

**TELECOM REGULATORY AUTHORITY OF INDIA**  
**NOTIFICATION**

**New Delhi, 21st November 2006**

F. No 1-18/2006- B&CS: In exercise of the powers conferred upon it under Subsection (2) and sub clauses (ii), (iii) and (iv) of clause (b) of Sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) read with Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No. 13-1/2004-Restg by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of Sub section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, hereby amends the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006) (hereinafter called the “Principal Order”) as follows, namely:

1. Short title, extent and commencement:

i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff (First Amendment) Order, 2006, (7 of 2006)”

ii) This Order shall apply throughout the territory of India.

iii) This Order shall come into force on the date of its publication in the Official Gazette

2. In the Principal Order, after the existing sub-clause (ii) of clause 5, the following proviso and entries relating thereto, shall be inserted;

“ Provided that the provisions of this sub-clause shall not apply to the following types of commercial subscribers:

i) Hotels with rating of three star and above

ii) Heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India)

iii) Any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms.”

3. In the Principal Order, the existing sub-clause (vi) of clause 6 and entries relating thereto, shall be deleted and substituted by the following new sub-clause and entries relating thereto;

“(vi) (a) sub clauses (i) to (v) shall apply to all commercial subscribers except those commercial subscribers listed in (b) below

(b) for the following categories of commercial subscribers there shall be no ceiling in respect of the maximum retail price payable by such a subscriber to a service provider nor shall there be any minimum subscription period:

i) hotels with rating of three star and above

ii) heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India)

iii) any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms.

Provided that for these commercial subscribers, the channels shall be offered on an a-la carte basis apart from any bouquets that may be offered by the broadcasters/multi system operators/cable operators.

Provided further that whenever bouquets are offered, these shall be subject to the following conditions:

I The maximum retail price of any individual channel shall not exceed three times the average channel price of the bouquet of which it is a part;

Explanation: if the maximum retail price of a bouquet is Rs."X" per month and the number of channels is "Y" then the average channel price of the bouquet is Rs. X divided by Y

II The sum of the individual maximum retail prices of the channels shall not be more than 150% of the maximum retail price of the bouquet."

"Explanation 1: For the purpose of clause (vi) above the question whether the commercial subscriber will pay the cable operator/multi system operator/the broadcaster will be determined by the terms of agreement(s) between the concerned parties, namely

i) broadcaster(s)

(ii) MSO(s) and cable operator(s) who have been authorized to provide signals to the commercial cable subscribers on the one hand , and the commercial subscribers on the other."

Explanation 2: It is clarified that in respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties."

4. Explanatory Memorandum:

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

**By Order**

**(R.N Choubey)**  
**Advisor (B&CS-II)**

**Annex -A**

**EXPLANATORY MEMORANDUM**

**1. Introduction and Background**

1.1 The Authority had issued a Tariff Order on 15th January 2004, which provided that the ceiling of cable charges shall be at the levels prevailing on 26th December 2003 for both FTA and Pay channels. This interim order was subject to final determination. Subsequently after extensive consultations a detailed Tariff Order was issued on 1.10.2004 (hereinafter referred to as Principal Tariff Order) which maintaining the sanctity of the ceiling of cable charges prevailing on 26.12.2003 provided a window for introduction of new pay channels and conversion of existing FTA Channels to pay subject to certain conditions. The underlying objective in both these orders was to provide relief to the cable subscriber who has no mechanism to protect himself against the hike in cable television charges.

1.2 A batch of petitions was filed by a couple of Associations of Hotels and Restaurants together with a hotel against some broadcasters and their authorized distributors in Telecom Disputes Settlement Appellate Tribunal (TDSAT). The dispute basically pertained to the fact whether the hotels and restaurants can be equated with domestic consumers for the provision of Cable TV Service besides other connected and consequential issues under adjudication. The Hon'ble TDSAT disposed of the petition vide their order of 17<sup>th</sup> January 2006. . A representation was received from association of hotels for intervention in the form of a restraining order.

1.3. An amendment to the principal tariff order was issued on 7<sup>th</sup> March 2006 as an interim measure. In this tariff amendment order, the terms, Ordinary Cable Subscriber and Commercial Cable subscriber were defined and it also provided for a ceiling on cable charges at the level prevailing on 1st March 2006 payable by one party to another in regard to the commercial cable subscribers. Subsequently an explanation was added through a further amendment on 24th March 2006 vide which it was clarified that the agency to whom the payment is to be made by the commercial cable subscribers will be as per the mutual agreement. An appeal was filed against the Tariff Amendment Order of 7th March 2006 by one of the broadcasters, namely M/s. Set Discovery Pvt Ltd questioning the powers of TRAI to issue an interim tariff order. This appeal was dismissed by the Hon'TDSAT vide its order dated 20.4.2006

## **2. Consultation Process**

2.1 The process of consultation on issues relating to commercial tariff for broadcasting and cable television services began immediately after the issue of the Tariff Amendment order of 7th March 2006

with a joint meeting of the broadcasters and hotel associations 16th March 2006 followed by meetings on 23rd March 2006 and 5th April 2006. A consultation paper was issued on 21st April 2006 identifying the following areas for consultation seeking comments of the stakeholders by 12th May 2006:

i) Definition and issues relating thereto of the term Commercial Cable Subscriber.

ii) Need or otherwise to fix commercial tariff

iii) Method and manner of fixation of commercial tariff

One of the basic questions directly related to the need for categorization of cable subscribers raised in the consultation paper was whether the definition contained in the Tariff Amendment Order of 7th March 2006 should be allowed to continue. The paper while spelling out the difficulties and problem of categorizing commercial cable subscribers who may or may not need protection sought inputs on the approach to the definition. The consultation paper also pointed out that the question of categorization and having a separate definition for commercial cable subscribers is closely linked to the question of approach to tariff regulation i.e. whether it is necessary to have tariff regulation at all or a differential set of tariff regulation for different categories of cable subscribers. The question of categorization depends and comes after the decision on the need or otherwise to have different sets of tariff regulation.. The tariff amendment order of 7th March 2006, as indicated in the explanatory memorandum attached to the said order was an interim measure subject to detailed examination for which purpose the consultation paper was issued.

2.2 The detailed consultation paper is available of TRAI' website [www.trai.gov.in](http://www.trai.gov.in) . This was followed by Open House Discussion on 25th May 2006 in Delhi. The gist of comments received on the consultation paper was placed on TRAI's website [www.trai.gov.in](http://www.trai.gov.in). A few representations were received from individual institutions other than the hotels and restaurants seeking clarification though not in response to the consultation paper. The views and decisions of the Authority in regard to the comments received from various stakeholders have been discussed at appropriate place in this explanatory memorandum.

2.3 Meanwhile a civil appeal (2061 of 2006 and 2247of 2006 ) was filed by a couple of hotel associations and one of the hotels in the Apex Court against hon'ble TDSAT Order of 17th January 2006. The

appeal also prayed, as an interim relief, stay against operation of the tariff amendment order of 7th March 2006. TRAI was however not made a party in this appeal. The Apex Court in its interim order of 28th April 2006 directed that the status quo be maintained as on the date of its interim order. In deference to the status quo orders it was decided to await the outcome of the final orders of the Apex  
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Court in regard to the issues relating to commercial tariff for broadcasting and cable television services for which a consultation paper was issued and an OHD was held.

