Report

on

Tariff issues related to Cable TV services in non-CAS areas

submitted to

the Hon'ble Supreme Court of India

in pursuance of its Orders dated 13th May, 2009 passed in Civil Appeal Nos.829-833 of 2009

by

Telecom Regulatory Authority of India (TRAI)

New Delhi: July 21, 2010

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GLOSSARY OF TERMS

ARPU	: Average Revenue Per User
BSNL	: Bharat Sanchar Nigam Limited
B2B	: Business To Business transaction
CAG	: Consumer Advocacy Group
CAS	: Conditional Access System
C&S	: Cable and Satellite
CBET	: Central Bureau of Excise and customs, service Tax
CMS	: Centre of Media Studies
CODA	: Cable Operators and Distribution Alliance
COFI	: Cable Operators Federation of India
Cr.	: Crore
d2h	: Direct To Home service of Videocon DTH Operator
DD	: Door Darshan
DTH	: Direct To Home
EBITDA	: Earnings Before Interest, Taxes, Depreciation and Amortization
FICCI	: Federation of Indian Chambers of Commerce and Industry.
FTA	: Free To Air
GEC	: General Entertainment Channel
HD	: High Definition
HH	: House Hold
IBF	: Indian Broadcasting Federation
ICO	: Independent Cable Operator
IMCL	: IndusInd Media and Communication Limited
INR	: Indian Rupees
IPTV	: Internet Protocol Television
IRS	: Indian Readership Survey
JV	: Joint Venture
LAAs	: Local Advertisement Avails
LCO	: Local Cable Operator
MRP	: Maximum Retail Price

MSO	: Multi System Operator
MTNL	: Mahanagar Telephone Nigam Limited
N/A	: Not Applicable
NBA	: News Broadcasters Association
Non-CAS	: Non-Conditional Access System
NCTA	: National Cable and Telecommunication Association
NRS	: National Readership Survey
NSSO	: National Sample Survey Organization
p.a	: Per Annum
SD	: Standard Definition
STB	: Set Top Box
TAM	: Television Audience Measurement
TDSAT	: Telecom Disputes Settlement Appellate Tribunal
TRAI	: Telecom Regulatory Authority of India
TRP	: Television Rating Point
UT	: Union Territories
VoD	: Video on Demand
WP	: Wholesale Price of channel
WWIL	: Wire and Wireless India Limited

CHAPTER I: INTRODUCTION

Background

1.1 The present exercise by the Telecom Regulatory Authority of India (TRAI) has its genesis in a judgment of the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) dated 15.01.2009 wherein, while setting aside a Tariff Amendment Order issued by TRAI, viz., the Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4.10.2007, the Hon'ble Tribunal directed TRAI to study the matter afresh in the light of its observations in the said judgment and issue a comprehensive order covering all aspects including the issue of subscription base in a non-addressable system. While considering the appeal filed by the Telecom Regulatory Authority of India [Civil Appeal No(s).829-833 of 2009] against the said judgment of the Hon'ble TDSAT, the Hon'ble Supreme Court passed the following order on 13.5.2009 :-

> *"…….. In super session of the order passed by this Court on 13.04.2009, the following may be read:*
>
> *By the impugned order, TDSAT has directed TRAI to study the matter afresh and issue a comprehensive order covering all aspects including the issue of subscription base in a non-addressable system.*
>
> *Learned senior counsel appearing for the TRAI stated that a revised study would be completed within a short period after hearing the parties at the earliest. The TRAI may however consider the matter de novo as regards all aspects and give a report to this Court by 11th August, 2009.*
>
> *All parties are directed to co-operate with the TRAI so as to enable them to file a report at the earliest.*

The TRAI shall also consider the feasibility of putting a cap on carriage and placement charges.

…………….”.

1.2 The Hon'ble Supreme Court has, vide its subsequent orders dated 11.08.2009 and 18.01.2010 allowed TRAI an extension of time till 30th June, 2010 to file its report. Copies of the orders passed by the Hon'ble Supreme Court from time to time in the said appeal are annexed and marked as **Annexure-I (Colly.)** to this report. As stakeholders were seeking meetings with the Authority even till 28th June, 2010, the exercise could not be completed before 30th June, 2010. Therefore, an application praying for grant of extension of time till 21st July, 2010 was filed before the Hon'ble Supreme Court on 30th June, 2010.

1.3 The Telecom Regulatory Authority of India has completed the exercise in accordance with the aforesaid directions of the Hon'ble Supreme Court and the present report is being submitted before the Hon'ble Supreme Court. The report is 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.

Entrustment of broadcasting sector regulation to TRAI

1.4 The Telecom Regulatory Authority of India (TRAI), a creature of the Telecom Regulatory Authority of India Act, 1997, is a statutory body established, primarily, to regulate "telecommunication services". Section 11 of the TRAI Act has entrusted the Telecom Regulatory Authority of India (the Authority) with specific functions relating to all telecommunication services. The detailed enumeration of those functions may not be relevant for the purposes of the present exercise; suffice it to mention that under the said provisions, the Authority has the mandate, inter alia, ----

(a) to make recommendations on important aspects relating to licensing, etc. (recommendatory functions);

(b) to ensure that the service providers comply with the terms and conditions of their licence, that there is effective interconnection between service providers and to set quality of service parameters and enforce them (regulatory functions);

(c) to set tariffs for the services (tariff setting function).

Section 2(1)(k) of the TRAI Act defines "telecommunication service" in the following words:

(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 electromagnetic means but shall not include broadcasting services;

*[Provided that the Central Government may notify other service to be telecommunication service including broadcasting services.]

[* Proviso added by the amendment in 2000]

Even though the proviso to section 2(1)(k) had been inserted in the TRAI Act, 1997 by the amendment in January, 2000, the Central

Government had no occasion to notify any other service (including broadcasting service) as "telecommunication service" under the said proviso till end 2003.

1.5 Regulation of the Cable Television Industry in India had started with the promulgation of the Cable Television Networks (Regulation) Ordinance, 1994 on September 29, 1994, which was converted into the Cable Television Networks (Regulation) Act (hereinafter "Cable Act") on March 25, 1995. The Act contained detailed provisions for the registration of cable television networks, the Programme Code and the Advertisement Code to be followed by cable operators, the compulsory transmission of Doordarshan channels by cable operators, non-interference with telecommunications systems by cable networks, etc. The Act also contained provisions defining offences relating to the cable networks and prescribing penalties for those offences. However, the Cable Act, as enacted originally, did not have any provisions relating to regulation of rates to be levied by cable operators from the viewers nor did it contain any provisions for differentiating between Free to Air (FTA) and pay channels.

1.6 The Cable Act was amended by Parliament in the year 2002 and section 4A was inserted in the said Act, which envisages transmission of programmes of pay TV channels only through addressable systems [popularly referred to as Conditional Access System (CAS)] in States, cities, towns or areas as may be specified by the Central Government by notification and from such date or dates as may be specified. The amendment was aimed, inter alia, at -

(i) empowering the Government to mandate through notification, in a phased manner, installation of addressable systems for viewing pay channels;

(ii) enabling viewers in such notified areas to view "free-to-air" channels in the existing receiver sets without having to go through the addressable systems;

(iii) enabling the subscriber, without having to change the receiving set, to view only those channels which he chooses to view from amongst those offered by the cable service provider and to pay for only those channels he chooses to view;

(iv) empowering the Government to prescribe, from time to time, the maximum amount to be paid by the subscriber to the cable service provider for the "basic service tier" consisting of the bouquet of notified "free-to-air" channels and to determine the number of channels to be included in this "tier" and the maximum cost for the same in different States/cities/areas of the country, from time to time.

1.7 A series of notifications were issued by the Government of India, Ministry of Information and Broadcasting, during the year 2003 with regard to the introduction of CAS in the four metropolitan cities of the country and its subsequent postponement/partial roll-back, which became subject matter of writ petitions before the Madras and Delhi High Courts.

1.8 On 26th December, 2003, a Division Bench of the Hon'ble Delhi High Court, in CWP 8993-4/2003 titled Consumer Coordination Council Vs. Union of India, permitted the Conditional Access System to be introduced in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feedback of three months' experience. It stated:

"Therefore, we are not restraining the respondent as prayed for by the petitioners. However, we allow the respondent to go

ahead with their scheme of CAS in Delhi to be reviewed after a period of three months. We desire that in this period of three months all the loopholes, difficulties faced by the consumers, effect of the implementation and problems, if any, arising out of implementation can be assessed and remedial measures be taken in that regard.”.

The following directions of the Hon’ble Delhi High Court in the said order are also worth recalling in this context:-

“……. There has to be some regulatory body in terms of the synopsis of comments which have been filed by the respondent to see the implementation. We would like the respondent to enlighten this Court of the steps taken in this direction before the next date of hearing.”.

1.9 As a sequel to the said directions of the Hon’ble Delhi High Court, the Central Government decided to entrust the regulatory functions relating to broadcasting and cable sectors to the Telecom Regulatory Authority of India. Accordingly, in exercise of the powers conferred by proviso to section 2(1)(k) of the TRAI Act, 1997, the Government of India, by a notification dated 9th January, 2004, notified “broadcasting services” and “cable services” as "te1ecommunication services". As a result of the said notification of 9th January, 2004, the provisions of the TRAI Act became equally applicable to broadcasting services and cable services. Further, the Government of India also issued an order on 9.1.2004 under section 11(d) of the TRAI Act, which mandated TRAI to make recommendations regarding terms and conditions on which the ‘Addressable Systems’ shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. The order also provided powers to TRAI to specify standard norms for, and periodicity of revision of rates of pay channels, including interim measures. TRAI, thus, became the statutory regulatory body for regulating broadcasting services and cable services in the country.

The beginning of tariff regulation

1.10 The cable television industry, ever since its inception in the early nineties, had remained unregulated resulting in undirected, undocumented, unchartered growth. Consequently, there were hardly any documented, set, known or uniform procedures, which had been followed in cable TV market. It is against this background that the Government of India decided to appoint TRAI as the sector regulator for the industry.

1.11 At this stage, TRAI had no details and information to regulate the industry as the industry was not regulated earlier and there were no prescribed or published rates for different levels of the distribution chain of the TV channels through the cable networks. Further, there was no known set of established practices being uniformly applied within the industry, which could be used as a yardstick or a standard for regulatory decisions. Moreover, there were reports that the charges were likely to be increased. Against this background, the Authority came out with a tariff order dated 15.1.2004 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.

1.12 Simultaneously, TRAI also issued a Consultation Note on 15.1.2004, seeking views of the stakeholders regarding appropriate recommendations/regulations/orders aimed at providing the consumers of the sector services at affordable prices and also to facilitate growth and competition in the industry.

1.13 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 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. This is also known as the Principal Tariff Order.

1.14 Along side the said tariff exercise, on the basis of extensive consultation process, the Authority made detailed recommendations on "Issues relating to Broadcasting and Distribution of TV Channels" to the Government of India on 1.10.2004, which contained a separate section on pricing. On the basis of the analysis of all relevant factors, it was noted that in non–CAS areas, consumers are not able to watch their desired channels and do not also have the option to maintain cable bills at affordable levels. Consumers had been protesting against frequent price hikes and available evidence suggested that the increase had been more than the rate of inflation. Thus, a need was felt to regulate the pay channel prices in non-CAS areas, at least till competition ensures that consumers have adequate choice. The Authority had considered various alternatives for such price control. A survey conducted by the Indian Market Research Bureau (IMRB) for TRAI before formulation of the recommendations had shown that the monthly cable TV bill varied from city to city and region to region and even amongst various socio-economic clusters in a particular region. For instance, the survey conducted across different cities reveals that the mean monthly cable TV bill as on May 2004 in non-CAS Areas varied between Rs.130 in Hyderabad to Rs.231 in Guwahati. Similar variations in prices were reported across cities as in August 2003 and December 2003. The survey also reported variations in prices across different socio-economic clusters within a region. The said survey had also pointed out that in any conventional distribution chain, every player marks up the price by a certain percentage which accounts for his value addition as well as profits. In the case of the cable sector which had grown unregulated and dealt with a heterogeneous product in terms of content quality and reach, there were no formal arrangements for sharing of revenue at different levels. It was further pointed out in the survey report that the MSOs and LCOs derive their margins by negotiating on connectivity. This business practice prevailing in the industry was primarily due to non existence of an addressable system which would provide a mechanism to know the exact number of subscribers for a channel. This business practice resulted in negotiated settlements on rate and connectivity and the consumer getting channels of different broadcaster/distributor of TV channels for a consolidated price which may not have relevance to the price of individual channels or bundles of channels. (This feature of the non-CAS tariff scenario persists and is likely to remain till the entire Cable TV network in the country is digitalized and addressable systems are introduced). Cost-based pricing, under these conditions, was not only found to be difficult since the product is not homogenous but it was also felt that the same could also damage the incentive to improve quality of content. Given the large number of operators and the extent of price variation, it was not possible to formulate a uniform policy except in terms of general principles. It was after considering these aspects in totality, the peculiar nature of the industry and the history of unregulated growth, the Authority decided to continue with the approach of regulating prices using historical prices.

Inflation linked increases in tariff

1.15 An amendment to the Tariff Order was made with effect from 1.1.2005, vide the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Second amendment) Order 2004 (8 of 2004) dated 1.12.2004, allowing an increase on account of annual inflation of 7% over the ceiling of cable charges fixed by the order dated 1st October, 2004. The increase was to be effective from 1.1.2005.

1.16 Subsequently, on 29.11.2005, an increase of 4 %, over and above the 7% already allowed earlier, was provided (by the Third Amendment to the principal Tariff Order) to account for the increase in costs on account of annual inflation. This increase was to take effect from 1.1.2006. This amendment order was not, however, brought into operation as the Hon'ble TDSAT stayed it upon an appeal being filed before it by a consumer organisation (Grahak Hitvardini Sarvajanik Sanstha). Subsequently, in its final order dated 22.12.06, the Hon'ble TDSAT observed as follows:-

"The 4% increase issued by TRAI with effect from 1.1.2006 was stayed by interim order passed by this Tribunal on 20.12.2005. The year 2006 has practically come to an end and for the future TRAI has to consider the matter of revision of rates afresh. Counsel for parties are not able to dispute that in view of the stay order, the 4% increase was not put into effect and today even if the stay order is to be vacated it will be impossible to recover any amount on the basis of the 4% increase which was to come into effect from 1.1.2006. We are informed that the legal issue regarding the jurisdiction of TRAI to regulate the tariff in respect of cable and broadcasting industry is pending before the Delhi High Court in C.W.P. No. 24105 of 2005 and C.W.P. No. 5332 of 2006. Therefore this Appeal has today become virtually academic.

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

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

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

1.17 Meanwhile, on the basis of a separate consultation process, wherein the question relating to principles to be followed for deciding the similarity of channels to those existing on 26.12.2003 for the purpose of fixation of prices for new pay channels, was taken up, the Authority, on 31st July, 2006, made an amendment to the principal Tariff Order. By this amendment, viz., the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006), the genre and language of a new pay channel or a channel converting into pay from free to air (FTA) became the relevant factors for deciding similarity of channels for purpose of price fixation of new pay channels.

Tariff (Eighth Amendment) Order

1.18 Based on the observations of the Hon'ble TDSAT in the Grahak Hitvardhini Sarvajanik Sanstha case mentioned above and also based on experience during the course of implementation of the principal Tariff Order, a need was felt to revisit the issue of tariff regulation for non-CAS areas in a holistic manner, including the issue of annual adjustment for inflation. The Authority, therefore, decided to initiate a process of consultation. As part of the consultation process, a Consultation Paper seeking comments of all the stakeholders was issued by TRAI on May 21, 2007. Mainly, the following issues were posed for consultation :-

A. Whether there should be total forbearance in tariff fixation;

B. Whether the then existing regime should continue in the same form or with modifications in the methodology of accounting for inflation and shifting of the reference date for ceiling; and,

C. Whether a tariff dispensation providing for specific ceiling at the consumer end should be considered. A number of related issues arising out of this option were also placed for consultation.

1.19 Based on the analysis of various inputs and the comments of the stakeholders during the consultation process, the Authority decided that the tariff dispensation for the non-CAS cable sector should, *inter alia*, provide for the following:

(i) The reference date needed a revision for the purposes of clarity and ease of implementation for all the players in the delivery chain, particularly for the subscribers. The Authority, therefore, decided to shift the reference date from 26.12.2003 to 01.12.2007. A 4% increase in the prevalent charges (the one which was already allowed by the Authority vide its tariff amendment order dated 29.11.2005) was again to be allowed. The increase allowed, was not, however, to be applicable in those cases where charges had already been increased by 4% by any service provider after the Hon'ble TDSAT order dated 21.12.2006.

(ii) In order to protect the interests of the subscribers in a transparent manner, specific ceilings in absolute terms were prescribed. These ceilings were related to the number of channels received, as well as to different types of habitations (i.e., cities, towns, semi-urban areas, etc.). These ceilings were only the upper limit (excluding taxes) up to which a consumer can be charged for a particular slab. However, if the charge after an increase by 4% as mentioned in sub-para (i) above, is less than the ceiling prescribed for a particular slab, then the cable operator was allowed to charge only up to the amount so increased and not up to the ceiling prescribed.

(iii) Since the cable operators and MSOs could no longer charge beyond the ceiling from the subscribers and since they had to continue to deliver quality channels and content within this ceiling to their subscribers, broadcasters were mandated to compulsorily provide their channels on a-la-carte basis to the MSOs/cable operators as per their request. In addition, they may also provide channels on bouquet basis. However, in order to ensure that the MSOs/cable operators get an effective a-la-carte choice without being handicapped by perverse pricing of bouquets, the Authority also decided to mandate a relationship between a-la-carte rates and bouquet rates.

1.20 In line with the above decisions, the Authority issued, on 4.10.2007, the Telecommunications (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007, effective from 1.12.2007. This Order prescribed, inter alia, that ---

(a) The charges prevalent on 1.12.2007, increased by an amount not exceeding 4%, shall be the ceiling in respect of charges payable by subscribers to cable operators, by cable operators to multi system operators and by multi system operators to broadcasters. This 4% increase was the same that was permitted by TRAI vide its third amendment order of December 2005 and stayed by TDSAT. Those service providers who had already availed this 4% increase were not permitted to again increase the charges.

(b) The Order, simultaneously and additionally, prescribed a ceiling on charges payable by the subscribers. The ceiling was fixed at Rs.77 in case a cable operator provided only free to air channels (not less than thirty). In case a cable operator provided both FTA and pay channels, the ceiling ranged from Rs.130 to Rs.260, based on the number of pay channels provided and the classification of cities.

(c) It also provided that broadcasters should offer channels on a-la-carte basis to the MSOs/LCOs and also laid down conditions to be fulfilled in case of offering of channels in bouquets in terms of relationship between such bouquet rates and a-la-carte rates.

1.21 Appeals were filed in the Hon'ble TDSAT against the Telecommunications (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007.

1.22 During the pendency of the appeals filed against the Eighth Amendment Order before the Hon'ble Tribunal, the Authority (TRAI), by the Telecommunications (Broadcasting and Cable) Services (Second) Tariff (Ninth Amendment) Order, 2008, dated 26.12.2008, permitted an increase of 7% on account of inflation with effect from 1.1.2009 on the cable TV rates as prevailing on 1.12.2007 and also reclassified the cities for the purpose of determining consumer level ceiling of rates. A statement outlining important milestones of tariff regulation in the broadcasting and cable sector is annexed and marked as **Annexure II** to this report.

TDSAT judgment on the Tariff (Eighth Amendment) Order

1.23 Hon'ble TDSAT, vide its order dated 15.01.2009, as mentioned supra in paragraph 1.1, set-aside the Tariff Eighth Amendment order, dated 4th October, 2007 and asked TRAI to study the matter afresh in the light of the observations contained in its judgment and issue a comprehensive order covering all aspects including the issue of subscription base in a non-addressable system. The Hon'ble Tribunal, in the said judgment, also made the following important observations:-

a. The Tariff Eighth Amendment order was only in the nature of interim Order resulting in freezing of prices and was not an exercise in tariff fixation as is ordained by section 11 (2) of the Act, in insofar as it relates to fixing the prices as on 1.12.2007.

b. In the context of TRAI's conclusion that adequate and effective competition in the market was lacking, the Hon'ble Tribunal observed that while introduction of forbearance or otherwise is within the competence of the judgement of the Authority, it must be based on a rational analysis.

c. On the issue of whether the classification of cities and towns as well as the slab system stipulated by the Tariff Eighth

Amendment Order was irrational, the Hon'ble TDSAT held that the price ceiling fixed in Schedule I to the Tariff Order, including for different tiers of channels/cities was arbitrary and irrational.

d. On the issue of broadcasters providing channels on à-la-carte basis to the MSOs/LCOs, the Tribunal held that while the idea of making à- la-carte choice of channels available to them was desirable, it must be backed up by adequate safeguards both to the consumer as well as to the broadcaster.

Orders of the Hon'ble Supreme Court and action taken by TRAI

1.24 The Authority filed an appeal in the Hon'ble Supreme Court of India against the judgment dated 15.1.2009 of the Hon'ble TDSAT and the Hon'ble Supreme Court of India, on 13.4.2009 directed status quo as on the date of the order dated 15.1.2009 of Hon'ble TDSAT. That on 13.05.2009, Hon'ble Supreme Court of India 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, the details of which are indicated in para 1.1 above.

1.25 Pursuant to the said directions of the Hon'ble Supreme Court, the Authority embarked upon a comprehensive *de novo* exercise. The Authority decided to involve all possible stakeholders in the process and, accordingly, issued written communications to a large number of stakeholders, which included Broadcasters of Free-to-Air (FTA) and Pay television channels, Direct-to-Home (DTH) operators, Internet Protocol TV (IPTV) service providers, Consumer Advocacy Groups (CAGs), Multi System Operators (MSOs), MSO Alliance, West Bengal MSO Alliance (an association of MSOs) and the Cable Operators' Associations. A press release was also issued on 17th June 2009 which invited the stakeholders to attend pre-consultation meetings on non-CAS Tariff exercise which were held in New Delhi on 23rd and 24th June, 2009. After taking inputs from the stakeholders it was decided to make necessary preparations for release of the consultation paper that comprehensively dealt with the issues raised by the stakeholders during pre-consultation and thereafter. The Authority accordingly held a number of interactive meetings with various stakeholders and also permitted presentations by various stake-holder groups on various issues relating to broadcasting and cable services including the issue of non-CAS tariff. On 27th July, 2009, the Authority appointed M/s Ernst & Young, as a consultant to assist the TRAI in the de-novo exercise for non-CAS tariff. A detailed statement showing the date-wise details of various steps taken by the Authority in pursuance of the directions of the Hon'ble Supreme Court dated 13.5.2009 is annexed and marked as Annexure III to this report.

1.26 Based on interactions with the stakeholders, TRAI prepared a number of data formats with a view to obtaining requisite data from different stakeholders, i.e., broadcasters/ aggregators, MSOs, Local Cable Operators (LCOs). Financial and operational information was sought through detailed questionnaire formats, customized to each stage of the supply chain. The information was also sought from consumer advocacy groups. These formats were placed on TRAI website on 7th August 2009. Individual letters enclosing the appropriate format(s) were also sent by post. It included letters to broadcasters, aggregators, MSOs, LCOs, DTH operators and CAGs. During the period 11th-27th August 2009, more than twenty meetings/conferences were held, in Delhi, Mumbai and Chennai with broadcasters, DTH operators, MSOs and LCOs.

1.27 On the repeated requests of the stakeholders, the Authority granted time extensions twice for furnishing their responses in the detailed questionnaire formats. During this phase, advertisements were also published in various news papers through out the country (29 States/UTs) in major Indian languages (Tamil, Telugu, Assamese, Marathi, Gujarati, Urdu, Kannada, Malayalam, Oriya, Punjabi, Bengali, Manipuri, Nepali, English and Hindi) reminding all the stakeholders to submit the information in the prescribed format as applicable to them. Since the stakeholders once again sought extension of time even beyond 22.09.09, individual reminders were again sent to respective stakeholders to submit the information in the prescribed formats. Further communications were sent to those service providers who submitted incomplete/ unclear information, seeking clarifications/ further information. Since information in the prescribed format was not forthcoming from all the stakeholders, process of issuance of individual letters to the stakeholders was repeated.

1.28 The data and figures which became available to TRAI by way of responses from different stakeholders were analyzed to arrive at the representative industry figures. Thereafter, letters dated 10th November 2009 were released, informing all the stakeholders about derived operational and financial figures, representative for different segments of the supply chain. Stakeholders were requested to respond by 18th November 2009 along with their data in the prescribed format in the event they did not agree with the derived representative figures. At the request of the stakeholders, the Authority granted extension up to 30.11.09.

1.29 Subsequently, on 11^{th} February 2010, a cable operators association in Karnataka requested for a simplified format for submitting information. At their request, a special format was devised for cable operators having less than 500 connections. Advertisements along with the simplified format calling for information from small cable TV network operators were released in various vernacular newspapers on 15^{th} February 2010 through out the country in 13 languages, viz., Tamil, Telugu, English, Hindi, Oriya, Punjabi, Kannada, Gujarati, Marathi, Malayalam, Urdu, Assamese and Bengali requesting them to submit information by 28^{th} February 2010. In order to provide them the widest possible reach, copies of the advertisements released in the newspapers containing the simplified format (in the respective regional languages) were also sent by post. In this process, the Authority addressed individual communications to more than 30,000 cable operators, which is around 50% of the total number of cable operators in the country.

1.30 Using the data received from stakeholders, representative Profit & Loss statements for stakeholder groups in the analog supply chain were developed. The objective of collating these figures was to understand the business models across the value chain and assess the need for intervention at various stages. Post publishing the first round of figures on 10.11.2009, TRAI received several responses and the additional data thus received from stakeholders were also duly incorporated and the revised representative figures arrived at by the Authority were made part of a detailed consultation paper brought out by the Authority on 25th March, 2010. A statement containing the summary of issues raised in the Consultation Paper is annexed and marked as Annexure IV to this report. Stakeholder comments on the issues raised in the Consultation Paper were placed on TRAI's website. Counter comments of stakeholders received on the comments, were also placed on the TRAI's website.

1.31 The Authority, thereafter, undertook a series of Open House Discussions (OHDs) with the stake-holders 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.

1.32 TRAI also relied on published secondary sources for information relating to the break-up of costs and revenues for different companies operating in this market. This included annual reports and financial statements published by listed companies, information filed by private limited entities in accordance with the Companies Act of 1956 and paid research and analysis conducted by prominent agencies. TRAI also looked at how regulators across more than 10 countries[1] have responded to issues like pricing, addressability, carriage fee, a la carte provisions, effective competition and digitization in cable TV services. In addition to information in the public domain and access to paid research databases, TRAI established contact with regulatory counterparts and also reached out to industry experts to understand market dynamics and the context in which regulation was introduced in these countries.

1.33 Chapter II of this Report describes the industry scenario bringing out the characteristics of a non-addressable cable TV system. Chapter 3 details the activities, processes and analyses undertaken and the conclusions arrived at by the Authority. Chapter IV deals with the issue of Carriage and Placement fee.

[1] Countries analyzed include: Australia, Brazil, Canada, France, Germany, Singapore, South Africa, South Korea, Taiwan, United Kingdom (UK) and United States of America (USA).

CHAPTER II: INDUSTRY SCENARIO

A. Overview of the Broadcasting Sector

2.1 This chapter sets out to briefly describe the evolution of the broadcasting and cable TV industry in India, the nature of analog cable TV market and the need to move towards digitization with addressability.

1. Evolution of the Sector

2.2 The cable and satellite television market in India emerged in the early 1990s, spurred by major international events like the Gulf War and the growth of homegrown media companies. The industry has experienced rapid growth, with the number of subscribers increasing from just 410,000 in 1992 to more than 91 million by the end of 2009 – a growth rate of nearly 40% every year for the last 16 years. This expansion of subscriber base is mirrored by commensurate growth on the supply side. India today has a large broadcasting and distribution sector, comprising around 550 television channels, 6,000 Multi System Operators (MSOs), up to 60,000 LCOs, 7 DTH/ satellite TV operators and several IPTV service providers.

2.3 In 2009, the revenue size of the Indian television industry was estimated at Rs.25,700 crore[2]. Of this, Rs.16,900 crore (66%) is attributed to subscription revenue generated from consumers and the balance Rs.8,800 crore (34%) comes from the advertising market. The last five years have changed the dynamics of the market significantly. Introduction of viewing platforms like DTH and IPTV, and digitization of the last mile (both voluntary and mandatory) have led to a more diverse, rapidly evolving multi-platform market. From a scenario where 100% of the cable & satellite (C&S) population was dependent

[2] FICCI- KPMG Media & Entertainment Industry Report, released March 2010

on analog cable services, DTH commanded around 20% market share by the end of 2009. Uptake of digital services is increasing and choice is becoming possible at the consumer end.

2.4 Conditional Access System (CAS) was mandated for cable services in the four metros – all of Chennai (Since September 2003) and parts of Mumbai, Delhi and Kolkata on December 31, 2006. In these areas, pay channels are relayed over cable necessarily through CAS-enabled or addressable systems.

In the case of DTH and IPTV services, all content is required to be encrypted and transmitted through conditional access systems. Thus these platforms are necessarily compliant with the CAS mandate for cable services. The rest of the country (i.e. where digitization and addressability are not mandated) continues to remain largely in an analog cable-dominated environment. However, the share of digital platforms is increasing gradually even in these areas, led largely by voluntary digitization (without addressability) and growing penetration of DTH.

