

Consultation Paper No.5/2006



TELECOM REGULATORY AUTHORITY OF INDIA

CONSULTATION PAPER ON

ISSUES RELATING TO COMMERCIAL TARIFF FOR BROADCASTING AND CABLE TELEVISION SERVICES

NEW DELHI

APRIL 21st , 2006

**TRAI HOUSE
A-2/14, SAFDARJUNG ENCLAVE
NEW DELHI-110029**

Table of Contents

| Sections | | Page No. |
|--------------|---|--------------|
| | Preface | 1 |
| Section -1 | Introduction and Background | 2-4 |
| Section -2 | Definition and Issues relating thereto of the term Commercial Cable subscriber | 5-9 |
| Section -3 | Need for fixation of Commercial Tariff | 10-12 |
| Section -4 | Method and Manner of fixation of Commercial Tariff | 13-15 |
| Section -5 | Issues for Consultation | 16 |
| Annexure-I | The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006 (2 of 2006) dated 07.03.2006 | 17-21 |
| Annexure-II | The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fifth Amendment) Order 2006 (4 of 2006) dated 24.03.2006 | 22-25 |
| Annexure-III | The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated 1.10.2004 and amendments dated 26.10.2004 & 1.12.2004 | 26-36 |
| Annexure-IV | Relevant extracts of recommendations on “Issues relating to Broadcasting & Distribution of TV Channels” dated 1.10.2004 | 37-38 |

PREFACE

This Consultation Paper by TRAI deals with the issue of commercial tariff for broadcasting and cable television services. The Tariff Order dated 1.10.2004 did not distinguish between commercial and other services. While dealing with a batch petitions filed by the Hotel and Restaurant industry, the TDSAT in its judgment dated January 17, 2006 concluded that the Tariff Order does not cover commercial services. Accordingly, TRAI decided as an interim measure to amend the Tariff Order and provide for a ceiling for commercial tariff also. This ceiling was fixed as the tariff as on March 1, 2006. This Tariff Order was issued on March 7, 2006.

As indicated in the explanatory memorandum to the Tariff Order the issue of the need or otherwise to fix tariff for commercial purpose and the method and manner of fixing specific commercial tariff are connected issues and needs a detailed consultation and examination. This paper brings out the relevant background as well as the specific issues for consultation. Section-1 brings out the background and the need for this consultation. Section-2 deals with issues relating to the need or otherwise for fixation of commercial tariff. Section-3 goes into the details of how commercial subscribers can be defined and classified. Finally, Section-4 discusses various modes of fixation of tariff for commercial consumers. Section 5 contains a summary of issues posed for consultation.

Written comments on the issues raised may please be furnished to Secretary, TRAI by May 12, 2006. For any further clarification on the matter Secretary, TRAI may be contacted on rstrai@gmail.com (Telephone No.011-26167448) or Advisor (B&CS) on rkacker@trai.gov.in (Telephone No.011-26713291). The fax number of TRAI is 011-26713442).

**(Nripendra Misra)
Chairman**

New Delhi
April 21, 2006

SECTION : 1 INTRODUCTION AND BACKGROUND

1.1 TRAI had issued a Tariff Order on January 15, 2004. This Tariff Order imposed a ceiling on tariffs at the levels of December 26, 2003. Subsequently after detailed consultations, this Tariff Order was repealed and a new Tariff Order dated October 1, 2004 was issued. The new Tariff Order, while continuing with the December 26, 2003 benchmark for old channels had provisions for launch of new pay channels and conversion of free to air channels to pay. In the Recommendations on Broadcasting and Distribution of TV channels the Authority had also indicated that the ceiling shall be reviewed periodically to make adjustment for inflation. it was also stated that the price regulation is only intended to be temporary and as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. The Tariff Order did not define the word "cable subscribers" and no distinction was expressly provided between ordinary cable consumer and a commercial cable consumer.

1.2 A batch of petitions was filed by a couple of Associations of Hotels and Restaurants together with a hotel against leading broadcasters and their authorized distributors in Telecom Disputes Settlement and Appellate Tribunal. The dispute basically pertained to the fact whether the hotels and restaurants can be equated with domestic consumers for the provision of cable TV service besides other connected and consequential issues under adjudication. The Hon'ble TDSAT while adjudicating on the issues of dispute in its judgment dated 17th January, 2006 in Petition No. 32(C) of 2005 (M.A.No.84 of 2005) and Petition No.80(C) of 2005 (M.A.No.239 of 2005) in the light of the provisions of Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) of 1.10.2004 had observed inter alia as under:

"36.We have already concluded that the members of the petitioner associations cannot be regarded as subscribers or consumers. As such we are of the view that the above tariff notification of the TRAI would not be applicable. It seems that TRAI has found it necessary to fix the tariff for domestic purpose. We think the Regulator should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring about greater degree of clarity and to avoid any conflicts and disputes arising in this regard

37. In view of the above, we are of the opinion that the respondents are well within their rights to demand members of the petitioner associations to enter into agreements with them or their

representatives for receipt of signals for actual use of their guests or clients on reasonable terms and conditions and in accordance with the regulations framed in this regard by TRAI”.

1.3 The Authority after deliberating on the observations made by the Hon’ble TDSAT considered that the issue of the need or otherwise to fix tariff for commercial purpose and the method and manner of fixing specific commercial tariff are connected issues and needs a detailed consultation and examination. Meanwhile the Authority after considering a representation received from a hotel association decided as an interim measure to extend the protection of ceiling on cable charges to commercial Cable subscribers at the level prevailing on 1.3.2006. To give effect to this decision a Tariff Amendment Order (fourth amendment) was notified on 7th March 2006. It was indicated in the explanatory memorandum that the proposed amendment is intended to be a short-term measure and would be reviewed on the basis of detailed examination through a consultation process.

