

Consultation Paper No. 6/ 2007



Telecom Regulatory Authority of India

Consultation Paper

On

**Issues relating to Tariff for Cable Television Services in
Non - CAS areas**

May 21, 2007

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Preface

Regulation of tariff for channels in non-CAS areas is governed principally by the provisions contained in the Tariff Order of 1.10.2004. This tariff order mainly provided that the cable charges payable by a subscriber to the cable operator, by a cable operator to the multi system operator and by a multi system operator to the broadcaster shall be the rate at which one was paying as on 26.12.03. This, in practical terms, also meant a continuation of multiplicity of ceiling rates operating for different subscribers at a point of time. The said order also provided for changes (both increase and decrease) in the ceiling rates in the event of addition to or reduction in the number of new pay channels, subject to certain conditions. The extent of increase or decrease was to be determined on the basis of rates of similar channels that existed as on 26.12.2003.

2. A number of questions on the effectiveness or otherwise of the existing tariff regime for non-CAS areas have come up during the course of implementation of the relevant tariff order. There are issues from the perspective of consumers as well as the service providers. While the broadcasters argue for deregulation, the network operators complain of being burdened with the problems of increased bills due to increased connectivity demanded by broadcasters, rendering the ceiling ineffective. The consumers may feel that the existence non uniform rates resulting in the cable operators charging arbitrarily without an effective redressal mechanism renders the tariff order somewhat ineffective.

3. In the detailed recommendations on issues relating to broadcasting and distribution of TV channels sent to Government of India on 1.10.2004, it was stated that the regulation of prices is only intended to be temporary measure, till such time that effective competition takes roots. There have been developments in the form of introduction of CAS in parts of three metros, as well as growing influence of alternative delivery platforms such as DTH, IPTV etc. Another important development was that Telecom Disputes Settlement and Appellate Tribunal had stayed the operation of the tariff amendment order of 29.11.2005 permitting 4 % increase in the ceiling cable charges on account of inflation (to be effective from 1.1.2006) in an appeal filed by a consumer organisation. The Tribunal, when finally disposing the appeal, observed that TRAI is free to consider if it requires to pass some orders on revision of rates for the next year.

4. Considering the circumstances mentioned above, a need has been felt to revisit the issue of tariff regulation for Non-CAS areas in a holistic manner, including the issue of annual adjustment for inflation. It has accordingly been decided to initiate a process of consultation. Chapter 1 of the consultation paper briefly gives the background and Chapter 2 captures, from the perspective of subscribers and service providers, the issues that have come up during the implementation over the last two and half years. A broad preliminary overview bringing out the pros and cons on the issues is also contained in this chapter. Para 2.31 contains the specific issues posed for consultation.

5. Written comments on the issues raised for consultation may please be furnished to Secretary, TRAI by 4th June 2007. The comments may preferably be sent in electronic form. [E-mail: traicable@yahoo.co.in or raviofftraai@yahoo.co.in or pvt_1967@yahoo.com]. The Fax numbers of TRAI are 011-23220442/011-23213294.

(Nripendra Misra)
Chairman

New Delhi
May 21, 2007

Chapter 1

Introduction and Background

1.1 Broadcasting and Cable services were notified as telecommunication services on 9.1.2004 as a result of which the said services came within the ambit of the Telecom Regulatory Authority of India Act 1997 (TRAI Act 1997). Certain additional functions were also given to the Telecom Regulatory Authority of India (TRAI) in exercise of the powers under section 11(1) (d) of the TRAI Act. TRAI has since then taken a number of initiatives for the regulation of the sector in exercise of both its recommendatory and mandatory powers vested with it.

1.2 One such initiative was regulation of tariff payable by various stakeholders in the Cable TV distribution chain consisting of the cable subscribers, the Cable Operators and the Multi System Operators (MSOs). In this regard, a comprehensive tariff order was issued on 1.10.2004. The provisions of this Tariff Order broadly contained the following:-

- i) The cable charges prevailing on 26.12.2003 in respect of channels and bouquets of channels that existed on that date shall be the ceiling on such charges. In other words the payments by a subscriber to the Cable Operator, by a Cable Operator paying to the multi system operator and by a MSO to the broadcaster shall be governed by the rate at which one was paying as on 26.12.03.
- ii) The tariff order provided that in the case of a new pay channel that has come after 26.12.03 or in the event of an existing FTA channel having converted into a pay channel, the ceiling shall be increased to the extent of the charges of the new pay channel or converted FTA to pay channel. In the event of a reduction in the number of existing pay channels as existing on 26.12.03 the ceiling shall stand reduced similarly.
- iii) The tariff order also provided that the rates of new pay channels shall be similar to the rates of similar channels that existed as on 26.12.03 and that the new pay channels or the converted FTA to pay channels shall be offered on a stand alone basis and not form part of the bouquets that existed as on 26.12.03.

