

New Delhi, the 28th August , 2008

DIRECTION

Subject: Direction, under section 13, read with sub-clause (ii), (iii) & (iv) 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) and clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), to M/s Star Den Media Services Private Limited to modify the a-la-carte and bouquet rates for its channels.

No. 1-8/2007-B&CS.----- Whereas, the Telecom Regulatory Authority of India (hereinafter referred to as the Authority) had issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) dated the 1st October, 2004 (hereinafter referred to as the principal Tariff Order) which has been amended from time to time;

2. And whereas clause 3 of the principal Tariff Order {as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October, 2007 (3 of 2007)}, *inter alia*, specifies the ceiling of the charges payable by a cable operator or multi system operator, as the case may be, to a broadcaster as the charges prevalent on the 1st day of December, 2007 and increased by an amount not exceeding four per cent with respect to bouquets of channels and stand alone channels and the said clause 3 reads as under:-

“3. Tariff:

The charges, excluding taxes, payable by

(a) Ordinary cable subscribers and commercial cable subscribers (except hotels with a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and have 50 or more rooms) to cable operators, multi system operators or broadcasters as the case may be;

(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 1st day of December, 2007, and increased by an amount not exceeding four per cent shall be the ceiling,

(A) with respect to both free to air and pay channels transmitted or retransmitted by multi system operators to cable operators, and by multi system operators and cable operators to subscribers referred to in sub-clause (a) above;

(B) in respect of bouquets of channels (consisting only of pay channels or both pay and free to air channels) and stand-alone channels not forming part of any bouquet transmitted by broadcasters to multi system operators, cable operators and to subscribers referred to in sub-clause (a) above.

Explanation 1: The four per cent increase referred above shall not apply in cases where the charges, existing as on the 26th December, 2003 as enhanced by 7% permitted with effect from 1st day of January, 2005, have been further increased by four per cent [being the four per cent. ceiling referred to in clause 3, (as it stood before its amendment by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007)] after the 21st December, 2006.

Explanation 2: for the purpose of clause 3(a) above the question whether the commercial cable subscriber will pay the cable operator/multi system operator/the broadcaster will be determined by the terms of agreement(s) between the concerned parties, namely

i) broadcaster(s)

ii) MSO(s) and cable operator(s) who have been authorized to provide signals to the commercial cable subscribers

iii) the commercial cable subscribers.

Explanation 3 : for the purposes of clause 3(b) and (c) above the charges will be modified to take into account the payments to commercial cable subscribers where appropriate.]

Provided that if any new pay channel(s) that is/are launched after the 1st day of December, 2007 or any channel(s) that was/ were free to air channel on the 1st day of December, 2007 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). 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 the 1st day of December, 2007 and have subsequently converted to pay channel(s) the rates must be similar to the rates of similar channels existing as on the 1st day of December, 2007 and/ or on the date of such launching of new channel or such conversion of free to air channel into a pay channel;

Provided further that in case a multi system operator or a cable operator reduces the number of pay channels that were being shown on the 1st day of December, 2007, the ceiling charge shall be reduced taking into account the rates of similar channels as on as on 26.12.2003.

Provided further that in the case of a commercial cable subscriber, the charges in respect of whom by virtue of clause 2(f)(ii) read with clause 3(a), is determinable as per mutual agreement between the parties, having facilities to get broadcasting services directly from the broadcaster, the later shall at the option of the commercial cable subscriber be obliged to provide

channels on ala carte basis. For such consumers whenever bouquets are offered, these shall be subject to the following conditions:

I The maximum retail price of any individual channel shall not exceed three times the average channel price of the bouquet of which it is a part;

Explanation: if the maximum retail price of a bouquet is Rs. “X” per month and the number of channels is “Y” then the average channel price of the bouquet is Rs. X divided by Y

II The sum of the individual maximum retail prices of the channels shall not be more than 150% of the maximum retail price of the bouquet.

