Bharti Telemedia Limited (Airtel)'s Response to TRAI's Consultation Paper on Tariff Issues related to TV Services

Q1) 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.

BTL's Response:

1. We suggest that the wholesale price of TV channels should be regulated and fixed based on a cost-based model.

The wholesale price of TV channels should be reduced immediately to benefit customers:

2. The wholesale price of TV channels was fixed by TRAI in October 2004 when the broadcasting sector was completely analog, and the under-reporting of subscriber revenue was to the extent of 80-90%. Therefore, the market conditions were not appropriate to fix the wholesale price based on a scientific model.

3. However, the Indian broadcasting sector has now undergone a structural shift with the implementation of digitalisation. While digitalisation of Phase I, II, and III is complete, Phase IV of digitalisation is likely to be completed by December 2016.

4. The digitalisation has helped the broadcasters to increase their subscription revenue, which had largely been under-reported in the analog regime. The advertisement revenue of broadcasters has also improved significantly due to correct reporting of subscriber base of each channel. The digitalisation has helped broadcasters to increase its advertisement and subscription revenue significantly without any corresponding increase in the cost.

5. As per FICCI-KPMG 2015 Industry report[1], the subscription revenue for broadcasters is estimated to have grown at 10% to INR 75 billions and going forward, it is expected to grow at a CAGR of 22% from 2014 to 2019 to INR 201 billions. An Increase in the declared subscriber base and increase in revenue share of broadcasters in the subscription pie is expected to drive up the share of subscription to total broadcaster revenue from 33% in 2014 to 40% in 2019. Similarly, the total TV advertising revenue is estimated to have grown by 14% in 2014 to INR 155 billion and going forward, it is expected to grow at a CAGR of 14% over 2014 to 2019, to reach INR 299 billion.

[1] https://www.kpmg.com/IN/en/IssuesAndInsights/ArticlesPublications/Documents/FICCI-KPMG_2015.pdf

6. Over the years, the number of channels broadcasted in India has more than tripled, and the reach of distributors has grown exponentially. Broadcasters today own several channels to carry advertisements for significant durations throughout the day, and DPOs are serving more subscribers than ever. However, the current wholesale price is still quite high and as a result, DTH operators are being forced to heavily subsidize their services to compete with cable operators due to differential regulatory costs and other licensing requirements.

7. Therefore, the current regulatory regime for wholesale tariffs has become outdated and has lost its relevance. There is an urgent need to reduce the wholesale tariff of channels so that the end objective of digitalisation can be achieved through more affordable tariffs for end customers.

The wholesale price of TV channels should be regulated:

8. Both the content and TV channel of broadcaster is unique and cannot be substituted with another content/TV channel. For example, a channel showing Kaun Banega Crorepati or Fear Factor or Big Boss cannot be substituted with another channel. Thus, if the wholesale tariff is not regulated and kept under forbearance, then the broadcaster would demand an exorbitant price for its channel/content due to its popularity, and DPOs would be forced to pay such an inflated price to meet consumer demand. This would lead to violation of 'must provide' provision as broadcasters can always deny the access of their content/TV channel to DPOs by charging an exorbitant rate.

9. The consumers and the Industry have witnessed the misuse of the forbearance regime in the wholesale tariff of HD channels. The agreements with broadcasters for HD channels are largely one-sided and lead to unreasonably high prices for HD content. The price differences of HD versus SD channels range from minimum 2.8 times to over 20 times without any differential content. In case of sports HD channels, some broadcasters have kept a RIO rate as high as Rs.120 for subscribers per month. (Please see Annexure-I for greater details)

10. To address any concern of the monopoly, the wholesale tariff in other service sectors such as telecom is also regulated. The interconnection charge such as termination charge (a wholesale tariff to be paid by one licensed operator to another) is regulated to avoid any instance of denial of interconnection or termination of a call over its network.

11. Any form of a forbearance regime (such as complete forbearance or RIO based models) will only promote the monopoly of broadcasters, their vertical integration and would lead to enormous litigations due to arbitrary price of content. Since the businesses of DPOs are wholly dependent on the availability of content, any ad-hoc or arbitrary pricing

will be detrimental to their investment and their capability to offer TV services to end consumers. Thus, the wholesale price of TV channels should be regulated to protect consumers' interest and to ensure the orderly growth of the broadcasting sector.

12. In fact, TRAI in its report dated 24.07.2010 submitted to the Hon'ble Supreme Court, stated, "*the principal risk of allowing forbearance in the wholesale market is that it could lead to an increase in prices, especially for dominant/ driver channels in the short run. Although in the long run, competition in each genre may help in aligning the price to market demand, in context of the lack of addressability, the effects of releasing the wholesale tariff could be significant, even if temporary. This is likely to adversely impact the subscriber – and there could even be disruption of services/ specific channels in certain areas. This could have a negative impact on the subscriber as well as the MSO/LCO.* <u>***Given the sensitivity of the MSO model to the cost of content, even temporary increases are likely to detrimental. The Authority is therefore, of the view that at present, it is premature to allow forbearance at the wholesale level."***</u>

13. We also oppose RIO based models (Universal RIO model and Flexible RIO model) as these are other forms of the forbearance regime. In Universal and Flexible RIO models, the broadcaster will have absolute control over the pricing of its channels/content without any regulatory oversight/intervention. The regulated RIO model is only workable, if the price cap of channel is priced strictly based on its cost and hence, the better approach would be to follow a cost-based model.

