

TIMES NETWORK'S COMMENTS
TRAI CONSULATION PAPER
ON
REVIEW OF REGULATORY FRAMEWORK FOR
BROADCASTING AND CABLE SERVICES



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WITHOUT PREJUDICE

INTRODUCTION :

The Telecom Regulatory Authority of India (TRAI), w.e.f. 1st February, 2019 implemented the New Regulatory Framework consisting of following regulations governing the broadcasting and cable industry :-

The Telecommunications (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017 ;

The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 ; and

The Telecommunications (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017.

These regulations were made after comprehensive review of the erstwhile regulations and these regulations replaced the earlier regulations including various amendments to the regulations. These are collectively & commonly referred to as New Regulatory Framework/new regime/ NTO. These regulations introduced retail regime wherein the broadcasters declare the prices and the viewer chooses the offerings, whereas the distributors (DPOs) were assured of a fixed income in the form of NCF and got further fees and incentives for acting as the intermediaries. Further, non-discrimination, transparency is the cornerstone of the new regulatory framework.

There was a very long drawn process of due consultation prior to making these regulations and the views / counter views of the various stakeholders were considered while framing these regulations. The Regulations were also subject to extensive legal challenge and scrutiny and there were also many concerns and apprehensions of the industry and the consumers on the new regulations and its proper implementation. The TRAI after holding numerous meetings, open house discussions in various parts of the country with all the stakeholders finally implemented the New Regulations with effect from 1st February 2019.

The regulations allowed the subscribers option to choose channels either on a-la-carte basis or in form of bouquets formed by the broadcasters and/or DPOs based on his choice and requirement.

In the present regulations, the consumer interest is fully protected as there is a complete choice available to the consumer to select channels on a-la-carte basis or in the form of bouquets of the broadcasters/DPOs. Further the MRP

based regime also protects consumer interest as the price payable by the subscribers for subscribing a particular TV channel is clearly known to the viewer and he/she can evaluate the cost vis a vis the value of a channel/bouquet being availed.

The NTO was subsequently amended in 2020 vide **NTO 2**, which consisted of : (i) Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020; (ii) Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Second Amendment) Regulations, 2020; and (iii) Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) (Third Amendment) Regulations, 2020.

The Regulatory Framework was further amended on 22nd November 2022 and was implemented with effect from 1st February 2023 to address some difficulties faced by the broadcasters due to NTO 2 regulations.

Now, TRAI has initiated this consultation exercise to address some of the issues related to the DPOs.

There are certain fundamental aspects which are necessary to discuss before proceeding on to provide our comments on the specific questions posed by TRAI in its consultation paper as we believe that though the issues are primarily related to the DPOs, but the issues and mainly the some of the demands of the DPOs concerns all the stakeholders in the value chain including the broadcasters and the consumers. With this premise, we wish to mention below these fundamental aspects in following paras: -

Comparison between broadcasters' bouquets and DPO bouquets is incorrect:

The DPOs have stated that when MSOs form bouquets, they are costlier as compared to bouquets formed by broadcasters as they get channels on a-la-carte price or MRP. Hence, there is no parity in bouquets formed by broadcasters and MSOs.

The DPOs generally makes DPO bouquets/packs combining the bouquets of pay channels of different broadcasters and may or may not include the a-la-carte pay channels. Hence, the pricing to DPO as far as the broadcaster's bouquets is concerned, is already discounted. If there are some standalone a-la-carte pay channels also included in such DPO bouquets, only such a-la-carte channels pricing is as per the MRP of that channel/s.

Hence, for illustration purpose, if a DPO bouquet has 100 pay TV channels, there will be very few a-la-carte channels added in the DPO bouquet. Most of

these channels are composed from the broadcaster's bouquet, which is already discounted. Hence, suggesting that all 100 pay channels of these bouquets are at a-la-carte MRP is incorrect.

It is not correct on the part of the DPOs to suggest that they understand the consumer preferences in a better way than the broadcasters as they interact with the consumers. The broadcasters are very much aware about the viewers liking and disliking and continuously makes changes in the channel programming accordingly. Further, it is incorrect to assume that consumer is a passive stakeholder and depends on DPOs advice for subscribing to channels/bouquets. The consumer is aware about the channels and its content it carries. The New Regulatory Framework (NRF) is based on certain basic premises and any compromise with such premises will adversely affect the entire framework. Firstly, the content and the pipe has been separated clearly. The DPO acts as an intermediary as the role of DPOs is to re-transmit the signals of TV channels to the consumers. It is the broadcaster who, as owner of content, decides channel packaging and its pricing and allowed to bundle TV channels and declare bouquet prices within the as per the prescribed framework. The DPOs are required to make available the a-la-carte channels and the broadcasters' bouquets to their customers.

In addition, flexibility has been given to the DPOs to form their bouquets or packs (as commonly called by them) by forming a-la-carte pay channels and bouquets of pay channels of different broadcasters. Further, they are allowed to offer up to 15% discounts on such bouquets to make it further more attractive to the consumer (the 15% discount is assumed to be funded by the DPO from the 20% distribution fee & up to 15% incentive if any). In fact, by offering 15% more discount, the DPO bouquet can be even more discounted if compared standalone with the respective prices of such a-la-carte channels and bouquets forming part of such DPO bouquet.

