



SUN TV NETWORK LIMITED

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SUN TV COMMENTS ON THE CONSULTATION PAPER ON TARIFF ISSUES RELATED TO TV SERVICES

INTRODUCTION

1. Sun TV Network Ltd. welcomes the initiative taken by the Telecom Regulatory Authority of India ("TRAI") in releasing the Consultation Paper No. 01/2016 dated January 29, 2016 on Tariff Issues related to TV Services ("**Consultation Paper**") and seeking views of the stakeholders on issues addressed therein.
2. We agree that there is a need to examine the tariff dispensation in holistic manner in light of the emerging trends in the TV broadcasting sector and changing consumption patterns of the consumers. Additionally, a new tariff dispensation is also needed at the earliest as the tariffs for addressable systems are currently linked to the tariffs of non-addressable systems, which are likely to be extinct soon with the implementation of DAS Phase IV.

PRINCIPAL POSITION

3. It has always been the stated position of the TRAI that the price freeze is an interim measure and will be withdrawn upon (i) evidence of effective competition, and (ii) introduction of addressability. With the evidence of effective competition both at wholesale level (*with 830 private satellite channels and 35 TV channels of public service broadcaster*) and retail level (*with 60,000 Local Cable Operators, 6,000 Multi System Operators, 7 Direct-to-Home operators, 2 Headend-In-The-Sky operators and few IPTV operators*) as well as introduction of addressability (with the implementation of DAS), the TRAI must ideally withdraw price freeze and allow the market forces decide the tariffs of channels. This would also be in line with the international practices adapted in developed markets like the USA as outlined by the TRAI in the Consultation Paper. Price forbearance will not only enable the channels to find its correct price basis the demand and supply of such channels, it will also bring innovation and price competitiveness at the wholesale level. This approach will also be in line with the Government of India's intent to enhance ease of doing business in India.
4. However, if it is still unsure of successful implementation under the price forbearance regime, it may consider withdrawing the price freeze with a condition to revisit the same, at the end of the 1st year of its implementation, if there are evidences to establish that such regime has negatively impacted growth of the industry.

ALTERNATE POSITION

5. In the event the TRAI is unable to withdraw the price freeze immediately (in either of the manners suggested in paras 3 & 4 above), it may consider laying down conditions upon fulfillment of which the twin conditions will be deemed achieved and the price freeze will be withdrawn. Pending such eventuality, for the reasons suggested in response to question 1, the TRAI may consider adopting 'Flexible RIO Model' as it is a step forward towards price forbearance. However, if the TRAI still believes that the tariffs need to be regulated, it may consider adopting the following modified/alternate tariff models at the wholesale level (akin to 'Regulated RIO Model') and retail levels:





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TARIFF MODEL – WHOLESALE LEVEL

- (A) Broad contours of the Tariff Model at the wholesale level may be as under:
- (i) The TRAI to prescribe seven (7) genres, namely (i) News & Current Affairs, and (ii) Infotainment, (iii) Sports, (iv) Kids, (v) Movies, (vi) Devotional, and (vii) General Entertainment.
 - (ii) The TRAI to fix genre-wise tariff ceiling. In this regard, the TRAI to consider the maximum existing tariffs of the channels under relevant genres. Accordingly, the genre-wise tariff ceiling shall be as under:

Genres	Ceiling
News & Current Affairs	Rs. 3.86
Infotainment	Rs. 12.60
Sports	Rs. 18.90
Kids	Rs. 5.62
Movies	Rs. 9.66
Devotional	Rs. 2.10
General Entertainment	Rs. 10.58

Such ceiling shall be subject to inflation based increase based on the movement of the wholesale price index (WPI) as has been the practice of the TRAI in the past and/or based on the parameter of the Consumer Price Index (CPI) for industrial workers published by the Ministry of Labour or an annual increase of 5%, whichever is higher.

