Response To TRAI Consultation Paper

On

Tariff Issues related to Cable TV Services in Non-CAS Areas

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Response to the Consultation Paper on Tariff Issues related to Cable TV Services in Non-CAS Areas (5/2010)

1. **Introductory Comments**

1.1 The Zee Network is pleased to submit its comments on this very important issue of "Tariff Issues in Non-CAS Areas". As vividly outlined in the consultation paper which is very detailed and full of statistics but regrettably lacking in industry dynamics such as viewership and TAM data which distinguishes a channel from another channel in the same genre based on the popularity of its content. The Non-CAS areas, comprising of over 80-86 million households present the largest single market segment in the Indian Pay TV industry. However at the same time, the sector is beset with problems such as lack of transparency and non-declaration of subscriber numbers at various levels.

1.2 However we are stunned to find that most of the Data (In Annexures) which is likely to be used for any potential price regulation does not factor in the GRPs and the TRPs which the channels enjoy and the segments of viewership that these channels target? Without going into the question of authenticity or otherwise of the GRP/TAM rating, it is an acknowledged fact that at present, this is the only currency available which is being adopted by the stakeholders viz. Broadcasters, advertisers & MSOs etc. for transacting business. It is incredible that TRAI could have prepared a consultation paper on price regulation without considering the viewership that the various channels enjoy which in turn depends upon the quality of content, as reported by TAM and BARB and other rating measurement agencies and base it solely on revenues and historical costs. As pointed out by us in our report the data of revenues is highly skewed as LCO comprising of 80% of the entire households indulge in under-reporting. Moreover the TRPs and GRPs vary from market to market and the price caps if any need to take these into account.

1.3 If the statistics for the past three years is reviewed, it may be seen that while the number of C&S households has stagnated at virtually the same level of close to 78-84 Million, the DTH subscriber base has risen to over 20 million in the same period. There are perennial problems plaguing the non-addressable analogue cable industry which are unique to India.

1.4 Unfortunately, the price regulation of Non-CAS areas, which has pegged the price of pay channels at levels of around Rs 200 per month, while capping the outgo of the individual customer does not address the malaise prevailing in the sector. While the 80 Million customers generate revenues of Rs 1600 Crores per month (Rs 19,200 Crores per year based on an average price of Rs 200 per month) collected at the level of LCOs, the remaining chain comprising of MSOs and the Broadcasters witness much lower revenues. The proposal to fix the revenue shares at various levels, even if recommended by the TRAI is subject to the proper declarations by LCOs to MSOs and likewise to broadcasters. It is quite obvious that any kind of revenue share can work only when the entire revenue realized from subscribers is properly accounted for. The estimated total revenue realized by the pay channels including the subscription from DTH is around Rs. 2500 cr to Rs. 2700 cr. Per annum. However, as per the prevalent scenario hardly 12% to 13% is the declaration level, thus effectively ruling out the revenue share mechanism for this non-addressable market. The lack of actual subscriber base data makes this proposition entirely unworkable as the total revenue realized from the ground/subscribers is not at all known.

1.5 It may be pointed out that the total revenue earned by an entity is the function of two factors – number of units (subscribers) and the rate per unit (subscribers). The surprising part of entire consultation paper is that while there is an elaborate discussion on the tariff fixation and the methodologies thereof, there is no discussion whatsoever on the methodology of determination of actual subscriber base in non-CAS areas which is one out of the two important variables in the value chain. The most contentious issue in the non-CAS area is the determination of actual subscriber base. At present there is complete non-transparency so far as the actual number of subscriber being served by LCO in non-CAS areas. Any tariff exercise done in isolation without addressing the associated issue of the subscriber number would be futile and will not serve the objective desired to be achieved.

1.6 The attention in this regard is invited to:

(i) the order of Hon'ble TDSAT dated 15/1/2009 wherein at para 84 the Hon'ble Tribunal has observed the following :

> *"84. With these findings, we set aside the Telecommunication (Broadcasting & Cable) Services (Second) Tariff (Eighth Amendment) Order 2007 dated 4.10.2007 of the Telecom Regulatory Authority of India.* ***We direct the TRAI to study the matter afresh in the light of our observations and issue a comprehensive Order covering all aspects including the issue of subscription base in a non-addressable system.*** *We expect the Authority to complete this Study in six months for which they may call for such relevant information as is required from the service providers. We also direct all the service providers that non-cooperation in this exercise including non-furnishing of information will be viewed as a violation of this Tribunal's orders".*

(ii) the order dated 13/4/2009 passed by Hon'ble Supreme Court on the appeal filed by the Authority against the judgment of TDSAT dated 15/1/2009. The relevant part of the order is reproduced below:

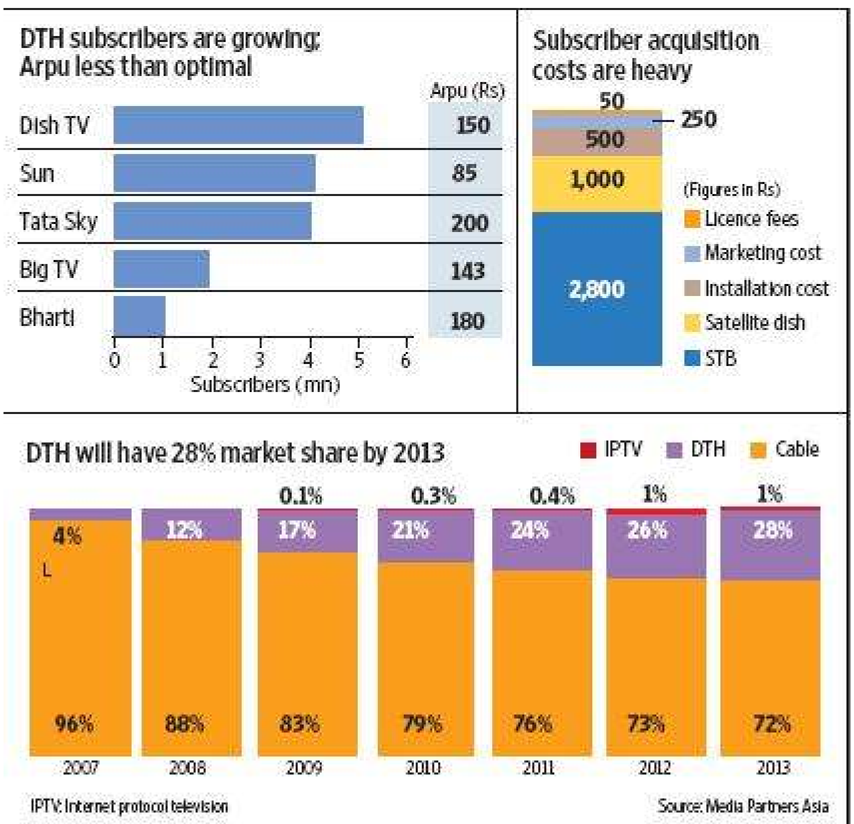
"In supersession of the order passed by this Court on 13.04.2009, the following may be read:

By the impugned order, TDSAT has directed TRAI to study the matter afresh and issue a comprehensive order covering all aspects including the issue of subscription base in a non-addressable (sic) system. *Learned senior counsel appearing for the TRAI stated that a revised study would be completed within a short period after hearing the parties at the earliest.* ***The TRAI may however consider the matter de novo as regards all aspects and give a report to this Court by 11th August 2009****. All parties are directed to co-operate with the TRAI so as to enable them to file a report at the earliest. The TRAI shall also consider the feasibility of putting a cap on carriage and placement charges......"*

A perusal of the above would reveal that both Ld. TDSAT and Hon'ble Supreme Court have directed the Authority to address the issue of subscriber base while considering the matter *de novo*. As pointed out hereinabove, it is reiterated that there is no attempt whatsoever on the part of Authority to also consider the subscriber base issue and the focus all along has been on the fixation of tariff/rate for pay channels. Thus, the said exercise suffers from serious infirmity in as-much-as the fixation of tariff without addressing the issue of other variable – subscriber base would render this entire exercise grossly incomplete and half-baked.

1.7 From the figures available in public domain and also reproduced in consultation paper, it is evident that both the MSOs and the broadcasters are getting a very small fraction of the revenues which are being collected from the subscribers. Most of the revenues are retained by LCOs through low declaration. Consequently MSOs report much lower revenues than would be evident from the real customer base they should be serving, and consequently most of these revenues go for broadcaster payouts leaving practically nothing for them. The Broadcaster also gets a very small fraction (12% to 13%) of total revenue collection.

1.8 While the Cap in pricing which is prescribed by TRAI (Non-CAS Area Pricing) at around 200 may seem a customer friendly move, the fact is that DTH today offers lower pricing than CAS area pricing with greater transparency and quality. As reported by MPA, the ARPUs are below Rs 200 and consequently the DTH services are expected to garner nearly 25% market share this year.



It is thus evident that the fixation of CAS area pricing is further putting pressure on MSOs, to the extent that all major MSOs are making losses. The analog cable systems help only the LCO in concealing revenues, while the Broadcasters and MSOs suffer.

The high profits realized by LCOs by keeping the networks analog are also having an impact on the digitalization of the industry as the LCOs are not at all interested in moving to a higher declaration. The 25% revenue share which would be typically available to them under a "digital network" will amount to just 50,000 per 1000 customers (At Rs 200 per month), which is much lower than Rs 1,60,000 which they are retaining now. Moreover the expanses of an LCO with 1000 customers inclusive of network maintenance and collection charges etc. amount to Rs 30,000 per month, leaving it with a meager margin of just Rs 20,000 per 1000 customers in a digital regime.

1.9 The very reason why the average price cap of Rs 200 was fixed in the first place in 2007 was the monopolistic nature of the cable networks and consequent fear that the prices charged from customers will be exorbitant. This indeed appeared to be the case initially when the cable prices in Metro cities such as Bombay touched Rs 350 – 400. However the situation has since changed and customers have a choice now through DTH which is available through six operators at tariffs ranging from Rs 70-350 per month based on channels selected.

It is thus evident that the Non-CAS pricing policy has outlived its utility and is in fact proving to be a barrier to the digitalization of the industry. The prevalence of carriage fees is a result of inability of MSOs in generating sufficient revenues from Pay channels to a large extent. However broadcasters are willing to pay much higher fees to DTH operators due to better declaration. Moreover the phenomenon of carriage fees is itself a result of limited capacity of 60-70 channels on analog systems and in most cases result in carriage of channels which the customers may not be interested in watching. These may include newly launched channels which are trying to gain market, channels with external funding or religious channels. In Digital cable systems which can carry over 300 channels, the impact of such carriage is greatly reduced as the customers have sufficient choice.

1.10 To this extent the Zee Network would recommend examining the impact of removing the price caps as these are now proving to be inimical to the interest of the entire industry. This will result in better quality of channels being delivered on the networks and lower resistance to digitalization. If the price caps are continued, alternative media such as DTH will come to dominate the entire industry as MSOs can no longer support such a structure.

