

Consultation Note No. 3 of 2004



TELECOM REGULATORY AUTHORITY OF INDIA

Consultation Note

on

Issues relating to Broadcasting and Cable Services

New Delhi

January 15, 2004

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PREFACE

Cable Television Network (Regulation) Act, 1995 was amended in the year 2002 and section 4A was inserted in the original Act which envisages transmission of programmes through addressable system (popularly referred to as Conditional Access System (CAS)) with effect from such date as may be specified in the Notification. Following various Notifications and Court interventions, the Conditional Access system is applicable in Chennai and certain areas of Calcutta, Mumbai and NCT of Delhi. In certain areas of Delhi, following the Hon'ble Delhi High Court orders dated 26.12.2003, the implementation of CAS is to continue for a period of three months on a trial basis after which the Court would give further directions taking into consideration the feed back of three months' experience.

2. The Government of India issued a Notification No.39 dated 09.01.04 whereby the scope of the expression 'telecommunication services' (defined in Section 2 of the Telecom Regulatory Authority of India Act, 1997 as amended) was expanded to include the broadcasting services and cable services also. Consequently the Telecom Regulatory Authority of India is entrusted with the basic task of regulation of cable and broadcasting services in the country.

3. There is considerable uncertainty about different aspects of the CAS regime and a detailed examination is required of the various issues including the rates for the broadcasting and cable services in CAS and non-CAS areas, and the conditions at which the addressable systems are made available by the cable operators. Not only are there no standard rates or conditions at which services are provided by the cable operators to the customers, there are reports that there may be an increase in the rates charged to the customer. The Authority has, therefore, begun its process of examination of the relevant issues including those relating to CAS through a consultation process.

4. The enclosed Consultation Note is the first step towards a meaningful examination of the relevant issues mentioned above and would provide the necessary platform for discussing them. The comments and other inputs provided by the stakeholders would enable the Telecom Regulatory Authority of India to formulate a more detailed Consultation Paper with a view to evolving appropriate policies for the orderly growth of the cable and broadcasting services in the country. The Consultation Note has already been placed on TRAI's website (www.trai.gov.in).

5. Written comments on this Consultation Note may be furnished to the Secretary, Telecom Regulatory Authority of India by 30th January 2004. It would be appreciated if the response is accompanied with an electronic version of the text through email at trai07@bol.net.in. The fax number of TRAI is 011-26103294.

**(Pradip Baijal)
Chairman, TRAI**

**New Delhi
Dated 15th January 2004.**

CONSULTATION NOTE ON SOME ISSUES RELATING TO BROADCASTING AND CABLE SERVICES

This Consultation Note seeks to address the issues regarding tariffs of broadcasting and cable service and problems arising out of the application of Conditional Access System (CAS) in certain areas. This Paper is in two Sections. Section I deals with the background of the issue; and Section II deals with the issues involved.

Section I

Background

2. Cable Television Networks (Regulation) Act, 1995 was amended in 2002 and Section 4A was inserted in the original Act which envisages “**Transmission of programmes through addressable system**” (popularly referred to as Conditional Access System (CAS) with effect from such date as may be specified in the Notification. A Notification dated 14th January 2003 was issued by the Ministry of Information and Broadcasting, Government of India making it obligatory for every cable operator to transmit/re-transmit programmes of every pay channel through an addressable system in Chennai Metropolitan area, Municipal Council of Greater Mumbai area, Kolkata Metropolitan area and National Capital Territory of Delhi within six months from 15th day of January, 2003. Subsequently vide Notification dated 10th July, 2003 the date of implementation was deferred and fixed within six months from 1st March, 2003, and Chennai and the areas of NCT of Delhi, Kolkata, Mumbai to be covered by CAS were also specified. Thereafter vide Notification dated 29th August, 2003, the earlier Notification dated 10th July, 2003 was amended and areas in NCT of Delhi where CAS was to be implemented were deleted.

3. The Hon’ble Delhi High Court, vide orders dated 4th December 2003, quashed the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India. The cable operators of the notified areas partially withdrew pay channels from mid-night of 15th December 2003.

4. Delhi High Court in CW no. 8993-4/2003 in its order dated 26.12.03 allowed the implementation of CAS in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feed back of three months' experience.