- (iii) Broadcasters to determine genre and fix tariffs of a-la-carte channels within the respective genre ceiling. Broadcasters to be permitted to revise (increase and decrease) the a-la-carte tariff of their channels (depending on demand-supply situation) within the genre ceiling once every year at the time of renewal of interconnection agreements.
- (iv) Broadcaster to offer channels to DPOs only on a-la-carte basis.
- (v) Broadcasters may offer maximum 50% discount on a-la-carte rates under different schemes offered to DPOs, which may depend on, amongst others, (i) number of channels subscribed by DPOs, (ii) reach of the channels/placement of the channels on packages formed by DPOs, (iii) placement of the channels on particular LCN, etc.
- (vi) Broadcasters to publish their respective RIOs within the above mentioned regulatory framework.





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TARIFF MODEL – RETAIL LEVEL

- (B) Broad contours of the Tariff Model at the retail level may be as under:
- (i) DPOs to place channels in the relevant genres published by Broadcaster.
 - (ii) DPOs to offer packages at the retail level. The packages may comprise of Pay and FTA channels. The tariffs of packages at retail level to be under price forbearance. Additionally, DPOs to offer channels on a-la-carte basis. The tariff of a-la-carte channels at retail level not to exceed 2 times the effective discounted tariff of such a-la-carte channel at wholesale level.
 - (iii) DPO to offer basic service tier comprising of 100 FTA channels for Rs. 100/-. The basic service tier to comprise of at least 5 channels from each genre in Hindi, English and regional language of the concerned region (if available).
 - (iv) The minimum monthly subscription fees per subscriber per month for packages comprising of pay channels to be increased from Rs. 150/- to Rs. 250/-

ISSUES FOR CONSULTATION

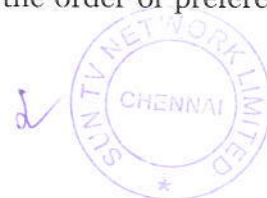
6. Without prejudice to the foregoing, our comments with respect to each of the issues for consultation are as follows:

Tariff Models

1. **Which of the price models discussed in consultation paper would be suitable at wholesale level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

Our brief comments with respect to each of the tariff models suggested by the TRAI are as under:

- Price Forbearance Model: As suggested in paras 3 & 4 above, we believe that this model is just appropriate and workable considering the existence of effective competition and addressability in India. The TRAI concerns raised by the TRAI are improbable and far fetched. The tariffs have always been under forbearance at the retail level, which in fact is more complex. Despite such price forbearance, the packages and tariffs offered at the retail level have been reasonable and under control purely because of effective competition.
- Cost Based Model: As correctly suggested by the TRAI, the media content is highly dynamic leading to huge variance in content content. Hence, fixation of tariff basis cost inputs will be highly irrational and unjustified.
- RIO Based Models: Without prejudice to our comments with respect to 'Price Forbearance Model' above, 'RIO Based Models' in the order of preference specified





in para 5 above may be the next best option till such time the price regulation is withdrawn.

2. **Which of the corresponding price models discussed in consultation paper would be suitable at retail level in broadcasting sector and why? You may also suggest a modified/ alternate model with detailed justifications.**

We are in favour 'Price Forbearance Model' at the retail level subject to 'Price Forbearance Model' at the wholesale level. Alternately, the TRAI may consider the modified/alternate price model at the retail level as suggested in para 5(B) above.

3. **How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.**

As discussed in para 5(A)(iv) and para 5(A)(v) above, the channels will be offered only on a-la-carte basis at the wholesale level and the discounting schemes will be offered to the DPOs. We believe that this will fulfill both transparency and non-discrimination requirements.

4. **How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested pair of models? Give your comments with detailed justifications.**

As discussed in para 5(B)(ii), para 5(B)(iii) and para 5(B)(iv) above, the customers will be entitled to subscribe to 100 FTA channels at a maximum tariff of Rs. 100/- (plus taxes). Alternately, the customers may subscribe to packages offered by the DPOs at a minimum tariff of Rs. 250/- (plus taxes). If the channel(s) desired by the customer does not form part of the package(s) subscribed by the customer, such channel(s) may be subscribed by the subscriber on a-la-carte basis. The tariffs of such a-la-carte channels are likely to be competitive as it would not exceed 2 times the effective discounted tariff of such a-la-carte channel at wholesale level.