Zee Network is of the view that the existing price freeze on the tariffs of pay channels in non-CAS areas is no longer necessary as it is hampering the growth of the broadcasting sector. The tariff freeze was initially introduced by the Regulator as a temporary measure. The TRAI itself in its Recommendations dated 1/10/2004 has observed

> *"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 effective competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."*

1.11 It is our submission that existing tariff regime in which the rates have been frozen is causing huge revenue losses to the broadcasters. The cost of programming for example sports, movies and general entertainment depends to a large extent on the type of content acquired or rights of telecast obtained from time to time and placing a cap of pricing can hinder a channel from going in for new programming which could only be supported by hike in subscription. It is pertinent to point out that the input cost for the broadcasters is continuously increasing in the form of increase in the cost of procurement of programmes from production houses, increase in the cost of IPR procurements, phenomenal increase in the cost of movie rights, increase in overhead costs, operational costs in the form of hiring of transponders etc. events rights and sports broadcasting rights etc. This has resulted in total imbalance as the broadcasters have to absorb all these increased costs themselves. This has caused significant dent in their revenues.

1.12 In this regard it is also pertinent to mention that in certain recent judicial pronouncements pertaining to DTH, the rates chargeable from DTH platforms have also been linked to the prevalent cable prices. This has caused considerable hardship in-as-much-as since the cable prices are frozen, the corresponding derived DTH prices from these cable prices are also in a manner stands indirectly frozen.

1.13 Zee Network is of the considered view that the rate regulation and price controls distort the market and lead to misallocation of resources. Artificially low prices deter any further investment in new channels & programming which in turn affects consumers' choices because of shortage of quality channels and lack of variety in programming. In this regard it is useful to refer to the extract of the Explanatory Memorandum to the Tariff Order dated 1/10/2004 which reads as under:.

> *"Fixation of price charged for new pay channels to consumers is difficult because of large variations for these prices* ***and of the difficulty in linking these to costs.*** *Further, this is a localized issue which is not easily amenable to centralized regulations. 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 interconnect agreements more transparent."*

Thus TRAI itself has acknowledged that it is not possible to determine an appropriate price for a channel because of lot of variable and complexities involved in undertaking the said exercise.

1.14 In this context, we would like to point out that there have been significant development and changes both at the content level as well as on the carriage side. More and more channels of different genres such as entertainment, news & current affairs, sports, life styles, infotainment etc. are available to the Indian consumers and in fact more channels are likely to be launched in the coming months. Accordingly, ample choice is available to the consumers in terms of content in each genre. Approximately 450 channels of different genres are available to the Indian consumers. Availability of such a high number of channels in the market ensures that no individual broadcaster can dominate the market. The competition is so intense in the market that in case a broadcaster tries to take the advantage of its market position by following anti competitive practices, the consumers always have option to switch over to alternate product (channel).

- ❖ In view of the detailed submissions made hereinabove we are of the view that there should be a total forbearance of tariff in non-CAS areas.

- ❖ The market is mature enough to reach its equilibrium level. The continuity of price regulation & controls will not only distort the market but will also lead to downgradation of quality of services and reduction of investment in the sector. It is to be noted that selling the channels at low prices will discourage any further investment in new channels and programming which is bound to affect the consumer choice and creating a shortage of quality channels and variety in programming content.

- ❖ Since market is mature and the economic principal of equilibrium has made its inroad into the industry, if any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the channel is under priced, the market forces will effect necessary correction based on its demand & popularity by increase in price. Hence no economic rationale exists for placing price controls.

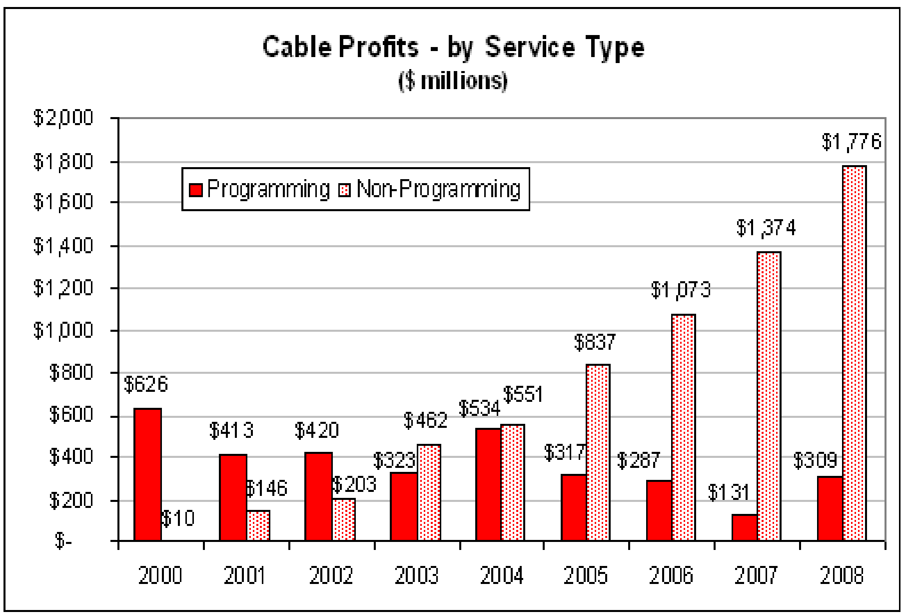
❖ In fact, under the free market conditions of competition, the cable television market has grown rapidly and a wider choice approx 100 channels of different genres is available to consumer at less than Re. 1 per day per household. If the price controls are persisted with, it will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved towards deregulation of their cable television industries, thereby choosing to remove any restrictions on pricing.

❖ As already submitted hereinabove the market forces should be allowed to operate freely which would ultimately self-regulate the system and optimum level price would be achieved. So far as the checks & balances are concerned, the TRAI can have a continuous monitoring of the market and can also initiate a system of regular reporting of pay channel prices by various broadcasters. If TRAI at any stage is of the opinion that market forces are not be able to throw up the appropriate level and in fact the interest of subscribers is being compromised, it can immediately intervene and effect necessary corrections.

❖ The TRAI has statutory power to regulate if the deregulation results in creation of some kind of imbalance in the market to the detriment of consumers. The fact that there is an intense competition on the ground and coupled with the reality that Regulator can intervene as & when the market tends to behave erratically, in our opinion are effective deterrents in preventing the broadcasters from acting in a whimsical manner to the detriment of consumers at large.

1.15 The removal of price caps in non-CAS areas will lead to faster digitalization as pay channels will be able to pay a larger share to LCOs if they can realize it from customers. Thus the entire industry will move to greater transparency.

OECD in its report has cited that the digitalization of cable will lead to greater revenues from broadband and non-TV services including voice. In India also this model can be successful, but the current price caps give greater incentive to LCOs to continue to work on lower declarations.



The price caps also provide for no up-gradation of the industry such as **HDTV** which can only be delivered over Digital Networks. Hence keeping in view the forthcoming developments in TV programming in the country, the price caps need to be phased out.

Subsequent of the promulgation of the Tariff Order in 2004 and its subsequent amendments, the scenario has changed constantly. A number of new channels in all genres have appeared which are outside the scope of the tariff order to the extent that these can be priced separately. Moreover many channels previously pay have gone FTA and vice versa. In addition there are over 200 channels waiting to be licensed.

We appreciate the attempts of the TRAI to understand the state of the market in studying the economics of LCOs, MSOs and Broadcasters and try to arrive at a possible pricing formula and a pricing cap based on Genres so far as broadcasters and revenue shares so far as LCOs and MSOs are concerned. However we believe that such exercise will be futile as there are over 500 channels waiting to be carried on various platforms and placing a price cap will only help established players and eliminate newcomers. In addition in the absence of addressability, the prices of even 100 channels based on any scheme of selection will exceed Rs 200, which is the typical level paid for by customers to DTH operators.

1.16 To summarize our introductory comments, the Zee Network would like to recommend a complete removal of ceiling of cable TV pricing in non-CAS areas. We believe that this step is necessary for the industry to grow as against the present situation where 80% revenues are lost due to non-transparency of the system.

In case the TRAI would like to proceed with any potential price controls, the consultation paper should be withdrawn and reissued based on viewership data, GRPs and TRPs enjoyed by the channels and potential pricing worked out by factoring on all these factors.

ISSUES FOR CONSULTATION

1. **Are the figures in Annexure B3 representative for the different genres of broadcasters? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the genre, and not of your company.**

   (a) While we are separately responding to the figures given in annexures B1, B2, B3, B4, B5 etc., nevertheless we would like to mention that the categorization of broadcasters in Annexure B3 is incomplete and is unrepresentative of the industry. For example it does not include Religious channels such as Aastha, Jagran and a host of others which occupy up to 10% space on an analog system(i.e. 6-9 channels). Moreover such channels have a different revenue model i.e. slot sales, which are different from pure advertising revenues. Channels such as Aastha carry virtually no advertising and are free to air .Hence they have no subscription or Ad revenues, with slot sales and their promotion of other products contributing to the financial viability.

   (b) As pointed out in our introductory remarks, the revenues of channels which are mentioned for various genres cannot be considered to be representative of the true revenues due to the underreporting. Hence taking the current figures, which as we have demonstrated are highly underreported implies that an incorrect picture is taken of the prevailing ground situation.

   (c) We also regret to note that the TRAI has not considered categorization of channels based on GRPs. The advertisers and Carriage fee providers primarily look at this data for Ad and carriage fees that they are willing to pay. In fact the viewership enjoyed by a channel directly depends upon the quality of content. The higher viewership means that people are liking a particular content in a channel and thus the popularity of a channel goes up accordingly. Hence the current categorization of channels should factor in the GRPs.

(d) We also find the operating costs as mentioned in Annex B2 to be unrepresentative of the industry. For example the operating costs of GEC Hindi category 2 are shown as Rs 103 crores against revenues of Rs 31 Crores implying that every channel in this category suffers a loss of Rs 72 crores per annum. However this is far from being true.

(e) In GEC Hindi Category 1 the Advertisement revenues are shown as Rs 380 crores out of a revenue of 419 Crores (91%) with only 39 Crores (9%) being subscription revenues. This is totally incorrect. The ratio of advertisement to subscription is closer to 55:45. In fact in certain cases, the subscription revenues are more than advertisement revenues. Moreover it varies based on GRPs which the channels enjoy.

(f) How should the channels be characterized?

The GRPs and TRPs should be a vital and important factor in categorizing the channel as it has direct relationship with the content of a channel. Ratings point is a measure of viewership of a particular television program.

One single television ratings point (Rtg or TVR) represents 1% of viewers in the surveyed area in a given minute. As of 2009, there are an estimated 86 million television households in India. Thus, a single national household ratings point represents 1%, or 8,60,000 households for the 2009-10 season. When used for the broadcast of a program, the average rating across the duration of the show is typically given. Ratings points are often used for specific demographics rather than just households. For example a ratings point among the key 18-49 year olds demographic is equivalent to 1% of all 18-49 year olds in the country.

