RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED

TO

CONSULTATION ON

DRAFT TELECOMMUNICATION (BROADCASTING & CABLE SERVICES) (EIGHTH) (ADDRESSABLE SYSTEMS) TARIFF ORDER, 2016

ISSUED ON 10TH OCTOBER, 2016

AND

DRAFT TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES) INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2016

ISSUED ON 14TH OCTOBER, 2016

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INTRODUCTORY COMMENTS

Zee Entertainment Enterprises Limited (ZEEL), welcomes the consultation on the *Draft Telecommunication (Broadcasting and Cable Services) (Eighth) (Addressable Systems) Tariff Order, 2016 (hereinafter referred to as 'Draft Tariff Order')* and the *Draft Telecommunication (Broadcasting And Cable Services) Interconnection (Addressable Systems) Regulations, 2016 (hereinafter referred to as 'Draft Interconnect Regulations')*. We note that TRAI has released the Draft Tariff Order and Draft Interconnect Regulations with an intent to create an enabling environment for orderly growth of the television broadcasting sector in the light of various developments related to technology, emergence of multiple distribution platforms, evolving business models and enhanced addressability across platforms. We further note that TRAI has undertaken, a comprehensive review of the existing tariff framework for the addressable systems, whereby a unified regulation has been prescribed for DACS / DTH / HITS / IPTV Platforms.

We appreciate the initiative of TRAI's attempt to evolve a new tariff structure that enables the consumers with the freedom to choose from an array of options with affordable a-la-carte and bundled television broadcasting services as per the consumers' preferences and paying capacity, while ensuring transparency in the entire value chain.

We have noted following salient features:

- Broadcasters are mandated to offer all channels on a-la-carte
- DPOs can decide the retail price of a pay channel which can be equal to or lower than MRP. There is no limit prescribed on the minimum cap for deciding the retail price
- MRP has to be same across all platforms
- MRP of a pay channel can be different in different Geographical areas

We understand that the tariff issues related to TV Sector has been the subject of consultation earlier as well. However, TRAI while formulating the proposed draft Tariff Order and Interconnect Regulations not only has not considered the Regulated RIO model suggested by majority of the stakeholders but also there are several relevant suggestions/ comments, being part of the earlier consultations, that are still un-attended/ un-addressed in the Draft Tariff Order/Regulations which needs due consideration by the Authority by incorporating the suggestions/comments provided herein below before coming out with the Final Tariff Order & Interconnect Regulations. In addition, our submission for harmonization of the provisions of the Copyright Act with the TRAI Act also apparently has not been considered while coming out with the draft Tariff Order & Interconnection Regulations.

We would like to submit that we have carefully reviewed the consultation and wish to suggest that the Draft Tariff Order if implemented in its current form and shape may pose multiple challenges in implementation and would be detrimental to the consumer interest.

We have supported our response with detailed analysis and have cited examples to substantiate our submissions. We now wish to proceed to give our response herein and the same should not in any manner be construed as a waiver of any comments made in our earlier submissions to the Authority.

POSITIVE INITIATIVES IN DRAFT TARIFF ORDER

Without prejudice to our submission that it is the Regulated RIO model which is best suited and has also been suggested by majority of stakeholders for the Addressable regime, we appreciate the initiatives taken by TRAI to address a few existing challenges vis-à-vis the wholesale and retail tariff models on the presumption that TRAI is going ahead with the integrated distribution model instead of the Regulated RIO model. The submissions made hereinafter are on the said presumption and are in the alternative. Among other things, the points listed below may be construed as positive initiatives for the overall development of the sector with a specific caveat that unless all our suggestions made in this response are incorporated harmoniously in the final draft Tariff Order, the positives referred below may not turn out to be helpful for the stakeholders at large including Broadcasters like us.

(1) Broadcaster's prerogative to fix MRP

Pricing of content should always be decided by the broadcaster and popularity of content will determine how many consumers opt for that channel. If there are not enough subscribers opting for the channel at that price, it will automatically lead to correction in pricing in due course. Therefore, the principle of economics of pricing being linked to the demand of the product will come into play. This will ensure that there is minimal market distortion.

TRAI has taken the welcome step by enabling Broadcasters to prescribe MRP of their pay channel to the consumers.

However, as detailed in subsequent paragraphs fixing of genre wise ceiling based on historical prices and restriction on discount while prescribing the relationship between MRP of a-la carte channel(s) and bouquet of channel(s) of a broadcaster is wholly unnecessary in the current MRP price regime. This issue has been elaborated in the subsequent Sections and needs to be suitably addressed by modifying/amending the relevant stipulations in the draft Orders.

(2) No discrimination in pricing among various addressable platforms

Non-discriminatory pricing will enable platforms to have a level playing field while competing with each other. Also, in this way, the DPOs will try to focus on improving the service levels, distribution infrastructure and other essential services like subscriber management, billing, complaint redressal, collection of subscription revenue etc. as the content costs for them will become same.

(3) Pricing flexibility based on Geographical Area

TRAI has correctly observed that the popularity of different channels varies in different Geographical Areas (as defined in the Draft Tariff Order). For example, if Channel A is popular in Delhi and trying to build consumer awareness in Rajasthan, keeping lower MRP in Rajasthan will increase sampling chances of Channel A. Unless viewers sample this channel, they are unlikely to pay for it. Differential pricing enables innovative pricing strategies and should be encouraged as it would help broadcaster's in giving discounts in the target Geographical Area while maintaining revenues from those Geographical Areas where it is popular.

In light of the above, we strongly recommend that the provisions made in the Draft Tariff Order regarding differential pricing in different Geographical Areas be continued.

(4) Forbearance on Premium channel pricing

Premium channel by nature have very niche viewer base and as such should not be governed by any of the retail price caps as proposed for normal channels. Also, it is essential for the industry to encourage development of variety in content and production of good quality content across different genres.

Encouraging Premium channels will also encourage investments in the TV sector while incentivizing broadcasters for the same. While forbearance on premium channel pricing is a welcome measure, we believe the same should be allowed for all channels.

(5) Introduction of Must carry provision

The consultation on Interconnect Regulations proposes “must-carry” provision for all addressable systems, on first-come-first-serve basis. It also mandates DPOs to publish information about its platform including available capacity and declare the rate of carriage fee. There is also a requirement to publish this information within 30 days.

This is a welcome step aimed at removing the artificial entry barriers for created by the DPOs to prevent entry of new channels without paying hefty carriage fees. Enforcement of “must-carry”, “must-provide” and “non-exclusivity” is necessary to stop the discrimination done by DPOs.

However, as detailed in subsequent paragraphs the Must Carry provisions in the form as stipulated in the draft Orders/Regulations have lot of issues which are required to be addressed while finalizing the draft Orders/Regulations. In order to ensure that “Must Carry” provision is exercised in its true spirit, the placement and marketing fee are also required to be brought within the regulatory ambit.

(6) Increased frequency of subscriber reporting 4 times a month

Accurate and timely subscriber reporting is the foundation stone for the billing and revenue assurance of a Broadcaster. With the provision of capturing four data points in a month, accuracy of subscriber reporting increases and provides more appropriate billing criteria from the Broadcaster to the DPO.

As correctly captured by the authority, this is aimed at preventing any kind of manipulation as well as also include those subscribers who are active for less than 30 or 31 days, in a calendar month. However certain clarifications are required to be issued by TRAI in this behalf to remove ambiguities.

(7) Requirement to appoint Compliance Officer

This will ensure conformity and proper reporting with respect to compliance of regulations. However, DPOs having average subscribers of less than 2 lakhs have been exempted and are not required to appoint compliance officers. This will dilute the very purpose of introducing this provision. DPOs can possibly circumvent this provision by splitting the subscriber base among multiple entities. While compliance is mandatory for all service providers, the threshold of requirement to appoint a compliance officer by a DPO should be reduced from 200,000 to 50,000 customers.

(8) Introduction of regulation on carriage fee

Despite capacity not being a constraint in the digitized era, DPOs continue to charge high carriage fees. The current proposal of slab-wise carriage fees is therefore a step in the right direction. It is very important that carriage fees should not be charged from channels which have a penetration of more than 20% in the target market.

While introduction of carriage fees is a very welcome move, we have highlighted a major shortcoming with respect of placement and marketing fees being kept out of regulatory ambit which will result in huge market distortion and discriminatory treatment to broadcasters. This has been highlighted in the subsequent sections.

SECTION I

IGNORES MAJORITY FEEDBACK FOR REGULATED RIO

(1) Regulated RIO is the preferred choice of majority stakeholders

We would like to bring Authority's attention to the fact that most of the stakeholders recommended Regulated RIO model in response to the Consultation paper issued by TRAI which also works on the principle of transparency and non-discrimination among stakeholders. However, we are surprised to see that such model has not been considered and a model has been proposed which was not a favorable model recommended by majority of the stakeholders. No justification/rationale has been given for rejecting the RIO model. In fact, consequent to the judgment in the NSTPL case, the stakeholders have already adopted the Regulated RIO model by incorporating therein different incentives/discounting parameters applicable to all the addressable platforms as per the directions of Hon'ble TDSAT to ensure transparency and non-discrimination which precisely is the objective of the present consultation exercise initiated by TRAI. At present the agreements between the Broadcasters and DPOs are being concluded on the basis of the modified Regulated RIOs published by the Broadcasters.

