



भारतीय दूरसंचार विनियामक प्राधिकरण
TELECOM REGULATORY AUTHORITY OF INDIA

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सत्यमेव जयते

DIRECTION

Dated: 9th May, 2016

Subject: Direction to broadcasters of pay channels under section 13 of the Telecom Regulatory Authority of India Act, 1997, read with clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) and clause 10 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (11 of 2010).


No. 1-46/2015-B&CS –Where as the Telecom Regulatory Authority of India [herein after referred to as the Authority], established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) (hereinafter referred to as TRAI Act, 1997), has been entrusted with discharge of certain functions, inter alia, to regulate the telecommunication services; notify rates for telecommunication services; lay-down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication service;

2. And whereas the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications), vide its notification No.39,

(a) issued in exercise of powers conferred upon the Central Government by the proviso to clause (k) of sub-section (1) of section 2 of TRAI Act, 1997 and

(b) published under notification number S.O.44(E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3, has notified broadcasting services and cable services to be telecommunication services;

3. And whereas the Authority, in exercise of the powers conferred by TRAI Act, 1997, read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, made the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the Tariff Order, 2004).


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4. And whereas the Authority, in exercise of the powers conferred by TRAI Act, 1997, read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, made the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (hereinafter referred to as the Tariff Order, 2010);

5. And whereas the Authority, in exercise of the powers conferred by TRAI Act, 1997, read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunication) No.39, made the Register of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004 (hereinafter referred to as the Register of Interconnect Regulations, 2004);

6. And whereas clause 3C of the Tariff Order, 2004 reads as under:-

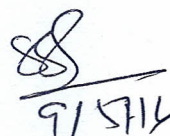
"3C. Manner of offering channels by broadcasters.—(1) Every broadcaster shall offer or cause to offer on non-discriminatory basis all its channels on a-la-carte basis to the multi system operator or the cable operator, as the case may be, and specify an a-la-carte rate, subject to provisions of sub-clause (2) of this clause and clauses 3 and 3B, for each pay channel offered by him.

(2) In case a broadcaster, in addition to offering all its channels on a-la-carte basis, provides, without prejudice to the provisions of sub-clause (1), to a multi system operator or to a cable operator, pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, the rate for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following conditions, namely:-

(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 and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-

If the bouquet rate is Rs. 'X' per month per subscriber and the number of pay channels is 'Y' in a bouquet, then the average pay channel rate of the bouquet shall be Rs. 'X' divided by number of pay channels 'Y':


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(3) A broadcaster may, without prejudice to the provisions contained in sub clause (1) and other provisions of this Tariff Order, offer discounts to multi system operators and cable operators on a-la-carte rates of its channels or bouquet rates and such offer of discounts, in no case, shall, directly or indirectly, have effect of contravening the provisions of sub-clause (2) and any other provisions of this Tariff Order."

7. And whereas sub-clause 2 of clause 4 of the Tariff Order, 2010 reads as under:-

"2) In case a broadcaster, in addition to offering all its channels on a-la-carte basis, offers, without prejudice to the provisions of sub-clause (1), pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, such broadcaster shall specify the rate for each such bouquet of channels offered by it:

Provided that -----

(a) the composition of the bouquets offered by the broadcaster to distributors of TV channels using addressable systems shall be the same as those offered by such broadcaster for non-addressable systems; and

(b) the rate for a bouquet of channels for addressable systems shall not be more than thirty-five percent¹ of the rate for such bouquet as specified by the broadcaster for non-addressable systems."

8. And whereas the explanatory memorandum attached with the Telecommunication (Broadcasting and Cable) Services (Second) (Eight Amendment) Order, 2007 explains the objects and reasons of introduction of clause 3C in the Tariff Order, 2004 and reads as under:-

".....the Authority has decided that broadcasters should compulsorily provide their channels on a-la-carte basis to the MSOs / cable operators as per their request. In addition, they may also provide channels on bouquet basis. However, in order to ensure that the MSOs/cable operators get an effective a-la-carte choice without being handicapped by perverse pricing of bouquets, the Authority has decided to mandate a relationship between a-la-carte rates and bouquet rates....."

