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PART III, SECTION 4

**THE TELECOMMUNICATION (BROADCASTING AND CABLE)
SERVICES (FOURTH) (ADDRESSABLE SYSTEMS)
TARIFF ORDER, 2010**

(NO. 1 OF 2010)

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 21st July, 2010.

No. 11-14/2009-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 (Fourth) (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 September, 2010.

(b) Clause 9 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 services and

cable services provided to subscribers, through addressable systems, throughout the territory of India, except cable services provided through cable television networks in the States, cities, towns or areas notified by the Central Government under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995).

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 includes direct to home service, head end in the sky broadcasting service, Internet Protocol television service and digital addressable cable service ;

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

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

(e)“Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997(24 of 1997);

(f) “broadcaster” means any person including an individual, group of persons, public or private body corporate, firm or any organisation 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 electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(h) “bouquet” or “bouquet of channels” means an assortment of distinct channels, offered together as a group or as a bundle;

(i) “bouquet rate” or “rate of bouquet” means the rate at which a bouquet of channels is offered to the distributor of TV channels or to the subscriber, as the case may be;

(j) “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 cable operator to transmit or retransmit programmes of any pay channel through an addressable system;

Explanation: The expression “cable operator” in this sub-clause shall include a multi system operator.

(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 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 (Fourth) (Addressable Systems) Tariff Order, 2010;

(p) “Customer Premises Equipment” means the equipment, components and accessories installed at the premises of the subscriber to enable the reception of any broadcasting service or cable service offered through an addressable system and includes ----

(a) the set top box and the remote control for set top box; and

(b) the dish antenna, where such dish antenna is essential for availing such service,-----

but shall not include a television receiver set, computer or any such end equipment ;

(q) “direct to home operator” means an operator licensed by the Central Government to distribute multi channel TV programmes in Ku band by using a satellite system directly to subscriber’s premises without passing through intermediary such as cable operator or any other distributor of TV channels;

(r) “direct to home service” means distribution of multi channel TV programmes by using a satellite system by providing TV signals directly to subscriber’s premises without passing through an intermediary such as cable operator or any other distributor of TV channels;

(s) “distributor of TV channels” means any person including an individual, group

of persons, public or private body corporate, firm or any organisation or body re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and such person may include, but is not limited to, a cable operator, direct to home operator, multi system operator, head end in the sky operator and a service provider offering Internet Protocol television service;

(t) “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;

(u) “head end in the sky operator” or "HITS operator" means any person permitted by the Central Government to -----

(a) distribute multi channel TV programmes in C band or Ku band -----

(i) by using a satellite system, to intermediaries like cable operators and not directly to subscribers; and

(ii) by using its own cable network, if any, to the subscribers of such cable network through Quadrature Amplitude Modulation (QAM) set top boxes, after first downlinking the signals at its terrestrial receiving station; and

(b) provide passive infrastructure facilities like transponder space on satellite, earth station facilities, etc. to one or more multi system operators or to any consortium of multi system operators or cable operators, for distribution of multi channel TV programmes, in C

band or Ku band through QAM set top boxes, using such infrastructure facilities;

(v) “Internet Protocol television service” means delivery of multi channel TV programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;

(w) “maximum retail price” is the ceiling price, exclusive of taxes, which shall be payable by a subscriber to the service provider for each pay channel or bouquet of pay channels made available to such subscriber by the service provider;

(x) “multi system operator” means a cable operator who receives a programming service from a broadcaster or his authorised agencies or from a HITS operator 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 authorised distribution agencies by whatever name called;

(y) “Order” means the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010;

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

(za) “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;

(zb) “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;

(zc) “service provider” means the Government as a service provider and includes a licensee as well as any broadcaster, direct to home operator, HITS operator, multi system operator, cable operator or distributor of TV channels;

(zd) “set top box” means a device, which is connected to, or is part of a television and which allows a subscriber to receive in unencrypted/descrambled form subscribed pay channels through an addressable system;

(ze) “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 subscribers and commercial subscribers unless specifically excluded;

(zf) “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 televisions 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 reference to the term ‘channel’ shall be construed as a reference to “TV channel”;

(zg) 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

WHOLESALE TARIFF

4. Manner of offering pay channels by broadcasters to distributors of TV channels using addressable systems.----- (1) Every broadcaster shall offer or cause to offer all its pay channels on a-la-carte basis to distributors of TV channels using addressable systems, and specify the a-la-carte rate for each pay channel:

Provided that the a-la-carte rate for a pay channel for addressable systems shall not be more than thirty-five per cent. of the a-la-carte rate of the channel as specified

by the broadcaster for non-addressable systems.