2.4 In the meantime, on 20th July 2006, in an appeal (LPA 985 of 2006) filed by the Union of India against the decision dated 10th March 2006, of the Hon'ble single judge for implementation of Conditional Access System (CAS) within a month, a division bench of the Hon'ble Delhi High Court ordered that the CAS should be implemented wef 31st December 2006 in the notified areas of the 3 Metros of Delhi, Mumbai and Kolkata and all the co-respondents (TRAI was a co-respondent in this appeal) were directed to cooperate with the appellant. TRAI in compliance of the direction dated 20th July 2006 of the division bench of the Hon'ble High Court of Delhi to implement CAS in the three metros of Delhi, Mumbai, Kolkata by 31st December 2006 continued the process of consultation started immediately after the single judge bench order of 10.3.2006 for issue of regulations/tariff relating to pay channels, Basic service Tier charges for Free to Air Channels, schemes for supply of set top boxes, interconnection agreements and quality of service matters, for CAS notified areas. These initiatives were to be completed by 31st August 2006 in terms of the activity wise time frame in the overall action plan of implementation by 31st December 2006. Since the decision on tariff etc in respect of CAS areas would impact commercial subscribers as well, a clarification was required in regard to the commercial tariff for CAS Areas with reference to status quo order. A submission was made during the hearing for a dispensation to proceed to fix commercial tariff in CAS notified areas. Subsequently, the Apex court allowed the application for impleadment in the appeal. The facts and circumstances were placed before the Apex court for directions. Since the status quo orders of the Apex Court was in force at time of issue of the Tariff Order dated 31st August 2006 in respect of CAS notified areas, the TRAI taking into account the status quo

order in respect of commercial tariff passed by the Hon'ble Apex Court on 28th April 2006 provided in the said tariff order that "the provisions of sub-clause (i) to (v) pertaining fixation of tariff for pay channels shall not apply to commercial subscribers and that the same shall be governed by the Supreme Court Order dated April 28, 2006 in Civil Appeal no 2061 of 2006"

2.5 . The Apex Court on the conclusion of the arguments in the appeal before it on 19th October 2006 reserved the judgment and directed that: " It appears that by order of 28 4.2006, a Bench of this Court directed that Status-quo, as it existed on that date, shall be maintained. It is stated at the Bar that pursuant to and in furtherance of the said order the TRAI has not been carrying out the processes for framing the tariff in terms of Section 11 of the 666

Telecom Regulatory Authority of India Act. Before us Mr. Sanjay Kapur, learned counsel appearing for TRAI submitted that TRAI has already issued consultation papers and processes for framing a tariff is likely to be over within one month from date.

We in modification of our said order dated 28.4.2006 direct the TRAI to carry out the processes for framing the tariff. While doing so, it must exercise its jurisdiction under Section 11 of the Act independently and not relying on or on the basis of any observation made by TDSAT to this effect. It goes without saying that all the procedures required for framing the said tariff shall be complied with.

It has been brought to our notice that even in the consultation paper some references have been made to the recommendations made by the TDSAT. In view of our directions issued hereinbefore a fresh consultation paper need not be issued. We, however, make it clear that in framing actual tariff the provisions of Section 11 of the Act shall be complied with and all procedures laid down in relation thereto shall be followed"

2.6 The consultation paper issued on 21st April 2006 was not with specific reference to CAS areas or non-CAS areas. A consultation paper on tariff issues related to CAS areas was issued on 14.6.2006 However since the Supreme Court's orders were in force this did not specifically refer to the problem of commercial cable subscribers. Keeping in view the above directions of the Apex Court requiring compliance with Section 11 of the TRAI Act 1997 (sans the need for fresh consultation paper) a draft of the tariff

amendment order for CAS areas in respect of commercial tariff was placed on the website of TRAI on 2nd November 2006 seeking comments of the stakeholders latest by 10th November 2006. Two separate meetings of the stakeholders (broadcasters and hotels) were held on 9th November 2006 who were also parties before the Apex Court giving them the opportunity to put forth their views. The comments received on the draft tariff order has been placed on TRAI's website [www.traigov.in](http://www.traigov.in). The gist of comments received in response to the draft tariff order is placed at Appendix 1 to this explanatory memorandum. The views and response of TRAI to the comments received on the draft tariff order has been discussed at the appropriate places of this explanatory memorandum.

### **3. Issue wise Analysis**

#### **3.1 Definition of Commercial Cable Subscriber and issues relating thereto**

3.1.1 The principal Tariff Order of 1.10.2004 did not provide for any distinction between an ordinary cable subscriber and a commercial cable subscriber. Neither did the first interim tariff order of 15.1.2004. In fact both the tariff orders did not contain the definition of the word cable subscriber. A perusal of the explanatory 667

memorandum particularly para 4 of the first tariff order of 15.1.2004 and para 3 of the principal order of 1.10.2004 would, however, indicate that under the given situation of a non addressable regime and reported frequent increases in cable charges, complexities involved in determining tariff based on cost, a ceiling in the form of a cap on tariff charges was considered to be feasible way of providing relief to the cable subscriber who as an end user had no mechanism of protection. The thrust on the need for protection of the ordinary cable consumer could also be noted in the consultation paper issued by TRAI for finalizing the recommendations on various issues relating to broadcasting and distribution of TV channels. The commercial establishments considered to be having a mechanism and wherewithal to protect themselves were not in the realm of deliberation of tariff regulation. Thus, it could be seen that the underlying objective was the need to give relief and protection to the users of broadcasting and cable services who had no mechanism to protect themselves from the hike in cable charges. Therefore, the question for a separate dispensation or otherwise for those establishments who avail

broadcasting and cable services not for their own domestic use but for the benefit of his /her clients, customers , members etc was not an issue focused upon in the in the context of the circumstances leading to the issue of the said tariff orders in 2004. .

3.1.2 However, subsequently the question of need for categorization and applicability of the principal tariff order of 1.10.2004 arose in respect of hotels before the TRAI when representations from a hotel association seeking relief against the hike in cable charges by broadcasters was received well before the matter came up before hon'ble TDSAT. While examining the issue it was felt that the principal tariff order of 1.10.2004 needed clarity on the real intent of applicability or otherwise to establishments who do not use the broadcast and cable services for their own use. However, before the decision could be taken matter had become sub-judice. There were also a couple of references from establishments (other than hotels) seeking clarification on the issue of applicability of tariff regulation and as to the interpretation.

3.1.3 The stakeholders representing the hotels have argued that there is no need for defining the term commercial cable subscriber and the existing definition should not be allowed to continue. They have indicated that the existing dispensation available for an ordinary cable subscriber should be available to hotels, as well, on the grounds, that they are not dealing with signals and do not get any material gain; that they are also end users like ordinary cable consumer; the issue of hotels being consumers or not is subjudice; and broadcasters adopt monopolistic tendencies by hiking charges for TV channels arbitrarily on the threat of disconnection and, the 668

international practice also do not provide for a concept of commercial subscriber.. A number of other arguments have also been advanced during the consultation process primarily to the effect that they are not charging the guests separately for these services just like a number of other services and that charges should relate to the value or quality of product (the signals are same for all types of users and there is no differentiation) which is same for all types of users and not how it is used. It has been argued that the services provided by the broadcasters are not public utility services like electricity etc requiring cross subsidization and therefore there is no need for categorization. A suggestion has also been made to use the approach adopted in

Consumer Protection Act in defining the word consumer. They had also raised issues such as the practice of broadcasters/cable operators collecting entire years subscription irrespective of level of occupancy at different times, lack of choice to choose channels, non-uniformity of rates of cable charges.