Hence, it is not correct to suggest that DPOs should be allowed to offer discounts of 45% as allowed to the broadcasters in forming their bouquets. The broadcasters are owners (say manufacturers) of content, and they can price their offering (product) as per their business model. However, the DPOs role is just of an intermediary(re-seller). If the cost of a TV channel or bouquet to DPO is say 100-35% (maximum payout to DPO), then how it is economically possible for the DPO to offer the same at 100-45%.

Further, if the DPO is really interested in passing on the benefits to the consumers, then the same can be done by way of reduced NCF as the Regulations prescribe maximum NCF whereas a DPO is allowed to offer any reduced NCF. The same is also seen in the industry wherein there are up to 50% reduction in the NCF by some players.

The DPOs demand to have greater flexibility in bouquet formation is driven by some motive wherein they may be willing to demean the broadcaster's bouquets by only pushing their packs/bouquets which is made of hundreds of channels making it difficult for the consumer to compare the prices and exercise his/her choice. This may completely distort the MRP regime as envisaged by the NRF.

The hypothesis that broadcasters push for unwanted channels is incorrect:

There is no pushing of 'unwanted channels' by broadcasters as pointed out by DPOs. Once the broadcaster bundles the channels keeping in view various aspects like viewer requirement, variety of content, cost, region, language, right mix etc. while complying with the bundling conditions prescribed in the regulatory framework for bouquet formation. Hence, it is incorrect to state that the broadcasters push 'unwanted' or 'unpopular' channel.

The DPOs have largely declared the DRP same as that of MRP declared by the broadcaster, whereas they are allowed to offer a lower DRP than MRP in the interest of consumers. Such discount can be adjusted from the distribution fee and the incentives a DPO gets from broadcaster.

On one hand, the DPOs ask for flexibility to offer discounts up to 45% similar to the broadcaster (though without any logic), but on the other hand, they have not been offering discounts on the DRP vis a vis the MRP wherein they already have that flexibility. It is a clear dichotomy on part of the DPOs wherein their ask for higher discount is an eyewash and may have been raised with other motives.

The demand of DPOs for unbundling of broadcaster bouquets is untenable and against the founding pillars of the New Regulatory Framework:

The New Regulatory Framework (NRF) has certain founding pillars which is tinkered with, will destroy its basic structure. Presently, the subscriber can choose from the following options or a mix of any :-

1. A-la-carte channels.
2. Bouquets offered by the Broadcasters.
3. Bouquets offered by the DPO.

A DPO who has signed agreement with broadcaster is mandated to carry the broadcasters' channels on a-la-carte basis and DPO is also not allowed to break the broadcaster bouquet. This ensures that the real choice of selection remains with the subscribers. In addition, a DPO can form his bouquets keeping in view the preferences of his target viewers. There is a clear

information on the MRP and DRP of the channel and bouquets being made available to the consumer. The subscriber has complete freedom to select and choose his package except the mandatory DD channels which are being carried in national interest. A subscriber choice is not affected rather his choice is widened as bouquets are also available to him along with a-la-carte and he can make his informed choice and selection based on his requirement and costs.

Present mechanism of Broadcaster/DPO bouquet is for facilitating the consumer to avail choices at his favourable price points. The consumers who do not want to pay more are already going with the lower price bouquet or ala-carte selection to keep their pay-out in control.

If unbundling of broadcaster bouquet is allowed, then the basic structure of the NRF will be destroyed. The relevance of a-la-carte pricing of channel will go away and the situation will be like the one existing prior to implementation of NTO.

It will be a double whammy for the viewer, as if a viewer needs say channel X and Y on a-la-carte basis, then he/she will be required to pay MRP of that channel say Rs. 10/- + 10/- (Total Rs. 20/-). But the same will be available to the DPO for Rs.5.5 each assuming 45% discount is applicable on that broadcaster bouquets totalling it to Rs. 11/-. Hence, DPO will be able to mis-sell this to the consumer in form of DPO pack of say 2 channels at less than Rs. 10/- after applying 15% discount allowed on DPO bouquets. The DPO will not only be giving non-transparent pricing to the viewer but will also take away the business flexibility of the broadcaster and start indulging in arm-twisting tactics by picking and choosing channels as per their whims and fancies and leaving out the other channels of the broadcasters.

The unbundling also allows a DPO to leave out some channels of the broadcasters from not carrying the same despite having opted the broadcasters' bouquets. This will make mockery of the entire NRF and retail pricing mechanism.

The situation will again push back the market to the old system which was prevalent prior to NTO. The choice of consumer will be highly restricted, and he/she will be forced to go for DPO packs only due to opaque and complicated pricing.

Issues for Consultation

A. Tariff related issues

Q1. Should the present ceiling of Rs.130/- on NCF be reviewed and revised?

