

Consultation Paper No. 9 /2005



TELECOM REGULATORY AUTHORITY OF INDIA

CONSULTATION PAPER

ON

**PROPOSAL FOR AMENDMENT TO THE TARIFF
ORDER OF 1.10.2004 ON BROADCAST AND CABLE
TELEVISION SERVICES**

NEW DELHI

November 7 2005

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PREFACE

This short consultation paper by the TRAI is a sequel to a proposal received from the MSO Alliance, an alliance representing major Multi System Operators for amendment to the ‘The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated 1.10.2004. While examining the proposal it was felt that there is a need for more inputs and broader consultation before a final decision could be taken.

Paragraphs 1-4 briefly bring out the background, existing position in Tariff Order and the details of the proposal for amendment. Paragraphs 5-8 while analysing the proposal brings out the pros and cons of the proposal for amendment as well as certain related issues. In Paragraph 9 the views of the stakeholders have been sought on the proposal for amendment as well as related issues.

Written comments on the issues raised may please be furnished to Secretary, TRAI by **30th Nov 2005**. 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@traf.gov.in” (Telephone No.011- 26713291). The Fax number of TRAI is 011-26713442.

Sd/-

New Delhi
7th November , 2005

{ Pradip Baijal }
Chairman

Background

The MSO Alliance, an alliance representing some of the major Multi System Operators had in a meeting with Telecom Regulatory Authority of India suggested that all new pay channels (i.e those introduced after 26.12.2003) should be offered as individual channels. According to the MSOs the existing provision in the Tariff Order to offer the new pay channels(s)/ or converted FTA to pay channels either individually or as part of a new separate bouquet on a stand alone basis has not been effective. Further, it has been stated that the absence of availability of information on individual channel prices, within the bouquet, hampers decision-making based on proper business rationale by the MSOs. On behalf of the MSO Alliance it was stated that the Tariff Order needs to be amended to ensure that the channels within a new bouquet are offered individually. The consultation paper deals with this proposal.

Position in the Tariff Order of 1.10.2004

2. According to the first proviso below clause 3 of the 'The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004)' 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 as on 26.12.2003 is /are converted to pay channel(s) subsequently, then the ceiling of cable charges 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 proviso further states that the extent to which the ceilings can be exceeded would be limited to the rates for the new channels and the rates must be similar to rates of similar channels as on 26.12.2003 for the new pay

channel(s) as well as channel(s) that were free to air as on 26.12.2003 and subsequently converted to pay channel(s).

Proposal for amendment

3. The MSO Alliance, in the context of the above, had made a proposal for amendment of the Tariff Order vide their letter dated March 14 2005. They have sought deletion of the words “or as part of new separate bouquets” in the proviso to the Tariff Order of 1.10.2004. The implication of this is that all new channels can only be provided as separate individual channels. They also indicated that once a new bouquet of pay channels is introduced, the new bouquet rate should be frozen at the level of introductory rate excepting for 7% increase for inflation. Another suggestion was that if the broadcaster wishes to introduce any further channels after the introduction of a new bouquet then further introduction of the channel(s) in pay channel mode may be offered as single channel and should not be loaded with the 2nd bouquet of new channels. Attention of the Authority was also drawn to Rule 9 of the Cable Television Network Rules 1994, as amended, and in particular the second proviso relating to illusory pricing introduced with effect from 6.6.2003. The proposal is at Annexure-I.

Hearing by the Authority

4. On a specific request, the MSO Alliance was given a hearing by the Authority on 3.6.2005 in connection with their proposal for amendment to the Tariff Order. The issues which were brought out during the meeting were similar to their submissions made in their proposal of March 14 2005. During the meeting, specific instances of pricing of Bouquet(s) consisting of HBO Channel and Ten Sports Channel were brought up wherein it was pointed out that the Broadcasters are forming bouquets with pay channels which were existing as on 26.12.2003 and pricing the bouquets in a manner which is violative of spirit of the Tariff Order of 1.10.2004 which provides

that rates of new pay channels should be similar to that of rates of similar channels as on 26.12.2003.