1.4 As a first step meetings with hotel associations and broadcasters who were the parties in the proceedings before TDSAT were held on 16.3.2006 and later with the agents of the broadcasters on 23.3.2006. The meetings were essentially to understand the current commercial practice and get inputs for preparation of the consultation paper. Based on the representations made by the Broadcasters a clarification was issued by amending the tariff order on March 24th, 2006. This amendment was meant to clarify that whether payment should be made to Broadcasters or to MSOs/Cable Operators would be governed by the terms of the agreement between the concerned parties. Copies of these orders are at **Annexure-I & II**.

Another round of meetings were again held on the 5th April and 7th April 2006 to further carry the process of consultation. A number of views were expressed during the meetings and written submissions made by the participants in the meeting. Representations have also been received from individual institutions other than hotels and restaurants. Based on these inputs this Consultation Paper has been prepared for getting structured inputs that would help to arrive at a final decision in this matter.

1.5 In the meanwhile an appeal had been filed by M/s Set Discovery Limited in the TDSAT against the tariff amendment order dated March 7, 2006. This had been heard by TDSAT and final orders have been passed dismissing the appeal. M/s Star India Limited have also filed a writ petition in the Delhi High Court against this order and this petition is yet to be disposed off.

1.6 Format and composition of the Consultation Paper

The Consultation Paper has been divided into following sections:-

Section 1: Introduction and background.

Section 2: Definition and issues relating thereto of the term Commercial Cable Subscriber.

Section 3: Need or otherwise to fix commercial tariff.

Section 4: Method of determining the commercial tariff.

Section 5: Issues for consultation.

SECTION 2: Definition and Issues relating thereto of the term Commercial Cable Subscriber.

Overview

2.1 The Hon'ble TDSAT in its judgment referred to in para 1.2 above has viewed the consumer as an ultimate user of goods on the basis of the conjoint reading of the judicial and dictionary definitions of the word consumer. The words ordinary Cable Subscriber and Commercial cable subscriber defined in 'The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006 date March 7 2006 has essentially followed this principle and is based on the nature of end use. The Ordinary Cable subscriber has been defined as to mean any person who receives broadcasting service from a cable operator and uses the same for his /her domestic purposes. On the other hand a 'Commercial Cable Subscriber' has been defined to mean any person who receives broadcasting service at a place indicated by him and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place. A copy of the fourth Amendment Tariff Order dated March 7 2006 is attached as **Annex I.** From current industry practice the following 3 classes of commercial subscribers can be found:-

- i) Those that take their feed directly from Broadcasters
- ii) Those that take their feed from the MSOs/Cable Operators but make payment to the Broadcasters as well as MSOs/Cable Operators
- iii) Those that take their feed from the MSOs/Cable Operators and pay only to the MSOs/Cable Operators.

Problems and difficulties

2.2 The term 'Commercial Cable Subscriber' as defined in the above said amendment order would bring within its ambit not only hotels and restaurants but also a whole range of establishments in the organized and unorganized sector which are using the signals received for other than his /her domestic purposes. This definition can also give rise to questions in a number of cases particularly of small shops and establishments as to what would constitute use for domestic purpose. A shopkeeper may use a small television set in his shop for his own viewing pleasure and not specifically for the clients who visit his shop. An organisation may have a TV Set installed for viewing by employees as a source of recreation and keeping their employees updated on the developments across the world. Further there can be situations of mixed

usage, say a cricket match where it may be difficult to distinguish the use of signals as for domestic purpose or for the purpose of clients.

2.3 There are a number of establishments such as hospitals and institutions both in the private and public sector primarily engaged in welfare and philanthropic activities, educational institutions particularly government run, religious institutions which may not be commercially exploiting the television signals, but could get covered by the above definition. The basic objective of these institutions by and large excepting large private hospitals and educational institutions may not be to commercially exploit the broadcasting services. A view has to be formulated as to whether such institutions are to be categorized differently from ordinary cable subscribers even though the signals are primarily meant for the customers and clients of such institutions.

2.4 Interactions with the broadcasters and Hotel Associations during the meetings revealed that even amongst hotels and restaurants it is only 75-100 hotels which receive feed directly from the Broadcasters and almost 99 % of the hotels and restaurants receive feed directly from the cable operators. This is the ground reality though the broadcasters pointed out that the cable operators are required to take specific prior permission or license from the broadcasters before supply of signals to the commercial establishments such as hotels, restaurants, hospitals, clubs, bars, pubs and such other establishments. Most of the hotels are paying to varying amounts and the reason for this is that they are paying to the local cable operator. Had the conditions in the Interconnection Agreement been enforced, the broadcasters would have levied rates that were uniform. Thus it appears that this condition in the Interconnection Agreements with cable operators has not been strictly enforced. Broadcasters have been issuing advertisements but these may not have been noticed by the smaller establishments most of whom have not also got individual notices indicating what they should pay and to whom. The implications of this is that this majority of hotels and restaurants are even otherwise out of the revenue net of broadcasters as the cable operators who supply signals without authorization may or may not be passing on the revenue collected from these commercial consumers. It did come to notice that the broadcasters are using the services of agencies that act as their authorized agents to monitor and prevent the supply of signals without authorization.

2.5 Then there are a vast majority of small shops and establishment mostly in the unorganized sector and getting signals at the rates as for ordinary cable subscriber. This particular segment may as groups form the largest segment and in terms of size, capacity to pay, could be varying very widely but also not fall in the category of hotels and

restaurants. This makes the grouping as to who in this category should be treated as commercial cable subscribers and who should not a complex job.