A cost-based model for wholesale tariffs of TV channels is critical:

14. We firmly believe that a cost-based model will be the best approach to fix wholesale tariffs of TV channels.

15. TRAI in its report dated 24.07.2010 submitted to the Hon'ble Supreme Court, recognized that among all identified mechanisms of price control (for wholesale tariff), **the cost plus model was considered to be most relevant to the Indian market.** However, it did not go for the cost based model, citing lack of comprehensive information.

16. In a monopolistic environment and where the broadcasting sector is going to be 100% digitized by end of December 2016, a cost based model is the best way to decide the wholesale tariffs. A cost based model would allow for an effective recovery of the seller's costs with a reasonable margin. This makes the broadcasters' business viable as costs and returns are accounted for. It constrains the ability of broadcaster to charge monopolistic price (i.e. an unwarranted price premium) as the price must be aligned to the cost base. This protects consumer interest and prevents over-charging. It is the most scientific method for fixing the wholesale price of a channel in a transparent manner.

17. Furthermore, the cost based model should factor in the level of digitalisation and the cost should decrease with the increase in digitalisation in future. Due to digitalization, broadcasters are able to realize the increased advertisement and subscription revenue without any corresponding increase in its cost. Since the digitalization is a direct result of an action taken by both DPOs and the customers, the benefits of digitalization should also be extended to both the customers and DPOs in the form of lower wholesale tariffs.

18. Therefore, we propose the following:

    a. In 2010, TRAI itself recognized that the cost based model is the most relevant model to the Indian market. However, the same was not adopted due to lack of adequate data. Thereafter, no effort was apparently made to recommence the said exercise. Thus, it is the high time that the wholesale price of channels are moved to a cost based regime and such an exercise is completed by TRAI in a time bound manner.

    b. For telecom sector, TRAI seeks all relevant data (either regularly say Accounting Separation Report or on ad-hoc basis) from TSPs, which helps TRAI to fix a cost based tariff for various segments. Similarly, TRAI should collect all financial data (cost and revenue data including the content and carriage cost as well as advertisement and subscription revenue) from broadcasters and fix the wholesale tariffs for channels in a time bound manner.

    c. TRAI may make use of an industry/ appropriate accounting/international renowned consulting firm to help in arriving at the cost and revenue of the broadcaster as well as an appropriate model for fixing the wholesale price of each channel in a time bound manner say 6-12 months.

    d. In fact, fixing the wholesale price for telecom network is more tedious/ complex than the broadcaster and still the wholesale interconnection charge for telecom is being fixed by TRAI for more than a decade. Therefore, we do not foresee any issue in fixing the wholesale tariffs for TV channels.

    e. The concept of intermediaries between the broadcasters and the distribution platform should be done away. While the broadcasters and the distributors are holding a valid licence/registration certificate; however, the intermediaries are not holding any such licence/certificate. There is no reason to involve an unlicensed entity between the dealings of two licensed operators.

Q2. 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.

BTL's Response:

The objective of the government and the regulator is to ensure that there is adequate competition in the retail segment so that customers can choose any distribution platform, avail any channel at affordable price and can access to multiple bouquets. We firmly believe that with a cost based wholesale price for TV channels, low entry barriers for distribution platform, a level playing field among distribution platforms, a "forbearance regime for retail tariffs" and adequate flexibility to design bouquets/tariffs at the retail side will increase the affordability of TV services to end customers.

Fixation of wholesale and retail tariffs should be dealt separately:

1. The fixation of wholesale and retail tariffs is a distinct regulatory exercise and completely independent of each other and the factors necessitating the same have to be analysed independently by TRAI. One does not necessarily lead to the other.

2. In the Indian telecom sector, this is already being practiced for the last two decades. The wholesale tariff (in the form of a regulated interconnection charge) and the retail tariff (under forbearance) is dealt separately through different regulations/tariff orders.

3. In contrast, in the Indian broadcasting sector, both wholesale and retail tariff is being dealt in a single tariff order/regulation. This has created a confusion wherein the exercise of fixing a wholesale tariff and related regulations is being linked with retail tariff. Therefore, the wholesale and the retail tariff in broadcasting sector should be dealt separately through different regulations/tariff orders as being done in the Indian telecom sector.

Retail tariffs should remain under a forbearance regime:

4. The Television Distribution market is highly competitive with the presence of 60,000 LCOs, 6000 MSOs, 7 DTH operators, 2 HITS operators and a few IPTV service providers. With the growth of digitalisation, competition at the retail level has become more intense and DPOs have become a substitute to each other (digital cable services versus DTH). The licensing/registration regime for DPOs are open for every individual/company with low entry barriers. Consumers have ample choice to avail TV services and packages from Cable TV, DTH, IPTV and HITS operators. Thus, every DPO is offering affordable, innovative and customer-friendly tariffs and services to attract and retain the end

customers. Thus, in such a competitive market, there is no plausible reason to regulate the tariffs at retail level and to regulate the packaging and pricing of TV channels.