2.5 The following figure provides the distribution of cable TV homes in different parts of the country:

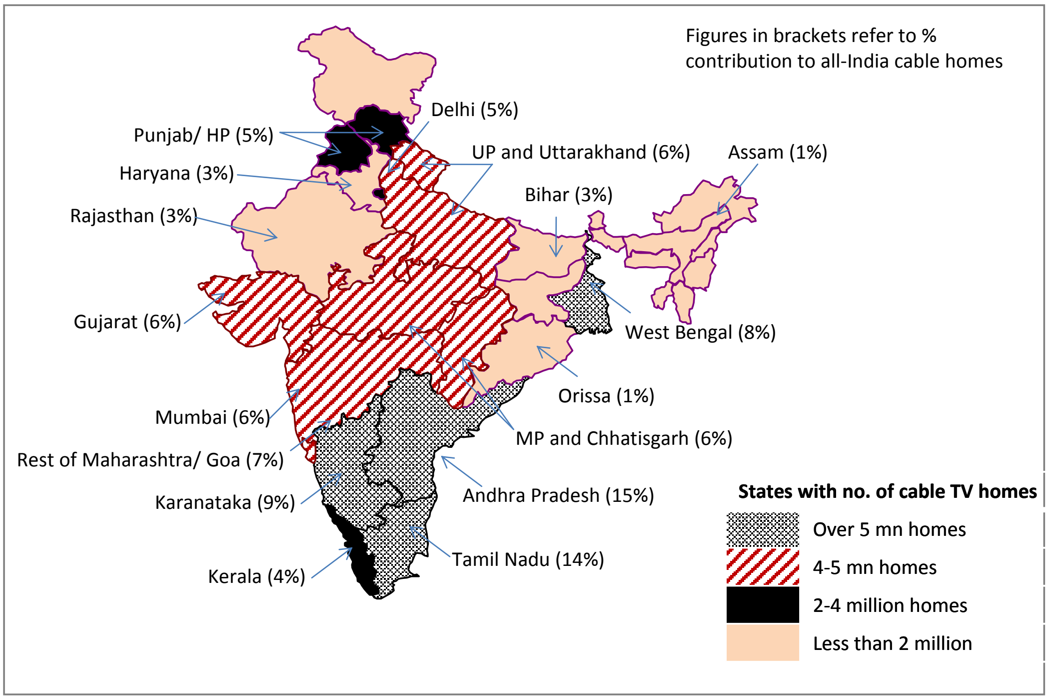


Figure 2.1: Share of Different States in All-India Cable TV Homes[3]

2. Distribution platforms

2.6 The following distribution platforms are present in India:

1. Terrestrial – this mode of transmission is owned and operated by the national public service broadcaster – Doordarshan
2. Cable
3. DTH
4. IPTV

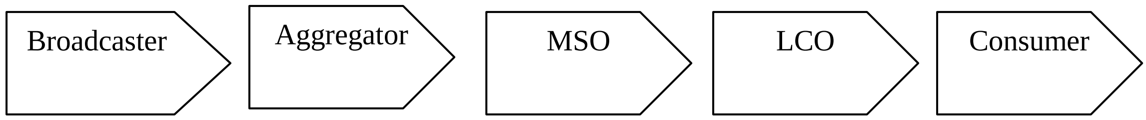
2.7 Of these, the last three i.e. Cable, DTH and IPTV are pay TV platforms (tariff-based services).

a) Cable

2.8 The cable services value chain comprises four main supply side entities i.e. broadcaster, aggregator, MSO, LCO and the end

[3] Market Survey by Francis Kanoi Marketing Research (2009)

consumer. The role of the broadcaster and aggregator is common across platforms.



Cable services value chain

(i)Broadcaster

2.9 The broadcaster owns the content to be televised and received by the viewer. The broadcaster’s role in the supply chain includes transmitting or “up-linking” the content signals to the satellite (from where they are “down-linked” by the distributor). Around 550 channels are permitted to be down linked in India. These channels provide a mix of content across genres and languages. There are around 200 broadcasters. There are some large broadcasters that operate more than 10 channels, medium size broadcasters operating 2-10 channels and many small broadcasters that operate only one channel.

2.10 The broadcasting business in India is primarily driven by two sources of revenue – advertising and subscription. There are two main types of broadcasting business models:

(1) Free to Air (FTA) broadcasters rely on advertising revenue as their primary source of revenue, and thus are dependent on the distribution supply chain only to ensure reach to their target audience.

(2) Pay TV broadcasters have a dual source of income. The channels need to ensure reach not just to earn advertising revenue but are also dependent on the distribution network to collect subscription revenue from the consumer.

2.11 In addition to content production costs, broadcasters also bear costs related to distribution and marketing of their content. The following trends are observed with respect to the broadcasting business model in India. The growing strength of large media houses is evident from the fact that around 100 pay channels are estimated to garner over 50% of the industry's domestic advertising revenue[4]. The television broadcasters are heavily dependent on advertising revenues. The industry size is split 66:34, in the favour of subscription revenue at the retail level. However the income of major broadcasters is roughly in the ratio of 35:65 in favour of advertising revenue.

2.12 While the number of channels available in India has increased rapidly, the content of these channels is skewed in favour of advertiser-friendly markets. As the demands on broadcasters to invest in content and be present across multiple platforms increase, their operating cost base is increases in proportion. To drive profitability and growth simultaneously, companies are looking at innovative ways of reducing their costs.

(ii) Aggregator

2.13 The TV channels can be distributed by the broadcaster himself or through authorized distribution agencies to the distribution platforms. An aggregator is a distribution agent who undertakes the distribution of TV channels for one or more broadcasters. The role of the aggregator in the value chain is to provide bundling and negotiation services for subscription revenue on behalf of the broadcasters. The sale of channels by the broadcaster/ aggregator to the distributor can take two forms a) A-la-carte: one channel is sold as a single unit and b) Bouquet: two or more channels are bundled and sold as a single unit.

[4] Based on analysis of data received from stakeholders during the consultation exercise

2.14 There are around 24 aggregators/ agents of broadcasters. Of these, the four main aggregators are Zee Turner (31 channels), Star DEN (23 channels), MSM Discovery (21 channels) and Sun Group's SDS (23 channels). The business model of an aggregator is largely commission-driven. They charge the broadcaster commissions in the range of 5%-10% for distributing these channels across different platforms[5].

2.15 These entities have a relatively small cost base, comprising salaries, travel and other operating costs. The key drivers of the aggregator business are a) Economies of scale i.e. large number of channels, b) Competitive offerings i.e. popular channels and innovative packaging and c) Market knowledge i.e. strong understanding of the market, both in terms of the subscriber base and their willingness and ability to pay for different channels. A key trend observed in this market is the entry of large broadcasting alliances in aggregation. This may be attributed to the market environment in which pay channels operate, which is characterized by lack of addressability.

(iii)Multi System Operator (MSO)

2.16 The MSO's role is to downlink the broadcasters' signals, decrypt any encrypted channels and provide a bundled feed consisting of multiple channels to the LCO. The following paragraphs explain the evolution of the Multi-System Operator (MSO).

2.17 In the early days of cable, there were no MSOs and the broadcasters negotiated directly with LCOs as the number of broadcasters was limited and most channels were Free to Air. However, the number of operators grew significantly, driven largely by the prospects of this industry and the absence of a regime to cap the number of operators. As a result, the subscriber base became increasingly fragmented

[5] Based on information received from major aggregators during the consultation exercise

across thousands of LCOs. Thus, it became expensive and ineffective for broadcasters to negotiate with several thousand operators. As the cost of down-linking signals grew (in line with the number of channels), it also became inefficient for every LCO to invest in equipment to service a few hundred households. The MSO then emerged as a “master distributor” who would purchase content from various broadcasters and provide it to multiple LCOs.

2.18 It is estimated that around 6,000 MSOs are present in the Indian market today. There are national MSOs who have presence across the country, regional MSOs having presence across a few states, state wide MSOs who have presence within a state and local city based MSOs. The prominent MSOs who have large networks and reach in the country are Asianet, DEN Networks Ltd., Digicable, Hathway Datacom, IndusInd Media and Communication, KAL Cables (Sumangali), Ortel and Wire and Wireless India Ltd (WWIL).

2.19 The MSO business is dependent on the broadcaster/ aggregator for content and on the LCO for last mile connectivity and subscription revenue collection. Some MSOs also have “direct points” through which they service the last mile.

2.20 The key growth drivers for the MSO business are the following. MSOs with significant reach (i.e. a large network) are able to reduce their costs by leveraging the same infrastructure on a large subscriber base. Operators need to leverage their scale of operations to receive bulk discounts for content purchased from broadcasters. The choice of markets (across states, cities and even localities) is an important determinant of the growth potential of an MSO. This increases the bargaining power of the MSO (since these are “must-reach” markets for the broadcaster). It also increases the potential of revenue from carriage[6] and placement[7] fee.

2.21 Recent trends observed in the MSO business are as follows. MSOs are observed to be gaining depth not just in their traditional markets but are also looking at lateral growth by entering into new regions. One of the ways in which MSOs have tried to expand to new regions is by buying out LCOs. This has led to huge premiums being paid for LCO operations in markets where the MSO perceives value in reaching out directly to the consumer. The recent corporate participation and investor interest in the MSO business has led to two unique market outcomes. Certain states and cities (e.g. Delhi, Maharashtra, Haryana and Bangalore) have a large number of MSOs (5-7) servicing each city. In contrast, it has been reported that certain markets are characterized by the presence of a single MSO.

2.22 The incidence of Carriage and Placement Fee is a recent phenomenon in the MSO business. Traditional cable services consisted of signals being carried in analog mode, thereby significantly restricting the capacity of the cable. Since the number of channels present in the market outnumbers the capacity, MSOs charge carriage and placement fee for channels to be carried on their networks. These payments are essentially a mechanism for the MSO to realize the efficient value of a "scarce" commodity – bandwidth to transmit channels.

2.23 The incidence of voluntary digitization is increasing among the larger MSOs. These MSOs have started to undertake infrastructure upgrades and installation of digital, addressable systems even in non-

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[6] Carriage Fee: Any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters

[7] Placement fee: Any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels

CAS areas. Transmission of digital signals allows the operator to increase the capacity to up to ten times that of analog signals. Large MSOs are also expected to move towards offering triple play services. Globally, cable operators provide bundled cable, broadband and phone services. This allows the operator to reduce the cost of reaching a household (three services offered through a single wire rather than three separate wires) and significantly improves profit margins. Once the necessary digital infrastructure and subscriber management systems are in place, MSOs in India are also likely to differentiate their offering by providing multiple services to the end user.

(iv)Local Cable Operator (LCO)

2.24 The role of the LCO in the supply chain is to receive a feed (bundled signals) from the MSO and retransmit this to subscribers in his/ her area through cables. The following information has been gathered regarding the number and type of LCOs operating in the market. Industry research and recent statements by major players estimate that there are up to 60,000 cable operators in the country. The business model is largely based on providing services to specific areas/ localities within a city. There is significant variation in the size of different LCO networks – ranging from less than 100 to over 10,000 subscribers. In all, the 60,000 cable operators service a total of 68 million analog cable households, at an average of 1,100-1,200 analog subscribers per operator.

2.25 The following operating models are observed in the LCO business:

The traditional dependent LCO (or franchisee) purchases broadcasting signals from an MSO. However, there is no restriction on the LCO and he can choose to exit his agreement with one MSO at any time and subsequently enter into an agreement with another MSO based on business decisions. The joint venture/ subsidiary model has emerged as a result of the recent wave of consolidation and LCO acquisition by large MSOs. The MSOs have majority/ minority ownership interests in these LCOs. Typically MSOs provide more favorable terms and financial assistance to JV companies and subsidiaries. The pricing and marketing strategies of DTH operators are posing a strong competitive challenge to incumbent analog cable operators. Given the nature of the cable business, where cabling the last mile is usually undertaken by a single party, monopolies at the subscriber level continue to persist.

b) Direct to Home (DTH)

2.26 The role of the broadcaster and the aggregator remain unchanged in the DTH value chain. Instead of a two-stage distribution value chain, there is a single distributor – the DTH operator.

DTH/ Satellite services value chain

2.27 The DTH operator is responsible for both, negotiating with aggregators/ broadcasters and servicing the end consumer. The mode of transmission between the operator and the consumer is via satellite rather than cable. Required customer premises equipment includes a satellite dish (to receive signals) and a set top box to decode signals and provide conditional access to paid content. The box is linked to a subscriber management system allowing the consumer to change his product/ service offering as required.

2.28 There are currently seven DTH operators operating in India. These include a) DD Direct Plus, which is owned by Doordarshan – a public service broadcaster, and currently provides free DTH services and, b)

Six private players – Airtel Digital TV, Big TV, Dish TV, Sun Direct, Tata Sky and Videocon d2h – who provide pay DTH services.

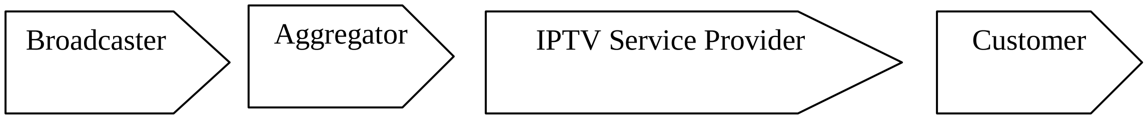
2.29 When evaluating the DTH business model it has been observed that the standalone nature of satellite transmission at the customer's premises allows DTH operators to be present across the country. Thus it can reach out to large geographic regions and to sparsely populated areas. Further, the provision of DTH services requires significant upfront investment and a long gestation period. The business is characterized by high customer acquisition costs. It has been observed that, to demonstrate a strong enough proposition for the consumer to shift, DTH operators often subsidize customer premises equipment and spend heavily on marketing and promotion in the initial years of operation.

2.30 DTH has experienced growing uptake in specific regions in the country. Since its introduction in 2003, uptake has increased considerably – to around 19 million subscribers by end 2009. Growth has been higher in certain types of markets such as: (a) "Cable Dark" markets – markets where cable was not present due to geographical distances or sparse population, (b) CAS markets – markets where addressability was mandated and consumers had to make switching decisions, and, (c) Affluent markets – certain sections of society that associate DTH with a premium product given options like Video on Demand (VoD), time shift viewing etc.

2.31 DTH is likely to face competition from digital cable in the near future. Although cable services are currently being provided mostly in analog mode, the major MSOs are undertaking investments to move towards digital transmission.

c) Internet Protocol Television (IPTV)

2.32 The IPTV supply chain is organized similarly, i.e. there is a single distributor connecting the broadcaster to the last mile.



IPTV services value chain

2.33 IPTV technology combines television distribution with broadband and telephony, and provides the option of Triple Play Services to the consumer. The signals for these services are transmitted through cable/ optical fiber networks. Owing to high speed two-way connectivity of this technology, there is greater potential of offering value added services like video on demand (VoD), time shift viewing and gaming.

2.34 There are presently four major IPTV service providers in India – MTNL, BSNL, Bharti Airtel and Reliance Communications – who offer services either themselves or through their franchises. In some cases, these companies directly service the last mile as well as own the transmission head-end. In other cases, smaller service providers lease the transmission head end and provide IPTV services to subscribers.

2.35 The IPTV model is largely focused on triple play. Large investments are required to lay fiber optic cables till the last mile. Alternatively, companies can choose to lease the transmission network from infrastructure owners. IPTV services have the potential to offer value added services like online gaming, broadband and e-commerce can be easily bundled along with the IPTV service.

d) Consumer

The key stakeholder in the supply chain is the end consumer – as the survival of all industry players is dependent on consumer uptake of their products and services. Whether in the form of direct payment of subscription revenue or indirect spends which lead to advertising revenue for the industry, the consumer is the focal point of the broadcasting and distribution sector.

2.36 The following trends are observed with respect to consumer choice and quality of service. Although these insights apply to consumers across the country, they are especially relevant to analog cable subscribers in non-CAS areas. It is seen that given the observed dependence of the Indian broadcasters on advertising revenue, a large number of new channels have been targeted towards audiences that are attractive to advertisers. Such audiences include urban affluent populations and large industrial states like Andhra Pradesh, Karnataka and Maharashtra. This has led to marginalization of consumers in less developed states. It has also led to limited content offerings developed for them. Such channels have found it difficult to enter the market given the high distribution costs that mass-based and advertiser focused channels like national news, general entertainment or sports are currently incurring.

2.37 It has also been observed that, a related point is the limited availability of subscription-driven content such as special interest channels (focused on niche concepts like golf, science etc.) and technologically advanced content like high-definition (HD) channels. Once digitization removes the capacity constraint and there is visibility on the paying potential of subscribers – niche content can be expected to grow rapidly in India. This will be further enhanced by cross-platform competition from internet, mobile and other digital media.

2.38 Further it has been reported that there is lack of standardization on pricing of services to consumers. The consumers are currently receiving and paying for different types of analog cable services. The choice of channels lies with the MSO/ LCO and not with the end consumer. Discounting and non-payment of dues are also prevalent in analog cable markets. These practices persist due to the high level of fragmentation at the last mile. Different billing and collection practices followed by LCOs also lead to differences in pricing and services. There are differing trends observed with respect to uptake of digital television services in non-CAS areas. Urban markets like Bangalore have experienced strong digital uptake, even in the absence of any mandatory move to CAS. However, subscribers in small towns and cities prefer to remain on analog as the one-time cost of switching to digital services is too high.

3. Financial transactions

2.39 The total revenue of the Indian television industry was estimated at Rs. 25,700 crore in 2009, of which advertising accounts for Rs.8,800 crore (34%) and subscription accounts for Rs.16,900 crore (66%) . Based on further analysis conducted during the course of this exercise, the size of the subscription market for analog cable TV services is estimated at Rs.13,500 crore (68 million subscribers x ARPU of Rs.165 per month). The revenue from carriage and placement fee is estimated at approximately Rs.900-1,000 crore[8].

2.40 The key financial transactions in the analog cable supply chain are a) advertising revenue to the broadcaster, b) collection of subscription revenue from the consumer, and its distribution across the supply

[8] As per MSO Alliance.

chain and c) payment of carriage and placement fee to the distributors by the broadcaster.

a) Advertising Revenue

2.41 The size of the television advertising market – which was estimated at Rs.8,800 Crore in 2009 – appears to be low compared to global benchmarks[9].

2.42 It is also observed that in comparison with international markets, Indian broadcasters are dependent on advertising for a large portion of their income. This dependence has resulted in broadcasters' concentrated focus on 'advertiser friendly' genres and limited investment in niche or targeted content. This trend is confirmed through the fact that there is a large number of channels in established ad-friendly genres like General Entertainment, vis-à-vis niche genres like education and infotainment (channels that combine information and entertainment).

2.43 It is also important to note that the television advertising business is closely linked to the television audience measurement system/ ratings. The advertising revenue of a channel, in large part, is determined by how effective a channel is at delivering a pre-defined target audience. Thus, viewership of a channel (based on a representative sample of towns/cities – known as metered markets) plays an important role in determining the advertising revenue potential of a channel. Given the lack of addressability in the market, the dependence on viewership measurement numbers also appears to be disproportionate.

2.44 TV ratings on a commercial basis are done by two agencies, TAM Media Research and aMap. Their operations are limited to a few large

[9] As per ASSOCHAM Report on 'Future of Advertisement Industry in India' (May 2007)

cities with a population above one lakh. All states except J&K, N.E, Bihar and Jharkhand are covered by TAM Media Research. The aMap sample includes all states except J&K and N.E. but includes Jammu and Guwahati. Within big cities too, their sample size is limited to a total of about 7000 (TAM) and 6000 (aMAP) metered homes. Equipment and technology used till recently by TAM Media Research Pvt. Ltd., (TAMRPL) was not DTH and CAS compatible. Ratings are currently based on cable homes. 7000 people meters (TAM) are grossly inadequate when compared to the total size of the cable and satellite market. Further, the spread of channels is not uniform across different regions of the country. As a result, channels with predominant viewership in rural and other areas are disadvantaged in the ratings. Urban viewership decides the ratings of programmes and the programme schedules of TV channels.

b) Subscription Revenue

2.45 As mentioned earlier in para 2.39, the analog cable subscription market is estimated at Rs.13,500 crore. The flow of content from the broadcaster to the consumer is compensated by the flow of subscription revenue in the reverse direction. The pass-through of television subscription – from the local cable operator, to the multi system operator and further down to the aggregator and broadcaster – is the key transaction that links the value chain. At each step, the stakeholder involved adds value to the service and receives a share of the revenue. The estimated distribution of subscription revenue across the value chain, based on information received from stakeholders, is as follows:- Broadcaster/Aggregator around 20% (Rs.2,900 crore) and Distributor (MSO+LCO) around 80% (Rs. 10,600 crore) As regards distribution of subscription revenue across the supply chain, it is relevant to note that there is very limited visibility on the subscriber base consuming and paying for the 129 pay channels analyzed for this exercise. In the absence of addressability, the subscription revenue transaction is being undertaken either as a fixed fee (lump sum), or on the basis of a "negotiated" subscriber base. The distribution of subscription revenue is also skewed due to lack of visibility.

c) Carriage and Placement Fee[10]

2.46 For a broadcaster dependent on advertising revenue, ensuring reach is critical. This is because higher reach implies greater access to the subscriber base – thereby providing an opportunity for the channel to improve its ratings. Carriage and placement fee provides the broadcaster access to an MSO's network. Due to the bandwidth constraints in the analog transmission mode, the MSO "allocates" certain frequencies to the highest paying channels. This phenomenon can be interpreted in simple economic terms as a "demand-supply" mismatch. With supply remaining unchanged at around 80 channels and the total number of channels having risen steadily to around 550 – carriage fee reflects the entry barrier posed by analog transmission.

2.47 Certain channels that have a steady demand in the market may pay lower carriage fee because the MSO would in any case want to carry those channels. The composition of the bouquet that the channel is part of and the relevance of that bouquet to the MSO also determines the value paid by a certain channel. If a genre has high competition amongst channels (and new channels continue to enter the market), then carriage fee is likely to be higher for that genre. This is because competition creates pressure on the number of frequencies allocated by the MSO to any particular genre. It has been observed that carriage fee is a phenomenon predominantly observed in metered

[10] Carriage Fee: Any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such distributor of TV channels, without specifying the placement of various channels of the broadcaster vis-à-vis channels of other broadcasters.
Placement fee: Any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such broadcaster vis-à-vis channels of other broadcasters on the distribution platform owned or operated by such distributor of TV channels.

markets. As discussed earlier in this section, this is because channel and programme ratings are a key source of information for media planners, and are reported to determine spending for a large number of national advertisers. Even within metered markets, the amount of carriage fee paid appears to be linked to the revenue potential of individual regions/ cities.

B. <u>Nature and Characteristics of the Market:</u>

2.48 Cable TV systems can be analogue or digital. In an analog cable system, the MSO collects the TV channels from different broadcasters and, after combining them into a bouquet, distributes these channels to the LCO, who in turn distributes them to the consumer. The consumer can watch these channels on his TV receiver set without using any additional hardware. In the analog cable system the composition of the bouquet is same for all its subscribers. The analogue system, by its very nature, is not addressable. The channels are in the analogue mode, which consumes a large bandwidth. As a result, the capacity of the analog cable system is restricted to around 80-90 channels only. In digital addressable systems, the MSO, after collecting TV channels from the broadcaster, digitally compresses and encrypts them either individually, for a-la-carte choice, or bundled into bouquets, for bouquet choice. These are then distributed to the consumers through the LCO. The consumer can watch only the subscribed channels (or bouquets) on his TV set after decrypting and decoding the TV channels, using a set top box. Use of efficient compression technologies make it possible to carry a large number of channels (more than 600 channels), whereas the encryption (conditional access) allows the consumer to subscribe to the channels of his choice. Additionally, the digital cable system is capable of providing value added services, interactive services and broadband to the consumer.

2.49 In India, although uptake of digital services is increasing, the cable and satellite television market is today largely analogue. About 75 % of the cable and satellite subscribers are dependent on analogue cable services. In 2009, there were 68 million analogue cable subscribers, out of a total estimated market of approximately 91 million, whereas DTH, IPTV and digital cable together accounted for about 24 million subscribers.[11]

1. Stakeholders views on the nature of the market:

2.50 In order to get stakeholder feedback on issues peculiar to the analogue non addressable cable market, the following questions were raised through the Consultation paper:

Is the market for cable services in non-CAS characterized by the following issues:

(i) Under-reporting of the analog cable subscriber base, (ii) Lack of transparency in business and transaction models, (iii) Differential pricing at the retail level, (iv) Incidence of carriage and placement fee, (v) Incidence of state and region based monopolies, (vi) Frequent disputes and lack of collaboration among stakeholders

Are these issues adversely impacting efficiency in the market and leading to market failure?

Stakeholder Comments

2.51 The stakeholders have generally accepted the existence of above mentioned issues in the Indian broadcasting and cable industry. Many stakeholders felt that there was no reliable figure on the number of subscribers receiving different channels in the non addressable system. On under-reporting of the subscriber base,

[11] Asia Pacific Pay TV & Broadband Markets 2009, Report by Media Partners Asia (MPA); FICCI-KPMG Media and Entertainment Industry Report released March 2010; NRS 2006 Estimates for analogue cable; quarterly filings by DTH operators.

opinions were divided. Some stakeholders admitted to the existence of the phenomenon of under-reporting of subscriber base. However, some MSOs, nearly all the cable operators and a few individuals were of the view that there is no under-reporting of subscriber base and that the issue is greatly exaggerated. Cable operators have stated that all deals between MSOs, cable operators and broadcasters are based on mutual negotiations that cannot be termed as under-reporting. According to them, there is no basis for arriving at the viewer-ship of a channel, which is not possible to measure in a scenario where all channels are bundled and there is no addressability.

2.52 Almost all stakeholders have admitted that there is lack of transparency in business and transactions models. The reasons for this lack of transparency are stated to be i) negotiation-based evolution of the market in which varying levels of bargaining power of the players in the value chain has an important impact and ii) technological/logistic limitations in quantifying market parameters and business transactions.

2.53 Almost all the stakeholders have admitted the existence of differential pricing at the retail level. One reason given is that subscribers in different strata of the society have different requirements and paying capabilities. If a cable operator caters to a mix of societal strata, he has no means to differentiate the content and has to impose differential pricing at the retail level to accommodate different paying capacities of subscribers.

2.54 Stakeholders feel that prevalence of carriage and placement fee is because of capacity constraint of the analog cable system leading to demand supply mismatch. The broadcasters have stated that they are forced to pay out substantial amounts in order to make sure that their channels are placed in visible bands. The MSOs, however maintain that carriage and placement fees are not a universal phenomenon and is limited to a certain fraction of total market. They also state that placement is sought by broadcasters to enter new markets or increase their advertisement revenue but are not forced upon them, and these charges are in realm of private contracts. However, MSOs feel that levying of carriage and placement is a temporary phenomenon and will get phased out with the digitization of this sector.

2.55 Several stakeholders have stated that state and region based monopolies exist at all levels. Cable operators, MSOs and broadcasters have stated that state and region based monopolies are detrimental to consumer interests and for growth of digitization in the country. There is also a view that these monopolies are also characterized in various places by intense political patronage and political ownership (direct/ indirect) which sometimes acts as a barrier for change. Cable operators have said that cable TV operation demands natural monopoly. On the contrary, MSOs say that in every State and region there are multiple MSOs/LCOs. Also, there is a lot of competition from DTH. However in certain markets there is a monopoly at the LCO level.

2.56 While agreeing to the existence of frequent disputes and lack of collaboration among the players, the stakeholders have highlighted the following reasons i) Rampant piracy and frequent migration of LCOs from one MSO to another ii) Lack of effective enforcement mechanism iii) Non-availability of authentic and reliable data resulting in non-transparent transactions and variations in content cost iv)Vertical integration in the business (e.g. a broadcaster also controls an MSO) resulting in vertical price squeeze v) Regional monopoly of some of the MSOs. Though consolidation is desirable its ultimate effect may be to tighten monopolies in the region vi) Lack of trust between broadcasters and cable industry.

2.57 Many of the broadcasters have opined that, on the lines of qualifying criteria for licenses issued to broadcasters, there should be minimum qualifying criteria for the MSOs and LCOs to ensure their techno-financial capability, and they have suggested mandatory licensing of MSOs/ LCOs.

2.58 Further, the stakeholders are unanimous in the view that addressable digitization is the only tool to introduce transparency in the cable sector that will lead to resolution of above mentioned problems/aberrations of the industry.

2.59 As regards whether the existence of the above mentioned issues is adversely impacting efficiency in the market and leading to market failure, opinions are divided. Some broadcasters felt that the existence of these issues need not necessarily call for high handed regulation through tariff ceilings; no amount of tariff prescription is going to resolve these structural defects inherent in the non-addressable system. Rather the solution exists in effective implementation of Interconnection Regulations. DTH operators, MSOs, and LCOs have observed that these issues are impacting market efficiency. An individual view, however, is that these issues are not impacting market efficiency as the end viewer is happy with the value derived from the few channels being watched.

2. Analysis and Conclusions:

2.60 Based on the feedback received from stakeholders, the observations and conclusions of the Authority on the characteristics of the analogue cable market are given below:

a) *Lack of clarity regarding the cable subscriber base*

2.61 From data and information gathered during the tariff exercise, it is observed that there is no reliable information on the number of subscribers receiving various channels through analogue cable TV services. Stakeholders have admitted that subscription revenue transactions are conducted on a 'negotiated' subscriber base. In non-addressable systems the amount of subscription fee, in lump sum, is negotiated between the broadcaster and the MSO. Based on this amount, the figure of subscriber base of the MSO is derived. The absence of reliable information on subscriber base is also recognized in the Interconnection Regulations. As per clause 9.1 of the Telecommunications (Broadcasting and Cable Services) Interconnection (Third Amendment) Regulation 2006, for example, in non-addressable systems, while executing an interconnection agreement for the first time between a multi system operator and a cable operator, the parties to the agreement shall take into account the subscriber base of the cable operator on the basis of the Subscriber Line Report (SLR) where such SLR exists. Where such SLR does not exist, this shall be negotiated on the basis of the evidence provided by the two parties on the subscriber base, including the subscriber base of similarly placed cable operators and local survey. The explanation below the clause states that the Subscriber Line Report (SLR) is only an indicative basis for arriving at the subscriber base and the subscriber base as mutually agreed by the two parties could be more than or less than the number indicated by the SLR.

2.62 Under the provisions of clause 12 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004, in non-addressable systems, the multi system operators are required to furnish the updated list of cable operators along with their subscriber base to the broadcasters on a monthly basis. As the system is non-addressable, it is difficult to work out the real subscriber base. This often leads to disputes between the broadcasters and the MSOs. The tendency of the broadcaster is to seek enhanced subscription fee based on the assumed growth in subscriber base of the MSO while that of the MSO is to seek reduction in such subscription fee based on perceived reduction in the subscriber base. The subscriber base being a derived number, rather than an actual number, the there is no clarity on the actual subscriber base leading to allegations of under-reporting by several stakeholders.

2.63 The Authority has examined the collateral evidence available in this regard. Figures in the inter-connect filings and other stakeholder data indicate that the 'negotiated' base of even the most popular channels is much lower than the total estimated number of about 68 million analog cable homes in the country. The maximum connectivity (number of subscribers) declared by major broadcasters/ aggregators through interconnect agreements is in the range of 4-5 million consumers. The level of reporting varies from area to area and also depends on the relative bargaining powers of the stakeholders. While the level of the negotiated base for different channels cannot be taken as conclusive proof of under-reporting, it is nonetheless difficult to believe that the most widely distributed channels reach less than 10% of analogue cable TV homes.