Analysis of the Proposal

5. The proposal has the following advantages:

- i) Because of the large number of channels in the market and the fact that most networks operate in an analogue mode, there is a shortage of bandwidth. Accordingly by offering more choice to operators it would be possible for them to meet the demands of the consumers in a more flexible manner.
- ii) The consumers would have more choice to the extent that they are able to exercise this through their cable operators.
- iii) To the extent that the consumers through their operators are able to select channels of their choice, they would not have to pay for those channels which they do not wish to watch.

The difficulties associated with the proposal are listed below:

- i) Without CAS, the consumers will not be able to exercise choice individually and can only do this collectively through the cable operator.
- ii) Since this would apply only to the new bouquets, it could be argued that these restrictions would be unfair on new entrants.

Views of broadcasters

6. The broadcasters are generally of the view that these matters should be left to the broadcasters and distributors and the packaging of channels is something that should not be regulated.

Views of the Authority as indicated in Recommendations of 1st October, 2004

7. The views of the Authority are :

- i) The Authority had decided that since no consumer choice is possible in non CAS areas, regulation of prices to promote individual channel choice for consumers should not be done (relevant extracts are at Annexure-II).
- ii) The Authority had also indicated that once competition comes in, price regulation will be withdrawn. In this context it may be noted that over the next 6 to 9 months there are likely to be more DTH players in the market which could provide effective competition to the cable industry.

Other issues

8. There are some other issues that have come up during the process of implementation of the Tariff Order and these are briefly discussed below:

a) Migration of channels

The HBO channel which was being distributed by Set Discovery up to 1.1.2005 is now being distributed by Zee Turner. Ten Sports which was

earlier distributed by Modi Entertainment is being distributed by Set Discovery from 1.4.2005. In both these cases there have been disputes on what should be the fair pricing of the new bouquets as well as reduction of the price in the old bouquet. At present individual channel prices are available only for Chennai. Reasonableness of bouquet prices can therefore be determined with reference to these prices. Similarly, reduction in price has also to be benchmarked to these prices. This is what is provided in the Tariff Order of 1st October, 2004. The precise manner in which this needs to be done is, however, not clear and requires consultation.

b) *Prices of new bouquets*

The MSO Alliance has suggested that once a new bouquet of pay channels is introduced the new bouquet rate should be frozen at the introductory level with a 7% increase for inflation. At present there is no such specific provision in the Tariff Order. This issue also requires to be debated.

c) *Publishing wholesale prices*

The Authority has already issued a Press Release giving the names of the new pay channels as well as FTA channels converted to pay after 26.12.2003. The MSO Alliance has suggested that the prices of these new channels should be made available on TRAI's website. Some broadcasters have argued against this. It is considered by them that this could lead to overcharging of customers since at present there is no clear link between the wholesale prices charged to the operators and the retail prices to the consumers.

Issues for consultation

9. In the background of the analysis in the preceding paragraphs the views of the stakeholders are sought on the following issues:

- I. Whether the proposal for amendment to the Tariff Order as suggested by MSO Alliance for deletion of the words “or as part of new separate bouquets” should be agreed to or not?
- II. If not, whether there can be any other method by which the concerns expressed by MSO Alliance can be addressed within the existing framework of non existence of addressability? If so how?
- III. Whether the existing tariff order be amended to indicate benchmarks which can be used for determining similarity in rates of new pay channels vis-a-vis rates of similar channels that was prevailing on 26.12.2003?

If so what should be the benchmarks and how to arrive at these benchmarks out of the following options:-

- Can the average wholesale price of bouquet of channels existing as on 26.12.2003 be used as benchmark to determine similarity in rates?
- Should available Chennai (CAS area) individual channel prices and wholesale bouquet prices in CAS Areas and Non CAS areas be used to derive a wholesale individual channel price within a bouquet in non CAS area and this derived wholesale price of the individual channel be used as a benchmark for judging the similarity in rates?
- Whether there can be any other methodology and what are the details of such alternative methodology?
- Whether similarity should be judged with reference to the same broadcaster or all broadcasters for similar genre of

channels and whether language and reach of a channel also be considered for reckoning similarity?

