

ISSUES FOR CONSULTATION- NON CAS TARIFF CONSULTATION

TRAI's Questions and our Responses:

1. *Are the figures in Annexure B3 representative for the different genres of broadcasters? What according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company*
2. *Are the figures in Annexure B5 representative for aggregators? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.*
3. *Are the figures in Annexure B7 representative for the national MSOs? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.*
4. *Are the figures in Annexure B7 representative for the regional MSOs? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.*
5. *Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company*
6. *Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? What according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.*

Ans. Our Comments on above questions 1 to 6 as under:

1. **Broadcaster as per Annexure B3:** *The figures are broadly representative but a distinction needs to be made with respect to whether the broadcaster is Indian or foreign; the genre and whether the distribution is direct or through content aggregator. However the 70:30 advertisement vs subscription revenue is broadly accurate.*
2. **Content Aggregator as per Annexure B5:** *It is difficult to comment on the accuracy in view of opaqueness with respect to contractual arrangements between the broadcasters and aggregators.*

3. **National MSO as per Annexure B7:** *Two factors need to be kept in mind while utilizing findings from Annexure B7: The first relates to the fact that there is heavy competition in metros and mini metros and major towns inter se between MSOs and with DTH. Secondly MSO declarations to Broadcasters have shown an upward curve every year in past 6 years but LCO declarations to MSOs have remained static and stagnant in past 15 years.*
4. *In fact the ever upward declarations secured by Broadcasters and the cost per channel increase in past 6 years have more than helped Broadcasters recover the so called under declaration. Finally the Alliance has always maintained that carriage fees are a temporary phenomenon which will automatically diminish with addressable digitalization.*
5. **Regional MSOs as per Annexure B7:** *Same comments as 3 above.*
6. & 6 **Larger/Smaller LCOs as per Annexure B9:** *The Alliance respectfully disagrees with the representative figures in Annexure B9. The average ARPU of Rs 165 per month may well be correct but looking to gross underpayment of entertainment tax and in some cases even service tax, it is felt that as the customer ends up paying these taxes to the LCO but such collections do not get fully paid to Government account the EBITDA margin is higher by at least another 10%.*

Q.7. *What according to you is the average analog monthly cable bill in your state or at an all India Level?*

Ans. *All India level, average monthly bill would be Rs. 150/- plus taxes.*

Q.8 *Is the market for cable services in non-CAS characterized by the following issues:*

(i) *Under reporting of the analog subscriber base.*

Ans. *The bogey of under reporting or under declaration has been raised for the past ten years without actually appreciating that there is no under reporting in the present day business arrangement between MSOs and content aggregators wherein the principle of 'negotiated declaration' is followed with no linkage to agreed amounts to actual number of people actually watching a pay channel. The answer no doubt lies in shifting to addressable digitalization leading to full transparency but this does not seem to be acceptable to some Broadcasters.*

(ii) *Lack of transparency in business and transaction models*

Ans: *While MSOs completely declare their revenue and costs and are increasingly moving to be listed entities, there is opaqueness at other levels.*

(iii) *Differential pricing at Retail level*

Ans: There are two aspects to differential pricing: One is linked to perception of purchasing power of the customer and the second with respect to level of competition.

(iv) *Incidents of carriage and placement fee*

Ans: *The Alliance wishes to rely on earlier presentations made to Trai on this issue and reiterate that this is a temporary phenomenon which has been unnecessarily blown up by a section of broadcasters. Placement is sought by broadcasters wishing to either enter new markets or increase their advertisement fees but are not forced upon and are in realm of private contracts.*

(v) *Incidence of States and Region based monopolies.*

Ans: *Even if present in past, the entry of new national MSOs and DTH has reduced monopoly significantly.*

(vi) *Frequent disputes and lack of collaboration among stakeholders*

Ans: *There is a lack of trust between the broadcasters and cable industry which historically is linked to arbitrary price hikes and abrupt switch offs. The historic and epochal December 2004 Interconnect Regulations led to start of a process of creating a level playing field for the distributing industry but many issues specially relating to unreasonable terms of contract await final resolution by TDSAT.*

Q9. *Are these issues adversely impacting efficiency in the market and leading to market failure?*

Ans. *Yes – the market is controlled by few dominant broadcasters who bundle a few popular channels with a bunch of junk channels and force MSOs to pay for channels that they can neither transmit in analogue due to capacity limitation or even customer demand. There is need for Government and Regulator to move to a graduated path of addressable digitalization but till then the Regulator will need to take proactive steps to impart efficiency in market through interconnect and tariff regulations.*

Q10. *Which of the following methodology should be followed to regulate the wholesale tariff in the non –CAS areas and why?*

i) *Revenue Share*

Ans. *While desirable, it will not be practicable in a non addressable regime.*

ii) *Retail minus*

Ans. This will not be possible in a non addressable regime where the base is negotiated.

iii) *Cost plus*

Ans. This is not possible till addressability comes.

iv) *Any other method approach you would like to suggest.*

Ans: The existing price caps should continue with an annual review every year end to allow broadcasters adjustment of their costs on inflation rate basis.

