

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, the 31st March, 2014.

**THE TELECOMMUNICATION (BROADCASTING AND CABLE) SERVICES
(SECOND) TARIFF (ELEVENTH AMENDMENT) ORDER, 2014**

(No. 3 of 2014)

No. 1-6/2014 - B&CS. ----- In exercise of the powers conferred by sub-clauses (ii), (iii) and (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), 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. 39 (S.O. 44 (E) and 45 (E)) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part II- Section 3- Sub-section (ii), ----

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 may be called the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 (3 of 2014).

(2) This Order shall come into force on the 1st day of April, 2014.

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), for the words and figures “prevalent as on 1st day of December, 2007, and increased by an amount not exceeding four per cent and further increased by an amount not exceeding seven percent of such increased amount shall be the ceiling,” the words and figures “prevalent before the coming into force of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014, and increased by an amount not exceeding fifteen per cent. shall be the ceiling ” shall be substituted.

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 shall be substituted, namely:-

Serial Number	Number of pay channels and Free to Air channels to be transmitted or re-transmitted 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)	(2)		(3)		
	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 ninety seven only.	Not exceeding rupees one hundred and seventy three only.	Not exceeding rupees one hundred and sixty only.
2.	More than twenty and upto thirty pay channels	minimum thirty Free to Air channels	Not exceeding rupees two hundred and forty six only.	Not exceeding rupees two hundred and nine only.	Not exceeding rupees one hundred and ninety seven only.
3.	More than thirty and up to forty five pay channels	minimum thirty Free to Air channels	Not exceeding rupees two hundred and eighty nine only.	Not exceeding rupees two hundred and forty six only.	Not exceeding rupees two hundred and twenty eight only.
4.	More than forty five pay channels	minimum thirty Free to Air channels	Not exceeding rupees three hundred and twenty only.	Not exceeding rupees two hundred and seventy only.	Not exceeding rupees two hundred and forty six only.

(b) in PART II, under column (2) of the Table, for the words “ Rupees eighty two only”, the words “Rupees ninety four only” shall be substituted.

(Parameswaran N.)
Principal Advisor (B&CS)

Note 1.-----The Explanatory Memorandum annexed to this Order explains the objects and reasons of the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Eleventh Amendment) Order, 2014 (3 of 2014).

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 the 1st October, 2004 and subsequently amended vide notifications no. 1-29/ 2004-B&CS dated the 26th October, 2004, no. 1-29/ 2004-B&CS dated the 1st December, 2004, no. 1-13/ 2005-B&CS dated the 29th November, 2005, no. 1-2/ 2006-B&CS dated the 7th March, 2006, no. 1-2/ 2006-B&CS dated the 24th March, 2006, no. 1-13/ 2005-B&CS dated the 31st July, 2006, no. 1-19/ 2006-B&CS dated the 21st November, 2006, no. 1-1/2007-B&CS dated the 04th October, 2007, no. 1-31/2008-B&CS dated the 26th December 2008 and no. 1-2/2014 - B&CS dated 10th February 2014.

EXPLANATORY MEMORANDUM

1. In 2004, the Authority had issued the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order 2004 (6 of 2004) dated 1st October 2004, for cable services, wherein cable charges excluding taxes, payable by Cable Subscribers to Cable Operators, Cable Operators to Multi System Operators/ Broadcasters, Multi System Operators to Broadcasters, prevailing as on 26th December 2003 in respect of both free to air and pay channels were made as the ceiling. On 1st October 2004, the Authority also sent its recommendations to the Government on Issues relating to Broadcasting and Distribution of TV channels in which, *inter alia*, it was stated that the ceilings prescribed by the above said tariff order shall be reviewed periodically to make adjustments for inflation.
2. Accordingly, inflation linked increases of 7% and 4% in the cable charges were permitted through the Second Tariff Amendment Order of 1st December 2004 and the Third Tariff Amendment Order of 29th November 2005 respectively, based on the movement of the 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 Tariff Amendment Order relating to the 4% increase could not be brought into operation as the Hon'ble TDSAT stayed it on 20th December 2005 on an appeal filed by a consumer organisation. Subsequently, through its order dated 22nd December 2006, TDSAT vacated the stay.
3. Through the Eighth Amendment to the Tariff Order, dated 4th October 2007, TRAI, while continuing the ceiling on the cable charges, permitted a 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. Subsequently, vide Ninth Amendment dated 26th December 2008 to the Tariff Order, another inflationary hike by 7% was allowed. This hike became effective from 1st January 2009.

4. Thus, after coming into force of the principal tariff order of 1st October 2004, three inflationary hikes (i) 7% w.e.f. 1st January 2005, (ii) 4% w.e.f. 1st January 2006, and (iii) 7% w.e.f. 1st January 2009 have so far been allowed. Table A below summarises the inflation linked hikes permitted till date.