2.64 It is observed that the average increase in subscription revenue of some large broadcasters is in the range of 15%-20% p.a. In light of the facts that: (1) all major channels/ bouquets are already currently operating at the prescribed limits and, (2) the permitted price increase as per TRAI's tariff orders have been in the range of 4%-7% p.a., it would appear that the key reason for this increase is negotiation on the basis of a lump sum, with the connectivity being merely a derived value. Any increase in revenue can thus be realized through an increase in the number of subscribers, and no corresponding increase in price is required.

2.65 Further, the existing wholesale tariff is much higher than the revenue generated on the ground (ARPU paid by consumer). For example, the per-connection tariff at the wholesale level is ~Rs.700 month[12] at the wholesale level, while the retail level ARPU is in the range of Rs.165 per month. An inference that can be drawn is that this is because the wholesale tariff attempts to take into account the extent of loss (or limited pass through) that happens in the supply chain.

2.66 Again, the last publicly available CBEC report in 2005-06 shows only Rs.75 crore of service tax as being collected from the industry[13]. On a base of 68 million subscribers (as per NRS 2006) paying an average of Rs.165 per month, the estimated service tax collections from analog cable should be in the range of Rs.1,400 crore per annum. Even if estimated full tax collections of Rs.1,400 crore per annum are likely be lower due to certain exemptions and other factors, there is still a significant gap between estimated and actual tax collection which points to the possibility of under-reporting of subscriber numbers in the cable industry.

2.67 Thus, while it may not be possible to incontrovertibly establish the fact of under-reporting or to quantify its extent, the Authority is of the view that there is sufficient collateral evidence to support the contention that the figures represented by the industry do not have a proper correlation with the reality on the ground. In fact, "non-addressable" analogue transmission, by its very nature creates an environment that incentivizes under-reporting of subscriber numbers, and at the same time makes it difficult to establish the actual numbers.

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[12] Figure derived from data gathered during consultation exercise.
[13] Central Bureau of Excise and Customs, Service Tax Figures from last annual report which is publicly available (2005-06)

b) Frequent disputes and lack of collaboration among stakeholders

2.68 From the available evidence and stakeholders' comments, it is clear to the Authority that there is a lack of trust and transparency in the business models in the industry. This is mainly on account of the fact that the subscriber base is a derived number based on negotiations between the broadcasters and the MSO/LCO and most often it is based on pre-defined content cost and the reported ceiling wholesale price. As mentioned earlier, this often leads to disputes between the broadcasters and the MSOs. The tendency of the broadcaster is to seek enhanced subscription fee based on the assumed growth in subscriber base of the MSO while that of the MSO is to seek reduction in such subscription fee based on perceived reduction in the subscriber base. Pricing decisions are made in the absence of data and the price of a channel cannot be effectively negotiated using subscriber uptake numbers as a measure of the channel's popularity. Lump-sum deals could be inefficient as the quantum is decided in the absence of relevant business information. Another fall-out is that this has led to dependence on intermediaries such as aggregators and the distribution agents to guarantee revenue. The industry subscription revenue gets further fragmented by pay outs and commission to these intermediaries. There is a lack of trust between the broadcasters and the cable industry.

2.69 The Authority observes that the absence of relevant business information has led to frequent disputes between stakeholders. These disputes often go into litigation and are observed in a number of areas including access to content, pricing of content and carriage. As litigation is time consuming and expensive, it leads to efficiency loss and is likely to adversely impact the growth of the industry. During the consultation process, suggestions have been made for bringing in a negotiated amount rather than subscriber numbers as the basis for interconnection agreements.

c) Relative importance of advertisement revenue in the broadcasters' revenue stream and its impact on content:

2.70 As mentioned in para 2.45 above, the estimated distribution of subscription revenue across the value chain, based on information received from stakeholders, is as follows: Broadcaster/Aggregator ~20% (Rs.2,900 crore) and Distributor (MSO+LCO) ~80% (Rs. 10,600 crore). On distribution of subscription revenue across the supply chain, it is relevant to note as discussed in para 2.61 above, that in the absence of addressability, the subscription revenue transaction is being undertaken either as a fixed fee (lump sum), or on the basis of a "negotiated" subscriber base. Lack of visibility impacts the distribution of subscription revenue and there is reportedly limited pass through of subscription revenue to the broadcaster and MSO. In the broadcaster's perception, there are risks as well as transactions costs involved in negotiating distribution of subscription revenue in the absence of visibility. One of the consequences is that the broadcasters' business models depend substantially on advertisement revenue to diversify the risks and costs involved in the collection of subscription revenue. This dependence has an impact on content as the broadcasters tend to focus on advertisement friendly genres rather than niche or targeted content. Further, advertisement revenue of a channel depends upon how effectively it delivers a target audience. Since there is no addressability in the market, the viewership of channels is obtained from television audience measurement rating systems (TAM systems) which are in place only in a few cities (metered markets). The television advertisement business is closely linked to the TAM system.

2.71 The inadequacies of the present system results in disproportionate weightage to viewership patterns of a small sample of viewers. The broadcasters focus on producing content which is popular in their perception. The perception of the broadcasters is in turn based on the Television Rating Points (TRP). However, as the ratings are skewed, the system promotes production of content which may not really be popular. The broadcasters fix the rates for advertisement spots for different programmes based on the popularity of such programmes as reflected by Television Rating Points (TRPs). Therefore the delivery of content is also targeted to the preferences of the subscribers in TAM markets. This results in a restricted variety of content for the rest of the subscribers.

d) Incidence of carriage and placement fee

2.72 The dependence on advertisement revenue and the need to ensure reach for the broadcasters' channels is closely linked to the incidence of carriage and placement fee. As mentioned earlier, analogue cable dominates the market with over 75% of cable and satellite homes availing these services. Cable has a capacity to carry around 80 channels in analog mode; however there are about 550 channels present in the market. This has led to a demand-supply mismatch and therefore, distributors are able to 'auction' frequencies to channels that are willing to pay more to be carried. The Authority observes that this has led to the emergence and growth of the phenomenon of carriage and placement fee in recent times. This is being dealt with in detail in Chapter IV.

e) Lack of effective competition

2.73 Distribution of cable TV in India is characterized by few dominant broadcasters and large multi system operators. Some of these broadcasters and large Multi System Operators (MSOs) have become even stronger on account of vertical integration. The last mile operations on the other hand are highly fragmented and therefore there are large disparities in the bargaining power of various players in the distribution chain. On the other hand, at the subscriber level, there is lack of effective competition and lack of choice to the subscribers as the last mile operations are in the nature of a monopoly market.

2.74 The broadcasters own the content to be televised and received by the viewer. In the broadcasting space there are some large players that own and operate more than ten channels (controlling 33% of all the channels), mid-size players that operate between 2-10 channels (controlling 43% of all channels), and lastly standalone regional players or niche channel operators that operate only a single channel (controlling 22% of all channels).

2.75 It is estimated that there are around 6000 MSOs in the sector. The majority of these are small local (city based) or regional (state based) MSOs with a subscriber base of a few thousand. There are some large MSOs having large networks and reach in the country. Competition is growing in the MSOs business. National operators are attempting to reach a threshold market share before undertaking major investments. Through aggressive LCO acquisition strategy, MSOs have tried to expand to new regions. The level of competition in the MSOs' business is not uniform throughout the country; certain cities and states (e.g. Delhi, Bangalore, Haryana, and Maharashtra) have a large number (5-7) of MSOs serving each city, on the other hand certain markets like Tamil Nadu and Punjab are characterized by regional monopolies – where close to 90% of the market is dominated by a single MSO. There are thus instances of specific and regional and state based monopoly within the country which create barriers for entry of new players into these markets. Such MSOs are in a position to exert market power in their negotiations with the broadcasters on the one hand, and with the LCOs on the other.

2.76 The business model of LCOs is largely based on providing services to specific areas/localities within a city. Furthermore, there are significant variations in the size of different LCOs networks - ranging from less than 100 to over 10000 subscribers. As stated earlier, the last mile operations provided by the LCO are in the nature of a monopoly market, though some amount of competition has emerged in recent times from DTH operators.

2.77 Fragmentation of operations at the level of the LCO is also linked to the existence of differential pricing at the retail level. From information gathered during the consultation exercise, it is evident to the Authority that while retail rates are capped under the prevailing tariff order, the Average Revenue Per User (ARPU) per month varies considerably from operator to operator. Based on data received from Consumer Advocacy Groups, the monthly cable bill varies from Rs.70 per month to Rs.250 per month from area to area, and operator to operator. It affects the level of transparency in the supply chain as it further limits the visibility on what ARPU various LCOs are actually collecting. Although there could be a view that the lack of standardized pricing negatively effects consumer interest as some pay more than others for the same product, this can be counterbalanced by the argument that it enables a flexible pricing to accommodate the paying capacities of different strata of consumers.

2.78 Based on the above, the Authority observes that in the Indian broadcasting and cable market, there are marked variations in the level of effective competition at various points in the supply chain in the same delivery platform as well as across various delivery platforms. The slow pace of growth of the alternative modes of delivery of television services is one of the major factors responsible for the lack of competition in the market. In addition, addressability is a crucial pre- requisite for effective competition. Information about the size of the market and the uptake of various platforms, products and services among the subscribers is essential for defining and encouraging effective competition. If sellers (broadcasters and distributers) do not know how many buyers (subscribers) are ultimately purchasing their services, the Authority concludes that the retail price and revenue arrangements among stakeholders cannot be negotiated on any scientific basis and hence cannot be left entirely to free market forces.

C. MOVE TO DIGITIZATION AND ADDRESSABLE SYSTEMS:

2.79 The analysis suggests that many of the above issues could be addressed through a move to an addressable system. Due to legacy reasons and business pressures, the stakeholders have over a period of time, aligned their business models to operate in a non transparent and inefficient environment. Lack of addressability is a root cause for the evolution of inefficient and non- transparent business models. Digitization with addressability will prove to be a technologically superior and practical solution to many of the issues faced by the sector. The technology will lend itself to easy audit and disclosure. It will ease the bandwidth constraints in distribution. It can dramatically improve the quality and variety of television services available to the consumers and open up large revenue streams for the industry if the triple play services are provided.

2.80 Digitization with addressability of the cable TV services would result in a number of advantages to Consumers, Broadcasters, MSOs, LCOs and Government, which are brought out in the following paragraphs.

2.81 For the consumer, there would be choice of channels, enabling him to budget his bill as per his choice and affordability. Thus, he would pay only for what he wants to watch. In addition, he would have a choice of interactive services like video on demand (VoD), personal video recording (PVR), video gaming, teleshopping, broadband with additional features such as EPG (Electronic Programme Guide). He would derive value for his money with enhanced quality of service through competition among operators/platforms.

2.82 Broadcasters would be able to carry on their business transactions on auditable and verifiable subscriber bases instead of negotiated base. The digital dividend would ensure availability of channel choice and spectrum and hence allow viable business planning for existing broadcasters and new entrants. Regional channels would be encouraged. Thus, broadcasters will get value for their content commensurate to quality and content would be protected against piracy. The increased capacity would also enable broadcasters to offer niche channels and HDTV channels.

2.83 MSOs would be benefited as they would be able to choose their channels on a-la-carte basis without having to subscribe them all. They would be able to market pay channels based on demographics and socio-economic conditions in their markets. MSOs would be able to generate more revenue through broadband, value added and interactive services like VoD, PVR, video gaming, music and teleshopping etc.

2.84 For local cable operators, the business transactions will be based on auditable subscriber base. If subscriber base declines, they would get the benefit of the same. Besides FTA subscription, they would get revenue share from all pay channels, broadband services and other value added services. Also, cable operators would be better equipped to meet customer requirements in terms of choice of channels and services and in terms of quality of service.

2.85 As far as Government is concerned, tax collection would match the market size. Also, Government would earn increased service tax revenue through enhanced deployment of broadband and other value added services.

2.86 Lastly, greater transparency in business transactions would significantly reduce litigations amongst service providers and reduce the need for regulatory interventions. This would result in better collaboration among service providers and overall growth of the sector.

2.87 An overwhelming majority of stakeholders across the value chain have strongly voiced their preference for the early implementation of digitization with addressability in the cable TV network. This view has emerged time and again in written submissions and in the open house discussions. In view of this, the Authority has laid out a road map for implementation of digitization with addressability in the country. The recommendations in this regard are being forwarded to the Government seperately. The Authority is also in the process of issuing a tariff order that will encompass all addressable systems such as DTH, HITS, CAS cable systems, IPTV etc. This tariff order will apply progressively in the cable TV networks as they switch over to digital addressable systems.

2.88 In the interim, a view has to be taken on regulation of the non-addressable cable TV sector. Price regulation is justified when markets fail to produce efficient prices. When markets are competitive and are said to function smoothly, they will lead to "efficient" prices that maximize value to consumers. For this efficient ideal competitive situation to be realized, the market must meet a number of conditions. The market must have several suppliers and consumers with none so large as to affect prices. There must also be free entry into and exit from the market. There must be perfect information and absence of transactions costs. Where all these conditions are not present, the market will not generally produce optimal results. In such a situation, there is justification for intervention. The introduction of price regulation in any market is one such intervention. Having examined the characteristics of the analog cable market and the impact of these characteristics upon market efficiency, the Authority is of the view that the non addressable cable TV sector will require appropriate regulatory interventions at some points across the supply chain. These aspects have been discussed in the subsequent Chapters of the Report.

CHAPTER III: TARIFF

A. DATA COLLECTION AND COLLATION

3.1 To understand the current state of the industry and the financial and operational models of various stakeholder groups, a large scale data collection exercise was undertaken by TRAI. M/s Ernst and Young were appointed as consultant to assist the TRAI in this tariff exercise. Six customized questionnaires/data collection formats were designed for various groups – Broadcasters, Aggregators, MSOs, DTH Operators, LCOs with more than 500 subscribers and LCOs with less than 500 subscribers. Using the data received, representative profit and loss (P&L) statements for stakeholder groups in the analog supply chain were developed. The objective of collating these figures was to understand the business models across the value chain and assess the need for intervention at various stages.

3.2 The following paras provide a snapshot of data and nature of information received, as well as the methodology for creating the representative figures for each stakeholder group.

1.Data Analysis

a) Broadcaster

3.3 TRAI received responses from several broadcasters – very few provided channel-wise financial and operational data, while others provided only company-level data. Some broadcasters did not respond to the request for information. The data collated by TRAI takes into account only those channels that participated in this exercise and provided data during this exercise.

3.4 In view of the diverse nature of more than the 500 channels present in the market today, the nature of content (genre) was taken as the primary unit of analysis and the data was collated at a genre-level, on the basis of the following genres:

Genre	**Comments, if any**
1. GEC English	
2A. GEC Hindi Category 1	Split in to Category 1 and Category 2 – based on a high operating cost and a low operating cost model[14].
2B. GEC Hindi Category 2	
3A. GEC Regional Category 1	Split in to Category 1 and Category 2 – based on a high operating cost and a low operating cost model
3B. GEC Regional Category 2	
4. English News	Split in to English, Hindi, Business and Regional News – based on language and/or nature of content
5. Hindi News	
6. Business News	
7. Regional News	
8. Sports	
9. English Movies	Split in to English, Hindi and Regional Movies – based on language of content
10. Hindi Movies	
11. Regional Movies	
12. Kids	
13A. Niche Category 1	Split in to Category 1 and Category 2 – based on a high operating cost and a low operating cost model
13B. Niche Category 2	

Table 3.1: Classification of television channels by genre for the purpose of financial analysis

3.5 The following data points were collected and analyzed - average annual total revenue, contribution of revenue from broadcasting and subscription, average annual operating costs and first year capital expenditure for setting up the channel. The objective of this analysis was to provide an indicator of the business model and revenue mix for

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[14] A cut-off point was determined using the 3-year average of operating cost to separate channels between Category 1 and Category 2. Channels above the point are analyzed in Category 1 and below the mean in Category 2.

various genres, while balancing this with the constraints/ limitations faced during data gathering. For example, while the TRAI is aware that in addition to advertising and subscription income, broadcasters may have other sources of revenue (e.g. syndication, licensing etc.) – these sources were observed to contribute less than 3%-5% of total revenue for the broadcasters who submitted data and in some cases this figure was 0%. Thus these income sources were kept out of the analysis of representative figures, due to their minimal contribution. Similarly, the TRAI is aware that total operating costs indicate only one part of the business model and that a break-up of costs over key heads such as programming, personnel, technology and distribution can provide a more comprehensive understanding. However the TRAI was constrained in its analysis by practical issues such as limited break-ups provided by the broadcasters themselves, or break-ups provided under heads different from those in the prescribed formats. Thus to make the figures comparable for channels both within and across genres, the TRAI chose to consider the operating cost figure at an aggregate level only.

3.6 The data for broadcasters was collated in three steps. The **first step** collated the data only of those channels that provided a channel-wise break up of information to TRAI. Genres where not even one channel provided such information to TRAI were left blank at Step 1. Simple averages of channel-wise data for key revenue and cost items were used to develop representative figures. As an example, figures from two popular genres are provided below:

2A	Genre	GEC HINDI CATEGORY 1		
	Revenue	INR Cr	346	
	Advertising Revenue	INR Cr	318	92%
	Subscription Revenue	INR Cr	28	8%
	Operating Costs	INR Cr	367	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	-6%	
	Capital Expenditure Year 1 - Year 5	INR Cr	35	

4	Genre	NEWS ENGLISH		
	Revenue	INR Cr	32	
	Advertising Revenue	INR Cr	31	97%
	Subscription Revenue	INR Cr	1	3%
	Operating Costs	INR Cr	111	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	-244%	
	Capital Expenditure Year 1 - Year 5	INR Cr	50	

Table 3.2: Representative figures for Broadcasters (Step One)

3.7 However these figures were observed not to provide a true representation of the financial health of the industry. First, while figures for several genres showed negative EBITDA margins – this is in contrast to the profit margins declared by several publicly listed broadcasters. Several companies have declared profits, such as TV Today Network Ltd. (28%), Zee Entertainment Enterprises Ltd. (39%), Zee News Ltd. (16%) and Sun TV Network (47%)[15]. Second, this was also in contrast to the growth trends projected by industry research (such as the FICCI Frames report released in March 2010). Third, these negative figures did not provide a logical explanation for the recent growth in the number of channels and the number of applicants awaiting approval for a broadcast license. In the last few years, the number of TV channels has increased from 136 channels in the year 2005 to around 550 channels today. The exponential growth in the number of channels and a large waiting list of channels for approval indicate that there is a strong business case for television channels. This variance from general industry trends may be on account of several reasons. It includes variations in the operating model of channels and/ or the inclusion of channels at the early stages of growth, which is likely to push down the average margins. The channel-wise averages also depend on the allocation methodology adopted by various networks.

[15] Based on published annual reports posted on company websites, financial results for the year ending March 2009

3.8 The **second step** attempted to use the data provided by certain companies – who provided company-level data, but did not allocate it to the various channels owned and managed by them. This was added to the channel-wise data from the first step. A set of weights for allocation was developed using the average operating cost by genre from the first step. This set of weights was used to allocate the company level data. Genres where not even one channel had provided channel-wise data – and correspondingly where no weight could be developed were left blank in Step 2. These averages provided the TRAI a second set of representative figures. As an illustration of the second step, figures from the genres indicated in Table 3.2 are provided below:

2A	Genre	GEC HINDI CATEGORY 1		
	Revenue	*INR Cr*	419	
	Advertising Revenue	*INR Cr*	380	91%
	Subscription Revenue	*INR Cr*	39	9%
	Operating Costs	*INR Cr*	446	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	-6%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	35	

4	Genre	NEWS ENGLISH		
	Revenue	*INR Cr*	81	
	Advertising Revenue	*INR Cr*	72	88%
	Subscription Revenue	*INR Cr*	9	12%
	Operating Costs	*INR Cr*	109	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	-35%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	50	

Table 3.3: Representative figures for Broadcasters (Step Two)

3.9 Even after this step, the averages did not provide a true representation of the financial health of the industry. In addition, the weights and corresponding allocation was limited by multiple factors. The first was that the weights themselves were derived from a set of figures observed to be in contrast to general industry trends. In addition, applying a standard set of weights does not take into account factors such as the number of channels in each network, the genre mix of channels in each network and, other variations. Nevertheless this step was important, as TRAI's objective was to use all possible methods for collating the data provided in a manner that was both comprehensive and representative.

3.10 The **third step** was to collate the data using certain filtration criteria to remove the impact of aberrations. Such aberrations included early stage channels/ companies that intended to push down the genre averages, inconsistencies and errors in certain data sets and finally, the allocation methodology used by networks to allocate costs and revenues to respective channels. The objective of collating this data, as outlined earlier, was to understand the current state of the industry and develop a logical set of inputs to test applicable tariff models. For example, the previous sets of figures (step one and step two) were limited because there was no base data for certain genres. However for full representation and comprehensive model testing, it was important to have at least some indication of the financial and operational model for these genres. Thus a simplified set of weights based on the source data was developed to estimate these figures. The representative figures at the end of this step for all the genres defined in Table 3.1 are as follows. (The figures for the genres indicated at Tables 3.2 and 3.3 are at Serials 2A and 4 of Table 3.4):

All figures are 3 year averages - unless explicitly mentioned

1	Genre	GEC ENGLISH		
	Revenue	*INR Cr*	50	
	Advertising Revenue	*INR Cr*	30	60%
	Subscription Revenue	*INR Cr*	20	40%
	Operating Costs	*INR Cr*	45	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	10%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	10	

2A	Genre	GEC HINDI CATEGORY 1		
	Revenue	*INR Cr*	600	
	Advertising Revenue	*INR Cr*	420	70%
	Subscription Revenue	*INR Cr*	180	30%
	Operating Costs	*INR Cr*	450	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	25%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	35	

2B	Genre	GEC HINDI CATEGORY 2		
	Revenue	*INR Cr*	150	
	Advertising Revenue	*INR Cr*	120	80%
	Subscription Revenue	*INR Cr*	30	20%
	Operating Costs	*INR Cr*	120	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	20%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	35	

3A	Genre	GEC REGIONAL CATEGORY 1		
	Revenue	*INR Cr*	165	
	Advertising Revenue	*INR Cr*	115	70%
	Subscription Revenue	*INR Cr*	50	30%
	Operating Costs	*INR Cr*	100	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	40%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	20	

Note1: Category 1 and Category 2 refer to 2 different business models prevailing in the same genre. Category 1 refers to the relatively high cost model while Category 2 refers to the relatively low cost model

Note2: Capital Expenditure from Year 1 to Year 5 excludes the impact of synergies for channels that belong to a large broadcasting network.

All figures are 3 year averages - unless explicitly mentioned

3B	Genre	GEC REGIONAL CATEGORY 2		
	Revenue	*INR Cr*	45	
	Advertising Revenue	*INR Cr*	35	80%
	Subscription Revenue	*INR Cr*	10	20%
	Operating Costs	*INR Cr*	30	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	30%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	20	

4	Genre	NEWS ENGLISH		
	Revenue	*INR Cr*	100	
	Advertising Revenue	*INR Cr*	80	80%
	Subscription Revenue	*INR Cr*	20	20%
	Operating Costs	*INR Cr*	130	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	-25%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	50	

5	Genre	NEWS HINDI		
	Revenue	*INR Cr*	170	
	Advertising Revenue	*INR Cr*	155	90%
	Subscription Revenue	*INR Cr*	15	10%
	Operating Costs	*INR Cr*	145	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	15%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	50	

6	Genre	NEWS BUSINESS		
	Revenue	*INR Cr*	75	
	Advertising Revenue	*INR Cr*	60	80%
	Subscription Revenue	*INR Cr*	15	20%
	Operating Costs	*INR Cr*	100	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	-30%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	35	

Note1: Category 1 and Category 2 refer to 2 different business models prevailing in the same genre. Category 1 refers to the relatively high cost model while Category 2 refers to the relatively low cost model
Note2: Capital Expenditure from Year 1 to Year 5 excludes the impact of synergies for channels that belong to a large broadcasting network.

All figures are 3 year averages - unless explicitly mentioned

7	Genre	NEWS REGIONAL		
	Revenue	*INR Cr*	20	
	Advertising Revenue	*INR Cr*	20	85%
	Subscription Revenue	*INR Cr*	5	15%
	Operating Costs	*INR Cr*	20	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	15%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	20	

8	Genre	SPORTS		
	Revenue	*INR Cr*	320	
	Advertising Revenue	*INR Cr*	160	50%
	Subscription Revenue	*INR Cr*	160	50%
	Operating Costs	*INR Cr*	275	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	15%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	50	

9	Genre	MOVIES - ENGLISH		
	Revenue	*INR Cr*	145	
	Advertising Revenue	*INR Cr*	100	70%
	Subscription Revenue	*INR Cr*	45	30%
	Operating Costs	*INR Cr*	75	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	50%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	10	

10	Genre	MOVIES - HINDI		
	Revenue	*INR Cr*	115	
	Advertising Revenue	*INR Cr*	100	85%
	Subscription Revenue	*INR Cr*	20	15%
	Operating Costs	*INR Cr*	90	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	*%*	25%	
	Capital Expenditure Year 1 - Year 5	*INR Cr*	10	

Note1: Category 1 and Category 2 refer to 2 different business models prevailing in the same genre. Category 1 refers to the relatively high cost model while Category 2 refers to the relatively low cost model

Note2: Capital Expenditure from Year 1 to Year 5 excludes the impact of synergies for channels that belong to a large broadcasting network.

All figures are 3 year averages - unless explicitly mentioned				
11	Genre	MOVIES - REGIONAL		
	Revenue	INR Cr	40	
	Advertising Revenue	INR Cr	30	70%
	Subscription Revenue	INR Cr	15	30%
	Operating Costs	INR Cr	30	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	30%	
	Capital Expenditure Year 1 - Year 5	INR Cr	10	
12	Genre	KIDS		
	Revenue	INR Cr	45	
	Advertising Revenue	INR Cr	30	65%
	Subscription Revenue	INR Cr	15	35%
	Operating Costs	INR Cr	40	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	10%	
	Capital Expenditure Year 1 - Year 5	INR Cr	10	
13A	Genre	NICHE CATEGORY 1		
	Revenue	INR Cr	120	
	Advertising Revenue	INR Cr	75	60%
	Subscription Revenue	INR Cr	50	40%
	Operating Costs	INR Cr	105	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	15%	
	Capital Expenditure Year 1 - Year 5	INR Cr	10	
13B	Genre	NICHE CATEGORY 2		
	Revenue	INR Cr	35	
	Advertising Revenue	INR Cr	25	65%
	Subscription Revenue	INR Cr	10	35%
	Operating Costs	INR Cr	25	
	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	30%	
	Capital Expenditure Year 1 - Year 5	INR Cr	10	

Note1: Category 1 and Category 2 refer to 2 different business models prevailing in the same genre. Category 1 refers to the relatively high cost model while Category 2 refers to the relatively low cost model
Note2: Capital Expenditure from Year 1 to Year 5 excludes the impact of synergies for channels that belong to a large broadcasting network.

Table 3.4: Representative figures for Broadcasters (Step Three)

3.11 It must be recognized that while these figures may provide a better understanding of the broadcasting business model, they are nevertheless averages of multiple channels. Thus, they are not likely to be an exact match to the revenues and costs of any single channel or network. These averages mask variations on account of factors such as – network size and strength, popularity/ viewership ratings, content acquisition models, revenue recognition and accounting policies. These concerns were also raised by stakeholders during the comments stage, and are elaborated upon later.

b) Aggregator

3.12 The representative figures prepared by TRAI takes into account only those Aggregators that participated in this exercise and provided data to TRAI. The data for Aggregators were collated in two steps.

3.13 The **first step** was to collate the data using a simple average of all data provided by Aggregators. However the averages may not include variations on account of the operating model followed by various aggregators (e.g. commission based or rights based) or the accounting policies adopted by various companies. These figures are provided below:

All figures are 3 year averages - unless explicitly mentioned

Aggregator			Comments
Average Bouquet Size	*Channels*	24	
Total Revenue - Collections	*INR Cr*	557	*Revenue is the total subscription revenue collected*
Total Operating Cost	*INR Cr*	334	*Costs are total operating costs*
EBITDA Margin	%	40%	

Table 3.5: Representative figures for Aggregators (Step One)

3.14 The objective of the preparing these figures was to test any applicable models for regulatory intervention. The **second step** was to collate the data using certain filtration criteria to remove the impact of aberrations. This included rationalization of the revenue model to make the figures comparable and removal of specific data sets where inconsistencies or errors were observed. The figures for aggregators after applying these criteria are provided below in Table 3.6.

c) Channel Connectivity

3.15 In addition to the costs of the broadcasters and the aggregators, another critical input required to test any models of regulatory intervention is the subscriber base. In the absence of information on how many subscribers were watching/ are likely to watch a particular channel, it is not feasible to derive a per unit price (tariff) that can be charged. As part of the data collection exercise, all stages of the value chain were asked to indicate the uptake of various channels at the primary wholesale level (i.e. from broadcaster to MSO), at the secondary wholesale level (i.e. from MSO to LCO) and finally at the retail level (i.e. from LCO to consumer). However no stakeholder provided comprehensive information for this parameter. To take forward the testing of various models, the TRAI then used the connectivity figures indicated in the interconnect agreements as an estimate of uptake for channel at the wholesale level. These figures are also provided below in Table 3.6:

	Type of Aggregator	Average Bouquet Size	**15+ channels**
1	Revenue	INR Cr	182
2	Costs	INR Cr	197
3	Earnings before Interest, Taxes, Depreciation and Amortizarion (EBITDA)	%	-9%
5	Genre-wise connectivity - in the range of:		
	GEC ENGLISH	*million households*	2.8
	GEC HINDI CATEGORY 1 & 2	*million households*	5.6
	GEC REGIONAL CATEGORY 1 & 2	*million households*	5.6
	NEWS ENGLISH	*million households*	2.7
	NEWS HINDI	*million households*	5.6
	NEWS BUSINESS	*million households*	3.5
	NEWS REGIONAL	*million households*	5.6
	SPORTS	*million households*	4.6
	MOVIES	*million households*	5.6
	CHILDREN	*million households*	3.5
	NICHE CATEGORY 1 & 2	*million households*	2.8

Table 3.6: Representative figures for Aggregators (Step Two) and channel connectivity

d)Multi System Operator (MSO)

3.16 The representative data prepared by TRAI takes into account only those MSOs that participated in this exercise and provided data to TRAI. The data for MSOs have been collated in two steps.

