

TARIFF DETERMINATION IN RESPECT OF SATELLITE CHANNELS BY PAKISTAN ELECTRONIC REGULATORY AUTHORITY (PEMRA)

Pakistan Electronic Media Regulatory Authority (PEMRA) was established on March 01, 2002 through an Ordinance to induct the private sector into the field of electronic media.

PEMRA has been mandated to:

- Improve the standards of information, education and entertainment.
- Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest.
- Facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level; and
- Ensure accountability, transparency and good governance by optimizing the free (low of information);

Government of Pakistan

Pakistan Electronic Media Regulatory Authority

TARIFF DETERMINATION IN RESPECT OF SATELLITE CHANNELS

Through this determination order the Pakistan Electronic Media Regulatory Authority (hereinafter referred to as “the Authority”) seeks a workable tariff to be charged by distribution agents of satellite TV channels from cable television operators across Pakistan for the distribution of satellite TV channels in respect of which they hold distribution rights from the Principals / Channel Owners / Right Holders. 1. BACKGROUND

- 1.1** With the growth of cable television operations in Pakistan the Pakistan Telecommunication Authority (PTA) started licensing of cable television operations and the first licence to a cable television operator was issued by the PTA on 5 June 2000. Since the cable television operators were providing free-to-air channels as well as a number of pay channels, the PTA also issued three licences to entities who held the rights for distribution of various pay channels in Pakistan, namely, M/s Dubai Marine Establishment (Pvt.) Ltd (DME), M/s Tele Biz and M/s Leo Communications.
- 1.2** After the issuance of channel distribution licences, disputes arose between the cable television operators and the channels distributors on a number of issues including tariff rates. Both the parties approached the PTA with their complaints and demands. As a result, the PTA intervened and after consulting both the parties a determination was issued by the PTA on 6 February 2001 to regulate the issues under dispute, including the tariff structure of the foreign satellite channels. However the Sindh High Court through its judgment dated 11 June 2001 in M.A No.07/2001 set aside the tariff determination of 6 February 2001.
- 1.3** As a result, the PTA once again went through the process of tariff determination in consultation with the channel distributors and the cable television operators and tried to determine the tariff afresh keeping in view the tariff rates proposed by the channel distributors as well as the cable television operators.
- 1.4** On 1 March 2002 the President of Pakistan was pleased to promulgate PEMRA Ordinance, 2002 (Ordinance

No. XIII of 2002) which established a new body called the Pakistan Electronic Media Regulatory Authority. Section 4 of the Ordinance vested the Authority with the power to regulate the establishment and operation of all broadcast and cable television stations in Pakistan. Section 4 of the PEMRA Ordinance, 2002 is reproduced hereunder for ease of reference: -

“4. Functions of the Authority: - The Authority shall be responsible for regulating the establishment and operation of all broadcast and CTV stations in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.”s

1.5 In addition, the Authority was empowered under sub-section (2) of section 39 of the Ordinance to make rules with the approval of the Federal Government providing for the following matters:-

- (a) to prescribe the forms for the licences for working, installing, operating, or dealing in transmission broadcast or distribution apparatus and the manner in which applications for the licences shall be granted;
- (b) to prescribe the terms and conditions of the licence including fee to be charged in connection with the issuance of licences and related matters.

1.6 The Authority in pursuance of powers conferred under section 39 of the Ordinance made rules, with the approval of the Federal Government and notification in the official gazette, called the PEMRA Rules 2002. These Rules defined the TV descrambler / decoder service and prescribed licences as well as the tariff for distribution of satellite TV channels through selling / leasing of descramblers / decoders in rule 14 and Table V of Schedule D to the PEMRA Rules 2002. In addition to the PEMRA Rules, the Authority also enacted PEMRA Distribution of Foreign Satellite TV Channels Regulations, 2002 to deal more specifically with various aspects of the distribution business.

1.7 Thus with the promulgation of the PEMRA Ordinance 2002 and the notification of the PEMRA Rules 2002, the issue of tariff determination in respect of foreign satellite channels came under the purview of PEMRA.

