



TELECOM REGULATORY AUTHORITY OF INDIA

Recommendations on

**Issues relating to Broadcasting and Distribution of
TV channels**

**New Delhi
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Executive Summary

Background

1.1 Broadcasting and Cable Services came under the purview of Telecom Regulatory Authority of India (TRAI or Authority) with effect from 9.1.2004, after the amendment to clause (k) of Sub Section (1) of Section 2 of Telecom Regulatory Authority of India Act (TRAI Act), 1997 as amended. This amendment added a proviso below clause (k) to include Broadcasting Services and Cable Services within the scope of 'Telecommunication Services'. Further, the Government of India also issued an order on 9.1.2004 under section 11(d) of the TRAI Act which mandated TRAI to make recommendations regarding terms and conditions on which the 'Addressable Systems' shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. The order also provided powers to TRAI to specify standard norms for, and periodicity of revision of rates of pay channels, including interim measures.

1.2 This document contains the recommendations of TRAI on various identified issues relating to Broadcasting Services and Cable Services including the areas specifically referred to by Government of India vide its order-dated 9.1.2004. TRAI has also issued with these recommendations a revised Tariff Order. A regulation on interconnection will be issued shortly. The recommendations also include draft amendments to the TRAI Act, the Cable Television Networks (Regulation) Act, 1995 (Cable Act) and the Rules under the Cable Act.

1.3 Section 1 briefly traces the history of developments, including regulatory aspects, in the Broadcasting and Cable Industry, prior to mandating TRAI to regulate the services in January 2004. It also lists the regulatory interventions undertaken by TRAI as interim measures pending finalisation of various issues.

1.4 Before finalising the recommendations TRAI had carried out a process of consultation with the Stakeholders by floating a detailed consultation paper and holding a series of meetings, with various stakeholders. TRAI also constituted a committee consisting of the representatives of the state governments of Delhi, Tamil Nadu, Maharashtra and West Bengal under the Chairmanship of Secretary TRAI to consider the various issues in regulating Cable TV. The inputs received in the process of consultation have been examined and taken into account while making the recommendations. International practices have also been studied. A survey was also

commissioned through M/s IMRB to study the characteristics of the Indian Market. The findings of the survey have separately been released.

Directions for Regulatory Intervention.

2.1 The basic objective that regulation in this sector needs to address is the need to promote growth and competition in the sector so that consumers have affordable prices for their home entertainment and can choose between alternative platforms and channels.

2.2 The cable industry has developed in an unregulated manner since 1991. The industry has grown rapidly and the size of the industry is now about Rs.15,000 crores per annum. This remarkable growth of the industry, owes in a large measure, to the entrepreneurial skills of the cable operators. The growth of this sector has, however, brought in its wake problems that have called for increasing regulation.

2.3. Pay channels in the country, initially came as free-to-air channels but starting from 1995 these free-to-air channels, increasingly became pay channels leading to rising consumer bills. In mature economies, pay television came along with Set Top Boxes and hence the pattern of development of the industry in India has been very different. According to one estimate the total pay out for pay channels has increased by 1100 per cent over the mid 90s. At the same time the consumer invariably has no choice in selecting his/her operator. The combination of increasing pay outs to the broadcasters, the lack of competition in the last mile and inability to choose between alternative platforms and channels has led to increasing consumer bills which have fuelled growing consumer dissatisfaction and a demand for regulation.

2.4 In terms of consumer choice, the present system does not provide any choice to consumers or at best offers very limited choice to consumers except in Chennai. In the current scenario, the broadcasters provide a bundle of channels to cable TV operators who either take and carry the entire bundle or carry nothing. Besides limiting the choice to what the cable operator offers, the consumer has no choice in most cases to even change the operator. In this context, it is viewed that regulatory intervention is required to bring in a radical change and to stimulate the market to provide choice of viewing.

2.5 Price increases in the Cable TV industry have been severe since the mid 90s driven largely by increases sought by pay channels offered by broadcasters. The estimate of price inflation of pay channels at 1100% over mid 90s is, of course, both because of increase in the prices of channels as

well as increase in the number of pay channels. The increases are ultimately passed on to the consumers by the cable operators. The vulnerability of the consumers was the reason for TRAI to intervene, by imposing a price cap in the form of prevailing prices as on 26.12.2003.

2.6 Sometimes, the objective of growth could come in conflict with the ultimate objective of providing consumers services at affordable prices. Yet, in the long run, the growth of the Industry is tied to the interests of consumers. Firstly, there is a need to extend coverage of cable and satellite TV to remote rural areas and secondly there is a need to provide choice to existing and potential consumers, in terms of either more number of operators in the same platform or alternate platforms and increased content availability. Alternate platforms could come either through DTH or other media like telephone lines. Both options are permitted even at present. To make different platforms compete on an even keel there is a need to attract investment on network/ infrastructure access, digitalisation, programming and content depth. Therefore, the industry needs to continuously grow backed by investible resources so as to provide choice to the consumers. At the same time, technology has been progressing rapidly with convergence taking place at both the consumer end as well as at the service provider end. With this convergence it would be possible for the cable industry to provide other services as well. Thus, already internet services are being provided by cable operators. In addition, telecom services could also be provided – in several countries like USA, UK and Korea, cable operators have made considerable progress in providing telecom services. This would be facilitated in the unified licensing regime.

2.7 Against this background the vision that the Authority has of how the television broadcasting and distribution business should grow in the future is as follows:

- The objective of the regulation would be to promote and facilitate competition amongst channels, operators and platforms
- Consumers should have the freedom to choose their content and their operator/platform- this would mean ease of exit from one operator/platform to another operator/platform
- The other platform could be DTH or other media like telephone lines. Both options are permitted even at present.
- Addressability must come on all TV channel distribution platforms
- As competition increases and the consumer has multiple choices, price regulation would gradually withdraw.

2.8 The key element of this vision is that the best regulatory framework is one that allows the industry to grow so that consumers have multiple choices giving them freedom to choose their content and operator/platform.

This competition together with addressability would empower the consumer to control his/her expenditure on viewing television channels. It is this vision that has guided the Authority in its task of developing a regulatory framework for this business.

Consumer Choice

3.1 In section 3 of the document, the following issues relating to consumer choice have been examined and analysed:

- i. Whether it is desirable to have a single method to provide choice to the consumer and addressability across all regions of the country
- ii. If not, what are the options
- iii. Whether there is a need for transitory options before finally graduating to a Conditional Access System as proposed by the Task Force set up in Sept 2001.
- iv. Whether the Conditional Access System and Addressability, be introduced through a legal mandate or allowed to be introduced voluntarily.

3.2 One of the ways that the objective of affordable TV services for the consumer can be met is if flexibility permitting a consumer to exercise his choice, is available. This implies that affordability will come if a consumer is able to decide what his total bill should be through the method of selection of channels. One method of doing so is to introduce CAS and set top boxes. The immediate question that comes up is that why, barring to some extent in Chennai, this scheme could not be implemented. Despite the advantages of CAS, the implementation had run into difficulties for the following reasons:

- State Governments had not been consulted at the decision making stage and so there was not much support for the new system at the implementation stage.
- There are certain areas where consumers were getting services at nominal prices. With implementation of CAS the consumer prices for pay channels were actually increasing instead of decreasing.
- One of the intended benefits of CAS is that the consumer is able to choose channels of his choice. He could either opt for the package of FTA channels or take his choice of pay channels. But post CAS, individual pay channels against bouquets were priced in such a manner that consumers had little choice of selecting individual pay channels.

- STBs were non-interoperable. Consumers apprehended that their STB would be of no use when they change residence or service provider. STBs were not easily available on rent
- Most of Broadcasters, MSOs and Cable Operators were not able to arrive at revenue share arrangements amongst themselves.
- Some MSOs had brought out pamphlets regarding sale/rental schemes of STBs. But this information did not percolate down to actual consumers. At the same time, there was considerable variation of pricing of STBs fixed by various MSOs.
- There was considerable uncertainty about continuity of the CAS scheme.

3.3 When CAS was introduced last year, the expectation was that it will help the customers. But, what actually happened was that it only helped the FTA subscribers, while others who wished to watch pay channels ended up paying higher bills. In Chennai where FTA channels were the main interest of a large majority of subscribers, CAS had a clear advantage of reducing the tariffs for FTA subscribers and therefore, was welcomed. In other cities where pay channels were more popular, the effect was opposite. Thus it is only in Chennai that CAS has been successfully implemented and upto May 2004 around 23,000 (less than 3% of the city's population) STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The IMRB survey has also revealed that consumers in Chennai have choice and are able to control the cable bills. The CAS has also brought in transparency in the system and meets the objective of bringing addressability in the system.

3.4 Another method of providing choice to consumers is through the medium of traps .This was brought up during the consultation process. Against the digital set top box, which costs around Rs.5000/-, a trap is said to cost around Rs.100 to Rs.500 and also allows the consumers to have a choice of whether or not to watch pay channels, either in full or in one or two packages. However, there is a major problem that traps can be bypassed, violated and hacked and therefore the problem of piracy is far greater than in the usage of STB technology. Another major disadvantage is that it does not provide a transparent method of accounting for the number of consumers having access to a particular channel and this may continue to result in disputes on revenue sharing amongst service providers.

3.5 Considering both sides of the argument and its successful deployment in some parts of India it does appear that traps can be used wherever it is found feasible and as a transitory phase to the use of STBs. Thus, while existing pay channels could be seen as it is, it can be mandated that all new

pay channels will be shown only through a STB. Further provision can be made that the existing channels can also move to the new class of channels

3.6 While CAS did not succeed entirely in the last attempt at deployment and traps have their own limitations the continuation of the existing system also has its problems. The key features of the existing system are:

- The consumer gets one bundle of channels supplied by his cable operator
- The cable operator in turn gets a fixed bouquet of channels from a broadcaster
- Thus both the consumer and the operator have very little choice

The drawbacks of this system are as follows:

- The consumer does not have any choice in viewing channels or in choosing his/her operator
- Prices for consumers would tend to increase as and when a new pay channel is launched or an FTA channel turns pay. Price Regulation can only control this to a limited extent.
- Consumers would have to pay for even those channels which he/she is not willing to view.
- Consumers will have no choice to control content and thereby control his/her cable bills.
- There would be continuing disputes on revenue sharing between service providers

In this model price control through regulation is difficult. It requires a decentralized enforcement mechanism. It also has severe drawbacks given the fact that the content is not homogenous, there are a large number of consumers and operators and the interconnection agreements are a highly complex set of systems. Therefore it is necessary to look at alternative models.

3.7 One of the suggestions that has been made is that choice should be provided to the consumer in terms of the last mile cable operator. This suggestion has been examined. However, even today there is no restriction on the number of last mile operators - yet this has not led to the consumer having significant choice. In the rest of the world also there is a similar pattern. It is unlikely that competition in the last mile can be fostered except through the introduction of alternative platforms. While this issue of fostering competition is dealt with in more detail in section 6 it is necessary to keep this in mind while dealing with the issue of choice in the cable industry.

3.8 Through the process of consultation, analysis and a thorough examination of international practices, the Authority has formulated its recommendations keeping the failure in the first instance in mind. The Authority is of the view that:

- A gradual transition to addressability is a must.
- Uniform or identical solution is not applicable across the board all over the country.
- The interest of FTA subscribers as also subscribers of pay channels has to be protected.
- It is to be remembered that pay channels came to India initially as free to air channels and later were converted to pay channels without set top boxes. All over the world pay channels came through set top boxes permitting the subscriber the choice whether he/she wanted to watch and pay for or not to watch any specific pay channel. This inversion of the logical process in India has led to the present set of problems
- Any change in the system, in a country as large and diverse as India, to be sustainable must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue.

Although addressability should be the ultimate objective it cannot be done immediately throughout the country. Considerable preparation would be required before introducing it in a particular area specially through a mandate. It is therefore necessary to develop transitory models that would allow a smooth transition to addressability and also provide some incentives for this movement. While evolving transitory models, the need to provide incentives in these models have been kept in view to facilitate smooth transition to addressability. The details of these models are described in Para 3.19 to 3.28 under section 3. The salient features of these models are briefly brought out as under:

Model I

- No compulsory CAS and STB, for watching pay channels.
- To stabilise prices and to motivate the stakeholders to move towards CAS, Regulations would be introduced providing for.
- Price cap at the level on 26.12.2003. The prices to be reviewed periodically by the Authority to make adjustments for inflation.
- New pay channels or converted FTA channels to pay channels coming after the date to be notified by GOI, designated as 'Premium Channels' can be offered only through STB and would be subject only to limited

price regulation of maximum allowable discount on bouquet of channels. Existing channels can also migrate and become premium channels.

- For pay channels launched or FTA channels becoming pay channels before the date to be notified by the GOI for introduction of premium channels but after 26.12.2003 broadcasters would be required to report their prices along with other details to the Authority. After reviewing the information the Authority would intervene in the matter, if necessary. To maintain the sanctity of the ceiling on the monthly cable rates specified by the Authority, these pay channels shall not be allowed to become part of an existing bouquet of channels and should be offered on a stand alone basis.

It could be seen, that the primary objective is to ensure price stability in this model. The drawback of this model is that consumers do not have choice, price regulation would be difficult and disputes between service providers would continue as there is no transparent method of revenue sharing. The price regulation shall be done by the Authority through tariff orders under section 11(2) of the TRAI Act.

Model -II

- Use of Traps to provide limited choice vis-à-vis model I. Traps could be used to divide customers into basic and pay customers. The consumers can be presented additional choice by offering more than one tier of pay channels, but for technical reasons this may not be able to exceed 2 or 3 tiers.
- Traps to be installed purely through market initiative.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments with Rs.72/- per month (exclusive of taxes) being the default rate.
- Pay Channel prices will be unregulated. Their stability would depend upon the number of consumers opting to view pay channels – the more consumers that opt for pay channels the less would be the price paid by the pay consumers.
- .New pay channels or FTA channels converted to pay channels coming after the date to be notified by GOI, designated as ‘Premium Channels’ can be offered only through STB and would be subject to no price regulation, except the limited regulation on maximum allowable discount on a bouquet of channel vis-à-vis individual channel rates.
- Existing pay channels would be free to become premium channels, if they choose to do so.

As already stated though this model gives some choice to consumer but would be plagued by fears of piracy. As the price of pay channels would be left to the market, in a situation of relatively very high FTA subscribers, the pay subscribers may be forced to share the burden of price increase.

Model -III

- Mandatory CAS and STBs for viewing pay channels.
- This can be implemented in Mumbai, Delhi and Kolkata after consulting the State Governments taking into account the groundwork already done in these cities
- CAS can be introduced in other areas after consulting the State Government.
- The existing provisions for providing a mandatory rental option for STBs should be insisted upon.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments with Rs 72/- per month (exclusive of taxes) being the default rate.
- Limited price regulation of the pay channels to the extent of regulating the maximum allowable discount on the bouquet of channels vis-à-vis individual channels.
- Regulations would be required on Interconnect arrangements since these were a matter of dispute when CAS was tried last year. Revenue share can be regulated on the request of service providers if parties are not able to arrive at an agreement within one month of initiation of the negotiation. The revenue share arrangement between service providers shall be regulated under Section 11(1)(b) (ii) and (iv) of the TRAI Act.
- Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. If during the roll out period certain problems are found the notification should be amended accordingly. As there are conflicting views on the applicability of Section 21 of the General Clauses Act it would be appropriate for the legal position to be made clear so that Government should be able, after recording the reasons in writing, to postpone, advance, suspend, amend or revoke the notification in public interest.

3.9 In the current recommendations, it is being suggested that all new channels are necessarily introduced through set top boxes in Models I and II. Gradually over a period of time viewing of pay channels should only be possible through set top boxes. The key to the success of this approach will

be how well the transition model is designed and implemented. There are distinct advantages and disadvantages in these models and the use of a particular model would be dependent on local conditions and tastes.

3.10 The Authority through its interactions with consumers has found that there are vast differences in the requirements of consumers in different parts of the country. This has been confirmed through a market survey that the Authority had commissioned. Accordingly, no single model can be applied across the whole country. Further, as already noted, implementation of the regulations in various models can only be done through a decentralised enforcement machinery which has to draw on the resources of the State Governments which has already been recognized in the Cable Act. In other large countries like USA also local authorities regulate the cable industry in terms of local functions. It is therefore of paramount importance that the decision in respect of the precise system in each area should be taken only after consultations with the State Governments and local stakeholders. Further there are always new technologies that are coming up and these can provide more solutions: thus these three models should not be regarded as static but rather would be a dynamic set which would change with evolving technologies. The need for changes in the model can also be periodically reviewed on similar lines i.e. after due consultations with State Governments and local stakeholders. So far as Chennai is concerned, since CAS has been implemented and is continuing no change is contemplated. The Model already implemented in Chennai is essentially Model III of these recommendations

3.11 The consultation process as well as the analysis of the entire problem of affordability and availability of choice to the customer has clearly demonstrated that some kind of inter-operability of set top boxes is required. There are two ways in which this can be achieved. One relates to having technical specifications and equipment matching those to ensure inter-operability. Extensive views have been expressed and it was found that there is a need for further study before technical inter-operability could be insisted upon. The other possibility is to have commercial arrangements which obviates the need for inter-operability, that is, an arrangement in which the set top boxes is owned by the cable operator and he makes it available to the customer on rent. The Authority is of the view that availability of rental scheme of set top boxes from all MSOs/Cable Operators is a fundamental requirement for the success of this scheme.

3.12 On prices of Set Top Boxes (STBs) as well as rental schemes of STBs, it has been proposed that details of various charges associated with STB installation would be announced by MSOs/Cable Operators at least ninety days prior to the implementation of CAS , if and when implemented, and would be available on TRAI's Website. Specific complaints of high prices/

rents, if required, would be addressed through a tariff order under section 11 (2) of the TRAI Act.

3.13 In order to ensure that bundling of channels through bouquets with a scheme of discounts does not nullify individual choice, a regulation specifying the maximum allowable discount on bouquet of channels vis-à-vis individual channels is required in CAS areas. The Authority would issue a tariff order to regulate the maximum allowable discount on the acceptance of the recommendations by the government.

3.14 The following is the summary of recommendations in regard to the issue of Choice for Consumers:

- The existing system will continue all over the country till the process of consultation with the State Governments and local stakeholders is completed and an acceptable model is found for each area. The alternative to the present system within the cable industry is to introduce consumer choice through various options including addressability. There could be three alternative sets of systems in the country – the existing system with price regulation and use of Set Top Boxes for premium channels, a system using Traps with a combination of Set Top Boxes for Premium channels and a Mandatory CAS based system. The decision in respect of the precise system in each area can be taken by the Government of India after consultations with the State Governments and local stakeholders. So far as Chennai is concerned, since CAS has been implemented and is continuing, no change is contemplated.
- In Non CAS areas (Model I) and in cable networks where Traps are being used (Model II), new pay channels can be introduced only through a STB and such channels will be designated as 'Premium Channels'. The date from which such a restriction will be imposed will be notified by Government of India. Existing Pay /FTA channels can move to the premium range if they choose to do so.

3.15 The tariff orders for the basic tier service, both for CAS areas and the networks deploying traps, maximum allowable discount on bouquet of channel and regulations for interconnection issues in CAS areas shall be issued by the TRAI on acceptance of the recommendations by the GOI.

Pricing

4.1. The Authority is separately issuing a tariff order whose salient features are described below.

4.2 The tariff order is aimed primarily at the situation arising out of the new pay channels and FTA channels converting to pay. This issue of the price of new pay channels or FTA channels that have converted to pay has been carefully considered by the Authority. Since new channels will be coming into the market a mechanism has to be provided for pricing of these new channels. At the same time, there is a need to conserve the protection provided to the consumers by the Tariff Order dated 15.1.2004. To maintain the sanctity of the ceiling, it has been decided that pay channels launched after 26.12.2003 should not be allowed to become part of the bouquet of channels being provided on 26.12.2003. A similar rule would apply for those channels that were free-to-air on 26.12.2003 and later convert to pay. It is expected that this would give choice to the operators and through them at least some choice to the consumers.

4.3 These new pay channels may be offered to the cable operator individually or as a new bouquet of channels which are not covered by the ceiling specified by the tariff order dated 15.1.2004. Thus for those consumers who do not get the new pay channels the ceilings already prescribed would continue. Where the consumers get the new pay channels, the extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new pay channels.

4.4 The Authority has, for the present, forborne to prescribe the ceiling rates for new pay channels that have been introduced after 26-12-2003 and for those channels that were free to air channels on 26-12-2003 but subsequently converted to become pay channels. However the Authority expects that the rates for the new pay channels would be similar to the rates prevalent on 26.12.2003 of similar channels. The Authority has, therefore, included in the tariff order a provision requiring the broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels. The ultimate objective of this exercise would be to ensure that the consumers are not subjected to unwarranted price increases on the pretext of introduction of new channels. It has also been decided that if there is a decrease in the number of pay channels as compared to the number of such channels being shown on 26-12-2003, the ceiling charge shall reduce taking into account the price of similar channels.

4.5 In the background of the discussion on the models described in section 3, the Authority shall issue the following regulations relating to pricing for the 3 new models described above on the acceptance of the recommendations by the government. Till such time prices would continue to be regulated according to the existing tariff order as amended from time to time.

For CAS Areas and Networks Deploying TRAPS (Model II & III)

- There shall be no price regulation on pay/premium channels except a limited regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail level. Price regulation for those taking the basic tier of only FTA channels will continue.

For Non CAS areas (Model I)

- The ceiling rates at which the charges will be paid by the cable subscribers to cable operators, cable operators to MSOs and MSOs to Broadcaster will be those prevailing on 26.12.2003. The ceiling shall be reviewed from time to time to make adjustments for inflation.
- No price regulation in respect of a Premium Channel except a limited regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail level
- The Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would be regulated as per the tariff order being separately issued.

4.6 On the issue of pricing of basic service tier, it has been recommended that:

- Basic Tier Rates should be fixed by TRAI in consultation with the State Governments. Till new rates are decided upon the existing rate of Rs.72/- per month, exclusive of taxes, will continue as the default rate.
- Different states can have different rates depending upon the demographic, topographic conditions etc.
- At present Government has the power to fix the basic tier rates under the Cable Act while TRAI has these powers under the TRAI Act. The dual jurisdiction of deciding basic tier rates should be done away with and exclusive powers be available with TRAI.

4.7 The regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders..

4.8 It has also been proposed that there can be different rates for the basic tier service for different states. Keeping in view the factor of diversity based on local conditions, the Authority does not propose to issue any regulation for Uniformity of Cable Rates. The Authority has however noted that uniform rates shall start emerging after the introduction of addressability and non-discriminating interconnect agreements.

Interconnection Agreements and Revenue Sharing

5.1 In areas where CAS is introduced, implementation of CAS can be held up if parties are not able to arrive at mutually accepted revenue share agreements. In order to ensure implementation of CAS, regulations will be issued at appropriate time on the following lines:

- The revenue sharing arrangements among broadcaster, MSO and LCO shall take place out of the proceeds of the amount payable by the subscriber.
- The interconnect agreements should clearly indicate the maximum retail price (MRP) of a pay channel or bouquet of channels, distribution margins for MSOs/ICOs. Similarly the agreements between MSOs and LCOs should clearly indicate MRP and margins for Local Cable Operators (LCO).
- The service providers shall mutually negotiate and decide on the revenue arrangements
- Where parties are not able to arrive at an agreement within 30 days of initiating such a process for revenue sharing, the Authority on the request of either of the party, will issue regulations under the powers conferred upon it under section 11(1)(b)(ii) and (iv) of TRAI Act.

5.2 Registration of Interconnect Agreements.

- All MSOs and LCOs will file interconnect agreements between them with the Authorised Officers for registration.
- All Broadcasters, DTH operators, HITS operators, and MSOs will file agreements between them to deliver the TV channels, with the Authority for registration
- TRAI will shortly come out with a revised regulation on registration of interconnection agreements.

5.3 Disconnection of Signals

- No broadcaster or MSO shall cut off the signals to an MSO or cable operator without giving at least one month's notice giving in brief the reasons for the proposed action. Such notice shall also be given in two

local newspapers having wide circulation so that consumers are also aware of the dispute and can take steps to protect their interests. The Authority will shortly be issuing regulations on general principles of interconnection. These will also include the provision relating to disconnection of signals.

Promotion of Competition in the Distribution of TV channels

6.1 Though Cable TV industry is fragmented at the last mile level, yet, it is characterised by a few dominant broadcasters and large MSOs, some of whom have a degree of vertical integration, resulting in disparities in bargaining powers amongst various players in the distribution chain.

6.2 The option of not allowing vertical integration at the root would impede investment and would not facilitate the objective of promoting competition. Therefore, the alternative route, of intervention when the situation warrants, has been explored and for this to happen regulations have been framed, so that they may be invoked at the appropriate time.