3.1.4 The groups representing the broadcasters have viewed that the definition as contained in the tariff amendment order of 7th March 2006 does not require change excepting certain modifications including in the identified categories of commercial cable subscribers for the purpose of tariff dispensation. A broadcaster has made a suggestion to the effect that the commercial cable subscriber should indicate the place where the services are required to the broadcasters and not also to multi system operator or cable operator as provided in the existing definition. Some broadcasters have remarked that the definition of commercial cable subscriber should specify the categories and have identified the categories of commercial establishments for extension of the protection.

3.1.5 The comments received from the stakeholders on the issue of need or otherwise of a separate definition and retention of the existing definition has been analyzed and the Authority's views are given below:

i) TRAI had noted that there are bound to be more disputes between establishments who received signals for the use of clients etc and the service providers including broadcasters and therefore the need to bring in clarity to the interpretation of the principal tariff order. But the TRAI before taking a final view decided to deliberate in detail through a consultation process as envisaged under Section 11(4) of the TRAI Act 1997, on the various issues relating commercial tariff for cable television services. Considering that the principal tariff order of 1.10.2004 required clarity in regard to its applicability to the commercial establishments in the context of the underlying objective stated above there is a necessity to

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identify the commercial establishments and provide for the manner of regulation of cable charges for these establishments. In either case whether to extend the protection of ceiling on cable charges in any form or not to extend protection at all, would require such establishments to

be identified separately. Therefore, the need to define the terms ordinary cable subscriber and commercial cable subscriber. The views of the hotel and its associations stating that there is no need for a separate definition is therefore not acceptable.

ii) The distinction sought to be made in the existing definition between an ordinary cable subscriber and commercial cable subscriber is justified from the point of view of the underlying premise that the need and extent of protection for a commercial establishment compared to that of an ordinary cable subscriber is not the same.

iii) It is an admitted fact that particularly hotels who had given details of prices paid by them that the charges paid by them is different and higher than the ordinary cable consumer. Thus even at the ground level the commercial establishments particularly the hotels and such other similar establishments, as a prevailing business practice, are treated differently.

iv) In regard to the approach one option is to adopt a definition which is wide in scope cum inclusive in nature as done in the existing definition which uses the criterion of usage as the basis to categorise the cable subscribers. In this approach the task of identification of specific categories of commercial cable subscribers is done for the purpose of extending or otherwise of the tariff regulation depending upon the assessment of the need for protection. The other approach is to adopt a definition, which is exhaustive identifying specific categories and sub-categories for the purpose of tariff regulation and indicating the type of regulation intended for each such defined category. The Authority has chosen to adopt the first approach for the reason that it is extremely complex to evolve objective criterion for categorization. Even in the approach to the categorization the Authority has used the method to exclude certain categories of commercial cable subscribers for the purpose of keeping out of the ambit of tariff regulation thereby leaving the residual category of commercial cable subscribers within the fold of the tariff regulation. Any approach to define specific category is bound to leave out some and include certain unintended ones. The stakeholders in their responses have also echoed similar views on the difficulty in evolving criterion for categorization of cable

subscribers. It would be simpler and better to identify specific  
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broad groups within this generic definition while providing for the differential dispensation in tariff regulation. Such an approach would also minimize the scope for disputes. Having a wide approach in defining a commercial cable subscriber would ensure that all are covered; those that do need protection could be specifically excluded. The Authority has therefore adopted this approach of having a definition, which is wide in scope and to identify specific groups for the purpose of tariff regulation based on the need for protection.

v) It is not denied that the product is same whether is a ordinary cable consumer or commercial establishments but the value derived from the product in the case of TV channels may not be the same in the situations where it is put to self use compared to a situation where it is meant for the purpose of its clients, customers. The television channels or programmes, even though may not be sold as a standalone service by commercial establishments particularly like hotels, etc. but as a means of entertainment do possess the potential to give an enhanced value to their packaged services. Therefore, the manner how the broadcasting services are being used becomes relevant for differentiating between an ordinary cable subscriber and a commercial cable subscriber.

vi) In regard to the suggestion of identifying specific categories within the group of commercial cable subscribers for definition or extending protection it is viewed that existing definition based on the type of use is wide enough and would cover such specified categories as well.

vii) Considering the ground realities where 99% of the subscribers are receiving signals through the multi system operators or cable operators the suggestion of broadcasters that the commercial subscribers would be required to indicate the place where the signal is required to only to broadcasters and not to operators is not acceptable. The existing definition gives flexibility as otherwise the restriction as suggested would create difficulties in regard to the vast majority of current arrangements of hotels etc with the operators.

viii) The amendments suggested for inclusion of the word agent and intermediary (of the broadcaster) has been examined and

is not considered necessary as such intermediary would be acting only under authorization and would represent the broadcaster even otherwise.

ix) As also expressed by some of the stakeholders the Authority is of the view that no single approach to categorization will be ideal and attempts of micro management will only add to the distortions in the market, creating fresh grounds for raising disputes. On the other hand the vast majority of commercial  
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establishments would fall within the scope of the existing definition yet would require protection as that of an ordinary cable subscriber

x) It has been pointed out that pay TV broadcasters for commercial usage should have separate interconnect agreements and that the Authority should direct the broadcasters that such agreements are entered into at the price that is being charged in the locality for an ordinary cable consumer. The Authority has noted that largely the broadcasters entering into interconnect agreements with the MSOs and independent cable operators exclude specified establishments such as hotels etc from the applicability and stipulates a prior permission requirement. Thus the issue of separate arrangement is in place and no change is warranted in this aspect of the present arrangements.

xi) One suggestion is that the product being same the license fee cannot be different for different consumers and that it should be determined on the basis of cost plus margin. Ideally a uniform price for a product of similar quality could be a situation if there is definite functional relationship between the cost of content and the value attached for the content and the cost of content itself is easily amenable to evolve a standard set of cost. In the case of broadcasting industry it may not be so. More importantly the argument is not based on proper appreciation of the prevailing system of determination of margin particularly in a non-CAS environment and without considering the complexities involved, as stated above, in costing of content.

xii) Contrary to the claims of the hotel association, the Authority is of the view that big hotels providing variety of services have the capacity to protect their interests and cannot be treated at

the same level as that of an ordinary cable consumer or even as that of large variety of commercial establishments which may require protection as that of the ordinary cable consumer. Many from this type of establishment may not be putting to use such services for the benefit of clients, customers etc. It was pointed out by the broadcasters that the cable charges as a portion of the revenue of the hotels forms a very insignificant portion and this has not been contested by the groups representing the hotels during the consultation process. In other words the impact of keeping this identified category out of the ambit of protection is unlikely to hurt their interests adversely.

xiii) It is noted that that the suggestion of categorization based on the source of feed will not be a reflection of ground realities and there can be situation where it is not possible to have  
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head end to receive the television signals and that such an approach would force the hotels to go to cable operators to receive signals instead of entering into contract with the broadcasters.

xiv) The Consumer Protection Act ..... defines the term consumer as

(d) "**consumer**" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) 1[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 1[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the

first-mentioned person;

2 [Explanation : For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of selfemployment;]

Basically the objective and purposes of the consumer protection act and the exercise of power TRAI Act for tariff fixation are two entirely different issues. The tariff regulation envisaged under section 11(2) particularly the proviso inherently provides for differential treatment for the purposes of tariff subject to reasons being stated whereas the Consumer Protection Act does not have any such provision. Further the definition does not seem to contain clues to create homogenous categories. The explanation for commercial purpose contained in the Consumer Protection Act cannot be ipso facto be extended as imputed. Therefore this suggestion to rely on Consumer Protection act has not been found to be helpful.