2. OBJECTIVES

2.1 The objectives sought to be achieved through this determination are as follows:

1. Eliminating channel piracy and infringement of copyright of channel owners / right holders.
2. Enabling channel distributors to get return on actual subscriber count as far as practicable.
3. Ensuring a reasonable rate of return for the cable television operators as well as the channel distributors.
4. Ensuring provision of inexpensive and quality entertainment to all the sections of the society in Pakistan.

3. INITIATION OF TARIFF DETERMINATION

3.1 The process of tariff determination was initiated by the Cable Television Policy Wing where a number of meetings were held in February and April 2003 with the concerned parties i.e. cable television operators through associations and representatives of satellite channels (channel distributors). The list of participants in those meetings is given as Annex A.

3.2 Points raised by cable television operators. In the meetings, the cable television operators raised the following points:-

- i) The existing tariff had eroded profitability and rendered the cable television operations unfeasible.
- ii) Recovery from the customers was difficult due to various factors.
- iii) The channel distributors were offering channels in the form of bouquets without giving any choice to the cable television operators to select and subscribe for the desired channels.
- iv) The price of the decoders was on the higher side and separate decoders are required for each channel thus increasing the project cost.
- v) The subscription fee should be recovered per subscriber on a monthly basis.

3.3 Points raised by channel distributors. The points raised by the representatives of channel distributors in the

meetings were as follows:

- i) There was widespread piracy of satellite channels and it was difficult to control it by offering individual channels.
- ii) The cable television operators do not disclose the actual number of subscribers and the physical counting and checking of subscribers was impossible.
- iii) The cable television operators have a number of loop holders making the counting of subscribers extremely difficult.
- iv) If the channels were offered on individual basis, the price of individual channels would be too high for the cable television operators and subscribers.
- v) If channels are offered on individual basis to the cable television operators, they pool these channels and make their own bouquets.

3.4 In the meetings both the parties agreed that for the proposes of subscriber count in the country an estimated figure of 4.0 million may be considered for calculation of subscription over the next 14 months as under:

- i) 20% of 4 million for the first 6 months.
- ii) 25% of 4 million for the next 4 months.
- iii) 30% of 4 million for the next 4 months.
- iv) 35% of 4 million after 14 months.

3.5 A number of other connected issues were also raised by both the parties in the meetings. The channel distributors and cable television operators also gave their proposed tariff rates on the PEMRA eligible channels.

4 ANALYSIS AND RATIONALE

4.1 Provisions of PTA tariff determination. To determine the tariff for foreign satellite channels, it was deemed pertinent to seek guidance from the determination carried out by the PTA. The tariff determination carried out by the PTA provided that the channel distributors shall offer individual channels and the cable television operators shall be left free to choose and subscribe for any number of available channels. Forced bundling on the part of channel distributors was not allowed. The channel distributors were however allowed to bundle their channels as may be agreed with the cable operators. The ceiling for the subscription fee of individual channels for cable television operators was fixed as Rs. 8/- per month per subscriber. The determination further provided that the subscription fee was to be paid monthly in advance and that the bouquet once subscribed was not to be changed without 45 days prior notice to the cable television operators. Further, all charges were to be billed and collected in Pak Rupees and the cable television operators were bound to provide at least four pay channels to the end subscribers.

4.2 Review of PTA tariff determination. Upon review of its determination, the PTA reiterated its earlier determination regarding forced bundling and did not allow forced bundling of channels by the channel distributors. The PTA also observed that putting a different price tag on different channels would not be practicable and that it would curtail the flexibility in pricing of channels by the distributors. It therefore proposed to continue to regulate the price through a common ceiling for all channels and was of the view that quality and popularity of the channels would determine the price of channels within the price ceiling thus creating competition among different channels. Before the PTA could take a decision and issue a reviewed determination the subject was transferred to PEMRA. The regulatory arrangement failed to take off. The cable operators refused to pay because they considered the charges excessive. The subscriber count was concealed. There was a large scale sale through the grey market. The channel distributors were unhappy. They appointed an agent to prosecute the cable television operators through raids and police action.