Approaches to the definition

2.6 Keeping in view the complexities involved a number of options in terms of approaches to define the term Commercial Cable Subscriber may need to be explored. One approach could be to start from the grouping or categorization done by broadcasters in their existing agreements to segregate commercial users and limit the term 'Commercial Cable Subscriber' to the groups identified in the agreements with the cable operator. A perusal of the agreements of the broadcasters and discussions with them suggest that this includes Hotels, Restaurants, clubs, and offices, pubs, bars, guesthouses, cinema halls, theatres, stadiums, hospitals and clinics. This would leave out the rest of the categories.

2.7 An extension of the approach as indicated above could be to further expand the list by identifying homogenous groups of establishments based on common criterion such as, institutions recognized under a particular statute say hotels and restaurants below a particular grade or having 'X' number of rooms etc; institutions having levels of income above a threshold level, on the basis of the place where establishment is situated. This approach could mean leaving out some types of establishment and including some other and this can give rise to disputes in a totally new area. The criterion evolved for sub categorization within a category may itself raise questions of unequal treatment of constituents falling within a category and could tend to be very subjective. Any criterion evolved has to be backed by facts and figures, which may not always be available. Further there could be practical difficulties if no such criterion is available for a particular category of commercial establishments.

2.8 The second approach is to adopt the source of receiving signals as a criterion for categorizing a consumer as a commercial cable subscriber. What is intended in this approach is to group all the consumers who receive signals for the use of clients directly from the broadcaster by putting up their own headend to receive signals. The groups that receive signals through the Authorised cable operator would be kept out of the ambit of the term commercial cable subscriber. The presumption and the analogy in this approach is that an establishment, which is willing to invest in a head end, should have the capacity to pay and can justifiably be treated as a commercial cable subscriber. This approach also does not seem to be flawless because about 99% of the commercial

establishments are receiving feed through the Cable operators only and it is difficult to monitor this in the absence of addressability. This may also obviate the complexities involved in defining specific categories to be included and categories to be excluded. However, given the expenses, in putting up a headend this could lead to a very limited coverage.

2.9 There could be another approach which is based on the logic that it is desirable to evolve a broad set of criterion as benchmark to determine if a cable subscriber is a commercial cable subscriber or an ordinary cable subscriber in the cases which do not fall under a limited easily definable group based on objective criterion. This approach would have two segments – one identified groups of institutions on some reasonable objective criterion, for instance it could be hotels and restaurants above a particular grading, educational institutions with accreditation by Govt or Govt agency, bars, clubs, pubs located in metropolitan cities, social and religious organizations. The second segment would contain broad criterion to be categorized as commercial cable subscriber for judging establishments falling outside the identified group as above. The illustrative criterion which could be used on a cumulative basis could be:

- i) If Broadcasting services received are used exclusively for the purpose of clients, customers
- ii) If such service is packaged as a value added service and sold with the objective to earn profit in the ordinary course of carrying on the business of such product or service.
- iii) If the recipient satisfying the above criterion is a shop or commercial establishment having a turnover of more than Rs. 'X' lakhs.

2.10 While discussing at length the approaches in defining the term 'Commercial Cable Subscriber' it needs to be mentioned that any approach to define the term has to take into account and would necessarily depend upon the decision whether there is a need to regulate commercial tariff. If the need is felt for regulating the commercial tariff then the need to precisely define the word commercial cable subscriber assumes greater significance. In case if the decision is to leave the commercial tariff to be decided by the market forces, the existing definition could be considered sufficient

2.11 In view of the above discussion the following questions are posed for consultation

- i) ***Should the definition as contained in the Tariff Amendment Order of 7th March 2006 and reproduced below be allowed to continue?***

"(ddd) 'Commercial cable subscriber' means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place."

- ii) If the problems and difficulties enumerated above are to be addressed how this can be done without changing the definition?*
- iii) If the definition as existing requires changes how should this be done*

SECTION 3 :NEED FOR FIXATION OF COMMERCIAL TARIFF

Overview

3.1 The explanatory memorandum attached to the first tariff order of 15.1.2004 indicated that there were circumstances prevailing at that time which required tariffs to be frozen so that the domestic cable subscriber are protected from arbitrary increase in prices. The comprehensive Tariff Order of 1.10.2004 while permitting a window for increase in ceiling on account of new pay channels/ FTA channels converted to pay subject to certain conditions provided a mechanism to ensure sanctity of ceilings in respect of pay channels prevailing as on 26.12.2003. A copy of this order along with amendments dated 26.10.2004 & 01.12.2004 are at **Annexure-III**. The Tariff Order was issued along with the Recommendations on Broadcasting and Distribution of TV Channels. In these Recommendations it was recognized that it is not possible to have uniformity of rates for subscribers. It was also stated that the price controls would be removed once effective competition had been established in an area. Relevant extracts are at **Annexure-IV**.

3.2 The judgment of Hon'ble TDSAT of 17.1.2006 has now drawn attention to the question of the need or otherwise to regulate commercial tariff. On the one hand it could be argued that commercial establishments have a much better ability to pay and therefore do not need any price protection. On the other hand it could be argued that even for the largest consumers some protection is necessary if there is no choice and no competition. There is also the fact that depending on how commercial consumers are to be defined there could be a large number of small consumers with little capacity to absorb any significant increase in their rates.

