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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 31st December, 2014.

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES
(SECOND) TARIFF (THIRTEENTH AMENDMENT) ORDER, 2014**

(No. 9 of 2014)

No. 1-6/2014 - B&CS. ----- In exercise of the powers conferred by sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications), No.39,-----

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

(b) published under notification No. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), namely:----

1. (1) This Order may be called the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 (9 of 2014).

(2) This Order shall come into force on the 1st day of January, 2015.

2. In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the principal Tariff Order), --

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(i) for the words and figures “prevalent before the coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014, and increased by an amount not exceeding fifteen per cent. shall be the ceiling”, the words and figures, “prevalent before the coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014, and increased by an amount not exceeding eleven per cent. shall be the ceiling” shall be substituted.

(ii) after the Explanation to the second proviso, the following proviso shall be inserted, namely:---

“Provided also that the charges referred to in sub-clause (a) above shall in no case exceed the maximum amount of charges specified in the Part I or Part II, as the case may be, of the Schedule annexed with this Order”

3. In the Schedule to the principal Tariff Order,-----

(a) in PART I, for the Table under the heading “Charges payable by a subscriber (referred to in sub-clause (a) of clause 3) to the cable operator or multi system operator transmitting or re-transmitting both Free to Air channels and Pay channels in Non-CAS areas.”, the following Table shall be substituted, namely:-

Serial number.	Number of pay channels and free to air channels to be transmitted or re-transmitted.	Maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for pay channels and free to air channels mentioned under column (2)
(1)	(2)	(3)
1.	Minimum thirty free to air channels and up to twenty pay channels	Not exceeding rupees two hundred and thirty four only.
2.	Minimum thirty free to air channels and more than twenty pay channels	Not exceeding rupees two hundred and ninety two only.

(b) in PART II, for the Table, under the heading “Charges payable by a subscriber (referred to in sub-clause (a) of clause 3) to the cable operator or multi system operator transmitting or re-transmitting only Free to Air channels (without any pay channels) in non-CAS areas.” the following Table shall be substituted, namely:--

<p>Minimum numbers of free to air channels to be transmitted or retransmitted.</p> <p style="text-align: center;">(1)</p>	<p>The maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for free to air channels (without any pay channel) specified under column (1).</p> <p style="text-align: center;">(2)</p>
<p>Thirty numbers of free to air channels.</p>	<p>Rupees one hundred and seventeen only.</p>

(Sudhir Gupta)
Secretary, TRAI

Note 1.-----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 (9 of 2014).

Note 2.—The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) was published vide notification no. 1-29/ 2004-B&CS dated the 1st October, 2004 and subsequently amended vide notifications no. 1-29/ 2004-B&CS dated the 26th October, 2004, no. 1-29/ 2004-B&CS dated the 1st December, 2004, no. 1-13/ 2005-B&CS dated the 29th November, 2005, no. 1-2/ 2006-B&CS dated the 7th March, 2006, no. 1-2/ 2006-B&CS dated the 24th March, 2006, no. 1-13/ 2005-B&CS dated the 31st July, 2006, no. 1-19/ 2006-B&CS dated the 21st November, 2006, no. 1-1/2007-B&CS dated the 04th October, 2007, no. 1-31/2008-B&CS dated the 26th December 2008, no. 1-2/2014 - B&CS dated 10th February 2014, No. 1-6/2014 - B&CS dated 31st March 2014 and No. 1-18/2014 - B&CS dated the 16th July 2014.

Explanatory Memorandum

1. In 2004, the Authority issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated 1st October 2004, for cable services. This Order placed a ceiling on cable charges (excluding taxes), payable by Cable Subscribers to Cable Operators, Cable Operators to Multi System Operators/ Broadcasters and Multi System Operators to Broadcasters. The ceiling was set at the rates as prevailing as on 26th December 2003 in respect of both free-to-air and pay channels. On 1st October 2004, the Authority also sent its recommendations to the Government on “Issues relating to Broadcasting and Distribution of TV channels” in which, *inter alia*, it was stated that the ceilings prescribed by the above said Tariff Order shall be reviewed periodically to make adjustments for inflation.

