

Telecom Regulatory Authority of India
23rd February, 2003

Interim Recommendation on Conditional Access System (CAS)

Background

1. Cable Television Networks (Regulation) Act, 1995 (CTN ACT) was amended in 2002 and Section 4A was inserted in the original Act which envisages “**Transmission of programmes through addressable system**” (popularly referred to as Conditional Access System (CAS) with effect from such date as may be specified in the Notification. A Notification dated 14th January, 2003 was issued by the Ministry of Information and Broadcasting, Govt. of India making it obligatory for the cable operator to transmit / re-transmit programmes of every pay channel through an addressable system in Chennai Metropolitan area, Municipal Council of Greater Mumbai area, Kolkata Metropolitan area and National Capital Territory of Delhi within six months from 15th January 2003. Subsequently vide Notification dated 10th July 2003 the date of implementation was deferred and fixed within six months from 1st March, 2003, and Chennai and the areas of NCT of Delhi, Kolkata, Mumbai to be covered by CAS were also specified. Thereafter vide Notification dated 29th August 2003, the earlier Notification dated 10th July 2003 was amended and areas in NCT of Delhi where CAS was to be implemented were deleted.

2. The Hon'ble Delhi High Court, vide orders dated 4th December 2003 quashed the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India on the grounds that it was based on arbitrary exercise of power and extraneous considerations. The cable operators of the notified areas partially withdrew pay channels from mid-night of 15th December 2003.

3. Delhi High Court in CW No.8993-4/2003 in its order dated 26.12.03 refused to restrain the Govt. from implementing CAS in Delhi and decided also to review the situation after three months. The order also stated inter-alia:

“.....We desire that in this period of three months all the loopholes, difficulties faced by the consumers, effect of the implementation and problems, if any, arising out of the implementation can be assessed and remedial measures be taken in that regard.”

“..... There has to be some regulatory body in terms of the synopsis of comments which have been filed by the respondent to see the implementation. We would like the respondent to enlighten this Court of the steps taken in this direction before the next date of hearing.”

4. In order to give effect to the directions of the Hon'ble High Court as above, the Government of India issued Notification dated 9th January 2004, whereunder the broadcasting and cable services have been brought within the ambit of telecommunication services in terms of section 2 (k) of the Telecom Regulatory Authority of India Act 1997 as amended by TRAI (Amendment) Act, 2000 (the Act). It also issued an order dated 9th January, 2004, under Section 11(d) of the Act, which inter-alia mandated the Authority to make recommendations regarding terms and conditions on which the “Addressable System” shall be provided to customers and to specify standard norms for and periodicity of revision of rates of pay channels

including interim measures (please see the three Annexures to “**Annexure A**” which give, respectively the Order dated 9th January, text of Section 2 of the TRAI Act, and Section 11 of the TRAI Act which provides the functions of the Authority).

5. The Authority has taken a number of steps to assess the difficulties faced by the consumers, the effects of the implementation of CAS and the problems that arise, including implementation problems and feasibility of conducting legally required activity in this regard. In mid-January, the Authority began a consultation process, obtained comments on relevant matters within that context in writing as well as through its meetings with various stakeholders, examined the views of the four Governments that have to implement CAS, and considered the regulatory practices in other countries. It has obtained substantial information and views, and is in a position to take the process forward with a more detailed Consultation Paper. This Interim Recommendation is one of the results of the Authority’s assessment of the various above-mentioned inputs, and is part of the process of taking remedial measures to properly address the issue of CAS. The following Sections I to VII give a summary of the relevant main underlying aspects, and Section VIII gives the Interim Recommendation of the Authority to the Government.

(I) Authority’s Consultation Note of 15th January, 2004

6. The Authority released a Consultation Note (a copy is annexed hereto as “**Annexure A**”), inviting the comments of the stakeholders by 30th January 2004, particularly on the following issues:

- (a) Norms for fixing and revising rates and for revenue sharing among the service providers in both CAS and non-CAS areas;
- (b) Choice available to consumers on account of channels being bundled;
- (c) Terms and conditions for acquiring/returning Set Top Boxes (STBs);
- (d) Principles for laying down/ensuring the Quality of Service standards, for compensation to be paid for below quality service (such as interruption in transmission), and the principle of sharing this compensation among the Broadcasters, Multi-Service Operators, and Local Cable Operators;
- (e) Measures to develop the industry, increase competition, promote efficiency and encourage wider consumer choice , including in rural and remote areas;
- (f) Extent of regulation of advertising on free to air and on pay channels, and other linked conditions that may be required, in both CAS and non-CAS areas.

7. In the interregnum i.e. between the period of initiation of the consultation process and arriving at the final conclusions, the Authority vide its order dated 15th January 2004, specified as ceiling the charges that were prevalent on 26th December 2003. A copy of the order is at “**Annexure B**”.

(II) Authority's Meetings With Various Stakeholders

8. The Authority held discussions with a) The Indian Broadcasters Foundation along with representatives of its members (broadcasters), b) multi-service operators (MSOs), c) associations of cable operators (LCOs), d) consumer organizations of Delhi (including Federation of Resident Welfare Associations) and outside Delhi (consumers) to have a first hand information and feedback about the system presently in place and the problems faced by the stakeholders on account of implementation of Conditional Access System (CAS). These discussions also included the overall feedback of the advantages and disadvantages of the CAS and various issues connected therewith and incidental thereto.

(a) Summary of the main points in the discussions held with the broadcasters and the comments received from them on the consultation note

(i) There is immense competition amongst the broadcasters, which in turn takes care of the content and the charges thereof. That being the situation, revenue-share arrangements amongst broadcasters, MSOs and LCOs be left to the market forces.

(ii) The present system of bundling of channels be continued as it is perceived as consumer friendly and a cost efficient delivery mechanism. With addressability and multiple platforms, the consumers would have choice.

(iii) CAS and choice of platforms will bring in transparency in the cable industry.

(iv) There should be no restriction on the advertisement time, which may increase cost to the consumers.

(b) Summary of the main points in the discussions held with the MSOs and the comments received from them on the consultation note

(i) At present, there is total lack of transparency regarding estimated subscriber base and consumers are forced to buy all pay channels, and this leads to frequent disputes amongst broadcasters, MSOs and LCOs.

(ii) The broadcasters take away a big share of revenue arising from LCOs. The MSOs are squeezed between the broadcasters and LCOs. While the LCOs under-declare the consumer base, the broadcasters resort to repeated price hikes, upward pushing of subscribers and bundling of weaker channels with other popular channels.

(iii) There should be a restriction on advertisement time as the broadcasters are gaining on one hand through subscription money and on the other on account of advertisement revenue. There are already norms available in respect of Prasar Bharti, where 10% of total broadcasting time is allowed for advertisement. Similarly, in Hong Kong, a cap is prescribed for advertisements per hour of commercial programmes.

(iv) The disadvantage of CAS would be that after its implementation, most of channels would move to Free-To-Air (FTA) and subscribers may not require Set Top Boxes (STBs) for the simple reason that on account of CAS, many subscribers may refrain from viewing costly pay channels. The revenue generated through advertisements may thus come down, which will also adversely affect the quality of the content.

(c) Summary of the main points in the discussions held with the LCOs and the comments received from them on the consultation note

(i) Many MSOs are also broadcasters and have created vertical monopolies, with the result that the broadcasters insist on obtaining signals through the MSOs, which belong to their group companies or associates, or they charge a lower price for these companies/associates. Broadcasters and MSOs force LCOs to pay a higher fee under threat of arbitrarily withdrawing content on the pretext that there is under-reporting of subscribers.

(ii) Fee charged by the broadcasters has no co-relation with TRP ratings, the prices are fixed non-transparently and they vary immensely across different parts of the city, or even within the same cable areas. Since the mid 1990s, the broadcasters have increased prices by about 1100%.

(iii) Transparency in subscription and revenue settlement amongst broadcasters, MSOs and LCOs can be achieved by circulation of list of subscribers by LCOs to all concerned parties. These lists should be open for challenge by concerned parties.

(iv) The charges fixed for FTA by Ministry of Information and Broadcasting are unrealistic and unviable. FTA channel should not be allowed to be converted into pay channels once these become popular.

(v) Advertisement time on pay channels need to be controlled, as it is a case of unjust enrichment of the broadcasters.

(vi) Bundling of channels should not be allowed. Even if allowed, the price of main channel should not be more than specified percentage of the total price of the bouquet.

(vii) As per CTN Act, cable operators are responsible for content shown on the Cable Network, though they have no control over that. This anomaly needs to be rectified.

(viii) The LCOs do not have enough capital to arrange for STBs. They are not an organized industry as such and the financial institutions do not provide funds for such activities.

(ix) Different cities should be categorized as is done in case of telecom and licenses be issued to MSOs for receiving and distribution of content.

(x) The introduction of CAS exposed the hollowness of claim by pay channels of large viewer-ship, as very few had opted to buy STBs. The most glaring example is the case in Chennai where out of 2.5 lakhs TV viewers, only about 20000 opted for STBs. With decline in viewer-ship, broadcasters started loosing on both revenue streams, i.e. on account of advertisement revenues and subscription revenues.

(xi) The introduction of CAS would take away the choice of consumer to change cable operator, even on the ground of quality of service.

(d) Summary of the main points in the discussions held with the Consumers and the comments received from them on the consultation note and other experts:

- (i) Consumer is totally confused about issues relating to purchase of Set Top Boxes as no information is available about available technologies and working of STBs. Price of STBs should be realistic and consumer friendly (the suggestions included, for example, that STBs be sold against deposit and monthly rent of Rs.30; the Analogue Box should be priced at Rs.1900 and Digital Box at Rs.2700).
- (ii) There should be a transparent system of Billing by operators and its rectification, and a proper receipt should be issued. Norms for Quality of Service also need to be determined and enforced.
- (iii) There should be a ban on advertisement on pay channels.
- (iv) The first 30 frequencies should be used for FTA channels.
- (v) The list of subscriber should be transparently maintained, and may even be posted on the internet which will take care of the problem of under declaration.

