



भारतीय दूरसंचार विनियामक प्राधिकरण 460
महानगर दूरसंचार भवन, जवाहर लाल नेहरू मार्ग,
(पुराना मिनटो रोड), नई दिल्ली-110002

TELECOM REGULATORY AUTHORITY OF INDIA

Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg,
(Old Minto Road), New Delhi-110002
Fax : 91-11-23213294
Dated 29th June 2011

F. No. 11-14/2009- B&CS

To,

Shri Vijay Kumar Rajput
Chief Operating Officer
M/s ESPN Software India Private Limited
S-405, (LGF), Greater Kailash, Part -II,
New Delhi - 110 048

Sub: Reference Interconnect Offer (RIO) for Operators of Addressable Platforms

Sir,

Please refer to TRAI's letter of even number dated 30th May, 2011 and your response dated 15th & 16th June 2011.

2. That the Authority on 21st July, 2010 made the "Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff Order, 2010".
3. Part II of the said Tariff Order deals with "Wholesale Tariff". Clause 4 provides for the "Manner of offering pay channels *by broadcasters* to distributor of TV channel using addressable systems". It has been clearly provided therein that Broadcasters shall offer their pay TV channels mandatorily on *a-la-carte* basis and in addition optionally in bouquet(s) to the distributors, at a rate not more than 35% of their corresponding rates in the non-addressable systems (*subject to the substitution to the figure 42% in place of 35%, as per the order dated 18th April, 2011 passed by the Hon'ble Supreme Court*). Thus so far as broadcasters are concerned, they are required to offer channels only on *a-la-carte* or in bouquet at the maximum rate of 42%. As a broadcaster, you have introduced separate tariff for the basic tier and add on packages, which is not prescribed and cannot be charged, as per the said Tariff Order. Please note that for the broadcasters, a uniform rate with maximum of 42% is to be charged, on *a-la-carte* or in bouquet, as per clause 4 of the Tariff Order (*read with the order dated 18th April, 2011 passed by the Hon'ble Supreme Court*).
4. A perusal of RIO and your letters dated 15 & 16th June 2011 makes it amply clear that your RIO is not in accordance with the Tariff Order dated 21.07.2010 inasmuch as a broadcaster you are required to offer *a-la-carte* and bouquet at uniform rate with maximum of 42% of rates for non-addressable systems,

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however you are claiming rates on the add on packages -which on the face of it is in violation of the said Tariff Order. The channel/ bouquet rates offered by you have been linked to their placement in basic or add on package. In other words, you have admittedly prescribed different rates in the basic and add on package.

5. The legal issues raised in your letters dated 15th & 16th June 2011 have been examined and the response is as follows:-


- (i) In the tariff order dated 21.07.2010, the Authority has duly considered the issue regarding "Tariff for Add on Packages". After duly considering the views of all concerned, the Authority has concluded that it is not possible to standardize packaging or to prescribe separate tariff for the same. So far as broadcasters are concerned, a uniform maximum limit of 42% of the rates for non-addressable systems are required to be charged by them, for a la carte or bouquet. As per the order dated 18.04.2011 passed by the Hon'ble Supreme Court, the Tariff Order is operating and binding on all concerned (*with substitution of the figure of 42% in place of 35% in the proviso to clause 4(1) and in proviso (b) to clause 4(2) of the Tariff Order*). All concerned, including you as a broadcaster, are required to comply with these provisions.
- (ii) The contentions raised by you with regard to the arguments held on 18.04.2011 before the Hon'ble Supreme Court, apart from being misleading, are misplaced. All the parties concerned, including the Authority are required to follow the order dated 18.04.2011, as it stands. A broadcaster, as per clause 4, is required to provide only *a-la-carte* and bouquet (optionally) and charge within a maximum limit of 42%.
- (iii) Clause 13.3 of the interconnect regulation, inter alia, provides for intervention by the Authority in the event RIO requires modifications, so as to protect the interests of the service providers or consumers of the broadcasting and cable TV sector. It may be noted that the issue of power of the Authority to intervene requiring modification of the RIO, in terms of clause 13.3 of the interconnect regulation, has not been a subject matter before the Hon'ble Supreme Court.
- (iv) The Authority has undertaken and completed the exercise and accordingly formulated the tariff order dated 21.07.2010.
- (v) Your response has been suitably considered. You are hereby granted final opportunity to modify your RIO in accordance with the provisions of the interconnect regulation so as to



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realign the same with the provisions of the tariff order dated 21.7.2010. The said modifications are to be carried in the RIO by M/s ESPN Software India Private Limited, on or before 06.07.2011 and the compliance thereof be reported to the TRAI within the time frame indicated herein above.

- (vi) Please further note that in case the necessary modifications are not carried out, the same would amount to violation of the provisions of the Tariff Order dated 21.07.2010 and directions of the Authority.


(Amit Sharma)
Dy. Advisor (B&CS)

Copy delivered also at Gurgaon address:-

Shri Vijay Kumar Rajput
Chief Operating Officer
M/s ESPN Software India Private Limited
7th Floor, Tower C, Infinity Towers,
DLF Phase 2, Gurgaon - 122 002