A Rtg / TVR is different from a share point in that it is the percentage of all possible viewers, while a share point is 1% of all viewers watching television at that time. Hence the share of a broadcast is often significantly higher than the rating, especially at times when overall TV viewing is low.

GRPs / TRPs

Gross rating points (GRPs) or Target Rating Points (TRPs) are chiefly used to measure the performance of TV-based advertising campaigns, and are the sum of the TVRs of each commercial spot within the campaign. An ad campaign might require a certain number of GRPs among a particular demographic across the duration of the campaign. The GRP of a campaign is equal to the percentage of people who saw any of the spots, multiplied by the average number of spots that these viewers saw. For example, the following would be representative of the channel demand and consequently the pricing it should command:

GRPs

Channels	Wk 14'2010	Wk 15'2010	Difference
Zee TV	275	260	-15
Star Plus	325	319	-6
Colors	278	258	-20
Star One	50	46	-4
Sony	151	146	-5
Sahara One	31	28	-3
SAB	75	78	3
NDTV Imagine	99	96	-3
Zee Cinema	109	115	6
UTV Movies	36	39	3
Star Gold	101	83	-18
FILMY	30	24	-6
GEC PUT	1286	1235	-51
PUT	3400	3260	-140

Daypart wise GRPs across GEC Channels

Daypart	Channels	Wk 14`2010	Wk 15`2010
Weekday Mon - Fri Prime Time 1900-2330	Zee TV	146	134
	Star Plus	131	135
	Colors	144	133
	Star One	13	13
	Sony	29	27
	SAB	31	32
	NDTV Imagine	42	42
Weekday Mon-Fri Afternoon Prime Time 1300-1500	Zee TV	17	18
	Star Plus	27	28
	Colors	22	21
	Star One	4	4
	Sony	21	26
	SAB	6	7
	NDTV Imagine	11	11
Weekend Sat - Sun Prime Time 1900-2330	Zee TV	28	31
	Star Plus	41	33
	Colors	15	16
	Star One	7	7
	Sony	23	18
	SAB	7	8
	NDTV Imagine	10	7

(g) It may be seen that Sony, which would claim to be in GEC category 1 enjoys only 150 GRPs which is about half of that enjoyed by Zee TV, Star Plus and Colors. Similarly Sahara One, which also claims to be in the same category enjoys just 10% of the viewership of Star Plus, Zee TV or Colors.

Similarly while the TRAI may be tempted to club Sahara Filmy with Zee Cinema or Star Gold, it enjoys just 30% of the GRPs of these channels.

The table below presents the performance of all channels based on TAM data:

TAM, CS 4+, ALL PHCHP

Week-14, Mar 28-Apr 03, 2010

CHANNELS	Wk-13	Wk-14	INC/DEC
9X	1	1	0
Aaj Tak	22	21	-1
Chardikla Time TV	3	3	0
CNBC TV18	2	2	0
Colors	276	262	-14
DD Punjabi	18	11	-7
Divya	11	12	1
ESPN	1	1	0
ETC	1	2	1
ETC Channel Punjabi	**5**	**8**	**3**
IBN 7	16	22	6
Imagine TV	105	104	-1
MH1	21	29	9
MH1 News	10	8	-2

MH1 Shraddha	10	10	-1
NDTV India	12	15	2
NDTV Profit	1	1	0
PTC Chakde	34	40	6
PTC News	19	28	9
PTC Punjabi	61	58	-2
Real	0	0	0
SAB	51	53	2
Sahara One	31	36	4
Sony Entertainment TV	114	148	35
Star Cricket	1	0	0
Star News	20	19	-1
Star One	38	44	6
Star Plus	355	395	40
Star Utsav	20	11	-9
Zee Business	3	2	-1
Zee Cinema	109	85	-24
Zee News	16	15	-1
Zee Punjabi	2	0	-1
Zee Smile	1	1	0
Zee Sports	1	1	0
Zee TV	291	344	53
Zing	3	3	0

Zoom	2	4	1
Any Channel	2998	3131	133
Others	975	1019	44
Grand Total	5995	6260	265

(h) While the names of many channels such as ESPN, Star Cricket, Neo Sports, Ten Sports are very striking and TRAI may be tempted to club it with other channels in the same Genre, the fact is that these enjoy a ratings only during the telecast of sporting events for which they hold the rights. Moreover, all the channels in a sports genre cannot be treated alike as their content would differ substantially depending upon the rights of the sporting event held by them. Thus it would be fallacious to club them under one category and apply the uniform tariff rate.

The situation is similar in case of Regional channels.

Punjabi Relative Channel Share

Channels	wk-13	Share %	wk-14	Share %
Chardikla Time TV	3	2	3	2
DD Punjabi	18	11	11	6
ETC Channel Punjabi	**5**	**3**	**8**	**4**

MH1	21	13	29	17
PTC Chakde	34	21	40	22
PTC News	19	12	28	16
PTC Punjabi	61	38	58	33
Zee Punjabi	2	1	0	0
Punjabi Total	**161**	**100**	**177**	**100**

(i) Now the question is how would the TRAI categorize these channels in Regional GEC Category 1 or 2? Will it be based on viewership data or channel revenues? Which channel does the TRAI think the viewers are more interested in watching - is it based on their revenues or based on viewership data? How will TRAI factor in the fact that some channels pay high carriage fees and consequently may have high revenues (such as INX which is reported to have paid a carriage fees of 70-80 Crores) and comes in GEC category 1 based on revenues but has a viewership rating of just 1?

To demonstrate the fact that the viewership is also highly regional market dependent, we give example of the Bengal market:

GRPs Of Week : 14-10, C&S 4+, Market : All Bengal

Channels	**Week 13-10**	**Week 14-10**

PUT	3184	3149
Zee Bangla	187	172
ETV Bangla	164	158
Aakash Bangla	41	47
Star Jalsha	485	444
Rupashi Bangla	54	52
DD7 Bangla	33	29
Tara Muzic	8	10
Star Anand	46	41
24 Ghanta	60	46
Kolkata TV	17	17
Tara News	2	1
Sony Aath	64	70
Zee TV	129	152
Star Plus	141	138
Sony Ent.	77	83
Colors	127	117
Zee Cinema	76	66
Star Gold	60	70
Star One	17	16
Sahara One	30	32

SAB	19	20
Star Utsav	13	15
ESPN	5	4
Star Cricket	0	1
Zee Sports	0	2
Star Sports	4	3
Ten Sports	8	10

(j) It may be seen that some of the regional news channels such as Tara News enjoy a rating of just 1 as against 24 Ghanta at a rating of 60. Thus the pricing of such channels cannot be clubbed together with other channels with same revenues but different GRPs.

Accordingly we suggest that the consultation paper may be reissued as it is based on irrelevant data which ignore the dynamics of the industry.

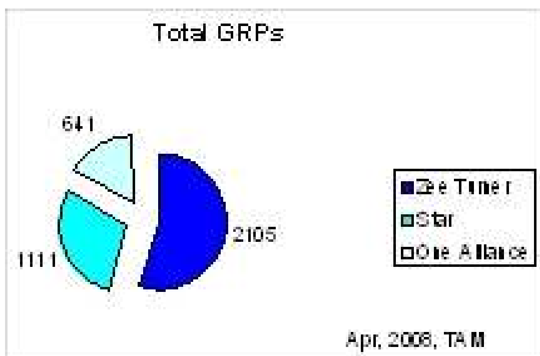
2. Are the figures in Annexure B5 representative for aggregators? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

(i) The main "Aggregators" in India are Zee Turner, Star Den, One Alliance and Sun. At the end of 2008 they distributed channels as follows:

Zee Turner: 33 Channels | Star Den: 24 Channels | One Alliance: 19 Channels

(ii) The total aggregate subscription revenues of the Aggregators in FY 09 which inter alia include the subscription from cable as well as subscription from DTH, were in the range of Rs. 2600 - Rs. 2800 Crores with Zee Turner and Star Den accounting for approximately Rs 800 – Rs. 1000 Crores each and One Alliance Rs 700 Crores. These figures comprise of the subscription revenue collected by them on behalf of their principals for cable & DTH platforms (in such an event the aggregators are only entitled to commission) and the subscription in their own right when they have acquired the channels for distribution on minimum guarantee/fixed fee basis.

(iii) The GRPs represented by the channels were as below:



In this context the figures mentioned in Annexure B5 of the consultation paper are as follows:

Revenue:182 Crores
Costs: 197 Crores

As such we are unable to see a correlation of the Aggregator revenues. We also fail to understand what purpose is served in aggregating revenues of Aggregators which have no real impact on the industry. The aggregators are acting on behalf of the broadcasters and as such are not a part of value chain.

3. Are the figures in Annexure B7 representative for the national MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

In Annexure B7 the figures mentioned are for two categories of national MSOs. National MSO

(i) With 2 Million+ customers where revenues are stated to be Rs 290 Crores and
(ii) With 1-2 Million customers with revenues of Rs 90 Crores

In this context, the data is as follows:

(i) Hathway Revenues $155 Million (Rs 697.5 Crores) comprising of cable services, internet, broadband, placement etc. ;Households reached 8.2 Million, Pay TV Subs 1.65 Million.

(ii) DEN Revenues $175 Million (787.5 Crores), comprising of revenue from cable services as well as share of revenue from Star DEN, the aggregator in which it has 50% stake ;House Holds reached 10 Million, Pay TV subs 1 Million.

(iii) Incable revenues $68 Million (Rs 306 Crores); Households reached 8 Million, Cable TV Subs 1.2 Million.

(iv) WWIL Revenues $63 Million (Rs 283.5 Crores);Households reached 9.8 Million, Cable TV subs 1 Million.

(All figures based on MPA report of 2010 and cross checked with company data)

As such we do not find any correlation of the data presented by the TRAI in Annexure B7 and the facts reported by MSOs. In addition, we are not able to comment on the said issue in detail as we do not have any access to the data submitted by various MSOs to the Authority.

4. Are the figures in Annexure B7 representative for the regional MSOs? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

We are not able to comment on the issue in the absence of the access to the data filled by regional MSOs except to observe that the regional MSOs are expected to have a lower base of customers than 1-2 million. (The customers are different from HHs passed).For1-2 Million customers the revenues would be higher than Rs 90 crores and should be close to 200 Crores.

5. Are the figures in Annexure B9 representative for the LCOs with > 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

The operations at this level are highly non-transparent and non-declarations are at much higher level. However, the figures of LCOs as reported seem to be close to industry levels. The EBITDA of 78% as mentioned is a bit high. It should be in the range of 70%. This is because on a revenue base of 6.7 lakhs per year, the technology transmission cost is taken at Rs 12000 per year (Rs 1000 per month) and Customer servicing cost at Rs 51,000 per year (Rs 4500 per month). These costs are likely to be higher with total at Rs 1 lakhs. The cost attributed to local content (Rs 1.3 Lakhs) is likely to be lower. We need to factor the impact of under-declaration as well as retention of taxes (Entertainment

& Service Tax) which though invariably collected from the customers but not paid to the Government.