3.1.6 The Authority has after examining the views put forth and for the reasons indicated above has come to a conclusion that an approach to definition based on specifically identifying categories would be more complex and problematic to implement and is bound to give

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rise to new grounds for dispute. Therefore, an exhaustive approach to the question of definition would be more desirable. Those groups who may not need protection can be excluded from the applicability of the tariff protection and group the rest as a residual category requiring protection. Therefore, the Authority has decided to retain the existing definition of 'commercial cable subscribers' contained in the tariff amendment order of 7th March 2006.

### **3.2 Need for fixation of commercial tariff and related issues types of commercial establishments to be covered and method of identification of such commercial establishments for regulation.**

3.2.1 The predominant purpose of CAS is to provide choice of channels. The Authority had in its tariff order of 31.8.2006 explained in detail the rationale for the approach to fix ceiling prices in respect of pay channels and standard tariff package for set top box schemes for CAS notified areas The commercial cable subscriber and the ordinary cable subscriber are at the same level in so far as

availability of choice of channels is concerned in regard to CAS area.

3.2.2 But the difference is that the former, particularly the hotels and other big commercial establishments who receive the broadcasting and cable services as a value addition to their own package of services have the potential to pass on the burden to their own clients. There may not be a direct functional relation between add on services such as that of the television channels and the business strength in as much as a client of a hotel or pub or club may not come to a hotel or club or pub etc with the sole objective of watching TV channels. But is it to be largely admitted, despite the claims to the contrary by the stakeholders representing the hotels, that such value added services definitely help to sustain and strengthen business relationship of such commercial establishments with their clients. If it had not been so, there was perhaps no need for the hotels to go to the appellate authority or the apex court or for TRAI to be deliberating on this issue of tariff for commercial cable subscribers particularly the hotels.

3.2.3 On the issue of which of the commercial cable subscribers should be provided protection and which should be left out and what can be the method of identifying such commercial establishments the views expressed can be summarized as under:

i) Allow the Commercial cable subscribers including hotels to be placed on par with ordinary cable subscribers and therefore the questions of exclusion or inclusion and the method thereof would not arise. The reason cited is that the market in which the broadcasters operate is monopolistic and competition is yet to come. Only safeguard that is required to

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be provided to the broadcasters is to account for inflation and for growth in the industry.

ii) Specific identification has been made for exclusion which are old age homes and hospitals supported with government funding and run for the poor or socially backward classes or run by non profit seeking /charitable organisations, small establishments and such like ; all establishments except five star hotels till the mechanism of consumer choice is put in place, institutions for physically challenged , jails , reform centers , children & women remand homes, petty shopkeepers , educational institutions, all types of religious places,

residential medical care units.

iii) A distinction has been sought to be made by a hotel, which claims that subscribers who use the signals themselves should be differentiated from those who further transmit. Since hotels consume the signals themselves they should not be treated as commercial subscribers.

iv) Broadcasters as a group have suggested that the commercial tariff should be left to market forces except certain identified categories which like the ones indicated in (ii) above who may need protection.

v) Another view is that if there is no a la carte choice or the channels are not delivered through the separate conduit commercial tariff should not be fixed

vi) The Greater Guwahati Hotel Association have suggested that the hotels in north eastern region with low tariff should be given a concessional tariff.

vii) In response to the draft tariff orders placed on the web site on 2nd November 2006 and the separate meeting held on 9th Nov 2006 certain specific comments have been received. These are briefly summarized as under;

I. On behalf of the broadcasters and their distributor agencies the following points have been made:

a) Clubs, bars, commercial malls, cinema halls as a category should also be included with the category of hotels of the grading of 3 star and above etc for the purpose of tariff regulation for both CAS and Non CAS areas It has been proposed that the cut off criterion in respect of establishments providing board and lodging should be reduced to 25 rooms from 50 rooms.

b) The relevant date for determination of charges in respect of commercial cable subscribers other than those who have been deregulated should not be from 26.12.2003 but from 1st March 2006 as

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contained in the tariff amendment order of 7th March 2006.

c) Another suggestion is for inclusion of all hospitals with 30 beds or more and even hotels with a grading of 1 and 2 star in the already identified

category of hotels having a grading of 3 star and above for the purposes of tariff regulation.

d) The dispensation provided in the draft tariff orders for commercial cable subscribers – one category subject to mutual agreement and the other residual category to be governed as like that of ordinary cable subscribers – is not clear about the position regarding the use of broadcast services and tariff thereof provided in ‘Public Viewing Area’ and this should also be included in the category where the tariff is to be decided by mutual agreement. both for CAS and NON CAS areas.

e) The tariff order for Non CAS areas containing an explanation indicating as to what would be the payment arrangements for a commercial cable subscriber has not been provided in draft CAS Area tariff order and may be provided on the same lines as provided in interim tariff amendment order of 7th March 2006 as amended.

II On behalf of the Hotels the following points were made:

a) TRAI should issue a separate consultation paper or an addendum consultation paper before fixing the tariff. Therefore, the current exercise of framing of tariff for commercial subscribers would not be in lines with the directions of the hon’ble Supreme Court and therefore the draft orders may be kept in abeyance or withdrawn.

b) The tariff orders singles out hotels of the grading of 3 star and above and it is discriminatory

c) When TRAI has fixed an MRP of Rs. 5 for CAS areas, the same rate can be used fix the tariff for commercial subscribers like hotels.

d) Instead of leaving to the mutual agreement the TRAI should fix the tariff for which the historical prices paid by these hotels can be used.

e) The tariff orders being an amendment to the principal order of 2004, it may be subject to an interpretation in a way, particularly with reference to the deregulated hotels leading to insistence of negotiation of charges with retrospective effect.

f) The group representing hotels who have head ends pleaded that even in the case of Non CAS areas there should be restrictions on individual channel pricing on the lines proposed for the CAS areas.

III One MSO has indicated that since the subscriber whether commercial or otherwise would be known there is an imperative need for a consequential amendment to clause 5.2(i) of the standard interconnect agreement which at present requires prior permission of the broadcaster. Another suggestion is that the ceiling on bouquets as provided for deregulated commercial cable subscribers of CAS areas should be extended to non commercial consumers in CAS Area as well It has also been suggested by one MSO that the ala carte price of Rs. 5 should not apply to any commercial establishment and schemes for Set Top Box should also be market driven. In the case of large commercial establishment only bouquets but with a choice within bouquet should be allowed.

3.2.4 . The Authority has noted that vis a vis the hotels which gets a grading on the basis of the services provided there is no such clear demarcation to identify or demarcate other institutions. Any exercise of differentiation on the basis of area covered, number of TV sets, volume of business which can be some of the criterion are bound to raise disputes and are not free from subjectivity..

3.2.5 The Authority has also considered the question that there are a number of big institutions falling in the category of hospitals, educational institutions which may be in a similar situation as that of the big hotels in terms of potential to commercially exploit the cable and broadcasting services. In other words the question is why hotels of particular grading or type should be singled out for keeping out the ambit of tariff protection. The broadcasters on the other hand have made reference to the hospitals, hotels of grading below 3 star and contended that these institutions are commercially exploiting they should also be kept out of the purview of the tariff regulation.

