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PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi, the 30th April , 2012.

No. 1-9/2012 B&CS. ----- In exercise of the 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. S.O. 44 (E) and 45 (E) dated 9th January, 2004 in the Gazette of India, Extraordinary, Part II, Section 3,----

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:-

THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (FOURTH)
(ADDRESSABLE SYSTEMS) TARIFF (FIRST AMENDMENT) ORDER, 2012

(NO. 3 OF 2012)

1. (1) This Order may be called the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012 (3 of 2012).

(2) This Order shall come into force from the date of publication of this Order in the Official Gazette.

2. Clause 2 of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010 (1 of 2010) (hereinafter referred to as the principal Tariff Order) shall be substituted, namely:---

“**Applicability.**----This Order shall be applicable to broadcasting services and cable services provided to subscribers, through digital addressable systems, throughout the territory of India.”

3. In clause 3 of the principal Tariff Order,----

(a) for sub-clause (b), the following sub-clause shall be substituted, namely:---

“(b) “addressable system” means an electronic device (which includes hardware and its associated software) or more than one electronic device put in an integrated system through which signals of digital addressable system can be sent in encrypted form, which can be decoded by the device or devices, having an activated Conditional Access System at the premises of the subscriber within the limits of authorisation made, through the Conditional Access System and the subscriber management system, on the explicit choice and request of such subscriber, by multi-system operator or DTH operator or IPTV operator or HITS operator to the subscriber;”

(b) after sub-clause (e), the following sub-clause shall be inserted, namely:----

“ (ea) “basic service tier” means a package of free-to-air channels to be offered, with an option to subscribe, by a cable operator for a single price to subscribers of the area in which his cable television network is providing service;”

(c) for sub-clause (m), the following sub-clause shall be substituted, namely:---

“(m) “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 and fulfils the prescribed eligibility criteria and conditions;”

(d) after sub-clause (s), the following sub-clause shall be inserted, namely:----

“(sa) “encrypted”, in respect of a signal of cable television network, means the changing of such signal in a systematic way so that the signal would be unintelligible without use of an addressable system and the expression "unencrypted" shall be construed accordingly;”

(e) for sub-clause (x), the following sub-clause shall be substituted, namely:---

“(x) “Multi-System Operator” means a cable operator who has been granted registration under rule 11 of the Cable Television Networks Rules, 1994, as amended by rule 8 of the Cable Television Networks (Amendment) Rules, 2012, and who receives a programming service from a broadcaster or its authorised agencies and re-transmits the same or transmits his own programming service for simultaneous reception either by multiple subscribers directly or through one or more local cable operators and includes his authorised distribution agencies, by whatever name called;”

(f) for sub-clause (za), the following sub-clause shall be substituted, namely:---

“(za) “pay channel”, in respect of a digital addressable system, means a channel for which subscription fees is to be paid to the broadcaster by multi-system operator or DTH operator or IPTV operator or HITS operator and due authorisation needs to be taken from the broadcaster for its re-transmission on the digital addressable system;”

(g) for sub-clause (zb), the following sub-clause shall be substituted, namely:---

“(zb) "programme" means any television broadcast and includes

- (i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation; and the expression "programming service" shall be construed accordingly;"

(h) in sub-clause (zd), the word "pay" shall be omitted.

(i) for sub-clause (ze), the following sub-clause shall be substituted, namely:---

"(ze) "subscriber" means any individual, or association of individuals, or a company, or any other organization or body who receives the signals of multi-system operator or DTH operator or IPTV operator or HITS operator at a place indicated by him or it to multi-system operator or DTH operator or IPTV operator or HITS operator, without further transmitting it to any other person and includes ordinary subscribers and commercial subscribers unless specifically excluded;"

(j) after sub-clause (ze), the following sub-clause shall be inserted, namely:----

"(zea) "subscriber management system" means a system or device which stores the subscriber records and details with respect to name, address and other information regarding the hardware being utilised by the subscriber, channels or bouquets of channels subscribed to by the subscriber, price of such channels or bouquets of channels as defined in the system, the activation or deactivation dates and time for any channel or bouquets of channels, a log of all actions performed on a subscriber's record, invoices raised on each subscriber and the amounts paid or discount allowed to the subscriber for each billing period;"

4. In clause 5 of the principal Tariff Order, the following proviso shall be inserted, namely:---

" *Provided that* in case the multi-system operator and the local cable operator fail to arrive at mutual agreement, the charges collected from the subscribers shall be shared in the following manner:-

(a) the charges collected from the subscription of channels of basic service tier, free to air channel and bouquet of free to air channels shall be shared in the ratio of 55:45 between multi-system operator and local cable operator respectively; and

(b) the charges collected from the subscription of channels or bouquet of channels or channels and bouquet of channels other than those specified under clause (a) shall be shared in the ratio of 65:35 between multi-system operator and local cable operator respectively.”