(III) Communication from the Chief Ministers/Chief Secretaries of States Which Have to Implement CAS

9. In addition to the various meetings mentioned above, the Authority has also received from the Government, letters written by the Chief Ministers/Chief Secretaries of the four States where CAS is being implemented. These letters clearly show that these States are not in favour of implementing CAS in its present form, and have suggested inter alia that CAS either be postponed or, in one case, that CAS be withdrawn.

10. In the case of the National Territory of Delhi, The Chief Minister wrote on a number of occasions, mentioning a number of problems related to the implementation of CAS. Her latest letter in this regard, dated 3rd January, 2004 (please see “**Annexure C**” for the full text of the letter) states, inter alia, that:

“.....In particular, I draw your attention to the reports from Connaught Place, Chanakya Puri, Kalkaji, Defence Colony, Hauz Khas, Vasant Vihar and Delhi Cantt. Sub divisions, all of which indicate that the off take of Set Top Boxes (STBs) and provision of channels has also been relatively very poor. Further it has been concluded that the Cable Operators do not appear to have the wherewithal and infrastructure to achieve more than 10 STBs on a given day. They are unhappy with the price fixed for the Free to Air channels.

All in all, the present system whatever permutations and combinations are considered, appears to make the consumer pay more for viewing less. This does not make economic sense. ...

They should not be placed at the mercy of operators who have no concern for consumer’s preference or financial outgo. Whatever decision is taken by the Central Government, if any conditionalities are imposed on people, a Regulator must be in position to see that their grievances are attended to promptly and efficiently.”

11. The letter from the Deputy Chief Minister of Maharashtra Government (please see “**Annexure D**” for the full text of the letter), dated 11th September, 2003, states inter alia that:

“... You must have gathered from the Newspapers that the consumers as well as the political parties feel very strongly about imposing unnecessary expenditure on a common viewer by imposing CAS. You may not be aware of one or more dimension to CAS i.e. the major security concern it will cause to Government. ...

I understand that GOI has granted extension in Delhi till December 2003. The State Government’s concern as mentioned above is far more grave. I therefore request you to postpone the date of implementation of CAS until we sort out these issues.”

12. The Chief Secretary of West Bengal on 5th September 2003 requested a postponement of CAS (please see “**Annexure E**” for the text of the letter), and stated inter alia that:

“..... The consumers are still not convinced whether the system is as consumer friendly as it is claimed to be.

... Consumers are also not sure of the availability, price and conditions for procuring the STBs. Freedom to switchover to channels of their choice at short notice is also likely to be curtailed in the proposed system. ...

Serious public grievances leading to law and order situation in the field are not ruled out in case of hasty implementation of CAS. ...

Apart from the points raised in my earlier letter regarding selection of the zone, legal and enforcement matters, there are various other problems, which need to be sorted out....

Under the circumstances, the State Government still feels that the system should be introduced in all the metros simultaneously after sorting out all the related issues.”

13. Subsequently, the Government of West Bengal had established a Committee at the State-level in order to facilitate discussions on issues and concerns arising from the implementation of CAS (please see “**Annexure F**” for a copy of the letter of the Principal Secretary to the Chief Minister of West Bengal, dated 2nd December, 2003 for a reference to this matter).

14. The Chief Minister of Tamil Nadu in a letter dated 6th January 2004 (please see “**Annexure G**”) stated inter alia:

“With regard to Chennai I would like to mention that though CAS is under implementation since the 1st of September 2003, it has not proved to be

popular. ... The common public are deprived of the opportunity of viewing popular programmes on pay channels due to the advent of set top boxes. However, in the absence of any regulatory mechanism, the monthly rates fixed by broadcasters are too high for the consumers to bear after investing in set top boxes. The set top boxes are also highly priced and made available on very rigid terms by Multi Service Operators. Thus the introduction of set top boxes is not at all consumer friendly and there seems to be no reason why the TV viewers of Chennai alone should suffer consequences of CAS experiment in the whole of India.

I therefore request you to withdraw CAS with immediate effect.”

15. These several communications and the views presented by various stakeholders need to be seen in relation to the Report of the Task Force which considered the introduction of CAS, and the views of the Government when it was decided to postpone CAS in Delhi in September, 2003. These are addressed in the next Section.

(IV) The Report of the Task For Which Considered Introduction of CAS, and Government's Views When Decision To Postpone CAS in Delhi Was Taken in September, 2003

16. A Task Force was set up on 28th January, 2003 by the Govt. of India to consider the issue of introduction of CAS. This consisted of representatives from the Indian Broadcasting Foundation, Multi Service Operators (MSOs), Content Creators, Cable Operators, Broadcasters, Infrastructure Providers, representative of consumer organizations and technical experts including representatives from the Government. The Task Force, headed by the Jt. Secretary, Ministry of Information and Broadcasting, made the following recommendations:

- (a) The Conditional Access System and supporting subscriber management system be mandated under the Cable Television Networks Regulations Act, 1995.
- (b) The Set Top Box shall be required only for “Pay” Channels and the “Free to Air” channels shall be receivable by the subscribers in the current mode, without Set Top Box. The encrypted channels should be defined as “Subscription based Channel”.
- (c) The technical parameters of the Set Top Box shall conform to the Indian standards, to be prescribed by the Bureau of Indian Standards, in accordance with provisions of the Bureau of Indian Standards Act, 1986. While doing so, the Bureau of Indian Standards may take into account the internationally acceptable standards and obtain recommendations from technologists and manufacturers of equipment.
- (d) It shall be mandatory for the Equipment Provider/Manufacturer to declare, in a transparent manner, the capability of the Set Top Box and its interoperability with other networks.
- (e) In order to ensure transparency in the operations between MSOs, Cable Operators etc., the Government must be empowered to obtain detailed information, on regular basis, from each level of operation. This may include information on total subscriber base, on individual programmes,

viewership of independent channels, subscription rates, charges fixed by the Broadcasters, Content Creators for each channel etc. Each subscriber shall be kept informed in a transparent manner of the subscription rates for each individual "Pay" channel.

- (f) Unauthorised viewing/distribution/redistribution of the broadcast signal should be made a cognisable offence.
- (g) The Government shall regulate the price of 'Basic Tier' of the 'Free to Air Channels'. The Government should also be enabled to revise the cost of the 'Basic Tier' from time to time. The Government will also make a special provision for the channels of the Public Services Broadcasters. No Government intervention was considered necessary with regard to the cost of the Set Top Box or the rates of the individual 'Pay' channel.
- (h) There should be no requirement for change of the receiving set, irrespective of whether the consumer chooses to watch 'Free-to-Air' channels and/or 'Pay' channels.
- (i) There was an immediate need to educate the consumer on the operation of cable television, on the cost of content creation and its distribution upto the households. The Broadcasters, Content Creators and MSOs should not enhance the charges of the 'Pay' channels arbitrarily; it should be done in a transparent manner.
- (j) The packaging of services, includes Value Added Services, as well as the pricing of the paid bouquets would be left to market forces. However, consumer interest needed to be protected by providing efficient and responsive service and through a transparent and accurate billing and collection system. This will also ensure that the revenue accruable to the Government is determined in a fair manner.

17. While the task force, as above, was clear and categorical in their recommendations on the need of a legislation for implementing CAS in the country and this has accordingly been done by inserting relevant section in the CTN Act and issuance of the notification, the fact remains that the ground realities as obtaining after the issuance of notification were noticed to be quite different and alarming. The non-implementation of the CAS in toto in most areas and continuance of the old practice of showing pay channel without set top boxes has been found to be quite alarming and untenable in law.

18. A reference is also made to the minutes dated 09.09.2003 of the CAS Implementation Committee meeting held on 1.9.2003, wherein, the Addl. Secretary, Ministry of Information and Broadcasting clarified the reasons for postponement of CAS in Delhi. He stated that CAS which was envisaged as a consumer friendly scheme should not become a matter of unnecessary controversy and debate between political parties. Hence, it had been decided to postpone CAS till after the Assembly Election in Delhi. He further stated that people who had already bought Set Top Boxes in Delhi should be encouraged to retain the same, as CAS would be implemented. He advised the Cable Operators not to threaten any increase in the monthly cable rates, as it would unnecessarily create panic in the public.

19. The abovementioned objectives and concerns, taken together with the views of a large sections of the stakeholders have all been considered by the Authority in reaching its conclusions. The Authority has also considered alternative views about

whether the Broadcasting and cable sector may be regulated at all, with one view being that there should be no regulation in this sector so that the Constitutional Rights of freedom of speech and expression may be preserved. The next Section considers a summary of the various relevant inputs that have been discussed in the previous Sections, and the subsequent Section addresses the matter regarding whether the sector should be regulated. Based on these points, the next Section provides a summary of the assessment of the various issues. The Interim Recommendation is provided in the final Section.

(V) A Summary of the Various Points Made With Reference to CAS

20. After analysing the various issues discussed in the meetings held with a cross-section of stakeholders as enumerated above, and based on the study of various comments and inputs received in response to the consultation note and in the communications from State Governments, the Authority noted the following problems in continuance of the present CAS in the four metros of South Delhi, Calcutta, Mumbai and Chennai.