3.2.6 The Authority is of the view that it would be incorrect to draw a strict analogy between the identified group of commercial cable subscribers comprising hotels above a given grading etc, and hospitals as the former as a group need to be treated on a different footing. Most importantly, the Authority has taken

conscious decision not to club hospitals, educational institutions, big or small, along with the group consisting of hotels etc above a particular grading from the perspective of the socio economic causes such institutions are expected to serve. Moreover it may be more difficult to evolve a reasonable objective criterion to differentiate between two luxury hospitals. While the Authority is clear that the intention of protection is to not facilitate profit making  
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by even such commercial hospitals, for the present and to begin with the Hospitals need to be given protection.

3.2.7 The Authority is however not closed to the option of revisiting the issue of categorization for the purpose of tariff regulation on the basis of experience gained if necessary. It is also to be recognized that there are a vast majority of establishments which do not receive the signals of television channels for their own use but they may not be commercially exploiting the services for furtherance of their own business. In this category would come educational institutions, Government hospitals, religious charitable and other philanthropic institutions, small shops, dhabas etc and this is not exhaustive list. During the interactions with the broadcasters it was clear that these commercial establishments, though in terms of the contract are not to be given signals without the prior permission of the broadcaster have not been targeted by the broadcasters due to sheer volume and difficulties in enforcing the agreements. Though some of the broadcasters have appointed agents to prevent and monitor of the giving signals by the MSOs to commercial establishments, it was still clear that this group is not the target of the broadcasters.

3.2.8 The Authority has also examined the various specific comments/suggestions made by the stakeholders and has found that  
i) The approach to identify each category of establishment for exclusion or inclusion for the purpose of tariff regulation is extremely complex and no such list can be exhaustive.

ii) However with regard to the request for inclusion of 'Public Viewing Area' this was not specifically included as the proposed tariff dispensation in respect of the deregulated category comprising of hotels of grading of 3 star and above provided for the route of mutual agreements in respect of public viewing areas as well. In the meeting with

the broadcasters it was suggested by them that this may be clarified. Further using public events to show programmes by the commercial cable subscribers even from the non identified category of commercial cable subscribers with a definite intention to commercially exploit the event by prescribing fee is not uncommon. The intention to protect the commercial cable subscribers in the residual category may be subject to misuse in the absence of a specific exclusion of such events. It has therefore been proposed to make provisions for the same by appropriately amending the tariff order.

iii) In regard to the request for inclusion of clubs, malls, cinema halls, the proposal has not been agreed to for the reasons already indicated earlier. The proposal for  
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reduction in the number of rooms from 50 to 25 has not been found to reasonable.

iv) The criterion based on area or number of TV sets would again be more subjective classification and difficult to implement.

v) As was noted during the consultation process the vast majority of commercial establishments in the group of commercial establishments other than the identified categories are actually not being targeted by the broadcasters perhaps for the reason of difficulties in enforcement of the clause of prior permission.

vi) In any case in the view of the TRAI many of these groups may not be able to negotiate their rates and may therefore may need protection like that of an ordinary cable consumer.

vii) The hotels as a group particularly big hotels in the view of the do not need protection. These are large subscribers and the broadcasters too would stand to lose large sums of money if their negotiations with them are not successful.

viii) The stakeholders have also proposed that some categories of institutions which may not be commercially exploiting the use of services be given protection. The Authority has not accepted this suggestion as this would could lead to disputes on whether or not a particular subscriber is

commercially exploiting the signals or not.

ix) A change suggested in the draft tariff order in regard to the explanation providing for the basis of payment by commercial cable subscribers has been accepted to make it clear that the commercial cable subscriber enters into agreements with the authorized cable operator /MSO.

x) Since certain commercial establishment would need protection like that of ordinary cable consumers the suggestions of no restrictions on pay channel price and set top box schemes has not been accepted. In regard to the suggestion regarding changes in interconnect agreement, the issue of identification of subscribers is a different issue and the clause of requiring specific provision for providing to the commercial cable subscribers is a clause which has been existing in the standard interconnect agreement.

3.2.9 In view of the above it has been proposed that there would be one category of commercial cable subscribers consisting of hotels with a rating of 3 star and above, heritage hotels, and any other hotel, motel, inn, and such other commercial establishment providing board and lodging and having 50 or more rooms. The Tariff in 679

respect of this group would be as per the mutual agreement. For all other commercial establishments which is outside this identified category the ceiling maximum retail price would be Rs.5 per channel.. However for the both categories of commercial cable subscribers, the tariff for showing programmes on special even in public viewing area shall be as per mutual agreement. Similarly in respect of schemes of supply of set top boxes in respect of the commercial establishments such as hotels with the grading of 3 star and above, heritage hotels, other commercial establishments providing board and lodging having 50 rooms or more, there will be forbearance while for other commercial establishments the provisions contained in clause 5(ii) of the Tariff Order of 31.8.2006 will apply.

3.2.10 One of the problems that have been raised by the hotels and its associations is that the channels are sold in bouquets and they are left with no choice to choose. In order to ensure even the forborne category of establishment have the real choice it has been made compulsory for the broadcasters to channels on ala

carte basis. Further in order to ensure that the individual channel choice is not illusory the tariff amendment order provides that the maximum retail price of individual channel shall not exceed three times the average channel price of the bouquet and the sum of individual channel prices of the channel shall not be more than 150% of the maximum retail price of the bouquet. This would act as a check on increase in channels prices and pricing of bouquets to make the choice illusory.

3.2.11 The group representing the hotels have expressed concerns particularly those who fall in the identified category of commercial establishments that the broadcasters would use the mutual agreement route to arbitrarily increase prices. The Authority believes that the category of commercial establishments which have been identified for forbearance would ordinarily be in position to deal with the broadcasters on an even keel in the negotiations. Yet the Authority is also not impervious to their concerns. Therefore the Authority would be closely watching the movement of prices in respect of this segment and would review its decision if considered necessary on the basis of inputs received. Similarly, there could be a number of similar institutions, which in terms of capacity to negotiate a mutual agreement may be similar, and these could be revisited later and if necessary the identified list could be reviewed. The Authority would separately be asking the broadcasters to report their tariffs for the commercial cable subscribers, to start with on a monthly basis, to gauge the extent of the increase in the rates. If found necessary the Authority would intervene in this matter.

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3.2.12 One of the issues raised by the Hotel Associations and their response to the Draft Tariff Order is that TRAI has to necessarily fix a tariff in terms of the order of the Hon'ble Supreme Court. This point has been examined. The Supreme Court has only directed the TRAI to carry out the process for framing the tariff. The Tariff Order that has been proposed by the Authority includes the fixation of tariffs for certain categories whereas for the hotels above particular grading this has been left to mutual negotiations. It has also been indicated elsewhere that the outcome of mutual negotiation would be closely watched and if necessary, intervention would be made later. The Consultation Paper that had been issued in April 2006 also clearly provides

one of the alternatives as excluding certain categories from the ambit of tariff regulations. One of the specific questions that had been framed was whether commercial tariff should at all be brought under the ambit of tariff regulation. Further, it was specifically asked whether the tariff regulation should cover all kinds of commercial establishments or whether some categories should be left out. Thus, this objection is not valid at all.

3.2.13 The other issues raised by the Hotel Associations is that a fresh consultation paper should be issued or an addendum to the existing Consultation Paper be issued. This has been specifically addressed by the order of the Hon'ble Supreme Court which has clearly ruled out the need for a fresh Consultation Paper.

