcing small broadcasters either to exit from the market or convert their pay channels to FTA channels for survival. This fact has been substantiated to some extent by the data available with the Authority. **While broadcasters offering large number of channels have converted their FTA channels to pay channels at token prices, generally less than a rupee per month in many cases whereas some smaller broadcasters have converted their pay channels to FTA during same period**”*

**Excerpts from the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Third Amendment) Order, 2022 (4 of 2022).**

*11. New tariffs announced by the major broadcasters reflected a common trend. The prices of their most popular channels, including the sports channels, were increased beyond Rs. 19/- per month. In compliance with the extant provisions, all such channels that are priced higher than Rs. 12/- (per month) have been kept out of bouquet. Accordingly, all the channels with maximum retails price above Rs. 12/- have been offered only on a-la-carte basis. The revised RIOs indicated wide-scale changes in composition of almost all the bouquets being offered.*



18. The committee held discussions on 23rd December 2021. Stakeholders listed the following issues which, in their opinion, required review:

**a. The proposed tariffs by broadcasters through their RIOs submitted in compliance to NTO 2.0 Tariff Orders would cause a significant increase in the tariffs to consumers. The consumer price rise, if any, is required to be limited to a reasonable limit.**

5. Therefore, it is a high time that the foundational errors in the regulatory framework are corrected. This can be achieved by taking following steps:

**a) Broadcasters should not be allowed to decide the retail price of channels:**

Broadcasters cannot access the subscriber directly as they are suppliers to the DPOs who provide the services to their customers. Furthermore, broadcasters have grossly misused their freedom to set retail prices to maximize their revenues by increasing channel prices and by manipulating consumer choice in favor of bouquets. **Therefore, broadcasters should not be allowed to set retail price of channels and DPOs' right to set retail price of services, including TV channels, should be reinstated.** The channel prices set by broadcaster should serve as the wholesale prices i.e. price at which DPOs procure channels from broadcasters.

**b) Broadcasters should not be allowed to form bouquets:**

Broadcasters do not have right under the license conditions to bundle the channels together. Further, they have always misused their right to form bouquets to push unwanted channels to consumers thereby increasing price of services as well as consuming precious DPO network capacity. Hence, broadcasters should not be allowed to form bouquets,

**c) Regulate wholesale price of channels:**

In order to arrest the issues resulting from monopoly of content it is imperative to regulate the wholesale price of TV channels by prescribing ceilings otherwise, broadcasters would continue to impose burden on consumer prices.

**d) DD free dish to be brought under the Regulatory framework:**

DD free Dish needs to be brought under the TRAI's Regulatory framework. This will arrest the issue of non-level playing field between the DD free dish and other regulated DPOs. Instead of promoting free services like DD free Dish, focus should be on ensuring affordable services to consumers by bringing out reforms in the regulatory framework.

With the above background, we now proceed to the Issue wise responses.

## Issue wise response

### A. Tariff related issues

- Q.1 Should the present ceiling of Rs.130/- on NCF be reviewed and revised?**
- If yes, please provide justification for the review and revision.**
  - If yes, please also suggest the methodology and provide details of calculation to arrive at such revised ceiling price.**
  - If not, provide reasons with justification as to why NCF should not be revised.**
  - Should TRAI consider and remove the NCF capping?**

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- 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.**

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- 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?**

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- Q.4 Should TRAI revise the current provision that NCF for 2<sup>nd</sup> TV connection and onwards in multi-TV homes should not be more than 40% of declared NCF per additional TV?**
- If yes, provide suggestions on quantitative rationale to be followed to arrive at an optimal discount rate.**
  - If no, why? Please provide justification for not reconsidering the discount.**
  - Should TRAI consider removing the NCF capping for multi TV homes? Please provide justification?**

### Response:

- The primary reason for regulating NCF is to ensure affordable services for the consumers. Despite the high degree of competition amongst DPOs and different network costs, NCF has been regulated with price ceilings.
- However, NCF is just one of many retail price components defined under the regulatory

framework. As stated in the preamble of our response, TV channel prices are a major component of retail prices and the primary reason for increasing customer cost is the retail channel pricing strategies adopted by broadcasters to maximize their revenues.

3. Therefore, to arrest such issues, it is important to first disallow broadcasters from prescribing retail prices of channels. Only DPO should be allowed to set the retail prices of channels along with all the other retail price components. The prices prescribed by broadcasters should serve only as the wholesale price of channels and DPOs should be able to sell the channels at the price above or below the wholesale price of channels.
4. Further, **all the retail price components (including NCF) should be brought under forbearance considering high degree of competition amongst the DPOs as their services are completely substitutable.** Whereas broadcaster enjoy monopoly due to non-substitutability of content; therefore, wholesale price of channel needs to be regulated with price ceilings to meet the overall objective of ensuring affordable services for consumers.

