Consultation Paper No. 01/2016

COUNTER COMMENTS TO TRAI CONSULTATION PAPER

ON

TARIFF ISSUES RELATED TO TV SERVICES

From:

(i) A. Mohan
Avnindra.mohan@zee.esselgroup.com

(ii) Viresh Dhaibar
viresh.dhaibar@zee.tajtv.com

COUNTER COMMENTS OF ZEE NETWORK TO CERTAIN OBSERVATIONS/SUGGESTIONS IN VARIOUS RESPONSES TO TRAI'S CONSULTATION PAPER NO. 01/2016 DATED 29th JANUARY 2016

1. **Integrated Distribution Model**

Various DPOs in their responses have suggested that Integrated Distribution Model is the most suitable model at the retail level. The various salient features of the said model are as under:

(i) DPO to provide FTA bouquet to the customers
(ii) Pay channels to be provided on a-la-carte basis only
(iii) Only Broadcasters are allowed to declare MRP of the channels
(iv) DPO to charge these components to the customers – Pay content cost, Rental amount depending upon the no. of channels subscribed by the customers
(v) Additionally, DPO to charge commission, carriage cost etc. from the Broadcasters
(vi) Broadly the following revenue share has been suggested:

- FTA Rs. 150/- - MSO : LCO = 70:30
- Pay Channels – Broadcaster : MSO : LCO = 40:30:30

Our Response:

While reiterating the comments made in our response to the Consultation Paper we would like to point out that considering the present status of the Distribution Sector there are numerous drawbacks in adopting the said model. We would also like to reiterate the following extracts of our response:

➢ *We have already recommended that the current prevalent model i.e. forbearance at the retail level with certain regulatory restrictions is the best model for the time being and therefore we would not like to suggest any of the models suggested in para 4.12 of the Consultation Paper.*

➢ *It may be mentioned that lot of characteristics of the distribution model viz. the basic access charges/the rentals etc for the network are already there in the present tariff dispensation at the retail level. A charge of Rs. 100/- per subscriber per month has been prescribed for basic tier consisting of 100 FTA channels. Similarly if a pay* *channel is subscribed by a consumer along with FTA basic tier bouquet, a tariff of Rs. 150/- per subscriber per month has been stipulated. This is nothing but basic access charges/rentals as contemplated under the distribution model. We have already mentioned that we are not in favour of introducing MRP regime in the sector at this stage as:*

- *(i)* *the digitalization is still under progress and large part of the areas falling under Phase-III & Phase-IV are yet to be digitized.*

- *(ii)* *moving to any other regime which may be significantly different from an existing regime would cause unwanted disruption in the digitalization process and should be avoided. The MRP regime was introduced by the Authority in 2006 as a part of CAS tariff scheme, however because of various shortcomings in the tariff framework, the MRP based tariff retime could not succeed.*

- *(iii)* *even under present regime there has not been a smooth flow of ground collection to various stakeholders in the value chain. There are still various issues regarding timely and transparent reporting of the actual subscriber numbers by the distribution platforms to the broadcasters and by the LCOs to MSOs in digital addressable cable regime. The introduction of MRP based model at this stage would be premature.*

- *It has been the experience of the broadcasters that despite there being stipulations of monthly obligations to furnish the timely subscribers reports by the distribution platforms, the reports are not being submitted for the months together. In such circumstances there has not been a proper flow of subscription money from the distribution platforms especially from digital cable service providers to the broadcasters and accordingly it is suggested that it will not be prudent to introduce MRP based regime till the entire digitalization is completed and the sector has stabilized.*

Drawbacks:

(A) Customer's point of view –

- The consumers will feel that they are being charged double for the same content, as they have to pay the channel's MRP as well as the usage cost of the network/bandwidth. This will increase the cost for a set of channels that a customer might want to watch. As a result, given the price-sensitive nature of Indian market, an avg. consumer will tend to select less no. of channels thereby resulting in the reduction of the number of channels with the consumers.

- Customers have to mandatorily select & pay for the FTA bouquet even if they may wish to watch only few or no FTA channels.

- Customers normally subscribe to a bouquet of channels, though the a-la-carte option is very much available (all the DTH Operators and major MSO's list the a-la-carte options on their website/leaflet etc.). The reason is that the multi broadcasters bouquet at the retail level are designed in such a manner by the DPOs that they not only meet the wholesome requirements of the consumers but are economical also.