Q.11 *If the revenue share model is used to regulate the wholesale tariff, what should be the prescribed share of each stakeholder? Please provide supporting data?*

Ans: In a non addressable regime, revenue share is difficult but if adopted then the CAS formula could be considered.

Q.12 *If the cost plus model is used to regulate the wholesale tariff, should it be genre wise or channel wise?*

Ans: A cost plus model would be extremely difficult to work out looking to opacity of broadcaster costs.

Q.13 *Can forbearance be an option to regulate wholesale tariff? If yes, how to ensure that (i) broadcasters do not increase the price of popular channels arbitrarily and (ii) the consumers do not have to pay a higher price.*

Ans. No, forbearance can not be a viable option till a much higher level of competition and creation of adequate level playing field conditions between broadcasters and cable industry.

Q.14. *What is your view on the proposal that the broadcasters recover the content cost from the advertisement revenue and carriage cost from subscription revenue? If the broadcaster is to receive both, advertisement and subscription revenue, what according to you should be the ratio between the two? Please indicate this ratio at the genre levels?*

Ans. At present, broadcasters are recovering 70% from advertisement and 30 % from subscription. The Alliance expects this to gradually change to a 50: 50 ratio as digitalization leads to higher transparency at the LCO level. Genre ratio analysis is difficult in absence of credible data.

Q.15 *What is your view on continuing with the existing system of tariff regulation based on freezing of a-la-carte and bouquet rates as on 1.12.2007; and the rate of new channels based on the similarity principle at wholesale level? You may also suggest modifications, if any, including the periodicity and basis of increase in tariff ceilings.*

Ans: *The reference date of 1.12.2007 was recently granted by TRAI and can continue for this calendar year. Starting next year there can be an annual review to allow for inflation cost adjustment.*

Q.16 *Which of the following methodologies should be followed to regulate the retail tariff in non-CAS areas and why?*

i) *Cost Plus*

Ans. *Not possible as most of the cost data can be inflated or manipulated.*

ii) *Consultative approach*

Ans. *Consultative approach is only possible in mature market conditions which is not the current scenario. But Alliance looks forward to a higher level of mature industry consultation facilitated by Trai.*

iii) *Affordability linked*

Ans. *Affordability linked approach Is difficult to implement due to increasing market competition between MSOs and with DTH operators. The Alliance however submits that India is basically a value for money market and it is perception or need for a particular even or programme which determines affordability rather than economic condition of the consumer.*

iv) *Any other method/approach you would like to suggest*

Ans. *The current non CAS tariff regime can continue ensuring a la carte choice to MSOs who wish to avail the same.*

Q.17 *In case the affordability linked approach is to be used for retail tariff then should the tariff ceilings be prescribed (i) single at national level or (ii) different ceilings at State level or (iii) A tiered ceiling (3 tiers) as discussed in paragraph 5.3.23 or (iv) Any other.*

Ans. *A tiered ceiling which is (3 tiers) as discussed in paragraph 5.3.23 is the correct approach for subscribers and the same should be followed.*

Q.18 *In case of retail tariff ceiling, should a ratio between pay and FTA channels or a minimum number of FTA/pay channels be prescribed? If so, what should be the ratio/number?*

Ans. *The Alliance feels that this would amount to micro management and can be avoided.*

Q.19 *Should the broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs? If yes, should the existing system continue or should there be any modification to the existing condition associated with it?*

Ans. *The Alliance feels price cap on cable industry and a la carte choice are interlinked. Yes, broadcasters be mandated to offer their channels on a-la-carte basis to MSOs/LCOs. Otherwise level playing field conditions will be violated looking to the present retail price of 125 pay channels as notified monthly by Trai.*

Q.20. *How can it be ensured that the benefit of a-la-carte provisioning is passed on the subscribers?*

Ans. *Since, there is a ceiling on LCO to subscriber, benefit of a-la-carte provisioning stands automatically transferred to consumer and as addressable digitalization penetrates further, the same benefit will further accrue.*

Q.21. *Are the MSOs opting for a-la-carte after it was mandated for the broadcasters to offer their channels on a-la-carte basis by the 8th tariff amendment order dated 4.10.2007. If not, why?*

Ans. *The Alliance has observed that broadcasters are refusing to pass on the benefits of a la carte to MSOs and are not agreeable on negotiated subscriber numbers if they opt for a-la-carte. Some national MSOs are entering into national deals and opt for bouquets rather than a la carte but do customize their offering based on regional demand.*

Q.22. *Should the carriage and placement fee be regulated? If yes, how should it be regulated?*

Ans: *The Alliance respectfully submits that carriage and placement fees are a temporary phenomenon which will gradually diminish once addressable digitalization takes hold. The Alliance also notes that there is NO intention of the Regulator to regulate advertisement revenue and hence feels it would not be right for the Regulator to place any caps. .*

