

Telecom Regulatory Authority of India

Notification

New Delhi January 15, 2004 / Pausa 25, 1925

No. 301-3/2004-Eco

In exercise of the powers conferred upon it under sub-section (2) of section 11 of the TRAI Act, 1997 as amended read with the Notification No.39 dated 09.01.2004 issued from file No.13-1/2004-Restg. by the Government of India 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 to notify, by an Order in the Official Gazette, tariffs at which Telecommunications (Broadcasting and Cable Operation) Services shall be provided, the Telecom Regulatory Authority of India hereby makes the following Order.

THE TELECOMMUNICATION (BROADCASTING AND CABLE)

SERVICES TARIFF ORDER 2004

[1 of 2004]

Section I

Title, Extent and Commencement

1. Short title, extent and commencement:
 - i. This Order shall be called "The Telecommunication (Broadcasting and Cable) Services Tariff Order 2004".
 - ii. The Order shall cover tariffs for all Telecommunication (Broadcasting and Cable) Services throughout the territory of India as also those originating in India or outside India and terminating in India.
 - iii. The Order shall come into force on the date of its notification in the Official Gazette.

Section II

Tariff

2. The charges payable by
 - (a) Cable subscribers to cable operator;
 - (b) Cable operators to Multi Service Operators/Broadcasters (including their authorised distribution agencies); and
 - (c) Multi Service 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, both for CAS and non-CAS areas until final determination by Telecom Regulatory Authority of India on the various issues concerning these charges.

Section III

3. Explanatory Memorandum

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

Section IV

4. Interpretation

In case of dispute regarding interpretation of any of the provisions of this Order, the decision of the Authority shall be final and binding.

BY ORDER

Dr. Harsha Vardhana Singh
Principal Advisor cum Secretary
Telecom Regulatory Authority of India

EXPLANATORY MEMORANDUM

Cable Television Networks (Regulation) Act, 1995 was amended in 2002 and Section 4A was inserted in the original Act which envisages **“Transmission of programmes through addressable system”** [popularly referred to as Conditional Access System (CAS)] with effect from such date as may be specified in the Notification. A Notification dated 14th January 2003 was issued by the Ministry of Information and Broadcasting, Government of India making it obligatory for every cable operator to transmit/re-transmit programmes of every pay channel through an addressable system in Chennai Metropolitan area, Municipal Council of Greater Mumbai area, Kolkata Metropolitan area and National Capital Territory of Delhi within six months from 15th day of January, 2003. Subsequently vide Notification dated 10th July, 2003 the date of implementation was deferred and fixed within six months from 1st March, 2003, and Chennai and the areas of NCT of Delhi, Kolkata, Mumbai to be covered by CAS were also specified. Thereafter vide Notification dated 29th August, 2003, the earlier Notification dated 10th July, 2003 was amended and areas in NCT of Delhi where CAS was to be implemented were deleted.

2. The Hon'ble Delhi High Court, vide orders dated 4th December 2003, quashed the Notification dated 29th August 2003 issued by Ministry of Information & Broadcasting, Government of India. The cable operators of the notified areas partially withdrew pay channels from mid-night of 15th December 2003.

3. Delhi High Court in CW no. 8993-4/2003 in its order dated 26.12.03 allowed the implementation of CAS in Delhi. The Delhi High Court further directed that after expiry of three months, appropriate direction shall be issued after taking into consideration the feed back of three months' experience.

4. The Government of India issued a Notification No.39 dated 9th January 2004 whereby, under the proviso to clause (k) of sub-section (1) of section 2 of the TRAI Act, 1997 as amended, the scope of the expression telecommunication services was increased to include the broadcasting services and cable services also. Thus, the broadcasting and cable services also came within the purview of the Telecom Regulatory Authority of India. Through this Notification, in exercise of the powers under clause (d) of sub-section (1) of section 11, the Telecom Regulatory Authority of India was further authorised to, inter-alia, specify standard norms for and periodicity of revision of rates of pay channels including interim measures.

5. There is considerable uncertainty about different aspects of the Conditional Access System (CAS) regime and a detailed examination is required of the various issues, including the rates for the broadcast and cable services in CAS and non-CAS areas. Not only are there no standard rates or conditions at which services are provided by the cable operators to the subscribers, there are reports that there may be an increase in the rates charged to the subscribers. The Authority has begun its process of examination of the relevant issues, including those relating to CAS, through a consultation process. To bring some certainty in the rates prevailing for these services, it was considered necessary by the Telecom Regulatory Authority of India to intervene in the matter. The TRAI has, therefore, deemed it appropriate to specify as ceiling the rates at which the charges will be paid by the cable subscribers to cable operators, by the cable operators to multi service operators and by multi service operators to broadcasters, as those prevailing on 26th December 2003 with respect to both free-to-air channels and pay channels, and for both CAS and non-CAS areas. This intervention will continue until a final determination by the Telecom Regulatory Authority of India on the various issues involved. The Hon'ble Delhi High Court, in CW No. 8993-4/2003 dated 26th December 2003, directed the continuance of implementation of CAS in Delhi on a trial basis, initially for a period of three months, after which appropriate directions would be issued after taking into account the feedback for the three months' experience. The ceiling rates have therefore been specified as those prevailing on 26th December, 2003.