A perusal of various comments posted in response to the Consultation Paper, we have observed the proposed model has been recommended mostly due to revenue share disputes arising within the parties down the value-chain. Certain MSOs who have not been able to collect their share out of revenues collected by the LCOs, have favoured this model in order to secure their share. However, as pointed out hereinabove most of the broadcasters, DTH operators and MSOs have preferred the Regulated RIO model which is quite apparent from the table given below:

Illustrative break-up of stakeholders' responses supporting Regulated RIO

Broadcasters	DTH	MSOs
Zee, Sony, Viacom, Star, ABP	Videocon, Dish, Reliance, Sun Direct	Siti, IMCL, Asianet, Ortel, NSTPL

In fact, majority of the stakeholders had asked for Regulated RIO model as proposed by TRAI. As you will appreciate, the industry has over the last decade already settled down to a Regulated RIO model and the contracts are being smoothly entered into by stakeholders.

Another important issue with the integrated distribution model is that this model will lead to hefty increase in carriage fees. With the legitimization of carriage fee through the proposed Order/ Interconnect Regulations, the model itself envisages charging of carriage fee both from FTA channels as well as from Pay channels. Thus, even in digital addressable systems where there is a sufficient capacity, the channels would be asked to pay carriage for inclusion in the basic tier as well as for making them available on their platforms. This will act as deterrent for new entrants as well as for niche channels. Hence it will adversely impact the creativity of the sector and will lead to de-growth in investment.

Instead of ensuring an equitable distribution of revenue realized from consumers across the value chain, the suggested model is completely skewed in favour of DPOs and in fact would severely impact other stakeholders including consumers as well as investment in the sector. This has been explained in detail in Section II.

Unlike any other industry, Broadcasters generally do not have any direct control in the delivery of the offerings to the consumer hence there are hardly any precedents across the globe where an MRP based model is in vogue for broadcasting.

(2) Conflict/lack of harmonization with the provisions of The Copyright Act, 1957

(i) It is stated that the broadcasting organizations are covered by The Copyright Act, 1957 which is a complete code in itself. Under the said Act the broadcasting organizations enjoy a special right u/s 37 of The Indian Copyright Act which is known as 'Broadcast Reproduction Right'. No distribution platform can distribute the content of a broadcasting organization without obtaining a specific license from them. The TRAI Act on the other hand is mainly for regulation of various 'carriage related services' such as distribution platforms (DTH, MSOs, HITS etc.) and the regulation of content aspect does not fall within its domain as the same is duly governed by the provisions of The Copyright Act. The proposed regulatory regime – the draft Tariff Order/Interconnect Regulations seek to impose various restrictions on broadcasting organization qua 'content' in the form of ceiling on tariff, manner of offering, discounting etc. which are directly in conflict with the provisions of The Copyright Act and severely restricts their freedom and ability to commercially exploit the same. Accordingly, as detailed in the subsequent paragraphs the provisions including the conflicting provision of proposed Tariff Order/Interconnect Regulation are required to be harmonized with the provisions of The Copyright Act, 1957 as otherwise they would fall foul of a special statute governing broadcasting organization.

(ii) The signals to TV Channels contain content which is protected under the provision of the Copyright Act, 1957. The owners of the content have full freedom to commercially exploit their Intellectual Property, i.e. content.

(iii) It is the recognition of this protection/right granted under the Copyright Act, 1957 that has led to inclusion of Rule 6(3) in the Cable Television Network Rules 1994. The aforesaid Rule 6(3) is a part of programming code and it clearly provides that no copyrighted work would be broadcasted unless the cable operator has taken license for the same under the Copyright Act from the owner of the copyright. The said programming code is applicable not only to cable operators but is also applicable to broadcasters, DTH operators and HITS operators in terms of license conditions and downlinking guidelines as applicable.

(iv) The object of the Copyright Act 1957 is to encourage creativity and intellectual growth of the country. Under the Copyright Act 1957, not only work itself is protected, the neighboring rights/the underlined works in the said work are also fully protected and are subject to commercial exploitation. As pointed out hereinabove, Chapter VIII of the Copyright Act provides for the rights of the broadcaster which is a special right. Any person, who during the continuation of the Broadcasting Reproduction Rights, distributes/retransmits without the authority of the content owner, is deemed to infringe the Broadcast Reproduction Rights. The broadcasters have also been provided right in terms of Section 39A (amended by Act 27 of 2012) qua broadcast reproduction rights while making Sections 18, 19, 30, 30A, 33, 33A, 34, 35, 36, 53, 55, 58, 63, 64, 65, 65A, 65B and 66 applicable thereto with necessary adaptation and modifications.

(v) Under the Copyright Act, there are two modes of licensing i.e. voluntary license and non-voluntary license (compulsory and/or statutory). However, in the scheme of Copyright Act, a voluntary license has primacy over non-voluntary license. Various provisions of the Copyright Act including Section 31, 31D, 32 etc. clearly provide that first an opportunity must be given for a voluntary licence on mutual terms and conditions. Each of the provisions providing for a non-voluntary license under the Copyright Act will come into effect only after an act of refusal by the copyright owner to license the work.

(vi) Section 19(3) provides for specifying the amount of royalty/consideration for assignment of copyright in any work and the revision thereof on such terms and conditions **as may be mutually agreed between the parties.** It is submitted that the provisions of Section 19 applicable to assignment of copyright are also applicable on licenses under Section 30 of the Copyright Act. It is submitted that even the broadcasters have to seek the content from the content owner, and in case the content owner does not wish to give its content, the aggrieved broadcaster has to approach Copyright Board only after a refusal to provide content on reasonable terms by the content owner. Similarly, Section 32(4) and the proviso to Section 32A of the Copyright Act and Section 84 of the Patents Act provides that no license is to be granted unless the applicant has proved to the satisfaction of the Board that he had approached the licensor and was denied authorisation without any reasons. Thus, the threshold in all the regimes is that applicant must approach the licensor first.

(vii) It is submitted that 'must provide' clause including the non-discriminatory provision must be construed within the compulsory and statutory licensing regime as provided in the Copyright Act. Hence, the existing Regulation provides for mutual negotiations, which is similar to the provisions contained in the Copyright Act. It is submitted that while framing Regulations, TRAI cannot by the arbitrary exercise of its powers and in an inconsistent manner, take away the right of mutual negotiation.

(viii) The scheme of the TRAI Regulations also has to be read in consonance with Indian Contract Act and the Copyright Act to provide for a voluntary licensing. It is for this reason that the Regulations (including DAS Regulations) specifically provide for mutual negotiations and any Tariff Order/Regulations that curb these rights of the content owner/broadcasters will be ultra vires the Copyright Act thereby rendering Section 37, 39A, Sec. 18, 19 etc. thereof otiose.

(ix) Taking away the right to freedom of contract will not only fall foul of the provisions of the Copyright Act but will also be inconsistent with the international obligations that have been provided for under various treaties to which India is a signatory

(3) <u>Regulatory regime regresses rather than advances</u>

With impending completion of digitalization, the industry had hoped for a light touch regulatory regime. However, instead, in our humble view the Draft Tariff Order and Draft Interconnect Regulations seek to introduce more stringent, onerous and intrusive regulatory dispensation virtually micromanaging the activities for the entire value chain. And the adversely impacted stakeholder will be the Broadcasters, as the proposed Tariff Order regulates pricing, discounting, manner of offering, bundling and legitimizing carriage fee leaving total uncertainty in both advertisement and subscription revenues.

TRAI, by its own admission, concluded in its various prior papers that TV Channels are an esteemed need, not essential services. However, Tariff Order proceeds with the erroneous premise that Pay TV channels are essential services. Further TRAI has not considered the fact that TV consumers in India can avail the FTA services of the Public Broadcaster DD Free Dish which provides over 100 FTA channels and currently has more than 30 million subscribers making it the largest platform in the country. We are of the view that there is no compelling reason to regulate Pay and FTA channels and accordingly, only a light touch regulation, if at all ought to have been proposed.

(4) <u>Misplaced 'Monopoly content' argument</u>

In the proposed Tariff Order almost all the activities of broadcasters inter alia including stipulation of MRP, ceiling on tariff, discounting restriction, manner of offering, RIO stipulation etc. have been brought under regulatory ambit. While for another set of stakeholders i.e. MSOs & LCOs falling within and part of the same value chain, mutual negotiations have been permitted for conclusion of contract failing which a default mechanism of revenue sharing has been prescribed. The justification for bringing almost all the activities of broadcasters under severe and restrictive regulatory regime (where even the mutual negotiations which are permitted under the existing Regulations have been taken away) has been given by TRAI in para 31 of the draft Explanatory Memorandum to the Tariff Order which reads as under:

"……………The Authority noted that though there are 48 broadcasters providing 275 pay channels at present, there is no effective competition among them. The content of each channel is unique and a channel cannot be substituted by another channel even by one of the same genre. The content of a channel in some sense becomes monopolistic in nature and more so when the channel is being viewed by a large number of subscribers. Similarly, availability of large number of MSOs and other distribution platforms also does not encourage competition as distributors of television channels are primarily dependent on the broadcasters for provisioning of channels to their customers……………."

In this context it is pertinent to point out that the argument of so-called 'monopoly' enjoyed by the broadcasters and therefore their regulation is warranted is entirely misconceived and misplaced.
There is no channel or broadcaster that enjoys absolute monopoly in the market and/or controls the market. It is entirely misconceived to term the content offered by broadcasters as 'monopolistic'. In this regard it is pertinent to point out that the content by its very nature is 'unique' as it is product of creativity. Uniqueness is not equivalent to monopoly.