6. Are the figures in Annexure B9 representative for the LCOs with =< 500 subscribers? If not, what according to you are the correct representative figures? When providing representative figures, please provide figures for the category, and not of your company.

The operations at this level are highly non-transparent and non-declarations are at much higher level. However the figures of revenue represented therein are close to industry figures.

We note from the TRAI figures that as pointed out hereinabove, in calculating the remittance of revenues to MSOs, the taxation impacts entertainment tax, service tax etc. are being ignored. While this varies from state to state and many of the operators may not be paying any taxes, the situation will change in the future. Hence any viability calculations need to factor the taxation issues also.

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

The average monthly bill varies from operator to operator and in different areas in the city. However at present the average rates are in the range of Rs 180-250 inclusive of taxes.

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

- **(i) Under-reporting of the analog cable subscriber base**
- **(ii) Lack of transparency in business and transaction models**
- **(iii) Differential pricing at the retail level**

(iv) Incidence of carriage and placement fee

(v) Incidence of state and region based monopolies

(vi) Frequent disputes and lack of collaboration among stakeholders

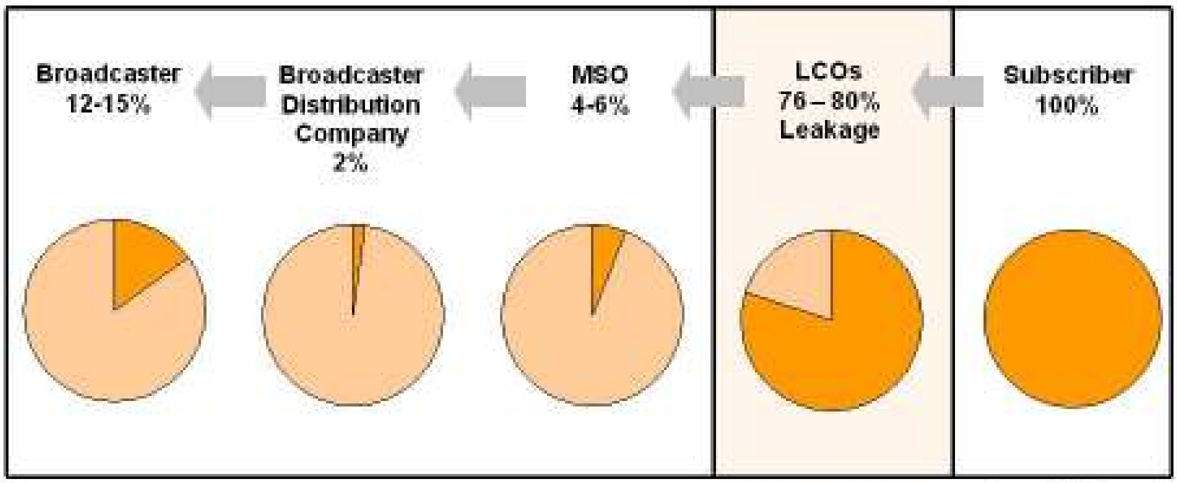
9. Are these issues adversely impacting efficiency in the market and leading to market failure?

(i) As explained in our introductory comments, the non-CAS analog market is seriously beset with under declarations, which go to the extent of 80%. Out of a revenue base the 80 Million customers generate - Rs 1600 Crores per month (Rs 19,200 Crores per year based on an average price of Rs 200 per month) which is collected at the level of LCOs, the remaining chain comprising of MSOs and the Broadcasters witness much lower revenues with just Rs. 2600 – Rs. 2700 crores being accounted for by Broadcasters as subscription revenue receipts which inter alia include the receipt from DTH also. We have provided data in answer to a previous question on the MSO revenues. While it may be acknowledged that some channels are free to air channels the revenue of which is retained by the LCO, the revenue short fall is very significant.

(ii) Even out of this meager figure of subscription receipts, 50%-60% goes out by way of carriage fees to the MSOs/LCOs, which means that the revenues do not go to the broadcasters, but rather the broadcasters have to shell out the hefty amount to MSOs/LCOs to carry the channel. This amounts to a huge loss of revenue to the broadcasters.

(iii) As the number of households, connections and collections per customer are not known disputes are common. As per SSKI research in 2008 the following picture represented the plight of the industry:

Leakages Happening at LCO level



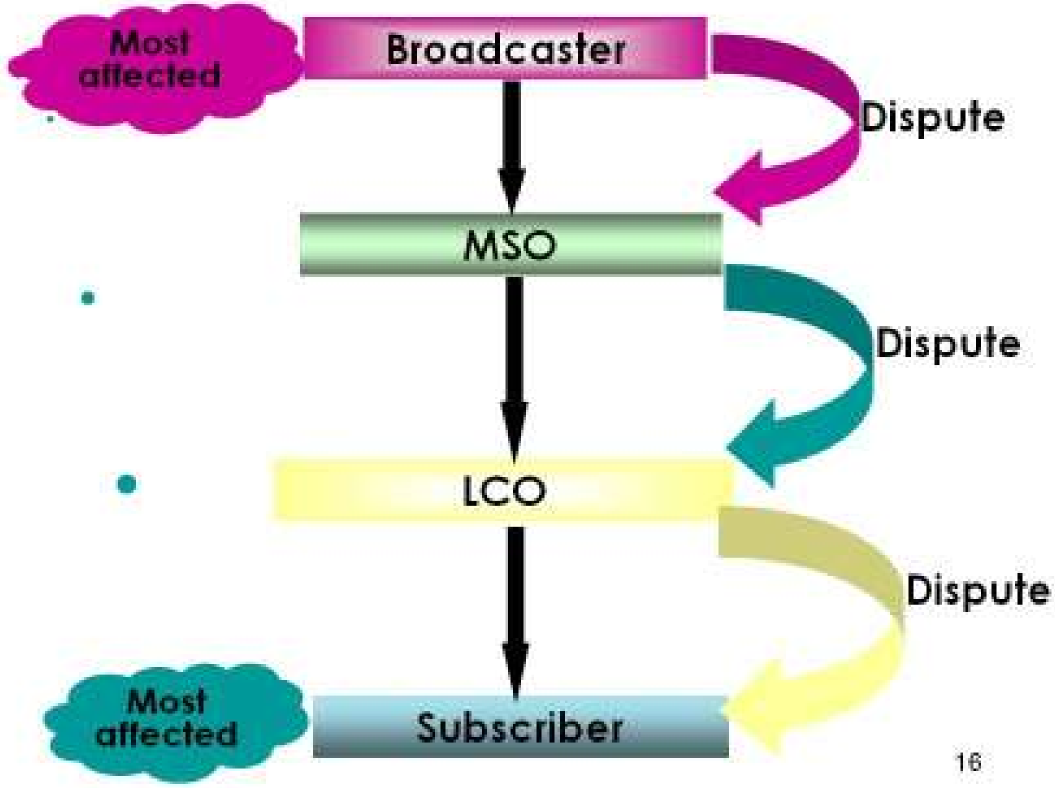
Source:SSKI Research

Distribution of Revenues

Markets	Operator	Broadcaster
USA	60%	40%
UK	63%	37%
Australia	65%	35%
Japan	65%	35%
India	88%	12%

8

This also results in disputes at various levels as broadcaster try to stop signals to MSOs and MSOs to LCOs in order to increase declaration.



(iv) As mentioned the above issue is impacting the market adversely. It has been acknowledged in the Consultation Paper that the consumer spend is there, however the same is not reaching the content provider and is not being shared on equitable basis by all the stakeholders. Normally it is said that under declaration is the root cause but the current operating mechanism which gives leverage to a particular section of cable operators, also is to be blamed equally for the current situation. A recent example of Bilaspur becoming a TAM rating town has seen sudden influx of big MSO's rushing on and trying to control the cable distribution there. In the process, unrealistic figures would be offered as MG's to Broadcasters and would again give rise to the situation as mentioned in issues for <u>consultation in Point No 8.</u>

(v) <u>**Differential Pricing At Retail Level**</u>

The fact that the deals between the content providers and the cable operators are negotiated deals which are again based on certain assumptions which leads to a differential pricing at retail level. The differential can be due to two basic reasons:

(a) The paying capacity of the consumer; and

(b) The competition in the area.

Thus saying that some consumer pay more and some less for the same service may be correct to certain extent and ideally it should not be there as no service or product has two prices anywhere. One cannot have a socialistic approach of cross subsidization etc. in this regard. Therefore the retail prices at all levels should be common. In recent times the growing penetration of DTH has forced cable operators to look at the pricing realistically and price their services to give effective competition to DTH which has come out with packages concept to suit various price needs.

(vi) **Incidence of Carriage and Placement Fees**

This is not a recent phenomenon. This has been in place since the cable industry came into organized sector as way back as 1994. Earlier due to high penetration of Black & White TV sets, the fight used to be for first eleven channels, E-2 to E-12 which were at that point of time termed as prime band. The recent times have highlighted the issue of carriage and placement fee because the ratio/mismatch between the demand and supply of the bandwidth on the analogue distribution platforms which is characterized by severe capacity constraints. There is no incentive for digitalization to the cable fraternity and no incentive to the broadcasters to support digitalization as they are not being paid for the digital signals. The economics of digitalization does not suit the LCO and as such they are quite happy and satisfied with the present non-addressable regime. Accordingly, unless some suitable measures are initiated and the migration is properly incentivized, there will be continuous struggle for digitalization.

(vii) **<u>Incidence of State & Region Based Monopoly</u>**

Over a period of time it has been observed that monopolistic practices have evolved in States & Regions by certain groups, which have been perpetuated by the cash economy in the business and the desire to establish control over the media. This is a dangerous trend as the channels not finding favour of the local politicians controlling the cable, are pushed to the background which is not in the interest of the broadcasters or the consumers. These kind of monopolies would again lead to conflicts which can be prevented by deploying efficient mechanism to gather information and proper analysis thereof.

(viii) **<u>Frequent Disputes and Lack of Collaboration among Stakeholders</u>**

There have been frequent disputes and lack of collaboration among stakeholders in the sector which has again been primarily because of the issue of non-transparency on the subscriber numbers and a continuous struggle to have the control over the ground. The continuous carriage issues also add to such conflicts. The practice of appointing dealers and distributors with conflicting interest by the broadcasters and/or the MSOs/cable operators offering unrealistic minimum guarantees to the broadcasters to push out the competitive cable operators in the area add to the series of conflicts. Thus it is essential that a strict code of conduct be implemented by respective stakeholders associations and bodies to reduce the incidence of conflict and move towards collaboration.

