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dth services



RP/FY 23-24/075/153

October 10, 2023

**To,**  
**Mr. Anil Kumar Bharadwaj**  
**Advisor(B&CS)-II**  
**Telecom Regulatory Authority of India,**  
Mahanagar Doorsanchar Bhawan,  
Jawahar Lal Nehru Marg,  
Old Minto Road,  
New Delhi-110002

**Sub: Response to TRAI Consultation Paper on "Review of Regulatory Framework for Broadcasting and Cable services"**

**Ref: TRAI Consultation Paper dated 8<sup>th</sup> August, 2023.**

Dear Sir,

In reference to the captioned consultation paper, we are pleased to enclose our response for your perusal.

We hope that our submissions will merit your kind consideration.

Thanking You  
Yours Sincerely

**For Bharti Telemedia Limited**

A handwritten signature in blue ink, appearing to read 'Rahul Vatts', is written over a blue circular stamp. The stamp contains the text 'Bharti Telemedia Limited' around the perimeter and a small star at the bottom.

**Rahul Vatts**  
**Chief Regulatory Officer &**  
**Authorized Signatory**  
**Encl: As mentioned above.**

**Copy to:**

- i. Member, TRAI.**
- ii. Secretary, TRAI.**
- iii. Principal Advisor (B&CS), TRAI.**

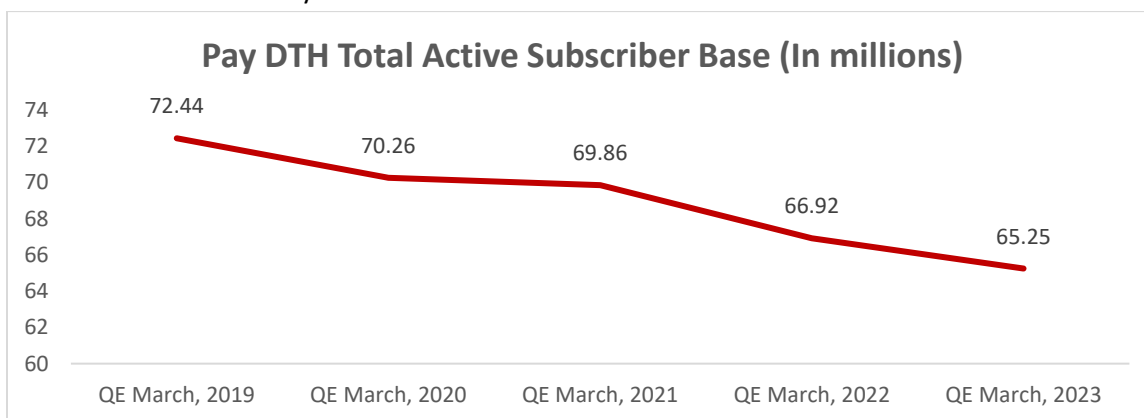
## **Response to CP on “Review of Regulatory Framework for Broadcasting and Cable services”**

### **Preamble**

- A. Airtel thanks the Telecom Regulatory Authority of India (TRAI) for providing it with the opportunity to submit comments on TRAI’s consultation paper, “Review of Regulatory Framework for Broadcasting and Cable Services”, released on August 08, 2023. We welcome this timely intervention by TRAI to address the issues being faced by the broadcasting sector relating to implementation of the new regulatory framework. The present consultation is critically important to holistically address the financial health of the broadcasting sector.
- B. Airtel also wishes to take this opportunity to laud the Authority for coming out with the futuristic recommendations dated 21.08.2023, on the very important & pertinent subject of "License Fee and Policy Matters of DTH Services."

### **Overview of the Broadcasting Sector: A state of concern**

- A. India has the second largest television market in the Asia-Pacific region, even though only 67% of households have a television connection. The linear broadcasting segment has evolved significantly since 2004, when the government gave the TRAI powers to regulate the segment. The segment has immense potential for growth in terms of innovation, penetration, and monetization.
- B. Despite that, India has one of the lowest ARPU in the world, owed partly to the stringent economic regulation in the sector. It restricts the incentive to expand coverage or make better offerings to existing consumers because regulation caps the MRP for a channel.
- C. Today, the broadcasting sector is at a stage where, admittedly, it is losing subscribers as well as revenue. India’s TV viewership has been on a decline, with a fall of over 10 million pay television (DTH) homes over the last few years.



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- D. To add to the complexity, the same content is available today on television, smart connected screens as well as smartphones through wired/wireless broadband. Owing to the difference in the distribution mechanism on these platforms, they are regulated differently, which creates a discriminatory situation.
- E. The industry is at a crossroad, where the next strategic and commercial decisions are likely to have a bigger and lasting impact on the survival and growth prospects of the business and the manner of consumption of TV channels.
- F. The broadcast and cable sector has the potential to become a USD 100 billion industry by the year 2030. The sector currently contributes only 0.58% of India’s GDP and significantly trails the global benchmark of approximately 4% contribution towards GDP seen in comparable economies. The Linear TV segment in the M&E in India has a huge headroom for growth with 40% of the households still not having access to television.
- G. **The B&CS segment in India can still grow if the Regulator creates an enabling regulatory environment. The time is ripe for regulatory forbearance on economic regulations for unlocking the segment’s potential.**
- H. It would not only benefit the segment stakeholders, but also contribute to the growth of the country by generating employment and contributing to the GDP. Forbearance in line with TRAI’s regulatory objectives will keep the sector growing and provide consumers with preferred channel packs for cheaper rates. It will reduce segment stakeholders’ dependence on advertisement revenue, improve the quality of content and reduce ad-minutage and thus benefit the consumer.
- I. We appreciate that TRAI has acknowledged bottlenecks that are affecting the market adversely. In our detailed submission, we have highlighted suggestions that the TRAI could pursue towards ensuring orderly market growth in the consumer interest.

### **Challenges faced by the DTH Sector**

In the past few years, with a clear unregulated growth of linear TV content delivered through digital platforms/ OTTs, and availability of pay channels for free on DD Free Dish, DTH Industry has been facing serious headwinds, observing constant decline in revenues, customer base and viewership content. These challenges are discussed below in detail.

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**Uneven regulatory framework creating a non-level playing field vis-a-vis competition:**

- A. The DTH industry is reeling under excess regulation, complex as well as disbalanced regulatory framework.
- B. For instance, today, in the broadcasting sector’s entire value chain, DTH operators are the only ones subjected to license fees. This creates a non-level playing field and is against the basic premise of TRAI’s endeavor to have a balanced regulatory framework.
- C. The differential regulatory approach can be further understood through the following table:

<b>Mode of Content delivery/access</b>	<b>Content rides on (underlying bearer)</b>	<b>Is Mode regulated (Y/N) - Need License or Registration</b>	<b>Pays License Fee (Y/N)</b>	<b>Tariffs Regulated (Y/N)</b>	<b>Licensed under &amp; regulated by (for access &amp; carriage)</b>
<b>DTH</b>	Satellite & Dish	Yes (License)	Yes (8%)	Yes	MIB & TRAI
<b>MSOs / Cable TV</b>	Satellite, Dish & Cable / Fiber	Yes MSO (Licence); Cable (Registration)	No	Yes	MIB & TRAI
<b>IPTV</b>	Fiber	Yes (License)	Yes** (8%/ 0%)	Yes	DoT/MIB & TRAI
<b>HITS</b>	Satellite, Dish & Cable / Fiber	Yes (License)	No	Yes	MIB & TRAI
<b>DD Free Dish</b>	Satellite & Dish	No	No	No	Under Prasar Bharti Act (no TRAI regulation apply on it)
<b>Digital/ OTT Platforms</b>	Highspeed broadband (Wireless/Wireline)	No	No	No	No

\*\* As per media reports Government is likely to exempt the revenue from IPTV from LF under UASL/UL.

