

TRAI CONSULTATION PAPER

NO. 5/2010

DATED 25th MARCH 2008

ON

**ISSUES RELATED TO CABLE TV SERVICES IN
NON-CAS AREAS**

RESPONSE FROM

NEO SPORTS BROADCAST PRIVATE LIMITED

TRAI Consultation paper No 5/2010 on Issues related to Cable TV Services in Non – CAS Areas

Introduction: At the outset Neo Sports appreciate for the various steps taken by TRAI with respect to cable industry from time to time. Though a long way is still to be covered in order to streamline various other unresolved issues to have a win-win situation for all the stake-holders including the Customers .

The Indian Pay TV industry has grown to a great extent since last 6-7 years and is on the path of further growth. Not only there is growth in subscriber base but also the growth in number of channels as acknowledged by the Authority also in this consultation paper. The growth evidently establish that the effective competition is now there in the market which shows the need of de-regulation of the industry so that it may grow on its own pace as per market practices of equilibrium .

The step taken by the Authority, in pursuance to the order passed by Hon'ble Supreme court, is to evaluate whether there exist the effective competition and if not take the steps to evolve a system of tariff fixation.

In this regard Neo Sports is pleased to place herewith its views on the Consultation paper, which is without prejudice to its right to challenge any directive, order, regulation or notification and reserve its rights to change the view based upon the further information received.

7 Issues for consultation

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.

NEO RESPONSE :

Being a Sports Broadcaster we are restricting our reply to the figures mentioned in point 8 of Annexure B 3 which related to Sports Genre.

As per our opinion the figures in point 8 of Annexure B3 are not the representative for the sports genres of broadcasters. We reiterate that we have already submitted the representative figure of our company to the

Authority vide our letter dated 17th November 2009 and further opposed the data circulated by the Authority (as circulated vide its letter dated 10.11.2009) vide our letter dated 30th November 2009. We are surprised that the Authority has not considered our single letter and reproduced the data as circulated to us earlier. We therefore refute the data as specified in the consultation paper.

We find it a paradox that the Authority is intending to use the data for tariff determination which is not reliable and do not represent the true picture of the industry.

Since neither the data as used by the Authority and rational for using the same data nor the exact methodology is specified in the consultation paper, we however in order to give comment upon the data of the Authority vis-à-vis our data we need a detailed understanding and discussion with the Authority so as to understand their process of calculation the representative figure.

2 Are the figures in Annexure B5 representative for the different genres of Aggregators? 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.

3 Are the figures in Annexure B7 representative for the different genres of national MSOs? 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.

4 Are the figures in Annexure B7 representative for the different genres of the regional MSOs? 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.

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 genre 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 genre and not of your company.

NEO Reply :

In order to give comment upon the data we need a detailed understanding and discussion with the Authority so as to understand the process of calculation the figure as the same related to other stake holders.

Issue 7. What according to you is the average analogue monthly cable bill in your state or at an all India level ?

NEO Reply :

The average analogue monthly cable bill for Maharashtra, as per our opinion, is Rs. 200/ per month per subscribers and at an all India level is Rs. 225/- per month per subscribers.

Issue 8. Is the market for cable services in non-CAS characterized by the following issues :

- (i) Under-reporting of the analogue 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.

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

NEO Reply :

The Authority has rightly observed a few issues as mentioned hereinabove, as the MSOs/LCOs have not been accepting the data published by various marketing agencies and have been disputing the said subscriber base figure which not only arise the issue of under reporting which is the mother of various other disputes. They have been declaring the subscriber base of their area as per their own wish to various broadcasters which again is different base to different broadcasters. It is rightly observed that even on such under-declared subscriber base the negotiation takes place between the MSOs/LCOs and the broadcasters.

Had there been some effective and transparent mechanism for determining the subscriber base such as digitalization etc., which is acceptable to all the stakeholders, this may resolve a major issue of under declaration which is the mother of all the major problems.

We suggest that the total subscriber base/data as declared/surveyed by the Authority (for the country/respective State) should be taken as final. The MSOs/LCOs should declare their true subscriber base (state-wise) and sum of which is bound to be matched with the data as declared/surveyed by the Authority. However in case the total subscriber base does not match the subscriber base as declared by the Authority, the same need to be determined by the %age derived from the subscriber base declared by MSOs/LCOs. E.g. in case the subscriber base declared by the Authority for a particular state/region is 10000 and the subscriber base declared by MSOs/LCOs for that state/region is equal to 5000, and suppose there are 5 MSOs/LCOs in that region declaring the subscriber base of 2000, 1500, 1000, 500 and 500 each hence their respective % age would be 40%, 30%, 20%, 10% & 10% as per their own declaration. Based upon such %age the true subscriber base of their network should be arrived on the basis of the subscriber base as declared by the Authority should be 4000, 3000, 2000, 1000 and 1000 respectively.