- a. If yes, please provide justification for the review and revision.**
- b. If yes, please also suggest the methodology and provide details of calculation to arrive at such revised ceiling price.**
- c. If not, provide reasons with justification as to why NCF should not be revised.**
- d. Should TRAI consider and remove the NCF capping?**

TN Comments:

The distributors of television channels have multiple sources of revenue. NCF is one such stream which gives them a minimum guarantee towards the services provided by them. They are the only stakeholders in the entire value chain to have such guaranteed revenue for each subscriber. NCF itself accounts for a major portion of the monthly charges payable by the consumer. A consumer even if opting only FTA channels must compulsorily pay the NCF charges. This has posed difficulty for the consumers specially at the lower end of the spectrum. NCF is also one of the reasons for shifting of some consumers to DD Freedish. Hence, any increase in NCF will increase the cost of the services and there may be shifting of some of the budget conscious viewers or viewers of multi-TV homes to other mediums like DD Freedish. A multi-tv home viewer may have a primary connection from DPO and second or subsequent connection by installing DD Freedish.

The present NCF adequately covers the cost of the services provided by the distributors including the LCOs.

With digitization, it is not practical to prescribe slabs of NCF based on the number of channels. We suggest that there should be a common NCF irrespective of the channels being opted by the consumer whether such number is 200 or more than 200. Infact, DPOs should be mandated to upgrade their system to carry all permitted TV channels in the country.

Q2. Should TRAI follow any indices (like CPI/WPI/GDP Deflator) for revision of NCF on a periodic basis to arrive at the revised ceiling? If yes, what should be the periodicity and index? Please provide your comments with detailed justification.

TN Comments:

The amount of NCF fixed is already on the higher side and there is no need to further increase the same. The need of the hour is that the TV services are aimed to reach to the unserved customers which constitutes about 30% of the households.

Q3. Whether DPOs should be allowed to have variable NCF for different bouquets/plans for and within a state/ City/ Town/ Village? If yes, should there be some defined parameters for such variable NCF? Please provide detailed reasons/ justification. Will there be any adverse impact on any stakeholder, if variable NCF is considered?

TN Comments:

Yes, DPOs may be allowed to offer variable NCF for different State/City/Town/village. However, such variable NCF should not be allowed on parameters such as choosing any particular DPO pack, broadcaster packs, a-la-carte channels etc. It should be purely on region/state/city/town/village basis and the DPO should file such variable DPOs to the Authority atleast 30 days prior to making such changes.

Q4. Should TRAI revise the current provision that NCF for 2nd TV connection and onwards in multi-TV homes should not be more than 40% of declared NCF per additional TV?

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

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

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

TN Comments:

TRAI in its EM to the 2020 Amendment Regulations had stated that they had examined the issue and the cost which can be directly attributed to the second TV connection and onwards is not more than 40% of the cost incurred by a DPO for primary connection. Accordingly, the Authority decided that DPOs shall not charge more than 40% of declared NCF for first TV connection, per additional TV for 2nd TV connection and onwards in a multi-TV home.

Q5. In the case of multi-TV homes, should the pay television channels for each additional TV connection be also made available at a discounted price?

a) If yes, please suggest the quantum of discount on MRP of television channel/ Bouquet for 2nd and subsequent television connection in a multi-TV home. Does multi-TV home or single TV home make a difference to the broadcaster? What mechanism should be available to pay-channel broadcasters to verify the number of subscribers reported for multi-TV homes?

b) If not, the reasons thereof?

TN Comments:

In view of the digital addressable system, each STB is considered as a separate connection and is technically capable of receiving a different set of channels

meaning thereby that each STB can be configured as per individual consumer choices.

In a multi-TV home viewers of each of the TV set have different choice of channels and therefore each multi-TV connection should also be considered as a separate and distinct additional subscriber for reporting in the MSR by the DPO.

The regulatory framework rightly recognises each STB as one subscriber. The distributor does not share the details of the customers with the broadcasters. It is very difficult for the broadcaster to verify the multi-TV connections as the SMS-CAS systems are at the distributor level. In other words, the control is with the distributor. Further, the consumer has a right to choose separate channels for the multi-tv homes hence it is not necessary that the customer opt for the same channels/broadcaster bouquets for his second or third TV connection. Hence, there is no rational for offering discount on second or subsequent connections.

Q6. Is there a need to review the ceiling on discount on sum of MRP of a-la-carte channels in a bouquet (as prescribed through the second proviso to clause 4 (4) of the Tariff Order 2017) while fixing the MRP of that bouquet by DPOs?

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

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

TN Comments:

No, there is no need to review the ceiling of discount on sum of MRP of a-la-carte channels in a bouquet while fixing the MRP of that bouquet by DPOs.

The distributor gets a mandatory 20% Distribution Fee on MRP of pay channels from the broadcasters of pay TV channels as distribution fees. In addition, a distributor may also be entitled to get up to 15% incentive on the MRP of the pay channels, based on objective and identifiable parameters. Even if distributor gets full 15% incentive, then also the total of the distribution fees and the incentives add up to maximum 35% of the MRP of pay channels.

The distributor should be allowed to offer discount, but the discount should be from the discounts the distributor gets from the broadcaster. Hence, fixation of 15% discount (assuming that distributor gets minimum 20% and a maximum 35% discount from broadcaster) is logical.