5. TRAI in "the Telecommunication (Broadcasting and Cable) Services Order for Addressable System" dated 21.07.2010 has recognized that **since the retail tariffs, prevailing in the market are quite competitive and the market forces appear to be operating effectively, there is no need for regulatory intervention in the matter of retail tariff fixation.**

6. The retail forbearance regime has enabled DTH operators to offer to innovate retail pricing models. While the DTH industry continues to be under huge losses and is heavily taxed, it still offers the most competitive and affordable tariffs to its consumers, as illustrated below:

DTH Provider	Country	Pack Name	Channels	Price(USD)
Airtel	India	My Plan 99+Tamil Top up	156	2.2
Indovision	Indonesia	Mars	101	20
Astro	Malaysia	Family	41	10.24
Truevision	Thailand	Happy Family	57	8.5
Sky	UK	Original	51	22.8
DirecTV	USA	Select	145	20

7. Clearly the Indian customers are benefited by having access to almost double the number of channels at 1/10th the price in comparison to DTH services worldwide. For example, Airtel offers one of the cheapest packs in the country at Rs.99 only for a base pack having 125 channels.

8. The DTH operators in India have invested thousands of crores in the last 10 years. They are incurring heavy losses on account of subsidizing set-top boxes to the extent of Rs.1800-2000 per STB. Further, Industry is subjected to multiple taxes & levies amounting to approximately 33%-35%. The industry's accumulated losses (after tax) are at Rs. 15,798 Crores (March 2014). The average loss per DTH connection is around Rs.2017.70. Therefore, the industry is in dire need of supportive regulations and any attempt to regulate retail tariffs will only worsen the financial health of the DTH Industry.

   In view the intense competition, mature behaviour of DTH operators, affordable tariffs and the declining financial health of DTH Industry, the tariff forbearance regime at a retail level should not be tampered with and should be continued in its true spirit. DTH operators should have the complete freedom to market TV channels in both a-la-carte and bouquet form and to innovate pricing model and business strategies. It is to be

noted that while the broadcasting sector has witnessed the instances of market distortions and unfair pricing at the wholesale level, no such example exists in a retail side. In fact, all disputes in various courts have been related to wholesale prices only.

9. A tariff forbearance regime does not imply "No Regulation" or "Nil Regulation." It is simply the application of the economic rationale that price regulation is not necessary when the markets are functioning in a competitive manner. DTH industry presently has intense competition and does not warrant any regulation of retail tariffs. However, even under forbearance, tariff for the service continues to be monitored by TRAI and appropriate regulatory measures are put in place to protect the consumer interests.

A MRP model will lead to de-growth of DTH Industry:

10. We strongly oppose any form of MRP based retail tariff model for DTH operators as DTH operators are basically the independent business entities holding a valid licence under Section 4 of Indian Telegraph Act granted by the Government of India. DTH operators act as independent entities that have invested significantly and incur huge costs in running their business. Airtel alone has invested more than Rs.6,000 Crores in its DTH operations. Some of these costs are subsidized set-top box, transponders, call centre operations, data maintenance, technologies, Manpower, licence fee, entertainment taxes, etc.

11. DTH operators interface with subscribers and play a significant role in the broadcasting sector. Thus, they cannot be treated merely as an intermediary (agent) between the broadcasters and the customers by way of a MRP based retail tariff model. Such a model will adversely affect the business case of DTH operators and will take away all their flexibility to run their business.

Level playing field among every distribution platform should be maintained:

12. Currently, three Digital Platform operators namely, Digital cable, DTH and HITs are engaged in providing television signal/Content to consumers and have to procure a license from MIB.

13. DTH companies are helping the Government to achieve the goal of digitalization in the country. Unlike in the past when cable was the only medium in the country, introduction of DTH has resulted in a transparent environment in the distribution/broadcasting industry.

14. At present, there are multiple options available for consumers, e.g. DTH, Digital Cable, IPTV, etc. All these offerings are competitively identical and easily accessible to the

consumers, but only DTH industry has managed to reach these services across the country with transparent pricing, world-class technology and top of the line customer service. Some of the comparisons of DTH with Cable industry are as follows:

DTH Operators	**Cable Operators**
Minimum average package starting from Rs. 99/- (plus regional top-up)	Minimum average package starting from Rs. 150/-
24/7 Call Centre, Toll Free Numbers, Customer Service strictly as per QoS TRAI Guidelines & Regulations	No such 24/7 call centre for customer service and they lack QoS TRAI Guidelines & Regulations which varies from place to place
No local Programme Channel can be aired	Local Programme Channel can be aired and they have more options resulting in better revenues
Regulation on CAM Slot increases the cost of Set-top Box	No such regulation on CAM Slot for Set-top box
Accumulated Losses of the Industry since inception (31st March , 2014) is Rs. 15,798 Crore and for Airtel it is Rs. 3359 Crore	Example of Den Cable: Accumulated Gain since inception (31st March, 2014) is Rs. 1678 Crore
Industry EBIT (- 5%)	Industry EBIT (+ 19 %)

15. It is clear from the above table that DTH provides a better service at a relatively lower cost with lower EBIT margin and profitability. However, despite the precarious financial health of DTH Industry, it is being saddled with huge levies & Taxes such as License Fee, Service Tax & Entertainment Tax as well.

16. Please refer to the table below, which indicates License Fee, Bank Guarantee & other levies applicable to all three service providers.

