Consultation Paper No. 3/2015

RESPONSE OF ZEE ENTERTAINMENT ENTERPRISES LIMITED

TO

TRAI CONSULTATION PAPER

ON

'TARIFF ISSUES RELATED TO COMMERCIAL SUBSCRIBERS' ISSUED ON 14TH JULY 2015

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Response of Zee Entertainment Enterprises Ltd on the Tariff Issues related to Commercial Subscribers put forth by TRAI in their Consultation paper dated 14th July 2015

Zee Network, having perused the Consultation Paper on Issues Relating to Commercial Subscribers, would like to place its response before the Authority.

We understand that Indian Broadcasting Foundation (IBF) has sent a comprehensive response to various issues raised in the said consultation paper. While reiterating and reaffirming the response of IBF which may be treated as an integral part of our response, Zee Network would like to further submit the following comments to the said consultation paper.

The present response is being submitted without prejudice to our rights and contentions in the pending Civil Appeal No. 3728 of 2015 with Hon'ble Supreme Court and Writ Petition No. W.P. (C) N. 5161 of 2014 pending with Hon'ble Delhi High Court.

Preliminary Comments

(i) The issue involved in this Consultation paper has arisen in view of the Judgment dated 9.3.2015 passed by the Hon'ble TDSAT. The said judgment while setting aside the Commercial Tariff Order dated 16.7.2014, has *inter alia* directed TRAI to do the following:-

> ***A. To undertake a fresh exercise on a completely clean slate and to consider afresh the question whether commercial subscribers should be treated equally as home viewers for the purpose of broadcasting services tariff or there needs to be a different and separate tariff system for commercial subscribers or some parts of that larger body.***
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> ***B. To consider whether to issue an interim tariff order dealing with the matter until it takes a final call on the subject.***

(ii) Subsequently, in the series of developments comprising order dated 10.05.2015 passed by the Hon'ble High Court of Delhi, TRAI, *inter alia*, came out with press release dated 13.05.2015 thereby clarifying that for the interim period (i.e. 16.07.2014 to 09.03.2015), as an ad interim measure, the "Telecommunication (Broadcasting and Cable) Services(Second) Tariff Order 2004" (6 of 2004) dated 01.10.2004, the" Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas)Tariff Order 2006 (6 of 2006) dated 31.08.2006 and the

"Telecommunication(Broadcasting and Cable) Services) (Fourth) (Addressable Systems) Tariff Order,2010 (1 of 2010) dated 21.07.2010 respectively shall apply subject to the outcome of the civil appeal filed by TRAI before the Hon'ble Supreme Court challenging the order dated 9th March, 2015 of the Hon'ble TDSAT. Pursuant to the said press release, IBF moved a Misc. Application bearing M.A. Nos. 160 & 161(C) of 2015 in Appeal No. 7(C) 2015 before the Hon'ble TDSAT in order to highlight the misconstruction thereof by the Hotel Association. The said Misc. Application has been listed before the Hon'ble TDSAT on various occasions from time to time.

(iii) The consultation paper dated 14.07.2015 issued by TRAI in terms of Section 11(4) of the TRAI Act specifies various issues for seeking comments of the stakeholders. However, one significant issue seems to have been omitted by the TRAI pertains to the applicability of the tariff for Commercial Subscribers during the interim period as pointed out hereinabove. The said issue in respect of the interim period is also required to be addressed especially in view of the fact that the Hon'ble TDSAT while considering the challenge to the tariff order dated 16.07.2014 (already set aside by the Hon'ble TDSAT), has kept the interconnect agreements of various broadcasters qua commercial subscribers in abeyance until the final determination of the challenge made thereto. The final judgment dated 09.03.2015 having, in explicit and unequivocal terms, directed the TRAI to even determine the applicability of tariff for the interim period, the TRAI should address this issue as well so as to avoid any potential dispute and litigation in this behalf.

(iv) The main issue involved in the present consultation exercise is - whether the Commercial Subscribers are to be treated on the same footing as Ordinary Subscribers for the purpose of tariff or they be subjected to a differential tariff.

