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TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 06th January, 2015.

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES
(SECOND) TARIFF (FOURTEENTH AMENDMENT) ORDER, 2015**

(No. 1 of 2015)

No. 1-1/2014 - 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 (Fourteenth Amendment) Order, 2015 (1 of 2015).

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

2. In clause 1 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the principal Tariff Order), in sub-clause (ii), after the words “the territory of India”, the words, brackets, figures and letters “except States, cities, towns and areas notified, from time to time, under sub-section (1) of section 4A of the Cable Television Networks (Regulation) Act, 1995” shall be inserted.

3. In clause 2 of the principal Tariff Order, ----

(i) for sub-clause (a), the following sub-clauses shall be inserted, namely:-

“(a) “addressable system” means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of digital addressable system can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the

subscriber management system, on the explicit choice and request of such subscriber, by multi-system operator or DTH operator or IPTV operator or HITS operator to the subscriber; and ---

the expression “non-addressable system” shall be construed accordingly;”

(ii) after sub-clause (aa), the following sub-clause shall be inserted, namely:-

“(ab) “**Authority**” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997(24 of 1997);”

(iii) after sub-clause (i), the following sub-clause shall be inserted, namely:-

“ (j) all other words and expressions used in this Order but not defined, and defined in the Act and rules and other regulations and order made there under, shall have the meanings respectively assigned to them in the Act or the rules or other regulations or Order, as the case may be.”.

4. In clause 3 of the principal Tariff Order, after item (B), for the existing provisos, the following provisos shall be inserted, namely:----

“Provided that if any new pay channel is launched or any free-to-air channel is converted to pay channel after the 1st day of January 2015, then the ceiling referred to as above shall not apply, if the new pay channel or pay channel converted from free-to-air to pay channel is provided on a standalone basis, either individually or as part of new, separate bouquet:

Provided further that the broadcaster shall declare the genre of its channels and such genre shall be either News and Current Affairs or Infotainment or Sports or Kids or Music or Lifestyle or Movies or Religious or Devotional or General Entertainment (Hindi) or General Entertainment (English) or General Entertainment (regional language);

Provided also that the rates of channels, referred to in the first proviso shall be similar to the rates of similar channels existing as on the date of such launch of new channel or such conversion of free-to-air channel into a pay channel;

Provided also that the ceiling of charges, specified under sub-clauses (a), (b) and (c) shall not, in any case, exceed by the rates of channels referred to in the third proviso;

Provided also that in case multi system operator or a cable operator reduces the number of pay channels that were being shown on the date of coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015), the ceiling shall be reduced taking into account the rate(s) of the channel(s) so removed;

Provided also that in the case of the commercial subscriber, for each television connection, the charges payable by the Ordinary cable subscriber under sub-clause (a), shall be the ceiling;

Provided also that if a commercial subscriber charges his customer or any person for a programme of a broadcaster shown within his premises, he shall, before he starts providing such service, enter into agreement with the broadcaster and the broadcaster may charge the commercial subscriber, for such programme, as may be agreed upon between them;

Explanation: For the removal of doubt, it is clarified that any increase in the price of goods or services, being provided by the commercial subscriber during the duration of the telecast of a programme, referred to in the above proviso, shall also be treated as charge for the said programme.

Provided also that the charges referred to in sub-clause (a) 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.”

5. For clause 3B of the principal Tariff Order, the following clause shall be substituted, namely:----

“**3B** In determining the similarity of rates of similar channels referred to in the provisos below clause 3 above the following factors shall be taken into account:

- (i) the genre and language of the new pay or converted Free to Air to pay channel; and
- (ii) the range of prices ascribed to the existing channels of similar genre and language in the price of a bouquet(s) and prices of bouquet(s) that exist.”

6. After clause 3B of the principal Tariff Order so substituted, the following clause shall be inserted, namely:-

“3C. Manner of offering channels by broadcasters.—(1) Every broadcaster shall offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate, subject to provisions of sub-clause (2) of this clause and clauses 3 and 3B, for each pay channel offered by him.