- (a) The detailed Recommendations/requirements that underlie the implementation of CAS are still not implemented or are difficult to implement without a further consideration of policy guidelines on those matters. Further, in view of the difficulties in implementing CAS (which is shown by the several points given below), there may be a need to consider the validity of some of the Recommendations of the Task Force which addressed the introduction of CAS.
- (b) State Governments of Delhi, Maharashtra, Tamil Nadu and West Bengal, where all the Four States (Metros) where the CAS is to be implemented, through their letters (copies Annexed hereto as “**Annexures C, D, E, F, G**”) are unanimous in their views against the present form of implementing CAS.
- (c) The fact that all the four State Governments implementing CAS have opposed the introduction of CAS in its present form, is extremely important for implementation of CAS because, for acts of commission and omission in compliance of the provisions of the CTN Act, the power to enforce and take remedial measures vests in the authorities of the State Government (**Under the CTN Act, the authorised officer has to take actions in case of violation of various provisions relating to “Regulation of Cable Television Network”, and in terms of Section 18 of the CTN Act courts are not to take action of any offence punishable under the Act unless there is a written complaint by any authorised officer. In Section 2 of the Act which gives definitions of various terms, “authorised officer” means, within his local limits of jurisdiction:- (i) a District Magistrate, or (ii) a Sub-Divisional magistrate, or (iii) a Commissioner of Police, and includes any officer notified in the Official Gazette, by the Central Government or the State Government, to be an authorised officer for such local limits of jurisdiction as may be determined by that Government**). It is noteworthy that despite the notification of CAS, it is mostly not being implemented by the cable operators and the State authorities are not able to fully address the matter. Moreover, since CAS has to be implemented by State authorities, the views of the State Governments have to be taken into consideration before implementing the system.

- (d) There is no uniformity about the rates, and they differ considerably even within different parts of a city and also within a cable area.
- (e) There are no standard rates or conditions at which services are provided by the various service providers of cable services including cable operators to subscribers.
- (f) There is considerable uncertainty also in the cost base. Regarding the cost estimation that was earlier done for free to air channels, the initial amount of about Rs.46/- per month per subscriber was amended in a later estimate to Rs.72/-.
- (g) A closer examination raises some questions about the later estimate of Rs.72/- per month also, as some of the underlying assumptions do not appear reasonable. Further work will be required to obtain a more accurate estimate. Another complicating factor is that the costs of electronics have been decreasing over time, and revised estimates may be required also for this reason.
- (h) The facts available point towards a poor penetration of CAS so far. In the case of Chennai, out of about 2.5 lacs consumers only about 20000 consumers have reportedly gone in for STB. Apparently, one of the impacts is that some regional channels have converted their pay channels into FTA.
- (i) In such cases where the penetration of STBs is very low, the broadcasters would suffer not only on account of truncated generation of subscription fee but also on account of reduced advertisements due to truncated viewership.
- (j) The various cable operators continue to follow the old system though illegally providing the channels other than FTA without STBs in CAS areas.
- (k) Some doubts have been raised about CAS being consumer friendly partly because it is not clearly established that the per month out-go of charges will be lower as also that some type of STBs commonly available are not suitable from the point of view of portability from one area to another even in the same city.
- (l) To ensure proper and fair functioning of cable operators, the competition has to be in place, either by way of increase in the number of LCOs in a particular locality or use of alternate technology, such as, DTH or Broadband etc. or both.
- (m) Before the introduction of CAS, the broadcaster, MSOs and cable operators had assured that the introduction of CAS would lead to lower tariffs and wider choice to the consumers. This has not happened and due to the absence of a regulatory system the situation can neither be properly monitored nor the various assurances enforced. There has been a sharp increase in charges of the pay channels and also they are showing less channels than were shown prior to introduction of CAS. Showing of less than the specified number of channels not only is an infraction of the provisions of the CTN Act and the notification issued thereunder but also could lead to resentment by the public. It may, therefore, be necessary to consider whether a printed list of free-to-air channel be circulated to each subscriber on monthly basis and also prescribing a backbone of free-to-air channels which shall not be denied.
- (n) Adequacy of competition in local areas may be another issue which deserves due consideration. At present there is a vicious cable operators' monopoly in most geographical areas and with large number of cable operators having been taken over by MSOs/ Broadcasters, the monopoly is now vertically integrated and is exploiting consumers, in absence of competition and consumers' choice

- (o) What will be the status of the STBs as are being used today, after the introduction of DTH.
- (p) Another factor which is affecting the consumers is the bundling of pay channels which takes away the right of consumers to choose. Therefore, there is a need as to how best to resolve the question of bundling of pay channels to the extent it adversely affects the interest and choice of the consumers. Until this vexed issue is resolved the cascade effect this has on other components of the service, no effective implementation of a tariff and /or choice regimen can be made.

(VI) Regulation of the Broadcasting/Cable Sector

21. A question has been raised at different places whether the action of the Authority in regulating CAS/ Broadcasting will not offend the freedom of speech and expression. This issue has been raised much more strongly with respect to advertisement that the regulation of tariffs, though in certain cases this points has also been made regarding tariffs.

22. The Authority has examined the regulatory regimes in various countries, and the broad features that are similar due to certain common regulatory elements in relation to cable and broadcasting. As in a number of other countries, in India too, the cable industry is marked by strong monopoly in the provision of cable service; over the past few years, these monopolies in India have become even stronger as vertical integration has taken place through acquisition of cable operators/MSOs by upstream operators. The regulation of monopoly is a widely recognized regulatory objective, in order to protect the consumer as well as to encourage the introduction of competition. There is regulation in various countries for this reason, both for tariffs and advertisements. There are some countries which now have relatively weaker regulation of tariffs, but regulated tariffs in certain phases of the Broadcasting and cable industry, or there is a legal mandate for regulating tariffs in this industry but in practice such regulation does not take place. One example is the United States of America (whose 1st Amendment to the Constitution is stricter in terms of freedom of speech etc. in comparison to our Constitutional provision), which had legal provisions for tariff regulation and implemented rate regulation more strictly during certain phases of its cable industry. Some of the relevant provisions for regulation of rates for the cable industry in the United States are given below.

Communications Act of 1934: Section 543- Regulation of Rates

(a) Competition preference; local and Federal regulation

(A) the rates for the provision of basic **cable service** shall be subject to regulation by a franchising authority, or by the Commission if the Commission exercises jurisdiction pursuant to paragraph (6), in accordance with the regulations prescribed by the Commission under subsection (b) of this section; and

(B) the rates for **cable programming services** shall be subject to regulation by the Commission under subsection (c) of this section.

(b) Establishment of basic **service tier** rate regulations

(1) Commission obligation to subscribers

The Commission shall, by regulation, ensure that the rates for the basic **service tier** are reasonable. Such regulations shall be designed to achieve the goal of protecting subscribers of any **cable** system that is not subject to effective competition from rates for the basic **service tier** that exceed the rates that would be charged for the basic **service tier** if such **cable** system were subject to effective competition.

(2) Commission regulations

Within 180 days after October 5, 1992, the Commission shall prescribe, and periodically thereafter revise, regulations to carry out its obligations under paragraph (1). In prescribing such regulations, the Commission -

...

(c) Regulation of unreasonable rates

(1) Commission regulations

Within 180 days after October 5, 1992, the Commission shall by regulation, establish the following;

(A) criteria prescribed in accordance with paragraph (2) for identifying, in individual cases, rates for **cable programming services** that are unreasonable;

(B) fair and expeditious procedures for the receipt, consideration, and resolution of complaints from any franchising authority (in accordance with paragraph (3)) alleging that a rate for **cable programming services** charged by a **cable** operator violates the criteria prescribed under subparagraph (A), which procedures shall include the minimum showing that shall be required for a complaint to obtain Commission consideration and resolution of whether the rate in question is unreasonable; and

(C) the procedures to be used to reduce rates for **cable programming services** that are determined by the Commission to be unreasonable and to refund such portion of the rates or charges that were paid by subscribers after the filing of the first complaint filed with the franchising authority under paragraph (3) and that are determined to be unreasonable.

(2) Factors to be considered

In establishing the criteria for determining in individual cases whether rates for **cable programming services** are unreasonable under paragraph (1)(A), the Commission shall consider, among other factors -

(A) the rates for similarly situated **cable** systems offering comparable **cable programming services**, taking into account similarities in facilities, regulatory and governmental costs, the number of subscribers, and other relevant factors;

(B) the rates for **cable** systems, if any, that are subject to effective competition;

(C) the history of the rates for **cable programming services** of the system, including the relationship of such rates to changes in general consumer prices;

(D) the rates, as a whole, for all the **cable programming, cable equipment, and cable services** provided by the system, other than **programming** provided on a per channel or per **program** basis;

(E) capital and operating costs of the **cable** system, including the quality and costs of the customer **service** provided by the **cable** system; and

(F) the revenues (if any) received by a **cable** operator from advertising from **programming** that is carried as part of the **service** for which a rate is being established, and changes in such revenues, or from other consideration obtained in connection with the **cable programming services** concerned.

(3) Review of rate changes

The Commission shall review any complaint submitted by a franchising authority after February 8, 1996, concerning an increase in rates for **cable programming services** and issue a final order within 90 days after it receives such a complaint, unless the parties agree to extend the period for such review. A franchising authority may not file a complaint under this paragraph unless, within 90 days after such increase becomes effective it receives subscriber complaints.

(4) Sunset of upper tier rate regulation

This subsection shall not apply to **cable programming services** provided after March 31, 1999.

23. The issue regarding the time frame for the Advertisement in a particular programme also requires a detailed examination. In this connection a reference is made to the directions dated 26.12.2003 of the Hon'ble High Court of Delhi and as per order notified by the Government of India dated 9th January 2004. The relevant excerpts of the Directions of the Hon'ble High Court in Delhi dated 26.12.2003 and the Government Order dated 9th January 2004 (which notified TRAI's jurisdiction over Broadcasting and cable services) are reproduced hereunder.

Direction dated 26.12.2003 by Hon'ble High Court of Delhi

“We also direct the respondent to look into the question of framing a policy with regard to those channels which generate lot of money by advertisements, as to why those channels where money is received by advertisements should not be notified as FTA channels. Respondent to also consider in regard to the time allotted in a slot of 30 minutes to advertise whether a limit needs to be put in respect of time for advertisements.”