4.3 Erosion of cable operators' profitability. PEMRA commenced the tariff determination by initially considering the cost and revenue structure as well as the profitability of the cable television operations. The analysis of the cost of operation of cable television operators indicates that there is an increase in the cost of operations of

cable businesses owing to a number of exogenous and endogenous factors that is impacting upon the profitability of the cable business. Different agencies like Water and Power Development Authority (WAPDA), Karachi Electric Supply Corporation (KESC), Pakistan Telecommunication Corporation Limited (PTCL) and district governments and cantonment boards charge fee from the cable television operators for utilizing their infrastructure and right of way. The cable television operators have to pay an average of Rs. 407- per pole to WAPDA and KESC. The district governments and cantonment boards have imposed their own fee for issuance of no objection certificates (ranging from Rs. 25,000/- to Rs. 50,000/- per annum) and in some cases have even imposed local taxes. Inflation taken at an average of 5% over the past three years has also contributed significantly to the cost of cable television operations. Thus the investment costs as well as the operating expenses have shown a gradual increase. More and more cable television operators are coming under the net of taxes and other cesses imposed from time to time that are rendering their business less profitable. The Economic Analysis Wing went into details of the viability and found that cable industry was unable to provide quality service to the subscribers due to poor revenue inflow. And the subscriber was unable to pay higher tariffs.

4.4 Introduction of PEMRA technical standards. Moreover PEMRA has also set some technical standards for cable television operators. It has now been made compulsory for the cable television operators to implement those standards in order to improve their standard of operations and signal quality so that the end users or the subscribers get the best services. In addition, the cable television operators are required to establish customer services centres in the locality in which they are operating their businesses. Registration of complaints and rectifying them promptly requires extra costs to be borne by the cable operators.

4.5 Competition from other technologies. With the introduction of new technologies like MMDS, LMDS and DTH the cable operators are bound to face a strong competition. Presently the competition is among the cable television operators themselves but now new and powerful players are on the verge of entering the business. The ultimate result would be the substitution of subscriber count and the revenue in the cable television business will, in all likelihood, decline further. The average cost and marginal cost in this sector will increase. The point of break even will move upwards. Therefore it is deemed necessary that to protect this business with more than 2,000 players and employment of 100,000 or so persons some of its economic problems need to be resolved. Conversely the introduction of new technologies is likely to benefit the channel distributors as the new players will distribute the

same content and thereby add to the subscriber count.

4.6 Profitability of satellite channels. The estimated annual cost of running a satellite channel is Rs. 250 million according to the Gallup survey report. Suppose a channel is broadcast to 30 countries worldwide. Taking an average return per channel from each country as Rs. 10 million the total annual revenue for a channel covering 30 countries comes out to Rs. 300 million. Compared with the cost figure of Rs. 250 million this results in an annual profit of Rs. 50 million per annum through subscription only. It is also safe to assume that the profit would be even higher than the figure of Rs. 50 million per annum per channel since the revenue from a large number of countries would be in excess of the average revenue of Rs. 10 million per annum that is taken for the purpose of calculations. Needless to say that the profit would be even higher if the revenue from advertising is added which has not been considered in the analysis.

4.7 Reduction in tariffs. The channel tariffs / subscription rates are showing a downward trend in various countries. In India for instance, the STAR TV announced a 25% cut in subscription rates with effect from 1 January 2003. Their revised monthly subscription rate is Rs. 30/- for the complete network of 6 channels. This comes out to Rs.5/-per channel per subscriber per month. This rate is based mostly on Indian channels or India specific beams of other foreign channels. On the other hand, Pakistan's case is totally different. There is no specific Pakistan beam. All the channels can cover Pakistan by extending footprint to Pakistan without any extra expenditure. In fact Pakistan is covered by them as an add-on to their target market. Thus rates for Pakistan should be much lower. Moreover, Pakistani channels need more payment since such channels aim specifically at Pakistani market which is smaller in terms of advertisement revenue as well as clientele.