This tariff order was applicable to both CAS areas and Non-CAS areas covering pay and FTA channels. However, subsequently, for CAS notified areas, a separate tariff order was issued on 31.8.06. While setting out the detailed Recommendations dated 1.10.2004 forwarded to the Government on issues relating to broadcasting and cable services, it was

indicated that the ceiling on cable charges would be reviewed once there was effective competition.

1.3 The genesis for the approach contained in the principal tariff order of 1.10.2004 was as under:

- i) There was a need to protect the interests of the consumers, as there had been widespread increase in prices charged by cable operators.
- ii) There was lack of competition characterized by a situation of dominant players and widespread fragmentation at the last mile level.
- iii) There was no transparency in the absence of addressability and there was little choice for the consumer in terms of channel selection. The consumer also had no choice in selection of a Cable Operator.
- iv) Cost based pricing, particularly of content, is extremely complex and there are a plethora of factors, which could affect the costs.
- v) There was no uniformity of rates and rates charged were governed by the capacity to pay and negotiated levels of subscriber base.
- vi) In the above situation, the best way to provide relief to the consumers was to prescribe a cap on the basis of historical rates.
- vii) In order to recognize the introduction of new channels from time to time, a window was provided in the tariff ceiling for new pay channels and converted FTA to pay channels.

The full text of the principal Tariff Order is available in TRAI's website: www.trai.gov.in

Indexing for Inflation

1.4 On 1.12.2004, an amendment to the principal tariff order was notified providing for an increase of 7% over the ceiling cable charges. This was to be effective from 1.1.2005 to account for annual inflation. This was based on the movement of wholesale price indices. Subsequently on 29.11.05, an increase of 4 % over and above 7% was provided to account for the increase in costs for annual inflation. However, this was to take effect from 1.1.2006. This amendment order was not brought into operation as the TDSAT stayed it. Subsequently, vide its order dated 22.12.06, TDSAT observed that:

“The 4% increase issued by TRAI with effect from 1.1.2006 was stayed by interim order passed by this Tribunal on 20.12.2005. The year 2006 has practically come to an end and for the future TRAI has to consider the matter of revision of rates afresh. Counsel for parties are not able to dispute that in view of the stay order, the 4%

increase was not put into effect and today even if the stay order is to be vacated it will be impossible to recover any amount on the basis of the 4% increase which was to come into effect from 1.1.2006. We are informed that the legal issue regarding the jurisdiction of TRAI to regulate the tariff in respect of cable and broadcasting industry is pending before the Delhi High Court in C.W.P. No. 24105 of 2005 and C.W.P. No. 5332 of 2006. Therefore this Appeal has today become virtually academic.

In these circumstances, we dispose of this Appeal leaving the parties to agitate the legal issues before the High Court in the petitions pending there.

The TRAI is free to consider if it requires to pass some orders on revision of rates for the next year.

The Appeal stands disposed of. The M.A also is disposed of.”

The full text of the tariff amendment orders of 1.12.04 and 29.11.05 are available in TRAI’s website www.traigov.in.

Tariff Amendment Order of 31.7.06

1.5 On 31.7.06, the Authority issued a tariff amendment order clarifying the factors that would be reckoned in determining the similarity of rates of similar channels. In terms of this tariff amendment order, the factors for determining the similarity of channels have been listed as under:

- i) the genre and language of the channel in question;
- ii) the range of prices ascribed to the channel of similar genre and language that existed as on 26.12.03, and
- iii) the range of prices of the individual channel of similar genre and language as existing in the cities where CAS is in existence.

The full text of the Tariff Amendment Order is available on TRAI’s website: www.traigov.in

Tariff Amendment Order of 21.11.06

1.6 On 21.11.06, the Authority further amended the principal tariff order to provide tariff dispensation for commercial cable subscribers. The major provisions of the amendment order provided for the following :-

- i) For the purpose of tariff regulation it was provided that there will be two categories of commercial subscribers. One category would consist of hotels with a grading of 3 stars and above and heritage hotels. This category would also

include any other hotels, motels, Inns and such other commercial establishments providing board and lodging and having 50 or more rooms. In the second category would fall all other commercial establishments,

- (ii) In respect of the first category, the tariff has been left to mutual agreements and market forces. But those commercial subscribers in non-CAS areas having their own head ends and other facilities to receive signals directly from the broadcasters will get the choice of individual channels as well as bouquets. The bouquet offering it was provided will be subject to restrictions on maximum bouquet price in relation to sum of individual channel prices, (iii) The tariff in respect of second category it was provided will be as that of ordinary cable subscribers. The relevant date for reckoning the ceiling was fixed as 26.12.03.