The prevalent market scenario is characterized by availability of various channels in each genre. For example, in the Hindi news category itself more than 20-25 channels are available and no single news channel can be considered to be monopolistic. Similar is the case with General Entertainment Channel(s), Movie Channel(s), Devotional Channel(s), Kids Channel(s) etc. While it may be true that in many cases one program comes only on one broadcasters' network, the program itself invariably competes with other programs coming on different Broadcasters' channels. Therefore, the channels are competing against each other in a transparent manner and on daily basis. Same gets reflected in the weekly reports publishing program-wise channel performances by various industry bodies.

Kindly note that in general the IPR's of the content are available only to a particular Broadcaster and hence only that Broadcaster makes the program available on its network. This scenario cannot be treated as monopoly. Similar argument can be made in case of DPO's as it can be observed that, each DPO has its own strong presence in various parts of the country, translating into monopolistic scenario on the ground.

In this context it is also relevant to mention that in order to address the alleged apprehension of monopoly, dominance etc. TRAI has already amended the Interconnect Regulations in February 2014 whereby the multi broadcasters' bouquet and other similar offerings have already been prohibited at wholesale level.

SECTION II

DETRIMENTAL TO CONSUMER INTERESTS

(1) Consumer costs to increase – else channel selection to reduce

The stipulation of rental charges for the DPOs hampers affordability. However, under proposed regime the consumer will either end up paying substantially more for the same set of channels that they avail today or will end up receiving significantly lesser number of channels for the same price. The rental for these channels alone, as per the Draft Tariff Order, would be higher than Rs. 230. The following examples based on the actual offerings by the DPOs fully substantiate and reinforces the said proposition:

a) Impact evaluated on present packaging – DTH

i. Present packaging of DTH with approximate consumer payout

Pack Name	Price (Rs.)	# Channels	# FTA Channels	# Pay Channels	Avg. Price / Pay Channel
Basic Entry Pack	240.0	220	140	80	3.0
Mid-Tier Pack	320.0	245	140	105	3.1
Premium Pack	480.0	280	140	140	3.4

ii. Assuming average price per pay channel and number of channels remaining same, consumer payout increases significantly

Pack Name	# FTA Channels	# Pay Channels	Avg. Price / Pay Ch.	Rental	Addl. Rental	Pay Ch. Cost	Total Cost
Basic Entry Pack	140	80	3.0	130.0	100.0	240.0	470.0
Mid-Tier Pack	140	105	3.1	130.0	120.0	320.0	570.0
Premium Pack	140	140	3.4	130.0	160.0	480.0	770.0

iii. Otherwise, number of pay channels in the packs reduces significantly

Pack Name	# FTA Ch.	# Pay Ch.	Avg. Price / Pay Ch.	Rental	Addl. Rental	Pay Ch. Cost	Total Cost
Basic Entry Pack	64	36	3.0	130.0	0.0	110.0	240.0
Mid-Tier Pack	70	55	3.1	130.0	20.0	170.0	320.0
Premium Pack	90	85	3.4	130.0	60.0	290.0	480.0

b) Impact evaluated on present packaging – MSO

i. Present packaging of MSO with approximate consumer payout

Pack Name	Price (Rs.)	# Channels	# FTA Channels	# Pay Channels	Avg. Price / Pay Channel
Basic Entry Pack	250.0	230	110	120	2.1
Premium Pack	320.0	270	115	155	2.1

ii. Assuming average price per pay channel and number of channels remaining same, consumer payout increases significantly

Pack Name	# FTA Channels	# Pay Channels	Avg. Price / Pay Ch.	Rental	Addl. Rental	Pay Ch. Cost	Total Cost
Basic Entry Pack	110	120	2.1	130.0	120.0	250.0	500.0
Premium Pack	115	155	2.1	130.0	140.0	320.0	590.0

iii. Otherwise, number of pay channels in the packs reduces significantly

Pack Name	# FTA Ch.	# Pay Ch.	Avg. Price / Pay Ch.	Rental	Addl. Rental	Pay Ch. Cost	Total Cost
Basic Entry Pack	68	57	2.1	130.0	20.0	120.0	250.0
Premium Pack	79	71	2.1	130.0	40.0	150.0	320.0

(2) Sampling:

Consumer does not watch all programs of a particular channel. Nor does the program preferences remain static in nature. Depending on the program content, the consumer switches his preference and watches different programs on different channels in the course of time. Also, the absence of substitutes of channels available with the consumers will limit his chances to sample new content.

The Draft Tariff Order proceeds with the assumption that the consumer wants to access a limited number of channels which, we humbly submit, is an erroneous assumption. Today consumer samples various channels across genres and decides to spend significant time on the content of his choice. Therefore, 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 recommended model since the option of sampling in the true sense is not being given to the consumers.

(3) Diversity

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 forcing an *a-la-carte* mandate and making bouquets unattractive, this strength will be significantly diluted leading to the survival of only fewer larger channels.

SECTION III

ADVERSE IMPACT ON BROADCASTERS' REVENUES

(1) Assured higher share of revenue for DPO, at the expense of Broadcasters who are content owners

We would like to highlight the pricing mechanics for any consumer products:

a) Manufacturers decide the product price (MRP)
b) Distributors get a percentage of MRP as distribution fees, he does not get a fixed revenue
c) Distributors can give discounts maximum to the extent of his margins
d) Distributors get a reasonable margin which can vary from 15% - 20%

In the proposed Draft Tariff Order, if we compare with the above mechanics:

a) While the manufacturer (Broadcaster) decides the MRP, the retail price is decided by the distributor (DPO) who can give any amount of discounts to the consumers
b) DPO gets a minimum assured revenue or Rs. 130 irrespective of any product consumed
c) DPO is free to discount a channel, rendering MRP meaningless
d) Distributors net share is considerably high

We have illustrated ARPU distribution amongst stakeholders with the following assumptions:

i. Average price per pay channel = Rs. 3.00 (similar to the present scenario explained above)
ii. DPO's distribution fee at 20% of Subscription revenue
iii. On an average 90% of the total channels offered by the DPO will attain subscriber base of 5-10% (i.e. carriage fee of 15 paisa per subscriber) of the respective target market. The average size of the target markets is further assumed to be 40% of the DPO's universe
iv. MSO: LCO share assumed to be 55:45

		Scenario I	Scenario II
	Total Channels Offered by network	300	300
	# DD Channels mandatorily subscribed	26	26
	# FTA Channels subscribed by customer	74	44
	# Pay Channels subscribed by customer	0	30
	Total Channels subscribed by customer	**100**	**100**
(A)	Fixed Rental Amount (Rs.)	130.00	130.00
(B)	Additional Rental Amount (Rs.)	-	-
(C)	Retail Price Subscription (Rs.) [@ Rs. 3]	-	90.00
(D = A+B+C)	**Consumer Payout / ARPU**	**130.00**	**220.00**
	Total Consumer payout (incl. service tax)*	156	264
(E)	DPO's Distribution Fee (@20%) (Rs.)	-	18.00
(F)	Carriage (Rs.) (90% ch., 40% subs, 15 paisa)	14.80	14.80
(G = D+E+F)	**DPO Share (Rs.)**	**144.80**	**162.80**
	MSO Share (Rs.) (@ 55%)	86.30	96.20
	LCO Share (Rs.) (@ 45%)	58.50	66.60
(H = C-E - F)	**Broadcaster Net Share (Rs.)**	**-14.80**	**57.20**
	Consumer ARPU	**130.00**	**220.00**
(I = G/D)	**DPO % Share**	**111%**	**74%**
	MSO % Share (@ 55%)	66%	44%
	LCO % Share (@ 45%)	45%	30%
(J = H/D)	**Broadcaster Net % Share**	**-11%**	**26%**

*In addition the Entertainment Tax imposed by various State Governments is also levied.

India being an extremely price sensitive market, most of the subscribers are expected to choose channels in a manner which reduces the average consumer payout. As illustrated in the table above, the net share of Broadcasters in the already reduced ARPU will fall drastically.
It is worth noting that DPO's revenue per subscriber has been safeguarded. There is no major incentive for the DPOs to promote channels on its platforms and can very well promote its own platform services which may act as a substitute for genres like movies, music etc. It is pertinent to point out that all the DTH operators as well as MSOs are offering substantial number of platform services which in fact are nothing but their own channels. All new channels will be totally unviable as they will be left completely at the mercy of the DPOs.

In the present model, DPO is assured of multiple revenue streams such as – Distribution fees, Rental fees, Carriage charges, Placement fees and

Marketing fees. Since the Draft proposes to charge rentals to the consumer purportedly for access and ROI for capacity enhancements, it completely obviates the need to charge carriage from the broadcasters for the very same purposes.

In light of the above, the Broadcasters' subscription and advertisement revenues will reduce significantly leading to closure of many channels, which in-turn will adversely impact the Television and Broadcasting ecosystem and growth.

(2) (i) <u>Marketing and Placement Fee</u>

While in the Draft Interconnection Regulations, the Authority has prescribed a formula for deriving carriage fee, placement and marketing fee have been kept outside the ambit and left for mutual negotiation. We would like to highlight that this defeats the purpose of achieving transparency and results in possible discriminatory practices. DPOs could misuse this flexibility in negotiating any amount in the name of marketing and placement.