3.17 The **first step** was to collate the data using a simple average of all data provided by MSOs by category – National MSOs with >2mn subscribers and Regional MSOs with 1-2 mn subscribers. However these averages were observed to include variations such as the impact of acquisitions/ expansion on the financials of individual MSOs. The figures are provided below:

All figures are 3 year averages - unless explicitly mentioned

Type of MSO		National	Regional
Revenue	*INR Cr*	**241**	**56**
Subscription Revenue	*INR Cr*	140	14
Carriage and Placement Fee Revenue	*INR Cr*	70	19
Other Revenue - Balancing Figure	*INR Cr*	30	23
Costs	*INR Cr*	**274**	**108**
Programming Costs (Subscription Revenue paid to Broadcasters)	*INR Cr*	166	47
Other Costs - Balancing Figure	*INR Cr*	111	61
Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	%	-14%	-64%

Table 3.7: Representative figures for MSOs (Step One)

3.18 The **second step** was to collate the data using certain filtration criteria to remove the impact of certain aberrations. For example, there appeared to be no standardized method for accounting for digital expansion plans and acquisitions of smaller distribution entities- while some MSOs were capitalizing these costs, others were including them under operating expenditure, causing aberrations in EBITDA margins in the year of expansion/acquisition. The objective of preparing these figures was to test any applicable models for regulatory intervention. Representative figures for MSOs after applying these criteria are provided below:

	Type of MSO	Geographical Footprint	National	% Contribution	Regional	% Contribution
	Connectivity: No. of subscribers	Million House Holds	2 million +	2 million +	1-2 million	1-2 million
1	Revenue	INR Cr	290	100%	90	90
	Subscription Revenue	INR Cr	122	42%	n/a[2]	n/a[2]
	Carriage and Placement Fee Revenue	INR Cr	139	48%	n/a[2]	n/a[2]
	Other Revenue	INR Cr	29	10%	n/a[2]	n/a[2]
2	Costs	INR Cr	277	100%	75	100%
	Programming Costs (Subscription Revenue paid to Broadcasters)	INR Cr	144	52%	39	52%
	Other Costs	INR Cr	133	48%	36	48%
3	Earnings before Interest, Taxes, Depreciation and Amortizarion (EBITDA)	%	4.60%		16.30%	

Table 3.8: Representative figures for MSOs (Step Two)

3.19 It is important to note that both sets of figures are an average of multiple operators. Thus, they are not likely to be an exact match to the revenues and costs of any single operator. It must also be mentioned that while the primary determinant of an MSO's business model is scale (number of subscribers), the figures cannot account for variations on account of certain factors. One of these factors is the extent of competition in the market – the more intense the competition at the MSO level, the lower the ability of the MSO to recover subscription revenue from the LCO. The revenue potential of an MSO also varies due to the extent of reach and target audience delivered by the MSO – the larger the reach and the more relevant the target audience, the higher the revenue potential for carriage and placement fee. Another factor is the success in translating voluntary digitization to higher retail ARPUs, which is observed to vary from network to network – based on competitive pressure from analog cable and DTH. Finally, given the fragmentation, varying years of operation and lack of visibility on the distribution supply chain, there are practical issues in assessing the value of infrastructure pertaining to analog cable services.

3.20 The following additional observations are made with respect to the MSO operating model. Even leading MSOs have limited visibility on the consumer. The declared subscriber base of the major MSOs is in the range of 5-6 million homes[16] (as opposed to NRS 2006 which

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[16] Based on data provided by MSOs during the consultation exercise (sum of analog subscribers of major MSOs); Based on information provided by broadcasters in interconnect agreements for 2009

estimates 68 million homes). The MSO model has become increasingly dependent on carriage fee over the last three years. It accounts for nearly 50% of the revenue for national MSOs. Revenue from carriage and placement fee has almost doubled between 2006-07 and 2008-09 for large MSOs[17]. From a macro-perspective, carriage fee (estimated at Rs. 900-1,000 Crore) constitutes only 5% of the television industry's revenue. However it is a significant source of income for the MSO – contributing up to 50% of his total revenue and indicates its criticality to the MSO business model. The changing role of the MSO, in the context of digitization, and the need to invest heavily in the last mile is posing additional margin pressure. This pressure stems from the need to acquire smaller MSOs and LCOs to improve visibility, as well as the need to invest in digital services to effectively compete with DTH.

e)Local Cable Operator (LCO)

3.21 The representative data prepared by TRAI takes into account only those LCOs that participated in this exercise and provided data to TRAI. The data for LCOs has been collated in two steps.

3.22 The **first step** was to prepare simple averages of LCOs by category – LCOs with more than 500 subscribers and LCOs with less than 500 subscribers. The figures for both types of LCOs are provided below:

[17] Based on data received from stakeholders

		Key data inconsistencies observed
	All figures are 3 year averages - unless explicitly mentioned	
2008-09		
Average no. of channels	66	
Average no. of pay channels	30	
Average no. of FTA channels	35	
Average no. of Local Cable Channels by MSO	3	
Average no. of Local Cable Channels by LCO	1	
Average no. of households	825	*Number of households is 4x no. of connections*
Average no of connections	289	
	(INR)	
Total Revenue 2008-09	677,439	
Subscription Revenue	547,639	*Does not equal figure of INR 555,731 in Pricing Question*
Carriage and Placement Fee	-	
Advertising Revenue - own channels	17,901	
Others	-	
Derived Total Revenue (sum of individual items)	**565,541**	
	(INR)	
Total Operating Cost 2008-09	149,350	
Programming Cost	262,849	*Does not equal figure of INR 321,723 in Pricing Question*
Technology and Transmission Cost	12,064	
Customer Servicing Cost	51,575	
Local channel content cost	143,699	
Any other costs	18,000	
Derived Total Cost (sum of individual items)	**488,188**	*Derived total cost is 3.3x the provided total operating cost*
EBITDA Margin - Total Revenue, Total Cost	78%	
EBITDA Margin - Derived Total Revenue, Derived Total Cost	14%	
	(INR)	
Retail Pricing	**2008-09**	
Average collection	555,731	*Does not equal figure provided under Revenue*
	(INR)	
Content Cost	**2008-09**	
Average payout to MSO	321,723	*Does not equal figure provided under Operating Cost*

Table 3.9: Representative figures from LCOs >500 subscribers (Step One)

		Key data inconsistencies observed
	All figures are 3 year averages - unless explicitly mentioned	
LCO Details		
Average no. of connections	189	
Average Pay Channels	26	
Average FTA Channels	32	
Average Local Cable Channels	15	
ARPU (INR per month)	169	
	per month	
Connectivity and Link Charges		
No. of connections	480	*Does not match with figure of 189 connections given above*
Monthly Fee to MSO/ Broadcaster	15,151	*i.e. INR 181,818 p.a. - does not equal figure of INR 74,575 in operating cost question*
	(INR p.a.)	
Revenue	**189,887**	*This figure is derived from individual line items*
Subscription Revenue	182,523	
Carriage and Placement Fee	3,095	
Advertising Revenue - own channels	4,269	
	(INR p.a.)	
Operating Cost	**161,608**	*This figure is derived from individual line items*
Content/ Programming	74,575	*Does not equal figure of INR 181,818 p.a. provied in Connectivity*
Collection	34,812	
Repairs & Maintenance	31,410	
Any other costs	20,811	
EBITDA Margin - Derived Total Revenue, Derived Total Cost	15%	

Table 3.10: Representative figures of LCOs <500 subscribers (Step One)

3.23 The figures are observed to be inconsistent in certain areas. For example, the number of households reported by the LCOs was observed to be higher than the number of his connections. In certain cases, the total costs derived from the sum of individual cost items (content, technology, customer servicing, repairs, overheads etc.) was not equal to the total cost provided in the operating costs section, and the total revenue derived from the sum of individual revenue items was not equal to the amount shown under total revenue. In certain other cases, the cost of content paid to the MSO did not match with the operating costs for programming. Similarly, the ARPU and subscriber figures were not the same as the subscription revenue.

3.24 The **second step** was to collate the data using certain filtration criteria to remove the impact of aberrations. Information gathered during interviews with LCOs, from consumer advocacy groups and from

MSOs who have direct points, has been used to supplement the information received from LCOs. In order to remove aberrations/ inconsistencies related to the scale of the LCO – these figures are collated on a per subscriber basis. Representative figures for LCOs after applying these criteria resulted in the following:

1	ARPU	*INR per subscriber per month*	165.00
2	Operating Costs	*INR per subscriber per month*	110.00
	Cost of Content (paid to MSO)	*INR per subscriber per month*	40.00
	Collection Costs	*INR per subscriber per month*	30.00
	Infrastructure Maintenance Costs	*INR per subscriber per month*	40.00
3	EBITDA Margin	*%*	33%

Note: these figures are based on steady state companies, aberrations arising from the impact of expansion or financials of early stage companies have not been considered.

Table 3.11: Representative figures for LCOs on a per subscriber basis (Step Two)

f) Monthly Cable Tariff/ Average Revenue per User

3.25 Efforts were made by TRAI earlier to survey the subscription fee being paid for cable TV services. In 2007, prior to drafting the Eighth Amendment, TRAI had commissioned a market study that reported the average cable bill in January 2007 as Rs.200 per month (post tax). It was also reported during the survey that the figure varied from Rs. 149 per month (Kochi) to Rs.322 per month (Shillong).

3.26 For the current exercise, the revenue figure (monthly cable bill or ARPU) for Step Two is based on an average of the responses from consumer advocacy groups that responded with information. This was also confirmed during meetings with MSOs and LCOs. Although the ARPU of Rs.165 is calculated at an all-India level, there is high variation in monthly subscription fee which can range from Rs.65 to Rs.250 across towns/cities. The information received from consumer groups on ARPU is provided below:

Information on ARPU Received from Consumer Advocacy Groups

State/ Region	City	*Monthly Cable Charge (INR) paid to LCO*
Pondicherry	Pondicherry	250
West Tripura District	Agartala	150
West Tripura District	Sdar	150
West Tripura District	Bishalgarh	150
West Tripura District	Sonamura	150
West Tripura District	Khow ai	150
West Tripura District	Teliamura	150
Gujarat & Rajasthan	Himmatnagar	250
Gujarat & Rajasthan	Idar	200
Gujarat & Rajasthan	Khedbrahma	200
Gujarat & Rajasthan	Modasa	250
Gujarat & Rajasthan	Meghraj	250
Gujarat & Rajasthan	Shamlaji	250
Gujarat & Rajasthan	Prantij	250
Gujarat & Rajasthan	Bichhiw ada	100
Gujarat & Rajasthan	Kherw ada	150
Gujarat & Rajasthan	Dungapur	200
Tamil Nadu	Chennai	100
Tamil Nadu	Chennai	130
West Bengal	West Bengal	160
Kerala	Kerala	125
Karnataka	Sagar	125
Karnataka	Shimoga	100
Theni District	Local	100
Jodhpur Dist / Rajasthan	Jodhpur Dist	175
Orissa	Cuttack City	250
Orissa	Cuttack City	250
Orissa	Bhubanesw ar City	250
Orissa	Bhubanesw ar City	250
Orissa	Berhampur	180
Orissa	Paradeep	180
Orissa	Puri	180
Orissa	Rourkela	180
Orissa	Sambalpur	180
Orissa	Angul	180
Orissa	Koraput	180
Orissa	Balasore	180
Chandigarh	Chandigarh	100
Panchkula	Panchkula	150
Mohali(S.A.S. Nagar)	Mohali	250

Table 3.12: Information on monthly cable charges received from different consumer advocacy groups (CAGs)..Contd

Information on ARPU Received from Consumer Advocacy Groups

State/ Region	City	*Monthly Cable Charge (INR) paid to LCO*
UP	Kanpur (Urban)	150
UP	Kanpur (Urban)	150
UP	Kanpur (Urban)	125
UP	Kanpur (Urban)	150
UP	Kanpur (Urban)	250
UP	Kanpur (Urban)	150
UP	Kanpur (Urban)	150
UP	Kanpur (Urban)	250
UP	Kanpur (Urban)	250
UP	Kanpur (Rural)	125
UP	Kanpur (Rural)	125
UP	Kanpur (Rural)	125
UP	Kanpur (Catts)	150
Uttar Dinajpur	Islampur	150
Uttar Dinajpur	Islampur	150
Uttar Dinajpur	Islampur	150
Uttar Dinajpur	Raiganj	150
Uttar Dinajpur	Raiganj	150
Uttar Dinajpur	Raiganj	150
South Dinajpur	Balurghat	125
South Dinajpur	Balurghat	150
Malda	Malda	75
Malda	Malda	150
Malda	Malda	75
Darjeeling	Siliguri	200
Darjeeling	Siliguri	150
Darjeeling	Darjeeling	150
Darjeeling	Darjeeling	100
Darjeeling	Bagdogra	200
Darjeeling	Bagdogra	150
Jalpaiguri	Jalpaiguri	150
Jalpaiguri	Jalpaiguri	90
Jalpaiguri	Aliporeduar	150
Jalpaiguri	Aliporeduar	65
Coochbehar	Coochbehar	150
Coochbehar	Coochbehar	150
Coochbehar	Dinhata	150
Average (INR per month)		**165.00**
Max (INR per month)		**250.00**
Min (INR per month)		**65.00**

Table 3.12: Information on monthly cable charges received from different consumer advocacy groups (CAGs)

3.27 It may be mentioned that the TRAI also commissioned a separate survey conducted by the Centre for Media Studies (CMS) in May 2010, to understand the prevailing analog cable retail tariff in 22 Indian cities. The study indicated that the average monthly cable bill in these cities was Rs.185 (as of March 2010). This supports the all India average of Rs.165 per month, received from the Consumer Advocacy

Groups. The findings of the CMS Study on Average Monthly Subscription Bill are as in the following Table:

City	March 2010	December 2006
Chennai	106	146 (CAS)
Delhi	183	156
Kolkata	161	171
Mumbai	248	240
Bangalore	209	211
Hyderabad	153	169
Ahmedabad	259	217
Bhopal	174	193
Chandigarh	165	212
Cuttack	207	256
Guwahati	187	200
Jaipur	208	244
Jamshedpur	149	158
Raipur	203	232
Kochi	137	149
Lucknow	156	160
Shimla	172	171
Patna	129	158
Dehradun	204	218
Varanasi	157	159
Jammu	185	197
Shillong	319	322
All	**185**	**200**

Table 3.13 Average Monthly Subscription Bill (Rs.) in 22 cities -CMS Study 2010

3.28 The monthly fee is not just a function of the subscriber’s ability to pay, but is also dependent on the cost of operations in a city. Cities with multi-dwelling units and densely populated areas tend to have low incremental costs of adding a subscriber. However smaller cities or hilly areas, that are sparsely populated may have a higher cost of operations (such as cost of cabling etc). Retail level pricing of cable services also depends on the consumer’s ability to pay – due to the non-addressable nature of analog services – it is possible for the LCO to undertake differential pricing for the same service. In some cases, it is reported that the price of the service is also linked to the total number of channels transmitted, and the share of pay channels in the total. Since there is considerable variation in the service across the country, this leads to variations in the retail price.

2. Consultation Paper

3.29 Based on the responses from stakeholders, data collection and analysis, TRAI issued a Consultation Paper on "Tariff issues related to cable TV services in Non-CAS areas" on 25th March 2010. All of the above data was brought out in the Consultation Paper. On 26th March 2010, letters were issued to various associations of cable operators, MSOs and broadcasters informing them about the release of consultation paper and requesting them to submit their comments on the issues posed in the consultation paper in time.

3.30 As mentioned in para 3.29 above, the results of the data collection and collation exercise, and the corresponding representative figures for each stage of the value chain were published by TRAI. Comments were actually solicited from stakeholders on two occasions – the first in November 2009 and the second in March 2010 (during the consultation stage). Four questions are raised regarding the data, and the comments received for each have been taken up separately. Additionally, a question was also raised regarding the size of the average monthly cable bill of consumers:

a)Are the figures representative of different genres of broadcasters? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, not for your company.[18]

b)Are the figures representative of aggregators? If not, what according to you are the correct representative figures? When providing

[18] Referenced to Question 1 in the consultation paper dated 25th March 2010

representative figures, please provide figures for the category, not for your company.[19]

c)Are the figures representative of national MSOs and regional MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, not for your company.[20]

d)Are the figures representative of LCOs with >500 subscribers and of LCOs with =< 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, not for your company.[21]

e)What is the average monthly cable bill in various states, and at an all-India level?[22]

3.31 As can be seen, if stakeholders indicated that these figures were not representative, they were asked to provide an alternative set of figures considered appropriate by them (supported by workings). Stakeholders were also asked to provide representative figures for the category as a whole (i.e. genre or type of operator), and not of their individual company.

a) Are the figures representative of different genres of broadcasters?

3.32 There were several responses received from stakeholders on this issue. Many stakeholders indicated that they did not agree with the figures provided. Some broadcasters indicated that the figures were not representative for different genres. However no workings or alternative figures were provided to enable the TRAI to constructively incorporate stakeholder feedback. Others indicated that they were not in a position to comment without having access to the source data and all aberrations that were excluded. Since individual channel and company data is commercially sensitive, TRAI was not in a position to

[19] Referenced to Question 2 in the consultation paper dated 25th March 2010
[20] Referenced to Question 3&4 in the consultation paper dated 25th March 2010
[21] Referenced to Question 5&6 in the consultation paper dated 25th March 2010
[22] Referenced to Question 7 in the consultation paper dated 25th March 2010

share all the detailed workings with stakeholders. An explanatory note that provided as many details as possible was prepared and circulated in the consultation paper. Several stakeholders indicated that these figures were not in line with their own company figures. This point – that individual company data will necessarily differ from genre or category level averages – had already been recognized by TRAI during the calculations stage, and was so outlined clearly as a characteristic of any average worked out on the basic of the figures for a large number of operators. Finally, stakeholders also indicated that it was difficult to generalize the broadcasting industry and collate information from multiple broadcasters into a single category. Factors such as business models, channel acceptability and popularity, life stage of operations etc. also determine the financial health of the channel.

b) Are the figures representative of aggregators?

3.33 Several stakeholders responded to the figures published for aggregators. Some of them indicated that they were not in a position to comment without having access to the source data and all aberrations that were excluded. Since individual company data is commercially sensitive, TRAI was not in a position to share all the detailed workings with stakeholders. An explanatory note that provided as many details as possible was prepared and circulated in the consultation paper. On the issue of connectivity derived from interconnect filings – stakeholders were of the view that this source was not appropriate and the figures were not correct considering that aggregators provide channels to all platforms including DTH and IPTV. However no workings or alternative figures were provided to enable the TRAI to constructively incorporate stakeholder feedback.

c) Are the figures representative of national MSOs and regional MSOs?

3.34 Several stakeholders responded to the figures published for MSOs. Many broadcasters raised questions on the method of calculation of the representative figures and the need for a detailed understanding of the process of calculation. Some were reluctant to express any views on the correctness or otherwise of the representative figures of MSOs on the ground that it pertained to stakeholders to whose data, they had no access. There was a view that it is difficult to generalize because MSOs are located in different markets. The contribution of carriage fee depends on the revenue potential of the market, and also on whether or not the MSO is present in a metered market. The primary feedback from national MSOs was that the contribution of subscription revenue to total revenue was lower than estimated (close to 30% instead of the estimated 42%) and that of carriage fee was higher than estimated (close to 50%-70% instead of the estimated 48%). However no workings or supporting data sets were provided to support these figures. The figures, including those for revenue mix, given in TRAI's consultation paper are averages on the basis of data made available to TRAI by some MSOs and could be different from those of other MSOs considered in the set or those proposed by individual stakeholders. With regard to regional MSOs, while aggregate revenue had been published, a break-up of revenue from different sources was not provided as information was not available/ adequate. Stakeholders have indicated that this mix of revenue for regional MSOs is in the range of 60%-70% from subscription, 20%-30% from carriage and the balance 10% from other sources like advertising on local channels. However no workings or source data were provided to support these figures. It was also indicated that some regional MSOs also have direct subscribers and thus play the role of an LCO for a part of their network. It is difficult to separate the MSO operations from the LCO operations of these companies raising practical difficulties of estimating the one-time and recurring costs of thousands of individual operators in a fragmented and unorganized market.

d) Are the figures representative of LCOs with more than 500 subscribers and of LCOs with 500 or less subscribers?

3.35 Cable operators submitted that the figures given do not represent the ground realities. The figures do not represent the actual cost of operation of a cable operator, which would be about Rs.180 per subscriber. Among other reasons, they have pointed out that since LCOs work on a small scale as family enterprises, their true costs do not get expressed in the statistics. Entire families work in these networks and their representative salaries and expenses are not accounted for; as they provide 24x7 services, costs appear to be low. Besides, the revenue loss due to non-paying subscribers or subsidy given to subscribers in whose houses amplifiers are installed, etc. is quite substantial, to the tune of 10-15%, which has not been accounted for. Several MSOs – some of which have direct points and others which operate through LCOs – responded to the figures. The general feedback from MSOs was that the profitability of the LCO was understated. It was estimated to be in the range of 50%-60% with average declaration levels of 25%. It was also indicated that the payments to the MSO (estimated at Rs.40 per subscriber per month) are likely to be lower. With regard to collection costs (estimated at Rs.30 per subscriber per month), MSOs indicated that these are in the range of Rs.10-15 per subscriber per month. With regard to infrastructure and maintenance costs (estimated at Rs.40 per subscriber per month), MSOs indicated that these are approximately Rs.15 per subscriber per month. However no workings or supporting data sets were provided to support these figures. The published figures aim to provide an indication of the estimated revenues and costs on a per subscriber basis, and are likely to differ from operator to operator.

e) What is the average monthly cable bill in various states, and at an all-India level?

3.36 Several stakeholders responded to this question, and the range of responses was varied. Three broad points of view were provided, the first set agreed with TRAI's figure given in the Consultation Paper that the average monthly cable bill was Rs.165 at an all India level, the second set indicated that this figure was lower than Rs.165 and the third set indicated that this figure was higher than Rs.165. The responses of the first set of stakeholders (generally MSOs) are summarized below:

All-India	State-level
Rs.165 (same as brought out by TRAI)	Rs.150 to Rs.170 in Himachal Pradesh (Shimla)
Rs.167	
Rs.165 to Rs.170	
Rs.150 to Rs.170 in urban areas and Rs.100 to Rs.120 in rural areas	

3.37 The responses of the second set of stakeholders (generally MSOs and LCOs) who indicated that average monthly cable was lower than Rs. 165/-, are summarized below:

All-India	State-level
Rs.100	Rs.120 to Rs.150 (Tamil Nadu)
Rs.125, ranging from Rs. 50 to Rs.250	Rs.125 (Delhi)
Rs.150	Rs.150 to Rs.165 (South India)

3.38 The responses of the third set of stakeholders (generally broadcasters, and some MSOs) who indicated that average monthly cable was higher than Rs. 165/-, are summarized below:

All-India	State-level

Rs.175to Rs.200	Rs.170 (West Bengal)
Rs. 180 to Rs.250	Rs.175 to Rs.200 (Delhi)
Rs.225	Rs.200 (Maharashtra)
Rs.240	Rs.200 in major towns, Rs.125 in small towns and Rs.50 in rural areas (Chhatisgarh, Orissa, Andhra Pradesh and West Bengal)
Rs.250 to Rs.300	

B. WHOLESALE TARIFF

3.39 After the data collection and collation exercise, the Authority proceeded to examine the issue of regulation of wholesale tariff. The wholesale tariff refers to the price charged by the broadcaster to the MSO. One of the key objectives of this *de novo* exercise was to evaluate the need for, and arrive at, an appropriate tariff at the wholesale level.

1.Stakeholder comments

3.40 With a view to arriving at a decision on the need for and method of price regulation, during the consultation exercise comments were solicited from stakeholders on the following issues:

a) Which of the following methodologies should be followed to regulate the wholesale tariff in the non-CAS areas and why?
i) Revenue share, ii) Retail minus, iii) Cost Plus, iv) Any other method/approach you would like to suggest?[23]

b) If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder?[24] Please provide supporting data.

c) If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?[25]

[23] Referenced to Question 10 in the consultation paper dated 25th March 2010
[24] Referenced to Question 11 in the consultation paper dated 25th March 2010
[25] Referenced to Question 12 in the consultation paper dated 25th March 2010

d) What is your view on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both, advertisement and subscription revenue, what according to you should be the ratio between the two? Please indicate this ratio at the genre levels.[26]

e) What is your view on continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level? You may also suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.[27]

f) Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.[28]

3.41 While the six issues outlined above are closely linked, stakeholders provided detailed comments on each issue separately. These have been taken up one-by-one in the following paragraphs. (The order in which they have been discussed is slightly modified to provide continuity to the discussion and analysis).

3.42 In general, the broadcasters' view was that the wholesale tariff should not be regulated. This stakeholder group was of the opinion that they should be allowed to price their content freely, and that adequate competition in the market would keep the prices in check. Some broadcasters also expressed the view that if complete forbearance was deemed premature at this stage, the existing system should continue subject to allowing inflationary increases to the price, removal of the mandatory a la carte provision, and setting of a sunset date for phasing out of analogue cable services in the country. The MSOs, DTH

[26] Referenced to Question 14 in the consultation paper dated 25th March 2010
[27] Referenced to Question 15 in the consultation paper dated 25th March 2010
[28] Referenced to Question 13 in the consultation paper dated 25th March 2010

operators and some LCOs, in general, indicated that some form of price control was required at the wholesale level to keep prices in check.

3.43 Most MSOs indicated their preference for the revenue share model. Other MSOs acknowledged that while price control in principle was desirable – none of the models could work efficiently in the absence of addressability. These MSOs suggested that the focus should be on addressability, with some interim measures to keep the wholesale prices in check. A DTH operator has suggested as none of the suggested methodologies will work on a stand-alone basis, that content cost can be capped using a mix of revenue share and cost plus approach. A few stakeholders suggested that content pricing be linked to viewership (i.e. TAM ratings or TRPs), but no specific proposal or workings were provided.

3.44 Several options were provided by MSOs and LCOs on what could be the prescribed revenue share among stakeholders. These included:

- Broadcaster (40%): MSO (35%): LCO (25%)
- Broadcaster (33%): MSO (34%): LCO (33%)
- Broadcaster (40%): MSO (30%): LCO (30%)
- Broadcaster (55%): MSO (45%) – on the income earned by the MSO from the LCO
- Broadcaster (30%): MSO (35%): LCO (35%)

However, no workings or supporting data were provided to indicate the basis of this revenue share. In addition, no comments were provided on how the revenue share mechanism could be practically implemented in a non-addressable environment – where the key metric – subscriber uptake of various channels is not known.

3.45 Stakeholder opinion was divided on the issue of using the cost plus model to regulate the wholesale tariff. As per the broadcasters, the cost- plus model cannot work on unreliable and incomplete data and, in the absence of addressability, revenue share and retail minus will be highly ineffective. Those MSOs that indicated that cost plus was not appropriate were of the opinion that such a model could lead to an inflation of costs at the wholesale level. Other MSOs indicated that a cost-based model should be applied, and that the ceilings should be channel-wise and not genre-wise. There were no specific comments from these MSOs on the structure of the cost plus model developed by TRAI, and no alternative models were proposed.

3.46 On the issue of forbearance, the broadcasters almost unanimously indicated that this is the preferred solution. Some broadcasters were of the opinion that an arbitrary increase in the price of a channel would be automatically checked by the level of competition in the market. Others indicated that appropriate regulation should be framed to ensure such increases do not happen. With respect to MSOs, in general, the comments received indicated that forbearance was not an acceptable option at the wholesale level and that subscription tariffs need to be regulated till the time addressability is established in the entire cable TV network in the country.

3.47 The general response from broadcasters on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue, is not feasible. In fact it is observed that channels incurring high distribution costs (on carriage and placement fee) are FTA channels that have no subscription income. Thus an inverse relationship is observed between the cost and revenue streams suggested above – i.e. channels with high content costs are likely to earn a higher proportion of their income from subscription. In contrast, channels with high distribution costs are likely to earn a higher proportion of their income from advertising. However, some MSOs felt that there should be a clear separation between pay and FTA channels. While FTA channel should get the entire advertisement revenue to meet out content cost, pay channels should not carry any advertisement and should only collect subscription revenue. Some MSOs and LCOs have suggested that the broadcasters be allowed to generate revenue from both streams (advertisement and subscription), with the suggested ratios varying from 50:50 to 70:30.

3.48 On the issue of continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level, some broadcasters indicated that the existing tariff regime should be phased out and a forbearance regime be brought in at the wholesale level. Others were of the view that the current system could be an interim measure until digitization, licensing and addressability set in. However, this needed to be subject to certain provisions such as removal of a la carte clauses, measures to improve connectivity and visibility on the actual subscriber base and movement of LCOs towards a franchise model. In general, MSOs also agreed that a freeze on the current rates as per the 2007 order was a workable solution; starting from next year, there can be an annual review to allow for inflation cost adjustment. Some MSOs indicated that this should be supported by a corresponding freeze on the connectivity. In addition, almost all MSOs were of the view that the a la carte provisions should continue, and that MSOs should be permitted to purchase a la carte channels at the same connectivity as the connectivity used to purchase the bouquet. DTH operators have suggested that wholesale tariff for broadcaster should be based on a-la-carte.

2.Analysis and Conclusions

3.49 In line with stakeholder responses, the analysis is also taken up separately on each of the six issues under consideration. On the issue of which model is appropriate for regulation of wholesale tariff, the conclusions of the Authority are provided after detailed discussions of the benefits and risks of each model.

a) Which of the following methodologies should be followed to regulate the wholesale tariff in the non-CAS areas and why?
i) Revenue share, ii) Retail minus, iii) Cost Plus
If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder?
If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?

3.50 In respect of regulation of wholesale tariff, there are competing arguments on both sides provided by stakeholders – i.e. both for and against regulation of the wholesale tariff, made by the MSOs and broadcasters respectively. The primary argument against regulation is that there are adequate channels in the market today, and that market driven pricing at the wholesale level is warranted. At the same time, the competing point-of-view is that given the non-addressable nature of the current system – there may be a need to check arbitrary pricing at the wholesale level. The Authority is of the view 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. At the same time, if a pricing mechanism is developed to control tariff at the wholesale level, the Authority is of the view that it should be efficient and dynamic enough to mirror the complex nature of the broadcasting industry, otherwise price controls could further distort market signals. The Authority is also of the view that the long term resolution of this issue requires addressability and transparency across the value chain and the focus should be on such long term resolution.

