

Consultation on the draft Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Amendment) Order, 2015

Written comments on the draft Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Amendment) Order, 2015 are invited from the stakeholders by 14th October, 2015. Counter-comments, if any, may be submitted by 21st October, 2015. The comments and counter-comments may be sent, preferably in electronic form to Mr. Sanjeet Singh, Advisor (B&CS), Telecom Regulatory Authority of India, on the e-mail: sanjeet.singh@traigov.in or vk.agarwal@traigov.in. For any clarification/ information, Mr. Sanjeet Singh, Advisor (B&CS) may be contacted at Tel. No.: +91-11-23220020, Fax: +91-11-23221998. Comments and counter-comments will be posted on TRAI's website www.traigov.in.

TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the -- September, 2015

THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (FOURTH)
(ADDRESSABLE SYSTEMS) TARIFF (----- AMENDMENT) ORDER, 2015

(No. – of 2015)

F. No. 1-9/2012- B&CS. ----- In exercise of powers conferred by sub-clauses (ii), (iii), (iv) and (v) 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 (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), namely:-

1. (1) This Order may be called the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (---- Amendment) Order, 2015.

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

2. In clause 3 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010), after sub-clause (zb), the following sub-clauses shall be inserted, namely:----

“(zba) “RIO” means a Reference Interconnect Offer published by a service provider specifying terms and conditions on which other service providers may seek interconnection from the service provider making the offer;

(zbb) “RIO rate” means the rate specified by the service provider in its Reference Interconnect Offer;”

3. In sub clause (1) of clause 6 of the principal Tariff Order,---

(i) for the second proviso , the following proviso shall be substituted , namely:-----

“Provided further that subject to the provisions of the Standards of Quality of Service (Digital Addressable Cable TV Systems) Regulations, 2012 (12 of 2012) and the Direct to Home Broadcasting Services (Standards of Quality of Service and Redressal of Grievances) Regulations, 2007 (8 of 2007), if a multi-system operator or direct to home operator or internet protocol service provider or HITs operator providing broadcasting services or cable service to its subscribers, using a digital addressable system, offers pay channels or pay channels and FTA channels as part of a bouquet, the a-la-carte rate of such pay channels forming part of a bouquet and the rate of such bouquet shall be subject to the following conditions, namely:

(a) the a-la-carte rate of a pay channel forming part of a bouquet shall not exceed two times its RIO rate offered by the broadcaster for addressable systems; and

(b) sum of a-la-carte rates of all the channels in the bouquet shall not exceed three times the bouquet rate.

Explanation: The a-la-carte rates of all the channels offered by the service provider shall be same for all the bouquet of channels formed by the service provider and the rates of each such bouquet must satisfy the conditions specified under clause (a) and clause (b) of this proviso.

(ii) the third proviso shall be deleted;”

(Sudhir Gupta)
Secretary, TRAI

Note 1.----- Telecommunication (Broadcasting and Cable) Services (Fourth)(Addressable Systems) Tariff Order, 2010 (1 of 2010) was published vide notification No.11-14/2009-B&CS dated the 21st July 2010, and subsequently amended vide notifications No. 1-9/2012-B&CS dated the 30th April 2012, No.1-9/2012-B&CS dated the 20th September 2013, No. 1-9/2012 - B&CS dated the 10th February, 2014, No. 1- 19/2014 - B&CS dated 18th July, 2014 and No. 1-42/2015 - B&CS dated 8th September, 2015 respectively.

Note 2.-----The Explanatory Memorandum at Appendix A to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (----- Amendment) Order, 2015 (-- of 2015).

Explanatory Memorandum

1. Regulation of broadcasting and cable TV services was entrusted to the Telecom Regulatory Authority of India (hereinafter referred to as the Authority) in 2004. Since then, the Authority has taken a number of initiatives for regulating the sector in exercise of both its recommendatory and regulatory powers vested with it as per the TRAI Act, 1997. In order to regulate the tariff for the broadcasting and cable TV services sector, TRAI has been issuing tariff orders for applicable tariffs to various stakeholders in the TV sector consisting of the broadcasters, distribution platform operators like LCOs/MSOs/DTH/IPTV/HITS Operators and TV subscribers.
2. TRAI issued the first tariff order for cable TV services on 15th January 2004. A ceiling for charges payable by a cable subscriber to the cable operator, a cable operator to a MSO/broadcaster and a MSO to a broadcaster was specified as the charges prevalent as on 26th December, 2003. In the case of retail tariffs charged by MSOs/LCOs from subscribers, ceilings were based on the number of channels received, as well as the types of habitations (i.e., cities, towns, semi-urban areas, etc.).
3. As per the practice prevailing at that time, the broadcasters used to provide their channels to MSOs/LCOs in a bouquet form by resorting to perverse pricing of bouquets vis-à-vis individual channels. The bouquets were sometimes formed so as to contain only one or two popular channels, while rest of the channels in the bouquet may not be value for money to the MSOs, LCOs and subscribers. The MSOs and LCOs were forced to then take the entire bouquet as otherwise they were denied the popular channels altogether. The cost of these unwanted channels was usually

