

TRAI's Consultation Paper dated March 4, 2008

Response on: Restructuring of Cable TV Services

Issues for Consultation

1. **The technological advancements, convergence and increasing popularity of value added services & applications require more vibrant and effective regulation for cable TV industry. Present eligibility criteria do not clearly define a person and also do not take into account financial strength, technical strength and experience of the applicant to provide cable TV services. Do you feel that present regulatory framework requires change? Please give suggestions with justifications.**

Response: As known to all, the present regulatory framework does not provide for any eligibility criteria for a person to be registered and operate as a Cable Operator.

The preface of this Consultation paper has given an indication of the growth of the cable sector which also indicates that cable is not an accessory for a consumer but it is closer to being a necessity. Any service which takes a form of necessity for consumers should only be provided by persons who are capable and experienced to do. This would increase the quality of service which a consumer gets and also the consumer would start relying on the cable operator since the cable operator is a front end of all the broadcasters.

Accordingly, it is suggested that the following criterion if put in place before allowing the registration of a person as a cable operator;

- Minimum net worth of a person / entity willing to operate as a cable operator should be specified to ensure that only serious person are operating as a cable operator
- The applicant should furnish the PAN Number, Entertainment Tax registration number and the Service Tax Registration number
- a criterion of minimum technical strength, as per the recommendations of the BIS should be put in place
- The applicant should also file its previous years Income Tax returns
- The applicant should also give an affidavit confirming that he has not been involved in any criminal action and no criminal matter is pending against him or the directors / management of the entity
- The applicant should also be made to file an affidavit confirming that it would not involved in piracy of signals of any channels and if he is found to be involved in any piracy, the registration as a cable operator may be cancelled

- The area of operation of the proposed cable operator should be specified while granting the registration as a cable operator

2. The registering authority may refuse the grant of registration in case of non submission of any document required by him as the application form does not clearly list out the documents to be submitted. In view of this, should a comprehensive list of documents required to be submitted along-with the application of registration be mentioned in the application form itself? Similarly, is there a need to make provisions for the appellate authority in case of refusal of registration by the registering authority?

Response: Yes, as a natural and accepted policy, the Government should clearly specify and stipulate the list of documents which are required for registration as a cable operator. This would bring transparency in the process of registration of a cable operator.

However, the current process of registration by a cable operator with the post office is not able to serve the process. The said requirement was put in place when the industry was in nascent stage however with efflux of time and growth of the cable industry, it has become important that a qualified body is made responsible for registration of the cable operator.

The responsibility for registration of a cable operator should be handled by the Nodal officers of the TRAI who are qualified enough for providing registration to the cable operators.

Once a qualification norm for registration of a cable operator has been stipulated by the Government along with the list of documents required for the registration of the cable operator, which would become a standard guideline for registration, there should not be a need of any appellate authority. The qualification norms and the criterion for registration of a cable operator can be based on following:

- Minimum net worth of a person / entity willing to operate as a cable operator should be specified to ensure that only serious players are operating as a cable operator.
- The applicant should furnish the PAN Number, Entertainment Tax registration number and the Service Tax Registration number
- a criterion of minimum technical strength, as per the recommendations of the BIS should be put in place
- The applicant should also file its previous years Income Tax returns
- The applicant should also give an affidavit confirming that he has not been involved in any criminal action and no criminal matter is pending against him or the directors / management of the entity

- The applicant should also be made to file an affidavit confirming that it would not be involved in piracy of signals of any channels and if he is found to be involved in any piracy, the registration as a cable operator may be cancelled
- The area of operation of the proposed cable operator should be specified while granting the registration

In any case, the person authorized to register a cable operator is only supposed to check whether the applicant is in compliance with the requirement stipulated by the Government, there should be any situation where a registration has not been allowed despite the applicant complying with all the requirements of the Government.

3. The present cable TV industry is subjected to minimum supervisory guidance and control. Do you feel that there is a need to streamline registration process, data collection and monitoring to ensure better cable TV services to customers? Is there a need to have a centralized/ decentralized authority where all the information relating to cable TV sector and also monitoring is managed? If yes, then what should be the structure and scope of work of such an agency? Please, give suggestions with justification.