3.51 The following methodologies were evaluated by TRAI for regulating tariff at the wholesale level:

- Revenue Share Mechanism
- Retail Minus Model
- Cost Plus Model

3.52 As far as the revenue share mechanism is concerned, this method of tariff determination allows for sharing of the subscription revenue generated at the consumer end by all stakeholders in the value chain. Thus all parties receive a pre-defined share of subscription revenue – this is similar to the current tariff regime for digital cable services in CAS areas. In these areas, retail tariff is shared in the ratio of broadcaster (45%), MSO (30%) and LCO (25%) The prescribed revenue share mechanism for CAS areas was based on the approximate costs incurred by each stage of the value chain plus an assessment of the expected returns to each stakeholder group.[29].

3.53 With respect to the benefits/ advantages of this methodology – revenue sharing provides a simple and transparent approach to price control at the wholesale level. Because it is aligned to the retail price, it ensures that the share of each stakeholder is linked to the demand (consumer uptake) of the product. In addition, since all stakeholders gain if the retail price increases, there is likely to be collaboration across the value chain to drive revenue increase through product improvement.

3.54 While revenue sharing is an efficient form of price control, the Authority is of the view that this methodology can be implemented only in an addressable environment. In non-CAS markets, negotiations are conducted on a subscriber base that varies from stakeholder to stakeholder. Thus it is difficult to determine the retail price of a single channel, and this mechanism is not applicable.

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[29] Details are in the Telecommunications (Broadcasting and Cable Services) Interconnection (Second Amendment) Regulation 2006 dated 24th August 2006, read with the Standard Interconnection Agreement introduced by the said Amendment.

3.55 The retail minus model links the price of specific types of content to the consumers' willingness to pay for them. The principal advantage of this method is that it allows the wholesale tariff of content to be aligned to the retail tariff of the same content. From the money recovered from the subscriber (retail price), it allows the distributor to recover his cost of operations (allocated to that content) and a reasonable margin – as a fixed cost. The balance accrues to the content owner. This implies that in cases where content is popular and consumer willingness to pay is high, the wholesale tariff is high. Vice versa, for less popular content where willingness to pay is low, the wholesale tariff would also be low.

3.56 Estimation of the wholesale tariff through this 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-CAS markets, it is difficult to obtain reliable information for both (1) and (2). With regard to channel/ bouquet wise pricing – the analog service is sold as a bundled feed of ~80 channels where the consumer cannot choose content of his/ her choice. With regard to uptake, the lack of addressability means that there is no reliable way to estimate the number of subscribers receiving a specific channel at their home.

3.57 In the absence of this empirical data, the Authority is of the view this method of tariff estimation is not appropriate for the Indian scenario. This conclusion is supported by international experience where the retail minus approach has been used to determine tariff only in addressable systems. Additionally, where this approach was considered internationally, the consumer had the choice to choose the content in question. It may be concluded this approach is more reliable for digital, a la carte services than for bundled analog services.

3.58 In the cost plus approach the “relevant” or “allocated” cost base of a channel is determined on the basis of sound financial and operational information from the broadcasters. This cost base plus a reasonable margin/ rate of return – is then allocated over the subscriber base of that channel – in order to determine the unit price. In other words, a cost based model takes into account the relevant operating costs of a channel and relevant capital expenditure in order to determine at what price and corresponding revenue the channel will recover its costs and earn a reasonable margin.

3.59 There are two key attributes of the cost based approach. The first is that it allows for effective recovery of the seller’s costs and plus a reasonable margin. This makes the business viable as costs and returns are accounted for. The second feature is that it constrains the ability of the seller to charge monopolistic price (i.e. an unwarranted price premium) – as the price must be aligned to the cost base. This protects consumer interest and prevents over-charging.

3.60 Reliable estimation of a wholesale tariff for broadcasting through this approach requires the following sets of data:

(1) 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

(2) Information about the uptake of various channels at the consumer end – to determine the denominator.

3.61 Among all identified mechanisms of price control, the cost plus model was considered to be most relevant to the Indian market. (The other two methodologies, revenue share and retail minus, are not suited for the analog transmission environment.) A cost-based approach was also an important argument made by parties in the case before the TDSAT and it found mention in the judgment of 15.1.2009 as a key action area for future tariff determination. 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. Details of the information gathering exercise and efforts made by TRAI to gather data from stakeholders have already been described in paras 3.1 to 3.38.

Cost Plus Approach

3.62 TRAI deployed a "Cumulative Cash Flow" model to determine the appropriate level of wholesale tariff. In view of the diverse nature of the 500 plus channels present in the market today, the nature of content (genre) was taken as the primary unit of analysis and the data was collated at a genre-level. The complete description of the manner in which data from the broadcasters was collated and analyzed to arrive at genre wise representative figures for the industry is described in paras 3.3 to 3.10 above. The Table 3.4 gives the representative figures of revenue, operating cost, EBITDA and capital expenditure for each genre of channel for the entire broadcasting industry.

3.63 The "Cumulative Cash Flow" model was developed at a genre-level, with the intent to generate recommended ceilings for each genre. A detailed methodology note and sample calculation was provided in the consultation paper dated 25^{th} March 2010.

3.64 As mentioned above a genre level approach has been adopted for determining the optimal whole sale tariff for 13 different genres of channels. A representative business model has been built for a representative channel in each genre. The time period for the business model has been taken as 5 years with year 1 being the first year of operation of the representative channel. Key cash outflows are the operating costs of the channel, capital expenditure as well as the cost of financing capital expenditure and any operating losses in the initial years. Key cash inflows are advertising and subscription revenue. The proportionate share of cost to be recovered from subscription revenue is dependent on the age of the channel. The target is that at the end of 5 years the cumulative inflows over 5 years set off the cumulative outflows over the same period. After this the channel enters a “steady” or “mature” state. The objective of arriving at the steady state is to assess what is the level of subscription revenue at which the business is stable. The calculation of steady state revenue is linked to two parameters – (i) the cash break even i.e the year in which cash inflows equal cash outflows and (ii) the cash pay back periods i.e. the year in which cumulative cash inflows equal cumulative cash outflows. A revenue index has been indicated in the model; this index measure cash inflows as a percentage of cash outflows. If the index is 100% key inflows are equal to key outflows; this happens in the break-even year. If the index is less than 100% the channel is incurring cash losses; if it is greater than 100% the channel is generating cash profits.

3.65 The key metrics utilized to built the representative channel financial statements are (i) operating costs over 5 years and (ii) capital expenditure over 5 years, both calculated from broadcaster data and indicated in Table 3.4 (iii) debt equity ratio 20:80, cost of debt 12% per annum and cost of equity 20% per annum based on broadcaster information (iv) mix between advertising and subscription revenue based on observed mix in broadcaster data for channels in each genre (v) uptake of channels in a genre in terms of number of subscribers which has been based upon maximum connectivity indicated in available inter-connect filings.

3.66 The Cumulative Cash Flow model and data provided by stakeholders enabled calculation of wholesale tariff at the genre-level. A sample tariff calculation using the cumulative cash flow model based on representative figures for a genre XYZ is illustrated below using key data points such as annual operating cost Rs.50 crore, one-time capital expenditure Rs.10 crore, revenue split between advertising and subscription ranging from 100:0 in year 1, to 60:40 in year 5 and maximum connectivity (number of subscribers) of 2.81 million, is indicated below.

	Example: Genre XYZ					(INR Cr)	
		Year 1	Year 2	Year 3	Year 4	Year 5	Source
A	Operating Costs	50.00	50.00	50.00	50.00	50.00	Stakeholder information
B	Capital Expenditure	10.00	-	-	-	-	Stakeholder information
C	Debt (20%)	2.00	-	-	-	-	Balance sheet analysis
D	Equity (80%)	8.00	-	-	-	-	Balance sheet analysis
E	Return on Capital - pre tax	1.84	1.84	1.84	1.84	1.84	
F	Interest on Debt (12%)	0.24	0.24	0.24	0.24	0.24	Balance sheet analysis and industry research
G	Return on Equity (20%)	1.60	1.60	1.60	1.60	1.60	Balance sheet analysis and industry research
H	Total Recoverable Cost (A+E)	51.84	51.84	51.84	51.84	51.84	
I	Revenue Index (as a % of recoverable costs)	42%	65%	100%	135%	182%	Assuming Year 3 break even - international benchmarks
J	Growth in revenue		35%	35%	35%	35%	
K	Revenue Split (Current)						
L	Advertising	100%	90%	80%	70%	60%	Stakeholder information
M	Subscription	0%	10%	20%	30%	40%	Stakeholder information
N	Corresponding Revenue (I*H)	21.90	33.70	51.84	69.98	94.48	
O	Advertising (L*N)	21.90	30.33	41.47	48.99	56.69	
P	Subscription (M*N)	-	3.37	10.37	21.00	37.79	
Q	Annual Recoverable Costs from Subscription - INR Cr (P)	38					
R	Max Connectivity (mn)	2.81					
S	Corresponding Monthly Tariff - INR ((Q/R)/12)	11					

Table 3.14 Sample tariff calculation using cumulative cash flow model

3.67 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. This model giving all its details was tabled to stakeholders during the consultation process. The ensuing paragraphs however indicate the issues observed while using the cost based model for pricing channels – first, in the numerator (i.e. the allocated cost base) and second, in the denominator (i.e. the number of subscribers or uptake).

3.68 There are two issues with the estimated cost base:

-Limited availability of comprehensive channel-wise information from the industry

-Significant variation in the cost base

3.69 A limited number of pay channels provided information at a channel level (and even this was partial in most cases). In the absence of comprehensive and broad-based channel-wise information – the estimated cost base runs the risk of not accurately representing the cost base of the broadcasting sector. In addition, variations in the business model of the broadcaster can significantly impact the cost base of a channel. A simple genre-level average cost for tariff determination cannot adequately represent the variety of business models present in the broadcasting sector today. This fact is reflected in the comments received from stakeholders on the collated genre level data provided in the consultation paper. To provide a fully accurate representation of various channels in the industry, a multi-dimensional framework is required with hundreds of possible permutations and combinations. As the model becomes more and more accurate, the number of price points increase – finally leading to a point where the applicable numerators equal the number of channels available.

3.70 These dimensions/ points of variance include the business model, ownership structure, network strength and popularity of the channel. Some of these factors are i) whether it is a standalone channel or a network-owned channel – a network channel will be able to operate at significantly lower capital and operating costs vis-à-vis a standalone channel by leveraging network synergies; ii) whether it has original content production or it follows a syndicated content model – a channel operating on syndicated content may be able operate at lower cost of content vis- à-vis competitors; iii) what are the markets of its presence – cost of operations for a channel may differ (due to infrastructure and distribution costs) based on the number and nature of markets it chooses to be present in; iv) whether the entity is vertically integrated – vertically integrated companies may be able to benefit from economies of scale thereby reducing their operating and/or capital costs.

3.71 Yet another issue in deploying an average operating cost figure to determine the base is that if two channels in the same genre have a dramatically different cost base, when averaged, the data is reflective neither of the low cost nor the high cost channel. Given the large number of channels in the pay broadcasting business (150) and the diversity in business and operating models adopted by them, the Authority is of the view that the cost plus approach is likely to effectively mirror the cost base only when applied at the level of a single channel/ product. As the number of channels in each category (in this case, genre) increases – the average cost base ceases to represent variations in the business model. While pricing each channel using data only of that channel and applying it to the cost plus model may produce more accurate results, it is tantamount to a case-by-case approach to pricing. Given the large number of channels/ broadcasters and the various methods of accounting and information management adopted by them, the Authority is of the view that the case-by-case approach is not likely to provide a practical solution to the issue of wholesale tariff.

3.72 The absence of data on the subscriber base is one of the reasons why tariff determination through revenue sharing or retail minus is not applicable in the Indian context. This information was also sought from stakeholders during the consultation exercise, but no channel provided the "estimated subscriber base" that it reaches out to. With respect to the cost based model, this creates practical difficulties in calculating the unit price.

3.73 In the absence of reliable subscriber numbers, TRAI used the current connectivity (based on interconnect agreements) to test the cost plus model. The issues observed with regard to use of current connectivity are described below.

3.74 The first concern is that connectivity is observed to differ from operator to operator and region to region. There is also limited information available to correlate this connectivity to the "actual" subscriber base of the operator and/or region. Second, significant variation in connectivity is observed, even among channels of the same genre. This needs to be viewed in light of the prevailing transaction models. Since all channels of a genre are operating at the price ceiling (based on the similarity principle), what differentiates their revenue is the number of connections that the tariff is multiplied with. During mathematical analysis with minimum, maximum and average connectivity figures for any genre – the unit price for a given cost base was found to be highly sensitive to the connectivity figure used. Third, the current connectivity is a derived number based on the target subscription revenue of a channel and the applicable tariff. An attempt to calculate the tariff using the subscription revenue requirement (derived from current costs and revenue) and the observed connectivity – is likely to lead to a ceiling that approximates the current tariff. Finally, the use of current connectivity figures is likely to perpetuate the mismatch between (1) the per subscriber cost of content to the MSO and, (2) the per subscriber retail price of television services. Thus it is not likely to lead to the alignment of business models across the value chain, which is identified as a key concern in non-CAS markets. Stakeholders' concerns on the use of connectivity figures have already been discussed earlier in this Chapter.

3.75 As regards the possibility of evolving cost based channel wise tariffs, it is stated that as the method of calculation moves from the genre level to the channel level, the cost base (numerator) may mirror the specific business model of the channel more closely. As a result, the channel-level ceiling is likely to be more accurate than a genre-level ceiling at least in so far as the numerator is concerned. However the accuracy of the channel-wise model must also be viewed in context of its practicability. The Authority is of the view that case-to-case pricing of channels is neither feasible nor practical at present, as the industry is characterized by 150 pay channels, all with varying methods of accounting and information management.

3.76 **Taking into consideration all these factors, the Authority is of the view that the results of the cost-based model, at present, are of limited reliability and applicability due to the lack of comprehensive data from the industry and the nature of the industry.**

b)Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.

3.77 A forbearance tariff regime allows for price determination based on mutually agreeable terms. In this regime, broadcasters and MSOs would be free to decide, on mutually agreeable terms, the price of content, level of discount, payment terms etc. It has been argued by stakeholders that intervention in B2B transactions should be evaluated only if it improves efficiency in the market. This is validated by the experience of international regulators, where wholesale tariff intervention is undertaken in very specific cases – either for (1) dispute resolution or (2) to protect the interests of one party where a monopolistic or anti-competitive tendency is established in the other party. Numerous representations were made by broadcasters during the consultation phase arguing the case for forbearance.

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

c) Can the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both, advertisement and subscription revenue, what should be the ratio between the two? Please indicate this ratio at the genre levels.

3.79 Channels incurring high distribution costs (on carriage and placement fee) are FTA channels that have no subscription income. Pay channels that have a dual source of income are in fact observed to have relatively higher content cost as compared to the cost of distribution. Thus an inverse relationship is observed between the cost and revenue streams suggested above – i.e. channels with high content costs are likely to earn a higher proportion of their income from subscription. In contrast, channels with high distribution costs are likely to earn a higher proportion of their income from advertising. Given the inverse relationship between the cost and revenue items indicated above – it is highly unlikely that FTA channels will earn subscription revenue, and vice versa. Thus the Authority is of the view that this model cannot be implemented in the current context.

d) Whether to continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level?

3.80 The de novo exercise conducted by the TRAI has re-evaluated the current price regime at the wholesale level. As explained earlier, a number of practical issues were faced 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. The Authority is of the view that effective resolution of the wholesale tariff issue can only come through the introduction of digital addressability, which is an important long term goal.

3.81 The Authority has also examined in depth the basic features of the prevailing tariff dispensation at the wholesale level. From one point of view, it may be said that if in fact, three years from now, the Indian cable & satellite market is envisioned as a fully digital, addressable environment – then bringing in a completely new tariff structure is likely to create significant compliance costs in the interim for stakeholders at both ends (broadcasters and MSOs). A new tariff regime will require renegotiation 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 are also supported by comments received from stakeholders during the consultation process. While broadcasters and MSOs have initially expressed discomfort with the current regime (broadcasters preferred forbearance while MSOs preferred more stringent price control) – both parties have also 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 is of the view that the best option is to**

draw upon the features of the prevailing tariff structure as a workable solution for the analog regime.

3.82 On account of price inflation, there may have been some increase in the costs of the broadcasters since the time of issue of the last Tariff order by the Authority. At the same time, there has been growth of markets and increase in subscriber numbers especially in the addressable DTH segment. Analysis of monthly WPI data shows that from January 2009 to January 2010, the WPI has increased from 228.9 to 250.5 and thus the annual inflation comes to 9.4%. From January 2009 to May 2010, the inflation for the whole period was 12.75%. However, trend analysis shows that in the period January 2009 to June 2009, the inflation was 2.6% and from June 2009 to December 2009 it increased to 5.6%. Calculating for the 6 months from December 2009 to May 2010, the rate has again dropped to 3.9%. **Keeping in mind all these factors, and the interests of consumers, the Authority is of the view that it would be appropriate to allow an increase of 9% over the existing prices of the channels/bouquets.**

3.83 The broadcasters would be permitted to price any new pay channel based on the similarity principle i.e. the price of a new channel would have to be similar to the rates similar channels in the same genre and language. The broadcasters would have to continue to offer existing bouquets. They would also be free to offer new bouquets. The MSOs would have the option to choose one or more bouquets.

C. A LA CARTE PROVISION AT WHOLESALE LEVEL

3.84 The key issue raised is that currently MSOs have to purchase content in the form of multiple bouquets. These bouquets were frozen first in 2003, and again in 2007 and have remained the same since then (with minor changes through addition and deletion of channels). The purpose of this exercise was to evaluate if broadcasters should be mandated to provide their channels on an a la carte basis to MSOs. This implies that MSOs would have the choice to buy either single channels (a la carte) or bouquets from the broadcasters. Alternatively if this provision is not mandated, then broadcasters can restrict MSOs from purchasing single channels and make them available only in bouquets.

1. Stakeholder Comments

3.85 During the consultation exercise, comments were solicited from stakeholders on the following issues:

1. Should the broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs? If yes, should the existing system continue or should there be any modifications to the existing conditions associated with it?[30]
2. How can it be ensured that the benefit of a-la-carte provisioning is passed on to the subscribers?[31]
3. Are the MSOs opting for a-la-carte after it was mandated from the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10. 2007. If not, why?[32]

3.86 While the three issues outlined above are closely linked, stakeholders provided detailed comments on each issue separately. These have been taken up one-by-one in the following paragraphs.

3.87 On the issue of whether broadcasters should be mandated to offer their channels on an a la carte basis, the general response received from the broadcasters was that this provision should not be made mandatory. The arguments provided by the broadcasters include the fact that a la carte actually reduces choice at the subscriber end, and that even though this provision is in force, MSOs are not opting for a la carte. The general response received from the MSOs was that it should be made mandatory, as the current bouquets (frozen in 2003) were too large and did not

[30] Referenced to Question 19 in the consultation paper dated 25th March 2010
[31] Referenced to Question 20 in the consultation paper dated 25th March 2010
[32] Referenced to Question 21 in the consultation paper dated 25th March 2010

provide a relevant bundle of content to the MSO. This was necessary to rationalize the cost of content, as the current system of bouquet selling creates large, unwieldy bundles that the MSO is forced to buy. The MSOs also indicated that any a la carte provisioning would need to be supported by checks and balances in the system to ensure that a la carte channels are provided to MSOs on the same connectivity as that of the bouquet. Currently, the MSOs reported that broadcasters were increasing the connectivity for a la carte channels – in effect, making a la carte infeasible (as the reduction in price is set off by an increase in connectivity).

3.88 On the issue of how the benefits of a la carte can be passed on to the subscriber, there were two main points of view. The broadcasters, in general, indicated that due to the technological constraints of analog cable – it was not possible to pass on the benefits of a la carte provisions to the subscriber. The MSOs indicated that with an affordability linked ceiling at the retail tariff level, this benefit will automatically get passed on. This is because the MSO/ LCO will pass on the reduction in the cost of content obtained through a la carte purchase of content, through a reduction in the effective price paid by the subscriber (monthly cable bill).

3.89 On the issue of why or why not, the current a la carte provisioning was being enforced/ implemented on the ground – i.e. if MSOs were actually opting for a-la-carte – there were two main points of view. The broadcasters iterated that MSOs were not opting for a la carte as the bouquet pricing was more efficient for them, and allowed them to purchase more channels at a reduced, bundled price. The MSOs in contrast, indicated that a-la-carte was not feasible as the connectivity demands of broadcasters for a-la-carte purchase of channels were much higher than if channels were purchased in the bouquet. This was effectively setting off the benefit of a-la-carte provisioning for the MSO, as the cost of content remained the same.

2. Analysis

3.90 There are strong arguments on both sides, both for and against the mandatory provision of a-la-carte. The key argument in favour of mandatory a-la-carte at the wholesale level is that it reduces the cost of content for the MSO – which is beneficial if these benefits are expected to be passed on to the consumer. This is because mandatory a-la-carte can help restrict the channels purchased by the MSO to those most relevant to his markets of presence.

3.91 The arguments against mandatory a la carte provision are that it reduces bundling efficiencies and there is a risk of breakdown of the broadcaster business model. The first argument is that a la carte provisions reduce inherent bundling efficiencies. It has been observed that mandatory a la carte provision could be less efficient as it reduces efficiencies related to bundling, that are an important driver of growth at both the wholesale and the retail level. Internationally, some regulators such as Ofcom have refrained from mandating a la carte provisioning. The second argument is that mandatory a la carte, in the current environment poses a risk to the pay broadcaster's business model. The a-la-carte business model (at both wholesale and retail level) is only feasible for a select set of channels – that are driven largely by subscription revenue. In the absence of addressability and technology that allows a la carte uptake at the subscriber end – it is not viable to push the broadcasting industry to align itself to a-la-carte provisioning.

3.92 The Authority has taken note of the fact that in the context of price controls at the wholesale level where ceiling prices for bouquets as well as channels are derived from current tariff levels, some element of cross-subsidization is inherent in the pricing structure i.e. the a-la-carte price of driver channels in every bouquet would be higher than current levels in a free pricing regime and the connectivity of non-driver channels in every bouquet would be lower than current levels in a free-pricing regime. Dismantling the bouquet system in the circumstances could have a detrimental impact on the broadcasters' business model because driver channels will not be able to effectively monetize their leadership position (as the a-la-carte price is capped) and non-driver channels will experience a dramatic fall in reach/ connectivity as they will no longer be carried/ purchased by MSOs.

3.93 The Authority has also observed that a la carte has not translated into practice even after broadcasters had been mandated to offer their channels on a la carte basis by the 8th Tariff Amendment Order of 4.10. 2007. In an environment where wholesale level pricing is determined by market forces, the a la carte price of a channel is likely to be disproportionately higher than the bouquet price. This has also been the experience in international markets. In the non-CAS regime, the gap between a la carte and bouquet pricing is lower, due to applicable price controls and the perverse pricing conditions. However it is observed that broadcasters demand higher connectivity to offset the impact of price control. Until the lack of transparency in the system persists, this practice cannot be controlled and MSOs are thus unlikely to opt for a la carte. In the absence of addressability, mandatory a-la-carte at the wholesale level is therefore not an implementable solution.

3.94 Further, the Authority also has noted that in an analogue system, the benefit of a la carte provisioning cannot be passed on to subscribers due to technological constraints. Thus even if MSOs purchase content on a-la-carte basis, the subscriber has limited choice, as the analog service is a bundled service of ~80 FTA and pay channels at the retail level. The full benefits of a la carte can be achieved only if it translates into genuine choice for the individual subscriber. **In the analog, non-addressable environment, the Authority is of the view that a la carte should not be made mandatory at the wholesale level as**

technological constraints in any case make it impossible for the benefits of a-la-carte provisioning to be passed on to the subscribers.

D. RETAIL TARIFF

3.95 The retail tariff is the price charged by the local cable operator to the subscriber/ consumer. In non-CAS 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. As discussed in paras 3.26 and 3.27 of this Chapter, the prevailing average monthly price of the analogue cable service based on feedback from CAGs at an all-India level is Rs.165 per subscriber , and based on the CMS study of 22 cities, it is about Rs.185 per subscriber. However, variations are observed based on several factors such as the cost of cabling and servicing the household, the relative affordability of various households and others.

1. Stakeholder Comments

3.96 With a view to determining the need for price regulation at the retail level, during the consultation exercise, comments were solicited from stakeholders on the following issues:

1. Which of the following methodologies should be followed to regulate the retail tariff in Non-CAS areas and why?
   (i) Cost Plus (ii) Consultative Approach (iii) Affordability linked (iv) Any other method/approach you would like to suggest.[33]
2. In case the affordability linked approach is to be used for retail tariff then should the tariff ceiling be prescribed (i) Single at

[33] Referenced to Question 16 in the consultation paper dated 25th March 2010

national level (ii) Different ceiling at State level or (iii) A tiered ceiling (3 tiered) as discussed in the Consultation Paper or (iv) Any other. [34]

3. In case of retail tariff ceiling, should a ratio between pay and FTA channel or a minimum number of FTA/ Pay channels be prescribed? If so, what should be the ratio/number? [35]

3.97 Since all of these issues are linked, the comments on these three questions relating to retail tariff have been taken together, rather than separately. In general, broadcasters indicated that forbearance at the retail level was preferred. This was due to the competitive offerings available in the market to the subscriber through alternate platforms such as DTH. However if the tariff was to be regulated, they indicated affordability as the preferred approach, though a few opined that it could lead to multiple prices for the same product which could be confusing for customers. For the cost plus method, two major inputs are cost of content per subscriber and cost of transmission/ distribution per subscriber. Arriving at per subscriber cost is limited by the assumption of a standard channel mix across the entire subscriber base which is fallacious, as lack of visibility in the subscriber base means there is no reliable data to back up the assumption. Further, the cost plus method would presume that channels are standard products or commodities, which they are not. Therefore, the cost plus approach cannot be used. The consultative approach, while better than cost plus, would require MSOs/LCOs to share details relating to services being provided, and costs of infrastructure maintenance and operation with the regulator. It would perhaps not work well in this country as the cable industry is not within a licensed regime. On the question as to whether the ceiling should be single at national level, state-wise or in 3 tiers, and on whether there should be a prescribed ratio between pay and FTA channels in case of a tariff ceiling, broadcasters in general re-iterated their position that

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[34] Referenced to Question 17 in the consultation paper dated 25th March 2010
[35] Referenced to Question 18 in the consultation paper dated 25th March 2010

forbearance was the preferred option and tariff should be left for determination in the market.

3.98 Among the distributors (MSOs and LCOs), there were differing views. Some indicated that forbearance should be adopted and tariff should be left to market forces. They also indicated that the cost plus model is not likely to provide accurate results, as cost data can be inflated or manipulated. The consultative approach was expected to be successful in a mature environment only, where players were licensed and organized. The affordability linked approach was also considered acceptable by certain stakeholders at the distributor level. However, some did say that India is basically a value for money market and it is perception or need for a particular event or programme that determines affordability, rather than the economic condition of the consumer. Moreover, they felt that it was "basic offering" rather than all cable TV services that should be the legitimate regulatory concern of the TRAI. On the question as to whether the ceiling should be single at national level, state-wise or in 3 tiers, a large number of MSOs said that it should be in 3 tiers, although some also felt that it should be a single cap at national level. On the question whether there should be a prescribed ratio between pay and FTA channels in case of a tariff ceiling, there was a view that it should be defined otherwise broadcasters would use their monopoly power by creating 4-5 major bouquets and driving other FTA channels out of the spectrum. A number of MSOs felt that it should in the ratio of 70:30, in accordance with the ratio of FTA channels (approx 400) to pay channels (approx 150) currently available. Others felt that prescribing such a ratio would amount to micro management of business model and should be avoided.

3.99 International regulatory experience reveals that in almost all digital markets, retail tariff is controlled for the basic tier of service – which is considered to be most important and "essential" to the consumer. In analog markets, where tiering is not technologically possible – an umbrella price for the analog service as a whole is fixed, and operators are not allowed to charge higher than the pre-defined price.

2. Analysis

3.100 The following factors create an environment where some level of regulatory oversight on the price that consumers pay is required i) High level of fragmentation in the analog cable market ii) Lack of a structured growth and licensing regime for the cable sector. This means that there are no disclosure requirements that can allow for regular tracking of prices and identification of any abuse. There is a strong case to take preventive measures and protect the consumer through a tariff ceiling iii) Nature of cable services – which tend towards a natural monopoly – as it is not cost-effective for multiple service providers to wire the same area iv) Nature of the analog service itself (where no choice is available to the consumer) v) Essential nature of basic television services and the value placed on them by the consumer vi) Differential pricing observed in the market vii) While at the national level, DTH is a strong competitor with almost 20% market share, there are micro markets where analog cable has a virtual monopoly and subscriber choice is limited.

3.101 **In light of the above, and taking into account international regulatory experience, the Authority is of the view 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-CAS markets.**

3.102 With respect to price control, there are three internationally prevalent methodologies:

- Consultative approach involving discussions with operators
- Cost-plus retail pricing
- Affordability linked retail pricing

3.103 Each of the methodologies was analyzed in detail and the possible risks and drawbacks were assessed.

a)Consultative Approach

3.104 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.

3.105 This 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 is of the view that in the present unstructured state of the sector, the consultative approach is not applicable to the Indian environment.

b) Cost- Plus Retail Pricing

3.106 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.

3.107 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. As brought out in the stakeholder comments, 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 (with an estimated 60,000+ local cable operators and 6000 multi system operators). There are also difficulties in separating the costs only for analogue services – as there are several operators in non-CAS areas that provide a mix of analog services and digital services (through voluntary digitization without addressability).

3.108 Based on the above, the Authority is of the view that the applicability of the cost plus model is limited in the predominantly analogue Indian cable market.

c) Affordability Linked Retail Pricing

3.109 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.

3.110 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 is of the view that an affordability linked price cap can protect the consumer and**

at the same time provide a practical solution to the impasse created by the non-addressable nature of analogue systems in India.

3.111 The affordability linked retail price cap has been developed through analysis of state wise urban household consumption expenditure data as per the 2006-07 NSSO survey. This has further been validated through other published data on income and expenditure. The primary analysis is based on state-wise urban household consumption. The National Sample Survey Organization (NSSO) data provides details on the monthly average expenditure per person on various items of consumption (such as food, fuel and light, education and consumer durables among others).