Any increase in discount by distributors is not logical as distributors act as resellers and are not expected to sell the services below cost. For example, if they are allowed to offer discount of 40%, then the natural question will arise that how such discounting is possible unless a distributor engages in predatory pricing to gain undue market share by undermining the competition as the cost of their purchase will be higher than sale price. Such

practices if allowed, may result in market distortions, and hamper the bouquet offerings by the broadcasters.

The New Regulatory Framework gives utmost importance to the choice of consumers wherein a consumer can opt for a-la-carte channels, broadcaster's bouquets, bouquets formed by the distributors or a mix thereof. This allows for the regulations to work in a fair and transparent manner for all the stakeholders in the value chain.

For eg. A broadcaster is not allowed to offer discount on the MRP declared for a-la-carte pay channels if sold individually. However, a distributor is allowed to offer up to 15% discount if it combines say 2 a-la-carte channels. Thus, a distributor enjoys greater pricing power while distributing these channels. In addition, distributor is also allowed to offer Distributor Retail Price lower than the MRP declared by the broadcaster and is entitled to offer genuine discounts in the normal business activities. But, at the same time, the regulations ensure that there are no predatory discounts offered by any stakeholder which undermine competition and hurt consumer interest in the long term.

Hence, if a distributor is really interested in passing on more discount to the consumer, it can offer first level discount on the DRP followed by second level discount in terms of offering up to 15% discount on the bouquets. Hence, 15% discount is a fair discount which can be offered by the DPOs from their margin.

There is no rationale or logic in the demand of the distributors that since broadcasters are allowed to offer 45% discount on their bouquets, they should also be allowed to offer similar discount. This demand is not based on any logical ground and is like comparing apples with oranges.

Some foreign entities may also enter the space and uproot the local players by initially offering deep discounts and capturing market by burning cash.

The Authority has already dealt with this issue. Para 42 of EM of 2020 Tariff Order which summarises the issue correctly is reproduced as below:

“The Authority has noted that in the new framework DPOs have flexibility to fix the DRP of pay channels with a condition that DRP of a channel should not be more than the MRP of that channel declared by the broadcaster. In case DPOs want to offer further discount on the bouquets, they can meet this objective by reducing the DRPs of pay channels forming the bouquet. Accordingly, the Authority has decided to continue with the cap of 15% on maximum discount permissible to DPOs while forming their bouquets of pay channels”.

Hence, it can be clearly seen that there is no merit in the demand of the DPOs for higher discounts or unbundling of broadcaster's bouquets.

Q7. Whether the total channel carrying capacity of a DPO be defined in terms of bandwidth (in MBPS) assigned to specific channel(s). If yes, what should be the quantum of bandwidth assigned to SD and HD channels. Please provide your comments with proper justification and examples.

TN Comments:

With the changes in the compression and encoding technologies, it is now possible to carry more TV channels in the same spectrum. The WPC and NOCC have also done away with the requirement of minimum bandwidth assignment for TV channels.

Hence, it is important that the distributors of TV channels adapt these latest compression technologies and make their system suitable to carry more TV channels and they should make their platform suitable to carry all the permitted channels in the country.

The stipulation of 1HD: 2 SD has severely impacted the growth of the HD channels in the country, in spite of the fact that there has been rapid development in the field of technology to augment the quality of transmission.

Hence, it is imperative that the ratio should not be prescribed and there should be common regulatory framework for both SD and HD channels.

Q8. Whether the extant prescribed HD/SD ratio which treats 1HD channel equivalent to 2SD channels for the purpose of counting number of channels in NCF should also be reviewed?

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

b. If no, please justify your response.

TN Comments:

HD and SD channels should be treated on similar lines. Generally, the HD channels are pay channels, and the distributors get their share in terms of Distribution Fees and Incentives according to the MRP of the channel. If the HD channel is priced high, there is greater margins with the distributors, hence treating one HD channel equal to 2 SD channels stifles the growth of better transmission to the viewer.

HD and SD channels should be allowed to be made part of the same bouquet. Such HD and SD channels were allowed to be made part of the bouquet before NTO. However, NTO disallowed making SD and HD variant of a channel as part of the bouquet. This has resulted in market distortion and the subscriber who could get the HD variant of a channel at nominal cost, must subscribe separately to HD variant either on a-la-carte basis or through subscribing to a separate bouquet. Due to this regulatory restriction, the HD subscribers have drastically reduced despite the equipment increasingly becoming

supportive of HD technology. The CPE like TV, STB have become HD and the viewer is constrained to subscribe to the HD channels mainly in view of the restrictions placed in clubbing of SD and HD variant of the channel under the Regulations. There is also a de-growth in HD channels after NTO was implemented, least to talk about newer technologies like 4K with Dolby sound being introduced in India. Hence, TRAI should allow clubbing of SD and HD variants of the channel in the same bouquet so that the HD viewer gets HD variant (along with SD variant) of channel, and he does not have to choose between HD and SD just because of regulatory restrictions.