6.3 The Authority will shortly be issuing regulations on general principles of interconnection under Section 11 (1) (b) of the TRAI Act which provide the following: -

- Every broadcaster shall provide on request signals of its TV channels on a non-discriminatory basis to all distributors of TV channels including Cable Networks, Direct To Home, Head Ends in the Sky.
- No exclusive contracts permitted between broadcasters and distributors of TV channels.
- Broadcasters will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.
- Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.
- The 'must provide' shall not apply for those distributors which have defaulted on payment.

6.4 In addition the Authority has also recommended that the following conditions may be added in the license of the DTH operators including the existing DTH operator:

- a). *“ Licensee shall not carry the signals of a broadcaster who has been found by any regulatory body or court of law to have*

- (i) refused access on a non-discriminatory basis to any other DTH operator as laid down in the Regulations of TRAI or*
 - (ii) violated the provisions of any law relating to competition including the Competition Act”*
- b) *“Licensee shall not enter into any exclusive contract for distribution of TV channels.”*

It is expected that this regulation will help promote competition both within the cable TV market as well as between cable TV and other platforms.

6.5 On the issue of ‘Must Carry of TV Channels’ the existing scenario of capacity constraint in carrying signals in analogue mode and its consequences of competition for space on the Cable Spectrum has been kept in view. Since digitalisation is a long-term goal, no fresh regulation on ‘Must Carry Obligations’ is proposed apart from the ones already there in the Cable Act and Rules. As and when capacity is augmented the ‘must carry’ regulation will be introduced. For the present therefore there will be no regulation on carriage charges.

6.6 For the DTH services, the Authority has recommended that in view of the licensing condition 7.6 of the DTH license which makes it obligatory for the licensee to provide access to various content provider/channels on a non-discriminatory basis, further regulation regarding must carry is not required.

6.7 Another issue that has arisen in recent times is the broadcast of popular events like cricket matches. To provide for this, the Convergence Bill had a provision making it mandatory to provide access to the public broadcaster for such events. Accordingly it is recommended that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.

Rationalization of License Fee and Taxes

7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most

feasible way of giving competition to the cable industry in the short run, is through DTH.

7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible. To some extent given the differences in size, technology and reach, complete uniformity is not possible.

7.3 Keeping in view the above and also TRAI's recommendation on DTH segment on 'Accelerating Growth of Internet and Broadband Penetration', the following recommendations are made:

- The Authority has already proposed a reduction of 2% in the revenue share license fee for DTH in its recommendations on "Accelerated growth of internet and broadband penetrations" in line with the reduction in the license fee given for other telecom operators.. The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by
 - Subscription fee charges passed on to pay channel broadcasters.
 - Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premises.
 - Service tax /entertainment tax paid to Central/State Govt if the gross revenue is inclusive of these taxes.
- DTH operators shall have to carry out detailed accounting separation so that revenues accrued from DTH operations and from other services, sale of hardware etc. could be separated. The operator should follow accounting separation guidelines issued by TRAI from time to time.
- DTH operator shall produce on demand all such books of accounts and documents which have a bearing on the verification of revenue for the purposes of calculating License fees and Auditing by the CA&G in accordance with the provisions of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971.
- The GOI should recommend to all State Governments to consider cable TV and DTH services at par and impose the same Entertainment Tax on these services. Similarly there should be parity in imposition of Service Tax.

- Foreign Direct Investment (FDI) limit in Cable TV and DTH should be reviewed and a consistent policy provided.
- The customs and excise duties on the equipment used to provide DTH and Cable Services should be similar to those used to provide other telecom services.

Advertisement

8.1 Section 8 deals with the issue of regulation of advertisement time. The Authority while deciding on the recommendations has taken into account the following factors:

- Consumers have voiced strong complaints over frequent and long duration of advertisement breaks and have also suggested a total ban on advertising on pay channels.
- There is a direction by Delhi High Court in CW no 8993-4/2003 to the Union of India to consider if there is a need put restriction on advertisement time and explore the feasibility of notifying the channels receiving lot of advertisement revenue as FTA channels.
- Most countries have regulation on advertisement time and the nature of regulation varies. The time limit on an average is in the range of 10-12 minutes per hour. But globally, in most of the countries the percentage of revenue from subscription is on even balance in relation to advertisement revenue.
- In India the ratio is in favour of revenue from advertisement and not from subscription. The former constitutes 100% in FTA channels and it is about 70% in the case of Pay channels.
- The average time reported by Broadcasters to TRAI on advertisement is seen to be within the global scenario.
- Regulation of advertisement time can adversely impact the subscription fees, as broadcasters would attempt to neutralise the revenue loss. This may be against the objective of providing affordable prices.
- Excessive advertisement by itself is detrimental to the service providers as it may result in loss in viewership and the market has a self-correcting mechanism.
- The recommendation on CAS and Traps providing a choice not to view pay channels may have an impact on viewership of pay channels and in this background, regulation of advertisement time may push up subscription rates.

8.2 Keeping the above in view TRAI has recommended that

- There should not be any regulation, at present, on advertisement on both FTA and Pay channels.

- The Cable Act should be suitably modified so that powers are available with the Government to regulate this, if found necessary, at a later stage.
- Broadcasters would also be required to give information on advertising time to TRAI and the Government and this would also be made available to the public through the TRAI web site.
- Broadcasters should be free to decide which channel should be FTA and which should be pay.

Regulatory Enforcement

9.1. In Section 9, the extent of effectiveness of the System of enforcement of regulations under the present regulatory arrangement has been examined.

9.2 The features of the proposed regulations are as follows:

- The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments:
- The Registration of Cable Operator should be done by the Authorised Officer and not by the Head Post Master. The existing cable operators may not be asked to obtain fresh registration but the next renewal of registration should be done with the Authorised Officers.
- The registration amount should be deposited by the Authorised Officer in the Post Office or under a central head in a nationalized Bank.
- The Authorised Officer should have power to revoke registration if a cable operator has been convicted of a criminal offence and imprisoned for the same.
- Information under Section 4A(9) should be submitted to the Authorised officer and not the Government of India as at present. The consolidated information may be sent to the central/state government. Formats for these can be separately prescribed.
- Consumers and operators should have the option to approach the Authorised Officers for implementation of the regulations/orders issued under the TRAI Act. The Authorised officers should be given powers with respect to the cable TV services to file complaints against violation of the orders/regulations issued under the TRAI Act.

- All Cable Operators and Multi System Operators shall maintain a register of subscribers containing the names of the subscriber, address, and monthly fee to be charged. The Register shall be furnished for inspection to the Authorised officer whenever he considers it expedient to inspect such a register.

9.3 There are a large numbers of cable operators operating in far flung areas. They need a local dispute resolution mechanism which they can easily approach. Disputes being very common in this service sector, the government may consider setting up an alternate dispute resolution mechanism for cable operators at the local level. For multi system operators and broadcasters there need be no change in the present arrangements.

Quality of Service

10.1 The purpose of laying down Quality of Service (QOS) parameters is to provide a framework whereby Multi System Operators/Cable Operators would be required to meet certain guidelines for delivery of services to the consumers. This regulation will be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in para 9.2.

10.2 The Authority has decided to issue the Quality of Service Regulation and the following shall serve as QOS codes and guidelines for the Cable TV Industry:

Information to be provided to consumer at the installation of Cable TV connection

- i. Detailed information must be provided to consumers at the time of installation and activation of cable services and at least annually to subscribers and at any time upon request about:
 - Products and services offered, i.e number of channels and names of individual channels being offered.
 - Prices and option of programming services.
 - Installation and service maintenance policies.
 - Billing and complaint procedures including the address and telephone number of the customer service centre.

Complaint handling procedure and benchmarks to redress complaints.

- ii. A Cable Operator shall improve the network quality and the complaint redressal infrastructure to meet the following benchmarks:
 - 90% of complaints will be corrected within 4 hours.
 - No more than 3% of customers should require to lodge complaint against service interruption each month.
 - 90% of 'No Signal' calls received should be corrected within 24 hours.
 - 90% of all other types of service calls will be corrected within 48 hours.
- iii. Each Cable Operator must maintain a customer service centre or help desk 8 hours a day, 6 days a week. All complaints shall be registered and complaint number issued for each Complaint.
- iv. A Cable Operator shall maintain record containing all complaints filed by the subscriber. The records shall include name and address of the complainant, date and time of filing complaint, type of complaint and redressal date and time with the confirmation of the consumer that the complaint has been redressed. The cable operator shall present records whenever called upon by the Authority or the Authorised officer.
- v. A cable operator shall take all necessary steps like provision of alternate power supply to eliminate the incidence of service interruption for power failure.
- vi. For the purposes of maintenance and repair, a cable operator must ensure that its representative(s) carry proper identification along with a photograph.

Billing Procedure and Complaints

- vii. Cable subscribers must be billed monthly with statements being clear and transparent. Where a customer does not view pay channels via a Set Top Box, a bill should be itemised clearly indicating cable charges and taxes. Where a customer does view pay or premium channels via a STB, a bill should be itemised and clearly indicate the price of the basic Fee to Air tier, the price of pay channels or bouquets, STB rental and deposits and taxes.
- viii. The billing system should be such that the following benchmarks are met:

- Complaints shall be addressed within 7 days of notice from the consumer to the operator.
- Refunds must be issued no later than either the customer's next billing cycle or 30 days following the resolution of the complaint, whichever is earlier.

Set Top Box related Complaints.

- ix In cases where there is a malfunction of a Set Top Box provided by the operator on rent, the operator must repair or replace the STB within 24 hours.
- x. In cases where a customer chooses to return a STB, the refund must be made within 15 days, subject to proper working condition of the STB.
- xi. If a customer chooses to subscribe to pay channels via a Set Top Box, then STB installations and subscriber activation must take place within 48 hours of the receipt of the subscriber's request.
- xii. Rebate for deficient service: In case the installation and activation of the STB is delayed beyond 48 hours of the receipt of the Subscriber's request, the multi system operator/cable operator shall in the monthly subscription give a rebate of Rs.15 per day for the first 5 days and Rs.10 per day for the subsequent period.

Change in positioning of channels

- xiii Change of positioning of TV channels should not be normally be done. In case of pressing technical reasons requiring changes of TV channel position is required, the cable operators shall notify subscribers at least two days in advance of such occurrence.

Technical Standards

- xiv A Multi System Operator and Cable Operator shall match the technical standards set by Bureau of Indian Standards (BIS) of Cable TV Network.

10.3 Though regulation on Quality of Service will be issued by the Authority after the regulatory enforcement machinery has been put in place as proposed in Section 9, in the meantime cable operators and MSOs can

take action to ensure that these standards will be met, once the regulation are in place.

Gist of Amendments proposed to the Cable Act and Rules and the TRAI Act

11.1 The major points on which amendments to the Cable Act/Rules and the TRAI Act have been proposed are as follows:

Cable Act and Rules

- Amendment of definitions to include various terms as well as cross-reference to the Telegraph Act, Wireless Telegraphy Act and the TRAI Act.
- Amendment of Section 4A to provide explicit powers to the Central Government to postpone, advance, suspend or revoke a notification already issued, after recording reasons in writing for the same.
- New section to be added to make it mandatory for new pay channels to come on an addressable system, after date to be notified by the Government.
- New section to be added to give powers to the Central Government to specify maximum time of advertisement.
- Amendments to give the authorised officers more powers and to make them the Nodal Officers in the field for implementation of the Act, including registration.

TRAI Act

- Amendment of definitions to clarify various terms like service provider, broadcaster, MSO, etc.
- Amendment of Section 13 to provide for directions to be issued in respect of all functions of the Authority.
- Amendment of Section 29 to provide for penalty for contravention of directions of the Authority as well as its orders and regulations.
- Amendment of Section 34 to provide for authorised officers to file complaints in respect of violations of any regulation reported by consumers or Cable Operators.

11.2 For ease of reference, all the proposed amendments have been put together at Annexure-II&III of the Recommendations giving the precise wording of the amendments. In addition, it has also been proposed that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.

SECTION 1: BACKGROUND

Cable TV Industry Development and Initial Steps For Regulation

1.1 The India cable TV industry has been in existence for over 15 years. Although Satellite Master Antenna TV (SMATV) systems for delivering multiple channels to consumer homes had been in existence prior to 1991, it was the advent of the Gulf War in 1991 and its coverage on international news channels which kick-started the spread of cable television in the country. After 1992, the proliferation of cable television was further fuelled with the broadcast of localized India-specific programming by various television channels.

1.2 In India, the cable TV industry has developed in an unregulated manner and has grown rapidly. Today, the market remains fragmented with over 150 cable TV channels and 30,000 cable TV systems although clear market leaders have emerged in both categories. The National Readership Survey 2002 (Source: NRS 2002) indicated that there were 38.6 million cable TV homes in India. More recent estimates indicate that, at calendar year-end 2003, there were more than 47 million cable TV homes in India, representing in excess of 50% penetration of television households (Source: Media Partners Asia, Asia Pacific Cable & Satellite Markets 2004).

1.3 Because of its unregulated growth, the cable industry continues to face problems in sustaining the delivery of high quality services to the consumer. This has increased the need for a new regulatory framework to support the industry's next stage of growth and consolidation and to protect the interests of the consumer.

1.4 The market is characterized by a large number of operators some of whom are very small. In recent times there has been some consolidation with a few vertically integrated operators where broadcasters have equity investments in the Multi System Operators. There has also been a steep increase in fees charged for pay channels in recent years, both on account of increase in the number of channels and the price per channel. The combination of these factors has driven the need for industry regulation so that consumers obtain quality services at reasonable prices, competition is promoted and anti-competitive trade practices are checked.

1.5 The regulation of the cable TV industry in India began with the promulgation of the Cable Television Networks (Regulation) Ordinance, 1994 on September 29, 1994, which was converted into the Cable Television Networks (Regulation) Act (hereinafter "Cable Act"), on March 25, 1995. The Cable Act, inter alia, provides that:

- To operate a cable television network, a cable TV operator has to be registered with the registering authority (head post-master of the head post office of the area) as a cable operator.
- No person can transmit or retransmit programmes and advertisements through the cable network unless they conform to the programming code and the advertisement code respectively prescribed under the rules.
- Cable operators have to use equipment that conform to the standards prescribed by the Bureau of Indian Standards, on and from the expiry of a period of three years from the date of establishment and publication of such standards.
- Seizure and confiscation of equipment of cable operators if they are unregistered or breach the programming or advertisement code or fail to transmit Doordarshan channels, as prescribed under the Cable Act.
- Contravention of any of the provisions of the Cable Act could result in imprisonment up to two years and/or fine up to one thousand rupees for first offence and for every subsequent offence imprisonment up to five years and fine up to five thousand rupees.
- Under the Cable Act, the authorized officer can seize the equipment of a cable operator in case of violation of section 3, 5, 6 and 8 and in terms of Section 18 of the Cable Act courts are not to take action for any offence punishable under the Act unless there is a written complaint by an authorized officer. In Section 2 of the Act which gives definitions of various terms, “authorized officer” means, within his local limits of jurisdiction:- (i) a District Magistrate, or (ii) a Sub-Divisional magistrate, or (iii) a Commissioner of Police, and includes any officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorized officer for such local limits of jurisdiction as may be determined by that Government.

Thus, the Cable Act provides for concurrent jurisdiction by the Centre and the States in enforcing the Act through authorized officers.

II. Task Force for The Introduction of CAS

1.6 Initially, most cable TV broadcasters in the country were Free To Air (FTA). Over the last few years, starting from 1996, the cable TV broadcasters began to turn pay and charge subscription fees. Broadcasters have formed pay channel bouquets to increase distribution revenues. These bouquets align around popular domestic mass-market channels with other niche-type local and international channels. The bouquets are generally one bundle of channels belonging to a broadcaster but in some cases the broadcasters team up with each other to make a bouquet of pay channels. The cost of

these bouquets are borne by the cable operator and then passed on to the consumer. As more channels turn pay, subscription fees are rising and monthly cable TV bills for consumers have grown rapidly.

1.7 To address issues relating to the cable industry, the Government of India had, on 25-9-2001, constituted a Task Force consisting of representatives from the Indian Broadcasting Federation, MSOs, Content Creators, Cable Operators, Broadcasters, Infrastructure Providers, Ministry of Consumer Affairs, Representatives of Consumers Activities and Technical Experts. The Task Force submitted its report dated 27-2-2002 and unanimously said that conditional access systems (CAS) was necessary to provide and ensure transparency at different levels of the industry and as a solution to the outstanding issues. The implementation of the CAS was envisaged as beneficial to all concerned industry stakeholders including consumers, MSOs, cable operators, broadcasters and the Government.

1.8 The Task Force was of the strong view that there was an urgent need to educate consumers on the operation of cable television and the cost of various services, including the operation and cost of STBs. The task force observed that in the existing arrangement, the consumer was paying for all channels, irrespective of what he actually watched or desired to watch. There was a need to make the system transparent in respect of the pay channels that could be viewed by subscribers. The subscription of all pay channels would be transparently known and the payment receivable by individual 'pay' channels would be fully determined. This transparency would also allow entitled revenue to accrue to the different links in the distribution chain of Cable TV.

1.9 The Task Force also proposed an enabling provision in the Act to prescribe basic minimum technical standards and performance parameters through the Bureau of India Standards (BIS). These recommendations can be summarized as follows:

- The Conditional Access System and the supporting subscriber management system should be mandated under the Cable Act.
- The STB shall be required for "Pay" Channels and the FTA channels shall be receivable by the subscribers in the current mode, without STB.
- The technical parameters of the STB shall conform to the Indian standards, to be prescribed by the Bureau of India Standards, in accordance with provisions of the Bureau of Indian Standards Act, 1986. While doing so, the Bureau of Indian Standards may take into account the internationally acceptable standards and obtain recommendations from technologists and manufacturers of equipment.

- It shall be mandatory for the Equipment Provider/ manufacturer to declare, in a transparent manner, the capability of the STB and its interoperability on other networks.
- In order to ensure transparency in the operations between MSOs, Cable operators etc., the Government must be empowered to obtain detailed information, on regular basis, from each level of operation. This may include information on total subscriber base, on individual programmers, viewer ship of independent channels, subscription rates, charges fixed by the broadcasters, Content Creators for each channels etc. Each subscriber shall be kept informed in a transparent manner of the subscription rates for each individual channel.

1.10 The recommendations of the Task Force resulted in Parliament amending the Cable Act of 1995. A new provision in the form of Section 4A was inserted and Sections 9, 11, 16 and 22 were suitably amended. These amendments empowered the Central Government, in public interest to make it obligatory for all Cable operators to transmit or retransmit programmes of every pay channel through an addressable system. Under this provision, the Ministry of Information and Broadcasting vide notification dated 14-1-2003, specified 15-1-2003 as the date within six months of which these obligations were to be complied within the areas of Chennai, Municipal Council of Greater Mumbai Area, Kolkata Metropolitan Area and National Capital Territory of Delhi. Six months time given in this Notification was to enable the cable operators/MSOs to import the necessary equipments. This Notification also records that the Central Government is satisfied that it is necessary to have this addressable system for the aforesaid areas.

Implementation of CAS- constitution of another Task force

1.11 In order to implement CAS in an orderly and timely fashion, the Central Government constituted another Task Force to examine the relevant issues on 28th January 2003. The recommendations given by the Task Force are as follows:

- There is a need to specify a “Basic Service Tier” of FTA channels by the Government so that the viewers in the metros are not deprived of viewing FTA channels, in the current mode.
- The ‘Basic Service Tier’ must have a minimum 30 FTA channel package and the same number must be specified in each of the four metros. This will include 3 “must carry” channels.
- The FTA channels, in the ‘Basic Service Tier’, must be in English, Hindi or the regional language, subject to availability in the area.
- The ‘Basic Service Tier’, must include channels on the genres of entertainment, news, sports, children programmes and music,

depending upon availability of such genre in the FTA channels, available in the particular area.

- All the FTA channels, over and above the 'Basic Service Tier' would be available to the subscribers within the maximum amount fixed for programmes in the 'Basic Service Tier'. No extra charge would be recoverable from the viewers, by the Cable Operators Broadcasters/MSO's, for viewing any additional FTA channels, in the area.
- All the members (except the cable operators) agreed that the maximum amount which a cable operator could charge a subscriber for receiving channels transmitted in the basic service tier, be fixed at Rs.72/- per month plus taxes. This maximum amount should be the same for all the four metros.
- The Task Force should continue to deliberate on other important issues relating to the problems of the Broadcaster, MSO and Cable Operators, to introduce addressability. Broadcasters/MSO's should be encouraged to transparently reveal their plan regarding pay channels after introduction of addressability, the bouquet being proposed and indication of the cost of pay channels/ pay channel bouquet.
- An intensive multi-media campaign should be launched by the Government/Broadcasters/MSO's/Cable Operators in order to educate the consumers on the provision of the Amendment Act and regarding the cost and utility of the STB's.

1.12 The Task Force held several meetings attended by the MSO's as well as the Cable Operators Association. In these meetings, it was stressed that the date of 15-7-2003 was sacrosanct and would not be postponed and all the cable operators were asked to ensure that necessary hardware for implementing CAS is installed in their respective networks well in time. The MSOs were also asked to furnish from time to time details with regard to status of the CAS hardware being procured by them. The Government attempted to facilitate import of the necessary equipments and in the process it issued Notification dated 28-5-2003 under the Custom Tariff Act, 1975 substantially reducing the custom duty payable on specified CAS hardware including STB's from 51.8% to 5%.

Problems on Implementation of CAS

1.13 In order to ensure smooth implementation of CAS in four metropolitan cities, discussions with representatives of stakeholders of cable industry i.e manufacturers, broadcasters, MSOs and cable operators were held. During the course of deliberations MSOs/Cable Operators were confident of meeting the demand of STBs. Subsequent review revealed that adequate number of STBs were not available. The government in consultation with the MSOs staggered implementation of the CAS to 1st Sept 2003 in a phased

zone wise manner in three metros of Delhi, Kolkata and Mumbai. The CAS implementation in Chennai was to be done in one go.

Suspension of CAS in Delhi

1.14 On 29 August 2003 the Ministry of Information and Broadcasting issued a notification deleting Delhi from the notification dated 10th July 2003. The impact of this was to defer the implementation of CAS in Delhi.

Appeal in the Delhi High Court and Order dated 4.12.2003

1.15 A writ petition was filed by the Cable Operators and MSOs against this in the Delhi High Court saying that whereas the CAS has duly been implemented in Chennai, Mumbai and Kolkata w.e.f. 1.9.2003, the Notification dated 29.8.2003 has deleted the specified areas of Delhi as mentioned in earlier Notification and thus CAS has not been implemented in Delhi. High Court Delhi vide its judgement dated 4.12.2003 quashed notification dated 29.8.2003.

Writ filed by Consumers Groups and Delhi High Court Judgment dated 26.12.2003

1.16 Delhi High Court in CW No. 8993-4/2003 ordered on 26.12.03 refused to restrain the government from implementing CAS in Delhi and decided also to review the situation after three months. The Delhi High Court also directed to look into the framing of policy with regard to those channels that generate substantial advertising revenues as to why these channels should not be notified as FTA channels. The Government was to consider whether a limit needs to be put in respect of time for advertisement. The High Court also ordered that “there has to be some regulatory body in terms of the synopsis of comments which have been filed by the respondent to see the implementation”.

Appointment of Regulator for Broadcasting and Cable Services

1.17 The Government of India issued a Notification No. 39 dated 9th January 2004 under the proviso to clause (k) of sub section (1) of section 2 of the TRAI act 1997 as amended, whereby the scope of the expression ‘telecommunication services’ under the TRAI Act was expanded to include broadcasting services and cable services also. Thus, the broadcasting and cable services also came under the purview of Telecom Regulatory Authority of India. With the issue of the notification dated 9.1.2004, an alternate dispute redressal mechanism also became available for the broadcasting

and cable industry. Under Section 14 of the TRAI the disputes between service providers, service provider and group of consumers are to be adjudicated by the Telecom Dispute Settlement Appellate Tribunal (TDSAT).

Order Dated 9.1.2004

1.18 The Government of India also issued an order dated 9th January, 2004 under Section 11 (1) (d) of the Act, which mandated the Authority to make recommendations regarding terms and conditions on which the “Addressable systems” shall be provided to customers and the parameters for regulating maximum time for advertisements in pay channels as well as other channels. The order also added to Sub-section (2) of Section 11 the function of specifying the standard norms for, and periodicity of revision of rates of pay channels, including interim measures.