(v) Broadcasting services were largely unregulated till early 2004. Pricing/tariff regulation was introduced in an attempt to bring about some uniformity in the manner in which business in the broadcasting sector was being carried out and to protect the end consumers, who were predominantly **domestic subscribers**. Even in relation to the domestic subscribers, the Authority, while formulating the regulations was of the view that price regulation is only temporary and will be in place only till such time the effective competition is achieved. Hence, the principle of tariff regulation was recognized as a temporary phenomenon and a necessary evil and one that was introduced for a particular purpose and would be jettisoned when the purpose, i.e., effective competition, was achieved.

The purpose of the Tariff Regulations was never to extend the benefit of tariff protection to commercial subscribers. In fact it is an admitted position on the part of TRAI that Principal Tariff Order dated 1/10/2004 is applicable only to Domestic Subscribers and that the Commercial Subscribers are out of its ambit.

(vii) Commercial subscribers were earlier completely excluded from the purview of regulations and thereafter included by the Authority by introducing different classes of "commercial subscribers" differentiating between "large" and "small" commercial subscribers. Authority's justification at that time appeared to be that "large" commercial subscribers like 5 Star hotels did not require tariff protection as they passed on the cost of services they provided to their guests. However, in the process the sub-classification created by the Authority and its reluctance to include all commercial establishments (irrespective of size and nature of activity) within the fold of "commercial subscriber" led to a prolonged litigation, ending up with the TDSAT setting aside TRAI's differentiated classification of commercial subscribers and finally in the Hon'ble Supreme Court, which dismissed all appeals and directed the TRAI to examine the issue of commercial tariffs afresh.

It is pertinent to note that no other country anywhere in the world, to the best of our information, has any form of tariff protection for commercial subscribers. We would like to mention that so far the tariff for Commercial Subscribers has been under forbearance and the same has worked well. The Tariff Order equating Commercial Subscribers with Ordinary Subscribers has already been struck down by Hon'ble TDSAT. Accordingly, we suggest that principle of market forces be continued without any price regulation i.e. the tariff for Commercial Subscribers should be kept under total forbearance. The Commercial Subscribers have significant countervailing power and they are not end-consumers. There is no reason for prescribing any Tariff Regulation and let the agreements be concluded between the parties through mutual negotiation

In the light of above, our response on various issues raised in the consultation paper is as under:

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

Response: Yes, there is a definite need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals. It is well recognized that whereas the Domestic Subscribers avail the broadcasting/cable services for their own consumption, in case

of Commercial Subscribers these services are packaged as a value added services with other services and are provided to their subscribers at a charge and/or to derive the benefit and the charges for TV services are recovered either directly or indirectly from them. Thus, the broadcasting services are availed and used by Commercial Subscribers for their commercial benefits and are a part of various amenities provided at their establishments with the primary purpose of attracting customers to their establishment and thereby increasing their revenue.

In so far as the definition of Commercial Subscribers is concerned, it would be appropriate that the definition(s) as notified by TRAI vide its notification "The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Twelfth Amendment) Order, 2014 for "Commercial Establishment" and "Commercial Subscriber" as reproduced herein below, should be retained by the Authority with the required modifications which are indicated in red colour.

> "**Commercial Subscriber**" means any person who receives broadcasting services or cable services at a place indicated by him to a Broadcaster, cable operator or multi system operator or direct to home operator or head end in the sky operator or Internet Protocol television service provider, as the case may be, and uses such services for the benefit of his clients, customers, members or any other class or group of persons having access to his commercial establishment", whether directly or indirectly
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> "**Commercial Establishment**" means any premises wherein any trade, business or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or work in connection with, or incidental or ancillary thereto, journalistic, printing and publishing establishments, educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment"

Further, The Telecommunication (broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Fourth Amendment) Order, 2014 has defined "Ordinary Subscriber" as under:

> "**Ordinary Subscriber**" means any subscriber who receives broadcasting services or cable services from multi system operator

or cable operator or direct to home operator or Internet Protocol television service provider or head end in the sky operator, as the case may be, and uses the same for his domestic purposes.