(2) In case a broadcaster, in addition to offering all its channels on a-la-carte basis, offers, without prejudice to the provisions of sub-clause (1), pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, such broadcaster shall specify the rate for each such bouquet of channels offered by it:

Provided that -----

- (a) the composition of the bouquets offered by the broadcaster to distributors of TV channels using addressable systems shall be the same as those offered by such broadcaster for non-addressable systems; and
- (b) the rate for a bouquet of channels for addressable systems shall not be more than thirty-five per cent. of the rate for such bouquet as specified by the broadcaster for non-addressable systems.

5. Charges payable by cable operator to multi system operator or HITS operator to be governed by mutual agreement between them.----- The charges payable by a cable operator to a multi system operator or to a HITS operator, as the case may be, shall be as determined by mutual agreement.

PART III
RETAIL TARIFF

6. Mandatory offering of pay channels on a-la-carte basis to ordinary subscribers and charges therefor. (1) Every service provider providing broadcasting services or cable services to its subscribers using an addressable system shall, from the date of coming into force of this Order, offer or cause to offer all pay channels offered by it to its subscribers on a-la-carte basis and shall specify the maximum retail price for each pay channel, as payable by the ordinary subscriber:

Provided that in the case of direct to home service, a direct to home operator who is unable to offer all its pay channels to its subscribers on a-la-carte basis on the date of coming into force of this order due to any technical reason, shall offer all its pay channels on a-la-carte basis to its subscribers with effect from a date not later than the 1st day of January, 2011.

(2) It shall be open to a service provider, while offering its pay channels on a-la-carte basis and specifying a-la-carte rates for each of them under clause (1), to specify a minimum subscription period, not exceeding three months, for subscribing to a pay channel on a-la-carte basis by a subscriber.

(3) Every service provider providing broadcasting services or cable services to subscribers using an addressable system may, in addition to the offering of pay channels on a-la-carte basis under sub-clause (1), also offer bouquets of channels, in which case, it shall specify the maximum retail price for each such bouquet

applicable to its ordinary subscribers.

(4) It shall be open to the service provider to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month per subscriber, towards channels chosen by the subscriber, either *a-la-carte* or bouquet, for availing the services of such service provider.

Explanation: It shall be mandatory for all service providers, who are providing broadcasting services or cable services to subscribers through addressable systems, to transmit or retransmit the channels of Doordarshan required to be transmitted compulsorily under section 8 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), to each subscriber on its network.

PART IV

OFFERING OF CUSTOMER PREMISES EQUIPMENT

7. Option to provide Customer Premises Equipment on out right purchase or hire purchase or rent.— Every service provider, who provides broadcasting services or cable services using an addressable system to its ordinary subscribers, shall give an option to every ordinary subscriber to make available to such subscriber, the Customer Premises Equipment, conforming to the Indian Standard, if any, set by the Bureau of Indian Standards, on out right purchase basis or hire purchase basis or rental basis,—

- (a) in accordance with the scheme, if any, made by the Authority in this behalf;
- (b) in case no such scheme as referred to in clause (a) has been made by the Authority, then in accordance with the schemes made by such service provider or his agent authorised by him in this behalf:

Provided that any such scheme made by the service provider shall provide for the following, namely:-

- (i) terms and conditions for return of the Customer Premises Equipment by a subscriber to the service provider, before completion of period of hire purchase or rental and refund of security deposit or advance payments, if any, after appropriate and reasonable adjustments towards depreciation (not exceeding 25% for each half year or part of it) in case of return of Customer Premises Equipment by a subscriber to the service provider;
- (ii) replacement of faulty Customer Premises Equipment and repair and maintenance of Customer Premises Equipment acquired under hire purchase scheme or on rental scheme during the period of hire purchase or rental scheme without any payment.

PART V

PROTECTION OF CONSUMERS AGAINST INCREASE IN PRICES

8. No increase of subscription charges for six months from enrolment of subscriber.—(1) No service provider, who provides broadcasting services or cable services using an addressable system to its subscribers, shall, increase the charges for a subscription package offered by him, for a minimum period of six months from the date of enrolment of the subscriber for such subscription package.

(2) The provisions of sub-clause (1) shall not prevent any service provider from reducing the price of the subscription package within the period of six months referred to in that sub-clause to the advantage of the subscriber.

(3) Subject to the provisions of sub-clause (2) of clause 6, a subscriber may opt, during the period of six months referred to in sub-clause (1), for any other subscription package offered by such service provider or any other service provider.