5. The Government of India issued a Notification No.39 dated 9th January 2004 (copy of the Notification is at Annexure I) under the proviso to clause (k) of sub-section (1) of section 2 of the TRAI Act 1997 as amended, (copy of the provisions of Section 2 of the TRAI Act is at Annexure II) whereby the scope of the expression 'telecommunication services' under the TRAI Act was increased to include the broadcasting services and cable services also. Thus, the broadcasting and cable services also came within the purview of the Telecom Regulatory Authority of India. Through this Notification, the Government of India, in exercise of the powers under clause (d) of sub-section (1) of section 11 (copy of the provisions of Section 11 of the TRAI Act is at Annexure III), further authorised the Telecom Regulatory Authority of India to specify inter alia standard norms for and periodicity of revision of rates of pay channels including interim measures. The said notifications further authorised TRAI to make recommendations on the parameters for regulating maximum time for advertisements in pay channels and other channels, and the terms and conditions for "addressable systems" provided to subscribers.

6. Under Section 11(4) of the TRAI Act, the Authority has to ensure transparency while exercising its powers and discharging its functions. The normal practice followed in the TRAI is to decide on issues following a consultation process with stakeholders. In this case too, the Authority is examining various issues and will be conducting consultations. This Consultation Note seeks inputs on a number of policy issues, so as to prepare a more detailed Consultation Paper.

Section II

7. Issues involved:

- a) The norms for fixing rates (or ceiling rates) for cable subscribers/ cable operators / Multi Service Operators for individual pay channels, bouquets thereof, and distribution of free-to-air channels; whether this should be uniform in areas under CAS and non-CAS areas or whether it should be different; other principles for determining the above mentioned rates, including periodicity of revision.
- b) Regulation regarding rates of cable operators, including periodicity of change of monthly cable charges in non-CAS areas and the maximum percentage change to be allowed at any one time.
- c) Principles governing the sharing of pay channel charges between broadcasters, Multi Service Operators and local cable operators.
- d) The principles for laying down limits as to the extent of bundling of pay channels to be allowed in order to ensure that Cable TV viewers have a genuine choice with regard to selection of pay channels, e.g. to ensure that bundling does not discourage selection of individual channels.
- e) The standard terms and conditions under which set top boxes may be made available (sale/rental) to subscribers in CAS areas and refund of charges deemed inappropriate.
- f) The conditions under which consumers may return set top boxes sold or rented to them by service providers and ask for a refund;
- g) The compensation to be paid by cable operators to viewers who have ordered pay channels if transmission is interrupted for more than a specified portion of prime time (e.g.10%) in a month or in the case of a sports channel, a similar portion (10%) of the time during an important sports event. The principles for sharing this compensation between broadcasters, Multi Service Operators and local cable operators.

- h) The principles to be followed for laying down the standards of quality of service to be provided by the cable operators / Multi Service Operators / Broadcasters and for ensuring the quality of service and conduct of periodic survey of such service provided by the Cable Operators / Multi Service Operators / Broadcasters so as to protect the interests of the consumers of Broadcasting and Cable Services.
- i) Measures to increase competition, promote efficiency and encourage wider consumer choice in the operation of Broadcasting and Cable services so as to serve consumer interests and to ensure the availability of services in rural and remote areas.
- j) Measures for the development of Broadcasting and Cable services technology (including Direct-to-Home and Broadband) and any other matter relatable to this industry, in general.
- k. Advertisements on TV channels
 - (i) the maximum advertising time to be permitted per half-an-hour on free-to-air channels along with other conditions that are required to be imposed;
 - (ii) the further regulation of advertising on pay channels in reference to tariffs for the channels;
 - (iii) whether the restrictions at (i) & (ii) above should apply to both CAS and non-CAS areas uniformly or whether differential treatment is called for.

8. Comments and other inputs are requested on the above issues and any other related matter. Please note that the comments relating to broadcasters should include issues relevant also for authorised distributors and advertising sales agencies of pay satellite channels.

9. The Authority invites written responses from all interested parties by 30th January, 2004. It would be appreciated if the response is accompanied with an electronic version of the text through email. The communication may be sent to Dr. Harsha Vardhana Singh, Secretary, TRAI (trai07@bol.net.in) or to Shri Rajan Singla, Advisor (trai@del2.vsnl.net.in). The fax number of TRAI is 011-26103294.

