

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

**TELECOMMUNICATION (BROADCASTING AND CABLE)
SERVICES (SECOND) TARIFF (EIGHTH AMENDMENT)
ORDER, 2007**

NO. 3 OF 2007.

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 4th October, 2007.

No 1-1/2007-B&CS.-- In exercise of the powers conferred by sub clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication), No.39 ,-

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), namely:-

1. (1) This order shall be called the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007.

(2) It shall come into force with effect from the 1st day of December, 2007.

2. In clause 1 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the principal Tariff Order) in sub-clause (ii), after the words “the territory of India”, the words, brackets, figures and letters “except States, cities, towns and areas notified, from time to time, under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995” shall be inserted.

3. In clause 2 of the principal Tariff Order, ----

(i) for sub-clause (a), the following sub-clauses shall be inserted, namely:-

“(a) “**addressable system**” means an electronic device or more than one electronic devices put in an integrated system through which television signals can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the service provider to the subscriber;

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

(aaa) “**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;”;

(ii) in sub-clause (f),---

(A) for item (i), the following item shall be inserted, namely:-

“(i) in respect of broadcasting and cable services provided to all ordinary cable subscribers and commercial cable subscribers except those specified in (ii) below, the rates (excluding taxes) payable by one party to the other by virtue of the written/ oral agreement prevailing on the 1st day of December, 2007. The principle applicable in the written/ oral agreement prevailing on the 1st day of December, 2007, should be applied for determining the said rates.”;

(B) in item (ii), for the words ‘for hotels’, the words ‘in respect of broadcasting and cable services provided to hotels’ shall be substituted;

(C) the Explanation below item (ii) shall be numbered as Explanation 1

thereof and after Explanation 1 as so numbered , the following Explanation shall be inserted , namely:-

“Explanation 2: The principle applicable in the written/ oral agreement referred to in item (i) of this sub-clause shall also be applicable for all new written/ oral agreements entered into between one party and another on or after 1st day of December, 2007.”

(iii) after sub-clause (i), the following sub-clause shall be inserted, namely:-

“ (j) all other words and expressions used in this order but not defined, and defined in the Act and rules and other regulations and Order made there under, shall have the meanings respectively assigned to them in the Act or the rules or other regulations or Order, as the case may be.”.

4. In clause 3 of the principal Tariff Order, after sub-clause(c), ---

(a) for the portion beginning with the words and figures “prevalent as on 26-12-2003” and ending with the words “with respect to both free-to-air and pay channels” the following shall be substituted, namely:-

“prevalent as on 1st day of December, 2007, and increased by an amount not exceeding four per cent. shall be the ceiling,

(A) with respect to both free to air and pay channels transmitted or retransmitted by multi system operators to cable operators, and by multi system operators and cable operators to subscribers referred to in sub-clause (a) above;

(B) in respect of bouquets of channels (consisting only of pay channels or both pay and free to air channels) and stand-alone channels not forming part of any bouquet transmitted by broadcasters to multi system operators, cable operators and to subscribers referred to in sub-clause (a) above”;

(b) Explanation 1 and Explanation 2 shall be re-numbered as Explanation 2 and Explanation 3 respectively thereof and before Explanation 2 as so re-numbered, the following Explanation 1 shall be inserted, namely:-

“Explanation 1: The four per cent. increase referred above shall not apply in cases where the charges, existing as on the 26th December, 2003 as enhanced by 7% permitted with effect from 1st day of January, 2005, have been further increased by four per cent. [being the four per cent. ceiling

referred to in clause 3, (as it stood before its amendment by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007)] after the 21st December, 2006;

(c) for item (ii) of Explanation 2 as so re- numbered, the following items shall be inserted, namely:-

ii) MSO(s) and cable operator(s) who have been authorized to provide signals to the commercial cable subscribers

iii) the commercial cable subscribers.

(d) for the first proviso , the following proviso shall be substituted, namely:-

“Provided that if any new pay channel(s) that is/are launched after the 1st day of December, 2007 or any channel(s) that was/ were free to air channel on the 1st day of December, 2007 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s). The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on the 1st day of December, 2007 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels existing as on the 1st day of December, 2007 and/ or on the date of such launching of new channel or such conversion of free to air channel into a pay channel ;”

(e) in the second proviso ,----

(A) the word “a broadcaster or” shall be omitted;

(B) for the words “ shown on 26.12.2003” the words “ shown on the 1st day of December, 2007” shall be substituted;

(C) for the words “as on 26.12.2003” the words “as on the 1st day of December, 2007 and/ or existing as on the date of such reduction in the number of pay channels” shall be substituted;

(f) after the third proviso, the following proviso shall be inserted, namely:-

“Provided also that the charges referred to in sub-clause (a) above

shall in no case exceed the maximum amount of charges specified in the Part I or Part II, as the case may be, of the Schedule annexed with this Order.”.

5. In clause 3B of the principal Tariff Order,

(a) after item (i), the word ‘and’ shall be inserted;

(b) for items (ii) and (iii), the following item shall be inserted, namely:-

“(ii) the range of prices ascribed to the existing channels of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that exist.”

6. After clause 3B of the principal Tariff Order, the following clauses shall be inserted, namely:-

“3C. Manner of offering channels by broadcasters.

(1) Every broadcaster shall offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate, subject to provisions of sub-clause (2) of this clause and clauses 3 and 3B, for each such pay channel offered by him.

(2) In case a broadcaster in addition to offering all its channels on a-la-carte basis, provides, without prejudice to the provisions of sub-clause (1), to a multi system operator or to a cable operator, pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, the rate charged for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following conditions, namely:-

(a) the sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

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

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

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

Provided further that -----

(i) in cases where the broadcaster ceases to make available a pay channel existing as on the 1st day of December, 2007 for broadcasting or for distribution, the rate of the bouquet containing such a pay channel existing on that date shall be reduced in the same proportion which the a-la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet;

(ii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any free to air channel is converted into pay channel after that date, then the said existing bouquet (excluding the said free to air channel) shall be offered at or below the rates prevailing as on that date for such bouquet;

(iii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any pay channel is converted into free to air channel after that date, then the said existing bouquet shall be offered, with or without such free to air channel so converted after reducing the rate prevailing as on that date for such bouquet, by an amount not less than the amount which bears the same proportion the a-la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet.

(3) A broadcaster may, without prejudice to the provisions contained in sub clause (1) and other provisions of this Tariff Order, offer discounts to multi system operators and cable operators on a-la-carte rates of its channels or bouquet rates and such offer of discounts, in no case, shall, directly or indirectly, have effect of contravening the provisions of sub-clause (2) and any other provisions of this Tariff Order. ”.

7. For clause 4 of the principal Tariff Order, the following clauses shall be substituted, namely:-

“4. Reporting requirement.

(1) Subject to the provisions of clause 3C, every broadcaster shall, within seven days from the 1st day of December, 2007, furnish the following

information to the Authority, namely:-

- (a) names, genre and language of all free to air channels offered by the broadcaster;
- (b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;
- (c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein along with the names of owners of other channels in the bouquets;
- (d) revenue share arrangement between owners of channels in the bouquet;
- (e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state(s) must be specified);
- (f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);
- (g) advertisement revenue for the last three years;
- (h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

(2) Every broadcaster who, after the 1st day of December, 2007,--

- (a) introduces any new pay channel or free to air channel; or
- (b) converts any pay channel into free to air channel; or
- (c) converts any free to air channel into pay channel; or
- (d) discontinues any free to air channel or pay channel; or
- (e) introduces any new bouquet or discontinues any bouquet or modifies any bouquet,

shall, within seven days of such introduction or conversion or discontinuation, furnish to the Authority the information required in items (a) to (h) of sub-clause (1).

(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2) immediately except items (d) and (g) of sub-

clause (1).

4A. Power of Authority to intervene.

The Authority may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services, or facilitate competition and promote efficiency in the operation of broadcasting services and cable services so as to facilitate growth in such services.

4B. Issue of receipt and bill.

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

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

(3) Every cable operator or the multi system operator or the broadcaster, as the case may be, shall give to every subscriber, along with the first bill given to such subscriber in compliance of sub-clause (1) after the 1st day of December, 2007, a list of all the pay channels and free to air channels being provided to the subscriber. Subsequently, written information about any changes in the pay channels or free to air channels being provided to the subscriber shall also be given along with the next bill given to the subscriber after such change.

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

4C. Maintenance of records by broadcaster, multi system operator and the cable operator.

