

Telecom Regulatory Authority of India
A-2/14, Safdarjung Enclave,
New Delhi 110029

Notification

No.1-29/2004-B&CS

Dated: October 1, 2004

In exercise of the powers conferred upon it under sub-section (2) and para (ii), (iii) and (iv) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India, 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 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 Order 2004".(6 of 2004)
- ii. The Order shall be applicable throughout the territory of India.
- iii. The Order shall come into force on the date of its notification in the Official Gazette.

2. Definitions:

(a) **“broadcaster”** means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his authorized distribution agencies;

(b) **“broadcasting services”** means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(c) **“cable operator”** means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;

(d) “**cable service**” means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;

(e) “**cable television network**” means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment designed to provide cable service for reception by multiple subscribers;

(f) “**charges**” means and includes 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"

(g) “**free to air channel**” means a channel for which no fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly ;

(h) “**multi system operator**” means any person who receives a broadcasting service from broadcaster and/or their authorized agencies and re-transmits the same to consumers and/or re-transmits the same to one or more cable operators;

(i) “**pay channel**”, means a channel for which fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.;

3.Tariff:

The charges , excluding taxes, payable by

- (a) Cable subscribers to cable operator;
- (b) Cable operators to multi system operators/broadcasters (including their authorised distribution agencies); and
- (c) Multi system operators to broadcasters (including their authorised distribution agencies)

prevalent as on 26th December 2003 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 26-12-2003 or any channel(s) that was/were free to air channel on 26-12-2003 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 26.12.2003 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 26.12.2003 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels as on 26.12.2003:

Provided further that in case a multi system operator or a cable operator reduces the number of pay channels that were being shown on 26.12.2003, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003.

4. Reporting Requirement

The broadcasters of such new pay channel(s) that have been introduced after 26-12-2003 or of any channel(s) that was a free to air channel on 26-12-2003 is/are converted to a pay channel subsequently, shall furnish to the Authority information in respect of charges for these channels in Schedule I of this Order. This information shall be furnished within seven days of coming into force of this order or the launch of new pay channel(s)/conversion of free to air channel (s) to pay channels, whichever is applicable.

5. Repeal

The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004 dated 15th January 2004 along with its amendments is hereby repealed.

6. Explanatory Memorandum

Annex A to this order contains an Explanatory Memorandum for the issue of this Order

(Dr. Harsha Vardhana Singh)
Secretary Cum Principal Advisor

Explanatory Memorandum

1 The TRAI vide TTO dated 15.1.2004 had specified as ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi system operators and the multi system operators to broadcasters, as those prevailing on 26th December, 2003.

2 A number of representations have been received seeking clarification on the manner in which new pay channels can be priced and the impact on retail prices. Similarly, clarifications have been sought on the impact of conversion to pay channels of channels that were free-to-air on 26th December, 2003.

3 This issue has been carefully considered by the Authority. Since new channels will be coming into the market a mechanism has to be provided for pricing of these new channels. At the same time, there is a need to conserve the protection provided to the consumers by the Tariff Order dated 15.1.2004. To maintain the sanctity of the ceiling, it has been decided that pay channels launched after 26.12.2003 should not be allowed to become part of bouquet of channels being provided on 26.12.2003. A similar rule would apply for those channels that were free-to-air on 26.12.2003 and later convert to pay. It is expected that this would give choice to the operators and through them to the consumers.

4 These 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 15.1.2004. Thus for those consumers who do not get the new pay channels the ceilings already prescribed would continue. Where the consumers get the new pay channels, the extent to which the ceilings referred to above can be exceeded would be limited to the rates for the new channels.

5. The Authority has considered the question of fixing a ceiling price for new pay channels that have been introduced after 26-12-2003 or for any channels that was a free to air channel on 26-12-2003 is subsequently converted to a pay channel. Fixation of prices charged for new pay channels to consumers is difficult because of large variations of these prices and of the difficulty in linking these to costs. Further this is a localized issue which is not easily amenable to centralized regulation. Prices in different parts of the country are based on different systems using different methodologies for fixing the subscriber base. Many of these problems will get resolved if addressability is introduced, giving consumers choice and making the interconnection agreements more

transparent. TRAI has separately sent recommendations to the government which, interalia, provide for a framework for transition to addressability in different situations. However, in the interim period prices will have to be regulated. This revised tariff order provides the framework for such regulation.

6. Thus the Authority has not lifted the ceiling for the pay channels that existed as on 26.12.2003. For the new pay channels introduced and the free to air channels converted to pay thereafter, the Authority expects that the rates for these channels would be similar to the rates prevalent on 26.12.2003 for similar channels. The Authority has therefore decided that broadcasters would furnish to the Authority information in respect of charges for these channels in the Schedule I of this Order. This information shall be furnished within seven days of coming into force of this order or the launch of new pay channels /converted Free to Air Channels to pay channels, whichever is applicable. After reviewing the information, the Authority would intervene in the matter, if necessary.

7. The Authority has also considered the issue regarding ceiling charges in case a multi system operator or a cable operator gives lesser number of pay channels compared to those shown on 26th December, 2003. The Authority has decided that in this case the ceiling charge shall be reduced taking into account the rates of similar channels as on 26.12.2003. In case of any complaint, the Authority would intervene in the matter, if necessary.

8 For ease of reference a self contained order has been issued repealing the earlier order dated 15.1.04 and all its amendments. Consequently the order now issued would supersede all previous orders, amendments and clarifications.

Schedule I

**Format for Reporting Rates by Broadcasters to TRAI for New Pay Channels
Launched or Converted Free To Air Channel to Pay Channels after 26.12.2003**
(Refer Section 4 of The Telecommunication (Broadcasting and Cable) Services (Second)
Tariff Order 2004

1. a) Name of the Channel b) Genre of Channel (eg. Entertainment, Sports, Movies etc.)	
2. a) Language of Channel b) Target Audience (National or Regional, if Regional, specify state(s))	
3. Whether channel is a pay channel in the whole of the country or only in part of the country. (Specify states if pay in part of the country)	
4. a) Is it being offered as individual channel or bouquet of channel b) If bouquet, name other channels c) Name of owners of channels in the bouquet.	
5 a) Rate of channel, if offered as individual channel b) Rate of channel in Chennai	
6 a) Rate of bouquet if offered as part of the bouquet b) Revenue share arrangement between owners of channels in the bouquet	
7 a) Expected Advertisement Revenue b) If channel is existing FTA channel, revenue for last three years	
8 Likely Impact on Consumer Tariff	

