

Consultation Paper No.: 3/2015



TELECOM REGULATORY AUTHORITY OF INDIA



Consultation Paper

on

Tariff issues related to Commercial Subscribers

14th July, 2015

Mahanagar Doorsanchar Bhawan

Jawahar Lal Nehru Marg

New Delhi-110002

Website: www.trai.gov.in

Written comments on the consultation paper are invited from the stakeholders by 31st July, 2015. Counter comments, if any, may be submitted by 7th August, 2015. The comments and counter comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B & CS), Telecom Regulatory Authority of India, on the e-mail: advbcs@traigov.in or umesh@traigov.in. For any clarification/ information, Mr. Wasi Ahmad, Advisor (B&CS) may be contacted at Tel. No: +91-11-23237922, Fax: +91-11-23220442. Comments and counter comments will be posted on TRAI's website www.traigov.in.

Contents

Chapter I : Introduction	1
Chapter II : Evolution of Tariff Framework	11
Chapter III: Regulatory Framework for Commercial Subscriber Tariff.....	24
Chapter IV: Summary of Consultation Issues	43
List of Acronyms	45

Chapter I

Introduction

- 1.1 The Telecom Regulatory Authority of India (TRAI) is a statutory body established by the Telecom Regulatory Authority of India Act, 1997 (hereinafter referred to as the TRAI Act). The primary functions of TRAI are to protect the interests of service providers and consumers of the telecom sector and to promote the orderly growth of telecom services.

- 1.2 In 2000, the TRAI Act was amended by insertion of a proviso to the section 2(1) (k) of the Act. This proviso empowered the Central Government to notify any other service, including broadcasting services, to be telecommunication services. Thereafter, the Government of India, through a Notification dated 9 January 2004, notified “broadcasting services” and “cable services” as "telecommunication services". As a result of the said Notification, the regulatory mechanism established by the TRAI Act became equally applicable to broadcasting and cable services. The TRAI Act applies to this sector in addition to the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933 – without affecting the jurisdiction, powers and functions under those laws. Thus, since 2004 TRAI has been regulating the broadcasting and cable TV sector in India by exercise of both - its recommendatory and regulatory powers.

- 1.3 The television broadcasting and distribution service in the country mainly comprises of cable television services (Cable TV), Direct-to-Home (DTH) services, Internet Protocol Television (IPTV) services, Headend-in-the-Sky (HITS) services and terrestrial TV services provided by Doordarshan, the public broadcaster. Value chain of TV channel distribution through Cable, DTH, IPTV and HITS platforms is depicted in Figure 1.

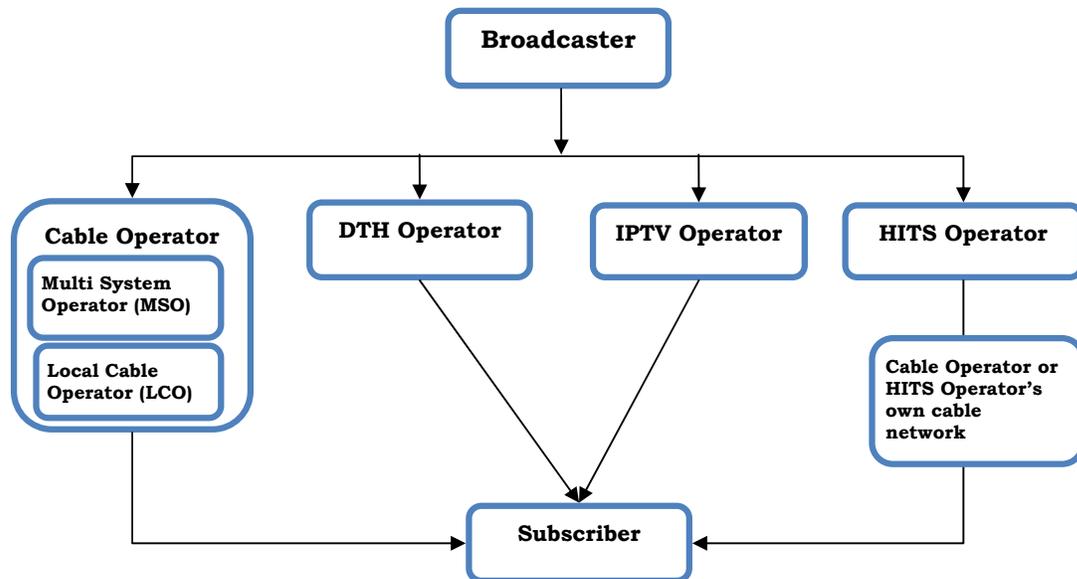


Figure 1: Broadcasting and Distribution Value Chain

1.4 In the DTH, IPTV and HITS services, TV signals are supplied essentially through digital addressable systems whereas supply of TV signals by cable can be either through digital addressable systems or non-addressable systems. In areas where digitisation of the cable TV network has been completed, supply of TV signals that are digital and also encrypted, is now through digital addressable systems, whereas in other areas, it is through non-addressable cable TV systems. In these areas, the signal is predominantly analog, unencrypted and there is no addressability.

1.5 The said elements of the broadcasting distribution services are governed as under:-

- (a) The Cable TV operations are governed by the Cable Television Networks (Regulation) Act, 1995 (hereinafter referred to as the Cable TV Act) and the Cable Television Networks Rules, 1994 (hereinafter referred to as the Cable TV Rules) as amended from time-to-time.

- (b) DTH services are governed by the 'Guidelines for obtaining license for providing Direct-to-Home (DTH) broadcasting service in India' issued by Ministry of Information and Broadcasting (MIB).
- (c) IPTV services are governed by the 'Guidelines for provisioning of Internet Protocol Television (IPTV) Services' issued by MIB.
- (d) HITS services are governed by the 'Guidelines for providing Headend-In-The-Sky (HITS) broadcasting service in India' issued by MIB.

1.6 The Cable TV segment is the largest platform for distribution of TV signals. The key entities involved in cable TV services value chain are Broadcasters, Multi System Operators (MSOs), Local Cable Operators (LCOs) and the subscribers as shown in Figure 2 below.

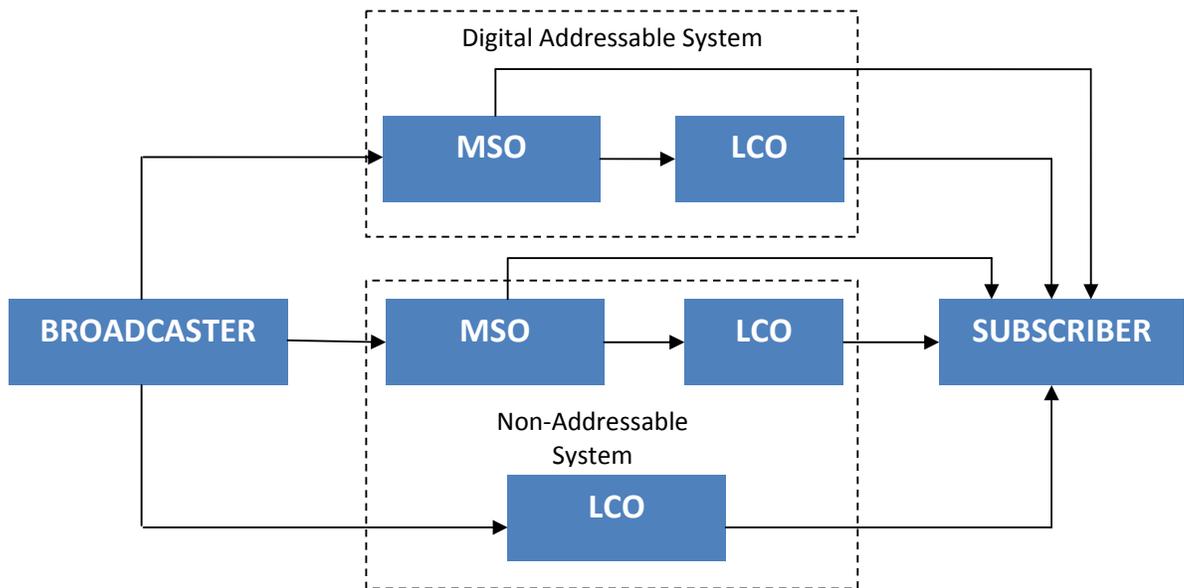


Figure 2: Cable TV service value chain

1.7 The broadcaster owns the content that is televised and received by the viewer. Its primary role is to make available content (programs) and to transmit or up-link it to the satellite either through its own tele-port