(2) In case a broadcaster, in addition to offering all its channels on a-la-carte basis, provides, without prejudice to the provisions of sub-clause (1), to a multi system operator or to a cable operator, pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, the rate for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following conditions, namely:-

- (a) the sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and
- (b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-

If the bouquet rate is Rs. ‘X’ per month per subscriber and the number of pay channels is ‘Y’ in a bouquet, then the average pay channel rate of the bouquet shall be Rs. ‘X’ divided by number of pay channels ‘Y’:

Provided that the composition of a bouquet existing as on the 1st day of December, 2007, in so far as pay channels are concerned in that bouquet, shall not be changed:

Provided further that nothing contained in the first proviso shall apply to those bouquets of channels existing on the 1st day of December, 2007, which are required

to be modified pursuant to the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014 and the rate of such modified bouquet of channels shall be determined in the following manner:----

The rate of the modified bouquet = [rate of the existing bouquet] x [sum of a-la-carte rate of pay channels comprising the modified bouquet/sum of a-la-carte rate of all the pay channels comprising the existing bouquet],

and if after modification of the bouquet, there remains only one channel in such bouquet, the broadcaster shall be free to offer such channel at its published a-la-carte rate in its Reference Interconnect Offer.

Provided also that no pay TV channel shall be added to or removed from the modified bouquet of TV channels referred to in the second proviso:

Provided also that---

- (i) in cases where the broadcaster ceases to make available a pay channel existing as on the date of coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015) or for distribution, the rate of the bouquet containing such a pay channel existing on that date shall be reduced in the same proportion which the a la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet;
- (ii) in cases where a bouquet existing on the date of coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff

(Fourteenth Amendment) Order, 2015 (1 of 2015) consists of both free to air and pay channels, and if any free to air channel is converted into pay channel after that date, the said existing bouquet (excluding the free to air channel) shall be offered at or below the rates prevailing as on that date for such bouquet;

(iii) in cases where a bouquet existing on the date of coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015) consists of both free to air and pay channels, and if any pay channel is converted into free to air channel after that date, the said existing bouquet shall be offered, with or without such free to air channel so converted after reducing the rate prevailing as on that date for such bouquet, by an amount not less than the amount which bears the same proportion the a la carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet.

(3) A broadcaster may, without prejudice to the provisions contained in sub clause (1) and other provisions of this Tariff Order, offer discounts to multi system operators and cable operators on a-la-carte rates of its channels or bouquet rates and such offer of discounts, in no case, shall, directly or indirectly, have effect of contravening the provisions of sub-clause (2) and any other provisions of this Tariff Order.”

7. For clause 4 of the principal Tariff Order, the following clauses shall be substituted, namely:-

“4. Reporting Requirement.-----(1) Every broadcaster shall, within seven days from the coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015), furnish the following information to the Authority, namely:-

- (a) names, genre and language of all free to air channels offered by the broadcaster;
- (b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;
- (c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein;
- (d) revenue share arrangement between owners of channels in the bouquet;
- (e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state must be specified);
- (f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);
- (g) advertisement revenue for the last three financial years;
- (h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster:

Provided that information under sub-clause (d) and (g) shall also be filed annually alongwith the filings done under the provisions of the Register of Interconnect Agreements (Broadcasting and Cable Services) Regulation 2004 (15 of 2004).

(2) Every broadcaster who, after the commencement of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015 (1 of 2015),-----

- (a) introduces any new pay channel or free to air channel; or
- (b) converts any pay channel into free to air channel; or
- (c) converts any free to air channel into pay channel; or
- (d) discontinues any free to air channel or pay channel; or
- (e) introduces any new bouquet or discontinues any bouquet or changes rate of existing bouquet; or
- (f) changes genre, language, name etc. of any existing channel,

shall, thirty days before such introduction or conversion or discontinuation or change, furnish to the Authority, the following information, namely:-

- (i) name of the channel to be introduced, converted or discontinued,
- (ii) the date on which the new channel is to be introduced, converted or discontinued;
- (iii) the a-la-carte rate of the pay channel if it is a newly introduced or converted pay channel;
- (iv) composition of new bouquet or bouquets to be introduced along with rates for each such new bouquet;
- (v) in the case of a new channel, the genre and language of the new channel;
- (vi) changed rate of the existing bouquet;
- (vii) changed a-la-carte rate, genre, language, name etc. of the existing channel.

(3) Every broadcaster shall display on its website the information furnished under sub-clauses (1) and (2), except the information specified under clauses (d) and (g) of clause (1), simultaneously with its submission to the Authority.

4A. Power of Authority to intervene.-----The Authority may, by any order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order.

4B. Issue of receipt and bill.----- (1) Every cable operator or the multi system operator, as the case may be, shall give to every subscriber the bill for the charges due and payable by such subscriber for each month or for such other period for which such charges become payable by the subscriber.