5. In clause 6 of the principal Tariff Order, for sub-clause (1), the following sub-clause shall be substituted, namely:---

“(1) Every multi-system operator or DTH operator or IPTV operator or HITS operator providing broadcasting services or cable services to its subscribers using an addressable system shall, from the date of coming into force of this Order, offer or cause to offer all channels offered by it to its subscribers on a-la-carte basis and shall specify the maximum retail price for each channel, as payable by the ordinary subscriber:

Provided that the a-la-carte rate of free to air channels shall be uniform.”

6. In clause 6 of the principal Tariff Order,---

(a) in sub-clause (1), after the first proviso the following provisos shall be inserted, namely:---

“ *Provided further that* in case a multi-system operator or DTH operator or IPTV operator or HITS operator providing broadcasting services or cable services to its subscribers, using a digital addressable system, offers channels as a part of a bouquet, the rate of such 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 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 channels are a part; and
- (b) the a-la-carte rate of each channel forming part of such a bouquet shall in no case exceed three times the average rate of channel of that bouquet of which such channel is a part;

Provided also that every multi-system operator or DTH operator or IPTV operator or HITS operator, providing broadcasting services and cable services, through digital addressable systems, before the date of commencement of this Tariff Order and continues to provide such services after such commencement shall, within sixty days from the date of such commencement, comply with the provisions of the second proviso. ”

(b) after sub-clause (1), the following sub-clause shall be inserted, namely:----

“ (1A) Every multi-system operator providing cable services to the subscribers, using digital addressable cable TV system, directly or through its linked local cable operator, shall offer a package of a minimum of one hundred free to air channels as basic service tier including the channels of Prasar Bharati, namely DD-Bharati, DD-Malyalam, DD-Podhigai, DD-Odiya, DD-Bangla, DD-Saptagiri, DD-Chandana, DD-Sahyadri, DD-Girnar, DD-Kashir, DD-NE , DD-Punjabi.

(1B) It shall be open to the subscriber to choose any combination of free to air channels up to one hundred channels, in lieu of the basic service tier offered by the multi-system operator.

Provided that it shall be open to the multi-system operator to specify a minimum monthly subscription, not exceeding one hundred rupees (excluding taxes) per subscriber, towards the basic-service tier or the free to air channels chosen by the subscriber in lieu of the basic service tier.

(1C) The basic service tier offered by the multi-system operator shall include at least five channels of the each genre namely news and current affairs, infotainment, sports, kids, music, lifestyle, movies and general entertainment in Hindi, English and regional language of the concerned region.

Provided that in case sufficient number of free to air channels of a particular genre is not available, the multi-system operator shall include in the basic service tier the channels of the other genres.

(1D) It shall be open to the subscriber of the digital addressable cable TV to subscribe to basic service tier or basic service tier and one or more pay channel or only free to air channels or only pay channels or pay channels and free to air channels.

(1E) If a digital addressable cable TV subscriber subscribes to the pay channels, in a-la-carte or bouquet or a combination of a-la-carte and bouquet, with or without free to air channels, it shall be open to the multi-system operator to specify a minimum monthly subscription, not exceeding one hundred and fifty rupees (exclusive of taxes) per month.”

(c) after sub-clause (4), the following proviso shall be inserted, namely:----

“Provided that nothing contained in sub-clause (4) shall apply to the subscribers of the digital addressable cable TV systems.”

7. In clause 8 of the principal Tariff Order, in sub-clause (1), the following proviso shall be inserted, namely:---

“Provided that if a free to air channel, forming part of the subscription package, is converted into pay channel by the broadcaster, based on the verifiable consent of the subscriber, the multi-system operator or DTH operator or IPTV operator or HITS operator may either remove the said channel from the subscription package of such subscriber and reduce the price of the subscription package by an amount equal to the a-la-carte price of such free to air channel or may increase the price of the subscription package by an amount not exceeding the difference between the a-la-carte price of such free to air channel and the a-la-carte price of the said channel after its conversion into pay channel.”