The full text of the tariff amendment order is available in TRAI's website www.traai.gov.in

Need for Fresh Consultation

1.7 The following was indicated in para 4.43 of the detailed recommendations of October 2004 on issues relating to broadcasting and distribution of TV channels:

“It must be emphasized that the regulation of prices as outlined above is only intended to be a temporary measure and till such time there is no effective competition. The best regulation of prices is done through competition. Therefore, as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders.”

1.8 During the proceedings before TDSAT on the issue of increase on account of inflation, a number of issues have been raised regarding the justification for annual increase and the methodology adopted to provide for increases in cable charges. There have also been developments in the form of introduction of CAS in parts of three metros and the growing influence of alternative platforms of delivery of TV channels such as DTH, IPTV etc. A number of regulatory initiatives to bring in transparency to the sector were taken. These were deliberated upon by TRAI and a need has been felt to revisit the issue of tariff regulation for non-CAS areas in holistic manner, including the issue of annual adjustment for inflation

through the process of consultation. It has accordingly been decided to initiate a process of consultation.

1.9 The tariff regime as existing has been there for more than two and half years now. It would be useful to take stock of the efficacy of this tariff regime as viewed by the stakeholders and review the same in terms of its contribution to the purpose for which it was intended and its relevance in the context of developments over the last two years.

1.10 Chapter 2 of this consultation paper, therefore, brings out the experiences in the implementation of the current tariff regime from the perspective of consumers and the industry and the developments over two years of implementation. That chapter also poses issues for consultation on the basis of experiences.

Chapter 2

Experiences in the Implementation and the Tariff Issues

Experience from Consumer Perspective

2.1 With rate of cable charges linked to the rates that were prevailing on 26.12.03, the increases in the consumer bill have been on two counts, viz., (i) 7% increase on account of inflation; and, (ii) emergence of new pay channels. The broadcasters have reported introduction of 24 new pay channels besides conversion of 36 Free to air channels into pay channel since 1.10.2004. Thus, the numbers of pay channels have more than doubled in a short span of two and half years. However, not all these channels are made available to all subscribers by MSOs. These channels have been offered selectively to the end consumers as forming part of new bouquets. In a non-addressable system, the option of choosing a particular channel is not with the consumer and as a result he/she gets only a bouquet of channels. The individual channel choice at the consumer end is possible only through the introduction of addressability.

2.2 Thus, in case a new pay channel/bouquet is added or an exiting free to air channel gets converted into a pay channel, the consumer's cable bill may undergo an increase irrespective of whether the new pay channels is wanted by a particular consumer or not. To this extent, the individual consumer under the existing tariff regime lacks control over his cable bill. For that matter the MSOs have also been stating that they also do not have any choice because broadcasters follow pricing policies, which discourage individual channel selection. Instances have however come to the notice where the Resident Welfare Associations (RWAs) by virtue of their organized power resisted and exercised control over the extent of increase in the cable bills on account of new pay channels. But such instances have been more of an exception rather than a rule.

2.3 In the non addressable regime, the monthly amount charged from the consumer by the Cable Operator is said to vary both in terms of geography and in terms of consumer profile. That is to say, price discrimination prevails in the market and the practice was sought to be justified on grounds of difference in ability to pay. Further, the monthly outgo in respect of the operator (i.e., by the LCO to MSO and by MSO to broadcaster) depends on the ability of the operators to negotiate a subscriber base. The extent of impact of increase may not be uniform across different segments of consumers and also may not be equal to the sum of

prices of such new pay channel(s) or converted FTA channel(s) in all cases. In this situation even though the consumer's monthly cable bill may not have gone up to the same extent as the cost of new pay bouquets and new individual pay channels, nevertheless even this less than permissible addition to his monthly cable bill for new content has not been welcomed. The primary reason for this dissatisfaction is because subscribers have to pay for channels, which are not wanted. This situation arises as a result of lack of addressability. However, it is perceived to be a defect of the existing tariff regime. At the same time, it needs to be noted that in spite of limitations of the tariff regime due to lack of addressability, it has been seen during the course of implementation that the extent of impact of new pay channels/bouquets has not resulted in increase in monthly cable bill to the extent of sum of the prices of new pay channels/bouquets of channels for the consumer..

2.4 Non uniformity in cable bills even within locality and across localities, cities and regions has been one of the often cited ground of complaint against the Cable Operators. In the absence of addressability, it is not feasible to arrive at any scientifically verifiable number of subscribers. This has led to a practice of a system of negotiated subscriber base for the purpose of settlement of payments across the distribution chain with consequential problem of under declaration.