The whole purpose of bringing carriage fee under regulatory ambit would get defeated as DPO would have carte blanche to demand carriage under the guise of placement & marketing fee. This would create a back door entry for packaging and side-deals. DPO would charge hefty fees for desired placement/packaging of channels from the Broadcasters and mutual negotiation would create non-transparent and unequal interconnection arrangements between the stakeholders and would have potential to distort the market.

In view of the above, we strongly recommend to bring placement fee and marketing fee also under the ambit of the regulation. **We propose that placement fee and marketing fee to be subsumed in the various discount parameters of the Broadcasters, which would be capped at 15% and transparently disclosed in the RIO.**

In the alternative, it is suggested that the LCN line-ups too be regulated as without this the DPOs may discriminate few Broadcasters. There should be fair rules to decide the LCN lineup. One of the parameters that can be considered is the average comparative ratings of a channel in last 1 year as reported by BARC. **Channels having higher ratings will be placed at the top of LCNs allocated to a particular genre of channels. LCNs once allotted will not be changed for a period of 1 year after which a similar exercise will be carried out to determine LCNs for next 1 year.** This will encourage Broadcasters to provide better content to the viewers while avoiding any additional payment to the DPOs. This would also make the LCN allocation entirely merit-based.

(ii) <u>Clarification on Carriage Fees for HD channels:</u>

It may be clarified by TRAI that for calculating carriage fee for HD channel, only HD sub-base of a DPO in the target markets as declared by the Broadcaster should be considered. As HD channels' consumption is still comparatively low considering the total C&S subscriber base, each HD channel would invariably end up paying carriage fee to the tune of double rate for the entire sub-base of a DPO in the relevant target markets, regardless of the fact that the consumers may or may not even have HD set top boxes. Therefore, it would be imperative to consider only respective DPO's HD sub-base in the relevant target market while calculating the carriage fee. For clarification, HD sub-base can be considered as set of customers having subscribed to at least one Pay/FTA HD channel. Also, we propose that the Carriage deals and subscription deals be co-terminus.

(iii) <u>Other issues relating to HD Channels</u>

The current distribution models of DTH as well as MSOs are today centered around giving a large package of channels but at significant discount to the A-La-Carte prices. For example, For an Ultra Pack (Tata Sky) with 250+ SD channels, the pack price is Rs 441.75, and the HD access fees (where all channels available in SD which have HD versions can be seen in HD) is only Rs 145.75 per month and Second STB access fee for the whole pack is Rs 200 per month.

The subscription packs from other providers are similar in nature. It is thus clear that HD channels (about 50 in Number) can be subscribed to by paying only Rs 3 per channel extra per month. Now the question is why Tata Sky would like to take this advantage away from customers?

If a tariff modelling is done where 50 HD channels are subscribed to a-la-carte at Rs 25 per channel per month, it will cost customers Rs 1250 per month instead of Rs 145.75 charged now (by Tata Sky). Even with a discount of 25%, It will still cost Rs 938/-.

Hence, we are unable to agree to the TRAI prohibiting the discounting of tariffs in bouquets or in other ways which benefits the customer. It needs to be emphasized that tariff regulations once in force will be applicable for extended periods, till modified, and HD channels will increase in number. An HD access fee of say Rs 150 for all channels is much more customer friendly than a-la-Carte pack of 50 or more HD channels.

The TRAI is well aware that there is a very steep growth in the number of HDTV channels coinciding with the flat panel HDTVs being sold in millions and regional HDTV channels being launched by every major broadcaster. Most of the HD channels have had a very low viewership in the past but the situation is changing now towards increasing TRPs and advertising at least in the urban markets though we see this extending to rural markets in the future. At present DTH platforms devote nearly 50% of their platform capacity to HD channels against 5% TRPs enjoyed by such HD channels. This is only for brand differentiation and investment in future which prompts the DTH platforms to carry HD channels. Moreover 10% of top 400 channels (i.e. 40 channels) have 80% of the measured TRPs (See table).

	BARC Ratings of SD and HD Channels with same content						
		HSM Urban 4+		HSM 4+ U+R		HSM Rural 4+	
Genre	**Channel**	**Wk 35**	**Wk 36**	**Wk 35**	**Wk 36**	**Wk 35**	**Wk 36**
	STAR Plus	225.6	221	168.3	164.3	111.4	108
	STAR Plus HD	3.6	3.5	2.1	2	0.6	0.6
	Colors	163.5	174.2	118.8	127.4	74.3	81
	Colors HD	2.3	2.6	1.5	1.6	0.7	0.5
	Sony Entertainment Television	121	117.9	83.3	84.2	45.9	50.7
Hindi GEC HD	Sony Entertainment Television HD	2.3	2.4	1.4	1.5	0.4	0.6
	Life Ok	118.9	119.5	91	91.1	63.3	62.9
	Life Ok HD	1.8	1.5	1.3	1	0.8	0.6
	Zee TV	151.5	144.3	132.1	127.9	112.8	111.5
	Zee TV HD	1.7	1.4	1.1	0.9	0.4	0.4
	&TV	70.6	67.4	47.8	47.2	25.3	27
	&TV HD	1.2	1.1	0.7	0.6	0.2	0.2

The position with movie channels is similar:

	BARC Ratings of SD and HD Channels with similar content						
		HSM Urban 4+		HSM 4+ U+R		HSM Rural 4+	
Genre	**Channel**	**Wk 35**	**Wk 36**	**Wk 35**	**Wk 36**	**Wk 35**	**Wk 36**
	STAR Gold	91.4	107.2	76.3	84.4	61.4	61.8
Hindi Movie HD	STAR Gold HD	1.3	1.8	1.3	1.3	1.3	0.8
	Zee Cinema	92	87.3	79.1	75.9	66.2	64.5
	Zee Cinema HD	1	1	0.8	0.9	0.7	0.8
	Sony MAX	109.5	112.9	91.6	95.1	73.8	77.5
	Sony Max HD	0.8	0.9	0.6	0.8	0.5	0.7
	&pictures	54.5	55.9	44	44.6	33.6	33.5
	&pictures HD	0.8	0.6	1	1	1.3	1.4

In order to increase viewership, it is essential that there be a discounting mechanism. Thus, the limit on discounting sought to be introduced by TRAI is anti-consumer as is quite apparent from above.

(3) Adverse impact on Advertisement Revenue

The Authority has made a provision that the broadcasters must also file the Advertisement revenue of each channel. If the view of the TRAI is that channels which have to pay high carriage fees which is not made up by subscription revenues will be able to make it up with advertisement revenues, the same is unlikely to hold true. The pattern of advertisement revenues is such that the top 4-5 channels have 80% of the network advertisement revenues. The channels lower down in the line barely have any advertisement revenue.

Majority of the Advertisement-sales deals are network deals. As the broadcasters' bouquet offerings will not likely to be taken up by the consumers and are likely to be rendered almost illusory and redundant (as the consumers mostly prefer multi broadcasters' bouquet) in the new environment, the Advertisement revenues of most channels that are not flagship channels will also fall as reach of these channels will become proportionate to consumer demand.

SECTION IV

ISSUES PERTAINING TO OPERATIONS, PROCEDURES AND IMPLEMENTATION

(1) Issue of Credit Period needs to be addressed – 60+ days available to DPO to pay broadcasters

Chapter V of "Draft Telecommunication (Broadcasting And Cable Services) Interconnection (Addressable Systems) Regulations, 2016" allows a DPO fifteen days to submit the subscriber report after the completion of a calendar month, in the specified format. It is worth noting that as per proposed regulation, last subscriber counts to be obtained on 28th of a month; as against present requirement of last day of the month (30th or 31st, as the case may be). Therefore, invariably DPO would get an extended timeframe of 17-18 days to provide the subscriber reports, counting from 28th day of the previous month.

Clause 13(2) stipulates Broadcasters to generate invoice on basis of subscriber reports submitted by a DPO and also need to give DPO at least fifteen days for making the payment. To understand the logistics involved in the process, 2-3 days would be required to process the subscriber reports and generate invoices against each DPO and a further 3-4 days for invoices to reach to DPO. Thus, on an average, 5-6 days need to be factored in the entire process. Post that, a DPO would have minimum 15 days' time to make the payment, against which the services have been enjoyed in the preceding month. Assuming DPO collecting payments from consumers in prepaid mode, the effective credit period would be:

i. 30 days (of the month in which service have been provided) +
ii. 15 days (to submit reports after completion of the month) +
iii. 5 days (of logistics for invoicing and courier) +
iv. 15 days (time to make payment)

i.e. 65+ days from the date of start of providing the service and collection of payment from the subscribers.

A robust SMS does not require 15 days for generating reports. Also, since DPO to generate subscriber count by 28th of a month, the regulation should stipulate making the monthly report available allowing maximum 7 days of processing time which should be strictly enforced. We recommend DPO to provide subscriber report in the prescribed format latest by 5th day of the immediately succeeding month to the Broadcasters.

Moreover, if the DPO is collecting money on a prepaid basis, there is no reason for extending such a large credit period to DPO. In such a scenario the Broadcasters should be allowed to raise provisional invoice every month on the 5th day based on last month's report. The invoices can be reconciled in the following month based on the actual subscriber report received from DPO.

DPO should be required to make payments within 15 days of receiving the provisional/ actual invoice, as the case may be.