8. In clause 9 of the principal Tariff Order, -----

“(a) in sub-clause (5), the word “pay” shall be omitted;

(b) in sub-clause (5), after the first proviso, the following proviso shall be inserted, namely:---

“ Provided further that every such operator who commences its services after coming into force of this Tariff Order shall submit to the Authority such reports before commencement of its services and thereafter any changes in the rates shall be reported thirty days prior to the change.”

(Wasi Ahmad)
Advisor (B&CS)

Note.-----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012 (3 of 2012).

Explanatory Memorandum

I. Background

1. In the last few years, the exponential growth in the number of TV channels (both Free To Air and Pay) combined with the inherent limitations of the analog cable TV systems has posed several challenges in the cable TV sector, mainly due to capacity constraints and non-addressable nature of the network. With time and evolution of technology, new addressable TV platforms like DTH, IPTV etc. were introduced to the masses. The evolution of technology also paved way for bringing about digitization with addressability in the cable TV sector. Accordingly, after studying the subject at length and undertaking a public consultation process, the Authority, on 5th August 2010, gave its recommendations on implementation of Digital Addressable Cable TV Systems (DAS) across the country along with a roadmap to achieve the same.
2. The Government, on 25th October, 2011, issued an Ordinance amending the Cable Television Networks (Regulation) Act, 1995, enabling the implementation of digital addressable cable TV systems in India. Thereafter, the Government also issued a notification dated 11th November, 2011, which laid down the roadmap for implementation, in a four phased manner, from June 2012 to December, 2014. The Ordinance dated 25th October, 2011, subsequently, in December, 2011, became an Act. The said amendment Act, apart from other provisions, provides for basic service tier (BST) to be offered by the operators of digital addressable cable TV systems, having its composition and tariff prescribed by TRAI.
3. Earlier, TRAI had, on 21st July 2010, issued the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010, applicable to broadcasting services and cable services provided to subscribers, through addressable systems, throughout the territory of India except cable services provided through cable television networks in the notified CAS areas. Considering the Cable Television Networks (Regulation) Amendment Act 2011, and the notification dated 11.11.2011 mentioned above, suitable amendments are required to be made in the tariff stipulations prescribed in the said tariff order, . Therefore, the Authority initiated a consultation process on the issues relating to implementation of digital addressable cable TV

systems. The consultation issues include, apart from other issues related to interconnection and QoS, the issues related to the tariff and composition of Basic Service Tier (BST), retail tariff, tariff for advertisement free channels and revenue share between Multi-System Operator (MSO) and Local Cable Operator (LCO).

4. In this connection a consultation paper was issued on 22.12.2011 on the “Issues related to Implementation of Digital Addressable Cable TV Systems”. In response to the consultation paper released on 22nd December 2011, a total of 87 comments and 4 counter-comments were received from stakeholders including consumers. Subsequently, an Open House Discussion (OHD) was also held on 13th March 2012, where the issues were discussed at length, with the stakeholders present. Based on the comments/views of the stakeholders and the analysis, various provisions related to the tariff and composition of BST, retail tariff, tariff for advertisement free channels and revenue share between MSO and LCO have been worked out and, accordingly, the tariff order has been amended through this tariff amendment order.

II. Analysis of issues

A. Basic Service Tier

5. Many stakeholders have suggested that the stipulation already available in the Tariff Order dated 21st July 2010, should be replicated for the DAS areas instead of a provision of BST, as the same is adequate to safeguard consumers’ interests. The said provision allows the operator of an addressable TV platform to prescribe a minimum subscription charge, not exceeding Rs. 150 per subscriber per month, towards the channels chosen by the consumer, on a-la-carte or bouquet basis. In support of their view, the stakeholders have stated that the fast paced growth of DTH, especially in the rural areas and cable dark areas, clearly establishes that market forces have worked extremely well at the retail, both in terms of packaging and pricing. As far as essential public services are concerned, some of the stakeholders have stated that the services of the Public broadcaster meets the public’s needs for basic television services across the country in the form of FTA Channels through its terrestrial service and DTH platform (DD Direct plus) without any recurring charges.