Provided also that the charges referred to in sub-clause (a) above shall in no case exceed the maximum amount of charges specified in the Part I or Part II, as the case may be, of the Schedule annexed with this Order.”;

3. And whereas the first proviso to clause 3 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007), as referred to in the preceding paragraph, specifies, *inter alia*, that -----

(a) if any new pay channels are launched after the 1st day of December, 2007 or any channel that was a free-to-air channel on the 1st day of December, 2007 is converted to pay channel subsequently, then the ceiling as referred to in the preceding paragraph can be exceeded, but only if the new channels are provided on a stand alone basis, either individually or as part of new, separate bouquet(s); and

(b) that for the new pay channels as well as the channels that were free to air channels as on the 1st day of December, 2007 and have subsequently converted to pay channels, the rates must be similar to the rates of similar channels existing as on the 1st day of December, 2007 and/or on the date of such launching of new channel or such conversion of free to air channel into a pay channel;

4. And whereas sub-clause (2) of clause 3C of the principal Tariff Order, as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October, 2007 (3 of 2007), requires, *inter alia*, that in case a broadcaster, in addition to offering all its channels on a-la-carte basis, offers its pay channels as part of a bouquet consisting only of pay channels or both pay and free to air channels, the rate charged for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the conditions specified therein and the said sub-clause (2) of clause 3C reads as under:-

“(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 charged 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’:

Provided that the composition of a bouquet existing as on the 1st day of December, 2007, in so far as pay channels are concerned in that bouquet, shall not be changed:

Provided further that—

(i) in cases where the broadcaster ceases to make available a pay channel existing as on the 1st day of December, 2007 for broadcasting or for distribution, the rate of the bouquet containing such a pay channel existing

on that date shall be reduced in the same proportion which the a la-carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet;

(ii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any free to air channel is converted into pay channel after that date, then the said existing bouquet (excluding the said free to air channel) shall be offered at or below the rates prevailing as on that date for such bouquet;

(iii) in cases where a bouquet existing on the 1st day of December, 2007 consists of both free to air and pay channels, and if any pay channel is converted into free to air channel after that date, then the said existing bouquet shall be offered, with or without such free to air channel so converted after reducing the rate prevailing as on that date for such bouquet, by an amount not less than the amount which bears the same proportion the a la carte rate of the said pay channel bears to the aggregate sum of the a-la-carte rates of all pay channels comprised in the said bouquet.”;

5. And whereas clause 4 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007), requires every broadcaster to furnish, within seven days from the 1st day of December, 2007 or within seven days from the date of introduction of any new pay channel or conversion of a pay channel into a free-to-air channel or vice versa or discontinuation of any free-to-air channel or pay channel, as the case may be, to the Authority, *inter alia*, the information specified therein and the said clause 4 reads as under:-

“4. Reporting requirement.

(1) Subject to the provisions of clause 3C, every broadcaster shall, within seven days from the 1st day of December, 2007, furnish the following information to the Authority, namely:-

(a) names, genre and language of all free to air channels offered by the broadcaster;

(b) name, a-la-carte rate, genre and language of each pay channel offered by the broadcaster;

(c) list of all bouquets offered by the broadcaster with prices of each bouquet, indicating the names of all the pay channels and free to air channels contained therein along with the names of owners of other channels in the bouquets;

(d) revenue share arrangement between owners of channels in the bouquet;

(e) target audience of all the pay channels and free to air channels (National or Regional, if Regional, state(s) must be specified);

(f) whether the pay channels are pay channels in whole of the country or only in part of the country. (States must be specified if a channel is a pay channel in part of the country);

(g) advertisement revenue for the last three years;

(h) any other information relevant to free to air channels, pay channels, a-la-carte rates and bouquets offered by a broadcaster.

(2) Every broadcaster who, after the 1st day of December, 2007,--

(a) introduces any new pay channel or free to air channel; or

(b) converts any pay channel into free to air channel; or

(c) converts any free to air channel into pay channel; or

(d) discontinues any free to air channel or pay channel; or

(e) introduces any new bouquet or discontinues any bouquet or modifies any bouquet,

shall, within seven days of such introduction or conversion or discontinuation, furnish to the Authority the information required in items (a) to (h) of sub-clause (1).