9. And whereas the Tariff Order, 2010 defines bouquet or bouquet of channels and bouquet rate or rate of bouquet as under:-

¹ revised to 42% by Hon'ble Supreme Court vide its interim order dated 18.04.2011 passed in the Civil Appeal no. 2847-2854 of 2011

"(h) "bouquet" or "bouquet of channels" means an assortment of distinct channels, offered together as a group or as a bundle;

(i) "bouquet rate" or "rate of bouquet" means the rate at which a bouquet of channels is offered to the distributor of TV channels or to the subscriber, as the case may be;"

10. And whereas on examination of the information relating to the interconnection agreements filed by the broadcasters under the Register of Interconnect Regulations, 2004, the Authority noted that in many cases the agreements are signed in the name of Cost per Subscriber(CPS) deals between the broadcasters and Distribution Platform Operators (i.e. Multi System Operators providing cable TV services through Digital Addressable Systems and DTH operators) for offering of channels of the broadcasters in different formations, assemblages and bouquets for a group or a bundle of channels;

11. And whereas the Authority vide its letter dated the 01st December, 2015 requested the broadcasters of pay channels to clarify the exact nature of CPS agreements being executed with different Distribution Platform Operators and also explain how CPS agreements comply with the existing regulatory framework including the provisions of clause 3C of Tariff Order, 2004;

12. And whereas most of the broadcasters, in their responses to the letter dated the 01st December, 2015 of the Authority, stated that under CPS agreements all the channels of a broadcaster are given to a Distribution Platform Operator at a single rate per subscriber per month. The Distribution Platform Operator pays to the broadcaster on the basis of the number of Set Top Boxes carrying any or all the channels of the broadcaster irrespective of number of channels of the broadcaster actually opted by subscribers;

13. And whereas most of the broadcasters in their response stated that CPS based agreements are purely mutually negotiated interconnection agreements and cannot be construed as bouquet of channels and hence do not fall within the realm of a-la-carte or bouquet offerings and; since CPS agreements do not fall within the category of a-la-carte or bouquet offerings therefore such agreements do not contravene the provisions of the clause 3C of the Tariff Order, 2004;

14. And whereas the Authority examined the response of the broadcasters in pursuance of the provisions contained in sub-clauses (2) and (3) of clause 3C of the Tariff Order, 2004 and the definition of bouquet or bouquet of channels in the Tariff Order, 2010, and concluded that

since in the CPS agreements, an assortment of distinct channels is being offered together as a group or as a bundle in the CPS agreements, it is nothing but a bouquet or bouquet of channels;

15. And whereas the provisions of the Tariff Order, 2004 and Tariff Order, 2010 are applicable to all type of interconnection agreements, including mutually negotiated interconnection agreements, entered between the broadcaster and the Distribution Platform Operators;

16. And whereas in pursuance of the provisions contained in sub-clauses (2) and (3) of clause 3C of the Tariff Order, 2004 and the definition of bouquet or bouquet of channels in the Tariff Order, 2010, the conditions specified in sub-clause (2) of clause 3C of the Tariff Order, 2004 are applicable on the CPS agreements signed for an assortment of channels offered together, as a group or bundle of channels.

17. And whereas as per sub-clause (3) of clause 3C of the Tariff Order, 2004, a broadcaster may offer discounts to Distribution Platform Operators on a-la-carte rates of its channels or bouquet rates and such offer of discount, in no case, shall, directly or indirectly, have effect of contravening the provisions of sub-clause (2) of clause 3C of the Tariff Order, 2004;

18. And whereas clause 4A of the Tariff Order, 2004 reads as under:-


"4A. Power of Authority to intervene:

The Authority may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services, or facilitate competition and promote efficiency in the operation of broadcasting services and cable services so as to facilitate growth in such services."

19. And whereas clause 10 of the Tariff Order, 2010 reads as under:-

"10. Power of Authority to intervene:

(1) The Authority may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of this Tariff Order, or protect the interests of subscribers and service providers of the broadcasting services and cable services, or promote and ensure orderly growth of the broadcasting services and cable services."


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20. Now, therefore, the Authority, in exercise of the powers conferred upon it under section 13, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) and clause 10 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, to protect the interest of service providers and consumers, directs all the broadcasters of pay channels to strictly comply with the provisions of clause 3C of Tariff Order, 2004 and clause 4 of the Tariff Order, 2010 at the time of providing signals of TV channels including in term of CPS agreements as detailed in paras above.

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To

All Broadcasters of pay channel

(As per list attached)