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TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES (SECOND) TARIFF (NINTH AMENDMENT) ORDER, 2008

(NO. 4 OF 2008)

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 26th December, 2008.

No. 1-31/2008-B&CS.----- In exercise of the powers conferred by subclauses (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 Telecommunication), No.39,-

- (a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub-section (1) of section 2 of the said Act, and
- (b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4,

the Telecom Regulatory Authority of India hereby makes the following Order further to amend the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004), namely:-

- **1.** (1) This order shall be called the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Ninth Amendment) Order, 2008.
- (2) It shall come into force on the 1st day of January, 2009.
- 2. In clause 3 of the Telecommunication (Broadcasting and Cable)

Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter referred to as the principal Tariff Order), after the words and figures "prevalent as on 1st day of December, 2007, and increased by an amount not exceeding four per cent.", the words "and further increased by an amount not exceeding seven per cent. of such increased amount" shall be inserted.

3. In the Schedule to the principal Tariff Order,-----

(a) in PART I, for the Table under the heading "Charges payable by a subscriber (referred to in sub-clause (a) of clause 3) to the cable operator or multi system operator transmitting or re-transmitting both Free to Air channels and Pay channels in Non-CAS areas.", the following Table and footnote shall be substituted, namely:-

..

Serial number.	Number of pay channels and Free to Air channels to be transmitted or retransmitted through the cable television network.		Maximum amount of charges payable by a subscriber per month for first television connection (exclusive of all taxes) for Pay channels and Free to Air channels mentioned under column (2)		
(1)	Pay channels	Free to Air channels	X Class cities and erstwhile A Class cities*	Y Class cities excluding erstwhile A Class cities*	Z Class cities, towns and other habitations
	2(a)	2(b)	3(a)	3(b)	3(c)
1.	Upto twenty pay channels	minimum thirty Free to Air channels	Not exceeding rupees one hundred and seventy one only.	Not exceeding rupees one hundred and fifty only.	Not exceeding rupees one hundred and thirty nine only.
2.	More than twenty and upto thirty pay channels	minimum thirty Free to Air channels	Not exceeding rupees two hundred and fourteen only.	Not exceeding rupees one hundred and eighty two only.	Not exceeding rupees one hundred and seventy one only.

3.	More	minimum	Not exceeding	Not exceeding	Not exceeding
	than	thirty	rupees two	rupees two	rupees one
	thirty	Free to	hundred and	hundred and	hundred ninety
	and upto	Air	fifty one only.	fourteen only.	eight only.
	forty	channels			
	five pay				
	channels				
4.	More	minimum	Not exceeding	Not exceeding	Not exceeding
	than	thirty	rupees two	rupees two	rupees two
	forty	Free to	hundred and	hundred and	hundred and
	five pay	Air	seventy eight	thirty five only.	fourteen only.
	channels	channels	only.		

^{*} Erstwhile A class cities as per Government of India, Ministry of Finance (Department of Expenditure) O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004.";

(b) in PART II, under column (2) of the Table, for the words "Rupees seventy seven", the words "Rupees eighty two" shall be substituted;

(c) for Note 4, the following Note shall be substituted, namely:-

"Note 4. Classification of cities referred to under column 3(a) and 3(b) of Part I of the Schedule shall be the same classification as mentioned in the orders of the Government of India, Ministry of Finance issued, from time to time, for the purpose of determining the entitlement of house rent allowance of Central Government Employees as per the O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004 issued by the Ministry of Finance (Department of Expenditure) as modified by its O.M. No.2(13)/2008-E.II(B) dated 29th August, 2008 or such other classification as may be specified by the Government of India, Ministry of Finance from time to time for the entitlement of the house rent allowance except in respect of cities which had been originally classified as A Class cities as per O.M. No. 2(21)/E.II(B)/2004 dated 18.11.2004, which shall, for the purpose of this Tariff Order, continue to be grouped with erstwhile A-1 Class cities now classified as X Class cities as per the said O.M. No.2(13)/2008-E.II(B) dated 29th August, 2008."

Note 1.----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Ninth Amendment) Order, 2008.