(2) <u>Obligation on Broadcasters to specify arrears in the invoices and Broadcasters rights thereto</u>

In the Draft Interconnect Regulations, the Authority has mandated that Broadcasters shall have no claim on any arrear amount which has not been specified by it in the immediate next three consecutive invoices issued after the due date for the invoice to which the arrears pertain.

While mandating this provision, we believe that the Authority has not appreciated the fact that this would be challenging especially in view of non-receipt of subscriber reports on time. Hence we suggest that there should not be any such provision. Anyways there is a law of limitation which prescribes a period of 3 years to recover the legal dues payable by one party to the other.

(3) <u>Maximum discount on MRP not specified for Retail Price</u>

In the proposed model there is a discount cap (15% + 20%) at the wholesale level (MRP).

However, the DPO has been provided freedom to declare retail prices within the cap of MRP declared by the Broadcaster. Therefore, it is quite likely that the DPO can provide a 40% discount on the same channels to its consumers whereas TRAI is prohibiting the Broadcasters from providing the same discount to the consumers. This defies economic logic.

This will result in different retail prices for the same channel in the same Geographical Area by different DPOs, thereby resulting in discrimination at consumer level and defeating the purpose of MRP stipulations.

Under the earlier regulations, pricing was on a B2B basis. Therefore, a-la-carte prices as well as the bouquet prices of channels were from broadcaster to the DPO. In such a situation, TRAI has made observations that if there is a huge difference between the sum of a-la-carte prices of individual channels and the bouquet of such channels, then pricing is illusory.

In the new MRP model, pricing is on a B2C basis which means Broadcasters declare MRP of the channels for the consumers and DPOs get a distribution fees which is 20% of the MRP. In this scenario, there is no reason for providing a restriction between the a-la-carte prices and the bouquet prices. All consumers have complete choice of a-la-carte channels and that too within the ceiling stipulated by TRAI for various genres. If Broadcasters make certain bouquets where the pricing is say at a discount of 50% to the sum of a-la-carte, it is an additional option for the consumers and would be a very positive consumer-friendly option.

(4) <u>DD Freedish offerings is creating non-level playing field</u>

While one set of DPOs (MSOs, DTH and HITS) are regulated, DD Freedish DTH service is kept outside the ambit of the Draft Tariff Order as it is a non-addressable platform. At present the Direct-to-Home

(DTH) services of Doordarshan is offering over 100+ channels for which no subscription is required to pay by the consumers. In other words, it is free. However, a consumer would need to pay an amount of Rs.130/- for 100 FTA channels to the DPOs. This creates a non-level playing field and likely to result in discrimination amongst the same set of consumers.

Therefore, all platforms including DD Freedish should come under the regulations.

(5) <u>Implementation challenges in DAS-III and DAS-IV areas continue to remain</u>

The proposed regime is a paradigm shift from current market realities. Therefore, significant time will be required for all the stakeholders including consumers to switch over to the new regime. Moreover, the DAS Phase-III implementation is not yet complete and the DAS Phase-IV implementation 'on ground' is likely to take another six months post the sun-set date of 31st December 2016.

This entire regime is based on the assumption that Digitalization shall be fully implemented by 1st April 2017 which is highly unlikely. Also DAS Phase-IV is the largely fragmented and most challenging market compared to the other phases. It is therefore suggested that any new regulatory regime be introduced only after June 2017 with a six-month transition time to ensure smooth switch over i.e. with effect from 1.1.2018. Various other implementation challenges of the proposed model have been separately highlighted in **Annexure - B** attached hereto.

(6) <u>Commercial Subscriber definition</u>

As per definition of subscribers in the Consultation on Draft Tariff Order:

> "Subscriber" means a person who receives television broadcasting services, provided by a service provider, at a place indicated by such person without further transmitting it to any other person and each set top box located at such place, for receiving the subscribed television broadcasting services from the service provider, shall constitute one subscriber".

As per the present regulations (specifically, clause 2 (o) and 2(t) of The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 dated

30th April 2012 and in Clause 2 (oa) of The Telecommunication (Broadcasting And Cable) Services (Fourth) (Addressable Systems) Tariff (Fifth Amendment) Order, 2015 dated 8th September 2015, the above definition of subscribers was qualified to include "Ordinary Subscriber"(s) and "Commercial Subscriber"(s) wherein, Ordinary Subscriber meant any subscriber who receives a programming service from the Service Provider directly and uses the same for his domestic purposes and Commercial Subscriber meant a subscriber who causes the signals of TV channels to be heard or seen by any person for a specific sum of money to be paid by such person.

The above definition of Commercial Subscriber(s) is awaiting directions/orders in Appeal No. 4 & 5 (C) of 2015 before TDSAT, Civil Appeal No. 3728 of 2015 before Supreme Court of India. There is also a Writ Petition No. 5161 of 2014 before Delhi High Court.

One of the stated objectives of the Draft Tariff Order is to ensure that Subscribers have adequate choice in the broadcast TV services while they are also protected against irrational tariff structures and price hikes.

Viewers going to these commercial establishments (hotels, restaurants, bars etc.) pay a heavy premium for services that are available at much cheaper prices outside. One of the factors which influences these viewers to pay a premium is the broadcast services available in these places. For example, in case of sports bars, the viewer agrees to pay more because of the sports matches being broadcast in these places. In case of 4-star and 5-star hotels too, the viewer pays a premium for all services available in these places.

The broadcasters should be entitled to charge differential commercial tariff. TRAI has already recommended that the HD channels be priced at three times the MRP of SD channels. We strongly recommend that similar to pricing for HD channels, broadcasters be allowed to price pay channels for commercial establishments at three times the MRPs for Ordinary Subscribers. Since the present Tariff Order is completely silent on the issue of Commercial subscribers, it is suggested that either the same be incorporated in the final Tariff Order or a supplementary consultation paper be immediately issued and the final Tariff order should be notified only after incorporating the separate Commercial Tariff for specified categories of Commercial establishments.

(7) <u>Technological constraints in implementing consumer choices – Consumer choice will be illusory</u>

We believe the proposed model envisages delivery of channels based on choice of the consumers (both FTA and Pay) which is likely to result in countless combination which we believe are not supported by the technology and infrastructure of the DPOs (both MSOs and DTH).

It may not be possible to practically implement the same and the choice mechanism so stipulated would only be illusory.

SECTION V

ISSUES NOT ADDRESSED

The Draft Tariff Order is silent on major issues affecting the current ecosystem which hampers flow of revenues to the Broadcasters. Issues listed below should be addressed prior to the Notification and implementation of the Draft Tariff Order:

(1) **<u>Transparency in subscriber declarations</u>**: Stringent penalties be stipulated for violation of various obligations including discrepancies in subscriber declaration which should *inter-alia* also include suspension / cancellation of DPO's License in case of deliberate and willful default.

(2) **<u>Quality of Services</u>**: There is no teeth to get any of the Quality of Service (QoS) mandates implemented on the ground as no effective penal consequences/financial disincentives have been prescribed. The same should be reviewed to provide for effective deterrents so as to ensure the compliance of respective obligations by various stakeholders.

(3) <u>Platform Services offered by DPOs should be brought under Regulation:</u>

Currently the platform services offered by DPOs are not covered under Regulation. These platform services are competing with Broadcasters channels and in fact act as substitutes for Broadcaster channels.

Today, almost every DPO in the country provide platform services for movies, music, other entertainment related programs which are being promoted as alternative content. DPOs have platform services like Active Music, Active Food, Dance Studio, Miniplex etc. for which the price ranges from Rs. 10 per month to Rs. 55 per month. Various DPOs offer more than 40 platform services to their customers. These platform services are nothing but alternatives to content offered by Broadcasters. Lack of Regulation for these platform services therefore results in non-level playing field vis-à-vis Broadcasters which are forced to keep their prices within the genre cap.

While the Authority have regulated all aspects of pricing, distribution fee, carriage, bundling for Broadcasters' channels, regulations related pricing & revenue distribution of Platform Services have been completely left out.

We strongly recommend that the Authority should come out with regulations for Platform Services to ensure the level playing field.

SECTION VI

SUMMARY RECOMMENDATIONS FROM ZEEL

(1) Timelines for moving to new regime

This entire regime is based on the assumption that Digitalization shall be fully implemented by 1st April 2017 which is highly unlikely. Also DAS Phase-IV is the largely fragmented and most challenging market compared to the other phases. Moreover, the new regulatory regime proposes a paradigm shift from the existing mechanism and sufficient time would be required by the stakeholders to switch over and conclude contracts as per new regime. It is therefore suggested that any new regulatory regime be introduced only after June 2017 with a six-month transition time to ensure smooth switch over i.e. with effect from 1.1.2018.

(2) Restriction on relationship between a-la-carte and bouquet prices should be removed

Under the earlier regulations, pricing was on a B2B basis. Therefore, a-la-carte prices as well as the bouquet prices of channels were from broadcaster to the DPO. In such a situation, TRAI has made observations that if there is a huge difference between the sum of a-la-carte prices of individual channels and the bouquet of such channels, then pricing is illusory.

In the new MRP model, pricing is on a B2C basis which means Broadcasters declare MRP of the channels for the consumers and DPOs get a distribution fees which is 20% of the MRP. In this scenario, there is no reasoning/rationale for providing a restriction vis-à-vis the relationship between the a-la-carte prices and the bouquet prices. All consumers have complete choice of a-la-carte channels. If Broadcasters make certain bouquets where the pricing is say at a discount of 40% to the sum of a-la-carte, it is an additional option for the consumers and would be a very positive consumer-friendly option.