(3) Every broadcaster shall exhibit on its website the information furnished under sub-clauses (1) and (2) immediately except items (d) and (g) of sub-clause (1).”;

6. And whereas clause 4A of the principal Tariff Order, as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007), specifies that the Telecom Regulatory Authority of India may, by order or direction made or issued by it, intervene in order to secure compliance of the provisions of the said 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 and the said clause 4A 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.”;

7. And whereas M/s Zee Turner Private Limited , being the authorised distributors of the channels named “CNBC TV 18”, “CNN IBN” and “CNBC Awaaz” (hereinafter referred to as the said reported channels) on the date when the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007) came into force, vide its letter dated the 28th December, 2007 (copy annexed as **Annexure-I** to this Direction), reported to the Authority, *inter alia*, the a-la-carte rates of the said reported channels as under:-

S. No.	Name of Channel	A-la-carte rate reported
1.	CNBC TV 18	Rs.7.50
2.	CNN IBN	Rs.2.00
3.	CNBC Awaaz	Rs.3.50

8. And whereas M/s Zee Turner Private Limited has, subsequently, vide its letter dated the 18th April, 2008 (copy annexed as Annexure-II to this Direction) , reported to the Authority that the said reported channels, as referred to in the preceding paragraph, are not being distributed by them with effect from the 1st April, 2008;

9. And whereas M/s Star Den Media Services Private Limited having its office at Star House, Dr. E Morse Road, Mahalaxmi, Mumbai-400011, (hereinafter referred to as the M/s Star Den Media Services Private Limited), being the broadcaster, vide its letter dated the 7th April, 2008 (copy annexed as Annexure-III to this Direction), reported to the Authority the introduction of a new bouquet of channels named as ‘Bouquet 3’ (hereinafter referred to as the Bouquet 3) comprising the said reported channels as referred to in paragraph 7 above and one free to air channel, namely “IBN 7”, at a rate of rupees twelve per subscriber per month, and also reported the names and a-la-carte rates of the channels comprising the said bouquet as under :-

S. No.	Name of Channel	A-la-carte rate reported
1.	CNBC TV 18	Rs.8.50
2.	CNN IBN	Rs.5.00
3.	CNBC Awaaz	Rs.5.00
4.	IBN 7	Free To Air

10. And whereas upon consideration of the said letter of M/s Star Den Media Services Private Limited dated the 7th April, 2008, as referred to in the preceding paragraph, it was, inter alia, observed by the Authority that the a-la-carte rates of the said reported channels namely, “CNBC TV 18”, “CNN IBN” and ‘CNBC Awaaz’ have been increased as under:-

S. No.	Name of Channel	A-la-carte rate reported by M/s Zee Turner	A-la-carte rate reported by M/s Star Den
1.	CNBC TV 18	Rs.7.50	Rs.8.50
2.	CNN IBN	Rs.2.00	Rs.5.00
3.	CNBC Awaaz	Rs.3.50	Rs.5.00
4.	IBN 7	Free To Air

11. And whereas the sum of a-la-carte rates of the channels reported by M/s Star Den Media Services Private Ltd. in the Bouquet 3 exceeded one and half times the bouquet rate for the said bouquet in violation of the condition (a) of sub-clause (2) of clause 3C of the principal Tariff Order, as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 (3 of 2007), as referred to in paragraph 4 above, which specifies that the sum of the a-la-carte rates of the pay channels forming part of 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 ;

12. And whereas the Authority, vide its letter dated the 30th May, 2008 (copy annexed as **Annexure-IV** to this Direction), informed M/s Star Den Media Services Private Limited, being the service provider, that -----

(a) the a-la-carte rates of the said reported channels as prevalent on the 1st December, 2007 as reported by M/s Zee Turner Limited had been increased by M/s Star Den Media Services Private Limited from rupees seven and paise fifty (Rs.7.50), rupees two (Rs.2.00) and rupees three and paise fifty (Rs.3.50), to rupees eight and paise fifty (Rs.8.50), rupees five (Rs.5.00) and rupees five (Rs.5.00), respectively, and that the a-la-carte rates of the said reported channels required to be maintained without exceeding the rates prevalent on the 1st December, 2007;