Although the said Tariff Order had been set aside by TDSAT, this Tariff Order categorically defines and constitute a "commercial establishment" and "commercial subscribers" as a distinct category exploiting the broadcasting services/cable services for commercial gain thereby recognizing the difference between ordinary subscribers and commercial subscribers. What was found arbitrary, illegal and unsustainable by the TDSAT was that after recognizing the distinction between the Commercial Subscribers and Ordinary Subscribers, the said Tariff Order extended the same tariff to Commercial Subscribers as is applicable for ordinary subscribers.

It is therefore suggested that the aforesaid classification between the "Domestic subscriber" and "Commercial subscriber" which is well established needs to be recognized by TRAI and these two separate and distinct categories of Subscribers ought to be treated differently in so far as the tariff applicability is concerned.

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.**

Response: (i) We have all along maintained that distinction between Ordinary Subscribers and Commercial Subscribers should be on the basis of nature of end use. As pointed out hereinabove, the nature of end use and the place where the TV signals are being provided should be the key determining factor as to whether the service is used for own consumption or it is packaged as a value added service with other services provided to the consumers and the charges for the same are included in the packaged value and recovered from the consumers either directly or indirectly and/or have the potential to be recovered. The key line of distinction should be whether the television services are commercially exploited or not.

(ii) The concept of "User" is well recognized in various regulations for the purpose of determining charges/taxes, including but not limited to Property Tax, Income Tax, Electricity and Water usage, etc. The extent of price divergence also varies. For example in India, electricity charges can vary from as low as INR 2.20 per unit for residential households to INR 10.9 per unit for commercial subscribers. Municipal regulations across

the country determine the municipal taxes based on "User" and accordingly different prices are charged for residential and commercial usage. Similarly even essential utilities like electricity, water, etc., are charged at different rates for ordinary and commercial subscribers, irrespective of the fact that the end consumer for the commercial subscriber remains the ordinary subscriber. The ordinary subscriber uses the signals of the channels for his personal use, while the commercial subscribers uses the signals of the channels as part of the various amenities provided at its establishments with the primary purpose of attracting customers to his establishment and thereby increasing their revenue.

(iii) The argument that the end consumer, whether at his domestic premises or at any commercial establishment, gets to view the same content with same quality of signals", is demonstrative of a wholly incorrect and inequitable approach in addressing the issue, as it places emphasis on the ultimate end viewer of the television signal at the commercial establishment, instead of the *actual subscriber* of the signal, i.e., the commercial establishment. It ignores the vital fact that a domestic subscriber is itself the consumer whereas in the case of a commercial subscriber - the subscriber is not the establishment but the patrons thereof to whom a suite of goods and services is provided together with the television signal as an inducement to purchase and/or consume the goods and services being offered by that establishment. Therefore, not applying a differential price regime based on usage is completely illogical and shorn of any rationale.

(iv) There is another erroneous argument being raised by certain commercial establishments like Hotel and Restaurants that the question of charging higher tariff shall only arise if such establishments separately charge their customers specifically for television services. Ex facie, such an argument is not only absurd, but is also contrary to the practice prevalent in Hotel industry. It may be appreciated that cost of providing television services is certainly included in the room tariff and other charges, which any customer has to pay to such entities. If that were not to be the case, there was no occasion to promote television services as one of the services included in room tariff of every hotel. It is a known fact that hotels & restaurants highlight availability of television channels as one of the amenities/features in their rooms. Any guest of Hotel pays a consolidated tariff towards room, which is inclusive of all services and facilities provided in the room including the television channels provided in the room. It is an economic fact that hotels recover all input costs of amenities through the room tariffs they levy on their guests. It is a

different matter that as a marketing or promotional tool no break-up of the room tariff is given to the guest, fact remains that there is nothing complimentary that is offered by hotels to its guests/clients, etc. It would thus be unfair upon broadcasters that they are deprived from levying commercial tariffs simply because the hotels are not transparent enough to provide break up of their room tariffs which would have clearly shown the TV channels cost as an input cost. Even the so called "free" breakfast or "free" use of wi-fi or "free" use of special lounges are all part of the overall tariff.

