

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

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 28th December, 2015

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

(No. 6 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 (Sixth Amendment) Order, 2015.

(2) It shall come into force from the 1st day of April 2016.

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 of TV channels 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 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 rate of a channel specified by the multi-system operator or direct to home operator or internet protocol service provider or HITs operator shall be valid across all the bouquets having such channel.

(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 (Sixth Amendment) Order, 2015 (6 of 2015).

Explanatory Memorandum

Background

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 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', vide tariff order dated

20.09.2013 between a-la-carte rates of TV channels forming part of bouquet and bouquet rates provided by the broadcasters:

- 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
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 big advantage of addressability to consumer to select the channels of the choice 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' prescribed at wholesale level 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 in 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 concerns regarding implementation of new 'Twin conditions' prescribing ascribed value to pay channels at the retail level 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 operators and general public.
 - (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?
 - (iv) How a-la-carte price of FTA channels have been taken as Rs.1/- in the TTO?
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. Accordingly, TRAI issued the draft Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Amendment) Order, 2015 on 30th September 2015 for consultation. Written comments on the draft Tariff (Amendment) Order were invited from stakeholders by 14th October, 2015 and counter-comments were to be submitted by 21st October, 2015. All the comments received were posted on the TRAI website. Subsequently, an Open House Discussion was held at New Delhi on 18th November, 2015. The views/comments of the stakeholders received and the analysis of the issues involved are

discussed in the paragraphs to follow.

Stakeholder comments

13. The DTH operators and MSOs have, in general, maintained that the prescription of 'twin conditions' is neither in the interest of the platform operators nor it is beneficial to the consumers. They have stated that, as compared to the bouquets currently offered by the operators, the implementation of 'twin conditions' would result in either reduction in the number of channels in the bouquet or a drastic hike in the bouquet rates.
14. It has been suggested by certain stakeholders that there is a need to regulate the RIO rates for channels offered by the broadcasters before regulating the a-la-carte price offered by platform operators to consumers. One stakeholder is of the view that if RIO rates are correctly priced by broadcasters then there would be no necessity for such tariff order as retail a-la-carte rates would become affordable to the consumer vis-a-vis the bouquet rate.
15. One of the stakeholders is of the view that the ceiling for a-la-carte rate of pay channels should be three times the wholesale RIO rate instead of two times proposed in the draft tariff order.
16. Some of the stakeholders stated that presently wholesale tariffs for HD channels are under forbearance and in the proposed draft tariff order HD channels are excluded from the applicability of the twin conditions. They further mentioned that if the twin conditions are applied to HD channels as well, then in order to ensure compliance to the proposed twin conditions, they will have to substantially increase the package costs.
17. Some of the stakeholders mentioned that if an operator has CPS/fixed fee agreements with a broadcaster then it has a mandate to offer maximum numbers of channels of that broadcaster in its entry package, which cannot be altered under the agreement. It is further stated that in case of implementation of proposed 'twin conditions' the operator will necessarily have to make small bouquets with less channels and cannot comply with the contractually committed packaging obligations agreed with the broadcasters.
18. Some stakeholders are of the view that there could be a scenario where

one regulation of TRAI would be in conflict with a prior regulation of TRAI intended to protect subscriber interests. They pointed out that Quality of Standards Regulation prohibits the operators to make any changes in the price or composition of subscribed channels during the first six months from the date of enrolment of the subscriber.

Analysis

19. 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 a reasonable price, without taking away any flexibility on the part of the platform operators to price the channels individually, or 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.
20. 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 prescribed a simplified provisions in this 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 established in twin conditions prescribing “ascribed value” and notified on 20th September, 2013 has been retained.
21. To elaborate on the criteria prescribed under the ‘twin conditions’, condition (a) provides a linkage between the a-la-carte rates of pay channels forming part of bouquet(s) at retail level, and the a-la carte rates of the channels offered by the broadcaster at the wholesale level (i.e. the RIO rate) for addressable systems. The linkage has been provided with an intention that the operator has a flexibility to package the channels as per his business plan while, at the same time, the restriction prescribed through the linkage (of two time the a-la-carte rate at wholesale applicable for addressable platforms) ensures that the a-la-carte prices are not rendered illusory to the consumers.
22. The criterion described in condition (b) provides, a linkage between the sum of a-la-carte rates of pay channels and bouquet rates at retail level ensuring that the a-la-carte rates of a channels are not illusory vis-à-vis

bouquet rates. The condition has been prescribed to ensure that whenever the bouquet rates are reduced, the a-la-carte rates of channels are also proportionately reduced enabling effective choice to the consumer in the form of a-la-carte rates of channels.