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

i) Revenue share

ii) Retail minus

iii) Cost Plus

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

(a) As explained by us in our introductory comments, the regulation of price in non-CAS areas is not a practical proposition unless digitalization is introduced. As we have explained at length:

(i) It is not possible to categorize channels as GEC Level 1 or Level 2 etc. as the viewership depends on the TRPs and GRPs of the channels and not on the revenue of the channel.

(ii) Channels with higher GRPs have greater pricing power and this needs to be acceded to as these incur higher expanses on production of quality content and distribution thereof.

(iii) It does not make any sense to group channels in "Categories" based on revenue unless the TRPs and "reach" is factored in. Unfortunately we find these vital and essential parameters missing from the TRAI consultation paper. As explained by us, the TRPs vary significantly and it should be the prerogative of the broadcaster to charge higher for channels with higher viewership expenditure. Ultimately, the market forces need to come into play.

(iv) It should be recognized that many channels having low reach may pay high carriage fees to MSOs and these will be pushed by the

MSOs on the limited capacity of the cable, ignoring customer preferences. On the other hand allowing free pricing will permit the broadcasters and MSOs to provide "in demand channels" by pricing them appropriately.

(v) Any pricing or tariff policy works only when there is a transparency and proper quantification at all levels. In the current scenario when the total revenue realized from subscribers itself is not known there cannot be any revenue share mechanism which can be stipulated between the stakeholders. Thus in a non-transparent regime where the actual number of subscribers are not at all known, any pricing mechanism whether retail minus or cost plus will never work.

(vi) As pointed out hereinabove, Retail Minus Methodology cannot be applied as there is no transparency on the subscriber numbers in the retail. The authority itself has accepted that there is a negotiated settlement at the wholesale level. Thus it is neither possible nor feasible to adopt retail minus methodology or revenue share mechanism in non-addressable non-CAS distribution. These kinds of methodologies can only be adopted when there is complete transparency and the total revenue from the activities is properly accounted for and available for distribution as revenue share across the value chain. In the current scenario of Non-CAS areas where there is no technological mechanism to ascertain the actual subscribers spent, it is practically not feasible to have the revenue share. Revenue share can only work if the figures are established and in a transparent manner so that there is no dispute over the figures. The international scenarios give example when the content provider gets anywhere between 45-50% and the balance is shared by the distribution chain, but it is important to mention here that these are addressable platforms where the consumer spent is shared in totality and it is not pick and choose of selective elements.

(vii) (a) Regarding the Cost Plus methodology the attention of the Authority is invited to its own observations in Consultation Paper No. 9/2004 dated 20/4/2004 in which it was inter alia observed:

"3. Pricing of Pay Channels: Subscriber Price

3.1 Cost Based Price

Costing of pay channel like any other costing requires details of capital expenditure and operational expenditure but cost determination for pay channels become difficult because:

- *Some Pay Channels are broadcasted and viewed in more than one country making it difficult to apportion cost to a specific country/ region.*

- *It is difficult to cost the contents being broadcasted, as it is not a standardized commodity. Video services are highly differentiated, programming quality is very difficult to measure objectively, and both services and their costs are changing rapidly.*

- *If revenues are being earned also from advertisement then it is not clear how much of the cost would be recovered through subscription fee".*

(b) A cost plus mechanism fixing the amount to <u>fixed EBITAS</u> will be incentive to non-efficient producer (Broadcaster) and disincentive to an efficient broadcaster. Moreover as pointed out hereinabove in preceding paragraphs and as acknowledged by the Authority itself, the cost being a dynamic factor depending upon the type of content which varies at frequent intervals, the cost based methodology is totally unsuitable for Broadcasting sector.

Therefore in our own opinion there should not be any control over the wholesale tariff, it should be market driven and let the market decide the true worth of each product. Thus forbearance is the way forward.

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.

(i) As explained by us in our introductory comments in non-CAS areas, no revenue share model can be prescribed as there are huge under-declarations. As explained by us, over Rs. 19200 Crores collected by LCOs are getting reduced to just Rs. 2600-2800 crores by the time they reach the Broadcasters and if the DTH subscription revenues are reduced from the above mentioned figures, it would result in abysmally low figure of Rs1500-Rs1600 Crore.

(ii) We recommend free pricing in non-CAS areas with a significant differential in pricing between digital and non-digital customers. For example, a broadcaster should be free to price its Bouquet 1 let us say at Rs 100 for Analog customers and Rs 50 for DTH or Digital customers (subject to of course the placement stipulations in basic tiers etc) to force conversion to Digital. If this pricing power is not given, the entire industry will become sick as the revenues are lost in the LCO networks and they will maintain status quo resisting digitalization at all costs including political and physical.

The TRAI needs to realize that the price caps are working against the interests of the industry.

(iii) The bulk of the channels are FTA channels or channels which are nominally "pay" but have such low GRPs that they need to pay carriage fees to MSOs. Hence the net result is the flow of funds from broadcaster to MSO rather than being the other way round.

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

(i) It is difficult to appreciate how the tariff can be regulated cost wise & genre wise or channel wise. We have explained in detail in the preceding paragraphs that it is not possible to adopt the cost plus model at all. As shown in the following figure the channels in the same genre have widely varying viewership:

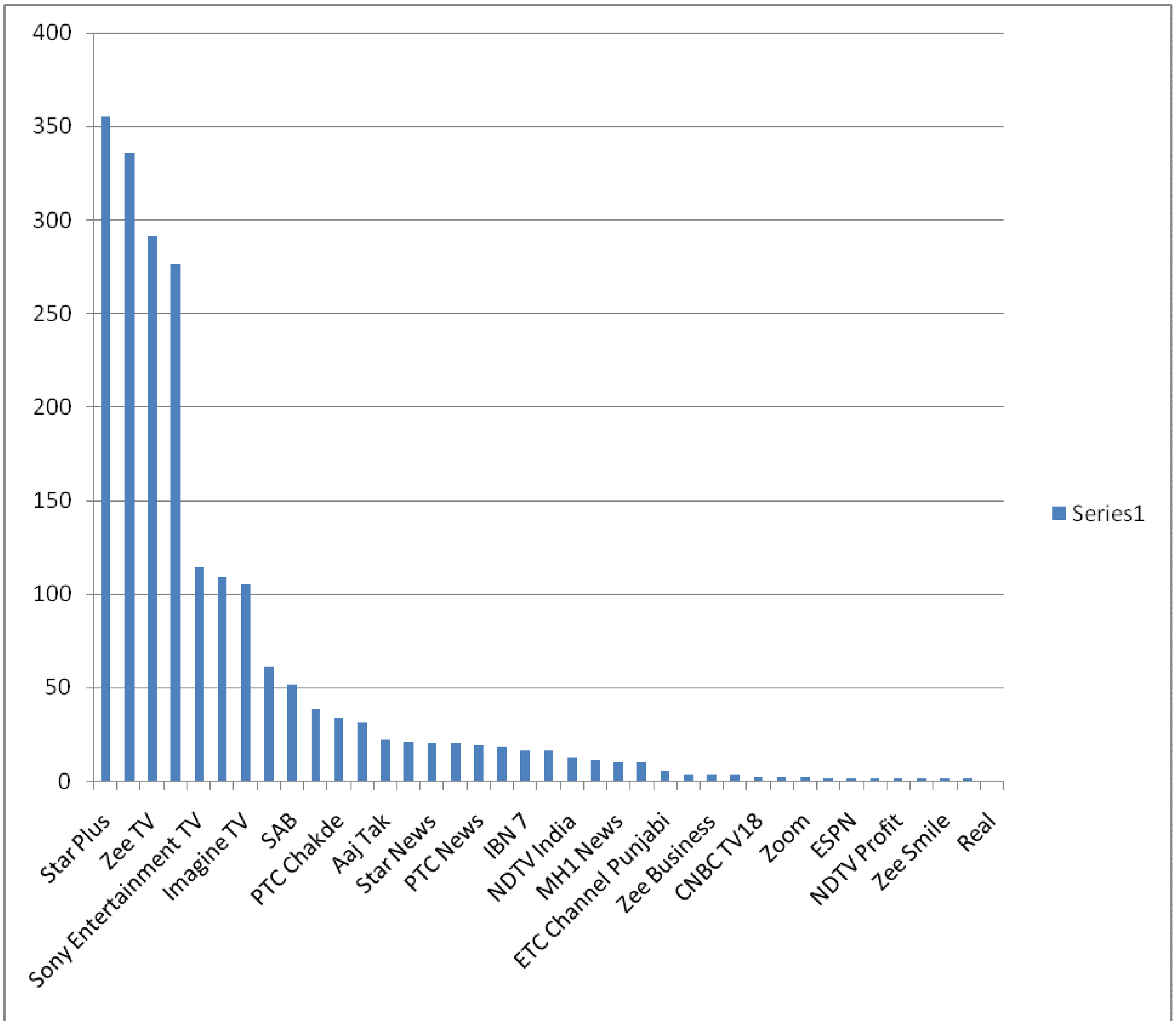
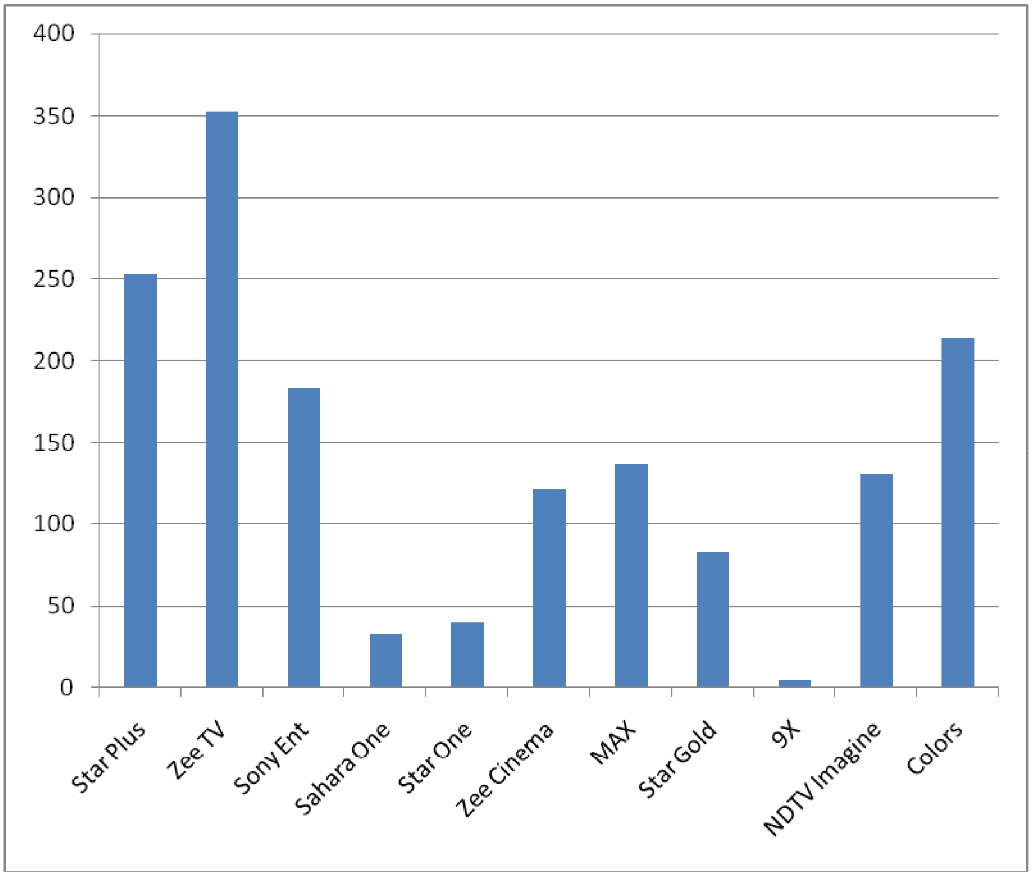


