

**Consultation**  
**on**  
**Draft Tariff Order applicable for Non-Addressable Cable TV Systems**

Tariff for cable TV services, offered through non-addressable cable TV systems, is governed by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) dated 01.10.2004. The eighth amendment to this tariff order was under judicial scrutiny, earlier in the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and subsequently, in the Hon'ble Supreme Court of India. In pursuance to the Hon'ble Supreme Court order dated 13.05.2009, in the said matter [Civil Appeal Nos. 829-833 of 2009 (TRAI vs. M/s Set Discovery Pvt. Ltd & Ors.)], TRAI had prepared a report titled "Tariff Issues related to Cable TV Services in non-CAS Areas", after following an elaborate consultation exercise. The said report was submitted to the Hon'ble Supreme Court on 21.07.2010. This report, amongst others, contained a draft tariff order applicable for non-addressable cable TV systems. A copy of the said report has been placed on the website of TRAI i.e. [www.traigov.in](http://www.traigov.in).

The Hon'ble Supreme Court pronounced its final order in the said matter on 17.09.2014. The Hon'ble Supreme Court, in this order, disposed off the appeals, while leaving all the questions of law open. It also ordered that *status quo* will continue till 31.12.2014. The order further stated that TRAI will attempt to notify the fresh tariff order immediately after 31.12.2014.

The Hon'ble Supreme Court also noted that since the report was prepared in 2010, there may be a necessity of holding further consultations and allowed the stakeholders that, in case, they intend to make representations to the TRAI, they may do so positively on or before 30.09.2014. Availing the opportunity, some of the stakeholders have submitted their representations. These representations have also been placed on the website of TRAI.

The Authority is of the view that a number of developments that have taken place since the time the draft tariff order was submitted to the Hon'ble Supreme Court as part of the said report which should be appropriately reflected in the final tariff order. However, before finalising the tariff order, the same should be consulted with the stakeholders. Accordingly, a revised draft tariff order viz. the Telecommunication (Broadcasting and Cable) Services (Seventh) (Non-addressable Systems) Tariff Order, 2014 (draft), has been

prepared and placed on the website of TRAI seeking views/comments of the stakeholders.

Stakeholders are requested to submit their written views/comments on this draft tariff order by 15<sup>th</sup> December 2014. It may be noted that this opportunity is in addition to the opportunity already given by Hon'ble Supreme Court through its order dated 17<sup>th</sup> September 2014, wherein it allowed the stakeholders to make representations to the TRAI, positivity on or before 30.09.2014. In view of the timelines set by the Hon'ble Supreme Court, no extension in the date for submission of views/comments shall be entertained. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi – 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: traicable@yahoo.co.in or advbcs@trai.gov.in ). Comments will be posted on the TRAI's website [www.trai.gov.in](http://www.trai.gov.in).

**Draft**

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,  
PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA  
NOTIFICATION

**THE TELECOMMUNICATION (BROADCASTING AND CABLE)  
SERVICES (SEVENTH)(NON-ADDRESSABLE SYSTEMS) TARIFF  
ORDER, 2014  
(No.----- OF 2014)**

New Delhi, the \_\_\_\_\_,2014.

**F. No. 1-1/2014-B&CS. ----- In exercise of the powers conferred by sub-clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications), No.39 ,-----**

- (a) issued, in exercise of the powers conferred upon the Central Government by proviso to clause (k) of sub-section (1) of section 2 and clause (d) of sub-section (1) of section 11 of the said Act, and
- (b) published under notification No. S.O.44 (E) and 45 (E) dated 9<sup>th</sup> January, 2004 in the Gazette of India, Extraordinary, Part II—Section 3—Sub-section(ii),----

the Telecom Regulatory Authority of India hereby makes the following Order, namely:----

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (SEVENTH) (NON-ADDRESSABLE SYSTEMS) TARIFF ORDER, 2014 (No. ---- 2014)**

**PART I  
PRELIMINARY**

**1.Short title and commencement.**-----**(1)** This Order may be called the Telecommunication (Broadcasting and Cable) Services (Seventh) (Non-addressable Systems) Tariff Order, 2014.

**(2)** This Order shall come into force on the 1<sup>st</sup> day of January, 2015.

**2. Applicability.**----This Order shall be applicable to broadcasting and cable services provided to cable subscribers, throughout the territory of India, through non-addressable systems.

**3. Definitions.**----- In this Order, unless the context otherwise requires, -

(a) “Act” means the Telecom Regulatory Authority of India Act, 1997 (24 of 1997);

(b) “addressable system” means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of digital addressable system can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by multi-system operator or DTH operator or IPTV operator or HITS operator to the subscriber;” and ---

the expression “non-addressable system” shall be construed accordingly;

(c) “a-la-carte” with reference to offering of a TV channel means offering the channel individually on a standalone basis;

(d) “a-la-carte rate” means the rate at which a standalone individual channel is offered to the distributor of TV channels or to the subscriber, as the case may be;

- (e) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997(24 of 1997);
- (f) “broadcaster” means a person or a group of persons, or body corporate, or any organization or body who, after having obtained, in its name, uplinking permission or downlinking permission, as may be applicable for its channels, from the Central Government, provides programming services;”
- (g) “broadcasting services” means the dissemination of any form of communication such as signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;
- (h) “bouquet” or “bouquet of channels” means an assortment of distinct channels, offered together as a group or as a bundle;
- (i) “bouquet rate” or “rate of bouquet” means the rate at which a bouquet of channels is offered to the distributor of TV channels or to the subscriber, as the case may be;

- (j) “ DAS area” means the cities, towns or areas, where, in terms of notifications issued by the Central Government from time to time under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), it is obligatory for every multi system operator or cable operator to transmit or retransmit programmes of any channel in an encrypted form through a digital addressable system;
- (k) “cable service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;
- (l) “cable television network” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;
- (m) ) “cable operator” means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;
- (n) “charges”, with reference to---
  - (i) subscriber, means the rates (excluding taxes) payable by the subscriber to the cable operator or multi system

operator, as the case may be, for cable services received by him;

(ii) cable operator, means the rates (excluding taxes) payable by the cable operator to the multi system operator or broadcaster, as the case may be, for broadcasting services or cable services received by him;

(iii) multi system operator, means the rates (excluding taxes) payable by the multi system operator to the broadcaster, for the broadcasting services received by him;”

(o) “commercial establishment” means any premises wherein any trade, business or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or work in connection with, or incidental or ancillary thereto, journalistic, printing and publishing establishments, educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment”;