(v) It is an admitted fact that the commercial subscribers and commercial establishments including but not limited to Hotels and Restaurants etc. invest in television signals in order to cater to their industry specific customer demands and the same adds to the value of services they offer to their customers. If the broadcasters are not allowed to charge the differential tariff and treat them at par with the ordinary subscribers, it would lead to unjust enrichment of these commercial entities at the expense of the broadcaster, as the TV signal is being used by the commercial establishment to attract visitors, customers, clients and guests to their premises for commercial gain/profit. As opposed to such entities and ordinary subscriber, is merely satisfying his own need for entertainment.

(vi) Further, it is important to point out that commercial establishments like Hotel and Restaurants are themselves engaged in price differentiation on account of the services they provide their subscribers. It is common knowledge that Hotels & Restaurants charge exorbitant rates for providing the same product in their premises, which is available in the market at much lower maximum retail price.

(vii) Another argument has been put forth in the Consultation Paper that since the same signal is being provided to the Commercial Subscribers and that no extra effort is made by the broadcaster to supply the signal to Commercial Subscribers, no differential tariff is warranted for Commercial Subscribers. The said justification is completely erroneous and flawed for the reason that the rates for Ordinary Subscribers are highly regulated and are under freeze since 2004. In other words, the broadcasting services are being provided to Ordinary Subscribers at a highly subsidized rate under so-called "public interest" although the Hon'ble TDSAT has time and again pointed out that broadcasting services are not essential services. The Commercial Establishments exploit the signals for their gain. No "public interest" would be sub-served by extending the subsidized tariff to these subscribers. As an example

extending the tariff applicable to an Ordinary Subscriber to a 5 star hotel which would be charging Rs. 10,000/- to 15,000/- per day as room tariff would be grossly unfair and unjustified.

In view of the above rationale, it is strongly recommended that there has to be a different pricing criterion for "Commercial Subscriber" and "Ordinary Subscriber"

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 non-addressable systems?**
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.**

Response: (i) Yes, there is a need to review the existing tariff framework (both at wholesale and retail levels) to cater to commercial subscribers for TV services provided through addressable and non-addressable systems. It is suggested that total forbearance should be allowed at the Wholesale as well as Retail levels in line with the Authority's thought process over the last decade.

(ii) It is essential to point out that the authority itself has taken the position all along that price control would be lifted once there is effective competition. After having taken a decision, at least with respect to certain categories of commercial subscribers that effective competition does exist and hence there is no need for price regulation with regard to such commercial subscribers, there is no justification now to proceed with the premise that effective competition which existed for the last 7-8 years has suddenly ceased to exist and hence there is now a need for price regulation in respect of commercial subscribers.

(iii) That the Authority, while re-visiting the case of tariff fixation for commercial subscribers, is necessarily required to consider aspects such as value of the content to the different categories of subscribers, the fact that TV signals is not an essential service, bargaining power of the consumers/capacity to protect their own interests, etc.

(iv) The Authority must also consider, the impact of the Tariff Regulations on the exercise of the exclusive statutory copyright owned by the broadcasters and freedom to contract. It is submitted that this is material inasmuch as a statutory right granted by Parliament in favour of the broadcasters cannot be whittled down in a manner sought to be suggested by certain section of Commercial Subscribers. Such encroachment upon the statutory rights of broadcasters is constitutionally unsustainable.

(v) The Authority has consistently maintained vide Tariff Order dated 07.03.2006, 21.11.2006 and further vide amendments to the Principal Interconnect Regulations dated 17.03.2009 and DAS Interconnect Regulations dated 30.04.2012 that Commercial Subscribers and Ordinary Subscribers cannot be equated.

(vi) Further, it is also pertinent to point out that for each amenity/services/goods provided by hotels, which hotel owners do not themselves generate, they enter into separate agreements with vendors. When there is full freedom for other vendors/suppliers to enter into agreements with hotels and other commercial subscribers and negotiate prices, why should only broadcasters be singled out for a discriminatory treatment. For example, a vendor who provides housekeeping services will negotiate with the hotel/commercial establishment and agree a commercial charge but such services are not charged separately to the guests/patrons of the hotel/commercial establishment but the cost thereof is recovered ultimately from the revenue earned by the establishment from its guests/patrons.