- D. Platforms like OTTs and Free Dish provide the same content (that is provided by DTH operators) to subscribers with no commensurate obligations of any kind including but not limited to payment of License Fee which DTH industry legitimately makes. This is the result of the same content either being

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made available for free (on DD Free to Air) or provided on the same screen through a broadband pipe at unregulated prices (on OTT platforms).

- E. This incentivizes customer switching thereby putting revenue pressure on DTH operators who have no other option but to charge subscribers. **There’s OTT at the top of the pyramid, and there’s DD Free Dish at the bottom. In the middle, private DTH services are getting squeezed.**
- F. This entirely unequal, discriminatory situation has created several regulatory loopholes/lacunae that are easily exploited by such unregulated players. While on one hand these players are benefiting from these regulatory gaps as they don’t fall under the ambit of the TRAI, on the other hand it has brought the fully regulated DTH industry on the verge of almost collapse. The DTH operators, even after 12-15 years, are still operating under a negative net worth.
- G. This clearly shows that DTH industry is operating in an intensely competitive environment with perfect substitutable players in the market and thus, the industry should be made free from the highly regulated regime or alternatively, all the service providers viz; OTT and Free Dish rendering similar services like DTH should come into purview of the regulatory regime.

**Therefore, to cope with the competitive constraint from unregulated platforms, there is a pressing need to bring about ‘Regulatory parity’ among all delivery platform operators.**

### **Move towards Forbearance: Need of the hour**

- A. The new regulatory framework (NTO) was introduced in 2017 to bring ‘*adequate & effective choice to the subscriber at affordable rates*’. However, it had the impact of regulating every miniscule aspect of the broadcasting industry – including pricing and packaging of television channels and their underlying content - which thus far had been managed quite simply through forbearance.
- B. It succeeded in creating widespread disparity and a significant amount of complexity for both DTH players and customers, with no benefit to any stakeholder. **It has caused widespread unrest, with prices going up for customers and choices of channels they could view- going down.**
- C. This situation is quite unique to India as being the only country that places restrictions on bundling, discount caps on bouquets, and price ceilings for the inclusion of channels in a bouquet. **Most countries have chosen to adopt a light-touch regulatory approach to tariff regulations of channels and related market practices such as bundling.**

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Country	Pricing Restriction	Packaging Restriction
Australia	None other than general competition law	No restrictions
China	Basic cable prices are fixed. No regulation on pricing of pay TV.	No specific regulation. Consumers must have the option to subscribe to the basic pack.
Cambodia	None	None
Hong Kong	None	None
New Zealand	None	None
Myanmar	None	None
Malaysia	Disclosure of rates before authority and the authority may intervene, but no restrictions currently.	None
Japan	Basic pack channel rates have to be disclosed. No regulation on Pay TV.	None
Philippines	None	None
Singapore	No rate control, but retail rates are disclosed before the authority	Cross-carriage system has a limited restriction on bundling.
South Korea	Price caps were removed but prices are subject to the authority’s approval.	None
Thailand	None	None
Vietnam	None	Required to have basic and tiered channel packages.

Sources – CASBAA Report 2016, International Communications Market Report 2017, Ofcom

- D. It has been five years since the regulator has implemented the NTO, but nothing significant has been achieved, except leaving the industry to fend for itself. **Nobody in the value chain- broadcasters, distributors, Consumers, advertisers - stands to benefit from TRAI’s pricing regime.**
  
- E. Consumers who are at the bottom of the pyramid now find linear broadcast increasingly expensive and are likely to switch to DD Free Dish. People in the middle of the pyramid, who were subscribing to a larger bucket of channels, now reduce the number of channels opted by them. And people in

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the top of the pyramid, who were earlier subscribing a lot of premium channels, are likely to move more towards OTT.

- F. There is an urgent and immediate need to revamp the whole regulatory framework. The DTH industry is operating in a highly complex and unsustainable environment and, therefore, the Authority should allow the market forces to play.
- G. Stringent pricing regulations are needed only when a few players dominate the market and may collude to maintain higher prices. Given the fact that the broadcasting industry is extremely competitive as is borne out by TRAI’s own data, with the revenues of the sector already on the decline and lack of evidence of market failure, it may be prudent to **follow forbearance and permit market forces to prevail and follow same light touch regulatory approach for the broadcasting sector as was applied in the Telecom sector, thereby leading to tremendous success and growth of that sector.**
- H. The telecom sector is an example of the benefits forbearance can provide to industry stakeholders and consumers. TRAI acknowledged that the industry had grown to an extent where market forces could effectively regulate cellular tariff. Forbearance was key to bringing down call rates, thereby leading to tremendous success and growth of that sector.
- I. **The broadcasting segment will also witness beneficial outcomes if the TRAI opts for forbearance. It will enable orderly growth, reduce prices, improve quality of service, and will ultimately benefit the consumer.**
- J. It is our firm belief that if TRAI introduces regulatory forbearance, several issues highlighted by the Authority in this consultation paper will automatically get resolved.
- K. Forbearance is a key foundational principle in regulation. ‘Regulatory forbearance’ is not the absence of any regulation, but an evidence-driven approach. It refers to the regulator’s decision to forgo direct intervention if the operation of market forces can achieve desired outcomes and there is no evidence of market failure.
- L. Evidently, the current regulatory framework under review - is micro regulated, leaving no flexibility at all with the broadcast sector. **The present review should be aimed at bringing about regulatory agility and striking the right balance between regulation and forbearance such that innovation takes center stage in the sector.** Regulatory intervention in pricing and other associated matters must be last resort when absolutely necessary to prevent market failure, which too should be duly assessed through rigorous regulatory impact assessment.

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**We remain hopeful that the regulatory overhaul would be undertaken keeping in mind the above fundamental principles, and that the industry can begin to proceed towards a light-touch regulatory regime. We sincerely trust that this consultation process will provide a much-needed progressive reset to the regulatory framework that will unlock the true potential of the Broadcasting and Cable Services (B&CS) industry in India.**

**The broadcasting industry needs bold reforms and complete forbearance that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.**

In case, TRAI is still of the view that the extant Regulatory Framework for broadcasting sector only requires a review instead of being done away with, in that case, as a major stakeholder in the industry, we are presenting the detailed submissions as under:



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**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?