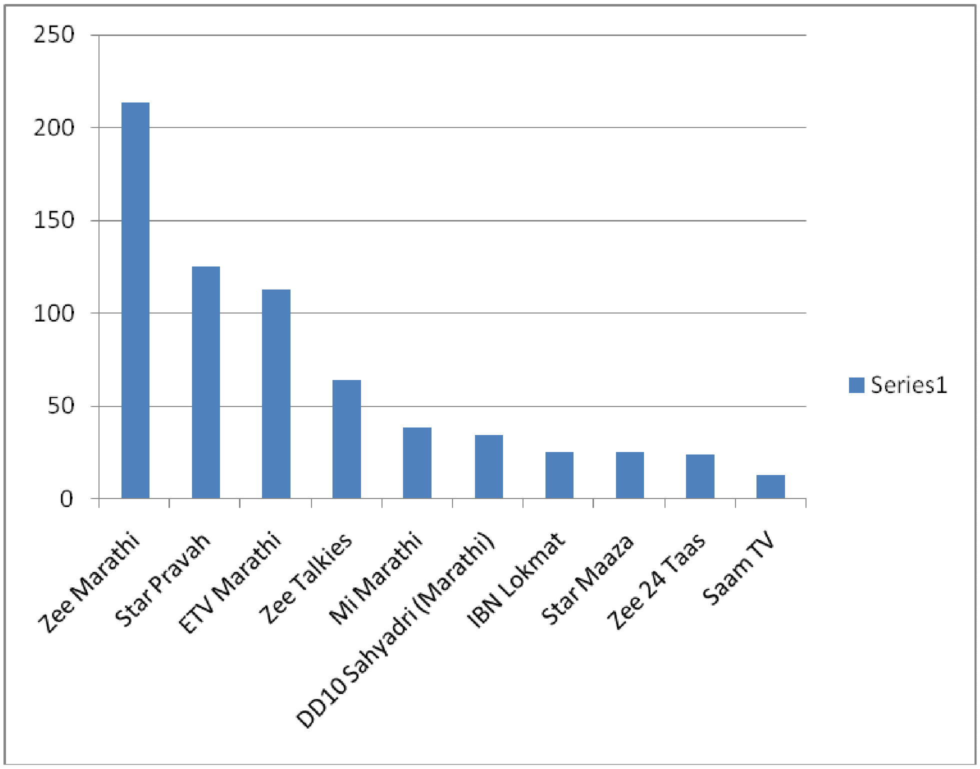
Figure: GRPs of Channels in Week 14, 2010

If one was to focus on channels genre wise, the GEC channels have the following GRP distribution (Week 10, 2010):



(ii) This makes it quite evident that no benchmark pricing can be stipulated for two channels in the same category such as 9X or Star Plus or for that matter Zee TV and Star One as compared to other channels.

The same pattern is repeated in other genres. For example in Marathi channels, which fall in the same genre, the distribution of viewership is as follows:



Hence Zee Marathi, the market leader cannot be priced at the same level as Mi Marathi.

The GRPs themselves are not static and change over the weeks, months & year and thus can not be the sole basis for pricing of channels. For example the table below shows the variation of GRPs in the Cinema Genre.

Weekly GRP Trend			
	Zee Cinema	Max	Star Gold
WK 41	133	151	104
WK 42	129	147	99
wk 43	143	161	101
wk 44	129	134	98
wk 45	129	136	90
wk 46	138	135	98
wk 47	147	137	96
wk 48	146	140	110
wk 49	126	136	80
wk 50	125	146	92
wk 51	123	137	89
wk 52	128	133	99
wk 01	145	136	102
wk 02	127	124	86
wk 03	123	126	85
wk 04	105	116	86
wk 05	127	121	122
wk 06	127	113	104
wk 07	124	125	107
wk 08	120	135	112
wk 09	123	118	93
wk 10	125	133	97

Note : The higher rating of viewership of MAX is due to IPL matches

It may be seen that the GRPs may show a variation of up to 50% within a quarter.

(iii) The TRAI will thus appreciate that there can be no basis for genre based pricing caps as different channels exhibit widely varying audiences based on the strength of their content rather than the name, genre or even revenues.

Hence the only way to regulate pricing can be channel wise and that too needs to be left to the judgment of the broadcaster as it needs to ascertain how its channel will yield maximum revenues. Generally a lower pricing will ensure carriage, while an unusually higher pricing may lead to customers preferring alternate channels of the same genre. Allowing pricing freedom will lead to higher quality of channels.

It is a fallacy to assume that customers will be adversely impacted as there are competing distribution systems such as DTH which offer pricing below Rs 200 despite there being no control on pricing.

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.

(i) Forbearance is certainly the way ahead. It needs to be appreciated that the broadcasters will not lose market share just by price increases as it will lead to a loss in advertisement revenues as well as revenues from slot sales. Subscription revenue is only one revenue stream.

It needs to be appreciated that due to the short sighted policies of Price caps, the revenues of broadcasters were choked to such an extent that they had no option but to increase advertising time on their channels to cover up the subscription losses. Today over 20% of time is devoted to advertising. Even channels such as History and Discovery which carry no advertising in their home countries have had to move to advertising models as the subscription revenues are miniscule due to LCO/MSO declaration issues.

We recommend not only forbearance but also differential pricing for digital systems to encourage migration to digital systems.

(ii) In this context, we would like to point out that there have been significant development and changes both at the content level as well as on the carriage side. More and more channels of different genres such as entertainment, news & current affairs, sports, life styles, infotainment etc. are available to the Indian consumers and in fact more channels are likely to be launched in the coming months. Accordingly, ample choice is available to the consumers in terms of content in each genre. Approximately 450 channels of different genres are available to the Indian consumers. Availability of such a high number of channels in the market ensures that no individual broadcaster can dominate the market. The competition is so intense in the market that in case a broadcaster tries to take the advantage of its market position by following anti competitive practices, the consumers always have option to switch over to alternate product (channel).

(iii) The market is mature enough to reach its equilibrium level. The continuity of price regulation & controls will not only distort the market but will also lead to downgradation of quality of services and reduction of investment in the sector. It is to be noted that selling the channels at low prices will discourage any further investment in new channels and programming which is bound to affect the consumer choice and creating a shortage of quality channels and variety in programming content.

(iv) Since market is mature and the economic principal of equilibrium has made its inroad into the industry, if any channel is overpriced, the market forces will naturally drive its price down to a level that is acceptable to consumers in the market and where the channel is under priced, the market forces will effect necessary correction based on its demand & popularity by increase in price. Hence no economic rationale exists for placing price controls.

(v) In fact, under the free market conditions of competition, the cable television market has grown rapidly and a wider choice approx 100 channels of different genres is available to consumer at less than Re. 1 per day per household. If the price controls are persisted with, it will distort the market's ability to reach equilibrium price levels that balance out supply and demand. In recent years most countries have moved towards deregulation of their cable television industries, thereby choosing to remove any restrictions on pricing.

(vi) As already submitted hereinabove the market forces should be allowed to operate freely which would ultimately self-regulate the system and optimum level price would be achieved. So far as the checks & balances are concerned, the TRAI can have a continuous monitoring of the market and can also initiate a system of regular reporting of pay channel prices by various broadcasters. If TRAI at any stage is of the opinion that market forces are not be able to throw up the appropriate level and in fact the interest of subscribers is being compromised, it can immediately intervene and effect necessary corrections.

(vii) The TRAI has statutory power to regulate if the deregulation results in creation of some kind of imbalance in the market to the detriment of consumers. The fact that there is an intense competition on the ground and coupled with the reality that Regulator can intervene as & when the market tends to behave erratically, in our opinion are effective deterrents in preventing the broadcasters from acting in a whimsical manner to the detriment of consumers at large.

The removal of price caps in non-CAS areas will lead to faster digitalization as pay channels will be able to pay a larger share to LCOs if they can realize it from customers. Thus the entire industry will move to greater transparency.

(viii) In view of the detailed submissions made hereinabove we are of the view that there should be a total forbearance of tariff in non-CAS areas.

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.

(i) The advertisement revenue and subscription revenues both belong to the broadcasters. It needs to be appreciated that the broadcasters are generally willing to limit advertising if they can be assured of the subscription revenues. In case of Zee Network, "break free" channels such as Zee Classic, Premier and Action do not carry advertising because these channels are meant for the DTH market where subscription is assured. It is for the same reason that these are priced higher for the Analog cable market, as the declarations are pathetic. In general a broadcaster will need to inflate the price of its channels up to five times with the present level of declarations as compared to addressable systems. However, because of the price cap/ceiling imposed by TRAI, the Broadcasters are suffering huge subscription revenue loss.

In general, the TRAI should take a dynamic view of the scenario and push towards tariff structures which promote digitalization rather than persisting with the aged 2004 methodology of capping analog tariffs.

(ii) Suggesting the Broadcasters to meet the content cost from advertisement and the carriage cost from subscription would be artificially splitting the integrated revenue streams and would amount to micro management and interference in the business model of the Broadcasters. There is no such distinction which exists at Broadcasters' level. The cost incurred whether on content or on carriage and distribution - is taken as a whole and the set off against the various streams of revenues. It is a well known fact that with the increase in number of channels, the total advertisement revenue pie which has remained more or less stagnant for last 2-3 years, has become fragmented, thus resulting in effective reduction in advertisement revenue per channel. Most of the analysts believe and rightly so that advertisement revenue stream has become saturated and now only way to meet the various costs which inter alia include content & carriage, is through subscription revenue. Thus the focus of the Broadcasters is towards subscription revenue so that the viable business model can be achieved in this competitive scenario.

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.

(i) We do not recommend continuing with the system of freezing of a-la-carte and bouquet rates. This methodology has outlived its utility. The DTH systems have demonstrated that the tariffs of below Rs 200 can be easily sustained if there is effective competition.

