

Without Prejudice  
By SPEED POST A.D

To  
Shri. Ram Sewak Sharma  
Chairperson  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawahar Lal Nehru Marg  
New Delhi – 110 002

Date: 12 August 2016

Subject: Appeal No, 2 (C) of 2014, Home Cable Network [P] Ltd. Vs Telecom Regulatory Authority of India, subsequent Hon'ble TDSAT order dated 29.05.2014, Judgment dated 28.04.2015 and Hon'ble Supreme Court of India, order dated 04.08.2015 in Civil Appeal No (s) 5159-5164 / 2015 and the subsequent Press Note No. 28 of 2016 issued by TRAI on 09.05.2016.

Dear Sir,

The TRAI vide its 2<sup>nd</sup> Tariff Order dated 01.10.2004 had frozen the charges payable by the Distribution Platform Operators (DPOs) to the Broadcasters and the charges payable by the consumer to the DPOs as prevailing on 26.12.2003 in respect of both FTA and pay TV channels.

The said tariff order was subjected to the First Review for the purpose of inflationary adjustment in November, 2004 and vide notification dated 01.12.2004 the said 2<sup>nd</sup> Tariff Order was amended to provide for increase up to 7% over the sealing of charges prevailing as on 26.12.2003. This increase was made effective from 01.01.2005.

Thereafter, another review was carried out and an increase of 4% was allowed with effect from 01.01.2006 on the prices arrived after the increase of 7% vide Tariff order 01.12.2004. In both the reviews that movement of whole sale price index was used.

The 3<sup>rd</sup> amendment to tariff order relating to 4% increase could not be brought into effect immediately as vide order dated 20.12.2005 the Hon'ble TDSAT stayed the said 3<sup>rd</sup> amendment order of 4% increase. The said stay order dated 20.12.2005 was vacated vide order dated 22.12.2006. Thereafter 8<sup>th</sup> amendment on 04.10.2006 was brought into effect to permit 4% increase in case service

providers could not avail benefit of 8<sup>th</sup> amendment owing to order dated 20.12.2005. vide 9<sup>th</sup> amendment dated 26.12.2008 another increase of 7% was granted.

(Relevant period Dec 2003 to Dec 2008)

01.01.2005	7%	WPI used
01.01.2006	4%	WPI used
01.01.2009	7%	WPI used
Effective Rise	19%	

The 8<sup>th</sup> amendment order was challenged in Appeal No. 10( C ) of 2007 before the Hon'ble TDSAT, which vide order dated 15.01.2009 set aside 8<sup>th</sup> amendment and the same was carried in appeal being CA No. 829-833 of 2009, titled TRAI vs. SET Discovery and others before the Hon'ble Supreme Court. The Apex Court directed the TRAI vide order dated 13.05.2009 to carry out the de novo exercise of cost based tariff fixation and submit its report before the Court.

The TRAI failed in arriving at cost based tariff and submitted its report on 21.7.2010 to the Hon'ble Supreme Court in CA No. 829-833 of 2009. The report of TRAI contains two startling facts, which cannot be ignored by any person of sound mind: -

1. Broadcasters did not cooperate and did not provide relevant financial information hence cost based tariff cannot be fixed
2. Permitting 9% increase on the last ceiling after 9<sup>th</sup> amendment

TRAI adopted new rule of law '*violator rewarded*' reasons best known to the then officer. These two findings were accepted by the broadcasters and no objection to their being defaulter was filed.

While the said matter was pending before the Hon'ble Supreme Court since 2009, the TRAI filed an application being IA No. 71-75 of 2014 in CA No. 829-833 of 2009 and sought the permission to review the tariff order. Hon'ble Supreme Court vide order dated 28.2.2014 only allowed the inflationary adjustment under section 1(2) of the TRAI Act, 1997.

The TRAI vide tariff order dated 31.03.2014 permitted the increase of 27.5 % of to the then existing charges. The said increase was split into two parts and the first installment of 15% was affected from 01.04.2014, whereas the second instalment of 12.5% was affected vide 13<sup>th</sup> tariff order dated 31.12.2014.