Integrated Models

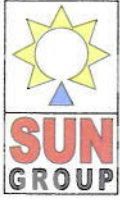
5. **Which of the integrated distribution models discussed in consultation paper would be suitable and why? You may also suggest a modified/ alternate model with detailed justifications.**

The 'Integrated Models' suggested by the TRAI, in our view, may not be feasible and practical. We feel that in today's India neither the customers are evolved enough to choose from the innumerable combinations of a-la-carte channels and/or bouquets that may be offered by Broadcasters and/or DPOs nor DPOs' systems are geared up to address such innumerable combinations that may be subscribed by the customers. Moreover, it may be a logistical nightmare at both the wholesale and retail level.

6. **How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.**

Please refer to our response to question 3.





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7. **How will the consumers interests like choice of channels and budgeting their expenses would be protected in the suggested integrated distribution models? Give your comments with detailed justifications.**

Please refer to our response to question 4.

Channel Pricing Framework

8. **Is there a need to identify significant market powers?**
9. **What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.**
10. **Should there be differential regulatory framework for the significant market power? If yes, what should be such framework and why? How would it regulate the sector?**

In view of the following reasons, we believe that the TRAI must not deal with issues relating to 'significant market power':

- (a) The Competition Commission of India ("CCI") established under the Competition Act, 2002 ("**Competition Act**") to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests the consumers and to ensure freedom of trade carried on by other participants in the markets in India, and for matters connected therewith and incidental thereto. In view thereof, the issues relating to the 'significant market power' squarely falls within the jurisdiction of the CCI.
- (b) Moreover, as per Section 60 of the Competition Act, the provisions of the Competition Act, 2002 will supersede anything inconsistent contained in any other law for the time being in force. Hence, framing any new regulations may conflict with the provisions of the Competition Act.
- (c) Most importantly, proviso (A) to Section 14(a) of the Telecom Regulatory Authority of India Act, 1997 itself prohibits Telecom Dispute Settlement & Appellate Tribunal ("**TDSAT**") to adjudicate any disputes relating to monopolistic trade practices, restrictive trade practices and unfair trade practices which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission (now the CCI) established under the Monopolies and Restrictive Trade Practices Act, 1969 (now the Competition Act). Hence, if TDSAT does not have jurisdiction to adjudicate, the TRAI obviously cannot frame regulations in relation thereto.

Channel Pricing Methodologies

11. **Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analogue prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?**

As discussed in para 2, going forward, with the implementation of DAS across India, it will not be possible to continue with the price freeze prescribed in 2004 and service the





price for digital platforms from analogue prices. Hence, in para 5(A)(ii) and para 5(A)(iii) above, we have discussed the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms.

12. **Do you feel that the list of Genres proposed in the consultation paper (CP) are adequate and will serve the purpose to decide genre caps for pricing the channels? You may suggest addition / deletion of genres with justification.**
13. **Is there a need to create a common GEC genre for multiple GEC genre using different regional languages such as GEC (Hindi), GEC (English) and GEC (Regional Languages), etc.? Give your suggestions with justifications.**

We feel that the list of genres proposed by the TRAI are adequate and will serve the purpose to decide genre caps for pricing the channels. There is no justification to discriminate between the tariffs within the GEC genre based on language of the channel.

14. **What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?**

As discussed in response to questions 8-10, we believe that the TRAI must not deal with issues relating to 'significant market power'.

15. **What should be the basis to derive the price cap for each genre?**

As discussed in para 5(A)(ii) above, the TRAI may consider the maximum existing tariffs of genres to derive the price cap for each genre.

16. **What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?**

We believe that the price discounting scheme, suggested in para 5(A)(v) above, will automatically rationalize the price of the channels basis the supply and demand of such channels in the overtly competitive environment. We wish to make it abundantly clear that the price cap is suggested merely for an interim period before the TRAI introduces price forbearance at the wholesale level.

17. **What should be the frequency to revisit genre ceilings prescribed by the Authority and why?**

As discussed in para 5(A)(ii) above, the genre ceiling prescribed by the TRAI must be subject to inflation based increase or annual increase of 5%, whichever is higher. Additionally, as discussed in para 5(A)(iii) above, Broadcasters must be permitted to revise (increase and decrease) a-la-carte tariff of their channels within the genre cap (depending on demand-supply situation) once every year at the time of renewal of interconnection agreements.