Views of the hotels and its associations

3.3 The hotel associations have argued that hotels and restaurants cannot be called commercial for purposes of receiving and retransmitting of pay channels to their guests as they do not charge the guests separately as for numerous other services which the hotel provides. One association had made out a case for being charged like a cable operator (i.e with a discount) on the grounds of being a bulk buyer. The other argument advanced by a hotel association is that rates of cable charges should relate to the inherent value of the service and not where and how the services are being used. . During the interaction with hotel associations it has been pointed out that the broadcasters force the

hotels and restaurants to pay for the entire year for negotiated occupancy levels, which are far removed from the actual level of occupancy. One of the Hotel Association has also drawn a distinction between a public utility and a public facility in as much as in the case of the former comprising of electricity and water there is an element of cross subsidy for poorer section of the society. In the case of the latter which includes television services there is no cross subsidy involved. On this ground the association argues that they should be treated at par with ordinary cable consumers. The issues of bundling of channels besides lack of uniform charges for channels, absence of quality of service commensurate with the prices charged have also been raised during interaction. Broadcasters according to them have a defacto monopoly in fixing rates of pay channels. A perusal of the documents furnished by the Hotel Association indicates that the rates per room charged have varied from as low as Rs.20 to Rs. 1300 per room and per month.

Views of the Broadcasters

3.4 The broadcasters who are the proponents for no price regulation argue that commercial establishments need no protection and particularly hotels and restaurants as they simply pass on the burden to their clients. Further the hotels and restaurants are free to charge for their products and use the services provided by the broadcasters for commercial gain. It has been argued on behalf of the broadcasters that the price of the service per room per day does not even constitute approximately .0004% of what hotels charge per room night. The services provided by the broadcasters are not even essential services of the nature of Electricity and water even where there are differential rates for domestic and commercial use. The Hotels can always refuse to avail of the services if the price charged by the broadcasters is considered unreasonable. It has been indicated by the broadcasters that even as international practice the price of the services to the hotels and commercial establishments is not regulated around the world.

Representation and inquiries from other commercial establishments

3.5 A couple of representations have been received from the Batra Hospital and the India Habitat Centre. While the former has pointed to the need for reduction of rates for hospitals the latter have pointed out that the rates have been sought to be revised by the broadcasters after the TDSAT judgment even after a firm annual contract was executed.

Basic approach of TRAI to tariff regulation

3.6 Given the current state of Cable Television Industry where the consumers have no choice to select channels of their choice TRAI has laid out a tariff regulation mechanism in the overall framework of recommendations on consumer choice. The Authority has pointed out that choice to the consumers can come through addressability or through the alternative forms of delivery. While providing for a tariff regulation mechanism the Authority has clearly indicated that price control will be lifted once there is effective competition. It is expected that recent developments of Delhi High Court's order for implementation of CAS in three Metros besides Chennai and the possibility of more number of DTH players becoming operational in the next few months could pave the way for more choice to the consumers.

3.7 In the context of the discussions in paras 3.1.to 3.6 the following questions are placed for consultation:

- i) ***Given the basic philosophy towards price control as brought out in paras 3.1 & 3.6 should the commercial establishments be brought under the ambit of tariff regulation?***
- ii) ***If so should the tariff regulation cover all kinds of commercial establishments or should some categories be left out?***
- iii) ***If some categories are to be left out what should these be and how can they be identified easily without causing unnecessary disputes?***

SECTION 4: METHOD AND MANNER OF FIXATION OF COMMERCIAL TARIFF

Overview

4.1 In sectors like Electricity, water and gas the exercise of fixation of price is based on cost plus a standard normated rate of return on investment. At a given level of production the revenue required to be generated is arrived at where after an exercise of rebalancing and cross subsidization is resorted to, to arrive at the differential commercial rates. In the case of telecom industry also it is possible work out a price based on costs. But unlike in these sectors, the cost of content which is the major component of price of a pay channel is difficult to cost and less amenable to any standard yardsticks of cost behavior. Distribution costs also vary widely from network to network. These are the reasons why TRAI has not attempted cost based pricing of broadcasting and cable TV services.

4.2 At the time when the initial tariff order prescribing ceiling on cable charges that existed as on 26/12/2003 was issued on 15/1/2004, the Authority had seen and noted that there is no basis for fixation of specific rates as the rates of cable charges varied from colony to colony, area to area and region to region and even within the colonies. The logic behind this system was due to the fact that the cable television industry operates on a system of determination of margin between various tiers of the distribution chain on the basis of level of declaration of cable subscribers. The genesis for charging a particular rate in a particular area was guided by economic capacity of the subscriber in that area. This wide variation in cable charges was also reflected by a market survey commissioned by TRAI through in May - July 2004. Considering the kind of non transparent system of determination of margins and the difficulties in evolving a uniform price based on costs it was considered appropriate to provide protection to the ordinary cable consumers at a level of historical cable charges which he/she was paying as on 26/12/2003. No specific rates were fixed as the prevailing rate for any area or region. As per the survey (in 10 cities) done at the behest of TRAI the average monthly consumer bill varied from Rs.233 at Guwahati to Rs. 130 at Hyderabad

4.3 Given this situation even in respect of ordinary cable consumers where different rates based on economic capacity to pay exists a question of approach to the method and manner of fixing specific commercial tariff is relatively difficult. Broadcasters have informed that they have a standard rate card for different kinds of hotels – highest for five star and lowest for one star. There are rates also for public viewing areas.

Contracts are given out by the Broadcasters for collection of dues from the commercial consumers. Typically annual contracts are executed based on occupancy factor and volume discounts, which are negotiated. Thus even with fixed rates the total amount paid is dependent upon site specific negotiations. For commercial establishments other than hotels and restaurants no rate cards apparently exist.

4.4 In the light of this state of industry practice the question arises as to what should be the basis for fixing rates of a commercial cable subscriber. There are 4 possible approaches

- i) Use a thumb-rule approach specifying a certain percentage over and above the ordinary cable charges for a commercial cable subscriber. However this would be difficult to implement given the wide variation in the cable rates for ordinary consumers.
- ii) The other possibility is to use historical prices just as has been done for the non-commercial consumers.
- iii) Yet another possibility is to differentiate amongst consumers and fix different norms for different types of consumers -the norms could relate to class of establishment, size of establishment, turnover, inflation indices etc.
- iv) Another alternative is to keep the entire commercial establishments out of the ambit of price regulation excepting to lay down broad criterion of revision of cable charges and the frequency of such revisions.