2.5 Further, though there may be more than one Cable Operator in a town/city, there is hardly any option at the ground level for switching Cable Operators either on account of competitive cable rates or on account of better quality of service. This has not been possible due to the informal area sharing arrangement working at the ground level within the colony/locality. Though, there are no legal restrictions in terms of number of Cable Operators or MSOs for a particular area or locality, yet in practice at the ground level it is noted that the local cable operator does not allow other cable operator in the area to give connection to the subscriber wanting to change the operator. It has however been noted during the recent roll out of CAS in the metros that the alternative delivery platform of DTH, has provided competition to the cable platform. As the marketing efforts of DTH operators spread to smaller towns, the competition in non-CAS areas is expected to intensify, thus providing effective choice to consumers.

2.6 One of the frequent complaints has been that the channels are changed by the MSO/LCO without any intimation. This is seen to be a common complaint in cities where there is heterogeneous mix of population. Given the analogue mode of transmission and the accompanying bandwidth constraints, the carriage and placement of channels acquire a value

leading to a business strategy which allows the MSOs to shift or drop channels, particularly those in the Free to Air mode. The principal tariff order of 1.10.2004 has a provision that in case of reduction in the number of pay channels, the ceiling cable charges will stand reduced. But it has been found difficult to enforce the same at the ground level as the consumer is often not given any bill, and even if given it contains very little details to ascertain which channels were given in a particular month.

Experience from Broadcaster's Perspective

2.7 The broadcasters have been opposing the cap on tariff in a number of fora on the ground that the flexibility of their business models is getting affected adversely as a result of the price cap. Secondly, it has been their argument that the entertainment through the medium of television or for that matter any form of entertainment is not an essential commodity, which would justify tariff regulation. They often resort to comparing the regime prevailing in other forms of media and the situation prevailing in other countries. They have been suggesting to leave the pricing and related issues to market forces.

2.8 The broadcasters have also argued that current tariff regulation of the broadcasting sector is against freedom of speech and freedom to carry on business in a lawful manner and therefore violative of provisions of the constitution. These legal issues are presently under scrutiny of various judicial fora.

2.9 An argument often advanced by the broadcasters is that there is adequate competition at the level of broadcasters in terms of number of channels available and the number of players. Particular reference is made to the plethora of free to air channels in each genre available from various broadcasters including the public broadcaster. Therefore, they claim that there is no justification for the tariff regulation.

Experience from MSO and Cable Operator's Perspective

2.10 On the other side, MSOs and Cable Operators have been complaining that though their revenue realization from subscribers have been frozen, but their outgo has gone up as broadcasters force higher levels of declaration in subscriber base in the interconnection agreements. This has also been a major ground for disputes. The operators complain that the existing tariff regime does not place any ceiling on the subscriber base, which is one of the factors determining the pay out from Cable Operators to MSOs and from MSOs to the broadcasters. With this factor not under any ceiling there is no effective freeze on the pay out

by them. It has been argued by them that the increase in outgo due to increases in declaration level for the same subscriber base cannot be recovered from the consumers as the freeze operates on consumer's monthly cable bill in absolute terms for existing pay channels. Further with the increasing number of pay channels the MSOs/Cable Operators also complain that they are forced by the broadcasters to take large bouquets for which they have no bandwidth in the analogue mode besides resulting in increased outgo. Accordingly, they had requested for channels to be provided on an *a-la-carte* basis by the broadcasters in non-CAS areas also. This was not agreed to by the Authority essentially on the ground that this choice cannot be passed on to the consumers in the absence of addressability.

Preliminary Assessment of the Perspectives of Stakeholders

2.11 In support of the contention of the broadcasters that the existing tariff control through the price cap is adversely affecting their business interests, no evidence has been placed before the Authority by the broadcasters. . However, the market reports do suggest that there has been growth in revenues of the broadcasters despite a cap on the tariff for cable charges over the last two years. This however may not lead to any conclusion as this revenue growth could be on account of new pay channels and increase in volume of subscribers. There is another factor, however, which is important. There has been a steady increase in the number of new pay channels and existing FTA channels converting into pay. One argument, which apparently flows from this, is that the decision to launch new pay channels (whose price is also to be linked to rates of similar channels existing as on 26.12.03 in terms of the principal tariff order of 1.10.04) makes a business sense despite the price cap. However, it could be merely because of a business strategy to continue the presence in the market and hope for a regime of forbearance in future. It could also be due to possible realization that the new pay channel can be pushed as part of new bouquets depending on the relative bargaining power of a particular broadcaster of the channel *vis a vis* the other service providers in the distribution chain in particular situations. But from the consumer perspective, the increase in the number of pay channels or bouquets of pay channels gives little protection to the consumer against being forced with unwanted channels and the resultant demand for increased payments by the Cable Operators.