Order dated 9th January 2004 from Govt. of India

“..... (b) the parameters for regulating maximum time for advertisements in pay channels as well as other channels.”

24. For appreciation of the issues relating to advertisement, we take a look at the regulatory system prevailing in a number of other countries.

(1) Australia

Broadcasting Services Act, 1992 (Section 101. Special Conditions Relating To Advertising)

- i. Each subscription television broadcastings license is subject to the condition that the licensee will not, before 1 July 1977, broadcast advertisements or sponsorship announcements.
- ii. For the purposes of this section, a person is not taken to broadcast an advertisement if:
 - a. the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - b. the person does not receive payment or other valuable consideration for broadcasting the advertising matter.
- iii. For the purposes of this section, a person is not taken to broadcast an advertisement if the person broadcasts matter that promotes subscription television broadcasting services being provided by that or an other person.

(2) Canada

Pay Television Regulations 1992, Sections 3(2)(d), (e) and (f)

- i. no licensee shall distribute programming that contains any commercial message;
- ii. other than filler programming, except as otherwise provided in a condition of its license, that is produced by the licensee after the date of publication in the Canada Gazette of the initial decision of the Commission granting a license to the licensee; or
- iii. other than filler programming, except as otherwise provided in a condition of its license, that is produced by a person related to the licensee after later of
 - (a) the date of publication in the Canada Gazette of the initial decision of the Commission granting a license to the licensee, and
 - (b) the day on which the person became related to the licensee.

“*Commercial message*” means an advertisement intended to sell or promote goods, services natural resources or activities, and includes an advertisements that mentions or displays in a resources or activities, but does not include any

- (a) public service announcement,
- (b) advertisement for a program distributed by a licensee,
- (c) identification of a pay television programming undertaking,
- (d) production credit, or
- (e) advertisement that
 - (i) is contained in the live feed of programming that is of the category set out in column I of sub item 6(6) of Schedule I and that is acquired by a licensee,
 - (ii) is broadcast during the same period, and originates in the same stadium, arena or other venue, as the event itself, and
 - (iii) is distributed by the licensee without compensation; (*message publicitaire*)

“*filler programming*” means programming, in no case longer than 30 minutes in duration, the purpose of which is to fill in the time between the presentation of the major programs distributed by the licensee, and includes material that promotes the programs or services provided by the licensee; (material d’intermede)

(3) European Union

Council Directive of 3 October, 1989, Articles 11 and 18

1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.
3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled

duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.
5. Advertising and teleshopping shall not be inserted if any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.

Article 18

1. The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising with the exception of teleshopping windows within the meaning of Article 18a, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.
2. The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
3. For the purpose of the Article, advertising does not include:-
announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes; --- public service announcements and clarity appeals broadcast free of charge.

(4) Finland

Act on Television and Radio Operations (744/1998)

Same as applicable to European Union.

(5) Germany

German Broadcast Advertising Law, 1991

Duration of advertising

The total amount of advertising on the public television channels may not be more than 20 minutes on workdays- as an average over the year (Sect.15 RfStV). No advertising may be transmitted after 8.00 p.m. or on Sundays or public holidays. On the third channels of the public broadcasters, there is no advertising. The total amount of advertising on public radio stations may not exceed 90 minutes on workdays.

The total amount of advertising on the private channels may not exceed 20% of daily transmission time. The amount of spot advertising may not be more

than 15% during that time (Sect 27 RfStV). Radioshopping and teleshopping shall not exceed one hour per day (within the permitted daily maximum transmission time of 20%).

The EU Television Directive (Art 18) limits the amount of permitted advertising to no more than 15% of the daily transmission time or 20% within a given one-hour period. (Under certain circumstances, the amount can be increased to 20% per day). Teleshopping may not exceed one hour per day.

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Insertion of advertising

For the insertion of advertising, there are different regulations for the public and private broadcasters. The provisions that apply to the private broadcasters are in line with the provisions in the EU Television Directive.

The following regulations apply to all broadcasters:

Advertisements must be shown in blocks, in other words grouped together. Spot that are transmitted on their own must remain the exception.

Advertisements must generally be inserted between programmes. They must be clearly separated from the programmes Broadcast advertising must be readily recognizable as such and clearly separated from the other programme parts by visual or acoustic means. Children's programmes or religious services may not be interrupted by advertising.

Television programmes transmitted by public broadcasters which are for longer than 45 minutes may contain one interruption for advertising. In the case of programmes that contain breaks, the advertising may only be inserted in such breaks. Apart from sports events, it may be also be shown between autonomous parts. (Sect.13 RfStV). Advertising interruptions of documentary and news programmes are only permissible if their duration does exceed 45 minutes. (Point 2.4 of the ARD and ZDF Guidelines).

According to the provisions of the EU Television Directive and those of the private broadcasters, advertising interruptions of documentary and news programmes are only permissible if the duration of the programmes exceeds 30 minutes. In programmes, which contain breaks, advertisements may only be inserted into the breaks or between autonomous parts. In the case of other programmes, the interval between two successive interruptions within one programme must be at least 20 minutes. The transmission of films can be interrupted once for every complete period of 45 minutes. A further interruption is allowed if their duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

(6) Hong Kong

Broadcasting Ordinance/Bill, 2000

Restricted to Domestic Free TV program service only, the peak viewing hours will be redefined as the period from 5.00 p.m. to 11.00 p.m. and the total

advertising time should not exceed 18% of the total broadcast time of those periods.

There was a suggestion that the current advertising time restrictions on domestic free licensees should not be relaxed. It is our assessment that, over the years, viewers are becoming more sophisticated and the general quality of advertising has improved significantly. We therefore believe that licensees should be given more flexibility to package, schedule and design the format of advertisements in a gradually liberalised TV market. At the same time, we must also ensure that any relaxation of the current restrictions would not result in the bunching of advertising which might otherwise obtrude on viewing pleasure. What we have now proposed in the Bill represents a sensible balance of the above-mentioned factors. The current advertising time restrictions will continue to apply during the prime time viewing hours, i.e. 5 p.m. to 11 p.m. At other times, licensees will be allowed to freely package their advertisements subject to the restriction that the aggregate advertising time shall not exceed 18% of the total broadcasting time in that period.

(7) Italy

Legal Provisions of 1975

Advertising and teleshopping must be kept completely separate from other parts of the programme and identifiable as such by the insertion on the screen, at the beginning and at the end of the message, of specific signs such as “advertising” or “teleshopping”. AGCOM must ensure that existing codes of conduct will adopt an identical signal for all channels during programmes destined to minors. Advertisements, including teleshopping and sponsorship, cannot be shown by the host of the programme within the context of the programme itself. Hidden and misleading advertisements is forbidden.

In the programme consisting of autonomous parts, or in similarly structured events and performances containing breaks, advertising and teleshopping messages shall only be inserted between the parts or during the breaks.

A period of at least 20 minutes must elapse between each successive advertising break within the programme.

In case of broadcasting of spot events, advertisement and teleshopping may be inserted during the breaks for seen by the official regulation of the sport being broad casted, or during its pauses insofar as the advertisements message does not interrupt the sport action.

Cartoon programmes cannot be interrupted by advertisement or teleshopping. The provision does not apply to cartoons destined to adults nor does it apply to full-length cartoons.

(8) Philippines

Cable TV Act, 1999, Section 12

Advertisements - Cable television may include advertisements and other similar paid segments for which the cable television operator may charge and collect reasonable fees : Provided, that such paid segments shall not exceed

ten (10) minutes per hour of program : Provided, further, That said advertisements and similar paid segments shall be exhibited or shown at the start and / or at the end of program: Provided, finally, That no foreign program provider or distributor shall be allowed to solicit and sell commercial positions and advertising time in their programming for products and services directed solely at and within the Philippines and insert such advertisements in the regional satellite feed of such foreign programmers and distributors to be received by the cable television operator.

(9) South Africa

Broadcasting Act, 1999

Regulation of advertising and sponsorship

The IBA must consider the possible restriction on the total time devoted to advertising by satellite broadcasters. Admittedly the viewer or listener has the alternative of switching off of the amount of advertising is excessive but, in the general public interest, the number of minutes devoted to advertising in each hour should perhaps be regulated.

(10) United Kingdom

Broadcasting Act 1990, Section 9(8)

1. Directions under this section may be, to any degree, either general or specific and qualified or unqualified; and directions under subsection (7) may, in particular, relate to :-
 - a. the maximum amount of time to be given to advertisements in any hour or other period,
 - b. the minimum interval which must elapse between any two periods given over to advertisements and the number of such periods to be allowed in any programme or in any hour or day.
 - c. the exclusion of advertisements from a specified part of a licensed service, and may make different provision for different parts of the day, different days of the week, different types of programmes or for other differing circumstances.

(VII) Assessment

25. The above examples clearly reveal that cable TV is regulated in most countries and CAS and other forms of regulation have been implemented after setting up regulatory structure. The absence of such arrangement in India has led to a situation that patent illegalities are being committed.

26. Under “The Cable Television Regulation Act, 1995” the showing of pay channels without an addressable system installed at the TV reception at consumer end is illegal. Thus, with the implementation of CAS, the LCOs are mandatorily required to allow pay channels only to the consumers who have the addressable system attached with their TV receivers. However, the ground reality is that, even in CAS areas, most cable operators are allowing the reception of pay channels to subscribers without addressable systems. In such a situation, TRAI cannot fix the rates for the cable operators to charge from the subscribers for showing the pay channels since that would amount to endorsement of an illegal activity. Also, the cable operators may not

show the pay channels to the subscribers at the rate of Rs.72/-, namely, the rate fixed for only FTA channels. The provisions of the CTN Act can only be implemented by the Authority under the control of the State Government. It would be clear from the letters addressed to the Government of India by Chief Ministers/Chief Secretaries as referred to above, that they are unanimously not in favour of implementing CAS in its present form. Hence the problem in implementing the CAS can only be sorted out after the Authority discusses the issues raised by them in detail. Authority has already called such a meeting. In the interim, if CAS continues, we would only be perpetuating the illegalities being committed in areas under CAS.