Parameters	***DTH***	***MSO***	***HITS***	***Cable***
Entry fee	*Rs 10 crores*	*Rs.1 Lakh*	*Rs. 10 crores*	*Nil*
Bank Guarantee (in Rs. crore)	*Rs. 40 crore*	*Nil*	*Rs. 40 crore*	*Nil.*
Annual License Fee	*10 % of GR*	*Nil*	*Nil*	*500/-*
WPC license fee and royalty	*As prescribed.*	*Nil*	*As prescribed*	*Nil*
Service Tax	*14.5 %*	*14.5 %*	*14.5 %*	*14.5 %*

**Average Entertainment Tax*	*10%*	*7-8%*	*7-8%*	*7-8%*
Total of Taxes	*34.5 %*	*22.5 %*	*22.5 %*	*22.5 %*

17. The above comparison clearly shows that there exists a non-level playing field among the various types of service providers. DTH operators pay a higher tax of (34.5%) in comparison to cable, which pays 22.5%, in which License Fee of 10% is one of the major components.

18. The DTH operators have a very transparent business and whatever revenue is earned, is shared with the Government. On the other hand, Digital cable operator, which has similar nature of business, is not liable to pay any License fee. Their entry cost is Rs.1 lac only against DTH entry cost of 10 crore +40 crore Bank Guarantee and a License Fee at the rate of 10% of Gross Revenue.

19. Under these circumstances, DTH operators are on huge competitive disadvantage position as compared to Digital cable. Further, all DTH operators are running into huge losses since inception.

20. Thus, we would request the Hon'ble authority to bring a level playing field between all operators viz, DTH, and Digital cable operator, similar license fee should be applicable to both types of operators, or if one is exempted from paying license fee, all types of distribution platforms should also be exempted to do so.

21. In view of the above, we would request you the following:-

    a.) To Waive-off the License Fee of 10% imposed on DTH Operators and bring the Industry at par with competing CAS/DAS cable industry; OR
    b.) In order to create a level playing field, all the distribution platform operators should be imposed a uniform License Fee.
    c.) Further, in case the LF is not removed, an overall percentage of the licence fees for DTH operators should be reduced. The concept of Adjusted Gross Revenue should also be brought for DTH operators wherein the payments being made to broadcasters and to the government in the form of service tax, sales tax, entertainment tax, VAT, should be excluded From AGR. The revenue of the broadcasters should also be considered for the licence fee to ensure that the payments being made by distribution platform to broadcasters are subjected to a licence fees.

Q3.How will the transparency and non-discrimination requirements be fulfilled in the suggested pair of models? Explain the methodology of functioning with adequate justification.

BTL's Response:

1. As explained above, the wholesale tariff has to be regulated as DTH operators do not have much leverage with broadcasters who are monopolistic in nature. For retail tariff, the forbearance regime should be continued as it has increased the affordability of TV services and has given the wider and innovative choice to end customers.

2. We believe that while scrutinizing the tariff (both at wholesale and retail levels), TRAI should ensure that the principles of - non-discriminatory, transparent, not anti-competitive, non-predatory, non-ambiguous and not-misleading - are being adhered.

3. TRAI should publish the deals of broadcasters and DPOs including the level of discounts being offered to each DPO on a regular basis to promote transparency and to address any concern of vertical integration.

4. In the telecom sector, the retail tariff regime is well tested and the tariff gets filed with TRAI whenever launched by service providers. Similarly, DTH operators also file their tariffs whenever launched and TRAI can be ex post facto intervene for any violation of the principles.

Q4. 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.

BTL's Response:

1. A cost-based model for wholesale tariffs and a forbearance regime for retail tariffs will lead to lower tariffs thereby increasing the affordability of channels and uptake of digital TV services by consumers.

2. The large number of DPOs in India is already delivering choice, innovation and value-for-money for consumers. Airtel offers a wide variety of choices for a subscription which includes bouquet, add-on-packs and al-a-carte channels.

3. Any kind of regulation at the retail level would take away innovation and flexibility and makes it difficult for DTH operator to cater for the needs of customers effectively.

Q5. 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.

Q6. How will the transparency and non-discrimination requirements be fulfilled in the suggested models? Explain the methodology of functioning with adequate justification.

Q7. 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.

BTL's Response:

Please see our response to Q. No. 1, 2, 3 and 4.

Q8. Is there a need to identify significant market powers?

Q9. What should be the criteria for classifying an entity as a significant market power? Support your comments with justification.

Q10. 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?

Q14. What should be the measures to ensure that price of the broadcast channels at wholesale level is not distorted by significant market power?

BTL's Response:

1. Both the content and TV channel of a broadcaster are unique and cannot be substituted with other content/TV channel. Hence, practically every broadcaster holds significant market power.

2. Currently, top five broadcasters offer 191 TV channels and controls almost 80% of TRP (as per BARC data), as illustrated below:

Broadcaster	Channel share Average %	Number of Channels
Star	23	46
Taj/ Zee	20.4	52
SUN	13.9	33
Indiacast / Colour	12.2	43
MSMD/ Sony	9.4	17
Total	**78.9**	191

3. It shows that the TV market is highly concentrated and controlled by a few broadcasters as against a high number of DPOs. Furthermore, many broadcasters also hold a DPO licence, i.e. DTH, MSO and therefore, there are genuine concerns of monopolization and vertical integration.

4. Therefore, it is critical that appropriate regulatory framework is in place to address any concern of monopolization and vertical integration (vertical price squeeze, exclusivity of the content to its own DPOs, denial of carriage, etc.). For this, we suggest the following:

   - The wholesale price of TV channel should be regulated and fixed based on a cost-based model. This will ensure that no broadcaster is able to distort the market in any manner. On the contrary, a forbearance regime for wholesale tariffs will create a monopoly of broadcasters, distort the market and lead to denial of channels through ad-hoc and arbitrary wholesale pricing.