6. Section 4A of the Cable Television Networks (Regulation) Amendment Act 2011, provides for a basic service tier (BST) which is a package of free to air channels to be offered by a cable operator, for a single price to subscribers of the area in which his cable television network is providing service. The subscriber has the option for subscribing to BST. The composition and tariff of the BST are to be fixed by TRAI. Thus the tariff order provides the prescription related to BST.
7. As far as the size and rate of the BST is concerned, different prescriptions have been suggested by the stakeholders. Majority of the stakeholders who have suggested the size of the BST, have kept it in the range of 30 to 70 channels with price ranging from Rs. 60 to Rs. 150. A few stakeholders have also suggested slab wise BST prescription ranging from Rs. 82 for upto 30 channels to Rs. 150 for more than 100 channels. Some of the other stakeholders have also suggested that India being a diverse country with respect to ethnicity, language, preferences, tastes and choices, it would be prudent that size as well as its rate should be left to be decided by operators, rather than it being defined by the Authority. One suggestion was that, in line with the international markets wherein 70-80 channels are being offered by the operators without forced regulation, in India also, the offerings in the other platforms will compel the DAS operator to offer a competitive proposition for the BST.
8. As per the extant provisions applicable to the notified CAS areas, a minimum of thirty FTA channels are to be included in the package of channels forming BST which the cable operator need to supply to all the consumers of his cable network, at a maximum amount of Rs. 82/- (excluding Taxes) per subscriber per month. In the non-CAS areas, as per the TRAI's tariff order dated 1st Oct 2004, as amended from time to time, if the operator provides only FTA channels then it should be provided to the subscriber at a maximum of Rs. 82/- per subscriber per month (excluding Taxes) for a minimum of 30 FTA channels. The tariff order also prescribes ceilings of slab wise subscription rates for the bundled packages (of pay and FTA channels), based on a minimum of 30 FTA channels mandatorily included in each of these bundled packages. Similarly, in the draft tariff order which forms a part of a comprehensive report on tariff issues, concerning the non-CAS areas, submitted by TRAI on 21st July 2010, to the Hon'ble Supreme Court, three uniform ceilings for the bundled offerings, across the country,

have been prescribed wherein a minimum 30 FTA channels are to be mandatorily included in each bundled offering. The tariff (maximum) has been kept at Rs. 100/- for a minimum 30 FTA channels, if the operator offers only FTA channels to the consumers. Further, in all the above tariff stipulations, any FTA channel, over and above the mandatory minimum limit of 30 channels, is to be offered to the consumer without any additional charges.

9. It is a fact that digitization enables to overcome the channel carrying capacity constraints. While in analog mode only one channel could be carried in a 7MHz/8 MHz channel, in digital mode, depending upon the compression and modulation techniques employed, 10-15 channels can be carried in a single 7MHz/8 MHz channel. Also, more channels are now available in the market. Accordingly, it is expected that the BST should include substantially more number of channels as compared to that earlier mandated. However, inclusion of more channels will naturally pushup the cost of the BST. Moreover, prescribing a very large BST will limit the flexibility to carry other offerings. Therefore, these aspects have to be suitably balanced while prescribing the size and the rate of the BST. Accordingly, the Authority has prescribed that a minimum of 100 FTA channels be offered as BST by all the operators of digital addressable cable TV systems at a maximum amount of Rs. 100/- (excluding taxes).

10. On the issue of composition of the BST, a large majority of the stakeholders are of the view that the BST should have a mix of channels of different genres and the composition should be left to be decided by the market forces in accordance with the choice, preference and requirements of the subscribers in the local area of operation and preference be accorded to the regional channels while forming the BST. The Authority is of the view that the operator shall compose and offer BST having an equitable mix of various genres by providing a minimum of five channels from each genre. However, in case, sufficient number of channels of a particular genre are not available, the same can be complemented by the operator with channels of other genres. It has also been provided that the operator should offer the channels of Prasar Bharati, the Public broadcaster, namely DD- Bharati, DD-Malyalam, DD-Podhigai, DD-Odiya, DD-Bangla, DD-Saptagiri, DD-Chandana, DD- Sahyadri, DD- Girnar, DD-Kashir, DD-NE , DD-Punjabi, within the 100 channels of the BST. This is expected to benefit those consumers who are residing/working at places, far away from their native places.