In addition there are Political issues which are also **adversely impacting efficiency in the market and leading to market the failure.**

Further we are of the view that the stand being taken by the MSOs/LCOs (supporting their view for under-declaring) with respect to MRP would automatically be resolved had there been transparency and true declaration of subscriber base by them. E.g. in case the subscriber base of any area is 10000 and the declaration by the LCO is 1000 homes only the cost of the channel is bound to be high; had the LCO declare full subscriber base of 10000 the price being charged by the broadcasters may be reduced as their total revenue would be increased by many fold even at the low price.

We differ by the stand taken by the Authority that the subscriber base is always a derived number by back calculation or based upon a predefined content cost etc. It is submitted that there are two methods prevalent in the industry one is subscriber base and other is fixed fee which is not based upon the subscriber base. In first method the total pay out of the LCO/MSO is based upon the number of subscribers (as declared/negotiated) multiplied by the price of the channels and in the second method the fixed fee is decided which is based upon the negotiation takes place between the parties.

The pricing of the channels are not an indicative figure but is a real price so as to maintain the uniformity in all the markets. Had the pricing of the channels are indicative figure; the Authority would not have issued various notifications with respect to pricing, its revision and frozen the price. Hence the subscriber base is not always a derived number by back calculation. However we do agree with the issue that there is lack of transparency in business and transaction models.

So far as the differential pricing at the retail level is concerned; the said issue is very peculiar to the Industry. However we are of the opinion the said issue might have been controlled by fixing of upper limit of MRP of the services. It is worth to be stated that offering of the services at the lower price by the LCO in some of the areas is solely due to the under-declaration; had there been the true and 100% declaration of the subscriber base; no LCO can afford to sell the channels less than the cost on which he has bought the services. Since there is under declaration therefore the services being availed by the LCOs/MSOs at no or free of cost and thereby what ever income is being earned by the MSOs/LCOs are the income without spending even a singly penny. It is rightly observed by the Authority that the services being distributed at the lower cost to some of the house holds on the cost of the stake holders only and also some of the consumers have to pay more for the same services, which also affects the level of transparency. The same problem can also be resolved by transparent declaration.

In addition incidence of carriage and regional monopoly are the other issues which is rightly observed by the Authority adversely impacting efficiency in the market and leading to market the failure, which must be immediately tapped.

We are of the view digitization of the distribution would be the right solution in this direction

Issue 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

Issue 11. If the Revenue share model is used to regulate the wholesale sale tariff, what should be the prescribed share of each stake holders. Please provide supporting data.

Issue 12. If the Cost Plus model is used to regulate the wholesale sale tariff, should it be genre wise or channels wise ?

Issue 13. Can forbearance be an option to regulate whole sale 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.

NEO Reply :

Price freeze is a major concern to the broadcasters. The price freeze was introduced only as a temporary measures but even after 7 years the freeze is not lifted. The impact of price freeze is affecting the broadcasters prejudicially as they are not able to recover their cost (content and other costs). Though the other source of revenue is advertisement but the advertisement price is also very price sensitive as there is an effective market equilibrium which controls the advertisement rate. We therefore request you to consider for the forbearance in CAS as well as Non CAS areas and lift the price freeze.

Revenue share method and Retail minus method may not be best suitable for the non CAS areas as rightly observed by the Authority. We are of the opinion that even the Cost Plus method may also not be best suited to regulate the pricing. As it is evident that the under declaration

is prevalent in the industry and considering the said practice (of under declaration) what subscriber base would be taken, as the base, for finalizing the price. The subscriber base is not declared properly by the operators hence this method shall not give the true picture of the pricing. The moot question comes that what should be the base of subscribers whether the total subscribers or negotiated subscribers; if we take negotiated subscriber base the price will keep on changing and in case we take the total subscriber base the price would be very low and by which the broadcasters would not be able to recover its cost even.