PART VI

MISCELLANEOUS

9. Reporting requirement. (1) Every broadcaster shall report to the Authority, the a-la-carte rates for its pay channels fixed by it under sub-clause (1) of clause 4 and the bouquet rate or bouquet rates, as the case may be, fixed by it under sub-clause (2) of clause 4 for its bouquets and shall also publish such rates on its web site.

Provided that the first such report, containing rates effective from 1st September, 2010, shall be submitted to the Authority by 1st September, 2010 and, thereafter, any changes in such rates ---

(a) shall be reported to the Authority thirty days prior to the change; and

(b) shall also be published on the website of the broadcaster.

(2) Every broadcaster who, after the coming into force of this Order, introduces any new pay channel, shall, thirty days before introduction of such pay channel, report to the Authority the *a-la-carte* rate for such pay channel and shall also publish such rate on its website.

(3) Any broadcaster of a free to air channel intending to convert the channel into a pay channel or vice-versa shall, at least one month before the scheduled date of conversion, -----

(a) inform the Authority about the intended conversion;

(b) give public notice about the intended conversion, published at least in two newspapers, of which one should be a national newspaper and one in the same language as the channel proposed to be converted; and

(c) during the notice period referred to in sub-clause (b), run a scroll at periodic intervals on the channel proposed to be converted.

Explanation: The notice period of one month shall be counted from the last date of publication in the newspaper, or from the date of receipt by the

Authority of the intimation given by the broadcaster, whichever is later.

(4) Every broadcaster shall publish, at least once in three months, in at least two national newspapers, full details about the channels provided by it, the nature of each channel, i.e., whether it is a free to air or pay channel, the a-la-carte rate of each pay channel and the bouquet rates for bouquets of channels, if any, for distribution through addressable platforms.

(5) Every direct to home operator, HITS operator, service provider offering Internet Protocol television service and every multi system operator providing cable services through an addressable system, shall report to the Authority its a-la-carte rates for pay channels and bouquet rates for different bouquets of channels, and also all terms and conditions, associated with the supply of set top boxes to the subscribers on hire purchase or rental basis.

Provided that the first such report shall be sent to the Authority by 1st September, 2010 and thereafter any changes in such rates shall be reported thirty days prior to the change:

Provided further that a direct to home operator, who starts offering all its pay channels on a-la-carte basis to its subscribers with effect from a date later than 1st September, 2010 but not later than 1st January, 2011 in terms of the proviso to sub-clause (1) of clause 6, shall report the a-la-carte rates for its pay channels to the Authority thirty days prior to the commencement of such a-la-carte offer of pay channels or by 30th November, 2010, whichever is earlier.

10. Power of Authority to intervene. (1) 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.

(Subodh Kumar Gupta)
Advisor (B&CS)

Note.-----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Fourth)(Addressable Systems) Tariff Order, 2010.

EXPLANATORY MEMORANDUM**I. Background**

1. In October 2007, M/s. Tata Sky Ltd. filed a Writ Petition, CWP No 16097 of 2007, in the Hon'ble Punjab & Haryana High Court in Chandigarh, amongst others, against TRAI and M/s. Zee Turner Ltd. in respect of the ETC Punjabi channel being distributed by M/s. Zee Turner Ltd. Amongst others, a direction of the Court to TRAI was sought to ensure level playing field conditions including fixing content tariffs for DTH and to ensure that similarly placed systems, namely CAS and DTH were treated equally. In pursuance of the Hon'ble Punjab & Haryana High Court judgment dated 21.08.2008, the Authority decided to go through a formal consultation process. A consultation paper on "DTH Issues relating to Tariff Regulation & new issues under reference" was issued on 06.03.2009. Two Open House discussions were held on 29.04.2009 and 05.05.2009 in New Delhi and Pune respectively.
2. Meanwhile, Special Leave Petitions were preferred in the Hon'ble Supreme Court of India on behalf of M/s Star Den Media Services Private Limited, M/s MSM Discovery India Private Limited and Indian Broadcasting Foundation (IBF) against the orders of Hon'ble Punjab and Haryana High Court in CWP No 16097 of 2007. The Hon'ble Supreme Court, vide its Order dated 04.05.2009, directed TRAI to proceed with its consultation uninfluenced by the views expressed by the Hon'ble High Court.
3. Hon'ble Telecom Disputes Settlement and Appellate Tribunal, (TDSAT) vide its judgment dated 14.07.2006 in petition no. 136(C) of 2006 [ASC Enterprises vs Star India] and judgment dated 31.03.2007 in petition no 189 (C) of 2006 [Tata Sky vs Zee Turner & Ors.] had held that the broadcasters should offer pay channels /bouquets to the DTH operators at 50% of the non-CAS rates pending a tariff determination for DTH services by TRAI. In Appeal No.10(C) of 2008 in the matter of M/s ESPN vs. TRAI, the Hon'ble TDSAT vide judgment dated 13.05.2009 held that the principle of 50% would be applicable only on channels available in basic packages and not on add-on packages.