4.8 Break-up of revenue. One of the most important factors to be examined in the tariff determination is the

breakup of the revenue share of the various parties / stakeholders. The break-up of the tariff for 5 channels bouquet of a typical channel holder is taken for ascertaining the share of each party / stakeholder for all channels. The break-up is as under:

- a) 5% of the gross revenue is tax deduction at source
- b) 10% of the net revenue is commission of channel distributor
- c) 30% of the principal's share is tax on remittance
- d) 70% of principal's share is remitted to the principal In addition there are regulatory charges as well.

4.9 Calculations. Taking the break-up of share given in para 4.8 above, two sets of calculations were made to arrive at a logical conclusion regarding the tariff. In the first instance, the shares were calculated on the basis of Rs. 5/- per channel per subscriber per month. The subscriber count was taken as 1.4 million. The calculations resulted in annual gross revenue of Rs. 84 million per channel including a government revenue share of Rs.5.8438 million. The income of the channel distributor came out to Rs. 7.644 million and the amount remitted to the principal Rs. 48.157 million.

4.10 In the second scenario, the shares were again calculated taking tariff as Rs. 1/- per channel per subscriber per month with the subscriber count remaining the same. This calculation resulted in annual gross revenue of Rs. 16.8 million per channel including a government revenue share of Rs. 1.1687 million. The income of the channel distributor came out to Rs. 1.528 million and the amount remitted to the principal Rs. 9.63144 million.

4.11 Benefits of lower tariff. Fixing tariff ceiling for channels as Rs. 1/- per subscriber per month instead of Rs.5/-per subscriber per month has the advantage of reducing the burden on the cable television operators and the subscribers / costumers and at the same time does not reduce the revenue of channel distributors and owners from what they are currently receiving from the cable television operators. 5 PROPOSAL ON TARIFF DETERMINATION, INVITATION OF COMMENTS AND PUBLIC HEARING

5.1 Pursuant to the discussions with the cable television operators and channel distributors in the meetings and after carrying out detailed financial analysis of the relevant and available data, the Authority finalized and circulated a proposal on tariff determination and invited comments from all interested parties including the general public. A notice was advertised in the national dailies inviting comments from all concerned and the proposal was placed on the PEMRA website and dispatched to all stake holders as well as the PEMRA regional offices for wide circulation.

5.2 In response the Authority received comments on the draft proposal from various cable television operators, PEMRA Friends, channel distributors, channel owners and chambers of commerce and industry etc. In particular, detailed comments were filed by M/s Dubai Marine Establishment (DME). Comments were also received from M/s Leo Communications and HBO. The comments received from M/s Leo Communications and HBO were though general in nature and were not supported by any supporting data. The Authority considered all the submissions.

5.3 After the receipt of comments from all concerned on the proposal on tariff determination, the Authority held a public hearing on 15 September 2003 at the PEMRA Headquarters in Islamabad wherein all the stakeholders as well as the general public were invited to participate and give their views, comments, observations and objections on the proposed determination. The participants and particularly the channel holders were asked to provide back-up data in support of their contentions. In response to their request M/s Leo Communications were given two days further for the purpose.

6 DISCUSSION ON IMPORTANT COMMENTS

6.1 As mentioned in para 5.2 detailed comments on the proposal of tariff determination were received from M/s Dubai Marine Establishment (DME). The important comments relevant and critical to tariff determination are mentioned below along with PEMRA findings;

DME COMMENTS

1. The cable television operators use the pricing ;tructure of pirated channels as a yardstick to determine how much they should pay for legitimate :hannels provided by licensed channel providers.
2. The offer of Rs.6 per channel was for the entire jouquet and not for individual channels as assumed by PEMRA. This offer is also subject to the Principal's consent.
3. The Authority should not be concerned with the figures of remittance to foreign principals as it is egulated by the State of Pakistan.
4. A report has been submitted reportedly prepared by AC Nielsen & S.H.M.A Pvt Ltd (Member of Ernst & Young nternational) dated November 2002. This report shows cable TV growth is likely to be 35% in 2003 and cable elevision operators' gross profit to be38%.