**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 2<sup>nd</sup> 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:**

Since, this step relates to ensuring affordable services to the consumers, it needs to be enabled by mandating broadcasters to charge reduced wholesale price of the channel for additional TV connections. This can be enabled through interconnection arrangements between DPOs and broadcasters that will allow reduced prices for additional TV connection of households.

**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. The primary reason for prescribing the discount ceiling on bouquets vs ala-carte pricing is to empower the customers to subscribe to only the channels of their choice. Therefore, regulatory intervention is required to arrest the real underlying cause of this issue.
2. In this regard, the primary reason for the woes of the Industry and the consumers has been the mischief applied by broadcasters through the retail prices of their bouquets. These bouquets are priced well below ala-carte rates for increasing broadcasters' revenue. To increase uptake of bouquets, the ala-carte rates of channels have been increased to increase the attractiveness of bouquets for increasing the advertising revenue by pushing the low demand channels to subscribers.
3. All this is happening despite the fact that broadcasters do not even have right under their license to bundle the channels in bouquets. Therefore, this situation needs to be arrested by preventing the broadcasters from forming the bouquets.
4. However, if TRAI decides to continue the formation of bouquets by broadcasters then to arrest the issues currently faced by the Industry, broadcasters should not be allowed to offer discounts on bouquets i.e. 45% discount currently allowed to the broadcasters should be abolished and all the channels in the bouquets should be offered at ala-carte rates.

**Q.7 Whether the total channel carrying capacity of a DPO be defined in terms of bandwidth (in MBPS) assigned to a 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. There is a high degree of heterogeneity in terms of technologies deployed by DPOs for transmission of TV channels. Thus, defining channel capacity in terms of Mbps would not yield any benefits.
2. The concept of defining channel capacity in terms of various technical parameters is in itself a kind of micro-regulation on the DPOs and needs to be abolished all together. Since, defining channel capacity of DPOs is related to ensuring non-discriminatory access to DPO capacity to the broadcasters, we believe that the current concept of first come first serve

needs to be abolished and replaced with the auction process that is followed by DD free dish. What has been allowed to the biggest DPO in the country should also be allowed to others.

3. Furthermore, once the entire retail tariff aspects, including channel pricing, will be entrusted with the DPOs and will be put in forbearance, this will allow the market forces to take course and will ultimately lead to lowering of subscription charges due to high competitive intensity amongst the DPOs.

**Q.8 Whether the extant prescribed HD/SD ratio which treats 1 HD 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:**

1. As mentioned, DPO Industry exhibits high degree of competition due to availability of multiple DPOs that provide the same service. Further, all the retail aspects, including fixing of retail price of channels and formation of bouquets should be exclusively entrusted to the DPOs.
2. Once the DPOs are empowered to decide all retail related pricing there would not be any need to regulate NCF as the benefits accruing from high competitive intensity and business autonomy given to DPOs, will be passed onto the consumers. This would obviate the need to micro regulate the aspects pertaining to SD/HD channel capacity.

**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. We would like to reiterate that there is a high degree of competitive intensity amongst DPOs and hence, they are vulnerable to losing their subscribers in case they provide dissatisfactory services to their subscribers.

2. Therefore, the notion of monitoring reception quality is irrelevant, as no DPO would engage in such behavior at the risk of losing its customers. Further, the CP does not mention any concrete evidence being provided by the stakeholder who has alleged the discriminatory treatment of its channels by the DPOs.

**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. We strongly oppose any mandate to provide FTA/Non-News/Newly Launched channels on the platform of DPOs, due to the following reasons:
  - a. We infer from the Consultation paper that certain stakeholders have proposed this in the name of declaring such channels as public service. However, **entities operate channels for commercial purposes to earn revenue from various sources such as advertising, etc. We contend how a Regulatory mandate is being sought by such entities in the name of Public Service, when these entities are operating channels as a commercial activity. The proposal is completely contrary to the basic tenant of consumer choice and places further burden on DPOs.**
  - b. It will lead to blocking and hoarding of the network capacity irrespective of the uptake of such channels amongst the viewers.
  - c. Furthermore, any private channels cannot be equated to the mandatory channels of Prasar Bharti. 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 same would amount to curtailing of business freedom of DPOs.
2. Therefore, **we strongly oppose any mandate to carry FTA/Non-News/Newly Launched channels.** Such proposals are nothing but a way of circumventing payment of carriage charges and to attain a competitive advantage through unfair means.