Accordingly, keeping in view the requirements of Section 11(4) of the TRAI Act the Authority decided to propose a Draft Tariff Order so that one more opportunity is given to the stake holders to offer their comments. The hotels and hotel associations who were parties to the case before the Hon'ble Supreme Court were also given the benefit of a personal hearing on 9th November, 2006 just as the broadcasters were given such a hearing.

### **3.3 Method for fixing the rates of commercial consumers**

3.3.1 As per the information given by the Hotel Associations on prevailing rates during the process of consultation it is noted that there is no uniformity in cable charges paid by the hotels. The broadcasters have however, indicated that they are charging hotels on the basis of rate cards and a couple of them have indicated that there has been no change in the rate per room since the last two years (perhaps before the date of dispute reaching the TDSAT). However, it was noted that the total payout could be varying depending upon the negotiated levels of occupancy of the hotels for which the cable charges are collected. In view of the fact that a large number of hotels take feed from the cable operators and MSOs (which as per the stipulation seen in the interconnect agreement not legal) have resulted in multiplicity of rates charged from hotels. The multiplicity of rates is more as a 681

result of the practice of cross subsidization prevailing in a nonaddressable system based on capacity to pay. The method fixing any specific tariff for commercial cable subscriber in this situation creates difficulties due to multiplicity of rates. Again, the prevailing situation of multiplicity of cable charges that is being

collected from ordinary cable consumers in the currently nonaddressable system creates difficulties in using these rates as benchmark for fixing the commercial tariff. Further in the light of the Authority's decision contained in regard to categorization of commercial cable subscribers and the tariff dispensation provided thereto in the preceding paragraphs the need for fixation of commercial tariff may not be necessary. Any exercise of fixing rates for individual category of subscribers cannot objectively be reasoned out for the reasons stated above.

3.3.2 One of the suggestion was that the commercial tariff could be 3 times the tariff paid by the ordinary cable subscriber in respect of 5 star hotels and 2 times in respect of other commercial establishments if they are to be different from the ordinary cable subscriber. Another suggestion is that the historical rates ( as done for the ordinary cable consumers) that prevailed amongst hotels before the raising of disputes could become the basis and this basic rate could be adjusted for inflation and growth of the industry. From the information provided by the hotel associations, it is noted that the rates charged for cable services have varied widely across hotels and different places not only in Dec 2003;the extent of increase has also not been uniform. 3.3.3 In regard to the issue of safeguards for commercial cable subscribers who are only paying the cable operator and do not have written agreements with the broadcasters suggestions have been received spelling out procedures. The Authority has examined these suggestions and a prescription of procedure or logistics for issues which can be handled more efficiently through mutual agreement may lead to rigidity. Therefore, the Authority has decided to leave this to the mutual agreement between the parties.

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### **Appendix 1**

## **LIST OF COMMENTS RECEIVED ON DRAFT TARIFF ORDER FOR COMMERCIAL SUBSCRIBERS IN CAS AREAS INDEX OF STAKEHOLDERS FURNISHING COMMENTS**

**S.No.Name From Where**

**1 Novex Communications Pvt. Ltd.**

**(Novex)**

**Mumbai**

**2 Indusind Media & Communications  
Ltd. (IMCL)**

**Mumbai**

**3 JAYPEE Hotels Limited (JAYPEE) New Delhi**

**4 Hotel and Restaurant Association**

**(Western India) [H&RA(WI)]**

**Mumbai**

**5 Hotel Association of India (HAI) New Delhi**

**6 Set Discovery Private Limited (SET) Mumbai**

**7 STAR India Pvt. Ltd. (STAR) New Delhi**

**8 ESPN Software India Pvt. Ltd. (ESPN) New Delhi**

**9 Hathway Cable & Datacom Private**

**Limited**

**Mumbai**

**10 Zee Turner Limited (Zee) New Delhi**

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### **Clauses for Consultation**

5. In the Principal Order, after the existing sub-clause (ii) of clause 5, the following proviso and entries relating thereto, shall be inserted;

“ Provided that the provisions of this sub-clause shall not apply to the following types of commercial subscribers:

i) Hotels with rating of three star and above

ii) Heritage hotels

iii) Any other hotel, motel, inn and such other commercial establishment, providing board and lodging and having 50 or more rooms.”

6. In the Principal Order, the existing sub-clause (vi) of clause 6 and entries relating thereto, shall be deleted and substituted by the following new sub-clause and entries relating thereto;

“(vi) (a) sub clauses (i) to (v) shall apply to all commercial subscribers except those commercial subscribers listed in (b) below

(b) for the following categories of commercial subscribers there shall be no ceiling in respect of the maximum retail price payable by such a subscriber to a service provider nor shall there be any minimum subscription period:

iv) hotels with rating of three star and above

v) heritage hotels

vi) any other hotel, motel, inn and such other commercial establishment, providing board and lodging and having 50 or more rooms.

Provided that for these commercial subscribers, the channels shall be offered on an a-la carte basis apart from any bouquets that may be offered by the broadcasters/multi system operators/cable operators. Provided further that whenever bouquets are offered, these shall be subject to the following conditions:

I The maximum retail price of any individual channel shall not exceed three times the average channel price of the bouquet of which it is a part;

Explanation: if the maximum retail price of a bouquet is Rs."X" per month and the number of channels is "Y" then the average channel price of the bouquet is Rs. X divided by Y

II The sum of the individual maximum retail prices of the channels shall not be more than 150% of the maximum retail price of the bouquet."

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### **Comments Received**

1. The proposed tariff order has protected 2 Star and 1 Star hotels.

A single room tariff is from Rs.1500 per day to Rs.8000 per day.

In the opinion of Novex, 2 Star and 1 Star hotels also must be treated as 5 Star, 4 Star and 3 Star hotel and the channel tariff should be mutually determined by the parties. Novex has also stated that in luxury Hospitals have the charges per bed ranging from Rs.750 per bed to Rs.6000 per room. Novex, therefore, submit that all hospitals having more than 30 beds may be put in a category like hotels. Hospitals run by Government, Semi Government or Municipality, to be charged other rate as determined by TRAI. ( Rate Card of the hospitals has been attached by Novex but not attached to gist). (Novex)

2. The ala carte of Rs. 5 for any channel should not be valid for any commercial establishment; an appropriate maximum per channel should be permitted. Only bouquets should be allowed for larger commercial establishments. However, there should be a choice of any of the bouquets. The formula of retail price channel and bouquet is acceptable. The rental schemes (STP) of Set top Boxes should not be mandatory and any schemes could be made

(market driven) for both kind of commercial establishments as defined in the TRAI note. (IMCL)

3. In view of the Supreme Court of India Orders, JAYPEE Hotels Ltd. state that TRAI should not recommend categorization of subscribers into various categories. All subscribers to the public utilities are alike irrespective of whether a subscriber is rich or poor. Any effort to make classification will be considered as discriminatory and it shall contravene the provision of Articles 14, 19 and article 301/305 of Constitution of India. In view of the aforesaid TRAI should consider all subscribers in one category. In is commendable that TRAI have thought that the subscribers have discretion to subscribe to the specific number of channels and should not be compelled to take full bouquet. The tariff Orders in respect of CAS should be made applicable to all subscribers in the notified area of Chennai, Mumbai, Kolkata and Delhi. There is full justification and objectivity in segregating these four notified areas from other non-CAS areas. (JAYPEE )