11. On the issue, whether the price prescription and the size of the BST be different for different states, cities or towns, though some of the stakeholders have said that it should be different for different areas but a large majority has said that the rate and size of the BST should be kept same throughout the country. The Authority recognizes that accounting for varying affordability levels of the consumers and their choices would not be possible due to variance in affordability and choice, even within localities in a city, or even within the same locality serviced by a single operator. A uniform prescription, on the other hand, provides for the consumer protection at an aggregate level, and is easy to enforce and communicate to the consumers. In line with the suggestion of the majority of the stakeholders, the Authority has decided that the size and rate of the BST to be kept the same, throughout the country.

12. The amended Cable TV Act provides that the FTA channels offered in the BST shall also have to be offered by the operator in a-la-carte form, at a tariff to be fixed by TRAI. A mixed response has been received from the stakeholders on the a-la-carte channels price of the channels forming the BST. Some of the stakeholders, including few Broadcasters, MSOs and DTH operators, few individual consumers, a consumer organization, majority of the LCOs and a cable operators Association, have stated that it should not be mandated on account of technical and commercial feasibility, inconvenience for the consumer to choose from a very large number of available channels and also as inferred from the studies carried out in international markets etc. However, many stakeholders have supported provision of channels in a-la-carte form and have suggested the a-la-carte channel rates based on linkage with the average channel price in the BST (with a-la-carte rates at 0-10% above the average BST channel rate) or fixed rates ranging from Rs. 1.5 to Rs. 5, with the majority lying between Rs. 2 to Rs. 3 per channel per subscriber per month.

13. The technology provides the consumers to choose channels, and to avail the benefit of addressable digitization, the Authority has decided that the consumer may opt for the BST of minimum 100 FTA channels (including the channels of public broadcaster, Prasar Bharati) offered by the operator or may choose 100 channels of his liking, from the FTA channels carried over the cable network of the operator, at the charges of the BST. The subscriber has the option not to opt for any FTA channel or BST.

B. Retail tariff

14. On the issue of retail tariff the views of the majority of the stakeholders are polarized around broadly three propositions- i) retail tariff be based on the CAS model, ii) retail tariff be linked with the ceilings prescribed at the wholesale level and iii) retail tariff be kept under forbearance.
15. The stakeholders who have suggested to adopt tariff model as prevalent in the notified CAS areas, are of the view that this system has been working well for last more than 5 years and none/minimal litigations amongst the service providers have been witnessed and the consumers are also satisfied with this model of tariff. Some of these stakeholders have suggested that suitable provisions may be added in this model for the HD and niche channels. They have suggested that HD channels may be offered at say 15% above the channel rate ceiling of Rs. 5.35 and the niche channels may be kept under forbearance.
16. Some of the stakeholders are of the view that when the wholesale rates have been regulated, the retail rates should also be regulated and there could be a linkage between the channel rates offered at the wholesale by the broadcasters to the operator of the addressable platform and the retail rates offered by the operator to the consumers. Ideally the linkage should be determined by the carriage cost incurred plus the profit margin and accordingly, the retail channel rates have been prescribed by various stakeholders in the range of 10% to 100% above the wholesale rate of the channel. A few stakeholders have also specified the range of channel rates at the retail level as Rs 6 to Rs. 7 for pay channels and around Rs.2 to Rs. 3 for the FTA channels, which they have stated to be kept common for all the genres whereas other few stakeholders have suggested different ceilings, for both pay and FTA channels, ranging between Rs. 3 to Rs. 10 for channels of different genres.
17. The stakeholders who have advocated forbearance at the retail level have stated that the forbearance at the retail level has worked well in the DTH sector and in support of their argument they have cited the growth trajectory of the DTH services, both in the urban as well as in the rural areas,. It has been argued by these stakeholders that DAS, being a competing

platform with the DTH and IPTV, the same tariff regime be prescribed to maintain level playing field amongst various addressable TV platforms.

18. The instruments of addressability, a-la-carte choice to the consumer and availability of sufficient competition from other addressable platforms provide adequate checks and balances over the forbearance of retail pricing, wherein packaging and pricing is being determined by the operators. Additionally, forbearance at the retail level for DAS areas would maintain level playing field amongst various addressable TV platforms. Accordingly, the Authority has decided to continue with forbearance at the retail level tariff for the DAS areas also. However, in case of FTA channels, as there is no content cost involved, the Authority is of the view that the channel pricing at the retail level, as decided by the operator of the digital addressable system for his network, should be uniform for all the FTA channels.