Response: This issue is of paramount importance, not only for the consumers but also for the Government, the Broadcaster and the Cable Industry as well. It is startling to know that the Regulator, TRAI, which is responsible for regulating the Cable Industry operations, despite being aware that the industry is subjected to “minimum supervisory guidance and control” has not taken any concrete steps towards streamlining the entire cable industry.

It is even bothering that despite the fact that the cable industry which is in operation for close to 15 years, catering to around 71 million households which effectively means around 350 million customers, out of which only around 10-12 million households is reported by the cable operators, the industry is still working on an ad hoc and non-transparent basis.

It is the need of the hour that in the interest of the consumer and the Government, necessary rules and regulations are put in place for streamlining the Cable Industry.

It is important that a central authority under the Telecom Regulatory Authority of India, with zonal offices spread all across the country is put in place to ensure that the cable operators are operating within the prescribed guidelines. Such authority should also be responsible for redressal of the consumer grievances with respect to the services being provided by the cable operator. This authority should also be responsible for conducting regular checks on the cable operators to ensure that the cable operators are declaring the correct subscriber base and are issuing proper receipts to all its

subscribers. This authority should, from the records publish data regarding the numbers of complaints forwarded to the cable operator and also the details as to within how much time the complaints of the subscribers have been redressed.

Presently, there is no platform for the subscribers of cable platform, other than the consumer forum, where the grievance of the customers can be quickly redressed without any cost to the customer. This body can very well be the platform for the redressal of the subscriber grievances in addition to being a body responsible for streamlining the entire cable operations in this country.

4. Present cable TV registration, the Cable Act and the Cable Rules do not cast any specific responsibility for effective customer grievance redressal. What changes do you suggest to bring in effective consumer grievance redressal mechanism?

Response: This is one of the most important factors which the Government needs to work upon and to formulate a policy for consumer grievance redressal. As it is a common knowledge, the cable consumers are the most suppressed lot for whom there seems to be no right for the redressal of grievance. The only means available for a cable consumer is under the Consumer Protection Act under which a consumer has to approach the court. In normal circumstances, this is not a feasible and practical solution a consumer is looking at.

In view of the above, it is suggested that the Government formulates a policy or rules under the Cable Network Regulation Act providing for the ways and means in which the consumer grievances can be settled, the person responsible for ensuring that consumer grievances are settled in a timely manner and penalty for not complying with the rules.

The said rules, among other things, should provide for:

- The Government should identify the issues which are attributable to the services of the cable operator and the resolution of which can be provided by the Cable Operator
- Each cable operator to have a dedicated phone number on which a consumer can register his complaint
- The consumer should be allotted a complaint number
- There should a specific time limit within which various complaints of the consumer should be redressed by the Cable Operator
- Each cable operator should charge the subscribers correctly and issue receipts to each and every subscriber
- The cable operator should ensure that the tax is collected from each subscriber and the amount is deposited by the Service Tax department and the entertainment tax department within the stipulated time limit

- The cable operator should adhere to the technical standards laid down.
- The cable operator should also adhere to the advertising the programming code
- The cable operator should keep the records of each of its subscriber correctly which should be audited on time basis by the TRAI or its Nodal officers on sample basis
- The rules should provide for penalties in case of deviation from the rules
- There should be nodal officer of TRAI, atleast in each district, who should be responsible for registration of the cable operator as well for providing the redressal to the consumers in case of the cable operator is not complying with the rules of the TRAI

5. At present by and large only one cable TV operator is providing service in a locality. Is there a need to introduce competition with more than one operator? Give your suggestions with justifications.

Response: In any growing industry, the endeavour of the Government has always been to promote competition and take all necessary steps to discourage any kind of monopoly. Any monopolistic situation by its very nature is anti consumer. Competition results in tariff reduction and improves the quality of service to the customers. To ensure that a consumer gets the option to choose the cable operator of his choice, there is an urgent need to proactive steps by the Government to achieve this end.

At present, it is a public knowledge that a subscriber is at mercy in the hands of a cable operator. A subscriber is ill treated and his grievances are neither heard nor addressed.

In view of the above, the Government should stipulate that a territory can be serviced by more than one cable operator for the benefit of the subscribers and the industry. The endeavour should be create an environment where the subscribers are having the option to choose between the various platforms as well as between different cable operators.