(p) “commercial subscriber” means any person who receives broadcasting services or cable services at a place indicated by him to

a cable operator or multi system operator or direct to home operator or head end in the sky operator or Internet Protocol television service provider, as the case may be, and uses such services for the benefit of his clients, customers, members or any other class or group of persons having access to his commercial establishment;”

- (q) “distributor of TV channels” means any person including an individual, group of persons, public or private body corporate, firm or any organisation or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited to, a cable operator, direct to home operator, multi system operator, head end in the sky operator and a service provider offering Internet Protocol television service;
- (r) “distribution platform operator” means an operator providing internet protocol television service or multi system operator or head end in the sky operator or direct to home operator or cable operator;
- (s) “free to air channel” means a channel for which no fees is to be paid to the broadcaster for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly;

- (t) “multi system operator” means a cable operator who has been granted registration under the Cable Television Networks (Regulation) Act, 1995 and who receives a programming service from a broadcaster and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more cable operators;”
- (u) “Non-DAS area” means area other than DAS Area;
- (v) “Order” means the Telecommunication (Broadcasting and Cable) Services (Seventh) (Non-addressable Systems) Tariff Order, 2014;
- (w) “ordinary cable subscriber” means any subscriber who receives a programming service from a service provider and uses the same for his domestic purposes;
- (x) “pay channel” means a channel for which fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly;
- (y) “programme” means any television broadcast and includes----
- (i) exhibition of films, features, dramas, advertisements and serials;

- (ii) any audio or visual or audio-visual live performance or presentation, and -----  
the expression “programming service” shall be construed accordingly;
- (aa) “Schedule” means Schedule annexed to this Order;
- (bb) “service provider” means the Government as a service provider and includes a licensee as well as any broadcaster, multi system operator, cable operator or distributor of TV channels;
- (cc) “subscriber” means a person who receives the signals of a service provider at a place indicated by him to the distribution platform operator, without further transmitting it to any other person and includes ordinary cable subscribers and commercial subscribers unless specifically excluded;
- (dd) “TV channel” means a channel, which has been registered under ---  
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- (i) the guidelines for uplinking from India, issued vide No. 1501/34/2009-TV(I) dated the 5<sup>th</sup> December, 2011; or

- (ii) policy guidelines for downlinking of television channels, issued vide No. 1501/34/2009-TV(I) dated the 5<sup>th</sup> December, 2011, -----

as amended from time to time or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by Government of India (Ministry of Information and Broadcasting) and any reference to the term 'channel' shall be construed as a reference to "TV channel";

- (ee) all other words and expressions used in this order but not defined, and defined in the Act and rules and regulations made thereunder or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

**PART II**  
**CHARGES PAYABLE BY SUBSCRIBERS TO CABLE**  
**OPERATORS OR MULTI SYSTEM OPERATORS**

**(RETAIL TARIFF)**

**4. Charges payable by ordinary cable subscriber to cable operator or multi system operator.**----- (1) Every cable operator or a multi system operator, as the case may be, who provides cable services to its ordinary cable subscribers, shall charge from its ordinary cable subscribers for such cable services, at rates not exceeding the maximum amount of charges specified in Part I or Part II , as the case may be, of the Schedule.

(2) In the case of a commercial subscriber, for each television connection, the charges payable by the ordinary cable subscriber under sub-clause (1), shall be the ceiling;

Provided that if a commercial subscriber charges his customer or any person for a programme of a broadcaster shown within his premises, he shall, before he starts providing such service, enter into agreement with the broadcaster and the broadcaster may charge the commercial subscriber, for such programme, as may be agreed upon between them.

**Explanation (1):** For removal of doubt, it is clarified that the provision of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) shall apply to the broadcasting and cable services being provided to the consumers through the addressable system.

**Explanation (2):** For removal of doubt, it is clarified that any increase in the price of goods or services, being provided by the commercial subscriber during the duration of the telecast of a programme, referred to in the above proviso, shall also be treated as charge for the said programme.

**PART III**  
**CHARGES PAYABLE BY CABLE OPERATORS OR MULTI SYSTEM**  
**OPERATORS TO BROADCASTERS**  
**(WHOLESALE TARIFF)**

**5. Broadcasters to specify rates for channels and bouquets within specified ceilings.**---- (1) Every broadcaster shall offer or cause to offer all its pay channels on a-la-carte basis to distributors of TV channels using non-addressable systems, and specify the a-la-carte rate for each pay channel:

Provided that the a-la-carte rate to be specified by the broadcaster for a pay channel shall in no case exceed the a-la-carte rate for that pay channel as prevalent immediately before the coming into force of this order.

(2) In case a broadcaster provides pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, such broadcaster shall specify the rate for each such bouquet of channels offered by it:

Provided that the bouquet rate to be specified by the broadcaster for a bouquet shall in no case exceed the bouquet rate for that bouquet of channels as prevalent immediately before the coming into force of this order.

Provided further that, both in the case of bouquets which existed before the coming into force of this order and in the case of bouquets which come into existence after coming into force of this order, the rate charged for a bouquet of channels and the a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following conditions, namely:-

- (a) the sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and
- (b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-

If the bouquet rate is Rs. 'X' per month per subscriber and the number of pay channels in the bouquet is 'Y', then the average rate of a pay channel in that bouquet shall be Rs. 'X' divided by number of pay channels 'Y'.

Provided also that the composition of a bouquet existing as on the 1<sup>st</sup> day of December, 2007, in so far as pay channels are concerned in that bouquet, shall not be changed:

Provided also that nothing contained in the third proviso shall apply to those bouquets of channels existing on the 1<sup>st</sup> day of December, 2007, which are required to be modified pursuant to the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014

and the rate of such modified bouquet of channels shall be determined in the following manner:----

The rate of the modified bouquet = [rate of the existing bouquet] × [sum of a-la-carte rate of pay channels comprising the modified bouquet/sum of a-la-carte rate of all the pay channels comprising the existing bouquet],

and if after modification of the bouquet, there remains only one channel in such bouquet, the broadcaster shall be free to offer such channel at its published a-la-carte rate in its Reference Interconnect Offer.

Provided also that no pay TV channel shall be added to or removed from the modified bouquet of TV channels referred to in the third proviso.