or through a tele-port operator. All broadcasters are governed by Uplinking and Downlinking guidelines issued by MIB and as amended from time-to-time. The role of an MSO in the cable TV network is to downlink the broadcasters' signals and provide a bundled feed consisting of multiple channels either directly to the subscriber or to the Local Cable Operator (LCO). In areas served by digital addressable systems, the role of the LCO in the supply chain is to receive a bundled feed from the MSO for retransmitting this by cable to subscribers. In areas served by non-addressable systems, the LCO can receive the cable TV signal either directly from the broadcaster or through an MSO for retransmitting it by cable to the subscribers.

- 1.8 In areas served by digital addressable system, the cable TV services are termed as DAS. In areas served by non-addressable systems, the cable TV services are termed non-DAS (non-CAS areas).

- 1.9 Unlike the DTH and HITs platforms that supply digital and encrypted TV signals pan-India, the supply of cable TV signals in large parts of the country are presently not in digital form, i.e., these areas are non-DAS. The Government has amended the Cable TV Act by issuing a Gazette notification on 30 December 2011 and the rules made thereunder on 28 April 2012. The Government also issued a notification on 11 November 2011, which makes it incumbent upon each cable operator to transmit or re-transmit programs of any channel in encrypted form in notified areas through a digital addressable system. The implementation process for DAS is to be executed in a phased manner and is spread over four phases. The cut-off dates for the first and second phases covering four metros and 38 designated cities were 31 October, 2012 and 31 March, 2013 respectively. The third phase, covering all urban areas other than those covered under Phase I and Phase II, was to be completed by 30 September 2014, while the last phase covering rest of the country was scheduled to be completed by 31 December 2014. The Government issued a notification on 11 September 2014 and extended

the cut-off dates for Phase-III and Phase-IV of DAS implementation to 31 December 2015 and 31 December 2016 respectively.

1.10 Supply of cable TV services through DAS has the following advantages over the cable TV services provided through non-addressable system:

- Availability of large number of channels, generally more than 250 for the consumer to choose from and subscribe to.
- Availability of a high quality signal with better picture quality & sound.
- Availability of option to the subscriber to subscribe to only those channels/services that he wishes to avail.
- Availability of interactive Value Added Services (VAS) like home shopping, movies-on-demand and educational programmes.
- Broadband connection can also be provided by the service provider on the same cable.

1.11 Registration: In areas served by non-addressable systems, as per provisions of the Cable TV Act, each MSO and LCO is required to register himself as a 'cable operator' in the Head Post Office of the local area. In areas served by DAS, as per provisions of the Cable Television Networks (Amendment) Rules, 2012, the MSO is required to register himself with MIB clearly indicating its area of operation.

Interconnection:

1.12 In order to ensure access to broadcaster's content for all the distributors of TV channels, TRAI has issued Interconnect Regulations from time-to-time. As per the existing framework for interconnection, each broadcaster is required to publish a Reference Interconnect Offer (RIO) wherein wholesale rate for each pay channel as well as each bouquet offered by him are to be notified.

- 1.13 In non-DAS areas, an independent LCO can downlink Free-to-Air (FTA) as well as pay channels directly from broadcasters without involving an MSO. To downlink pay channels directly, the independent LCOs have to enter into interconnection agreements with the broadcasters. LCOs also have an option to obtain pay channels through MSOs. However, in areas served by DAS, only an MSO can receive signals from the broadcasters as per the Cable TV Networks Rules, 1994 as amended on 28 April 2012. Both FTA and pay channels received from the broadcasters are transmitted by the MSO in digital and encrypted form to the subscriber either directly or through its linked LCOs. The channels are decrypted at the customer end through a set top box (STB) programmed by the MSO to receive channels of customer's choice as per details in the Subscriber Management System (SMS).
- 1.14 In areas served by addressable systems, broadcaster and the MSO/DTH/IPTV/HITS operator enter an interconnection agreement based on the existing framework prescribed in the interconnection regulations (either on RIO rates or at rates that are mutually negotiated).
- 1.15 As per a provision of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012, broadcasters were permitted to specify different rates for supply of signals by the MSOs to different categories of commercial subscribers.
- 1.16 This provision was deleted by the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 issued on 18 July 2014. In the said regulation, the following salient features were incorporated - (i) there is no need for sub-categorization of the commercial subscribers into similarly placed groups for the purpose of prescription of tariff dispensation for commercial subscribers. (ii) the

definition of commercial subscribers was revisited and amended. (iii) only distinction required is, to place the commercial subscribers into two broad classes i.e. – (iii) (a) those who offer television services/programmes as part of the amenities to their guests and (iii) (b) those who charge for the same. (iv) only a subscriber who specifically charges extra to its clients/visitors on account of viewing of TV channels at its premises be treated as a commercial subscriber and all other subscribers be treated akin to ordinary subscribers. (v) all types of subscribers including the commercial subscribers obtain TV signals only through an MSO/LCO/DTH/IPTV/HITS operator. In view of the above, the provision permitting the notification of different rates for commercial subscribers was deleted. This was explained in the explanatory memorandum of the said Regulation.

1.17 Tariff: TRAI has issued Tariff orders from time-to-time prescribing both the wholesale and retail tariffs for TV channels in areas served by addressable and non-addressable systems. Prevailing framework for TV services provided in areas served by digital addressable systems requires a broadcaster to prescribe wholesale tariff for MSO/HITS/DTH/IPTV Operators. In turn, these operators can prescribe retail tariff for subscribers. For cable TV services provided in areas served by non-addressable systems, rates prescribed by the broadcasters have been frozen based on historical pricing prevailing as on 26 December 2003, with provision to give inflation linked hikes. In case of retail tariff charged by cable operators (MSOs/LCOs) for services provided through non-addressable system, upper ceilings have been prescribed. In areas served by addressable systems, the wholesale tariff of a channel published by a broadcaster in its RIO should be less than or equal to 42% of the tariff published in its RIO for areas served by non-addressable systems. Presently, in areas served by addressable systems, MSO/HITS/DTH/ IPTV Operators are free to decide packaging and pricing of channels/ bouquet(s) for the subscribers as per their business plans subject to certain conditions

prescribed by TRAI in its Tariff Orders applicable for digital addressable systems. All TV channels (FTA /Pay) available on the platform of the MSO/ HITS/ DTH/ IPTV Operators must be offered to the subscribers on *a-la-carte* basis. In addition, bouquet(s) of channels can also be offered subject to certain conditions as prescribed by TRAI in its applicable Tariff Orders.