&

**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.**

&

**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?**

&

**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?

**Response:**

At the outset we reiterate that the DTH industry is facing bleak future due to non-level playing field and discrimination vis a vis DD FreeDish, OTTs (unregulated entities) as well as MSOs/ LCOs (lightly regulated). This has been duly captured in our submissions in the Preamble.

We strongly recommend that we follow forbearance and permit market forces to prevail and follow same light touch regulatory approach for the broadcasting sector as was applied in the Telecom sector, thereby leading to tremendous success and growth of DTH sector.

Further, over the years the market has matured with ample choices available to customers from various DPOs (regulated and unregulated) that are resulting in immense competitive constraints on regulated DTH players and hence, time has come to leave NCF to market forces.

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Under the New Tariff Order (NTO) regime, the DTH industry is excessively over-regulated at every level and this approach has proved detrimental for the sustainability and growth of the industry. **While the regime was purported to enhance consumer welfare, in our view it has rather upended the same, and not resulted in any benefit to the consumer.**

**Therefore, the capping on the Network Capacity Fee (NCF) being one of the many regulated components should be done away with. The forbearance i.e. doing away with all pricing mandates on NCF will allow industry to innovate, and offer flexible options to consumers.**

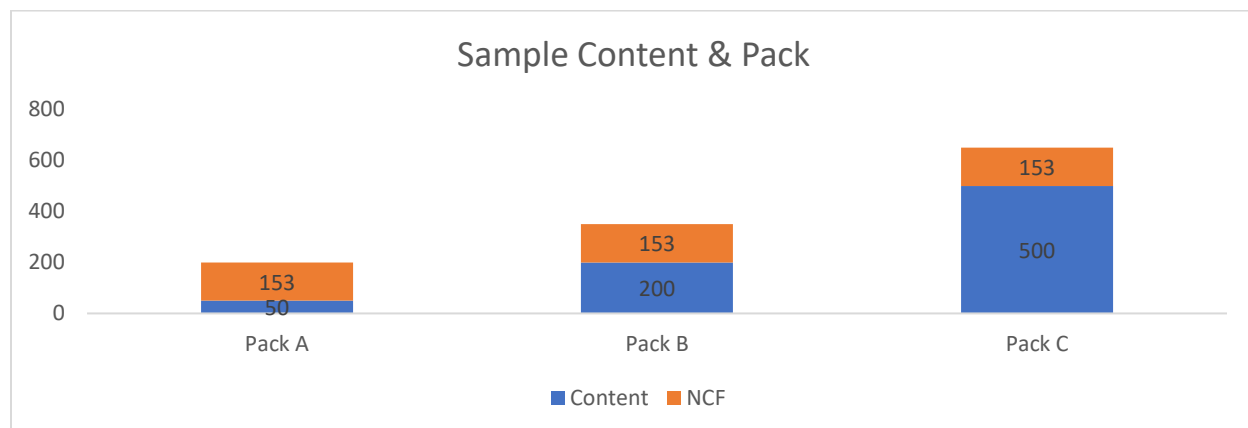
The market today is very competitive when it comes to linear content as subscribers have choice of multiple platforms to watch it such as DTH, Cable TV, Free Dish, OTTs. The DTH is not the only mode of watching linear content, hence keeping only this segment of the broadcasting platform is impractical and discriminatory, and NCF capping restricts the DPO’s ability to carry out business operations in a fluent and competitive manner.

The amount of the NCF that can be charged should instead be left to market forces i.e. DPOs for them to be able to compete with non-regulated competitors such as free-dish and OTT players. Forbearance will allow price flexibility for curated offerings for customers. Therefore, it should be left to market forces to decide the pricing which will be determined after taking into consideration factors such as cost of service, inflation, geographical criteria, serviceable area, customer behaviour/ interest etc – which the present Order that caps NCF uniformly does not appropriately take care of.

In order to cater to customers with different preferences - a regulated/fixed NCF poses a challenge as DPOs are unable to curate their plans which meet customer expectations. The same amount of NCF may act as an undesirable higher package for customers who have subscribed to a lower value pack with less content, compared to customers who may have taken higher value packs.

The illustration below depicts that the DTH packs of subscribers’ range from 50 to 500 within the same state. Adding an NCF of Rs. 153 (Incl. of taxes) will add a cost burden of up-to 300% in excess of the actual content subscribed to by the subscriber who is at the low end of pack value. On the other hand, a subscriber with a Rs. 500 Pack will pay approx. 30% of the actual content pack subscribed. This approach does not work for most subscribers.

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Further, the Authority did not give any basis of its calculation of determining the NCF but imposed many ground rules for NCF.

**TRAI should, therefore, remove all capping on NCF and allow DPOs to price their offerings to best serve diverse customer behaviour and choice across geographies than following a “one size fits all” approach that capped NCF forces upon the sector.**

While we strongly recommend that the time has come to let market forces determine appropriate NCF than by regulatory intervention on pricing, in case TRAI after thorough regulatory impact assessment (RIA) believes there is a market failure that necessitates regulating the NCF, then flexibility should be allowed to have a differential NCF based on a segment or class of customers created on the basis of a justifiable, reasonable and non-discriminatory yardstick.

Secondly, there should be an inbuilt and automatic mechanism in such Regulation to allow an increase in NCF linked o WPI/CPI inflator for capping purposes, and these revisions should be carried out every two years. Without prejudice, the last NCF was specified in 2017 and considering that the cost of operations is increasing each year, there have been no inflation adjustment over all these years. Hence there is a need to factor inflation cost and review this NCF.

In conclusion, we resubmit that TRAI should reintroduce forbearance in the NCF, as it will help the DTH industry stem unsustainability of diminishing subscriber base.

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**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?**

**Response:**

We reiterate that such provisions are outcome of the NTO regime which has not worked well. Hence the principle of forbearance should be followed to give flexibility to the industry.

Further, as per the current regime DPOs are not allowed to charge more than 40% of declared NCF for second and any additional TV in a multi TV home. Curiously, while the broadcasters are free to decide the MRPs of their respective channels, however, the current NTO places a restriction on the DPOs with respect to charging of NCF on multi TV and that too with an assumption on associated cost of providing services on second/multi TV.

This is completely discriminatory since the broadcasters are not subject to similar/any cap on the MRP of their respective channels for multi-TV homes. Therefore, the mandate on offering discounts on multi TV should be made applicable to the Broadcasters for their content. Since the DPO’s offer discount on multi TV, the same mechanism can be relied upon by the broadcasters to verify the multi-TV homes.

**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.**

**Response:**

The broadcasting industry needs bold reforms and complete forbearance that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.

Moreover, the current framework of limiting the discounts is constricting and deprives the customer of the benefit of telescopic pricing. Thus, the quantum of discounting should be left at the discretion of DPO, and Broadcaster should be made part of pricing forbearance.