2. Accordingly, inflation linked adjustments have been allowed by the Authority from time to time. After coming into force of the principal Tariff Order of 1st October 2004, three inflationary hikes (i) 7% w.e.f. 1st January 2005, (ii) 4% w.e.f. 1st January 2006, and (iii) 7% w.e.f. 1st January 2009 were allowed till March 2014. Since 2009, the said Tariff Order was under judicial scrutiny of the Hon’ble Supreme Court in CA No. 829-833 of 2009, and therefore, no such inflationary adjustment could be allowed till March 2014. The Hon’ble Supreme Court in IA No. 71-75 of 2014 in the said matter, vide its order dated 28th February 2014, permitted the Authority to review the tariff ceilings to make adjustment for inflation and notify the same. Thereafter, the last such adjustment was permitted through the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 dated 31st March 2014.

3. In the Tariff Order of 31st March 2014, the Authority decided to allow an inflation linked increase of 27.5% on the specified ceilings, both, at the retail and wholesale levels. However, the Authority decided that this hike would be implemented in two installments. The first installment of 15% was made effective from 1st April 2014 and

it was announced that the second installment for the remaining inflation linked increase shall be made effective from 1st January 2015 through a separate Tariff Order. This has been explained in para 9 of the Explanatory Memorandum to the said Tariff Order dated 31st March 2014.

4. Accordingly, the remaining inflation linked increase works out to be 10.87% $[(1.275/1.15) \times 100]$ over and above the price ceilings arrived at after increasing the same by 15%, as allowed through the said Tariff Order dated 31st March 2014. In other words, with this 10.87% (say 11%) inflation linked hike increase, the ceilings prevailing as on 31st March 2014, effectively increase by 27.5%.
5. In the meanwhile, on 17th September 2014, in the matter of Civil Appeal Nos. 829-833 of 2009 (TRAI vs. M/s Set Discovery Pvt. Ltd. & Ors.) relating to tariff applicable for non-CAS areas (the Eighth Amendment, dated 4.10.2007, to the principal Tariff Order dated 1st October 2004), the Hon'ble Supreme Court while disposing of the said appeals directed TRAI to notify the tariff for the said areas immediately after 31.12.2014 and ordered *status quo* to be continued till that time.
6. Earlier, some broadcasters appealed against the cited Eighth Amendment of 4.10.2007, before the Hon'ble Telecom Disputes Settlement Tribunal (TDSAT). Hon'ble TDSAT through its order of 15.01.2009 set aside the said Tariff Amendment Order. The Authority filed an appeal in the Hon'ble Supreme Court of India against the order dated 15.1.2009 of Hon'ble TDSAT [Civil Appeal No(s).829-833 of 2009]. The Hon'ble Supreme Court, on 13.4.2009 directed status quo as on the date of the order dated 15.1.2009 of Hon'ble TDSAT. On 13.05.2009, Hon'ble Supreme Court passed an order directing TRAI to consider the matter de novo as regards all aspects and give a report to the Hon'ble Supreme Court.
7. Accordingly, TRAI initiated a consultation process. In this regard, a detailed Consultation Paper was brought out by the Authority on 25th March, 2010. The

Authority, thereafter, undertook a series of Open House Discussions (OHDs) with the stakeholders in the month of June, 2010. The first OHD was held at New Delhi on 1st June, 2010 followed by the second at Pune (Maharashtra) on 3rd June, 2010 and the third at Bangalore on 4th June, 2010. The last OHD was held at Kolkata on 8th June, 2010. In all, 249 stakeholders participated in these discussions, representing broadcasters, aggregators, MSOs, LCOs, Associations of broadcasters, MSOs and LCOs, Consumer Advocacy Groups, individual subscribers and industry analysts. Discussions were also held with stakeholders who had submitted their written comments and counter-comments in response to TRAI's CP. These discussions, held on 31st May, 2010 and then on 11th June, 2010, were attended by 122 stakeholders. Subsequently, some broadcasters/ aggregators, MSOs, Cable Operators Associations and Indian Broadcasting Foundation (IBF) had separate discussions with the Authority on 22nd June, 2010 and a joint meeting with the Authority on 23rd June, 2010. The News Broadcasters Association (NBA) also had meetings with the Authority on 25th and 28th June, 2010.