- 1.18 Consumption Pattern: TV Services are used by different type of consumers such as household consumers, consumers using TV signals in shops and other establishments where commercial activity is being carried out, in Hospitals, Clubs, Restaurants/Bars, and Hotels etc. The basis of such a classification of consumers can be different depending on the chosen yardstick. In a given group also, further classification is possible based on size, usage, volume etc. Since there are a number of possible classifications of the consumers, it has been an issue of debate whether all types of consumers should be charged equal or there should be different tariff provisions based on the consumer classification.
- 1.19 Prior to 7 March 2006, tariff regulation for cable TV did not make any distinction between commercial cable subscribers and ordinary cable subscribers. The Authority vide The Telecommunications (Broadcasting & Cable) Services (Second) Tariff (Fourth Amendment) Order 2006, (2 of 2006), issued on 7 March 2006 defined the 'Ordinary cable subscriber' and 'Commercial cable subscriber' separately.
- 1.20 The Authority vide The Telecommunications (Broadcasting & Cable) Services (Second) Tariff (Seventh Amendment) Order 2006, (8 of 2006) issued on 21 November 2006 further distinguished between two groups of commercial subscribers as follows: the first group of commercial subscribers to be under forbearance regime and the other

group (all other commercial subscribers that were not included in the first group) to be treated the same as ordinary subscribers.

- 1.21 The definition of commercial subscribers, their pricing mechanism and method of provision of TV signals to such subscribers have been a point of contention since past many years. As can be seen in chapter II, there has been protracted litigation on these issues.
- 1.22 As per the existing regulatory framework, in areas served by addressable systems, broadcasters can provide signals only to the MSO/HITS/DTH/IPTV Operators. Only these operators now have the flexibility of further pricing the TV signal supplied to their consumers. They are free to price and package the channels in line with their business plans subject to certain conditions prescribed by TRAI in the Tariff orders applicable for digital addressable systems. This can be interpreted that the commercial subscribers can subscribe to TV services only through MSO/HITS/DTH/IPTV Operators. In any case, the supply of TV signals has to be in compliance with the uplinking/downlinking guidelines issued by MIB.
- 1.23 In areas served by non-addressable systems, broadcasters can provide TV signals to cable operators (MSOs/LCOs). Therefore commercial subscribers who have obtained a registration to become cable operators are only eligible to get TV signals directly from the broadcasters. However, if they are not registered, then the broadcasters cannot provide TV signals to such commercial subscribers directly as per the existing uplinking/downlinking guidelines issued by MIB. Here again, if TV signals are directly received from the broadcasters by a commercial subscriber who has registered as cable operator, there is a possibility of mutual negotiation. However, if the TV signals are obtained by the commercial subscribers from an MSO/ LCO, then the broadcasters cannot prescribe the channel/ bouquet prices to such subscribers.

1.24 This Consultation Paper has been prepared to seek the comments of stakeholders on various issues related to subscriber classification and the framework for tariff. Chapter II discusses evolution of the tariff framework and Chapter III discusses the regulatory framework for commercial subscriber tariff. A summary of issues for consultation is provided in Chapter IV.

Chapter II

Evolution of Tariff Framework for Commercial Subscribers

- 2.1 Soon after it came to be vested with regulation of broadcasting and cable TV services, TRAI issued an interim Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004 on 15 January 2004, to notify the charges payable by subscribers to Cable Operators/ Broadcasters as on 26 December 2003 as the ceiling for Free-to-Air (FTA) and pay channels, until final determination by TRAI on various issues concerning these charges. As on that date, there was no distinction amongst different consumer categories based on the nature or kind of consumption.
- 2.2 Thereafter, on 01 October 2004, TRAI notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (hereinafter referred to as 'Principal Non-CAS Tariff Order') superseding the interim tariff order issued on 15 January 2004. The Principal Non-CAS Tariff Order retained the ceilings imposed on cable TV charges, while providing a window for introduction of new pay channels and conversion of existing FTA channels to 'pay channels' subject to certain conditions prescribed by TRAI.
- 2.3 On 10 December 2004, TRAI notified the Telecommunication (Broadcasting and Cable Services) Interconnect Regulation, 2004 (hereinafter referred to as 'Principal Non-CAS Interconnect Regulation').
- 2.4 On 08 August 2005, the Association of Hotels and Restaurants filed Petition Nos. 80(C) and 32(C) of 2005, before the Hon'ble TDSAT praying, *inter alia*, while challenging the actions of the broadcasters in requiring the Hotels and its members to execute fresh agreements with the broadcasters and/or their authorized distributors with increased

subscription fees higher than what was prevalent on 26 December 2003.

2.5 On 17 January 2006, the Hon'ble TDSAT dismissed the petition to, inter alia, hold in paragraph 37 as follows:

“37. In view of the above, we are of the opinion that the Respondents are well within their rights to demand the members of the Petitioner Associations to enter into agreements with them or their Representatives for receipt of signals for actual use of their guests or Clients on reasonable terms and conditions and in accordance with regulations framed in this regard by TRAI.”

2.6 On 07 March 2006, TRAI, upon considering the observations made by TDSAT in its Order dated 17 January 2006 and a representation received from Federation of Hotel and Restaurants Association of India (FHRAI), in the interim, notified the Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Fourth Amendment) Order, 2006 (2 of 2006). By this Order, definitions of two classes of subscribers (set out below) was issued and commercial cable subscribers were required to pay subscription fees at rates prevailing as on 01 March 2006.

“ ‘Ordinary cable subscriber’ means any person who receives broadcasting service from a cable operator and uses the same for his/her domestic purposes.

‘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.”

2.7 On 21 April 2006, a Consultation Paper was issued by TRAI for detailed consultations on the issue.

2.8 In the meantime, Civil Appeal No. 2061 of 2006 was filed challenging the Hon'ble TDSAT's order dated 17 January 2006 by Associations of Hotels and Restaurants before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court passed a "*status quo*" order on 28 April 2006. This *status quo* order was modified by the Hon'ble Supreme Court, on 19 October 2006, after final hearing of the appeal and while reserving its judgement, on the said date, the Hon'ble Supreme Court directed as under:-

"We in modification of our said order dated 28 April 2006 direct the TRAI to carry out the processes for framing the tariff. While doing so, it must exercise its jurisdiction under Section 11 of the Act independently and not relying on or on the basis of any observation made by TDSAT to this effect. It has been brought to our notice that even in the consultation paper some references have been made to the recommendations made by the TDSAT. In view of our directions issued hereinbefore a fresh consultation paper need not be issued. We, however, make it clear that in framing actual tariff the provisions of Section 11 of the Act shall be complied with and all procedures laid down in relation thereto shall be followed."

2.9 On 02 November 2006, in pursuance of the directions of the Hon'ble Supreme Court, a draft tariff amendment order for Non-CAS areas seeking comments of the stakeholders was placed on the website of TRAI.

2.10 On 21 November 2006, upon completion of consultation, TRAI amended the principal Tariff Order in terms of The Telecommunications (Broadcasting & Cable) Services (Second) Tariff

(Seventh Amendment) Order, 2006 (8 of 2006). This tariff amendment order had the following main provisions:

- (a) Maximum tariff charges for all hotels (except excluded categories of hotels) shall be at the same rate as for ordinary subscribers and other commercial subscribers.
- (b) With respect to hotels with ratings of 3 stars and above, heritage hotels and hotels with a capacity of 50 or more rooms (hereinafter referred to as “the Excluded Categories of Hotels”), the charges were to be mutually negotiated.
- (c) 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.

2.11 A similar dispensation was made in respect of commercial subscribers in CAS areas by an amendment to The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006), for which a tariff amendment Order was issued on the same day, i.e., 21 November 2006.

2.12 On 24 November 2006, the Hon’ble Supreme Court of India decided Civil Appeal No. 2061 of 2006 and reversed the order of the TDSAT dated 17 January 2006 to –

- (a) Hold that Hotels are covered by the definition of “consumer”;
- (b) Remand the matter back to TRAI directing it to carry on the process for fresh determination of tariff independently while recording certain views extracted below.