- IV. What should be the approach in case an existing pay channel changes from one distributor to another as in the case of HBO and Ten Sports and what specific changes may be required in the Tariff Order?
- V. Whether the prices charged by broadcasters to the MSOs, for channels/bouquets launched after 26.12.2003, should be frozen at the levels at which they were introduced, with an annual increase for inflation as suggested by the MSOs?
- VI. Whether the prices charged by the broadcasters to the MSOs as reported under clause 4 the Tariff Order of 1.10.2004 should be released for public information by TRAI as and when there are changes? If so how this would lead to more efficient functioning of the market?
- VII. Whether, we should move towards pricing of individual channels so that the consumers in a non-CAS environment, through the cable operators, exercise a wider choice regarding channels?

Annexure-I

Extracts of proposal dated 14.3.2005 for amendment to the Tariff Order of 1.10.2004 from MSO Alliance

The following are the extracts of the letter dated 14.3.2005 in which the MSO Alliance had proposed that the Tariff Order of October 1, 2004 be amended:

The Alliance is deeply concerned at the fact that in public perception there is a price freeze in force from January 15, 2004, yet in fact, the Tariff Order of October 1, 2004 has left it open to new pay channels or converted FTA to pay channels to be offered individually or as part of new bouquet.

- As regard Para 6 of the minutes, which inter alia,, deals with any new pay channels introduced after 26.12.2003 or any FTA channel converted into a pay channel, then such pay channels shall be offered by the broadcasters to the MSOs on stand alone basis, there should be freedom to the MSOs to subscribe for sub-group channels within the bouquet of newly introduced pay channels.
- It is submitted that the price of the stand-alone channel, within the bouquet of the channels should not be such that it forces the MSOs to subscribe for “ALL the channels in the bouquet” unless specifically opted for due to the price disadvantage attached for one popular channel and is bundled with other channels having no demand or relatively low demand.”
- In fact attention of the Authority is drawn to Rule 9 of the Cable Rules 1994 and in particular the second proviso relating to illusory pricing introduced with effect from 06.06.2003.
- Further the embargo being introduced in the form of the TRAI rate freeze order/ notification that once the new bouquet of the pay channels/individual pay channel is priced by the broadcaster, which is having the existing/old bouquet of the channels, then:-
 - 1) The rate freeze order for the newly introduced bouquet of the pay channel should become applicable upon its introduction stage and the rates, if at all may be increased for the new channels, then the same may be increased in accordance to the TRAI regulations, e.g. if a channel is introduced say on 26th April 2004 at Rs.10/- then rate at the introductory state become freeze. If the rates that are to be increased then such increase shall alone be at the rate of 7%

(as per the notification dated 1st December, 2004) and no further liberty is available to that such newly introduced pay channel.

- 2) If the broadcaster wishes to introduce any further channels, after the introduction of the 2nd bouquet of channels/stand-alone channel, then such further introduction of the channel(s) in pay channel mode may be offered on stand-alone basis and should not be loaded with the new (2nd) bouquet of channels.

The suggested amendment to Tariff Order would clarify that the original intention of the above Proviso was applicable only to single channels on stand-alone basis. Consequently, words in the Proviso reading “or as part of new separate bouquets” would need to be deleted.

This is because in effect there is no price freeze on new channels launched after December 26, 2003. By allowing the Broadcasters to create new bouquets situations have been created by which there has been a 500% increase in the price of HBO channel on it being transferred from the Sony distribution network to the Zee Turner distribution network. This was never the intention of TRAI as it completely distorts the very purpose of the Tariff freeze Order.

Further, it was not the intention of TRAI to allow broadcasters to create new bouquets and force customers pay for channels that they do not wish to see. While the Alliance continue to hold its consistent view that the only long term solutions lies in bringing about mandatory addressability for pay channels, as this matter is sub-judice in the Delhi High Court, it is suggested that as an interim measure of new channels launched after December 26, 2003 be available to cable operators/customers on stand-alone basis only.

Annexure-II

Extracts from the Detailed Recommendations on Issues relating to Broadcasting and Cable Services

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

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

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