Q9. What measures should be taken to ensure similar reception quality to subscribers for similar genre of channels? Please suggest the parameter(s) that should be monitored/ checked to ensure that no television channel is discriminated against by a DPO. Please provide detailed response with technical details and justification.

TN Comments:

It should be mandated that DPOs should maintain similar reception quality for all the channels for same genre. Good quality signal transmission is one of the primary objectives of Digital system. Any unfavourable treatment to any channel is not welcomed be it the private channel or the channels of Prasar Bharti as it affects viewer experience. The DPO should declare the total bandwidth availability and the allocation of bandwidth for channels on its website apart from reporting the same to Authority.

Q10. Should there be a provision to mandatorily provide the Free to Air News / Non-News / Newly Launched channels available on the platform of a DPO to all the subscribers?

- a. If yes, please provide your justification for the same with detailed terms and conditions.**
- b. If not, please substantiate your response with detailed reasoning.**

TN Comments:

The FTA channels have a business model which is dependent on the advertising and not subscription revenue.

News and current affairs channels are very important for dissemination of news and information. They not only disseminate news, but also forms public opinion on various matters of national importance. Mostly, these news channels are free to air, means they earn their revenues through advertisement and not through subscriptions. If these channels are not given the opportunity of reaching viewer's homes, they cannot survive. Though, the extant TRAI Regulations prescribe "Must Carry" conditions, but in practice, the situation is different. In spite of the regulatory framework, FTA news channels face in-numerous difficulties in carriage and placement of their channels on the distributors platforms and reaching the targeted viewers. The

high cost of carriage fees and placement fees is well known fact. Even the pay news channels are priced very low.

Hence, with the development of compression technologies which enables enhancing the capacity of the distributor's network, mandatory placing of all FTA news channels on the distributor platform should not be a distant dream. Why the channel carrying capacity issue should arise at all?

The distributors already get a fixed minimum NCF of Rs. 130/- which covers their cost of operations and profit margin. Hence, it should be the duty of the DPO to upgrade the platform to carry all the channels which have received downlink license in the country. If all available FTA news channels were to mandatorily be placed on their network, it will not cause any harm to any stakeholders. The broadcaster's channels will be carried, the DPOs will offer more variety at to the consumers for the cost which they pay towards NCF. The consumers will also be happy as they get value for money and able to watch the diverse and multiplicity of viewpoints by watching different news channels. There will be lesser cord-cutting by consumers.

To start with, the DPOs should be mandated to carry all news channels mandatorily followed by having a carrying capacity to carry all permitted TV channels whether FTA or pay.

Q11. Should Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 be made applicable to nonaddressable distribution platforms such as DD Free Dish also?

TN Comments:

No, the Tariff Order 2017, Interconnection Regulations 2017 and Quality of Service Regulations 2017 should not be made applicable to non-addressable distribution platforms such as DD Free Dish. Some of the reasons why this should not be done are as follows:

Prasar Bharati, is a statutory autonomous body established under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 ("**Prasar Bharati Act**").

Prasar Bharati brings its own and select television channels of private broadcasters to the households of millions of ordinary citizens, mostly in rural areas and small towns, through its free DTH platform, who cannot afford to pay subscription. Thus, the "target audience" of DD Free Dish is entirely different vis-à-vis that of private DTH operators. The DD Free Dish audience does not cannibalise the pay audience of private DTH operators. DD Free Dish is for public welfare and to fulfil the objectives laid down in Section 12 of the Prasar Bharati Act.

The Interconnect Regulations are aimed at regulating the 'must provide' mandate as prescribed under Regulation 3, i.e., if a distributor makes a

request, the Broadcaster “must provide” its channels to it and further must do so on a non-discriminatory basis. It also mandates that the broadcaster must publish Reference Interconnect Offer (“RIO”) for the distributor to avail service. Prasar Bharati neither subscribes to the RIO of the Broadcaster nor publishes its own RIO as mandated for other private distribution platform operators under the extant TRAI Regulations. Prasar Bharati operates under a completely different regime and does not demand the channels of the broadcasters. Neither does Prasar Bharati opt for the channels under the RIO published by the Broadcasters. The Interconnect Regulations lay down the steps to be taken by the broadcaster and the distributor of television channels which culminates in Interconnect Agreement being executed between broadcaster and private distributor. Pertinently, no such steps are required to be taken by Prasar Bharati for availing the channels of the broadcaster.

The Interconnect Regulations are not aimed at regulating Prasar Bharati which carries out public service functions. Prasar Bharati has always been considered as a distinct and special entity by various legislations in India. Some of the examples are as stated herein below:

(A) Cable Television Networks (Regulation) Act, 1995

Under Section 8 of the said Act, the Central Government has the power to notify channels operated by Prasar Bharati to be mandatorily aired by private DTH operators.

(B) Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

The said Act is a special statute that has been enacted with the specific aim to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance *through mandatory sharing of sports broadcasting signals with Prasar Bharati*. It is submitted that no other DTH operator has been given such a special status. While the sporting events of national importance are provided on a Free to Air (“FTA”) basis to DD Free Dish, no such treatment is meted to private distributors.