(1) Every broadcaster, multi system operator and the cable operator shall keep adequate records relating to the information pertaining to ---

(a) the dates of increase in charges;

(b) the amount of increase;

(c) the number of pay channels and free to air channels with their names which were available immediately prior to every such increase or changes in charges or changes in the composition of bouquets;

(d) the number of pay channels and free to air channels with their names which were available immediately after every such increase or changes in charges or changes in the composition of bouquets;

(e) the names, addresses and charges pertaining to other service providers to whom broadcasting services or cable services are being provided;

(f) any other information which may be relevant for the purposes of this Order.

(2) In addition to keeping the abovementioned records, every cable operator shall also keep complete records relating to the names, addresses and charges pertaining to all its subscribers.

4D. Non-applicability to addressable systems.

The provisions contained in this Tariff Order except clause 3C shall not apply to cases of transmission or retransmission of channels through cable television network using addressable systems.”

8. For Schedule 1 to the principal Tariff Order, the following schedule shall be substituted, namely:-

SCHEDULE TO THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (SECOND) TARIFF ORDER 2004 (6 OF 2004)
(See clause 3)

PART I

Charges payable by a subscriber (referred to in sub-clause (a) clause 3) to the cable operator or multi system operator transmitting or re-transmitting both Free to Air channels and Pay channels in Non-CAS areas.

Serial number	Number of pay channels and Free to Air channels to be transmitted or re-transmitted through the cable television network.		Maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for Pay channels and Free to Air channels mentioned under column (2)		
	(1)	(2)	(3)		
	Pay channels. 2(a)	Free to Air channels. 2(b)	A-1 and A Class cities. 3(a)	B-1 and B-2 Class cities. 3(b)	Other areas. 3(c)
1.	Upto twenty pay channels.	minimum thirty Free to Air channels	Not exceeding rupees one hundred and sixty only.	Not exceeding rupees one hundred and forty only.	Not exceeding rupees one hundred and thirty only.
2.	More than twenty and upto thirty pay channels.	minimum thirty Free to Air channels	Not exceeding rupees two hundred only.	Not exceeding rupees one hundred and seventy only.	Not exceeding rupees one hundred and sixty only.
3.	More than thirty and upto forty five pay channels.	minimum thirty Free to Air channels	Not exceeding rupees two hundred and thirty five only.	Not exceeding rupees two hundred only.	Not exceeding rupees one hundred and eighty five only.
4.	More than forty five pay channels.	minimum thirty Free to Air channels	Not exceeding rupees two hundred and sixty only.	Not exceeding rupees two hundred and twenty only.	Not exceeding rupees two hundred only.

PART II

Charges payable by a subscriber (referred to in sub-clause (a) clause 3) to the cable operator or multi system operator for transmitting or retransmitting only Free to Air channels (without any pay channels) in Non-CAS areas

Minimum numbers of Free to Air channels to be transmitted or retransmitted through the cable television network. (1)	The maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for Free to Air channels (without any pay channel) specified under column (1). (2)
Thirty numbers of Free to Air channels.	Rupees seventy seven only.

Note 1. The maximum amount of charges payable by a subscriber, for his second and subsequent television connections at his same premises, shall be such as may be mutually agreed upon between such subscriber and the cable operator or multi system operator, as the case may be.

Note 2. It shall be mandatory for all cable television networks to transmit or retransmit minimum of thirty free to air channels.

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

Note 4. Classification of cities referred to under column 3(a) and 3(b) of Part I of the Schedule shall be the same classification as mentioned in the orders of the Government of India, Ministry of Finance issued, from time to time, for the purpose of determining the entitlement of house rent allowance of Central Government Employees as per the O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004 issued by the Ministry of Finance (Department of Expenditure) or such other classification as may be specified by the Government of India, Ministry of Finance from time to time for the entitlement of the house rent allowance.

(R.N. Choubey)
Principal Advisor (B&CS)

Note 1.-----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007.

Note 2.—The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004".(6 of 2004) was published vide notification no. 1-29/ 2004-B&CS dated 1st October, 2004 and subsequently amended vide notifications no. 1-29/ 2004-B&CS dated 26th October, 2004, no. 1-29/ 2004-B&CS dated 1st December, 2004, no. 1-13/ 2005-B&CS dated 29th November, 2005, no. 1-2/ 2006-B&CS dated 7th March, 2006, no. 1-2/ 2006-B&CS dated 24th March, 2006, no. 1-13/ 2005-B&CS dated 31st July, 2006 and no. 1-19/ 2006-B&CS dated 21st November, 2006.

EXPLANATORY MEMORANDUM

1. Introduction and Background

Overview of broadcasting and cable TV sector

1.1 The licensing and permission as well as content regulation of broadcasting and cable TV sector mainly fall under the domain of Ministry of Information and Broadcasting, while the carriage regulation is looked after by the Telecom Regulatory Authority of India (hereinafter referred to as the Authority). This responsibility of carriage regulation was entrusted to Authority in 2004. Authority has since then taken a number of initiatives for regulating the sector in exercise of both its recommendatory and mandatory powers vested with it as per TRAI Act, 1997.

1.2 One key initiative was issue of tariff orders for tariff payable by various stakeholders in the Cable TV distribution chain consisting of the cable subscribers, the Cable Operators and the Multi System Operators.

Existing tariff provisions

1.3 The provisions contained in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated the 1st October, 2004 (hereinafter referred to as the principal tariff order) and its subsequent amendments govern tariff for cable TV services in Non-CAS areas. Broadly, the principal tariff order provides that the cable charges payable by subscriber to the cable operator, by a cable operator to the multi system operator (hereinafter referred to as the MSO), and by the multi system operator to the broadcaster will not be increased beyond the levels prevailing as on 26th December, 2003. The said order also provided for changes (both increase and decrease) in the ceiling rates in the event of addition or reduction in the number of new pay channels subject to

certain conditions. The subsequent amendments made to the principal tariff order, from time to time, provide, *inter alia*, as under:-

(a) a seven percent increase in the ceiling on account of inflation with effect from 1st January, 2005 (allowed by the amendment dated 1st December, 2004 to the principal tariff order);

(b) a further four percent increase on account of inflation with effect from 1st January, 2006 by an amendment dated the 29th November, 2005 to the principal tariff order, the operation of which was stayed by the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and subsequently, the appeal was disposed of on 21st December, 2006 with the following observation:-

“Counsel for parties are not able to dispute that in view of the stay order, the 4% increase was not put into effect and today even if the stay order is to be vacated it will be impossible to recover any amount on the basis of the 4% increase which was to come into effect from 1.1.2006. We are informed that the legal issue regarding the jurisdiction of TRAI to regulate the tariff in respect of cable and broadcasting industry is pending before the Delhi High Court in C. W. P. No. 24105 of 2005 and C. W. P. No. 5332 of 2006. Therefore this Appeal has today become virtually academic.

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

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

The Appeal stands disposed of.”;

(c) the factors to be considered for determining the similarity of similar channels (provided by an amendment dated the 31st July, 2006 to the principal tariff order);

(d) a separate tariff scheme for commercial subscribers (provided by an amendment dated the 21st Nov 2006 to the principal tariff order).

1.4 During the course of the implementation of the tariff order, the general feedback received indicated that the broadcasters have been pleading for lifting of controls, the multi system operators and cable operators have been pointing to the tariff regime not being able to address the issue of connectivity and the practice of bundling of channels in bouquets by the broadcasters. The consumers have been complaining against the multiplicity of rates

and absence of an effective mechanism to know whether the charges levied are legitimate. During the proceedings before TDSAT in an appeal filed on the issue of 4% increase on account of inflation, a consumer organisation also questioned the justification for annual increase and the methodology adopted to provide for increase in cable charges.

1.5 In the light of the observations of Hon'ble TDSAT's orders and based on the feedback received during the course of implementation of the tariff order, the Authority was of the view that a formal consultation should be carried out involving the stakeholders in order to decide the future course of action.

2. Consultation Process

2.1 A consultation paper was issued by the Authority on the 21st May, 2007 inviting comments and suggestions on the issues specified therein from various stake holders. The comments and suggestions received were compiled and a gist of the same was placed on TRAI's website www.trai.gov.in on 18.06.2007. This was followed by open house discussions in Jaipur, Hyderabad, Kolkata and Lucknow on the 4th July, 7th July, 10th July and 13th July, 2007. The issues were also discussed in an exclusive meeting with consumer advocacy groups on 8th September, 2007 at Delhi. Meetings were also held with a group representing broadcasters on 11th September and a group representing multi system operators on 14th September 2007 on specific requests from these groups. The comments and suggestions received from various stake holders on the issues specified in the consultation paper are summarized in Annexure II to this Explanatory Memorandum.