4. As the earlier consultation paper on DTH tariff dated 06.03.2009 did not explicitly raise the issues relating to add-on packages and other connected issues for consultation with stake-holders, the Authority in pursuance of Hon'ble TDSAT judgment dated 13.05.2009 considered it necessary to issue a supplementary consultation paper. Accordingly, a supplementary consultation paper covering these and other related issues was issued on 24.12.2009.
5. An appeal [C.A. No.4139 of 2009] was filed in the Hon'ble Supreme Court by M/s Tata Sky against the judgment dated 13.05.2009 of Hon'ble TDSAT. This appeal was dismissed by the Hon'ble Supreme Court on 06.07.2009 with a direction to TRAI to decide the entire matter within a period of two months without being influenced by any observation made in the impugned order of the Hon'ble TDSAT.
6. TRAI had undertaken a tariff exercise for cable TV services in non-CAS areas in pursuance of the Hon'ble Supreme Court directions dated 13.05.2009 in Appeal nos. 829-833 of 2009 [TRAI vs Set Discovery]. It is worthwhile to record in this context that an important issue raised in the consultation relating to the DTH sector was desirability or otherwise of linking the wholesale prices for the DTH sector to the prevalent non-CAS wholesale prices. In this context, a number of service providers expressed the view that the wholesale for DTH platform have to be linked to wholesale tariff for non-CAS areas, in view of the linkages between DTH and non-CAS tariff.
7. While the tariff matter relating to DTH services was under consideration of the Authority, HITS policy was notified on 26.11.2009 by the Ministry of Information and Broadcasting and the Ministry, vide its reference dated 10.12.2009, requested TRAI to consider tariff issues relating to HITS services. Accordingly, TRAI issued a consultation paper dated 06.04.2010 on "Interconnection and Tariff Issues related to HITS services".
8. In view of the fact that tariff for all systems other than cable services in the notified CAS areas were under review, the Authority also decided to review the tariff for Cable TV

services in CAS areas. So, a consultation paper on “Issues related to Tariff for Cable TV services in CAS notified areas” was issued on 22.04.2010.

9. Thus, the scope of consultation exercise included tariff issues in DTH, HITS and CAS. The Authority took up these issues in discussions held on 31.05.2010, 11.06.2010, 22.06.2010 and 23.06.2010 in New Delhi for further deliberations with the stakeholders. Open House Discussions were held at New Delhi on 01.06.2010, Pune on 03.06.2010, Bangalore on 04.06.2010, and Kolkata on 08.06.2010.

II Analysis of issues

10. The following is a summary of main issues, stakeholder comments and analysis thereon.

A. Tariff regulation for addressable systems

11. The issues are whether there is a need to regulate tariff in case of distribution of TV channels through addressable platforms. If so, should there be a uniform tariff framework for all addressable systems and should the tariff regulation be at wholesale/retail level.
12. The majority of the broadcasters who supply TV content for distribution to MSOs, DTH operators and other distributors state that there should be forbearance on tariff and the market should be allowed to determine the prices. In their opinion, there is a case for regulation only in the event of market failure. Some of them state that if required, regulation may be undertaken for keeping parity and competition in the interim period. DTH operators representing most of the addressable market stressed the need for regulation of tariff at the wholesale level so as to put them on a level playing field with the analogue cable TV market. They are of the view that there is substantial subjectivity in the analogue cable TV subscriber count and consequently in the revenues of this market. Further, according to them, cable operations are localized on area basis and therefore, cable operators do not compete with each other on area basis unlike in the DTH services. Also one MSO, IPTV service provider, cable operators’ association and majority of individual stakeholders indicated the need for tariff regulation. Some industry groups have favoured light touch regulation.

13. The majority of stakeholders have suggested separate tariff framework for non-addressable and addressable systems. Another suggestion is that there should be three tariff frameworks one each for analogue non-addressable systems, addressable systems in non-CAS areas and addressable systems in CAS areas. A third suggestion is for not having any tariff framework.
14. The Authority has considered the question as to whether there is a need for regulating tariff in addressable systems. In this context, the Authority has observed that while there is a “must provide” provision for broadcasters, each channel is unique in terms of content and in that sense the distributor is limited in his choice of channels. Secondly, while there are today six private DTH operators who are competing amongst themselves, there is an organic linkage between the addressable and non-addressable systems and the issue really is of a non-level playing field between the up-coming addressable systems vis a vis the incumbent analogue systems. The Authority is of the view that implementation of digitization with addressability is the road ahead for the sector and would be in the best interest of the industry as well as the consumer. In order to achieve a structured growth in this direction, a certain amount of regulatory intervention is considered necessary.
15. Having decided to regulate the tariff for addressable systems, the next issue is regarding the framework of tariff regulation. It is felt that within a single tariff framework, the different addressable systems can be accommodated with suitable provisions. Thus, the tariff dispensation can follow two frameworks – one meant for addressable systems and other meant for non-addressable systems. This approach is further supported by the extant Interconnection Regulations which deal with the overall TV market on single distinction basis. This Tariff Order is meant for addressable systems.