(b) the rate of the bouquet also needed to be revised in compliance with clause 3C of the principal Tariff Order, as amended from time to time;

13. And whereas the Authority, vide its letter dated the 30th May, 2008, as referred to in the preceding paragraph, further informed M/s Star Den Media Services Private Limited that it has decided to afford an opportunity to M/s Star Den Media Services Private Limited to respond to the above observations before taking a final decision in terms of clause 4A of the principal Tariff Order, as amended from time to time and that in case M/s Star Den Media Services Private Limited wished to present its case personally, it may be present for a personal hearing on the 10th June, 2008 in the office of the Authority;

14. And whereas, in response to the letter of the Authority dated the 30th May, 2008, as referred to in the preceding paragraph, M/s Star Den Media Services Private Limited, vide its letter dated the 6th June, 2008 (copy

annexed as **Annexure-V** to this Direction), requested for postponing the date of personal hearing to the 12th June, 2008 and also made the following submissions in the said letter dated the 6th June, 2008, namely:-

(a) that the principal Tariff Order provides for fixing the rates of newly launched channels on the basis of rates of similar channels existing as on the 1st December, 2007 and the said reported channels are newly launched channels;

(b) that as regards the a-la-carte prices of its channels, that in terms of clause 3C of the principal Tariff Order, the a-la-carte rates of channels in the bouquet are derived from the price of the bouquet of which such channels are part and not the other way round;

(c) that it has fixed the rate of its channels reasonably (in fact much lower) within the prescribed similarity criteria as contained in the principal Tariff Order [for which it has relied on certain observations contained in paragraph 3.17 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006)], as, in its view, clause 3C of the principal Tariff Order, while specifying the methodology for reduction to be given by a broadcaster in case it ceases to make available a pay channel which existed on the 1st day of December, 2007, is silent on the pricing of channels by the successive distributor;

15. And whereas upon consideration of the request of M/s Star Den Media Services Private Limited as contained in its letter dated the 6th June, 2008, as referred to in the preceding paragraph, an opportunity of personal hearing was afforded to M/s Star Den Media Services Private Limited by the Authority on the 12th June, 2008, wherein the representatives of M/s Star Den Media Services Private Limited made the same submissions which were made in its said letter dated the 6th June, 2008;

16. And whereas, subsequent to the personal hearing afforded to it by the Authority on the 12th June, 2008, as referred to in the preceding paragraph, M/s Star Den Media Services Private Limited, vide its letter dated the 22nd June, 2008 (copy annexed as **Annexure-VI** to this Direction), informed the

Authority that it had sought legal advice on the matter and its legal counsels strongly felt that, -----

- (a) the object of the principal Tariff Order, read together with the Explanatory Memorandum, indicates that the object of the said Tariff Order has all along been to treat migration of channels from one distributor to another as launch of new channels, so far as the successive distributor is concerned and the principles of pricing applicable for fixing rates of new channels as outlined in the principal Tariff Order shall apply to such cases as the migration of channels from one distributor to another distributor is launching of new channels so far as the new distributor is concerned;

- (b) it is a well settled principle in law that the principle of purposive construction must be applied to give an interpretation consistent with the object of the Tariff Order and the intention of the TRAI could never have been to treat migration of channels as 'New Channels' for the purpose of construction of one part of the Tariff Order and as 'Existing Channels' for the purpose of another part of same Tariff Order;

- (c) the replacement of the word "introduced" with the word "launched" in the proviso to clause 3 of the principal Tariff Order by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 dated the 4th October 2007 cannot be construed as a change of law as far as migration of channels are concerned since the words "introduced" and "launched" can be used interchangeably and, in fact, word 'launched' is wide enough to include the word 'introduced' in its ambit and, in its perspective, the launch of the CNBC channels, means launching it as a new service,

and further informed the Authority that it would be filing further written submission on the issue incorporating in detail the legal advice obtained by it from its counsels by the 25th June, 2008 and, if necessary, it would even want to make submissions by way of a personal hearing through its counsels and, therefore, requested the Authority not to pass any orders in the matter without considering its detailed written and oral submissions;