“28. We have noticed hereinbefore that the members of Associations take TV signals either from Respondents

Broadcasters under their respective contracts or agreements or through cable operators. Whereas in the former case, there exists a privity of contract between the broadcasters and the owners of the hotels, the owners of the hotels admittedly would not come within the purview of definition of MSOs. The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the ‘consumer’ and ‘subscriber’ would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefore the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers. They do not have any privity of contract with broadcasters or cable operators. The identity of the guests is not known to the broadcasters or cable operators. A guest may not watch TV or in fact the room may remain unoccupied but the amount under the contract by the owners of the hotels whether with the broadcasters or cable operators remains unchanged. We, therefore, are of the opinion that the members of the appellants’ associations are consumers.”

“39. ... no difference ...

“50. We, therefore, are of the opinion that it would not be correct to contend that the commercial cable subscribers would be outside the purview of regulatory jurisdiction of TRAI. If such a contention is accepted, the purport and object for which the TRAI

Act was enacted would be defeated. TDSAT, with great respect, therefore, was not correct in opining that the regulators should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard.”

“53. We are, however, sure that TRAI while exercising its jurisdiction under Sub-section (2) of Section 11 of TRAI Act shall proceed to exercise its jurisdiction without in any way being influenced by the said observations.”

2.13 Hotels which formed a part of the excluded category under the Notifications dated 24 November 2006 and the Federation of Hotel and Restaurants Association of India (FHRAI), filed Appeals No.17(C) of 2006 (East India Hotel Ltd vs. TRAI and Ors) and 18(C) of 2006 (The Connaught Prominent Hotels Ltd vs. TRAI and Ors) before the Hon’ble TDSAT challenging *inter alia* the Tariff Order/ Notification dated 21 November 2006, issued by TRAI.

2.14 The Hon’ble TDSAT, by its judgment dated 28 May 2010, allowed Appeals 17(c) of 2006 and 18(c) of 2006 and quashed the tariff order with, *inter alia*, the following direction:

“We, therefore, are of the opinion that it is a fit case where the impugned orders are required to be set aside. We direct accordingly. We, however, do not wish to issue any direction with regard to the refund of any amount but we would request the Authority to consider the case of commercial establishments once over again in a broad based manner.”

2.15 Civil Appeal Nos. 6040-6041 of 2010 filed by one of the broadcasters (M/s ESPN) and other connected appeal Nos. 10476-10477 of 2010 and 8358-8359 of 2010 were filed before the Hon’ble Supreme Court

challenging the judgment of the Hon'ble TDSAT dated 28 May 2010, wherein:

- (a) On 16 August 2010, the Hon'ble Supreme Court passed an ad interim order of stay on the order of the TDSAT dated 28 May 2010.
- (b) By its judgement dated 16 April 2014, Hon'ble Supreme Court dismissed Civil Appeal No. 6040-41 of 2010 and other connected appeals filed by the broadcasters challenging the quashing of the Notification dated 21 November 2006, by the TDSAT. Hon'ble Supreme Court further directed TRAI to consider the matter de-novo within 3 months and to re-determine tariff as under:

“Upon hearing the learned counsel and looking at the impugned judgment, we see no reason to interfere with the said judgment and, therefore, confirm the same. The civil appeals are dismissed... However, we direct that for a period of three months, the impugned tariff, which is in force as on today, shall continue. Within the said period, TRAI shall look into the matter de novo, as directed in the impugned judgment, and shall re-determine the tariff after hearing the contentions of all the stake holders...”

2.16 Accordingly, TRAI issued a consultation paper on 11 June 2014, seeking comments/views of the stakeholders on various alternatives on issues related to - tariff stipulations for the commercial subscribers; manner of offering of TV services to them; the definition of the terms 'commercial establishment', 'shop' and 'commercial subscriber'; and sub-categorization of the commercial subscribers into similarly placed groups.

2.17 After analyzing all the issues involved and on the basis of inputs received from various stakeholders, the Authority notified the following Regulations and Orders–

- (a) The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Twelfth Amendment) Order, 2014 (5 of 2014) on 16 July 2014.
- (b) The Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (Fourth Amendment) Order, 2014 (6 of 2014) on 18 July 2014, that amended the Principal Addressable (Digital) Tariff Order.
- (c) The Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) (Fourth Amendment) Regulation, 2014 (9 of 2014) on 18 July 2014, that amended the Principal Addressable (Digital) Interconnect Regulation.
- (d) The Telecommunication (Broadcasting And Cable Services) Interconnection (Eighth Amendment) Regulation, 2014 (8 of 2014) on 18 July 2014, that amended the Principal Non-CAS Interconnect Regulation.

2.18 The amendments to the Regulations referred at para 2.17 above also took into consideration the existing policy guidelines for downlinking of TV channels issued by MIB on 5 December 2011, which stipulate that:-

“The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom

License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service."

2.19 The effect of the aforementioned amendments dated 16 July 2014 and 18 July 2014, to the Tariff Orders and the Interconnect Regulations was as under:-

- (a) All commercial subscribers were required to obtain television services only from a MSO/LCO/DTH/IPTV/HITS operator.
- (b) Broadcasters were in effect prohibited from entering into direct agreement/relationship with any subscriber including commercial subscribers. The Broadcaster has to enter into an agreement with the relevant MSO/LCO/DTH/IPTV/HITS operator and as a consequence, the subscriber gets the signal from the MSO/LCO/DTH/IPTV/HITS operator.
- (c) Commercial establishments which did not specifically charge their clients/ guests on account of providing/showing television programmes and offered such services as part of amenities, were to be treated like ordinary subscribers. The charges would be on per television set basis.
- (d) Commercial establishments which levy and recover a specific charge from their clients/guests on account of providing/showing television programmes, the supply of signals would be at a tariff to be mutually agreed between the broadcaster and the commercial subscriber.

2.20 The two tariff amendment orders were challenged by the Indian Broadcasting Foundation and Others in Appeal No. 7(c) of 2014 before the Hon'ble TDSAT.

2.21 A Writ Petition No. 5161 of 2014 (Star India vs. TRAI and Ors.) was filed before the Hon'ble High Court of Delhi challenging the amendments dated 16 July 2014 and 18 July 2014, to the Tariff Orders and to the Interconnect Regulations applicable to Non-CAS areas and to DAS areas. Hon'ble High Court issued notice in Writ Petition No. 5161 of 2014 by its order dated 19 August 2014, while directing that the charges collected by the petitioner (Star India) in the meanwhile in terms of the impugned Tariff Orders and Regulations shall be subject to the outcome of the writ petition and the commercial establishments shall be bound to pay the difference, if any, in the event of the petitioner succeeding in the writ petition. The Petition is pending disposal.