(vii) **In our view the Authority should allow total forbearance at both the levels i.e. at wholesale level as well as at the Retail level. It is pertinent to note that no other country anywhere in the world, to the best of our information, has any form of tariff protection for commercial subscribers. We would like to mention that so far the tariff for Commercial Subscribers has been under forbearance and the same has worked well. The Tariff Order equating Commercial Subscribers with Ordinary Subscribers has already been struck down by Hon'ble TDSAT. Any further attempt to do so would again lead to disputes and litigations. Accordingly, we suggest that principle of market forces be continued without any price regulation i.e. the tariff for Commercial Subscribers should be kept under total forbearance. The Commercial Subscribers have significant countervailing power and they are not end-consumers. There is no**

reason for prescribing any Tariff Regulation and let the agreements be concluded between the parties through mutual negotiation.

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

Response: The present framework is not adequate to ensure transparency and accountability in the value chain to effectively minimise disputes and conflicts among stakeholders due to inadequate disclosure of the true and correct number of commercial subscribers. The Monthly reports which are submitted by the DPO's (MSO's/DTH/HITS/IPTV operators)for the areas served by addressable systems and MSO's/LCO's in areas served by non-addressable systems invariably do not reflect the actual count of Commercial subscribers serviced by the above named DPO's. There is always a dispute between the Broadcaster and the DPO with regard to the number of commercial subscribers declared as compared to the actual number serviced by the DPO's. There is a need to have a robust monitoring mechanism in place. The broadcasters should have the right to conduct the periodic audits of the systems to ensure correct reporting and proper declaration of number of subscribers in order to safeguard their revenues.

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?**

Response: There is a need to have a robust monitoring and audit mechanism in place to ensure minimising of dispute between the Broadcaster and the DPO with regard to the number of commercial subscribers declared as compared to the actual number serviced by the DPO's. The DPO's should give a declaration every month with details of Commercial Subscriber serviced in different cities along with the number of Commercial contracts executed. The broadcasters should be allowed to conduct quarterly audit to check the correctness of the monthly reports being submitted by various platform service providers.

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?**

Response: We have already recommended forbearance both at wholesale as well as retail level. The Hon'ble TDSAT in its order dated 4th September

2013 in Petition No. 396(C) of 2012 and Petition No. 738(C) of 2012 inter alia held as under :

> *"After the matter was heard for some time, counsel representing the broadcasters namely, ... state that as long as the DTH operators and the Multi System Operators make payments to the broadcasters at the rates, for excluded commercial consumers as shown on the broadcasters' websites and submitted to the TRAI or at any lower rates as mutually agreed between the broadcasters and the DTH operators or the Multi System Operators as the case may be, the DTH operators and the Multi System Operators will be free to negotiate the rates at which they would supply the channels to the petitioners'.*
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> *This, to a large extent, redresses the petitioners' grievance. It needs, however, to be clarified here that the petitioners shall not be compelled to take the full bouquets of any broadcaster/DTH Operator/Multi System Operator and it will be open to the petitioners to take only the channels of their choice and to pay for it at rates mutually agreed between the petitioners and the distributors as provided in the regulations relating to a-la-carte channels.*
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> *In case the petitioner(s) make a request to any broadcaster to furnish to them the names of the DTH Operators/Multi System Operators/Local Cable Operators directly authorized by the broadcaster for any particular area or territory, the broadcaster should give the necessary information to the petitioner(s) without objection".*

Keeping the above in view, we suggest the following methodology to ensure smooth interconnection:

(a) There would be direct negotiations between broadcasters and commercial subscribers. The broadcaster would publish the rates for commercial tariff for both wholesale and retail (with margins to be allowed) on their website. These rates shall form the basis for finalizing the agreement with Commercial Subscribers.

(b) The Commercial Subscribers would finalize the rates and agreements with the broadcaster. The agreements would be entered on a mutually negotiated basis.

(c) The broadcaster would authorize the DPOs in particular areas/territories i.e. it would authorize designated MSOs and DTH operators in particular areas who will supply signals to the Commercial Subscribers;

(d) Commercial Subscriber should also satisfy itself that the new operator is duly authorised by the broadcaster and it should be no defence to claim ignorance. Commercial Subscribers should demand from LCOs/MSOs a written undertaking that they have the necessary authorisation to distribute signals of the channels to the Commercial Subscribers in the defined area of operation.