17. And whereas M/s Star Den Media Services Private Limited, vide its subsequent letter dated the 26th June, 2008 (copy annexed as Annexure-VII to this Direction), made the following additional submissions, namely:-

- (a) that in the event of migration of channels from one distributor to another distributor, the principal Tariff Order, as amended from time to time, does not permit a successive distributor to offer the migrated channels as part of their existing bouquets of channels that existed on the 1st December, 2007 and, since it is mandatory on the part of the broadcasters to compulsorily offer the bouquet composition that existed as on the 1st December, 2007, effectively, the successive distributor cannot offer the migrated channels as part of its existing bouquets and are required to offer the same as part of a new bouquet and the principal Tariff Order also requires the broadcasters to offer channels on a-la-carte basis and the a-la-carte rates to be determined on the basis of the price of the bouquet of which such channels are part and, therefore, it had to launch the new bouquet comprising the CNBC channels on the ground and execute agreements with cable operators for this new bouquet separately;
- (b) that the intention of the Authority, as it had submitted earlier, could never have been to treat migrated channels as “new channels” for the purposes of packaging/bouquet composition and treat the same migrated channels as “existing channels” for the purposes of determining the a-la-carte rate;
- (c) that the purpose and intention behind the Tariff Order is that since the migrated channels cannot be offered as part of existing bouquets by the successive distributor, the rates of these channels must be comparable to the rate of similar channels and that the principles of interpretation have to be applied in order to ascertain the true meaning/purpose of the Tariff Order which has to be seen in its overall context;

18. And whereas the Authority gave one more opportunity to M/s Star Den Media Services Private Limited and M/s Network 18, the owners of the said reported channels as referred to in paragraph 4 above to present their case in a personal hearing on the 4th July, 2008 and in the said personal hearing, the representatives of M/s Star Den Media Services Private Limited made a power-point presentation to the Authority, reiterating their earlier submissions made vide their letters dated 6th June, 2008, 22nd June, 2008 and 26th June, 2008; and also made the following additional submissions, namely:-

(a) that M/s Network 18, the owners of said reported pay channels, had written to M/s Zee Turner Private Limited, the then distributors of said reported channels, and had requested M/s Zee Turner Private Limited to report Rs.13.00, Rs.8.00 and Rs.10.00 as the a-la-carte rate of their channels “CNBC TV 18”, “CNBC Awaaz” and “CNN-IBN”, respectively, to the Authority;

(b) that M/s Zee Turner Private Limited then wrote back to M/s Network 18 on 2nd January, 2008 informing M/s Network 18 that the a-la-carte rates of Rs.7.50, Rs.3.50 and Rs.2.00 for the channels “CNBC TV 18”, “CNBC Awaaz” and “CNN-IBN”, respectively, had been filed by M/s Zee Turner Private Limited with the Authority;

(c) that M/s Network 18 then wrote back to M/s Zee Turner Private Limited showing displeasure over the rates filed by them for their channels and requested M/s Zee Turner Private Limited to fix a meeting with the Authority for discussing the implications of filing lower rates and further advised them not to file the reference interconnect offer for the Direct to Home (DTH) platform;

(d) that due to the disagreement with M/s Zee Turner Private Limited over the a-la-carte rates, M/s Network 18 parted way from M/s Zee Turner Private Limited and filed their rates for DTH to the Authority separately,

but, the representatives of M/s Network 18, the owners of the said reported channels, and M/s Star Den Media Services Private Limited, however, admitted, during the said personal hearing on the 4th July, 2008, that the Authority was not informed about the above correspondence between them

and M/s Zee Turner Private Limited, the distributors of their channels at the relevant time;

19. And whereas the Authority has carefully considered the submissions made by M/s Star Den Media Services Private Limited, as referred to in the preceding paragraphs and, after such careful consideration, is of the view that the said submissions do not have merit and cannot be accepted for the following reasons, namely:-

(a) that the word 'introduced' was substituted by the word 'launched' in proviso to clause 3 of the Tariff Order by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 with the specific objective that only the new channels which are launched by the broadcasters may be priced on similarity principle, and not the channels which were already existing on the 1st December, 2007 because the rates of channels which were already existing on the 1st December, 2007, would already be available;