Q.23 *Should the quantum of carriage and placement fee be linked to some parameters? If so, what are these parameters and how can they be linked?*

Ans. *No, it can not be linked to any parameter it is restricted to certain areas, where TAM meters are installed and is not the universal phenomenon and is actually matter of demand and supply.*

Q24. *Can a cap be placed on the quantum of carriage and placement fee? If so, how should the cap be fixed?*

Ans *If there is no cap on the amount of advertisement broadcaster can collect, then there should not any cap on carriage and placement fee.*

Q25. *Is there a need for a separate definition of commercial subscriber in the tariff order?*

Ans. *As far as Non Star category hotels and other commercial establishments are concerned the price of pay channels is same. There should not be any distinction or definition for such commercial subscribers. As far as Star hotels are concerned, they can continue under commercial subscriber category.*

Q26. *If the commercial subscriber is to be defined in the tariff order, then does the existing definition of "Commercial subscriber" need to be revised? If yes, then what should be the new definition for the commercial subscriber?*

Ans. *Commercial subscriber definition should be only for Four and Five star hotels and Grade I restaurants.*

Q27 *In case the commercial subscriber is defined separately, then does the present categorization of identified commercial subscribers, who are not treated at par with the ordinary subscriber for tariff dispensation, need to be revised? If yes, how should it be revised?*

Ans. *Yes, the definition needs to be revised as above.*

Q28. *Should the cable television tariff for these identified commercial subscribers be regulated? If yes, then what is your suggestion for fixing the tariff?*

Ans. *For Four and Five Star hotels, the tariff should not be more than two times the normal subscriber tariff.*

Q29 **Do you agree that complete digitalization with addressability (a box in every household) is the way forward?**

Ans: *The Alliance is in complete agreement but it must be appreciated that digitalizing 80 million homes is a stupendous task which is why it advocates graduated but time bound digitilisation.*

Q30 *What according to you would be an appropriate date for analog switch off? Please also give the key milestones with time lines.*

Ans: The Alliance has worked out a time line for the Ministry of Information and Broadcasting which is being separately supplied. Broadly the Alliance sees complete digitalization happening in a 7-10 year time frame.

Q31 *What is the order of investment required for achieving digitization with addressability, at various stakeholder levels (MSOs, LCOs, and Customers)?*

Ans. The Cable industry needs Rs. 50,000 crores in next seven years for digitalization of all metros/mini metros and towns.

Q32 *Is there a need to prescribe the technology/standards for digitization, if so, what should be the standard and why?*

Ans. There is a need to prescribe standards for digitalization in consultation with BIS.

Q33 *What could be the possible incentives that can be offered to various stakeholders to implement digitization with addressability in the shortest possible time or make a sustainable transition?*

Ans: The cable industry needs a clear cut roadmap of digitalization with a five year tax holiday for all expenditure incurred to convert from analogue to digital transmission. Further the industry needs to be treated on par with telecom sector for imports and customs duties. Non revenue incentives like time bound right of way permissions will also help. The Alliance is willing to provide a comprehensive paper on incentives required for sustainable transmission.

Q34 *What is your view on the structure of license where MSOs are licensed and LCOs are franchises or agents of MSOs?*

Ans. The Alliance has submitted its view earlier on the need to regulate the entire cable sector by transparent registration but feels that this should be a facilitative and not licensing exercise. Only registered LCOs should be allowed to become franchisee of the MSO or ICOs.

Q35 *What would be the best disclosure scheme that can ensure transparency at all levels?*

Ans: The best disclosure scheme to ensure transparency at all levels will depend on the ability of the Regulator to obtain factually accurate cost and revenue based information from all classes of service providers with strong disincentives for under reporting.

Q36 *Should there be a 'basic service' (group of channels) available to all subscribers? What should constitute the 'basic service' that is available to all subscribers?*

Ans: *The Alliance feels that a basic service is difficult to define and can be left to individual service providers to customize as per regional and local demand.*

Q37 *Do you think there is a need for a communication programme to educate LCOs and customers on digitization and addressability to ensure effective participation? If so, what do you suggest?*

Ans. *Yes there is a need to do so and an All India effort along with all stakeholders i.e. LCO/MSO/Broadcaster/TRAI/Ministry of I&B/Ministry of consumer affairs be taken into confidence on the benefits of digitalization and addressability both for QOS /transparency and choice to consumers.*

Q38. *Stakeholders are free to raise any other issue that they feel is relevant to the consultation and give their comments thereon.*

- *Ans.- Way Forward Issues:*
- ***Digitalizing over 120 million TV customers by 2017 is a huge task.***
- ***Most of the burden to be met by cable industry.***
- ***Government and Regulator must notify a clear-cut roadmap with timelines to ensure that pace of digitalization is hastened.***
- ***Time bound policy framework can accelerate the process***
- ***Digitalization date for conversion of analog to digital addressability for pay channels***
- ***Categorise the market so that all players can follow a clear plan***
- ***An Empowered Task Force Can Accelerate the Process.***