   - Volume based discounting schemes or any other discount scheme should be allowed and available to all distributors of TV channels in a fair and transparent manner.

   - TRAI should ensure that the wholesale tariffs should adhere to the principles of non-discriminatory, transparent, not anti-competitive, non-predatory, non-ambiguous and not-misleading.

   - TRAI should also publish the commercial terms between the broadcasters and DPOs including the level of discounts being offered to each DPO on a regular basis to promote transparency and to address any concern of vertical integration.

   - **Additional regulatory provisions should be placed on broadcasters holding significant market share (either assuming a number of channels or based on TRP) as well as vertically integrated (holding a valid DPO licence) based on international best practices and TRAI's earlier recommendations.**

Q11. Is there a need to continue with the price freeze prescribed in 2004 and derive the price for digital platforms from analog prices? If not, what should be the basic pricing framework for pricing the channels at wholesale level in digital addressable platforms?

BTL's Response:

1. As explained in our response to Q.1, we support a cost-based wholesale price of TV channels. Since the exercise of fixing a cost-based wholesale price may take some time, and the consumers should be benefited with reduced tariff for TV services immediately, we suggest the following options:

   (a) **Fix the RIO rates for DTH operators based on fixed fee/CPS agreements:** Today, 95% of the agreements with Broadcasters are based on Fixed Fee/CPS and only 5% are based on RIO rates. Since the channel price in fixed fee/CPS agreements is less than 4% of the RIO rates, it clearly indicates that the RIO rates are unrealistic and far from market realities, as illustrated below:

	A	B	C	D = B / C	E = B / A	F = C/A
Network	Number of Channels (SD & HD)	CPS (per customer for all channels) (Rs.)	Sum of Al a Carte RIPO Rates (per customer for all channels) in Rs.	Ratio of CPS & Sum of Al a Carte RIPO Rates	Rate per customer per channel = CPS / Number of Channels (Rs)	Rate per customer per channel = Sum of Al a Carte RIPO Rates / Number of Channels (Rs)
A	43.00	32.97	838.71	3.9%	0.77	19.50
B	41.00	21.50	517.76	4.2%	0.52	12.63
C	18.00	14.30	371.45	3.8%	0.79	20.64
D	9.00	2.76	66.35	4.2%	0.31	7.37
E	36.00	11.40	296.91	3.8%	0.32	8.25
F	6.00	0.54	170.21	0.3%	0.09	28.37

The published RIO rates are often used as means to arm-twist the DPOs from signing the agreement based on fixed fee /CPS and to dissuade the end consumer from being able to make a-la-carte choices as per his/her preference. Therefore, the RIO rates are highly inflated, and still TRAI continues to increase these rates based on inflation.

Therefore, the current RIO rates of broadcasters should not be more than the average rate of each channel under fixed fee/CPS agreements, which is less than 4% of the current RIO rates. The reduction in the RIO rates at the level of fixed fee/CPS deals will not result into any loss to broadcasters as broadcasters are already selling their channels at that price. However, a rationalization of RIO rates closer to market rates will contain the monopolistic behavior of broadcasters. It is to be noted that recently, in the telecom sector, TRAI had reduced the upper ceiling of carriage charge from 60 paisa to 35 paisa as the prevailing carriage charge was found to be closure to that rate. Similarly, roaming ceiling rates were revised to make it closure to the realized rates.

Q12. Do you feel that list of the 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.

Q13. 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 language) etc? Give your suggestions with justification.

BTL's Response:

1. We suggest that the wholesale price of channels should be decided based on a cost-based model for each channel.

2. We oppose any genre based wholesale pricing as popularity, quality of content and demands of the channel vary from channel to channel even within the same genre. The variations in the business model of the broadcaster can significantly impact the cost of a channel. A simple genre-level average cost for tariff determination cannot adequately represent the variety of business models present in the broadcasting sector today. Costs such as content, Manpower, operating, and technology vary from channel to channel and broadcaster to broadcaster. Thus, it would be incorrect to price all channels of the same genre uniformly, especially when the cost of one channel can be significantly higher than the other channel.

3. Furthermore, in some cases, a programme related to a different genre is being shown on the channel of a different genre. For example, some movie channels are showing sports like live cricket, etc. Thus, the significant cost of obtaining the rights of sport events would be allocated to another genre, thereby increasing the wholesale price of all channels in that genre.

4. Therefore, we recommend that a cost-based exercise should be conducted for each channel rather than on the basis of the genre.

Q15. What should be the basis to derive the price cap for each genre?

Q16. What percentage of discount should be considered on the average genre RIO prices in the given genre to determine the price cap?

Q17. What should be the frequency to revisit genre ceilings prescribed by the Authority and why?

Q18. What should be the criteria for providing the discounts to DPOs on the notified wholesale prices of the channels and why?

Q19. 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?

BTL's Response:

1. As explained in our response to Q. 1, we support a cost-based model for determining the wholesale price of channels.

2. Once the wholesale price is determined for all channels, broadcasters should be given complete freedom to offer the discounts below than the said price. However, in an unregulated discount regime, if there is a significant gap between the ceiling price (fixed by TRAI) and the market price (after discounts) between two DPOs, it will lead to anti-competition and promote vertical integration.