ANNEXURE - I TO THE CONSULTATION NOTE

NOTIFICATION NO. 39
[DATED 09.01.2004]

MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY
(Department of Telecommunications)

NOTIFICATION

New Delhi, the 9th January, 2004

S.O. 44(E). - In exercise of the powers conferred by the proviso to clause (k) of Sub-section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Central Government hereby notifies the broadcasting services and cable services to be telecommunication service.

[F.No. 13-1/2004 – Restg.]
P.K. TIWARI, Dy. Secy (Restg.)

ORDER

New Delhi, the 9th January, 2004

S.O. 45(E). - In exercise of the powers conferred by clause (d) of Sub-clause (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as the Act), the Central Government hereby entrusts the following additional functions to the Telecom Regulatory Authority of India, established under Sub-section (1) of Section 3 of the Act, in respect of broadcasting services and cable services, namely:-

- (1) Without prejudice to the provisions contained in clause (a) of Sub-section (1) of Section 11 of the Act, to make recommendation regarding -

- (a) the terms and conditions on which the “Addressable systems” shall be provided to customers

Explanation – For the purposes of this clause, “addressable system” with its grammatical variation, means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator for that purpose to the subscriber,

- (b) the parameters for regulating maximum time for advertisements in pay channels as well as other channels.

- (2) Without prejudice to the provisions of Sub-section(2) of Section 11 of the Act, also to specify standard norms for, and periodicity of, revision of rates of pay channels, including interim measures.

[F.No. 13-1/2004 – Restg.]
P.K. TIWARI, Dy. Secy (Restg.)

ANNEXURE - II TO THE CONSULTATION NOTE

SECTION 2 OF THE TRAI ACT, 1997

2. (1) In this Act, unless the context otherwise requires:-

- a. "appointed day" means the date with effect from which the Authority is established under sub-section (1) of section 3;
- (aa) "Appellate Tribunal " means the Telecom Disputes Settlement and Appellate Tribunal established under section 14.
- b. "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;
- c. "Chairperson" means the Chairperson of the Authority appointed under sub-section (3) of section 3;
- d. "Fund" means the Fund constituted under sub-section (1) of section 22;
- e. "licensee" means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;
- (ea) "licensor" means the Central Government or the telegraph authority who grants a license under section 4 of the Indian Telegraph Act, 1885 (13 of 1885).
- f. "member" means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and Vice-Chairperson ;
- g. "notification" means a notification published in the Official Gazette;
- h. "prescribed" means prescribed by rules made under this Act;
- i. "regulations" means regulations made by the Authority under this Act;
- j. "service provider" means the Government as a service provider and includes a licensee;
- k. "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services;

PROVIDED that the Central Government may notify other service to be telecommunication service including broadcasting services.

(2) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933) shall have the meanings respectively assigned to them in those Acts.

(3) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

ANNEXURE - III TO THE CONSULTATION NOTE

SECTION 11 OF THE TRAI ACT, 1997

11. Functions of Authority

- (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-
 - (a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:-
 - (i) need and timing for introduction of new service provider;
 - (ii) terms and conditions of licence to a service provider;
 - (iii) revocation of licence for non-compliance of terms and conditions of licence;
 - (iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services.
 - (v) technological improvements in the services provided by the service providers.
 - (vi) type of equipment to be used by the service providers after inspection of equipment used in the network.
 - (vii) measures for the development of telecommunication technology and any other matter relating to telecommunication industry in general;
 - (viii) efficient management of available spectrum;
 - (b) discharge the following functions, namely:-
 - (i) ensure compliance of terms and conditions of license;
 - (ii) notwithstanding anything contained in the terms and conditions of the license granted before the commencement of the Telecom Regulatory Authority (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;
 - (iii) ensure technical compatibility and effective inter-connection between different service providers.
 - (iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
 - (v) lay down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;
 - (vi) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;
 - (vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

- (viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;
 - (ix) ensure effective compliance of universal service obligations:
- (c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations.
- (d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government, having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation, if any, the Central Government shall take a final decision.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1) or sub-section (2), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.