Note 2.—The Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) was published vide notification no. 1-29/ 2004-B&CS dated 1st October, 2004 and subsequently amended vide notifications no. 1-29/ 2004-B&CS dated 26th October, 2004, no. 1-29/ 2004-B&CS dated 1st December, 2004, no. 1-13/ 2005-B&CS dated 29th November, 2005, no. 1-2/ 2006-B&CS dated 7th March, 2006, no. 1-2/ 2006-B&CS dated 24th March, 2006, no. 1-13/ 2005-B&CS dated 31st July, 2006, no. 1-19/ 2006-B&CS dated 21st November, 2006 and no. 1-1/2007-B&CS dated 04th October, 2007.

Annexure

EXPLANATORY MEMORANDUM

In 2004, the Authority had issued the Telecommunication (Broadcasting and cable) Services (Second) Tariff Order 2004 (6 of 2004) for cable services, wherein cable charges excluding taxes, payable by Cable Subscribers to Cable Operators, Cable Operators to Multi System Operators/ broadcasters (including their authorised distribution agencies), Multi System Operators to Broadcasters (including their authorised distribution agencies) prevailing as on 26 December 2003 in respect of both free to air and pay channels were made as the ceiling on such charges. The Tariff Order, as amended, also permitted increase/decrease in ceiling on account of new pay channel(s) launched after 26.12.2003 or on FTA channel (s) existing on that date converting to Pay channel (s) later or on reduction in the number of pay channel(s) as shown on 26.12.2003 under certain conditions.

- 2. Later on, inflation linked increases of 7% and 4% in the cable charges were permitted vide second tariff amendment order of 1st December 2004 and third tariff amendment order of 29th November 2005 based on the movement of wholesale price index (WPI). These inflation linked increases in the cable charges were to be effective from 1st January 2005 and 1st January 2006, respectively. However, the third amendment order relating to 4% increase could not be brought into operation as the TDSAT stayed it on 20.12.2005 on an appeal filed by a consumer organisation. Subsequently, vide its order dated 22.12.2006, TDSAT vacated the stay.
- 3. TRAI, vide its eighth tariff amendment order dated 4th October 2007, while continuing the ceiling on the cable charges, allowed the 4% increase in the cable charges in those cases in which service providers had not increased the charges after the stay was vacated by Hon'ble TDSAT on 22nd December 2006. For the operational convenience, the reference date was also changed from 26th December 2003 to 1st December 2007 in this tariff amendment order.

- 4. Further, the Authority, vide this eighth tariff amendment order dated 4th October 2007, while continuing the freeze on the cable charges also provided for specific ceilings for ordinary subscribers and residual commercial subscribers based on number of channels transmitted for different categories of cities, towns and other habitations.
- 5. Some broadcasters have moved Hon'ble TDSAT against the eighth amendment order dated 4th October, 2007 vide appeal no 10(C), 11(C), 12(C) and 15(C) mainly on the provisions relating to the mandatory a-la-carte provisioning of their channels to MSOs/cable operators wherein the order of the Hon'ble TDSAT is reserved. A group of cable operators and an MSO have also moved the Hon'ble TDSAT against the city specific ceilings and classification of cities vide appeal no 13(C) and 14(C). However, none of the appellants have raised the issue of 4% increase in the tariff permitted by the eighth tariff amendment order of 4th October, 2007.
- 6. While indicating the regulatory framework for Tariff, TRAI in its recommendations on "Issues relating to Broadcasting and Distribution of TV Channels" (sent to the Government on October 1, 2004) had also indicated that the ceiling will be revised periodically to make adjustments for inflation. While issuing the eighth tariff amendment order on 4th October 2007 also, it was indicated that the Authority would closely monitor the tariff ceilings prescribed in the tariff order. As has been done in the past, a revision of the prescribed ceilings on account of inflation has been felt necessary.
- 7. Office of the Economic Advisor, an Attached Office under the Ministry of Commerce and Industry maintains the movement in whole sale price index (WPI) on yearly, monthly and weekly basis. WPI is calculated based on a basket of commodities. Thus the WPI based on all commodities will be most appropriate for deciding the inflation related adjustment, which has also been the basis in the past. The monthly data regarding WPI is available upto August 2008. However the weekly data is available upto 29th November 2008, though the figures for the last 8 weeks in the weekly data are provisional.
- 8. The analysis of the monthly WPI data shows that the WPI has increased from 223.8 to 249.3 from August 2007 to August 2008. Thus the inflation comes to be 12.82% if it is