Regulatory Interventions by TRAI

Regulation on Price Cap

1.19 Immediately after the broadcasting and cable services came within the purview of the Telecom Regulatory Authority of India, the Authority found that there were no standard rates or conditions at which cable operators provide services to subscribers. The Authority also received reports that there may be an increase in the rates charged to subscribers. To bring some certainty in the rates prevailing for these services, it was considered necessary by the TRAI to intervene in the matter. On 15th January, 2004 it specified as ceiling the rates at which the charges will be paid by cable subscribers to the cable operator, by cable operators to multi system operators and by multi system operators to broadcasters, as those prevailing on 26th December 2003 with respect to both FTA channels and pay channels, and for both CAS and non-CAS areas, until a final determination by the TRAI on the various issues involved.

Press Release dated 19 February 2004

1.20 After the announcement of the Telecommunication (Broadcasting and Cable) Services Tariff Order 2004, a number of doubts were raised on the impact of the order. To clarify these doubts a press release was issued on 19th February, explaining the word ‘charges’ and provisions relating to this.

1.21 According to the clarification given by this press release, the term ‘charges’ means and include the charges/ tariff rates payable by one party to the other by virtue of the formal/ informal Agreement prevalent on 26th December 2003. The principle applicable in the formal/ informal Agreement

prevalent on 26th December, 2003, should be applied for determining the scope of the term 'charges'.

1.22 It was also explained that the ceiling charges are specified in terms of products that they pertained to, namely the channels that were shown on 26th December, 2003. Normally, there should not be a reduction in the number of channels shown on 26th December, 2003. If this were so then there should be a pro-rata reduction in the charges

Regulation on Inter-connect Agreements

1.23 TRAI issued an amendment to the Interconnection Regulations of 1999 on 3 February 2004 making it mandatory for all Broadcasters and Multi System Operators to provide their interconnection agreements to TRAI.

1.24 All major broadcasters and Multi System Operators have filed agreements for registration with the Authority. Service providers have been asked to file these agreements in a specified format for easier reference.

Interim recommendation on CAS

1.25 TRAI provided its Interim Recommendations on CAS on 23rd February 2004 to the Government. Based on a number of factors that were mentioned therein, TRAI recommended that the Government Notification No. SO 792 (E) dated 10th July 2003, which notified the areas for implementing CAS, be kept in abeyance for at least three months.

1.26 The recommendation was accepted by the Government and vide Notification No.S.O.271 (E), dated 27 February 2004, the Government suspended the mandatory operation of CAS until such date as may be notified by the government. Due to this Notification there are no separate CAS or non-CAS areas and such distinction has been withdrawn in this Amendment. The notification however was not operated in Chennai on account of the stay given by the Madras High Court in Writ Petition numbers 4863, 4890, 4936 and 4919 of 2004. The interim order granted by this Court on 04-03-2004 was subsequently made absolute by the Court Order dated 30.4.2004.

Consultation and process for finalizing recommendations

Consultation Note

1.27 The objective of the Consultation Note was to obtain feedback from stakeholders on the issues regarding tariff of broadcasting and cable service and problems arising out of the application of Conditional Access System

(CAS) in certain areas. It was issued on 15th January 2004. This consultation note sought inputs on a number of policy issues, so as to prepare a more detailed Consultation Paper. These policy issues broadly include:

1. The norms for fixing rates for cable subscribers/ cable operators/ multi system service operators (MSO) for individual pay channels, bouquets and the distribution of FTA channels (whether uniform in CAS and non-CAS area)
2. Periodicity of change of monthly cable charges in non CAS area
3. Revenue sharing between broadcasters, MSO's and cable operators
4. The extent of bundling of pay channels
5. The standard terms and conditions for providing STB's
6. Provisions regarding the return of STB's (whether purchased or taken on rent)
7. Compensation to the subscribers in case of the interruption in pay channels for more than specified period
8. Standards relating the Quality of Service
9. Measures to increase competition, promote efficiency and encourage wide consumers choice
10. Measures relating to the development of broadcasting and cable services
11. Advertisement on the TV channels- issue relating to maximum permissible advertisement time to be permitted on pay channels and FTA channels.

The comments and inputs for the consultation note were called for up to 30th January, 2004.

Consultation Paper

1.28 Taking into account the inputs received in response to the Consultation Note TRAI issued a Consultation Paper on April 20, 2004 for giving its recommendations to the Government. The objective of the Consultation Paper was to provide consolidated information to stimulate the discussion. The paper provided the necessary platform for discussing the important issues relating to the regulations for the Cable TV Industry. The paper called for the comments of various stakeholders on different issues. The comments on the Consultation Paper were called for up to 7th May 2004 and a large number of responses were received.

1.29 TRAI also held discussions with various stakeholders on the consultation paper, on 7th, 11th and 15th May 2004, in Chennai, Delhi and Mumbai respectively. In addition a seminar was also held in Mumbai on 19th June 2004, on Broadcasting and Distribution of TV channels. In

addition, TRAI also held a series of smaller meetings with Broadcasters, MSOs, LCOs, Consumer organizations etc.

Special Committee of TRAI and State Government

1.30 TRAI had also constituted a Committee consisting of representatives from the State Governments of Delhi, Tamil Nadu, West Bengal and Maharashtra and was chaired by Secretary, TRAI. The Committee met on 10.3.2004, 31.3.2004, 28.4.2004, 3.6.2004 and 14.7.2004. The Committee considered various issues including Pricing of Pay Channels, Bundling of channels, STBs, Advertisements and Gradual and voluntary introduction of STBs. The Committee also considered the measures to improve implementation of the policy and suggested that the State Governments should be given necessary powers to notify areas for implementation of CAS and Authorised Officers to be given powers to solve local disputes. A copy of this report is at *Annexure I*.

1.31 The Authority had also engaged a consultant – M/s IMRB - to carry out a survey to understand the channel preferences, prices, acceptability of CAS, etc. in the country. A copy of the report has been put on the website of TRAI along with these recommendations. A reference has been made to the report wherever found relevant. The Authority also studied in detail international practices and experiences; wherever relevant these have been referred to in these recommendations.

SECTION 2: DIRECTIONS OF REGULATORY INTERVENTIONS

2.1 Given the background of the cable TV industry, it is necessary to first set out the broad objectives that policies and related regulations need to address. The basic objective that regulation in this sector needs to address is the need to promote growth and competition in the sector so that consumers have affordable prices for their home entertainment and can choose between alternative platforms and channels.

2.2 The cable industry has developed in an unregulated manner since 1991. The industry has grown rapidly and the size of the industry is now about Rs.15,000 crores per annum. This remarkable growth of the industry, owes in a large measure, to the entrepreneurial skills of the cable operators. The growth of this sector has, however, brought in its wake problems that have called for increasing regulation.

2.3. Pay channels in the country, initially came as free-to-air channels but starting from 1995 these free-to-air channels, increasingly became pay channels leading to rising consumer bills. In mature economies, pay television came along with Set Top Boxes and hence the pattern of development of the industry in India has been very different. According to one estimate the total pay out for pay channels has increased by 1100 per cent over the mid 90s. At the same time the consumer invariably has no choice in selecting his/her operator. The combination of increasing pay outs to the broadcasters and the lack of competition in the last mile and inability to choose between alternate platforms and channels has led to increasing consumer bills which have fuelled growing consumer dissatisfaction and a demand for regulation.

2.4 Though affordable prices is a primary objective but at the same time prices should also be maintained at levels that stimulate competition and further growth of the industry, which should lead to furthering the objectives of giving consumers more choice and higher quality services. These objectives may conflict in certain cases. For example when prices do not provide fair return on the investments, the operator may not like to make further investments to upgrade or expand the network.

2.5 Against these objectives, it is imperative to examine the efficacy of the present system in addressing these objectives and subsequently, what are the major problems that require regulatory intervention. Such intervention can take two directions: firstly encourage competition and secondly introduce regulation to enhance competition or counter the imbalances resulting from a lack of competitive market structures.

2.6 In terms of consumer choice, the present system does not provide any choice to consumers and offers limited choice to operators. One notable exception is Chennai where the introduction of CAS has resulted in a greater degree of choice for consumers and cable TV operators. In the current industry context, broadcasters provide a bundle of channels to cable TV operators, who can either accept the entire bundle (irrespective of ratings and viewership) or be forced to carry nothing. The end result is that consumers have a much lower freedom of choice – they simply have to take the entire bundle provided by the operator or not take the service at all. In most cases the consumer does not even have the choice to change his operator. Therefore, there is a need for radical change in the system to provide the consumer with greater choice, both in terms of choosing operators and in choosing channels. Regulatory intervention is required to stimulate the market to provide such choice and where necessary to directly intervene so that greater choice is available.

2.7 The issue of affordability or reasonable prices has been at the forefront of the current debate about reform in the cable TV industry. As already noted, price inflation in the cable TV industry has been severe since the mid-1990's, driven by both the increases in the number of pay channels offered by broadcasters and the increase in their prices.

2.8 As has been explained earlier the price increases have been largely absorbed by the consumer. It has also inflated the cable operator's cost, causing grievance to both parties. These increases were the principal reason for TRAI's first regulatory intervention – the tariff order of January 15, 2004 imposing a ceiling on prices at the level of December 26, 2003. This was a temporary first step ahead of a more detailed examination and the adoption of a more permanent system. The new system must address not only the end consumer price but also the interconnection arrangements between the various players in the distribution chain including local cable operators (LCOs), multi system operators (MSOs) and broadcasters. If these structural problems in the distribution chain are not addressed, they will ultimately impact the consumers in the form of price increases or loss of content and programming.

2.9 The need for the industry to grow is tied to two essential requirements for consumers. Firstly, there is a major need to extend the coverage of cable and satellite TV to remote, rural homes and areas. For instance, Direct To Home (DTH) satellite television can prove viable transmission to rural areas, enjoying cost efficiencies over cable TV operators, which are typically reliant on high population densities (i.e. urban areas) in order to build networks with economy. Secondly, there is a great need to give consumers choice in terms of operators and programming. The numbers of cable operators that can function in a

particular area are limited given the cost of laying a network. True choice in this regard can only perhaps come once there is an alternative platform like DTH. In order for competition to succeed, the business must be attractive enough to attract investors with sizable funds, network/infrastructure access, programming depth and technology expertise. Similarly, if the cable industry is to grow, prosper and provide consumers with choice and quality services, significant funds are required to be invested in STBs and digitization. Digitization can also help to clearly combat piracy, bring basic addressability to the industry and provide consumers with additional programming channels and new interactive TV services. At the same time, technology has been progressing rapidly with convergence taking place at both the consumer end as well as at the service provider end. With this convergence it would be possible for the cable industry to provide other services as well. Thus, already internet services are being provided by cable operators. In addition, telecom services could also be provided – in several countries like USA, UK and Korea, cable operators have made considerable progress in providing telecom services. This would be facilitated in the unified licensing regime. It is imperative that the industry therefore continues to grow and there are powerful incentives for investments that enhance competition and consumer choice

2.10 Against this background the vision that the Authority has of how the television broadcasting and distribution business should grow in the future is as follows:

- The objective of the regulation would be to promote and facilitate competition amongst channels, operators and platforms
- Consumers should have the freedom to choose their content and their operator/platform- this would mean ease of exit from one operator/platform to another operator/platform
- The other platform could be DTH or other media like telephone lines. Both options are permitted even at present.
- Addressability must come on all TV channel distribution platforms
- As competition increases and the consumer has multiple choices, price regulation would gradually withdraw.

2.11 The key element of this vision is that the best regulatory framework is one that allows the industry to grow so that consumers have multiple choices giving them freedom to choose their content and operator/platform. This competition together with addressability would empower the consumer to control his/her expenditure on viewing television channels. It is this vision that has guided the Authority in its task of developing a regulatory framework for this business.

2.12 With this as the perspective the following are some of the major problems that have been identified. These issues are discussed in the later sections and wherever necessary regulatory interventions are suggested.

- **Consumer Choice**

2.13 The lack of addressability in the industry today is a major concern. The core issue here is consumer choice. Greater choice will provide the consumer with more control over content and correspondingly will give the consumer better control over the price that he/she is charged. This was sought to be rectified by direct intervention in the form of a legislative mandate. To what extent was this a correct strategy needs to be examined along with the alternatives. This is done in Section 3.

- **Pricing**

2.14 At present there is no regulation of prices except for the tariff ceilings imposed by the Authority and the fixation of the ceiling price of Rs.72/- per month for the basic tier in CAS notified areas. Another important issue is to look at the prices of individual channels vis-à-vis the prices of a bundle of channels and to see if the present system offers adequate choice and if not what kind of regulatory intervention is required. These issues are discussed in Section 4.

- **Interconnection agreements and revenue share**

2.15 The need for price regulation not only at the end consumer point but also all along the value chain has to be examined. Lack of proper revenue sharing arrangements is a major issue today and unless this area is reformed consumers can be affected adversely by interruptions of channels. These issues are discussed in Section 5.

- **Promotion of competition in the broadcasting of TV channels**

2.16 Competition is the key to the success of any regulatory framework. By easing entry and exit barriers, providing access to content across all competitors and by providing choice at every level regulation can spur new investments and promote competition. This should over a period of time lead to lower levels of regulation and allow all the players, both in the industry and amongst consumers, to exercise choice and decide what is best for them. Competition issues are discussed in Section 6.

- **Rationalisation of License Fee and Taxes**

2.17 There are several alternatives to cable TV which need to be promoted to provide effective competition. To this end rationalization of taxes, license fees etc. needs to be looked at to provide a level playing field to the extent possible given the divergence in technologies and scale of operations.

- **Advertisement**

2.18 Consumers have voiced strong complaints over the frequency and long duration of advertisement breaks. They have pleaded for regulation of advertising time. This issue also needs to be addressed suitably. This has been done in Section 8.

- **Regulatory Enforcement**

2.19 The efficacy of any system of regulatory enforcement depends crucially on the extent to which the regulations can be enforced on the ground. This is specially so for the cable industry where the number of operators and consumers are large and spread all over the country. There is need to reorganize the present regulatory system for effective implementation of the regulations. These issues are addressed in Section 9.

- **Quality of Service Standards**

2.20 At present quality standards exist only in the form of technical standards laid down by the BIS. These need to be expanded to provide service standards on fault rectification, billing complaints etc. A framework has been devised by the Authority and discussed in Section 10

2.21 For all the above issues a detailed discussion is provided in the following sections. The discussion draws on valid international experience along with the views of stakeholders and the recommendations of the special committee. After analyzing the issues in the light of this material, solutions are offered in terms of recommended amendments to the TRAI Act, the Cable Act and Rules made under the Act. In some cases the solution lies in terms of amending the existing Regulations or issuing new Regulations under the TRAI Act. **Since some of these regulations would be based on acceptance of the recommendations and changes in the legal structure, these will be issued after relevant changes have been made in the law.** A regulation on interconnection and a revised tariff order are being separately issued.

SECTION 3: CONSUMER CHOICE

3.1 Under the existing regime, the consumer has little choice. The consumer's only choice is to subscribe or not to subscribe to the service being offered by the local cable operator. Once the consumer has decided to subscribe, he/she is left with no choice and has to subscribe to all the channels being offered by the local cable operator. The local operator can be persuaded to show a particular channel or a group of channels. However in a large and heterogeneous community it would be impossible to cater to all choices. Additionally under this system consumers would necessarily pay for channels that they do not watch. Similarly operators have limited choice – they cannot choose individual channels but have to pick up the entire bouquet offered by a broadcaster. One way out of this problem would be to adopt CAS. This was the solution recommended by the Task Force as already indicated in Section 1. Brief details of how it was implemented have already been described in that Section.

3.2 In this section the following issues relating to consumer choice have been examined and analysed:

- i. Whether it is desirable to have a single method to provide choice to the consumer and addressability across all regions of the country
- ii. If not, what are the options
- iii. Whether there is a need for transitory options before finally graduating to a Conditional Access System as proposed by the Task Force set up in Sept 2001.
- iv. Whether the Conditional Access System and Addressability, be introduced through a legal mandate or allowed to be introduced voluntarily.

Stakeholders' Comments

3.3 All stakeholders have provided their comments for the implementation of CAS. Different groups have different views regarding its implementation. Some prefer voluntary and other prefer mandated CAS, giving their views in favour of their preferences. These are briefly summarized below:

- *Most pay broadcasters and some cable operators favour the voluntary implementation of CAS and have recommended that the adoption of CAS for accessing pay content should be left to market principles. According to them this should be introduced by the service provider but also suggest the full availability and deployment of STBs. Some also*

suggested that CAS should be accepted by subscribers on its own compelling value proposition at the offered price.

- *The majority of FTA broadcasters, all MSOs and majority of cable operators prefer a mandated CAS because of the following reasons:*
 1. *Without mandating by law no regulation will work in the beginning in India.*
 2. *Pay channels have to be paid on the basis of actual viewership and the subscription thereof, and there are no methods to measure the actual viewership other than a proper addressable system.*
 3. *Voluntary CAS may lead to lot of confusion as some of the LCOs will be offering CAS and others will not be, hence the customers in the area where CAS is not being offered by LCO will be deprived of all the benefits of CAS and the purpose of CAS will be defeated.*
 4. *CAS will bring uniformity in the Industry and Trade if it is mandated by law.*
 5. *MSOs have argued that under the current system the sharing of subscription revenue is biased towards the LCO and the pay channel broadcasters. The MSO who provide the uninterrupted services are sandwiched between the two. A proper revenue sharing model is required in any service so as to ensure continuity of the service to the customer. Only a proper addressable system can bring about the same.*
 6. *Shortly we will have DTH and other delivery platforms in our country. Those service providers will target the same cable TV customer. While DTH and other platforms will be addressable and digital, cable TV cannot remain non addressable and analogue. Such a piquant situation will lead to further disputes between stakeholders on pay TV revenue. There cannot exist two types of systems in the industry- vis. addressable and non-addressable.*
- *There are some other opinions as well - a consumer organization has suggested that either way implementation can be adopted provided that all the objectives are met. Another suggestion is that CAS should be mandated only if TRAI fails to convince pay channels and broadcasters to earn only advertisement revenue. In Chennai there appears to be an overwhelming consensus amongst operators and consumers that CAS has benefited them and should continue. In other cities like Mumbai and Delhi the response of the consumers is not so*

uniform and there are a number of concerns on CAS, mainly the cost of the STB and the monthly cable bill.

Conditional Access System

3.4 One of the ways that the objective of affordable TV services for the consumer can be met is if flexibility permitting a consumer to exercise his choice, is available. This implies that affordability will come if a consumer is able to decide what his total bill should be through the method of selection of channels. One method of doing so is to introduce CAS and set top boxes. The immediate question that comes up is that why, barring to some extent in Chennai, this scheme could not be implemented. Despite the advantages of CAS, the implementation had run into difficulties for the following reasons:

- State Governments had not been consulted at the decision making stage and so there was not much support for the new system at the implementation stage.
- There are certain areas where consumers were getting services at nominal prices. With implementation of CAS the consumer prices for pay channels were actually increasing instead of decreasing.
- One of the intended benefits of CAS is that the consumer is able to choose channels of his choice. He could either opt for the package of FTA channels or take his choice of pay channels. But post CAS, individual pay channels against bouquets were priced in such a manner that consumers had little choice of selecting individual pay channels.
- STBs were non-interoperable. Consumers apprehended that their STB would be of no use when they change residence or service provider. STBs were not easily available on rent
- Most of Broadcasters, MSOs and Cable Operators were not able to arrive at revenue share arrangements amongst themselves.
- Some MSOs had brought out pamphlets regarding sale/rental schemes of STBs. But this information did not percolate down to actual consumers. At the same time, there was considerable variation of pricing of STBs fixed by various MSOs.

- There was considerable uncertainty about continuity of the CAS scheme.

3.5 When CAS was introduced last year, the expectation was that it will help the customers. But, what actually happened was that it only helped the FTA subscribers, while others who wished to watch pay channels ended up paying higher bills. In Chennai where FTA channels were the main interest of large majority subscribers, CAS had a clear advantage of reducing the tariffs for FTA subscribers and therefore, was welcomed. In other cities where pay channels were more popular, the effect was opposite. Thus it is only in Chennai that CAS has been successfully implemented and upto May 2004 around 23,000 (less than 3% of the city's population) STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The IMRB survey has also revealed that consumers in Chennai have choice and are able to control the cable bills. The CAS has also brought in transparency in the system and meets the ultimate objective of bringing addressability in the system.

Traps

3.6 Traps are an alternative way of giving choice to consumers. Traps can either be used to block certain channels or to allow certain channels to enter a home. These devices are being used extensively in the USA and Canada and in parts of Europe.

“The most common method to block programming (in the United States) is through the use of a set-top box. An alternative method that some cable companies use for blocking channels is an electronic filter that “traps” out a particular channel. This filter is physically installed on the cable equipment outside a customer’s home and provides complete blocking of the specific channel until the device is removed.”

(Source: National Cable & Telecommunications Association, “Cable Puts You in Control)

“Certain cable networks (in the United States) are transmitted unscrambled and trapping devices are used outside of the customer’s home to keep networks that the home has not purchased from transmitting to the customer’s televisions.”

(Source: U.S. General Accounting Office, “Issues Related to Competition and Subscriber Rates in the Cable Television Industry,” October 2003)

“The majority of cable companies (in Canada) serving 6,000 or more subscribers have chosen to offer some of the Canadian specialty and foreign satellite services in a discretionary tier, or tiers, where the signals are not

scrambled. Cable companies typically distribute these tiers in an unscrambled mode throughout their entire systems, but then install a 'trap' or 'filter' outside the premises of those subscribers who do not wish to receive the package(s). These packages of services are added to basic cable and marketed by cable companies under a variety of names, including 'Cable Plus' and 'Full Cable Service'.

(Source: Canadian Radio, TV & Telecommunications Commission, "Distribution of Cable TV Services in Canada," October 2001)

3.7 Considering the current market situation in India, the most feasible option seems to be in using negative traps that can block the entire set of pay channels. This would allow consumers to have a choice of whether or not to watch pay channels. Those who do not want to do so can bring down their cable bills by having traps placed outside their residence while the others can continue to watch these channels. It is also possible to divide consumers into 2-3 tiers with different packages – more than this would not be possible due to technical reasons.

3.8 Against a digital STB, which costs around Rs.5000/- a trap is said to cost between Rs.100 to Rs.500/-. Thus it provides a more cost effective method of providing limited choice. However, there is the major problem that traps can be bypassed, violated and hacked and therefore the problem of piracy is far greater than with the usage of STB technology. Another major disadvantage is that it does not provide a transparent method of accounting for the number of consumers having access to a particular channel. Thus disputes about revenue sharing are likely to continue when using traps. These problems will be less in networks where there is not much demand for pay channels or where an operator is confident of meeting these challenges.

3.9 Considering both sides of the argument, and its successful deployment in some parts of India, it does appear that traps can be used wherever it is found feasible. This could be also used as a transitory phase to the use of STBs. Prior to the deployment of digital STB technology in the late 1990's in USA and Canada, traps were used in the 1970's and 1980's to enable viewers to block or access an expanded basic tier of pay channels alongside analogue STBs (to allow consumers to view premium channels). Traps continue to be in use in USA and Canada.

3.10 Thus while existing pay channels could be seen with the help of traps it can be mandated that all new pay channels i.e all channels that are introduced after a specified date to be decided by the GOI, will be shown only using the STB. Further provision can be made that the existing channels can also move to the new class of channels. A note on traps is given at the end of this Section.

Mandatory versus Voluntary CAS

3.11 While all sections of the industry welcome CAS there is no agreement on whether this should be done on a voluntary basis or through a legal mandate, as was attempted last year. As already noted the opinions of consumers differ—while some support it, others object to it. Ideally, it should be left to the market to decide and individual consumers should have the choice of whether or not to rent or buy a STB and view pay channels. This is how STBs were promoted in mature media economies and how they are being promoted in emerging media economies. In both instances, where CAS has been deployed, consumers have also typically seen an increase in their monthly cable TV bills.

3.12 In emerging media markets such as China, Korea, Indonesia, Taiwan, Philippines, Sri Lanka, and Thailand, while the government has attempted to foster STB penetration, there has been no mandate for the deployment of STBs. Instead operators, most of who command last mile control, have relied on funds from domestic and international investors and market demand from consumers, to begin deploying STB technology. In mature media markets (USA, UK, Australia, Japan) the usage of analogue STBs prior to launch of digital STBs allowed consumers to become more familiar with STBs and premium channels ahead of the launch of two-way digital STBs that today offer consumers value-added interactive services such as video-on-demand (VOD) and digital or personal video recording (DVR or PVR).

3.13 In India, the development of the cable TV industry has run contrary to the pattern evident in mature media markets and as a result the industry is unique. Consumers are already used to watching pay channels without either analogue or digital STBs and do not want to pay any extra amount to rent or buy STBs. At the same time, alternative platforms such as DTH will have addressable systems that give consumer choice and give it greater competitive edge over the cable industry in the long term and potentially deprive the latter of any viable commercial future. A weak cable industry will not be able to offer meaningful competition and thus consumers, especially those watching pay channels, will be hurt.