2.22 The Hon'ble TDSAT in terms of its judgment dated 09 March 2015, allowed the appeal filed by the Indian Broadcasting Foundation, quashing the two tariff amendment orders dated 16 July 2014 (non-DAS) and 18 July 2014 (DAS). The Hon'ble TDSAT while allowing the appeal also, *inter-alia*, directed TRAI to issue fresh orders within six months from the date of the judgment. The relevant portion of the order reads as under:

"In the facts and circumstances of the case, this petition is allowed and for the same reasons as discussed above, proviso 6 and 7 to clause 3 of the fourteenth amendment along with the explanation to the proviso 7 are also set aside. TRAI must now undertake a fresh exercise on a completely clean slate. It must put aside the earlier debates on the basis of which it has been making amendments in the three principal tariff orders none of which has so far passed judicial scrutiny. It must consider afresh the question whether commercial subscribers should be treated equally as home viewers for the purpose for broadcasting services tariff or there needs to be a different and separate tariff system for commercial subscribers or some parts of that larger

body. It is hoped and expected that TRAI will issue fresh orders within six months from today. [@ pages 44 & 45]

As a consequence of the tariff amendment orders dated 21 November being taken out, the unamended Second, Third and Fourth tariff orders will come into play and commercial subscriber would, by default, get bracketed with ordinary subscribers. In other words though the impugned amendments in the tariff orders are quashed by this judgment, nonetheless, for practical purpose the situation will continue to remain the same. And this is because despite two orders by the Supreme Court to consider the question of tariff in respect of commercial subscribers, within specified times periods, TRAI has not been able to produce the tariff that would satisfy judicial scrutiny. This is evidently a highly anomalous situation and to remedy it TRAI must consider whether to issue an interim tariff order dealing with the matter until it takes a final call on the subject. TRAI should take a decision in regard to any interim arrangement within one month from today. [@ pages 45 & 46]

All the different kinds of commercial subscribers being put en block at par with the ordinary subscriber appears to be as arbitrary and unreasonable as the carving out of a very small segment of hotels [namely, (i) hotels with rating of three stars and above, (ii) heritage hotels and (iii) any other hotel/motel, inn and such other commercial establishment providing board and lodging having 50 or more rooms] for exclusion from the tariff protection. We are strongly of the view that what is required in the matter is a far more nuanced approach. We rather feel it is high time that TRAI should stop making any further amendments in the different tariff orders and take a completely fresh and holistic view on the question of tariff in broadcasting services. As a result of repeated amendments, the Second, Third and Fourth tariff orders have become so complicated that it has become difficult even to follow the exact import of a provision without

examining all the amendments made earlier in the Principal tariff order. How much the tariff orders have become clumsy and unwieldy is evident from their very names as is sought be demonstrated in the opening lines of this judgment. We, accordingly, expect that as the whole country is now to come under the DAS regime, TRAI will undertake a fresh exercise and come out with a single consolidated instrument covering broadcasting services. [@ pages 47 & 48]

2.23 A Civil Appeal bearing No. 3728 of 2015 has been filed by the Federation of Hotels and Restaurants Association of India in the Hon'ble Supreme Court challenging the judgment of the TDSAT dated 09 March 2015, in Appeal No. 7(c) of 2014. The Appeal is now listed on 20 July 2015.

2.24 In Writ Petition No. 5161 of 2014, the Hon'ble High Court of Delhi, issued an order on 15 May 2015, holding that while determining the tariff in terms of the judgment of TDSAT dated 09 March 2015, TRAI shall not consider itself bound by the regulations impugned in the petition in any manner whatsoever. The relevant portion of the order reads as:

"...to allow TRAI to be guided by the impugned Regulations while making fresh determination of tariff in terms of the order of the TDSAT would not only be a futile exercise but would also give rise to multiplicity of proceedings.

25. Therefore, to meet the ends of justice, we direct that while determining the fresh tariff in terms of the judgment of TDSAT dated 09 March 2015, the TRAI shall not consider itself bound by the Regulations impugned in this petition in any manner whatsoever. However, it is made clear that in the event of the main petition failing, the different tariff, if any, provided in the said Tariff Order for commercial subscribers shall also stand quashed."

The Writ Petition is now listed on 21 July 2015.

2.25 In this view of the matter, in compliance with the directions of Hon'ble TDSAT, the Authority is initiating this CP to solicit the comments/views of all the stakeholders. However, the final tariff dispensation shall depend upon the outcome of the judgment by the Hon'ble Supreme Court.

2.26 TRAI has filed an appeal (Civil appeal No 4851 of 2015 (TRAI vs IBF and others)) in the Hon'ble Supreme Court challenging the judgment and order dated 09 March 2015, delivered in appeal No 7(C) of the Ld. TDSAT. The civil appeal is now listed for further hearing.

2.27 With this as a backdrop, TRAI is commencing this Consultation process to examine the following issues:-

- (a) Is there a need to classify subscribers of TV broadcasting services into different categories?
- (b) In case subscribers are required to be classified, then,
 - (i) What should be the criterion to arrive at a classification of subscribers of TV broadcasting services into different categories?
 - (ii) Should there be differential tariffs for different subscriber categories?
 - (iii) What should be the criterion to determine the differential tariffs?
 - (iv) Who should have option to prescribe such differential tariffs?
 - (v) What should be the regulatory framework to implement such differential tariffs?

Chapter III

Regulatory Framework for Commercial Subscriber Tariff

3.1 The Authority has initiated this consultation process *de novo* to consider what would be an appropriate regulatory framework to deal with different classes of subscribers and their typical usage of TV services, keeping in mind statutory and policy objectives. The main issue which needs to be deliberated upon is whether there is a need to differentiate the subscribers into ordinary and commercial from the perspective of carriage and tariff. If so, then what should be the basis for such a classification?

A. Classification of Subscribers

3.2 Taking a holistic view, TV subscribers can be classified based on any one or more of the possible parameters given below:

- (a) Place of viewing TV signal.
- (b) Type of usage criteria for TV signals.
- (c) Method of provisioning of such TV signal.
- (d) Number of TV signal points at such locations.
- (e) Perceived value of TV signal.
- (f) Type of content of TV signal.

(a) Place of viewing TV signals

3.3 TV subscribers who place their televisions sets at home and view the TV programs at their residential premises can generally be referred to as Ordinary or Domestic subscribers. As a corollary, all other subscribers who obtain the TV services and place their television sets at non-residential locations can be referred to as Non-domestic or Commercial Subscribers. This in effect would include shops, hospitals/clinics, malls, industrial establishments, cafés, restaurants,

bars/ Pubs, hotels, offices, waiting rooms at airports; railway stations; hospitals etc.

- 3.4 However, it could be argued that such a classification may be too simplistic in its approach as such an approach does not take into consideration the purpose for which TV services are consumed and classification is based on locations where the TV services are consumed. Further, it may also be true that this approach does not take into consideration the fact that at several locations where commercial activity is being carried out, the TV programs are being provided simply as a mode of infotainment/ amenity. It is not germane in any way to the actual commercial activity being conducted at the premises where the TV is located.

(b) Type of usage criteria for TV signals

- 3.5 Type of usage of TV signal may be another criterion to classify subscribers. The TV subscription at the residential premises of a domestic subscriber is used purely for the information and entertainment of the subscriber, his family and/ or guests. There is no commercial exploitation of the service by such domestic subscribers. The TV service, in this case, is just like any other convenience available to the members of the household.
- 3.6 TV services are also obtained by a variety of non-domestic subscribers for use in non-residential environments. This *inter alia* includes TV services obtained for viewing by members in clubs, guests in hotels, passengers at waiting areas at Airports/ bus/ railway stations, patients in hospital rooms, or clients at beauty parlours etc. In these cases, the TV facility is also an amenity/convenience for infotainment of the member/ guest/ inhabitant/ student/ visitor etc. The service consumer, i.e. the viewer, does not have a permanent ownership of the connection and the utilization is temporary. Further, in these situations, there is no specific financial transaction taking place specifically for viewing the TV programs. In such cases, the question

which arises is whether such, free and personal viewing of TV programs within a commercial establishment be construed to be a commercial use of the TV subscription? The actual subscriber who pays for the TV subscription and may be the owner of the establishment may or may not even be the actual viewer. While it may be true that the establishment itself is carrying out activities of commercial nature, but the issue to be addressed is whether the TV service provided therein can be considered to be commercially exploited when it just is an amenity and not even germane to the basic purpose/ objective/ business of the establishment where it is provided.