- As pointed out hereinabove, this model prevents creation of genre-wise multi-broadcaster bouquets and only broadcaster-wise bouquets are allowed. However, the customers choose packages aiming to receive all the channels in a particular genre, irrespective of which broadcaster the channels belong to e.g., a Hindi-speaking customer who watches Zee TV, also prefers to watch other popular channels in the same genres viz. Star Plus, Colors & Sony TV. This is applicable in case of the most of the genres. Hence the customer tends to opt for a bouquet which contains all Hindi GEC channels of various Broadcasters. Same is true for other genres also such as Movie, Music, News etc. The proposed model will seriously limit the convenience of the customers for genre-wise bouquet selection, as it permits only Broadcaster-wise bouquets.

(B) DPO's point of view –

- As MRP of the channels would be decided by the Broadcasters, this will give no flexibility to the DPO's to create/customize package and pricing of the channels. As DPO's interact with the customers at a transactional level, they are in a better position to understand the customers' needs and ability to spend on the entertainment. Hence today, DPO's offer several packages in various parts of country at different price points as per their customers requirements. In this model, DPO's will not be able to create tailor-made offerings suited to customers' need.

- DPO's will merely act as an intermediary agent for the Broadcasters. The model will take away their flexibility to run as an independent business entity.

- DPO's may not be able to choose from innumerable combinations of a-la-carte channels and/or bouquets that will be offered by various Broadcasters. And also DPO's system will not be geared up both technically as well as commercially to address further countless combinations that will be subscribed by the customers. Hence the model will have huge logistical nightmare, both at wholesale level and retail level.

- IPTV & Cable networks are bi-directional in nature. As the Authority has rightly pointed out, the same network can be used for transmitting other kinds of data viz. broadband internet in either unicast, multicast or broadcast mode. For these networks, the network usage charges could be independent of pay channel charges subscribed by the customers. Therefore it may lead to discrepancies on network usage charges depending upon the business models of various DPO's.

(C) Broadcaster's point of view –

- This model will lead to continuation of carriage fees. The model itself envisages charging of carriage fee both from FTA channels as well as from Pay channels. Thus, the carriage regime would continue even in digital addressable systems as 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.

- On going through several comments in response to the Consultation Paper, we observe this model has been suggested mainly because of revenue share dispute arising within the parties down the value-chain. MSO's have not been able to earn more out of revenues collected by the LCO's; and in order to secure their share this model has been suggested. However, instead of addressing the shortcomings in the prevalent system and improving the collection from the ground, the said model has been suggested and while doing so, its impact on the sector has completely been ignored.

- Instead of ensuring an equitable distribution of revenue realized from consumers across the value chain, the suggested model is completely skewed in favour of MSOs and in fact would severely impact other stakeholders as well as investment in the sector. In order to understand the formula proposed by various stakeholders, below is the snapshot of ARPU vs. revenue share by all stakeholders of the value chain:

Customer Payout (Rs.)			**Revenue Share (Rs.)**			**Revenue Share %age**		
FTA	**Pay**	**ARPU**	**Broadcaster**	**MSO**	**LCO**	**Broadcaster**	**MSO**	**LCO**
150	50	200	20	120	60	10%	60%	30%
150	100	250	40	135	75	16%	54%	30%
150	150	300	60	150	90	20%	50%	30%

From the above, we can see that the Broadcasters are only able to receive around 10% to 20% of the total ARPU. Only MSO will stand to gain from this formula. Secondly, major portion of the consumers spent would go for payment towards FTA channels which are in fact free for DPOs. Thirdly, pay channels contain quality content and are preferred by the consumers for fulfilling their entertainment requirements. This model would lead to increase in their subscription payment without offering them any additional benefit. In fact in the name of rental etc the consumer is being forced to subscribe to FTA channels, even though he may not be willing/interested in the same.

- As pointed out hereinabove, in addition to the above lop-sided revenue share, the MSO's will also charge hefty carriage fees and commission for collecting revenue on behalf of the Broadcasters. Thus the actual revenue realisation will further go down for the Broadcasters resulting in unjust gain for the MSOs.

2. **Disparity between RIO rates & actual Deals**

Various DPOs have pointed out in their responses that the present RIO rates of the broadcasters are totally unrealistic and the actual deals are taking place at around 10% of the RIO rates. In other words, the exorbitant discount of 90% is being made available by the broadcasters. Accordingly, the channel tariff/prices are required to be fixed at 10% of their prevalent rates.

Our Response

- The present mutually negotiated contracts are based on number of parameters/criteria inter alia including the penetration offered, placement of channel, the size of platform, EPG positioning, the number of channels carried, length of the contract etc. Further the notion that the prevalent agreements are being entered into at 10% of the RIO rates is also entirely misconceived and misplaced as it is entirely fallacious to compare simply the sum total of RIO rates of all channels with the mutually negotiated deal value. It fails to take into account the weighted average criteria based on viewership as well as the penetration distinction between the national and regional channels. This has been elaborately explained in subsequent paragraphs with the help of an example.