8. The outcome of this comprehensive and transparent consultation process, was a detailed report prepared by TRAI titled "Tariff Issues related to Cable TV Services in non-CAS Areas". This report was based on an extensive study of the sector with the help of a reputed consultant engaged for the purpose, an in-depth appraisal of the problems facing the analog cable distribution platform in the country, and an analysis of stakeholder views expressed during the consultation process, involving all the segments of the value chain in the cable distribution sector i.e. broadcasters, aggregators, multi system operators, the cable operators, consumer advocacy groups and other stakeholders.
9. The report cited in para 8 was submitted to the Hon'ble Supreme Court on 21st July 2010. The report also contained a draft Tariff Order for non-addressable systems.
10. The Hon'ble Supreme Court, in its final order dated 17th September 2014, noted that since the report was prepared in 2010, there may be a necessity for holding further

consultations and allowed the stakeholders that, in case, they intend to make representations to the TRAI, they may do so positively on or before 30th September 2014.

11. The Authority concluded that the draft Tariff Order, forming part of the said report submitted to Hon'ble Supreme Court on 21st July 2010, may not be suitable for notification in the present form as a number of important developments have taken place since then. Therefore, as part of the consultation process, a revised draft Tariff Order, reflecting the said developments and containing other tariff-related aspects pertaining to non-addressable areas, was uploaded on TRAI's website on 1st December 2014, seeking views/comments of stakeholders.
12. As mentioned in para 3 above, the purpose of the present Tariff Order is to allow the remaining part of the inflation linked hike. The issues regarding ceilings for the charges prescribed at the wholesale and retail levels, raised in the draft Tariff Order uploaded for consultation on 1st December 2014, on which the inflation linked adjustments have a direct bearing are also being dealt with in this Tariff Order.

Wholesale Tariff

13. One of the key issues in the de novo exercise directed by the Hon'ble Supreme Court in its order dated 13th May, 2009 was to evaluate the need for, and arrive at, an appropriate tariff at the wholesale level. With a view to arrive at a decision on the need for and method of price regulation, during the consultation exercise undertaken for the purpose (henceforth, the consultation exercise 2009-10), different methodologies for regulation of wholesale tariff were discussed i) Revenue share, ii) Retail minus, and iii) Cost plus, comments were solicited from stakeholders.
14. In respect of regulation of wholesale tariff, there were competing arguments on both sides – both for and against regulation of the wholesale tariff. The Authority concluded that given the lack of transparency on subscriber numbers in the market and the subscribers' lack of choice in the present analogue system, if pricing were left

unchecked, there is a distinct possibility that this could lead to higher prices for the consumer. However, if a pricing mechanism is developed to regulate tariffs at the wholesale level, it should be efficient and dynamic enough to mirror the complex nature of the broadcasting industry; otherwise, price controls could further distort the market.

15. As far as methodology for regulation of tariff at the wholesale level is concerned, the Authority concluded that while revenue sharing is an efficient form of price regulation, this methodology cannot be implemented effectively in a non-addressable environment. This is because in non-addressable markets, agreements are primarily based on a subscriber base which is a negotiated figure rather than the actual number. Moreover, the basis for negotiation also varies from stakeholder to stakeholder.
16. Estimation of the wholesale tariff through the ‘retail minus model’ requires two sets of comprehensive empirical data: (1) price of various channels/ bouquets paid by the consumer; and, (2) uptake of various channels/ bouquets in the market (i.e. number of subscribers). In non-addressable markets, it is difficult to obtain reliable information for both (1) and (2). International experience also suggests that the retail minus approach has been used to determine tariffs only in addressable systems. In the absence of the empirical data, the Authority concluded that this method of tariff estimation is not appropriate for the non-addressable markets in India.
17. As regards the ‘cost plus model’, reliable estimation of a wholesale tariff for broadcasting requires the following sets of data:
 - Detailed information on the one-time and recurring costs of creating and transmitting content (transmission costs up to the MSO level) – to determine the numerator
 - Information about the uptake of various channels at the consumer end – to determine the denominator.

