

Challenges of Regulation in a Digital Era

Applicable Acts

A. CABLE /BROADCASTING

1.	Cable / Broadcasting	Cable Television Networks Regulations Act 1995.
2.	Cable / Broadcasting	Brought under Regulatory Framework of TRAI, by Government notification of January 9, 2004.
3.	Public Broadcasting	Prasar Bharati (Broadcasting Corporation of India Act) 1990.
4	Broadcasting Bill 2007	Revised Draft Bill circulated by Government, requesting for further inputs service providers / other. Currently dormant.

B. TELECOM

1.	Indian Telegraph	Indian Telegraph Act, 1885.
2.	Wireless	Indian Wireless Act, 1933.
3.	Telecom	Telecom Regulatory Authority of India (TRAI Act 1997)

C. INFORMATION & TECHNOLOGY

1.	Information Technology - (IT)	Information Technology Act, 2000.
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D – 1. FILM & COPYRIGHT

Cinematograph Act, 1952.

Role of MSOs (Multi- System Operators)

- Multi System Operators came into existence in 1995 as a consolidator and catalyst for providing state of art infrastructure with control rooms for accommodating large number of channels.
- MSOs provided best quality cables and later optic fiber & equipments to build an information infrastructure highway for communication and information technologies for large Broadcasting Entities, ultimately ensuring better television viewing experience for the subscribers.
- ***This assured an easy and one point collection mechanism for Pay TV Broadcasters absolving them of large collection personnel and obviated the need to enter into thousands of interconnection agreements.***
- Backed mainly by organized Corporate Entities by investing own funds for creating and then continuously upgrading the infrastructure without any fiscal or tax support from State/Central Governments. Have pioneered provision of digital services by setting up central digital head-ends and digital feeds thereby continuing to function as the backbone of Cable TV industry.

Perils of the current Analog cable TV system Non Addressable

Lump sum Approach

No measuring mechanism- Imagine electricity, gas, telephone without a **meter** and paying a random price for it

No Choice

All channels (Pay & free-to-air) **bundled** together whether one likes to watch channels or not

No Uniform rate

Cable TV rate **varies** even in the same neighborhood

Non Transparent

Due to **lack of regulation** in addressability and its implementation

Frequent Disputes

Between stakeholders, causing **customer** distress

Result

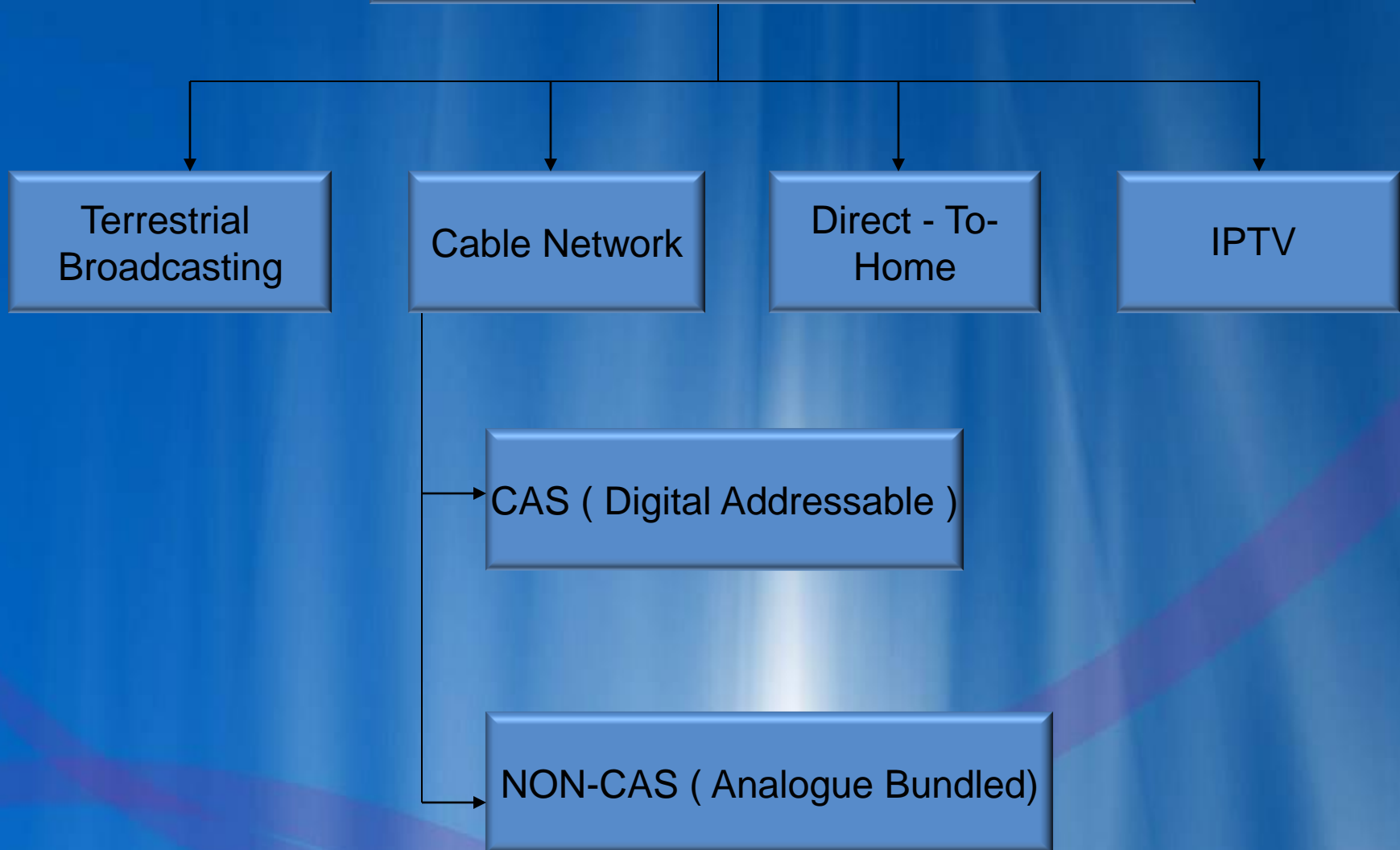
Frequent **price hike, blackouts** still !! And unsatisfied customers