**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?**

**Response:**

1. Kindly refer to the detailed explanation given by relating to non-level playing field between DD free Dish and other DPOs. The same is hereby summarized below:
  - a. DD Free dish started as a Public service to increase the footprint of National broadcasting services but today it caters to over 45 million household and has commercial implications for the entire Industry. It has become the biggest DPO in the country and has adversely affected the entire DPO industry due to its free services.
  - b. Although DD Free Dish service is free for subscribers but DD Free Dish earns more revenues (per channel carried) than any other DPO in the country. This is due to the reason that DD free Dish gets carriage fee for even pay channel. For FTA channels, there is no regulatory cap on the carriage fee.
  - c. The benefits accrued by DD free Dish are due to Regulatory arbitrage over the other DPOs due to non-enforcement of TRAI's Regulations on it.
2. **Thus, the continuation of DD Free Dish operating outside the regulatory framework is against basic principles laid down by Constitution of India as Article 19 ( 1) (g) of Constitution provides Right to practice any profession or to carry on any occupation, trade or business. The Regulatory imbalance in favor of DD free dish impinges the right of other regulated DPOs to conduct their business freely.**
3. Further, this is also against the principle of reasonableness as the current regulatory framework is discriminatory and favors DD free Dish over the interests of other DPOs
4. **In view of the above, we submit that the Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 should be enforced on DD free Dish.**

**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. As per the Interconnection Regulations, 2017, a licensed broadcaster must necessarily declare its channel as either FTA or Pay Channel. Once, a channel is declared as FTA or



Pay, it must be provided as FTA or Pay uniformly to all DPOs. This is due to fact that Interconnection regulations require the broadcaster to ensure non-discriminatory treatment towards all DPOs.

2. However, today DD Free Dish carries several channels as free for its customers whereas these are pay channels for other DPOs' subscribers. It must be recognized that DD Free Dish is as much a DPO as others and is covered under the definition of DPO and DTH as provided under the TRAI Regulations:

*(r) "distribution platform" means distribution network of a DTH operator, multi- system operator, HITS operator or IPTV operator;*

*"direct to home operator" or "DTH operator" means any person who has been granted licence by the Central Government to provide direct to home (DTH) service;*

3. Recently, the TDSAT has reiterated the legal position that has been upheld up to 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."*

4. Despite the above, no steps have been taken to ensure the parity between DD Free Dish and other licensed DPOs in terms of carriage of pay channels by DD Free Dish by stopping the carriage of pay channel by DD Free Dish.
5. The continuation of carriage of pay channels by DD Free Dish is leading to situation where broadcasters on one hand, are charging subscription free for their pay channels from licensed DPOs but are paying DD free dish for the carriage of the same channels. **Thus, broadcasters are effectively using the fees collected from other DPOs for funding their biggest competitor i.e. DD free Dish. This is nothing but a competitive distortion wherein other DPOs are losing their market share to a DPO who is also indirectly receiving funds from them.**
6. **Thus, to arrest the above issues, broadcasters should be directed to declare their channels as FTA channels for all DPOs, in case these channels are being carried by DD Free Dish.**

**Q.13 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. In continuation to our responses to Q11 and Q12, we submit that in order to address the issues relating to DD free dish, it needs to be mandatorily upgraded to an addressable platform and TRAI Regulations be enforced to it. The technology/mechanism for upgrading DD Free Dish to an addressable platform will be same as that of any other DTH Operator in the country. Non-addressable system carrying private television channels is contrary to the extant regulatory framework and DD Free Dish should not have been even allowed to operate as a non-addressable platform as it was mandate for all DPOs to operate only as addressable platforms .
2. We do not believe that there will be major cost implications on the subscribers. The Cable TV/DTH Industry in India is highly competitive, and service providers often, absorb the cost of set-top boxes/CPEs. Prasaar Bharti can carve out appropriate Business and migration plan and can decide the reasonable sunset timeline for the free services. This is akin to discontinuation of services/technology in the telecommunication sector, and has been achieved efficiently without causing major inconvenience to consumers.
3. Thus, consumer interests will be taken care of in the current market structure. Additionally, all the DPOs are mandated to carry channels of National importance, and hence, National Objectives are also being appropriately taken care of.
4. **The primary reason for higher consumer tariffs is the current Regulatory framework. The consumers are forced to switch to DD Free Dish due to current pricing practices of broadcasters**
5. **Therefore, in order to increase the affordability of Cable TV services, we reiterate that it is essential to overhaul the entire Regulatory framework as submitted in the preamble of our response.**