6. Any other regulatory reform.

Response: HUGE UNDER DECLARATION AND LESS COLLECTION OF SERVICE TAX

The issue which has been touched in various issued of this consultation paper but has not been given an independent head is the issue of non payment / under payment of service tax and entertainment tax by the Cable operators to the Service Tax Department and State Government (s). Although Point 8 of this consultation paper does provide for discussion on

issue relating to the under declaration by the cable operators, however this issue is too big to be covered only as a sub point.

The Cable Operators are the most unregulated business operators and the same is very clear from the fact that the declaration level and payment of service tax is only to the tune of 15% - 20% of the total subscriber base. This is a huge loss to the exchequer, which till date has not been taken seriously and this is reason because of which a specific regulation in this regard is desired.

The fact that there is huge under declaration by the cable operators has been accepted by all and sundry including the TRAI even in the present consultation paper. The relevant extracts of this consultation paper which is necessary to understand this issue are reproduced hereunder for reference purpose:

1.7 Presently India has around 220 million households and as per Media Partners Asia Ltd's report on Asia Pacific Pay-TV & Broadband Markets 2007, there were around 71 million households receiving Cable TV services at the end of December 2006. As per this report, cable TV households accounts for 59.2 % of the total TV households in the country and the subscription revenue of the cable TV was approx. Rupees 11484 crore annually by the year ending December 2006.

1.13 The physical spread of cable TV is increasing but present information system utilised to monitor cable TV industry is inadequate and needs immediate attention. Proper maintenance of records and monitoring is necessary for the effective enforcement of the Cable Act and the Cable Rules.

3.2.3 Presently cable TV operators are required to pay entertainment tax and service tax, which are linked to the number of subscribers. Cable TV operators charge a consolidated amount monthly from their consumers and sometimes do not provide any receipt to the consumers. Even if they provide receipt, it does not clearly reflect charges for the service and applicable taxes on them separately. In such a scenario cable TV operators may evade taxes by under declaring their subscribers. TRAI in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007, dated 4th October 2007 also stipulated the Requirements of mandatory billing with necessary details, issue of receipts for payments made. However, details of impact of implementation are not available at present. There is a need to develop a proper system of billing and monitoring so that evasion of taxes can be avoided and problems of connectivity also gets substantially addressed.

It is clear from the Para 1.13 and 3.2.3 of the present consultation paper that the cable operators are indeed resorting to huge amount of under declaration about which even the Regulator of this sector is aware of. The fact that the

cable industry is crippled due to the huge under declaration is being done by the cable industry is also know to other Government departments including the Service Tax Department and the Entertainment tax department who collect taxes from the cable operators in the form of Service Tax, Entertainment Tax etc.

The adverse effect of the under declaration is not only the loss for the Exchequer but is also a hindrance in the growth of the cable industry. The Broadcasters, in order to cover their losses due to the under declaration in the cable industry have increased the rates of their channels. Due to this, the consumer is bearing the heat of the increased monthly subscriptions.

In this regard, there are certain important data and figures, as illustrated below, which also needs to be analyzed to ascertain and identify the actual level of under declaration of subscriber numbers and consequent under payment of service tax is being done by the cable operators:

- The Distribution of revenue in various countries are as under:

Markets	Share of Cable Operator	Share of Content providers
USA	60%	40%
UK	63%	37%
Australia	65%	35%
Japan	65%	35%
India	88%	12%

- As per the above table, the level of revenue declaration is far below the normal and average global declaration. Consequently, with a low declaration level, the collection of Service Tax and Entertainment Tax from the cable operators is also very low.
- The table as given below contains the details of the service tax collected by the Service Tax department in some of the locations of this country.