B. Wholesale Tariff:

16. Regarding regulation of the wholesale price of TV content, the issue is to assess the appropriate methodology for doing the same. The possible approaches include defining a

relationship between wholesale rates applicable in addressable and non-addressable TV market.

17. In general, broadcasters support forbearance for a durable and sustainable economic model and for investment in quality content. According to them, it would be in the overall interest of the subscribers that existing practice of rate regulation and price controls should be dispensed with. They maintain that de-regulation would lead to greater range of quality content to attain maximum possible reach and viewership on sustainable basis. There is another view which states that the existing arrangement of making content available to DTH operators at half the prevailing price for non-CAS areas could be given effect to as a tariff order on the condition that this would be applicable only for basic packs. Discount of only 25% on non-CAS rate should apply to all packs other than basic packs.

18. DTH operators are in favour of deriving rates for wholesale price fixation of TV channels for DTH services from the applicable rates for cable TV services in non-CAS areas. DTH operators in general state that given the subjectivity of subscriber base in non-CAS areas and the fact that the same content gets viewed on non-addressable and addressable platforms, the bouquets offered by broadcasters in non-CAS areas should be available to them at a discount. They state that the wholesale price for DTH operators should be in the range of 10%-30% of the corresponding rates applicable in non-CAS cable TV services. They also state that this rate should be without any linkage of channel/bouquet wholesale price to the reach and placement of a channel on the DTH platform. According to DTH operators, around 20 million DTH customers contribute more than 50% of the broadcasters' subscription revenue as compared to around 70 million of cable TV customers. Further, most agreements negotiated between DTH operators and broadcasters has the wholesale tariff on DTH platform at a much lower rate of around 15-20%. In case of long term contracts, flat-fee agreements are in effect. Broadcasters have confirmed that commercial agreements are in place with DTH operators on the basis of revenue deals which translates into 25-30% of RIO rates declared by broadcasters. They further state that in this scenario there is no need for intervention by the regulator.

19. Amongst other stakeholders, MSOs have favoured the proposition of linkage between the wholesale rates meant for both the systems. On the contrary, consumer groups and individuals are against this proposition as they support extension of the tariff regime that prevailed for notified CAS areas to rest of the country. Some industry organisations are not in favour of any regulation.
20. Based on the information submitted by the stakeholders to TRAI, an analysis was carried out to assess the price at which broadcasters provided TV channels to DTH operators. Since DTH has become the predominant addressable system compared to CAS and IPTV, the related data of DTH has been considered in this exercise. It has been noticed that different methods are followed for securing content at the wholesale level. In one method, a long term contract is entered into for payment of a fixed annual fee. Various factors, including subscriber base and growth, number of channels and their reach and duration of the contract are likely to influence such contracts. In another method, the agreements are based on the unit price of a channel and the corresponding subscriber base ascertained from the subscriber management system. A percentage discount is made available by the broadcaster on the channel price depending on the target subscriber base. In both models, it is noticed that the content is made available at a discounted price by the broadcasters to the addressable platform distributor.
21. From stakeholders' data, it is also observed that the gross cost of content paid by distributors to broadcasters in 2008-09 for 68 million non-CAS subscribers was estimated at Rs.2900 cr. The corresponding amount in the same period for DTH services is estimated at Rs.1000 cr. Broadcasters pay carriage and placement fee to distributors which is estimated at Rs.950 cr. and Rs.50 cr. for non-CAS and DTH respectively. Thus the net collection of broadcasters is Rs.1950 cr. (Rs.2900-950) and Rs.950 cr. (1000-50) for non-CAS and DTH respectively. On an estimated subscriber base of 68 million of non-CAS and 13.4 million for DTH in 2008-09 the per subscriber content cost per annum would be Rs.287/- (1950 cr./ 68 million) for non-CAS and Rs.709/- (950 cr./13.4 million) for DTH. Thus, to a broadcaster a DTH subscriber or equivalent to addressable system

holds a quantitative value equivalent to 2.47 (709/287) analogue cable TV subscribers. This gets translated into a discount of 59.6% for a DTH subscriber or equivalent, on the wholesale rate applicable for an analogue TV subscriber. However, this is based on gross figures of the industry.