27. This has to be seen with certain other ground realities, including those mentioned earlier in the summary of the comments of stakeholders. For instance,

- there are financial constraints at the operator level because the fragmented Indian market has very few well-managed and well-funded multi cable system operators (MSOs / Cable Operators). The majority are unable to access the capital and expertise needed to drive a high quality, volume-led and scalable rollout of CAS. Most MSOs / Cable operators and local financial institutions also remain unable to subsidize the cost of CAS for the consumers.
- CAS deployment essentially assumes that cable operators (including MSOs) are able to work out satisfactory rental/price sharing arrangements with subscribers. In the absence of regulations in this regard, it is unlikely that any operator will invest in a Subscriber Management System that supports CAS solutions.
- The current ground realities of the Indian market show that a volume-led deployment of CAS is unlikely till the consumers are confident that acceptance of CAS would not lead to higher charges and deterioration in services.

28. In view of the discussions and the analysis made above, it is evident that while the broadcasters / MSOs feel that full disclosure of number of customers is not being made by the LCOs, some of the MSOs and LCOs feel that they are being squeezed by the broadcasters by the latter arbitrarily increasing the charges payable by MSOs & LCOs based on artificially increased number of customers. One of the reasons for introducing the CAS was to eliminate this ambiguity. However, on the field, due to various reasons the penetration of CAS is poor and the ambiguity persists. Hence, in the end result, it is the subscriber who is the victim of the present day situation. The subscriber is, accordingly, faced with increase in cable tariffs which may have no direct co-relation with cost or any other cogent reasoning / basis and in the absence of a regulatory system all the three ladders in the cable TV system are blaming each other for exploiting the consumer. Incidentally, this is the situation even after the issue of TRAI's order dated 15th January 2004 specifying as ceiling the charges prevalent on 26-12-2003 because there were reports that fewer channels were being shown or in some cases even attempts to increase tariff have been made. Doubts have also been raised about CAS being consumer friendly because in the present state of ambiguities about cost and viewership, it is not clearly established that the per month outgo charges will be lower. Besides, some type of STBs commonly available are not suitable from the point of view of portability from one area to another even in the same city, and the consumer consequently suffers.

29. In conclusion, the only feasible course of action seems to be that the CAS should be denotified or kept in abeyance till the TRAI finalizes the regulation on CAS after the final consultation paper. This paper will be issued within about a week based on the comments on the preliminary consultation note received from the stakeholders; the Authority's interaction with broadcasters, MSOs, representatives of cable operators and consumer groups; views of the State Governments implementing CAS and the problems faced by them; and a study of the regulatory systems and best practices in other countries. The detailed Consultation process will involve interaction with various stakeholders through their written comments, Open House Discussion Meetings, and a series of smaller meetings specifically with different groups of service providers, consumers, and policy makers. This process is expected to take a further period of about three months. In the meanwhile CAS should remain stayed in the four metros, otherwise the consumers will continue to be exploited and also the denotification or putting notification in abeyance would take us out of the present illogical situation where for different reasons CAS has not been implemented in Mumbai and Kolkata and also partially in Delhi, and is being opposed by State Government in Chennai.

30. The Authority is not discussing the desirability and continuity of Conditional Access System, but how best it can be implemented without there being any undue exploitation of the consumers. That being the basic concern, the Authority's analysis has manifested certain basic problems which need to be addressed before the system becomes fully operational and this is the primary consideration which impelled the Authority to make a recommendation to keep the implementation of CAS in abeyance till the loopholes in the system are plugged/taken care of.

31. The Authority has also consulted the Attorney General of India on the Legal issues involved and this recommendation is being made taking the views of the Attorney General into account.

VIII. Interim Recommendation

32. The Authority, accordingly, recommends that the Notification No. SO 792 (E) dated 10th July, 2003 be kept in abeyance for at least three months and necessary action be taken keeping in view the directions of the Hon'ble High Court of Delhi dated 26.12.03 in CW 89934/2003.

ANNEXURE A

Consultation Note No. 3 of 2004



TELECOM REGULATORY AUTHORITY OF INDIA

Consultation Note

on

Issues relating to Broadcasting and Cable Services

New Delhi

January 15, 2004

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PREFACE

Cable Television Network (Regulation) Act, 1995 was amended in the year 2002 and section 4A was inserted in the original Act which envisages transmission of programmes through addressable system (popularly referred to as Conditional Access System (CAS)) with effect from such date as may be specified in the Notification. Following various Notifications and Court interventions, the Conditional Access system is applicable in Chennai and certain areas of Calcutta, Mumbai and NCT of Delhi. In certain areas of Delhi, following the Hon'ble Delhi High Court orders dated 26.12.2003, the implementation of CAS is to continue for a period of three months on a trial basis after which the Court would give further directions taking into consideration the feed back of three months' experience.

2. The Government of India issued a Notification No.39 dated 09.01.04 whereby the scope of the expression 'telecommunication services' (defined in Section 2 of the Telecom Regulatory Authority of India Act, 1997 as amended) was expanded to include the broadcasting services and cable services also. Consequently the Telecom Regulatory Authority of India is entrusted with the basic task of regulation of cable and broadcasting services in the country.

3. There is considerable uncertainty about different aspects of the CAS regime and a detailed examination is required of the various issues including the rates for the broadcasting and cable services in CAS and non-CAS areas, and the conditions at which the addressable systems are made available by the cable operators. Not only are there no standard rates or conditions at which services are provided by the cable operators to the customers, there are reports that there may be an increase in the rates charged to the customer. The Authority has, therefore, begun its process of examination of the relevant issues including those relating to CAS through a consultation process.

4. The enclosed Consultation Note is the first step towards a meaningful examination of the relevant issues mentioned above and would provide the necessary platform for discussing them. The comments and other inputs provided by the stakeholders would enable the Telecom Regulatory Authority of India to formulate a

more detailed Consultation Paper with a view to evolving appropriate policies for the orderly growth of the cable and broadcasting services in the country. The Consultation Note has already been placed on TRAI's website (www.trai.gov.in).

5. Written comments on this Consultation Note may be furnished to the Secretary, Telecom Regulatory Authority of India by 30th January 2004. It would be appreciated if the response is accompanied with an electronic version of the text through email at trai07@bol.net.in. The fax number of TRAI is 011-26193294.

(Pradip Baijal)
Chairman, TRAI

New Delhi
Dated 15th January 2004.

CONSULTATION NOTE ON SOME ISSUES RELATING TO BROADCASTING AND CABLE SERVICES

This Consultation Note seeks to address the issues regarding tariffs of broadcasting and cable service and problems arising out of the application of Conditional Access System (CAS) in certain areas. This Paper is in two Sections. Section I deals with the background of the issue; and Section II deals with the issues involved.

Section I

Background

2. Cable Television Networks (Regulation) Act, 1995 was amended in 2002 and Section 4A was inserted in the original Act which envisages “**Transmission of programmes through addressable system**” (popularly referred to as Conditional Access System (CAS) with effect from such date as may be specified in the Notification. A Notification dated 14th January 2003 was issued by the Ministry of Information and Broadcasting, Government of India making it obligatory for every cable operator to transmit/re-transmit programmes of every pay channel through an addressable system in Chennai Metropolitan area, Municipal Council of Greater Mumbai area, Kolkata Metropolitan area and National Capital Territory of Delhi within six months from 15th day of January, 2003. Subsequently vide Notification dated 10th July, 2003 the date of implementation was deferred and fixed within six months from 1st March, 2003, and Chennai and the areas of NCT of Delhi, Kolkata, Mumbai to be covered by CAS were also specified. Thereafter vide Notification dated 29th August, 2003, the earlier Notification dated 10th July, 2003 was amended and areas in NCT of Delhi where CAS was to be implemented were deleted.

3. The Hon’ble Delhi High Court, vide orders dated 4th December 2003, quashed the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India. The cable operators of the notified areas partially withdrew pay channels from mid-night of 15th December 2003.

4. Delhi High Court in CW no. 8993-4/2003 in its order dated 26.12.03 allowed the implementation of CAS in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feed back of three months' experience.

5. The Government of India issued a Notification No.39 dated 9th January 2004 (copy of the Notification is at Annexure I) under the proviso to clause (k) of sub-section (1) of section 2 of the TRAI Act 1997 as amended, (copy of the provisions of Section 2 of the TRAI Act is at Annexure II) whereby the scope of the expression 'telecommunication services' under the TRAI Act was increased to include the broadcasting services and cable services also. Thus, the broadcasting and cable services also came within the purview of the Telecom Regulatory Authority of India. Through this Notification, the Government of India, in exercise of the powers under clause (d) of sub-section (1) of section 11 (copy of the provisions of Section 11 of the TRAI Act is at Annexure III), further authorised the Telecom Regulatory Authority of India to specify inter alia standard norms for and periodicity of revision of rates of pay channels including interim measures. The said notifications further authorised TRAI to make recommendations on the parameters for regulating maximum time for advertisements in pay channels and other channels, and the terms and conditions for "addressable systems" provided to subscribers.

6. Under Section 11(4) of the TRAI Act, the Authority has to ensure transparency while exercising its powers and discharging its functions. The normal practice followed in the TRAI is to decide on issues following a consultation process with stakeholders. In this case too, the Authority is examining various issues and will be conducting consultations. This Consultation Note seeks inputs on a number of policy issues, so as to prepare a more detailed Consultation Paper.