(2) Every bill referred to in sub-clause (1) shall contain all details including the total number of pay and free to air channels provided by such cable operator or multi system operator, as the case may be, the charges levied (excluding taxes), nature and rates of taxes levied and amount thereof.

(3) Every cable operator or multi system operator, as the case may be, shall acknowledge all payments made by the subscriber by issuing a receipt therefor duly signed by him, indicating therein the period and the purpose for which the payment has been received.

(4) Every cable operator or the multi system operator, as the case may be, shall give to every subscriber, along with the first bill given to such subscriber in compliance of sub-clause (1), a list of all the pay channels and free to air channels being provided to the subscriber and shall also provide to the subscriber, written information about any subsequent changes in the pay channels or free to air channels being provided to the subscriber along with the next bill after such change.

4C. Maintenance of records by broadcaster, multi system operator and the cable operator.--- (1) Every broadcaster, multi system operator and the cable operator shall keep records relating to the information pertaining to ---

(a) the dates of increase in charges;

(b) the amount of increase;

- (c) the number of pay channels and free to air channels with their names which were available immediately prior to every such increase or changes in charges or changes in the composition of bouquets;
 - (d) the number of pay channels and free to air channels with their names which were available immediately after every such increase or changes in charges or changes in the composition of bouquets;
 - (e) the names, addresses and charges pertaining to other service providers to whom broadcasting services or cable services are being provided;
 - (f) any other information which may be relevant for the purposes of this Order.
- (2) In addition to keeping the abovementioned records, every cable operator shall also keep complete records relating to the names, addresses and charges pertaining to all its subscribers.

4D. Non-applicability to addressable system.----The provisions of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) shall apply to the broadcasting and cable services being provided to the consumers through the addressable system.”

(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 (Fourteenth Amendment) Order, 2015 (1 of 2015).

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, No. 1-18/2014 - B&CS dated the 16th July 2014 and No. 1-6/2014 - B&CS dated the 31st December 2014.

Explanatory Memorandum

1. On 15th January 2004, the Authority came out with a Tariff Order. 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.
2. Simultaneously, TRAI also issued a Consultation Note on 15th January 2004, seeking views of stakeholders about appropriate recommendations/regulations/orders aimed at providing services to consumers at affordable prices and also to facilitate growth and competition in the industry. Thereafter, taking into account the inputs received in response to the Consultation Note of 15th January, 2004, TRAI issued a detailed Consultation Paper on 20th April 2004 for the purpose of deciding on an appropriate tariff regime. In the meanwhile, TRAI had also received representations from broadcasters, multi system operators and cable operators, seeking clarification as to what should be the ceiling charges in case an existing free to air channel converts into a pay channel or when a new pay channel is launched. Therefore, a mechanism had to be provided for pricing these new pay channels and Free-to-air (FTA) channels converted to pay channels. At the same time, there was a need to continue with the protection provided to consumers by the Tariff Order dated 15th January 2004. To maintain the sanctity of the said ceiling, it was decided that pay channels launched after 26th December 2003 should not be allowed to become part of bouquet of channels which were being provided on 26th December 2003. A similar rule was made applicable for those channels that were FTA on 26th December 2003 and later converted to pay. It was further provided that new pay channels may be offered individually or as a bouquet of channels which are not covered by the ceiling specified by the Tariff Order dated 15th January 2004. Thus, for those consumers who did not get new pay channels, the ceilings already prescribed were allowed to continue. Where consumers got new pay channels after 26th December 2003, the extent to which the ceilings referred to above could be exceeded was limited to the rates for the new channels. The Authority also considered the question of fixing a ceiling price for new pay channels. Keeping in view the fact that fixation of prices for new pay channels is difficult not only because of large variations of these prices but also the difficulty in linking channel prices to costs, the Authority decided that broadcasters should be mandated to fix prices of such channels at levels similar to the rates prevalent on 26th December 2003 for similar channels and to reserve to itself the power to intervene, if necessary. The Authority also decided, on the basis of the detailed consultations, that

where the number of pay channels is reduced after 26th December 2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on 26th December 2003. The Authority issued a self contained Tariff Order, namely, the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) on 1st October, 2004 containing the foregoing decisions. From time to time, amendments to the Tariff Order dated 1st October 2004 have been notified. Till now, 13 amendments have been made to the Tariff Order dated 1st October 2004.