22. The data available with TRAI for 2008-09 indicates that several agreements between DTH operators and broadcasters are of long duration and have been finalized at 30-35% of the non-CAS rates. With growth in the number of subscribers in the addressable systems, the rates are likely to reduce further. Keeping in view the above considerations, the Authority is of view that the wholesale rates of pay TV channel(s) and bouquets for all addressable systems should not be more than 35% of corresponding channel(s) and bouquets in cable TV services in non-addressable market. The Authority will review the position as and when considered appropriate.
23. Broadcasters will continue to offer all bouquets that are available for the non addressable (non CAS) system to the distributors in addressable system. They will also offer their channels to the distributors in addressable systems on *a la carte* basis as at present.

C. Tariff for Add-on Packages:

24. The issue is whether the same wholesale tariff should apply irrespective of the placement of a TV channel in the basic or add-on pack or *a la carte*.
25. Broadcasters indicated that DTH operators obtain their channels in bouquet or *a la carte* mode and later compose different types of packages- basic, add-on and *a la carte* channel at subscriber level. In such a scenario, the placement of a given channel in basic or add-on packages may have an influence on the number of viewers who view the channel and the number of subscribers who pay subscription fee for it. Broadcasters have stated that when a given channel is placed in a basic package it is viewed and paid by a larger set of subscribers as compared to the situation when the same TV channel is placed in an add-on package. In the latter case, a subscriber opts for add-on packages of his own

will which ultimately limits the reach of that channel. Broadcasters suggested a pricing proposition in which the discount available on a TV channel at wholesale would be directly linked to the actual reach of that channel on a DTH platform. This reach is determined on the basis of subscriber count against this particular channel.

26. In response to the arguments of broadcasters, distributors, especially DTH operators put forth two arguments: First, a bouquet supplied by a broadcaster does not contain channels of all types. Therefore, DTH operators create appropriate packages to suit subscribers' interests. Second, DTH operators rely on extant provision of Interconnection Regulations which allows them to compose packages as per their discretion.
27. The basic pack and add-on pack(s) which are under consideration here includes pay TV channels for which broadcasters receive the content charges. Though the consultation paper outlined three possible definitions of a basic package, the views expressed by the stakeholders could not converge on any particular definition. Rather the views followed different directions altogether. The packages observed in the market are not standardized and there is a large variation from operator to operator. Nor it is possible to standardize packaging as such an effort would not capture the myriad requirements of the different markets. The Authority is also mandating the provision of *a la carte* channels to the subscribers. The Authority is, therefore, of the view that it is not feasible or desirable to regulate tariff on the basis of packaging of channels.

D. Retail tariff:

28. A number of retail level issues that have direct impact on TV subscribers have also been raised in the consultation process. These include (i) fixation of retail tariff ii) need to mandate *a la carte* choice of TV channels, and (iii) regulating the retail tariff for set top boxes.
29. Service providers have generally expressed the view that the retail tariff should be under forbearance. Consumer groups however, are in favour of some regulation at the retail level. At present, retail tariff for the DTH platform which is the predominant addressable platform, is under forbearance. There are 6 DTH operators competing against one another

and with the incumbent analogue cable system. It is observed that the retail tariffs prevailing in the market are quite competitive. As the market forces appear to be operating effectively, the Authority is of the view that there is no need for regulatory intervention in the matter of retail tariff fixation at present.

E. Offering TV Channels on a *la carte* basis at retail level

30. The issue is whether *a la carte* offer of TV channel should be mandatory for distributors of addressable systems. Since these systems function on the basis of Conditional Access and Subscriber Management System, they enable subscribers to have a choice of TV channel.
31. Some broadcasters are in favour of *a la carte* even at entry level. However, some broadcasters oppose mandatory *a la carte* on the ground that TV channels made available in bundled form to subscribers are price effective for them. They have cited some studies which say that *a la carte* would lead to higher costs for subscribers and hence, the approach would not serve the intended purpose. They further state that at present DTH operators are offering only around 15-20 channels on *a la carte* basis and that too at about 250% -300% of their wholesale prices as the rates are under forbearance at retail level.
32. Some of the DTH operators have stated that technical problems are anticipated if *a la carte* to the subscriber is mandated for all TV channels. One of them has stated that different commands would be required to be transmitted through the satellite for each *a la carte* option exercised by each subscriber. This would consume significant satellite transponder bandwidth and would require up-gradation of the terrestrial node. Option of *a la carte* would, therefore, increase the channel price for subscribers. Besides, they have also stated that they create various packages tailored to meet customer requirements and hence, *a la carte* offering of channels need not be mandated. Another DTH operator has stated that despite technological challenges, they can offer *a la carte* choice in case of