DD Free Dish does not charge any subscription fee from subscribers for providing any channels which are there on its platform. Its subscriber has to incur only a nominal one-time fee in securing/buying a set top box from the open market to receive the signal.

It is pertinent to note that Prasar Bharati on 07.06.2011 approved an e-auction policy for placement of private channels on the then DD Direct+ Platform in compliance with the direction of the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) judgment dated 16.12.2010 in ***Zee Turner Ltd V/s Prasar Bharati (2010) SCC Online TDSAT 935***. The regime followed by Prasar Bharati is that it charges a slot fee to the Broadcaster for allotting slots on its satellite to carry (not for subscription) the channel on its platform,

as per Prasar Bharati's legislative mandate. The slots on DD Direct are auctioned by Prasar Bharati Corporation, whereby the interested private broadcasters participate in the auction and the highest bidder in a particular genre as determined by Prasar Bharati is allotted a channel slot on payment of slot fees. Prasar Bharati do not pay any licensing/subscription fees to the broadcasters since it is a public broadcaster constituted under an Act of Parliament. There is no requirement of executing a subscription agreement (Reference Interconnect Offer Agreement/RIO) with Prasar Bharati for offering of broadcaster's channels on its platform. Prasar Bharti only carries those private channels of a private broadcaster, that are successful in the e-auction. Pertinently, mere participation in the e-auction does not guarantee a slot on DD Direct+, as compared to the regime under the Interconnect Regulations, where a broadcaster must provide to a distributor on request i.e., the must provide regime is not applicable to Prasar Bharti.

In the auctioning of slots also, Prasar Bharti ensures through differential reserve price and bucket system, that adequate opportunity is given to all genres to participate in the auction.

The Target Audience of DD Free Dish is primarily people living in rural areas and remote regions of India where cable television is not readily available and/or where people cannot afford to pay for pay TV channels.

DD Free Dish caters to the weaker sections of the Society who cannot afford to pay subscription fees for channels. It offers a wide range of FTA channels along with certain pay channels which are offered by broadcasters who participate in the auction process and are declared successful basis their bids.

DD Free Dish also carries radio channels which further differentiates it from the DPOs.

DD Free Dish is like Doordarshan terrestrial television transmission and All India Radio Services of the Government wherein the people of the country are provided the television services without any subscription cost.

Hence, the objectives, channels, target audience, technology, purpose of DD Free Dish is different and cannot be equated with the DPOs. Putting it on an equal footing with the commercial DPOs will be a grave injustice to the millions of households which will be deprived of television reach from their homes.

Q12. Should the channels available on DD Free Dish platform be mandatorily made available as Free to Air Channels for all the platforms including all the DPOs?

TN Comments:

No, as stated above, there is no commonality between the DD Free Dish platform and the DPOs. First and foremost is that the viewers of DD Free Dish do not pay any charges for watching TV channels. They only need to buy a dish antenna system along with STB and tune in to receive the signals. There is no subscription fee as is applicable for DPOs. Even if a consumer opts for say same FTA channels as available on DD Free Dish from a DPO, still the consumers must pay NCF charges.

Hence, both systems are not comparable and in a country like India, it should be the endeavour to reach the maximum people and not make policies which result in curtailment of services.

However, Prasar Bharati may look at the possibility of only including FTA channels on its platform and not to allow pay channels to participate in the e-auction, but the same should be clearly stipulated before holding e-auctions.

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

TN Comments:

The primary purpose of an addressable system is for distribution of 'pay tv' channels as without addressable system, the concept of 'pay tv' is superfluous. However, for a model which is solely based on free to air channels, where one does not necessarily need to authorize viewing of TV channels, there is no need to introduce addressable system. There is no purpose it can serve except giving exact number of households. But, the addressable system also has its numerous additional investments to be made in areas of CAS-SMS, monitoring etc. which is a wasteful expenditure for purely FTA model.

As per an estimate, there are more than 40-45 million DD Free dish households. It is not necessary that if the DAS has been introduced for the private sector, then the same should also be applicable for the public sector. The main purpose of introduction of DAS was to address the issue of under-declaration, lower transmission quality, non-transparency, disputes between service providers. All such issues are not applicable for DD Free Dish as its business model is free to air and it does not collect any subscription money. Its primary focus is to make Doordarshan channels available to the masses. In addition, few private broadcasters' channels are also made available which not only add to the variety of content on such platform but also ensures revenue to the Government. Whether to introduce DAS as per the business model of DD Free Dish should be left for Prasar Bharati to consider in due course of time and should not be recommended to be mandated. The 40

million+ customers who have invested in the present system cannot be burdened to go for a new system.

It is normal for various systems to co-exist and flourish and a single system may not always be the best situation for any industry.

B. Interconnection related issues

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

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

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

TN Comments:

The continuance of the unamended RIO agreement by DPO creates a situation in the market wherein effectively two different RIOs of a broadcaster co-exist in the market at the same time and it may result in unfavourable treatment of consumers differently situated. Hence, it is important that after publication of the RIO by the broadcasters, all DPOs shall enter into a new RIO agreement with the broadcasters.