Regulatory Digital Initiatives

CAS Rollout issues

- The Cable Act 1995 was amended in 2002 to bring in mandatory addressability for pay TV channels through use of set top boxes for four metros by September 2003.
- CAS was made operational in Chennai in September 2003 and in Delhi in December 2003.
- Based on Delhi High Court directive in March 2006, CAS was finally implemented in one zone each of Mumbai, Delhi and Kolkata from 31st December, 2006. Chennai has been CAS notified from September 1, 2003.
- TRAI issued Recommendation on HITS, to enable satellite based digitalization on Cable, accepted by Government in 2009. HITS is not yet operational.
- TRAI finalized a 55 city digital addressable rollout plan in December 2007, however not endorsed by Govt. Now dropped.
- Government is replacing CAS with mandatory analogue sunset clause/gradual digitalization as recommended by TRAI in August 2010. Government has accepted TRAI recommendation with revised timelines.

Distribution Platforms



TRAI as Cable / Broadcast Regulator

- Cable Television/Broadcasting Services were brought under Telecom Regulatory Authority of India in January 2004.
- A Fast track judicial body (Telecom Disputes Settlement Appellate Tribunal – TDSAT) was made available for settlement of disputes between broadcasters and MSOs /cable operators
- The Cable Rules 1994 were amended in 2006 empowering Government to License CAS MSOs/ICOs and TRAI to issue new customer friendly CAS Regulations.
- TRAI's key roles on Regulating the Broadcast and Cable Industry includes powers for :
 - Interconnect regulations
 - Tariff Orders
 - Revenue Share methodology and process
- TRAI also recommends policy initiatives to Government. A recent example is the Digital Blueprint of August 2010.

Pricing of Channels: Under Interconnect Regulations - CAS & Non CAS

Indian Pricing Framework

- The payment for Pay TV channels in analog areas is based on the principle of 'negotiated declaration' recognized by the September 4, 2006 Interconnect Regulation.
- Broadcasters are free to fix both a-la-carte and bouquet rates but MSOs cannot charge more than Rs. 260 for the entire bundle of pay TV and FTA channels.
- However for CAS areas the pricing for Basic FTA tier (at Rs. 83 plus taxes for a minimum of 30 channels) and pay channels has been regulated by Tariff Order of August 31, 2006 upheld by TDSAT order of February 27, 2007 and challenged in SC by broadcasters.
- The pay channels are priced at Rs. 5.35 per sub/month plus taxes for a single channel.