- specific pay TV channels to all their subscribers provided a minimum commitment around Rs.150/- per subscriber per month is available. However, one MSO and cable operators' association favour comparison of CAS regime with DTH. They along with consumer groups and individuals have generally supported mandatory *a la carte* offerings.
33. A consumer group has stated that there should be minimum 10 TV channels that should be subscribed at subscriber's level under *a la carte* options. On minimum subscription period for *a la carte* TV channels, stakeholders have opined that the period can be one month, three months, four months, six months and or even 12 months.
 34. In an addressable system, it is essential that the benefits of advanced technology are passed on to the subscribers. A tariff dispensation for addressable systems should enable the subscribers to watch the channels of their choice. Therefore, it becomes necessary to ensure that channels are available to subscribers on an *a la carte* basis. In fact, one of the conclusions of the Federal Communications Commission (FCC)'s, 'Further Report on the Packaging and Sale of Video Programming Services to the Public' dated 09.02.2006, is that many consumers could be better off under an *a la carte* model. In view of the foregoing, the Authority has decided to mandate the offering of channels by distributors on an *a la carte* basis to the subscribers in all addressable systems.
 35. Some of the DTH operators have brought out certain technical constraints and capacity limitations in the implementation of an *a la carte* system. DTH operators may require some time for re-configuring/up-grading their systems to cater to the new requirements. The Authority is of the view that the DTH operators may be allowed time up to December 31, 2010. Accordingly, DTH operators would have to offer TV channel(s) to their subscribers on *a la carte* basis not later than January 1, 2011.
 36. At present, DTH operators are offering a number of entry level packages at retail level in the range of Rs.125/- to Rs.160/- per subscriber per month. The entry level packages represent in a sense the minimum subscription charges that the DTH operators expect to

- collect from the subscribers. Besides, add-on packs and a few channels on *a la carte* basis are also available on optional subscription basis. With the availability of all pay channels on *a la carte* basis, more choices can be made available to subscribers. The viability and sustainability of the distributors' operations also needs to be kept in mind. Keeping in view the present market conditions and at the same time, looking at the need to protect the interests of the consumer, the Authority has decided that while the service provider in an addressable system can be permitted to prescribe minimum subscription charges, the amount of such minimum monthly subscription charges should not exceed Rs.150/-. This would be in line with the entry level packages prevailing in the DTH market today.
37. While mandating *a la carte* choice of channels to the subscriber, the Authority recognizes the fact that if changes in choices made by subscribers are too frequent, service providers may face technical and operational difficulties. In order to provide a measure of stability to the service providers in servicing the choices made by the subscribers, the Authority has decided to permit the service providers to stipulate a minimum commitment period for the *a la carte* choice of channels by the subscriber, provided that the minimum commitment period should not exceed 3 months.
38. The advantages of bundled packages of channels should also be available to the subscriber. Subscribers should be able to choose between *a la carte* channels or bouquets/packages. Stakeholders have pointed out that bundled services are more cost effective as compared to *a la carte* offerings; this is likely to ensure the co-existence of bouquets/packages with *a la carte* offerings on addressable systems. Accordingly the provision of bouquet/packages of channels to the subscribers is also a part of the Tariff Order.
39. Another issue concerns the rate at which *a la carte* channels are offered to the subscribers. Presently DTH operators are offering up to 25 pay channels on *a la carte* basis. The retail rates applicable to these channels today are comparable with the corresponding wholesale rates at which these channels are available in non-addressable systems. The Authority is of the view that *a la carte* should represent a meaningful

choice for the subscriber. However, the Authority at present has decided to adopt a light touch approach and not to mandate any conditions on pricing of *a la carte* channels. In order to safeguard subscribers' interests, the Authority would keep a close watch over the market and may intervene in public interest whenever necessary. For this purpose, a provision for publishing of rates of TV channels on quarterly basis has been specified.