4.5 Another important issue is that once the rate is fixed how should it be communicated to the consumer. This question is important as the individual consumer needs to be educated as to whom he has to pay and for what. Those who get the feed from the cable operator will have to pay both the broadcaster and the cable operator. Since they have been paying only the cable operator they would have to be individually informed by the broadcasters and agreements entered into. Due notice would also have to be given to those commercial consumers with whom the broadcasters have no written agreements.

4.6 In the context of the discussions in paras 4.1 to 4.5 the following questions are placed for consultation:

- i) ***What should be the method for fixing the rates of commercial consumers? Which of the approaches suggested above should be used?***

- ii) Is there any other reasonable method of fixing the commercial tariff?*
- iii) What safeguards are required for those commercial consumers who are only paying the cable operator and do not have written agreements with the broadcasters?*

SECTION-5 : ISSUES FOR CONSULTATION

In the background of the analysis in the preceding paragraphs the view of the stakeholders are sought on the following issues:-

- A) Should the definition as contained in the Tariff Amendment Order of 7th March 2006 and reproduced below be allowed to continue?**

“(ddd) ‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.”

- B) If the problems and difficulties enumerated in Section 2 are to be addressed how this can be done without changing the definition?**
- C) If the definition as existing requires changes how should this be done?**
- D) Given the basic philosophy towards price control as brought out in para 3.5 should the commercial establishments be brought under the ambit of tariff regulation?**
- E) If so should the tariff regulation cover all kinds of commercial establishments or should some categories be left out?**
- F) If some categories are to be left out what should these be and how can they be identified easily without causing unnecessary disputes?**
- G) What should be the method for fixing the rates of commercial consumers? Which of the approaches suggested above should be used?**
- H) Is there any other reasonable method of fixing the commercial tariff?**
- I) What safeguards are required for those commercial consumers who are only paying the cable operator and do not have written agreements with the broadcasters?**

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, 7th March 2006

No.1-2/2006 -B & CS – In exercise of the powers conferred upon it under sub-section (2) and Paragraphs (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 read with the Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No. 13-1/2004-Restg by 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 Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, hereby makes the following Order:

1. Short title, extent and commencement:

- i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006)”
- ii) This Order shall apply throughout the territory of India.
- iii) This Order shall come into force on the date of its publication in the Official Gazette

2. (i) In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), under clause 2 after the existing sub-clause (d) and the entry relating thereto, the following sub clauses and the entry relating thereto shall be inserted as sub-clauses (dd) and (ddd), respectively, namely:-

“(dd) ‘Ordinary cable subscriber’ means any person who receives broadcasting service from a cable operator and uses the same for his/her domestic purposes.

(ddd) ‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.

Explanatory note

The distinction between an ordinary cable subscriber and a commercial cable subscriber is in terms of the difference in the use to which such signals are put. The former would use it for his/her own use or the use of his/her family, guests etc. while the latter would over commercial and other establishments like hotels, restaurants, clubs, guest houses etc. which use the signals for the benefit of their customers, clients, members or other permitted visitors to the establishment. “

(ii) In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), under clause 2 the following shall be substituted for the existing clause (f)

“(f) ‘Charges’ means

(i) for all others except commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26th December 2003. The principle applicable in the written/oral agreement prevalent on 26th December 2003, should be applied for determining the scope of the term “rates”

(ii) for commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 1st March 2006. The principle applicable in the written/oral agreement prevalent on 1st March 2006, should be applied for determining the scope of the term “rates”

3. In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, (6 of 2004), the existing sub-clause (a) and the entries relating thereto shall be substituted with the following: -

“ (a) Ordinary cable subscribers to cable operator.”

4. In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, (6 of 2004), after the existing clause 3 and the entries relating thereto, the following clause and the

entries relating thereto shall be inserted as clause 3A: -

"3A: the charges, excluding taxes, payable by commercial cable subscribers to cable operators, Multi system Operators or Broadcasters as the case may be, prevalent as on 1st March 2006 shall be the ceiling with respect to both free to air and pay channels.

Provided that if any new pay channel(s) that is/are introduced after 1-3-2006 or any channel(s) that was/were free to air channel on 1-3-2006 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s) and the new channel(s) is/are not included in the bouquet being provided on 1-3-2006 by a particular broadcaster. The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on 1-3-2006 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels as on 1-3-2006.

Provided further that in case a broadcaster or multi system operator or a cable operator reduces the number of pay channels that were being shown on 1-3-2006, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 1-3-2006."

5. Explanatory Memorandum:

This Order contains an Explanatory Memorandum attached as Annex A.

By Order

Rakesh Kacker

ACTING SECRETARY-CUM ADVISOR(B&CS)

Explanatory Memorandum

A batch of petitions was filed by a couple of Associations of Hotels and Restaurants against leading broadcasters in Telecom Disputes Settlement and Appellate Tribunal. The dispute basically pertained to the fact whether the hotels and restaurants can be equated with domestic consumers for the provision of cable TV service and there were also other connected and consequential issues under adjudication. The Hon'ble TDSAT while adjudicating on the issues of dispute in its judgment dated 17th January, 2006 in Petition No. 32(C) of 2005 (M.A.No.84 of 2005) and Petition No.80(C) of 2005 (M.A.No.239 of 2005) in the light of the provisions of Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) had observed interalia as under:

“36.We have already concluded that the members of the petitioner associations cannot be regarded as subscribers or consumers. As such we are of the view that the above tariff notification of the TRAI would not be applicable. It seems that TRAI has found it necessary to fix the tariff for domestic purpose. We think the Regulator should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring about greater degree of clarity and to avoid any conflicts and disputes arising in this regard.