**Q.14 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?**

- e. If yes, how the issue of differential pricing of television channel by different DPOs be addressed?**
- f. If no, then how should the business continuity interest of DPO be protected?**

**Response:**

1. We submit that the current practice that allows DPOs to either continue with existing contract or enter into new agreement should be continued with. To cater to their customers and business interests, DPOs will duly weigh the benefits of the options before exercising their choice.
2. Such practice is consistent with the non-exclusivity principle enshrined in the regulations as all DPOs can exercise above options. Furthermore, as per the contract act, any amendment to be made in executed agreement should be with the consent of both the parties, and any change proposed in the said agreement by one party, may or may not be acceptable to the other party.
3. Therefore, the existing provisions rightfully recognize that the amendment proposed by the broadcaster in its RIO may or may not be accepted by DPOs.

**Q.15 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:**

In case, amendment in RIO becomes expedient due to amendment in Regulations/tariff Orders, an addendum (w.r.t amendments in RIO) can be signed between the parties that would become the part of existing interconnection agreement. However, all such changes brought about due to change in the Regulations/Tariff orders must conform to the requirements of DPOs w.r.t. the long term plans subscribed by their customers.

**Q.16 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. We do not support any mandate on the validity of RIO and Interconnection

Agreement, as it will deny the flexibility to the service providers. This will create uncertainty in the sector, as the long-term agreements provide better opportunities to service providers to devise their tariff and business plans.

2. In addition to harming the business interests, mandatory tenure of interconnection agreements would also lead to unnecessary operational burdens on the service providers.
3. Furthermore, as explained in response to Q14, the principles of non-exclusivity and non-discrimination are met even in the existing provisions. Therefore, there is no need to restrict the tenure of interconnection agreements to a fixed tenure.

**Q.17 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?
- &

**Q.18 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:**

1. The freedom to organize TV channels on EPG is not different from the freedom given to broadcasters to control sequencing of content on their TV channels. Various websites, online apps etc., also enjoy autonomy in organizing content on their respective platforms. In offline space, various stores that organize the goods to increase their sales and to serve their customers more effectively enjoy similar freedom.
2. Moreover, EPG provides an easy navigation interface to allow customers to access their channels and the customers can anyway discover the channels with appealing content as content is main driver for channel's popularity not its placement in EPG.
3. Thus, DPOs should be given complete freedom for placement of channels in the EPG as per their requirement of serving their customer more effectively.

**Q.19 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.**

**b. If no, please justify your comments.**

**Response:**

1. We submit that there is no need to review the revenue share between MSO and LCO in the Standard Interconnection Agreement. The arrangement between the MSO and LCO is entirely governed by market forces and there is no binding on either of the parties to mandatorily enter into such agreements.
2. This is unlike the relationship between broadcasters and DPOs wherein the principles of Must Carry and Must Provide are applicable that put obligations on service providers.
3. Further, the revenue share arrangement between MSOs and LCOs is already established and there is no dispute regarding revenue share between MSO and LCO.
4. **Therefore, due to the nature of the relationship between MSO and LCO as being governed by market forces**, there is no need for any further Regulatory Intervention in deciding the distribution of revenue between the two.

**Q.20 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?**

**&**

**Q.21 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.**

**&**

**Q.22 Should TRAI consider removing capping on carriage fee for introducing forbearance? Please justify your response.**

**Response:**

1. The principles of Must Carry is intrinsically linked to the carriage fee. It is similar to the relationship between Must Provide and channel prices. When a DPO invokes Must Provide, it must pay the price prescribed by the broadcaster as per its terms and conditions. Broadcasters have been given autonomy under NRF-2017 to set the channel prices without any ceiling.
2. However, conversely, when a broadcaster invokes Must Carry, a DPO has to charge carriage fee well below the network incurred by it due to the regulatory ceiling imposed on carriage fee. On the other hand, DD free Dish charges carriage fee well in excess of other DPOs. For example, average carriage fee charged by DD Free Dish per channel is around INR 16 Crores as per the latest auction price. However, as per the Regulatory capping on DPOs, they can charge only up to INR 48 lakhs (i.e. INR 4 lakhs per month) as carriage fee for SD channels.
3. Thus, the above inconsistencies must be addressed that are distorting the market practices wherein interests of broadcasters and DD Free Dish have been prioritized over the survival of other DPOs. DPOs should be allowed to charge carriage fee without any regulatory inhibitions. Further, to maintain transparency, the concept of first come first serve must be abolished and DPOs should be able to allocate channel capacity in a transparent way and charge carriage fee in line with what is charged by DD free dish.
4. To safeguard interests of smaller broadcasters that show content of national importance, lower carriage fee may be charged (for certain max percentage of free network capacity). The amount of carriage fee for these broadcasters may be determined from market determined charges once these are discovered.