3.112 Affordability was estimated using the premise that cable services do not exist in the market, so that the pricing can be looked at afresh without any current biases. Other consumption items that can act as 'surrogates' or can be compared to cable services were identified, to estimate the amount spent by the household on 'similar services'. The approximate expenditure on these surrogates was then used to set the cap for cable services.

3.113 Surrogates were identified based on the need that the consumption items fulfill as per the definition provided by 'Maslow's hierarchy of needs'. Based on stakeholder feedback and analysis by TRAI, the Authority is of the view that cable services meet 'esteem' needs in a household. Thus the average that is spent on goods and services that fulfill those needs has been identified as the affordability level for cable services and has been used to estimate the price ceiling. This is further explained using the diagram below:

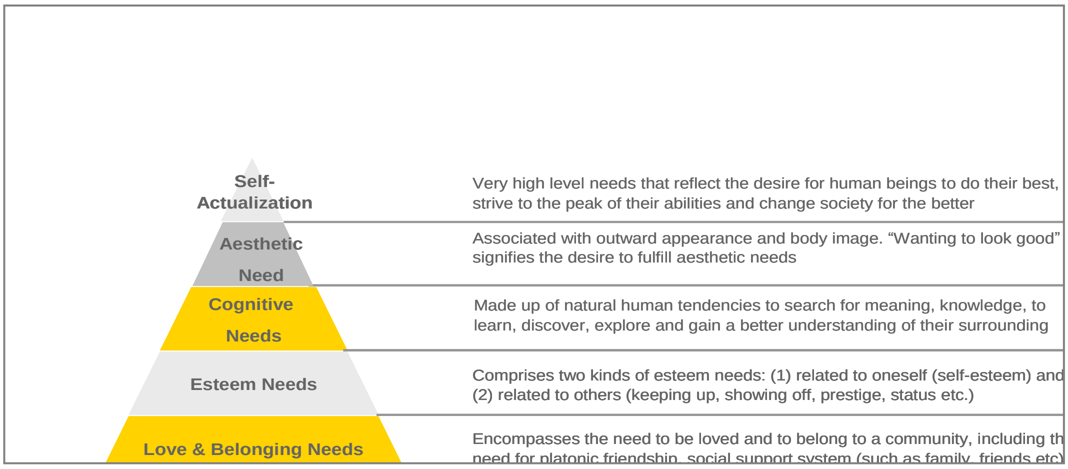

Figure 3.1: Maslow's Hierarchy of Needs

3.114 The items of consumption listed in Table 4R the NSSO report 2006-07 have been further classified according to the hierarchy as follows:

Item of Consumption	Need	Rationale
Food Group	Physiological	Basic need for survival
Others (includes pan, tobacco, intoxicants)	Esteem	Linked to keeping up with others and status
Fuel & Light	Physiological	Basic need for survival
Clothing	Aesthetic	Associated with outward appearance & desire to improve body image
Footwear	Aesthetic	Associated with outward appearance & desire to improve body image
Education	Cognitive	Connected to human tendency to learn, explore; supports search for knowledge
Medical	Safety	Protection from elements, bring about stability
Consumer Goods	Esteem	Linked to self-esteem and status
Rent	Physiological	Basic need for shelter
Taxes & Cesses	Safety	Linked to law, order & stability
Durable Goods	Esteem	Brings status, prestige in society

Table 3.15: Classification of NSSO Expenditure Items within the Hierarchy

3.115 Based on the above analysis, at an all India level, the per-household spending on esteem needs is Rs. 236 per month. The state-wise and national averages are provided below:

S.No	State	HH Size	Per Capita Spend - Esteem Needs Only	Per HH Spend (HH Size * Per Capita Spend)
1	Andhra Pradesh	3.8	55	208
2	Assam	4	53	213
3	Bihar	5.2	26	134
4	Chhattisgarh	4.6	48	222
5	Delhi	4.3	65	280
6	Gujarat	4.6	73	335
7	Haryana	4.8	53	256
8	Himachal Pradesh	4.3	66	282
9	Jammu & Kasmir	4.3	46	199
10	Jharkhand	4.6	41	187
11	Karnataka	4.1	45	184
12	Kerala	3.8	110	417
13	Madhya Pradesh	4.9	40	198
14	Maharashtra	4.3	75	323
15	Orissa	4.1	46	189
16	Punjab	4.2	72	301
17	Rajasthan	4.8	41	197
18	Tamil Nadu	3.6	47	170
19	Uttar Pradesh	5	36	179
20	Uttaranchal	4.3	45	195
21	West Bengal	3.8	52	197
22	N-Eastern States	4.3	57	246
23	Group of UTs	4.3	75	322
	All-India	**4.3**	**54**	**236**

Table 3.16: Per Household Spend on Esteem Needs (NSSO Data)

3.116 This is further validated by data collected during the consultation exercise. The data provided by the CAGs indicate minimum charges 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 indicates a minimum tariff 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. The details are at paras 3.26 and 3.27. Thus Rs. 250 per month per subscriber could form a reasonable ceiling. **In light of these figures, the Authority is of the view 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.**

Need for a Basic Service

3.117 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. The number of channels has increased dramatically over the last decade; with the majority of this increase taking place for channels in the FTA category (around 400 FTA channels are present across various genres and languages). It was felt that while pay channels have a dual source of income, there are several other FTA channels accessible at minimal cost to the consumer. For these FTA channels, the cost to the consumer includes only the cost of transmission, distribution and servicing. As per the data and documented responses from stakeholders (MSOs and LCOs) during the present consultation, the Authority is 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 is in line with the present ceilings for FTA channels in both CAS[36] and non-CAS areas, (duly updated to account for inflation). Correspondingly, **the cap for the basic service (FTA only, subject to a minimum of 30 FTA channels) is proposed at Rs. 100 per connection per month. 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.**

3.118 As regards the imposition of tariff ceilings at various levels , the advantages and disadvantages of the following three options are discussed below:

1. Enforcing state wise caps
2. Allocate states into three tiers and, enforcing a tier wise cap
3. Enforcing a single national level cap

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[36] Figures furnished by the Finance Ministry at the time of implementation of the CAS regime.

3.119 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.

3.120 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 fall could 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.

3.121 A national cap is the most straightforward way to protect the cable consumer. Some stakeholders have 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.

3.122 A single national level ceiling is warranted in the current scenario. 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 is of the view 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.

3.123 On the prescription of a ratio between pay and FTA channels, it is observed that there are differing levels of service that currently prevail 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 must be 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 is 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.

3.124 The market survey of consumers of cable television services in India conducted by TRAI in 2007 through Centre for Media Studies (CMS) indicates that the percentage of people receiving 21-50 channels and 51-100 channels are the highest and they are more or less equal (Refer Annexure VI). So if one were to categorize the subscribers based on the channels received, it would be 50 or below channels and above 50 channels.

3.125 **On the basis of these arguments, as well as an assessment of affordability for basic services and pay TV services, the Authority is of the view that the following price ceilings should be placed 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**

CHAPTER IV: CARRIAGE AND PLACEMENT FEE

4.1 Another issue that was raised during the proceedings before the Hon'ble Supreme Court was the issue of high carriage fee being paid by the broadcasters. Some broadcasters had indicated that the price of distributing a channel on analog networks had increased dramatically, and that MSOs were charging indiscriminately to carry and place channels on their networks. Data received from certain channels show that these costs have increased in the range of 25-60% over the last three years. This was having a significant negative impact on the financial health of certain broadcasters. In context of price controls on how much broadcasters can charge MSOs for content, it was suggested that reverse controls (on how much MSOs can charge broadcasters for carriage and placement) also be evaluated.

4.2 The phenomenon of carriage and placement fee has already been described in the discussion on industry analysis covered in Chapter II of this Report. Carriage and placement fee is most often treated as a single package payment representing the financial transaction between the broadcaster and the MSO, charged by the latter for affording the former access to the latter's network. In fact, the package consists of two finely distinguished components- carriage fee, which is any fee paid by a broadcaster to a distributor of TV channels, for carriage of the channels or bouquets of channels of that broadcaster on the distribution platform owned or operated by such a distributor, without specifying the placement of various channels of the broadcaster vis a vis channels of other broadcasters, and placement fee which is any fee paid by a broadcaster to a distributor of TV channels, for placement of the channels of such a broadcaster vis a vis the channels of other broadcasters on the distribution platform owned and operated by such a distributor. For purposes of data record and analysis, however, no distinction is drawn between the two components and they are treated as a common transaction. This is also the approach that has been adopted by the TRAI in the current exercise.

4.3 For a broadcaster dependent on advertising revenue, ensuring reach is critical. This is because higher reach implies greater access to the subscriber base – thereby providing an opportunity for the channel to improve its ratings. Carriage and placement fee provides the broadcaster access to an MSO's network. Due to the bandwidth constraints in the analog transmission mode, the MSO "allocates" certain frequencies to the highest paying channels. This phenomenon can be interpreted in simple economic terms as a "demand-supply" mismatch. With supply remaining unchanged at ~80 channels and the total number of channels having risen steadily to around 550 – carriage fee reflects the entry barrier posed by analog transmission and will continue to rise until the capacity constraint is addressed through digital services.

4.4 When a mismatch is observed, it is also pertinent to mention that the price at which the market settles depends on several factors such as: (1) the resulting revenue potential of purchasing the product, in this case the reach provided by that frequency; (2) the ability to pay of the buyer, in this case the channel willing to pay the maximum for a certain band/ market and, (3) the dynamics of the micro-market, in this case the extent of competition with different genres, the target audience delivered by the MSO etc.

4.5 It is understood from TRAI's interaction with over 10 international regulators that carriage and placement fee is an internationally prevalent business. However, the form of the transaction itself is not standardized and can vary significantly. For example, pay channels typically do a 'net transaction' where carriage fee is settled against the content cost paid by the MSO to the broadcaster, thereby leading to only one inflow or outflow – depending on whether the channel is a net loser or gainer from the supply chain. Another form of carriage fee is paid through barter or exchange of some kind, such as equity stakes. A third form, that is prevalent in the United States for example, is that carriage fee is paid in the form of "Local Ad Avails" (LAAs) – where the broadcaster forgoes a percentage of advertising revenue in favour of the MSO. In this form, while the pay out in terms of the monetary value is the same, this transaction does not appear as a cost item for the channel.

1. Factors that influence carriage and placement fees:

4.6 In cases where carriage and placement fee is paid to the MSO through a monetary transaction, the amount paid is determined by a range of factors such as target audience delivered, popularity of the channel, bouquet composition, competitive intensity, linkage with metered markets, revenue potential of markets, macro-economic factors and business drivers.

a)Target audience delivered

4.7 Each MSO provides a unique target audience based on its socio economic mix, spending power and audience profile. A particular market may be critical to a channel, given the channel's positioning and its advertiser base in which case it would be willing to pay higher carriage fee to reach this audience. For example, the data received from Hindi news channels (which pay high amounts of carriage fee) indicated that these channels pay minimal fee in the four southern states. This is attributed to the fact that the non-Hindi speaking target audience of these states is not relevant to the channels.

b) Popularity of the channel

4.8 Certain channels that have a steady demand in the market may pay lower carriage fee because the MSO would in any case want to carry that channel. For example an established channel carried on prime band may pay no carriage fee. In contrast, a new entrant may pay carriage fee even to be placed on Colour or "S" band. For example, the data indicates that some leading channels, especially in popular genres like General Entertainment and Sports, do not pay any carriage fee and are still carried on analog networks.

c) Bouquet composition

4.9 It is observed that carriage fee is also negotiated on a bouquet or bundled basis (these bouquets are different from those for which subscription revenue is collected). Thus the composition of the bouquet that the channel is part of and the relevance of that bouquet to the MSO also determines the value paid by a certain channel.

d) Competitive intensity

4.10 If a genre has high competition amongst channels (and new channels continue to enter the market), then the carriage fee is likely to be higher for that genre. This is because competition creates pressure on the number of frequencies allocated by the MSO to any particular genre. During discussions with stakeholders, it was reported that in certain genres like News and Hindi GEC, the entry of new players has led to an increase in competition, and a corresponding increase in the total carriage fee paid by channels in that genre.

e) Linkage with Metered Markets

4.11 It has been observed that carriage fee is a phenomena predominantly observed in metered markets. This is because channel and programme ratings are a key source of information for media planners, and are reported to determine spending for over 80% of national advertisers. The following table provides a snapshot of the data on carriage and placement fee received by the TRAI from those broadcasters who had furnished a break-up of the carriage and placement fee paid by them in different markets. Together, these broadcasters paid out more than Rs. 360 crores as carriage fee to distributors and they therefore account for a sizable segment of the total market. The data supports the strong linkage of metered/ TAM markets with carriage and placement fee:

Type of channel/network	**Carriage Fee Distribution**
Hindi News Channel	150+ networks, all TAM markets
Hindi Entertainment Channel	200+ networks, all TAM markets
English News Channel	250+ networks, all TAM markets
News Network (1)	100+ networks, all TAM markets
News Network (2)	Spends given only by TAM markets, not by operators/ networks
News Network(3)	200+ networks, all TAM markets
Hindi General Entertainment	100+ networks, all TAM markets

Table 4.1: Figures on carriage and placement fee provided by broadcasters, indicated that this fee is paid almost entirely in metered markets

f) Linkage with Revenue Potential of Markets

4.12 Even within metered markets, the amount of carriage fee paid appears to be linked to the revenue potential of individual regions/ cities. This is evident from the following analysis:

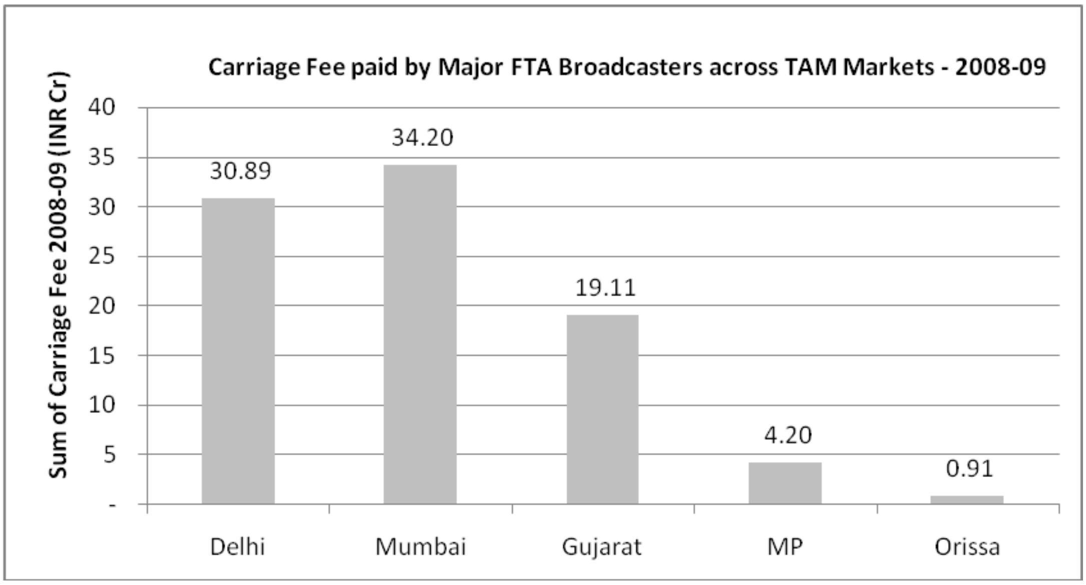

Figure 4.1 Carriage Fee paid by major FTA broadcasters across TAM markets

State	Monthly per capita expenditure in Rs.	Carriage and Placement Fee spend	Number of C&S households	Per household carriage and placement fee spend
Source	(NSSO 06-07)	Data from 3 Major Broadcasters	(NRS 2006)	Calculated Figure (Rounded off to the nearest rupee)
Unit	(Rs.)	(Rs. Cr)	(Rs. Cr)	(Rs.)
Above Average Affluence/ Expenditure				
Delhi	1,804.00	30.89	0.28	110
Mumbai	1,673.00 *(figure for Maharashtra)*	34.20	0.35	98
Gujarat	1,421.00	19.11	0.41	47
Below Average Affluence/ Expenditure				
MP	1,002.00	4.20	0.25	17
Orissa	1,072.00	0.91	0.17	5

Table 4.2 Carriage and placement fee on a per household basis for select metered markets[37]

g) Macro-Economic Factors and Business Drivers

4.13 It is observed that the payment of carriage fee is already aligned to market forces. There is evidence that the transaction value varies with changes in the industry environment. Information received from stakeholders indicates that while carriage fee has increased over the last three years, the rate of increase differs from year to year. Across a

[37] Based on select sample of carriage fee paying broadcasters, data has been aggregated, aberrations removed and this information does not reflect any specific player

sample of 3 large carriage fee paying networks, it was observed that the average escalation in carriage and placement fee related outflows was 77% from 2006-07 to 2007-08 and only 24% from 2007-08 to 2008-09. This is attributed to pressure from the economic slowdown observed in 2008-09, which has led to automatic correction in major cost items such as carriage and placement fee.

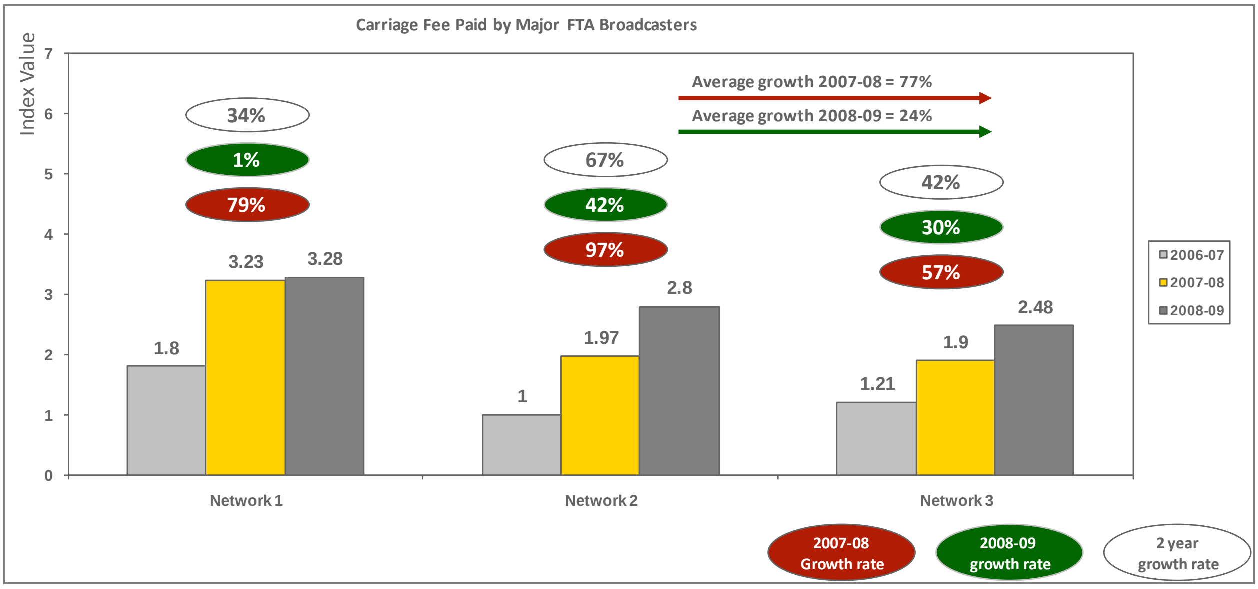

Figure 4.2: Carriage and placement fee on a per household basis for select metered markets[38]

4.14 On carriage and placement fee, two options were available:

- Leaving the carriage and placement fee transaction to market forces
- Regulating the transaction

4.15 If carriage and placement fee is to be controlled, there are three ways in which regulatory intervention could take place:

- Prohibiting MSOs from charging any such fee
- Limiting the fee by imposing a ceiling, or
- Linking the fee to a formula that reduces the MSO's ability to charge arbitrarily

[38] Based on select sample of carriage fee paying broadcasters, data has been aggregated, aberrations removed and this information does not reflect any specific player

2. Stakeholder Comments

4.16 During the consultation exercise, comments were solicited from stakeholders on the following issues:

1. Should the carriage and placement fee be regulated? If yes, how should it be regulated?[39]
2. Should the quantum of carriage and placement fee be linked to some parameters? If so what are these parameters and how can they be linked?[40]
3. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?[41]

4.17 Since all of these issues are linked, the comments on these three questions relating to carriage and placement fee have been taken up together, rather than separately. In general, the pay broadcasters have asked for forbearance on carriage and placement fee, in line with forbearance on all other major transactions in the pay TV market. However they indicated that if the inflow of broadcasters from MSOs was limited (due to controls on wholesale tariff) then the corresponding outflow from broadcasters to MSOs (carriage and placement fee) should also be controlled. Some of the news and free to air channels argued in favour of carriage and placement fee controls. They felt that carriage and placement fee was growing indiscriminately and that it had increased by 70% (300% according to some broadcasters) in the last 3 years. They have estimated the total amount of carriage fee paid at anywhere between Rs. 1200-1500 crores. Commercial balance had shifted in favour of the MSOs as the carriage fee is totally unregulated, while broadcasters are compelled to work within the constraints of price ceilings for the channels. Broadcasters are being compelled to divert money from content investment to distribution. Their suggestions included: (1) Freezing the rate as on 2006-07 levels (2)Setting a particular year as a benchmark

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[39] Referenced to Question 22 in the consultation paper dated 25th March 2010
[40] Referenced to Question 23 in the consultation paper dated 25th March 2010
[41] Referenced to Question 24 in the consultation paper dated 25th March 2010

or base year for calculation of carriage fees and linking increases to subscription fee increase (3) Linking the fee to parameters such as reach, number of channels in a genre, channel placement, broadcaster performance in terms of viewership over the past 1 year, consistency and efficiency of service of the MSO and investment in digitization (4) Linking the fee to declarations by the MSO/LCO (5) Bidding and auctioning of all available frequencies for a fixed period (6) setting fixed genre wise ceilings for different bands etc. Some broadcasters suggested that while it may not be possible to work out a foolproof solution to regulate carriage /placement fee, in the interim, before full digitization is implemented, carriage fee could be capped at a certain percentage of the average subscription revenue paid to the MSO/LCO to pay channels. The percentage could vary genre and band wise. It could serve as a benchmark for FTA channels also. These broadcasters felt that the regulation of carriage and placement fees would be an important tool in the hands of the Authority to ensure smooth and speedy digitization of cable TV in the country. An important suggestion made was that the MSOs and LCOs should be obligated to make public the broad terms and conditions along with carriage and placement fees charged by them from various broadcasters for different bands and frequencies. They should be mandated to file the said data along with the carriage/placement agreement with the TRAI on quarterly basis. This would provide a mechanism for monitoring carriage/placement fees.

4.18 In general, cable operators (LCOs and MSOs) have asked for forbearance in carriage fee as this is driven by a supply demand mismatch, with the emergence of a large number of channels and the constraints of the channel carrying capacity of analogue cable. They maintain that once digital, addressable systems are in place this issue would automatically be addressed. Another distributor’s view was that carriage and placement fee cannot be regulated because it varies from place to place. Regional channels do not pay any carriage fee in their respective regions, but have to pay carriage fees in the rest of the country. Yet another view was that regulation of carriage and placement fee could be done only if there was transparency in the subscriber base, which was not possible in the present system; that could be achieved only with digitalization, whereupon, the occurrence of carriage and placement fees itself would be greatly reduced. MSOs have pointed out that globally carriage fee is not regulated. Carriage fee is very similar to the rent for using infrastructure. As per market estimates carriage fee is approximately Rs. 1000 crore which is about 10% of the advertising revenue earned by broadcasters; in any retail distribution rent of 10% can be considered reasonable. As advertising revenue is not regulated carriage fee should also not be regulated. Carriage fee collections help the MSOs to create a corpus that helps them fund digitalization. As far as the broadcasters' interest is concerned, they generally agree to pay carriage fee/ placement fee so that they get good TRPs which in turn get them better advertisement revenue. Another viewpoint was that with around 550 channels in operation, if carriage fees are capped it would be difficult for new channels to enter the cable system, if an older channel did not wish to leave. Further, controls on carriage fee would not permit differentiation between good and bad quality infrastructure, as it is the networks with better quality and reach that command the higher prices.

3. Analysis

4.19 The first issue which has been considered by the Authority is whether carriage/ placement fall within the definition of "service' and whether they can be regulated.

4.20 It is seen that the TRAI defined carriage fee in March 2009 by way of an amendment to the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 (13 of 2004) i.e. vide the Telecommunication (Broadcasting and Cable Services) Interconnection

(Fifth Amendment) Regulations,2009. The regulatory regime relating to interconnection in the broadcasting sector laid down by the TRAI thus encompasses the concepts of both carriage fee and placement fee. It is a different matter that as point of policy, the Authority has so far refrained from regulating carriage and placement fee and has also indicated, from time to time, the reasons for not doing so in the explanatory memoranda accompanying the regulations issued by it. Further, the question whether carriage fee is a service and within the regulatory purview of the TRAI has also been adjudicated by the Hon'ble TDSAT in its judgment dated 12.5.2009 in appeal No.11 © of 2006 (Wire and Wireless India Ltd vs. TRAI). By this judgment, the Hon'ble Tribunal has settled the issue in the following words:

"23. *As regards the question whether the impugned order should only be concerned with charges other than Carriage Fee, we are of the view that Carriage Fee would need to be taken into consideration. To argue that the Carriage Fee is not part of "service" would not be appropriate. When dealing with Interconnection issues having a bearing on revenue distribution, obviously all the revenues arising in the normal course of the business of transmission of signals should be taken into consideration. It is a different matter whether carriage fee is significant or not. For both the above reasons, we hold that the Authority was competent in issuing the impugned Regulation and it is not contrary to the provisions of the TRAI Act.*"

The judgment of the Hon'ble TDSAT having not been challenged by the appellant in the said case, the ruling of the Hon'ble Tribunal has become final.

4.21 For regulating carriage and placement fees, as mentioned earlier, the Authority took into consideration the following possibilities:

-Banning /Prohibiting MSOs from charging any such fee

-Limiting the fee by imposing a cap or ceiling, or

-Linking the fee to a formula that reduces the MSO's ability to charge arbitrarily

4.22 In the light of stakeholder comments received and based on the observation the carriage/ placement fees are purely market driven phenomena caused by a supply demand mismatch, it is evident that banning or prohibiting carriage/ placement fees is not a feasible option.

4.23 As for linking the fee to a formula based on some parameters, again, based on the stakeholder comments received, the Authority feels it is amply clear that the non-addressable nature of the analogue cable market makes it infeasible to arrive at verifiable reach of markets serviced by the distributor in terms of subscriber numbers which is the logical primary determinant of the quantum of carriage /placement fee charged. Besides, carriage and placement fee is a multi-dimensional transaction, not amenable to generalized formulations. As pointed out by several stakeholders, it can vary from place to place, from network to network, from market to market. The amount of carriage and placement fee paid by a broadcaster to an MSO depends on multiple parameters including but not limited to (1) target audience delivered, (2) pull of channel, (3) bouquet composition, and (4) competition intensity in the genre. As the parameters affecting the negotiation differ with each transaction and with each party, enforcing a model or pricing mechanism that standardizes this value across markets is not efficient and/or practical. Implementing a standardized model for payments of carriage and placement fee will lead to micro-management of business models and may adversely impact efficiency in the market.

4.24 The Authority has also debated the possibility of regulating carriage and licence fees through the imposition of controls or caps. As is evident from the stakeholder comments received, there are strong arguments on both sides – both for and against controls on carriage fee, made by the broadcasters and MSOs respectively.

4.25 The primary argument in favor of controls is that the rapid increase in carriage fee has led to very high costs of distribution and therefore higher operational costs for the broadcasters. In a regime of price control over wholesale rates, this could put pressure on broadcasters' margins. The rapid increase in carriage /placement fee can be attributed to two reasons: (1) genuine lack of bandwidth in the analog transmission mode, which leads to a supply demand mismatch, and (2) considerable pressure on the MSO business model (worsened by lack of addressability) – leading to pressure to garner revenue from other sources like carriage and placement fee.

4.26 There are also arguments for not placing any controls on carriage fee. It is observed that carriage fee may be paid by the broadcaster in many forms, such as net transactions with subscription revenue, discounts to group companies, barter transactions, equity stake etc. This makes it difficult to devise a single ceiling/ level of control. Placing controls on this transaction may also have the perverse effect of driving it underground and creating a "black market' for auction of frequencies by the MSOs.

4.27 Further, it is universally acknowledged that this fee reflects a genuine shortage of bandwidth in the analog transmission market. In this respect, carriage fee can be equated to auction proceeds for any scarce commodity. Placement fee is also similar to the concept of "listing fee" earned by retailers to display a certain manufacturer's products (channel) at a prime location (frequency) in their store (cable service). It is also acknowledged that carriage fee, as pointed out by stakeholders, has become an important source of income to sustain the MSO business and generate funds for digitization and in the long term, controls on carriage fee could adversely impact the entire value chain and hinder the roll-out of digitization.

4.28 The Authority has also looked at the international experience in controlling or capping carriage fee. Carriage fee in international markets is viewed as a matter of commercial negotiation and is based on relative bargaining power and market strength of players. In all the countries studied, there is no incidence of direct intervention in placement and carriage fee, nor in any other transactions at the wholesale level (e.g. subscription fee negotiations). In fact, even in international digital markets, where carriage fee cannot be monetized because the supply of bandwidth is almost unlimited – there is still incidence of placement fee. While carriage fee reflects the supply demand mismatch and is market driven, placement fee is also a commercial transaction linked to the willingness of a channel to pay for being carried on a certain number that is easy to recall and/or placed adjacent to a particular channel.

4.29 There is evidence in the Indian market to demonstrate that the transaction value for carriage and placement fee varies with changes in the macro/ industry environment. Market forces appear to be exerting an influence on the quantum of carriage and placement fee paid by broadcasters to MSOs. Imposing a price determination model in such a situation may in fact upset the equilibrium and adversely impact efficiency.

4.30 Finally, it is observed that carriage fee in India is largely driven by the advertising potential of various markets. This is demonstrated by the fact that carriage fee is only paid in markets covered by the viewership agency TAM – as large advertisers allocate a majority of their marketing spend according to ratings published by TAM. Thus it can be argued that carriage fee should not be regulated if there are no controls on advertising revenue. This point has been made by a large number of stakeholders.