3. Earlier, some broadcasters appealed against the 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.
4. 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.
5. 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 analogue 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.

6. The report cited in para 5 was submitted to the Hon'ble Supreme Court on 21st July 2010. The report also contained a draft Tariff Order for non-addressable systems.
7. The Hon'ble Supreme Court pronounced its final order in the said matter on 17th September 2014. The Hon'ble Supreme Court, in this order, disposed of the appeals, while leaving all the questions of law open. It also ordered that *status quo* will continue till 31st December 2014. The order further stated that TRAI will attempt to notify the fresh Tariff Order immediately after 31st December 2014.
8. 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.
9. 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. Accordingly, as part of the consultation process, a revised draft Tariff Order, was uploaded on TRAI's website on 1st December 2014, seeking views/comments of stakeholders. This consultation process has resulted into two Tariff Amendment Orders – (i) the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Thirteenth Amendment) Order, 2014 which was notified on 31st December 2014, and (ii) this Tariff Amendment Order i.e. the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourteenth Amendment) Order, 2015. This Tariff Amendment Order takes into account the views/comments offered by the stakeholders in the consultation process and analysis of the relevant issues which are not covered in the said Thirteenth Tariff Amendment Order. The following is a summary of the main issues and analysis thereon.

Wholesale Tariff

10. 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.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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

18. 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 18 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.
19. On the aspect of pricing of new channels on the similarity principle, two broadcasters have stated that it is not reasonable as the pricing of different channels of a particular genre cannot be placed on equal footing as such channels may have varied content and costs incurred for procurement/creation of this content may also drastically vary. Another broadcaster has argued that as channels with niche content are being launched by broadcasters, it is not appropriate to apply the similarity principle to these channels when their content is totally different and not at all similar to any of the existing channels classified under 11 specified genres.

Analysis

20. A window, for new pay channels to come in, has always been provided in the Tariff Orders, applicable for analogue cable TV systems, so that the avenues for growth and variety of content are not blocked. In a non-addressable regime, where consumers have no choice to take or reject a channel, it was also essential that the sanctity of the ceiling provided for in the first Tariff Order dated 15.1.2004 continues to be preserved and a mechanism for providing greater variety to subscribers by way of new pay channels through operators is put in place. The principal Tariff Order of 1.10.2004, accordingly, provided that new pay channels will be offered on a standalone basis either individually or as part of a new bouquet. In such a scenario the ceiling can be adjusted accordingly. The Tariff Order also provides that new channels will have rates similar to existing similar channels and the same principle applies for pricing of a channel which a broadcaster converts from FTA to pay. Similarly, if the number of pay channels provided are reduced, the ceilings are to be reduced accordingly.

21. 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.
22. The pricing mechanism on the similarity principle in no way requires that similar channels are to be priced equally. In fact, the channels can be priced anywhere within the range of prices of similar channels or below it, based on the business model of the concerned broadcaster and the uptake of the channel. Niche channels are primarily meant for targeted clients which, generally, constitute a relatively very small percentage of the total subscriber base of any particular MSO/cable operator. Since in non-addressable markets, subscribers do not have the wherewithal to choose specific channels on their own due to technological constraints, such channels, may not have any significant relevance in such markets.
23. As regards categorization of channels in the 11 specified genres, the prescribed provision merely brings the non-addressable systems in line with addressable systems; in the digital addressable cable TV systems (DAS), broadcasters are required to declare the genre of channel as one of the specified 11 genres.

Accordingly, suitable provisions have been prescribed in this Tariff Order.

Manner of offering of channels

a) A-la-carte offering of channels at the wholesale level

24. The issue of mandatory offering of channels on a-la-carte basis at the wholesale level was discussed during the consultation exercise 2009-10, and, a provision to keep it optional for broadcasters was proposed in the draft Tariff Order, forming part of the Report submitted to the Hon'ble Supreme Court. Considerable time has elapsed since formulation of the said draft Tariff Order. In the intervening period, the a-la-carte offering of channels by broadcasters, in the non-addressable areas at the wholesale level, has been mandatory. The system has already stabilized and is working on the ground, without any major issues reported. Moreover, most major broadcasters are themselves moving towards offering their channels, exclusively, on a-la-carte basis.

