

July 31, 2015

**Telecom Regulatory Authority of India**

Mahanagar Doorsanchar Bhawan,  
Jawaharlal Lal Nehru Marg,  
New Delhi – 110002

**Kind:** Mr. Wasi Ahmad (Advisor B & CS)

**Ref:** Consultation paper No. 3/2015 dated July 14, 2015 on Tariff Issues Related to Commercial Subscribers (“**Consultation Paper**”).

Dear Sir,

We, IndiaCast UTV Media Distribution Private Limited (“**IndiaCast UTV**”) as an authorized agent of various Broadcasters, namely, TV18 Broadcast Limited, Disney Broadcasting (India) Limited, Eenadu Television Private Limited and EPIC Television Networks Private Limited, distributes the channels of the said Broadcasters, pursuant to the extant of the TRAI Regulations dated 10.02.2014, or as amended till date.

IndiaCast UTV supports the overall objective of this review on the tariff issues relating to commercial subscribers, and is keen to contribute in any form as possible. IndiaCast UTV’s response to the Consultation Paper focuses on specific questions relating to Commercial Subscribers.

Again, we wish to show our appreciation on this opportunity extended to the stakeholders by way of this Consultation Paper. In context of the same, we hereby attach our views/comments on the various issues raised in this Consultation Paper for your kind perusal.

For any further clarification you may write to us or contact us.

Yours Sincerely,

**For IndiaCast UTV Media Distribution Private Limited,**

**Authorized Signatory**

**IndiaCast UTV Media Distribution Private Limited**

Consultation Paper on

**“Tariff Issues Related To Commercial Subscribers”**

Issued by TRAI on July 14, 2015

Response of IndiaCast UTV Media Distribution Private Limited (hereinafter referred to as “**IndiaCast UTV**”) on “**Tariff Issues Related to Commercial Subscribers**”

**Issues:**

**1. Is there a need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals?**

**IndiaCast UTV’s Response:**

We respectfully submit that there is definitely a need to define and differentiate between domestic subscribers and commercial subscribers for provisioning of TV signals. Domestic subscribers and commercial subscribers are two verticals in this industry, it may well be noted that domestic subscribers is one element which is the major and very important source of revenue for the Cable TV industry comparatively lower in case of commercial subscribers. Commercial subscribers are not ordinary subscriber, but are actually the organization/companies / factories /hotels etc., who are primarily engaged in the activities with an ultimate aim to earn profit. Therefore, no commercial subscriber should be allowed to benefit of any tariff order for residential / domestic subscribers which is in the nature for regulating and safeguarding the interest of a consumer who is not a business undertaking and hence such right should be confined solely to the bonafide domestic subscribers.

Again, it is noteworthy that arrangements with commercial subscribers are not typically regulated in other countries, and there appears to be very little or less compelling reason to justify such regulation in India. However, there is also a considerable difference between the two sets of consumers. And the difference is also drawn in other laws which also recognizes commercial undertakings and includes them under the commercial subscriber for the purpose of Income tax, Property Tax,

Road Tax, water usages and electricity usages, LPG usages. Different tariff rates are applicable to the commercial subscribers based on the commercial exploitation and methods of provisioning of the amenities and utilities. The contention of TRAI that commercial subscribers as per the Electricity Act., 2003, and also under various provisions under the respective municipal/metropolitan acts entails the terms and conditions for determination of differential tariff based on transmission and supply of utilities and this establishments requires provisioning of additional infrastructure and is definitely different from the domestic consumers which is one aspect of the classification of commercial and domestic consumers/subscribers. But it may also be noted that the allocation of this additional infrastructures are a basic requirement by the type of establishment, which is different and further categorised as industrial, commercial, agricultural and other services. Clearly, implicating that the increased tariff rates are not a single and direct import of this additional infrastructures but is based on the government subsidisation and such is provided in the interest of the public or household consumers and is not eligible to a commercial undertaking.

**2. In case such a classification of TV subscribers is needed, what should be the basis or criterion amongst either from those discussed above or otherwise? Please give detailed justification in support of your comments.**

**IndiaCast UTV's Response:**

We are of the opinion that the basis of classification should be on a criteria considering both the place and the type of usage of TV Signals.

The classification based on the combination of place and the type of usage of the TV signal, ensures and clearly differentiates a commercial subscriber from that of a household subscriber without any ambiguity.

Also, agreed that some of the commercial subscriber would definitely exploit the TV content and earn revenue directly as in the case of screened TV contents which are chargeable. It is inevitable that when a license has been granted for commercial exploitation of the contents, the licensee shall do so. Now it should be left to the parties to decide on the parameters and modes of exploitation of the TV contents in terms of the agreements to be executed between the parties.

**3. Is there a need to review the existing tariff framework (both at wholesale and retail levels) to cater for commercial subscribers for TV services provided through addressable systems and nonaddressable systems?**

**IndiaCast UTV's Response:**

Yes, there is a need to review the existing tariff framework for commercial subscribers since the commercial subscriber should not be treated at par with the household subscribers.