18. **What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?**

19. **What would be the maximum percentage of the cumulative discount that can be allowed on aggregated subscription revenue due to the broadcasters from a DPO based on the transparent criteria notified by the broadcasters?**





As discussed in para 5(A)(v) above, Broadcasters must be entitled to offer maximum 50% discount on a-la-carte tariffs of the channels under different schemes offered to DPOs which may depend on, amongst others, (i) number of channels subscribed by DPOs, (ii) reach of the channels/placement of the channels on packages formed by DPOs, (iii) placement of the channels on particular LCN, etc..

Introduction of Niche Channels

20. What should be parameters for categorization of channels under the “Niche Channel Genre”?
21. Do you agree that niche channels need to be given complete forbearance in fixation of the price of the channel? Give your comments with justification.
22. What should the maximum gestation period permitted for a niche channel and why?
23. How misuse in the name of “Niche Channel Genre” can be controlled?
24. Can a channel under “Niche Channel Genre” continue in perpetuity? If not, what should be the criteria for a niche channel to cease to continue under the “Niche Channel Genre”?

It may be extremely difficult to categorize niche channel genre basis the suggested parameters and unnecessarily create ambiguity in genre classification -

- (i) Audience Attributes: Kids channels may be categorized as Niche Channels as these are accessed by special interest groups (kids), or
- (ii) Gestation Period: Even a new GEC channels may qualify as Niche Channels during the gestation period of 12-18 months, or
- (iii) Nature of Content, Production, Distribution and Marketing Costs: No channel will be able to qualify as Niche Channel in view of the ‘Cons’, ‘Workability’ and ‘Challenges’ highlighted in ‘Cost Based Model’ suggested by the TRAI.

In view thereof, we suggest that Niche Channels be restricted to Ad-Free Channels, HD Channels and 3D Channels as noted in the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable Services) (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012. This will arrest the misuse in the name of ‘Niche Channel Genre’. We also believe that in order to promote and facilitate introduction of more ‘Niche Channels’, the price forbearance for Niche Channels must continue till such time the subscription of Niche Channels crosses a defined threshold.

Pricing of High Definition (HD) Channels

25. How should the price of the HD channel be regulated to protect the interest of subscribers?
26. Should there be a linkage of HD channel price with its SD format? If so, what should be the formula to link HD format price with SD format price and why?



- 27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?**

As discussed in response to question 20-24 above, HD Channels are Niche Channels and price forbearance on HD Channels must continue. Since HD channels are purely pull based, the TRAI may consider mandating offer of HD channels at the retail level on a-la-carte basis or as part of separate bouquet, but the TRAI must grant full liberty to Broadcasters to fix tariffs of HD Channels without having any linkage with the tariffs of its SD format.

Manner of Offering

- 28. Do you agree that separation of FTA and pay channel bouquets will provide more flexibility in selection of channels to subscribers and will be more user friendly? Justify your comments.**

As discussed in response to question 4, under the suggested modified/alternate price model, the subscribers will have enough flexibility. Under the circumstances, DPOs may be given the flexibility to package the channels.

Ease of Channel or Bouquet Subscription

- 29. How channel subscription process can be simplified and made user friendly so that subscribers can choose channels and bouquets of their choice easily? Give your suggestions with justification.**
- 30. How can the activation time be minimized for subscribing to additional channels/bouquets?**

We believe that if the existing QoS Regulations are strictly enforced, majority of the concerns raised by the TRAI may be addressed. Hence, the TRAI may consider introducing penal provisions (leading up to suspension / cancellation of the license of DPOs) for non-fulfillment of obligations specified in the QoS Regulations. Further, in majority of instances, the Subscribers are not even aware of the channels / packages being offered by his/her DPO. Hence, the TRAI may consider mandating DPOs to publish the channels / packages offered behind the invoices raised on the Subscribers and on their websites. Additionally, DPOs may be mandated to maintain a robust website (for online activation) and active call centre (for activation over a call) to facilitate activation within 24 hrs.