Broadcaster should have right for bundling along with the right to decide the price. It is ultimately consumer-friendly move. E.g., a Broadcaster has 5 channels – Channel A, Channel B, Channel C, Channel D and Channel E. Each channel is priced at Rs. 10. Broadcaster also provides a bouquet comprising 3 popular channels – Channel A, Channel B & Channel C priced at Rs. 18. Broadcaster should have complete freedom to create another bouquet comprising all 5 channels priced at Rs. 20.

In the above illustration, a consumer will anyway have options to select individual channels and also bouquet comprising popular channels at Rs. 18. Additionally, consumer will also have a 3rd option to select all 5 channels at Rs. 20. This 3rd option not only gives consumers a better value for money offering (in the bouquet of 3 channels, price per channel comes at Rs. 6, while in the bouquet of 5 channels, price per channels comes down to Rs. 4) but also gives Broadcasters a chance for sampling less popular channels. It is worth noting that, in the entire value chain the revenue for the DPOs are always secured by way of appropriate distribution fee. Hence it is unfathomable that the bundling power of the broadcasters has been significantly reduced in the new model, which does not benefit any stakeholders in the value chain.

Also cap/ceiling on a-la-carte channel MRP of various genres has been stipulated by TRAI which in the opinion of TRAI itself would offer a realistic option to consumers. Therefore, an argument that Broadcasters will keep prices of their channels high is not tenable. A-la-carte prices for the channels will always be under the prescribed guidelines from TRAI.

We do not agree with the genre-wise cap/ceiling as proposed by the Authority as we are in favour of forbearance for channel pricing, nevertheless we are going ahead with our response without prejudice to our rights and contentions.

In this context it also pertinent to point out that a consumer would always like to opt for a multi-broadcaster bouquet which is the exclusive prerogative of the DPO. In such a scenario the restriction of 15% discounting in a-la-carte bouquet relationship at the broadcasters' level renders the bouquet of individual broadcasters unattractive and in fact completely illusory. Accordingly, since in the proposed model the offerings in the form of MRP is direct to consumers, the necessary flexibility is required in the form of freedom to discount the bouquet price as per the business requirements of the broadcasters and ground realities. In fact, as pointed out hereinabove this would be extremely consumer friendly and would provide additional meaningful options to the consumers.

Therefore, we suggest to amend the regulation to the extent of **– retail price of a bouquet of pay channels shall not be less than fifty percent of the sum of retail prices of the a-la-carte pay channels forming part of the bouquet.** Same flexibility can be given to the DPOs also.

(3) <u>Changes suggested in the basic Rental, Additional Rental Amount</u>

There should be no fixed minimum rental. In this context, we would like to draw an analogy with the Retail Industry:

a) Any store selling products of manufacturers do not charge its consumers for coming into the store. E.g., there is no entry fee for shopping in hyper stores likes Big Bazaar or D-Mart etc. or any local kirana shops for purchasing.

b) Shopkeepers earn revenues only from the margins from the MRP decided by the manufacturers.

c) There is no fixed assured revenue for retail stores, i.e. customers having once entered the stores, are not obligated to pay any amount if they do not wish to purchase, and pay only for the products they purchase.

d) This acts like an incentive for the stores to attract consumers to enter into their stores and purchase for significant amounts, so that retail stores can conduct their business.

However, in the proposed model, customers are required to pay for DPO's capacity (as against in retail stores, consumers do not pay for the real estate and infrastructure of the retailers). On top of that, the prescribed maximum amount of Rs. 130 is so high for price sensitive consumers, that it acts as deterrent for subscription of pay channels.

Taking cue from the practices in other stabilized industries, we are of the opinion that basic Rental amount should not be charged from the consumers. DPOs are already eligible for carriage fees for less popular channels and distribution fee from popular channels' subscription, hence it should meet their business requirements.

However, as the entire country is moving towards complete digitization, we understand that there may be certain capex requirements for the DPOs. In this context it is pertinent to point out that no new infrastructure has been laid down by the DPOs exclusively for digital transmission. In fact, the same cable network infrastructure (optical fiber) which an MSO was already using the delivering the channels in analogue regime, is being used in digital regime as well. Further the headend and the cable infrastructure have also been depreciated because of the usages over a period of time. Therefore, basic rental can be prescribed as maximum of Rs. 75 for providing access to 200 channels to a consumer.

Also we believe that, additional rental amount should not be there in vogue. The logic being, once a DPO commits certain capacity to cater to the consumers' demands, there is no difference in bandwidth cost utilized by the consumers subscribing 200 or 300 channels. In other words, the rental amount which is supposed to meet bandwidth costs for DPO, does not correlate with the different consumers subscribing different volumes/quantity of channels. As consumers' viewing choice is heterogeneous in nature, a DPO plans for increasing capacity only to meet variety of consumers' needs. Hence, additional rental amount should be nil.

As in general any DPO would have 400-500 channel carrying capacity and an average consumer today subscribes to 200 channels, **Authority may consider for additional rental to be levied only after 200 channels**.

(4) <u>Changes suggested in Distribution Fee</u>

In the proposed Draft Interconnect Regulations, the Authority has prescribed Broadcaster to offer to a distributor, a minimum of 20% of the MRP of its pay channels or bouquets of pay channels as distribution fee. In our view, the amount of 20% of MRP is very high and it should be reduced to a minimum of 10%.

(5) Changes suggested in Carriage Fee, Placement Fee & Marketing Fee

We would like to highlight the fact that a channel may not be meant for entire subscriber base for a particular state, defined as Geographical areas in the Draft Interconnect Regulations. A channel may be targeting only the subscribers in major towns and may not be the entire state including rural parts. However, as per the regulations, the channel would be required to pay maximum of 20 paisa carriage fee to the DPO for the purpose of re-distribution in the entire state. **In this light, we propose the maximum carriage to be reduced to 10 paisa per SD channel and 20 paisa per HD channel in the target market**, with the rate of carriage fee reducing as per stipulations given in Schedule I of the Draft Interconnect Regulations.

In some genres, the target market is very limited (may be to a particular city only). For example, English language channels cater to English-speaking population only. They might have a target market of a few metros only. It would be meaningless for them to pay carriage for Maharashtra if they want to target only Mumbai. It is recommended that for purpose calculating **carriage fee for certain sets of channels (e.g., English language GEC, Movies, News etc.), target market should be allowed to be further subdivided into cities of Geographical Areas.**

To calculate carriage fee for HD channel, only HD sub-base of a DPO in the target markets as declared by the Broadcaster should be considered. For clarification, HD sub-base can be considered as set of customers having subscribed to at least one Pay/FTA HD channel.

We strongly recommend to bring placement fee and marketing fee also under the ambit of the regulation. **We propose that placement fee and marketing fee to be subsumed in the various discount parameters of the Broadcasters, which would be capped at 15% and transparently disclosed in the RIO.**

Also, it is essential that strict provisions be made in the regulations to prevent any commercial understanding between the Broadcasters and the DPOs other that those stipulated in the Draft Tariff Order regarding the subscription fee and in the Interconnect regulation regarding the carriage fee. This will prevent the avoidable situation wherein the DPO may force a Broadcaster to commit certain advertising/promotional spends in exchange for better placement or carriage in the DPO's retail packages.

It is suggested that the LCN line-ups too be regulated as without this the DPOs may discriminate few Broadcasters. There should be fair rules to decide the LCN lineup. One of the parameters that can be considered is the average comparative ratings of a channel in last 1 year as reported by BARC. **Channels having higher ratings will be placed at the top of LCNs allocated to a particular genre of channels. LCNs once allotted will not be changed for a period of 1 year after which a similar exercise will be carried out to determine LCNs for next 1 year.**

(6) Changes suggested in regulation related to the Subscriber Reports

a) Time of generation of report should be from 7 PM to 9.30 PM as against 7 PM to 11 PM proposed in regulation.
b) DPO should provide subscriber report in the prescribed format on the 5th day of the immediately succeeding month to the Broadcasters
c) There should be a penal provision equivalent to 20% of monthly License fee for each month delay in submitting subscriber report.
d) If the DPO is collecting money on a prepaid basis, Broadcasters should be allowed to raise provisional invoice every month by 5th day of the month based on last month's report.
e) Consumer details in the SMS should incorporate pin-codes of installation addresses. This will help in accurate capturing of Geographical Area based details. The SMS report format for subscription should also have Geographical Area wise subscriber counts.

(7) Security Deposit

The Draft Interconnect Regulations have included provision of Security Deposit in the arrangement between an MSO & LCO. However, it is pertinent to note that similar provisions have been missing in case of interconnect arrangements between a Broadcaster and a DPO. We would like to stress upon inclusion of security deposit/Bank Guarantee provision while a DPO entering into an arrangement with a Broadcaster.

Security deposit/Bank Guarantee should be equivalent of three months' subscription amount, and would be en-cashable on account of payment default by the DPO. Such security deposit if en-cashed in part or full, should be immediately replenished by the DPO to the original level in order to continue to receive the Broadcaster's channels.