calculated from August 2007 to August 2008. However, the inflation is 12.13%, 12.08%, 11.72% and 11.46% if it is calculated with reference to September 2007, October 2007, November 2007 and December 2007 respectively ending with August 2008. Similarly, the inflation comes to 11.44% if it is calculated on the basis of weekly WPI figure for the period 6th October 2007 (Date nearest to the issue of eighth tariff amendment order) to 6th October 2008. However the inflation again comes down to 8.69% and 7.99% if it is calculated on the basis of latest figure available for the week ending 29th November 2008 and compared with the WPI figure for the week ending 6th October 2007 and 1st December 2007 (Date from which eighth tariff amendment order was made effective) respectively. From this analysis it is clear that the inflation was around 12% initially, but has come down to around 8% and the trend shows that it may come down further. With the recent cut in the administered fuel prices, it is expected that the inflation will be below 8%. For this reason and in the interests of the consumers at large, the Authority feels it reasonable to increase the rates of cable TV services by an additional 7% with effect from 1st January 2009.

- 9. Tariff amendment order dated 4th October 2007 had also prescribed specific tariff ceilings at consumer level based on the number of pay channels and classification of cities/towns. Therefore, now it is felt appropriate to provide for inflation linked adjustment by way of re-fixation of ceilings in rupee terms by taking into account the 7% hike given in the cable charges, and then rounding it off to the nearest rupee. The rounding off is desirable from the point of view of convenience of the consumers and service providers.
- Another issue that has arisen relates to reclassification of cities made by the Ministry of Finance for the purpose of house rent allowance to Central Government employees recently. The earlier classification of cities / towns / habitations into A-1, A, B-1, B-2, C and "unclassified" categories for HRA purposes was based on OM NO 2(21) / E.II (B)/2004 dated 18.11.2004 issued by the Ministry of Finance (Deptt of Expenditure), as amended from time to time. This classification was used in the Tariff Amendment Order dated 4th October, 2007, for fixing ceilings for A-1 and A Class cities as one group, B-1 and B-2 Class cities as second group and C and "unclassified" as third group. After the implementation of the decision of the Government on the report of the 6th Pay

Commission, Ministry of Finance has now changed the classification of cities vide their O.M. No. 2(13)/2008-E. II(B) dated 29th August, 2008. The erstwhile A-1 Class cities have been named as "X" Class cities, and erstwhile A, B-1 and B-2 Class cities have been named as "Y" Class cities. Erstwhile "C" and "unclassified" towns and habitations have been named as "Z" Class. As the tariff amendment order of 4th October 2007 already provides that the classification of cities will be the same as classified from time to time by the Ministry of Finance for the purpose of HRA to the Central Government employees, (vide Note 4 below Part II of Schedule to the Tariff Amendment Order dated 4.10.2007), there is a need now to reflect this modified classification of cities in the principal Tariff Order. Accordingly, revised classification of cities as notified by the Government of India, Ministry of Finance has also been incorporated in the Schedule to the Tariff Order. However, for the purposes of the Tariff for non-CAS cable sector, the principal Tariff Order has treated the erstwhile "A" Class cities at par with "A-1" class cities. In order to maintain the existing dispensation, this tariff amendment order continues to club the erstwhile "A" class cities with the present "X" class cities, so that interests of stakeholders in these cities are not affected.

11. Government of India, Ministry of Finance (Department of Expenditure) has issued orders for treating Faridabad, Ghaziabad, Gurgaon and NOIDA at par with "X" Class cities for the purpose of HRA. Similarly, Government of India has also issued orders for treating Jalandhar Cantt., Shillong, Goa and Port Blair at par with "Y" Class cities for the purpose of HRA. The provisions of this Tariff Order will apply to these cities in accordance with these orders of the Ministry of Finance (Department of Expenditure) as already contemplated in Note 4 of the Schedule to the Tariff Order. Accordingly, a complete list of cities and towns under different categories for the purposes of the Tariff Order is placed at Annexure-I. The said list is based on the Government of India, Ministry of Finance (Department of Expenditure)'s O.M. No. 2(13)/2008-E. II(B) dated 29th August, 2008 and also incorporates the changes allowed by the Ministry of Finance in the case of specific cities as reflected in the said O.M.. The said list also reflects the categorization of the erstwhile A Class cities along with the present X Class cities for the purpose of this Tariff Order as indicated in the preceding paragraph.