4.31 The Authority is of the view that the root cause of the escalation in carriage and placement fees lies in the supply-demand mismatch – where the number of channels present in the market far exceeds the capacity of the analog transmission mode. As this gap has widened, carriage and placement fee has risen to reflect the scarcity of frequencies and the growing premium for the owner of this scarce commodity – the MSO. The Authority is of the view that an increase in capacity, through digitization, is the only sustainable way of addressing the carriage fee issue. In the long term, as alternative revenue streams and uptake of digital distribution allows greater room for the broadcasting business model to grow, this factor coupled with the high costs of distribution on analog, is likely to provide an impetus for content to move towards digital, addressable systems. This will lead to automatic resolution of the carriage and placement fee issue.

4.32 In the analog, non-addressable environment, the Authority is of the view that it is not feasible to place any cap on the amount of carriage and placement fee. In a situation of supply-demand mismatch due to the capacity constraints of distribution platforms, any attempt to lay down a ceiling will only result in market distortions and may lead to covert or disguised deals that will be difficult to regulate. The Authority has however noted that at present, carriage and placement fee agreements between the broadcasters and MSOs/LCOs are not filed with the regulator. **The Authority is of the view that all carriage and placement fee transactions should be part of interconnection agreements between the broadcasters and MSOs/LCOs in the case of pay channels, or separately formalized as carriage and placement fee agreements in the case of FTA channels, and these should be filed with the TRAI. Such filings of carriage and placement fees will enable the Authority to monitor carriage and placement fee transactions regularly and regulate the same through interventions where considered necessary.**

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

THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (FIFTH)(NON-ADDRESSABLE SYSTEMS) TARIFF ORDER, 2010

(NO.----- OF 2010)

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the ______th July, 2010.

F. No. 1-3/2009-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 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,----

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

PART I
PRELIMINARY

1.Short title and commencement.------(1) This Order may be called the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010.

(2) (a) Except as otherwise provided in sub-clause (b), this Order shall come into force on the 1st day of January, 2011.

(b) Clauses 5, 6 and 8 of this Order shall come into force from the date of publication of this Order in the Official Gazette.

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 or more than one electronic devices put in an integrated system through which television signals 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 service provider 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 pay 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 any person including an individual, group of persons, public or private body corporate, firm or any organization or body who or which is providing programming services and includes his or her authorised distribution agencies;

(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 electro magnetic 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) “CAS area” means the States, 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 pay channel through an 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) subscribers, means the rates (excluding taxes) payable by subscribers to the broadcaster for broadcasting service received, or to distributor of TV channels, for the broadcasting services or cable services received from such distributor;

(ii) distributors of TV channels, means the rates (excluding taxes) payable by such distributors of TV channels to broadcasters for broadcasting services received, or to other distributors of TV channels for the broadcasting services or cable services received, as the case may be;

(o) "clause" means the clause of the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010;

(p) "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 ends in the sky operator and a service provider offering Internet Protocol television service;

(q) **"**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;

(r) "multi system operator" means a cable operator who receives a programming service from a broadcaster or his distribution agencies 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 and includes his distribution agencies by whatever name called;

(s) “Non-CAS area” means area other than CAS Area;

(t) “Order” means the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010;

(u) “ordinary cable subscriber” means any subscriber who receives a programming service from a service provider and uses the same for his domestic purposes;

(v) “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;

(w) “programme” means any television broadcast and includes----

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation, and -----

the expression “programming service” shall be construed accordingly;

(x) “Schedule” means Schedule annexed to this Order;

(y**)** “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;

(z) **"**subscriber" means a person who receives the signals of a service provider at a place indicated by him to the service provider, without further transmitting it to any other person and includes ordinary cable subscribers and commercial subscribers unless specifically excluded;

(za) "TV channel" means a channel, which has been registered under -----

> (i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or
>
> (ii) policy guidelines for downlinking of television channels, issued vide No. 13/2/2002-BP&L/BC-IV dated the 11th November, 2005, ---------

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";

(zb) 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, CABLE OPERATORS TO MULTI SYSTEM OPERATORS AND MULTI SYSTEM OPERATORS TO BROADCASTERS

4. **Charges payable by ordinary cable subscriber to cable operator or multi system operator**.**-----** 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, only at rates not exceeding the maximum amount of charges specified in Part I or Part II , as the case may be, of the Schedule.

PART III

DETERMINATION OF WHOLESALE TARIFF BY BROADCASTERS

5. Broadcasters to specify rates for channels and bouquets within specified ceilings.---- (1) Every broadcaster shall, irrespective of whether it provides its channels on a-la-carte basis to the distributors of TV channels using non-addressable systems or not, specify, on or before the 1st day of September of each year, an a-la-carte rate for each pay channel offered by it, which shall be valid for a period of one year from the 1st day of January till the 31st day of December of the following year:

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 clause as increased by nine per cent.

(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, on or before the 1st day of September of each year, the rate for each such bouquet of channels offered by it, which shall be valid for a period of one year from the 1st day of January till the 31st day of December of the following year:

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 clause as increased by nine per cent.

Provided further that, both in the case of bouquets which existed before the coming into force of this clause and in the case of bouquets which come into existence after coming into force of this clause, 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'.

(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 during the entire period of one year for which it was specified:

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

(4) Each broadcaster shall, on or before the 1st day of September of each calendar year, report to the Authority, the a-la-carte rates of its pay channels specified under sub-clause (1) and the bouquet rate or bouquet rates, as the case may be, specified by it under sub-clause (2), and shall, simultaneously, place the details of such rates on its website.

(5) The composition of a bouquet which existed before the coming into force of this clause, in so far as pay channels in that bouquet are concerned, shall not be changed:

Provided that -----

(a) 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) for the whole year or converts such pay channel into a free to air channel during the course of the year, the broadcaster shall reduce the price of the bouquet proportionately;

(b) in case a bouquet existing on the date of coming into force of this clause 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;

(c) in case a bouquet existing on the date of coming into force of this clause 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.

(6) If any new pay channel is launched by a broadcaster after the coming into force of the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010 or any channel, which was free to air before the coming into force of the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010, is converted to a pay channel subsequently, 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 the Telecommunication (Broadcasting and Cable) Services (Fifth) (Non-addressable Systems) Tariff Order, 2010 or on the date of launching of such new channel or conversion of such free to air channel into a pay channel.

Provided 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.

(7) 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, which shall be valid for the remaining part of the year; 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:

Provided that in case such introduction of new pay channel or conversion of free to air channel or launching of new bouquet takes place on or after the 1st September of a calendar year, the rates so specified by the broadcaster shall be valid till the end of the next calendar year.

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.

Provided that the agreement for any calendar year shall be signed on or before the 30^{th} day of November of the preceding calendar year and the charges as agreed in such agreement shall remain valid for the entire calendar year.

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 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 1st January, 2010, 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 clause, 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 along with the names of owners of other channels in the bouquets;

(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(s) 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 years;

(h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

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

(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,

shall, one month before such introduction or conversion or discontinuation, 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.

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

9. Power of Authority to intervene. The Authority may, by 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

10. Repeal and saving.-(1) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) (hereafter 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, uthorization, 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 (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.

SCHEDULE TO THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (FIFTH) (NON-ADDRESSABLE SYSTEMS) TARIFF ORDER, 2010

(See clause 4)

PART I

Charges payable by an ordinary cable subscriber to the cable operator or multi system operator for transmitting or retransmitting only free to air channels (without any pay channels) using non-addressable systems.

Minimum numbers of free to air channels to be transmitted or retransmitted. (1)	The maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for free to air channels (without any pay channel) specified under column (1). (2)
Thirty numbers of free to air channels.	Rupees one hundred only.

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 only.
2.	minimum thirty free to air channels and more than twenty pay channels	Not exceeding rupees two hundred and fifty 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.

(Subodh Kumar Gupta)
Advisor (B&CS)

Annexure I (Colly.)

IT E M NO.MM- 5 COUR T NO.1 S EC T I O N XVI I

S UP R E M E C OUR T O F I N D I A

R ECO R D OF P R OC E E D I N G S

CIVI L AP P E A L NO(s). 82 9- 8 3 3 OF 20 0 9

T E L E P H O N E R E G U L A O R Y AUTH.O F INDI A Appellant (s)

VER SUS

S E T DISCOV E R Y P. L T D . E T C . Respondent(s)

(With appln(s) for ex-P a rte stay)

Date: 12 / 0 2 / 2 0 0 9 These Appeals were mentioned today.

CORAM : HON'B L E TH E CHI E F JUS T I C E
HON'B L E MR. JUS T I C E P. SAT H A S I V A M
HON'B L E MR. JUS T I C E J.M. PA NC H A L

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.
Ms. Shubhr a Kapur, Adv.
Mr. Rajiv Kapur, Adv.
Ms. Arti Singh, Adv.
Ms. Neha S. Verm a, Adv.

For Respondent(s) Mr. Arun Jaitley, Sr. Adv.
Mr. Mukul Rohtagi, Sr. Adv.
Mr. Gopal Jain, Adv.
Ms. Nandini Gore, Adv.
Ms. Manik Kar a nj a w a l a, Adv.

Mr. Maninder Singh, Adv.

Ms. Pr atibh a M. Singh, Adv.
Mr. Gaurav Shar m a , Adv.
Mr. Sumeet Bhatia, Adv.
Mr. Ankit Gupta, Adv.
Ms. Surbhi Mehta, Adv.

Ms. Mamta Tiwari, Adv.
Ms. Shruti Chaudhary, Adv.
Mr. P r ateek Ku m a r, Adv.
for M/s. Fox Mandal & Co., Adv.

UPON hearing counsel the Court made the following OR D E R

List on 27. 2 . 2 0 0 9 .

Status quo till then.

(Ravi P. Verm a)	(Veera Verma)
Court Master	Court Master

1

ITEM NOS.13+49 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009(for prel.hearing)

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay)

WITH Civil Appeal NO. 1166-1169 of 2009

(With appln.(s) for ex-parte stay and office report)

Date: 27/02/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr.Harish N.Salve, Sr.Adv.

Mr. Sanjay Kapur,Adv.

Ms.Arti Singh, Adv.

Ms.Neena S.Verma, Adv.

Ms.Shubhra Kapur,Adv.

Mr.C.S.Vaidyanathan, Sr.Adv.

Mr.Arun Katpalia, Sr.Adv.

Mr.Ankur Saigal, Adv.

Ms. Bina Gupta, Adv.

Ms.Anisha Ranjan, Adv.

Mr.Manjul Bajpai, Adv.

Mrs.Inklee Roy Barooah, Adv.

For Respondent(s) Mr.Soli Sorabjee,Sr.Adv.

Mr.Gopal Jain, Adv.

Mrs.Nandini Gore,Adv.

Ms.Sonia Nigam, Adv.

Mr.Kaushik Murali, Adv.

Mrs Manik Karanjawala,Adv.

Mr.K.K.Venugopal, Sr.Adv.

Mr.Ramji Srinivasan, Sr.Adv.

Ms.Mamta Tiwari, Adv.

Ms.Shruti Chaudhary, Adv.

Mr.Prateek Kumar, Adv.

2 Mr.Ankur Talwar, Adv.

3 For M/S Fox Mandal & Co. ,Advs

UPON hearing counsel the Court made the following ORDER

List on 06.03.2009.

Status quo ordered on 12.02.2009 will continue till then.

Reply affidavit, if any, may be filed in the meanwhile.

(G.V.Ramana)	(Veera Verma)
Court Master	Court Master

ITEM NO.37 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,permission to file additional documents)

WITH Civil Appeal NO. 1166-1169 of 2009

(With appln. for ex-parte stay and office report)

Date: 06/03/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.
Ms. Shubhra Kapur, Adv.
Ms. Arti Singh, Adv.
Ms. Neha S. Verma, Adv.
Mr. Mahendra Kr. Sonker, Adv.

Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. Arun Katpalia, Adv.
Mr. Manjul Bajpai, Adv.
Mrs. Inklee Barooah, Adv.
Ms. Bina Gupta, Adv.

For Respondent(s) Mr. Soli J. Sorabjee, Sr. Adv.
Mr. Gopal Jain, Adv.
Mrs. Nandini Gore, Adv.
Mrs Manik Karanjawala,Adv.

Mr. Maninder Singh, Adv.
Mr. Gaurav Sharma, Adv.
Mr. Sumeet Bhatia, Adv.
Ms. Surbhi Mehta, Adv.
Mr. Ankit Gupta, Adv.

-2-

Mr. C.A. Sundaram, Sr. Adv.
M/S Fox Mandal & Co. ,Adv
Mr. K.K. Venugopal, Sr. Adv.
Mr. Ramji Srinivasan, Sr. Adv.
Ms. Mamta Tiwari, Adv.

Ms. Shruti Chaudhary, Adv.
Mr. Prateek Kumar, Adv.
Mr. Ankur Talwar, Adv.

Mr. A.J. Bhambhari, Adv.
Ms. Nisha Bhambhari, Adv.
Ms. Ranjita, Adv.

UPON hearing counsel the Court made the following ORDER

Status quo as on the order of TDSAT till the next date of hearing . List after two weeks.

(R.K. Dhawan) Court Master	(Veera Verma) Court Master

ITEM NO.34 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,permission to file additional documents)

I.A.Nos.11-15 (appln.(s) for impleadment)

WITH Civil Appeal NO. 1166-1169 of 2009
(With appln.(s) for ex-parte stay and office report)

Date: 13/04/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr.H.N.Salve, Sr.Adv.
\
Mr. Sanjay Kapur,Adv.
Mr.Rajiv Kapur,Adv.
Ms.Shubhra Kapur, Adv.
Ms.Arti Singh, Adv.
Ms.Neha S.Varma, Adv.

Mr.Arun Katpalia, Adv.
Mr.Manjul Bajpai, Adv.
Mr.Ankur Saigal, Adv.
Ms. Bina Gupta, Adv.

Ms.Anisha Ranjan, Adv.
Mr.Gaurav Singh, Adv.
Mrs.Inklee Barooah, Adv.

For Respondent(s)in Mr.F.S.Nariman,Sr.Adv.
C.A.Nos.829-833 Mr.Gopal Jain, Adv.

Mrs.Nandini Gore, Adv.
Mr.Abhijit Deb, adv.
Mr.Kartik Bhatnagar, Adv.
Mrs Manik Karanjawala,Adv.

In C.A.Nos.1166-69 Mr.C.A.Sundaram, Sr.Adv.

2

Mr.Gopal Jain, Adv.
Mrs.Nandini Gore, Adv.
Mr.Abhijit Deb, adv.
Mr.Kartik Bhatnagar, Adv.
Mrs Manik Karanjawala,Adv.

Ms.Nisha Bhambhani, Adv.
For Mr.Rajiv Mehta, Adv.
Mr.Ramji Srinivasan, Sr.Adv.
Ms.Mamta Tiwari, Adv.
Mr.Prateek Kumar, Adv.
Ms.Swati Sinha,Adv.
for M/S Fox Mandal & Co. ,Advs

Mr.Gaurav Sharma, Adv.
Mr.Sumeet Bhatia, Adv.
Ms.Surbhi Mehta, Adv.
For Mr.Maninder Singh, Adv.

UPON hearing counsel the Court made the following ORDER

Appeals are admitted.

Application for impleadment is allowed.

List on 30.04.2009 to consider the feasibility of putting a cap on carriage and placement charges (to broadcasters) imposed by MSOs as prevailing on 04.10.2007.

The interim order will continue till then.

(G.V.Ramana)	(Veera Verma)
Court Master	Court Master

ITEM NO.2 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay and impleadment,permission to file additional documents)

WITH Civil Appeal NO. 1166-1169 of 2009

(With appln. for ex-parte stay and office report)
(For directions)

Date: 30/04/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE P. SATHASIVAM

HON'BLE MR. JUSTICE J.M. PANCHAL

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.

Dr. A.M. Singhvi, Sr. Adv.

Mr. Sanjay Kapur,Adv.

Ms. Arti Singh, Adv.

Ms. Neha S. Verma, Adv.

Mr. C.S. Vaidyanathan, Sr. Adv.

Mr. Arun Katpalia, Adv.

Mr. Manjul Bajpai, Adv.

Mr. Ankur Saigal, Adv.

Ms. Bina Gupta, Adv.

Mr. Gaurav Singh, Adv.

Mr. Vibhav Srivastava, Adv.

Mr. Ashish Yadav, Adv.

For Respondent(s) Mr. F.S. Nariman, Sr. Adv.

Mr. C.A. Sundaram, Sr. Adv.

Mr. Gopal Jain, Adv.

Mrs. Nandini Gore, Adv.

Mr. Kaushik Mishra, Adv.

Mr. Kaushik Marali, Adv.

Mr. Rajiv Naik, Adv.

For Mrs Manik Karanjawala,Adv.

-2-

Mr. Ramji Srinivasan, Sr. Adv.

Ms. Mamta Tiwari, Adv.

Mr. Prateek Kumar, Adv.

For M/S Fox Mandal & Co. ,Adv

Mr. A.J. Bhambhari, Adv.

Ms. Nisha Bhambhari, Adv.

Mr. Rajiv Mehta, Adv.

Mr. A. Henry, Adv.

UPON hearing counsel the Court made the following ORDER

Heard learned counsel for both the parties.

By the impugned order TDSAT has directed TRAI to study the matter afresh and issue a comprehensive Order covering all aspects including the issue of subscription base in a non-addressable system.

Learned senior counsel appearing for the TRAI stated that revise study would be completed within a short period after hearing the parties at the earliest.

All parties are directed to co operate with the TRAI to file a report at the earliest. The TRAI shall also consider the feasibility of putting cap on subscription charges to the broadcasters and any other allied aspects in this regard. The TRAI may also consider the matter de novo as regards all other relevant aspects and give a report to this Court by 11th August, 2009.

List on 11.8.2009.

Interim order to continue.

(R.K. Dhawan) (Veera Verma)

ITEM NO.MMC Court1 SECTION XVII

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELECOM REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERYP.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,impleadment,permission to file additional documents
WITH Civil Appeal NO. 1166-1169 of 2009
(With office report)

Date: 08/05/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.

Mr. C.S.Vaidyanathan, Sr.Adv.
M/s. Manjul Bajpai, Arun Katpalia,
Ashish Yadav & Ms. Bina Gupta, Advs.

For Respondent(s) Mr. F.S.Nariman, Sr. Adv.
Mr. C.A.Sundaram, Sr. Adv.
Mr. Nandini Gore, Adv.
Mrs Manik Karanjawala,Adv.

Mr. Ramji Srinivasa, Sr. Adv.
Ms. Mamta Tiwari, Adv.
M/S Fox Mandal & Co. ,Adv
Mr. Rajiv Mehta ,Adv

UPON hearing counsel the Court made the following ORDER

To be listed on 13.5.2009 before the Special Bench.

(Meera Hemant) (Veera Verma)
AR Court Master

ITEM NO.MMC Court1 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 829-833 OF 2009

TELECOM REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERYP.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,impleadment,permission to file additional documents
WITH Civil Appeal NO. 1166-1169 of 2009
(With office report)

Date: 08/05/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE P. SATHASIVAM

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.

Mr. C.S.Vaidyanathan, Sr.Adv.
M/s. Manjul Bajpai, Arun Katpalia,
Ashish Yadav & Ms. Bina Gupta, Advs.

For Respondent(s) Mr. F.S.Nariman, Sr. Adv.
Mr. C.A.Sundaram, Sr. Adv.

Mr. Nandini Gore, Adv.
Mrs Manik Karanjawala,Adv.

Mr. Ramji Srinivasa, Sr. Adv.
Ms. Mamta Tiwari, Adv.
M/S Fox Mandal & Co. ,Adv
Mr. Rajiv Mehta ,Adv

UPON hearing counsel the Court made the following ORDER

To be listed on 13.5.2009 before the Special Bench.

(Meera Hemant) (Veera Verma)
AR Court Master

ITEM NO.53 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,permission to file additional documents)

I.A.Nos.11-15 (appln.(s) for impleadment)

WITH Civil Appeal NO. 1166-1169 of 2009
(With appln.(s) for ex-parte stay and office report)

Date: 13/05/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE DEEPAK VERMA

For Appellant(s) Mr.H.N.Salve, Sr.Adv.
Mr. Sanjay Kapur,Adv.
Mr.Rajiv Kapur,Adv.
Ms.Arti Singh, Adv.
Ms.Neha S.Varma, Adv.

Mr.C.S.Vaidyanathan, Sr.Adv.
Mr.Arun Katpalia, Adv.
Mr.Manjul Bajpai, Adv.
Ms. Bina Gupta, Adv.
Mr.Ankur Saigal, Adv.
Mr.Vaibhav Srivastava, Adv.
Mr.Ashish Yadav, Adv.
Mr.Manoj V.George, Adv.

For Respondent(s)in Mr.Arun Jaitley,Sr.Adv.
C.A.Nos.829-833 Mr.Gopal Jain, Adv.

Mr.Kaushik Murali,Adv.
Mr.Rajiv Naik, Adv.
for Mrs Manik Karanjawala,Adv.

Mr.Arun Jaitley, Sr.Adv.
Mr.A.J.Bhambhani, Adv.
2

Ms.Nisha Bhambhani, Adv.
Miss Ranjita, Adv.
For Mr.Rajiv Mehta, Adv.

Mr.Ramji Srinivasan, Sr.Adv.
Ms.Mamta Tiwari, Adv.
Mr.Prateek Kumar, Adv.
for M/S Fox Mandal & Co. ,Advs

Mr.Maninder Singh, Sr.Adv.
Mr.Gaurav Sharma, Adv.
Mr.Sumeet Bhatia, Adv.
Ms.Surbhi Mehta, Adv.
Mr.Abhinav Mukherji, Adv.

UPON hearing counsel the Court made the following ORDER

In super session of the order passed by this Court on 13.04.2009, the following may be read :

By the impugned order, TDSAT has directed TRAI to study the matter afresh and issue a comprehensive order covering all aspects including the issue of subscription base in a non-adverssable system.

Learned senior counsel appearing for the TRAI stated that a revised study would be completed within a short period after hearing the parties at the earliest. The TRAI may however consider the matter de novo as regards all aspects and give a report to this Court by 11th August, 2009.

All parties are directed to co-operate with the TRAI so as to enable them to file a report at the earliest.

The TRAI shall also consider the feasibility of putting a cap on carriage and placement charges.

List on 11.08.2009.

Interim order will continue till then.

(G.V.Ramana) Court Master

(Veera Verma) Court Master

ITEM NO.2 COURT NO.1 SECTION XVII

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay and impleadment,permission to file additional documents and extension of time)
WITH Civil Appeal NO. 1166-1169 of 2009
(With appln. for ex-parte stay and office report)

Date: 11/08/2009 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.
Mr. Rajiv Kapur, Adv.
Ms. Shubhra Kapur, Adv.
Ms. Arti Singh, Adv.
Ms. Kanika Singh, Adv.

Mr. Ashok H. Desai, Sr. Adv.
Mr. Arun Katpalia, Adv.
Mr. Manjul Bajpai, Adv.
Mr. Ankur Saigal, Adv.
Ms. Bina Gupta, Adv.
Ms. Devika Bajpai, Adv.
Mr. Vibhav Srivastava, Adv.
Mr. Ashish Yadav, Adv.
Mr. Gaurav Singh, Adv.

For Respondent(s) Mr. Gopal Jain, Adv.
Mrs. Nandini Gore, Adv.
Mr. Kaushik Marali, Adv.
For Mrs Manik Karanjawala,Adv.

Mr. Ramji Srinivasan, Sr. Adv.
Mr. Prateek Kumar, Adv.
Mrs. Sangeeta Mandal, Adv.
For M/S Fox Mandal & Co. ,Adv

Mr. Rajiv Mehta, Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Abhinav Mukerji, Adv.
Mr. Gaurav Sharma, Adv.
Mr. Balaji Srinivasan, Adv.
Mr. Prabhat Ranjan, Adv.
Ms. Madhusmita Bora, Adv.

UPON hearing counsel the Court made the following ORDER

This Court by Order dated 13th May, 2009, directed the TRAI to file a report at least by 11th August, 2009. Learned senior counsel appearing for TRAI stated that the various parties have to be heard and matter is to be discussed in detail, therefore, more time is required for finalization of the Report. The TRAI is granted time till 31st December, 2009, for filing the Report.

The matter be posted in the 1st week of January, 2010.

Interim order to continue.

ITEM NO.MM-5 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A.NO.26-30/09 IN
CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for extension of time/directions)

WITH
Civil Appeal NO. 1166-1169 of 2009
(With office report)

Date: 15/12/2009 These Appeals were mentioned today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.M. PANCHAL
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s) Mr. H.N. Salve, Sr. Adv.
Mr. Sanjay Kapur,Adv.
Ms. Arti Singh, Adv.
Mr. J. Garg, Adv.

For Respondent(s) Mr. F.S. Nariman, Sr. Adv.

Mrs Manik Karanjawala,Adv.

Mr. Ramji Srinivasan, Sr. Adv.
M/s. Sangeeta Mandal,Jayasree Singh, Swati Sinha, Mamta Tiwari,Prateek Kumar, Advs.
For M/S Fox Mandal & Co. ,Adv

M/s. A.J. Bhambamni, Biswanath Agrawalla, Nisha Bhambani,Rajiv Mehta ,Advs

Mr. Maninder Singh, Sr. Adv.
Mr. Gaurav Sharma, Adv.
Mr. Abhinav Mukerji ,Adv
Ms. Surbhi Mehta, Adv.

M/s. Arun Katpalia, Manjul Bajpai,
Ankur Saigal, Bina Gupta,
Gaurav Singh, Advs.
Ms. Bina Madhavan, Adv.
Mr. Gopal Jain, Adv.

UPON hearing counsel the Court made the following O R D E R

List on 4.1.2010.

(R.K. Dhawan) (Veera Verma)
Court Master Court Master

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ITEM NO.39 COURT NO.1 395266 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,extension of time,impleadment,permission to file additional documents)
I.A.Nos.31-40 & 41-45
(Applns. For intervention and vacating stay)
WITH
C.A.NO.1166-1169/2009
(With appln. for ex-parte stay and office report)

Date: 04/01/2010 These Appeals were called on for hearing today.

Certified to be true copy
Saxena
Assistant Registrar (Judl.)
07.01.10
Supreme Court of India

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s)
Dr. A.M. Singhvi, Sr. Adv.
Mr. Sanjay Kapur,Adv.
Ms. Shubhra Kapur, Adv.
Mr. Rajiv Kapur, Adv.
Ms. Arti Singh, Adv.
Mr. S.N. Mitra, Adv.

And Respnd. in CA 829-833/09
Mr. C.S. Viadyanathan, Sr. Adv.
Mr. Manjul Bajpai, Adv.
Mr. Arun Kathpalia, Adv.
Mr. Ankur Saigal, Adv.
Ms. Bina Gupta, Adv.
Mr. Gaurav Singh, Adv.
Mr. Ashish yadav, Adv.
Ms. Devika Bajpai, Adv.
Mr. Akshay Mishra, Adv.

For Respondent(s)	Mr. F.S. Nariman, Sr. Adv. M/s. Gopal Jain, R.N. Karanjawala, Manik Karanjawala,Nandini Gore,Murli Kaushik, Mansi Gupta, Sonia Nigam, Advs. For Karanjawala & Co., Advs.
	M/S Fox Mandal & Co. ,Adv
	Mr. A.J. Bhambhani, Adv. Mr. Rajiv Mehta ,Adv Ms. Nisha Bhambhani, Adv.
	Mr. Maninder Singh, Sr. Adv. Mr. Abhinav Mukerji ,Adv Mr. Gaurav Sharma, Adv. Ms. Surbhi Mehta, Adv.
	Mr. Balaji Srinivasan, Adv. Mr. B.D. Vivek, Adv.
	Ms. Pooja M. Saigal, Adv. Ms. Narayani K. Sibal, Adv. Mr. P.N. Puri, Adv.
Intervenor	Mr. Mukul Rohatgi, Sr. Adv. Ms. Mamta Tiwari, Adv. Ms. Swati Sinha, Adv.
Star India P.L.	Mr. Ramji Srinivasan, Sr. Adv. Ms. Mamta Tiwari, Adv. Ms. Swati Sinha, Adv.
Intervenor IA 36-40	Mr. C.A. Sundaram, Sr. Adv. Ms. Mamta Tiwari, Adv. Ms. Swati Sinha, Adv.

UPON hearing counsel the Court made the following

O R D E R

List on 18.1.2010.

Liberty to file reply in the meantime.

(R.K. Dhawan) Court Master	(Veera Verma) Court Master

ITEM NO.27 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 829-833 OF 2009

TELEPHONE REGULAORY AUTH.OF INDIA Appellant (s)

VERSUS

SET DISCOVERY P.LTD.ETC. Respondent(s)

(With appln(s) for ex-Parte stay,intervention,extension of time,vacating stay,impleadment,permission to file additional documents)

WITH Civil Appeal NO. 1166-1169 of 2009
(With office report)

Date: 18/01/2010 These Appeals were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.V.RAVEENDRAN
HON'BLE MR. JUSTICE DEEPAK VERMA

For Appellant(s) Mr.Harish N.Salve,Sr.Adv.
Dr.A.M.SInghvi, Sr.Adv.
Mr. Sanjay Kapur,Adv.
Mr.Rajiv Kapur, Adv.
Ms.Arti Singh, Adv.
Mr.S.N.Mitra,Adv.

Mr.Ashok H.Desai,Sr.Adv.
Mr.Manjul Bajpai, Adv.
Mr.Ankur Saigal, Adv.
Ms. Bina Gupta, Adv.
Mr.Gaurav Singh, Adv.
Mr.Ashish Yadav, Adv.
Ms.Devika Bajpai, Adv.

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For Respondent(s) Mr.F.S.Nariman, Sr.Adv.
Mr.Gopal Jain, Adv.
Ms.Sonia Nigam, Adv.
Ms.Manasi Gupta, Adv.
Mr.Murali Kaushik, Adv.
For Mrs Manik Karanjawala,Advs.

Mr.Mukul Rohtagi, Sr.Adv.
Ms.Sangeeta Mandal, Adv.
Ms.Shruti Chaudhary, Adv.
Ms.Swati Sinha, Adv.
For M/S Fox Mandal & Co. ,Advs

Mr.C.A.Sundaram, Sr.Adv.
Ms.Shruti Chaudhary, Adv.
Ms.Sangeeta Mandal, Adv.
Ms.Swati Sinha, Adv.
For M/s.Fox Mandal & Co., Advs.