(3) The a-la-carte rate for each pay channel specified under sub-clause (1) and the bouquet rate specified under sub-clause (2) shall not be increased by the broadcaster unless such increase is permitted by the Authority by an order:

Provided that the broadcaster may, at any time, reduce such rate or rates, as the case may be;

(4) In case a broadcaster discontinues a pay channel which formed part of a bouquet for which rates had been specified by him under

sub-clause (2) or converts such pay channel into a free to air channel, the broadcaster shall reduce the price of the bouquet proportionately;

(5) In case a bouquet existing on the date of coming into force of this order consists of both free to air and pay channels, and if any free to air channel is converted into pay channel after that date, then the said existing bouquet (excluding the said free to air channel) shall be offered at or below the rates prevailing as on that date for such bouquet;

(6) In case a bouquet existing on the date of coming into force of this order consists of both free to air and pay channels, and if any pay channel included in the bouquet is converted into free to air channel after that date, then the said existing bouquet shall be offered, with or without such free to air channel so converted after reducing the rate prevailing as on that date for such bouquet, by an amount not less than the amount which bears the same proportion the *a la carte* rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet.

(7) If any free to air channel is converted to pay channel or any new pay channel is launched by a broadcaster after coming into force of this order, the rate for such new pay channel or converted pay channel shall be similar to the rates of similar channels existing

before the coming into force of this order or on the date of launching of such new channel or conversion of such free to air channel into a pay channel.

Provided that the broadcaster shall declare the genre of its channels and such genre shall be either News and Current Affairs or Infotainment or Sports or Kids or Music or Lifestyle or Movies or Religious or Devotional or General Entertainment (Hindi) or General Entertainment (English) or General Entertainment (regional language);

Provided further that in determining the similarity of rates of similar channels under this sub-clause, the following factors shall be taken into account:

- (i) the genre and language of the new pay or converted free to air to pay channel; and
- (ii) the range of prices ascribed to the existing channels of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that exist.

(8) In case a broadcaster launches a new pay channel or converts a free to air channel into a pay channel under sub-clause (6) or launches a new bouquet of such channels, it shall, at least thirty days prior to the launching of the new pay channel or bouquet of channels or the conversion of the free to air channel into pay channel, -----

- (a) specify the a-la-carte rate or bouquet rate or both, as the case may be, for such channel or channels or bouquets of channels; and
- (b) report such rate or rates, as the case may be, to the Authority and, simultaneously, place the details of such rates on its website:

**Explanation:** For removal of doubt, it is clarified that the provision of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) shall apply to the broadcasting and cable services being provided to the consumers through the addressable system.

## **PART IV**

### **CHARGES PAYABLE TO MULTI SYSTEM OPERATORS BY CABLE OPERATORS**

**6. Charges payable by cable operator to the multi system operator to be governed by mutual agreement between them.-----**The charges payable by a cable operator to a multi system operator shall be determined by mutual agreement between the cable operator and the multi system operator.

**Explanation:** For removal of doubt, it is clarified that the provision of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) shall apply to the broadcasting and cable services being provided to the consumers through the addressable system.

## **PART V**

### **MISCELLANEOUS**

**7. Issue of receipt and bill.**----- (1) Every cable operator or the multi system operator, as the case may be, shall give to every subscriber the bill for the charges due and payable by such subscriber for each month or for such other period for which such charges become payable by the subscriber.

(2) Every bill referred to in sub-clause (1) shall contain all relevant details including the total number of pay and free to air channels provided by such cable operator or multi system operator, as the case may be, the charges levied (excluding taxes), nature and rates of taxes levied and amount thereof.

(3) Every cable operator or multi system operator, as the case may be, shall acknowledge all payments made by the subscriber by issuing a receipt therefor duly signed by him, indicating therein the period and the purpose for which the payment has been received and other relevant details.

(4) Every cable operator or the multi system operator, as the case may be, shall give to every subscriber, along with the first bill given to such subscriber in compliance of sub-clause (1) after 1<sup>st</sup> January, 2015, a list of all the pay channels and free to air channels being provided to the subscriber and shall also provide written information about any subsequent changes in the pay channels or free to air channels being provided to the subscriber along with the next bill given to the subscriber after such change.

**8.Reporting Requirement.**----- (1) Every broadcaster shall, within seven days from the coming into force of this order, furnish the following information to the Authority, namely:-

- (a) names, genre and language of all free to air channels offered by the broadcaster;
- (b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;
- (c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein;

- (d) revenue share arrangement between owners of channels in the bouquet;
- (e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state must be specified);
- (f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);
- (g) advertisement revenue for the last three financial years;
- (h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

Provided that information under sub-clauses (d) and (g) shall also be filed annually alongwith the filings done under the provisions of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004) (hereinafter called regulation).

(2) Every broadcaster who, after the commencement of this Order,----

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- (a) introduces any new pay channel or free to air channel; or
- (b) converts any pay channel into free to air channel; or
- (c) converts any free to air channel into pay channel; or

- (d) discontinues any free to air channel or pay channel; or
- (e) introduces any new bouquet or discontinues any bouquet or changes rate of existing bouquet; or
- (f) changes a-la-carte rate, genre, language, name etc. of any existing channel,

shall, one month before such introduction or conversion or discontinuation or change, furnish to the Authority, the following information, namely:-

- (i) name of the channel to be introduced, converted or discontinued,
- (ii) the date on which it is to be introduced, converted or discontinued;
- (iii) the a-la-carte rate of the pay channel if it is a newly introduced or converted pay channel;
- (iv) composition of new bouquet or bouquets to be introduced along with rates for each such new bouquet;
- (v) in the case of a new channel, the genre and language of the new channel;
- (vi) changed rate of the existing bouquet;
- (vii) changed a-la-carte rate, genre, language, name etc. of the existing channel.

(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2), simultaneously with its submission to the Authority.

**10. Power of Authority to intervene.** The Authority may, by any order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services.

## **PART VI**

### **REPEAL AND SAVING**

**11. Repeal and saving.**-(1) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) (hereinafter referred to as the repealed Tariff Order) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any

notification, order, requirement, registration, certificate, notice, decision, direction, approval, authorization, consent, application, request or thing or action, made, issued, given or done or taken under the repealed Tariff Order shall, if in force at the commencement of this Order, unless a different intention appears, continue to be in force and have effect as if made, issued, given or done or taken under the corresponding provisions of this Order.

(3) Unless a different intention appears, the repeal of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (No. 6 of 2004) shall not, ----

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of the repealed Tariff Order or anything duly done or suffered thereunder; or
- (c) affect any penalty, forfeiture or punishment under the Act for any violation of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) so repealed; or
- (d) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Tariff Order; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, ----

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed under the Act as if the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) had not been repealed.