Since DPO is interfacing with the customers directly, it is in a better position to assess customer preferences and thus, customize its plan and offerings to serve them which is aligned to their interest.

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It has been observed that subscription of DPO’s bouquets by subscribers is far greater than the Bouquets provided by the Broadcasters (70% of Subscribers on DPO compared to only 10% subscribers on Broadcasters Bouquets).

Therefore, a flexibility in terms of discounting the DPO’s bouquets is necessary to cater to the choices of the subscribers and offer better plans and offerings to them, a complete forbearance on discounts will benefit all stakeholders viz. customers, DPO’s and Broadcasters.

**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.**

**&**

**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.**

**&**

**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.**

**Response:**

Allocation of bandwidth specific to channels is dynamic and is mainly dependent upon the following factors:

- i. Type of service (SD/HD/Radio/Interactive application/Game).
- ii. Conditional Access data (CAS) associated with each type of service.
- iii. Additional Data associated with services such as information ticker, Redbug Services, Multi audios.
- iv. Quality of content from broadcasters for different channel categories such as Sports, News, Movies, Music, etc.

The table below shows that every channel runs on a specific dedicated bandwidth as per requirements of the broadcaster in question on a non-discriminatory basis:

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S.no	Channel/Service	Average bit rate (Mbps)
1.	Channel-1 (SD) News	1.2
2.	Channel 2 (SD) Movie	1.2
3.	Channel-3 HD (sports)	4.7
4.	Channel -4 HD (Movie)	4.7

As specified above, channel capacity is dependent upon multiple factors and varies frequently as per channel category/specifications and hence, it cannot be fixed in generic terms. These bandwidth are reviewed on each occasion by the DPOs and modified according to the requirements of subscriber and network. **Therefore, it is in the interests of both subscribers and DPOs that the quantum of bandwidth allocation be left to the DPOs for superior quality and experience.**

As per the provisions of the Tariff Order 2017, for the purposes of calculating the number of channels within the distribution network capacity subscribed, one HD channel shall be treated as equal to two SD channels.

TRAI in this present CP has specifically stated that *“Changing technology, such as advancements in compression and encoding parameters, provides DPOs with the opportunity to adopt different channel allocation procedures. For instance, one of the DTH operator treats one HD channel as equivalent to three SD channels.”*

It is therefore necessary to consider that due to technological innovations and enhanced picture quality, there is a need to review the relationship between SD and HD channels for the purposes of counting the channels.

The bandwidth allocated to such category of channels is the following: SD = 1.2 MBPS | HD = 4.5 MBPS | 4K = 16 MBPS. As per this allocation and the requirements of TRAI to review the relationship of these 3 categories, **we recommend that one HD channel should be equivalent to 4 SD Channels and one 4K channel should be equivalent to 4 HD Channels or 15 SD Channels.**

Primarily, it is the quality and strength of the signal transmitted from the uplink station that ensures the quality of reception at the subscriber’s end considering the fine tuning of receiving antenna that can be measured through STB Specific to picture quality. Some tools are available that indicate PSNR & DMOS value that can relate with quality of picture. Lastly, the quality of picture reception is subjective and depends upon an individual’s visual perception as well as at the Television set at the consumer end.

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**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.**

**Response:**

**We have already highlighted in Preamble, that the present uneven regulatory framework is creating a non-level playing field for DTH vis-a-vis competition. The broadcasting industry needs bold reforms and complete forbearance that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.**

The Authority is aware that the current framework casts many obligations upon the DPOs with respect to carriage of channels. Some of these are:

- DPOs have been mandated to compulsorily offer all the TV channels available on their platform on a a-la-carte basis.
- DPOs are also obligated to carry the broadcasters’ bouquet apart from bouquets which they can create basis combinations of a-la-carte channels and bouquets by broadcasters.
- DPOs to mandatorily carry /provide the 28 channels notified by the Central Government/MIB.
- DPOs also obligated to provide 200 FTA channels to subscribers as part of the Network Capacity Fee charged by DPOs.

As the channel bandwidth capacity is limited, a mandatory obligation of provisioning all FTA channels available on the platform of a DPO to all its subscribers constrains the capacity thereby putting additional cost challenges, besides it takes away the liberty of the DPOs to offer channels of their choice to customers. Such mandates also result in frequent changes in content at the customer end and thus deplete the quality of experience for the subscriber.

**Thus any mandate as suggested by TRAI would be not beneficial for the customer as there is a heightened risk of customer fatigue settling due to excessive channels being added mandatorily. Additionally, such a mandate will increase the cost of operation.**

**Airtel therefore suggests that the provisioning of channels to the subscriber should be left to market forces and no mandates should be instituted upon DPOs in this regard. Rather than introducing more and new restrictions, the need of the hour is to give complete forbearance and substantially relax subsisting onerous obligations.**

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<p><b>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?</b></p> <p style="text-align: center;"><b>&amp;</b></p> <p><b>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?</b></p> <p style="text-align: center;"><b>&amp;</b></p> <p><b>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.</b></p>
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**Response:**

As highlighted in the Preamble, the discriminatory regulatory treatment of DTH industry vis a vis other players (lightly regulated MSOs and unregulated OTTs/Freedish) has created such a level playing issue that it has significantly deteriorated the health of DTH industry.

The DTH industry is reeling under excess regulation, complex as well as disbalanced regulatory framework. The differential regulatory approach can be further understood through the following table:

Mode of Content delivery / access	Content rides on (underlying bearer)	Is Mode regulated (Y/N) - Need License or Registration	Pays License Fee (Y/N)	Tariffs Regulated (Y/N)	Licensed under & regulated by (for access & carriage)
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MSOs / Cable TV	Satellite, Dish & Cable / Fiber	Yes MSO (Licence); Cable (Registration)	No	Yes	MIB & TRAI
IPTV	Fiber	Yes (License)	Yes** (8%/ 0%)	Yes	DoT/MIB & TRAI
HITS	Satellite, Dish & Cable / Fiber	Yes (License)	No	Yes	MIB & TRAI
DD Free Dish	Satellite & Dish	No	No	No	Under Prasar Bharti Act (no TRAI regulation apply on it)
Digital/ OTT Platforms	Highspeed broadband (Wireless / Wireline)	No	No	No	No

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Platforms like OTTs and Free Dish provide the same content (that is provided by DTH operators) to subscribers with no commensurate obligations of any kind including but not limited to payment of License Fee which DTH industry legitimately makes. This is the result of the same content either being made available for free (on DD Free to Air) or provided on the same screen through a broadband pipe at unregulated prices (on OTT platforms).