We would like to draw the attention of the Authority on the circumstances and need to regulate the price of any commodity by the Govt. or Regulator. In the beginning of the development of Indian economy there was an era of wide economic imbalances, black marketing, hoarding of food and grains by the whole seller, an artificial scarcity of those products was very common practices adopted by the traders which led to increase in the price of those products for undue profit by those hoarder, which resulted to unjust enrichment for them and increased the economic differences. With the passage of time Monopoly became another issue which led to give undue gain to the traders by increase in price by their dominating position.

In order do control such situation the Govt. of India adopted various means which included promulgation of **The Essential Commodities Act, 1955** for controlling the supply and distribution of certain essential items like foodstuffs, including edible oilseeds and oils; petroleum and petroleum products, coal including coke and woollen textiles; drugs etc; and thereby to control the price so as to make them available to poor people at a reasonable price. In addition **The Essential Services Maintenance Act, 1968** was also passed whereby some essential service were defined by the Govt. which are postal, telegraph or telephone service, railway service or any other transport service.

Considering above, it can be inferred that the need for regulation of any price arised whenever there is a scarcity of services and/or the manufacturer/Service provider intends to take undue advantage of its monopolistic situation **or there is not enough competition.**

We suggest that the need for regulation of channel prices or otherwise therefore has to be decided with specific reference to the situation prevailing in the industry governing the product or service. The questions that are therefore relevant would be:

i) Are there enough players with freedom to enter or exit at the various tiers of the industry so that the market can play an effective role

balancing the demand and supply not only in terms of quantity but also of quality?

ii) Are there conditions in the market, which enable a few players to use their dominance to the detriment of others?

iii) Do all the stakeholders have sufficient knowledge and competence to play an effective role in driving the market forces on their own without any protection?

(iv) is there sufficient competition to balance the equilibrium of the cable TV market.

We would like to examine and draw our consideration as :

Is it really a need for controlling the prices?

Is there really scarcity of channels? *Are there not enough players with freedom to enter or exit?* Is there no choice available to the consumers? We would like to draw the attention of the Authority when there are approximately more than 450 channels available in different genres *the market can play an effective role balancing the demand and supply not only in terms of quantity but also of quality*, the market players are really compelled to fix up the price of the channel in a highly competitive manner as per the market forces.

Are there conditions in the market, which enable a few players to use their dominance to the detriment of others? So far as the Channels are concerned the same may be taken as product e.g. entertainment product, sports product, movie product. Availability of various products (approx 450 channels) in the market breaks the dominance of any broadcaster. In case one broadcaster intends to take advantage of his dominance and try to increase the price or otherwise the consumer will definitely switch to other product (channel). In addition there are presently DTH players and IPTV players are also in the market, which clearly shows that there are enough competition in market. Yes the dominance/monopoly by cable operator on the ground may deteriorate the situation which need to be rectified by fixing a minimum number of operators in every area.

In the cable industry, of course all the stakeholders have sufficient knowledge and competence to play an effective role in driving the market forces on their own without any protection? They have even their organized association to protect their interests e.g. IBF for broadcasters, MSO Alliances for MSOs and various association for LCOs and consumers are available to protect their interest.

Considering above it is very clear that the market is matured enough to balance its equilibrium. Price regulation & controls will not only distort the market but also will lead to down gradation of quality of services and also reduction of investment in the industry.

It is to be noted that selling the channels at low prices will discourage any further investment in new channels and new/quality programming which will surely affect the consumer choice and creating a shortage of quality channels and programming, which means control of pricing will lead to a limitation of the quality and variety of their programming content.

Since market is mature and the principal of Equilibrium has made its inroad into the industry therefore where any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the price is under priced it will require the correction by increase in price. Hence there is no economic rationale exists for placing price controls, as every company has its own business model.

In fact, under the free market conditions of competition, the cable television market has grown rapidly and presently provides to the consumer a wider choice approx 90 channels of different genres at less than Re. 1 per day per household, which is cheaper than a newspaper. Price controls will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved to deregulate their cable television industries, choosing to remove any restrictions on pricing. **In addition the Telecommunication is the live example of the forbearance as there was no price freeze and due to competition the market price has been slashed down to its equilibrium and all the stake holders including consumers are in gaining position.**

Indian cable and satellite TV industry has been and is undergoing a dynamic and vibrant phases which is poised for further growth. The industry can function in most effective manner only when governed by market forces and not by regulation. The same may be observed that even before the price freeze there is no such unreasonable increase in price by the broadcasters. It is time proven fact that any industry which is controlled against the market forces, have faced a lot of problem which lead to not only running under losses but also were forced to be wound up e.g. looms, collieries etc. By imposing pricing restrictions such a dynamic and competitive market would adversely impact the revenues of all the stake holders, thus resulting in a negative impact on the quality and diversity of programming available to consumers, less choice to consumers, and increase in last mile operators monopoly.