F. Tariff regulation for set top box:

40. Another issue in relation to retail tariff relates to subscriber-level tariff for set top box in addressable networks.
41. Most of the broadcasters are of the view that tariff for supply of set top box should be left to market forces to decide because the competition provided by six DTH operators and other addressable platforms would keep the prices charged by Multi System Operators (MSOs) for set top boxes in CAS areas under check. Some broadcasters have stated that the present system should be continued as it offers adequate options to subscribers as per their convenience and spending power. Another broadcaster suggests that until the objective of 100% digitization is achieved, the Authority may as an interim measure maintain the present system for regulation of tariff for set top box.
42. On the distributor's side, the DTH operators have stated that tariff for supply of set top box should be left to market forces, as 6 DTH players are already serving the same market without any tariff regulation. Most of the MSOs suggested that tariff should be left to market forces. One MSO has said that the guidelines for rental can continue and the 5 year warranty on set top box should be done away with and it should be brought at par with DTH. Only one MSO suggests that the present system should be continued. Different associations from cable industry stated that this should be left to market forces.
43. The provisions relating to standard tariff packages for set top boxes for cable services in CAS areas were necessitated by the need for keeping entry barriers low for subscribers opting for pay channels in CAS areas. This was required to ensure easy migration of

existing cable subscribers in the wake of compulsory implementation of CAS. However the present circumstances are quite different. More than one addressable system is available to subscribers to choose from and competition amongst these platforms and amongst service providers within the same platform will help to keep prices of set top boxes in check. Prices for set top boxes are already exhibiting a downward trend with growth in the market and rise in volumes. The Authority is also separately recommending to the Government the need for complete digitalization with addressability in the cable TV network alongwith a road map for this purpose. FDI limits in the distribution sector (with the exception of local cable) have recently been recommended at the level of 74% for addressable systems like DTH, IPTV etc and MSOs desirous of bringing in digitalization . All these factors are expected to give an impetus to the rapid growth of the digital addressable segment of the market. With growth in volumes, prices of set top boxes are likely to fall further. The Authority therefore, is of the view that setting a retail tariff for set top boxes is not necessary. To take care of the need for commercial interoperability, however, it is being mandated that service providers would make standard Customer Premises Equipment (CPE) available to a subscriber at his premises through at least three options - outright purchase, hire-purchase or under a rental scheme. The rates shall be declared in each case.

G. Niche channels requiring specialized set top boxes:

44. In recent times, the market has witnessed the emergence of a number of niche channels such as HD and 3D TV channels that require special set top boxes. An issue that was posed for comments during consultation was whether tariff for niche channels requiring specialized set top boxes should be regulated.
45. In case of niche channels requiring specialized set top box e.g. HDTV channels, the stakeholders are generally of the view that such channels have recently appeared in the market and all equipment relating to HD programs including the set top box and TV set are relatively costly as compared to standard definition TV sets etc. Therefore, no regulation is necessary.

46. The niche TV channels can only be viewed in an addressable environment and that too with the help of specialized set top boxes. These channels which have been recently introduced employ advanced technology and therefore, can be considered premium in nature. As these channels are viewed by an elite section, the Authority is of the view that there is no general public interest involved and the tariff dispensation for niche channels requiring specialized set top box TV channels should be left to market forces. The Authority will review the position at an appropriate time.

III Applicability to the notified CAS areas:

47. As already indicated in paragraph 15 supra, the Authority is of the view that the tariff dispensation for broadcasting and cable services can follow two broad frameworks, one for addressable systems and the other for non-addressable systems. The general principles of tariff determination under the present tariff order are, thus, intended to be applicable to all addressable systems, including cable services provided through conditional access systems (CAS) in areas notified by the Central Government under section 4A of the Cable Television Networks (Regulation) Act, 1995. However, the immediate application of the present tariff order to cable services in such notified areas may lead to an anomaly as regards specification of wholesale and retail rates for pay channels. This is on account the fact that there are certain existing provisions in the Cable Television Networks Rules, 2004 relating to fixation of prices of channels. Rule 10 of the said Rules provides, inter alia, that every broadcaster shall declare the nature of each of its channels as “pay” or “free-to-air” as well as the maximum retail price of each of its pay channels to be charged by the multi system operators or local cable operators from the subscribers in areas notified by the Central Government under section 4A. The tariff dispensation provided in the present order for addressable systems, on the other hand, mandates that a broadcaster shall specify its “wholesale” rates for addressable platforms. In case, the tariff dispensation in the present tariff order is immediately extended to cable services in such CAS notified areas, it may result in a situation where a broadcaster would be required to define retail price as well as wholesale price of its

channels in respect of such notified areas. In order to prevent this anomaly, a separate recommendation is being made to the Government for amending Rule 10 of the Cable Television Networks Rules. Till the required amendment is carried out by the Government, the existing tariff dispensation for cable services in areas notified by the Central Government under section 4A of the Cable Act, i.e., under the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006) and the revenue sharing arrangements under the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004” (13 of 2004), as they stand at present, shall continue to apply. The tariff dispensation under the present tariff order will be extended, *mutatis mutandis*, to cable services in such CAS notified areas after the Central Government makes requisite amendments in the relevant provisions of the Cable Rules.