2.12 While it is true that entertainment in a sense is not one of the services listed as essential service under the relevant statute, it cannot also be ignored that there are an estimated 70 million cable and satellite households who are affected. Hon'ble TDSAT in its

judgement dated 27.2.07 in appeal no 10(C), 12(C) and 13(C) of 2007 has also observed that television viewing has almost attained the status of an essential service in the country. This figure is expected to grow. On the other hand there can be arguments that mere numbers *ipso facto* may not justify regulation. There are a number of items of products and services, which are consumed by a much larger population yet there is no regulation. Another argument could be that this huge volume of potential subscribers provides a business opportunity to the players to compete and this could result in the betterment of ultimate consumer welfare. But the volume alone may or may not drive forces of market to work in the interests of consumers unless the market becomes adequately competitive. The need for regulation of channel prices or otherwise therefore has to be decided with specific reference to the situation prevailing in the industry governing the product or service. The questions that are therefore relevant would be:

- i) Are there enough players with freedom to enter or exit at the various tiers of the industry so that the market can play an effective role balancing the demand and supply not only in terms of quantity but also of quality?
- ii) Are there conditions in the market, which enable a few players to use their dominance to the detriment of others?
- iii) Do all the stakeholders have sufficient knowledge and competence to play an effective role in driving the market forces on their own without any protection?
- iv) It is well known that revenues for most pay channels are derived largely from advertisements and to a lesser extent from subscription charges paid by the consumers. The question, therefore, is whether the fear of losing advertisement revenue, if subscription charges are increased resulting in loss of viewer ship is enough check on undue increases in subscription charges.

Absence of any one or more of the conditions could disturb the effective play of market forces and vitiate the levels and extent of competition.

2.13 There are a number of content aggregators /providers and there is also a wide availability of choice of content both in pay and free to air mode. But the choices offered may or may not be perceived to be equally competitive in terms of comparability of quality of content made available. Under the existing non –addressable regime, even with reference to a broadcaster, it is one or two driver channels which pull a bouquet of channels and even amongst these driver channels there is lack of competition. In terms of popularity or viewer

ship, excepting for Chennai, there is very little that the Free to Air channels have been seen to offer in competition to some of the popular pay channels of some of the private broadcasters.

2.14 The Authority has been receiving complaints from consumers alleging violation of tariff orders. In a vast majority of cases out of around 125 complaints /request for clarification received during the period from June 2005 to December 2006 it is seen that the increase in cable charges has been on account of addition of new pay channels or on account of changes in the negotiated subscriber base. The Tariff order of 1.10.2004 provides for increase in ceilings on account of new pay channels and does not provide any freeze on the subscriber base. In some cases the complaints turned out to be actually disputes over the rate prevailing, as on 26.12.03 and in other cases there were disputes as to which channels were shown on 26.12.03. The complaints received from Cable Operators and the MSOs alleging increase in payout in violation of the tariff order were found to be mainly on account of increased declaration levels rather than the increase in rates prevailing as on 26.12.03. Since there was no cap on declaration levels these alleged violations of tariff order were found to be disputes over subscriber base between the broadcaster and the MSO or the MSO and the Cable Operator. There have been only a few instances of complaints of alleged violation of tariff order actually turning out to be so. However, it needs to be remembered that the number of complaints received by TRAI is so small that it may not be taken as reflective of ground reality.

2.15 The complaint about non-uniformity in cable rates for the same content and in many cases in the same locality is genuine and the existing tariff regime cannot address this. It rather recognizes the existence of non-uniformity in cable rates. But there is also a positive side to this problem. This has made it possible to have cross subsidization across different segment of consumers according to their capacity to pay. This act of cross subsidization, though, leading to diversity in rates, has proved to be an effective tool in retaining the customers from different economic strata.

2.16 The current tariff order places a cap on the subscription charges payable on per consumer basis by the subscriber to the local Cable Operator, by the Cable Operator to the MSO and finally by the MSO to the broadcaster. There are two major problems with the current tariff order. The first problem from consumer perspective is the issue of inability to gauge how much increase is the permissible on account of new pay channels. Consumers may not have any evidence of how much they paid in 2003 and for which channels. Even if they did, there is no method to decide what percentage of the price paid by them was on

account of pay channels, and what percentage was for carriage of FTA channels. As a result, the cap on amount payable by consumer to LCO is breached easily. The second problem with the tariff order arises from the point of the Cable Operator and MSOs. This is because even though there is a cap on per subscriber charges payable by them as provided in the tariff order, this is easily circumvented by re-negotiating the subscriber base, rendering the enforcement of tariff order very difficult.

2.17 On the other hand it can be argued that the tariff order provides at least a statutory framework against which the conduct of the broadcaster and operators can be assessed and judged. After all there was nothing prior to January 2004 and there was widespread opinion that there was a need to bring some semblance of order and transparency to the industry in which the consumer was helpless. The existing regime gives a benchmark and broad parameters, which serve as a check in preventing whimsical increases by the service provider. Another argument in favour of tariff regime could be that given the features of a non-CAS regime, the plethora of cable rates prevailing and the content cost not being amenable to any standardization, the existing regime of providing cap based on historical rates is perhaps the best that is feasible in the circumstances.