This incentivizes customer switching thereby putting revenue pressure on DTH operators who have no other option but to charge subscribers. **There’s OTT at the top of the pyramid, and there’s DD Free Dish at the bottom. In the middle, private DTH services are getting squeezed.**

**This entirely unequal, discriminatory situation has created several regulatory loopholes/lacunae that are easily exploited by such unregulated players. While on one hand these players are benefiting from these regulatory gaps as they don’t fall under the ambit of the TRAI, on the other hand it has brought the fully regulated DTH industry on the verge of almost collapse. The DTH operators, even after 12-15 years, are still operating under a negative net worth.**

#### **Business Model of DD Free Dish**

According to industry estimates, at the end of 2022, there were around **45 million DD Free Dish households**. The free services have made Free Dish the leader and it is now on the verge of overtaking Cable and DTH by adopting pricing practices that can be argued to be anti-competitive and predatory in contravention to TRAI’s regulatory framework of broadcasting and cable sector for tariff orders. We explain it through its business model, in subsequent paragraphs.

Prasar Bharati does not charge any monthly or annual subscription fee from viewers for viewing the DD Free Dish service. For availing of the DD Free Dish services, one requires only a small one-time investment to purchase the Dish Receive System containing a Set-Top-Box and a small-sized Dish Antenna.

Although DD Free Dish is operated by Doordarshan, the platform also allows private broadcasters to air their channels on a free-to-air basis. As per Free Dish, the carriage of Private Channels on DD Free Dish is based on e-auctions but with differential pricing based on genre (language).

To air their channels on DD Free Dish, private broadcasters participate in an e-auction process conducted from time to time. The auction process allows private broadcasters to bid for slots on the platform, and the highest bidders are allotted slots for a specified period. Prasar Bharati earned more than Rs 1000 crore from the latest e-auction in March 2023. Originally, DD Free Dish only had DD channels. But Prasar Bharati augmented the capacity of DD Free Dish to 167 channels (soon expected to increase to 250). It helped the company widen its reach and clock an unprecedented **growth of almost 100% from 22 million in 2017 to 43 million in 2022.** <https://prasarbharati.gov.in/free-dish/>

## **Response to CP on “Review of Regulatory Framework for Broadcasting and Cable services”**

Date	Channel count
December 2018	80
December 2019	104
December 2020	161
December 2021	164

Prasar Bharti

\*164 including 91 Doordarshan channels and 65 private channels

Some of the major broadcasters had initially pulled their content out from DD Free Dish from 1 March 2019 as TRAI’s new tariff order did not allow FTA channels’ inclusion in the pay channel bouquet. However, these broadcasters came back on DD Free Dish during 2020, on account of lower revenues and decreased viewership.

### **Concerns of DTH operators against DD Free Dish**

- **Competition:** DD Free Dish offers same channels as free-to-air, which compete with (and are offered as) paid channels by DTH operators. In such a case, why would a customer want to pay for same channel to a DTH operator when it is available for free by other competitor? This incentivizes customer switching thereby putting revenue pressure on DTH operators who have no other option but to charge subscribers. In such case a consumer would prefer paying for a low-cost CPE than opting for a recurring DTH subscription, especially in areas that are price sensitive. **There’s OTT at the top of the pyramid. And there’s DD Free Dish at the bottom. In the middle, Cable TV and private DTH services are getting squeezed.**
- **Discriminatory Conduct:** Availability of pay channels for free on DD Free Dish is discriminatory and goes against the basic principles of the new tariff regime.
- **Advertising revenue:** Since DD Free Dish is a free-to-air platform, it can be more attractive to advertisers who want to reach a wider audience without having to pay for expensive advertising slots on paid channels. Corollary then, the private broadcasters on DD Free Dish will attract more advertising revenue away from DTH operators.

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**DD Free Dish is a “Service Provider” under TRAI Act**

TRAI does not directly regulate DD Free Dish since it is not recognized as a distribution platform operator (DPOs) under NTO. Owing to this anomaly, the aspects of pricing, quality of service, and interconnection seem to not apply on DD Free Dish.

Prasar Bharati is a licensee u/s 4 of the Indian Telegraph Act and, being a licensee, it is covered under the definition of ‘service provider’ in section 2 (j) of the TRAI Act. Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007, defines DTH as under -

*(ka) "direct to home service" means distribution of multichannel TV programmes by using a satellite system by **providing TV signals directly to a subscriber's premises without passing through an intermediary** such as cable operator or any other distributor of TV channels.*

This sufficiently and independently establishes the fact that Prasar Bharati is a service provider under the TRAI Act.

**Therefore, the term “service provider” means the Government as a service provider and includes a licensee as well as any broadcaster, distributor of television channels or local cable operator, DD Free Dish is subject to regulations framed by TRAI, and any non-compliance should be treated as a violation of the extant legal framework.**

In view of the above it is suggested that:

i. **The discriminatory treatment of DTH industry vis-a vis Free Dish and other platforms offering same /similar services should be ended forthwith. There should be uniform provisions to introduce a level-playing field among all competing service providers and / or distribution operators & All the provisions of TRAI’s regulatory framework should be enforced in a transparent manner on all the types of distribution platforms including Free Dish.**

**OR**

ii. **The mandates of extant regulatory regime, licensing framework, license fees, and all other operational mandates on the DTH should be removed and the DTH sector should be allowed to access the business model similar to that of DD Free dish as the nature of services rendered are same/similar.**

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**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?

**&**

**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.**

**&**

**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 31<sup>st</sup> December every year. Please justify your response.**

**Response**

The RIO regime has arisen out of the NTO implementation. This needs to change and forbearance is necessary for DTH to remain sustainable. The relationship between DPOs and broadcaster was addressed even when the provision w.r.t RIO was not in place. Therefore, the need for RIO should be reconsidered and left with the broadcasters and DPOs.

The broadcasting industry needs bold reforms and complete forbearance that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.

The Authority may also note that the implementation of RIO is itself very complex. Any change in RIO affects the whole ecosystem including DPOs and their customers. To facilitate any change in RIO is a massive effort in terms of configuration and alignment to DPO systems including CAS and SMS.

In case of an amendment to the RIO by the Broadcaster, the option of being able to continue with the unamended RIO agreement should be made available to the DPO. In fact, TRAI should fix a minimum validity period for a sign off on the agreement between a DPO and Broadcaster. This is because any sudden change during the validity of the RIO poses significant challenges for the DPOs concerned, including changes/increases in the price of customer packs/bouquets at short notice. This can create customer dissatisfaction and contribute to customer churn. Additionally, there should be a mandate on Broadcasters to provide reasonable notice of minimum 90 days in case if they desire to amend the existing RIOs.

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In situations where the amendment in the RIO becomes expedient due to an amendment in the extant Regulation/ Tariff order, the Authority should consider and direct DPOs to provide a reasonable time period, a minimum of 6 months’ time, within which to implement the amendment. The 6-month timeline should commence from the date the broadcaster publishes its new prices. This amount of time is required as the changes are enormous and time-consuming as is evident from the below mentioned reasons:

- i. **Redesigning and reconfiguring channels and bouquets:** DPOs need to change the a-la-carte rates of pay channels as well as re-design all their bouquets. Further, they need to manage the changed bouquets of each broadcaster. The designing of new bouquets is also a challenge considering the price limitations placed in the TRAI Tariff order w.r.t pricing of channels in the bouquets. This is followed by the process of configuring the new channels and new bouquets in the DPO’s various systems. All these activities are extensive and time consuming.
  