Indian Content Regulation Framework

“Must Provide” by Broadcasters to all forms of signal seekers

- Broadcasters “**must provide**” all their TV channels on a ‘non discriminatory’ basis to all forms of signal seekers including MSOs/cable operators/DTH operators/HITS operators and IPTV providers. This is in terms of **Interconnection Regulations** of December 10,2004 as amended in 2006 and 2009.
- The Regulations provide for 21 days legal and public notice for disconnection of signals by Broadcasters or MSOs to enable dispute resolution or resort legal remedies by seeking urgent intervention of TDSAT.
- Broadcasters have to submit their **standard interconnect offers** to TRAI to ensure non-discriminatory legal and contractual terms to MSOs/cable operators.

Conditional Access Regulations (CAS) Regulations 2006

- **TRAI issued three Regulations** in August 2006 to create a legal framework for smooth implementation of CAS. These include a tariff order, interconnect regulation and QOS regulation. Key features are:
- TRAI stipulated a **Tariff structure** based on the low price –high volume similar to the highly successful mobile phone market. Legal challenges by Broadcasters were dismissed by TDSAT and are pending in Supreme Court.
- TRAI directed CAS MSOs to provide a mandatory **Rental Scheme for Set Top Boxes** to facilitate easy availability of Set Top Boxes for customers across all economic segments.
- **Standard Interconnect Terms** fixing standard contracts and determining standard distribution margins have been introduced.
- **Quality of Service Regulation** for customer bills and services introduced for first time.
- **Legal challenges** to these regulations by broadcasters dismissed by TDSAT in February 2007.
- **Appeals** pending in Supreme Court.

Licensing of Cable Operators

Regulatory Framework for registration of cable operators

- There is a registration policy for Cable by Post Office application under the Cable Act. This has to be renewed annually.
- The draft Broadcast Bill 2007 provided for repeal of Cable Act but licensing of cable operators.
- However, for CAS areas, there is a specific licensing policy applicable from 2006 under the July 31, 2006 amendments to Cable Rules 1994 based on various technical parameters/eligibility conditions of the concerned MSO/ICO.
- TRAI has recommended overhaul of Post Office registration by a licensing regime pending for Government's consideration.
- The October 4, 2007 Regulation stipulated maintenance of subscriber records by Cable Operators for first time.

Controlling Analogue Cable Tariff Bills

- The **pricing of channels** in analog areas was earlier regulated by a Tariff Order of TRAI in January 2004 'freezing pay channel and FTA prices' to December 2003 rates.
- This was replaced by the **October 4, 2007** Tariff Regulation. A new **price cap** was put on MSOs/cable operators based on number of pay channels provided fixing maximum charges excluding taxes/duties at Rs. 260 plus taxes and also granting ala carte choice of channels/bouquets to MSOs/ICOs.
- Broadcasters challenged this Tariff Order and Hon'ble TDSAT set it aside for fresh determination of tariff. TRAI appealed against this order to the Supreme Court, which ordered status quo and directed framing of fresh regulations *de novo* by TRAI.
- The Regulator submitted its recommendations to Supreme Court on July 21, 2010. Final hearing is awaited. Notice has been issued to Ministry of I & B on application by Indian Broadcasting Federation to report on digital policies. Next hearing on July 14, 2011.

Digital Addressable Tariff

- TRAI issued a digital addressable tariff order common for Digital Cable, HITS, DTH and IPTV platforms on July 21, 2010.
- Key Features were:
 - ❖ **Ala carte** choice of Channels/Bouquets to be compulsorily provided by Broadcasters.
 - ❖ **Mandatory** supply of Ala carte channels to Customers.
 - ❖ **Broadcaster** permitted to specify the rate for **bouquet/a la carte** separately.
 - ❖ To give an **incentive to cable digitalization**, TRAI directed that the rate for a bouquet of channels for addressable systems shall not be more than ***thirty-five per cent*** of the rate for such bouquet as specified by the broadcaster for non-addressable systems for digital cable MSOs..
 - ❖ On appeal by **broadcasters**, this special dispensation to digital addressable platforms was **set aside** by the Hon'ble TDSAT for fresh tariff determination.
 - ❖ **TRAI** filed appeal to SC which admitted it and stayed TDSAT judgment but raised the ceiling to 42% from TRAI's mandate of 35%.