C. A-la-carte provisioning of the channels

19. As far as the consumer is concerned, primary benefit to the consumer that an addressable TV system provides is the ability to choose the channels of his choice. In the tariff order dated 21st July 2010, the operators are mandated to offer all the pay channels carried over their network, on a-la-carte basis. Around 75% of all the channels, permitted by the Ministry of Information and Broadcasting, are FTA channels. Thus, offering only the pay channels on a-la-carte basis, largely deprive the subscribers from exercising their choice of channels. Therefore, the Authority feels it appropriate to extend the a-la-carte provisioning of channels to cover both the FTA and pay channels carried over the network of an operator as it is technically feasible and does not burden much the operator logistically on the one hand and empowers the consumers to benefit from the digitization with addressability of the TV services distribution sector, on the other hand. However, the advantages of bundled packages of channels should also be available to the subscriber. Subscribers should be able to choose between a-la-carte channels or bouquets or a combination of the two. This is likely to ensure the co-existence of bouquets with a-la-carte offerings on addressable systems. Accordingly, the provision of bouquet of channels to the subscribers is also a part of the Tariff Order.

20. While mandating a-la-carte choice of channels to the subscriber, the Authority recognizes the fact that if changes in choices made by subscribers are too frequent, service providers may face technical and operational difficulties. In order to provide a measure of stability to the service providers in servicing the choices made by the subscribers, the provision wherein the service providers can stipulate a minimum commitment period for the a-la-carte choice of channels by the subscriber, has been retained.

D. Twin conditions at retail level

21. TRAI had, in its Tariff Orders dated 21st Nov. 2006, for commercial subscribers in CAS and non-CAS areas, made a provision wherein twin conditions were defined to establish a relationship between the a-la-carte rate of a channel and the rate of the bouquet wherein this channel forms a part. The conditions were introduced to ensure that the consumer is not made to subscribe to bouquet(s) and left with no choice to choose. These conditions ensure that the individual channel choice is not illusory. These conditions act as a check on increase in channels prices and pricing of bouquets to make the choice illusory.

22. While prescribing the a-la-carte provisioning in the tariff order dated 21st July 2010, the Authority had decided to adopt a light touch approach and not to mandate any conditions on pricing of a-la-carte channels. It was stated in the explanatory memorandum that the Authority would, however, keep a close watch over the market and may intervene in public interest whenever necessary. In this context, in the DTH sector wherein the operators are allowed to package and price the offerings, it has been observed that the uptake of channels on a-la-carte basis is negligible. One of the prime reasons for poor uptake of a-la-carte channels is that the a-la-carte rates of the channels are disproportionately high as compared to the bouquet rates, especially in the entry level packs.

23. Further, the popular channels are distributed among different packs, both at entry level and in other smaller additional packs. As a result, the subscriber is often compelled to take additional packs to meet his demand, ultimately ends up paying more. Thus, the main purpose of addressability is defeated and ills of non-addressability continues. To ensure choice to the consumers through a-la-carte offering and to prevent skewed a-la-carte pricing, the twin

conditions have been extended to the retail level pricing. It is expected that the twin conditions at the retail level would allow a consumer to effectively exercise his choice through rational pricing of channels in a-la-carte vis-a-vis bouquet pricing. For the existing operators of the digital addressable systems, a period of 60 days has been provided for the compliance of these twin conditions.

E. Minimum Monthly Subscription Charges

24. The viability and sustainability of the distributors' operations also needs to be kept in mind. In the tariff order dated 21st July 2010, a provision exists which allows the operators to specify a minimum monthly subscription for availing the services of such service provider. This in a sense represent, the minimum monthly subscription charges that the operators expect to collect from the subscribers to recover the cost of providing the services.