Section II

7. Issues involved:

- a) The norms for fixing rates (or ceiling rates) for cable subscribers/ cable operators / Multi Service Operators for individual pay channels, bouquets thereof, and distribution of free-to-air channels; whether this should be uniform in areas under CAS and non-CAS areas or whether it should be different; other principles for determining the above mentioned rates, including periodicity of revision.
- b) Regulation regarding rates of cable operators, including periodicity of change of monthly cable charges in non-CAS areas and the maximum percentage change to be allowed at any one time.
- c) Principles governing the sharing of pay channel charges between broadcasters, Multi Service Operators and local cable operators.
- d) The principles for laying down limits as to the extent of bundling of pay channels to be allowed in order to ensure that Cable TV viewers have a genuine choice with regard to selection of pay channels, e.g. to ensure that bundling does not discourage selection of individual channels.
- e) The standard terms and conditions under which set top boxes may be made available (sale/rental) to subscribers in CAS areas and refund of charges deemed inappropriate.
- f) The conditions under which consumers may return set top boxes sold or rented to them by service providers and ask for a refund;
- g) The compensation to be paid by cable operators to viewers who have ordered pay channels if transmission is interrupted for more than a specified portion of prime time (e.g.10%) in a month or in the case of a sports channel, a similar portion (10%) of the time during an important sports event. The principles for sharing this compensation between broadcasters, Multi Service Operators and local cable operators.
- h) The principles to be followed for laying down the standards of quality of service to be provided by the cable operators / Multi Service Operators / Broadcasters and for ensuring the quality of service and conduct of periodic

survey of such service provided by the Cable Operators / Multi Service Operators / Broadcasters so as to protect the interests of the consumers of Broadcasting and Cable Services.

- i) Measures to increase competition, promote efficiency and encourage wider consumer choice in the operation of Broadcasting and Cable services so as to serve consumer interests and to ensure the availability of services in rural and remote areas.
- j) Measures for the development of Broadcasting and Cable services technology (including Direct-to-Home and Broadband) and any other matter relatable to this industry, in general.
- k. Advertisements on TV channels
 - (i) the maximum advertising time to be permitted per half-an-hour on free-to-air channels along with other conditions that are required to be imposed;
 - (ii) the further regulation of advertising on pay channels in reference to tariffs for the channels;
 - (iii) whether the restrictions at (i) & (ii) above should apply to both CAS and non-CAS areas uniformly or whether differential treatment is called for.

8. Comments and other inputs are requested on the above issues and any other related matter. Please note that the comments relating to broadcasters should include issues relevant also for authorised distributors and advertising sales agencies of pay satellite channels.

9. The Authority invites written responses from all interested parties by 30th January, 2004. It would be appreciated if the response is accompanied with an electronic version of the text through email. The communication may be sent to Dr. Harsha Vardhana Singh, Secretary, TRAI (trai07@bol.net.in) or to Shri Rajan Singla, Advisor (trai@del2.vsnl.net.in). The fax number of TRAI is 011-26193294.

ANNEXURE - I TO THE CONSULTATION NOTE

NOTIFICATION NO. 39
[DATED 09.01.2004]

MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY
(Department of Telecommunications)

NOTIFICATION

New Delhi, the 9th January, 2004

S.O. 44(E). - In exercise of the powers conferred by the proviso to clause (k) of Sub-section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Central Government hereby notifies the broadcasting services and cable services to be telecommunication service.

[F.No. 13-1/2004 – Restg.]
P.K. TIWARI, Dy. Secy (Restg.)

ORDER

New Delhi, the 9th January, 2004

S.O. 45(E). - In exercise of the powers conferred by clause (d) of Sub-clause (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as the Act), the Central Government hereby entrusts the following additional functions to the Telecom Regulatory Authority of India, established under Sub-section (1) of Section 3 of the Act, in respect of broadcasting services and cable services, namely:-

- (1) Without prejudice to the provisions contained in clause (a) of Sub-section (1) of Section 11 of the Act, to make recommendation regarding -

- (a) the terms and conditions on which the “Addressable systems” shall be provided to customers

Explanation – For the purposes of this clause, “addressable system” with its grammatical variation, means an electronic device or more than one electronic devices put in an integrated system through which signals of cable television network can be sent in encrypted or unencrypted form, which can be decoded by the device or devices at the premises of the subscriber within the limits of authorisation made, on the choice and request of such subscriber, by the cable operator for that purpose to the subscriber,

- (b) the parameters for regulating maximum time for advertisements in pay channels as well as other channels.
- (2) Without prejudice to the provisions of Sub-section(2) of Section 11 of the Act, also to specify standard norms for, and periodicity of, revision of rates of pay channels, including interim measures.

[F.No. 13-1/2004 – Restg.]
P.K. TIWARI, Dy. Secy (Restg.)

ANNEXURE - II TO THE CONSULTATION NOTE

SECTION 2 OF THE TRAI ACT, 1997

2. (1) In this Act, unless the context otherwise requires:-

- a. "appointed day" means the date with effect from which the Authority is established under sub-section (1) of section 3;
- (aa) "Appellate Tribunal " means the Telecom Disputes Settlement and Appellate Tribunal established under section 14.
- b. "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;
- c. "Chairperson" means the Chairperson of the Authority appointed under sub-section (3) of section 3;
- d. "Fund" means the Fund constituted under sub-section (1) of section 22;
- e. "licensee" means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 (13 of 1885) for providing specified public telecommunication services;
- (ea) "licensor" means the Central Government or the telegraph authority who grants a license under section 4 of the Indian Telegraph Act, 1885 (13 of 1885).
- f. "member" means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and Vice-Chairperson ;
- g. "notification" means a notification published in the Official Gazette;
- h. "prescribed" means prescribed by rules made under this Act;
- i. "regulations" means regulations made by the Authority under this Act;
- j. "service provider" means the Government as a service provider and includes a licensee;
- k. "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services;

PROVIDED that the Central Government may notify other service to be telecommunication service including broadcasting services.

(2) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act, 1885 (13 of 1885) or the Indian Wireless Telegraphy Act, 1933 (17 of 1933) shall have the meanings respectively assigned to them in those Acts.

(3) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

ANNEXURE – III TO THE CONSULTATION NOTE

SECTION 11 OF THE TRAI ACT, 1997

11. Functions of Authority

- (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the functions of the Authority shall be to-
 - (a) make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:-
 - (i) need and timing for introduction of new service provider;
 - (ii) terms and conditions of licence to a service provider;
 - (iii) revocation of licence for non-compliance of terms and conditions of licence;
 - (iv) measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services.
 - (v) technological improvements in the services provided by the service providers.
 - (vi) type of equipment to be used by the service providers after inspection of equipment used in the network.
 - (vii) measures for the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
 - (viii) efficient management of available spectrum;
 - (b) discharge the following functions, namely:-
 - (i) ensure compliance of terms and conditions of license;
 - (ii) notwithstanding anything contained in the terms and conditions of the license granted before the commencement of the Telecom Regulatory Authority (Amendment) Act, 2000, fix the terms and conditions of inter-connectivity between the service providers;
 - (iii) ensure technical compatibility and effective inter-connection between different service providers.
 - (iv) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
 - (v) lay down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;
 - (vi) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;
 - (vii) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;
 - (viii) keep register maintained under clause (vii) open for inspection to any member of public on payment of such fee and

compliance of such other requirement as may be provided in the regulations;
(ix) ensure effective compliance of universal service obligations:

- (c) levy fees and other charges at such rates and in respect of such services as may be determined by regulations.
- (d) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act:

Provided that the recommendations of the Authority specified in clause (a) of this sub-section shall not be binding upon the Central Government:

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new licence to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations:

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request:

Provided also that the Central Government may issue a licence to a service provider if no recommendations are received from the Authority within the period specified in the second proviso or within such period as may be mutually agreed upon between the Central Government and the Authority:

Provided also that if the Central Government, having considered that recommendation of the Authority, comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall refer the recommendation back to the Authority for its reconsideration, and the Authority may, within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by that Government. After receipt of further recommendation, if any, the Central Government shall take a final decision.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885 (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1) or sub-section (2), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

ANNEXURE B
Telecom Regulatory Authority of India

Notification

New Delhi January 15, 2004 / Pausa 25, 1925

No. 301-3/2004-Eco

In exercise of the powers conferred upon it under sub-section (2) of section 11 of the TRAI Act, 1997 as amended read with the Notification No.39 dated 09.01.2004 issued from file No.13-1/2004-Restg. by the Government of India under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of section 2 of the Telecom Regulatory Authority of India Act, 1997 to notify, by an Order in the Official Gazette, tariffs at which Telecommunications (Broadcasting and Cable Operation) Services shall be provided, the Telecom Regulatory Authority of India hereby makes the following Order.

**THE TELECOMMUNICATION (BROADCASTING AND CABLE)
SERVICES TARIFF ORDER 2004**

[1 of 2004]

Section I

Title, Extent and Commencement

1. Short title, extent and commencement:
 - i. This Order shall be called “The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004”.
 - ii. The Order shall cover tariffs for all Telecommunication (Broadcasting and Cable) Services throughout the territory of India as also those originating in India or outside India and terminating in India.
 - iii. The Order shall come into force on the date of its notification in the Official Gazette.

Section II Tariff

2. The charges payable by
 - (a) Cable subscribers to cable operator;
 - (b) Cable operators to Multi Service Operators/Broadcasters (including their authorised distribution agencies); and
 - (c) Multi Service Operators to Broadcasters (including their authorised distribution agencies)

prevalent as on 26th December 2003 shall be the ceiling with respect to both free-to-air and pay channels, both for CAS and non-CAS areas until final determination by Telecom Regulatory Authority of India on the various issues concerning these charges.

Section III

3. **Explanatory Memorandum**

Annex A to this Order contains an Explanatory Memorandum for the issue of this Order.

Section IV

4. **Interpretation**

In case of dispute regarding interpretation of any of the provisions of this Order, the decision of the Authority shall be final and binding.