  If all these factors are taken into account, the discounting qua RIO rates based on various factors even in the present RIO regime is to the extent of 50-55% only.

- The continuation of the price freeze in the sector has caused distortion in the prices of channels inasmuch as where as prices of the channel which were existing in December 2003 have remained frozen. (as they have been derived from the bouquets which were frozen in December 2003), while the new channels in the same genre /category have been priced higher. This has led to heavy discounting in the case of newer channels thus causing distortion.

- It is stated that in comparing simply the sum of RIO rates of all channels offered by a broadcaster with the negotiated deal value, basic premise considered is that all the channels are viewed by the entire universe. Whereas each channel, by virtue of its language, genre etc. has its own target audience and is not consumed by entire universe. Therefore we must look at the penetration of each channel based on its viewership and calculate its Effective RIO Rate after multiplying the RIO rate with the penetration percentage in the universe. E.g., Marathi channel is only viewed in Maharashtra. Hence its RIO rate should be considered only for Marathi subscriber base. The following example clarify the issue:

(i) Let us assume that a Broadcaster is having 32 channels.
(ii) The Broadcaster is providing all its channels with certain packaging/placement obligations at say Rs. 30/- per subscriber per month (CPS).
(iii) The sum of RIO a-la-carte rates of these 32 channels is Rs 150
(iv) These 32 channels can be divided into 3 categories:

A. National Channels which are consumed across the country

B. Regional channels, which are primarily consumed in one regional market

C. Niche/ Speciality channels whose audience is more restricted because of the language / nature of content

(v) A - 10 channels, sum of RIO a la carte is Rs 55
B – 12 channels, sum of RIO a la carte is Rs 50
C - 10 channels, sum of RIO a la carte is Rs 45

(vi) A group of channels are meant for National Audience hence the weightage is 100%

B group of channels are meant for a regional language audience, hence it goes out only to 10% of the audience

C group of channels are for niche audience, hence may go out to a limited audience, say 5%

#	A (National)	B (Regional)	C (Niche)	
No of channels	10	12	10	32
Sum of RIO A la carte	55	50	45	
Weight	100%	10%	5%	
Wt. Price (Rs)	55.0	5.0	2.25	62.25

(vii) In the above example, after taking into account the viewership details of each category of channels, Broadcaster's weighted average price works out to Rs 62.25 (and not Rs 150), as it is made out to be.

(viii) At a CPS deal of Rs 30, the discount works out to be around 52%. The said discount is based on:

(a) the No of channels taken up by the DPO
(b) the channels put in different Tiers such as basic tier(s) etc.
(c) the LCN No provided for each channel within the genre
(d) some other factors like no of new channels that are agreed to be carried by the DPO

(ix) The CPS deals are based on RIO rates and appropriate discounts are offered to DPOs, based on the channel take-up, tiering etc

- We have already suggested that in the proposed tariff regime all these parameters would form the part of RIO in transparent manner. The maximum percentage of cumulative discount that can be allowed on the aggregate subscription revenue due to the broadcasters from a DPO based transparent criteria should not exceed 40%. The limiting of discounting to 40% would also check the perverse pricing and the channels would be priced in accordance with the market reality. It would also bring so called rationalization in the RIO rates in tune with the market realities.

3. **<u>Monopolistic Nature of Content</u>**

It has been observed in certain responses that since the broadcasters have monopoly over their content, they are in a dominant position. Accordingly, the content pricing at the broadcasters' level needs to be regulated.

<u>Our Response</u>

- Our earnest submission is that 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.

4. **Cost Based Model**

With regard to the response of certain stakeholders to adopt the Cost Based Model for pricing, the attention is invited to para 6 of our response to the Consultation Paper wherein it is elaborated in detail as to why the cost based tariff framework is not suitable for the Broadcasting Sector. The content of the same are reiterated and at the cost of repetition it is stated that it is not possible to adopt the said Model because of the following:

(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.

(iv) It is extremely tedious task to calculate fixed cost, variable cost and link return for the same which is again correlated with the subscriber no. Projections etc.

5. **<u>Genre Caps to be based on average of current price ceilings</u>**

Some of the stakeholders in their responses to pricing methodology have suggested the calculation of genre cap by averaging the prevalent RIO prices which should be further discounted by 40% to 50%.

<u>Our Response</u>

- We have already pointed out in our response to the Consultation Paper that the present ceiling/cap is based on the tariff freeze stipulated by TRAI in 2004 in analogue regime whereby the rates of bouquet of channels prevalent on 26.12.2003 and also the composition of the bouquets were frozen.

