

RESPONSE OF DISH TV INDIA LTD.

ON

CONSULTATION PAPER

ON

**“ISSUES RELATED TO BROADCASTING AND
CABLE TV SERVICES FOR COMMERCIAL
SUBSCRIBERS”**

ISSUED ON 11TH JUNE, 2014

**SUBMITTED BY
RAJIV KHATTAR
email id : rkhattar@dishtv.in**

RESPONSE OF DISH TV INDIA LTD. TO THE CONSULTATION PAPER NO. 6/2014 ON TARIFF ISSUES RELATED TO BROADCASTING AND CABLE SERVICES FOR COMMERCIAL SUBSCRIBERS

Dish TV India Ltd wishes to submit its response to various issues raised in the consultation paper on extension/renewal of the DTH licenses.

PRELIMINARY SUBMISSIONS:

1. The ultimate beneficiary of the channels, whether availed by Ordinary Customer or Commercial Customer is the Ordinary Customer. It is a common knowledge that in all of the Commercial establishment, the customer do not go to watch the channels. The provisioning of the channels is only ancillary to the main service of the establishment. Any increased cost of the channels are passed on to the Ordinary Customer. Effectively, an Ordinary Customer ends up paying more for a channel at a Commercial Establishment that what he pays at his home. Such a differentiation falls foul of the Article 14 of the Constitution of India.

With these remarks our response to the various issues is being given hereinafter:

2.1 *Do you agree with the definitions of “commercial establishment”, “shop” and “commercial subscriber”, given below?*

“Commercial subscriber”.....

“Commercial establishment”.....

“Shop”.....

Dish TV Response:

- (i) It is stated that for the purpose of tariff, there should not be any distinction between an ordinary cable subscriber and commercial subscriber and the normal cable tariff which is applicable to a domestic subscriber should apply to so-called commercial subscriber as well. This is more so in case of digital addressable systems. The tariffs should be dependent upon the ultimate end use of the signals by the recipient thereof and not by the intermediary, viz., the establishments. It may be mentioned that all other commodities/services are available to so-called

“commercial subscribers” such as hotels etc. at their MRP. For instance, a mineral water supplier supplies the bottle at their MRP irrespective of the price charged by the hotel from a customer for that bottle. The same holds good for other products as well.

(ii) It is submitted that even the Quality of Service Regulations, which inter alia provides for the services conditions for a subscriber, does not provide for two different kind of subscribers. It is also submitted that it is not possible to categorise subscribers since there is no intelligible differentia. Further, any attempt to categorise the subscribers will also fall foul of the Article 14 of the Constitution of India.

(iii) Without prejudice to the above, it is submitted that the definition of Commercial Establishments and Commercial Subscribers proposed by TRAI is very wide which takes within its ambit even the hospitals, charitable organizations, educational institutions etc. If the Authority finally comes to the conclusion that there is a need for differential tariff for “Commercial Subscribers” then the same should be confined to only 5 Star Hotels and the same ought not be extended to Hospital, educational institutions etc. as by no stretch of imagination one can consider that a sick person in the Hospital has gone to watch Television and pay for the charges. In fact there are various hospitals and clinics, who run for the philanthropic and charitable cause and for which there is no dearth of the numerous example in our country. If assuming that the Hospitals are covered under the Commercial Subscribers/Establishments, the cost of these services would be added to the Hospital bill and would be passed on to the sick persons who come for treatment. Ultimately cost of treatment would go up as the costs are likely to be passed on to the patients. Similar is the case with educational institutions and other charitable organizations and NGOs.

- (iv) It is submitted that even on technical front a separate commercial tariff is un-implementable for reasons that historically distribution of signals have never been segregated between Commercial Subscribers and Ordinary Subscribers and the signals so received by the Commercial Subscribers and Ordinary Subscribers are inseparable as the signals uplinked by a DTH operator consist of single feed. There is no separate uplinking for Commercial Subscribers. It is submitted that same programme / signals is being provided to the Subscribers be it Ordinary or Commercial and there is no element of value added service to the Commercial Customers. In view of this it does not call for any differential pricing.
- (v) Without prejudice to above, it may be mentioned that at present the Telecommunication Broadcasting and Cable Services (Second) Tariff (Fourth Amendment) Order 2006 dated 7th March 2006 defines the term “commercial subscriber” as under:
- “2. (ddd) ‘Commercial cable subscriber’ means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place indicated by him to a broadcaster, multi system operator or cable operator, as the case may be, and uses such signals for the benefit of his clients, customers, members or any other class or group of persons having access to such place”.*
- (vi) Vide notification dated 21st November 2006, it was clarified by the TRAI in clause 3.3.4 of the Explanatory Memorandum that the ceiling in respect of commercial cable subscribers in non-CAS areas who do not fall in the identified category of hotels in three star and above, the tariff ceiling shall be the rate prevailing as on 26/12/2003. It has also been clarified that

these commercial cable subscribers would pay at par with the ordinary cable subscribers. This has been explicitly provided in sub clause (f) of clause 2 which provides as under:

“(f) ‘Charges’ means and includes

(i) *for all ordinary cable subscribers and commercial cable subscribers except those specified in (ii) below, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26th December, 2003. The principle applicable in the written/oral agreement prevalent on 26th December 2003, should be applied for determining the scope of the term “rates”.*

(ii) *for hotels with a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms, the charges specified in (i) above shall not be applicable and for these subscribers the charges would be as mutually determined by the parties.*

Explanation: It is clarified that in respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties.”