Mr.A.J.Bhambani, Adv.
Mr.Biswanath Agrawalla, Adv.
Ms.Nisha Bhambani, Adv.
For Mr. Rajiv Mehta ,Adv

Mr.Maninder Singh, Sr.Adv.
Mr.Gaurav Sharma, Adv.
Ms.Surbhi Mehta, Adv.
Mr. Abhinav Mukerji ,Adv

UPON hearing counsel the Court made the following O R D E R

Appellant-T.R.A.I. seeks time upto 30th June, 2010 to finalise the report. Time, as requested, is granted. Learned counsel appearing for one of the respondents contended that they have already submitted a reply with the contentions raised, in the form of an affidavit, and that may also be taken into consideration. Some of the learned counsel for the respondents have contended that there are more than 66,000/- operators and only hand full of them are being heard by

T.R.A.I. and others are not given opportunity to place their suggestions/views. We are told that already public notices have been issued and it is also put on the website of T.R.A.I. If any party is interested, he/it would be at liberty to make suggestions to the T.R.A.I. within a reasonable time. The broadcasters and other stake-holders also would be at liberty to give their suggestions to T.R.A.I. within a reasonable time.

List by end of June, 2010.

(G.V.Ramana)	(Veera Verma)
Court Master	Court Master

Annexure II

Tariff regulation in the broadcasting and cable sector

Important Milestones

Details of the Order	Brief contents of the Order
A. Non-CAS	
The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 (1 of 2004) dated 15.01.2004	The charges payable by- (a) Cable subscribers to cable operator; (b) Cable operators to Multi Service Operators/Broadcasters (including their authorised distribution agencies); and (c) Multi Service Operators to Broadcasters (including their authorised distribution agencies) prevalent as on 26th December 2003 shall be the ceiling with respect to both free-to-air and pay channels, both for CAS and non-CAS areas until final determination by Telecom Regulatory Authority of India on the various issues concerning these charges."
The Telecommunication (Broadcasting and Cable) Services Tariff (First Amendment) Order 2004 (3 of 2004) dated 10.03.2004	The charges payable by- (a) Cable subscribers to cable operator; (b) Cable operators to Multi Service Operators/Broadcasters (including their authorised distribution agencies); and (c) Multi Service Operators to Broadcasters (including their authorised distribution agencies)

	prevalent as on 26th December 2003 shall be the ceiling until final determination by Telecom Regulatory Authority of India on the various issues concerning these charges." **Note:**This amendment omitted the expression "with respect to both free-to-air and pay channels, both for CAS and non-CAS areas" in the principal tariff order because of Governments decision to postpone implementation of CAS except in Chennai where CAS continued under orders of the Madras High Court.
The Telecommunication (Broadcasting and Cable) Services Tariff (Second Amendment) Order 2004 (3 of 2004) dated 13.08.2004	This amendment merely added the words "excluding taxes" after the word "charges". The amendment thus clarified that the ceiling charges were excluding taxes.
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated 01.10.2004	3.Tariff: The charges , excluding taxes, payable by (a) Cable subscribers to cable operator; (b) Cable operators to multi system operators/broadcasters (including their authorized distribution agencies); and © Multi system operators to broadcasters (including their authorized distribution agencies) prevalent as on 26^{th} December 2003 shall be the ceiling with respect to both free-to-air and pay channels: **Provided that if any new pay channel(s) that is/are introduced after 26-12-2003 or any channel(s) that was/were free to air channel on 26-12-2003 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand**

	alone basis, either individually or as part of new, separate bouquet(s) and the new channel(s) is/are not included in the bouquet being provided on 26.12.2003 by a particular broadcaster. The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on 26.12.2003 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels as on 26.12.2003: **Provided further that in case a multi system operator or a cable operator reduces the number of pay channels that were being shown on 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003.** **NOTE:** **This order repealed the Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 (1 of 2004) . It continued the ceiling rates as on 26.12.2003 but allowed increases in the ceiling charges to the extent of rates of new pay channels introduced after 26.12.2003 and decreases when pay channels were reduced. Rates for new channels should be similar to rates of similar channels as on 26.12.2003.**
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (First Amendment) Order 2004 (7 of 2004) dated 26.10.2004	This was a minor amendment by which the expression " a broadcaster or" was inserted in the second proviso to make it read as under: Provided further that in case **a broadcaster or** a multi system operator or a cable operator reduces the number of pay channels that were being shown on 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003.

The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Second Amendment) Order 2004 (8 of 2004) dated 01.12.2004	**Ceiling charges increased by seven per cent. on account of inflation w.e.f. 1.1.2005.**
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Third Amendment) Order 2005 (8 of 2005) dated 29.11.2005	**Ceiling charges increased by another four per cent. on account of inflation w.e.f. 1.1.2006. This was stayed by TDSAT in an appeal filed by Grahak Hitvardini. Appeal finally disposed of on 22.12.2006 with the observation that TRAI is free to consider if it requires to pass some orders on revision of rates for the next year.**
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006 (2 of 2006) dated 07.03.2006	Based on the observations made by TDSAT in its judgment dated 17.01.2006 in Petition No. 32(C) of 2005 and 80(C) of 2005 that TRAI should consider whether it is necessary to fix tariff for commercial purposes, the definition of "ordinary cable subscriber" and "commercial cable subscriber" were inserted in the Tariff Order. **This order also froze as ceiling the charges payable by commercial cable subscribers at the rates prevalent on 1st March, 2006, as an interim measure.**
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fifth Amendment) Order 2006 (4 of 2006) dated 24.03.2006	This was a minor clarificatory amendment aimed at clarifying that the commercial subscriber shall enter into agreement only with the broadcasters or **authorized MSOs or authorized cable operators**.
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order 2006 (5 of 2006) dated 31.07.2006	Principles for deciding similarity of channels (genre and language and ranges of prices of channels belonging to similar genre and language) were spelt out for the first time by this amendment.

The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Seventh Amendment) Order 2006 (8 of 2006) dated 21.11.2006	This amendment order created two categories of commercial subscribers, namely:- (a) hotelswith a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms; and (b) all other commercial subscribers. The amendment order provided that for the first category, the charges would be as mutually determined by the parties [i.e. charges (protection) as applicable to ordinary subscribers shall not be applicable to these subscribers]. For commercial subscribers in the second category, the charges were the same as applicable to ordinary cable subscribers. It was also clarified that in respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties. **Note: On appeals filed by certain hotels and their associations (Appeal Nos.17©/2006 and 18©/2006), the TDSAT has, vide its judgment dated 28th May, 2010, set aside this order on the ground that the micro-classification done by TRAI, based only on paying capacity of the appellants, is not sustainable. With the quashing of the Seventh Amendment Order, the present position is that the interim protection given by TRAI vide its order dated 7th March, 2006 (Fourth Amendment) has revived. Thus, the ceiling rates as prevalent on 1st March, 2006 continue to apply, subject to**

	the shifting of the reference date to the 1st December, 2007 as ordered by Eighth Amendment Order.(on which there is status quo).
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 (3 of 2007) dated 04.10.2007	**This order shifted the reference date for tariff ceilings from 26.12.2003 to 01.12.2007. It mandated the broadcasters to provide pay channels a-la-carte to the MSOs. It also introduced ceilings on the charges payable by consumers to LCOs in terms of the number of pay channels provided and depending upon the classification of cities (based on the classification adopted by M/Finance for payment of HRA to Central Government employees).** **This Amendment Order was set aside by Hon'ble TDSAT by a judgment dated 15.01.2009 which is the subject matter of appeals before the Supreme Court. The Supreme Court has ordered status quo as on the date of the Tribunal's order. TRAI is carrying out a de novo tariff exercise as per the directions of the Apex Court.**
The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Ninth Amendment) Order 2008 (4 of 2008) dated 26.12.2008	By this Amendment Order, another inflationary increase of seven per cent was allowed on the ceiling rates.

Details of the Order	**Brief contents of the Order**
B. CAS	
The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas)	**Tariff dispensation for CAS notified areas laid down for the first time. Tariff Order provided an MRP of Rs.5/- per channel per month at the**

Tariff Order, 2006 (6 of 2006) dated 31.08.2006	**subscriber end for all pay channels. It also provided two standard tariff packages for Set Top Boxes which were mandatory. Basic Service Tier of 30 FTA channels to be provided at Rs.77/- in analogue mode. Pay channels to be provided a-la-carte to subscribers.** **In this order, TRAI had indicated that the tariffs for commercial subscribers shall be governed by the interim orders of the Supreme Court dated 28.04.2006 in Civil Appeal No.2061 of 2006 (Hotel Association case, which was pending before the Hon'ble Supreme Court at that time).**
The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff (First Amendment) Order, 2006 (7 of 2006) dated 21.11.2006	This amendment order created two categories of commercial subscribers, namely:- (c) Hotels with a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms; and (d) all other commercial subscribers. The amendment order provided that for the first category, charges as applicable to ordinary subscribers shall not be applicable. For commercial subscribers in the second category, the charges were the same as applicable to ordinary cable subscribers. It was also clarified that in respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as

	mutually determined between the parties. **Note: On appeals filed by certain hotels and their associations (Appeal Nos.17©/2006 and 18©/2006), the TDSAT has, vide its judgment dated 28th May, 2010, set aside this order on the ground that the micro-classification done by TRAI, based only on paying capacity of the appellants, is not sustainable.**
The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff (Second Amendment) Order, 2006 dated 19.12.2006	This was a minor clarificatory amendment to clarify that the rent and security deposit as mentioned in the two options for purchase of Set Top Boxes as contained in the Schedule are exclusive of taxes and other levies under any law.
The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff (Third Amendment) Order, 2006 (5 of 2008) dated 26.12.2008	This amendment order allowed an increase of seven per cent. on MRPs of pay channels and on the charges for FTA channels (Rs.77/- to Rs.82/-) w.e.f. 1st January, 2009. It also brought down the security deposits and monthly rentals for Set Top Boxes under the Standard Tariff Packages mandated in the Schedule, with effect from the same date.

Annexure III

List of events/steps taken by TRAI since 13.05.2009 for completion of the tariff exercise for Non-CAS areas

S. No.	Date	Event
1.	13^{th} May 09	The date of the order of the Hon'ble Supreme Court.
2.	15^{th} May 09	The Legal Opinion of the Senior Counsel of the Authority received by the appellant.
3.	25^{th} May 09	Internal Meeting of the Pr. Advisors/Advisor in TRAI for charting out the course of action.
4.	9^{th} June 09	Meeting of the Authority to discuss and decide the course of action.
5.	10^{th} June 09	Letter issued to the stakeholders for pre-consultation meeting.
6.	12^{th} June 09	Meeting with the Consumer Advocacy Groups (CAGs) during workshop in Mysore.
7.	19^{th} June 09	Meeting with the MSOs and LCOs in Srinagar.
8.	23^{rd} June 09 (Forenoon)	Pre-consultation meeting with DTH operators and IPTV service providers.
9.	23^{rd} June 09 (Afternoon)	Pre-consultation meeting with Consumer Advocacy Groups (CAGs) registered with TRAI.
10.	24^{th} June 09 (Forenoon)	Pre-consultation meeting with the broadcasters and their associations.
11.	24^{th} June (Afternoon)	Pre-consultation meeting with MSOs, LCOs and their associations.
12.	8^{th} July 09	Meeting of the Authority for taking a decision regarding engaging a Consultant for assisting the TRAI in the de-novo exercise for non-CAS tariff.
13.	9^{th} July 09	Meeting of the Authority for deciding the Terms of Reference (TOR) for engaging the consultant.

14.	10th July 09	Letter issued to consulting firms requesting them to submit their bids for engagement as a consultant.
15.	15th July 09	Meeting with stakeholders on the format for seeking information from them.
16.	15th July 09	Presentation by MSO Alliance (an association of MSOs) to the Authority on various issues relating to broadcasting and cable services including the issue of non-CAS tariff.
17.	16th July 09	Meeting with stakeholders on the issue of format for seeking information from them.
18.	17th July 09	Meeting with stakeholders on the format for seeking information from them.
19.	17th July 09	Presentation by DTH operators association and DTH operators to the Authority on various issues relating to broadcasting and cable services including the issue of non-CAS tariff.
20.	20th July 09	Meeting with stakeholders on one to one basis on the issue of format for seeking information from them.
21.	20th July 09	Presentation by Cable Operators Federation of India (COFI) and All India Aavishkar Dish Antenna Sangh to the Authority on various issues relating to broadcasting and cable services including the issue of non-CAS tariff.
22.	20th July 09	Opening of Technical bids submitted by consulting firms.
23.	21st July 09	Presentation by Indian Broadcasting Foundation (IBF) [an association of broadcasters] to the Authority on various issues relating to broadcasting and cable services including the issue of non-CAS tariff.
24.	22nd July 09	Presentation by consulting firms.
25.	23rd July 09	Opening of Financial bids of the shortlisted consulting firms.

26.	24th July 09	Meeting of the Authority to approve appointment of consultant
27.	27th July 09	M/s Ernest & Young appointed as a consultant to assist the TRAI in the de-novo exercise for non-CAS tariff.
28.	29th July 09	Contract signed with M/s Ernst & Young.
29.	7th August 09	Formats for collecting information on financials and operations of various stakeholders such as broadcasters, aggregators (i.e. authorized distributors of the broadcasters), DTH operators, Multi System Operators, Cable Operators and consumers were uploaded on the website of TRAI. All the stakeholders were requested to co-operate and furnish the called for data in a time bound manner. The date for submission of information was 17.8.2009.
30.	7th August 09	Letters numbering about 245 were issued to the stakeholders requesting them to furnish the information as per the format (as at Sl.No.29 above) by 17.8.2009.
31.	11th August 09	The date of the order passed by this Hon'ble Court whereby time was granted till 31.12.09 for filing the report.
32.	11th August to 27th August 09	Meetings/ conferences numbering about 21 were held, in Delhi, Mumbai and Chennai with broadcasters, DTH operators, local cable operators (LCOs), Multi System Operators (MSOs) by the officers of TRAI and a representative of M/s Ernst & Young - the consultant appointed by the Appellant Authority.
33.	17th August 09	Appellant Authority had granted time till 17.08.09 for submitting information in the prescribed format. The authority received various letters/

		representations seeking extension of time. The time was accordingly extended uptil 31.08.09 (1st EXTENSION).
34.	1st September 09	Instead of submitting the information, the stakeholders made further representations seeking extension of time beyond 31.08.09. The time was accordingly extended uptil 22.09.09 (2nd EXTENSION). It was further made clear that "no further extension will be granted".
35.	8th and 9th September 09	Advertisements were published in various news papers through out the country (29 States/UTs) in major Indian languages (Tamil, Telugu, Assamese, Marathi, Gujarati, Urdu, Kannada, Malayalam, Oriya, Punjabi, Bengali, Manipuri, Nepali, English and Hindi) reminding all the stakeholders to submit the information in the prescribed format as applicable to them.
36.	14th September 09	Letters were sent to 34 MSOs/ LCOs whose addresses were received from the Cable Operators Federation of India (COFI) – a representative body of cable operators, requesting MSOs/LCOs to submit the information in the prescribed formats.
37.	22nd to 25th September 09	The stakeholders have once again sought extension of time even beyond 22.09.09. Meetings with the LCOs/MSOs of Mangalore, Mysore and Bengaluru cities by an Officer of TRAI and a representative of M/s Ernst & Young to get an overall idea of operations and financials of these service providers.
38.	25th September 09	As per the request made by the stakeholders, letters were sent to all major stakeholders to submit the information in the prescribed formats. Further

		communications were sent to those service providers who have submitted incomplete/ unclear information, seeking clarifications/ further information.
39.	6th to 12th October 09	Inspite of advertisements as information in the prescribed format was not forthcoming from MSOs/ LCOs, the Appellant Authority after collecting the addresses of some of the MSOs/ LCOs, spread throughout the length and breadth of the country, issued individual letters to 778 MSOs/ LCOs, requesting them to submit details as per the format.
40.	10th November 09	Letters informing all the stakeholders about the representative details of operations and financial data derived from the data submitted by some of the stakeholders was sent. Stakeholders were also requested to respond by 18th November 2009 along with their justifications.
41.	20th November 09	The stakeholders sought extension of time beyond 18.11.09 for submitting their response to the derived representative detail. At the request of the stakeholders, the authority granted extension upto 30.11.09.
42.	2nd December 09	Instead of submitting their response to the derived representative details, the Indian Broadcasting Foundation, association of all the major broadcasters has issued a questionnaire to the authority.
43.	21st January 2010	Letters numbering 12,070 were issued to the stakeholders through out the country calling upon them to furnish the called for information.
44.	15th February 2010	Advertisements along with a simplified format calling for information from small cable TV network operators (having less than 500 subscribers) released in various vernacular newspapers through out the

		country in 13 languages viz; Tamil, Telugu, English, Hindi, Oriya, Punjabi, Kannada, Gujarati, Marathi, Malayalam, Urdu, Assamese and Bengali.
45.	15th February 2010	On the request of the stakeholders, the last date for submissions of the called for information was extended upto 28.2.2010.
46.	17th February 2010	Copy of the advertisements released in the newspapers (Sl.No.44 above) sent by post to 18,588 small cable TV network operators having less than 500 subscribers throughout the country in the relevant regional languages.
47.	28th February 2010	Last date for submission of called for information by the stakeholders.
48.	28th February 2010 to 25th March 2010	Collation, analysis of the information/inputs received from the stakeholders and drafting of the consultation paper.
49.	25th March 2010	Issued a Consultation paper on "Tariff issues related to cable TV services in Non-CAS areas". The last date for submission of comments/views by the stakeholders was 25.4.2010.
50.	26th March 2010	Letters were issued to various associations of cable operators, MSOs and broadcasters informing them about the release of consultation paper and requesting them to submit their comments on the issues posed in the consultation paper in time.
51.	22nd April 2010	Meeting with IBF - an association of broadcasters, Star India and MSM Discovery - broadcasters, regarding clarifications on the consultation paper.
52.	23rd April 2010	Letter clarifying the issues raised in the meeting at Sl.No.51 above, was issued to IBF and the broadcasters.

53.	5th May 2010	Survey Report on Cable TV subscription charges and other related issues was released.
54.	31st May 2010	Discussion with stakeholders held in Delhi.
55.	1st June 2010	Open House Discussion (OHD) with the stakeholders held in Delhi.
56.	3rd June 2010	Open House Discussion (OHD) with the stakeholders held in Pune.
57.	4th June 2010	Open House Discussion (OHD) with the stakeholders held in Bangalore.
58.	8th June 2010	Open House Discussion (OHD) with the stakeholders held in Kolkata.
59.	1st June 2010, 3rd June 2010, 4th June 2010 and 8th June 2010	In all, the stakeholders numbering 249 took part in OHDs held in Delhi, Pune, Bangalore and Kolkata.
60.	11th June 2010	Discussion with the stakeholders held in Delhi.
61.	22nd June 2010 (forenoon)	Meeting with cable operators and MSOs for formulation of views on the tariff related issues raised in the consultation paper.
62.	22nd June 2010 (afternoon)	Meeting with broadcasters for formulation of views on the tariff related issues raised in the consultation paper.
63.	23rd June 2010	Meeting with cable operators, MSOs, broadcasters and DTH operators for formulation of views on the tariff related issues raised in the consultation paper.
64.	24th June 2010 and 25th June 2010	Letters dated 24th June 2010 and 25th June 2010 received from the stakeholders giving their views on the issues raised in the consultation paper.
65.	25th June 2010	At the request of News Broadcasters Association (NBA), a meeting was held with them on the carriage fee related issues.
66.	28th June	At the request of News Broadcasters Association

	2010	(NBA), a 2nd meeting was held with them on the carriage fee related issues.
67.	28th June 2010 to 21st July	Analyzed the comments received on the consultation paper and finalized the report to be submitted to this Hon'ble Court.
68.	21st July 2010	Report of the appellant Authority on the exercise for tariff related issues for non-CAS areas submitted to this Hon'ble Court.

Annexure IV

Summary of issues raised in the Consultation Paper

1. Are the figures in Annexure B3 representative for the different genres of broadcasters? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company.
2. Are the figures in Annexure B5 representative for aggregators? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
3. Are the figures in Annexure B7 representative for the national MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
4. Are the figures in Annexure B7 representative for the regional MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
5. Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
6. Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.
7. What according to you is the average analog monthly cable bill in your state or at an all India level?
8. Is the market for cable services in non-CAS characterized by the following issues:

(i) Under-reporting of the analog cable subscriber base

(ii) Lack of transparency in business and transaction models

(iii) Differential pricing at the retail level

(iv) Incidence of carriage and placement fee

(v) Incidence of state and region based monopolies

(vi) Frequent disputes and lack of collaboration among stakeholders

9. Are these issues adversely impacting efficiency in the market and leading to market failure?

10. Which of the following methodology should be followed to regulate the wholesale tariff in the non-CAS areas and why?

    i) Revenue share

    ii) Retail minus

    iii) Cost Plus

    iv) Any other method/approach you would like to suggest

11. If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder? Please provide supporting data.

12. If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?

13. Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.

14. What is your view on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both, advertisement and subscription revenue, what according to you should be the ratio between the two? Please indicate this ratio at the genre levels.

15. What is your view on continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level? You may also suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.

16. Which of the following methodologies should be followed to regulate the retail tariff in non-CAS areas and why?

    i) Cost Plus

ii) Consultative approach

iii) Affordability linked

iv) Any other method/approach you would like to suggest

17. In case the affordability linked approach is to be used for retail tariff then should the tariff ceilings be prescribed (i) single at national level or (ii) different ceilings at State level or (iii) A tiered ceiling (3 tiers) as discussed in paragraph 5.3.23 or (iv) Any other
18. In case of retail tariff ceiling, should a ratio between pay and FTA channels or a minimum number of FTA/pay channels be prescribed? If so, what should be the ratio/number?
19. Should the broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs? If yes, should the existing system continue or should there be any modification to the existing condition associated with it?
20. How can it be ensured that the benefit of a-la-carte provisioning is passed on the subscribers?
21. Are the MSOs opting for a-la-carte after it was mandated for the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10.2007. If not, why?
22. Should the carriage and placement fee be regulated? If yes, how should it be regulated?
23. Should the quantum of carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?
24. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?
25. Is there a need for a separate definition of commercial subscriber in the tariff order?
26. If the commercial subscriber is to be defined in the tariff order, then does the existing definition of 'commercial subscriber' need to be revised? If yes, then what should be the new definition for the commercial subscriber?
27. In case the commercial subscriber is defined separately, then does the present categorization of identified commercial subscribers, who are not treated at par with the ordinary subscriber for tariff dispensation need to be revised? If yes, how should it be revised?

28. Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?
29. Do you agree that complete digitization with addressability (a box in every household) is the way forward?
30. What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.
31. What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs and Customers)?
32. Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?
33. What could be the possible incentives that can be offered to various stakeholders to implement digitization with addressability in the shortest possible time or make a sustainable transition?
34. What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?
35. What would be the best disclosure scheme that can ensure transparency at all levels?
36. Should there be a 'basic service' (group of channels) available to all subscribers? What should constitute the 'basic service' that is available to all subscribers?
37. Do you think there is a need for a communication programme to educate LCOs and customers on digitization and addressability to ensure effective participation? If so, what do you suggest?
38. Stakeholders are free to raise any other issue that they feel is relevant to the consultation and give their comments thereon.

Annexure V

List of Pay TV Channels and their prevalent rates

Sl. No.	Names of channels	Prevalent rate (Rupees)
(1)	(2)	(3)
1	Zee TV.	13.88
2	SET (Sony Entertainment)	21.40
3	Star Plus	18.73
4	Sahara One	20.50
5	SAB TV	14.70
6	Star One	21.94
7	Bindass	10.00
8	Zee Smile	6.57
9	9X	20.50
10	NDTV Imagine	20.50
11	NDTV Showbiz	8.00
12	Firangi	15.00
13	E-24	15.00
14	Colors	21.40
15	Real	13.00
16	AXN	15.52
17	Star World	4.87
18	Zee Cafe	8.56
19	Set Pix	12.84
20	BBC Entertainment	6.50
21	Boomerang	10.00
22	WB	6.60

23	FX	15.50
24	Fox Crime	15.50
25	MGM	6.42
26	Zee Marathi	8.56
27	Zee Bangla	8.67
28	Zee Punjabi	1.60
29	Zee Telugu	11.13
30	Zee Kannada	7.98
31	ETC Punjabi	9.63
32	SUN TV	13.26
33	Gemini TV	11.02
34	Udaya TV	12.30
35	Vijay TV	4.28
36	ETV	10.70
37	ETV 2	5.99
38	ETV Bangla	11.12
39	ETV Marathi	11.12
40	ETV Kannada	11.12
41	ETV Gujarati	11.12
42	ETV Oriya	11.12
43	Raj TV	11.77 8.26 (in AP)
44	Raj Digital Plus	8.26 5.01 (in AP)
45	Vissa TV	5.01 11.77 (in AP)
46	MAA TV	6.00
47	Zee Salaam	15.00
48	Surya	12.31
49	Star Jalsha	12.00
50	ETV UP	11.12
51	ETV Bihar	11.12

52	ETV Urdu	11.12
53	ETV Rajasthan	11.12
54	ETV MP	11.12
55	Tarang	10.70
56	Asianet	13.25
57	Asianet Plus	7.00
58	ETC	3.21
59	Zing	5.35
60	MTV	7.49
61	VHI	3.21
62	SUN Music	7.50
63	Gemini Music	7.50
64	9XM	7.00
65	Channel 8	10.00
66	Udaya II	7.49
67	Nat Geo Music	7.40
68	MAA Music	7.50
69	Channel V	1.07
70	Tarang Music	5.35
71	ESPN	35.45
72	Star Sports	35.45
73	Star Cricket	29.96
74	Neo Cricket	35.45
75	Neo Sports	26.60
76	Zee Sports	11.13
77	Ten Sports	16.05
78	MAX	18.19
79	Zee Cinema	13.88
80	Star Gold	17.66
81	Star Movies	17.66
82	HBO	16.69
83	Zee Studio	7.49

84	Zee Classic	10.70
85	Zee Action	10.70
86	Zee Premiere	11.98
87	Zee Talkies	16.58
88	KTV	16.06
89	Teja TV	5.68
90	Udaya Movies	15.40
91	Navvulu TV	18.20
92	Ushe	16.06
93	UTV Action	10.00
94	Filmy	16.50
95	B4U Movies	6.00
96	TCN Classic Movies	10.00
97	Kiran	18.19
98	World Movies	10.00
99	UTV Movies	15.00
100	NDTV Lumiere	15.00
101	Aditya Movies	18.19
102	Zee News	8.02
103	CNN	1.60
104	CNBC Awaaz	4.82
105	24 Ghante	6.42
106	24 Taas	9.09
107	NDTV 24X7	9.10
108	NDTV Profit	6.42
109	Aaj Tak	7.49
110	Headlines Today	3.21
111	Tez	2.14
112	Sun News	1.50
113	Gemini News	8.02
114	Udaya Varthegalu	7.86
115	Times Now	9.10

116	CNBC TV 18	9.10
117	CNN-IBN	5.35
118	BBC World	5.00
119	Dilli Aaj Tak	8.50
120	Zee Business	5.14
121	Zee 24 Ghantalu	5.60
122	Star Ananda	6.00
123	Bloomberg UTV	8.50
124	ET Now	8.50
125	Cartoon Network	13.37
126	POGO	13.37
127	Animax	2.14
128	NICK	6.42
129	Cbeebies	6.50
130	Disney Channel	9.52
131	Disney XD	9.52
132	Hangama TV	8.35
133	Baby TV	13.25
134	Chutti	13.37
135	Chintu	13.37
136	Khushi	13.37
137	Discovery	16.05
138	NGC	6.15
139	The Fox History & Entertainment Channel	4.71
140	Animal Planet	5.35
141	Discovery Turbo	10.00
142	Discovery Science	12.00
143	Nat Geo Wild	16.00
144	Nat Geo Adventure	16.00
145	Zee Trendz	1.07
146	Zoom	8.35

147	Discovery Travel & Living	9.63
148	NDTV Goodtimes	9.63
149	Zee Jagran	2.14
150	Prarthana	5.35

Annexure VI

Television receipt capacity Vs number of channels received: non-CAS Households (Recall based) (in %)

	Capacity of TV Set						**Number of Channels Received**					
Number of Channels	< 20	21-50	51-100	101-150	151-200	Above 200	< 20	21-50	51-100	101-150	151-200	Above 200
Delhi	0.7	0.7	53.7	12.8	24.2	8.1	0.7	25.5	73.8	-	-	-
Kolkata	2.0	0.7	56.7	18.0	22.7	-	3.3	30.0	63.3	3.3	-	-
Mumbai	-	-	61.8	19.7	18.5	-	-	37.6	60.5	1.9	-	-
Bangalore	-	0.9	77.7	10.5	10.0	0.9	0.5	27.7	71.8	-	-	-
Hyderabad	6.7	0.9	79.1	2.7	10.7	-	8.0	37.8	54.2	-	-	-
Ahmedabad	0.5	5.0	60.2	16.4	14.4	3.5	1.5	52.7	45.3	0.5	-	-
Bhopal	-	2.0	54.0	11.0	29.5	3.5	0.5	29.5	69.0	1.0	-	-
Chandigarh	-	-	44.1	11.9	44.1	-	0.5	59.9	39.1	0.5	-	-
Cuttack	0.5	3.5	67.3	8.5	18.6	1.5	2.5	63.3	34.2	-	-	-
Guwahati	1.5	1.0	67.7	8.5	20.4	1.0	2.5	20.4	75.1	1.5	0.5	-
Jaipur	-	2.4	45.2	20.7	23.6	8.2	1.0	52.9	46.2	-	-	-
Jamshedpur	-	4.0	60.7	22.4	12.4	0.5	0.5	48.3	51.2	-	-	-
Raipur	0.5	1.0	33.5	26.6	33.0	5.4	0.5	35.0	58.6	5.4	0.5	-
Kochi	-	14.1	68.3	9.0	8.0	0.5	-	42.7	55.3	2.0	-	-
Lucknow	1.5	3.4	39.2	12.3	27.0	16.7	4.4	61.8	33.3	-	0.5	-
Shimla	2.0	4.0	59.3	15.6	12.6	6.5	2.5	52.8	44.2	0.5	-	-
Patna	6.0	2.5	50.3	21.1	15.1	5.0	6.5	56.3	36.2	1.0	-	-
Dehradun	1.5	-	30.3	17.4	41.8	9.0	2.0	58.2	39.8	-	-	-
Varanasi	6.4	3.0	40.4	9.9	23.2	17.2	7.9	52.2	39.4	0.5	-	-
Jammu	3.0	2.0	46.8	11.4	25.9	10.9	4.5	46.8	48.8	-	-	-
Shillong	-	-	59.3	34.2	6.0	0.5	-	69.3	30.7	-	-	-

Source : CMS Survey Report 2007