(ii) The broadcasters, MSOs and Cable operators will not be able to increase arbitrarily even with forbearance as the customers always have a choice to go to a competing system such as DTH if the LCO indulges in arbitrary or high pricing.

(iii) As we have explained in detail, the "similarity principle" is a fallacious concept as the channels which are in the same genre or are "similar" in fact have widely varying characteristics and can never be compared. It will be atrocious to put a price cap on three sports channels which have rights to different sports. Similarly a regional GEC or a news channel gets pricing power based on viewership and not based on its genre or "category". Hence we advise the TRAI to desist from giving consideration to such thoughts despite the data presented in various annexures which gives totally misleading picture.

(iv) The Zee Network does not support price regulation based on historic pricing as it places undue restrictions on programming costs by broadcasters and leads to the following anomalies:

(a) The cable operators in a price controlled regime tend to under declare the customers owing to the incompatibility between income and expenses on pay channels.

(b) The costs in media industry do not bear a direct relation to the inflation.

(v) Accordingly while reiterating that we are in the favour of forbearance of tariff in non-CAS areas, we do not recommend the continuation of the methodology followed by TRAI vide Tariff Order dated 1.10.2004/1.10.2007. Simply allowing adjustment on annual basis for inflation, based on wholesale price indices as is being done presently is wholly insufficient & inadequate to offset the increase in input costs of a broadcaster. The approach followed by the Authority assumes that the content produced by the channels remain more or less of the same quality and variety and that increase in overhead can be compensated by allowing inflation based hike. However, the said approach is entirely inappropriate in-as-much-as there has been sea change in the quality & variety in the programming content on continuous basis which is the result of continuous investment not only in the infrastructure in terms of equipments etc. but also in the acquisition of new quality based programmes, new movies, manpower etc. and such cost components cannot in any manner be compensated merely by an inflation based hike in wholesale prices.

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

i) Cost Plus

ii) Consultative approach

iii) Affordability linked

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

(i) As explained very elaborately by us in the preceding discussion, we are in favor of price forbearance and the pressure to be built for digitization and addressability. Cost plus method cannot be adopted in the prevalent scenario. The pressure should be built by letting broadcasters price channels high for Analog systems(instead of putting a price cap), local field level auditing of customers and bills, requirements for LCOs to file customer data and inviting customers to go on websites and report the Local LCO. We recommend high penalties for under-reporting and non-payment of taxes.

(ii) As pointed out in the preceding paragraphs, the pricing should be left to the market as the producer has the best idea of the cost incurred and he would price his product in a manner that would provide the customers a value for money. The affordability linked pricing is done in case of essential commodities and is legislated. In most of such cases there is budgetary support available from the government on it.

(iii) There is no scientific formula which can be prescribed for revenue share between various content providers in a non transparent, unaddressable analogue regime. We are of the firm view that it is the 'content' which drives the business and accordingly content owner should be free to price its product in accordance with the demand.

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

As explained in detail, the concept of affordability based pricing will not work as the industry is becoming sick due to LCO under-reporting and consequent inability by broadcasters and MSOs to realize revenues.

There should be no apprehension of irrational price hikes as customers now have a choice to go to DTH providers or even alternate cable operator despite some ground monopolies.

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?

(i) Mere prescription of minimum number of FTA channels and pay channels is not going to serve the desired purpose. The question would be which pay channels and which FTA channels? What would be the basis for selecting the pay channels to be included in the service and carried by the cable operator? How the regional preferences and linguistic preferences would be taken into account?

(ii) There would be a tendency on the part of the cable operator to include the lesser priced pay channel as well as less popular pay channels into the service tier and demand exorbitant carriage fee from the other broadcasters who wish their channels to be carried. This would cause further financial detriment to the broadcasters who are already reeling under the heavy burden of carriage fee.

(iii) It would also lead to the customers facing serious viewership issues viz.

(a) Premium channels such as Sports or premium Cinema will not be accommodable in the pricing.

(b) Cable operators and MSO will charge carriage fees as customer preferences as suggested by us above will not be a consideration in selection.

(c) There will be less room for premium high quality channels and more channels with carriage fees will occupy the cable system.

(iv) We do not recommend any retail tariff ceiling and hence this section is not applicable. As pointed out hereinabove, TRAI will not be able to prescribe a minimum FTA/ Pay ratio as this will lead to cable operators pushing those channels which pay high carriage fees but which the viewers do not want to watch to be pushed on to the cable systems which have a limited capacity. Even amongst pay channels, there will be attrition towards lower grade channels in the same genre.

(v) Hence the prescription of overall ceiling based on just numerical numbers of FTA and pay channels being shown is not proper at all. It is the quality of the channel rather than the quantity of the channels being distributed which should determine the pricing. It should be remembered that the attempt is being made not only to prescribe ceiling for carriage but also on content which in our opinion is highly arbitrary and unjust.

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?

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

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?

(i) In the present non-addressable environment where the under-declaration is quite high and there is no mechanism to determine the actual number of subscribers viewing channels, it is not possible for the broadcasters to offer their channels on a-la carte basis. The offering of a-la carte in such a scenario would not lead to any choice being offered to the consumers because of technological impediments and in fact such a stipulation would be totally adverse to the consumer's interest who at present is receiving variety of programming through bouquets and at discounted prices. Till the time the addressability is introduced where the customers can exercise their options and choice, there is no point in stipulating any a-la carte offering of channels by broadcasters.

(ii) This aspect of the matter has already been addressed by TRAI vide its Explanatory Memorandum to "The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order 2006 (5 of 2006) when a demand was made by the MSOs for stipulation of availability of new channels by MSOs from broadcasters on a-la carte basis. The relevant extracts of the Explanatory Memorandum are being reproduced as under:

> *3.7 Digitalization is seen to be one solution to address the stated cause for proposed amendment. TRAI has already made detailed recommendations on Digitalization of Cable Television in September 2005. With developments on the DTH platform even the small /medium level MSOs and Last Mile*

Operations have started realizing the need for moving towards digitalization. …………………………..

3.12 On the basis of the above analysis and the decision on the first issue for consultation it is felt that this concern could be better addressed through introduction of addressability and spread of digitalization.

(iii) We have suggested tariff forbearance and the broadcasters should have the prerogative to offer both a-la-carte as well as bouquet rates. There should be no apprehension of irrational price hikes as customers now have a choice to go to DTH providers or even alternate cable operator despite some ground monopolies. The pressure should be built by letting broadcasters price channels high for Analog systems(instead of putting a price cap), local field level auditing of customers and bills, requirements for LCOs to file customer data and inviting customers to go on websites and report the Local LCO. We recommend high penalties for under-reporting and non-payment of taxes.

(iv) In an analogue environment where there is no mechanism for a consumer to choose individual channels, to mandate provision of the same on a-la-carte basis will be detrimental to the interest of the broadcaster and will be discriminatory. Thus in present scenario, ala-carte offering cannot be mandated. Mandating such offerings will in fact push up the carriage fee to be paid by the broadcaster and only MSOs would be the beneficiary and not the consumer.

(v) It needs to be reemphasized that the benefit of a-la-carte pricing can only be passed on to the customers in a digital addressable system. With a digital system, the customers can see which channel they have selected, which are available and for which they are being billed. Hence the question of not on-passing to customers does not arise.

(vi) In analog systems a-la-carte provisioning and pricing is not possible. The MSO makes a bundle of the analog signals comprising of about 100 channels by including only some channels which cannot be avoided (such as Zee, Star Plus, colors and some cinema and news channels). The rest is filled with channels which pay carriage fees but fall in an "unwanted category" and are generally forced on customers. Due to the carriage fees phenomena, the position of the channels is changed very frequently. In most cases these "carriage channels" come in the place of the most watched channels and the customer is left to find where the popular channel is now placed.

(vii) In this regard it is useful to refer to an analysis done by Thomas W. Hazlett of George Mason University, School of Law, US. The relevant conclusive parts of the analysis read as under:-

> *Experience in the U.S. C-Band market, DBS, and in the Canadian cable market, suggests that a-la carte pricing results in higher prices and attracts few customers, even when subscribers can select between a-la carte and bundled channels. Experience in other markets suggests that services are efficiently bundled under cost conditions similar to those prevailing in multi-channel video. Competitive entry by two satellite radio firms has been achieved by 100-channel bundles. Similar buffet style pricing occurs in theme parks, ski resorts, and in health clubs. And in the market for broadband internet access, all-you-can-eat is popular with the consuming public; per-hour access fees have achieved little*

success in attracting customers. And a la carte rules cannot plausibly constrain cable operators' behavior without concomitant imposition of rate regulation. Not only are such controls currently ruled out via federal statute, they have proven unworkable through multiple episodes – precisely because operators react to controls by changing investments, marketing, and pricing, rendering the constraints impotent. Moreover, the video indecency that drives many to support regulation of cable pricing will not be confronted in any event: broadcast television, prompting by far the strongest outrage, is mandated to be included on all cable tiers, with or without a-la carte pricing.

Nonetheless, the illusion remains that prices for bundles are unfair when users believe that they are paying to support channels they do not value. There is an important sense in which network users come together to support the joint costs of creating video services. But it is equally true that this support is actually garnered because different users pay for different uses of the network. Subscribers only pay for the basic tier when the value of the service they receive exceeds the cost they pay. This is the economic interpretation of bundling. It allows individual customers with diverse tastes to support efficient production of a wide range of services, and to realize their own value from that system.

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

(i) As elaborately explained by us in detail, it is not possible to regulate the carriage and placement fees. With over 500 channels in operation, if a carriage fees is capped, no new channel will ever be able to enter a cable system if an older channel does not wish to leave the same. This will be to the detriment to some new channels, which wish to start off with a large market share.

(ii) It is not possible to regulate the placement as most cable systems are beset with serious interference problems. In most cases these affect the lowermost and the higher channels. They need to have flexibility to be able to place the channels so that these are at least visible without serious interference.

We believe that the market forces should determine such placement. As elaborated by us the MIB needs to push for digitalization of cable systems as in such systems the placement is not an issue owing to middleware and EPG.

Hence instead of formalizing old practices via new regulations, the TRAI needs to strike out for new systems and digitalization with the due force it deserves.

(iii) Thus we are of the opinion that there is no need to regulate the carriage or placement fees and it is best to leave the same to the market forces to determine the exact level of cost a channel needs to bear to have desired visibility. Though the digitalization may increase the bandwidth however the placement of the channel on a particular tier or bouquet which may warrant a level of visibility may still be there and it will be decided by the mutual consent of both the channel and the platform.

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?

(i) Although we are of the view that the Carriage and placement fees should be left to market forces, yet the quantum of the carriage and placement to be paid should definitely be linked to the amount of subscription the platform pays. It is a common tendency on the part of distributors of channels (MSOs/LCOs) to declare miniscule connectivity for the purpose subscription payment but huge connectivity and reach for claiming carriage fee. This anomaly is required to be addressed.