(8) Changes suggested in Audit

a) Audit firm allocation for 1st Audit should be done by IBF or any Broadcaster industry body and presence of Broadcaster representative during Audit.
b) In case of any deviation found in Audit, there should be stiff penalty to the tune of 3 times of licensee fee payable as identified during Audit or in case hidden CAS/SMS is found then termination of license
c) Regulation should inter-alia provide for
    i. Field sample (STB & VC number) collection and use of same as data item during Audit
    ii. Transport Stream recording to identify numbers and version of CAS
    iii. Complete Data collection of CAS and SMS for Audit and not any filtered data
        1. Log of Package to channel mapping change from SMS and CAS
        2. Penalty and Blacklisting of CAS and SMS vendor in case of under-reporting by DPO.

The detailed changes related to CAS & SMS requirement are given in '**Annexure – A'**.

(9) Modification in appointment of Compliance Officer

DPOs having average subscribers of less than 2 lakhs have been exempted and are not required to appoint compliance officers. This will dilute the very purpose of introducing this provision. DPOs can possibly circumvent this provision by splitting the subscriber base among multiple entities. While compliance is mandatory for all service providers, the threshold of requirement to appoint a compliance officer by a DPO should be reduced from 200,000 to 50,000 customers.

(10) RIO amendment – TRAI final authority, not DPO

We observe that TRAI has created a provision enabling DPOs to raise objections on the RIO filed by any Broadcaster. And upon receiving objections, Broadcaster will need to modify its RIO in accordance with the regulations and publish the same on its website.

We would like to mention that ambit of raising objections on the RIO should lie exclusively with the Authority and no further delegation of the same should be vested in DPO. The attention in this regard is invited to various judgements of Hon'ble TDSAT including the judgment in Petition No. 44(C) of 2004 and Petition No. 40(C) of 2009 wherein it has been clearly held that the challenge to various provisions of RIO should either be before Hon'ble TDSAT or TRAI. It may be pointed out that enabling DPO to raise objection and making it obligatory on the part of broadcaster to consider and amend RIO as per those objections would introduce lot of complications in the process as multiple DPOs (DTH/MSOs) keep on raising one objection or the other and the RIO will never attain finality. In any event since the DPO can always approach TRAI/TDSAT against any alleged unreasonable clause provision and seek redressal thereof, the said provision in the Interconnect Regulation is wholly unnecessary.

(11) Prescribing Genre cap/ceiling – detrimental to growth of Broadcasters

It is pertinent to point out that input cost for any content is governed by market forces. The Authority has ignored this aspect and has come out with a mechanism to control price downstream from Broadcaster to DPOs putting several restrictions on the price of a particular channel falling in a specific genre. But there are no restrictions/regulation governing upstream whereby the cost of acquisition by the Broadcaster is regulated.

It is a common knowledge that the acquisition cost of content has gone up substantially in the last several years due to inflation and market forces. For example, cost of acquisition of a movie in 2005 which was around Rs. 1.00 crore has gone up as high as Rs. 30 - 50 crores in 2016. Likewise, cost of acquisition for sports content has also gone up exponentially but the price cap of the genre restricts the Broadcaster being able to monetize the same.

It is pertinent to point out that the Intellectual property/Copyright owner under the copyright Act is permitted and free to recover the perceived value of its content but under the TRAI Regulation/Tariff order the Broadcaster/Content owner distributing the said content through its channels is not allowed to charge the realistic market value and will be bound by the restriction of the genre cap/ceiling imposed on a particular channel prescribed by TRAI.

It is also important to take note that:

(i) Programming costs are a function of investments made by broadcasters which varies every year owing to nature of rights and production

(ii) Historical investments will be wrong yardstick for deciding future prices of the channels

(iii) Providing fixed mark-up on the programming costs would essentially control the profitability of the Broadcasters. Secondly, providing similar mark up to different broadcasters having different content would be like treating un-equals as equals and would in itself be discriminatory.

In view of the above, it is recommended that there should not be any cap/ceiling on the price of a channel in a particular genre and forbearance should be permitted for the Broadcaster so as to price their channels as per market dynamics.

(12) <u>To fix Sunset date for introducing forbearance for pricing at Wholesale and Retail level</u>

TRAI itself in its Recommendations dated 1/10/2004 has observed

> *"It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through effective competition. Therefore, as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."*

It is our submission that now the entire country is moving towards addressability. The addressable systems are not only transparent but also offer meaningful choice of channels – both in the form of a-la carte as well as bouquet to the consumers. In other words, a consumer has been empowered to choose the channels which it wishes to watch. In addition, the capacity constraints which were prevalent in the analogue regime have also disappeared with the digitalization of cable networks.

In view of this position, it is suggested that TRAI should fix a definite Sunset date for introducing forbearance for pricing at Wholesale and Retail level. This is important since 12 Years have elapsed after TRAI's initial recommendation made on 1/10/2004 with regards to forbearance. It would be beneficial for the overall growth of the entire value chain including Investors if a sunset date for forbearance is prescribed in the final Tariff Order.

In our view the Sunset date for introducing forbearance should be One (1) year from the date of implementation of the Final Tariff Order.

CONCLUSION

De-growth of the Television & Broadcasting ecosystem

It is to be noted that there is enough competition among the broadcasters that should encourage forbearance on retail and wholesale prices. Cost of producing content is increasing day-by-day and is increasing at rates more that the inflation rates. Therefore, we strongly recommend forbearance on pricing of channels.

Also, consumers may not get to view channels of their choice as the DPO may not air that channel for want of sufficient subscriber base or due to not having sufficient capacity. In most cases, the DPOs will not have sufficient capacity to air all 850 odd channels on their platform as it will be economically unfeasible for them.

As outlined by us, the customers will be the biggest losers as today they receive nearly 500 channels including HD channels in prices ranging from Rs 500-700 which will be denied to them. Subscriptions for such packages may exceed Rs 2000.

Most Channels will be impacted as while they are “Pay Channels” today and do not pay any carriage fees, they will need to commence doing so in future when the Tariff order is implemented. Moreover, the level of carriage fees is so high that most channels specially HD channels will be unable to afford it. Therefore, we strongly recommend to reduce the carriage fee rate.

A large number of issues have been left unaddressed. These include Platform services, positioning of DD Freedish as it expands, Clone Channels, additional STBs in the home, and a host of others.

If this Tariff Order is implemented in the proposed form it will result in a massive de-growth of the entire Television and Broadcasting value chain which will equally impact Broadcasters, DPOs and consumers. On one hand Broadcasters would be forced to shut down several channels due to significant reduction in advertising revenue as well as subscription revenues, on the other hand DPOs ability to grow ARPUs will get restricted due to lack of variety of content. It is evident that with fewer number of channels consumers would suffer the most as they will be deprived of the variety and quality of content available at present. We propose that the TRAI should not implement the same without addressing the issues raised.

We apprehend that the proposed regime would result in closure of various channels as sampling and access to variety of content will be severely restricted which is critical for innovative content. Therefore, it is recommended that bundling should be allowed with a higher discount of 50% on sum of ala carte rate. Similarly, distribution fee should be rationalized to 10% of MRP and maximum rental to be charged by the DPO for a basic tier should be reduced to Rs. 75/- for 200 channels.

The proposed regime does not address the issue of viewership and the resultant adverse impact on advertising revenues which is also a critical element for monetizing the investment made in creating content.

We further submit that this response is being furnished without prejudice to our rights and contentions, with a specific request to you to give us a convenient time and date to meet you in person and explain our point of view expressed in our written response.

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ANNEXURE – A

(A) Conditional Access System (CAS) & Subscriber Management System (SMS):

1. The distributor of television channels shall ensure that the current version of the Conditional Access System (CAS), deployed by it, do not have any history of hacking.

    Explanation*: A written declaration available with the distributor from the CAS vendor, in this regard, shall be construed as compliance of this requirement.*

2. The SMS shall be independently capable of generating, recording, and maintaining logs, for the period of at least immediate preceding two consecutive years, corresponding to each command executed in the SMS including but not limited to activation and deactivation commands.

3. It shall not be possible to alter the data and logs recorded in the CAS and the SMS.

4. The distributor of television channels shall validate that the CAS, deployed by it, do not have facility to activate and deactivate a Set Top Box (STB) directly from the CAS terminal. All activation and deactivation of STBs shall be done with the commands of the SMS.

5. The SMS and the CAS should be integrated in such a manner that activation and deactivation of STB happen simultaneously in both the systems.

    Explanation*: Necessary and sufficient methods shall be put in place so that each activation and deactivation of STBs is reflected in the reports generated from the SMS and the CAS terminals.*

6. The distributor of television channels shall validate that the CAS has the capability of upgrading set top boxes over-the-air (OTA), so that the connected set top boxes can be upgraded in the event of hacking.

7. The fingerprinting should not get invalidated by use of any device or software.

8. The CAS and the SMS should be able to activate or deactivate services or STBs of at least 50% of the subscriber base of the distributor within 24 hours.

9. The STB and Viewing Card (VC) shall be paired from the SMS to ensure security of the content.

10. The CAS and SMS should be capable of individually addressing subscribers, for the purpose of generating the reports, on channel by channel and STB by STB basis.

11. The SMS should be computerized and capable of recording the vital information and data concerning the subscribers such as:

    a. Unique Customer Id
    b. Subscription Contract number
    c. Name of the subscriber
    d. Billing Address
    e. Installation Address
    f. Landline telephone number
    g. Mobile telephone number
    h. Email id
    i. Channel(s), bouquet(s) and services subscribed
    j. Unique STB Number
    k. Unique VC Number.