2.18 But a mere presence of the tariff regime, whether the existing one or one in modified form, it can be argued, may not by itself mean much if it does not really serve the purpose of protecting the interests of the consumers and capable of being effectively implemented at the ground level. What is in fact required is a framework of regulation that facilitates market forces to work. There are thus several issues in the present tariff regime for non-CAS areas as brought out in the preceding paragraphs.

2.19 Thus the important aspect that becomes relevant is the extent of effectiveness of the current tariff regime for non-CAS areas in the context of discussions in the preceding paragraphs. The current tariff regime for non-CAS areas may have difficulties in effectively protecting the interests of consumers for the following reasons:

- a) Often bills or receipts for payments are not given by the operators and the consumer has simply no means to verify and satisfy that he is paying only for the services provided to him. Even if bill is given, it does not indicate the apportionment between pay and FTA channels. The existing tariff regime does not provide a solution to this.
- b) Monthly cable bills can go up on account of new pay channels on which he has no control in the sense that he cannot refuse to take the same. In the absence of an

addressable regime, there is no scope for exercising the choice to refuse to take the new bouquet.

- c) Consumer has no information on the interconnection agreements among the LCOs, MSOs, and broadcasters and which of the channels are pay channels and which are free to air channels
- d) Even where such information is available, in the absence of addressability he has little scope of translating his choice and reduces his monthly cable bill.
- e) Due to lack of effective decentralized enforcement mechanism at the local level, the consumer does not have an opportunity to get remedied speedily and effectively.

Prescription of Overall Ceiling on Monthly Cable Bills and Issues thereof

2.20 As indicated in supra the current tariff regime in practical terms means existence of multiple monthly cable charges for consumers at retail levels in respect of the channel or bouquet of channels that existed as on 26.12.2003. The multiple cable charges prevailing now, can be taken to be consisting of the frozen rate of then (i.e. 26.12.2003) existing channels plus inflation increase of 7% plus the charges levied for the new pay channels or converted pay channels from FTA.

2.21 In the context of the problems expressed in respect of non-uniform ceiling on monthly cable charges and the drawbacks of the existing tariff regime for non-CAS areas a question that arises is whether a specific overall ceiling prescribed for monthly cable bill for the end consumer could address some of the issues. The argument in support could be that there should not be any price differential when similar channels are provided to different viewers by the same Cable Operator. Such an approach, it could be argued, would be in line with the approach followed for CAS notified areas except that for non-CAS areas the overall ceiling will be for the entire bundle of channels. Secondly, it is also often suggested that a overall ceiling on monthly cable charges may, in general, help the subscribers to be clear about the ceiling amount beyond which he cannot be forced to pay. This (the overall ceiling on monthly cable charges) will also help the subscribers in minimizing the disputes with the operators. Often an argument advanced in support of the non-uniform cable charges is that the feature is a natural corollary of business practices in a non-CAS regime which enables the Cable Operator to cross-subsidize different segments of the market.

2.22 It needs to be noted that prescription of overall ceiling would mean two sets of consumers, one whose present monthly cable bills are below the proposed overall ceiling on monthly cable bill and the other whose present cable bills are above it. It is the latter that had the capacity to pay would get some relief, while the former group may have grounds for being dissatisfied. While there may be some discontent due to non uniformity in monthly cable charges, it essentially is a result of cross subsidization resorted for retaining subscribers of different economic strata.

2.23 Under the current tariff regime, the ceiling charges are applicable to parties at various levels of distribution chain. If the prescription of an overall ceiling on monthly cable charges is to be considered for the end consumer, a question arises as to how the tariff at the other levels of distribution chain namely, between broadcaster and MSO, and between MSO and Cable Operator would be determined. Considering the existing industry practice in a non-CAS regime where the rate is often dependent upon the negotiated subscriber base, it may not be feasible to extend the approach of overall ceiling or sets of ceiling on monthly cable charges to other distribution levels. The remedy that TRAI should put a cap on increase in connectivity is impractical. However, TRAI has laid down some broad guidelines for determination of subscriber base through an amendment in the Regulation on Inter-connection on 4.9.2006.