3. Analysis of Issues

Issues posed for consultation

3.1 The Authority had broadly posed the following issues for consultation:

- A. Whether there should be total forbearance in tariff fixation;
- B. Whether the existing regime should continue in its present form or with modifications in the methodology of accounting for inflation and shifting of the reference date for ceiling; and,

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

Since all these issues are closely linked to one another, therefore the issues, stakeholders' responses, the Authority's decisions and the rationale for the same are discussed in the succeeding paragraphs in an all-inclusive manner.

Stakeholder's responses in nutshell on the issues

3.2 The broadcasters in general have made out a case for forbearance. They have clearly expressed that even if regulations need to continue, the regime should lay down the criterion for assessing the stage when such regulations would be lifted and state, a priori, the benchmarks and a sunset date for moving towards total forbearance. The group of stakeholders representing multi system operators and cable operators has favored continuance of regulation of the sector in some form with opinions varying as to the degree of regulation and time upto which such regulation should continue. This group has also strongly favored the availability of channels on a-la-carte basis from the broadcasters. Another predominant view of this group of the stakeholders is that if prices are to be regulated at the subscriber end with a specific ceiling which was one of the options suggested in the consultation paper, then there is a corresponding need to determine connectivity levels and revenue sharing amongst the cable operators, multi system operators and broadcasters. As far as consumers are concerned, only two consumer associations and a couple of individuals responded to the consultation. By and large, with some variation, the consumer's view is that the regime of regulations should continue for some more time because DTH is at a nascent stage and yet to provide effective competition to the cable services industry. A gist of the responses received from the stakeholders is available on TRAI's website www.trai.gov.in

3.3 The Authority noted during the deliberations in the open houses that the cable operators had suggested that uniform ceiling of around Rs. 200/- as a broad all India average at the consumer end can be taken to represent the existing ground realities of prevailing cable charges. They further argued for putting in a regulation specifying the levels of connectivity and revenue share amongst the broadcasters, MSO and LCO. Some suggestions for determining the number of subscribers also came up during the open house

discussions. Since there was a strong demand for determination of connectivity levels between the service providers and the revenue sharing arrangements, the Authority while pointing out the difficulties and complexities involved in the exercise in a non-addressable regime, solicited specific solutions from the large number of cable operators who participated in the open house meetings. It was noted during the deliberations in the open house discussions that there are no feasible solutions to determine the connectivity in non-addressable regime.

3.4 A perusal of the responses received during the consultation process indicates a clear dividing line between the group representing broadcasters on one hand and the remaining stakeholders (MSOs, cable operators and consumers) on the other, on the issue of tariff regulation, particularly with reference to forbearance. **These comments not only reflect conflicting views, which is natural because of diverse commercial interests, but also point to a possible lack of mutual faith among the groups of stakeholders which is primarily arising out of non-addressable nature of analogue cable transmission. The following paragraphs examine each of the issues posed for consultation and determine the approach that would be feasible and the tariff dispensation that would be desirable.**

A. Issue No. 1: Whether the tariff should be under forbearance

3.5 Against this background, the first option to be examined is that of forbearance in the area of tariff for cable services. The strongest advocacy for forbearance was from the broadcasters, and they have advanced the following arguments in support:

- i) Price regulation impedes the introduction of quality content, investment flows and impact the revenue and bottomlines of the broadcasters.
- ii) There is adequate competition at the level of content and now even at the delivery platform level.
- iii) Globally, the tariff is not controlled except occasionally the basic service tier charges.
- iv) TV channels and content are matters of intellectual property, and not an essential commodity requiring control.
- v) The mere availability of power to re-introduce controls is an adequate preventive tool to correct market aberrations.

vi) Even if a decision is taken to control tariff, there has to be some criterion for determining sufficiency of level of competition and sunset date for lifting of controls.

The above arguments have been raised by the broadcasters time and again and the Authority has considered these arguments and explained its stand in its earlier tariff orders and regulations. The following paragraphs revisit these arguments.

3.6 There were around 30 to 35 pay channels apart from free to air channels in the beginning of 2004, when the mandate to regulate the sector was given to Telecom Regulatory Authority of India. A regime of tariff regulation in the form of retaining the tariff at December, 2003, level has been in existence since then. Over a period of three and half years, since January, 2004, there has been a steady flow of new pay channels or conversion of existing FTA channels to pay. Today there are around 270 channels, both pay and free to air which have been given permission to uplink/downlink. Further, around 70 channels are awaiting permission of the Government for uplinking/downlinking. It is noted that 28 new pay channels have been introduced in terms of clause 4 of the principal tariff order of 1.10.2004 and 36 free to air channels have been converted to pay. A number of new bouquets have been introduced consisting of on an average 2 to 10 channels per bouquet. Of the new pay channels 18 have come from the stable of three major broadcasters. Arrival of plethora of new channels in the Indian television space during the last 2-3 years is a clear indication that the business prospects of the Broadcasters have improved.

B. Issue No.2: Whether enough competition exists amongst broadcasters and at delivery platform level

3.7 The next argument advanced is that there is enough competition both at the broadcaster level and now also at the delivery platform level (such as DTH). As far as broadcaster level is concerned, it would superficially appear that there is indeed enough choice, with more than a dozen broadcasters offering 270 channels in different genres. However, the fallacy in this argument immediately becomes apparent once it is noted that competition will exist only if a channel can easily substitute for another channel, which is often not the case. This is because each channel has certain uniqueness associated with it because of its content, even within the same genre. Thus a particular TV channel carrying

popular serials cannot be replaced by another, and a kids channel showing popular cartoons cannot be substituted by another kids channel. It is this uniqueness of content which is leveraged by the broadcasters when they form the bouquets and sell the same to MSOs and cable operators.

3.8 As far as competition at the delivery platform level is concerned, it is somewhat early to say that DTH is in a position to give effective competition to cable TV. Out of about 71 million cable & satellite homes in the country, only about 3.5 million are presently subscribing to pay DTH services. This, too, is confined at present to large cities. For the most part, the last-mile cable operator enjoys a virtual monopoly in content distribution within his area of operation. Thus at the subscriber level, there is hardly any choice in delivery platforms. It is in this context that regulatory practices in other countries are not very relevant for Indian situation, because the subscribers in the advanced countries have a much greater choice of delivery platforms such as cable TV, DTH, IPTV etc. Apart from greater choice in the form of delivery platforms, the subscribers in the developed countries also have effective choice in larger number of last mile cable operators.

C. Issue No. 3: Regulation Vs forbearance

3.9 Next, the argument of television entertainment not being an essential commodity is often advanced to support the demand for forbearance. However, this also holds no water because the decision to regulate or not to regulate any goods or service arises from the analysis of the competition in the market. On market failure in cable TV service in India, the Authority has been conducting market surveys from time to time. Of course, determination of extent of market failure is an important input in deciding the extent and manner of regulation. The state of competition in cable TV services has been summarized by the Authority in the explanatory memorandum annexed with the tariff order for cable service in CAS area dated 31st August, 2006 which is reproduced below:

“2(ii) The fundamental principle of regulation is to allow the market forces to work and to ensure a level playing field amongst various service providers. At the same time whenever the Regulator considers that there is not enough competition in the market, regulatory intervention is required to protect the interests of the subscribers. This fundamental principle has been kept in mind by the Authority while finalising this tariff order. The Authority would closely monitor the developments in the market and as the level of competition increases a review of the tariff regime would be considered.

(iii) Price regulation is justified when markets fail to produce competitive prices. When markets are competitive and are said to function smoothly, they will lead to “efficient” prices that maximize value to consumers. For this efficient ideal competitive situation to be realized, the market must meet a number of conditions. These conditions include that the market must have several suppliers and consumers with none so large as to affect prices. There should also be free entry to and exit from the market. Where all these conditions are not present, the market will not generally produce optimal results. In such a situation, there is justification for intervention by the Regulator to improve social welfare. The introduction of price regulation in any market is one such intervention necessitated on account of lack of adequate competition in the market. Such market failures are caused by a number of factors.

(iv) In the case of cable television sector in India, historically, there has been lack of effective competition and lack of choice to the subscribers. Cable services, particularly the last mile operations, are in the nature of a monopoly market in India. Although, the cable TV industry is fragmented, it is characterised by a few dominant broadcasters and large Multi System Operators (MSOs) with some of them having vertically integrated operations, resulting in unequal bargaining powers amongst various players in the supply chain.