3. Thus, broadcasters should not distinguish between two DPOs over the discount, and the same discount along with applicable T&C should be available to all DPOs. Such discounts (channel wise, bouquet wise and all channels wise) should be fair, transparent, non-discriminatory, non-predatory and anti-competitive and should not promote vertical integration.

4. To promote transparency, broadcasters should publish their discount schemes on their website and offer to all DPOs. Furthermore, TRAI should also publish the commercials (agreed rates) between the broadcasters and DPOs over its website to promote a level playing field and transparency.

5. TRAI may conduct a cost-based exercise, initially every year, based on market developments or may decide the frequency, if a yearly review is considered to be cumbersome.

Q20. What should be parameters for categorization of channels under the "Niche Channel Genre"?
Q21. 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.
Q22. What should the maximum gestation period permitted for a niche channel and why?
Q23. How misuse in the name of "Niche Channel Genre" can be controlled?
Q24. 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"?

BTL's Response:

1. As explained above, we recommend a cost-based wholesale rate for each channel, including niche channels.

2. In 2010, TRAI decided not to regulate the wholesale price of HD channels as it believed that HD channels fall in the a category of niche channels. However, the misuse of an unregulated wholesale tariff for niche channel has already been witnessed where the agreements between the broadcasters and DPOs for HD channels are largely one-sided and at unreasonably high prices (Please see Annexure-I for greater details)

3. If broadcasters are given complete forbearance in fixation of wholesale tariffs, then they will introduce all channels in niche category (as broadcasters introduced HD channels with abnormal wholesale tariffs) to bypass the regulatory regime. Thus, we recommend that a cost-based exercise for fixing the wholesale tariffs should be conducted for niche channels as well.

4. In case, TRAI still decides to categorize some channels as 'niche channels' in national interest then such channels should only be related to the social sector, such as school education, agriculture, etc. The tariff forbearance regime of such channels should be reviewed every year to avoid any misuse and bypass of the regulatory regime. Needless to say that DTH operators are already offering niche channels like DD Bharti, DD Kishan as per the guidelines of MIB.

Q25. How should the price of the HD channel be regulated to protect the interest of subscribers?

BTL's Response:

1. Currently, the wholesale pricing for HD channels is under forbearance. TRAI, vide its TTO (Addressable Systems) dated 21st July, 2010, opined that HD channels are niche and premium content, which do not warrant price regulation.

2. Since the ground realities today present a different picture, it is an appropriate time to review this issue de novo, taking into account the current large-scale proliferation of high-definition televisions, as well as the rapidly growing HD subscriber base.

3. As per the joint study conducted by FICCI and KPMG in 2015, the share of HD panel TV sales is approx. 55% and it is expected to further increase over the next five years, reaching 80% by 2019. Currently, approx. 50 channels are on HD platform, and all broadcasters are now creating more TV channels on HD platform, and mostly all new channels are now coming on HD platform. As per our estimates, 50% of all new Airtel DTH subscribers opt for HD set-top box, which shows high consumer interest in HD channels. Such large-scale adoption is an indication that HD television content no longer falls within the realm of niche or premium offerings, but is rather a segment that is fast-growing and as such requires the attention of TRAI.

4. This segment still remains unregulated at the wholesale level, and DTH operators find it extremely difficult to negotiate bilateral arrangements with broadcasters, which in turn adversely impacts consumer interests and put many operators at a competitive disadvantage. The absence of a regulated wholesale pricing regime for HD Channels allows broadcasters to exercise a dominant position by employing opportunistic and arbitrary pricing for such content, and prevents larger-scale proliferation of high-definition content. Lack of regulation or control over wholesale pricing of HD channels is leading to even higher, more disproportionate prices for a significant number of consumers, and will be tantamount to violation of the 'must-provide' conditions applicable to broadcasters.

5. Agreements with broadcasters for HD channels are largely one-sided, and lead to unreasonably high prices for HD content, with little to no uniformity across the entire portfolio of HD channels available to distributors. We illustrate these gaps in a chart as an Annexure to our response. A cursory look reveals stark differences in the ratio of prices of SD channels to their HD counterparts. These price differences range from a minimum of 2.7 times to over 15 times the price of the SD channel. It is in the context of this lack of uniformity in HD pricing that we propose a cost-based wholesale price regulation of HD channels.

6. **Therefore, we recommend that a cost-based exercise should be conducted for all channels, including HD channels immediately.**

Q26. 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?

BTL's Response:

1. We recommend a cost based wholesale price regulation for both SD and HD channels. Once a cost based exercise is done for fixing the wholesale price of every channel, there is no need to link the pricing of SD channel with HD channel.

2. In case, the cost of SD and HD channels cannot be separated, then the wholesale price of an HD channel should not be more than 1.2 times of equivalent SD channel.

Q27. Should similar content in different formats (HD and SD) in a given bouquet be pushed to the subscribers? How this issue can be addressed?

Q28. 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.

BTL's Response:

1. Flexible pricing is a core tenet of consumer marketing and innovation. The innovative pricing model for various combinations of products/services is critical for the growth of DTH services. Customers find differential bouquets/products/offerings, a great value proposition as these enable them to use various products/services of their choice at a much lower price.

2. To reflect upon the importance of variety seeking in consumer choice, DTH operators should continue to have the flexibility to offer a variety of packages/bouquets to consumers.

Q29. 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.