3.14 Given the existing structure of the industry and the experience of last year when even after a mandate, CAS deployment faltered, it may be necessary to provide a legislative mandate for introducing consumer choice through STBs and CAS.

Role of State Governments

3.15 In the context of CAS, the role of State Governments is crucial. The Authorized Officers come under the State Governments. The entire burden of enforcing any legislative mandate lies with them. The Special Committee has also recommended a greater role for the State Governments specially in deciding whether or not to mandate CAS in a particular area. **There is a wide divergence between different areas of the country in terms of viewership habits and preferences. It would be difficult to mandate a national solution that is appropriate for all parts of the country. Different strategies can work in different areas. Therefore it should be ensured that the state governments are taken into confidence and consulted at every stage.**

Transition

3.16 While CAS did not succeed entirely in the last attempt and traps have their own limitations the continuation of the existing system also has its problems. The key features of the existing system are:

- The consumer gets one bundle of channels supplied by his cable operator
- The cable operator in turn gets a fixed bouquet of channels from a broadcaster
- Thus both the consumer and the operator have very little choice

The drawbacks of this system are as follows:

- The consumer does not have any choice in viewing channels or in choosing his/her operator
- Prices for consumers would tend to increase as and when a new pay channel is launched or an FTA channel turns pay. Price Regulation can only control this to a limited extent.
- Consumers would have to pay for even those channels which he/she is not willing to view.
- Consumers will have no choice to control content and thereby control his/her cable bills.
- There would be continuing disputes on revenue sharing between service providers

In this model price control through regulation is difficult. It requires a decentralized enforcement mechanism. It also has severe drawbacks given the fact that the content is not homogenous, there are a large number of

consumers and operators and the interconnection agreements are a highly complex set of systems. Therefore it is necessary to look at alternative models.

3.17 One of the suggestions that has been made is that choice should be provided to the consumer in terms of the last mile cable operator. This suggestion has been examined. However, even today there is no restriction on the number of last mile operators – yet this has not led to the consumer having significant choice. In the rest of the world also there is a similar pattern. It is unlikely that competition in the last mile can be fostered except through the introduction of alternative platforms. While this issue of fostering competition is dealt with in more detail in section 6 it is necessary to keep this in mind while dealing with the issue of choice in the cable industry.

3.18 Through the process of consultation, analysis and a thorough examination of international practices, the Authority has formulated its recommendations keeping the failure in the first instance in mind. The Authority is of the view that:

- A gradual transition to addressability is a must.
- Uniform or identical solution is not applicable across the board all over the country.
- The interest of FTA subscribers as also subscribers of pay channels has to be protected.
- It is to be remembered that pay channels came to India initially as free to air channels and later were converted to pay channels without set top boxes. All over the world pay channels came through set top boxes permitting the subscriber the choice whether he/she wanted to watch and pay for or not to watch any specific pay channel. The existing situation is such that it is one reason why the earlier attempt to introduce such set top boxes did not succeed.
- Any change in the system, in a country as large and diverse as India, to be sustainable, must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue.

3.19 Although addressability should be the ultimate objective it cannot be done immediately throughout the country. Considerable preparation would be required before introducing it in a particular area specially through a mandate. It is therefore necessary to develop transitory models that would allow a smooth transition to addressability and also provide some incentives for this movement. While evolving transitory models, the need to provide

incentives in these models have been kept in view to facilitate smooth transition to addressability. The salient features of these models are briefly brought out as under:

Model I

3.20 In this model there would be no compulsory CAS- thus existing pay channels can be watched without a STB. To stabilize prices and incentivise stakeholders to move to a system that gives more choice and addresses the other problems of the industry the following regulations can be introduced:

- Price cap at the level on 26.12.2003. The prices to be reviewed periodically by the Authority to make adjustments for inflation.
- For pay channels launched or FTA channels becoming pay channels before the date to be notified by the GOI for introduction of premium channels but after 26.12.2003 broadcasters would be required to report their prices along with other details to the Authority. After reviewing the information the Authority would intervene in the matter, if necessary. To maintain the sanctity of the ceiling on the monthly cable rates specified by the Authority, these pay channels shall not be allowed to become part of a bouquet of channels existing on 26.12.2003 and should be offered on a stand alone basis.
- New pay channels and converted FTA channels to pay channel, from the date to be notified by the GOI, can be offered only through STBs. These channels would be called premium channels. Existing channels can also migrate to this category of premium channels. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the central government powers to notify a date after which a new pay channel can come only via a STB.
- The premium channels would be subject to price regulation only to the extent that the maximum allowable discount on the bouquet vis-à-vis sum of a-la-carte channel price will be regulated by the Authority.
- In this model therefore there will be four types of channels:-
 - (i) FTA channels - these will be channels that do not charge a subscription
 - (ii) Pay channels – channels that charge a subscription and existed on 26.12.2003
 - (iii) New pay channels – channels that charge a subscription, but did not exist on 26.12.2003
 - (iv) Premium channels – channels that charge a subscription fee and have come into existence after a date to be notified by the

Government. Existing channels can also migrate and become premium channels

The advantages of this model are as follows :

- (i) it ensures price stability
- (ii) no additional investment is required and it can be implemented straight away
- (iii) It does support STB installation through the incentive of no price regulation for premium channels

The disadvantages of this model are the following:

- (i) This involves considerable Regulation as both consumer price and broadcaster revenues are being controlled.
- (ii) The choice available to a consumer is minimal
- (iii) Disputes on revenue share would continue as broadcasters could claim higher connectivity
- (iv) There would be no addressability implying weak competition with DTH
- (v) Existing channels are unlikely to come on the STB as they would suffer a loss of revenue and thus there would be slow digitization

3.21 It could be seen, that the primary objective is to ensure price stability in this model. The drawback of this model is that consumers do not have choice, price regulation would be difficult and disputes between service providers would continue as there is no transparent method of revenue sharing. This should be seen as a transitory model leading to addressability.

Model II

3.22 As an alternative to Model I a system of using traps can be considered as another alternative transitory model. The essential features of this model are as follows:

- Traps could be used to divide customers into basic and pay customers. The consumers can be presented additional choice by offering more than one tier of pay channels but for technical reasons this may not be able to exceed 2 or 3 tiers.
- Basic tier service rates to be regulated by the TRAI in consultation with State Governments.
- Pay Channel prices will be unregulated. Their stability would depend upon the number of consumers opting to view pay channels – the

more consumers that opt for pay channels the less would be the price paid by the pay consumers

- New pay channels and converted FTA to pay channel, from the date to be decided by the GOI, can be offered only through STBs. These channels would be called premium channels. Existing channels can also migrate to this category of premium channels. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the central government powers to notify a date after which a new pay channel can come only via a STB..
- The premium channels would be subject to price regulation only to the extent that the maximum allowable discount on the bouquet vis-à-vis sum of a-la-carte channel price will be regulated.
- Traps would be installed purely through a market initiative and no mandate should be given for this.

3.23 In this model therefore there will be three types of channels:-

- (i) FTA channels - these will be channels that do not charge a subscription
- (ii) Pay channels – channels that charge a subscription and existed prior to the date to be notified by the government as indicated in (iii) below.
- (iii) Premium channels – channels that charge a subscription and have come into existence after a date to be notified by the Government. Existing channels can also migrate and become premium channels

3.24 The major advantage of this model is that it provides a cost effective solution for dividing consumers into FTA and Pay categories leading to lower prices for FTA consumers and higher market penetration through such consumers.

3.25 The major disadvantages of this model are that traps are prone to high levels of piracy and this is one of the main reasons why operators are generally against it. It could also lead to price increases for pay consumers. This is because those consumers who opt for traps and watch only FTA channels would pay less and this burden would get transferred to the consumers watching pay channels. It would be very difficult to regulate this as the extent of increase would depend crucially on the percentage of consumers opting to stay with pay channels in a network. The more of such consumers the less would be the price increase. Finally there would be no improvement in Revenue share arrangements amongst the various players in the distribution chain. In contrast STBs provide a better method of revenue accounting and also provide the platform for value added services.

3.26 Like Model I this should also be seen as a transitory model which can lead to addressability at a later stage. It has the advantage over Model II of providing limited choice but at the same time is susceptible to a high degree of piracy. Thus this may be suitable in areas where operators are confident of combating piracy or in areas where the demand for pay channels is limited and therefore both price increase and piracy problems would be less.

Model III

3.27 This model assumes that voluntary CAS would not succeed and that this can be introduced only by a legislative mandate. This can be implemented in Mumbai, Delhi and Kolkata after consulting the State Governments taking into account the groundwork already done in these cities. CAS can be introduced in other areas after consulting the concerned State Governments.

3.28 In Section 1 it has been noted that the mandatory introduction of CAS was to begin from 15.7.2003. Subsequently it was felt that sufficient STBs are not available and therefore the date of implementation of CAS was postponed to 1.9.2003. Even after 1.9.2003, the CAS could not be implemented in the three metros of Delhi, Mumbai and Kolkata. Given this experience it would be better if the government has clear powers to reschedule the introduction of CAS whenever it is felt that the implementation is not possible in the prescribed time frame and public interest requires that it may be implemented from a subsequent date. There are conflicting views on the power available with the government under section 21 of the General Clauses Act to add, to amend, to vary or rescind any notification, orders, rules or bye-laws, issued by it. Therefore to remove all doubts it is proposed that the government should have clear powers under section 4A(1) of the Cable TV Act to change the notified date of implementation of CAS, if found necessary, in the public interest. To avoid arbitrary exercise of such powers reasons for such change should be recorded in writing.

3.29 The other features of this model would be:

- Regulations would be required on Interconnect arrangements since these were a matter of dispute when CAS was tried last year. Revenue share can be regulated on the request of service providers if parties are not able to arrive at an agreement within one month of initiation of the negotiation. The revenue share arrangement between service providers shall be regulated on the request of either of the parties under Section 11(1)(b)(ii) and (iv) of the TRAI Act.
- The Basic Tier Price would be decided by the TRAI in consultation with the state governments. This would be done by TRAI under the

provisions of section 11(2) of the TRAI Act. This would require deletion of Section 4A(4) and (5) of the Cable Act

- The existing provisions for providing a mandatory rental option for STBs should be insisted upon.
- Limited price regulation of the pay channels to the extent that the maximum allowable discount on the bouquet of channels vis-à-vis individual channels will be regulated.
- Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. The information on STBs would be made available at least 90 days before actual implementation of CAS.

The advantages of this model are as follows :

- (i) Consumers gets wide choice and can use this choice to reduce their cable bills by reducing the number of channels that they subscribe to
- (ii) It would lead to a stable and transparent revenue share mechanism
- (iii) More channels can come if digitisation accompanies the mandating of CAS
- (iv) There would be better quality of transmission
- (v) Cable TV would be able to provide more effective competition to DTH.

This model also has several disadvantages which are listed below:

- (i) The prices for pay consumers will increase unless they reduce their content i.e. the number of pay channels that they watch. Consumers typically want price stability without loss of content and this clearly would not be possible as has been seen in Model II.
- (ii) This model implies heavy regulation in the initial phase – more than Model I or II – and this could lead to confusion unless the regulation is properly implemented

3.30 In the current recommendations, it is being suggested that all new channels are necessarily introduced through set top boxes in Model I and II. Gradually over a period of time viewing of pay channels should only be possible through set top boxes. The key to the success of this approach will be how well the transition model is designed and implemented. Considering all the new models it can be seen that each has its advantages and disadvantages. The use of a particular model must depend upon local conditions and tastes. For this reason no one model is being recommended.

An enabling framework is set out in the following sections. This would support all the three new models.

3.31 Broadly the following would be the guidelines for adoption of the three new models:

- a. Where consumers and the State Government feel that the paramount consideration is to keep prices stable and where considerable preparation would be required for introducing CAS Model I can be chosen
- b. Model II would be appropriate where there are strong operators and demand for pay channels is not very large and yet not insignificant
- c. Model III would be best where consumers want to exercise choice and consider that this is the best way of controlling their cable bills. It would also require preparation in terms of equipment, organization of the operators and suitable interconnection arrangements amongst all service providers.

3.32 The Authority through its interactions with consumers has found that there are vast differences in the requirements of consumers in different parts of the country. This has been confirmed through a market survey that the Authority had commissioned. Accordingly, no single model can be applied across the whole country. Further, as already noted, implementation of the regulations in various models can only be done through a decentralized enforcement machinery which has to draw on the resources of the State Governments which has already been recognized in the Cable Act. In other large countries like USA also local authorities regulate the cable industry in terms of local functions. It is therefore of paramount importance that the decision in respect of the precise system in each area should be taken only after consultations with the State Governments and local stakeholders. Further there are always new technologies that are coming up and these can provide more solutions: thus these three models should not be regarded as static but rather would be a dynamic set which would change with evolving technologies. The need for changes in the model can also be periodically reviewed on similar lines i.e. after due consultations with State Governments and local stakeholders

3.33 As far as Chennai is concerned, the CAS has been successfully implemented and upto May 2004 around 23,000 STBs were installed. The Authority had found in its interaction with Chennai consumers that the vast majority of consumers are happy with the system of CAS. The CAS has also brought in transparency in the system and meets the ultimate objective of bringing addressability in the system. Therefore it is recommended status quo may be maintained in Chennai. In the case of Delhi, Mumbai and Kolkata a writ petition has been filed in the Delhi High Court by three MSOs seeking directions to implement CAS in these three cities. Depending on the

outcome of this case the further course of action would have to be decided upon.

Recommendations

3.34 Keeping the above in view the following is recommended:

- **Any change in the system, in a country as large and diverse as India, to be sustainable, must come after consultations with the State Governments as well as local stakeholders. The transition to any new system also has to be smooth. Till this process is completed the present system will have to continue. The alternative to the present system within the cable industry is to introduce consumer choice through various options including addressability**
- **CAS can be implemented in Mumbai, Delhi and Kolkatta after consulting the State Governments and local stakeholders taking into account the groundwork already done in these cities**
- **For other cities, the Government may notify an area for mandatory introduction of CAS under section 4A of the Cable Act only after consulting the concerned State Government and local stakeholders**
- **Government may notify areas where new pay channels can be introduced only through a STB and such channels will be designated as premium channels. Existing pay/FTA channels can move to the premium range, if they choose to do so. This would require amendment of the Cable Act and Section 4(A)(9) is proposed to be amended along with a new section 4(B) which will give the Central government powers to notify the date after which a new pay channel must only come via a STB. This date can be different for different areas of the country.**
- **The decision in respect of the precise system in each area can be taken after consultations with the State Governments and local stakeholders. This process could use the guidelines suggested in para 3.31 above.**
- **So far as Chennai is concerned, since CAS has been implemented and is continuing, no change is contemplated.**
- **Wherever CAS is to be introduced a minimum of six months time should be provided to ensure that all preparatory steps are taken for smooth implementation of CAS. Government should have clear powers not only to specify the date from which CAS is to be introduced but also the power to postpone, advance, suspend, amend or revoke the notification, in public interest after recording reasons in writing. Section 4A(1) of the Cable Act should be amended to provide for this.**

3.35 The tariff orders for the basic tier service, both for CAS areas and the networks deploying traps, maximum allowable discount on bouquet of channel shall be issued by the TRAI on acceptance of the recommendations by the GOI.

3.36 A copy of proposed changes in the Cable Act and the TRAI Act for concurrent running of the three systems in the country are at Annexure II and III respectively. Some additional amendments have also been proposed which have been discussed in the subsequent sections.

3.37 It is expected that with this flexibility the wide diversity that exists between different parts of the country will enable the Governments in the States to recommend whatever appears best suited to them. GOI will also have the flexibility of choosing from among different options keeping in view the recommendations of the State Governments and local conditions.

Set Top Boxes

3.38 In implementing CAS, consumers have expressed their concern that they would be forced into a situation that would limit their ability to shift locations or operators once they have signed up with the initial one. Furthermore, consumers want to be assured that the commercial terms associated with acquiring and using STB are reasonable and not monopolistic in nature.

3.39 The Authority held many consultations to gather the necessary inputs for its recommendations on inter-operability. These sessions surfaced a number of issues which are discussed below.

3.40 One major concern of consumers is that deployment of conditional access systems should not negatively impact their ability to move or switch providers of television services. This concern stems from a situation where operators would each deploy a distinct proprietary CAS, and therefore would require usage of specific set top boxes containing the same proprietary CAS to work with those systems. As a result, the consumer is locked in by the cable operator and/or MSO to use the technology and equipment being provided to him. If the consumer is forced to purchase the STB, he does not have any use for it once he shifts out of the coverage area of that operator or wants to switch operators.

3.41 Another concern with this arrangement is that it also creates a potential monopolistic situation that leaves the consumer with no choice but to accept the offer being presented by the operator. If the consumer is forced to purchase the STB, the consumer does not typically even have an option to find a better price from another vendor. Even in the case of rental,

lease or other commercial arrangements that do not force the consumer to purchase the STB, or allows him to return it for a predetermined amount when he no longer requires its use, the commercial arrangement still creates a situation of unequal strength where the operator can govern the terms.

3.42 This dependence on the operator has driven consumer apprehension about CAS, particularly in relation to the fact that he/she would not be treated fairly, could be overcharged and also could be given poor service. As a result, consumers have demanded STB interoperability so that they could be free to use any kind of STB purchased or rented from the open market.

3.43 The debate about interoperability is rooted in the fact that cable operators, MSO's and broadcasters would like to prevent customers from seeing content that they have not paid for. While there are agreed upon standards, which BIS also recognizes, for carriage and coding of the content, the proprietary portion of CAS deployments comes in coding the information that is needed to access the scrambled or encrypted content. This part of the coding is not specified in standards, and therefore companies have developed their own solutions to achieve security.

3.44 There are many situations when this security is breached by hacking. When hacking occurs, depending on the type of hack, what is hacked, and the design of the actual CAS, the results could be limited to one specific subscriber, to a group of subscribers, or the complete network. In all of these situations, containing hacking requires replacing at times just the Smart Card used in the CAS deployment, but sometimes the entire set top box. This is a risk and expense that is borne by the operators, especially since the consumer does not have a choice in choosing a particular CAS system. The commercial ramifications are significant when hacking occurs as the costs and logistics of replacing hardware can be tremendous. Therefore the decision of which CAS to choose is significant for the operator.

3.45 From the above discussion, it can be seen that inter-operability is not purely a technical discussion, but also needs to be addressed with commercial considerations. On the technology aspects, there is a specific scope within which inter-operability has been considered. This scope is only for cable TV networks, and does not include DTH, for which interoperability regulations already exist.

3.46 In cable TV networks, the traditional type of transmission is analogue, which would require using analogue set top boxes. Today, most networks are of this type, and because LCOs today send unscrambled signals, these networks can directly be plugged into TVs without a need for descrambling or converting the content signal. CAS can be implemented on analogue networks, but would require the consumer to use an analogue set top box in

addition to the current arrangement. All stakeholders agreed that analogue networks do not provide for inter-operability because it is technically infeasible to implement while maintaining sufficient levels of security.

3.47 Instead of analogue transmission, most new networks are being deployed in digital platforms because of the superior capacity, quality and flexibility. Digital networks can have inter-operable CAS systems, which is where the discussion is focused.

3.48 The existing provisions in the Rules in relation to STBs are set out below:

- The government had on June 6 2003 issued a notification amending the Rules which inter alia added the following provision as Rule 13.

“The cable operator shall make provisions for the rent and security deposit or refund thereof as well as warranty, repair and maintenance in the manner notified by the Government”

- Through a further notification dated 8th September 2003 the Rules were further amended which inter alia provided a new provision as Rule 14 which is as below:

“Manner of making provisions for rent, security deposit, etc. for Set Top Boxes – (1) The Cable Operator will intimate to each cable subscriber in writing and at least fifteen days before the introduction of ‘Conditional Access System; in the specified area of service, the following details of Set Top Boxes:-

- (a) Type of Set Top Box, whether analogue or digital, its Main physical functions and its conformity with the Bureau of Indian Standards.*
- (b) Details of payment schemes, including validity period of the offers on sale, hire, purchase, or rent of Set Top Box and amount of refundable security deposit payable by the cable subscriber.*
- (c) Maximum time for refund of security deposit to any cable subscriber who returns the Set Top Box.*
- (d) Details of maintenance facility available with the cable operators.*
- (e) Maximum time to repair/replace the Set Top Box.*
- (f) Period of warranty of the Set Top Boxes.*

2. The Cable Operator shall also furnish the information required in sub-rule (1) above to the Ministry of Information and Broadcasting, duly authenticated by its authorized signatory.”

3.49 Both the above mentioned rules provide that an operator must give a rental provision. This would address the problem of those consumers that change residence and also gives them a chance to change operators where this is feasible. They can return the set top box once they change residence/operator and take a new box from the new operator. However there is no provision to regulate the prices of STBs, the rental rates and other charges. The question of whether these should be regulated or not needs to be decided. This issue is discussed below.

3.50 The argument in favour of regulation is based on the following :

- (i) At present consumers are not paying for a set top box and with CAS they would have to pay for it either on outright purchase basis or on a rental scheme.
- (ii) Since consumers do not have a choice they will have to pay on whatever terms the local operator offers. This lack of choice requires that STB prices/rental schemes should be regulated

The argument against regulation is that

- (i) There has been a great deal of consumer resistance to purchase or rent a STB. In Chennai, only about 3% of the consumers have a STB. This number could be higher in other metros (where popular pay channels command greater viewership) were CAS to be introduced there again. It would be in the interest of operators to offer more attractive STB schemes, leading to higher STB penetration thereby providing sustainable business models for all industry stakeholders. As a result, it is in the interest of operators to promote attractive STB rental schemes and promotional discounts.
- (ii) Additionally, there is also the problem that there is a large variety of STBs (and varying prices, ranging between Rs 2,000–Rs5000 for both analogue and digital STBs) coupled with a number of schemes to promote their usage. With such variety it would be difficult to provide any uniform benchmarks.

3.51 Considering all this it would seem to be counter productive to issue any regulation at this stage. However each operator would be asked to furnish to the Government and TRAI details of the various charges associated with STB installation fees, fees for the smart card, any one-time deposit, and monthly STB fees. These would be displayed on TRAI's website as well as the web sites of MSOs and cable operators, wherever the operators are maintaining a website. The information on STBs would be made available at least 90 days before actual implementation of CAS. This would give consumers the opportunity to see STB-related rental fees and other fees in different geographical areas so that if the rates anywhere appear to be too high consumers can take this up with TRAI. Appropriate

regulations would be issued by TRAI suo motto or on the complaint of consumers, if found necessary, under Section 11(2) of the TRAI Act. **This would also mean that the Cable Rules would need to be amended to enable TRAI to obtain such information from the operators. Accordingly Rule 14 of the Cable Television Networks Rules has been proposed to be amended to give effect to this recommendation.**

3.52 Thus, in order to ensure that consumers will not be overcharged for STBs, information on the rates for various charges associated with the STB will be put on the web site, if any, of the operators and TRAI's web site. If it appears that an operator is overcharging a particular consumer(s), TRAI would issue appropriate regulations.

3.53 In an ideal situation, the solution to this problem lies in having a STB that would not have a proprietary design and would be freely interoperable. Consumers would be able to buy or rent this from any store, just as they do for any other product, or have it integrated into other media devices like TV's and/or VCD players. However, there are technical problems in ensuring this type of interoperability, and such a system has not been introduced in any part of the world yet, though some countries have made efforts in that direction. A limited form of interoperability already exists in the form of STBs that have the capability to accept an external conditional access module (CAM). This module contains the required CAS components, and can be changed and plugged in to STB's that can accept CAMs whenever the operator changes. This system is however more expensive and has also not been mandated by the BIS. Thus, the BIS standards today do not prescribe inter-operability for cable TV set top boxes.