	No. of C&S homes (Rs. in Lacs)	Average ARPU per month (Rs.)	Total C&S revenue per annum (Rs. in Crore)	Service Tax payable (Rs. In Crore)	Service Tax Collected (Rs. in Crore)	Service Tax Shortfall (Rs. in Crore)
Delhi	26.08	150	469.44	58.02	5.57	52.45
Kolkata	20.97	125	314.55	38.88	4.99	33.89
Bangalore	13.93	175	292.53	36.16	3.29	32.87
Chennai	15.57	100	186.84	23.09	2.69	20.40

Hyderabad	11.82	150	212.76	26.30	0.58	25.72
Jaipur	2.25	225	60.75	7.51	1.15	6.36
Coimbatore	3.36	100	40.32	4.98	0.23	4.75
Ludhiana	2.82	150	50.76	6.27	0.90	5.37
Bhopal	1.84	150	33.12	4.09	0.27	3.82
Gurgaon	1.68	150	30.24	3.74	1.14	2.60
Cochin	2.30	100	27.60	3.41	0.54	2.85
Mangalore	0.88	150	15.84	1.96	0.38	1.58
Vishakhapattnam	3.48	100	41.76	5.16	0.16	5.00
Panchkula	0.56	150	10.08	1.25	0.17	1.08
Chandigarh	1.48	150	26.64	3.29	0.05	3.24
Cuttack	1.55	175	32.55	4.02	0.00	4.02
Asansol	1.41	125	21.15	2.61	0.00	2.61
Bokaro	0.89	125	13.35	1.65	0.00	1.65
Mysore	1.94	150	34.92	4.32	0.40	3.92
Total				236.71	22.51	214.18

- A bare perusal of the above table indicates that the Service Tax department has been able to collect only 10% of the total revenue collectible from the Cable Operators. It indicates a grim state of affairs in which the cable industry is as well as the non seriousness of the Service Tax department in collecting the revenue of the Government. It also indicates that the Service Tax department needs to take immediate and urgent steps to ensure that any further loss of Government on account of under declaration by the cable operator is immediately curbed.
- The data is an authentic data, provided by the concerned departments. A bare perusal of the data indicates the huge amount of under declaration by the cable operators. Another startling fact arising out of the data is that the Service Tax department is aware of and is in possession of this data but no concrete steps have been taken by the Service Tax department to ensure that the Cable operators deposit the actual amount of Service Tax which they collect from the cable operators.

It can be very safely presumed that such act of Cable Operators cannot continue to work until and unless they are in hand in glove with the Service Tax authorities.

- In view of the above, it is suggested that the Government lays down strict guidelines with respect to the requirement of issue of receipt by the cable operators to the subscribers as well as timely and periodic verification by the Service Tax department of the data provided by

the Cable Operators to ensure that there is no leakage of revenue to the Government.

- The Government should also look at formation of local committees in all the districts having representations from the Broadcaster, Nodal Officer of TRAI, Cable Operators, Service Tax department representative and Entertainment Tax Department representative. Such body, apart from having the representation from all the concerned quarters, will also be competent enough to handle the delicate and serious issue of under declaration.
- An alternate to the above could be the appointment of an independent survey agency who should be handed over the responsibility of finding out the exact number of cable households being catered by the cable operators. This alternate method would also be very handy since it would be an independent body and its sole job would be to provide the exact number of cable subscribers.

7. In view of deliberation in para 3.2, is there a need to modify provisions of the Cable Act/ Cable Rules? Please, give suggestions with justification.

Response: The major issues arising out of para 3.2 relate to the issue mentioned below, the response to each of them is provided along with the issues:

- (i) provision of ala carte channels by the broadcasters : the provision of ala carte channels to the subscribers in a non addressable system is not possible so this provision may not have a positive effect on the subscribers. On the other hand, this may act as a tool in the hands of the cable operators to increase their carriage fee to the broadcasters and would also deny consumers the channel of their choice. A cable operator, under the guise of this regulation, choose not to show a popular channel and thus deny the consumer his requirement for a particular channel.
- (ii) receipts by the cable operators: The response to this issue has been adequately covered under Point 6 of this response paper.
- (iii) the declaration of the subscription amount collected by the cable operators: This is the biggest issue which is crippling the cable industry and is working as an hindrance towards the growth of the cable industry. The issue has been discussed in detail in para 6.
- (iv) the responsibility of the MSO / LCO to comply with the content code / programming code for the channels of the Broadcaster: For a content which is being provided by a Broadcaster to the MSO / LCO, the Broadcaster should be made responsible and not the MSO / LCO. The

reason is that the MSO / LCO is distributing the channel on real time without having to see the content of any programme. The MSO / LCO do not even have the right to fiddle with the content of any programme. In such circumstances, it would be unfair to burden the MSO / LCO and make them responsible for the content which is not within their control.