- ii. **Working within system limitations and constraints:** The change in prices of channels intimated by the broadcasters has a cascading effect in terms of changes in all the technical and billing systems and data of a DPO. Further, all changes have to be aligned in the CAS and SMS systems and every configuration made in the system needs to be tested to validate its correctness. All this requires time, particularly the validation of all billing related matters.  
  
Further, the DPO’s systems are designed with a pre-defined capacity limited to defined number of transactions in the normal course of business. Any changes in RIO or otherwise are ad-hoc changes and thus, it puts strain on the existing systems. Apart from the transactions contemplated for accommodating this change and migration, the transactions also include the day-to-day activities related to life cycle management of the existing customers. Apart from that, there are multi-fold pre and post activities which will require time over and above this.
  
- iii. **Equipping the platform to deliver relevant information regarding change to customers:** In order to make changes to the prices and channel bouquets, it is mandatory to provide prior intimation to customers. Considering the DPOs’ huge subscriber base, intimation about a change in prices to customers require a structured approach and a well laid out process and the resources to support such a process and transition. All this alignment calls for an adequate amount of time to establish such process. Without proper intimation it is not feasible to change prices as this would lead to customers unsubscribing and causing loss of business.
  
- iv. **Aligning resources to manage anticipated high strain on call centres:** This change is likely to generate a customer outcry which leads to a huge increase in the volumes of calls at customer centres. Customers also reach out to DPO call centres to make changes in their plans. Apart from training the customer executives, a DPO needs to equip and enhance resources to cater to the queries and needs of its customers.

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- v. **Aligning and educating the entire Value Chain from distributors, retailers to consumers:** To formalise the changes made by broadcasters across the ecosystem, the DPOs need to educate customers as well as other stakeholders involved in the value chain about retail outlets, sales force, person on fleet, etc;. This is a huge and time-consuming task. Managing this with all the retailers across India is a complicated process and not feasible with the present specified period.

Given the above complexities, the TRAI needs to reconsider the need for the RIO itself.

As regards validity of an RIO, it is submitted that currently all the RIOs issued by DPOs/Broadcasters specify a one-year validity period. However, in case the TRAI wishes to persist with the RIO regime, we recommend that TRAI fix a common end/start date to the RIOs across Broadcasters and DPOs. From the subscribers’ perspective, a common validity with the same end and start dates will be better as it will allow customers to amend the pricing / pack construct at one go for all broadcasters instead of making multiple changes for each broadcaster.

**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?**

**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?**

**Response:**

We request the Authority to follow forbearance and permit market forces to prevail and follow same light touch regulatory approach for the broadcasting sector as was applied in the Telecom sector, thereby leading to tremendous success and growth of that sector.

We sincerely trust that this consultation process will provide a much-needed progressive reset to the regulatory framework that will unlock the true potential of the Broadcasting and Cable Services (B&CS) industry in India.

It may be noted that presently, the TRAI has already micro regulated the operations of the DPOs through the numerous obligations and the linear channels carried by DPOs are approved by MIB and additionally, the pricing of all such channels are also regulated by TRAI. Therefore, any requirement as to placement of the channels on DPOs platform should be left at the discretion of DPOs as DPO is equipped to serve the customer interest.

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The DPO is the link in the value chain which serves the customer directly and as a result, is aware of the requirements and preferences of the different subscribers across different geographies. Today, there are mandates w.r.t alignment and change of Logical Channel Number (LCN) in the EPG which make it difficult for a DPO to design its EPG keeping customer interest in mind. Any prior approvals for change in LCN should be removed. The current mandate is sometimes difficult to accommodate as broadcasters too are not keen to change the LCNs frequently. In fact, changing the LCN frequently not only creates customer dissatisfaction but also irks broadcasters, as well as creating major concerns about the sequential placement of channels.

Hence, any mandate on EPG needs to be reconsidered and removed, however, if TRAI has a divergent view, then the **channels should be clubbed in the form of a single genre irrespective of language**. It has been observed that a majority of subscribers tend to browse for their preferences using genres.

**Therefore, in the interests of subscribers, channels should be clubbed in the form of a single genre irrespective of language.** For instance, if a subscriber prefers to watch entertainment channels, the EPG guide should list all the entertainment channels in all languages at one go. This will make the subscriber’s journey easier and better. We understand that MIB gives permission to channels in multiple languages as well and enlisting the EPG Genre wise will not have any negative effect on such channels.

**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.**

**Response:**

No Comments

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**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?**

**&**

**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.**

**&**

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

**Response:**

We remain hopeful that the regulatory overhaul would be undertaken keeping in mind the fundamental principle for forbearance and that the DTH industry can begin to proceed towards a light-touch and sustainable regulatory regime. Such a bold reform will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.

**Therefore, we submit that TRAI should remove the cap on carriage fee and introduce forbearance as the cap restricts the DPOs’ flexibility to recover their cost of carrying a channel.**

It is also suggested that the DTH industry should also be allowed to treat the FTA channels in the same manner as Free Dish. FTA channels buy slots on DD Free dish through an auction at much higher rates than that of DPOs. For instance, in the Hindi GEC category, the FTA channels generally incur a placement fee as high as Rs. 24 Crores per annum. Such relaxations should also be considered in case of the other DPOs/DTH. **There should be a uniform approach for all DPOs.**

**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.**



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**Response:**

The monthly subscription percentage for a television channel should remain unchanged even if the broadcaster and the DPO party fail to enter into a new agreement. In other words, the prescribed percentage does not need a review.

**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:**

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

**&**

**Q 25 Should TRAI consider removing capping on the above-mentioned charges for introducing forbearance? Please justify your response.**

**Response:**

As stated in the preamble, we reiterate that the TRAI should permit market forces to prevail. The broadcasting industry needs bold reforms and complete forbearance will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.

We are of the view that micro regulation on issues such as installation charges, activation charges, visiting charges, etc are completely unwarranted in this highly competitive industry and such oversight needs to be done away with, specifically given that these are last mile delivery and installation related charges that impact the service delivery, staff etc.

However, if TRAI is of the view that such charges should be regulated, it is our request that TRAI introduce a provision in the QoS Regulation to provide for a periodic increment mechanism in such charges linked to a suitable index matrix which will help DPOs recover the increased operational costs.

**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.**

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**Response:**

Subscribers are charged on the basis of distributor retail prices. It will therefore be in the interests of the subscriber to be aware of the actual charges they are being charged. **Hence, a display of DRP only is sufficient for the subscribers lest over information create unnecessary confusion.**

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

**&**

**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.**

**Response:**

Sub-regulation 2 of Regulation 23 mentions that the billing cycle in the case of the pre-paid billing method is thirty days from the date of activation of services. But it is silent on the periodicity of the billing cycle in case a subscriber intends to recharge services for an entire year. The sub-regulation reads as under:

***“23. Pre-paid billing and payment. —***

***...***

***(2) The billing cycle for pre-paid payment option shall be thirty days from the date of activation of services.”***

The subscriber preference for channel viewership is very dynamic and is prone to change frequently (addition or deletion of a channel within or outside of a pack). Therefore, the system in the case of prepaid subscribers gets updated on a daily basis. In such cases, the ideal scenario is to get the subscriber updated about billing on a monthly basis and this information needs to be stored by DPOs for a maximum of 3 months.