TRAI had recently commissioned a market survey which showed that at macro level, the average monthly cable bill for a subscriber in December, 2006, varied enormously from Rs.149 in Kochi to Rs.322 in Shillong, even though services being provided did not warrant such variation. This apart, there have been instances where the cable charges have been increased for a colony or a subscriber arbitrarily. These clearly point to market failure, both at the macro level and at the micro level. By the same token, the mere availability of power to regulate and intervene at any time by TRAI has not proved to be a deterrent and has not prevented market aberrations of the type mentioned above.

3.10 This brings us to the issue of laying down conditions for ushering in forbearance by indicating appropriate benchmarks in advance and also indicating a sunset clause. The Authority is conscious of the need to move towards a regime where the regulator’s intervention becomes minimal and only to the extent necessary. The Authority also recognizes that a commitment to move towards a deregulated regime needs to be backed by a well laid out framework in terms of time limits and goals at different points of time. But, on the other hand, it has to be kept in mind that the timing of laying down a well defined framework itself will be meaningful only when some progress is seen to have been made in

the conditions warranting forbearance. Right now, it would be too early to do so when only 3.5 million subscribers have access to pay DTH services and only 0.5 million have been covered under conditional access system on cable TV side out of a total of 71 million subscribers.

3.11 The above analysis clearly shows that the cable TV segment has not yet matured to a level which can give confidence for bringing in complete forbearance. In the absence of an addressable system, which enables choice to consumers, it is difficult to conclude that competition is effective in the market. At the same time, the Authority would hasten to add that TRAI is committed to bringing in a regime of forbearance and deregulation by promoting competition. This is the model followed by TRAI very successfully in the telecom sector, where the tariff is mostly under forbearance. For the cable TV and broadcasting sector also, the recommendation of TRAI on 1.10.2004 stated that once there is effective competition the tariff regulations would be lifted.

3.12 The Authority has been using every opportunity to initiate measures to promote competition and bring in transparency in the sector. The following would bear testimony to TRAI's efforts in this regard:

- (i) In its recommendations on terrestrial television broadcasting, TRAI specifically recommended that this segment should be opened up for private sector also.
- (ii) Having implemented CAS in Chennai and parts of Delhi, Mumbai and Kolkata, TRAI has recommended extension of the same to the remaining parts of the three metros.
- (iii) TRAI is examining a report of the Group on digitalization and introduction of voluntary CAS for extension of CAS to 55 more cities in a well defined time frame.
- (iv) TRAI has initiated a process of consultation for recommending a framework for "head-end in the sky (**HITS**)" which would enable digitalization of cable transmission with addressability for the whole country at one go.
- (v) TRAI is also examining the ways to encourage IPTV by recommending removal of bottlenecks.
- (vi) Separately, a consultation paper has also been circulated for promoting mobile TV.

(vii) Finally, interconnection regulations have been issued which have made it easier for DTH operators to source content more easily and thus become more competitive.

3.13 The endeavor of the Authority is to facilitate competition and enable withdrawal of the regime of regulations. This will happen in the broadcasting and cable sector when stakeholders including consumers are confident that the market forces are effective in producing competitive prices with an appropriate mechanism for self-correction.

D. Issue No.4: Whether continuing existing tariff regime should continue with or without modifications in existing tariff order

3.14 The second option considered in the consultation process was to continue with the existing tariff regime with or without modifications. In terms of the first tariff order of 15.1.2004, a freeze on tariff was introduced to protect the interests of consumers as an interim measure. Subsequently, the tariff order of 1.10.2004 provided a window for new pay channels to come in, so that the avenues for growth and variety of content are not blocked. In a non-addressable regime, where the consumers have no choice to take or reject a channel, it was also essential that the sanctity of ceiling provided for in the tariff order dated 15.1.2004 continued to be preserved and a mechanism for providing greater variety to the subscribers by way of new pay channels through the operators put in place. The tariff order of 1.10.2004 accordingly provided that the new pay channels will be offered on a standalone basis either individually or as part of a new bouquet. The tariff order also provided that the new channels/bouquets will have rates similar to existing similar channels/bouquets. An increase of 7% on the ceiling cable charges was given vide tariff order of 1.12.2004 to account for adjustment for inflation. A subsequent increase of 4% to be effective from 1.1.2006 vide amendment order of 29.11.2005 was however stayed by the Hon'ble TDSAT and the matter was disposed of on 21.12.2006, allowing TRAI to take appropriate decision for the future. Separately, when the issue of applicability of the principal order to commercial subscribers came up, the Authority consciously took a view that certain types of commercial establishments need no protection and kept them out of the purview of the tariff order.

3.15 The experience with implementing the existing tariff order shows that while it generally succeeded in bringing about a greater discipline in the cable TV segment, it suffered from the following drawbacks:

(i) The tariff order did not indicate a specific ceiling for any of the three levels (i.e., MSOs, cable operators and subscribers) in the distribution chain. Instead, it merely stated that the rates being paid as on 26.12.2003 by the stakeholders at each of the three levels will not be increased. The ordinary subscriber found it difficult to enforce these provisions to the extent that they related to him, since often no bills and receipts were being issued by the last mile cable operator. Moreover, the number of pay channels has also gone up from around 30 to nearly 100 in a matter of 3 years. The reference date of 26.12.2003, therefore, becomes less relevant.

(ii) As far as the ceilings imposed on the rates at the other two levels (i.e., between cable operator and MSO, and between MSO and broadcaster) were concerned, the problem was that in the absence of any addressability, it was difficult to correctly assess the subscriber base and, therefore, difficult to determine the total amount payable even if the rate was frozen. The Authority has laid down broad guidelines in the amendment to Interconnection Regulation issued on 4.9.2006 on the matter of connectivity. However, these guidelines may not be of much help if any party decides to dispute the numbers.

3.16 It is thus obvious from the analysis above that whatever be the tariff regime, it should firstly be transparent enough from subscriber's point of view in the sense that at least the maximum amount payable by him should be clearly and unambiguously laid down in relation to the channels received by him. Proper system of the documents like bill stipulating the details of the channels and the receipt for the payments for such cable services provided by the cable operator is also required to be in place. The second problem mentioned above relating to subscriber base and connectivity is rather intractable in the unaddressable analogue regime, and has been discussed separately later in this explanatory memorandum.

3.17 The Authority finds merit in the proposal for revising the reference date and for having proper bill and receipt of the cable services provided by the cable operators.

E. Issue No. 5: Tariff ceiling at consumer end and related issues

3.18 This brings us to the third alternative posed in the consultation paper, which essentially proposed fixing a tariff ceiling in absolute terms at the subscriber end. This could be done in relation to the number of channels received, and/or by categorizing cities, towns and habitations into separate categories and fixing rates for them separately. Several MSOs and cable operators as well as many consumers in the open house discussions favoured this approach. However, the MSOs and cable operators also said that in order to enable them to deliver the required number of channels to the subscribers at or below the ceiling rates, it would be necessary to bring the broadcasters within the ambit of the proposed tariff regime in an appropriate manner so as to enable the MSOs and cable operators to source the content at right prices. The Authority finds considerable merit in the suggestions of the consumers, MSOs and cable operators on this issue. However, before coming to any final decision, it would be useful to discuss two important aspects of the cable TV segment which have a significant bearing on tariff issues.

F. Issue no. 6: Determination of bouquet pricing by broadcasters

3.19 There are two important matters which are unique to cable TV segment in this country. The first of these relates to the bouquet pricing by the broadcasters and their subsequent retransmission by the MSOs/cable operators to subscribers in bundled form. The second is that of determining the subscriber base or the connectivity for payment purposes among the broadcasters, MSOs and the cable operators, which has been briefly touched upon earlier. These are discussed below.

3.20 The marketing strategy often followed by the broadcasters has been one where a broadcaster forms a bouquet of individual channels and then that bouquet is priced very attractively by giving huge discounts over a-la-carte rates of individual channels. More often than not, the channels are not made available on a-la-carte basis. While there may not be anything wrong in giving bulk discounts which is a normal business practice, what compounds the problem is that the bouquets are sometimes so formed as to contain only one or two popular channels, while rest of the channels in the bouquet may not be seen as 'value for money' by the MSOs, cable operators and subscribers. The MSOs and the cable operators are then forced to take the entire bouquet as otherwise they are denied the popular channels altogether. To make the matters worse, the MSOs and the cable operators have to pay as if all the channels in the bouquet are being watched by the entire negotiated

subscriber base, when in fact only the popular channels will have high viewership. This marketing strategy based on bouquets runs essentially on a kind of ‘perverse pricing’ of bouquets vis-à-vis the individual channels. As a result, the entire cost is passed on to the subscribers. Of course, in a non-addressable environment, the subscribers are not in a position to choose individual channels anyway. However, even the limited freedom available to the MSOs and cable operators to decide, based on their local knowledge, as to which channels their customers in their area or locality want (or do not want), is denied by the bouquet-based marketing strategy of the broadcasters. One obvious question to be posed here is about the reason which lies behind such a marketing strategy. The answer lies in the fact that for a broadcaster, the main source of revenue comes from advertising, and the subscription revenue paid by the ordinary subscribers is only a smaller source. Therefore, a broadcaster, in order to maximize his revenue, has to maximize his subscriber base for as many of his channels as possible because the advertisement revenue depends on the subscriber base. Hence the need to tag along less popular channels compulsorily with more popular channels. Needless to say, it is the subscriber who ends up paying for the subscription for the less popular channels.