37. In view of the above, we are of the opinion that the respondents are well within their rights to demand members of the petitioner associations to enter into agreements with them or their representatives for receipt of signals for actual use of their guests or clients on reasonable terms and conditions and in accordance with the regulations framed in this regard by TRAI”

2. TRAI had also received a representation from the Federation of Hotel and Restaurant Associations of India (FHRAI) in which they had interalia requested:

i) TRAI to fix Tariffs for hotels as per normal procedure (i.e) after giving appropriate opportunity to the affected persons including hotels and restaurants to represent against the proposed Tariffs.

ii) TRAI to issue a restraining order on the broadcasters stating that they (broadcasters) may not charge arbitrary rates fixed for hotels and restaurants till the regulations are framed by TRAI.

3. The Authority considered the observations made by the Hon'ble TDSAT and the representation of FHRAI in the context of the judgment of the Hon'ble Tribunal. The issue of need or otherwise to fix tariff for commercial purpose and the method and manner of fixing specific commercial tariff are connected issues and needs a detailed consultation and examination. The Authority is considering the course of action on this separately.

4. In the meanwhile keeping in view the observations of Hon'ble TDSAT and the representation of FHRAI, the Authority has considered appropriate, in the interim, to extend the protection of ceiling to the commercial consumers as well. This protection in respect of Commercial Cable Subscriber will however be available at the level of the rates prevailing on 1st March 2006 unlike in the case of non-commercial consumer. To give effect to this, the words Ordinary Cable Subscriber, Commercial Cable Subscriber has been defined and the definition of 'charges' has been amended and new clause to give effect to the relevant date for determining the ceiling in respect of commercial cable subscriber has been introduced.

5. The proposed amendment is intended to be a short-term measure and would be reviewed on the basis of detailed examination as indicated in para 3.

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, 24th March, 2006

No. 1-2/2006-B & CS – In exercise of the powers conferred upon it under sub-section (2) and Paragraphs (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 read with section 36 of the Telecom Regulatory Authority of India Act, 1997 and the Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No. 13-1/2004-Restg by 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 Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, hereby makes the following Order:

1. Short title, extent and commencement:

- i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fifth Amendment) Order 2006, (4 of 2006)”
- ii) This Order shall apply throughout the territory of India.
- iii) This Order shall come into force on the date of its publication in the Official Gazette

2. In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), read with the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006) after the existing 2nd proviso below clause 3A and the entries relating thereto, the following explanation and the entries relating thereto shall be added:

“Explanation1: For the purpose of clause 3A above the question whether commercial cable subscriber will pay the cable operator/MSO/the broadcaster will be determined by the terms of agreement(s) between broadcasters, MSO(s), Cable Operator(s) or between Broadcaster(s) and the Commercial Cable Subscriber(s) or between MSO / Cable

Operator who have been authorized to provide signals to the Commercial Cable subscriber(s), on the one hand, and Commercial Cable Subscriber(s), on the other, as the case may be”

3. Explanatory Memorandum:

This Order contains as Explanatory Memorandum attached as **Annex- A.**

By Order

(Rakesh Kacker)

Advisor (B&CS)

Explanatory Memorandum

TRAI had in pursuance of the observations of Hon'ble TDSAT and the representation of FHRAI, considered appropriate, in the interim, to extend the protection of ceiling to the commercial consumers as well. Accordingly, the Authority issued a Tariff Amendment Order (Fourth Amendment Order) on 7.3.2006. This protection in respect of Commercial Cable Subscriber was however to be available at the level of the rates prevailing on 1st March 2006 unlike in the case of non-commercial consumer. The proposed amendment it was indicated to be a short-term measure and was to be reviewed on the basis of detailed examination.

2. As a part of initial step towards detailed examination a process of seeking inputs from groups representing hotels and broadcasters was initiated. During this process the group of broadcasters made a representation in which it was pointed out inter alia as under:

“The Order (*Tariff Amendment Order dated 7.3.2006*) has in effect nullified / reversed the order (*TDSAT order*) dated 17.1.2006. (emphasis in italics added). TDSAT recognized that the services to the hotels should be only through authorized means. A vast majority of the Hotels and Commercial establishments who obtain service through cable operators without requisite authorization from the broadcasters. In our view, the current arrangements through which Hotels and Commercial Establishments obtain supply is tantamount to piracy of signals. There is a clear danger that Hotels /commercial Establishments shall misuse the TRAI Tariff Order to legitimize the present unauthorized arrangements. A hotel or a commercial establishment needs to obtain a license from the respective broadcaster to receive and exhibit the service. However, clause 4 3(A) is being exploited by the Hotels to continuously receive service and exhibit the services without a valid license and in an unauthorized manner....”

3. The spirit and intention behind the provision of extending the protection of ceiling to commercial cable consumers through the Tariff Amendment Order of 7.3.2006 was to cover those commercial cable subscribers who are provided television signals by those who are authorized to provide signals by virtue of agreements either written or

oral. The intention of the amendment order is not to promote illegal provision of broadcasting services.

4. Hon' ble TDSAT in its judgment of 17.1.2206 has also recognized this in para 37 of the judgment wherein it has been indicated

“.....Therefore, we leave upon the Respondents to proceed against the petitioners association and its members for recovery of legitimate amount due to them for receipt of signals by the members of petitioners associations. If the members of the petitioners association have paid the subscription to the authorized agent/distributor/MSO of the respondent broadcasters, then that will be treated as legitimate payment but wherever such subscription has been paid to unauthorized distributor or MSO or Cable operators it will be open to the respondent broadcasters to raise demands from the members of petitioners association.....”