passed on by the MSOs/LCOs to the consumers. To address this issue, TRAI in its tariff order dated 4th October 2007, mandated the broadcasters to provide their channels on a-la-carte basis to the MSOs/LCOs as per their request. In addition, broadcasters were also permitted to provide channels on bouquet basis. However, in order to ensure that an effective a-la-carte choice was available to MSOs/LCOs without being handicapped by perverse pricing of bouquets, the Authority also mandated a relationship, in the form of 'Twin Conditions', between a-la-carte rates of TV channels forming part of bouquet and bouquet rates provided by the broadcasters.

4. In order to provide benefits of the Digital Addressable Systems (DAS) to the consumers, TRAI in its Tariff Order dated 21st July 2010 mandated MSOs/DTH/IPTV/HITS operators (herein after referred to as platform operators) to offer all the pay TV channels on a-la-carte basis. In addition to this, platform operators were also permitted to offer bouquets or a combination thereof. While prescribing a mandatory a-la-carte offering of pay TV channels, the Authority had initially decided to adopt a light touch approach. It therefore did not mandate any conditions on pricing of the a-la-carte channels vis-à-vis the pricing of bouquets of which these channels formed a part.
5. Subsequently, on examining the prevalent market conditions, it was observed that though the platform operators were allowed to package and price the offerings as bouquets in addition to offering them on a-la-carte basis, the uptake of channels on a-la-carte basis remained negligible as compared to the bouquet subscriptions. Analysis yielded that the prime reason for such poor uptake of a-la-carte channels was that the a-la-carte rates of channels were disproportionately high as compared to the bouquet rates and further, there was no dynamic relationship between these two rates. It was also observed that many popular channels were distributed among different bouquets or packs compelling a consumer to

subscribe to more than one pack to be able to view all his desired channels, as the a-la-carte rates of channels were exorbitantly high. Thus a subscriber, under such circumstances, in order to view his desired channels, was ultimately paying more on this account. Consequently, the very purpose of addressability was defeated.

6. As per data available with TRAI, it was observed that a platform operator offered a bouquet, containing pay channels, at Rs. 290/-, while the sum of a-la-carte rates of pay channels constituting this bouquet was Rs. 1605/-. Therefore the bouquet was being offered by the platform operator at a discount of 82% to the sum of a-la-carte rates of pay channels constituting that bouquet. This indicated that a-la-carte rates of pay channels constituting the bouquet were exorbitantly high. As a result, while technically, a-la-carte rates of channels were declared, these were illusive and customers were left with no choice but to opt for bouquets. To enable consumer choice through a-la-carte offering and also prevent skewed a-la-carte and bouquet pricing, TRAI, in its Tariff (Amendment) Order dated 30th April 2012, extended the 'Twin Conditions' to the retail level pricing also. The intent while prescribing the 'Twin Conditions' was basically to link the a-la-carte rates of channels to the bouquet rates, so that whenever the bouquet rates are reduced, the a-la-carte rates of channels are also proportionately reduced in order to ensure effective choice to the consumer in the form of a-la-carte rates of channels. The Authority was conscious that while doing so, ingenuity and flexibility should be allowed to the platform operators with regard to pricing and packaging their offerings at the retail level. The tariff order also extended the mandate of offering the TV channels at retail level, on a-la-carte basis to FTA channels also.
7. In the Tariff (Amendment) Order dated 30th April 2012, a flat average value of the pay channels in the bouquet was used for computation of the ceiling of a-la-carte rate of each pay channel. DTH Operators Association

and Multi-System Operators had raised certain apprehensions regarding implementation of the 'Twin Conditions' at retail level. It was contended that the use of a flat average value restricted the flexibility of a platform operator to fix the a-la-carte rates of channels based on its business model and the channel costs. The DTH Operators Association submitted that under this dispensation the ceiling derived from the flat average rate of a pay channel in the bouquet, at times, may work out to be considerably low due to the large size of the bouquet and presence of a large number of FTA channels in the bouquet. This, according to them placed abnormally low ceilings for a-la-carte rate of certain pay channels. In order to address this issue, TRAI, in the Tariff (Amendment) Order dated 20th September 2013, introduced new 'Twin Conditions', wherein the ceiling for the a-la-carte rate of pay channel was linked to the 'ascribed' value of a channel instead of the earlier prescribed flat average value of the channel in the bouquet. The ascribed value of a channel in a bouquet is essentially its a-la-carte rate, rationalized with respect to the overall bouquet rate. The ceiling on the a-la-carte rates for pay channels could therefore be arrived at in a more rational manner and allowed flexibility to operators to package channels as per their business plans, while ensuring that the a-la-carte prices were not rendered illusory for the consumers.

