

## TELECOM REGULATORY AUTHORITY OF INDIA

### NOTIFICATION

New Delhi, 24<sup>th</sup> 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 read with section 36 of the Telecom Regulatory Authority of India Act, 1997 and 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 (Fifth Amendment) Order 2006, (4 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. In the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), read with the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006) after the existing 2<sup>nd</sup> proviso below clause 3A and the entries relating thereto, the following explanation and the entries relating thereto shall be added:

“Explanation1: For the purpose of clause 3A above the question whether commercial cable subscriber will pay the cable operator/MSO/the broadcaster will be determined by the terms of agreement(s) between broadcasters, MSO(s), Cable Operator(s) or between Broadcaster(s) and the Commercial Cable Subscriber(s) or between MSO / Cable Operator

who have been authorized to provide signals to the Commercial Cable subscriber(s), on the one hand, and Commercial Cable Subscriber(s), on the other, as the case may be”

3. Explanatory Memorandum:

This Order contains as Explanatory Memorandum attached as **Annex- A**.

By Order

(Rakesh Kacker)

Advisor (B&CS)

## Annex A

### Explanatory Memorandum

TRAI had in pursuance of the observations of Hon'ble TDSAT and the representation of FHRAI, considered appropriate, in the interim, to extend the protection of ceiling to the commercial consumers as well. Accordingly, the Authority issued a Tariff Amendment Order (Fourth Amendment Order) on 7.3.2006. This protection in respect of Commercial Cable Subscriber was however to be available at the level of the rates prevailing on 1<sup>st</sup> March 2006 unlike in the case of non-commercial consumer. The proposed amendment it was indicated to be a short-term measure and was to be reviewed on the basis of detailed examination.

2. As a part of initial step towards detailed examination a process of seeking inputs from groups representing hotels and broadcasters was initiated. During this process the group of broadcasters made a representation in which it was pointed out inter alia as under:

" .....The Order (*Tariff Amendment Order dated 7.3.2006*) has in effect nullified / reversed the order (*TDSAT order*) dated 17.1.2006. (emphasis in italics added). TDSAT recognized that the services to the hotels should be only through authorized means. A vast majority of the Hotels and Commercial establishments who obtain service through cable operators without requisite authorization from the broadcasters. In our view, the current arrangements through which Hotels and Commercial Establishments obtain supply is tantamount to piracy of signals. There is a clear danger that Hotels /commercial Establishments shall misuse the TRAI Tariff Order to legitimize the present unauthorized arrangements. A hotel or a commercial establishment needs to obtain a license from the respective broadcaster to receive and exhibit the service. However, clause 4 3(A) is being exploited by the Hotels to continuously receive service and exhibit the services without a valid license and in an unauthorized manner...."

3. The spirit and intention behind the provision of extending the protection of ceiling to commercial cable consumers through the Tariff Amendment Order of 7.3.2006 was to cover those commercial cable subscribers who are provided television signals by those who are authorized to provide signals by virtue of agreements either written or oral. The intention of the amendment order is not to promote illegal provision of broadcasting services.

4. Hon' ble TDSAT in its judgment of 17.1.2206 has also recognized this in para 37 of the judgment wherein it has been indicated

".....Therefore, we leave upon the Respondents to proceed against the petitioners association and its members for recovery of legitimate amount due to them for receipt of signals by the members of petitioners associations. If the members of the petitioners association have paid the subscription to the authorized agent/distributor/MSO of the respondent broadcasters, then that will be treated as legitimate payment but wherever such subscription has been paid to unauthorized distributor or MSO or Cable operators it will be open to the respondent broadcasters to raise demands from the members of petitioners association....."

5. With a view to bring clarity to interpretation it has been decided to add an explanation below the existing 2<sup>nd</sup> Proviso to the newly added clause.