5. With a view to bring clarity to interpretation it has been decided to add an explanation below the existing 2nd Proviso to the newly added clause.

**Telecom Regulatory Authority of India
A-2/14, Safdarjung Enclave,
New Delhi 110029**

Notification

No.1-29/2004-B&CS

Dated: October 1, 2004

In exercise of the powers conferred upon it under sub-section (2) and para (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India, 1997 read with the Notification No.39 (S.O No. 44 (E) and 45 (E))dated 09.01.2004 issued from file No.13-1/2004-Restg. by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following Order.

1. Short title, extent and commencement:

- i. This Order shall be called "The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004".(6 of 2004)
- ii. The Order shall be applicable throughout the territory of India.
- iii. The Order shall come into force on the date of its notification in the Official Gazette.

2. Definitions:

(a) "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;

(b) "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 construed accordingly;

(c) "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;

(d) "cable service" means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(e) "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;

(f) "charges" means and includes the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26th December 2003. The principle applicable in the written/oral agreement prevalent on 26th December, 2003, should be applied for determining the scope of the term "rates"

(g) "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 ;

(h) "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;

(i) "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.;

3.Tariff:

The charges , excluding taxes, payable by

- i) Cable subscribers to cable operator;
- ii) Cable operators to multi system operators/broadcasters (including their authorised distribution agencies); and
- iii) Multi system operators to broadcasters (including their authorised distribution agencies) prevalent as on 26th December 2003 shall be the ceiling with respect to both free-to-air and pay channels.

Provided that if any new pay channel(s) that is/are introduced after 26-12-2003 or any channel(s) that was/were free to air channel on 26-12-2003 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s) and the new channel(s) is/are not included in the bouquet being provided on 26.12.2003 by a particular broadcaster. The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on 26.12.2003 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels as on 26.12.2003:

Provided further that in case a multi system operator or a cable operator reduces the number of pay channels that were being shown on 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003.

4. Reporting Requirement

The broadcasters of such new pay channel(s) that have been introduced after 26-12-2003 or of any channel(s) that was a free to air channel on 26-12-2003 is/are converted to a pay channel subsequently, shall furnish to the Authority information in respect of charges for these channels in Schedule I of this Order. This information shall be furnished within seven days of coming into force of this order or the launch of new pay channel(s)/conversion of free to air channel (s) to pay channels, whichever is applicable.

5. Repeal

The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 dated 15th January 2004 along with its amendments is hereby repealed.

6. Explanatory Memorandum

Annex A to this order contains an Explanatory Memorandum for the issue of this Order

(Dr. Harsha Vardhana Singh)
Secretary Cum Principal Advisor

Explanatory Memorandum

1. The TRAI vide TTO dated 15.1.2004 had specified as ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi system operators and the multi system operators to broadcasters, as those prevailing on 26th December, 2003.
2. A number of representations have been received seeking clarification on the manner in which new pay channels can be priced and the impact on retail prices. Similarly, clarifications have been sought on the impact of conversion to pay channels of channels that were free-to-air on 26th December, 2003.
3. This issue 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 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 to the consumers.
4. These new pay channels may be offered individually or as a bouquet of channels which are not covered by the ceiling specified by the tariff order dated 15.1.2004. Thus for those consumers who 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 channels.
5. The Authority has considered the question of fixing a ceiling price for new pay channels that have been introduced after 26-12-2003 or for any channels that was a free to air channel on 26-12-2003 is subsequently converted to a pay channel. Fixation of prices charged for new pay channels to consumers is difficult because of large variations of these prices and of the difficulty in linking these to costs. Further this is a localized issue which is not easily amenable to centralized regulation. Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. Many of

these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnection agreements more transparent. TRAI has separately sent recommendations to the government which, interalia, provide for a framework for transition to addressability in different situations. However, in the interim period prices will have to be regulated. This revised tariff order provides the framework for such regulation.

6. Thus the Authority has not lifted the ceiling for the pay channels that existed as on 26.12.2003. For the new pay channels introduced and the free to air channels converted to pay thereafter, the Authority expects that the rates for these channels would be similar to the rates prevalent on 26.12.2003 for similar channels. The Authority has therefore decided that broadcasters would furnish to the Authority information in respect of charges for these channels in the Schedule I of this Order. This information shall be furnished within seven days of coming into force of this order or the launch of new pay channels /converted Free to Air Channels to pay channels, whichever is applicable. After reviewing the information, the Authority would intervene in the matter, if necessary.

7. The Authority has also considered the issue regarding ceiling charges in case a multi system operator or a cable operator gives lesser number of pay channels compared to those shown on 26th December, 2003. The Authority has decided that in this case the ceiling charge shall be reduced taking into account the rates of similar channels as on 26.12.2003. In case of any complaint, the Authority would intervene in the matter, if necessary.

8 For ease of reference a self contained order has been issued repealing the earlier order dated 15.1.04 and all its amendments. Consequently the order now issued would supersede all previous orders, amendments and clarifications.

Schedule I

Format for Reporting Rates by Broadcasters to TRAI for New Pay Channels Launched or Converted Free To Air Channel to Pay Channels after 26.12.2003

(Refer Section 4 of The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004

| | |
|--|--|
| 1. a) Name of the Channel b) Genre of Channel (eg. Entertainment, Sports, Movies etc.) | |
| 2. a) Language of Channel b) Target Audience (National or Regional, if Regional, specify state(s)) | |
| 3. Whether channel is a pay channel in the whole of the country or only in part of the country. (Specify states if pay in part of the country) | |
| 4. a) Is it being offered as individual channel or bouquet of channel b) If bouquet, name other channels c) Name of owners of channels in the bouquet. | |
| 5 a) Rate of channel, if offered as individual channel) b) Rate of channel in Chennai | |
| 6 a) Rate of bouquet if offered as part of the bouquet b) Revenue share arrangement between owners of channels in the bouquet | |
| 7 a) Expected Advertisement Revenue b) If channel is existing FTA channel, revenue for last three years | |
| 8 Likely Impact on Consumer Tariff | |

Telecom Regulatory Authority of India

A-2/14, Safdarjung Enclave,

New Delhi 110029

Notification

No.1-29/2004-B&CS

Dated: October 26, 2004

In exercise of the powers conferred upon it under sub-section (2) and para (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 read with the Notification No.39 (S.O No. 44 (E) and 45 (E)) dated 09.01.2004 issued from file No.13-1/2004-Restg. by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India hereby makes the following Order.