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

TN Comments:

Whenever the change in RIO is necessitated due to the change in the regulatory framework, it is expedient that such changed RIO is signed by all the service providers as per the regulatory timelines.

Q16. Should it be mandated that the validity of any RIO issued by a broadcaster or DPO may be for say 1 year and all the Interconnection agreement may end on a common date say 31st December every year. Please justify your response.

TN Comments:

It should not be prescribed as it will result in micro-management of the sector. Further, a financial year or a calendar year may not be suitable to all stakeholders. The same should be left to the market forces.

The extant provision of one year term is reasonable and no further conditions are required to be prescribed.

**Q17. Should flexibility be given to DPOs for listing of channels in EPG?
a. If yes, how should the interest of broadcasters (especially small ones) be safeguarded?**

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

TN Comments:

No, any EPG should have a logical numbering which should be easy for the viewers. There is good flexibility presently with the DPOs in terms of placement of channels in genre-language combination.

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

TN Comments:

The MIB gives permission to a channel in multiple languages (if so requested), however, the broadcaster is required to declare the genre and the language while declaring the channels under the RIO. Similarly, MIB puts all channels in news and non-news genres (categories), however the broadcaster is required to declare the exact genre and the language at the time of reporting the same to TRAI. Hence, a single language should be declared by the broadcaster. In case, a channel has more than one language, then the primary language or the first language of the channel declared by the broadcaster should be considered by DPOs for placing it at appropriate place in the EPG.

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

a. If yes:

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

ii. Should the regulations prescribe revenue share on other revenue components like Distribution Fee for Pay Channels, Discount on pay channels etc.? Please list all the revenue components along-with the suggested revenue share that should accrue to LCO.

Please provide quantitative calculations made for arriving at suggested revenue share along-with detailed comments / justification.

b. If no, please justify your comments.

TN Comments:

We presently have no comments.

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

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

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

TN Comments:

There is no need to review the capping of the carriage fee as has been fixed by NTO 2 Regulations of 2020.

In fact, there is a requirement that the DPOs should be mandated to upgrade their systems to increase their channel carrying capacity to be that of 100% of the number of channels which have received downlink permission in the country.

It appears that an artificial scarcity has been created on the part of the DPOs so that they are able to command unrealistic and high carriage fees specially from the middle and small broadcasters. In view of this, the systems are not upgraded so that the scarcity is maintained and there is artificial demand created for carriage of the channels. Hence, the DPOs should be mandated to upgrade their systems in a phased manner as per the roadmap to be decided. Till such time, there is no need for revising the capping on carriage fees.

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

TN Comments:

Till such time the DPOs are not mandated to upgrade their system for 100% carriage of all the TV channels in the country, capping on the carriage fees should continue as a deterrent to ask unusual high carriage fees and the same should be strictly enforced.

To increase penetration of HD channels (which has been severely affected after NTO), the rate of carriage fees of HD channels and the cap on carriage fees of HD channels should be equal to SD channels. There is no justification in making a higher threshold for HD channels due to advancements in compression and encoding technologies.

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

TN Comments:

TRAI should move towards forbearance for all the stakeholders in the value chain in a planned manner. However, if forbearance is introduced in only selected fields, it can distort the regulatory framework. If there is no capping on the carriage fees, the carriage fees for 20 paise and 40 paise for SD and HD channels respectively per active subscriber of a DPO is very high and acts as a deterrent to the medium and small broadcasters.

Hence, the need of the hour is that DPOs shall be mandated to achieve 100% channel carrying capacity in a phased manner which will give a democratic right to every channel which has been granted permission by MIB to get

placed on DPO platforms and viewed by people. Till such time, there should be no removal of the capping on carriage fee.

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

TN Comments:

The 20% threshold of the active subscribers of DPO is a very large benchmark and not practical. Even for a very popular TV channel in view of large number of TV channels, this threshold may be difficult to be achieved in view of the different languages/genres/people preferences etc.

Hence, a more realistic threshold which can be not more than 5% of the active subscriber base of the DPO should be made.

If the threshold is very high, it gives a dominating position to the DPOs to negotiate its unreasonable terms with the broadcaster. The broadcaster under the threat of discontinuance of its channel from the DPOs platform may be under pressure to agree to the terms as dictated by the DPO.

C. Quality of Service related issues

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

- a. Installation and Activation Charges for a new connection**
- b. Temporary suspension of broadcasting services**
- c. Visiting Charge in respect of registered complaint in the case of DTH services**
- d. Relocation of connection**
- e. Any other charges that need to be reviewed or prescribed.**

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

TN Comments:

No, the capping should not be removed (till the time forbearance model is adapted for all stakeholders) as it ultimately affects the consumer. Any unreasonable charges levied by any stakeholder results in consumer ire and

if the consumer cuts the cord due to any such reasons, it also adversely affects the other stakeholders like broadcasters who loses viewership for actions not within their control at all.

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

- a. MRP only**
- b. MRP with DRP alongside**
- c. DRP only?**

Justify your response by giving appropriate explanations.