(e) The broadcaster shall enter into the agreement with these designated DPOs (authorized MSOs and DTH operators) based on mutual negotiations to enable them to provide signals to Commercial Subscribers.

(f) The DPOs would enter into a separate and distinct agreement with the Commercial Subscribers at the rates already negotiated and finalised with the broadcasters and such agreement would be clearly distinguishable from the agreement that DPOs enter for provision of signals to ordinary subscribers. In this context it may be noted that the agreements between broadcasters and designated DPOs would take care of the margin of DPOs.

(g) The DPOs would form/devise a separate offering for Commercial Subscribers based on the RIOs of the broadcasters and such commercial offering would be clearly identifiable being meant for Commercial Subscribers only.

(h) Separate Customer Application Form (CAF) would be devised for Commercial Subscribers which would be different from the CAF for ordinary subscribers.

(i) Wherever the mandatory digital addressable system (DAS) is in force, DPOs would ensure that the delivery of channels to Commercial Subscribers is in encrypted mode through set top box.

(j) The DPOs would send a separate subscriber report on monthly basis to the broadcasters in respect of Commercial Subscribers.

(k) The Commercial Subscribers would make the payment to the broadcasters/DPOs depending upon the terms of the agreement executed with them.

(l) Such Commercial Subscribers who have their own headends can directly enter into an agreement with the broadcasters. In that event the Commercial Subscribers should have necessary registration as per The Cable Television Network (Regulations) Act. In a DAS notified area, it would be the responsibility of the Commercial Subscriber to ensure distribution of TV signals in digital and encrypted form within its commercial establishment. Also it should be clearly provided that the Commercial Subscriber, unlike DPO, cannot re-transmit the TV signals to any other subscriber.

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?**

Response: In order to ensure that the TV signal feed is not misused for commercial purposed wherein the signal has been provided for non-commercial purpose, the following measures are being recommended:

(i) Declaration from the Ordinary Subscriber that the signals will be used exclusively for domestic use should be obtained by the DPO while filling up the Customer Application form (CAF) at the time of providing signals.

(ii) Monthly Reports to be submitted by the DPO's should contain the bifurcation and the count of Ordinary and Commercial Subscribers.

(iii) Periodic Audit can be undertaken of DPO's offering services on Addressable Platforms to ensure true and correct declaration of Commercial and Ordinary Subscribers.

(iv) In case of Non Addressable platforms, if it is found that the MSO/LCPO has underreported or misused the signals meant for Ordinary Subscriber by offering the same to Commercial Subscribers, the Broadcaster can recover exemplary damages equivalent to ten times of the under-declared value on the first instance of such default reported. On subsequent default(s) the Broadcaster shall have the option to terminate

the contract with the DPO by discontinuing the signals in addition to the fine payable.

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

Response: We would like to suggest that the Authority should swiftly dispose off any complaints made by the Broadcaster on the misuse of signals meant for Ordinary subscriber used for servicing commercial subscribers in a time bound manner. The Authority should levy fines which would act as deterrent and also introduce a provision of cancelling/suspension of the License granted to the DPO on account of repeated default.

Conclusion: In the backdrop of our above response, we would like to conclude that if Commercial Subscribers are treated at par with the Ordinary Subscribers, it would be a violation of the fundamental right of the Broadcasters under Article 19(1)(g) of the Constitution of India to carry on business in the manner they desire, inasmuch as the exclusive right granted to the broadcasters under the Copyright Act, 1957, to issue licenses in respect of communication to the public of the broadcast, would effectively be taken away, without any reason therefor and especially as no "public interest" will be sub-served by treating the commercial subscribers as ordinary subscribers for the purpose of price ceiling.

Further, we also suggest that principles of market forces be allowed without any price regulation i.e. the tariff for Commercial Subscribers should be kept under total forbearance. The Commercial Subscribers have significant countervailing power and they are not end-consumers. To equate a Commercial Subscriber with an Ordinary Subscriber would result in gross injustice to the Broadcasters as they would be deprived of monetising the cost which they have already incurred for procuring niche content for their channels.

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