BY ORDER

Dr. Harsha Vardhana Singh
Principal Advisor cum Secretary
Telecom Regulatory Authority of India

ANNEX A TO THE TARIFF ORDER

EXPLANATORY MEMORANDUM

Cable Television Networks (Regulation) Act, 1995 was amended in 2002 and Section 4A was inserted in the original Act which envisages “**Transmission of programmes through addressable system**” [popularly referred to as Conditional Access System (CAS)] with effect from such date as may be specified in the Notification. A Notification dated 14th January 2003 was issued by the Ministry of Information and Broadcasting, Government of India making it obligatory for every cable operator to transmit/re-transmit programmes of every pay channel through an addressable system in Chennai Metropolitan area, Municipal Council of Greater Mumbai area, Kolkata Metropolitan area and National Capital Territory of Delhi within six months from 15th day of January, 2003. Subsequently vide Notification dated 10th July, 2003 the date of implementation was deferred and fixed within six months from 1st March, 2003, and Chennai and the areas of NCT of Delhi, Kolkata, Mumbai to be covered by CAS were also specified. Thereafter vide Notification dated 29th August, 2003, the earlier Notification dated 10th July, 2003 was amended and areas in NCT of Delhi where CAS was to be implemented were deleted.

2. The Hon’ble Delhi High Court, vide orders dated 4th December 2003, quashed the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India. The cable operators of the notified areas partially withdrew pay channels from mid-night of 15th December 2003.

3. Delhi High Court in CW no. 8993-4/2003 in its order dated 26.12.03 allowed the implementation of CAS in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feed back of three months’ experience.

4. The Government of India issued a Notification No.39 dated 9th January 2004 whereby, under the proviso to clause (k) of sub-section (1) of section 2 of the TRAI Act, 1997 as amended, the scope of the expression telecommunication services was increased to include the broadcasting services and cable services also. Thus, the broadcasting and cable services also came within the purview of the Telecom Regulatory Authority of India. Through this Notification, in exercise of the powers under clause (d) of sub-section (1) of section 11, the Telecom Regulatory Authority of India was further authorised to, inter-alia, specify standard norms for and periodicity of revision of rates of pay channels including interim measures.

5. There is considerable uncertainty about different aspects of the Conditional Access System (CAS) regime and a detailed examination is required of the various issues, including the rates for the broadcast and cable services in CAS and non-CAS areas. Not only are there no standard rates or conditions at which services are provided by the cable operators to the subscribers, there are reports that there may be an increase in the rates charged to the subscribers. The Authority has begun its process of examination of the relevant issues, including those relating to CAS, through a consultation process. To bring some certainty in the rates prevailing for

these services, it was considered necessary by the Telecom Regulatory Authority of India to intervene in the matter. The TRAI has, therefore, deemed it appropriate to specify as ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi service operators and by multi service operators to broadcasters, as those prevailing on 26th December 2003 with respect to both free-to-air channels and pay channels, and for both CAS and non-CAS areas. This intervention will continue until a final determination by the Telecom Regulatory Authority of India on the various issues involved. The Hon'ble Delhi High Court, in CW No. 8993-4/2003 dated 26th December 2003, directed the continuance of implementation of CAS in Delhi on a trial basis, initially for a period of three months, after which appropriate directions would be issued after taking into account the feedback for the three months' experience. The ceiling rates have therefore been specified as those prevailing on 26th December 2003.

ANNEXURE C

GOVT.OF NATIONAL CAPITAL TERRITORY OF DELHI
DELHI SECRETARIAT, I.P.ESTATE, DELHI - 110002

SHEILA DIKSHIT
CHIEF MINISTER

D.O.No.: CM/VIP/04/01
Dated: 3/1/2004

Dear Shri Prasad,

This recalls our detailed discussion on 31st December, when I had once again apprised you the problems faced by consumers with the introduction of the Conditional Access Systems (CAS) in South Zone of Delhi.

2. I had brought to your notice the experiences reported by the State Standing Committee but you had requested for a more detailed field level assessment to be provided. Accordingly, the enclosed report recounts numerous difficulties faced by the consumers based upon the reaction of 34 South Zone Resident Welfare Associations who were contacted by the area SDMs. In particular, I draw your attention to the reports from Connaught Place, Chanakya Puri, Kalkaji, Defence Colony, Hauz Khaz, Vasant Vihar and Delhi Cantt. sub divisions, all of which indicate that the off take of Set Top Boxes (STBs) and provision of channels has also been relatively very poor. Further it has been concluded that the Cable Operators do not appear to have the wherewithal and infrastructure to activate more than 10 STBs on a given day. They are unhappy with the price fixed for the Free to Air channels.

3. All in all, the present system whatever permutations and combinations are considered, appears to make the consumer pay more for viewing less. This does not make economic sense. I request you now to kindly take a decision which is in the interest of the consumer and does not add to his expenditure unnecessarily. Till all factors have been worked out in a transparent and equitable fashion, a way must be found to let the consumers see the channels they have grown accustomed to, without let up. They should not be placed at the mercy of operators who have no concern for consumer's preference or financial outgo. Whatever decision is taken by the Central Government, if any conditionalities are imposed on people, a Regulator must be in a position to see that their grievances are attended to promptly and efficiently.

With regards,

Yours sincerely,

Sd/-

(SHEILA DIKSHIT)

Encl : As above.

Shri Ravi Shankar Prasad
Minister of State (Independent Charge) for Information and Broadcasting
Govt.of India
New Delhi.

STATUS REPORT REGARDING IMPLEMENTATION OF CONDITIONAL ACCESS SYSTEM IN NOTIFIED AREA OF SOUTH DELHI

BACKGROUND

1. Cable Television Networks (Regulation) Act, 1995 was amended in 2002 and Section 4A was inserted in the original Act which envisages “**Transmission of programmes through addressable system** (popularly referred to as Conditional Access System (CAS))” with effect from such date as may be specified in the Notification. A Notification dated 14th January, 2003 was issued by the Ministry of Information and Broadcasting, Government of India making it obligatory for the cable operators of the notified area to transmit programs of every pay channel through an addressable system within six months from 15th January 2003. Subsequently the date of implementation was deferred and fixed within six months from 1st March 2003 vide Notification dated 10th July 2003 and the area of NCT of Delhi to be covered by CAS was also notified. Thereafter vide Notification dated 29th August 2003, the earlier Notification dated 10th July 2003 was amended and areas of NCT of Delhi where CAS was to be implemented were deleted.

2. Consequent upon the Delhi High Court’s order dated 4th December 2003 wherein the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India was quashed, the cable operators of the notified area partially withdrew pay channels from mid-night of 15th December 2003.

3. Delhi High Court in CW no. 8993-4/2003 in its order dated 26/12/03 allowed the implementation of CAS in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feed back of three months experience. High Court in this order, inter-alia, directed the respondent Union of India, Ministry of Information & Broadcasting to go ahead with their scheme of CAS in Delhi to be reviewed after a period of three months. The Court desired that in this period of three months all the loop-holes, difficulties faced by the consumers, effect of the implementation and problems, if any, arising out of the implementation can be assessed and remedial measures be taken in this regard.

Implementation of CAS in the area notified in the Notification dated 10th July, 2003

4. A meeting was convened by Principal Secretary (Home), GNCT of Delhi in which Commissioner, Excise & Entertainment Tax provided a list of cable operators of the notified area. A list of Cable operators registered under The Delhi Entertainment and Betting Tax Act, 1996, which is placed at annexure-A, were contacted by the area Sub Divisional Magistrates (SDM), the authorized officers under section 2 of The Cable Television Networks (Regulation) Act 1995, under the supervision of Divisional Commissioner/ Deputy Commissioner. It was found that a number of cable operators mentioned in the list are either not existing on the ground or have merged with other operators.

5. SDMs gathered information from the existing cable operators about the progress of implementation of CAS in terms of the number of subscribers & number of set top boxes installed/booked/enquiries received from the subscribers. The tabulated information is at **Annex-B**.

6. **There are approximately 150 Resident Welfare Association (RWA) in the notified areas of South Delhi out of which 34 RWAs were contacted by the area SDMs and a feedback was obtained from them. Some of concerns of the consumers represented by RWAs and service providers i.e. cable operators are as under:**

A. Concerns of Consumers:

a. Lack of information and transparency

Most of the consumers in the notified area appear to be ill-informed of the different aspects of transition to the CAS regime. The same appears to be true for the cable operators. This lack of information and transparency in implementation has given rise to a situation of apprehension and anxiety in the short-term.

b. Uncertainty about implementation of CAS

There is a widespread view that the Delhi High Court in its order dated 26/12/03 has directed that implementation of CAS will be reviewed after a period of three months. This is construed differentially. Further speculation has been fuelled by conflicting press reports on the implementation of CAS

c. Price:

i) Price of Set Top Box

Some Multi System Operators (MSO) have brought out pamphlets regarding sale/lease/rental price of set top boxes. But this information has not percolated to actual consumers. At the same time, there is considerable variation in pricing of set top boxes fixed by the various MSOs.

There are certain colonies in the notified area (low income group colonies like Sangam Vihar, Madan pur Khadar, parts of Alakhnanda, Madangir, etc) where consumers are presently charged Rs. 100 to Rs. 150 as monthly cable subscription without any set top box. They are unable to afford the cost/rental of the set top box.

At the other end of the spectrum, the concern of a particular group of consumers having more than one television set in their houses is the need to have a separate set top box for each television set and costs thereof.

ii) Free to Air Channel (FTA)

The list of Free to Air Channels (FTA) is open ended. Section 4A(ii) states that “One or more free to air channels to be included in the package of channels forming basic service tier and any or more such channels may be specified, in the Notification genre wise for providing the programme mix of entertainment, information, education and such other programmes”. Therefore there is a perception that apart from three compulsory Doordarshan Channels, the availability of other FTA channels are subject to change without notice. Moreover there is general dissatisfaction with regard to quality of programming on the presently announced FTA channels.