The said two amendments i.e. 11<sup>th</sup> and 13<sup>th</sup> were challenged in Appeal No. 1(C) to 6( C) of 2014 wherein the Hon'ble TDSAT provided vide order dated 29.05.2014 to maintain separate

account. The said 11<sup>th</sup> and 13<sup>th</sup> amendment were set aside vide judgment dated 28.04.2015 whereby the Hon'ble TDSAT explicitly pointed out inherent illegality in applying and using the WPI for the purpose of giving inflationary hike in the charges recoverable by the Broadcasters and the DPOs. The said order dated 28.04.2015 was carried in appeal in CA No. 5159-5164 of 2015 wherein the Hon'ble Supreme Court vide order dated 04.08.2015 up held the judgment dated 28.04.2015 by the Hon'ble. TDSAT and also directed the TRAI to comply with the judgment of Hon'ble Tribunal.

The present Press Release No. 28 of 2016 dated 09.05.2016 indicates that inflation linked hike is not required at present because the revenues of the broadcasters have increased and would substantially passed the expected returns. With regard to paras 2, 7, 8 and 9 of the said Press Release following objections are being raised:-

- a. The TRAI indicated that the GDP deflator has been taken into account as a measure of inflation and also the increase in the number of subscribers for the purpose of analyses and therefore it was concluded by the authority that no hike is required at present. In addition in Para 2 it is also indicated that 11<sup>th</sup> and 13<sup>th</sup> amendments to the second tariff order dated 01.10.2004 was issued on the industry demand.
- b. We most respectfully request that the representation made by the Industry be revealed to us and be made public. TRAI did not file any document during the course of hearing in the Appeal 1 (C) to 6 (C) of 2014 manifesting and evidencing the industry demand. It appears that industry is also permitted to make oral demand which can be easily complied with.
- c. We also request to reveal the result of holistic analysis as referred in paras 7, 8 and 9 of the Press release wherein you have used the GDP deflator. In case you have made an indicative or experimental GDP deflator as made by the Ministry of Commerce for the purpose of Telecommunication services, the same must be and ought to be revealed or made public. In our understanding the Ministry has not published any GDP deflator in 2016.
- d. That the purpose of the Press Note is not clear to us and the stake holders. It is well known fact to everyone who is even little versed, with the administered prices would know that cost of the providing the services has decreased by 70 to 80% since December 2003 (reference of price freeze 26.12.2003) and

cost of providing service to one subscriber is under deflation and cannot be even in single digit. In case GDP deflator is applied in relation to the increase in number of subscribers and decrease in the cost of providing services then the TRAI must withdraw the 2<sup>nd</sup> amendment dated 01.12.2004, 3<sup>rd</sup> amendment dated 29.11.2005, 8<sup>th</sup> amendment dated 4.10.2007 and 9<sup>th</sup> amendment dated 26.12.2008 and Rollback the price ante 26.12.2003 by reducing the same by 80% in the interim while progressing with the cost based tariff. (stake holders reasonably expect that when cost has gone down then price of 26.12.2003 be reduced by 80% in the interim)

### PRAYERS

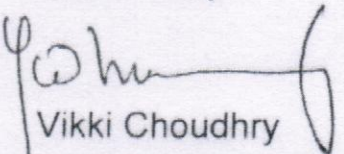
We claim following reliefs that TRAI must:-

1. withdraw the 2<sup>nd</sup> amendment dated 01.12.2004, 3<sup>rd</sup> amendment dated 29.11.2005, 8<sup>th</sup> amendment dated 4.10.2007 and 9<sup>th</sup> amendment dated 26.12.2008 and
2. Roll back the price ante 26.12.2003 by reducing the same by 80% in the interim while progressing with the cost based tariff. (stake holders reasonably expect that when cost has gone down then price as on 26.12.2003 be reduced by 80% in the interim)
3. Provide copy of GDP Deflator referred in Press Note No : 28 of 2016
4. Provide copy of Industry Representation based on which 11<sup>th</sup> and 13<sup>th</sup> Amendment to Second Tariff Order was notified
5. Notify the cost based tariff at the earliest

We also seek an opportunity to explain and elaborate the fundamental aspects of administered prices specially in broadcasting sector, if so desired by you.

Thanking you

Yours Truly

  
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