We do not believe that the viewership data of every subscriber, even those who opt for the channel even for a day, should be included in the reports as this list can be highly dynamic & volatile, and will only be unnecessary and disproportionate reporting burden on the DPOs that will go against ease of doing business.

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

- a. The Platform Services Channels shall be categorized 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’.

**Response:**

As stated in the preamble the broadcasting industry needs bold reforms and complete forbearance that will restore the fundamentals of the industry and enable long term viability, sustainability, and competitiveness, and not transitory or quick-fix solution to prevent another disruption.

We now highlight the issues w.r.t Platform Service Channels:

➤ **Ambiguity over provisions related to exclusivity of content of Platform Service channels:**

- i. MIB had issued its Operational Guidelines dated 16.09.2022 wherein the following conditions had been imposed on DPOs w.r.t PS channels run by DPOs on their platform:

*“The Platform Services (PS) are programmes transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India.*

*The programme transmitted by the DTH operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).”*

- ii. As regards the criteria of “exclusivity”, it is Airtel’s understanding that as a DPO, Airtel cannot share content with other DPOs and that it can only offer the content in question to its own subscribers, Therefore, “exclusivity” implies that a movie taken from a broadcaster can be offered by a DPO to its customers irrespective of such a movie also being made available to other DTH operators.
- iii. This is how the extant Licensing guideline has been interpreted. However,
- iv. it is Airtel’s request that TRAI provides further clarity as to what exclusive content constitutes.

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➤ **Capping on number of PS Channels:**

- i. MIB had issued its Operational Guidelines dated 16.09.2022 wherein the following conditions were to be imposed to DPOs w.r.t PS channels run by DPOs on their platforms:  
*“Total number of permitted PS for a DTH operator shall be capped to 5% of the total channel carrying capacity of the DTH operator platform.”*
- ii. India is a diverse and multi-linguistic country and hence the choice and preferences of customers for content vary from region to region. The demand of content from customers is across different genres viz., devotion, fitness, lifestyle, education, etc.
- iii. The platform services provide an avenue through which to offer the content which is otherwise not available on linear channels. To cater to such a wide audience, this platform service is one of many mediums available to meet customer needs and preferred choice of content.
- iv. Therefore, any restriction on the number of PS channels will be tantamount to denying the customer their choice of content. It would also limit the availability of regional choices.**
- v. The Platform Services of the DTH operators are competing against LCO owned local channels inserted by the MSOs/LCOs. **In the absence of any restriction on MSO/LCOs, the limit of 5% on total channel carrying capacity for DTH platforms should also be removed.**
- vi. Additionally, the DTH Operator is using CAPEX and creating its own infrastructure to cater to the needs of its audience. Any restriction on carrying capacity of PS channels on the DPO’s own platform is thus unwarranted.

**Hence we recommend that in respect of PS services:**

- 1. Principle of forbearance should be applied in case of platform services channels as well.**
- 2. There should be no cap on the number of PS channels provided by the DPOs**
- 3. Content for the PS channels should be left at discretion of DPOs / DTH operators since they are closest to their customers and understand their preferences.**

**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.**

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**Response:**

The current framework stipulates multiple levels of information via Consumer Corner, Subscriber Corned and Manual of Practice. The same information is also being disseminated through customer care programming service via 999 channel. There is a need to make this more cohesive and reduce it to one touch point to make it more customer friendly. We also suggest that only the relevant information be displayed viz. Complaint Redressal Process, details of packs and plans and relevant charges thereof.

**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?**

**Response:**

Under Section 13 of the TRAI Act, TRAI has the power to issue directions for the discharge of its functions under sub-section (1) of section 11. The action of imposing “financial disincentive” is in the nature of a penalty and in our view is not the right approach for cable and broadcasting sector. In any case, such approach will only widen the non-level playing field inter-se DTH players and various DPOs (regulated and unregulated) as majority of those – with the exception of DTH players – will be able to operate outside the TRAI’s framework and the authority will find it challenging to enforce any such penalty framework on them.

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While we are not sure if the provisions of the TRAI Act 1997 (amended 2000) empower the Authority to impose the penalty as financial disincentive for any violation under the license, this will be an industry unfriendly measure and hence to Financial Disincentive should be levied.

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

#### **Response:**

We list here a few other industry concerns which require TRAI’s attention include the following:

#### **1. Regulate any content through the same lens, irrespective of medium.**

OTT services have proliferated at a very rapid pace and become a part of life of a large section of society. These are the services where the subscribers can avail the channels and content through internet on their mobile handset/computer or any digital display device through an application (app).

With the proliferation of high-speed broadband services in India, a new set of players have come into play in the broadcasting distribution services. These players created their OTT platform to provide the content/channels that are explicitly marked as live TV. While MIB and TRAI regulate the existing distribution platforms, e.g. DTH, IPTV, MSOs, no such regulatory framework exists for the OTT platforms, which carry the same content. This has created an anti-competitive environment and a non-level playing field for the Distribution Platform Operators (DPOs).

In order to eliminate the current discrimination vis-à-vis Distribution Platform Operators (DPOs), it is essential that OTT platforms are brought under the regulations and license conditions.

#### **OTT Platforms provide ‘Substitutable services’ to Distribution Platform Operators (DPOs)**

Today channels shown on OTTs and other distribution platforms are the same. OTTs offer a wide variety of content including relay of LiveTV channels and catch-up TV shows. OTT platforms are now larger than Television platforms with around 770 million wireless broadband consumers.

The broadcasting sector presently is catered by four permitted Distribution Platform Operators (DPOs), i.e., MSOs, DTH, HITS and IPTV.

Due to availability of high-speed broadband services and smart devices, previous dependency on specific devices for watching specific content has been nullified. Today, linear programming, live broadcasting and global and local OTT content are being consumed across screens (e.g., smartphone, PC, Smart TVs).

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Most OTT platforms allow content to be cast on larger screens and through internet enabled TV sets, essentially eliminates any difference between an OTT platform carrying live television and a registered distribution platform. Currently, although the same content flows through these pipes, there are glaring anomalies in their licensing and regulatory treatment.

In view of the changed market and distribution structure, services of DPOs are perfectly substitutable not only from amongst the DPOs and platforms of FreeDish and unlicensed OTT players. The OTT platforms that are presently outside the purview of any licensing and regulatory framework have evolved as substitutable platform that enables the consumers to have access to video/television services.

For instance, while the content flowing through the DTH pipes is licensed by the MIB and regulated by NTO of TRAI with respect to its price, distribution and QoS. The same content when it flows through broadband pipes on the OTT platforms is subject to none of these regulations.