In other words, the hotels upto the rating of three star and having less than 50 rooms the charges as are applicable to the ordinary cable subscribers are applicable.

(vii) Vide Telecommunications (Broadcasting and Cable) Services (Third) (CAS areas) Tariff (First Amendment) Order 2006, it was further stipulated by TRAI that there would be one category of commercial cable subscribers consisting of hotels with the rating of three star and above, heritage hotels and any other hotel, model, inn and such other commercial establishments providing boarding and lodging and having 50 or more rooms. The tariff in respect of this group would be as per the mutual agreement and for all other commercial establishments which are outside this identified category, the ceiling maximum retail price would be Rs. 5/- per channel. However, for both the categories of commercial cable subscribers, the tariff for showing programmes on special event in public viewing area shall be as per mutual agreement.

(viii) Thus, for both CAS and non-CAS areas, the TRAI has categorically clarified that there are two distinct categories of commercial cable subscribers and in respect of the category falling under the group of three star hotels and below 50 people in public viewing area (i.e. restaurant, club, pub, hospitals and eating joints, cinemas, discos, etc.) the tariff as are applicable to an ordinary cable subscriber in non-CAS areas and Rs. 5/- per channel in CAS areas would be applicable. Despite this categorical clarification by TRAI, the RIO issued by certain broadcasters for DTH services seeks to exclude all categories of commercial cable subscribers from the purview of the respective RIOs. This is quite contrary to the above mentioned clarifications and tariff order issued by TRAI. Pending finalization of the present consultation process, TRAI should immediately intervene in terms of the powers available to it under clause 13.3 of the Interconnect Regulations dated 3/9/2007 and ask the broadcasters to

amend/notify their RIOs in line with the above mentioned clarifications/orders.

2.2 Do you agree that further sub-categorizing the commercial subscribers into similarly placed groups may not be the way to proceed? In case the answer is in the negative, please give details as to how the commercial subscribers can be further sub-categorised into similarly placed groups along with full justifications?

Dish TV Response:

- (i) As submitted above, even the Quality of Service Regulations, which inter alia provides for the services conditions for a subscriber, does not provide for two different kind of subscribers. It is also submitted that it is not possible to categorise subscribers since there is no intelligible differentia. Further, any attempt to categorise the subscribers will also fall foul of the Article 14 of the Constitution of India.
- (ii) Accordingly, there is no need to create the category of subscribers or any sub categorisation, since the end subscriber would always be the same.

2.3 Which of the models, discussed in para 1.27, should be prescribed for distribution of TV signals to the commercial subscribers? Please elaborate your response with justifications. Stakeholders may also suggest any other model with justifications.

Dish TV Response:

- (i) The manner in which the signals of TV Channels are to be distributed have been clearly provided for in the TRAI regulations. In terms of the extant TRAI Regulations, each Broadcaster is required to publish the Reference Interconnect Offer of its channels and the Distributor of TV Channels have the right to avail such channels / bouquet of channel as it may deem fit from the Broadcaster.

- (ii) The 3 Options suggested in the Consultation Paper is a mix of the existing manner of provisions of channels to the subscribers. It is attempt of lay down a new process which according to us is not required.
- (iii) The provisioning of channels of a Broadcaster to the subscribers – whether normal or an establishment, can and should continue to be in the same manner in which it is being done now. There is no need for any change in the manner in which the provisioning of channels is to be done to the commercial establishment. The Distributor of TV Channels shall avail the channels from the Broadcasters in terms of the extant Regulations and the establishment will be free to avail the channel from such Distributor by entering into agreement with the distributor of channels.
- (iv) The broadcasters should be mandated to provide uniform RIO's for all kinds of subscribers i.e. the rates and terms for provision of channels should be uniform for all kinds of subscribers – whether ordinary or commercial and should also cover all kinds of establishments. Broadcasters should be prohibited from making any categorization of the subscribers.

2.4 *In your view which of the 4 alternatives mentioned above, should be followed? Please elaborate your response with justifications*

Dish TV Response:

- (i) We are of the strong view that the tariff for commercial subscriber should be same as that of ordinary subscriber. In fact, as stated above, there should not be any differentiation or discrimination between the commercial subscriber vis-à-vis ordinary subscribers.
- (ii) The reasons for having same tariff for Commercial and Ordinary subscriber have been mentioned in response to Point 1 of the Consultation Paper. As there cannot be any intelligible differentia

between various categories of the Commercial Subscribers and also that the ultimate end user of the Broadcast channels are end consumer / an ordinary consumer, there is no reason for creating a difference between Commercial and Ordinary Subscriber and charging differential tariff.

- (iii) If channel of a Broadcaster is used for commercial purpose, say for example, if a movie on a movie channel is shown in an establishment where the consumers are required to pay an entry fee to specifically watch the channel, it may still be called the commercial exploitation of the broadcast channel for which a separate arrangement can be made between the broadcaster and such establishment. However, in cases where no specific charge is levied for watching the channels and the provisioning of channel is only as an integral part of the activity of the establishment and there is no element of value added service to the Commercial Customers, the tariff should be equal to that of ordinary subscriber.

3. Summary of responses

We would like to summarize our responses to the specific points raised in the consultation paper.

- (i) **There should not be any categorization of the subscribers.**
- (ii) **The tariff should be same for all kinds of subscribers, whether Ordinary or Commercial.**
- (iii) **The provisioning of channels should be done only by the Distributor of TV Channels and not by the Broadcasters. The law does not permit a Broadcaster to be a Distributor of TV Channel also.**