TRAI's Digital Blueprint-August 2010

- As part of the redetermination exercise of various tariff structures in 2010, TRAI came to the conclusion that the cable industry must be gradually digitized with addressability within a specified time frame of 2011 to 2013.
- For implementing the 'sunset date' for Analogue Cable TV services, the Cable Television Networks (Regulation) Amendment Act 2002, especially Section 4(A) be suitably amended.
- All service providers who have set up a digital addressable distribution network before the sunset date(s) , should be treated similar to telecom service providers and be eligible for income tax holiday for the period from the date of setting up of the network, or 1.04.2011 whichever is later, till 31.03.2019.
- The Authority recommended that the basic custom duty on digital head-end equipments and STBs be reduced to zero for the next 3 years to give a boost to conversion of the broadcast distribution network to digital addressable system.
- This has not yet found favor with the Finance Ministry in the 2011 budget but is essential for providing a favorable fiscal environment for the vast investments required estimated to cost over Rs. 25000 crores.

Ministry's Strategic Plan for 2011 to 2017

- An impressive strategic plan has been put up on the official website in February 2011 by the Ministry of I & B for 2011-2017.
- Key policy objectives for **Broadcasting Sector** include:
- Streamlining and restructuring **Public Broadcast** services.
- Complete switchover to **Digital Cable** in a defined timeline.
- Introduce appropriate **IPR (copyright)** regime in all media segments.
- Promotion and development of **IPTV and Mobile TV** services.
- Creation of a **Self-Regulatory Mechanism** instead of a Broadcast Regulatory Authority on the lines of the Supreme Court decision of 1993.
- Indian Broadcasting Federation has announced setting up of Broadcast Content self regulatory authority by name of BCCC. This is now functional by June 2011.

Final Timelines- Analogue Sunset

Phase	Area Suggested by TRAI in the August 5, 2010 Blueprint	Revised Time Frame Recommended by TRAI dated 22/02/2011	I & B Ministry's Final Deadline
Phase – I	Four Metros of Delhi, Mumbai, Kolkata & Chennai	31 st March, 2011	31 st March, 2012
Phase -II	Cities with a population more than one million	31 st December, 2012	31 st March, 2013
Phase –III	All urban areas (Municipal Corp./ Municipalities)	31 st December, 2013	30 th September, 2014
Phase – IV	Rest of India	31 st December, 2013	31 st December, 2014

The Digital Path Forward

Steps Required

- Greater emphasis is required for **network digitization**, increased **addressability** and **broadband** penetration as per Digital Blueprint and National Broadband Policy of TRAI.
- The **registration** for cable TV operator to be replaced by a comprehensive and supportive licensing framework as per 2008 TRAI recommendations.
- Separate **licensing** frameworks for Cable TV operators (LCOs) and Multi System Operators (MSOs).
- No **ban** is required on entry of new channels under uplinking and downlinking. Tougher norms for new entrants should be enforced.
- Urgent amendments to Cable Act to amend Section 4 (A) are planned and must be carried out quickly to meet the timetable.
- Government has set up a multi service provider/consumer Task Force in April 2011 which needs to start meeting regularly to smoothen the digital path.
- A new philosophy of **light feather touch** regulation by TRAI with TDSAT continuing as a safety net dispute settlement body is necessary.

Regulatory Challenges For Digital Era

- The **Cable Industry** will have to invest about Rs. 25000 crores to convert 90 million analogue homes to digital.
- Uneven **FDI** of 49% for cable and 74% for HITS makes for uneven level playing field. FDI needs to be harmonised for cable industry. The process of consultation between Trai and Government is complete and a fresh DIPP notification is required.
- Finance Ministry is still to be convinced to provide **tax incentives** to enable cable industry to meet the enormous challenge of digitalisation in a defined time frame.
- TRAI needs to decide on **Interconnection issues for pay channel contracts in the new digital era** and mandate RIOs for 3 years and revenue share issues between broadcasters/MSOs and LCOs to ensure digitisation actually happens in the prescribed time frame.
- Another urgent issue is to fix a **wholesale cap on broadcasters** and allow retail forbearance between MSOs and customers. TRAI can alternatively consider mandated **pay channel pricing** for a period of one year for each city from the time of digital addressability to allow smooth rollout.

***Thank You
Ashok Mansukhani***