12. The SMS should be capable of:

    a. Viewing and printing of historical data in terms of the activations and the deactivations of STBs.
    b. Locating each and every STB and VC installed.
    c. Generating historical data of changes in the subscriptions for each subscriber and the corresponding source of requests made by the subscriber.

13. The SMS should be capable of generating reports, at any desired time about:

    i. The total number of registered subscribers.
    ii. The total number of active subscribers.
    iii. The total number of temporary suspended subscribers.
    iv. The total number of deactivated subscribers.
    v. List of blacklisted STBs in the system.
    vi. Channel(s) and bouquet(s) wise Monthly Subscription Report in the prescribed format.
    vii. The names of the channels forming part of each bouquet.
    viii. The total number of active subscribers subscribing to a particular channel or bouquet at a given time.

ix. The name of a-la carte channel(s) and bouquet(s) subscribed by a subscriber.
x. The ageing report for subscription of a particular channel or bouquet.

14. The CAS shall be independently capable of generating, recording, and maintaining logs, for the period of at least immediate preceding two consecutive years, corresponding to each command executed in the CAS including but not limited to activation and deactivation commands issued by the SMS.

15. It shall be possible to generate the following reports from the logs of the CAS:

    a. STB-VC Pairing / De-Pairing
    b. STB Activation / De-activation
    c. Channels Assignment to STB
    d. Report of the activations or the deactivations of a particular channel for a given period.

16. The SMS shall be capable of generating bills for each subscriber with itemized details such as the number of channels subscribed, the rental amount for the channels subscribed, the rental amount for the customer premises equipment, charges for pay channel(s) and bouquet(s) of pay channels along with the list and retail price of corresponding pay channel(s) and bouquet(s) of pay channels, taxes etc.

17. The distributor shall ensure that the CAS & SMS vendor(s) has the technical capability in India to maintain the systems on 24x7 basis throughout the year.

18. The distributor of television channels shall declare the details of the CAS and the SMS deployed for distribution of channels. In case of deployment of any additional CAS/ SMS, the same should be notified to the broadcasters by the distributor.

19. Upon deactivation of any subscriber from the SMS, all programme/ services shall be denied to that subscriber.

20. The distributor of television channels shall preserve unedited data of the CAS and the SMS for at least 2 years.

(B) Fingerprinting:

1. The distributor of television channels shall ensure that it has systems, processes and controls in place to run finger printing at regular intervals.
2. The STB should support both visible and covert types of finger printing.
3. The finger printing should not be removable by pressing any key on the remote of STB.
4. The finger printing should be on the top most layer of the video.
5. The finger printing should be such that it can identify the unique STB number or the unique VC number.
6. The finger printing should appear on all the screens of the STB, such as menu, EPG, Settings, no content screen, and games etc.
7. The location, font color and background color of fingerprint should be changeable from head end and should be random on the viewing device.
8. The finger printing should be able to give the numbers of characters as to identify the unique STB and/or the VC.
9. The finger printing should be possible on global as well as on the individual STB basis.
10. The overt finger printing should be displayed by the distributor of television channels without any alteration with regard to the time, location, duration and frequency.
11. Scroll messaging should be only available in the lower part of the screen.
12. The STB should have a provision that finger printing is never disabled.

(C) Set Top Box (STB):

1. All STBs should have a Conditional Access System.
2. The STB should be capable of decrypting the Conditional Access messages inserted by the Head-end.

3. The STB should be capable of doing finger printing. The STB should support both Entitlement Control Message (ECM) & Entitlement Management Message (EMM) based fingerprinting.

4. The STB should be individually addressable from the Head-end.

5. The STB should be able to receive messages from the Head-end.

6. The messaging character length should be minimal 120 characters.

7. There should be provision for global messaging, group messaging and the individual STB messaging.

8. The STB should have forced messaging capability including forced finger printing display.

9. The STB must be compliant the applicable Bureau of Indian Standards.

10. The STBs should be addressable over the air to facilitate OTA software upgrade.

ANNEXURE – B

ECO SYSTEM ISSUES RELATED TO IMPLEMENTATION OF PROPOSED MODEL

i. Present Scenario - Digital Systems Not In Place:

1. Broadcasters have observed multiple entries of STBs are done in name of a particular LCO without subscriber details.

2. Pre-activated STBs are given to LCOs under single address without any details.

3. In many cases pre-activated STBs issued to the LCOs/subscribers are directly activated from the CAS and is not linked with the SMS.

4. MSOs install multiple CAS on the same feed at multiple locations & face challenges in integrating the same with their SMS. The data capturing gets compromised, huge backlogs are created which is a revenue loss to broadcasters & ex-chequer.

5. DPOs install/change additional CAS & SMS without intimation to the broadcasters.

6. DPOs do not disclose additional CAS installed so as to under-declare their correct subscriber base.

7. Historical records of subscribers, packages, channels offered etc., are not maintained by DPOs.

8. Most of cable head-ends are unable to generate subscriber reports as per the Regulations. They are heavily dependent on SMS Vendors for such support. The DPOs are not well versed with their own system, thus, ascertaining the actual subscriber base of DPO along with requisite details is a challenge.

9. EPG are poorly maintained, channels are not placed in applicable genres on the EPG. At times, EPG does not even show the correct channel listings.

10. Most of the times DPO's evade audits.

11. Subscriber reports are not provided to the broadcasters or such subscriber reports are provided after a prolonged time. The subscriber reports usually does not contain complete information, such as, package wise, city-wise, state-wise and a-la-carte basis subscriber base.

12. Further subscriber reports are prone to alterations / manipulations from SMS data base, due to which subscriber base is under-declared.

13. In many instances MSOs deliberately change their SMS before an audit is to be conducted, in order to under-declare their correct subscriber base. Factually, the past data base in maintained under the old SMS and the new SMS does not capture the old data. By changing SMS, MSOs wriggle out of their Regulatory obligations in furnishing/maintaining past records /data.

14. Transaction Logs are not maintained for each subscriber of such DPO.

ii. <u>Contact Details Of DPOs/LCOs –</u>

1. There is no manner in which a subscriber can ascertain the details/coordinates of the DPO/LCO in its area through which it can obtain signals of the channels.

2. There is no consumer friendly method adopted by a distributor of TV channels such as call centre, toll free number, dedicated e-mail, mobile application, etc. by which a subscriber can request for obtaining signals of channels.

iii. <u>Availing Broadcasting Services of DPOs/LCOs and Terms & Conditions, thereof –</u>

1. There is no standard format for Consumer Application Form devised by a DPO for subscription of channels by subscribers. Resultantly, the subscribers are ill informed about the channels contained in their subscribed package, the T&C on which the STBs have been provided to them, guarantee/warrantee for the STBs, price of channels, etc.

2. Conditions relating to return/surrender of the customer premise equipment are not prescribed by the DPOs.

3. In most cases DPOs do not get a CAF executed by a customer.

4. Pre-activated STBs are provided to subscribers without getting the CAF filled by the customer.

5. No set process is followed for supply and installation of CPE.

iv. <u>Choice of Channels –</u>

1. Choice of channel to a subscriber will continue to be a myth. Most of the MSOs/LCOs have still not introduced packaging on ground, hence

channels are made available to the subscribers on a lump-sum basis, as in the analogue regime.

2. When a subscriber approaches a DPO for signals of channels, most DPOs seldom informs the subscriber about the choices available to them pertaining to subscription of channels.

3. Most DPOs do not offer channels on a-la-carte basis.

v. <u>Billing –</u>

1. Neither invoices nor receipt of payments are being furnished to the subscribers.

2. Itemised bills containing details of rental, charges towards package(s), charges towards CPEs, etc. are not issued by DPOs to the subscribers.

3. As no itemized bills are provided to subscribers by LCO/MSO, the data capturing from the ground (Customer details/ bouquet/ a-la-carte channels subscribed) is lost. Majority of the operators do not have updated customer details available with them and these do not reflect in their SMS, thus broadcasters do not get correct picture of subscriber base & what a-la-carte channels are subscribed by consumers.

vi. <u>Customer Care / Call Centre & Complaint Redressal System–</u>

1. Most of the MSOs neither have a customer care call centre, nor do they have any complaint redressal centre to handle customer complaints. There is no time limit for redressal of complaints, hence, redressal of complaints by nodal officers/appellate authorities is far from reality.

2. Majority MSOs don't even have their own websites and if they do, they are either not updated or do not carry complete information. Hence, consumers remain always uninformed.

3. There are no checks & balances between MSO & LCO in terms of complaints received from the subscribers and their redressal mechanism. No records are maintained & no periodic audits are being held for the customer complaints by the any authority.

vii. <u>Quality of Services:</u>

1. Even if a subscriber calls directly to the MSO for the redressal of his complaint, he is being directed back to the LCO who is unaccountable for the service. Breakdown in service especially in cable, is a common phenomenon and down-time affects revenue generation across all stake holders.

2. No Nodal officers are available to check the existing QoS norms at random consumer points on the ground.

3. No trained manpower is available with LCOs / MSOs. Majority of them are semi- skilled.

viii. <u>Discontinuation of Services –</u>

1. There is no procedure adopted by a DPO for disruption of TV services, shifting of connections, disconnection of TV services, or any price protection (reduction or refunds) to subscribers.

2. Due to non-implementation of inter-operability of STBs, consumers are left with no choice but to continue with the same DPO/LCO despite receiving continuous poor services.

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