ANNEXURE-I TO THE EXPLANATORY MEMORANDUM

List of Cities and Towns under different categories for purposes of the present Tariff Order

S. No.	"X" Class Cities including		"Y" Class Cities excluding	
	erstwhile "A" Class cities		erstwhile "A" Class cities	
1	Ahmedabad (U/A)#	1	Agra (U/A)	
2	Bengaluru (U/A)	2	Aligarh	
3	Chennai (U/A)	3	Allahabad (U/A)	
4	Delhi (U/A)	4	Amravati	
5	Faridabad*	5	Amritsar (U/A)	
6	Ghaziabad*	6	Asansol (U/A)	
7	Greater Mumbai (U/A)	7	Aurangabad (U/A)	
8	Gurgaon*	8	Bareilly (U/A)	
9	Hyderabad (U/A)	9	Belgaum (U/A)	
10	Kolkata (U/A)	10	Bhavnagar (U/A)	
11	Jaipur#	11	Bhiwandi (U/A)	
12	Kanpur (U/A)#	12	Bhopal (U/A)	
13	Lucknow (U/A)#	13	Bhubaneshwar (U/A)	
14	Nagpur (U/A)#	14	Bikaner	
15	NOIDA*	15	Chandigarh	
16	Pune (U/A)#	16	Coimbatore (U/A)	
17	Surat (U/A)#	17	Cuttak (U/A)	
		18	Dehradun (U/A)	
		19	Dhanbad (U/A)	
		20	Durg-Bhilai Nagar (U/A)	
		21	Goa*	
		22	Gorakhpur	
		23	Guntur	
		24	Guwahati (U/A)	
		25	Gwalior (U/A)	
		26	Hubli-Dharwad	
		27	Indore (U/A)	
		28	Jabalpur (U/A)	
		29	Jalandhar Cantt *	
		30	Jalandhar (U/A)	
		31	Jammu (U/A)	
		32	Jamnagar (U/A)	
		33	Jamshedpur (U/A)	
		34	Jodhpur (U/A)	
		35	Kochi (U/A)	
		36	Kohlapur (U/A)	
		37	Kota (U/A)	

38	Kozhikode (U/A)
39	Ludhiana (U/A)
40	Madurai (U/A)
41	Mangalore (U/A)
42	Meerut (U/A)
43	Moradabad
44	Mysore (U/A)
45	Nashik (U/A)
46	Patna (U/A)
47	Pondicherry (U/A)
48	Port Blair *
49	Raipur (U/A)
50	Rajkot (U/A)
51	Ranchi (U/A)
52	Salem (U/A)
53	Shillong *
54	Solapur
55	Srinagar (U/A)
56	Thiruvanathapuram (U/A)
57	Tiruchirappalli (U/A)
58	Tiruppar (U/A)
59	Vadodara (U/A)
60	Varanasi (U/A)
61	Vijaywada (U/A)
62	Visakhapatnam (U/A)
63	Warangal (U/A)

Note

- (i) The above list is based on the Government of India, Ministry of Finance (Department of Expenditure)'s O.M. No. 2(13)/2008-E. II(B) dated 29th August, 2008, with modifications as stated in note (ii) and (iii).
- (ii)* Ministry of Finance has issued orders treating Faridabad, Ghaziabad, Gurgaon and NOIDA at par with "X" class cities for the purpose of HRA. They have, therefore, been included in "X" class cities for the purpose of this Tariff Order. Similarly, Ministry of Finance has also issued orders treating Jalandhar Cantt, Shillong, Goa and Port Blair at par with "Y" class cities for the purpose of HRA. They have, therefore, been included in "Y" class cities for the purpose of this Tariff Order.
- (iii)# Ahmedabad (U/A), Jaipur, Kanpur (U/A) Lucknow (U/A), Nagpur, Pune (U/A) and Surat (U/A), being cities falling under the erstwhile classification of A Class cities, will continue to be treated at par with "X" class cities (erstwhile A-1 Class cities) for the purposes of this Tariff Order.