25. During the consultation process industry stakeholders have emphasised that in the cable sector there is a sizable population of consumers which has a limited paying capacity. For such subscribers the Authority is of the view that the minimum monthly subscription charges of Rs. 150 (maximum) may be a potential entry barrier. Therefore, the Authority has decided that, instead of a single minimum monthly subscription option, the service provider of the digital addressable cable TV systems shall specify at least two minimum monthly subscription options. One option wherein the service provider can specify a minimum monthly subscription, not exceeding Rs. 100 per subscriber, and the other one wherein the operator can specify this amount, to be not exceeding Rs. 150 per subscriber per month. In the first minimum monthly subscription option (not exceeding Rs. 100 per month), the subscriber can avail the BST or any 100 channels on a-la-carte basis from the FTA channels carried by the MSO in its network. In case the subscriber opts for one or more pay channels, with or without BST or other FTA channels, the operator can charge him as per the second minimum monthly subscription option (not exceeding Rs. 150 per month). As far as other addressable platforms are concerned, the existing stipulation concerning the minimum monthly subscription option has been retained.

F. Provisions related to change in composition of package/pricing

26. To protect the consumer interests, a provision has been made in the Tariff Order dated 21.07.2010, that the operator shall not increase the charges for a subscription package offered by him, for a minimum period of six months from the date of enrolment of the subscriber for such subscription package. However, operators have requested to make amendment in this provision so that in case one or more FTA channels forming part of the package gets converted to pay channel, adherence to this provision should not put unnecessary burden on the operators to carry such channels without charging the consumers. Accordingly, realising the difficulty faced by the operators, a proviso has been added to the relevant clause which allows the operator to either drop the particular channel(s) from the package or modify the charges accordingly, based on the discretion of the consumer.

G. Revenue share

27. Most of the broadcasters/aggregators suggested that the revenue share between operators of digital addressable cable systems should be based on the mutual negotiation instead of being regulated by TRAI. Some of them have suggested that the revenue share of BST should be regulated by TRAI whereas rest of the offerings should be on mutual negotiation and in case the revenue share is defined by TRAI, it should be same for both the BST and other offerings. Some of broadcasters have suggested a maximum of 15-20% share for LCO while one suggestion is that the revenue be shared in the ratio of 55:45 for MSO and LCO respectively. Most of the industry associations have also favoured that the revenue share should be based on mutual negotiation.

28. The MSOs are divided on mechanism for determining the subscription revenue share between the MSO and LCO. Some have suggested that it should be based on mutual negotiation while others have suggested that it should be defined by TRAI. It has been suggested that the revenue share could be on similar lines as CAS model with a higher revenue share for MSOs, keeping in view the investments the MSOs have to make in the DAS areas. Almost all the LCOs are in favour of regulation of subscription revenue share by TRAI. Some of them have suggested that the current CAS regime should be followed for DAS as well. Different ratios have been

suggested by the LCOs for BST (ranging between 75% to 100% in favour of LCO) and rest of the offerings (varying from 25-60% in favour of LCO).

29. TRAI in its tariff order dated 21st July 2010, had prescribed that the revenue share between the MSO and LCO should be decided through mutual negotiations. During the consultation process as well as at various industry fora, it has been emphasised that the Authority should define the revenue share in order to protect level playing field and interests of the large cable community. It has also been stated that the revenue share for the basic service tier amount should also be clearly apportioned between the LCO and MSO.
30. In the digital addressable cable TV systems, the subscriber management system (SMS) of the MSO contains database regarding the subscriber base and the channels/bouquets subscribed by each of its subscribers. This database is verifiable and auditable. Also, the MSO is mandated to declare the a-la-carte rates of all the channels and the rates of bouquets/packs offered by it, if any. With these details, the exact subscription revenue is also known to the MSO as well as to the LCOs connected to the MSO. In view of the transparency inbuilt into the digital addressable systems, the Authority is of the view that it would be appropriate that the MSO and LCO share the subscription revenue, based on mutual negotiations, as the parameters to negotiate upon are no longer disputable. In case, they fail to arrive at a mutually agreed revenue share arrangement, they shall share the subscription revenue as prescribed in Part IV of this tariff order.
31. A large number of stakeholders have advocated for adoption of revenue share model of the notified CAS areas. In the notified CAS areas, for the pay channels, the subscription revenue is shared amongst the broadcaster, MSO and LCO in the ratio of 45:30:25 respectively. The revenue share mechanism based on CAS model has been considered by the Authority. Even though, this formulation for revenue share cannot be applied directly in the DAS areas, wherein the MSO defines the retail price of the channel/bouquets instead of the broadcaster, some useful clue can be drawn from the same. In the digital addressable cable TV systems, the FTA channels (as well as pay channels) are to be aggregated by the MSO and carried in digital and encrypted form. They are duly accounted and authorised through the SMS system of the MSO, and carried over the network of both the MSO and LCO. This is akin to carriage of pay channels in the notified CAS areas. Therefore, as far as the quantum of revenue share for the FTA

channel/bouquets is concerned, the CAS formulation can be adopted. Being FTA channels, there is no share for the broadcasters and so the revenue share works out to be 55:45 between the MSO and LCO respectively.