- The a-la-carte prices of channels have been derived from these frozen bouquets and do not represent the fair value of these channels.

- The continuation of the price freeze in the sector has caused distortion in the prices of channels inasmuch as where as prices of the channel which were existing in December 2003 have remained frozen. (as they have been derived from the bouquets which were frozen in December 2003), while the new channels in the same genre /category have been priced higher. This has led to heavy discounting in the case of newer channels thus causing distortion.

- In Civil Appeal No. 2847 – 2854 of 2011, the Supreme Court has vide order dated 18.04.2011 already stipulated the prices for addressable platforms to be 32% of analogue prices. Thus any suggestion to dilute/reduce the prevalent ceiling would not only affect the investment, innovation, creativity and quality of the content thereby adversely affecting the consumers' choice but also be the violation of the order of the Hon'ble Supreme Court.

- Accordingly, we have suggested in our response that although the true value of our various popular and flagship channels is more than the prevalent caps/ceiling, in the interest of ensuring the smooth transition for the analogue regime to digital regime in Phase-III and Phase-IV, for the time being the prevalent ceiling/cap on the price of the channels be stipulated as the Cap under the proposed tariff framework. We have also suggested the discount mechanism which would take care of the 'rationalization' concerns.

6. **<u>Regulate OTT to ensure cross-platform non-discrimination</u>**

Some of the stakeholders have suggested the regulation of OTT services also in order to create a level playing field and to ensure non-discrimination.

<u>Our Response</u>

- At the outset it may be pointed out that the regulation of OTT services is not covered within the scope/ambit of the present consultation exercise. The TRAI itself in para 1.2 of the CP has categorically stated that the objectives of the current consultation inter alia are :

  "To carry out a review of existing Tariff arrangements and developing a Comprehensive Tariff Structure for Addressable TV Distribution of "TV Broadcasting Services" across Digital Broadcasting Delivery Platforms (DTH/ Cable TV/ HITS/ IPTV) at wholesale and retail level".

- Without prejudice to the submission that the issue of regulation of OTT services is outside the scope of present consultation exercise, it is stated that even otherwise no regulatory framework is required at present for OTT services. India is a fledgling internet market, with just about 10% of the population connected. The audience that is connected mainly constitute the urban English speaking & reading audience. The audience for Indian language products and services is just in the growth phase and this is beginning to reach lower socio-economic classes.

- We believe that bringing any kind of regulatory framework for OTT services would destroy this fledgling market, by

  a) Increasing Time taken to market
  b) Increased cost due to carriage fees
  c) And non availability of niche services and products, to the relevant audience, because the start ups/new service providers involved in provision of the service will be discriminated which would result in increasing the access cost.

- As pointed out hereinabove, any regulation/licensing of OTT services against the principles of “net neutrality” and non-discriminatory access would result in:

  (a) Creation of monopolies and
  (b) Dis-incentivize innovation
  (c) Increased cost of access and de-gradation of users experience

- Furthermore, the nature of the internet is such that it is not possible to block services and products from other markets – unless we go down the china route of censorship. This not only will be ill advised, but also difficult to implement in a democratic republic such as India.

- It is also pertinent to point out that unless India applies a complete blockade on OTT services coming in from outside India’s borders – and the internet is without borders – there is a very real possibility of OTT service providers moving base to a more business friendly environment, thus depriving India of much needed tax revenue, as well as jobs. Companies such as Flipkart are already based outside India, as the cost of running a business in India is so complex. More regulation adds to the complexity of doing business, and discourage the overseas companies from setting up their base in India.

  By bringing OTT under the framework of regulation - products and services from outside India will gain a stranglehold, not just in India but globally. And, this will act as a barrier for future Indian led global giants. It goes against the principles of Make in India.

- It is also relevant to mention that the OTT services comprise of applications delivered using the underlying data, wireless, wireline, fiber or Ethernet networks and in future will include free Wi-Fi bands. We do not believe that the TRAI or any other regulator has the resources to examine the trend of developments or determine how any such service such as Google maps should be regulated. It is preposterous to assume that an Apps provider such as Google maps should pay to a Mobile company for data usage for which customer is paying or for that matter the customer should pay more because he is not browsing the web but using Google maps.

- However, with the continuous growth of OTT services, in order to ensure the non-discrimination embedded in the concept of net neutrality and to safeguard the consumer interest, some kind of regulation may be needed to

    - prevent the cartelisation to fix the prices
    - prevent discrimination between forms of data.
    - ensure that there is a level playing field for new entrants to the OTT market – who are providing innovative new products and services to the customer.

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