8. Some platform operators have raised the following concerns regarding implementation of new 'Twin conditions' at the retail level prescribed by TRAI in the Tariff (Amendment) Order dated 20th September 2013:-
 - (i) The formula for deriving ascribed value is too complicated and is difficult to implement at the ground level.
 - (ii) It will force the operators to offer channels below the RIO rates. A-la-carte is stipulated by the DTH operator and it cannot be below its cost.
 - (iii) Since a channel may be placed in more than one bouquet and

it may be added or deleted from the bouquet frequently, therefore, ascribing a value to pay channel would lead to the frequent changes in the bouquet prices/a-la-carte prices.

- (iv) If a DTH operator offers any discount under any scheme, such discounted rate would be applicable while calculating the a-la-carte rate.
- (v) The tariff order will take away all the flexibility of DTH operator with respect to the packaging of the channels. The addressable platforms would be forced to package the channels in such a manner where the package has less number of pay channels, less number of FTA channels with increase in the price of the package.
- (vi) The ascribed value of channel can be changed by the DTH operator by increasing the rate of the bouquet; or by reducing the number of pay channels without changing the rate of the bouquet; or by reducing the number of FTA channels without changing the rate of bouquet. This would make bouquets to be more expensive.
- (vii) DTH operators get the channels from the broadcasters on 3 different terms – (i) RIO basis (ii)CPS basis and (iii)Fixed fee basis. If DTH operators offer the channels on a-la-carte basis, the DTH operators would not get the channels on Fixed fee/CPS basis from the broadcaster. Accordingly, the rate of the channels will have to be linked with the RIO rates of the broadcaster since the same would be the input cost of the DTH operator and not with the bouquet rates of the DTH operators and it would become irrelevant while offering on a-la-carte basis.

9. An appeal had been filed against the 'Twin Conditions', prescribed by TRAI in the Tariff (Amendment) Order dated 20th September 2013, before the Hon'ble TDSAT vide 19(C) of 2013 by M/s Dish TV India Ltd and

Others.

10. During the course of hearing various issues were raised. Some of them are as follows:-

- (i) The formula is too complicated to be understood easily by the general public and the judiciary.
- (ii) In case few channels are added to the bouquet, then the ascribed value for an existing channel in the bouquet changes. How is the workability of this situation envisaged?
- (iii) In case few channels are dropped from the bouquet, then the ascribed value for an existing channel in the bouquet changes. How is the workability of this situation envisaged?

11. During the course of hearing, TRAI made submissions before the Hon'ble TDSAT that the Authority is willing to consider the appellant's grievances against the impugned tariff order. It was further submitted that the Authority may invite comments and suggestions from other stakeholders as well and will take a final view on the matter after consideration of all the materials brought to its notice. Subsequently, the Hon'ble TDSAT disposed off the set of appeals vide its order dated 13th July, 2015 stating that the Authority will take the final decision on the matter within four months from the date of order.

12. The intention of the Authority while prescribing these 'Twin Conditions', has been to ensure availability of an effective choice to the consumers allowing them to subscribe to their desired channels on an a-la-carte basis at reasonable price, without taking away any flexibility on the part of the platform operators, to price the channels individually and as a bouquet in a manner to suit their business plans. This is sought to be achieved by ensuring that there exists a relationship between the a-la-carte rates of each channel and the bouquet(s) formed by combining

these channels offered by the broadcaster.

13. The Authority while eager to ensure reasonable a-la-carte rates of channels to consumers, does not want to impinge upon the freedom of platform operators in deciding the a-la-carte rates and bouquet rates for its consumers. Therefore, a relationship has been proposed between the a-la-carte rates of pay channels in the bouquet and the total price of the bouquet. The relationship prescribes that for a given set of a-la-carte rates, the bouquet rates are not reduced beyond a limit. Here it is necessary to clarify that the freedom of pricing the bouquet(s) rests with platform operators in totality. However, it is expected that when bouquet rates are reduced drastically, similar proportionate reduction is also given in the a-la-carte rates of channels forming the bouquet, so that consumers continue to have a meaningful choice in selecting channels on a-la-carte rates and such rates do not become illusory.
14. It is also proposed that each platform operator will be required to publish a-la-carte rates of all the pay and FTA channels provided on its platform. Such a-la-carte rates will be valid for that platform operator across all the bouquets offered by him. Bouquet rates will have to fulfill twin conditions based on published a-la-carte rates of channels.
15. The Authority has carefully considered the maximum discount which can be permitted to be provided by the platform operators while forming the bouquets considering the sum of a-la-carte rates of channels constituting the bouquet, keeping in view the operational flexibility required by platform operators and to protect the interests of consumers while subscribing to such channels on a-la-carte basis. The Authority is proposing that the platform operators can provide a discount up to 66.66% while forming the bouquet rate over the sum of a-la-carte rates of channels constituting the bouquet in order to preserve innovation, efficiency and ingenuity of the platform operators. Any discount of more