18. Adoption of a cost-based approach was also an important argument made by parties in their appeal as a key action area for future tariff determination. In the spirit of the TDSAT judgment and the Hon'ble Supreme Court's mandate for a de novo exercise, a genuine attempt was thus made to develop a robust cost-based model for wholesale tariff. In response to these demands, TRAI initiated a very large-scale information gathering exercise to collect relevant financial and operational information from stakeholders across the value chain. The objective was to assess the cost base and determine if an appropriate pricing schedule for content at the wholesale level could be calculated. However, mainly, because of the limited availability of comprehensive channel-wise information from the industry and significant variation in the cost base of various components that determine the ultimate price of the channel, the Authority concluded that the results of the cost-based model were of limited reliability and applicability.
19. After analyzing the suitability of various methodologies discussed above, the Authority concluded that there were a number of practical issues in developing a robust model for tariff determination because of the lack of addressability. Moreover, the lack of addressability also poses serious problems in successfully implementing forbearance at the wholesale level.
20. In the consultation exercise 2009-10, one point of view that came across was that, in a few years, the Indian cable and satellite market would be fully digital and, therefore, addressable. In such a setting, bringing in a completely new tariff structure is likely to create significant compliance costs in the interim for stakeholders. A new tariff regime would require re-negotiation of contracts and determination of connectivity numbers afresh. In the absence of addressability, it may even be said that a change in price is not likely to affect the payout of the MSO/ inflow of the broadcaster (as a corresponding change in connectivity will be used to offset the impact). These views were also supported by comments received from stakeholders during the consultation exercise 2009-10. While broadcasters and MSOs initially expressed discomfort with

the current regime (broadcasters preferred forbearance while MSOs preferred more stringent price control) – both parties recognized that the current system, despite its imperfections, is working at the ground level. Both parties also indicated that if TRAI's focus was on introducing digitization with addressability, (and, thereby, addressing the root cause of the issue at hand), then perhaps continuing with the current system in the interim was the most practical solution. Keeping in mind the views of the stakeholders, the Authority concluded that the best option is to draw upon the features of the prevailing tariff structure as a workable solution for the analogue regime. These features pertain to:

- Price of channels and bouquets,
- Composition of the existing bouquets and
- Pricing of new pay channels and channels converted from FTA to pay (channels launched/converted after the reference date of 1st December 2007, prescribed by the extant Tariff Order) on the similarity principle i.e. the price of a new pay channel/converted channel is to be fixed similar to the rates of channels of the same genre and language.

Stakeholder comments

21. In response to the draft Tariff Order put up for consultation on 1st December 2014, the comments of stakeholders, representing various service providers in the value chain, are on lines similar to those expressed in the consultation exercise 2009-10 (See para 20 above). Some broadcasters and their association have stated that significant changes have taken place in the sector since the time TRAI submitted its report to the Hon'ble Supreme Court and, therefore, the tariff as well as interconnection and quality of service aspects need to be looked into holistically. The changes they referred to include, apart from regulatory changes notified and recommendations made by TRAI to the Government, availability of a much larger number of channels, inroads of digitization of cable TV sector, increase in metered market size, increase in demand for carriage and placement fee etc.

22. Broadcasters have also pointed out that the Tariff Order should allow the remaining inflationary hike as per the scheme decided by the Authority as indicated in the amendment to the Tariff Order (Eleventh Amendment) notified by TRAI on 31st March 2014.

Analysis

23. As far as non-addressable cable TV systems are concerned, the key parameters/limitations that characterise such systems remain, more or less, the same as prevalent at the time the earlier consultation was carried out. These include: channel carrying capacity constraint, non-addressability leading to absence of transparent business parameters, technological limitations which prevent customers to choose channels of their choice, and broadcasters being unable to assess true market determined price for their channels etc. Moreover, the digitization of the cable TV sector is under way and the Government has already notified a time frame for digitization of cable TV sector which envisions complete digitization by December 2016. In view of the discussion above, the Authority is of the view that the earlier observations of the Authority with regard to wholesale tariff still hold good.

24. As discussed in para 3, the remaining inflationary hike, of the 27.5% inflationary hike that the Authority had decided in the amendment to the Tariff Order notified on 31st March 2014, has been included in this Tariff Order. It works out to be 11% over and above the wholesale rates as prevalent immediately before coming into force of this Tariff Order.

Accordingly, provisions governing the wholesale tariff have been incorporated in this Order.

Retail Tariff

25. The retail tariff is the price charged by the local cable operator to the subscriber/consumer. In non-addressable markets, this tariff is a bundled price for cable service

– it comprises analog reception of about 80 channels, with a mix of FTA and pay channels. Built into the price are the billing, collection and maintenance charges incurred by the cable operator.