(b) that the criteria of similar rates of similar channels does not apply in case of channels which existed on the 1st December, 2007 and which merely migrate from one distributor to another as the reported a-la-carte rates of all existing pay channels have been frozen at the 1st December, 2007 level except as regards the four per cent. increase allowed in the principal Tariff Order, as amended from time to time, and the mere offering of such migrated channels, either as a-la-carte channels or as part of new bouquets in addition to their being offered on a-la-carte basis, does not allow the new distributors of such migrated channels to fix a-la-carte rates for such migrated channels at a level higher than the rates prevalent on the 1st December, 2007 and already reported to the Authority by the broadcasters as required by clause 4 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order (Eighth Amendment) Order, 2007, nor does it allow such new distributors to fix bouquet prices for such channels in violation of the requirements contained in sub-clause (2) of clause 3C of the principal Tariff Order, as inserted by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007;

(c) that the application of the similarity principle to any channel which migrates from one distributor to another and consequent increasing of the rates of such channels by the new distributor would be a violation of clause 3 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007, which, *inter alia*, requires that the charges, excluding taxes, payable by cable operators to multi system operators/broadcasters (including their authorised distribution agencies) and multi system operators to broadcasters (including their authorised distribution agencies), prevalent as on the 1st day of December, 2007, shall be the ceiling, in respect of bouquets of channels (consisting only of pay channels or both pay and free to air channels) and stand-alone channels not forming part of any bouquet transmitted by broadcasters to multi system operators, cable operators and to subscribers;

(d) that the contention of M/s Star Den Media Services Private Limited that the words “introduced” and “launched” can be used interchangeably and, in fact, word ‘launched’ is wide enough to include the word ‘introduced’ in its ambit and the launch of the CNBC channels, means launching it as a new service, has not been found acceptable as such an interpretation would negate the provisions of clause 3 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007, particularly having regard to the fact that the new bouquet 3 as reportedly introduced by the M/s Star Den Media Services Private Limited comprises mainly of the three pay channels, namely, “CNBC TV 18”, “CNBC Awaaz” and “CNN-IBN”, all of which are channels which were existing on the 1st day of December, 2007 and whose a-la-carte rates had already been reported to the Authority by M/s Zee Turner Private Limited, the distributor of the said reported channels at the relevant time and thus the rates of these channels as reported by M/s Zee Turner Private Limited have become frozen in terms of the said clause 3 of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007;

(e) that the contention of M/s Star Den Media Services Private Limited that the observations contained in paragraph 3.17 of the Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006) would apply to

cases of price fixation in cases of migration of channels from one distributor to another has not been found acceptable for the reasons that -----

(i) the said observation in the said Explanatory Memorandum had been made in the context of the then prevailing system of offering of channels by broadcasters as bouquets, i.e., when there was no requirement in the principal Tariff Order requiring the broadcasters to offer all their channels on a-la-carte basis and the said observation had been made in the context of the Authority's decision not to consider any amendment to the principal Tariff Order in regard to the issue of shifting of a channel from one broadcaster to another at the relevant time;

(ii) the said observation does not contain a statutory mandate that in the cases of all channels which migrate from one broadcaster to another, the pricing of such channels will be decided on the principle of similarity of rates for similar channels;

(iii) the said explanatory memorandum only explains the objects and reasons for the amendments made in the principal Tariff Order vide the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006) and is not, by itself, an amendment to the principal Tariff Order and it is a settled principle of law that the statement of objects and reasons cannot control the actual words used in it or for the construction of the provisions of the legislation;

(iv) the observations contained in the said paragraph 3.17 of the Explanatory Memorandum annexed to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006) are totally irrelevant after the amendment of the principal Tariff Order by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 which requires the broadcasters not only to offer all channels on a-la-carte basis and also to report to the Authority the a-la-carte rates of all their channels as they existed on the 1st December, 2007 and the rates of the said reported channels, namely, "CNBC TV 18", "CNBC Awaaz" and "CNN-IBN" having been already reported to the Authority as required by the principal Tariff Order as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007, the increasing of such rates on the ground of either a shift in the distributorship or on the basis of application of the similarity principle as purportedly

contained in the observations of the Authority in the said paragraph 3.17 of the said Explanatory Memorandum to the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Sixth Amendment) Order, 2006 (5 of 2006), would be a clear violation of clause 3 of the principal Tariff Order as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007;