23. The Authority has given complete flexibility to distributors to notify a-la-carte price to give freedom to business. However, it expects that distributors will take due care of customers' interest and will adopt rational approach in notifying a-la-carte price.
24. Stakeholders mentioned that under CPS deal they get all the channels from a broadcaster in a bouquet form, which consist of 3-4 popular channels while the remaining channels are not so popular. The sum of effective a-la-carte rates of these 3-4 popular channels will be less than the total price of bouquet of channels. In such a scenario if a platform operator offers a-la-carte channels, then majority of the customers may choose only these 3-4 popular channels resulting in loss to the operator. These stakeholders also stated that if they want to take channels on a-la-carte basis from the broadcasters then the broadcasters offer these channels at RIO rates, which are very high and do not have any relationship with the bundled price of these channels offered under CPS deals by the broadcasters. They further suggested the need to regulate the wholesale level tariff before inspiring it at retail level.
25. The Authority noted the concerns of stakeholders that a-la-carte rates at retail level cannot be regulated unless tariff at the wholesale level is regulated. In this regard it is worth mentioning that the Authority in its tariff orders dated 4th October 2007 and 21st July 2010 have already 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 to the operators. These conditions were prescribed to ensure that an effective a-la-carte choice was available to distributors without being handicapped by perverse pricing of bouquets by broadcasters at the wholesale level.
26. As regards the pricing of HD channels having high RIO rates, it may be noted that rates of HD channels as of now are under forbearance. Hence, the operators are free to offer such channels only in a-la-carte or as a separate bouquet, in case their business model does not support offering of such channels as part of same bouquet having SD as well as HD channels.

27. Regarding comments of DTH operators that broadcaster force them to offer maximum numbers of channels in their entry package, it is pertinent to mention that TRAI in the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation 2004 as amended from time to time has made the following provisions:

“13.2A.11 It shall be mandatory on the part of the broadcasters to offer pay channels on a-la-carte basis to direct to home operators and such offering of channels on a-la-carte basis shall not prevent the broadcaster from offering such pay channels additionally in the form of bouquets:

Provided that no broadcaster shall, directly or indirectly, compel any direct to home operator to offer any channel or channels or bouquet or bouquets offered by the broadcaster to such operator in any package or scheme being offered by such direct to home operator to its direct to home subscribers.”

In view of above, if any broadcaster insists platform operators to include any channel or channels or bouquet or bouquets offered by the broadcaster to such operator in any package or scheme, then it will amount to the violation of TRAI’s interconnection regulations mentioned above and such broadcaster will be subjected to penalty as per provision of TRAI Act. Further any platform operator, who accedes to any such force inclusion by the broadcaster, also violates the Regulations framed under TRAI Act. Therefore, the concern of DTH operators that broadcasters force them to offer maximum numbers of channels in a given bouquets is not tenable.

28. Concerns of stakeholders regarding restrictions on change in the price or composition of subscribed channels during first six months from the date of enrolment are already addressed in this order, as 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) will supersede this tariff order.
29. The Authority is aware that in order to satisfy the ‘twin conditions’ prescribed in this order, the platform operators may be required to carry out changes in the a-la-carte rates of channels and price or composition

of the bouquets. Accordingly, this amendment will be effective from 1st April 2016 providing enough time to platform operators to carry out such changes in the a-la-carte rates of channels or composition of the bouquets.

30. The Authority in its endeavor to ensure reasonable a-la-carte rates of channels offered to the consumers provides freedom to the platform operators in deciding the actual a-la-carte and bouquet rates for its consumers. Therefore, only a relationship has been prescribed between the a-la-carte rates of pay channels in the bouquet and the total price of the bouquet. 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 illusionary.
31. Each platform operator will be required to specify 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. Each Bouquet rates will have to fulfill twin conditions based on published a-la-carte rates of channels.
32. The Authority has carefully considered the maximum discount which can be permitted to the platform operators while forming the bouquets considering the sum of a-la-carte rates of channels constituting the bouquet. The Authority is of the view that the platform operators can provide a discount up to 66.66% while forming the bouquet 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.
33. Any discount of more than 66.66% in forming the bouquet rates clearly indicates that a-la-carte rates have been fixed at unreasonable high price. In no case, a discount of more than 66.66% can be given over the sum of a-la-carte rates of channels in the bouquet. However, flexibility to re-notify a-la-carte rates of channels rests with the platform operators. In case, a platform operator reduces the a-la-carte rates of some channels to form a bouquet, the revised a-la-carte rates so notified must be considered to satisfy the twin conditions in all such bouquets where such channels form part of the bouquet.

34. These 'Twin Conditions' have been prescribed to ensure that:
- a. The platform operators retain the flexibility to devise and offer innovative and attractive packages/bouquets of channels by offering discounts upto 66.66% over a-la-carte rates of channels forming the bouquet.
 - b. The flexibility to notify a-la-carte rates of all the channels available at its platform rest with platform operator. He has flexibility to reduce a-la-carte rates of channels at any time to facilitate lower rates for a bouquet consisting of such on a-la-carte channels.
 - c. The 'Twin Conditions' oblige the platform operator to extend a proportionate reduction in a-la-carte rates of the channels offered in the bouquet if he wants to reduce the bouquets rates further. Such reduction in the a-la-carte rates of channels shall be applicable across all bouquets.
35. It is hoped that with implementation of these 'Twin Conditions' at retail level, consumers will have better choice and freedom to exercise the option.