3.7 However, there are certain establishments where commercial activity is carried out, that do exploit TV programs commercially, i.e., they don't provide TV service as an amenity but charge directly or indirectly for watching a TV program at their premises. Examples of such cases may include, but not limited to the following are:

- (a) Cinema halls that organise public viewing of screened TV content which is pay per entry for the viewers.
- (b) Pubs, Clubs or bars that organise public viewing of sports/fashion/film events using TV content for the viewers who may be levied with an entry fee. Besides this, there may also be enhanced charges for food/ drinks served during such an event.
- (c) Pay per entry for live telecast of events of worldwide significance with a mass appeal organised at hotels along with separate arrangements for food/drink etc. where the viewing of the content is the main attraction and bundled charges are paid for by the patrons to attend such screenings.
- (d) Special dinners/banquets with viewing of screened TV content which is charged.

3.8 In all these cases, the TV program is intended for further commercial exploitation. They certainly and distinctly are a different category from

those establishments where although commercial activity is carried out, but the TV services are provided simply as an amenity. It can be argued that if TV services are being consumed as an amenity/ convenience by the client/ guest/ inhabitant/ visitor etc without any separate charge or payment being levied upon him, then such a subscriber, though linked to an establishment where activities of commercial nature are carried out, is no way different from a domestic/ordinary subscriber. However, where the TV subscription/ program is used for commercial benefit of the subscriber, i.e., the TV programs are being exhibited for a price, then such use of the TV services may be deemed to be commercial usage, and such subscribers may be termed as Commercial subscribers. It is pertinent to mention here that such commercial utilisation of TV programs may also require separate permissions and licences to be in compliance with the laws such as those for entertainment.

(c) Method of provisioning of TV signal

- 3.9 Another criterion for classification of subscribers can be based on the methodology/ infrastructure required to service subscribers. This criterion for classification of subscribers as commercial or domestic is generally used by Utility companies/ agencies such as electricity and water supply companies. It is pertinent to examine the classification of subscribers by such utility providers’.
- 3.10 Generally, commercial subscribers of electricity or water are also bulk consumers with a clearly different level of consumption as compared to residential consumers. Therefore, the infrastructure required to feed commercial consumers is different. For electricity companies the infrastructure required to service a commercial consumer depends on the total load requirement, voltage at which supply is to be given and the power factor. Section 61 of the Electricity Act, 2003 specifically provides for the terms and conditions for determination of differential tariff based on transmission and supply of electricity. Different types

of users are supplied electricity at different voltages and power ratings. While a domestic user is supplied with electricity at a voltage of 220V, a commercial user may be supplied, subject to its requirements, with voltages up to 400kV. Since the factors determining cost of supply are different, differential tariff is the norm.

- 3.11 In the case of TV services, there is no qualitative difference in the type of signal that has to be provided for a commercial subscriber by the broadcaster or distributor of TV signals. It is possible that for some establishments TV connections are provided in a large number of rooms, such as in hotels or hospitals or even offices, there could be a need for signal boosters and several sets of set-top-boxes. However, unlike in the case of electricity supply, these equipments are essentially consumer premise equipments (CPEs) for which the consumer pays.
- 3.12 Even in cases where the infrastructure required for supply of electricity is not different, as is the case with small non-industrial businesses, commercial tariffs for electricity and water charged by the utility companies are generally higher than that for domestic users. This is so because domestic electricity and water are generally subsidized for domestic users as a part of the social policy of governments.
- 3.13 It must also be recognised that water/electricity are vastly different in nature as compared to TV signals. Both electricity and water are basic raw inputs on which a commercial entity builds its service/manufacturing activity. TV signals on the other hand are provided in the final form to all subscribers alike. In case of TV signal, the bandwidth requirement in particular and infrastructure requirement in general irrespective of the type of platform used to supply the TV signals (for example DTH) are similar for all types of subscribers and does not depend on the type of premises where TV signal has been supplied to or the nature of its use. The averaged-out cost to provide

the TV signal is same for all types of subscribers. Moreover, there are no social policy issues of cost subsidisation for domestic subscribers.

3.14 Thus, the matter for consideration is whether there is any reason at all to classify subscribers of TV services into different categories on the basis of the method of provisioning of the TV signal.

(d) Number of TV signal points at a location

3.15 If the number of TV sets placed in a single location/ premise by a subscriber is large, it may be argued that such bulk consumers may be treated differently, similar to bulk consumers of electricity/ water. This argument gains further credence if the TV subscriber is also an establishment where commercial activity is carried out. This rationale however raises issues such as - What should be the number TV connections beyond which the premise/ location would be considered as a commercial subscriber? In fact, a counter argument would be that with bulk of the connections in close concentration, it would aptly justify discounts based on bulk purchase criteria.

3.16 Further, there may be cases where, even if the number of such TV connections in close vicinity is large in number, but the TV services are being provided as an amenity without any charges. Would this rally amount to commercial exploitation of the TV services by the subscriber? A holistic view by the stakeholders in this matter is solicited.

(e) Perceived value of TV Services

3.17 Perceived value is the notional gain that may accrue by display of TV programs at commercial establishments. These could be places like academic institutions, waiting rooms of hotels/ hospitals/public transport establishments like airports etc in addition to malls/shops/ restaurants/ bars etc. It could also be argued that availability of TV programs adds to the overall ambience or comfort levels of the clients/

visitors at these locations. While it is difficult to quantify the value addition to the ambience of such locations, the fact remains that soft music or a TV program being played out at such an establishment does attract attention and may enhance the comfort levels of the visitor/ client.

3.18 Let's take a few examples to deliberate the issue further. A doctor may put up a TV for viewing by his patients in the waiting lounge of his clinic for the patients waiting for the consultation. Airports also put up TVs in their transit lounges for passengers waiting to board their flights. A commercial mall may put-up TV screens for general entertainment of the visitors. There can be many such examples. In reality, TV has become an accepted fixture at such locations and it's almost taken as a granted.

3.19 The important issue for analysis is whether people visit such places with the prime objective of viewing the TV programs or is the viewing incidental to the primary purpose of their visit? It can be argued that a patient does not visit the clinic to view TV, and a passenger does not definitely visit the airport for TV entertainment and so on. Based on the discussion above, it appears that television today is a commonly available amenity. While a specific channel at a given point in time may attract viewers, in general the availability of a television can no longer be the primary reason for attracting a client into a place where commercial activity is being carried out. Whether the subscribers' transaction is driven purely by such peripheral factors is a matter that needs deliberation and rational justification. Stakeholders may consider if this can be the basis for classification of subscribers as commercial subscribers for the supply of TV signals. If there is a case for such classification based on perceived value, then how should the perceived value be quantified and linked to the tariff for such subscribers?

(f) Type of content of the TV signal

3.20 In the fast changing environment of today, TV has become a very powerful medium for mass communication. There are certain TV channels which are primarily dedicated to mass viewing especially in rural and remote areas. TV programs for e-Shiksha, e-health programs and programs relating to agriculture and farming etc. seek to disseminate knowledge and information at a mass level. To watch most of these programs, people gather in large numbers at a common location. It is also a part of the Government's agenda to spread knowledge and information in rural and remote areas. Arrangement to view these program by a large numbers of people at a common location are made by schools, block committees, panchayats, local municipal bodies or some NGOs etc. While the viewers may benefit, including commercially, from viewing such programs, but the primary motive for beaming such TV programs in this case is non-commercial. These programs – both the content and arrangement for their mass viewing are public services.

3.21 From the above discussions, it appears that identification and classification of commercial subscribers is a highly subjective exercise. Views of stakeholders are invited on following issues:

Issues for consultation

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

3.22 The previous paragraphs dwelt on whether there is a need to classify TV subscribers into commercial and ordinary and in case the need for such classification is essential, then what should be the applicable criterion to arrive at such a classification. The next step would be to examine as to what should be the tariff dispensation in such a scenario. The succeeding paragraphs discuss relevant issues related to tariff.