26. With a view to determining the need for price regulation at the retail level, during the consultation exercise 2009-10, comments were solicited from stakeholders on an appropriate methodology for regulation of retail tariff viz (i) Cost Plus or (ii) Consultative Approach or (iii) Affordability linked or (iv) Any other method/approach.
27. Cost plus retail pricing is based on the “estimated cost” of providing cable services to consumers at the retail level. This includes the costs of the broadcasters, MSOs and LCOs, plus a reasonable margin for each stakeholder in the value chain.
28. There are several practical issues with estimating a reliable and accurate cost plus retail tariff. The cost plus tariff has to include an assessment of content cost per subscriber (attributable to the broadcaster), distribution cost per subscriber (attributable to the MSOs/LCOs) plus a reasonable margin. It is difficult to arrive at per subscriber costs of content and distribution in a market where cost and products are not standardized and the number of subscribers is not reliable. With respect to broadcasting costs and margins, difficulties are faced due to lack of standardization of costs in the industry. Variances due to the operating model, the size of the network, the genre, the content acquisition model and other factors – make it difficult to arrive at an average cost for content. With respect to distribution costs and margins, there is extensive fragmentation at the last mile and the lack of a disclosure regime makes it difficult to collect information for all stakeholders in the industry. There are also difficulties in separating the costs only for analogue services – as there are several operators in non-addressable areas that provide a mix of analog services and digital services (through voluntary digitization without addressability).

29. A consultative approach to retail pricing is used in countries like Korea and Taiwan, and involves periodic review of the pricing policies of all operators. Cable operators propose the price to be charged to the subscribers and their rationale for the same (cost structure, competition, proposed investments and upgrades) – and this is subject to review by the regulatory authority.
30. A consultative approach can only work in a licensed environment, as operators have statutory obligations to declare their pricing to the authorities on a regular basis. Non-compliance with the consultation review leads to a loss of the license to operate. The Authority was of the view that, in the unstructured state of the sector, the consultative approach is not suitable in the Indian environment.
31. In the report submitted to the Hon'ble Supreme Court, after examining various methodologies, the Authority concluded that 'cost plus' and 'consultative approach' are not suitable for adoption in the Indian analog cable TV market. The Authority also concluded that a retail price ceiling – at a reasonable level – that balances consumer interest with the growth potential of the industry – is warranted in the case of cable TV services in non-addressable markets in India.
32. Affordability linked retail pricing connects the price cap to the affordability or ability of consumers to pay for products and services. This approach considers the current income and/or expenditure levels for consumers while deciding the price cap and benchmarks it to expenditures in similar product and service categories. Subject to certain reasonable assumptions on consumer spending habits, it is possible to then calculate affordability linked benchmarks through available consumer expenditure data.
33. This approach reaches the consumer directly and estimates the price based on demand. It also allows the retail tariff to de-link itself from any issues and/ or problems observed on the supply side, such as non-availability of comprehensive cost

data. The Authority concluded that an affordability linked price cap can protect consumer interests and at the same time provide a practical solution to the impasse created by the non-addressable nature of analogue systems in India.

34. The affordability linked retail price cap was developed through analysis of State-wise urban household consumption expenditure data as per the National Sample Survey Organization (NSSO) survey. This was further validated through other published data on income and expenditure. The primary analysis is based on State-wise urban household consumption. This was further validated by data collected during the consultation exercise 2009-10. The data provided by the Consumer Advocacy Groups indicated minimum charges (for the cable TV services) of Rs. 65 per month per subscriber and maximum charges of Rs.250 per month per subscriber, at an average of Rs.165 per month per subscriber. Similarly, the CMS Survey commissioned by TRAI suggested minimum charges (for cable TV services) of Rs.106 per month per subscriber in Chennai and a maximum tariff of Rs. 319 per month per subscriber in Shillong, with an average of Rs. 185 per month per subscriber across 22 cities. Thus, it was concluded by the Authority that Rs. 250 per month per subscriber could form a reasonable ceiling. In the light of these figures, the Authority decided that the retail price cap for pay cable services be fixed at Rs. 250 per connection per month with the actual monthly bill being left to the business model of the individual operator – subject to the ceiling.

35. In addition to determining the value placed on pay TV services by a household, the Authority also felt the need to define a more basic service comprising FTA channels only. For FTA channels, the cost to the consumer includes only the cost of transmission, distribution and servicing. After examining the data and responses from stakeholders (MSOs and LCOs) during the consultation exercise 2009-10, the Authority was of the view that the cost of providing FTA channels to a household is in the range of Rs. 80-100 per connection per month. This was in line with the prevailing ceilings for FTA channels in both the erstwhile notified conditional access systems (CAS) areas and non-CAS areas, (duly updated to account for inflation of 9%

as provided for in the draft Tariff Order submitted to the Hon'ble Supreme Court alongwith the Report). Accordingly, the Authority concluded that the cap for the basic service (FTA only, subject to a minimum of 30 FTA channels) be kept as Rs. 100 per connection per month. It was also concluded that the operators who do not wish to subscribe to pay channels would have the option of providing the basic service to their consumers at a maximum of Rs. 100 per month.