## PART II

**Charges payable by an ordinary cable subscriber to the cable operator or multi system operator transmitting or re-transmitting both free to air channels and pay channels using non-addressable systems.**

Serial number.	Number of pay channels and free to air channels to be transmitted or re-transmitted.	Maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for pay channels and free to air channels mentioned under column (2)
(1)	(2)	(3)
1.	minimum thirty free to air channels and upto twenty pay channels	Not exceeding rupees two hundred and eleven only.
2.	minimum thirty free to air channels and more than twenty pay channels	Not exceeding rupees two hundred and sixty three only.

**Note 1.** It shall be mandatory for all cable television networks to transmit or retransmit minimum of thirty free to air channels, including channels of Doordarshan required to be transmitted compulsorily under section 8 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

**Note 2.** In case the services are provided for a part of the month in a particular case, the ceiling indicated under column (2) of Part I or under column (3) of Part II, as the case may be, of the Schedule shall be determined on a pro-rata basis for the period of service provided during that month.

(Sudhir Gupta)  
Secretary, TRAI

## **Explanatory Memorandum**

### **Background**

1. On 15.1.2004, the Authority came out with a tariff order by which charges payable by a cable consumer to the cable operator, a cable operator to a Multi System Operator (MSO) and a multi system operator to a broadcaster prevalent as on 26th December, 2003 (the date on which the Hon'ble Delhi High Court passed orders regarding introduction of CAS in Delhi as mentioned supra) were specified as the ceiling.
2. Simultaneously, TRAI also issued a Consultation Note on 15.1.2004, seeking views of the stakeholders regarding appropriate recommendations/regulations/orders aimed at providing services to the consumers of the sector at affordable prices and also to facilitate growth and competition in the industry. Thereafter, taking into account the inputs received in response to the Consultation Note dated 15th January, 2004, TRAI issued a detailed Consultation Paper on 20th April 2004 for purpose of deciding upon an appropriate tariff regime for the sector. In the mean time, TRAI had also received representations from broadcasters, multi system operators and cable operators, seeking clarification as to what should be the ceiling charges in case an existing free to air channel converts into a pay channel or when a new pay channel is launched. Therefore, a mechanism had to be provided for pricing of these new pay channels and free-to-air (FTA) channels converted to pay channels. At the same time, there was a need to conserve the protection provided to the consumers by the Tariff Order dated 15.1.2004. To maintain the sanctity of the said ceiling, it was decided that pay channels launched after 26.12.2003 should not be allowed to become part of bouquet of channels which were being provided on 26.12.2003. A similar rule was made applicable for those channels that were free-to-air on 26.12.2003 and later converted to pay. It was further provided that new pay channels may be offered individually or as a bouquet of channels which are not covered by the ceiling specified by the tariff order dated 15.1.2004. Thus, for those consumers who did not get new pay channels, the ceilings already prescribed were allowed to continue. Where the consumers got new pay channels after 26.12.2003, the extent to which the ceilings referred to above could be exceeded was limited to the rates for the new channels. The Authority also considered the question of fixing a ceiling price for new pay channels but having regard to the fact that fixation of prices for new pay channels is difficult not only because of large variations of these prices but

also the difficulty in linking channel prices to costs, the Authority decided that the broadcasters should be mandated to fix prices of such channels at levels similar to the rates prevalent on 26.12.2003 for similar channels and to reserve to itself the power to intervene in such prices, if necessary. The Authority also decided, on the basis of the detailed consultations, that where the number of pay channels is reduced after 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on 26.12.2003. The Authority issued a self contained tariff order, namely, the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) on 1st October, 2004 containing the foregoing decisions. From time to time, amendments to the tariff order dated 1.10.2004 have been notified. Till now, 12 amendments have been made to the tariff order dated 1.10.2004.

### **Need for this tariff order**

3. Earlier, the eighth amendment, dated 4.10.2007, to the said tariff order was appealed before the Hon'ble Telecom Disputes Settlement Tribunal (TDSAT). Hon'ble TDSAT vide its order dated 15.01.2009 set-aside this tariff amendment order and asked TRAI to study the matter afresh and issue a comprehensive Order. The Authority filed an appeal in the Hon'ble Supreme Court of India against the order dated 15.1.2009 of Hon'ble TDSAT [Civil Appeal No(s).829-833 of 2009]. The Hon'ble Supreme Court, on 13.4.2009 directed status quo as on the date of the order dated 15.1.2009 of Hon'ble TDSAT. On 13.05.2009, Hon'ble Supreme Court passed an order directing TRAI to consider the matter *de novo* as regards all aspects and give a report to the Hon'ble Supreme Court.
4. Accordingly, TRAI initiated an elaborate consultation process. In this regard, a detailed consultation paper was brought out by the Authority on 25<sup>th</sup> March, 2010. The Authority, thereafter, undertook a series of Open House Discussions (OHDs) with the stakeholders in the month of June, 2010. The first OHD was held at New Delhi on 1st June, 2010 followed by the second at Pune (Maharashtra) on 3rd June, 2010 and the third at Bangalore on 4th June, 2010. The last OHD was held at Kolkata on 8th June, 2010. In all, 249 stakeholders participated in these discussions, representing broadcasters, aggregators, MSOs, LCOs, Associations of broadcasters, MSOs and LCOs, Consumer Advocacy Groups, individual subscribers and industry analysts. Discussions were also held with the stakeholders who had submitted their written comments and counter-

comments in response to the TRAI consultation papers. These discussions which took place on 31st May, 2010 and then on 11th June, 2010, were attended by 122 stakeholders. Subsequently, some broadcasters/aggregators, MSOs, Cable Operators Associations and Indian Broadcasting Foundation (IBF) had separate discussions with the Authority on 22nd June, 2010 and a joint meeting with the Authority on 23rd June, 2010. News Broadcasters Association (NBA) also had meetings with the Authority on 25th and 28th June, 2010.

5. As an outcome of this comprehensive and transparent consultation process, TRAI prepared a detailed report titled "Tariff Issues related to Cable TV Services in non-CAS Areas". The said report was based on an extensive study of the sector with the help of a reputed consultant engaged for the purpose, an in-depth appraisal of the problems facing the analog cable distribution platform in the country and an analysis of stakeholder views expressed during a detailed consultation process, involving all the segments of the value chain in the cable distribution sector i.e. broadcasters, aggregators, multi system operators, the cable operators, consumer advocacy groups and other stakeholders.
6. The said report was submitted to the Hon'ble Supreme Court on 21<sup>st</sup> July 2010. The said report also contained a draft tariff order for non-addressable systems.
7. The Hon'ble Supreme Court pronounced its final order in the said matter on 17<sup>th</sup> September 2014. The Hon'ble Supreme Court, in this order, disposed off the appeals, while leaving all the questions of law open. It also ordered that *status quo* will continue till 31<sup>st</sup> December 2014. The order further stated that TRAI will attempt to notify the fresh tariff order immediately after 31<sup>st</sup> December 2014.
8. The Hon'ble Supreme Court also noted that since the report was prepared in 2010, there may be a necessity of holding further consultations and allowed the stakeholders that, in case, they intend to make representations to the TRAI, they may do so positively on or before 30<sup>th</sup> September 2014.
9. Taking into account the Hon'ble Supreme Court order and other relevant facts and developments, the Authority has concluded that the draft tariff order, forming part of the said report submitted to Hon'ble Supreme Court on 21<sup>st</sup> July 2010, may not be suitable for notification in the present form as a number of important developments have taken place since then. These developments need to be suitably reflected in the tariff order. These developments have been discussed in the subsequent paragraphs.