- (v) The channels being shown directly by the MSO / LCO: The channels which are shown by the MSO / LCO should also comply with the programming and advertisement code and these channels should also comply with the Programming and Advertisement Code and they should be mandatorily required to be registered with the Ministry of Information and Broadcasting. All the channels which are available in this country should be treated similarly and there should not be any discrimination between the channels of a broadcaster and a channel of MSO / LCO.

8. In particular, suggestions may be given for a proper regulatory framework on the following issues, among others:

- (i) Correct determination of subscriber base**
- (ii) Laying a good quality network**
- (iii) Permission and monitoring of ground-based channels offered by MSOs and LCOs**

Response: My suggestions regarding the points of discussion of this Clause are:

- (i) Correct determination of the subscriber base is the need of the hour, for the Government, for the broadcasters as well as for the industry. There are various measures which can be adopted for determining the correct subscriber base and the census data and the ration card issued by the government could be the prime tools to identify the correct subscriber base. Another important measure could be imposing strict mandate by the Government to the cable operators to issue receipts to the subscribers. This can also be counter checked by comparing the service tax collection done by the cable operator vis a vis the available data and the census. This would broadly give a picture as to whether a cable operator is under declaring the subscribe numbers or not.

The under declaration should also carry a punitive action in addition to the cancellation of the registration of the cable operator.

- (ii) To ensure that the cable operator is laying a good quality network so that the subscribers could get the best quality of signals, it should be compulsorily mandated that the Cable Operators should get a certificate,

either from any expert Government department or from a qualified Chartered Engineer on the quality of network. In addition, the cable operator should also be required to take a certificate from the concerned Government department regarding the payment made by the cable operators for the poles they use in the network.

- (iii) As per my understanding, there is no difference between the ground based channels offered by the MSO and / or LCO and the satellite channels which are offered by the Broadcasters since both are being finally made available to the subscribers and both can have positive and negative impact on an individual subscriber as well as on the society. In such a case, even the authority should not create a difference between these two in contravention of the applicable regulations..

In such a case, it should be strictly mandated that even the channels of MSO / LCO should be mandatorily required to be registered with the Ministry of information and broadcasting. At present, no such provision is existing because of which the national security and integrity is compromised.

9. Presently MSOs are also registered as Cable TV operators. Do you feel the need for a different regulatory framework for MSOs in view of discussions in section 3.3? Give your suggestions with justification. The suggestions may specifically cover, among others, the issues relating to registration of multi-city MSOs, monitoring mechanism, number of MSOs in a city/state etc.

Response: MSO's are distinct category of service providers who aggregate the content / channels from the Broadcasters and then supply a uniform feed to cable operator. By nature of their operations, MSO's needs vast infrastructure to down link the channels and to mix the stream of all the channels. In digital environment, the MSO's are required to also have the necessary encryption system and Subscriber Management System. Accordingly and in view of this, the Ministry of Information and Broadcasting has stipulated registration for MSO's as separate class of Service Providers. However there is no separate definition of MSO in Cable Act. Accordingly it is suggested that necessary amendment be made in the cable act to incorporate the definition of MSO.

10. What QoS parameters should be prescribed for non CAS areas to address concerns of the customers keeping in view the present status of networks? What should be the points in the network to define various signal parameters such signal strength, S/N ratio etc? What should be the monitoring mechanism to ensure effective implementation

Response: Transmission Quality : Bureau of Indian standards (BIS) has already laid down the minimum standards of Service that the cable operators must ensure at the customer end. These are

- Carrier to Noise Ratio (C/N) > 44 db
- Minimum carrier level – 60 DbuV
- Maximum Carrier Level – 80
- Slope < 12 – db
- Cross modulation to be better than 57 db
- Composite second order to be better than 57 db

The cable operators should be mandated to stick to these recommendations of the BIS

Effective Bandwidth : Effective bandwidth of a cable network must cater for all the channels provided by the network as well as a minimum of 10% additional channels for future enhancements