3.21 An obvious solution to this problem is to ensure, using regulatory powers, that broadcasters offer channels compulsorily on a-la-carte basis and also to have a mechanism to prevent ‘perverse pricing’ of bouquets vis-à-vis the individual channels. This issue was raised earlier by a group of MSOs through their association ‘MSO Alliance’. After an extensive consultation on a proposal of MSO alliance to provide for a-la-carte option for all the new channels at the MSO level, the Authority was not in favour of this proposal of MSO Alliance, partly because of the technical inability of MSOs and cable operators to pass on the benefit of a-la-carte choice to the customer because of the non-addressable nature of transmission of channels on cable networks. The relevant portion of para 3.1 of the explanatory memorandum to the tariff order dated 31.07.2006 is reproduced below:

“3.1such choice is technically not available at the level below in the distribution chain including the consumer.”

3.22 The second reason why the original proposal of ‘MSO Alliance’, that the new pay channels should come only in a-la-carte mode, could not be accepted was because it could be seen as being discriminatory against the new pay channels. This was explained in para

3.5 of the explanatory memorandum annexed with the amendment to the tariff order issued on 31.7.2006. The same is reproduced below:

“3.5 The proposal in all fairness can be considered for implementation only on a prospective basis. This would mean there will be three different sets of regimes for channels floated at different points of time. One for those which existed as on 26.1.2.2003, the second for those new pay channels which came in after 26.12.2003 and third the proposed new regime as finally decided on the basis of the proposal of MSO Alliance. The implementation of different sets of regulations for three sets of regimes could become complicated. The proposal would invite criticism on grounds of being unfair to the new entrants.”

3.23 An appeal (Appeal no 9(C) of 2006) has been filed by MSO Alliance against this decision and the matter is currently under consideration before Hon’ble Telecom Disputes Settlement and Appellate Tribunal.

3.24 As can be seen, the present practice of the broadcasters marketing their channels in a bouquet form by resorting to perverse pricing results in unwanted channels within the bouquet being thrust on the MSOs/cable operators. The cost of these unwanted channels is ultimately passed on by the MSOs/cable operators to the consumers. The normal expectation, therefore, would be that the broadcaster should be made to offer their channels on a-la-carte basis so as to avoid the financial burden of unwanted channels. But the question then arises is whether the financial saving resulting from a-la-carte choice of channels would be passed on to the consumers by the MSOs/cable operators, particularly when a-la-carte choice can not be made available at the level of consumers. This could have been doubtful in the earlier tariff regime which was not very transparent from consumer’s point of view. However, the issue needs to be viewed from the perspective of the changed tariff regime. The situation has changed now because

(i) The Authority has decided to impose a reasonable ceiling on the amount that a cable operator or an MSO can charge from the subscribers. This will compel MSOs and cable operators to pass on the financial benefit to the subscribers. This was not the case earlier.

(ii) Competition is now growing from the DTH operators, and wherever the DTH operators have a reasonable presence, it will act as a further check to ensure that benefits

are passed on to the subscribers by the MSOs and cable operators. This competition is only going to grow rapidly in future.

3.25 Authority was also conscious of the apprehension about multiplicity of tariffs for channels introduced at different times as stated in para 3.22 above. Therefore, all the existing pay channels and new pay channels have been kept on equal footing, i.e., both these types of pay channels are compulsorily to be provided on a-la-carte basis in addition to the bouquet, if any.

3.26 Under the circumstances, the proposed tariff dispensation now provides that the broadcasters will compulsorily offer channels on a-la-carte basis to the multi system operators and cable operators. It has also been provided that if an a-la-carte rate does not exist for a pay channel, the same will be declared by the broadcasters within seven days from the date of coming into force of the tariff order.

G. Issue No. 7: Issue of connectivity and revenue

3.27 The payments made by cable operator to MSO, and by MSO to the broadcaster depend on the number of subscribers that are being provided with the signals. However, in the unaddressable analogue mode of cable transmission, it is extremely difficult to assess the correctness of the subscriber base being reported by the cable operator to the MSO, and by the MSO to the broadcaster. As a result, the determination of the subscriber base becomes a matter of negotiation, leading to frequent disputes. The extent of the problem can be gauged from the fact that this determination of the subscriber base involves negotiations between about 15 broadcasters and nearly 6000 MSOs, and between these MSOs and about 70,000 cable operators almost on an annual basis. Moreover, the process of addition to reduction in subscriber base due to changes in areas of operation of 6000 MSOs and 70,000 cable operators is a continuous process, and it is not feasible in non-addressable mode to put any freeze on the subscriber base, as suggested by some groups representing the cable operators and MSOs. This is because there would be continuous change, even within the same area of operation, due to factors such as spread of DTH, competition from another MSO or cable operator, or a normal churn in the subscriber base. Consequently, no freeze can be put on the total amount being paid by a cable operator to an

MSO, or by an MSO to the broadcasters. During the open house discussions, several suggestions were made for determining the level of connectivity. These include population of the town/city, number of television sets sold, number of house tax/property tax payers, number of electricity connections etc. However, none of these suggestions are feasible because in a town/city, there would be a large number of cable operators (with their number running into hundreds in large cities). It would be practically impossible to get a third party to carry out surveys on an annual basis for the respective areas of operation of 70,000 cable operators all over the country in a manner which would be acceptable to all parties.

3.28 It has been suggested that the viewership ratings by private agencies should be used to determine the levels of connectivity and the revenue share. This has also been examined. Without holding anything against the work of such agencies, Authority is not inclined to adopt this method because there is a significant difference between viewership and connectivity. This is because viewership refers to number of persons actually watching a channel, whereas connectivity refers to the number of subscribers to whom the bundle of channels are being supplied by the MSO/cable operator, irrespective of the fact whether a particular channel is being watched by a particular subscriber or not. This distinction is inherent in the very nature of non-addressable analogue cable transmission. These ratings are a useful tool for advertisers, but would not be useful for determining connectivity across thousands of operators and across the length and breadth of the country.

3.29 The Authority, as discussed above, has carefully explored the options available for determining connectivity and has come to the conclusion that the methods suggested are highly subjective and would be prone to give rise to more disputes. Accordingly, the Authority has decided not to determine the levels of connectivity between the stakeholders. The Authority is firmly of the view that the solution to this problem lies in introduction of addressability for which steps are being taken as indicated in para 3.12.

4. Conclusions

4.1 Based on the foregoing analysis, the Authority has come to conclusion to have a tariff dispensation having features of the existing tariff order, while providing for the

maximum amount of charges beyond which a service provider can not charge from the subscriber. This would be done best by suitably amending the existing tariff order. Certain conclusions about the required features and the criteria which this tariff amendment order should satisfy are as under :-

Objectives of this tariff amendment order

(i) As is clear from paras 3.5 to 3.13 above, the conditions in the cable TV segment are not yet ripe enough for bringing about forbearance at this stage. Therefore, for the present, the best solution available is to amend the existing order and make provisions for removing the difficulties associated with the existing order, to the extent that is possible in non-addressable regime.

(ii) Thus, it is important that the revised tariff dispensation must be transparent to the extent possible and easy to understand from the subscriber's point of view. The subscriber must also be empowered to enforce the tariff order. Simultaneously, since the number of pay channels has increased manifold in the last three years, the reference date of 26.12.2003 needs to be updated to current level.

(iii) The new tariff dispensation, while protecting the subscriber's interests as already mentioned above, should also make sure that the levels of revenue inflows are not severely impacted, as otherwise in the absence of required funds for investment, the objective of network upgradation and digitalization will suffer a setback, which will also not be in the subscriber's interests. Some increase in the cable charges is also required in the interest of service providers to enable them to provide better services to the subscribers.

(iv) The revised tariff dispensation should also make sure that the unique strength of the existing non-addressable analogue transmission to cross-subsidise the cable charges between the richer and poorer sections of a given subscriber base (i.e., pay-as-you-can) should not be severely affected.