32. As far as pay channels and bouquets, having pay channels, are concerned, the MSO would be required to pay the broadcaster from its share of the subscription revenue. This requires that his share should be more than the revenue share of 55%, prescribed for the BST/FTA channels (a-la-carte or bouquets). In the notified CAS areas, the revenue share of 25% for the pay channels for the LCOs, was prescribed in the backdrop that LCO would keep the total subscription revenue arising out of the BST. In the Digital Addressable Cable TV Systems, the subscription revenue arising out of the BST and FTA channels (a-la-carte or bouquet(s)) is going to be shared with the MSOs in the ratio of 55:45 (MSO:LCO). So one argument could be that the LCO is required to get more revenue out of the pay channels and bouquet having pay channels, to sustain their business. In this regard, the main difference between the CAS and the DAS is that, in CAS the FTA channels were downlinked by LCO and distributed whereas in DAS all channels, including FTA channels, are downlinked, encrypted and distributed by the MSO. In case of the bouquet having both pay and FTA channels, as it would be very difficult to bifurcate the pay and FTA channel revenue components, it would be prudent to share the revenue for such bouquet(s) in the same ratio as that for the pay channels. Further, to incentivise the LCO, to promote pay channels on a-la-carte basis, a better revenue share for the LCOs is envisaged which would ultimately ensure better choice to the consumer. So there is a case to have a revenue share higher than 25% for LCOs for pay channels or bouquet with pay channels. For only FTA subscription (a-la-carte, bouquet or BST), it is now 45%. So taking a mid path i.e. 35% for LCOs, for pay channels or bouquet with pay channels, is expected to generate sufficient revenue for LCOs. This would leave 65% of subscription revenue with the MSOs. Besides the subscription revenue, the MSO has other sources of revenue in the form of carriage fee. Also, the retail packaging and pricing would be done by the MSO in the DAS regime. Keeping in view all these factors, the Authority has decided that the subscription revenue shall be shared between the MSO and LCO in the ratio of 65:35 respectively, for the pay channels and bouquet having pay channels, with or without FTA channels.

H. Advertisement free channels

33. On the issue of viability of ad-free channels, many stakeholders have opined that ad-free channels are viable, however, a large majority of the stakeholders, consisting of all the segments of the stakeholders including the consumers, are of the view that the determination of viability of the ad-free channels in the Indian markets be left to the market forces to decide.
34. On the issue of tariff dispensation for the ad-free channels, a large majority of the stakeholders have advocated forbearance at both the wholesale and retail levels in the DAS areas. Few MSOs have, however, suggested that the wholesale tariff be regulated, keeping the retail under forbearance whereas one cable operator association has suggested that tariff for ad-free channels should be regulated by TRAI.
35. As far as the sharing of the subscription revenue of the ad-free channels is concerned, all the broadcasters have viewed that it should be left for the commercial negotiations between the service providers. The other stakeholders are divided over this issue. Some of these stakeholders have suggested that revenue share be decided in the same way as any other pay channel while others have suggested different percentages for broadcaster, MSO and LCO, however, they have not offered any justification for the same.
36. Offering of a channel in advertisement-free format (Ad-free channel) is a recent phenomenon in the Indian television market. These channels are driven by demand and generally cater to targeted segment of viewers. The ad-free channels, being solely dependent on the subscription revenue and demand based, in line with the view of a large majority of the stakeholders, the Authority has decided to keep the ad-free channels under complete forbearance. The niche channels e.g. HDTV channels and 3D channels, which require specialized STBs, are already under forbearance and would continue to remain under forbearance. The Authority will review the position at an appropriate time. As far as revenue share is concerned, it shall be shared between MSO and LCO in the same ratio as defined for other channels.