PEMRA FINDING

1. One of the objectives of this whole exercise of determining tariff is to come up with ways and means :o curb piracy in the country. In the public hearing one representative of a channel distributor (M/s Leo Communications) stated that if piracy is checked and actual subscriber count established by PEMRA the prices for channels would automatically come down. At that very public hearing, it was pointed out to him :hat the converse of this statement is also true. That is :o say, if prices are brought down to an acceptable level, the operators would be left with no reason to resort to piracy and hide subscriber count. The only reason cited by the cable operators for under-stating :heir subscriber count and resorting to illegal cards available in the market is that the channel distributors charge excessive rates for their channel bouquets. In case even after prices are brought down to an acceptable and reasonable level, the cable television operators do not divulge their true subscriber count nor refrain from piracy, the Authority shall take action against them.
2. If the DME cannot make any offers without the Principal's consent then there is no point in making he offer unless that consent has been obtained. The offer in this case is meaningless.
3. What the DME does not appreciate is that the ustifiability of the amount was questioned in the context of the particular calculation made on the basis of tariff of Rs. 5/- per channel per subscriber per month. It is pertinent to mention here that presently the channel distributor is recovering payment at the ceiling of Rs.8/- per subscriber per channel per month "or 120,000 subscribers only. Even with the increase of subscriber count to 1.4 million (or more) a eduction of tariff to Rs. 1/- per subscriber per channel per month would result in no revenue loss to the channel distributor or the principal.
4. PEMRA's analysis does not support these findings. Monthly charges of small cable operators are sometimes as low as Rs. ISO/- per month and incidences of non-payment are of a noticeable number. The report also does not take into account any of the elements identified in the preceding paras hat make cable business less profitable. Another problem with this report is that there are eight categories of CTV licences (from B1 to B8) yet the report is unclear as to whether the average operating profit of all categories of cable operations has been

aken or only that of the big players. Licensees in BI category constitute approximately 89% of the total licences issued by PEMRA in all categories. Furthermore, licensing in the rural category has been on the increase. In the rural areas the viability is even poorer. All the above factors have been overlooked in the preparation of the report by AC Nielsen & S.H.M.A Pvt Ltd. In the rural category the licence fee and other charges have been drastically brought down by the Authority to ensure that people living in those areas have access to media through cable television. The present rates charged by the channel distributors would make it impossible for the rural licensing to take off in any substantial way.

7 DETERMINATION

7.1 Taking all the above analysis and findings into account the consideration, the following conclusions emerge:

- (i) **Tariff for foreign satellite channels.** The tariff ceiling for a foreign satellite channel is fixed as Rs. 1/- per channel per subscriber per month.
- (ii) **Tariff for foreign sports' satellite channels.** It cannot be gainsaid that the cost of running a sports channel is on the higher side of the average estimated annual cost of running a satellite channel in view of the excessive amounts that have to be paid to buy the exclusive rights to telecast important sports events and matches live. To cover the additional costs of the foreign sports channels the tariff ceiling for such satellite channels is fixed as Rs. 21/- per subscriber per month.
- (iii) **Tariff for Pakistani satellite channels.** At the same time, there is also a need to fix a reasonable tariff for Pakistani channels which may be defined as those channels that have obtained licence from PEMRA and are encrypted and not free to air. To provide adequate incentives to Pakistani channels the tariff ceiling for such satellite channels is fixed as Rs. 2/- per subscriber per month. The need to fix a higher ceiling for Pakistani satellite channels as compared with foreign satellite channels arises since the Pakistani channels carry Pakistani content and therefore deserve a larger share in the revenue. Moreover, the Pakistani channels cover a smaller market and therefore need incentives to keep operating. Also, justification for fixing a higher tariff for Pakistani channels arises from the fact that the Pakistan channels are watched by more people and more frequently.
- (iv) **Subscriber count.** In the meetings between the cable television operators and the channel distributors, consensus evolved over the figure of 4.0 million subscribers. The calculations in this determination have been made ' on the basis of 35% of this figure as it was cited by the channel distributors that internationally this is the accepted '\ average percentage of recovery. In this determination the channel rates have been substantially brought down to . ensure that cable operators have no excuse or justification to hide subscriber count or resort to piracy. To ensure that distributors get paid on the basis of the actual number of subscribers, PEMRA would give details of all its licensees to the licensed distributors. It would also furnish all information obtained from its outsourced projects for detection of operators, loopholders (licensed or unlicensed) and subscribers all across the country. Furthermore, if any operator(s) or loopholder(s) hide(s) subscriber count or resort(s) to piracy even after being charged the tariff rate as determined herein, PEMRA would take action against such operator(s) under the relevant provisions of the PEMRA Ordinance and Rules.
- (v) **Content.** In the draft determination, the Authority had proposed that the satellite channel owners wishing to distribute their programmes in Pakistan should include Pakistani content in their programming fare. The Authority received some reservations from channel owners. While the views of the channel owners carry