BTL's Response:

1. We believe that the current process of subscription wherein a subscriber can subscribe to any channel through various forms, call centre, application, SMS, website, etc. is simple and user friendly.

2. However, we shall implement any suggestion to improve the experience of customers subject to technical feasibility.

Q30. How can the activation time be minimized for subscribing to additional channels/bouquets?

BTL's Response:

1. Under the current process, DTH operators are activating the subscription of any channel almost instantly.

2. However, we shall implement any suggestion from TRAI to improve the experience of customers, subject to technical feasibility.

Q31. Should the carriage fee be regulated? If yes, what should be the basis to regulate carriage fee?
Q32. Under what circumstances, carriage fee be permitted and why?
Q35. 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?

BTL's Response:

1. We recommend a cost-based model for determining the wholesale price of each channel, which would be fixed after considering the cost and revenue of the broadcasters. Since in a cost-based model, the carriage, placement or any other cost will be considered before determining the wholesale price of each channel, the issue of

carriage, placement and other cost will automatically be settled and there would not be any need to intervene in the carriage, placement and other fee.

2. Furthermore, for a broadcaster dependent on advertising revenue, ensuring reach is critical. The higher reach implies greater access to the subscriber base, thereby providing an opportunity for the channel to improve its rating. If a particular channel is popular, there will always be a huge demand from the customers to include such channels and in such circumstances, broadcasters do not pay any carriage fee and instead earn huge subscription revenue from the DPOs. There will not be a situation wherein a popular channel is being denied to end customer due to want of carriage fee as non-carriage of such a channel will adversely affect the DPOs' business.

3. Currently, all DPOs have limited bandwidth and can carry limited channels as against the higher number of available channels. Since the DPOs cannot carry each and every channel with its limited bandwidth and is also bound to carry all popular channels, it seeks a nominal carriage fee only for those channels, which are new and may attract only a limited subscriber base to recover its bandwidth and operational cost. Broadcasters hence pay the carriage fee for fewer popular channels to increase its advertisement revenue. Once the channels become popular, the broadcasters stop paying the carriage fee to DPOs and in turn seek the higher subscription charges from the DPOs.

4. While the digitalisation has improved the capacity, however, even after the complete digitalisation, capacity will always be a constraint to carry all channels. Therefore, DPOs should have complete freedom to seek the carriage fee for new, un-popular channels to recover its carriage and other operational costs. Thus, the carriage fee should be left to market forces based on the principle of 'demand and supply'. Otherwise, TRAI should mandate sharing of advertisement revenue between the broadcasters and distribution platform operators for such channels, which are not high in demand from broadcasters.

5. Any attempt to regulate the carriage/placement charge will be tantamount to regulating the advertisement revenue, which is also driven by the principle of 'demand and supply' factor. If there is no limit or regulation on advertisement rates, there is no reason for placing any limit/regulation on carriage/placement fee.

6. In fact, in its report dated 24.07.2010 submitted to the Hon'ble Supreme Court, TRAI recognized that "*The Authority has also looked at the international experience in controlling or capping carriage fee.* ***<u>Carriage fee in international markets is viewed as a matter of commercial negotiation</u>*** *and is based on relative bargaining power and market strength of players.* ***<u>In all the countries studied, there is no incidence of direct intervention in placement and carriage fee,</u>*** *nor in any other transactions at the* *wholesale level (e.g. subscription fee negotiations). In fact, even in international digital markets, where the carriage fees cannot be monetized because the supply of bandwidth is almost unlimited – there is still incidence of the placement fees. While carriage fees reflect the supply-demand mismatch and are market driven, placement fee is also a commercial transaction linked to the willingness of a channel to pay for being carried on a certain number that is easy to recall and/or placed adjacent to a particular channel."*

7. Therefore, we recommend that the carriage and placement fee should not be regulated in any form and the same should be left to market forces.

Q33. 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?
Q34. 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?

BTL's Response:

1. As explained in the preceding question, DPOs have limited capacity as compared to the higher number of TV channels. Currently, the number of channels in India are approx. 850 (800 SD channels and 50 HD channels) and to carry all these channels, DTH operators require at least 1500MHz spectrum. In contrast, existing DTH operators' capacity ranges from 200MHz to 700MHz, which means that they cannot carry all channels and the availability capacity is much lower than the required capacity.

2. Putting a cap on the carriage fee will not address the issue of demand and supply gap. In the event, the carriage charge is regulated then it is not clear how with a regulated carriage fee with a ceiling, DPOs will select channels with limited bandwidth, i.e. first-come-first-serve, subscriber choice, auction, lottery, linked with other agreements, etc. Any regulation on the carriage fees will force DPOs to invest in their infrastructure limited to carrying popular channels rather than upgrading their infrastructure to carry as many channels as possible and incur huge losses.

3. In a situation of supply-demand mismatch due to the capacity constraints of DPOs, any attempt to lay down a ceiling will only result in market distortions and may lead to covert or disguised deals that will be difficult to regulate.

4. Moreover, the carriage fee varies from place to place, network to network and market to market. The amount of carriage and placement fee paid by a broadcaster to a DPO depends on multiple factors, including but not limited to (1) target audience delivered, (2) pull of channel, (3) bouquet composition, and (4) competitive intensity. Since all

these factors differ with each transaction and with each party, enforcing a regulated cap would not an efficient regulation and will lead to micro-management of DPOs' business.