Since there exist competition we are, therefore, of the opinion that let the market forces play its own role and price be determined by the law of demand

Normally the commercial practice is that price is not increased during the year unless a new channel is introduced. It is suggested that the said practice may be converted as rule of law. The Authority may promulgate a law that the price agreed by the service provider will remain the same during the subsistence of the Agreement signed, unless of exceptional circumstances and at the time of renewal of the Agreement the Broadcasters will be free to determine the price of its products

Issue 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 ration at the genre levels?

NEO Reply :

The above proposal may not be feasible. Does it mean in case where the broadcaster is paying no carriage cost to the MSO, the channels to be made available as FTA.

Further a Broadcaster should be free to recover the cost from the streams which is best suited to it. It is to be noted even if the cost of advertisement have impact on the consumer indirectly and the price of subscription have the impact the consumer directly. Does it mean we are suggesting that we should impose an indirect cost on the consumers.

It is to be noted that broadcasters of different genres have to adopt different models suited to their business need, hence it would be a disastrous to adopt this kind of common practice for all of them. Further in case if a broadcaster has a common team handling the content and distribution it may not be practicable to apportion or allocate the exact cost of content and distribution.

We would further liked to submit that there is regulation which is controlling the duration of Advertisement which is fixed and strictly controlled by the Regulation, consequent upon which the time left for advertisement is very limited. Also the advertisement revenue market is also very sensitive.

We are of the opinion that the above methodology would not be feasible for the sports channels, since the advertisements are shown only at the break time of live event (which means in case of cricket after the completion of bowling over or fall of wicket and in case of Soccer either in the half time or after any goal), therefore the number of advertisement to be shown has its limitations. As a sports channel we cannot show the advertisement during the live match/event. It is further to be stated that the high cost of content of sports cannot be compared with GEC, the major part of which is to be recovered during live match only.

It is opined that higher declaration of the subscription can reduce the subscription rate

Issue 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 suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.

NEO Reply :

We suggest total forbearance as suggested above and no tariff regulation should be there.

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

- Cost Plus
- Consultative approach
- Affordability linked
- Any other method /approach you would like to suggest

Issue 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 para 5.3.23 or (iv) Any other

Issue 18. In case of retail tariff ceiling, should a ratio between pay and FTA channel or a minimum number of FTA / Pay channel be prescribed? If so what should be the ratio/ number?

NEO Reply :

Though we are of the opinion of the total forbearance, however at the retail level the cost plus approach, out of the three methods, can be adopted as it is really easy to calculate the cost of per channel and while distributing the channels in bouquet the cost of bouquet should accordingly be determined. The difficulty as stated in whole sale price may not be applicable in this method at retail level.

The Affordability approach will lead to various prices of the same product which would not only create confusion but would give the unfettered rights to the cable operators to charge the price at its sole discretion which would create a discrimination among the channels as the channels which are higher priced will not be opted by the consumers.

So far as issue 18 is concerned : we appreciate the present formula as suggested by the Authority may be continued and minimum three to four channels from each genre should be carried by the cable operators.

In order to have the clear **choice of the channels** by the Consumers; The channels to be provided by the Operator should be decided in the following manner :

Suppose an operator can distribute 90 channels, out of such 90 channels :

- 22 should be FTA
- 48 should be decided by the majority of the consumers residing in that particular area. A form should be filled up by the consumer (on quarterly basis) giving his choice of watching the channel
- 20 should be the choice of Operator

The above method will not only control the carriage fee but will also provide the opportunity to the new channels. Also the consumer will also get the channels of their choice failing of which the Operator will distribute the channels at his own discretion.

In addition MSOs/ LCOs must carry without interruption and any modification (on 24 hour basis) all channels which they have subscribed, as non continuation/ blacking of the Channels by the MSO/LCO not only shall affect the consumers as they would be deprived of the channels they have subscribed to but also the broadcasters prejudicially as interruption may sabotage the goodwill/rating of the channels affecting the advertising revenue also. The MSO/LCO sometime is also

paid to sabotage the goodwill of the channel or the MSO/LCO wants to auction the space on basis of carriage fee.