Criteria incorporated in amending the tariff order

4.2 Based on the above analysis, the Authority has come to the conclusion that after learning from the experiences of the present tariff dispensation and given the limitations of the existing non-addressable analogue transmission, the tariff amendment order should have the following elements:

(i) The reference date needs a revision for the purposes of clarity and ease of implementation for all the players in the delivery chain, particularly for the subscribers. The Authority has, therefore decided to revise the reference date from 26.12.2003 to 01.12.2007. The 4% increase in the prevalent charges is the one which was already allowed by the Authority vide its tariff amendment order dated 29.11.2005. This amendment order allowing 4% increase was stayed by the Hon'ble TDSAT in an appeal filed by a consumer organisation. Subsequently, this appeal was disposed of vide Hon'ble TDSAT order dated 21.12.2006 as mentioned in para 1.3(b) of this explanatory memorandum. The increase upto 4%, allowed now, will not be applicable in those cases where charges have already been increased by 4% after the Hon'ble TDSAT order dated 21.12.2006.

(ii) Moreover, in order to protect the interests of the subscribers in a transparent manner, specific ceilings in absolute terms have to be prescribed. This would mean that every subscriber should know the maximum amount beyond which he cannot be charged by the cable operator. These ceilings should be related to the number of channels received, as well as to different types of habitations (i.e., cities, towns, semi-urban areas etc.). At the same time, the total number of such slabs/ceilings should not be too large, as otherwise it may confuse the ordinary subscriber and become difficult to implement. These ceilings are only the upper limit (excluding taxes) upto which a consumer can be charged for a particular slab. However, if the charge after an increase by 4% as mentioned in sub-para (i) above, is less than the ceiling prescribed in the schedule for a particular slab, then the cable operator can only charge upto the amount so increased and not upto the ceiling prescribed. This can be illustrated by an example where a subscriber in a category 'A' city is receiving 35 FTA and 35 pay channels and paying Rs. 150/- (excluding taxes) as on 1.12.2007. Although the ceiling prescribed in the schedule is Rs. 235/-(excluding taxes), the cable operator can only charge upto Rs. 156/- [150/- + (4% of 150/-)] only.

(iii) The ceilings should be such as to ensure continuity of adequate revenue inflows so as to enable the service providers to invest in network upgradation.

(iv) Since the Authority is fixing only the maximum amount beyond which a cable operator can not charge from the subscriber, the option for the cable operators to determine charges with reference to purchasing power of the subscribers has been retained with the added feature of ceiling.

(v) Keeping in view the apprehension of some of the stakeholders regarding the tendency to increase the cable charges towards the ceiling for those subscribers who are paying less than the ceiling, the Authority has decided that the existing cable charges may be increased by an amount not exceeding 4%, as already permitted by the tariff amendment order of 29.11.2005. Correspondingly, such provision for the increase of 4% in the rates is also extended to the broadcasters.

(vi) The Authority is also conscious of the fact that for the growth of the broadcasting services sector, an enabling environment should be available for introduction of new channels or conversion of FTA to pay and pay to FTA on continuous basis by the broadcasters. However, rates of new channels must be similar to the rates of similar channels. This feature of the existing tariff order has been substantially allowed to continue. At the same time, the broadcasters are free to form new bouquets which may consist of both old and new channels, subject to fulfillment of requirements of clause 3C of the amended tariff order. While it is so, the broadcasters must continue to provide the bouquets existing as on 01.12.2007 without any change in composition in so far as pay channels are concerned. The rates of such existing bouquets also must not be increased by more than 4%.

(vii) The tariff order should make it compulsory for the cable operators to issue bills and receipts to the subscribers, which will empower the subscribers with enough documentation to approach any forum for resolving any disputes or grievances.

(viii) Since the cable operators and MSOs can no longer charge beyond the ceiling from the subscribers and since they have to continue to deliver quality channels and content within this ceiling to their subscribers, it becomes necessary to enable them to acquire content in a manner consistent with the imposition of ceiling at the subscriber's end. It is thus obvious that putting a ceiling on the cable operators and MSOs has a natural corollary, namely, that some checks also need to be correspondingly put on the broadcasters about the manner in which channels are marketed and sold by them to MSOs and cable operators. As already pointed out in paras 3.20 to 3.22 above, the bouquet method of marketing the channels results in financial burden on the MSOs and cable operators because they are required to pay to the broadcasters based on a uniform connectivity for all the channels within the bouquet, even though all the channels may not be equally watched by the

subscribers. This financial burden is then passed on to the subscribers and built into their monthly cable charges. Therefore, the Authority has decided that broadcasters should compulsorily provide their channels on a-la-carte basis to the MSOs/cable operators as per their request. In addition, they may also provide channels on bouquet basis. However, in order to ensure that the MSOs/cable operators get an effective a-la-carte choice without being handicapped by perverse pricing of bouquets, the Authority has decided to mandate a relationship between a-la-carte rates and bouquet rates. For this purpose, the pricing relationship which has already been tested in the case of certain specified commercial subscribers both in CAS and non-CAS areas is being adopted.

(ix) Further, the Authority is of the view that merely mandating a pricing relationship between a-la-carte and bouquet rates will not be enough, because such a requirement can always be fulfilled even when the a-la-carte and bouquet rates are increased manifold as compared to the existing rates. This will defeat the very purpose of the tariff order. Therefore, the Authority has decided not to allow any increase in the rates of bouquets except for an increase of 4% over the rates existing on 1.12.2007. Similarly, the a-la-carte rates of such pay channels which are not part of any bouquet as on 1.12.2007 and which are being offered on stand alone basis will also not be increased by more than 4% . These provisions are necessary to ensure that there is no disruption on account of non availability or high rates of existing bouquets and channels, and the subscribers do not have to suffer on this account. The Authority expects that the broadcasters would honor the prevailing rates at which they are providing broadcasting services to MSOs, cable operators or to the commercial cable subscribers, as the case may be, and would not increase the rates except as provided for by the tariff order.

(x) The Authority has consciously decided that with the exception of clause 3C of the tariff order, the rest of the provisions of the tariff order will not apply to cable services delivered through addressable system in non-CAS areas. This would, in particular, mean that such of those MSOs and cable operators which are implementing voluntary CAS in non-CAS areas would be largely outside the purview of this tariff order so long as their area of operation is not notified as a CAS area. This is expected to give a boost to the introduction of CAS on voluntary basis. However, such cable transmissions which are

digital in nature but without addressability and without conditional access would continue to be covered under this tariff order.

Determination of tariff ceiling

4.3 The above analysis brings us to the important issue relating to the determination of tariff ceiling. While doing so, the Authority has been guided by the following, namely:-

(i) The Authority is of the opinion that for determining the ceilings, we need to form appropriate matrix or slabs of habitations and number of channels. The optimum classification for the habitations would be to divide them into three categories, viz., class “A-1 and A Cities”, “B-1 and B-2 Cities” and “others areas”. This classification would be essentially based on a similar classification available in the office memorandum of the Ministry of Finance, Govt. of India, for the purposes of house rent allowance. The list of cities/towns falling in A-1, A, B-1 and B-2 categories, as per O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004 is annexed to this explanatory memorandum.

(ii) As far as FTA and pay channel slabs are concerned, the Authority noted that the cable networks in the country would essentially fall in four categories. One category is of a small number of such cable networks which are found in smaller towns and in semi-urban areas which carry only free to air channels. Most of the cable networks would fall in the second and third categories which are transmitting upto or less than 60-80 channels, carrying a mix of FTA and pay channels. The fourth category would be those cable operators which have upgraded their network to provide digital service and are capable of transmitting more than 80 channels.

(iii) A market study commissioned by TRAI has reported that the average monthly cable charges (or ARPU, i.e., average revenue per user) is Rs. 200 per month, including taxes.

Media Partners Asia in their Asia Pacific Report for 2007 have reported that the ARPU level in 2006 was approximately Rs. 160 per month. FICCI, during their annual media event FICCI Frames, 2007, have estimated the ARPU level to be Rs. 143 per month. If we take the average of these three ARPUs reported by different organizations, then we find that the average ARPU works out to about Rs. 168 per month, including taxes. Thus, the Authority’s effort is that the tariff ceilings should be fixed in such a manner that the overall average derived from these ceilings is close to Rs. 168 per month, so that the

broadcasting and the cable TV sector does not suffer a revenue shock which will also be detrimental to consumer's interests in the long run.

