

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, 7th March 2006

No.1-2/2006 –B & CS – In exercise of the powers conferred upon it under sub-section (2) and Paragraphs (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 read with the Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No. 13-1/2004-Restg by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, hereby makes the following Order:

1. Short title, extent and commencement:

- i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006)”
- ii) This Order shall apply throughout the territory of India.
- iii) This Order shall come into force on the date of its publication in the Official Gazette

2. (i) In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), under clause 2 after the existing sub-clause (d) and the entry relating thereto, the following sub clauses and the entry relating thereto shall be inserted as sub-clauses (dd) and (ddd), respectively, namely:-

“(dd) ‘Ordinary cable subscriber’ means any person who receives broadcasting service from a cable operator and uses the same for his/her domestic purposes.

(ddd) ‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place.

Explanatory note

The distinction between an ordinary cable subscriber and a commercial cable subscriber is in terms of the difference in the use to which such signals are put. The former would use it for his/her own use or the use of his/her family, guests etc. while the latter would over commercial and other establishments like hotels, restaurants, clubs, guest houses etc. which use the signals for the benefit of their customers, clients, members or other permitted visitors to the establishment. “

(ii) In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), under clause 2 the following shall be substituted for the existing clause (f)

“(f) ‘Charges’ means

(i) for all others except commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26th December 2003. The principle applicable in the written/oral agreement prevalent on 26th December 2003, should be applied for determining the scope of the term “rates”

(ii) for commercial cable subscribers, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 1st March 2006. The principle applicable in the written/oral agreement prevalent on 1st March 2006, should be applied for determining the scope of the term “rates”

3. In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, (6 of 2004), the existing sub- clause (a) and the entries relating thereto shall be substituted with the following: -

“(a) Ordinary cable subscribers to cable operator.”

4. In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004, (6 of 2004), after the existing clause 3 and the entries relating thereto, the following clause and the entries relating thereto shall be inserted as clause 3A: -

“3A: the charges, excluding taxes, payable by commercial cable subscribers to cable operators, Multi system Operators or Broadcasters as the case may be, prevalent as on 1st March 2006 shall be the ceiling with respect to both free to air and pay channels.

Provided that if any new pay channel(s) that is/are introduced after 1-3-2006 or any channel(s) that was/were free to air channel on 1-3-2006 is/are converted to pay channel(s) subsequently, then the ceiling referred to as above can be exceeded, but only if the new channel(s) are provided on a stand alone basis, either individually or as part of new, separate bouquet(s) and the new channel(s) is/are not included in the bouquet being provided on 1-3-2006 by a particular broadcaster. The extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels. For the new pay channel(s) as well as the channel(s) that were free to air as on 1-3-2006 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels as on 1-3-2006.

Provided further that in case a broadcaster or multi system operator or a cable operator reduces the number of pay channels that were being shown on 1-3-2006, the ceiling charge shall be reduced taking into account the rates of similar channels as on 1-3-2006.”

5. Explanatory Memorandum:

This Order contains as Explanatory Memorandum attached as Annex A.

By Order

Rakesh Kacker

ACTING SECRETARY-CUM ADVISOR(B&CS)

Explanatory Memorandum

A batch of petitions was filed by a couple of Associations of Hotels and Restaurants against leading broadcasters in Telecom Disputes Settlement and Appellate Tribunal. The dispute basically pertained to the fact whether the hotels and restaurants can be equated with domestic consumers for the provision of cable TV service and there were also other connected and consequential issues under adjudication. The Hon'ble TDSAT while adjudicating on the issues of dispute in its judgment dated 17th January, 2006 in Petition No. 32(C) of 2005 (M.A.No.84 of 2005) and Petition No.80(C) of 2005 (M.A.No.239 of 2005) in the light of the provisions of Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) had observed interalia as under:

“36.We have already concluded that the members of the petitioner associations cannot be regarded as subscribers or consumers. As such we are of the view that the above tariff notification of the TRAI would not be applicable. It seems that TRAI has found it necessary to fix the tariff for domestic purpose. We think the Regulator should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring about greater degree of clarity and to avoid any conflicts and disputes arising in this regard.

37. In view of the above, we are of the opinion that the respondents are well within their rights to demand members of the petitioner associations to enter into agreements with them or their representatives for receipt of signals for actual use of their guests or clients on reasonable terms and conditions and in accordance with the regulations framed in this regard by TRAI”

2. TRAI had also received a representation from the Federation of Hotel and Restaurant Associations of India (FHRAI) in which they had interalia requested:

- i) TRAI to fix Tariffs for hotels as per normal procedure (i.e) after giving appropriate opportunity to the affected persons including hotels and restaurants to represent against the proposed Tariffs.

- ii) TRAI to issue a restraining order on the broadcasters stating that they (broadcasters) may not charge arbitrary rates fixed for hotels and restaurants till the regulations are framed by TRAI.

3. The Authority considered the observations made by the Hon'ble TDSAT and the representation of FHRAI in the context of the judgment of the Hon'ble Tribunal. The issue of need or otherwise to fix tariff for commercial purpose and the method and manner of fixing specific commercial tariff are connected issues and needs a detailed consultation and examination. The Authority is considering the course of action on this separately.

4. In the meanwhile keeping in view the observations of Hon'ble TDSAT and the representation of FHRAI, the Authority has considered appropriate, in the interim, to extend the protection of ceiling to the commercial consumers as well. This protection in respect of Commercial Cable Subscriber will however be available at the level of the rates prevailing on 1st March 2006 unlike in the case of non-commercial consumer. To give effect to this, the words Ordinary Cable Subscriber, Commercial Cable Subscriber has been defined and the definition of 'charges' has been amended and new clause to give effect to the relevant date for determining the ceiling in respect of commercial cable subscriber has been introduced.

5. The proposed amendment is intended to be a short-term measure and would be reviewed on the basis of detailed examination as indicated in para 3.