Issue 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?

Issue 20. How can it be ensured that the benefit of a-l-carte, provision is pass on the subscribers ?

Issue 21. Are the MSOs opting for a-l-carte after it was mandated for the broadcasters to offer their channel on a-la-carte basis by the 8th tariff amendment order dated 4.10.07. If not , why?

NEO Reply :

It is rightly observed by the Authority that the benefit of a-la-carte provisioning in non CAS area are not being and cannot be passed on the subscribers, as there can not be any facility for passing the same to consumer through a single cable. Hence the broadcasters should not be mandated to offer the channels in a-la-carte. The only beneficiary in this case are MSOs who subscribe the channels as per their sole discretion without consulting the viewers and consequent upon which the viewers may not be able to watch their favourite channels and have to pay extra subscription fee when the demand for the same. In case the bouquet of channels are subscribed by the MSO the channels as desired by the Consumers would be easily and promptly available to them.

It is wrongly presumed that only one or two popular channels are there in the bouquet and other are tied up. In the bouquet most of the channels are widely viewed by the consumers. The purpose of any bouquet or selling the products in package is to provide all the utility product in the same pack at a cheaper price to the consumer and the same principal is being adopted in cable industry. In analogue mode bouquet is always beneficial and cheaper to the operators and the benefit of which can be passed on to the consumers. In case of addressable system as rightly observed by MSOs the a-la-carte option should be available to them.

Hence the broadcasters should not be mandated to offer a-la- carte channels to the Operators.

With our company the MSO have subscribed for bouquet only.

Issue 22. Should the carriage and placement fee be regulated? If yes, how should it be regulated?

Issue 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?

Issue 24. Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?

NEO REPLY

We suggest that the Authority should take steps to regulate the carriage fees and prescribe a ceiling which should not exceed for Prime band:

- Rs. 10 lacs p.a. for an MSO that has 1 million cable homes in top 6 Metros,
- Rs 5 lacs p.a. per million cable homes in next 23 Tier 1 cities,
- Rs 2.5 lacs p.a. per million cable homes in Tier 2 cities.

MSOs/LCOs must compulsorily carry at least three to four channels each from News, Movies, General Entertainment and Sports genres and at least 3-4 channels each from the genres which are Children, Music, Regional languages other than the principal language of that state, Documentary/International factual programming. This will provide the consumers variety of channels and will take 48 frequencies adding thereto 4 DD channels will occupy total 52 frequencies which still leaves over 40 frequencies free for the MSO/LCO to decide further on basis of consumer demand and for carriage fee.

For the lower frequency the above price to be reduced by 20%. Eg for C band the price should be 8 lacs and for S Band the price should be 6 lacs and so on.

Issue 25. Is there a need for a separate definition of commercial subscriber in the tariff order?

Issue 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?

Issue 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?

Issue 28. Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?

NEO REPLY

Yes of course there should be a separate definition of Commercial Subscribers.

We are of the opinion that the existing definition to be amended considering the following representations :

- The number of rooms to be reduced to 30 in stead of 50
- The Hospitals having more than 30 TVs should be included as part of the commercial subscribers, as the hospitals are charging the fee as per the facilities; such as deluxe rooms and semi deluxe rooms etc. having TV and not having TV
- The big establishments (offices/factories, banks etc) using the services and having 20 TVs in the establishment should be covered even if the services are being used for recreation and up-dation of developments of the Employees.

As per our opinion who so ever is involved in commercial activities e.g. any office or bank using the services for the benefits of employees should be charged the commercial rates and not the domestic rates. All the big educational institutes as the business colleges are being run for the profits. Why a hospitals need TV sets in the room of any patient – it may be observed that in the normal room in any Hospitals no TV is provided while in the luxury class room the TV is provided to the patient for which an inherent cost is included in the bill of the room rate. Hence the same should be covered in the definition of the commercial subscribers

In addition the Restaurants while showing live events must be covered in the commercial subscribers either on Pay per view basis or on commercial rates for the complete Term of the Agreement.

Considering above and the industry/ business prospects, we propose the following definition :

‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives

broadcasting service at a place indicated by him to a broadcaster and uses such signals for the purpose of further distribution/transmission of the same as part of its integrated services to its main services to its customers/employees/members, which inter-alia includes Hotels, Guest houses, Restaurants, lodges, Pubs, bars, clubs, hospitals, banks, offices and factories etc..”