(iv) Another benchmark is provided by the two DTH operators. One operator is offering 4 packages, of which two packages come close to the two dominant channel slabs of this tariff order ceiling, viz., 30 or more FTA plus upto 30/50 pay channels. The two packages of this operator which come closest are one offering 32 FTA + 40 pay channels for Rs.250 (including taxes), *and the second package offering 34 FTA + 61 pay channels for Rs. 300 (including taxes)*. Similarly, another operator is offering three packages, of which the package closest to the two dominant channel slabs of this tariff order ceiling is one in which 23 FTA + 58 pay channels are offered for Rs. 240 (excluding taxes), and if the taxes are factored in for comparison, then the price of the package would be around Rs. 300. Based on this, it can be safely said that the indicative price for 30 FTA + 50 pay channels would be about Rs. 275 (including taxes).

(iv) An indication of the ceiling can also be obtained from CAS rates. The two major MSOs operating in CAS areas are giving discounts while offering their packages of pay channels, apart from offering a-la-carte rates as per rules. Thus, Hathway is giving a discount of 29% on the price of 34 pay channels offered in their 'family pack' package. Similarly, IMCL is offering a discount of 23% while offering 31 pay channels in their 'optimiser' package, and a discount of 38% while offering 62 pay channels in their 'super saver' package. Thus, it can be said that the market is offering an average discount of about 30% while offering pay channels as bulk offering in their packages. If this discount is applied on the a-la-carte CAS price of Rs. 150/Rs. 250 for say, 30/50 pay channels, then we get a discounted price of Rs. 105/Rs. 175 for 30/50 pay channels. If we add Rs. 77 for 30 or more FTA channels, then we come to a price of Rs. 182/Rs.252 (excluding taxes), *or a corresponding price of Rs. 235/Rs. 314 including taxes* for the example taken of 30/50 pay channels.

(v) Thus to sum up, the following market information has been found useful in determining the ceilings:

- (a) ARPU levels in the country are around Rs.168 per month including taxes.
- (b) A comparable DTH package for 30 FTA + 50 pay channels would cost about Rs. 275 including taxes.

- (c) A comparable package in CAS areas would cost Rs. 182/Rs. 252 (excluding taxes) or Rs.235/Rs. 314 including taxes for the illustrative case of 30/50 pay channels.

4.4 A detailed analysis has been carried out by TRAI regarding pricing of cable services. This analysis shows that the ARPU level likely to emerge from the prescribed tariff ceilings is Rs. 151.68. or Rs. 152 per month including taxes if no increase is allowed. After factoring in a permitted increase of upto 4%, the resultant ARPU levels will be Rs. 158/- which is close to the existing ARPU level of Rs. 168 prior to the tariff amendment order. Similarly, the market information relating to DTH and CAS operations (DTH being present at the moment mainly in class 'A-1 & A' and 'B-1 & B-2' cities, and CAS being available only in four metros) shows that the predominant tariff ceilings of Rs. 200/Rs. 250 and Rs. 175/Rs. 210 (excluding taxes) in class 'A-1 & A' and 'B-1 & B-2' cities compares very well with similar DTH offering at Rs. 275 (including taxes) and CAS offering at Rs. 182/Rs. 252 (excluding taxes). Therefore, the Authority is of the view that the tariff ceilings prescribed in the tariff order after considerable deliberations are appropriate both for protecting the subscriber's interests as well as of service providers. It shall be closely monitored and a review would be undertaken at an appropriate time.

ANNEXURE I TO THE EXPLANATORY MEMORANDUM

List of Cities and Towns as per O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004 issued by the Ministry of Finance (Department of Expenditure).

TABLE

	A-1 Class Cities		A-Class Cities		B-1 Class Cities		B-2 Class Cities
1	Bangalore (U/A)	1	Ahmadabad (U/A)	1	Agra (U/A)	1	Aurangabad (U/A)
2	Chennai(U/A)	2	Jaipur	2	Allahabad (U/A)	2	Aligarh
3	Delhi (U/A)	3	Kanpur (U/A)	3	Amristar(U/A)	3	Amravati
4	Greater Mumbai(U/A)	4	Lucnkow (U/A)	4	Asansol (U/A)	4	Bareilly(U/A)
5	Hyderabad (U/A)	5	Nagpur(U/A)	5	Bhopal (U/A)	5	Belgaum (U/A)
6	Kolkata (U/A)	6	Pune(U/A)	6	Coimbatore (U/A)	6	Bhavnagar(U/A)
		7	Surat (U/A)	7	Dhanbad(U/A)	7	Bhiwandi (U/A)
				8	Faridabad (U/A)	8	Bhubaneshwar (U/A)
				9	Indore(U/A)	9	Bikaner(U/A)
				10	Jabalpur(U/A)	10	Chandigarh
				11	Jamshedpur(U/A)	11	Cuttack (U/A)
				12	Kochi(U/A)	12	Dehradun(U/A)
				13	Ludhiana (U/A)	13	Durg-Bhilai
				14	Madurai(U/A)	14	Ghaziabad
				15	Meerut(U/A)	15	Gorakhpur
				16	Nashik(U/A)	16	Guntur
				17	Patna(U/A)	17	Guwahati (U/A)
				18	Rajkot(U/A)	18	Gwalior (U/A)
				19	Vadodara(U/A)	19	Hubli-Dharwad (U/A)
				20	Varanasi (U/A)	20	Jalandhar(U/A)
				21	Vijayawada (U/A)	21	Jammu
				22	Vishakhapatnam(U/A)	22	Jamnagar(U/A)
						23	Jodhpur
						24	Kolhapur (U/A)
						25	Kota
						26	Kozhikode (U/A)

						27	Mangalore (U/A)
						28	Moradabad
						29	Mysore (U/A)
						30	Nagar (U/A) (Chattisgarh)
						31	Pondicherry(U/A)
						32	Raipur(U/A)
						33	Ranchi
						34	Salem(UA)
						35	Solapur
						36	Srinagar
						37	Thiruvananthapuram (U/A)
						38	Tiruchirappalli (U/A)
						39	Tiruppur(U/A)
						40	Warangal(U/A)

ANNEXURE II TO THE EXPLANATORY MEMORANDUM

A detailed consultation paper was issued on 21st May 2007 requesting for comments and suggestions on the followings:

- I In view of the facts that there are questions of effectiveness of the existing tariff regime, and because there have been developments over the last two years leading to increased competition from other alternative platforms, should there be a total forbearance of tariff in the non-CAS areas?
- II. In the event that answer to (I) is 'yes', is there a need for providing checks and balances and if so what specific measures would be required from the point of view of providing protection to the subscribers?
- III. In case forbearance as an option is not advisable,
 - a) Should the existing ceiling on cable charges payable by the Cable Subscriber to Cable Operator, Cable Operator to MSO and MSO to Broadcasters as prevailing on 26.12.2003 be allowed to continue for non- CAS areas with adjustments on an annual basis for inflation based on wholesale price indices as done presently?
 - b) If the existing approach for inflation adjustment based on wholesale price indices is not appropriate, would the method of indexing used for determining cost of assets for the purpose of capital gains tax be an appropriate method? If not, what other alternative methods could be thought of ?
 - c) In case of the option at (III) (a) is to be considered, should the reference date for determining the ceiling on cable charges be shifted to 1.1.2007 instead of the existing reference date of 26.12.03, and then permitting changes thereafter for new channels and annual inflation adjustment etc?
- IV.(a) Can the existing regime be replaced by prescribing an overall ceiling on monthly cable charges (exclusive of taxes) payable at the level of the end consumers? If this is to be done, how would the following aspects be dealt with:

- i) Whether the overall ceiling on monthly cable charges can be determined in the manner indicated in para 2.27 of the consultation paper? Is there any other method of arriving at the specified ceiling on monthly cable charges and what that method should be?
- ii) Should there be a single overall ceiling on monthly cable charge or should there be different ceilings separately for metros, urban areas and non-urban areas? If so what should that ceiling be in respect of each such category of areas and how such ceiling should be arrived at? What should be the yardstick or basis for categorization of areas into metros, urban and semi urban areas?
- iii) Should the overall ceiling on monthly cable charges be accompanied by a prescription of a minimum number of FTA channels and pay channels? Would the suggestion contained in para 2.26 of the consultation paper be acceptable? If yes what would be the appropriate number of channels separately for FTA and Pay that should be specified?
- iv) If such overall ceilings are fixed, then how and at what periodicity should this be reviewed, in view of various market developments that may come about? An appropriate methodology for factoring in the impact of such market development in the overall ceiling may also be suggested.