1. Short title, extent and commencement:
 - i. This Order shall be called "The Telecommunication (Broadcasting and Cable Services (Second) Tariff (First amendment) Order 2004.(7 of 2004)
 - ii. The Order shall be applicable throughout the territory of India.
 - iii. The Order shall come into force on the date of its notification in the Official Gazette.
2. In the second proviso of clause 3 the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 after the words "Provided further that in case", the words "a broadcaster or" shall be inserted.
3. Explanatory Memorandum

This Order contains an Explanatory Memorandum for the issue of this Order.

(Rakesh Kacker)

Advisor(B&CS)

Explanatory Memorandum

In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, reduction in rates was specified in the second proviso of clause 3 for multi system operators and cable operators. It is considered that the same principle should also apply in case a broadcaster reduces the number of pay channels being supplied or when a pay channel converts into a free to air channel. In view of this, the amendment is being issued.

TELECOM REGULATORY AUTHORITY OF INDIA
A-2/14, Safdurjung Enclave,
NEW DELHI 110 029
NOTIFICATION

No.1-29/2004-B&CS

Dated : 1.12.2004

In exercise of the powers conferred upon it under sub-section(2) and para (ii),(iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 read with the Notification No.39 (S.O. No.44(E) and 45(E) dated 09.01.2004 issued from file No.13-1/2004-Restg by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of section 2 of the Telecom Regulatory Authority of India Act, 1997) the Telecom Regulatory Authority of India hereby makes the following Order.

1. Short title, extent and commencement:

- i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Second amendment) Order 2004.(8 of 2004)”
- ii) This Order shall apply throughout the territory of India.
- iii) The Order shall come into force with effect from 1.1.2005.

2. The phrase “prevalent as on 26th December 2003 shall be the ceiling” appearing in the second last line of para 3 under the heading titled “Tariff” and before the first proviso under the same para of “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004”. (6 of 2004) shall be replaced by “prevalent as on 26.12.2003 plus 7% shall be the ceiling.”

3. Explanatory Memorandum

This Order contains an Explanatory Memorandum for the issue of this Order.

(Dr. Harsha Vardhana Singh)

Secretary cum Principal Advisor

EXPLANATORY MEMORANDUM

1. TRAI has specified vide the TTO (6 of 2004) that the charges, excluding taxes, payable by—

- (a) Cable Subscribers to Cable Operator;
- (b) Cable Operators to Multi System Operators / broadcasters (including their authorised distribution agencies); and
- (c) Multi System Operators to Broadcasters (including their authorised distribution agencies)

prevailing as on 26th December 2003 shall be the ceiling with respect to both free to air and pay Channels. It was also provided in the said Tariff Order that this ceiling could be exceeded, in case if any new pay channel was introduced after 26.12.2003 or an existing FTA channel as on 26.12.2003 was converted to Pay Channel provided that they are offered on a standalone basis and the extent of increase over the ceiling would be limited to the rates for the new channels and the rates on new pay channels or converted FTA channels must be similar to the rates of similar channels as on 26.12.2003. The Tariff Order also provided for reduction in the ceiling on the same principle if the Broadcaster/ MSO/ cable Operator were to reduce the number of pay channels that were being shown as on 26.12.2003.

2. While indicating the regulatory framework for Tariff as stated above it was also indicated in the Recommendations on Issues relating to Broadcasting and Distribution of TV Channels, (sent to the Government on October 1, 2004) that the ceiling shall be reviewed periodically to make adjustments for inflation and that the next review would be undertaken in November 2004 so that the new rates are implemented from 26.12.2004.

3. Accordingly an exercise was undertaken to determine the adjustment rate. For this purpose the Wholesale Price Index (WPI) has been used. The figures for this index are available upto 6.11.2004. The Consumer Price Index figures have not been used, as they do not have the latest information. Also these relate to certain specific consumption baskets. Therefore for the present purpose the WPI would be more appropriate. In deciding the rate of increase to be allowed the Authority has used the figures as on 30.10.2004 on which date the inflation rate was 7.06 %. Although subsequently the rate has increased to 7.64% it is not clear whether this trend would continue in the current month or not

-the latest figure as on 13.11.2004 is 7.34%. For purposes of convenience and simplicity the increase has therefore been pegged at 7%.

4. Therefore, it has been decided to issue this amendment Order to allow for inflation, which has been analyzed to be at 7%. This amendment Order will come into effect from 1.1.2005. Thus the new rates will apply for the payments to be made by consumers, cable operators, multi system operators for the month of January 2005. The 7% increase will apply to the charges, excluding taxes, payable as on 26.12.2003. Thus if the payment was Rs 220/- p.m as on 26.12.2003 of which Rs. 20/- was on account of taxes, the 7% increase will be applied on Rs 200/- and an increase of Rs.14/- p.m would be the maximum permissible increase in the basic charges excluding taxes.

Relevant extracts of recommendations on “Issues relating to Broadcasting & Distribution of TV Channels” dated 1.10.2004

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.

- 5 *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.*
- 6 *The other view is that the rates should not be uniform and they should be market determined.*
- 7 *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.