Consumers feel that channels like Fashion TV are included in the list of FTA channels while a number of educational channels are in the pay channel category.

iii) Pay Channels:

Price of individual pay channel and bunch of different channels available as a package “Bouquet” is not available with the consumers. Some handouts with suggested price have been issued by the MSOs but the information is not available even with local area cable operators and is sketchy.

If all the channels which were available before implementation of CAS subscribed under CAS, their month expenditure will rise substantially even after the one time installation and activation charges for set top boxes are taken care of.

For example, as a sample the price structure advertised by one of the MSOs/cable operator is given below:

a. Free of air channels	Rs.100
b. Cost of pay channels	Rs.199
c. Rent of set top box	Rs. 40

Total charges payable per month Rs. 340 (approx.)

This is apart from down payment of Rs.3917 in case of outright purchase or Rs.3250 (regular rental scheme)/ Rs.1649 (rental scheme for Early Birds).

The monthly cable charges of Rs.340/- is substantially higher than the average monthly charges which is approximately reported to be Rs.165/- per month now without a set top box.

d. Advertisement on pay channels

If any channel is put in the pay channel category, it should also have restrictions on advertisement time. An advertisement policy for pay channels should be brought forth by the Central Government.

e. Non transferability of set top box on change of residence

A substantial segment of consumers are living in rented houses. They apprehend that they will have to change the set top box on change of residence.

f. After sales service

The cable operators are not sufficiently equipped with trained manpower for after sales service of set top boxes. Minor/major defects in the equipment may necessitate change of set top box.

g. Obsolescence of set top box technology

Set top boxes might get replaced by more efficient DTH technology (like DTH) causing redundancy.

1. Cable Operators' Concern

a. Investment on set top boxes

Since implementation of CAS entails large capital investment in the form of set top boxes, cable operators are circumspect at this juncture. Though there are claims by several cable operators that they have a large stock of set top boxes, a substantial number of them appear to have a limited number of set top boxes with them in ready stock.

b. Price of FTA channels

The price of FTA channels fixed by the Central Government is unacceptable and should be reviewed and hike to ensure their profitability.

c. Time frame for implementation of CAS

The cable operators do not appear to have the wherewithal and necessary infrastructure to activate more than 10 set top boxes on any given day at present.

ANNEXURE D

**DEPUTY CHIEF MINISTER
MAHARASHTRA**

**D.O. No. BCR 53/2002/388/SPI-5
Dated: 11th September 2003**

Subject: Implementation of CAS in Greater Mumbai

Dear Shri Prasad,

I would like to invite your attention to the subject mentioned above and the date given by GOI for implementation of CAS in Maharashtra from September 01, 2003.

At the outset I would like to bring it to your notice that State Government was not involved at the decision making stage. You must have gathered from the Newspapers that the consumers as well as the political parties feel very strongly about imparting imposing unnecessary expenditure on a common viewer by imposing CAS. You may not be aware of one or more dimensions to CAS i.e. the major security concern it will cause to Government.

I am given to understand that once CAS is implemented, it will be easy to reach out to any individual through his Set Top Box and television set. Specific messages can be passed on to particular individuals. This may be a major security concern and hazard. On the background of recent bomb blasts in the City and the fresh threats of further blasts received, it may not be a wise thing to insist on CAS at this juncture.

The police force is also engaged in security. It may not be possible to expect them to stretch themselves for this cause.

We would also need to take all political parties and consumers into confidence before this concept of CAS is understood and accepted by them.

I understand that GOI has granted extension in Delhi till December 2003. The State Government's concern as mentioned above is far more grave. I therefore request you to postpone the date of implementation of CAS until we sort out these issues.

The Bombay High Court may be apprised of this extension and Government's concern so that there will be no further legal complications.

I request you to kindly issue suitable instructions to your Ministry under intimation to the State Government.

**Yours sincerely,
Sd/-
(Chagan Bhujbal)**

**Shri Ravi Shankar Prasad,
Minister of State for Information and Broadcasting (I/C)
Shastri Bhavan, New Delhi.**

ANNEXURE E

Chief Secretary
West Bengal

Government of West Bengal
Writer's Building
Kolkata – 1
Dated: September 5, 2003

Dear Shri Singh,

Kindly refer to your D.O. No. 9/1/2000 – BP&L (Vol.IV) dated September 3, 2003 and related correspondences and discussions on the proposed implementation of CAS in Kolkata. After receiving the D.O. letter dated September 1, 2003 from Secretary, Ministry of Information and Broadcasting, I asked the Secretary, Information & Culture Affairs Department to convene a meeting of the MSOs, representatives of the cable operators and consumer groups to assess the field realities and associated problems. The issues that emerged in the said meeting are briefly stated below:

- (a) The consumers are still not convinced that the system is as consumer friendly as it is claimed to be. Had it been so, there was no case for deferment of its implementation in Delhi in view of the “impending Assembly Election”.
- (b) CAS has not yet been implemented in Mumbai and conditions in Chennai are not comparable with those in Kolkata. Whereas in Chennai, majority of the consumers watch free to air regional channels, in Kolkata there is a sizeable viewer-ship of the popular pay channels. This is because of the mixed population in Kolkata having different cultural affinities and taste.
- (c) Consumers are also not sure of the availability, price and conditions for procuring the STBs. Freedom to switchover to channels of their choice at short notice is also likely to be curtailed in the proposed system.
- (d) Serious public grievances leading to law and order situation in the field are not ruled out in case of hasty implementation of CAS. Since it has not yet been implemented in Delhi and Mumbai, there is a feeling that Kolkata is being singled out as a ground of experiment, results of which are still unknown.
- (e) Consumers are not aware of the likely price of pay channel packages, as some of the broadcasters reportedly have not yet declared their prices even to MSOs. They feel that the choice of their favoured channels may be too costly for them to bear and that the new system is likely to be more industry friendly than consumer friendly. In any case, the element of cross subsidy now prevailing in the economically backward areas, which the consumers enjoy would be discontinued after the introduction of CAS.

Issues narrated above are only illustrative and not exhaustive. Apart from the points raised in my earlier letter regarding selection of the zone, legal ad enforcement matters, there are various other problems, which need to be sorted out. You are also aware that Sarodotsav will start in Kolkata later this month and introduction of CAS right now may disturb the festive season.

Under the circumstances, the State Government still feels that the system should be introduced in all the Metros simultaneously after sorting out all the related issues. I would, therefore, request you to kindly convene a meeting of the State Governments concerned for working out the modalities of simultaneous introduction of CAS in Delhi, Mumbai and Kolkata.

With regards,

Yours sincerely,

(S. N. Roy)

**Shri Vijay Singh
Additional Secretary
Government of India
Ministry of Information & Broadcasting
New Delhi 110 001**

ANNEXURE F

Principal Secretary to Chief Minister
Government of West Bengal
D.O.No.1381 Pr Secy/ICA

Dated: December 2,2003

Dear Shri Singh,

This is to draw your kind attention to the correspondence resting with your D.O.No.9/13/2003-BP&L dated 16th October 2003 regarding constitution of a Committee at the State-level in order to facilitate discussions on issues and concerns arising from the implementation of CAS. The order issued under No.4068-ICA dated 24.11.2003 constituting a State-level Committee for the aforesaid purpose is enclosed for your perusal and necessary action.

Now I would like to seize this opportunity to request you to kindly let us know the names and other relevant particulars of the representative of the I & B Ministry and the Chairman, Media Publicity Co-ordination Committee for further necessary action in this regard.

Your Sincerely

(Arun Bhattacharya)

Shri Vijay Singh

Additional Secretary
Ministry of Information & Broadcasting,
Government of India,
New Delhi- 110 001

ANNEXURE G

J JAYALALITHAA

Chief Minister

6.1.2004

Dear Shri Ravi Shankar Prasad

I would like to bring to your notice that the Conditional Access System (CAS) was introduced in Chennai City alone with effect from 1.9.2003. You would recall that the CAS was to be introduced from 1.9.2003 in all the metropolitan cities of India, i.e. Delhi, Mumbai, Kolkata and Chennai. However CAS was not implemented in Mumbai, Delhi and Kolkata.

In Delhi it was decided that CAS would be implemented after the Delhi State elections. Consequently in Delhi CAS was implemented in South Delhi, but due to resistance from consumers and also due to the objection of the Chief Minister of Delhi, the implementation of CAS in Delhi has been put on hold. It is now learnt that the Government of India is contemplating an Ordinance to withdraw the implementation of CAS. Thus it is seen that it is only in Chennai that CAS is being implemented.

With regard to Chennai I would like to mention that though CAS is under implementation since the 1st of September 2003, it has not proved to be popular. So far approximately 20,000 set top boxes have been sold in the whole city by the two Multi Service Operators, i.e. Sumangali Cable Vision and Hathway Cable Network. In a city where there are 8 lakh cable connections, the sale of only 20,000 set top boxes tells its own story. The common public is deprived of the opportunity of viewing popular programmes on pay channels due to the advent of set top boxes. However, in the absence of any regulatory mechanism, the monthly rates fixed by broadcasters are too high for the consumers to bear after investing in set top boxes. The set top boxes are also highly priced and made available on very rigid terms by Multi Service Operators. Thus the introduction of set top boxes is not at all consumer friendly and there seems to be no reason why the TV viewers of Chennai alone should suffer the consequences of the CAS experiment in the whole of India.

I therefore request you to withdraw CAS with immediate effect. May I also suggest that introduction of any such system, in future, may be done after taking into confidence the State Government's concerns and the interest of the consumers? Further a regulatory mechanism may be put in place to keep a check on the Broadcasters and Multi Service Operators with adequate powers given to the State Government.

With kind regard,

Yours sincerely

Sd/-

J JAYALALITHAA

To

Shri Ravi Shankar Prasad,
Hon'ble Union Minister of State for
Information and Broadcasting,
Shastri Bhavan, Dr.Rajendra Prasad Road,
New Delhi-110 001