Further, with progressive penetration of digitization, mandatory a-la-carte offering is going to be the road ahead. Considering these factors, the Authority, in the draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014, proposed mandatory a-la-carte channel offering at the wholesale level. They may, in addition to a-la-carte offerings, offer bouquet of channels. However, as per the current practice, it was also proposed that the twin conditions, prescribing the relationship of rates of channels offered on a-la-carte basis vis a vis bouquet rates, should continue to apply. This is to ensure that the a-la-carte rates are not pegged at high levels compared to the bouquet rates, thereby making the a-la-carte rates illusory for the MSOs/cable operators.

Stakeholder comments

25. In response to the draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014, MSOs and cable operator associations have supported the mandatory a-la-carte offering of channels at the wholesale level. Broadcasters, in general, are not in favour of the same. Broadcasters have stated that neither is the a-la-carte offering at the retail level technologically feasible nor do the MSOs represent subscribers' choice; so, this should not be mandated at the wholesale level. Some broadcasters have also stated that the conditions prescribing the relationship between bouquet and a-la-carte rates are unreasonable and unjustified. They have, however, not explained the basis for their statement.

Analysis

26. In non-addressable systems, it is not technologically possible for consumers to subscribe channels on a-la-carte basis. However, in the non-addressable cable TV segment, MSOs/cable operators generally have region-specific areas of operation and have a reasonable idea about preferences of subscribers, with regard to channels. Therefore, MSOs/cable operators should have the flexibility to choose channels which are relevant to its area of operations. For example, for an MSO/cable operator serving an area of a particular linguistic majority, say Tamil, the channels of other languages, say Bengali, may be of little relevance. In case the MSO/cable operator does not have the flexibility to choose channels as per its requirements, it may have to subscribe to channels, as part of bouquets offered by broadcasters, which do not have any relevance to its subscribers. This requires an unnecessary cost burden on the MSO/cable operators which they will have to ultimately pass on to their subscribers for viability of business operations. Thus, subscribers will have to unnecessarily pay for channels which they would not voluntarily subscribe to.
27. In view of the discussion above, the Authority is of the view that broadcasters be mandated to offer their channels on an a-la-carte basis.

b) Mechanism for pricing of bouquets to take into account conversion of a channel from FTA to pay or vice versa and discontinuation of a pay channel, forming a part of the bouquet

28. In case, a broadcaster converts a pay channel, forming part of one or more bouquets, into an FTA channel or vice versa or discontinues (i.e. ceases to make available) a pay channel, then a mechanism has been prescribed for a change in the composition/pricing of the bouquet so affected. The mechanism prescribes that when a pay channel, forming a part of a bouquet, is converted to an FTA channel or is discontinued, then the rate of such a bouquet offered by the broadcaster will be reduced by an amount equal to the ascribed value [=bouquet rate x (a-la-carte rate of such channel/sum of a-la-carte rate of all the pay channels comprised in the said bouquet)] of such channel in the bouquet i.e. by an amount which the a-la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet. And, when an FTA channel forming a part of a bouquet is converted into a pay channel then the mechanism specifies that the said bouquet is to be offered by the broadcaster at the same rate excluding such channel.

c) Relationship between a-la-carte and bouquet rates ('twin conditions')

29. TRAI had, in its Tariff Orders of 21st Nov. 2006, for commercial subscribers in CAS and non-CAS areas, made a provision wherein twin conditions were defined to establish a relationship between the a-la-carte rate of a channel and the rate of the bouquet wherein this channel forms a part. These conditions were also introduced in the Tariff Order applicable for analogue cable TV systems in the year 2007. The conditions were introduced to ensure that an MSO/cable operator is not compelled to subscribe to a bouquet(s) depriving him of the right to choose channels on an a-la-carte basis as per his requirements (please refer to para 26 above). Such a situation may arise, if the a-la-carte prices are kept unreasonably high without any linkage to the bouquet price of which such channel forms a part. In sum, these conditions at the wholesale level allow an MSO/cable operator to effectively exercise his choice through rational pricing of channels in a-la-carte *vis-a-vis* bouquet pricing. This, in a way, ensures that the individual channel choice is not rendered illusory.
30. Moreover, these conditions have been in force for the last 7 years and are being complied by the broadcasters. The Authority is of the view that these conditions should continue to apply to ensure that the a-la-carte rates are not placed too high with respect to the bouquet rates, thereby making the a-la-carte rates illusory for the MSOs/cable operators.