(f) that sub-clause (2) of clause 3C of the principal Tariff Order, as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 requires that 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 charged for such bouquet and a-la-carte rates for such pay channels forming part of that bouquet shall be subject to the following two 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 said sub-clause (2) of clause 3C requires compliance with both the said conditions and, therefore, the contention of M/s Star Den Media Services Private Limited that the a-la-carte rates of channels in the bouquet are to be derived from the price of the bouquet of which such channels are part and not the other way round is found to be not acceptable;

(g) that the ceilings on charges to be paid by multi system operators to the broadcasters for existing channels as envisaged in clause 3 of the principal Tariff Order would become irrelevant and ineffective if rates of channels can be increased by just migrating from one broadcaster to another and if such increase is allowed, it will render the ceiling as prescribed in the said clause 3 of the principal Tariff Order totally ineffective and would result in a

situation where the price of any channel can be increased by merely changing the distributor of such channel;

(h) that the submission of M/s Star Den Media Services Private Limited that Tariff Order could never have intended to treat migrated channels as 'New Channels' for the purpose of formation of a bouquet and 'Existing Channels' for the purpose of determining a-la-carte prices is totally misconceived as the relevant provisions of the principal Tariff Order make it very clear that the composition of the bouquets of channels which existed existing as on 1st December, 2007 shall not be changed except under the circumstances specified in the second proviso to sub-clause (2) of clause 3C of the principal Tariff Order as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 and, therefore, all channels which become part of a broadcaster's (distributor's) stable after the said date are required to be offered by not including such new channels in the bouquets which existed on the said date and, as regards the rates for such channels, the same would be subject to the freezing of the rates as on the 1st December, 2007 in the case of channels which migrated from one broadcaster to another on a date subsequent to the said date and it is only in the case of channels which are launched after the said date, the principle of similarity of rates for similar channels is applicable as per the first proviso to clause 3 of the principal Tariff Order as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007 and, therefore, the contention that the Tariff Order could never have intended to treat migrated channels as 'New Channels' for the purpose of formation of a bouquet and as 'Existing Channels' for the purpose of determining a-la-carte prices is found to be clearly misconceived and totally untenable;

(i) the contentions of M/s Star Den Media Services Private Limited, made during the personal hearing on the 4th July, 2008, and in the presentation given to the Authority by the representatives of M/s Star Den Media Services Private Limited on the said date during the said personal hearing, about the purported correspondence held between M/s Network 18, the owners of the said reported channels and M/s Zee Turner Private Limited, the then distributor of the said reported channels, during the months of December, 2007 and January, 2007 on the issue of pricing cannot be taken into account at this stage by the Authority for the following reasons, namely:-

(A) none of the correspondence was addressed to the Authority at the relevant time;

(B) since it is the broadcaster (including its distributing agent) which is distributing the channels which has the responsibility to comply with the provisions of the principal Tariff Order as regards the reporting requirement and since M/s Zee Turner Pvt. Limited, being the authorised distributor of the said reported channels at the relevant time, had reported to the Authority the a-la-carte rates of the said reported channels, any correspondence between M/s Network 18, the owners of the said reported channels and M/s Zee Turner Pvt. Limited, the authorised distributor, which was not in the notice of the Authority at the relevant time cannot be taken into consideration by the Authority after such reporting;

(C) neither M/s Network 18, the owners of the channel, nor M/s Star Den Media Services Private Limited had informed the Authority about any dispute between the owners of the channel and the said authorised distributor of the channel at the relevant time, i.e., either upon the filing of the purportedly lower rates by M/s Zee Turner Pvt. Limited on the 28th December, 2007, as referred to in paragraph 7 above or any time thereafter, before the filing of the rates in question by M/s Star Den Media Services Private Limited vide their letter dated the 7th April, 2008, as referred to in paragraph 9 above;