B. Tariff related issues

(a) Existing Tariff Regime

3.23 In the existing system for provisioning of TV signals to the subscribers, there are two tariff regimes that are in operation - one for digital addressable systems (DAS/DTH/IPTV/HITS) and the other, for the non-addressable systems (analog Cable TV systems). Before examining the issue of the tariff framework for commercial subscribers, there is a need to revisit and place in correct perspective, the existing regulatory framework for supply of TV signals to the subscribers, either commercial or otherwise.

➤ **For TV services provided through digital addressable systems**

3.24 As per the regulatory framework for digital addressable systems, the broadcasters and the distribution platform operators (MSOs/DTH/HITS/IPTV operators) enter into interconnection agreements with broadcasters for supply of TV signals within the framework prescribed in the interconnection regulations. Registration for DTH and HITS operators are granted by MIB, and for IPTV, it can be granted either by MIB or by the Department of Telecom (DOT). Every MSO needs to register with MIB before providing the TV signals to LCOs and/or subscribers. As per the policy guidelines in vogue for downlinking of TV channels issued by MIB, the broadcasters are permitted to provide the satellite TV channel signal reception decoders only to registered/licenced MSOs/DTH/IPTV/HITS operators. Thus, only these MSOs/

DTH/IPTV/HITS operators are authorised to receive the TV signals directly from broadcasters for further distribution to the subscribers. LCOs can take the digital and encrypted TV signals either from the linked MSO or from the HITS operators and further distribute the same to the subscribers including commercial subscribers if any. MSOs can also directly provide cable TV signals directly to their subscribers including commercial subscribers if any.

3.25 Wholesale tariff arrangements presently exist between broadcasters and the MSOs/DTH/IPTV/HITS operators. The wholesale tariff for addressable systems is linked to the wholesale tariff of the non-addressable systems. The linkage provides that the rates declared by the broadcasters for their channels/bouquets in their RIOs shall not be more than 42% of the rates for the respective channels/bouquets prescribed in the RIOs for non-addressable systems.

3.26 As far as retail tariffs at the subscriber end are concerned, the MSOs/DTH/IPTV/HITS operators are free to price and package their channels in line with their business plans subject to certain conditions prescribed by TRAI in the tariff orders applicable for addressable systems. MSOs are also required to offer a basic service tier (BST) to which subscriber can subscribe to while paying a nominal monthly charge for the same. Subscribers are free to choose an equal number of FTA channels for the price of BST from amongst the FTA channels available on the MSOs platform in lieu of the MSO offered BST. This is to ensure that affordable basic TV services are available to all subscribers.

3.27 MSOs and their linked LCOs operate on the basis of a revenue share agreement as mutually agreed to. In the event of a failure to arrive at a mutual agreement, they fall back on fixed ratios for revenue share that have been prescribed by the Authority.

➤ **For services provided through non-addressable systems (non-CAS cable TV services)**

3.28 In areas that have not yet been digitized, the analog regime permits a broadcaster to supply TV signals directly to a cable operator. Here again, the broadcasters notify RIO rates for their channels. Broadcasters enter into agreements with cable operators based on the existing framework prescribed in the interconnection regulations (either on RIO rates or at rates that are mutually negotiated). The wholesale tariff agreements between broadcasters and such cable operators are linked to the rates that were frozen based on historical pricing prevailing as on 26 December 2003, and hiked from time-to-time based on inflation linked hikes permitted by the Authority. In areas served by non-addressable cable TV systems, quite a few commercial subscribers may have also registered as cable operators to receive the TV signals directly from the broadcasters and they may supply this TV signal to their guests.

3.29 At the retail side, cable operators prescribe the rates for subscribers (both for ordinary as well as commercial subscribers). TRAI has also prescribed certain tariff ceilings for the ordinary subscribers.

(b) Tariff for commercial subscribers

3.30 It is evident from the discussions above, that broadcasters publish their RIOs for wholesale tariff in compliance with the framework prescribed by TRAI. In case of digital addressable systems, retail tariffs are notified by MSOs/ DTH/ HITS/ IPTV operators wherein they are free to price and package their channels/bouquets as per their business plans subject to certain conditions prescribed by TRAI in the tariff order applicable to digital addressable systems. In case of non-addressable systems, the retail tariffs for ordinary subscribers are specified by the cable operators (MSOs/ LCOs) subject to certain ceilings prescribed by the Authority. The prescribed ceilings are on an all-India basis and are based on the number of channels supplied. The

cable operators enter into agreements with the broadcasters based on the existing regulatory framework for interconnection.

3.31 In the existing regulatory framework, there are no explicit provisions for retail tariff as far as commercial subscribers are concerned, either for addressable or non-addressable systems.

3.32 In order to put in place a regulatory framework on tariff for commercial subscribers, one possible option could be to leave tariff fixation to the MSOs/LCOs/DTH/ IPTV/ HITS operators as the case maybe. The other way could be to bring out a specific framework on retail tariff for commercial subscribers. This may include, but is not limited to, the following options:

- (i) Tariffs for commercial subscribers on each type of platform (Cable TV/ DTH/ IPTV/ HITS) are the same as that for ordinary subscribers.
- (ii) Tariffs for commercial subscribers are linked to the tariffs for ordinary subscribers.
- (iii) Tariffs for commercial subscribers have no linkage with the tariffs for ordinary subscribers but some measures are built-in to the framework to safeguard the interest of Commercial subscribers.
- (iv) Revenue share model between the commercial subscribers and either MSOs/ DTH/ IPTV/ HITS operators in areas served by addressable systems or MSOs/ LCOs (cable operators) in areas served by non-addressable systems, as the case may be.
- (v) Any other method suggested by the stakeholders for fixing tariffs for commercial subscribers at wholesale and/or retail levels.

➤ **Tariffs for commercial subscribers to be same as that for ordinary subscribers**

3.33 There can be several reasons to argue that for each type of platform, the tariff for commercial subscribers may be the same as that for

ordinary subscribers. One such reason could be that method of provisioning of the TV signal in both cases is same and no extra cost is being incurred to provide the TV signals to a commercial subscriber. Another reason could be that there is no element of subsidy involved in the pricing for ordinary subscribers as is the case in the provisioning of other utilities like water, electricity etc. Hence, the tariffs may also be the same for the same type of content. The counter argument could be that, tariff for commercial subscribers cannot be treated at par with that for the ordinary subscribers as these subscribers utilize the TV services for commercial gains and such gains need to be shared amongst the stakeholders in line with fair business practice.

➤ **Tariffs for commercial subscribers have a linkage with tariffs for ordinary subscribers.**

3.34 The other possible method to prescribe retail tariff for commercial subscribers could be to link it with the tariff for ordinary subscribers i.e. a formulaic relationship may be prescribed between the tariff for commercial subscribers and that for ordinary subscribers. The formula would factor in the fact that commercial subscribers need to be charged extra due to the commercial gains derived by them from the TV services as compared to ordinary subscribers.

3.35 However, the following issues may have to be considered in this option:

(a) Whether the extra charges over and above the tariffs for an ordinary subscriber would be a fixed amount or will be an *ad valorem* factor?

(b) How to deal with different kinds of commercial enterprises subscribing to TV services? Should they all be treated alike? Or should there be further sub-classification of the different types of commercial establishments? How do you factor in the differences in the size of the establishments of the commercial subscriber

and the scale of exploitation of the TV Services by the commercial subscriber?

- (c) How to factor in the differences in the perceived gain from utilisation of the TV services for different commercial subscribers?

3.36 It may be objective to say that any attempt to arrive at a tariff system that is fair to the ordinary subscribers on one hand while also being fair to various types of commercial subscribers on the other is fraught with the risk of subjectivity and with significant possibility of disputes and disagreements over the framework. That is, if one can be designed at all.