d) Mandatory Offering of pre-2007 bouquet

31. Till 2007, the a-la-carte offering of channels was not mandatory and the offering from broadcasters were primarily in the form of bouquets. In 2007, for the first time, a-la-carte offering of channels by broadcasters as well as compliance to the 'twin conditions' were mandated. Thus, the a-la-carte prices of channels have been basically derived from the pre-2007 bouquets. In a way, the pre-2007 bouquets act as a reference point for a-la-carte pricing of channels and pricing of bouquets that were offered subsequently have also evolved around this reference. Thereafter, the principle for regulation of prices of channels/bouquets has remained the same. Moreover, pre-2007 bouquets have been mandated since then and are being offered by broadcasters. Although, some broadcasters do not support the mandatory offering of pre-2007 bouquets, the Authority is of the view that pre-2007 bouquets be continued to be offered by the broadcasters.
32. A mechanism (please refer to Annexure I) has also been provided (as prescribed earlier in the Tenth Amendment to the principal Tariff Order) for reconfiguration of such bouquets, if, it is required due to the regulatory prescriptions in the Telecommunication (Broadcasting and Cable Services) Interconnection (Seventh Amendment) Regulation, 2014 dated 10.2.2014.
33. Accordingly, provisions governing the wholesale tariff have been incorporated in this Tariff Order.

Reporting requirements

34. Certain reporting requirements for broadcasters were proposed in the draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014. As per these reporting requirements, broadcasters were required to provide details of channels such as genre and rate, and inform, in advance, about the introduction of any new pay channel, conversion of an existing FTA channel into pay channel or vice-versa, and change in composition of bouquets etc. It was also proposed that a broadcaster shall make available such information on its website apart from informing the Authority.

Stakeholder Comments

35. Several broadcasters have stated that the information pertaining to advertisement revenue and revenue share arrangement between owners of channels in the bouquet is commercially sensitive whereas the same has been mandated to be published on the website of the broadcaster. They have also questioned the relevance of such information to the Authority. On the change in timelines for reporting to the Authority, broadcasters have suggested that the earlier prescribed timelines should be retained.

Analysis

36. The information pertaining to advertisement revenue and revenue share arrangement between owners of channels in the bouquet is important in analyzing various issues that come up before the Authority from time to time as well as while framing different regulations and tariff orders. Therefore, the Authority is of the view that the information is required to be filed with the Authority. However, taking note of the concerns of the broadcasters, the Authority feels that the said information need not be published by the broadcasters on their websites.
37. The Authority is of the view that information regarding introduction, conversion, discontinuation, change in genre etc., if available well in advance will enable the Authority to be in a better position to take care of anomalies, if any. Moreover, to bring in uniformity in the timelines prescribed in other regulations/tariff orders for such changes these timelines need to be revised. Accordingly, suitable provisions have been made in this Tariff Order.

Billing

38. In the draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014, provisions related to billing to consumers were proposed. The said provisions were on similar lines as those prescribed in the existing Tariff Order applicable for cable TV services offered through non-addressable (analogue) cable TV systems.
39. Stakeholders who have offered their views on the aspect of billing, have supported the issue of bills and receipts to consumers. An MSO has stated that it is not advisable to issue an itemized bill in non-addressable systems.
40. The Authority is of the view that the issue of a bill to subscribers for dues as well as acknowledgement for payment made by the subscriber should be mandatory for the MSOs and cable operators, as the case may be. Bills should have all the relevant details such as number of pay and FTA channels offered, applicable taxes etc. The first bill should also have the list of channels provided and, subsequently, whenever there is any change in the channels provided. Accordingly, suitable provisions have been made in this Tariff Order.

Tariff for cable TV services offered through Digital Addressable Cable TV Systems (DAS), before the cut-off dates notified for implementation of DAS

41. The draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014, contained an explanation, (in the provisions on tariff at retail and wholesale levels) to clarify that if an operator offers cable TV services in an area through DAS prior to the cut-off dates for implementation of DAS as notified by the Central Government, then the tariff in such cases shall be governed by the Tariff Order applicable to addressable systems.

Stakeholder comments

42. All the stakeholders who have offered their views on this issue are agreement with the proposal. However, broadcasters have stated that operators should be fully compliant with the DAS regulatory requirements in order to be governed by the Tariff Order applicable for addressable systems.