In terms of the international experience, the tariff rates for the commercial subscribers are deregulated, as mentioned below:

<b>S. No</b>	<b>Country</b>	<b>Ordinary Subscriber</b>	<b>Commercial Subscriber</b>
1.	Australia	No retail or wholesale rate regulation, though Foxtel has agreed with the competition regulator (ACCC) to include certain rate caps for its basic subscription tier as one of the conditions for allowing the content merger of Optus and Foxtel	No rate regulation
2.	Hong Kong	No retail or wholesale rate regulation	No rate regulation
3.	Japan	No retail or wholesale rate regulation. The Ministry of Internal Affairs and Communications (MIC)	No rate regulation

		typically approves residential rates	
4.	North Korea	Basic tier rate caps are set by regulators	No rate regulation
5.	Malaysia	No requirement for regulatory approval of retail or wholesale rates but the rates have to be filed with the regulator (MCMC) which could decide to open an “investigation” if it deems fit	No rate regulation
6.	Philippines	No notable retail or wholesale rate regulation	No rate regulation
7.	Singapore	No retail or wholesale rate regulation although the Singapore Media Development Authority has the powers to regulate rates	No rate regulation
8.	Thailand	Retail and wholesale rates need to be approved by	No rate regulation

		the regulator but, in practice, such approval is reasonably granted	
9.	United Kingdom	No retail or wholesale rate regulation	No rate regulation
10.	United States of America	Rate regulations were relaxed in 1996	No rate regulation (at any time)

Hence, there is no need regulate the tariff rates for commercial subscriber and shall be kept under forbearance.

**4. Is there is a need to have a different tariff framework for commercial subscribers (both at wholesale and retail levels)? In case the answer to this question is in the positive, what should be the suggested tariff framework for commercial subscribers (both at wholesale and retail levels)? Please provide the rationale and justification with your reply.**

**IndiaCast UTV's Response:**

In continuance to our comment as per the para 3 above, we are of the opinion that the tariff rates (both at wholesale and retail levels) shall be kept under forbearance.

TV signals are non-essential services from the Constitutional point of view, as held by TDSAT. Accordingly, it should be appreciated that free contract pricing should be the norm. However, TRAI had extended tariff protection to household subscribers as an exception to that norm. Extension of the same in a blanket manner to commercial subscribers shall thus be unfair. Courts have also recognised the power of the authority to regulate through forbearance and also adopt a different approach qua different subscribers. It is pertinent to mention that even the ordinary subscribers at

the retail end are under tariff forbearance and therefore there is no reason for tariff for commercial subscribers to be not forborne.

**5. Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimise disputes and conflicts among stakeholders?**

**IndiaCast UTV's Response:**

In context to the present regulatory framework for commercial and household subscriber, we are of the opinion that the regulation is in a manner disadvantageous and prejudiced to the Broadcasters and household subscribers. Commercial subscribers are in some form or the other, able to exploit the TV contents to their commercial advantage (directly or indirectly) without a justifiable and fair distribution of revenue to all the stakeholders in the value chain, therefore, in order to protect the interest of all the stakeholders, the tariff protection provided to the domestic subscriber should not be extended to the commercial subscribers.

**6. In case you perceive the present framework to be inadequate, what should be the practical and implementable mechanism so as to ensure transparency and accountability in the value chain?**

**IndiaCast UTV's Response:**

Refer to our response to issue no. 5 above

**7. Is there a need to enable engagement of broadcasters in the determination of retail tariffs for commercial subscribers on a case-to-case basis?**

**IndiaCast UTV's Response:**

As stated in our response to issue no. 4 that there is tariff forbearance at the retail level and hence, involvement of Broadcasters in determination of retail tariffs for commercial subscribers on a case-to-case basis is unwarranted.

**8. How can it be ensured that TV signal feed is not misused for commercial purposes wherein the signal has been provided for non-commercial purpose?**

**IndiaCast UTV's Response:**

Broadcasters should have the right to conduct periodical audits of the DPOs and the commercial subscribers to ensure that the TV signals are used for assigned purpose only and not otherwise, in both addressable and non-addressable systems. The DPOs shall also ensure that during the audit process they should produce all the relevant documents and information as required by the auditors. A period of three years post expiry of a subscription agreement, should be prescribed for preservation of record and documents evidencing its subscribers.

It should also be mandated that the DPOs shall provide a comprehensive subscriber line report on a monthly basis clearly segregating the household and commercial subscribers catered by them. The same should also be periodically filed with the TRAI by the DPOs, the TRAI may prescribe the time at its wisdom.

It shall be made compulsory to the commercial subscriber to seek/ receive signals from the DPO's who have necessary permission from the broadcaster to provide signals to the commercial subscriber. The commercial subscriber should called for necessary document/ authorization of Broadcaster from DPO's before receiving signals from DPO's. It shall also me made mandatory for the commercial subscriber to intimate to the Broadcasters the details of DPOs from whom it is intending to receive signals of channels and receive the signals from such DPO's only after due confirmation/ authorization.

**9. Any other suggestion which you feel is relevant in this matter. Please provide your comments with full justification.**

**IndiaCast UTV's Response:**

In light of the foregoing, it is suggested that the tariff for commercial subscribers be kept under total forbearance and in line with international practices as mentioned above. With the implementation of digitalization, addressability has already been introduced in DAS Phase I & Phase II areas and effective competition is evidenced from the market. Further, with effect from 1st January 2016 the DAS Phase III areas will be effectively digitized and the entire country will get digitized effective 1<sup>st</sup> January 2017 which will further evidence effective competition through addressability. Hence, when we are moving ahead for achieving milestone of digitization with addressability

the tariff of any nature including commercial tariff must be kept under total forbearance.