TN Comments:

The EPG should display only MRP as declared by the broadcaster. Displaying of MRP with DRP will clutter and confuse the viewer. Displaying only DRP will not again give a clear picture to the viewer on pricing of the channel. Since the channel primary pricing is MRP, the EPG should display MRP. The consumer understands that there are discounts applicable on the MRP (whether in terms of bouquet discounting and/or DPO discounting) and hence displaying of MRP is good enough for a consumer to get a perspective of the different channels pricing.

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

TN Comments:

The DPOs shall be mandated to give pre-paid bills to their consumers on monthly basis as is done in case of post-paid billing. The bill can be in form of soft copy or physical copy as per the option chosen by the consumer.

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

TN Comments:

Yes, this will check any unethical practices and the CAS and SMS systems will be further strengthened. This will also pave the way for a minimum subscription duration of say one month for the subscriber. A 1day subscription, 7 days subscription is not practical in TV viewing in India as the TV channel rates are very reasonable and affordable by most sections of the people and hence the demand for such very short-term durations will be miniscule and any such practices should not be encouraged as such very short duration activation/de-activation also puts pressure on DPOs DAS systems.

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

- a. The Platform Services Channels shall be categorised under the genre 'Platform Services' in the EPG.**
- b. Respective MRP of the platform service shall be displayed in the EPG against each platform service.**
- c. The DPO shall provide an option of activation /deactivation of platform services.**

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

TN Comments:

We agree with the MIB Guidelines. In addition, the platform services shall be placed at the end of EPG. No platform services channel shall be allowed to be clubbed with the DPO Bouquets or packs. There should be no inter-mingling of the PS channels with the broadcasters' channels in LCN sequencing.

They should exist separately and there should be continuous scroll of PS.

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

- a. Toll-free customer care number**
 - b. Establishment of website**
 - c. Consumer Corner**
 - d. Subscriber Corner**
 - e. Manual of Practice**
 - f. Any other provision that needs to be re-assessed**
- Please justify your comments with detailed explanations.**

TN Comments:

The impact of the present regulations can only be properly assessed once they have been implemented by the DPOs. We feel that Authority should focus on ensuring effective implementation and compliance of the existing QoS before re-evaluating the provisions of the present QoS regulations. While further deregulating the B&CS sector is important, however the aforesaid provisions are presently vital for ensuring that the interest of the consumers is protected and the same allow consumer choice and transparency.

D. Financial Disincentive

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

- a. If yes, please provide answers to the following questions:**
 - i. What should be the amount of financial disincentive for respective service provider? Should there be a category of major/ minor violations**

for prescription of differential financial disincentive? Please provide list of such violation and category thereof. Please provide justification for your response.

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

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

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

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

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

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

TN Comments:

The present regulations provide for disincentives in case of non-compliance of audit provisions by DPOs. However, the monitoring and efficacy of these should be reviewed with the view to realize the regulatory objectives.

We are of the opinion that no financial disincentives be introduced for other areas as this will result in micro-management of the sector wherein the objectives of the regulations should to move towards de-regulation.

E. Any other issue

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

TN Comments:

We strongly advocate that PAY channels and FTA channels should be allowed to be clubbed in a bouquet. If certain FTA channels of the same broadcaster are provided without any cost in the broadcaster bouquets, then restriction on clubbing of FTA channel with pay channels may not be warranted. When the Regulations clearly mandate the publication of MRP of pay channels and declaration of channel as pay or FTA, then there is no harm if FTA channel is allowed to be clubbed in the bouquet of pay channels. This will ensure better carriage of the channels in bouquets and will also not force broadcasters change the business model like turning FTA channel into pay channel with

nominal pricing for purpose of inclusion in bouquet. This issue will also partly address the issue of pay channels being carried on DD Free Dish.

Further, we feel that TRAI should move towards light touch regulations in line with the policy of the Government and should not micro-manage the broadcasting sector. The regulator should move towards forbearance for all the stakeholders in the value chain.

The micro-management will result in pushing the sector backwards and the investment in state-of-the-art technology such as HD, 3D, 4K and other technologies which greatly enhance TV viewing experience of the viewers will not come forward. The broadcasting industry, which is a shining example of the liberalized economic era and built on the principles of “Atmanirbharta” will be pushed backwards and there will be no major capital investments by the private sector. This may also deter foreign companies from investing in the broadcasting space, although the Government wishes to attract more foreign capital in this sector and has recently permitted higher FDI in the broadcasting sector.

It may please be noted that frequent and numerous changes in the key regulatory provisions have far reaching consequences and not only disturbs the working of the industry but also results in consumer angst and ire towards the players in the industry and the consumer frustration also results in migration of consumers to alternative medium or technology. Hence, TRAI should move towards light touch regulations wherein it promotes healthy growth of the industry, and the consumers are benefitted by the state-of-the-art technological offerings, innovations at affordable costs.

The Indian television industry not only caters to the viewers in India, but also reaches to the Indian diaspora in almost all the countries of the world. This is a shining example of globalization of the Indian business. Hence, the need is not to stem the growth but to give it an enabling environment where it can flourish and contribute to India’s emerging position as a soft power in the changing world order. We thank TRAI for allowing us to offer our comments on this issue.