2.24 One option is to consider if the market forces can be allowed to operate in the determination of the rates of tariff between the broadcasters and MSOs and MSOs and Cable Operators. With a an overall ceiling on monthly cable charges operating at the end consumer level irrespective of the rates prevailing amongst the service providers the consumer gets insulated on account of price variation and subscribers base variation among broadcasters, MSOs and Cable Operators. There can be some problems with this arrangement as an operator could load the subscribers with channels or bouquets which are unpopular/unwanted and charge the subscriber at the ceiling level, though the channels or the bouquet may not have cost the operator as much as a popular channel or bouquet. But it is vital to keep in mind that the pressure of competition that may be exerted by the emerging DTH platform can be expected to rein in the service providers from being whimsical and to this extent the aberrations could be in check

2.25 The existing non-CAS tariff order of 1.10.2004 as amended by an order of 31.7.2006 does not provide an option to an MSO to choose a channel. This could be cited as a bottleneck in not providing all the popular channels. A related issue that arises is whether

the MSOs who are technically equipped to receive channels on *a-la-carte* basis should be given the option to choose individual channels. This may enable the MSOs to choose channels, which may reflect the popular choices of the subscriber based on regional preferences. This may also prevent the subscribers from being burdened with the new pay channels to some extent. But the problems of disputes over subscriber base and the consumer not getting a choice to choose individual channels may however continue to remain in the absence of addressability.

2.26 Another issue that may need consideration is whether a prescription of overall ceiling on monthly cable charges needs a parallel prescription of a minimum number of channels that should be provided for such a ceiling. It becomes relevant as prescription of a mere ceiling on monthly cable charges without corresponding stipulation of minimum number of channels may lead to a situation of number of channels to be reduced, while keeping the cable charges close to the ceiling. One view can be that competition from DTH would keep such practices in check. Alternatively, in so far as the free to air channels are concerned a minimum of 30 FTA channels as made applicable in CAS notified areas could be considered along with some pay channels. The majority of cable network in the country have capacities ranging between 550 Mhz to 750 Mhz which are capable of carrying of 55 to 70 analogue channels. The network size could be smaller in semi urban areas and larger in urban areas and still larger in Metros. While it is very difficult to objectively arrive at a standard figure on the required number of channels a minimum of 65 channels for a 750 Mhz network (30 free to air channel and 35 pay channels) can be considered as one option There is another possibility of considering different number for different areas if differential sets of monthly ceiling on cable charges are to be considered.

2.27 The most important and difficult in terms of evolving an acceptable method, is the issue of determination of the overall ceiling figures. With the cost based determination being extremely complex, one possibility is to go by the historical prices. But the question is which of the innumerable historical prices operating in the current non-CAS regime could be considered as representative. The historical monthly cable bills vary widely across regions /economic strata. Further such overall ceiling based on historical prices may have to take into account the allowance for new pay channels. One option for historical prices could be to use the all India average cable bill of Rs. 176 as revealed by the market survey commissioned in 2004 by TRAI and then arrive at a ceiling after adjusting for inflation over the last 3 years and also to give allowance to an average number of new pay channels that may have come in

since then. This average price of Rs. 176 would after adjustment for inflation say @6% per year for 3 years would be around Rs.220. Considering that this is an average figure, and giving some allowance for new pay channels that have come in, the ceiling could be Rs. 250 for 65 channels including 30 FTA channels. This amount would be excluding central and state taxes such as service tax, entertainment tax etc. This is because in the average monthly cable bill of Rs.176 revealed by the market survey in 2004, separate component for tax was not known, though it is believed that there has been widespread tax evasion in non-addressable regime.

Development Over the Last Two Years

2.28 A significant development has been the competition from the alternative delivery platform of DTH as recently seen during the recent roll out of CAS in parts of three metros, though there could be difference of opinions on the extent of degree of competition. There are two private DTH operators besides the Doordarshan. There is one more licensee and another letter of intent holder who are expected to enter into operation in future. Besides it is reported there is one more application under consideration. The market reports indicated that during the implementation of CAS in parts of three metros, DTH as an addressable platform had made aggressive efforts to garner market share particularly in the CAS notified areas by offering concessional packages in their tariff. DTH as an alternative addressable platform and with a footprint over the whole country is certainly poised to give competition both in CAS and non-CAS areas. Perhaps, the competition would intensify with more DTH operators coming into operation. Some of the telecom companies are also putting in efforts to deliver television channels through Internet protocol. Doordarshan, as the public broadcaster has launched a free direct to home service and has plans to expand the offering. It is also planning a project for providing a few Free to Air Channels from its basket through mobile phones using terrestrial network. All these developments augur well for the competition which will ultimately force the service providers to package their products to win the consumer.