Table A: Summary of inflation linked hikes allowed till date									
Sr. No.	Date from which Inflation linked hike allowed	Period covered for allowing the inflation linked hike and corresponding WPI			Quantum of actual hike allowed	Effective total inflation linked hike allowed (Dec. 2003 till Dec. 2008)	Increase in WPI (from Dec 2003 till Dec 2008)	Percentage pass - through	Remarks
				WPI					
1	1.1.2005	From	Dec-03	176.8	7%	19%	30%	63%	WPI data as per 1993-94 series.
		To	Dec-04	188.8					
2	1.1.2006	From	Dec-04	188.8	4%				
		To	Dec-05	197.2					
3	1.1.2009	From	Dec-05	197.2	7%				
		To	Dec-08	229.7					

5. No increase (on grounds of inflation) has been allowed for the past five years, for the reasons discussed below. The Eighth Amendment to the Tariff Order was challenged by several service providers vide appeal Nos. 10(c) to 15(c) of 2007 in the Hon'ble Telecom Disputes Settlement and Appellate Tribunal (TDSAT) which, in its judgment dated 15th January 2009, struck down the said amendment to the tariff order. On TRAI's appeal (CA no. 829-833 of 2009 TRAI Vs Set Discovery and Ors), Hon'ble Supreme Court, in its interim order dated 13th May 2009, stayed the said Hon'ble TDSAT judgment and directed the Authority to carry out *de novo* tariff determination exercise and submit a report to it. The Authority carried out the exercise and submitted the same in the Hon'ble Supreme Court on 21st July 2010. In this report, a draft tariff order was also attached which, amongst others, had a provision for 9% inflation linked hike in the tariff ceilings.

6. The said matter has been pending in the Hon'ble Supreme Court since 2009. In effect this means that there has been no inflation linked adjustments in the Tariff Order during the past five years. In this background, the Authority approached the Hon'ble Supreme Court and filed an Interlocutory Application (I.A.) Nos. 71-75 of 2014 in CA no. 829-833 of 2009 in the case of TRAI Vs Set Discovery and Ors, and sought permission of the Hon'ble Court to review the Tariff Order. The Hon'ble Supreme Court allowed the IA and in its order dated 28th February 2014 held as under:

“On going through the averments in these applications, the Appellate Authority is permitted to review the tariff ceiling to make adjustment for inflation and notify the same, in exercise of its powers conferred under section 11(2) of the TRAI Act, 1997.”

7. In line with the past practice, the Authority has now worked out the change in the WPI from December 2008 to February 2014, based on the monthly WPI data maintained by the Ministry of Commerce and Industry. The month-wise WPI data since January 2008 has been compiled and placed at Appendix I. From this WPI data, the inflation works out to be equal to 43.69% for the period December 2008 to February 2014.
8. The inflation linked hikes provided till date have been analysed in Table A above. It can be seen that while the WPI moved up by 30% during the period from December 2003 till December 2008, taking the relevant factors into considerations, the effective inflation linked hike permitted by the Authority was 19%. Thus, the pass-through was around 63%. Therefore, it would be only appropriate that a similar pass-through is permitted for the period under consideration. Keeping in line with the above analysis, the inflation linked hike to be permitted for the period under consideration (from December 2008 to March 2014) has been worked out and is presented in Table B below.

Table B: Inflation linked hike to be provided covering the period from Dec 2008 to Mar 2014						
Date from which Inflationary hike allowed	Period covered for allowing the inflation linked hike and the corresponding WPI			Quantum of Inflation as per WPI	Total quantum of inflation linked hike to be allowed taking pass through as 63% of hike in WPI for the corresponding period	Remarks
1.4.2014	From	Dec-08	124.5	43.69%	27.5%	1. WPI data as per 2004-05 series. 2. WPI data is available only up to Feb. 2014. Hence, data of Feb. 2014 has been taken for Mar. 2014.
	To	Mar-14	178.9			

9. The Authority is of the view that a hike to the tune of 27.5% in a single go would not be appropriate for the market; consumers need some time to adjust. Therefore, the Authority has decided that this hike should be implemented in two installments. The first installment of 15% shall be effective from 1st April 2014 which has been incorporated in this Tariff Order. The second installment for the remaining inflation linked increase, for the period from December 2008 to March 2014, shall be made effective from 1st January 2015 through a separate tariff order to be issued subsequently. This is expected to give enough and reasonable time to all the stakeholders to adjust to these hikes.
10. In its tariff amendment order dated 4th October 2007, the Authority had prescribed specific tariff ceilings at consumer level based on the number of pay channels and classification of cities/towns. Accordingly, to account for the 15% inflation linked hike, similar tariff ceilings at the consumer level have been worked out and tabulated in the tariff order. The tariff ceilings have been rounded-off to the nearest rupee from the point of view of convenience of the consumers and service providers.

Month-wise WPI Data

(Source: Website of the Office of Economic Adviser to the Government, Ministry of Commerce and Industry)

Year	WPI											
	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug	Sept.	Oct.	Nov.	Dec.
2014	178.9	178.9										
2013	170.3	170.9	170.1	171.3	171.4	173.2	175.5	179	180.7	180.7	181.5	179.2
2012	158.7	159.3	161	163.5	163.9	164.7	165.8	167.3	168.8	168.5	168.8	168.8
2011	148	148.1	149.5	152.1	152.4	153.1	154.2	154.9	156.2	157	157.4	157.3
2010	135.2	135.2	136.3	138.6	139.1	139.8	141	141.1	142	142.9	143.8	146
2009	124.4	123.3	123.5	125	125.9	126.8	128.2	129.6	130.3	131	132.9	133.4
2008	117.5	119	121.5	123.5	124.1	127.3	128.6	128.9	128.5	128.7	126.9	124.5

WPI Data for 2004-05=100

WPI data not available beyond February 2014.