(ii) In order to bring necessary transparency in the carriage and placement deals, these should be treated as a part of interconnection process and the agreements for carriage and placement should be duly reported to TRAI at periodic intervals under The Register of Interconnect Agreements (Broadcasting and Cable Services) Regulations 2004 (15 of 2004) dated 31.12.2004 as amended.

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

(i) As elaborately explained by us in detail, it is not possible to regulate the carriage and placement fees. With over 500 channels in operation, if a carriage fees is capped, no new channel will ever be able to enter a cable system if an older channel does not wish to leave the same. This will be to the detriment to some new channels, which wish to start off with a large market share.

(ii) It is not possible to regulate the placement as most cable systems are beset with serious interference problems. In most cases these affect the lowermost and the higher channels. They need to have flexibility to be able to place the channels so that these are at least visible without serious interference.

(iii) We believe that the market forces should determine such placement. As elaborated by us the MIB needs to push for digitalization of cable systems as in such systems the placement is not an issue owing to middleware and EPG. Hence instead of formalizing old practices via new regulations, the TRAI needs to strike out for new systems and digitalization with the due force it deserves.

(iv) However, as pointed out hereinabove, in our opinion there should be ceiling on the quantum of carriage and placement fee based on the declaration being given by the respective MSO/LCO. This will in fact ensure some transparency in the amounts being asked and a formula can be set as under :

Subscriber Declaration Slab	**Percentage of Subscription Revenue Being Paid**
Upto 5000	2%
5000-10,000	3%
10,000-15000	4%
15,000-20,000	7%
20,000 and above	10%

Here the high declaration is being incentivized which will bring <u>some</u> level of transparency for pay channels.

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

26. 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?

(i) Yes, all the non-residential subscribers would fall in this category and will include Offices, Hotels, Cinemas, Bars, Restaurants and Theatres, Hospitals, and others.

However it is not at all desirable that TRAI should regulate the tariff for each of these and this should be under forbearance.

(ii) The current definition of a commercial subscriber is sufficient and very much clear however we are of the opinion that there should be one rate for all category of consumers. You cannot have a same product being priced differentially for a hotel with 50 rooms and a hotel with 100 rooms. Therefore the current definition needs to be suitably amended and the tariff as we have suggested may be left to the market forces on parity with the normal tariff.

(iii) We would like to bring to TRAI's notice that Broadcasters have for several years been charging differential rates i.e commercial rates from commercial establishment and a lower rate from ordinary consumers. The commercial rates charged by Broadcasters for cutting edge programming are very nominal and is hardly 1% of their room rate tariff.

(iv) We request not to have any price control regulation for any commercial establishment, of any category at all, since they are not end user consumers who may need protection, given that they use these services for commercial gain, and charge a huge premium for the services that they offer. A large number of establishments are taking unauthorized feed from the cable operators who are not authorized to distribute the same to the Commercial establishments. We request that - the category of "clubs, restaurants, bars, commercial malls, cinema halls" be added after the words Motel, Inn, and likewise, the number of rooms be amended from 50 to 25. We also recommend that all such establishments and public viewing areas of commercial establishments be exempted from any form of price regulation. The existing arrangement/agreement between the other Commercial Establishments as mentioned in the tariff order & other commercial establishment such has banks, hospitals etc and the Broadcasters be continued on the basis of existing arrangement/agreement till the expiry of such agreement/arrangement, else this may create a lot of complications.

(v) Any privately or trust owned hospitals having more than 25 TV sets may be treated at par with 5/4/3 Star hotels. It is further submitted that large hospitals have in many cases more than 125 TV sets in their premises. It would be very fair and just if broadcasters are allowed to recover their charges from any hospitals having more than 25 TV sets and those should be treated at par with 5/4/3 star hotels. We also submit that any hospital owned/operated by Government/semi Government / Municipality be protected and shall have protection of ceiling irrespective of number of TV sets installed by them.

Hence it is not the function of TRAI to regulate the tariff for each of these and it should desist from such thoughts.

27. 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?

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

There should be forbearance on tariffs for all category of commercial customers. Kindly refer to our reply above.

29. Do you agree that complete digitization with addressability (a box in every household) is the way forward?

(i) Yes. Complete digitalization with addressability is the way forward. Moreover we recommend digitalization via HITS as it permits the customers to receive an identical service across the country and reduce LCO/MSO risks.

(ii) It enables the customer to pick and choose channels and limit its bill to the channels it wishes to watch. It has been demonstrated in DTH that digitalization leads to better customer acceptance (despite the hassle of putting an antenna which is not there in cable) and leads to lower tariffs. It leads to a better choice from nearly 1000 channels which will be crowding the Indian skies in the next two years. The analog systems and associated price caps if continued further will distort the dynamics of the sector with continued disputes and litigations. Digitalization will attract investments in the country with better transparency and higher valuations as in the case of IT and Telecom.

(iii) Thus the complete digitalization is the key to all the issues the industry is facing today. It will be in the interest of the consumer, operator and the broadcaster. It will give choice to the consumer, capacity to the operator and opportunity to the broadcaster. The prices with true declaration and appropriate share of the revenue of actual consumer spend will be beneficial for every one. The role of the government in the whole process has to be that of a facilitator by incentivizing the digitalization process.

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

In order to implement the digitalization plan in a country like India, there has to be a targeted date for switch off of analogue signals and the said switch off date has to be different for different regions/cities/areas. The digitalization has to be implemented in a phased manner. A targeted analogue switch off date is quite important from the following point of view :

(i) This would indicate the certainty in the policy of the Government and would enable all the stakeholders to gear up and arrange in terms of resources required for implementation of digitalization.

(ii) Would enable the manufacturers of set top boxes to plan their production accordingly.

(iii) Would enable the MSOs to order for the digital headend equipments, encryption system and SMS system etc. in advance to meet the switch off deadline.

(iv) Would enable the MSOs/LCOs to effectively communicate with the subscribers so as to apprise them of the benefits of addressable digitalization and to ensure smooth transition from analogue to digital regime.

(v) The different switch off dates for different phases is imperative as this would provide the implementation stability in the targeted areas/regions before moving to next area/phase.

We are of the view that the entire country should be digitized within a period of next three years. The phase-wise identification of various areas/regions for digital implementation can be done through discussions with all stakeholders and respective State Governments.

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

The operation of HITS system by Dish TV, which had to be abandoned due to cross holding restrictions and absence of interconnect regulations shows that it is possible to establish a HITS system for serving customers countrywide in less than Rs. 15 crores. The major expanses in HITS are in satellite operational costs.

A typical digital headend at LCO level can be established in Rs 100 lakhs while a major MSO headend with about 300 channels can be established in the range of Rs 6-10 crores.

The customers need to incur costs only on the STB, which are likely to be around Rs 1700-2000.

The level of involvements will be different for different networks and the industry will automatically ascertain the level of investment required and will bring in the required resources to meet those requirements. We believe that the industry till now has been meeting the requirements and will be able to meet in future also. The tentative estimate of the total investment required for digitizing terrestrial headends throughout the country shall be in the range of Rs. 55,000 – Rs. 60,000 crores

We would also like to point out that the platform like HITS will not be viable with a single operator and should be managed as a shared infrastructure platform. It will save lot of resources and bring economy of scale, which will ultimately benefit the consumer.

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

We recommend promotion of HITS as a technology owing to its multifarious advantages. However we do not recommend prescribing a particular technology for digitalization. This is similar to DTH where we have MPEG-2, MPEG-4, MPEG-4 DVB-S2 technologies which co exist without problems.

The technology standards keep on evolving and thus the operators are quite competent to take a call on the technology to be implemented . BIS is the appropriate body to prescribe the standardization and regulator should bring out appropriate quality of service guidelines in the interest of the consumers. Thus there is no need to specify a particular technology and the only thing required is the laying down of appropriate standards by BIS.

33. 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?

(i) We feel that the Govt. should bear the cost of decoders by issuing coupons to customers for direct redemption along with each STB supplied. The policy adopted by US where two coupons of $40 each were given to the subscribers for set top boxes to enable them to from analogue to digital may please be referred to in this context. The Govt. will recoup this cost in no time through Taxes and service charges. At present all the funds are being misappropriated at the LCO level.

It is wrong to assume that by putting price caps the government is doing any favour to any customer. It is only forcing low grade content based on carriage and sickness in industry.

(ii) The other fiscal incentives inter alia include

1. Duties, structure/ concessions applicable to IT sector be extended to broadcast industry as technology is converging

2. To treat broadcasting/cable industry as part of Telecom infrastructure to provide level playing field. Some cable operators wish to provide IPTV as well as voice connectivity.

3. Provide same incentives to the cable industry as given to Telecom industry.

4. Separate classification of Cable TV equipment by Commerce Ministry and parity with Telecom sector.

5. Excise and VAT parities with Telecom sector.

6. Removal of anomalies on service tax on subscription.

7. Govt. of India may recommend to State Governments to have uniform entertainment duty on cable services.

8. Incentive scheme on STB's.

9. Zero customs duty on set-top box and digital headend equipments for Cable TV Sector.
10. Complete waiver in sales tax, entertainment tax for 3 years. The VAT coverage be extended to these two taxes.
11. Concession by way of NIL spectrum charges on satellites providing digital cable services.
12. To catalyze the process of digitalization and to add on in to the revenue streams additional services like Internet and VoIP to be encouraged through the cable network. STB support features to provide such services will enhance the growth of digitalization and will make the service more attractive.
13. Banks to treat the landing for upgradation of headend and cable network and for procurement of STBs as priority sector advance at concessional rate of interest

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

Yes, this structure can be workable, however at present the LCO are independent entities and are unlikely to give up their status unless these are bought out. This, in fact, is a very common in the industry as the MSO try to gain last mile customers themselves.

For the present we recommend that the Govt. focuses on digitalization and proper regulations on Interconnects and leave the industry structure to industry players.

35. What would be the best disclosure scheme that can ensure transparency at all levels?

Forbearance in tariffs and digitalization.

36. 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?

We do not recommend any such classification. There is no reason to attribute or include any particular channel in a basic group as compared to others. The Govt. or TRAI or even the MSO have no right to impose their own selection on customers. This will also lead to malpractices in getting included in basic package at high premium.

In addition, Basic service group of channels will be very difficult to determine as there will be continuous change in the taste and preferences of the consumer and as such demographical requirements should be left to the wisdom of the operators to decide the composition offering to the consumer based on the local preferences and demand. As experienced in DTH the industry has moved forward to offer various kinds of attractive basic packs to the consumers.

37. 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?

Yes indeed, there is a great and urgent need to explain the advantages of digitalization, which can also enable broadband and voice services based on service mix selected. However so long as price controls are maintained, the LCOs will not cooperate to go digital.

There is also a need for an appropriate communication plan for the operators which should allay their fears that they may suffer financial losses on the implementation of digitalization.

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