However following establishments shall be excluded from the above provided they have less than three TV Sets:

- Educational & Research Institutes
- Govt. Hospitals
- Establishments having the service providing area of less than Hundred square feet
- Religious & Philanthropic Institutes

Explanation : It is clarified that Restaurants and cafés having more than 30 seats will be deemed as Commercial Cable Customers.

We are of the strong opinion that the price for commercial establishments need not be brought under the ambit of Tariff regulation and the prices should be determined by the market forces based upon the simple economics of Demand and Supply.

The commercial transaction should be settled with the mutual consent of both the parties and at the price determined by the market forces which will be better for any industry and will be better in long run. The regulation of price may squeeze the size of any industry.

International commercial practice indicates that there is no instance of price regulation over commercial establishments, even in markets where residential tariffs are regulated. In addition differential rates for domestic and commercial consumers are prevalent in various countries of Europe and UK.

Price controls distort the market and lead to a misallocation of resources; they would reduce investment in and the quality of channels, programming and cable infrastructure to the detriment of consumers.

For the other commercial establishments which is being connected by MSOs/LCOs a separate lists of them should be provided to the broadcasters by them.

Issue 29. Do you agree that complete digitization with addressability (a box in every household) is the way forward?

NEO REPLY : we are of the opinion that complete digitization with addressability (a box in every household) is the only way forward to all the problems of the industry.

Issue 30. What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.

NEO REPLY : We suggest the three years sun set period should be set out so that the existing networks to upgrade their network to the digital networks and new networks only with the digital facilities should be granted the license.

Issue 31. What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs and Customers)?

NEO REPLY : The cost of box may be recovered from the Customers and other should be shared between MSO & LCO on mutually decided basis.

Issue 32. Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?

NEO REPLY : There should be standardization of compression system which is to be prescribed by BIS, this will help in interoperability.

Issue 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?

NEO REPLY : A tax heaven for next three years should be allowed to the networks who complete their digitization during the granted time.

Issue 34. What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?

NEO REPLY : We agree that the structure of license to be granted to MSOs and LCOs to be their franchises or agents.

Issue 35. What would be the best disclosure scheme that can ensure transparency at all levels?

NEO REPLY : In addition to the subscribers report (i.e. the number of subscribers subscribing the channel of a particular broadcaster), MSOs should also declare to all the broadcasters the total number of Set top boxes installed in a particular areas/region.

Issue 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?

NEO REPLY :

The MSOs/LCOs should treat all the channels equally and in non discriminatory manner. Since there is no regulation to protect the interest of the Broadcasters against discrimination; a few (new and/or Small) broadcasters tend to be discriminated by the Operators (MSOs/LCOs) while subscribing and distributing their channels.

The Operators may form the bouquet as per their own wish and commercial benefit without considering the interest of the Consumers and broadcasters. The Broadcasters, who would be paying the high placement/carriage fee their channels are placed in a better (basic) tier which is a clear discrimination and injustice to the small or new broadcasters who cannot afford to pay the high placement fee but have the capability and good content with them.

It is further suggested that in the basic services either FTA channels should be there and rest of the channels should be there in various packages or on a-la-carte basis. Or the consumers should be given the option to participate in forming the basic services.

Issue 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?

NEO REPLY : As per our opinion the cause of failure of CAS was lack of knowledge; as neither the LCOs nor the consumers were well aware of the scheme of CAS.

We suggest there must be an effective and aggressive communication programme to educate the LCOs and consumers on digitization and addressability to ensure effective participation.

The awareness campaign to go in print media and a compulsory promos on every channels after every one hour.

By such they will be aware of the advantages of the digitization and the implementation of which will be smooth and faster.

Issue 38. Stakeholders are free to raise any other issue that they feel is relevant to the consultation and give their comments thereon.

NEO REPLY

In addition as a Sports Broadcaster we come across some issues which are peculiar to only sports broadcasters. We are enumerating the same for your kind consideration and with a request and expectation to have the optimum way out for the same either by amendment in inter connect regulations or in any other way you feel appropriate.

- **Deactivation period & Process :** The deactivation period of 21 days is very long period and affecting all the broadcasters and particularly to Sports Broadcasters adversely. As we are aware that the shelf life of a live event is 20-30 days and if the MSO/LCO commits any breach or default he will still be allowed to take advantage of such default and will show the live Event despite the breach and defaults because the broadcaster cannot deactivate the network before 21 days.