Issue of Accounting for Increase in Costs on Account of Inflation

2.29 At the time of issuing the tariff amendment orders providing for an increase of 7% with effect from 1.1.05 and an additional increase of 4% w.e.f. 1.1.2006, the basic objective

was to evolve a methodology to compensate for the increase in costs, keeping in view the ultimate objective of deregulation once there is effective competition. The recommendation of 1.10.2004 contained a suggestion for annual review of the cable charges ceiling on account of inflation. The method used the yearly movement of the wholesale price indices on a week-to-week basis. The approach of using price indices as reference point for judging the reasonableness of increase in prices of charges is not something unknown. Some of the regulators, for example like USA, Canada, use the movement in price indices as a reference point for judging the reasonableness of tariff increases. It is also noted that in some of the agreements entered into by broadcasters with DTH operators, movement of price indices are used as a reference for providing for increase in prices of the channels. The costing of content is admittedly a very complex exercise and if it had been possible to work out a standard representative cost of a channel the annual review could have been possible on the basis of such cost itself. In this manner the objective of preventing whimsical price increases in cable TV, which was at that time largely monopolistic in the absence of DTH, was facilitated.

2.30 In regard to the increase allowed on account of inflation, there can be arguments that:

- i) The ceiling charges fixed by TRAI were not based on cost but on historical prices. Therefore, the increase on account of inflation to cable bills, which is not based on cost, is incorrect.
- ii) The adoption of wholesale price indices for giving effect to inflation is not an appropriate method, as the indices do not reflect the elements of cost involved in the services provided.
- iii) In a non-addressable regime where the levels of negotiated subscriber base is an important factor in determining the margins, the increase in costs of inputs may or may not translate into impact on margins.
- iv) Over the period of two years, the number of subscribers has grown and with higher declarations at various levels of distribution chain the subscription revenues of the service providers have grown offsetting the increased costs.
- v) On the other hand the broadcasters particularly the sports broadcasters had proposed to consider the sports channels on a different footing for the purpose of giving annual increases on account of inflation.

Issues for Consultation

2.31 In the light of the discussions above the following issues are posed for consultation and comments of all the stakeholders:

- I. In view of the facts that there are questions of effectiveness of the existing tariff regime, and because that there have been developments over the last two years leading to increased competition from other alternative platforms, should there be a total forbearance of tariff in regard to non-CAS areas?
- II. In the event that answer to (I) is 'yes', is there a need for providing checks and balances and if so what specific measures would you suggest from the point of view of providing protection to the subscribers?
- III. In case forbearance as an option is not advisable,
 - a) Should the existing ceiling on cable charges payable by the cable subscriber to Cable Operator, Cable Operator to MSO and MSO to broadcasters as prevailing on 26.12.2003 be allowed to continue for non-CAS areas with adjustments on an annual basis for inflation based on wholesale price indices as done presently?
 - b) If the existing approach for inflation adjustment based on wholesale price indices is not appropriate, would the method of indexing used for determining cost of assets for the purpose of capital gains tax be an appropriate method? If not what other alternative methods would you like to suggest? (Explain in detail the method and with sample working and cite international practices if any).
 - c) In case of the option at (III) (a) is considered should the reference date for determining the ceiling on cable charges be shifted to 1.1.2007 instead of the existing reference date of 26.12.03, and then permitting changes thereafter for new channels and annual inflation adjustment etc?
- IV. (a) Can the existing regime be replaced by prescribing a overall ceiling on monthly cable charges (exclusive of taxes) payable at the level of the end consumers? If this is to be done, how would the following aspects relating to such an approach, in the light of observations in paras 2.20 to 2.27 be dealt with:
 - i) Whether the overall ceiling on monthly cable charges can be determined in the manner indicated in para 2.27? Is there any other

method of arriving at the specified ceiling on monthly cable charges and what that method should be?

- ii) Should there be a single overall ceiling on monthly cable charge or should there be different ceilings separately for metros, urban areas and non-urban areas? If so what should that ceiling be in respect of each such category of areas and how such ceiling should be arrived at? What should be the yardstick or basis for categorization of areas into metros, urban and semi urban areas?
 - iii) Should the overall ceiling on monthly cable charges be accompanied by a prescription of a minimum number of FTA channels and pay channels? Would the suggestion contained in para 2.26 be acceptable? If yes what would be the appropriate number of channels separately for FTA and Pay that should be specified?
 - iv) If such overall ceilings are fixed, then how and at what periodicity should this be reviewed, in view of various market developments that may come about ? An appropriate methodology for factoring in the impact of such market development in the overall ceiling may also be suggested.
- b) In the event of the proposal at IV (a) above being considered what method should be adopted in respect of tariff determination in regard to cable charges payable by MSO to broadcaster and Cable Operator to the MSO? Can the tariff determination be left to the market forces?
 - c) In view of the fact that even in non-CAS areas, the transmission of channels from the broadcaster to the MSO is in ‘addressable’ format, would it be advisable allow *a-la carte* choice for MSOs in the context of observations contained in para 2.25? If so, what should be the elements of such tariff regulation at wholesale level?
- V. Should the decisions be different in respect of the residual category of commercial cable subscribers (other than those for whom there is forbearance in terms of tariff amendment orders of 21st November 2006) or the decision applicable to the ordinary cable subscribers should be made applicable to them as well?