(D) M/s Star Den Media Services Private Limited has not placed before the Authority any material to show that any such dispute as regards the alleged under reporting of its channel prices by the then authorised distributor of the said reported channels is pending adjudication either before the Hon'ble TDSAT or before any other judicial/quasi-judicial forum;

(E) the contention of M/s Star Den Media Services Private Limited that it had requested the M/s Zee Turner Private Limited to arrange a meeting immediately with the Authority for discussing the implications of filing lower rates is not borne out by the copy of the e-mail dated the 8th January, 2008 (submitted by M/s Star Den Media Services Private Limited to the Authority as part of its presentation and personal hearing before the Authority on the 4th July, 2008) and the said e-mail merely indicates that M/s Network 18 had requested M/s Zee Turner Private Limited "to kindly fix up a meeting to discuss the issue of rates to be filed with the TRAI so that we may re-work and finalize the same at the earliest.";

(F) M/s Star Den Media Services Private Limited has not produced any other correspondence to show that the matter had been brought to the notice of the Authority;

(G) even if such a meeting with the Authority had been sought from M/s Zee Turner Private Limited by M/s Network 18 in January, 2008 as alleged by M/s Star Den Media Services Private Limited [as referred to in sub-paragraph (E) above] , there was nothing which prevented the said M/s Network 18 or M/s Star Den Media Services Private Limited from approaching the Authority at the relevant time against the alleged under-reporting of the prices of its channels;

(H) the fact that M/s Network 18, the owners of the said reported channels and M/s Star Den Media Services Private Limited have not approached the Authority at the relevant time and allowed the rates as reported to the Authority by M/s Zee Turner Private Limited vide its letter dated the 28th December, 2007 (as referred to in paragraph 7 above) to continue till the end of March, 2008 would show that the said rates as reported to the Authority by M/s Zee Turner Private Limited had been accepted by the M/s Network 18 and M/s Star Den Media Services Private Limited for all practical purposes;

(j) that the contention of M/s Star Den Media Services Private Limited mentioned in the aforesaid letter and during the personal hearing, if accepted, would make the provisions of the principal Tariff Order aforesaid as irrelevant, ineffective and, in fact, negate the objects and reasons for which the aforesaid provisions were made in the principal Tariff Order by the Authority;

20. Now, therefore, in exercise of the powers conferred upon the Telecom Regulatory Authority of India under section 13 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with sub-clause (ii), (iii) & (iv) of clause (b) of sub-section (1) and sub-section (2) of section 11 of the Telecom Regulatory Authority of India Act, 1997 and clause 4A of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), in order to promote transparency and protect the interests of the service providers in the broadcasting services, promote and ensure orderly growth of the broadcasting services and cable services, to ensure effective interconnection between different service providers and regulate arrangement amongst service providers of sharing their revenue

derived from providing telecommunication and broadcasting services, and to enforce the provisions of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), as amended from time to time, and for the reasons mentioned in the preceding paragraphs, the Telecom Regulatory Authority of India hereby directs that the M/s Star Den Media Services Private Limited shall, within seven days from the date of this Direction, -----

(a) bring the a-la-carte rates of its three pay channels, namely, 'CNBC TV 18', 'CNN IBN' and 'CNBC Awaaz' to the same levels which were first reported as a-la-carte rates for the said reported channels to the Authority by M/s Zee Turner Private Limited, the then authorised distributor of the said reported channels, vide its letter dated the 28th December, 2007 (as referred to in paragraph 7 above);

(b) revise the rate of its 'Bouquet 3' comprising the said reported channels, namely, 'CNBC TV 18', 'CNN IBN' and 'CNBC Awaaz' and one free to air channel, namely, 'IBN 7', so as to comply with the conditions (a) and (b) as specified in sub clause (2) of clause 3C of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) as amended by the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eighth Amendment) Order, 2007;

(c) submit a report to the Authority within seven days of receipt of this Direction regarding compliance with the directions contained in sub-paragraphs (a) and (b) above.

(R.N Choubey)
Principal Advisor (B &CS)

To

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