36. Another aspect that was considered during the consultation exercise 2009-10, for retail tariff pertained to specifying the ratio between pay and FTA channels offered to consumers. In this regard, it was observed that there were differing levels of service that prevailed in the market for analog cable services. The mix of channels provided by an operator has a significant impact on the quality of content available to the end consumer. Thus, it was recognized that a larger number of pay channels would warrant a higher price from the consumer, as these costs were necessary to compensate the value chain for producing and transmitting such content. At the same time it was felt that a certain number of FTA channels should be accessible to almost every television owning household in the country. This calls for provision of a basic service that could be purchased at a reasonable price to the subscriber.
37. The market survey of consumers of cable television services in India conducted by TRAI in the year 2007 through Centre for Media Studies (CMS) indicated that the percentage of people receiving 21-50 channels and 51-100 channels are the highest and they were more or less equal. So if one were to categorize subscribers based on channels received, it would be 50 or below channels and above 50 channels.
38. On the basis of these observations, as well as an assessment of affordability for basic services and pay TV services, the Authority, in the draft Tariff Order, prescribed the following price ceilings on the retail tariff:
 - Rs. 100 per month – minimum of 30 FTA channels, including the must carry channels of Doordarshan – this is defined as the “Basic Package”

- Rs. 200 per month – Basic Package + up to 20 pay channels
- Rs. 250 per month – Basic Package + more than 20 pay channels

Stakeholder comments

39. In response to the draft Tariff Order of 1st Dec. 2014, broadcasters have stated that retail tariff be put under forbearance as there is sufficient competition in the market. They have also argued that free retail pricing will attract investment in the sector and encourage offering of quality content to subscribers. In this context, a broadcaster stated that the mechanism of retail pricing in the form of ceilings limits the capacity of operators to exploit differential pricing at the retail level. Some broadcasters further suggested retail ceilings varying from Rs. 300 to 500, in case retail price ceilings are to be prescribed. The only national MSO that offered its views on retail tariff, has, while supporting the mechanism of retail ceilings, suggested that the overall retail cap be at least Rs. 350. However, two cable operator associations are in agreement with the retail tariff ceilings suggested in the draft Tariff Order dated 1st Dec. 2014.
40. Some broadcasters have expressed the apprehension that prescribing a certain minimum number (30 channels) of FTA channels to be mandatorily offered in all the slabs at the retail level will lead to a tendency on the part of MSO/cable operators to charge more carriage/placement fee from the broadcasters for carriage of their channels. One of the broadcasters said that the ratio of FTA and pay channels should not be prescribed in different slabs at the retail level. However, a regional broadcaster has suggested that TRAI should prescribe a minimum number of pay channels of different genres to be mandatorily carried within the number of pay channels prescribed in the retail slabs.

Analysis

41. As discussed in para 23 above, even on date, the key parameters/limitations that characterise non-addressable cable TV systems are more or less the same as prevailed

at the time the consultation process 2009-10 was carried out. Moreover, in the analog markets, the level of competition at the retail level also remain almost unchanged.

42. The retail price caps are basically affordability linked caps which have been arrived at taking into account data from different surveys carried out by NSSO, CMS (specifically for this purpose for TRAI) and feedback from consumer organisations etc. These retail caps have been duly accounted for the inflation linked adjustment. The ratio of FTA and pay channels associated with these caps has also been arrived at based on the CMS survey and feedback from consumer organisations. The apprehension of broadcasters that mandating a minimum number of FTA channels could lead to MSOs charging more carriage fee does not seem to be well founded. The carriage/ placement fee charge for a channel does not depend upon whether the channel is pay or FTA; it depends on a number of factors such as the demand of the channel, whether the market is metered or not, the business model of the broadcaster etc. Thus, linking carriage/ placement fee with the mandating of a minimum number of FTA channels to be carried in different slabs in the retail level is not tenable. Moreover, the mandate, relating to minimum number of FTA channels in various slabs, has been part of the prevailing tariff prescription since 2007.
43. The MSOs/ cable operators should have the flexibility to decide on the channels to be carried by them in their networks depending upon the requirements of the markets being served by them. So, it may not be appropriate for the Authority to prescribe a minimum number of pay channels of different genres to be mandatorily carried within the number of pay channels prescribed in the retail slabs.
44. In view of the above discussion, the Authority is of the view that the earlier conclusions of the Authority with regard to retail tariff and its related aspects, in principle, still hold good. However, the retail tariff ceilings arrived at that point of time were inclusive of 9% inflation linked hike whereas the Authority has now permitted inflation linked hike of 27.5% in line with the decision of the Authority as discussed in para 13. Accordingly, the revised retail tariff ceilings have been worked