5. Since carriage fees are purely market driven phenomena caused by a supply demand mismatch, the same should be left to market forces and not to be regulated. If the carriage fee is regulated, then it will only create disputes between DPOs and broadcasters and will force DPOs to invest less in their infrastructure.

Q36. 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?

<u>BTL's Response:</u>

No comment

Q37. 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?

<u>BTL's Response:</u>

We are already offering the above facility to our customers.

Q38. Can Electronic Program Guide (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.

<u>BTL's Response:</u>

1. We do not recommend the PIP feature as the implementation of this feature will be expensive both for customers and DPOs.

2. Technically, PIP feature cannot be offered on existing set-top boxes. The customers would have to buy a new set-top box with PIP facility, and the cost of such a set-top box will be at least 3-4 times higher than the current cost.

3. Similarly, DTH operators will have to incur huge development and IT cost to develop this feature.

4. Since the benefits of PIP feature is much smaller than the cost of making this feasible and subscriber can be informed about the programme of unsubscribed channel through other means, the PIP feature should not be mandatorily implemented.

Q39. 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.

Q40. Will there be any additional implementation cost to subscriber for pay-per-view service?

BTL's Response:

1. We wish to submit that the option of pay-per-program for the content which is received from broadcasters is not technically feasible as the complete technical control of the programme IDs are not made available to DPOs by the broadcasters, and it is the broadcasters, which control the programmes guide for end customers. Furthermore, each DPO and broadcaster would have to incur huge development cost to implement this feature in their system. Further, tariffs for pay-per-view will be quite high for customers compared to tariff for whole channel available on 24x7.

2. Since DPOs are already offering affordable tariffs to end customers and with the reduction in the wholesale tariffs (as suggested above), the affordability of TV services will further increase and the provisioning of pay per programme will require a huge cost, both at broadcasters and DPOs level, we do not recommend pay per programme viewing of the broadcaster content.

Q41. 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 of periodic reporting to broadcasters and audit of DPOs with justification.

BTL's Response:

1. Currently, the television distribution market is highly fragmented with the presence of 60,000 LCOs, 6000 MSOs, 7 DTH operators, 2 HITS operators and a few IPTV service providers. A central facility connecting all distributors and broadcasters at a central place will be a hugely cumbersome and costly exercise. Therefore, we do not recommend setting up of any central facility for the audit purpose.

2. We firmly believe that the current systems of audit between broadcasters and DTH operators are quite transparent and can be implemented for other DPOs as well.

Q42. Stakeholders may also provide their comments on any other issue relevant to the present consultation.

N/A

Annexure-I

Channel	Company/ Distributor	Genre	SD	HD	SD v/s HD Ratio/Times
Fox Life HD	NGC	Lifestyle	1.98	30	15.2
Ten	TAJ	Sports	8.61	125	14.5
MTV Indies	Indiacast	Music	4.02	50	12.4
Zee Café	Taj	nglish Entertainmen	4.59	50	10.9
Star World	STAR	nglish Entertainmen	2.05	20	9.8
Nat Geo Music	NGC	Music	3.11	30	9.6
CNBC Prime	Indiacast	News	4.88	46	9.4
Star Sports 2	STAR	Sports	15.12	141.8	9.4
Animal Planet	Discovery	Knowledge	2.59	24.15	9.3
Star Sports 1	STAR	Sports	14.89	119.9	8.1
Zee Studio	TAJ	Movies	4.01	30	7.5
Sony Six	MSMD	Sports	18.77	127.65	6.8
Gemini TV	SUN	GEC- Regional	5.91	40	6.8
Sun Music	SUN	Music- regional	4.02	25	6.2
NGC	STAR	Knowledge	2.58	16	6.2
Sun	SUN	GEC- Regional	7.11	40	5.6
Baby TV	NGC	Kids	5.57	30	5.4
EPIC	Indiacast	GEC	10.5	55	5.2
TLC	Discovery	Lifestyle	4.65	24.15	5.2
Colors	Indiacast	GEC	11.46	57.5	5.0
Sony Pix	MSMD	Movies	6.88	33.3	4.8
Color Infinity	Indiacast	nglish Entertainmen	8.32	40	4.8
History TV 18	Indiacast	Knowledge	8.57	40.25	4.7
KTV	SUN	GEC- Regional	8.61	40	4.6
Nat Geo People	NGC	Knowledge	6.72	30	4.5
Nat Geo Wild	NGC	Knowledge	6.72	30	4.5
Sony	MSMD	GEC	11.47	51.06	4.5
&Pictures	Taj	Movies	9.65	40	4.1
Star Gold	STAR	Movies	7.42	30	4.0
Star Movies	STAR	Movies	7.42	30	4.0
Zee Cinema	TAJ	Movies	7.44	30	4.0
Zee TV	TAJ	GEC	7.44	30	4.0
Star Sports 3	STAR	Sports	12.58	50	4.0
Star Plus	STAR	GEC	7.87	30	3.8
Comedy Central	Indiacast	nglish Entertainmen	8.3	30	3.6
AXN	MSMD	nglish Entertainmen	8.32	30	3.6
Star Sports 4	STAR	Sports	14.89	50	3.4
Life OK	STAR	GEC	9.21	30	3.3
Discovery World	DISCOVERY	Knowledge	7.75	24.15	3.1
&TV	Taj	GEC	10.58	30	2.8
Travel XP		Lifestyle	31	85	2.7