10. On 10<sup>th</sup> February, 2014 five amendments, to the tariff orders and regulations. were notified by TRAI. These amendments were made to bring in clarity in the roles and responsibilities of the broadcasters and their authorised agents. This included an amendment (tenth amendment) to the tariff order applicable for non-addressable cable TV systems.
11. Through the said amendment, the definition of the ‘broadcaster’ was amended to clarify, and place beyond all doubt, the exclusive role of the broadcaster in publishing RIOs and entering into interconnect agreements with distribution platform operators (DPOs), as prescribed in the interconnection regulations. The definition of ‘authorised agent or intermediary’ was separately framed to clarify their facilitative role in the business of TV channel distribution both for the broadcasters and MSOs. The definition of MSO was also amended accordingly.
12. The said amendment to the regulations provides that in case a broadcaster, in discharge of its regulatory obligations, uses services of an agent, such agent can only act in the name of and on behalf of the broadcaster. Further the broadcaster shall ensure that such agent, while providing channels /bouquets to the DPOs, does not alter the bouquets as offered in the RIO of the broadcaster. Furthermore, in case an agent acts as an authorised agent of multiple broadcasters, the said amendment mandates that the individual broadcasters shall ensure that such agent does not bundle its channels or bouquets with that of other broadcasters. However, broadcaster companies in ‘holding’ and ‘subsidiary’ relationship, as prescribed in the regulations, can bundle their channels.
13. On 31<sup>st</sup> March, 2014, eleventh amendment to the tariff order applicable for non-addressable cable TV systems was notified by TRAI to allow inflationary adjustment at, both, retail and wholesale levels.
14. On 16<sup>th</sup> July, 2014 the twelfth amendment to the tariff order applicable for non-addressable cable TV systems was notified by TRAI. This amendment was made in pursuance of the judgment of the Hon’ble Supreme Court dated 16<sup>th</sup> April, 2014 in the CA No. 6040-41 of 2010 -M/s ESPN Software India Pvt. Ltd. Vs TRAI and Ors. Through this amendment, tariff stipulations applicable to commercial subscribers and the manner of offering of channels thereto were amended. The definition of ‘commercial establishment’ was included and the definition of ‘commercial subscriber’ was accordingly amended.
15. The digitisation of the cable TV sector is underway in the country, in a phased manner & is scheduled to be completed in four phases. The cut-off

dates for the first and second phases were 31<sup>st</sup> October 2012 and 31<sup>st</sup> March 2013 respectively. The first two phases cover the metro cities and 38 other cities having population more than a million. The cut-off dates for the third and fourth phase have been notified as the 31<sup>st</sup> December 2015 and 31<sup>st</sup> December 2016 respectively.

16. This tariff order is being notified in pursuance of the order of the Hon'ble Supreme Court dated 17<sup>th</sup> September, 2014. This tariff order also takes into account the developments in the broadcasting and distribution sectors as well as incorporates regulatory prescriptions amended/added during the intervening period between 2010, when a draft tariff order was submitted to the Hon'ble Supreme Court as part of the above mentioned report dated 21<sup>st</sup> July 2010, and the final order of the Hon'ble Supreme Court.
17. The following is a summary of main issues and analysis thereon.

### **Wholesale Tariff**

18. One of the key objectives of the *de novo* exercise directed by the Hon'ble Supreme Court in its order dated 13<sup>th</sup> May, 2009 was to evaluate the need for, and arrive at, an appropriate tariff at the wholesale level. With a view to arrive at a decision on the need for and method of price regulation, during the consultation exercise undertaken for the purpose (henceforth, the consultation exercise 2009-10), different methodologies for regulation of wholesale tariff viz. i) Revenue share, ii) Retail minus, and iii) Cost plus were discussed and comments were solicited from stakeholders.
19. In respect of regulation of wholesale tariff, there were competing arguments on both sides – i.e. both for and against regulation of the wholesale tariff. The Authority concluded that given the lack of visibility on subscriber numbers in the market and the subscribers' lack of choice in the present analogue system, if the pricing is left unchecked, there is a possibility that this could lead to higher prices for the consumer. However, if a pricing mechanism is developed to control tariff at the wholesale level, it should be efficient and dynamic enough to mirror the complex nature of the broadcasting industry, otherwise price controls could further distort the market.
20. As far as methodology for regulation of tariff at wholesale level is concerned, the Authority concluded that while revenue sharing is an efficient form of price control, this methodology cannot be implemented effectively, in a non-addressable environment. This being so because in

non-addressable markets, agreements are primarily based on a subscriber base which is a negotiated figure rather than the actual number. Moreover, the basis for negotiation also varies from stakeholder to stakeholder.

21. Estimation of the wholesale tariff through ‘retail minus model’ method requires two sets of comprehensive empirical data: (1) price of various channels/ bouquets paid by the consumer and, (2) uptake of various channels/ bouquets in the market (i.e. number of subscribers). In non-addressable markets, it is difficult to obtain reliable information for both (1) and (2). International experience also points that the retail minus approach has been used to determine tariff only in addressable systems. In the absence of this empirical data, the Authority concluded that this method of tariff estimation is not appropriate for the non-addressable markets in India.
22. As regards ‘cost plus model’, reliable estimation of a wholesale tariff for broadcasting requires the following sets of data:
  - a) Detailed information on the one-time and recurring costs of creating and transmitting content (transmission costs up to the MSO level) – to determine the numerator
  - b) Information about the uptake of various channels at the consumer end – to determine the denominator.
23. Adoption of a cost-based approach was also an important argument made by parties in their appeal as a key action area for future tariff determination. In the spirit of the TDSAT judgment and the Hon’ble Supreme Court’s mandate for a *de novo* exercise, a genuine attempt was thus made to develop a robust cost-based model for wholesale tariff. In response to these demands, TRAI initiated a very large-scale information gathering exercise to collect relevant financial and operational information from stakeholders across the value chain. The objective was to assess the cost base and determine if an appropriate pricing schedule for content at the wholesale level could be calculated. However, mainly, due to limited availability of comprehensive channel-wise information from the industry and significant variation in the cost base of various components that determine the ultimate price of the channel, the Authority concluded that the results of the cost-based model are of limited reliability and applicability.
24. After analyzing suitability of various methodologies discussed above, the Authority came to the conclusion that a number of practical issues are

there in developing a robust model for tariff determination due to the lack of addressability. At the same time, this lack of addressability also creates difficulties in successfully implementing forbearance at the wholesale level.

