

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

Reply- Yes, there is a need to define and differentiate between domestic and commercial subscribers for provision of TV signals. There is a fundamental difference of usage between domestic and commercial subscribers. Domestic subscribers avail broadcasting services for their own consumption i.e. domestic use, on the other hand commercial subscribers avail these services for further commercial purposes. These services are packaged with other services offered by commercial subscribers and are provided to end consumers at a certain charge. Hence, commercial subscribers derive commercial benefits from the services and charges for same are recovered either directly or indirectly from the end consumers. Therefore, it can be said that the broadcasting services are availed by commercial subscribers for their commercial benefits and are a part of various amenities provided at their establishments with primary purpose of attracting customers to their places which in turn increases their revenues. It is further suggested that the definition of commercial subscribers as notified by TRAI through its notification “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Twelfth Amendment) Order, 2014 should be retained by authority should include subscribers getting services directly from a broadcaster. It is also pertinent to mention here that though the tariff orders defining commercial subscribers and commercial establishments have been set aside by TDSAT, the said tariff order clearly defines and recognize “commercial subscriber” and “commercial establishment” as a distinct class using the broadcasting services for commercial gains thereby recognizing the distinction between commercial subscribers and ordinary subscribers.

It is therefore suggested that the aforesaid classification between domestic subscriber and commercial subscriber needs to be recognized by the TRAI and these two classes of subscribers need to be treated differently in so far as tariff 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.

Reply- The criteria for drawing distinction between ordinary subscribers and commercial subscribers should be based on (i) place of viewing TV signals and (ii) type of usage criteria for TV signals.

(i) ***Place of viewing TV signals-*** The place of viewing a TV signal/channel is a way to differentiate between an ordinary subscriber and a commercial subscriber. When TV signals are viewed at a residential household, it is for personal consumption and there is no intent to use the signals for commercial purposes. However, when the signals are used viewed at a commercial establishment, the primary objective is to achieve a commercial gain. It may not be in form of charging money from their customers, but also to enhance their services in order to attract customers. For instance, in case of two hotels with same standard, the one with TV sets with multiple channels in rooms will attract more customers from the other where there are no TV sets. All these commercial establishments, as a matter of fact, boast of TV signals as part of their amenities. This fact becomes pertinent in case of TV channels like us which cater to a niche audience.

- (ii) ***Type of usage criteria for TV signals***- In case of ordinary subscribers, they use the TV signal for their personal viewing. Whereas in case of commercial subscribers, the TV signals are part of the services which they offer to their customers. Hence, it is a value add service for which either they charge directly or package these services into collective charges which they collect from their customers. It is also widely accepted that various services provided by commercial establishments are not charged separately but a consolidated payment is taken for the same; TV signals being one of the parameters.

Moreover, in our view there is no need to sub-categorize the commercial subscribers; this will lead to more disputes and a sense of discrimination among various categories.

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

Reply- We would like to state our single response to both these questions-

The Pay TV signal industry in India has grown and become more mature, it is also one of the most competitive and diverse industries in world. There are diverse operators like MSOs, cable operators, DTH operators, IPTV platforms, HITS operators etc. in the market. Though diversified, there is intense competition among various TV channels and delivery platforms for viewing and revenues. This completion while on one hand has seen growth in subscribers and on the other hand has seen sharp drop in tariffs. From 2004, when broadcasting and cable TV services came under TRAI to 2015, market dynamics have changed significantly. TRAI should actively consider whether regulation of tariff is required with respect of any category of subscribers especially the commercial subscribers. Considering the large scale competition prevalent in Indian industry, regulation of tariff should be left to market forces. **Forbearance** is need of the hour. A study of international markets will show that regulators take a lenient view thereby ensuring active competition in market and leave decisions like tariff to market players. It is submitted that wholesale Non-DAS tariff currently applicable to analogue platforms and used as a reference for addressable systems should be abolished and tariffs should be left to market forces. Moreover, in today's time when cost of producing content are always increasing, TRAI should actively consider this while fixation of tariffs.

Another thing pertinent to mention is that for every goods or services which the commercial establishments particularly the hotels provide or offer to their customers, they enter into separate agreements with various vendors/suppliers. When there is full freedom for other vendors/suppliers to enter into agreements with commercial establishments and negotiate prices, they why should only broadcasting services be singled out for a discriminatory treatment.

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

Reply- The present framework is not adequate to ensure transparency and accountability in value chain to effectively minimize disputes and conflicts among stakeholders as there is lack of true and correct number of commercial subscribers. The monthly reports which are submitted by MSO's, DTH operators, HITS operators etc. for addressable/non-addressable areas do not reflect the actual count of commercial subscribers serviced by these operators. There is large scale under reporting of numbers. As a result there is always a dispute between a broadcaster and operator with regard to commercial subscribers declared vis-a-vis the actual number of subscribers serviced by them. The broadcasters should have a right to conduct regular audit of system to ensure correct reporting and declaration of subscriber base.

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?

Reply- As pointed above, broadcasters should have a right to conduct regular audits to ensure correct reporting and declaration of subscriber base so that disputes between broadcasters and operators are kept at minimum. Moreover, operators should be asked to present correct reports.

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?

Reply- The broadcasters should be allowed to directly negotiate with the commercial subscribers. We strongly recommend forbearance since the commercial subscribers are not ordinary subscribers but are companies/organizations/hotels etc. which maintain profit and loss accounts and provide services to their customers and in turn earn revenues. Commercial subscribers should not be allowed to benefit from any tariff order meant for ordinary subscribers. MSO's, DTH operators etc. should only be allowed to serve commercial subscribers pursuant to approval from concerned broadcaster, which approval shall flow from the agreement finalized between broadcaster and commercial subscriber. Full forbearance is the only option for commercial subscribers.

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?

Reply- Operators should take a declaration from ordinary subscribers that the signals will be used exclusively for domestic use at the time of providing the signal. Towards this end there should be periodic audit of operators to establish true and correct declaration of ordinary and commercial subscribers. In case it is found out that operator has under-reported or misused the signal meant for ordinary subscribers by offering the same to commercial subscribers, there shall be provision for broadcaster to recover damages. Further, broadcaster should also be able to take suo motto action on having knowledge of any misuse of the signals by asking operator to switch off the signals of concerned subscriber and also initiate appropriate legal proceedings wherever necessary.

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

Reply- TRAI should keep in mind that the cost of generating content is ever increasing. Any proposed regulation of commercial tariff will limit the ability of broadcaster to make quality content and fund new infrastructure and technology which is always evolving in this industry. The authority shall keep in mind the end use of TV signal which is different for ordinary subscriber and commercial subscriber.