While there are cross-holding restrictions for DTH, no such restrictions are applied to other mediums which often carry content produced by common shareholders/owners. The differential regulatory approach has already been highlighted above and is reiterated below:

Mode of Content delivery / access (e.g. Content is a Live Channel / Sports)	Content rides on (underlying bearer)	Is Mode regulated (Y/N) - Need License or Registration	Pays License Fee (Y/N)	Tariffs Regulated (Y/N)	Licensed under & regulated by (for access & carriage)
DTH	Satellite & Dish	Yes (License)	Yes (8%)	Yes	MIB & TRAI
MSOs / Cable TV	Satellite, Dish & Cable / Fiber	Yes MSO (Licence); Cable (Registration)	No	Yes	MIB & TRAI
IPTV	Fiber	Yes (License)	Yes** (8%/ 0%)	Yes	DoT/MIB & TRAI
HITS	Satellite, Dish & Cable / Fiber	Yes (License)	No	Yes	MIB & TRAI
DD Free Dish	Satellite & Dish	No	No	No	Under Prasar Bharti Act (no TRAI regulation apply on it)
Digital/ OTT Platforms	Highspeed broadband (Wireless / Wireline)	No	No	No	No

\*\* As per media reports Government is likely to exempt the revenue from IPTV from LF under UASL/UL.

***Response to CP on “Review of Regulatory Framework for Broadcasting and Cable services”***

Given that the same content can be viewed across different medium, it is critical that a similar regulatory framework should govern all content regardless of the access pipe it uses to reach the customer.

**2. Considering the importance of Broadcasting, India has created an enabling and progressive regulatory framework that ensured:**

- a. All broadcasting content is available to customers without discrimination through every Distribution Platform Operator (DPO) i.e. DTH, multi-system operator, IPTV and HITS operators, – **through TRAI “Must Provide” Principle.**<sup>1</sup>
- b. Separation of Broadcast and Distribution sector – **through MIB cross-holding restrictions**<sup>2</sup>

**Several different technologies are delivering the same customer experience:**

- a. However, there is a parallel and fundamental shift that has happened in content broadcast, accelerated due to convergence of distribution platform **on wireless and wireline broadband**. As per some estimates<sup>3</sup>, by 2025, it is expected that the **total screen count will reach about a billion with ~250 million television screens and over 750 million smartphone screens.**
- b. As highlighted earlier, today, linear programming, live broadcasting and global and local content are being consumed across screens (e.g., smartphone, PC, Smart TVs) essentially eliminating any difference between distribution platform on **wireless and wireline broadband** and a registered distribution platform operator.
- c. While MIB and TRAI regulate the existing Distribution Platforms (DPOs), e.g. DTH, IPTV, MSOs and HITS, no such regulatory framework exists for distribution platform on **wireless and wireline broadband**, which carry the same broadcast content. This has created an anti-competitive environment and a non-level playing field for the DPOs.
- d. **This anomaly leads to the risk of unequal access of same broadcasting content** i.e. content broadcast under DPOs gets covered under regulations of must carry-must provide principle and NTO; but no such regulation exists if content broadcast was to happen over **broadband networks.**

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<sup>1</sup> [https://www.trai.gov.in/sites/default/files/Interconnection\\_Regulation\\_03\\_mar\\_2917.pdf](https://www.trai.gov.in/sites/default/files/Interconnection_Regulation_03_mar_2917.pdf) , pg 83

<sup>2</sup> <https://ficci.in/spdocument/23200/FICCI-EY-Report-media-and-entertainment-2020.pdf>



***Response to CP on “Review of Regulatory Framework for Broadcasting and Cable services”***

**Regulatory provisions creating disparity in a technology-neutral environment:**

- i. **Violation of “Must Provide” Principle:** TRAI introduced the principle of must provide to ensure broadcasters provide content to all distribution platforms on a non-discriminatory basis. However, it becomes inapplicable in cases where the same broadcast content (as shown on registered distribution platforms) is being carried over broadband as a medium.
- ii. **Violation of MIB Downlinking Policy:** As per MIB’s Downlinking Policy, the broadcaster is under an obligation to provide services only through registered DPO’s (such as DTH providers, etc.). By providing TV channels to unregistered digital distribution platforms, the broadcasters are violating the Downlinking Policy which needs to be addressed by MIB and TRAI.
- iii. **This anomaly leads to** risks such as exclusionary and discriminatory impact for subscribers who may not be able to access same broadcast content on their choice of delivery platform. This also goes against the basic tenet of NTO, which promotes the consumer interest, by providing real and effective choice to the consumer.
- iv. In-fact the situation worsens if a single entity secures exclusive content and distribution rights of a popular broadcast programming, and bundles it for its own subscribers.
  - Content acquired may only be provided to its own customers on wired/wireless broadband & rest of the subscriber universe will straightaway get excluded from having opportunity to access such content – **defeating must provide principle**
  - Full end control of both broadcast content and distribution by a single entity – **defeating MIB cross-holding restrictions.**
  - Show the same content at arbitrary pricing norms on a digital platform – **defeating the TRAI NTO Tariff regulations.**
- v. The fundamental principle and objective behind any regulatory framework is to create a non-discriminatory, level playing field for sector’s overall growth. Furthermore, any regulatory framework needs to keep pace with the advancing technology and market dynamics.

***Response to CP on “Review of Regulatory Framework for Broadcasting and Cable services”***

Therefore, we request urgent intervention for amendment in the current regulatory framework to ensure:

- **Regulatory framework be technology agnostic and must include all modes of delivery of broadcast content across all platforms irrespective of underlying technology used.**
- **Same content should be available across all platforms at same price – pricing parity irrespective of technology.**
- **Platforms must include wireline, wireless, satellite and cable. No blocking of access by any one player in the value chain. This will ensure transparency and a level playing field.**

**3. Customer insights/ analytics / Audience Measurement:**

In various businesses, understanding the customer insights and related analytics (following due principles of customer consent etc.) is a common exercise aimed with a view to offer better products and services.

For example, for various broadcast OTTs, the audience insights and measurement is a standard norm; again aimed at enabling better experience by offering content as per customer choice and preference. Similar flexibility also needs to be considered for DPOs & DTH Industry. The existing framework viz. “*Policy Guidelines for Television Rating Agencies in India* (“Guidelines”) has become obsolete as it tends to mandate a methodology and process which are no longer relevant considering the rapid technology innovation. The guidelines also do not take into cognizance the technological advancement which has fundamentally changed the way we access and consume media services.

Considering the precarious health of the DTH industry, there is also a dire need to create opportunities to foster innovation and encourage new products & services. Hence we request the review of above guidelines with following broad principles:

- **Light touch regulation, with simple registration for providing insight/ measurement / analytics.**
- **Guidelines must not prescribe any one business model over another. It should not create barriers to the emergence of more efficient business models.**
- **It should not mandate and hard code the rules viz. data collection across multiple distribution platform using a predetermined methodology, sampling size or selection, demographics etc;**
- **The framework shall be subject to applicable data privacy norms including Digital Personal Data Protection Act.**

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