Carriage Fee, Placement Fee and Marketing Fee

- 31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?**
- 32. Under what circumstances, carriage fee be permitted and why?**
- 33. Is there a need to prescribe cap on maximum carriage fee to be charged by distribution platform operators per channel per subscriber? If so, what should be the "price Cap" and how is it to be calculated?**
- 34. Should the carriage fee be reduced with increase in the number of subscribers for the TV channel? If so, what should be the criteria and why?**



The carriage fees for channels are anyways not justified in case DPO under the 'must provide' clause requisitions such channels from Broadcaster.

Carriage fees maybe permissible in case Broadcasters are seeking carriage of the channel under the 'must carry' basis subject to a mandate on transparency and non-discrimination on the same.

- 35. Should the practice of payment of placement and marketing fees amongst stakeholders be brought under the ambit of regulation? If yes, suggest the framework and its workability?**

The placement fees and marketing fees would anyways get covered under the price discounting scheme suggested in para 5(A)(v) above for Pay Channels subscribed on 'must provide' basis. Hence, there is no need for the TRAI to regulate placement fees and/or marketing fees for Pay channels on subscribed on 'must provide basis'.

Variant of Channels

- 36. Is there a need to regulate variant or cloned channels i.e. creation of multiple channels from similar content, to protect consumers' interest? If yes, how should variant channels be defined and regulated?**

There is no need to regulate variant or cloned channels provided the Broadcasters have obtained requisite licenses from the MIB for each such channel. Broadcasters must have the right to offer such channels. It is up to DPOs to subscribe and offer such channels to the Subscribers at the retail level.

Channel Visibility on Electronic Programme Guide (EPG)

- 37. Can EPG include details of the program of the channels not subscribed by the customer so that customer can take a decision to subscribe such channels?**
- 38. Can EPG include the preview of channels, say picture in picture (PIP) for channels available on the platform of DPOs but not subscribed by the customers at no additional cost to subscribers? Justify your comments.**

Electronic Programme Guide (EPG) may include details of the program of all channels subscribed by DPOs and not be restricted to the channels subscribed by the Customer. However, provision of picture in picture (PIP) may not be mandated as it may involve intellectual property rights issues and be best left to mutual negotiations between Broadcasters and DPOs.

Pay-Per-Program Viewing and Tariff Options

- 39. Is the option of Pay-per-program viewing by subscribers feasible to implement? If so, should the tariff of such viewing be regulated? Give your comments with justification.**
- 40. Will there be any additional implementation cost to subscriber for pay-per-view service?**



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Pay-per-program is essentially a Value Added Services (VAS) and is currently being offered by DPOs in the form of TVOD, NVOD, SVOD and VOD. It is not feasible to have pay-per-program on linear feed. Since VAS is driven purely by consumer demand and has on its own grown and will further develop and grow with the evolution of technology, there is no need for any regulatory intervention.

Audit and Reporting Issues related to Tariff

41. **Do you agree with the approach suggested in Para 5.8.6 for setting up of a Central Facility? If yes, please suggest detailed guidelines for setting up and operation of such entity. If no, please suggest alternative approach(s) to streamline the process periodic reporting to broadcast and audit of DPOs with justification.**

The proposed approach may be difficult to implement. Instead, we suggest that the TRAI empanels Big 4 audit firms (instead of M/s. Broadcast Engineering Consultants India Ltd.), whose services may be used by the Broadcasters to conduct the audit in terms of Schedule II of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (as amended) and Schedule III of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (as amended). The scope of audit may be standardized by Indian Broadcasting Federation to address DPOs' concerns.

The TRAI must consider getting more stringent regulations to ensure compliance of Schedule I of the Telecommunication (Broadcasting & Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (as amended) and Schedule IV of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, 2004 (as amended) by DPOs. DPOs are grossly violating such requirements resulting in failed audits and litigations in TDSAT.

Other Issues

42. **Stakeholders may also provide their comments on any other issue relevant to the present consultation.**

In addition to the foregoing, we have the following suggestions:

- The TRAI must consider getting more stringent laws to make piracy of channels punishable with suspension of license on first violation and cancellation of license on subsequent violation.
- Prepaid models are very much acceptable to the Subscribers. It has worked phenomenally well for the mobile services and DTH services. The TRAI may consider mandating / promoting pre-paid models at the retail level.