than 66.66% in forming the bouquet rates is bound to hurt the interests of consumers. Therefore, the Authority proposes that if a platform operator, while deciding the rate of a bouquet, consider it fit to provide a discount of more than 66.66% over the sum of a-la-carte rates of channels constituting such bouquet, then in such a situation a-la-carte rates of channels constituting the bouquet will need to be re-notified downwards in order to satisfy the twin conditions and to ensure that the a-la-carte rates of channels do not become illusory. In case, a platform operator reduces the a-la-carte rates of some channels to form a bouquet, the revised a-la-carte rates must be considered to satisfy the twin conditions in all such bouquets where such channels form part of the bouquet.

16. Since many stakeholders are of the view that deriving the ascribed value, prescribed in the Tariff (Amendment) Order dated 20th September 2013, is too complicated and difficult to implement on the ground, the Authority has proposed a simplified provisions in this draft tariff order which do away with the need to arrive at an 'ascribed value'. While doing so, the basic relationship between a-la-carte rates of pay channels in a bouquet and the bouquet rates has been retained.
17. These 'Twin Conditions' will seek to ensure that:
 - a. The platform operators retain the flexibility to devise and offer innovative and attractive packages/bouquets of channels by offering discounts over a-la-carte rates of channels forming the bouquet.
 - b. In the event that the platform operator seeks to offer even deeper discounts, it is at liberty to do so. The 'Twin Conditions', however, oblige the platform operator to extend a proportionate reduction in a-la-carte rates of the channels offered in the bouquet. Such reduction in the a-la-carte rates of channels shall be applicable across all bouquets.

Examples

1. Suppose, there are 10 pay channels (Ch-1 to Ch-10) available on the platform of the platform operator.

2. Suppose, the platform operator decides to offer 2 bouquets namely A and B having the following composition:-

(1) Bouquet A= Consisting of Ch-1+Ch-2+Ch-3+Ch-4+Ch-5 + 5 FTA channels [Total 10 channels]

Bouquet A rate = Rs. 15

(2) Bouquet B= Ch-5+Ch-6+Ch-7+Ch-8+Ch-9+Ch-10 + 7 FTA channels [Total 13 channels]

Bouquet B rate = Rs. 18

3. Suppose, the a-la-carte rate of the channels offered by the broadcaster to the platform operator at the wholesale level under RIO is as under:-

- Ch-1= Rs. 5/-
- Ch-2= Rs. 3/-
- Ch-3= Rs. 4/-
- Ch-4= Rs. 6/-
- Ch-5= Rs. 1/-
- Ch-6= Rs. 2/-
- Ch-7= Rs. 1/-
- Ch-8= Rs. 3/-
- Ch-9= Rs. 4/-
- Ch-10= Rs. 5/-

4. Then, as per the first condition, of the twin conditions, the platform operator cannot price the a-la-carte rate of pay channels forming part of the bouquet more than two times the rate of a-la-carte channels offered by the broadcaster as per its RIO. Therefore, as per this condition, suppose the platform operator decides that the a-la-carte rate of each of its pay channel

will be at the maximum ceiling prescribed in this condition i.e. two times of RIO rate, the declared a-la-carte rates will be as under:-

Sl. No.	Channel No.	Wholesale RIO Rate of the broadcaster (Broadcaster to platform operator)	A-la-carte rate of platform operator
1	Ch-1	5/-	10/-
2	Ch-2	3/-	6/-
3	Ch-3	4/-	8/-
4	Ch-4	6/-	12/-
5	Ch-5	1/-	2/-
6	Ch-6	2/-	4/-
7	Ch-7	1/-	2/-
8	Ch-8	3/-	6/-
9	Ch- 9	4/-	8/-
10	Ch-10	5/-	10/-

5. Let us assume that a-la-carte rate of each FTA channels is Rs. 2/-

6. (a) The sum of a-la-carte rates of channels in bouquets A

$$= 10+6+8+12+2+ (5 \times 2) = \text{Rs. } 48$$

$$3 \times \text{Bouquet A rate} = 3 \times \text{Rs. } 15 = \text{Rs. } 45$$

Bouquet A does not satisfy twin conditions.

(b) The sum of a-la-carte rates of channels in bouquets B

$$= 2+4+2+6+8+10+ (7 \times 2) = \text{Rs. } 46$$

$$3 \times \text{Bouquet B rate} = 3 \times \text{Rs. } 18 = \text{Rs. } 54$$

Bouquet B satisfies twin conditions.