25. In the consultation exercise 2009-10, one point of view that came across was that, in a few years, the Indian cable & satellite market would be fully digital and addressable one. In such a scenario, bringing in a completely new tariff structure is likely to create significant compliance costs in the interim for stakeholders. A new tariff regime will require re-negotiation of contracts and determination of connectivity numbers afresh. In the absence of addressability, it may even be said that a change in price is not likely to affect the payout of the MSO/ inflow of the broadcaster (as a corresponding change in connectivity will be used to offset the impact). These views were also supported by comments received from stakeholders during the consultation exercise 2009-10. While broadcasters and MSOs have initially expressed discomfort with the current regime (broadcasters preferred forbearance while MSOs preferred more stringent price control) – both parties recognized that the current system, despite its imperfections, is working at the ground level. Both parties also indicated that if the TRAI's focus was on introducing digitization with addressability (and thereby addressing the root cause of the issue at hand), then perhaps continuing with the current system in the interim was the most practical solution. Keeping in mind the views of the stakeholders, the Authority concluded that the best option is to draw upon the features of the prevailing tariff structure as a workable solution for the analog regime. These features pertain to-
- i. price of channels and bouquets,
  - ii. composition of the existing bouquets and
  - iii. pricing of new pay channels and the channels converted from FTA to pay (channels launched/converted after the reference date of 1.12.2007, prescribed by the extant tariff order) on similarity principle i.e. the price of a new pay channel/converted channel is to be prescribed similar to the rates of similar channels in the same genre and language.
26. As far as the non-addressable cable TV systems are concerned, even as on date the market dynamics are more or less the same as that prevailed at the time the said consultation process was carried out. Moreover, the digitization of the cable TV sector is underway and the Government has

already notified a time frame for digitization of cable TV sector which envisions complete digitization by December 2016. Therefore, the Authority is of the view that the earlier observations of the Authority with regard to wholesale tariff still hold good.

27. In addition to these features of the wholesale tariff, certain other provisions arising out of the developments that have taken place in the sector in the intervening period, as discussed in paras 10-15, also need to be included. The same are outlined below:

- i. In line with an existing provision in the digital addressable cable TV systems (DAS), broadcasters should be required to declare the genre of channel as one of the specified 11 genres.
- ii. In accordance with the change in regulatory prescriptions regarding distribution of channels by the broadcasters, brought out by tariff order amendment dated 10.02.2014, the practice of offering of bouquets, comprising channels of multiple broadcasters, was to be discontinued. Whereas, through an earlier amendment (dt. 4.7.2007) to the tariff order, it was mandated that the composition and rate of a bouquet existing as on the 1.12.2007, in so far as pay channels are concerned in that bouquet, shall not be changed, except for inflationary increases permitted in the tariff orders, issued by the Authority from time to time.

In order to ensure that both of these requirements are satisfied, a method to re-configure a bouquet comprising channels of multiple broadcasters was prescribed. The principle adopted was that, if a channel is to be taken out from a bouquet, the rate of the bouquet containing such a pay channel shall be reduced in the same proportion which the a-la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels in the said bouquet. An illustration of reconfiguration of bouquet can be seen at Annexure I. The bouquets so modified were required to be offered without any change in the composition, in so far pay channels are concerned, by the concerned broadcaster(s). However, for such modified bouquets, the twin conditions as well as the conditions mentioned in the sub-clauses (4), (5) and (6) of clause 5 this tariff order shall also apply equally.

28. Accordingly, provisions governing the wholesale tariff have been incorporated in this order.

### **A-la-carte offering of channels at the wholesale level**

29. The issue of mandatory offering of channels on a-la-carte basis at the wholesale level was discussed during the consultation exercise 2009-10, and, a provision to keep it optional for the broadcasters was proposed in the draft tariff order, forming part of the Report submitted to the Hon'ble Supreme Court. Considerable time has passed since formulation of the said draft tariff order. In the intervening period, the a-la-carte offering of channels by the broadcasters, in the non-addressable areas at the wholesale level, has been mandatory. The system has already stabilized and working on the ground, without any major issues reported. Moreover, most of the major broadcasters are themselves moving towards offering their channels, exclusively, on a-la-carte basis. Further, with progressive penetration of digitization, mandatory a-la-carte offering is going to be the road ahead. Therefore, the Authority is of the view that broadcasters be mandated to offer their channels on a-la-carte basis. They may, in addition to a-la-carte offerings, offer bouquet of channels. However, as per the current practice, twin conditions, prescribing the relationship of rates of channels offered on a-la-carte basis vis a vis bouquet rates, should continue to apply. This is to ensure that the a-la-carte rates are not placed too high with respect to the bouquet rates, thereby making the a-la-carte rates illusionary for the MSOs/cable operators. Accordingly, suitable provisions have been prescribed in this order.

### **Retail Tariff**

30. The retail tariff is the price charged by the local cable operator to the subscriber/ consumer. In non-addressable markets, this tariff is a bundled price for the cable service – that comprises analog reception of ~80 channels, with a mix of FTA and pay channels. It also accounts for the billing, collection and maintenance charges incurred by the cable operator.
31. With a view to determining the need for price regulation at the retail level, during the consultation exercise 2009-10, comments were solicited from stakeholders on an appropriate methodology for regulation of retail tariff viz