some weight, the desirability of such a provision is considered beneficial even for channels themselves in their becoming truly international in character. Nonetheless, the Authority has decided to relax this conditionality. The Authority would, however, like to see in the coming days ahead that the satellite channel owners examine this Issue seriously and make endeavours to include Pakistani content In their programmes.

8 TERMS AND CONDITIONS

8.1 The tariff ceilings for satellite channels are fixed subject to the conditions enumerated below:

- (i) The satellite channel owners will invest a percentage of their revenue within Pakistan on research and development of electronic media and other broadcasting related activities in consultation with the Authority.
- (ii) Pakistan has a rich cultural heritage and traditions of programme production. The foreign satellite channel owners should endeavour to carry Pakistani content on their channels where possible.
- (iii) The channels will be offered on individual basis or as mutually agreed between the cable television operators and the channel distributors. Forced bundling by the channel distributors is not allowed.
- (iv) The channel subscription fee will be paid on a monthly basis or as mutually agreed.
- (v) All charges will be billed and calculated in Pak Rupees.
- (vi) The tariff determination will be reviewed after a period of 18 months in view of the cost, revenue, market conditions and technology at that time.
- (vii) Only those channel distributors who hold valid distribution license in Pakistan for specific channels from PEMRA shall be allowed to provide access to various cable television operators.
- (viii) The cable television operators will carry channels of the national broadcaster within their first 10 channels and all other Pakistani channels within the first 20 channels.
- (ix) All persons involved in using smuggled cards / decoders / descramblers for various satellite TV channels shall be brought to book under the PEMRA Ordinance and other related laws of the land.
- (x) DTH service by satellite channel distributors is not permitted. The satellite channel holders can only sell their channels and associated set-top boxes / descramblers / decoders only to licensed cable television operators and not to any one else.
- (xi) A separate license is required for DTH service.

9 FINAL NOTE

9.1 The whole exercise has been undertaken in a systematic manner. The cable television operators shall have to declare actual subscriber counts as with this determination they have no incentive left to hide their counts or patronize the grey market of illegal cards, All channels (free-to-air / pay channels) being distributed in Pakistan shall have to be authorized / licensed by the Authority. To determine the channels that are to be distributed through cable television system is the sole prerogative of the Authority and cannot be left to the sweet will of the operators. The tariff determination would go a long way in ensuring that copyright obligations are fulfilled by the operators.

9.2 Sale of unauthorized cards / decoders would be curbed strictly. In this regards PEMRA shall request the Central Board of Revenue and other law enforcing agencies to play their role effectively so that the concerns of the channel owners / rights holders are addressed.

9.3 The Authority recognizes that the clearing up operation will take both time and perseverance. The first step in this exercise is to establish an appropriate mechanism, a reasonable charge, removing the causes of under declaration and piracy and making the operators and channel distributors understand Pakistani regulations. The ultimate beneficiary of all this exercise should be the consumer. This determination would be a stepping stone towards addressing the concerns of the stakeholders while at the same time ensuring that the consumer is not over burdened.

9.4 This determination order was approved by the Authority in its 19th meeting held on 19 September 2003.