3.54 The consultation process as well as the analysis of the entire problem of affordability and availability of choice to the customer has clearly demonstrated that some kind of inter-operability of set top boxes is required. There are two ways in which this can be achieved. One relates to having technical specifications and equipment matching those to ensure inter-operability. Extensive views have been expressed and it was found that there is a need for further study before technical inter-operability could be insisted upon. The other possibility is to have commercial arrangements which obviates the need for inter-operability, that is, an arrangement in which the set top boxes is owned by the cable operator and he makes it available to the customer on rent. **The Authority is of the view that availability of rental scheme of set top boxes from all MSOs/Cable Operators is a fundamental requirement for the success of this scheme.**

Bundling of Channels

3.55 A major advantage to a consumer having a STB is that he/she can choose the channels that he/she wants to watch and thus pay for the

selected channels. However the current commercial practice in the industry is that channels are not sold as such but only in the form of bundles or bouquets of channels. Each broadcaster puts all its channels in one bundle that is sold en bloc. Operators do not have the choice to choose individual channels which are part of a bouquet. Without addressability the consumers have no choice but to get all the bouquets that an operator is offering. With CAS consumers should have the choice to watch:

- Individual channels
- The bouquets offered by the Broadcasters
- Specialised bouquets formed by the operator from the channels offered by different broadcasters

3.56 If the discount on a bouquet is very large then no one would buy individual channels. When CAS was introduced, many consumers complained that compared to a bouquet of channels, an individual channel was priced in such a manner that subscribers did not have a real option to choose channels on a-la-carte basis. It is for this reason that the Cable Television Network Rules have a provision that discounts should not be offered in such a way as to render the choice of individual pay channels illusory. Clearly the advantage in introducing CAS would be lost if the pricing of pay channels is such that the consumer only has the limited choice of choosing or not choosing a bouquet offered by a particular broadcaster or operator. It is essential that he does have an effective choice in choosing the individual channels. For this purpose, it is proposed to impose a reasonable limit on the amount of discount that a broadcaster can offer on a bundle of individual channels. This limit would also apply to the discounts being offered by the MSO/cable operator to the consumer. **The Authority would issue appropriate regulations in this regard under Section 11(2) of the TRAI Act on acceptance of the recommendations by the Government.** The issue has been discussed in greater detail in Section 4.

Note on Traps

3.57 Trap technology can be used to provide FTA channels to those customers who do not want to subscribe to Pay Channels. The technology provides a limited cheaper option as compared to STB. Trap is a small passive device having a length of about 5 to 10 cms. It is mounted before the Cable TV enters the customers' house.

3.58 There are two types of Traps - Negative Trap and Positive Trap. Negative Trap removes/attenuates the signals of those Pay Channels which are not subscribed by the customer. One can remove a group of TV

Channels from the lower or middle or higher part of Cable TV Radio Frequency (RF) spectrum from a single Trap.

3.59 Under the Positive Trap system, at the headend of the cable TV, a jamming carrier is suitably inserted into the RF spectrum of the Pay channel rendering the channel unviewable. If a customer subscribes to the Pay channel, the cable operator inserts a Positive Trap which being a notch filter removes the jamming carrier thereby making the channel again viewable.

3.60 To discourage/prevent tempering, plastic and metal shields are sometime used to encapsulate traps.

3.61 In Principle, provision of Negative Traps is suitable in a cable system where majority of the customers subscribe to pay channels. On the other hand when majority of the customers subscribe to FTA channels, provision of Positive Traps is recommended. In practice Negative Traps are extensively used as compared to Positive Traps.

3.62 The Trap technology has been perfected over a period of time to prevent deterioration in its performance due to temperature and humidity. The utilization of Trap is common in USA, Canada, Europe, China and Middle East. The cost of a typical Trap which distinguishes between FTA and Pay channels lies approximately between US \$ 4 to 5 in international markets.

3.63 Over the years, Addressable Taps technology has evolved as an improvement over Negative and Positive Traps. Those Pay channels for which customer do not want to pay can be filtered out by remotely controlling the addressable tap. The cable connection to the customer who has not paid the subscription can also be switched off remotely from the Headend. The Addressable Tap is mounted outside the customer's house just like normal trap is mounted. The Addressable Tap is remotely controlled from the Headend. A computer takes care of the Subscriber Management System, Billing etc. The cost of the Addressable tap is around US\$20. In addition, the cable operator is also required to make additional investment at the Headend equipment to individually address the taps.

3.64 Traps are not an exact substitute of CAS/STB technology. In fact, Trap being a passive and analogue device is technically much inferior to digital CAS/DTB technology which has several provisions like superior technical quality, choice of hundreds of channels, Video on Demand (VOD), Electronic Programme Guide (EPG), Pay-Per-View, Internet access/E-Banking/E-Commerce, Other Interacting applications etc.

Indian Experience of manufacturing and deploying Traps

3.65 It has been seen that locally manufactured traps are in use in some parts of southern India. These traps provide consumers a choice of viewing a few selected channels at a reasonable price instead of subscription to all the channels at prices which their income levels would not otherwise permit. Given the current system of revenue sharing arrangements between the various players in the distribution chain, this also gives the LCO an opportunity to increase the penetration of cable services.

3.66 The local traps in use are seen to be covered by a shield and are designed in such a way that they can be fixed or removed only with a special tool. This makes tampering difficult though not impossible and coupled with frequent site inspections some amount of safeguard against piracy is possible. The use of traps shows that although the problem of piracy exists it is not so serious as to make the option completely unviable.

SECTION 4: PRICING

The Issues

4.1 Initially, most of the TV channels were FTA. Over the last few years, channels are turning into pay channels and have begun charging subscription fees. As more channels turn pay, subscription fees are rising and monthly cable TV bills for consumers are growing rapidly. In the present system, new pay channels generally join the existing bouquet of channels and customers have no choice but to pay higher subscription fee for the new expanded bouquets.

4.2 As has already been discussed in section 3 the consumer today has no choice, except to some extent in Chennai, to choose channels and therefore control the cable bill. Addressability is crucial to protect consumers against frequent price increases. In the absence of addressability, the consumers have no choice and therefore when a new pay channel is launched or an FTA channel converts into a pay channel, the Cable bill for consumers increase. It is to be expected that consumers will always be burdened with price hikes even if they do not want to view additional pay channels. This may aggravate the existing discontent amongst consumers against frequent price hikes. To give protection against the price rise, the TRAI on 15th January, 2004 had put a ceiling on cable charges as those prevalent 26th December, 2003 until final determination by the TRAI.

4.3 Due to frequent increases in cable TV subscription fees, Government amended the Cable Act for the introduction of CAS. The primary objective was that the consumers will have the choice to choose the pay channels and pay only for those channels, which they wish to watch. But post-CAS, a-la-carte channels against bouquets were priced in such a manner that consumers had little choice of selecting individual channels.

4.4 In most of the areas, the cable services are available from just one cable operator and consumers do not have the choice to select a cable operator. In the absence of competition, there is need to regulate the prices of basic tier services. Presently the government has fixed the basic tier service charges for CAS areas as Rs.72 per month exclusive of taxes. The Authority has received many representations for revision of the basic service tier charges. Considering the fragmented nature of the cable TV distribution, and cost of networks being dependent on the topography, demography etc, the issue that has emerged is whether there could be a single rate for basic tier service for the whole of the country based on national averages.

4.5 The following issues have been examined in this chapter:

- (I) Pricing of pay channels
- (II) Prices of a-la-carte channels vis-à-vis bouquet of channels
- (III) Price of Basic Tier
- (IV) Uniformity of Cable TV rates
- (V) Periodicity of revision of rates

International Trends on Price Regulation

4.6 The general pattern that emerges from the study of different countries is that there are regulations for basic Cable rates while the other packages are generally not regulated. A notable exception is Taiwan where both the basic and other channels are also regulated. In UK, there is no regulation even for the basic tier. In Canada, there is provision for removing the basic tier control if the existence of competition can be established – either if the basic service package of one or more competitors is available to 30% or more of the households in its service area and it has lost at least 5% of subscribers since the competing service was introduced. In Japan, approval is required at the initial stage of commencing operations but later, operators only need to notify the tariff changes.

I. Pricing of Pay Channels

Stakeholder's Comments

4.7 The issue of the regulation of the pay channel prices divides the parties in two major groups, one supporting the need for regulation and the other opposing it.

- *Pay Broadcasters say that if the prices of the pay channels are regulated that will reduce the competition. with the other alternatives, as the cost structures are different for cable and DTH. Moreover the regulation of price of pay content with the ceiling price, will have a negative impact on the quality and the diversity of programming – price regulation limits the broadcasters ability to select business models based on the market demand and competitive environment. It is also pointed out that there exists enough competition at the broadcasting end and thus there exists no need for regulation. In addition it has been argued that regulation can distort the market and can lead to a misallocation of the resources. If prices are set low – there exist insufficient incentives to produce copyrighted work and also there will be under investment in future. The broadcasters will not invest in new programming and new channels and this will affect the consumer's*

choice. If prices are set above – copyright owners are over compensated and thus there will be over investments.

- A modification of this position taken by some stakeholders is that the prices should be market determined and if the number of channels is high then automatically this will reduce the prices to the economical level. However, if there exists monopoly then there should be regulation.*
- An alternative view is that there should be market determination of the prices but advertisements on the pay channels should be either banned or regulated. Another suggestion is that broadcasters should not be allowed to increase the prices more than once in a year and even that must be related to the rate of inflation.*
- The other group which favours the regulation of the pay channel prices suggests that there should be price regulation until greater transparency in the sector is achieved. One suggestion has been to use the cost plus method.*

Authority's Analysis

4.8 Globally, where pay channels and pay tiers have been offered, they are generally not capped or regulated. The major exception in overall trend of deregulated prices is Taiwan, where there is a basic rate cap, a ban on tiers and a provision to offer premium or pay channels only as a-la-carte, capped at between US\$3-US\$9/month.

CAS Areas

4.9 In the CAS scenario, consumers have the choice to leave or to choose channels via a STB. This gives consumers the choice to control their cable bills. The one metro in which CAS deployment has taken shape, namely in Chennai, has given consumers considerable satisfaction. The Chennai market (1.14 million cable TV homes, according to NRS 2002), is largely dominated by FTA channels but consumers have historically been obliged to receive both FTA and pay channels in a single package. Subsequent to CAS rollout, only around 23,000 (as of May 2004) acquired an STB in Chennai to access pay channels, implying less than 3% of the cable TV universe in the market.

4.10 As per the IMRB report for Chennai the average cable rates for Non-STB users is Rs.98 per month. Similarly STB using subscribers are also able to control their cable bills. Presently 74% of STB subscribers in Chennai pay between Rs.151-200 and only 12% subscribers pay more than Rs.250.

4.11 The Authority considers that since consumers have the choice to accept or reject pay channels available via a STB, these should not be subject to price regulation. A limited regulation may, however, be required on maximum discount on bouquet of channels so that the discounting scheme does not nullify the choice of selecting channels on a-la-carte basis.

Non-CAS Areas

4.12 In non-CAS areas consumers are not able to choose what they want to watch and do not have the option to maintain cable bills at affordable levels. Consumers have been protesting against frequent price hikes and available evidence suggests that this increase has been far more than the rate of inflation in the recent past. Thus there is need to regulate the pay channel prices in Non-CAS areas at least till competition ensures that consumers have adequate choice.

4.13 TRAI had specified as the ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi service operators and by multi service operators to broadcasters, as those prevailing on 26th December 2003. The Authority has decided that for Non-CAS areas the ceiling rate of 26.12.2003 would be reviewed periodically to make adjustments for inflation.

4.14 To maintain the sanctity of the ceiling rates prescribed by the Authority, the Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would have to be offered on stand alone basis i.e these channels cannot be part of the bouquets existing on 26.12.2003. These channels may be offered individually or as a bouquet of channels not covered by the ceiling specified by the tariff order dated 15.1.2004. It is expected that this it would also give choice to the operators and through them at least some choice to the consumers. The Authority has, for the present, forborne to prescribe the ceiling rates for new pay channels that have been introduced after 26-12-2003 and for those channels that were free to air channels However the Authority expects that the rates for the new pay channels would be similar to the rates prevalent on 26.12.2003 of similar channels. The Authority has, therefore, included in the tariff order a provision requiring the broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels. The ultimate objective of this exercise would be to ensure that the consumers are not subjected to unwarranted price increases on the pretext of introduction of new channels. It has also been decided that if there is a decrease in the number of pay channels as compared to the

number of such channels being shown on 26-12-2003, the ceiling charge shall reduce by the average price of pay channels

4.15 The Authority had considered various alternatives to price control. Given the large number of operators and the extent of price variation it would be difficult to formulate a uniform price policy except in terms of general principles. Cost based pricing would be difficult since the product is not homogenous and this could damage the incentive to improve quality of content. It is for this reason the Authority has decided to continue with the approach of regulating prices using historical prices.

Cable TV Networks deploying Traps

4.16 In section 3, the use of Traps in the cable TV networks was discussed. Traps can be used to divide consumers into basic and pay consumers. The pay consumers could also be provided limited additional choice by offering various tiers of pay channels possibly limited to 2 or 3. However, regulation in these networks would be difficult for the pay tier as the “correct” level of prices would depend upon the number of consumers opting for the “only FTA” package. As has been noted in Section 3 the larger the number of customers subscribing to pay channels, the less would be the price increase.

4.17 In non-CAS networks and, for networks deploying Traps all new pay channels and existing FTA channels becoming pay channels would have to be re-transmitted from the date to be specified by the government in the encrypted form. The subscribers would be able to view these premium channels through STBs. Since the consumers would have the choice to accept or leave the premium channels, the Authority has decided not to regulate prices of premium channels, except the maximum allowable discount on a bouquet of channels.

4.18 Though the Authority has decided to forbear price regulation for CAS areas and networks deploying traps, it will be closely monitoring the interconnect agreements between different service providers and its impact on retail prices. The Authority may intervene if prices cannot be maintained at reasonable levels in CAS areas and increases are exponential rather than incremental.

4.19 To summarise the Authority has decided the prices would be regulated in the following manner:

(a) CAS Areas and Networks Deploying Traps

- **There shall be no price regulation on pay/premium channels except the limited regulation on maximum allowable discount on a bouquet of channels. Price regulation for those taking the basic tier service of only FTA channels will continue. (discussed in subsequent paras under the heading II).**

(b) Non-CAS Areas

- **For Non-CAS areas the ceiling rates at which the charges will be paid by the cable subscribers to cable operators, cable operator to the multi system operator and multi system operator to a broadcaster will be those prevailing on 26th December 2003. The ceiling shall be reviewed periodically to make adjustments for inflation. The next review would take in November'2004 so that the new rates are implemented from 26.12.2004.**
- **The Pay channels launched after 26.12.2003 or existing FTA channels converting to pay channels after 26.12.2003 would have to be offered on stand alone basis i.e these channels cannot be part of the bouquets existing on 26.12.2003. These channels may be offered individually or as a bouquet of channels not covered by the ceiling specified by the tariff order dated 15.1.2004.**
- **Broadcasters of all pay channels, introduced after 26-12-2003, including FTA channels converting to pay, are required to submit information regarding the new pay channels and the Authority would, if necessary, amend the prices of these channels.**
- **It has also been decided that if there is a decrease in the number of pay channels as compared to the number of such channels being shown on 26-12-2003, the ceiling charge shall reduce taking into account the price of similar channels**

4.20 The Authority has issued a Tariff Order along with these recommendations under section 11(1) and (2) of the TRAI Act.

II. Price of Bouquet of Channels Vis-à-vis individual channels

Stakeholder's comments

4.21 The majority of the stakeholders prefer bundling for one reason or the other. There is ,however, no agreement on whether the discount to be offered on the bundle vis-à-vis the price of individual channels should be regulated or not. The summary of the stakeholders' view is given below:

- *The argument of those who prefer regulation,(mainly consumers groups and operators), of the discount point to the need for having a genuine choice available to the consumers. Most have preferred a discount to be set at not more than 15% of the price of individual channels. An alternative view is that the price of any channel in the bouquet should not be 5-10% more than the average price of the channel .One view is also that not more that one channel in the bouquet should be priced more than twice the average price of the channels. Yet another suggestion has been that the ceiling rate of the individual channel should not be more than double the average price of the channel in the bouquet.*
- *Pay broadcasters have argued that the free market mechanism provides the best means to set prices of the individual channels. Discounts are given for bouquets on account of the various administrative and distribution costs of selling content. There should be no regulation on this aspect.*

Authority's Analysis

4.22 Globally, bundling and tiering of pay channels is allowed and not regulated except in Taiwan where bundling is currently prohibited. In Taiwan pay channels are offered on an a-la-carte basis between US\$3-US\$9/month. With the exception of Taiwan, tiering and bundling of pay channels has typically driven pay television growth globally, on both cable TV and DTH satellite platforms.

4.23 However, globally, broadcasters generally license their channels individually (or in some cases, in a small group) to operators who then tier these channels in a package to consumers at a price they typically set based on market demand and market forces. This does not occur in India as broadcasters indicate prices and tiers to MSOs and LCOs who then pass on the cost or most of the cost to consumers. Since the distribution chain is fragmented and most MSOs and LCOs have weak bargaining power and

brand recognition compared to broadcasters with pay channels, the operators have had little choice but to accept the bouquets.

4.24 In CAS areas the choice of selection is required at two levels. Firstly, at the cable operator level and secondly, at the consumer level. The cable operator should have the freedom to choose and package channels as per local demand and the consumer should have the choice to either select any of the bouquet of channels offered by the operator or to choose a set of channels as per his/her liking. The Central Government has specified in the Cable Television Networks (Regulation) Rules, 1994 that the price of an individual choice vis-à-vis bouquet of channel should not be such that it nullifies the choice to individual channels. The relevant rule is reproduced below:

Rule 9 (2)(a)

“Rates of subscription for each individual pay channel provided by the cable operator and discount, if any, offered on subscribing to minimum number of channels or more:

Provided that discounts so offered for subscribing to minimum number of channels or more shall not be such as to dilute/nullify the choice to individual channels.”

4.25 When CAS was introduced, many consumers complained that compared to a bouquet of channels, an individual channel was priced in such a manner that subscribers did not have a real option to choose channels on a-la-carte basis. The reasons for these complaints were that the rule quoted above has not been followed by many broadcasters in spirit. The problem lies in the fact that the rule is not specific enough and does not provide a precise guidance. This is because the maximum amount of allowable discount was not specified. Stakeholders have suggested various benchmarks for the maximum allowable discount on bouquets which have been discussed in para 4.21 above. Higher discount is normally seen to dilute the consumer choice for the individual channel. The past experience has revealed that in order to give genuine option to the consumers for selection of individual channels, the maximum allowable discount on the bouquet of channels needs to be capped.

4.26 To study the industry practices of discounting schemes on the bouquet of channels in the wholesale and retail market, major pay broadcasters and MSOs of Chennai were requested to provide the information on prices of individual channels and bouquets of channels. In addition the Authority also referred to the discounting scheme offered by a MSO in the erstwhile CAS area of Delhi. The information available with the Authority revealed that the discounts range from 20.73% to 62.5%.

4.27 There is thus a need to have a regulation on the maximum allowable discount on a bouquet of channels at both the wholesale and retail levels in CAS areas. The Authority would issue appropriate regulations in this regard under Section 11(2) of the TRAI Act on acceptance of the recommendations by the Government.

4.28 Non-CAS consumers have no choice to choose individual pay channels and therefore no limit on the maximum discount on bouquet of channels can be laid down. Moreover, if the maximum allowable discount is prescribed for Non-CAS areas, it would not be possible to regulate the prices with respect to the ceilings specified as of those prevalent on the 26th December, 2003.

4.29 The Authority shall however regulate the maximum allowable discounts on bouquet of premium channels in the non-CAS areas or those areas deploying traps. **The appropriate regulations shall be issued by the Authority after acceptance of the recommendations on the introduction of premium channels by the government**

III. Price of Basic Tier Service

4.30 The Cost Accounting Branch, Ministry of Finance carried out an exercise for working out economic cost of delivery of channels in the Cable Networks. Based on this costing exercise, the government specified the ceiling price of Rs 72/- per month (excluding taxes) for the Basic Tier Service.

Stakeholder's comments

4.31 The price of the Basic Tier Service fixed at Rs 72/- per month (exclusive of taxes) has become a issue among the different stakeholders. Three distinctive viewpoints have emerged

- *Consumer groups have argued that this amount is excessive and should be brought down*
- *Cable operators have opposed this saying that this is grossly inadequate to cover the operational and running expenditure of the last mile. They suggest that this amount should be Rs180 per month. There should also be a mechanism to correct these prices for rise in input costs like electricity*
- *The third view is that the price of Rs.72/-per month was fixed after due deliberation and should not be changed – changes in technology can also help to bring down the costs. It has also been suggested that this amount is applicable to the whole country as the cost of infrastructure will be the same.*

- *One suggestion is that the fixing of this price is necessary only in areas where the cable operator is having more than 25000 connections and does not have any other competitor i.e. fixing should be allowed to avoid monopoly.*
- *Yet another suggestion is that if an operator can offer more than the minimum prescribed number of channels -30- then a differential system should be used.*

Authority's Analysis

4.32 The need for a basic tier price control arises only in CAS areas and networks using traps. The cost of carriage of channels depends on a number of parameters which vary from region to region. Historically too the price of cable services have varied from area to area even though broadcaster prices have been uniform. For these reasons it is considered that there needs to be flexibility in the regulation of this price.

4.33 The cost of a cable network for a particular area largely depends on the topography, population density and demands for cable services and therefore would vary from one area to the other. For example, the cost per subscriber would be much higher in sparsely populated area when compared to the densely populated area. Considering the fragmented nature of the last mile operators, it may not be appropriate to decide price of basic tier service based on the national averages. The cost of one cable operator may be substantially different from the other cable operator. It has therefore been found appropriate that the basic tier service price should be determined by the TRAI in consultation with the state governments under the powers conferred upon it under Section 11(2) of the TRAI Act. There could be a single price or multiple prices for a state.

4.34 Many MSOs have requested that they may be allowed to offer bigger bouquets of FTA channels at a higher price than Rs.72 per month. This issue is linked to the issue of digitization of the cable system. This is an issue that can be separately pursued. The only point to be noted here is that some incentives need to be provided to promote digitization.

4.35 At present Basic Service Tier can be regulated both under the TRAI Act and The Cable Act. Since TRAI is already regulating the prices of cable services, it is recommended that the prices of basic tier should also be regulated by TRAI alone and the provisions under the Cable Act may be deleted.

4.36 To summarise the Authority recommends that:

The Basic Tier Service rates should be decided by TRAI under the powers conferred upon it under Section 11(2) of the TRAI Act. The basic tier rates shall be decided in consultation with the State Governments. The dual jurisdiction of deciding basic tier rates should be done away with and exclusive powers be available with the TRAI. This would require deletion of section 4A (4) and (5) of the Cable Television Network (Regulation) Act.

IV. Periodicity of Revision of rates

4.37 Stakeholder's view:

- *One view is that there should be no regulation in this regard. However, any revision should be notified to the consumer 30 days before to enable him to make his choice to subscribe to the channel or not.*
- *An alternate view has been that the prices should not be changed more than once every year. Some have suggested that this can be relaxed in exceptional circumstance like rise of input costs. Another suggestion is that the one year period can be applied to pay channels and for the basic tier this could be once in two years.*

Authority's Analysis

4.38 In India, cable prices have been increasing mainly due to many existing FTA channels turning into pay channels and launch of new pay channels. Since the Authority has put a ceiling on the prices of pay channels in Non-CAS areas a decision on periodicity of revision of pay channel prices for Non-CAS areas is required only to the extent that there will be new pay channels leading to price increases. These prices are also proposed to be regulated. For CAS areas and in networks using traps there are two options. Either some periodicity is maintained or this issue is left unregulated. The advantage of fixing some periodicity is that consumers know when to expect changes and are not taken by surprise every few months. On the other hand as input costs change, taxation rates change or some other facts change there would arise a need to change the prices either at the wholesale level or retail level. After considering both options the Authority considers that there could be complications arising out of fixing the periodicity for the unregulated segment. The only need is to ensure that consumers are given enough time to make choice. **Therefore a period of one month should be given before the prices are changed. Since consumers will have choice only under CAS or for premium channels this regulation will only be for CAS areas and for premium channels.**

4.39 To give effect to the change an appropriate tariff order shall be issued by the TRAI after these recommendations are accepted.

V. Uniformity of Cable Rates

Stakeholder's comments

4.40 The views of different stake holders vary in this context also as some prefer uniform rates and the others do not, giving their own reasons.

- *One view is that there should be an equal playing field and so a uniform rate is essential. A variation of this view is that there should be a uniform rate at least till the point the market matures and consumers have full information for market participation.*
- *The other view is that the rates should not be uniform and they should be market determined.*
- *One observation is that under an addressable system uniform rates will be possible for the basic tier across the country. With respect to pay channels, under CAS the market forces will determine the charges which will benefit the consumer. All the pay channels will have their own MRP, which will be made available to consumer and then rates will be uniform.*

Authority's Analysis

4.41 Currently there are no uniform rates for Cable TV services. Rates tend to vary from one area to another and at times these are different within the same area depending upon the socio- economic status of the individuals. It has already been stated that different states can have different basic tier rates depending on the local conditions of each individual state.

4.42 The rates of pay channels should be uniform ideally speaking. These rates would tend to become uniform after the introduction of addressability and non-discriminating interconnect agreements. **Therefore at this stage further regulation for uniformity of Cable rates is not proposed.**

Sunset date of price regulation clause

4.43 It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is no effective competition. The best regulation of prices is done through competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn.. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders.