- **Tariffs for commercial subscribers have no linkage with the tariffs for ordinary subscribers but there are some measures prescribed to safeguard the interests of Commercial subscribers**

3.37 The other possible option is to have no linkage of commercial subscriber tariffs with the tariffs for ordinary subscribers. However, there may be some measures put in place to safeguard the interests of the commercial subscribers. In this case, the flexibility to prescribe the commercial subscriber tariff may be left to the MSOs/ DTH/ HITS/ IPTV operators in areas served by addressable systems and MSOs/ LCOs (cable operators) in areas served by non-addressable systems as the case may be. Upper ceilings may however be set such that the tariffs prescribed for commercial subscribers are not abnormally high. This approach may take care of the interest of broadcasters to get good returns from commercial activities. In order to protect the interest of different stakeholders, some provisions as discussed below may be mandated:

- The broadcasters may be mandated to offer all their channels on *à la carte* basis and also specify their rates separately for ordinary and commercial subscribers. Similarly, DPOs may also be

mandated to offer all channels, available on their platform, on *à la carte* basis both for ordinary and commercial subscribers.

- In case channels are also offered in the form of a bouquet of channels, relationship for pricing of such bouquets *vis-à-vis* the *à la carte* rate of the channels, forming part of the bouquet, should follow the framework as prescribed for ordinary subscribers by TRAI.

3.38 However, such a system would also not take into consideration the nature and volume of the commercial activity. In this case also, the possibility of hurting the interest of commercial subscribers with occasional commercial activities at a substantially curtailed level cannot be ruled out.

➤ **Revenue share with MSOs/ DTH/ HITS/ IPTV operators and MSOs/ LCOs.**

3.39 In this approach, MSOs/ DTH/ HITS/ IPTV operators in areas served by addressable systems and MSOs/LCOs (cable operators) in areas served by non-addressable systems may be permitted to negotiate with the commercial subscribers and arrive at mutually agreed tariffs that will be applicable to commercial subscribers. They may also work out and agree on the revenue share amongst themselves. Such an approach is more suitable to take into account, the volume of the extent of exploitation of the TV signals by commercial subscribers and other relevant factors to accordingly strike a deal. However, the inherent drawback in this model is that while the TV content belongs to the broadcasters, they do not have a say in negotiations that take place nor can they stake any claim in the revenue share.

➤ **Any other approach suggested for fixing the tariffs for commercial subscribers**

3.40 In addition to the approaches discussed in the preceding paragraphs, there is always the possibility of another approach for pricing of commercial subscribers both at wholesale level and retail level. Stakeholders may suggest a suitable and appropriate approach with detailed justification which protects the interests of all the stakeholders in the value chain without giving any one particular stakeholder the dominant power.

3.41 The discussion above has primarily been with respect to retail tariffs for commercial subscribers. Similar alternatives are also possible for tariffs at the wholesale level i.e. the tariffs maybe similar for both ordinary and commercial subscribers or, it is linked in some manner with the tariff for ordinary subscriber or, it may be on total forbearance.

Issues for Consultation

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.

C. Additional issues

3.42 Once a tariff framework for commercial subscribers has been established, it is equally important to put in place a mechanism that enables fair and transparent revenue share amongst all stakeholders.

This enhances accountability at all levels and ensures smooth conduct of business across the entire value chain in a manner that minimizes disputes and conflicts among stakeholders.

3.43 First and foremost in this regard is the disclosure of the actual number of commercial subscribers by the operators (MSOs/ DTH/ HITS/ IPTV operators in areas served by addressable systems and MSOs/ LCOs (Cable Operators) in areas served by non-addressable systems as the case may be) to the broadcasters to ensure that a fair share of the revenues earned from the commercial subscribers also accrue to the broadcasters. There may be various methods to achieve this objective depending on the ease of implementation. One such measure could be to put in place a voluntary disclosure mechanism wherein it is mandated that the nature of the connection (ordinary/commercial) is declared at the time of provisioning itself. In addition to this, the total number of such commercial subscribers served may also be required to be intimated to the broadcasters periodically. These details may also be required to be rendered to the broadcaster on a need-basis or as and when requested. In case of digital addressable systems, it may also be mandated that the individual commercial subscriber details be populated in the SMS of distribution platform operators (MSOs/ DTH/ HITS/ IPTV operators) along with the type of commercial activity that the TV signal is utilized for by that subscriber. A system of audit and checks will also need to be instituted based upon mutually agreed terms to enable joint verification.

3.44 The instituted framework must cater for a transparent sharing of the revenue in a manner such that all stakeholders across the value chain are fairly compensated. In this context, one may argue that freedom to fix tariff at retail level rests with DPOs even for commercial subscribers. Broadcasters may feel that while they are the copyright owners of their content that is being exploited for financial gains by

commercial subscribers, they are however not privy to the extent of the profits being generated on this account. Thus, broadcasters may argue that they must retain some flexibility to work with commercial subscribers during the process of consultation/ negotiation for fixing the tariffs for commercial subscribers. Contrary to this, others may argue that broadcasters already have sufficient leeway to fix the wholesale tariffs and the tariffs are fixed while knowing well in advance that commercial exploitation of TV signals is a reality. Therefore, once tariff for all subscribers has been fixed at the wholesale level after taking into account all relevant factors, there may not be any further need to provide for further flexibility to cater for commercial subscribers.

- 3.45 The other pertinent issue relates to identification of commercial usage. There may be cases where normally the subscriber located at a premise where activities of commercial nature are carried out does not utilise the TV service for any commercial gains but, he may however do so, on certain specific occasions. Similarly there can also be a possibility wherein an ordinary subscriber starts exploiting the TV service for commercial gains occasionally after obtaining relevant permissions from the requisite authorities. For such subscribers, the issue may be as to how such occasional commercial usage be monitored such that commercial gains accruing for such occasional usage are accounted for and shared in a transparent manner. The framework must provide for disclosure of such activities in advance to the concerned operators and that adequate provisions for penalties on violation of the advance disclosure arrangement are built into the system. The objective should be to protect the interests of all stakeholders in a manner such that the revenue accrued from such commercial activity is appropriately shared amongst them. One approach may be to treat all subscribers who occasionally exploit the TV signals for commercial gains as commercial subscribers. Stakeholders may comment and suggest on the suitability of such a

mechanism and the measures that must be taken to enable practical implementation of such a mechanism such the interest of all stakeholders in the value chain are adequately protected.

Issues for consultation

- 5. Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimise disputes and conflicts among stakeholders?**
- 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?**
- 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?**
- 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?**
- 9. Any other suggestion which you feel is relevant in this matter. Please provide your comments with full justification.**

Chapter IV

Summary of Consultation Issues

- 1. Is there a need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals?**
- 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.**
- 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.**
- 5. Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimise disputes and conflicts among stakeholders?**
- 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?**

- 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?**

- 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?**

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

List of Acronyms

Abbreviation	Description
CAS	Conditional Access System
CP	Consultation Paper
DAS	Digital Addressable System
DPO	Distribution Platform Operator
DTH	Direct to Home
FHRAI	Federation of Hotel and Restaurants Association of India
FTA	Free to Air
HITS	Headend in the Sky
IPTV	Internet Protocol Television
LCO	Local Cable Operator
MIB	Ministry of Information and Broadcasting
MSO	Multi System Operator
RIO	Reference Interconnect Offer
SMS	Subscriber Management System
STB	Set Top Box
TDSAT	Telecom Dispute Settlement and Appellate Tribunal
TRAI	Telecom Regulatory Authority of India
MIB	Ministry of Information and Broadcasting
IBF	Indian Broadcasting Federation
NGO	Non-Governmental Organisation
BST	Basic Service Tier