4. H&RA(WI) has stated that TRAI has not clarified whether the tariff includes the copyright fees being claimed by the Broadcasters. TRAI has not clarified whether these commercial subscribers have to enter into contracts with the local cable operators or Broadcasters, as is being demanded by them since 2004. TRAI has decided to carve out Hotels of the excluded category, leaving it to the vagaries of market forces. This is discriminatory. There are only about 850 Hotels throughout the country in the nature of excluded category and singling them out, for exclusion from the 685

ambit of the notification is unfair, inequitable and discriminatory. It is, therefore, not understandable that why in respect of such a small number of excluded category of Hotels, TRAI has chosen to leave them to the market forces, instead of fixing the tariff. As suggested during the consultation paper proceedings earlier, TRAI could have fixed a tariff of 10% more than what is being paid at present for all commercial subscribers, instead of creating uncertainty and discrimination. While carving out the exclusion, it is noticed that several other commercial subscribers like Restaurants, Hospitals, Clinics, Commercial Offices, Airports and Railway Stations, Educational Institutes, Clubs etc. are being treated like ordinary cable subscribers, while only this 850 odd number is being categorized as commercial subscriber, for the

purposes of tariff. The H&RA(WI) would also like to emphasize that Hotels are bulk consumers of the service rendered by Broadcaster and not commercial subscribers as is being defined by TRAI. As bulk consumers, TRAI should in fact, have arrived at a special reduced tariff like is the case for any other product / service used by a bulk consumer. The H&RA(WI) also fails to understand the logic behind TRAI's arriving at the figure of 50 more rooms for categorization. In telecom areas, TRAI has not fixed a separate tariff by categorizing the consumer based upon the place of its usage. The restrictions placed on Broadcasters will be of no consequence in the non CAS area, as the consumer has no choice to select the product. While issuing the two draft notification's, TRAI has not followed the letter and spirit in which the Hon'ble Supreme Court has handed out its order on 19th October 2006. In view of what is stated above, the H&RA(WI) suggests that, (i) the rate fixed for CAS areas for ordinary cable subscribers should be made applicable to all types of commercial cable subscriber ipso facto, (ii) TRAI should prescribe a 10% discount on the tariff to all commercial subscribers who are bulk consumers, In respect of non CAS area, TRAI may notify a discounted rate of Rs.4/- per month per channel and extend the 10% discount for bulk consumers as stated above, (iii) TRAI, should notify that the aforesaid tariff is inclusive of the copyright fees claimed by the Broadcaster, (iv) TRAI, should also notify that both the ordinary cable subscriber and commercial subscriber are at liberty to have contracts either with the local cable operator or the Broadcaster. (v ) To stop undue enrichment by the Broadcasters, both the ordinary subscriber as well as commercial subscriber shall be entitled to a rebate in case the usage of the service is stopped by the subscriber. For example, a Resident consumer having gone out of station for more than 30 days, or a Hotel closed for its business for more than 30 days in a year, 686

should be eligible for a prorata rebate, as the product / service is not used at all. [H&RA(WI)]

5. TRAI did not go into the question on whether there is a need for different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid, the authority was supposed to record the reasons thereof (This is the exact import of Section 11(2) of TRAI Act). The

Supreme Court order dated 19.10.2006 presupposes the fact that TRAI is carrying on the process for framing the tariff. This order further implies that the Hon'ble TRAI could continue the process of framing of TARIFF irrespective of the outcome of the appeals. It is worth noting that in the consultation paper on issues relating to commercial tariff, there was no discussion on the need for creating separate categories for different classes of persons and the only issue which was closest to the above was whether tariff for commercial purposes should or should not be fixed by the TRAI since the Hon'ble TDSAT had asked TRAI to consider the same. Therefore, it is submitted, the TRAI would first have to come to an independent conclusion based on a fresh consultation paper / an addendum to the consultation paper. Further, the need for creation of a separate TARIFF for different classes needs wider representations of bodies before TRAI and an invitation to HAI/HRAWI alone is not sufficient. It must be noted that the entire exercise was initiated by HAI due to the arm twisting tactics employed by the broadcasters in order to pressurize the members of HAI to pay huge sums of money to the broadcasters. This was coupled with the threat of disconnection. Keeping this in mind it is surprising as to how the TRAI could come to a conclusion that this category of subscribers (mostly comprising 3 star hotels and above) would not need tariff protection any longer. The broadcasters enjoy a monopoly in their respective fields and individual member hotels do not have the capacity to negotiate the terms with the broadcasters on an equal footing. Substantial discrimination would be caused to commercial establishments where free market forces are now sought to be allowed. Where in a CAS area there are certain norms for fixing the M.R.P. of an individual channel as compared to the total bouquet, no such norms have been framed for non-CAS areas. It has already been submitted during the consultation process that broadcasters do not adhere to such norms while fixing a price for an individual channel. In fact hotels with 3 star ratings and above mostly have their own head end equipments and incur huge expenditure on the same. Such establishments should ideally be offered reduced rates and not be allowed to fend for themselves without price protection. It is once again reiterated that if notification of 1.10.2004 is made applicable to all categories of subscribers, it

will totally meet the ends of justice. This is due to the fact that even on 26.12.2003, this category of subscribers which is now sought to be de-regulated, was already paying a much higher charge than all other categories. All across the world there is no differential in tariffs for domestic and commercial subscribers. The TRAI with respect to the telephone services has not felt the need for a differential tariff for different class of persons. Thus it becomes all the more important for it to spell out the reasons for framing such differential TARIFF on broadcasting. The TRAI must consider that when it moved the Supreme Court for a modification of status quo order, with a view to framing a TARIFF, could it then choose not to fix any TARIFF at all for certain categories. Not only this, such draft TARIFF orders, if notified, would amount to negation of the entire proceedings before the Hon'ble Supreme Court. The definition of commercial cable subscriber does not need to continue since the issue that hotels are consumers or subscribers and not their guests is being adjudicated by Supreme Court. Once they are held to be consumers then in that case they would be covered by the initial notification of 2003/2004 and the question of creating a separate category for them will not arise. The hotels were never paying the broadcasters the rates being paid by domestic consumers. Even in 2003/2004 rates being paid by hotels were way above the domestic consumers. There is no reason why these rates cannot be taken as historical rates. It is also submitted that till the time the proposed inter-connect regime is not enforced, TRAI must prevail upon broadcasters not to refuse signals to hotels through the nearest cable operator authorized by them. It is therefore requested that till all the aforesaid points as well as other points orally submitted before the Hon'ble TRAI at the meeting on 9.11.2006, are considered, and acted upon, the draft Tariff orders may be kept in abeyance / withdrawn. (HAI)

6. SET has submitted that Commercial Cable Subscribers in the CAS areas do not require any protection and TRAI must allow the market forces to determine the prices. The very objective of TRAI to have notified the CAS Tariff Order of 31st August 2006 and fix a general MRP for all channels to Ordinary Cable Subscribers was to protect the interest of the consumers. Therefore there is no logic or rationale for TRAI to treat Commercial Cable Subscribers on a equal footing with Ordinary Cable Subscribers in CAS areas

when there is no consumer interest involved. SET, therefore, recommend that TRAI must not extend the provisions of the CAS Tariff Order to Commercial Cable Subscribers. (SET)