SECTION 5: INTERCONNECTION AGREEMENTS AND REVENUE SHARE

Issues

5.1 Interconnection means the commercial and technical arrangements between service providers. Interconnection is a critical factor for viability of competition. There are many issues on interconnection like selectively blocking channels for certain operators, blocking channels to settle commercial disputes, delays in interconnecting, etc.

5.2 Interconnection is also an important consumer issue. Cable or satellite subscribers would not be able to access the service they demand unless necessary interconnection arrangements are in place. Services can also be disrupted unless arrangements are in place to resolve these disputes.

5.3 TRAI has received a number of complaints for disruption of services as different services providers do not arrive at mutually agreed commercial arrangements and settle their disputes through blocking of channels. These commercial disputes generally relate to revenue sharing arrangements between service providers. In these circumstances, it is the consumer who suffers the most as he/she is denied access to the service. In the interests of the consumers and the industry it is imperative that a framework for effective interconnection between service providers is laid down so that such disputes are minimized.

5.4 TRAI in its consultation paper had sought comments of stakeholders on interconnection issues including regulation for revenue share arrangement between different operators. This issue and related issues have been dealt with in this chapter.

Comments of stakeholders

5.5 The views of the different stakeholders differ in this context. Some prefer this concept of revenue sharing and others do not.

- *Some stakeholders, mainly pay broadcasters, say that this decision should be left to the broadcasters and the distributors to be negotiated and mutually agreed upon. They also say that the cost estimation method appears to be flawed , given that it does not take into account the full economic relations between the parties.*
- *Other stakeholders, mainly MSO's and cable operators support the revenue sharing concept and have also suggested certain percentage shares for each segment.*

- *Cable operators have also said that they should be given a share of the advertisement revenue and carriage charges collected by the MSOs*

Authority's Analysis

I. International Regulatory Framework on Interconnection

Australia

5.6 The ACCC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. As part of the condition for allowing the Optus/Foxtel content merger to proceed (Australia's leading subscription TV operators), Foxtel was required to provide a number of undertakings to the ACCC in 2002. These undertakings were reviewed and modifications suggested by the ACCC in 2003 and 2004 and include critical open access provisions for third party content and channel providers and the surrender of exclusive programming contracts.

Canada

5.7 The CRTC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. Disputes can generally be categorized as follows: between broadcasting distributors and the programming services that they carry on access issues and the related terms of carriage; between competing broadcasting distributors over access to buildings and the end-user; and between programmers regarding rights acquisition and markets served.

5.8 The Commission employs alternative dispute resolution techniques, such as fact-finding meetings, mediation and staff-opinions to attempt to break deadlocks and assist disputing parties to resolve their differences. When this proves unworkable, the Commission can determine on disputes by way of "final-offer" arbitration. These processes are usually conducted on a confidential basis as the matters in dispute often involve commercially sensitive information.

Philippines

5.9 The NTC typically intervenes when two parties are not able to arrive at an agreement in the C&S subscription television industry. For instance, in April 2003, the NTC rendered a decision, which immediately ordered Sky Cable and other cable companies to carry the GMA-7 channel (FTA terrestrial and a must carry) on its CATV system on the channel numbers at which their stations are transmitting, except when technically unfeasible in

which case shall be assigned the nearest channel which does not cause interference.

5.10 The NTC also ordered the erring cable companies to “cease from arbitrarily changing channel assignments without advance written notice to complainant TV stations, the public and the approval by the NTC.”

Taiwan

5.11 Article 8 of the 1999 Cable Radio & Television Law states: “The central regulatory agency shall set up a Cable Radio and Television Review Committee (referred to herein after as "review committee") to review the following:

1. Arbitration of program fees and other disputes between system operators and channel providers;
2. Arbitration of disputes among system operators”

II. For CAS Areas

5.12 Before actual implementation of CAS, service providers will have to revise the interconnect agreements. The financial or commercial arrangements between various operators are complex. The Authority believes that industry negotiation should be the main approach for developing interconnection arrangements. Since in CAS areas the number of pay subscribers are clearly known these agreements should clearly provide the retail price and the margins available for all the service providers in the distribution chain.

5.13 Negotiations for these contracts should begin six months prior to the scheduled date for introduction of CAS. In case service providers are not able to decide the revenue share arrangement within a month of starting such negotiations, the Authority will consider the issue of appropriate regulations depending on the areas of disagreement under the powers conferred upon it through section 11 (1) (b) (ii) and (iv) of the TRAI Act. This is especially necessary in a mandated CAS framework because the entire mandate may be nullified by the breakdown of the interconnection arrangements. The regulations shall be based on similar interconnect arrangements of the service provider, cost details of networks etc.

5.14 In case these negotiations do not succeed even after the issue of such regulations the matter could be taken up in TDSAT as a dispute so that all issues are settled well before the commencement of CAS.

5.15 Therefore the revenue share arrangement between various service providers of CAS areas will be as under:

- (i) The revenue sharing agreements among broadcaster, MSO and LCO shall take place out of the proceeds of the amount payable by the subscriber.**
- (ii) The interconnect agreements should clearly indicate the maximum retail price of a pay channel or bouquet of channels, distribution margins for MSOs. Similarly, agreements between MSOs and LCOs should clearly indicate MRP and margins for LCOs.**
- (iii) The service providers shall mutually negotiate and decide the revenue share arrangements.**
- (iv) Where parties are not able to arrive at an agreement within 30 days of initiating such a process for revenue sharing, the Authority will consider the issue of appropriate regulations depending on the areas of disagreement under the powers conferred upon it through section 11 (1) (b) (ii) and (iv) of the TRAI Act.**

III Non CAS areas

5.16 Revenue share arrangement between services providers of Non-CAS areas is a major source of dispute. There are no agreements about the total number of subscribers and hence the total revenue is not clearly known. The Authority had considered various options to regulate the revenue share arrangement but found that in absence of the accurate information about the subscriber base and total revenue it is not feasible. Many MSOs and cable operators have requested to put a ceiling on revenue payable by one party to the other along with the ceiling rates for various channels. Since subscriber base is a dynamic number and keeps changing, it would not be appropriate to have such ceilings. TDSAT in its order dated 27.8.2004 in the case of IndusInd and Hathway Vs TRAI has held that subscriber base has to have reference to the number of subscribers. The argument of the applicants that irrespective of the increase in the subscribers' base, no further charges are payable was not found maintainable. Therefore the Authority has decided not to regulate the revenue share arrangement between service providers in Non-CAS areas for the present. However it is recognized that there would be a number of disputes relating to the subscriber base/revenue share. In view of this the need of an alternate dispute mechanism at the local level has been stressed in Section 9.

5.17 In this connection, it may be relevant to discuss the issue of “under declaration”. The total sum of all bouquets is around Rs.240 per month for all bouquets put together. The actual consumers’ subscription is in many cases less than Rs.200 per month and the average is Rs.176 per month according to the IMRB survey. The only way this pricing can be sustained is less than 100% declaration by the Cable Operators. Since, there is no MRP and only whole sale prices are available, there is no well defined margin for the distributor. In practice this margin is derived by negotiating the subscriber base for which payment is to be made. Thus, in the absence of any definition of what is a proper level of declaration, it is not possible to say what is “under declaration”. Unless there is a methodology to derive the full subscriber base and to establish dealer’s margins, negotiations and disputes are likely to continue in the non-CAS areas. Addressability will lead to a solution of this problem as the number of subscribers can then be known transparently.

Registration of Interconnection Agreements

5.18 The Authority had issued a regulation on Register of Interconnect Agreements on 3.2.2004 and by virtue of this regulation Broadcasters and Multi System Operators register interconnect agreements with the TRAI. The Authority has also decided that the interconnect agreements are to be submitted in two parts - Part A containing the standard affiliation/contract and part B containing the information in the tabular form on subscriber base, rate per subscriber, service area, discounts etc. The existing regulation is under review and will be amended shortly taking into account the experience of the last few months.

5.19 At present, the Authority is not registering the interconnect agreements between the MSOs and LCOs but it is felt that there is a strong need to register these agreements at the local level so that the Authorised Officer has access to them and can use them in case of any complaint of violation of TRAI’s regulations. It is proposed to mandate that these agreements will be registered with the concerned Authorised Officers.

5.20 The non-discrimination agreements are not only required for cable operators but across all platforms of delivery TV channels. Therefore broadcasters, DTH operators and HITS operator will also be required to file agreements for registration with the Authority.

5.21 Therefore the Authority has decided that:

- (i) **All MSOs and LCOs will file interconnect agreements between them with the Authorised Officers for registration of Interconnect agreements. To enable this to be done it is**

proposed to insert a new section – Section 20 A of the Cable Act to enable TRAI to delegate this function under Section 33 of the TRAI Act.

- (ii) All Broadcasters, DTH Operators and HITS Operators will file interconnect agreements between them with the Authority for registration, apart from agreements between Broadcasters and MSOs.**
- (iii) A revised regulation on registration of interconnection agreements will be shortly issued.**

5.22 The regulation to register the interconnect agreements of MSOs and LCOs with the Authorised officers would be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in section 9 and the amendment to the Cable Act mentioned above.

Disconnection of signals

5.23 An important issue is the disconnection of signals to settle a dispute. Usually this means that without notice the signals by a broadcaster or MSO are cut off leaving consumers in the lurch. This implies that the consumer who has not defaulted nevertheless has to bear the brunt of the dispute between the operators.

5.24 The Telecom Dispute Settlement Appellate Tribunal (TDSAT) in its order dated 12.8.2004 in the case of appeal No. 21(C) of Hathway Cable & DataCom Pvt Ltd Vs ESPN Software India Pvt Ltd has made the following note:

“ Lastly we may note that Hathway also wants the regulator under Telecom Regulatory of India Act to act in the matter in view of the role assigned to it under the TRAI Act SO 45(E) dated 9.1.2004 of the Central Government on “addressable system”. We may also quote the following submission of Hathway in its rejoinder:

“ The Petitioner further submits TRAI as the administrator of the industry ought to look into all aspects of the standard form agreement inter se executed amongst the broadcaster and MSOs/cable operators so that the same is executed with all the fair and balanced clauses for uninterrupted supply of the services in the interest of consumers. The petitioner further submits that such high-handed act of blocking the channels ought not be allowed by foreign broadcasters so that the consumers are not put to hardship and to disadvantageous position vis-à-vis the competition. It is submitted that it is an industry practice that the MSOs like the petitioner are compelled to sign on the standard form

agreement virtually with no alteration on the dotted line, as the broadcasters like the Respondent no. 1 are always in a commanding position. If however, the MSOs like these petitioners do not agree to sign the standard form agreement, the Broadcasters discontinue to provide the signals and the customers get deprived of the signals and the petitioner placed in a disadvantageous position vis-à-vis the competition.”

It is for TRAI to consider these aspects.”

5.25 The disconnection of channels not only by the foreign broadcasters but also by other players in the distribution chain including Indian broadcasters and MSOs should be the last resort for settlement of disputes. It is, therefore, necessary to find some solution that will protect the consumers without compromising the ability of the broadcasters/operators to settle their dispute. One way of doing this is to impose a restriction on the broadcasters/operators that they cannot cut off the signals without giving at least one month's notice. This would give some time for the affected parties to obtain relief. This notice should also be given through the newspapers so that consumers also have an opportunity to approach the necessary forum to ensure that their interests do not suffer on account of a dispute to which they have not contributed in any way.

5.26 Therefore it has been decided that :

No broadcaster or MSO can cut off the signals to an MSO/cable operator without giving at least one month's notice giving in brief reasons for the proposed action. Such notice shall also be given in two local newspapers having wide circulation so that consumers are also aware of the dispute and can take steps to protect their interests.

5.27 The Authority will shortly be issuing regulations on general principles of interconnection. These will also include the provision relating to disconnection of signals.

SECTION 6 : PROMOTION OF COMPETITION IN THE DISTRIBUTION OF TV CHANNELS

Issues

6.1 The distribution of cable TV in India is characterized by a few dominant broadcasters and large MSOs. Some of these players have become even stronger as vertical integration has taken place. Last mile operations on the other hand are highly fragmented and therefore there are large disparities in the bargaining power of various players in the distribution chain.

6.2 The vertical integration may improve efficiency as it reduces the transaction between upstream and downstream operations but at the same time vertically integrated companies may be able to use this vertical integration in certain circumstances to reduce competition. The anti-competitive behaviour could take the following forms:

- (i) Vertical Price Squeeze may happen when a vertically integrated broadcaster increases the price of a TV channel for competing operators but maintains the same price for operator affiliates. The effect would be to reduce or squeeze the margins.
- (ii) Exclusivity of the Content could be another form whereby popular TV channels can be denied to a competitor so as to promote the broadcaster's own distribution network.
- (iii) Denial of carriage by a vertically integrated cable system of TV channel of the rival company.

6.3 The issue is to what extent can regulation help to ensure that there is fair competition and to what extent can the market be expected to ensure that competition is not thwarted.

I. "Must Provide" and Exclusivity of TV Channels

Stake holder's Comments

6.4 All stakeholders have provided comments on the issue. These have been summarized below:

- *Most cable operators, Consumer organizations are of the view that the denial of TV signal to any platform is anti-competitive and is normally used to promote a particular platform.*
- *Few broadcasters have stated that it is a contractual deal based on commercial terms and is dependent on the viability of the proposal on*

the whole, and the faith and confidence the parties have in each other. No Authority should intervene in that.

- *Another argument put forth by a pay broadcaster is that if all platforms carry the same content that will reduce competition as the platform will compete only with after sale customer services. Thus there will be no incentive to improve the content*

International Trends

6.5 Globally different approaches are being used to check the abuse of vertical integration. In a few countries there are restrictions on ownership to check vertical integration at the root itself but in most other countries legal prohibitions are used to monitor and legislate against the abuse of vertical integration. In most countries vertical integration is not prohibited but there are restrictions on cross-media ownership. There are also restrictions on the operation of vertically integrated systems.

6.6 In USA there is a 40% limit on the number of channels that can be occupied by video programmers affiliated with the particular Cable system. More importantly in the US vertically integrated Cable companies are prohibited from discriminating against competitors in the distribution of satellite delivered programming. Similarly, vertically integrated satellite delivered programmers may not enter into exclusive contracts with Cable operators unless the Federal Communication Commission determines that they are in the public interest. The “ Program Access Rules” that had been drawn up in the USA by the FCC in 1992 were originally valid only for 10 years but were subsequently extended for another five years in 2002.

6.7 In the Philippines the National Telecommunications Commission has prohibited exclusive agreements between Cable and Satellite operators and channels as a general rule and new exclusive agreements need to be approved by the NTC.

6.8 In Canada, a June 7, 2001 ruling by the Canadian Radio-Television and Telecommunications Commission, reversed a long-standing policy that prevented cable companies from owning pay and specialty TV channels:

“The commission has decided, by majority vote, that cable companies and their related entities will be allowed, as a matter of broadcasting policy, to purchase interests, including controlling interests, in Canadian analog pay and specialty programming services.”

Source: CRTC Public Notice, June 7, 2001

Rogers Communications and Shaw Communications, the country's two largest cable companies, had been pressing for a change in the CRTC's rules. The cable companies said that if telecom giant BCE Inc. could own a distribution channel – such as the Expressvu satellite service – as well as specialty channels through its CTV Network then Rogers, Shaw and others should be allowed to do the same. In its decision, the CRTC said the cable TV industry would be governed by the following principles:

- *All specialty and pay services should be supplied and distributed on fair and equitable terms.*
- *Unaffiliated companies should get terms and conditions that are no less favorable than those with affiliates.*
- *Any competitively sensitive information should not be shared.*
- *A programming service is entitled to obtain, at its expense every year, independently verified subscriber numbers for the service in question to validate the basis for programmer compensation.*
- *Where a programming service contributes to the costs of marketing and promotion, it is entitled to obtain, at its expense, an independently verified accounting in respect of its contributions.*

Cross platform Cable and Satellite ownership is allowed – Shaw, for instance, is a controlling shareholder in Shaw Cable and DTH platform StarChoice.

6.9 The attention of the Authority has also been drawn to the following provisions in Japan

Broadcasting Law: Chapter III Private Broadcaster

“Article 52-6: The paid broadcaster shall not, unless under a justifiable reason, refuse to provide broadcaster’s paid broadcasting service to any person who wishes to receive said paid broadcasting with the use of receiving equipment in Japan.”

Authority’s Analysis

Non Discriminatory Access

6.10 In India, competition for delivery of TV channels is not only to be promoted within the Cable Industry but also from distributors of TV channels using other mediums like DTH, HITS etc. It is important that all these distribution platforms are promoted so that they provide consumers with choice. It would be very important that at this stage vertical integration does not impede competition. Vertically integrated broadcaster and distribution network operators would, in the absence of strong regulation,

have the tendency to deny popular content to competing networks or to discriminate against them- this was the apprehension that led to regulation of this aspect in USA.

6.11 One method of checking these practices is to stop at the source any chance of anti-competitive behaviour by ruling that vertical integration will not be allowed. This route could, however, impede investments and in the long run adversely affect competition. The only DTH platform today has a degree of vertical integration. There is another pay DTH platform which is awaiting approval from the government that also has a degree of vertical integration. In the short run DTH is the platform most likely to provide effective competition to cable operators. Restriction of vertical integration could therefore lead to a situation where the DTH rollout could be affected and hence competition. It is for this reason that the alternative route has been looked at; controlling anti-competitive behaviour wherever it manifests itself. These issues are dealt with in the following paragraphs.

6.12 Generally TV channels are provided to all carriers and platforms to increase viewership for the purpose of earning maximum subscription fee as well as advertisement revenue. However, according to some opinions, if all platforms carry the same content it will reduce competition and there will be no incentive to improve the content. Some degree of exclusivity is required to differentiate one platform from the other.

6.13 Exclusivity had not been a feature of India's fragmented cable television market. However the rollout of DTH platform has brought the question of exclusivity and whether it is anti competitive to the forefront. Star India Ltd and SET Discovery Ltd do not have commercial agreements to share their contents with ASC Enterprises on its DTH platform and at present are exclusively available on the Cable TV platform. ASC Enterprises claims that the future growth will remain impacted by the denial of these popular contents. Space TV a joint venture of Tatas and Star, is also planning to launch its digital DTH platform. It has applied for license to the government for the same. The DTH services have to compete with Cable TV. If a popular content is available on Cable TV and not on the DTH platform, then it would not be able to effectively give competition to the cable networks.

6.14 The issue has to be seen primarily from the consumer's perspective. If all channels are not available on one DTH platform then the consumer may have to install more than one dish to view his favourite channels. If the content is not available on all platforms then they would not be treated as the same and would be presented as different products having different content. If content, especially popular content, is exclusively available on one DTH platform then there may not be effective competition. The

consumers would also have limited choice as subscribing to one particular DTH platform may not ensure the availability of content of his/her choice.

6.15 The DTH platform would have to be seen as a carrier of TV channels and its vertical integration with the broadcaster cannot be the reason for content denial to the other distributors. The DTH platforms would have to compete on the strength of the quality of service, tariffs and packaging of the TV channels and not on the content.

6.16 DTH is quite clearly the most effective competitor for Cable TV today. It would be illogical for a consumer to establish two arrangements to view the differing content of two platforms when he has access to the entire content through cable. Moreover if a popular content is available on the cable network and is not available on the DTH platform, it would never be able to give an effective alternative to the cable services. Competition between cable and DTH will be enhanced if all the content is available on both platforms. Therefore in the interest of consumers it is essential that all channels are available on all platforms on a non-discriminatory basis. This would promote competition amongst different platforms and thus would be beneficial for the consumers.

6.17 In the USA the fear was that Cable companies with their affiliated programmers would deny satellite platforms content. These regulations were found to be useful and therefore these had been extended in 2002 by another five years. While extending the regulation by 5 years, the FCC had come to the following conclusion:

“The competitive landscape of the market for the distribution of multichannel video programming has changed for the better since 1992. The number of MVPDs that compete with cable and the number of subscribers served by those MVPDs have increased significantly. We find, however, that the concern on which Congress based the program access provisions -- that in the absence of regulation, vertically integrated programmers have the ability and incentive to favor affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies such that competition and diversity in the distribution of video programming would not be preserved and protected – persists in the current marketplace.”

6.18 This experience is important as it indicates that such regulation can provide an effective stimulus to competition and this success has been the reason for the extension of such regulation although for a shorter period of five years. Here the problem is that broadcasters may not provide content to rival platforms and this could adversely affect competition in terms of price and quality of service. It is therefore necessary that there should be regulations in place that can be invoked if content is denied in a manner that stifles competition.

6.19 In this context the issue of whether the general ban on exclusivity will adversely affect competition or not needs to be addressed. In the USA the FCC came to the following conclusion after reviewing the impact of 10 years of this ban

“Finally, we believe that the retention of the exclusivity prohibition will not reduce the incentives to create new or diverse programming. As demonstrated from the record before us, the number of national programming services increased since the enactment of the prohibition on exclusivity from 87 in 1992 to 294 in 2001. Moreover, the number of vertically integrated services has nearly doubled since 1994. We do not believe that the exclusivity prohibition has been a disincentive for cable MSOs to develop new profitable cable networks.”

6.20 Keeping in view this experience and the absence of exclusivity in India so far a general ban on exclusivity at this stage has been envisaged. Exclusivity at this stage is more likely to harm competition rather than promote it.

‘Must Provide’ through whom

6.21 There is high cost involved in the distribution of TV channels if the market is fragmented. To reduce the distribution costs broadcasters should be free to provide access in the manner they think is beneficial for them. The ‘must provide’ of signals should be seen in the context that each operator shall have the right to obtain the signals on a non-discriminatory basis but how these are provided - directly or through the designated agent/distributor is a decision to be taken by the broadcasters. Thus the Broadcaster will not be held to be in violation of the ‘must provide’ condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.

Licensing conditions to enforce non- discriminatory access

6.22 The Competition Act prohibits certain activities as anti- competitive. If a broadcaster violates these provisions of the Competition Act then its content should not be permitted to be carried by any DTH operator. To enforce the provisions of non-discriminatory access under the TRAI Act and the Competition Act new licensing conditions should be imposed on DTH operators. This condition would require DTH operators not to carry the signals of a broadcaster who has been:

- (i) found by any regulatory body or a court of law to have refused access on a non-discriminatory basis to any other DTH operator as contemplated in the TRAI regulations or

- (ii) found by any regulatory body or court of law to have violated the provisions of any law relating to competition including the Competition Act

6.23 In addition it is also proposed that to check the DTH operator from entering into exclusive contracts with broadcasters a condition should be added that the Licensee shall not enter into any exclusive contract for distribution of TV channels. This would ensure fair competition amongst DTH operators and strengthen the regulation to this effect.

Safeguards for Broadcasters

6.24 In this context it must be recognized that certain basic criteria must be fulfilled before a service provider can invoke this clause. Thus the service provider should be one who does not have any past dues. Similarly provisions for protection against piracy must be provided. However the content provider must establish clearly that there are reasonable basis for the denial of TV signals on the grounds of piracy.

Volume Discounting Schemes

6.25 An important aim of non discriminatory conditions is to ensure that a vertically integrated supplier does not treat itself in a way that benefits itself, its subsidiaries or its partners and has material effect on competition. The broadcaster must offer the required channels on terms that are no less favourable than those on which it provides equivalent services to its own affiliated operators.

6.26 Broadcasters are also offering discounting schemes including volume or bulk discounts. Such discounts are not considered anticompetitive if these are consistently available to similarly placed operators. However such discounts will be treated anticompetitive if provided on preferential basis to one or select group of operators.

Minimum Subscriber Guarantees

6.27 Minimum Subscriber Guarantees (MSGs) provide that an operator shall provide a minimum number of subscribers and is billed on that basis irrespective of whether he /she has been able to get that many subscribers or not. Such a condition can deny entry to a new operator or to an operator entering a new system like CAS. Thus under CAS it would be difficult to predict the number of consumers who would take a STB and subscribe to a particular channel. Minimum Subscriber Guarantees (MSGs) could thus effectively block such new systems from coming in. Thus the Authority feels that such conditions are not only anti-competitive but it would also negatively impact the successful implementation of CAS. The subscriber

management system is a transparent mechanism to count the number of subscribers using Cable or DTH service. The basic idea of introduction of CAS to give consumer choice and have subscriber base accounting gets defeated with MSGs. These MSGs may also inflate the cost for operators and in turn for the consumers. This would be against the objective of making services more affordable for the consumers and of increasing competition. MSGs therefore should not be allowed and for the present this restriction is proposed to be introduced only in CAS areas.