- (i) Cost Plus or (ii) Consultative Approach or (iii) Affordability linked or (iv) Any other method/approach.
32. Cost plus retail pricing is based on the “estimated cost” of providing cable services to consumers at the retail level. This includes the costs of the broadcasters, MSOs and LCOs, plus a reasonable margin for each stakeholder in the value chain.
33. There are several practical issues with estimating a reliable and accurate cost plus retail tariff. The cost plus tariff will have to include an assessment of content cost per subscriber (attributable to the broadcaster), distribution cost per subscriber (attributable to the MSOs/LCOs) plus reasonable margin. It is difficult to arrive at per subscriber costs of content and distribution in a market where cost and products are not standardized and there is limited visibility as to subscriber numbers. With respect to broadcasting costs and margins, difficulties are faced due to lack of standardization of costs in the industry. Variances due to the operating model, the size of the network, the genre, the content acquisition model and other factors – make it difficult to arrive at an average cost for content. With respect to distribution costs and margins, there is extensive fragmentation at the last mile and the lack of a disclosure regime makes it difficult to collect information for all stakeholders in the industry. There are also difficulties in separating the costs only for analogue services – as there are several operators in non-addressable areas that provide a mix of analog services and digital services (through voluntary digitization without addressability).
34. A consultative approach to retail pricing is used in countries like Korea and Taiwan, and involves periodic review of the pricing policies of all operators. Cable operators propose the price to be charged to the subscribers and their rationale for the same (cost structure, competition, proposed investments and upgrades) – and this is subject to review by the regulatory authority.
35. A consultative approach can only work in a licensed environment, as operators have statutory obligations to declare their pricing to the authorities on a regular basis. Non compliance with the consultation review leads to a loss of license to operate. The Authority was of the view that in the unstructured state of the sector, the consultative approach is not suitable in the Indian environment.
36. In the report submitted to the Hon’ble Supreme Court, after examining various methodologies, the Authority came to the conclusion that ‘cost

plus' and 'consultative approach' are not suitable for adoption in the Indian analog cable TV market. The Authority also concluded that a retail price ceiling – at a reasonable level – that balances the consumer interest with the growth potential of the industry – is warranted in the case of cable TV services in non-addressable markets in India.

37. Affordability linked retail pricing connects the price cap to the affordability or ability of consumers to pay for products and services. This approach considers the current income and/or expenditure levels for consumers while deciding the price cap and benchmarks it to expenditures in similar product and service categories. Subject to certain reasonable assumptions on consumer spending habits, it is possible to then calculate affordability linked benchmarks through available consumer expenditure data.
38. This approach reaches the consumer directly and estimates the price based on demand. It also allows the retail tariff to de-link itself from any issues and/ or problems observed on the supply side, such as non-availability of comprehensive cost data. The Authority concluded that an affordability linked price cap can protect consumer interests and at the same time provide a practical solution to the impasse created by the non-addressable nature of analogue systems in India.
39. The affordability linked retail price cap was developed through analysis of state-wise urban household consumption expenditure data as per the National Sample Survey Organization (NSSO) survey. This was further validated through other published data on income and expenditure. The primary analysis is based on state-wise urban household consumption. This was further validated by data collected during the consultation exercise 2009-10. The data provided by the Consumer Advocacy Groups indicated minimum charges (for the cable TV services) of Rs. 65 per month per subscriber and maximum charges of Rs.250 per month per subscriber, at an average of Rs.165 per month per subscriber. Similarly, the CMS Survey commissioned by the TRAI indicated a minimum charges (for cable TV services) of Rs.106 per month per subscriber in Chennai and a maximum tariff of Rs. 319 per month per subscriber in Shillong, with an average of Rs. 185 per month per subscriber across 22 cities. Thus, it was concluded by the Authority that Rs. 250 per month per subscriber could form a reasonable ceiling. In light of these figures, the Authority decided that the retail price cap for pay cable services should be fixed at Rs. 250 per connection per month with the actual monthly bill being left to the business model of the individual operator – subject to the ceiling.

40. In addition to determining the value placed on pay TV services by a household, the Authority also felt the need to define a more basic service comprising FTA channels only. For FTA channels, the cost to the consumer includes only the cost of transmission, distribution and servicing. After examining the data and responses from stakeholders (MSOs and LCOs) during the consultation exercise 2009-10, the Authority was of the view that the cost of providing FTA channels to a household is in the range of Rs. 80-100 per connection per month. This was in line with the prevailing ceilings for FTA channels in both erstwhile notified conditional access systems (CAS) areas and non-CAS areas, (duly updated to account for inflation of 9% as provided for in the draft tariff order submitted to the Hon'ble Supreme Court alongwith the Report). Accordingly, the Authority concluded that the cap for the basic service (FTA only, subject to a minimum of 30 FTA channels) be kept as Rs. 100 per connection per month. It was also concluded that the operators who do not wish to subscribe to pay channels would have the option of providing the basic service to their consumers at a maximum of Rs. 100 per month.
41. Another aspect that was considered during the consultation exercise 2009-10, for retail tariff pertained to prescription of ratio between pay & FTA channels offered to the consumers. In this regard, it was observed that there were differing levels of service that prevailed in the market for analog cable services. The mix of channels provided by an operator has a significant impact on the quality of content available to the end consumer. Thus, it was recognized that a larger number of pay channels would warrant a higher price from the consumer, as these costs were necessary to compensate the value chain for producing and transmitting such content. At the same time it was felt that a certain number of FTA channels should be accessible to almost every television owning household in the country. This calls for provision of a basic service that could be purchased at a reasonable price to the subscriber.
42. The market survey of consumers of cable television services in India conducted by TRAI in the year 2007 through Centre for Media Studies (CMS) indicated that the percentage of people receiving 21-50 channels and 51-100 channels are the highest and they were more or less equal. So if

one were to categorize the subscribers based on the channels received, it would be 50 or below channels and above 50 channels.

43. On the basis of these observations, as well as an assessment of affordability for basic services and pay TV services, the Authority, in the draft tariff order, prescribed the following price ceilings on the retail tariff:
- Rs. 100 per month – minimum of 30 FTA channels, including the must carry channels of Doordarshan – this is defined as the “Basic Package”
  - Rs. 200 per month – Basic Package + up to 20 pay channels
  - Rs. 250 per month – Basic Package + more than 20 pay channels

44. As far as the non-addressable cable TV systems are concerned, even as on date the market dynamics are more or less the same as that prevailed at the time the consultation process 2009-10 was carried out. Moreover, the status with regard to the capacity constraints, offerings to the consumers and choice available with the consumer in the analog markets also remain almost unchanged. Therefore, the Authority is of the view that the earlier conclusions of the Authority with regard to retail tariff and its related aspects, in principle, still hold good. However, the retail tariff ceilings arrived at that point of time was inclusive of 9% inflation linked hike whereas the Authority has permitted a inflation linked hike of 15% for the period up to March 2014. Accordingly, the revised retail tariff ceilings have been worked out to adjust for the balance hike and rounded off to the nearest rupee value. The revised retail tariff ceilings, work out as:

- Rs. 105 per month – minimum of 30 FTA channels, including the must carry channels of Doordarshan – this is defined as the “Basic Package”
- Rs. 211 per month – Basic Package + up to 20 pay channels
- Rs. 263 per month – Basic Package + more than 20 pay channels

Accordingly provisions have been prescribed in the tariff order.