Analysis

43. The Authority is of the view that the way forward in the broadcasting and cable TV sectors is implementation of addressable digitization. Therefore, if a service provider offers cable TV services using digital addressable systems, before sunset date of the analogue systems in the concerned area, as notified by the Central Government, the regulatory prescription should facilitate and incentivise such efforts. In this regard, in the report submitted to the Hon'ble Supreme Court, the Authority had stated that the Tariff Order applicable for addressable systems will apply progressively in the cable TV networks as they switch over to DAS. This aspect has been explicitly clarified in the Tariff Order.
44. Before offering digital addressable cable TV services, the service provider shall have to get registered and establish the digital addressable Cable TV system as prescribed in the Cable Television Networks (Regulation) Act, 1995 and the rules made thereunder. The Authority is of the view that, for such service providers, the regulatory prescriptions relating not only to the tariff but also to interconnection, QoS etc. shall be the same as those applicable to Cable TV services offered in DAS.

Revenue share between MSO and cable operator

45. In the draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014, it was proposed that revenue share between an MSO and a cable operator should be decided through mutual negotiations. In response to this proposal in the draft, two cable operator associations have stated that the revenue share should be such that it enables a

cable operator's business to survive whereas another cable operator association and a national MSO have supported the proposal for revenue share to be decided on mutual negotiation basis.

46. Presently, in the non-addressable areas, MSOs and cable operators have mutually negotiated business arrangements. The Authority is of the view that mutually negotiated arrangements be continued between MSOs and cable operators to determine the revenue share amongst them.

Definitions of 'addressable system' and 'Authority' in the Tariff Order

47. Amongst others, the definitions of 'addressable system' and 'Authority' were inserted in the principal Tariff Order vide Eight Amendment to the said Tariff Order. These two definitions are an integral part of the Tariff Order. Also other definitions are already there in the principal Tariff Order. Hence, these two definitions have been incorporated in the Tariff Order.

Maintenance of records by Broadcasters, MSO and Cable operators

48. Maintenance of records relating to, amongst others, the number of FTA and channels pay channels, date and amount of increase in charges of these channels, etc. are incidental to the operation of the Tariff Order. Therefore, to maintain such records, appropriate provisions have been made in the Tariff Order for broadcasters, MSOs and cable operators.
49. Certain provisions which were included/amended in the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) in the intervening period (between the time the draft Tariff Order was submitted to the Hon'ble Supreme Court on 21st July 2010 as part of the report submitted to it and draft Tariff Order, uploaded on TRAI's website on 1st Dec. 2014) have also been made part of this Tariff Order. These provisions were included/amended following separate consultation processes. These provisions include, certain provisions relating to commercial subscribers, manner of reconfiguration of bouquets offered by broadcasters, etc.
50. Besides the issues discussed above, stakeholders have raised several other issues such as those related to carriage fee, placement fee, levy of financial disincentive on non-compliant service providers, enforcement of quality of service norms, issues pertaining interconnection regulations etc. Such issues have not been discussed as they are not a part of this Tariff Order.

Illustration of Reconfiguration of Bouquets

If there is a bouquet, comprising of 10 channels of 3 broadcasters as per the following details.

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 1	Broadcaster A	Pay	2	30 (Sum of a-la-carte rates = 45)
Channel 2	Broadcaster B	Pay	5	
Channel 3		FTA	0	
Channel 4		Pay	7	
Channel 5		Pay	3	
Channel 6	Broadcaster C	Pay	5	
Channel 7		Pay	9	
Channel 8		Pay	7	
Channel 9		Pay	4	
Channel 10		Pay	3	

After the reconfiguration the bouquets to be offered by the individual broadcasters shall be as under:

Broadcaster B shall offer the bouquet as per the following details

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 2	Broadcaster B	Pay	5	10 (=30 *15 / 45)
Channel 3		FTA	0	
Channel 4		Pay	7	
Channel 5		Pay	3	
		Sum of a-la-carte rates	15	

Broadcaster C shall offer the bouquet as per the following details:

Name of the channel	Name of Broadcaster	Type of channel (Pay / FTA)	A-la-carte rate	Bouquet Rate
			Rs.	Rs.
Channel 6	Broadcaster C	Pay	5	18.67 (=30 *28 / 45)
Channel 7		Pay	9	
Channel 8		Pay	7	
Channel 9		Pay	4	
Channel 10		Pay	3	
		Sum of a-la-carte rates	28	

While the Broadcaster A can offer channel 1 at a-la-carte rate of Rs. 2.”