We find that MSOs/LCOs are taking advantages of the said (long) period, which is causing a great hardship to the sports broadcasters; and indulge in piracy as they cross their agreed area or connect some deactivated LCOs during the live event and the sports broadcasters are not able to take any action but to wait for 21 days during which the major portion of or the Live Event will be over.

- In the event of Piracy by LCOS/MSOs it is suggested that some stringent action be taken against them which should inter-alia include suspension/cancellation of their license.
 - **It is requisite to point out that during the Live event the rate of piracy is quite high and even the signals of CAS areas is leaking to Non CAS Areas.**

Considering the above problems it is suggested that old provision of 2 days notice in case of unauthorized distribution to be re-introduced and deactivation for other reasons to be allowed for two weeks. And in case of CAS signals flowing to NON CAS areas and piracy there should be some provision of strict action including suspension / termination of License.

- It is also suggested that the old system of intimating the Subscribers either by News paper or Scroll to be introduced. By such system the cost of publication (which is very high now a days) can be saved and secondly intimation by Scroll is an effective way to intimate most of the consumers as the consumer may or may not read the notice but will definitely watch the scroll on the channel.
- **In addition the deactivation should not be done at the whims and fancy of either party, the same should be done only when there is breach of the terms of the Agreement only.** It has been observed that MSOs/LCOs has started deactivating the sports channels during the non Live Event due to which the subscribers are not able to view the other sports based programmes which is produced and broadcasted during such period, which causes a great loss to all the sports broadcasters. In such case the MSOs to be charges pay per view rates.
- **Lock In Period :** We suggest that the right of deactivation the signals and termination of the Agreement should be used very sparingly and not at the whims and fancy of one party intended to deactivate/terminate; as the result of deactivation is serious.

We would like to draw your attention to the unjustified tactics being adopted by the MSOs/LCOs in terminating the Agreement after the Live Event is over on the one false pretext or other. MSOs/LCOs have started terminating the Agreement after the Live Event is over, which is nothing but adopting the concept of Pay-per-View in Non CAS regime. It is therefore suggested that there should be lock in period for the MSOs/LCOs while subscribing the channels. MSO/LCO should not be allowed to terminate the Inter-connect agreement before

the expiry of the Term unless there is a breach by broadcaster or the business of MSO/LCO is being closed down. This is very crucial issue from the Sports Broadcasting point of view, as the MSOs subscribe the channels at the time of Live Events by taking shelter of “Must Provide” provision and when the said Live Event is over they terminate the Agreement and at the time of next Live Event they rush to TDSAT for subscribing the Channels.

It is suggested that this route should be plugged as MSOs/LCOs are adopting oppressive practice of Pay per View system in this manner indirectly by subscribing the channels for short time. In order to overcome this issues the following are suggested :

- MSOs/LCOs should not be allowed to terminate or deactivate the channels before expiry of the Term or
 - A lock in period (not less than of six months) to be introduced for Sports Broadcasters. OR
 - Differential pricing be allowed to be charged from MSOs/LCOs which shall be depending upon the subscription period.
- **“Must Provide” clause should be balanced** and no unfettered rights to be provided to the Distributor (MSOs/DTH Operators). As once the Distributor commits some defaults the provisions of must provide should not be applied on such defaulted Distributor.
 - It is further suggested that Distributor should also have the obligation of intimation as (the obligation) of the broadcaster in clause 3 of Inter connect Regulations; i.e. the Distributor also must intimate to the broadcaster its intention to subscribe or not to subscribe the services within 30 days of receipt of offer/RIO from the Broadcasters along with the reasons of refusal. It is further suggested that once the Broadcaster had offered the Channels to the Distributor and the Distributor has refused to subscribe or has avoided to respond in the stipulated time, in such a case the Broadcaster should be discharged from the obligation of “Must Provide”.
 - **SLR/Monthly Report** : We would like to stress upon strongly on the non compliance by the MSOs/LCOs for the provision of sending the monthly report. None of the MSO/LCO complies with the stipulation that in non-addressable systems, the multi system operators to furnish the updated list of cable operators along with their subscriber base to the broadcasters on a monthly basis. It is suggested that

failure to comply with such obligation need to be strictly dealt with so that the implementation of this obligation could be effective.