**Q.23 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 for your response.**

**Response:**

1. We submit that the **condition that restricts the disconnection of a channel by a DPO if the subscription for the channel is above the threshold (i.e. above 20%) is inherently discriminatory against the DPOs. It disallows them from exercising their basic right of disconnecting the channels in case of disagreement with the broadcasters. Therefore, this condition is in violation to Article 14 and Article 19 of the constitution.**
2. In view of the above, this condition should be abolished and only in exceptional situations pertaining to Public Interest, TRAI may intervene to ensure that the parties enter into an agreement.

**B. Quality of Service related issues**

**Q.24 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.**

**&**

**Q.25 Should TRAI consider removing capping on the above-mentioned charges for introducing forbearance? Please justify your response.**

**Response:**

1. We submit that there should be complete forbearance on the abovementioned charges. We reiterate there exists a high degree of competition in the Industry wherein consumer enjoys considerable choice in terms of selecting the DPO. Therefore, the prescription of such ceilings in such a hyper-competitive environment is not required.
2. The prescription of price ceilings devoid the DPOs of recovering their costs and investments. It may also lead to sub-optimal quality or delays for consumers, as there may be cases where service providers may cut costs, in order to operate within the



prescribed ceilings. It also reduces innovation by DPOs to serve customers better, as they may be concerned about the costs of implementing innovative solutions.

3. To maintain transparency, DPOs may be mandated to publish these charges in their retail tariffs. However TRAI should not regulate the quantum of such charges.

**Q.26 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 purpose of displaying price in the EPG is to inform the customer of the price at which channel is available for subscription i.e. DRP. Hence, displaying DRP is relevant from consumers' perspective.
2. Once, the current regulatory framework is migrated to the regime where DPOs will decide retail prices, only DRP will be relevant as wholesale prices (by broadcasters) will not have any relationship with retail prices.

**Q.27 What periodicity should be adopted in the case of pre-paid billing system. Please comment with detailed justification.**

**Response:**

The current billing period as provided in the extant Regulation is working fine and customers are accustomed to current billing system. Thus, there is no need for any change.

**Q.28 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:**

DPOs have incurred huge costs in deploying Subscriber Management System (SMS) that are functioning as per current requirements. Any changes or alterations of introducing daily reporting would lead to requirement of additional infrastructure that is beyond the financial feasibility of many DPOs. Hence, the current system should be continued with.

**Q.29 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:**

We submit that since the above conditions are part of MIB guidelines for Platform services, these can be included in the QoS Regulations as well. However, this might not be feasible in certain Set-Top boxes that have been functional prior to NRF-2017. Therefore, these would need to be exempted.

**Q.30 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**

**Any other provision that needs to be re-assessed**

**Please justify your comments with detailed explanations.**

**Response:**

Since the above requirements have been in force since the implementation of NRF-2017 and are in consumer interest, these may be continued with. There should be penal provisions, such as termination of license in case of DPOs who don't comply with these for a considerable time period of say three years.

**C. Financial Disincentive**

**Q.31 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. In 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?**
- 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:**

1. We submit that there should not be any further provisions for imposing financial disincentives for shortcomings. The financial disincentives do not always lead to addressing the underlying issues. In some cases, these might worsen the overall situation.
2. The implementation of regulatory financial disincentives can lead to higher compliance costs and diversion of resources away from productive activities and innovation. The regulatory financial disincentives might encourage businesses to prioritize short-term compliance over long-term sustainable practices.
3. However, to deal with the pressing issues on the sector w.r.t. non-compliance by certain DPOs., TRAI may direct broadcasters to not to provide their signals to DPOs who don't undergo technical audit, as mandated under the regulations, for a consecutive period of two years. Further, broadcasters may be mandated to not to provide their signals to those DPOs who are found to be engaging in piracy.

**Q.32 Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.**

**Response:**

Please refer to the preamble of our response, wherein we have given a detailed explanation of the reforms needed to revive the Industry and aligning it the licensing framework. Unless these reforms are undertaken, it will not be possible to arrest the downfall of the cable industry.

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