45. With reference to the affordability linked approach, during the consultation exercise 2009-10, it was also discussed that if tariff ceilings are prescribed using this approach then whether the tariff ceiling prescribed should be different ceilings at State level or tiered ceiling (3 tiered) as discussed in the Consultation Paper dated 25<sup>th</sup> March, 2010 or a single ceiling at national level or any other?

46. A state wise cap would take into account state wise affordability and expenditure levels. As a result there would be ~25 levels of retail tariff applicable across the country. While this approach most closely mirrors the affordability level of every state, it still cannot account for affordability differences within a state, or within a particular city. State-wise ceilings also have the following disadvantages: (1) difficulties in communicating and enforcing multiple tariffs across the country (2) significant variation in the ceiling with the highest state at nearly five times the tariff set for the lowest state.
47. A tier wise cap would require allocating various cities into different tiers. This can be done by forming a classification that indexes the average state affordability to the average all India affordability. Those significantly above the average could fall under Tier 1, those equal to or nearly equal to the average fall under Tier 2, and those significantly below the average fall under Tier 3. The retail tariff falls as one moves from Tier 1 to Tier 3. Such an allocation would ensure that states with similar expenditure behavior are grouped together and the tier wise price cap reflects the variation in affordability level across different states. However, the tier-wise ceilings will still not be able to account for variations among states within a tier or among cities within states. Additionally, it would require more detailed communication than a single all-India tariff as consumers would need to be informed as to which tier they fall into and what the applicable tariff ceiling for that tier is.
48. A national cap is the most straightforward way to protect the cable consumer. Some stakeholders argued that affordability differs from state to state, and state-wise caps should be developed. Therefore, some states which have lower expenditure levels compared to the national average may be disadvantaged. However, it must also be recognized that there is variation in affordability within states, within cities and even within the two residential areas serviced by a single operator. A national cap thus provides the consumer protection at an aggregate level, while also allowing the operator to cross-subsidize low affordability households in his area through charging more to high affordability ones. Imposing too many categories/sub-classifications can thus complicate the tariff and may reduce efficiency. Additionally, a single national cap is easy to enforce and communicate to the consumer.
49. In view of the above discussion, a single national level ceiling was considered to be appropriate by the Authority for the Indian market. In addition to the ease of communication, implementation and enforcement –

it provides for a uniform lens through which the consumer end of the cable market can be observed. While it may not be able to account for varying affordability levels, it may also be recognized that no cap (tiered or state-wise) can account for all variance in affordability. For example, there may be different levels of affordability for cities within a state. There may also be different levels of affordability within localities in a city, or even within the same locality serviced by a single cable operator. Thus, the Authority concluded that a single national cap should be applicable, with the decision of cross-subsidization on account of affordability being left to the individual cable operator. This would allow for protection of consumer interests, while balancing it with the parallel objective of not micro-managing the business model of individual operators.

#### **Revenue share between MSO and cable operator**

50. Presently in the non-addressable areas, MSOs and cable operators have mutually negotiated business arrangements. The Authority is of the view that mutually negotiated arrangements be continued between the MSOs and cable operators to determine the charges paid by the cable operator to the MSO. Accordingly, provisions have been prescribed in the tariff order.

#### **Billing**

51. Provisions have been made in the tariff order for issue of bill to the subscribers as well as acknowledgement for payment made by the subscriber. It has been made clear that the bill should have all the relevant details such as number of pay and FTA channels offered, applicable taxes etc. The concerned operator is mandated to provide, in the first bill, the list of all the channels offered and, subsequently, whenever there is any change in the offerings.

#### **Tariff for offering of cable TV services using addressable systems in the areas where the cut-off dates notified by the Central Government for DAS implementation are not yet over**

52. The Authority is of the view that the way forward in the broadcasting and cable TV sectors is implementation of addressable digitization. Therefore, if a service provider offers, before the analog sunset date of the concerned area as notified by the Central Government, cable TV services using digital

addressable systems, the regulatory prescription should facilitate and incentivise such efforts. In this regard, in the report submitted to the Hon'ble Supreme Court, the Authority had stated that the tariff order applicable for addressable systems will apply progressively in the cable TV networks as they switch over to digital addressable systems. This aspect has been explicitly clarified in the tariff order.

53. Needless to say, before offering digital addressable cable TV services, the service provider shall have to get registered and establish digital addressable Cable TV system as prescribed in the Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder. The Authority is of the view that for such service providers, the regulatory prescriptions relating not only to the tariff but also to the interconnection, QoS etc. shall be the same as those applicable to Cable TV services offered in DAS.

#### **Reporting requirements**

54. Reporting requirements for broadcasters have been prescribed. Broadcasters are required to provide details of channels such as genre, rate etc. Broadcasters are also required to inform, in advance, about introduction of any new pay channel, conversion of an existing pay channel into pay channel, change in composition of bouquets etc. Broadcasters are required to inform the Authority as well as to make available such information on its website. Accordingly, provisions have been prescribed in the tariff order.

### Illustration of Reconfiguration of Bouquets

If there is a bouquet, comprising of 10 channels of 3 broadcasters as per the following details.

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 1	Broadcaster A	Pay	2	<b>30</b>  (Sum of a-la-carte rates = 45)
Channel 2	Broadcaster B	Pay	5	
Channel 3		FTA	0	
Channel 4		Pay	7	
Channel 5		Pay	3	
Channel 6	Broadcaster C	Pay	5	
Channel 7		Pay	9	
Channel 8		Pay	7	
Channel 9		Pay	4	
Channel 10		Pay	3	

After the reconfiguration the bouquets to be offered by the individual broadcasters shall be as under:

Broadcaster B shall offer the bouquet as per the following details

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 2	Broadcaster B	Pay	5	<b>10</b> (=30 *15 / 45)
Channel 3		FTA	0	
Channel 4		Pay	7	
Channel 5		Pay	3	
		Sum of a-la-carte rates	<b>15</b>	

Broadcaster C shall offer the bouquet as per the following details:

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 6	Broadcaster C	Pay	5	<b>18.67</b> <b>(=30 *28 / 45)</b>
Channel 7		Pay	9	
Channel 8		Pay	7	
Channel 9		Pay	4	
Channel 10		Pay	3	
			Sum of a-la-carte rates	

While the Broadcaster A can offer channel 1 at a-la-carte rate of Rs. 2.”