Piracy Issues

6.28 It has been argued by many that the 'must provide' should not be extended to those networks, which do not adequately protect the content against piracy. The broadcaster must have the right to determine whether the network is secure enough to allow the distribution of their valuable content, and whether to license content to them. This argument against 'must provide' is reasonable but has to be seen in the present context. The TV channels are available on all Cable TV networks without any safeguard against piracy, perhaps with the exception of Chennai. The content provider must establish clearly that there are reasonable basis for the denial of TV signals on the grounds of piracy.

Others

6.29 The central government while issuing License for DTH operation and granting permission for Head Ends in the Sky Operation have clearly laid down conditions that these operators shall ensure that signals are distributed in an equitable and non-discriminatory manner. Similar conditions are not available for the broadcasters to provide signals on equitable and nondiscriminatory basis. This can be ensured by putting it as one of the condition for downlinking.

6.30 **TRAI has therefore decided that:**

- (a) Every broadcaster shall provide on request signals of its TV channels on a non-discriminatory basis to all distributors of TV channels including cable networks, Direct To Home, Head Ends in the Sky.**
- (b) No exclusive contracts would be permitted between broadcasters and distributors of TV channels.**
- (c) Broadcaster will not be held to be in violation of the 'must provide' condition if it is ensured that the signals are provided through a particular designated agent/distributor or any other intermediary and not directly.**

- (d) Volume based discounting schemes would be allowed if there is a standard scheme applicable to all similarly based distributors of TV channels.**
- (e) The ‘must provide’ shall not apply for those distributors which have defaulted on payment.**
- (f) The Broadcasters and the Multi System Operators/ Independent Cable Operators shall not insist on minimum subscriber guarantees from MSOs/Cable of CAS areas where transparent subscriber management systems are installed. This regulation will be issued on acceptance of the recommendations by the Government.**

6.31 The Authority will shortly be issuing a regulation in regard to sub paras (a) to (e) above under Section 11 1 (b) (ii), (iii) & (iv) of the TRAI Act. It is expected that this regulation will help promote competition both within the cable TV market as well as between cable TV and other platforms.

6.32 In addition the Authority also recommends that the following conditions may be added in the license of the DTH operators including the existing DTH operator:

- a) *Licensee shall not carry the signals of a broadcaster who has been found by any regulatory body or court of law to have*
 - (i) *refused access on a non-discriminatory basis to any other DTH operator as laid down in the Regulations of TRAI or*
 - (ii) *violated the provisions of any law relating to competition including the Competition Act.*
- b) *Licensee shall not enter into any exclusive contract for distribution of TV channels.*

II. ‘Must Carry’ of TV Channels

Stake holder’s comments

6.33 Stakeholders have also provided their comments on the ‘must carry’ issue. These are briefly summarized below :

- *Must carry has been supported by consumers and few MSOs. It has been suggested ‘must carry’ of a channel may be made mandatory for all cable TV and DTH and Broadband service providers, as then automatically the digitization of the cable would come in and the digital decoders would be required at home so voluntary CAS will be promoted*

- *Cable operators are against mandated ‘must carry’ due to constraint in the capacity of Cable TV networks. Some other cable operators have suggested a must carry clause and regulation of carriage charges*
- *Most pay broadcasters are also against ‘must carry’ of the TV channels.*
- *A cable operator association has suggested that the ‘must carry’ clause may be mandated for the CAS areas but it should not be mandated for the non-CAS areas.*

International trends

6.34 The global trend is to mandate the ‘must carry’ of the terrestrial FTA channels. Such regulations exist in Japan, Korea, Philippines, and Taiwan. In Canada, the basic package offered by cable TV operators must include local and regional stations, provincial educational services and public broadcasters English and French services. In the United States each local commercial television broadcast station is given an option to choose between “must carry” or “may carry” i.e consent is required for re-transmission. If a local commercial station elects must carry status, it is entitled to insist on cable carriage in its local market. Each cable operator having capacity of more than 12 channels has to set aside upto one third of the channel capacity for must carry channels.

Authority’s Analysis

6.35 Today the majority of the Cable TV networks are carrying signals on an analogue mode and are capable of carrying up to 60 channels. Due to channel carrying capacity constraint, new and upcoming channels are competing to get a space on the cable spectrum. Generally these channels are either not carried on the cable network or have to pay carriage fees to the cable operator.

6.36 In India, as per the section 8 (1) of the Cable Television Network (Regulation) Act, 1995, Cable operators must carry at least 2 Doordarshan terrestrial channels and one regional language channel of a state in the prime band. At present imposing any must carry regulation will not help as in the majority of the networks there is not enough space to carry all the channels. The solution to this problem lie in augmenting the carrying capacity of TV channels through digitization of Cable TV Networks. Since digitization is a long term goal and cannot be addressed immediately TRAI shall be bringing out a consultation note on this subject at a later date. Therefore at present there should be no must carry obligations apart from the ones already there in the Cable Act and Rules. **As and when capacity is augmented the ‘must carry’ regulations will be introduced.** Accordingly for the present therefore there will be no regulation on carriage charges.

Once the must carry regulations can be imposed then through the provision of non- discriminatory access carriage charges would be regulated.

6.37 So far as DTH is concerned clause 7.6 of the DTH license says that the “The Licensee shall provide access to various content providers/channels on a non-discriminatory basis”. This condition should be sufficient to prevent a DTH platform from refusing to carry the content of broadcasters affiliated to a rival platform. Thus, here also, no additional regulation is proposed.

6.38 Another issue that has arisen in recent times is the broadcast of popular events like cricket matches. To provide for this, the Convergence Bill had a provision making it mandatory to provide access to the public broadcaster for such events. **Accordingly it is recommended that there should be legislation on the lines of Clause 31 of the Convergence Bill, according to which events of general public interest to be held in India will have to be carried on the network of the public service broadcaster.**

SECTION 7: Rationalisation of License fee and Taxation

Issues

7.1 There is a fundamental difficulty in providing competition within the cable industry in the provision of last mile services. In some parts of the world this has been explicitly recognized and the local operator has been given an exclusive franchise in a given geographical area. This is not feasible in India given the way the industry has grown and evolved. The most feasible way of giving competition to the cable industry in the short run is through DTH.

7.2 If there has to be competition between the two platforms then license fees, taxes etc. should all be made as uniform as is possible. To some extent given the differences in size, technology and reach complete uniformity is not possible.

Stakeholder comments

7.3 *From the perspective of an operator the suggestion has been made that spectrum royalty charged from the DTH operator should be abolished as there is no shortage of such spectrum like the terrestrial frequencies. To make DTH competitive it has been suggested that the revenue share should be brought down to 2% , that this should be on adjusted gross revenue, bringing down the bank guarantee amount to the previous year's fees, reduction of customs duties to 5% for STBs, concessional sales tax for hardware to access the DTH services, tax holiday for five years from all taxes and waiver of excise duties to make domestic manufacturing of digital decoders affordable.*

Authority's Analysis

7.4 Presently DTH operators are being charged annual license fee of 10% of its gross revenue as reflected in the audited accounts. DTH operators' revenue include pay channel charges and sale of hardware and therefore a significant amount of license fee is payable on account of these. This license fee increases the cost of pay channels and hardware for DTH subscribers.

7.5 There is need to provide as even a playing field as possible, between DTH and the Cable industry given the differences in scale of operation and technology. The cable operators have to pay an annual fee of Rs.500. Taking a cable operator who has only 500 connections this means an average of Re.1 per annum. In contrast if we take the consumer bill for a DTH consumer with full content at Rs.300 per month a 10% revenue share comes to Rs.30 per month or Rs.360 per annum. Therefore from both angles – the need to maintain parity with cable industry and the need to popularize

DTH as a mass market instrument there is a need to bring down the levels of license fee for the DTH operators. At the same time there is need to provide checks to ensure that the accounts are being correctly presented – this can be done by using the CAGs audit to ensure that there is no loss of revenue to the Government. Necessary changes should be made to the license conditions to incorporate these changes.

7.6 The DTH operator carries pay channels on its platform. The major portion of the revenue collected for transmitting pay channels is passed on to the broadcasters and as such that portion is not a DTH operator's revenue. However the license fee is imposed on such revenues also which makes pay channels more expensive for DTH viewers. Thus for DTH the license fees should be applied on the adjusted gross revenue –i.e. total revenue excluding items that are of a pass through nature. This would also be consistent with the government's policy for the Telecom Sector to apply license fee on the adjusted gross revenue and not on the total revenue.

7.7 TRAI has expressed its views in various recommendations that the telecom services should not be treated as a source of revenue for the Government. Imposing lower license fee on the service providers would encourage higher growth, further tariff reduction and increased service provider revenues. With increased growth, it would be a win- win situation for the industry and the Government. The Government would also get higher license fee and service tax if revenue for the service provider increase.

7.8 The annual license fee payable by a DTH operator should be reduced on the same basis as was done recently for telecom operators. The Authority has already proposed a reduction of 2% in the license fee for DTH in its recommendations on "Accelerated growth of internet and broadband penetrations". Similarly the application of license fee on the adjusted gross revenue, as in the telecom sector, may also be followed i.e the revenue which is pass through in nature or is not from any activity under the license should not be charged license fee.

7.9 **Therefore the Authority recommends :**

- a) **A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendations on "Accelerated growth of internet and broadband penetrations", in line with the reduction in the license fee given for other telecom operators .**
- b) **The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by**

- (i) **Subscription fee charges passed on to the pay channel broadcasters;**
 - (ii) **Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premise;**
 - (iii) **Service/Entertainment tax actually paid to the Central/State Government, if gross revenue had included them.**
- c) **DTH operators shall have to carry out detailed accounting separation so that revenues accrued from the DTH operations and from other services, sale of hardware could be separated. The operator should follow the Accounting Separation guidelines issued by the Authority from time to time.**
- d) **The DTH operator shall produce, on demand, all such books of accounts and documents which have bearing on the verification of revenue for the purpose of calculating license fee and auditing by the Comptroller and Auditor General of India in accordance with provisions of Section 16 of the Comptroller and Auditor Generals' (Duties, Powers and Condition of Service) Act, 1971.**
- e) **Necessary changes should be made to the license agreements to incorporate these changes.**

Tax Policy on Cable and DTH Platform

7.10 Many state governments are giving differential treatment to the DTH and Cable Services as far as Tax policy goes. For example in Mumbai the Entertainment Tax on DTH services is reported to be higher than the Cable Services. Similarly many Cable Operators have made a representation that in some states there is no entertainment Tax on the DTH services whereas it is charged on the cable services. Such differences are going to provide artificial barriers to competition. There should be a uniform tax policy for all segments to the extent possible.

7.11 The Authority therefore recommends that:

- (a) **The Government of India should recommend to all State Governments to consider Cable and DTH Services at par and impose the same rate of Entertainment Tax on these services.**

- (b) **Service tax should be imposed on DTH just as in Cable TV**

Foreign Direct Investment

7.12 The Government Policy for Foreign Direct Investment for the Cable and DTH Services is as follows:

- (i) Cable Services: Foreign Direct Investment upto 49%
- (ii) DTH Services: Total Foreign Equity FDI/NRI/OCB/ FII:49% and with in foreign Equity, FDI component not to exceed 20%

7.13 Cable TV Services and DTH Service are to be treated as carriers of TV Channels signals and can be compared with the Telecom Operators which carry voice/video/data signals over its networks.

7.14 Due to convergence of technologies, TV channels can now be delivered through the Telecommunication Networks. For instance, it is possible for an ISPs to provide Cable Services through their existing networks. However it may not be possible for prospective cable operators due to different equity structure requirements for Cable TV and Internet Services Providers. Whereas an ISP can have up to 74% foreign direct investment but it has been restricted at 49% for cable operators. The common policy would result in more efficient use of the existing resources and thus help the consumers to get services at more reasonable rates. The policy may help to push in more cable operators which would give additional choice to consumers for selection of the cable operator.

7.15 There is need for a complete review of the FDI policy so that this is consistent across sectors and does not provide a stumbling block where there is a natural convergence of technology.

7.16 **It is therefore recommended that:**

The Foreign Direct Investment limit in Cable TV as well as related sectors like DTH should be reviewed and a consistent policy adopted.

Direct and Indirect Tax benefits to distributors of TV channels

7.17 The government has given number of benefits on direct and indirect taxes on equipment used for telecom networks and for income earned from providing such services. Since TV channels can also be distributed on Telecom Networks, it is recommended that similar benefits be available to stand alone distributors of TV channels. This would ensure level playing field and promote competition.

SECTION 8: ADVERTISEMENT

Issues

8.1 Consumers have voiced strong complaints over the frequent and long duration of advertisement breaks. They have been requesting to ban or at least restrict the duration of advertisement on Pay channels. The consumer organizations have been arguing that since they pay subscription fees for viewing pay channels, there is little justification for these channels to show advertisements.

8.2 The Delhi High Court in its order dated 26.12.2003 in the CW No. 8993-4/2003 also directed the Union of India to look into the framing of policy with regard to those channels that generate substantial advertising revenues as to why these channels should not be notified as FTA channels. The Government was also to consider whether a limit needs to be put in respect of time for advertisement

8.3 The Government issued an order dated 9.1.2004 and asked for recommendations of TRAI on the parameters for regulating maximum time for advertisement in pay channels and other channels.

8.4 The issue before the Authority is to suggest the maximum allowable time of advertisement on pay channels and other FTA channels.

Stakeholders Comments

8.5 The stakeholder's comments on the issue are again divided. Broadcasters are generally against the regulation of maximum allowable time for advertisements but consumers and cable operators have strongly recommended regulation of advertisement time. The comments received are summarized below:

- *The supporters of regulation of advertisement time have reasoned that the consumers do not like frequent and long interruption of programmes specially in current affairs and news programs which are mostly FTA. Similarly for any general entertainment channel also a time limit should be defined. Some have suggested that this limit be imposed at 10 minutes for an hour.*
- *An alternative view is that the advertisement time should be left to the market forces for the FTA channels but should be regulated or even banned for the pay channels.*
- *The opposite view is that low subscription revenue should be made up with increased advertisement time. Supporting this is the view that restriction on advertising time will severely hamper growth and*

competition in the broadcasting industry and increase the cost to the consumer. A similar view is that the market will regulate this since excessive advertising is counter productive and can lead to loss of viewership and therefore revenues from both subscription and advertising

International Experience

8.6 Most countries have some regulation on advertisement time. This limit is generally in the range of 10-12 minutes per hour. In some countries (Korea and Japan) advertising control is only for the free-to-air channels. In countries like Taiwan and Thailand advertising is banned on pay TV while in Canada it is banned on pay and premium channels. In the USA this restriction is only for childrens' programmes.

Authority's Analysis

8.7 In India, Free To Air channels are currently reliant 100% on advertising and pay channels about 70% on average, thereby implying that advertising revenue is the primary source of funding for the industry and investment in new and existing programming. This is contrary to the experience of most mature global Cable and Satellite markets where there is an even balance between advertising and subscription. In emerging markets the ratio of advertising to total revenues is similar to India's or is lower.

8.8 In India, there are no channels which rely entirely on the subscription revenue. The market only has channels which either rely on advertising revenue or both the advertising revenue and the subscription revenue. HBO, for instance which generates revenue from subscription in the United States, has changed its business model for Asia and is only viewed as a premium movie channel in the advanced economies of Hong Kong and Singapore. HBO is a basic tier channel in Taiwan and the Philippines and partially reliant on advertising in India because of low monthly per subscriber revenues.

8.9 The Authority has obtained average advertisement time from the pay channel broadcasters. Almost all channels have reported an average advertisement of 10 to 12 minutes per hour which is within the limits laid down in global regulations on advertisement time.

8.10 Based on global regulations on maximum allowable advertisement time, six minutes of advertising per every half hour of programming can be considered as a potential regulation in India. This may not be too onerous for few large broadcasters but will be quite burdensome for smaller regional channels and niche-type domestic and international channels. The cost structure for regional channels is not significantly different from the

national Hindi entertainment and news as content like regional movies, news etc is expensive. Many smaller regional channels do not get airtime rates as much as popular Hindi channels. Thus restrictions on advertising time would be very detrimental to the growth of regional channels and may hamper the creation of TV content in the regional languages. The restrictions would also prove detrimental for niche domestic and international channels.

Additionally, the regulation of advertisement time typically drives up the subscription fees. Thailand's case provides a relevant example in this regard. In Thailand Advertising is banned on Pay TV as stated under the Ministerial regulation No. 14 (B.E 2537, 1994) issued under the Broadcasting Act, BE 2498(1955), Title 4, Clause 25. Since the only source of revenue for Pay TV services is subscription fee, the Average Revenue Per User (ARPU) naturally for these services is very high at US \$ 32 per month. Therefore, the Advertising revenues reduce subscription rates for consumers. The restriction on advertisement time would either result in increase in the subscription fee or affect the variety and quality of the programming.

8.11 The primary objective of the policy is to give consumer choice and good quality service at affordable prices. To ensure affordable services to the consumers, the Authority has regulated the subscription fees of TV channels in Non-CAS areas. In addition, the Authority has also put a ceiling on the maximum allowable discounts on the bouquet of channels which would encourage selection of individual channels. Besides regulating subscriptions, regulation on the advertisement time and its corresponding affect on the revenues for broadcasters may hamper growth and competition in the broadcasting Industry.

8.12 Broadcasters that put sizeable amount of time on advertisement loses viewership which is detrimental for a TV channel as such loss of viewership would mean loss of revenue. This shows that the market has a means of correcting "overadvertising". This is corroborated by a report provided by Edeilweiss Capital on Zee Telefilms. Moreover for sports, advertisements can be inserted only during the natural breaks like between overs in a cricket match or during lunch/tea time.

8.13 The Authority has proposed mandatory introduction of CAS as one of the three new models, and use of traps to block pay channels as another model. This would definitely have some impact on the viewer-ship for pay channels. This could lead to a price increase for pay channels – correspondingly pay channel prices could also go up because of the absence of the cross subsidization effect that exists in the absence of addressability. With the introduction of CAS prices for pay consumers may go up. Restrictions on advertising minutes could further add to these inflationary pressures.

8.14 The Authority has also looked at the question of classifying certain channels as FTA depending on their advertisement revenue. A fundamental difficulty is that all subscription revenue is booked to a bouquet and it is not clear how much can be ascribed to one channel. Thus the only information that can be gathered is the amount of advertisement revenue that a channel gets. On the basis of this information it would not be correct to interfere with the business model of a broadcaster and decide that certain channels cannot take subscription revenue. Broadcasters keep changing their business models in response to market conditions and it would be difficult to give regulatory guidance at the required speed. The effort on the other hand should be to improve consumer choice and allow the consumers to vote with their eyes. If very few consumers choose to buy a channel the broadcaster would be forced to move a pay channel to a FTA channel to protect his/her advertising revenues. Therefore the Authority considers that it should not regulate and restrict the freedom of a broadcaster to make a channel pay or FTA.

8.15 It is therefore recommended that:

- (i) There should not be any regulation, at present, on advertisement on both FTA and Pay Channels.**
- (ii) The Cable Act should be suitably modified so that powers are available with the government to regulate this if found necessary at a later stage. Broadcasters would also be required to give information on advertising time to TRAI and the Government. This would also be made available to the public through the TRAI web site.**
- (iii) Broadcasters should be free to decide which channel should be FTA and which should be pay.**

Section 9: Regulatory Enforcement

Issues

9.1 The effectiveness of a Regulatory System depends on the extent to which it can be enforced on the ground. The solution does not lie in the formulation of the policies alone but also in effectively implementing it. This is specially so for the Cable Industry where the number of operators and consumers are large and spread all over the country.

Analysis of the Authority

9.2 There are a number of agencies under the Cable Television Networks (Regulation) Act, 1995(The Cable Act) that are involved in the regulation of the cable industry today. The Registering Authority for the cable television networks is the Head Post Master and enforcement of important provisions of the Cable Television Networks (Regulation) Act relating to CAS, Programme code, Advertisement code, compulsory carriage of Doordarshan channels etc. are with the Authorised Officers. In addition certain reporting on CAS by Cable Operators is done directly to the Government of India. The Authority considers that it would be better if there is one agency at the local level that could perform all the regulatory functions.

9.3 The Authorised Officers at present have certain jurisdiction and it is best if they can be made the nodal point for all local regulation enforcement. It is not that regulating cable industry would be new for many district administrations. A case in this regard is summarized below in which the Local Administration to avert the law and order problem resolved the local disputes between operators. This case has been discussed in the following para.

9.4 The Collector Coimbatore took a series of meetings in Sept-Oct' 2003 with Cable TV Operators, Pay Channel representatives, an MSO and consumer groups to resolve problems between them. Number of decisions were taken during these meetings which have been summarized below:

- Pay channels should provide decoders immediately to cable operators who apply without pre-conditions but subject to usual formalities.
- To resolve issues between cable operators, MSO and Pay channels, a standing committee under the Revenue Divisional Officer was formed. The standing committee is to meet every month.
- Standing committee to decide issue of outstanding dues between parties
- The cable operators to provide receipts to consumers

9.5 However in all cases district administrations have not been able to resolve the cases as enabling powers are not available under the Cable Act or other acts. In this regard a complaint of Progressive Cable Networks Welfare Association Andhra Pradesh lodged with the Authority is relevant. The Association had represented against denial of signals by a number of pay broadcasters and suggested the following in the representation:

“ The cable TV operators in AP state who have not been provided these pay channels have lodged the representations to the District Collectors to implement the Cable Act in view of the public interest by providing all pay channels to all the cable TV operators for the last two years. So District Collectors are awaiting the clear instructions from the TRAI regarding the providing the all pay channels to all cable TV operators. Hence we request you issue clear instructions to all the District Collectors to take necessary action against managements and District wise Distributors of the pay channels to provide all pay channels to all cable TV operators in AP state”

9.6 Another similar case is from the Sonitpur District of Assam. A voluntary consumer association from that district had filed an objection with the District Collector against the proposed hike of the cable services charges by the local cable operator. A joint sub-committee consisting of officials, representatives of voluntary consumer association and cable operator was formed to reach at a decision on monthly cable rates. However the final decision could not be reached and now the organization has sent a representation to the Authority.

9.7 These cases suggest that the local Authorities should have a role to play in the implementation of the Cable Act and TRAI Act with respect to the cable services. However under the present system local authorities do not have sufficient powers to enforce these decisions and there is need to make amendments in the Cable Television Act. The Special Committee has also recommended that additional powers be given to the Authorised Officers. These changes have been discussed below.

9.8 At present, besides Deputy Commissioners, SDMs, Police Commissioners, both the Central Government and the State Government can appoint the Authorised Officers. This system of concurrent jurisdiction of enforcing the Cable Act needs to be carefully used. The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments.

9.9 As per Section 4 A(9) of the Cable Act, cable operator is to submit information regarding the number of subscribers, subscription rate, number of subscribers of basic Tier and other pay channels to the Central Government. The Authorised Officer as the nodal officer to enforce the Cable TV Act would be helped by having such information. The data provided by service providers can be used by the Authorised officers to establish cases of violation of tariff order and other regulations issued under the TRAI Act. Thus this information could be put to better use if it is available with the Authorised Officers. It is therefore proposed that information under 4A(9) should be provided by the cable operator to the Authorised officers and not to the central government. However, it should also be the duty of the Authorised Officer to send consolidated reports to the State/Central Government, formats for which can be prescribed. Similarly information should also be available in Non-CAS areas with the operators, which can be made available to the Authorised Officers wherever required this information could be maintained by the operator in the form of a register.

9.10 The Authorised Officer being the nodal officer for enforcement of various regulations/orders, should also be declared the registering authority for operating cable services. There should also be provision for withdrawal of registration if an operator is convicted of any crime and imprisoned for the same. The registration fee collected by the Authorised Officer should be deposited with the postmaster or in the central head, in a nationalized bank.

9.11 The Authority has issued a tariff order putting a ceiling on the rates of the cable TV services and will shortly issue a regulation on interconnection. In addition the Authority is also going to issue regulations on the quality of the services for the cable services. For implementation of the Authority's regulations, consumers and operators should have an option to approach the Authorised officer. The Authority considers that the Authorised Officers should be empowered to file complaints in respect of violations of these regulations.

9.12 There are a large number of cable operators operating in far flung areas. They need a local dispute resolution mechanism which they can easily approach. Disputes being very common in this service sector, the government may consider setting up an alternate dispute resolution mechanism for cable operators. For multi system operators and broadcasters there need be no change in the present arrangements.

9.13 **The Authority therefore recommends the following :**

- **The duties to be assigned to Authorised Officers appointed by the state government and the central government should be clearly**

demarcated so that there is no overlapping of jurisdiction and responsibilities. The following recommendations are for additional duties of the Authorised Officers to be appointed by the State Governments.