out to adjust for the balance hike and rounded off to the nearest rupee value. The revised retail tariff ceilings, work out as:

- Rs. 117 per month – minimum of 30 FTA channels, including the must carry channels of Doordarshan – this is defined as the “Basic Package”
- Rs. 234 per month – Basic Package + up to 20 pay channels
- Rs. 292 per month – Basic Package + more than 20 pay channels

Accordingly provisions have been prescribed in the Tariff Order.

45. Another issue that was raised during the consultation exercise 2009-10 was whether the tariff ceiling should be prescribed on pan-India basis i.e. same ceiling for all parts of the country or the ceiling should be State-wise i.e. different ceilings for each State or whether different States should be classified in three categories based on affordability of the inhabitants of the respective States and tariff ceilings for each such category is prescribed.

Stakeholder Comments

46. On the issue of whether retail ceilings are to be prescribed at the national level or state level or in a tiered manner, a broadcaster has stated that as the affordability and demand and supply are different in different areas, it would not be appropriate to have a single national ceiling. However, a national MSO and three cable operator associations have supported ceilings on a national basis as it is easy to enforce and communicate to consumers.

Analysis

47. A State-wise cap would take into account State-wise affordability and expenditure levels. As a result there would be about 25 levels of retail tariff applicable across the country. While this approach most closely mirrors the affordability level of every State, it still cannot account for affordability differences within a State, or within a particular city. State-wise ceilings also have the following disadvantages: (1) Difficulties in communicating and enforcing multiple tariffs across the country (2)

Significant variation in the ceiling with the highest State at nearly five times the tariff set for the lowest State.

48. A tier-wise cap would require allocating various States into different tiers. This can be done by forming a classification that indexes the average State affordability to the average all-India affordability. Those significantly above the average could fall under Tier 1, those equal to or nearly equal to the average fall under Tier 2, and those significantly below the average fall under Tier 3. The retail tariff falls as one moves from Tier 1 to Tier 3. Such an allocation would ensure that States with similar expenditure behavior are grouped together and the tier-wise price cap reflects the variation in affordability level across different states. However, the tier-wise ceilings will still not be able to account for variations among States within a tier or among cities within States. Additionally, it would require more detailed communication than a single all-India tariff as consumers would need to be informed as to which tier they fall into and what the applicable tariff ceiling for that tier is.
49. A national cap is the most straightforward and simplest way to protect the cable consumer. Some stakeholders argued that affordability differs from State to State, and State-wise caps should be developed. Therefore, some states which have lower expenditure levels compared to the national average may be disadvantaged. However, it must also be recognized that there is variation in affordability within States, within cities and even within the two residential areas serviced by a single operator. A national cap thus provides the consumer protection at an aggregate level, while allowing the operator to cross-subsidize low affordability households in his area through charging more to high affordability ones. Imposing too many categories/ sub-classifications can complicate the tariff and may reduce efficiency. Additionally, a single national cap is easy to enforce and communicate to the consumer.
50. In view of the above discussion, a single national level ceiling was considered appropriate by the Authority for the Indian market. In addition to the ease of communication, implementation and enforcement – it provides for a uniform lens

through which the consumer end of the cable market can be observed. While it may not be able to account for varying affordability levels, it needs to be recognized that no cap (tiered or State-wise) can account for all variance in affordability. For example, there may be different levels of affordability for cities within a State. There may also be different levels of affordability within localities in a city, or even within the same locality serviced by a single cable operator. Thus, the Authority has decided that a single national cap should be applicable, with the decision of cross-subsidization on account of affordability being left to the individual cable operator. This would allow for protection of consumer interests, while balancing it with the parallel objective of not micro-managing the business model of individual operators. Accordingly, provisions have been prescribed in the Tariff Order.