7. STAR's stated position is that there should be no rate regulation at all for any commercial establishment, of any category at all, since they are not end user consumers who may need protection, 688

given that they use these services for commercial gain, and charge a huge premium for the services that they offer. Further, any rate regulation only complicates the process of closing deals with larger platform providers such as DTH and IPTV. STAR requests that in the Draft Tariff Order the category of "clubs" be added after the words Motel, Inn, and likewise, the number of rooms be amended from 50 to 25. No price protection should be offered to these establishments. Channels telecast in public viewing areas of several commercial establishments are an integral part of the product offering of these establishments. It is not uncommon for commercial establishments such as restaurants, bars, cinema halls, and even 5 star hotels to charge a premium from their consumers for watching a television event at their premises. Therefore, STAR recommends that all such event based viewing in the public viewing areas of commercial establishments be exempted from any form of price regulation. STAR also requests that the explanation provided in clause 3-A of the Notification dated 24th March 2006, be restored and that the commercial establishments be permitted to receive signals only from "Authorized" Cable Operators/MSOs. (STAR)

8. ESPN believes that there should be no rate regulation at all in CAS or Non-CAS Areas for any hotel or 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. ESPN's submissions are along the same line as STAR's, which has already been summarized in the foregoing para. (ESPN)

9. Hathway welcomes timely amendment in the Tariff Order for CAS notified areas as indicated in the draft notification. Consequential amendment has therefore become imperative and necessary in the Standard and Commercial Interconnection Agreement for the CAS notified areas, and more particularly under Clause 5.2(i) of

the standard agreement between broadcasters and MSOs, wherein it indicates that prior permission is required from the broadcasters for distribution of channels in CAS notified area to the commercial establishments. It is submitted that each subscriber would be 'accounted for' including its classification, whether customer is commercial establishment or otherwise. There should be a Revenue Share among Broadcaster, MSO and Cable Operator in the ratio 45:30:25. (Hathway)

10. Zee 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 689

their room rate tariff. Zee requests 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. Zee request that in clause 2 (f) (ii) - 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. Zee also recommends 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 Clause 2 (f) (ii) & other commercial establishment such as 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. 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. Zee also submits 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. The principal of market forces be continued without any price regulation. The option of offering channels on an a la carte basis is not workable in Hotels and the channels are being subscribed for the Customers who come to stay there. Hence the demand of channels are there on daily basis, which can be fulfilled only when all the channels are available with the hotels. In other respects, the submissions of Zee are similar to other broadcasters, whose views have already been mentioned above.

(Zee)

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**TO BE PUBLISHED IN THE GAZETTE OF INDIA  
EXTRAORDINARY PART III**

**SECTION 4**

**TELECOM REGULATORY AUTHORITY OF INDIA**

**NOTIFICATION**

**New Delhi, 19th December, 2006**

No 1-20/2006-B&CS.-- In exercise of the powers conferred by sub clauses (ii), (iii), (iv) and (v) of clause (b) of sub-section (1) and subsection (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39,-

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated 09/01/2004 in the Gazette of India, Extraordinary, Part III, Section 4,

The, Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006),namely:-

**1.** This Order may be called the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff (Second Amendment) Order, 2006.

**2.** It shall come into force on the date of its publication in the

Official Gazette.

**3.** In the Schedule to the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006),--

(a) the Note under OPTION-1 shall be numbered as Note 1. thereof and after the Note1. as so numbered , the following Note shall be inserted, namely:-

“Note 2. The rent and refundable security deposit specified above are exclusive of any tax or any other levies under any law and tax or levy shall be payable by the subscriber.

(b) the Note under OPTION-II shall be numbered as Note 1. thereof and after the Note1. as so numbered , the following Note shall be inserted, namely:-

“Note 2. The rent and refundable security deposit specified above are exclusive of any tax or any other levies under any law and tax or levy shall be payable by the subscriber.

**(R.N Choubey)**

**Advisor (B&CS-II)**

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Note.1.- The Telecom Regulatory Authority of India hereby amends the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006) published in the Gazette of India, Extraordinary, Part III, Section 4 under notification No : 15-3/2006 - B&CS New Delhi, dated 31st August, 2006, subsequently amended vide the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff (First Amendment) Order, 2006, (7 of 2006) published in the Gazette of India, Extraordinary, Part III, Section 4 under notification F. No 1-18/2006- B&CS dated 21st November 2006.

Note 2. The Explanatory Memorandum. explains the objects and reasons for the said amendments.

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### **EXPLANATORY MEMORANDUM**

1. In pursuance of the Hon 'ble Delhi High Court's direction to implement Conditional Access System (CAS) in parts of the three Metros of Delhi, Mumbai and Kolkata, the, Telecom Regulatory Authority of India had issued Tariff Order on the 31st August 2006, specifying , among other things, ceiling of maximum retail price for pay channel, maximum amount that can be demanded for Free to Air Channels under the Basic Service Tier and a standard tariff package

for supply of Set top Boxes on rental basis. The said Tariff Order was further amended on the 21st November 2006 to provide for tariff dispensation in respect of commercial cable subscribers. The Tariff Order dated the 31st August 2006 indicates that the amount of ceiling for maximum retail price for pay channel and the amount for Basic Service Tier charges shall be exclusive of taxes.

2. During the interactive meetings held with stakeholders, it was observed that the position in respect of the standard tariff package for supply of set top boxes under rental schemes would need a

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## **CONDITIONAL ACCESS SYSTEM (CAS) NOTIFICATIONS**

### **I**

**S.O.39(E)1**—In exercise of the powers conferred by sub-section (1) of section 4A, read with section 9 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), the Central Government, having been satisfied that it is necessary so to do, hereby notifies the 15 day of January 2003 as the date within six months from which it shall be obligatory for every Cable Operator to transmit/re-transmit programmes of every pay channel through an addressable system in the areas specified below, namely:

1. Chennai Metropolitan area;
2. Municipal Council of Greater Mumbai area;
3. Kolkata Metropolitan area;
4. National Capital Territory of Delhi.

### **II**

**S.O. 503(E)2**—In exercise of the powers conferred by sub-sections (2) and (3) of section 4A of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) (hereinafter referred to as the 'Act'), and in pursuance of the notification of the Government of India in the Ministry of Information and Broadcasting Number S.O. 39(E) dated 14 January 2003, the Central Government hereby specifies the minimum number of free-to-air channels to be included in the package of channels forming the basic service tier as thirty, in the areas specified below, namely:

1. Chennai Metropolitan area;
2. Municipal Council of Greater Mumbai area;
3. Kolkata Metropolitan area;
4. National Capital Territory of Delhi.

2. The package of channels forming the basic service tier must include the compulsory transmission of three Doordarshan channels notified under section 8 of the said Act and the genres of entertainment, news,

sports, children's programmes and music must be in English, Hindi and the regional language, depending on the availability of such channels in the areas afore-mentioned.

**3.** Further, in exercise of the powers conferred by sub-section (4) of section 4A of the said Act, the Central Government, having been satisfied

1 Notification, dated 14 January 2003.

2 Notification, dated 7 May 2003.

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clarification with regard to inclusion or otherwise of the applicable taxes in the amount of rent and refundable security deposit specified in the Schedule to the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006). For the tariff for pay channels and the basic service tier charges, the orders are clear that the rates fixed (of rupees five per subscriber per month and rupees seventy seven per subscriber per month respectively) are exclusive of taxes. A similar principle needs to be adopted for the rent and refundable security deposit specified in the Schedule to the Telecommunication (Broadcasting and Cable) Services (Third)(CAS areas) Tariff Order, 2006 (6 of 2006) for set top boxes. Accordingly, in order to make the position clear, a Note has been inserted, in the Option I and Option II of the said Schedule containing the tariff details for supply of set top boxes in CAS notified areas, clarifying that the amounts mentioned in the Option I and Option II of Schedule in respect of rent and refundable security deposits shall be exclusive of applicable taxes, if any.