- The Registration of Cable Operator should be done by the Authorised Officer and not by the Head Post Master. The existing cable operators may not be asked to obtain fresh registration but the next renewal of registration should be done with the Authorised Officers.**
- The registration amount should be deposited by the Authorised Officer in the Post Office or under a central head in a nationalized bank.**
- The Authorised Officer should have the power to revoke registration if a cable operator has been convicted of a criminal offence and imprisoned for the same.**
- Information under the Section 4 A (9) of the Cable Act should be submitted to the Authorised Officer. The consolidated information may be sent to the central/state government.**
- Consumers and operators should have the option to approach the Authorised Officers for implementation of the Authority's regulations/tariff orders concerning the cable TV services. In case of violation of the regulations, the Authorised Officers should have the power to file complaints.**
- The government may consider setting up an alternate dispute resolution mechanism for cable operators at the local level. For multi system operators and broadcasters there need be no change in the present arrangements.**
- All cable operators and multi system operators shall maintain a register of subscribers containing the names of the subscriber, address, monthly fee charged and number of channels received. The register shall be furnished for inspection to the Authorised Officer whenever he considers it expedient to inspect such register to find out if there has been a violation of any regulation**

9.14 The draft amendments required in the Cable Act, TRAI Act and Rules are at Annexure II and III respectively. Apart from these amendments the amendments at these Annexure also include certain amendments which are required to bring about consistency between the Cable Act and the TRAI Act as also to clearly bring out the jurisdiction of TRAI for broadcasting and cable services. Some of these amendments had already been sent to Government and are being included here for sake of completeness.

SECTION 10 : QUALITY OF SERVICE

10.1 The purpose of laying down Quality of Service (QOS) parameters is to provide a framework whereby cable TV operators are required to meet certain customer service guidelines in the delivery of cable TV services to consumers. These guidelines and codes of practice will also need to be enforced.

Stakeholder Comments

10.2 In its consultation paper, TRAI had requested comments from the stakeholders on various issues concerning the quality of the cable television service. All stakeholders have agreed that there should be some QOS Regulations. Consumer organizations have given various parameters that they would like to be covered by such regulations. On international norms some have argued that we should be cautious and not adopt unrealistic standards that cannot be complied with. Others have argued that we should adopt the best international practices.

International trends

10.3 Most countries have a quality of service regulation which cover issues like rent of reception equipment, fault repair, billing, choice in programming services, availability of Cable TV personnel for consumer grievances, outage of the system etc. Countries also have a system for adjudication and enforcement of the quality of service provisions. These could lead to financial penalties and also license revocation.

The Authority's Analysis

10.4 The quality of the cable service depends on the network design, planning, operation and maintenance and the management of the service. The network performance is an important element of Quality of Service. The consumers desire quality uninterrupted cable service which is only possible through the high quality network performance. The technical standards of equipment are decided by the Bureau of Indian Standards and cable operators are bound to use these equipment in the network. The equipment complying the BIS standards should ensure the high quality transmission/retransmission on the cable television networks. At the same time other quality parameters which could be termed under the management of service like billing, fault repair and the support and responsiveness to a customer are also important.

10.5 The Authority has decided to issue regulations on the quality of service and its compliance would be obligatory for all MSOs and cable

Operators. The technical standards have been re-emphasized in the quality of service regulations for better enforcement. The other quality standards relating to the billing, complaint handling, information on services offered etc. have been laid down in more details.

10.6 The quality of service norms for STBs has been laid down separately. The Authority had received number of complaints that service providers are not providing STBs in time and there is delay in refund when these are returned. To ensure timely installation and activation of STBs, a provision for rebate has been proposed.

Enforcement of Quality of Service regulation

10.7 The TRAI is required under the TRAI Act not only to lay down standards of the quality of service to be provided by the service providers but also ensure quality of the service and conduct the periodical surveys of services so as to protect the consumer interest. The TRAI has powers to issue directions and enforce quality of service. The contravention of the directions of the Authority may lead to the punishment with fine. The section 29 of the TRAI Act in this regard is reproduced below:

“If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.”

10.8 Further, under Section 33 of the TRAI Act, the Authority may also delegate the power to Authorized Officers to prosecute cable operators violating QOS provisions contained in the directions and guidelines that the Authority has laid out. The decentralized monitoring and enforcing quality of service norms should ensure adherence to the QOS norms.

Regulation on the Quality of Service

10.9 Through its analysis of international QOS codes and practices and its appraisal of QOS information from Indian cable TV industry stakeholders, **the Authority has decided that the following should serve as QOS codes and guidelines for the cable TV industry in India:**

Information to be provided to consumer at the installation of cable TV connection

- (i) Detailed information must be provided to consumers at the time of installation and activation of cable services and at least annually to subscribers and at any time upon request about:
- products and services offered i.e number of channels and names of individual channels being offered
 - prices and options of programming services
 - installation and service maintenance policies
 - billing and complaint procedures including the address and telephone number of the customer service centre.

Complaint handling procedure and benchmarks to redress complaints

- (ii) A cable operator shall improve the network quality and the complaint redressal infrastructure to meet the following benchmarks:
- 90% of complaints will be corrected within 4 hours.
 - No more than 3% of customers should require to lodge complaint against service interruption each month.
 - 90% of "no signal" calls received should be corrected within 24 hours.
 - 90% of all other types of complaints will be corrected within 48 hours.
- (iii) Each cable operator must maintain a customer service center or help desk 8 hours a day, 6 days a week. All complaints shall be registered and complaint number issued for each complaint.
- (iv) A Cable Operator shall maintain record containing all complaints filed by the subscriber. The records shall include name and address of complainant, date and time of filing complaint, type of complaint and redressal date and time with the confirmation of the consumer that the complaint has been redressed. The cable operator shall present the records whenever called upon by the Authority or the Authorised officer.
- (v) A Cable Operator shall take all necessary steps like provision of alternate power supply for at least 6 hours, to minimise the incidence of service interruption for power failure.

- (vi) For the purposes of maintenance and repair, a cable operator must ensure that its representative(s) carry proper identification along with a photograph.

Billing Procedure and complaints

- (vii) Cable subscribers must be billed monthly with statements being clear and transparent. Where a customer does not view pay channels via a set-top box, a bill should be itemized clearly indicate cable charges and taxes. Where a customer does view pay/premium channels via a STB, a bill should be itemized and clearly indicate the price of the basic free-to-air tier, the price of pay channels or bouquets, STB rental and deposits, and taxes.
- (viii) The billing system should be such that the following benchmarks are met:
- complaints shall be addressed within 7 days of notice from the consumer to the operator.
 - Refunds must be issued no later than either the customer's next billing cycle or 30 days following the resolution of the complaint, whichever is earlier.

STB related Complaints

- (ix) In cases, where there is a malfunction of a STB provided by the operator on rent, a cable operator must repair or replace the STB within 24 hours.
- (x) In cases where a customer chooses to return a STB, the refund must be made within 15 days, subject to a proper working condition of the STB.
- (xi) If a customer chooses to subscribe to pay channels via a set-top box STB installation and, subscriber activation must take place within 48 hours of the receipt of the subscriber's request.
- (xii) Rebate for deficient service: In case the installation and activation of the STB is delayed beyond 48 hours of the receipt of the Subscriber's request, the multi system operator/cable operator shall in the monthly subscription give a rebate of Rs 15 per day for the first 5 days and Rs 10 per day for the subsequent period.

Change in positioning of channels

- (xiii) Change of positioning of TV channels should not be normally done. In case of pressing technical reasons requiring changes of TV channel position is required, the cable operators shall notify subscribers at least two days in advance of such occurrence.

Technical Standards

- (xiv) A Multi System Operator and cable operator shall match the technical standards set by the Bureau of Indian Standards (BIS) for cable TV Network.

10.10 This regulation will be issued after the Authorised Officers have been empowered to file complaints for violation of TRAI's regulations as indicated in section 9. Though regulation on Quality of Service will be issued by the Authority after the regulatory enforcement machinery has been put in place, in the meantime cable operators and MSOs can take action to ensure that these standards will be met, once the regulation are in place.

ANNEXURES

- (i) Annexure 1 Special Committee report
- (ii) Annexure II Proposed Amendments in the Cable Act
- (iii) Annexure III Proposed Amendments in the TRAI Act

Report of the Special Committee appointed to consider issues regarding Cable TV Regulation

TRAI had constituted a Committee consisting of representatives from the State Governments of Delhi, Tamil Nadu, West Bengal and Maharashtra and chaired by Secretary, TRAI. The TOR of the Committee is at Annexure. The Committee met on 10.3.2004, 31.3.2004, 28.4.2004, 3.6.2004 and 14.7.2004. The Committee's views on various issues referred to it are set out in the following paragraphs. It was noted that the state governments reserve the right to make further comments on the issues.

Pricing of pay channels

1. The difficulties in determination of cost based price of pay channels was also considered and it was felt that cost based pricing of pay channels is not feasible. If pay channels are to be regulated it was felt that the price cap mechanism will be most suitable for price regulation both for bouquets and overall package available to consumers. The committee noted that even price cap mechanism may be difficult for the following reasons:

- Different prices in different areas and at times even in the same area for different subscribers.
- Prices for individual channels do not exist (except Chennai and Delhi for a brief period) and thus implementation of price cap for unbundled channel will require specification of price for individual channels, or of some formula to link individual channels to bundled aggregate prices. On examining this in detail the committee felt that regulation of individual channel price would not be feasible.
- In number of areas cable services are not available and price cap with reference to a date is not possible.
- For monitoring and implementation of pricing policies, the role of Local Authorities becomes crucial since it was felt that a new system with explicit role and powers for Local Authorities should be put in place. The Local Authorities have no role in price regulation, at present.

- The Committee was of the opinion that for greatest acceptability of CAS, the same prices for the same content should prevail as in the pre CAS regime.
- The Committee felt that the prices may be allowed to be changed annually.

Bundling of channels

2. The Committee observed that at present pay channels offer a package deal to the MSOs and in turn the MSOs transfer the same to subscriber. Even in CAS areas compared to a bouquet of channels offered by the broadcaster, an individual channel is priced in such a manner that the subscribers do not have a real option to choose channels on a-la-carte basis. The committee decided that the issue needs to be regulated.

3. The committee deliberated on various issues involved in pricing of individual channels vis-à-vis bouquet of channels. The Committee also felt that in order to give effective choice to the consumer there should be a cap on the bulk discount (i.e. the discount if the entire bouquet is bought as against the sum of prices of the individual channels) being offered on the bouquet. Similarly a cap should also be considered for the ratio of individual channel price to the overall bouquet price.

Set Top Boxes

4. The Committee deliberated on the issue of sale/rent of set top boxes and decided that it should be made mandatory for service providers to offer set top boxes on rent.

5. The issue of interoperability of Set Top Boxes was also discussed and it was felt that making it mandatory has lots of advantages and therefore, the option may be further explored. The option of billing on the basis of pay-per-viewer or number of hours for each channel should also be explored.

6. It was also felt that no advance rent should be permitted. TRAI should be empowered to specify the rent for the STBs and it may exercise the power whenever found feasible. In case of damage to the Set Top box due to the consumer's fault, the consumer should bear the liability.

7. The Committee also felt that there is need to examine the quantum of deposit and other terms and conditions after taking note of relevant international experience and the specific schemes in India. The thrust of these conditions should be to make the system sustainable, on a large scale.

Traps

8. The committee discussed the Trap technology and its possible use in the Cable Television Networks. The committee noted that it is an alternative way of choosing pay TV channels. Traps either can be used to block certain channels or allow certain channels to enter home. A trap can be used to block pay channels to one subscriber or to a group of subscribers. Against a digital STB, which costs around Rs 5000, a trap is said to cost around Rs 400-500. Thus it provides cost effective method of choosing pay channels.

9. The committee noted that though the Traps are cost effective means to block the pay channels for subscribers not willing to pay extra to view pay channels but has the following disadvantages:

- (i) Traps can be easily by-passed and therefore problem of piracy is greater than the STBs.
- (ii) It does not provide transparent system of accounting for number of subscribers accessing pay channels.
- (iii) Though FTA subscribers will gain from this system but price regulation for subscribers subscribing for pay channels will be difficult.

10. Although this option has certain disadvantages, since it is cost effective, the committee recommends that use of Traps in Cable Systems should be further explored.

Advertisement

11. The Committee discussed the prevailing practices of advertisement and scheduling of Free to Air Channels and Pay Channels. The committee was of the opinion that advertisement of FTA need not be regulated as it is the only source of revenue for these channels. Moreover, these channels will have in-built market based mechanism for self regulating the duration of advertisements.

12. For pay channels the committee noted that unlike other countries the advertisement revenues comprise as predominant percentage of the overall revenues. Therefore, the advertisement time should not be regulated for the present. However, TRAI should monitor and review this periodically.

Gradual and voluntary introduction of Set Top boxes

13. The Committee deliberated on problems relating to implementation of voluntary CAS. The committee also debated to make it mandatory for existing pay channels to be viewed without a set top box i.e. these channels will form part of the basic tier. Only new channels may be allowed to be viewed through CAS. Over a period of time existing pay channels can shift to CAS. However, in that scenario basic tier price needs to be adjusted for shifting of channels from Basic Tier to the non basic tier. The committee considered that this form of a voluntary CAS should be considered further and the option of a mandatory CAS should also be considered in a more decentralized fashion.

Other measures

14. The Committee felt that the key was not only formulating appropriate policies but also implementing them effectively. Taking both these aspects into account, the Committee was of the view that the State Governments and local officers should be given greater powers. Thus the State Governments should be empowered to notify areas for CAS implementation rather than the Central Government. Similarly powers under section 4 (A) 2 & 3 of Cable TV act should also be delegated to the State Government.

15. After an initial specification by TRAI of the framework for price regulation, the pricing of the Basic Tier should also be left to the State Governments who could also be given the flexibility to further delegate if need be. In this situation, TRAI should lay down the tariff setting principles, which should be followed by the various authorities.

16. Reports under Section 4 (A) 9 of Cable TV act should go to the authorized officer who could send reports to the State Government/Central Government in a consolidated manner. Disputes between operators, MSOs and Broadcasters should be settled locally through the authorized officers and only appeals should go to TDSAT. The authorized officer rather than the Head Postmaster should be made the registering authority. The authorized officer should be empowered (by allowing him to takeover the network and hand it over to any person temporarily till permanent arrangement is made) to make arrangements for continuing to serve the consumers of an operator in the event that the registration of an operator is cancelled.

17. Under Section 33 read with Section 34 of the TRAI Act the authorized officer should also be empowered to file complaints in respect of matters under their jurisdiction.

The terms of reference for the Special Committee

1. Suggest the norms for fixing rates (or ceiling rates) for cable subscribers/cable operators/Multi Service Operators for individual pay channels, bouquets thereof, and distribution of free-to-air channels.
2. Suggest regulation regarding rates of cable operators, including periodicity of change of monthly cable charges.
3. Suggest the principles for laying down limits as to the extent of bundling of pay channels to be allowed in order to ensure that Cable TV viewers have a genuine choice with regard to selection of pay channels.
4. Formulate the standard terms and conditions under which set top boxes may be made available (sale/rental) to subscribers.
5. Suggest the conditions under which consumers may return set top boxes sold or rented to them by service providers and ask for refund.
6. Suggest the maximum advertising time to be permitted per hour on pay channels along with other conditions that are required to be imposed.
7. Examine the implications of gradual and voluntary introduction of set top boxes.
8. Any other measure, to ensure that CAS does not lead to exploitation of the consumers

Amendment proposed in The Cable Television Networks (Regulation) Act, 1995 and Notifications and Rules issued there under

The title of the Act should be changed to “ The *Broadcasting and Cable Television Networks (Regulation) Act, 1995*”. This is because the amendments in the Act also include certain provisions which apply to Broadcasters.

I. Amendments in the Cable Act

(a) Certain Changes are required in the definition of Basic Tier, Free To Air channels, pay channels so as to facilitate use of Traps and introduction of premium channel in Non-CAS areas.

(i) Section 4A(9) (b) should be substituted by

“basic service tier” means a package of free-to-air channels provided by a cable operator, for a single price to the subscribers of the area in which his cable television network is providing service and such channels are receivable for viewing by the subscriber on the receiver set without any addressable system attached to his receiver set but may require use of traps in the cable television network of the cable operator;

(ii) Section 4A (9) (e) should be substituted by

“free to air channel” means a channel for which no 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.

(iii) Section 4A(9) (f) should be substituted by

“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.;

(iv) New 4A (9) (g) should be added after 4 A (9) (f)

“premium channel” in respect of a cable television network means a channel the reception of which under section 4(B) of the Cable

Television Network (Regulation) Act by the subscriber would require the use of an addressable system to be attached to his receiver set;

(v) New 4A(9)(h) should added after 4 A (9) (g)

“trap” in respect of a cable television network, means a device which can act either as a negative trap which would block pay channels from being received by a subscriber or a positive trap which removes an interfering carrier from a channel allowing a subscriber to view it.

(vi) Explanations under 4A (9) including the proposed new explanations should now be part of the definition under section 2 of the Act.

(b) Reference to other Acts like TRAI Act required

Subsection (j) in the section 2 is to be added to refer to the TRAI Act

“(j) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act ,1885 (13 of 1885) , the Indian Wireless Telegraphy Act, 1933 (17 of 1933) and the Telecom Regulatory Authority of India Act 1997 shall have the meanings respectively assigned to them in those Acts”

(c) Consultation with the State governments to mandate CAS

(i) The following proviso should be added after Section 4A(1) :

4A Transmission of programmes through addressable system, etc.- (1) Provided that where the Central Government is satisfied that it is in the public interest to do so ,it should for reasons to be recorded in writing , postpone, advance , suspend or revoke a notification already issued under this section

(d) Deletion of the provision to decide Basic Tier Service Rate:

At present price of Basic Service Tier can be regulated both under the TRAI Act and The Cable Act. Since TRAI is already regulating the prices of cable services, it is recommended that the the prices of basic tier should also be regulated by TRAI alone and the provisions under the Cable Act may be deleted. *Therefore sub-sections (4) and (5) of section 4A may be deleted.*

(e) Amendment in section 4(3):

Revocation/ refusal for registration

The second proviso is to be added to section 4(3) of the Act to enable registering authority to revoke or refuse registration in case of insolvency or convicted for some crime.

“provided further that the registering authority may revoke or refuse registration if a cable operator has been convicted of any criminal offence involving imprisonment.”

(f) New Section 4(B) to be added so that new pay channels (to be called as premium channels) come on the addressable system.

(i) 4(B) If the Central government is satisfied that it is necessary in the public interest to do so, it may, by notification in the official gazette, make it obligatory for every cable operator in areas notified under this section to carry all pay channels, to be called premium channels, launched after such date as may be specified in the notification, after encryption and the reception of which by the subscriber would require the use of an addressable system to be attached to his receiver set.

(g) New Section 4 (C)

Powers to regulate Advertisement time

4C : If the Central government is satisfied that it is necessary in the public interest to do so, it may, by notification in the official gazette, specify the maximum time of advertisement on pay channels and other channels.

(h) New Section 7A for Cable Operators to maintain a register of subscribers roll

“7A (i) Every cable operator and multi system operator shall maintain a register of subscribers containing the names of the subscriber, address, number of channels being received, monthly fee charges,

(ii) The register shall be furnished for inspection to the Authorised Officer whenever he considers it expedient to inspect such register”

(i) Authorised Officer

A new section 20 A to permit delegation of powers to Authorized Officers

“20 A Functions under the TRAI Act:

“The Authorised Officers would also exercise such functions as are assigned to them under the TRAI Act including the functions that may be delegated to them under section 33 of the TRAI Act.”

II. Amendment in the Notifications

(a) Registering Authority: Amendment in notification no SO 718(E) dated 29.9.94

The registering authority should not be the Head Post Master but the authorized officers. Accordingly the notification dated 29th September 1994 should be amended replacing the words “Head Post Master of a Head Post Office” by “*Authorised Officer*” .

III. Amendments in the in the Cable Television Networks Rules, 1994
Rules relating to the registering authority

(i) Rule 3 (4)

Clause 4 needs to be amended by replacing “Head Post Office” with “Authorised Officer”. In addition to remove doubts the following explanation may be added at end of this clause

“A person operating cable television networks may continue to do so for a period his registration is valid. However the renewal of the registration shall be obtained from the Authorised Officer.”

(ii) Form 1

Replace “ Head Post Office” in column 4 (b) by “Authorised Officer”.

(iii) Form 3/3A

Replace the words “Government of India Head Post Office”: in title and “Head Post Office” at the end of col. 4 by “Name of Authorised Officer.”

(iv) Form 4

Replace the words “ Head Post Master” and “Head Post Office” at the end of the form by “Name of the Authorised Officer”.

(v) Rule 10:

The reports under section 4(A)9 of the Cable Act should go to the authorized officers. This would require amending the Rule 10 replacing the words “Central Government in the Ministry of Information and Broadcasting” by “*Authorised Officer of the area within whose territorial jurisdiction the office of the cable operator is situated*”

(vi) Rule 14

The information on STBs is to be publicized at least 3 months before actual implementation of CAS in a city and therefore the word “*fifteen*” in the sub-rule (1) should be replaced by “*ninety*”.

The information on STBs should be available with TRAI which would require amending this rule. The sub-rule (2) should read as:

“ The Multi System Operator/Cable Operator shall also furnish the information required in sub-rule (1) above to the Ministry of Information and Broadcasting and Telecom Regulatory Authority, duly authenticated by its authorized signatory.”

**Amendment proposed in The Telecommunication Regulatory Authority
of India Act, 1997 - as amended**

I Section 2- definition

Telecommunication Services

It is necessary is to amend section 2 (1) (k) of the TRAI Act – the last phrase “*but shall not include broadcasting services*” needs to be deleted.

Service provider

The definition needs to be amended to remove any ambiguity and can be changed as follows

“service provider” means the (Government as a service provider) and includes a licensee as well as any broadcaster, multi system operator cable operator or distributor”

Further since terms like broadcaster and cable operator has not been defined in the Act it is necessary to add the following clauses (bb) to (bg) after section 2(b) and section (fa) after section 2 (f)

(bb) “broadcaster” means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his authorized distribution agencies;

(bc) – “broadcasting services” means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be constructed accordingly;

(bd) – “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;

(be) – “cable service” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(bf) – “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;

(bg) “distributor of TV channels” means any person re-transmitting TV channels through electromagnetic waves through cable or through space intended to be received by general public directly or indirectly and includes a cable operator, direct to home operator and multi system operator;

(fa)- “multi system operator” means any person who receives a broadcasting service from broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators;

(c) Section 2(2)

After the words “Indian Wireless Telegraphy Act 1933(17 of1933) add the words

“the Cable Television Networks (Regulation) Act ,1995 as amended by the Cable Television Networks (Regulation) Act 2000 and any other applicable law in India”

The amendment would help to cross refer to these Acts and harmonise the regulation of broadcasting and cable services under the TRAI Act.

II. Functions of the Authority

(a) Section 11(1)

The cross reference to Cable Act would help to maintain the consistency between the Cable Act and the TRAI Act and would clearly bring out the jurisdiction of TRAI Act and would also clearly bring out the jurisdiction of TRAI on the Cable and Broadcasting Industry. The proposed clause is as under:

“Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885) and *Cable Television Network (Regulation) Act, 1995 as amended by*

Cable Television Network (Regulation) Act 2000, the function of the Authority shall be-

III. Amendment in Section 13

As per this section the Authority can issue directions to the service providers for discharge of its functions under Section 11 (1) (b). The existing section does not cover the entire functions of the Authority as contained in Section 11(1). In addition the function of the Authority is to notify tariff rates under Section 11(2) which is not covered by the Section 13. In order to avoid any controversy and ambiguity and to rectify the lacuna, it is proposed the Section 13 should read as under:

“The Authority may, for the discharge of its functions under sub section 1 (b), (c), (d) and (e) and sub section (2) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.”

IV. Section 29- Penalty for contravention of directions of Authority

In the existing section the violation of the Authority’s direction is punishable with fine. The violations of the orders and Regulations are not mentioned as punishable therein with fine. By the way of proposed amendment, this lacuna is intended to remove so that in case of any violation of the Orders/Regulations, by any service providers the action can be taken by the Authority in terms of provisions contained in the Act. It is therefore proposed that the word “Direction” should be substituted by “ Directions/ Orders / Regulations”. The section would read as:

“ If a person violates any Direction/Order/Regulation of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in case of second or subsequent offences with fine which may extend to two lakh rupees and in case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.”

V. Cognizance of offences

Section 34 (1)

In respect of cable services, all requests by consumers and cable operators for implementation of the TRAI Act or Regulations made there under should be handled by the Authorised Officers. In this regard , it is proposed that after the word “Authority”, the words “ *and in the case of cable services, in respect of violations of any regulation issued by TRAI, reported by consumers or cable operators save on a complaint made by the concerned Authorised Officer* ”should be added.