IV.(b) In the event of the proposal at IV (a) above being considered, what method should be adopted in respect of tariff determination in regard to cable charges payable by MSO to broadcaster and by Cable Operator to the MSO? Can the tariff determination be left to the market forces?

IV(c) In view of the fact that even in non-CAS areas, the transmission of channels from the broadcaster to the MSO is in 'addressable' format, would it be advisable to allow a-la carte choice for MSOs in the context of observations contained in para 2.25 of the consultation paper? If so, what should be the elements of such tariff regulation at wholesale level?

V. Should the decisions be different in respect of the residual category of commercial cable subscribers (other than those for whom there is forbearance in terms of tariff

amendment orders of 21st November 2006) or the decision applicable to the ordinary cable subscribers should be made applicable to them as well?

2.2 The detailed consultation paper was made available on TRAI's website www.trai.gov.in to enable the stakeholders to send in their comments. The final date for receipt of comments was 11.06.2007. A total of 24 written comments were received from the stakeholders. The comments and suggestions received were compiled and a gist of the same in a summarized form was placed on TRAI's website www.trai.gov.in on 18.06.2007. This was followed by the open house discussions in Jaipur, Hyderabad, Kolkata and Lucknow on the 4th July, 7th July, 10th July and 13th July, 2007.

2.3 An overall broad summary of comments, compiled stakeholder group wise on major aspects of the issues posed for consultation is given below:

A) Group representing the subscribers/consumers

- i) On the issue of forbearance: No forbearance should be there.
- ii) On continuance of existing regime with or without modifications:
 - o The existing tariff regime has protected the industry from downward revision of charges. The existing tariff should rather be brought down (VOICE)
 - o The existing ceiling should continue but the ceiling should be for all levels based on MRP system. For instance, if ceiling MRP (for consumer) is Rs. 200 the ceiling for LCO to MSO should be Rs160 (200-15%), the ceiling from MSO to Broadcaster to be Rs136 (Rs 160-15%) (Grahak Hitvardhini)
 - o The existing system of su-motu revision of prices based on WPI is not acceptable.
 - o Price increase should be considered only on specific demand and after giving consumers an opportunity to explain and increase should be once in two years.
 - o Change in reference date to 1.1.07 for determining ceiling would not be appropriate and will be illusory.
- iii) On the issue of revision of existing regime to provide for a ceiling at end consumer level and related questions (the views expressed in regard to some questions are not clear, and at some places it is even contradictory):

- There should be a specific tariff stipulated and control should continue till DTH/IPTV gives real challenge.
 - CAS price of Rs.5 should be used as the benchmark and on that basis the rate should be: Rs 1/-villages; Rs.2/- at Tehsil towns; Rs.3/- in district cities; Rs. 4/- in capital cities and Rs, 5/- in Metro cities.
 - The ceiling proposed by TRAI is acceptable but should be minus inflation adjustment. The ceiling should not exceed Rs. 200 and should be comparable to DTH and CAS bill (for 15 pay channels). There should be uniform ceiling across the country. On the number of channels, the suggestion is 30 FTA plus 30 pay channels (the minimum proposed is contrary to the ceiling suggested of Rs 200 for 15 pay channels).
 - Some others do not support the overall ceiling on monthly charges. Pay channels with an a-la-carte price coupled with the ceiling on FTA charges would automatically determine the bouquet prices Differential prices for urban, metros and non-urban areas would be preferable. Prescription of a minimum number of pay channels is not necessary if pay channels have a-la-carte prices.
- iv) On the issue of periodicity of review of tariff:
- No review necessary, Market forces will take care of developments
 - Reviews should be biannual
- v) On the issue of determination of tariff between MSO/LCO/Broadcaster:
- Ala carte option with price should be adopted
 - It should be left to market forces.
- vi) On the issue of providing channels to MSOs on a-la-carte basis:
- Ala-carte is desirable and should be permitted.
- vii) On tariff charged for commercial subscribers:
- Commercial cable subscribers should also be benefited by controls. Different prices should be fixed for commercial subscribers.
- B) Group representing broadcasters**
- There should be total forbearance. However, one broadcaster has suggested consumer end price ceiling as proposed with forbearance for others.

- Revenue share to be left to market forces. Even now the sharing of revenue between broadcaster/MSO is being done by mutual agreement only.
- Proposals in the consultation paper reflects mere tinkering attempt without addressing real issues. Inflation based adjustment not at all appropriate and does not reflect growing costs of acquiring content.
- Sports broadcasters acquire content at huge costs and the tariff regime has been having a devastating affect.
- Even if price is to be regulated
 - there should be sunset provision for price regulation
 - Benchmark to be defined for determination of existence of adequate competition.
- No ala-carte choice at the wholesale level should be permitted, as the consumer in the absence of addressable system will not benefit.

C) Group representing multi system operators, cable operators etc

(i) On the issue of total forbearance:

- The overwhelming view of the group is against total forbearance for the present.
- But views on the time limit and circumstances under which existing tariff control should continue have varied. These are
 - Till addressability (mandatory/ voluntary) is introduced/ digitalization progresses.
 - Till 2010 when commonwealth games begin.
 - Till the DTH/IPTV service matures to provide competition.
 - Till clear cut regulations are put in place indicating under what circumstances the broadcasters can increase their charges (rate as well as connectivity).

(ii) On the issue of continuance of existing tariff regime with or without modifications (there are shades of variation in views, and only broad and overall view has been captured here):

- One common view is that the existing regime could continue but ceiling should be on total pay out - both on rate and connectivity.

- Any new pay channel to be introduced only on a-la-carte basis.
 - If ceiling on total pay out to broadcasters is not provided then the freeze between cable operators and consumer on account of new pay channel and increased connectivity should be lifted. (WWIL)
 - Adjustment for inflation based capital assets index not appropriate.
 - Existing regime was an adhoc measure and adjustment based on inflation index is inappropriate.
 - On the suggestion of shifting of date of reference for ceiling to 1.1.07 there are views both for and against. The views in favour of shifting the reference date to 1.1.2007 also require some of the changes suggested above to be incorporated in the existing tariff regime.
- (iii) On the replacement of the existing regime with an overall ceiling and its related questions. (There are shades of variation in views. Only broad and overall views have been captured here.):
- While some MSOs are against the overall ceiling, some others seem to recommend such a ceiling and have made specific suggestions as to what could the slabs be and the number of channels that could be linked to the slabs.
 - Some have suggested specific ceiling slabs based on number of channels, for different areas, network.
 - An industry observer has stated that an overall ceiling on per channel basis be fixed between broadcaster and MSO. Requirement of minimum number of channels can be for FTA and the number for pay channels should be left to service provider.
 - A view has also been expressed against the overall ceiling stating that if the ceiling is still considered to be imposed then:
 - There should be a clear definition of the distribution margin between broadcasters, MSOs and LCOs as well.
 - Broadcasters should provide the option of a-la-carte choice to MSOs
 - The number of FTA /pay channels linked should remain same or more for a year.
 - MSOs /LCOs to be mandated to show a certain fixed number of FTA channels in all genres with specific preference for regional language.

- Price regulation should not be inimical to move towards digitalization and addressability.
 - Review of ceiling should be on annual basis and new pay channel addition only on a-la-carte basis.
- (iv) On the method of determination of cable charges payable between broadcaster/MSO/LCO and giving a-la-carte option to MSOs:
- The tariff determination should not be left to market forces
 - One suggestion is to allow current system of mutual negotiation for particular area.
 - Broadcasters should sell their channels on a-la-carte basis and pay channel revenue should be as in CAS area i.e. (45% for broadcasters, 30% for MSO and 25% for LCO)
 - A-la-carte choice of channels should be given to the MSOs in addition to bouquets.
 - If the same channel is taken in bouquet, then a-la-carte rate should apply to bouquets also
 - There should be a regulation providing for a relation between the bouquet price and sum of individual channel price in the bouquet.
- v) Tariff dispensation for commercial subscribers:
- rates payable by commercial subscribers should be same as that of ordinary cable subscribers unless the commercial subscribers are given signals through a dedicated lines or receive signals directly from broadcasters.
 - rates to big commercial cable subscribers can be 3 times the ordinary rates.
 - In the agreements with broadcasters, the MSOs/LCOs through whom the commercial subscriber is getting the feed should also be made a party (a tripartite agreement should be there).
 - A hotel association has opposed our decision to keep the select category of commercial cable subscribers (3 star hotels and above) out of tariff control as being unjust and unfair.

Thus it could be seen that there are variations in the perceptions and views of the stakeholders. In the open house discussions, which were held at four places, essentially the same views were echoed by the participating stakeholders.
