

**CONSULTATION PAPER
ON
TARIFF ISSUES RELATED TO BROADCASTING AND CABLE TV SERVICES FOR
COMMERCIAL SUBSCRIBERS
11th JUNE, 2014**

TTN Response:

We are aware that the present Consultation Paper (“CP”) is in pursuance of the Hon’ble Supreme Court’s judgment of April 16, 2014, wherein the apex court has directed the Authority to look into the matter *de novo* in consonance of the Hon’ble TDSAT’s judgment of May 28, 2010 and has also asked the Authority to re-determine the tariff after hearing the contentions of all the stakeholders.

We are ever so grateful to the Authority for the opportunity, by way of this CP, to the stakeholders to express their views on a very significant business issue of commercial subscribers under the broadcasting and cable services. What would have been ideal for stakeholders is availability of adequate time and opportunities for them to express their views & demands and raise issue of concerns. However, with all due respect to the Hon’ble Supreme Court’s order in this regard we are committed to extend all our support in completion of this consultation process, well within the given time frame.

As you are aware, the commercial subscription is a separate business vertical for the broadcasting & cable services (“B&CS”) service providers and emerged as significant source of revenue for them. The commercial subscription, though marginally, covers up the revenue leakage owing to ineffective DAS implementation, under declaration, piracy, rising carriage fees, etc. for the broadcasters and other B&CS service providers.

Much has been said and explained in detail in various judgments of the courts and tribunals regarding the nature of commercial establishments and hotels and how they are different from the ordinary subscribers and consumer. Thus, for the sake of brevity we have not dwelled into explaining the uniqueness of commercial establishments from the ordinary subscribers/ consumers. We have read and understood the different verdicts of the courts and tribunals on the issue of commercial subscribers, establishments, etc. and have based our response on such confirmed judgments & orders without specifically mentioning them in the below response.

Consultation Issues

Definition of Commercial Subscribers

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

“Commercial 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 or a cable operator or direct to home

operator or multi system operator or head end in the sky operator or a service provider offering Internet Protocol television service , 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 its commercial establishment;”

“Commercial Establishment” means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment but does not include a shop or a factory registered under the Factories Act, 1948 (43 of 1948);”

"Shop" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;”

- 2. If the answer is in the negative, alternate definitions with proper justification may be suggested.*

Categorization of Commercial Subscribers

- 3. 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-categorized into similarly placed groups along with full justifications.*

TTN:

Definition of Commercial Subscribers

We have certain grave concerns on the definition of terms and the classification, thereof. We have separately dealt with the proposed definitions and submit our views as under:

- A. Definition of “Commercial Subscriber” and use of the phrase “...at a place indicated by him”:*

1. There is an inherent flaw with the existing definition term 'Commercial Subscriber' which has been so far overlooked and even carried forward to the proposed definition under the CP. Our concern is regarding the phrase "...at a place indicated by him" in the existing and proposed definitions. The said phrase in the definition gives a 'Commercial Subscriber' unlimited right to ask for the broadcasting service at any place of his choice, even outside its commercial establishment or a far flung area that has nothing to do with commercial establishment or subscriber. Such undetermined right for the commercial establishment is susceptible to misuse and piracy of the broadcasting service. Quite clearly, this has not been the intention of the Authority or the stakeholders.
2. Further we would like to state that the broadcast services should be used ONLY for the customers, clients, etc. and not for their employees and workers' entertainment. We find that this concern can be easily addressed by making a small addition to the proposed definition as following:

"Commercial Subscriber" means any person, other than a multi system operator or a cable operator, who receives broadcasting service at a place, within its commercial establishment, indicated by him to a broadcaster or a cable operator or direct to home operator or multi system operator or head end in the sky operator or a service provider offering Internet Protocol television service, as the case may be, and uses such signals only for the benefit and/or usage of its clients, customers, members or any other class or group of persons having access to its commercial establishment on invitation or payment basis."

B. Definition of '*Commercial Establishment*' and exclusion of '*a shop or a factory registered under the Factories Act, 1948 (43 of 1948)*' and no mention of '*Public Viewing Area*':

1. The proposed definition of 'Commercial Establishment' excludes a shop or a factory registered under the Factories Act, 1948 (43 of 1948) from the term 'Commercial Establishment'. Thus such exclusion would mean that the shops and factories would be ordinary subscribers like the domestic subscribers/ consumers. However, the fact remains that the shops and factories are a workplace and is obviously not a domestic environment. Even electricity boards, local administrative bodies have different slabs of electricity, property taxes and basic service rates, respectively for commercial users, including shops and factories. In addition the LP Gas Cylinders companies also do not exclude shops and factories and charge the commercial rates from them.

2. Further, the commercial establishments, including shops and factories, often use the television channel and services for their employees for the purpose of:
 - Keep staff involved
 - Boost morale of the staff
 - Improve productivity
3. All the above factors contribute to profits and gains for a commercial unit. Therefore, if a commercial establishment and factory or a shop owner make a broadcast television service available to its workers or clients visiting their office, shop or factories, a commercial tariff should be payable.
4. It is further to be noted that presently educational and healthcare business are registered as charitable trust but are being run for commercial purpose and for private gain, hence it should also be categorically included in the definition of Commercial establishment; accordingly the definition of Commercial Establishment should be as follows :

"Commercial Establishment" means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, or any other institutions run for private gain, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952 (35 of 1952), and premises in which business/vocation of educational, healthcare, banking, insurance, stocks and shares, brokerage or produce exchange is carried on, including theatres, cinemas, restaurants, eating houses, residential hotels, shops, clubs or other places of public amusements or entertainment and Public Viewing Areas".

5. Public Viewing Area: In view of the above suggested definition, it is imperative to bring the term 'Public Viewing Area' in the ambit of Commercial Establishment. Today the Public Viewing Areas or PVAs have become the hub for commercial activity. All the airports, hotels, clubs, party lawns, banquet halls, etc. can be termed as Public Viewing Areas where television show casing of major sports events, major news telecasts and live events is done for guests and invitees. For eg. shopping malls, hotel lounges and part halls, auditorium, clubs, etc. organize screening of live

sporting action for their clients and guests on either payment basis or privileged entries for members. 'Public Viewing Area' is distinct category of commercial establishment, where large audience of people can be entertained at the same time, quite similar to movie theaters or cinemas. Thus, we suggest that 'Public Viewing Area' should be defined based on the suggestion, herein under and included under the Commercial Establishment and broadcasters should be allowed charge separate tariff for show casing television channel in a 'Public Viewing Area'.

6. Accordingly, 'Public Viewing Area' should be included in the term 'Commercial Establishment' and defined as under:

“A **Public Viewing Area** is a space earmarked for showcasing and/ or screening special or major events on television for audience that has been especially gathered or invited to watch such event by a commercial subscriber inside its Commercial Establishment.”

Categorization of Commercial Subscribers

1. The term 'Shops' has been kept out of the proposed definition of the 'Commercial Establishments'. However, keeping in mind the expansion and existing and future entry of big corporates into multi or single brand retail & wholesale store business in India, which by the existing statutory provisions will be categorized as shops, we strongly advocate the view that shops and factories should be included in definition of commercial establishments. At the same time we also understand the requirements and commercial prospects of the small establishments or businesses run only by family members and therefore, we recommend that there should be classification of shops and factories into small scale or large scale. Where small scale establishment should be the one which do not fall any one of the categories below:
 - a) having more than twenty employees (similar to EPF provisions)
 - b) having the premises of more than 2500 sq feet in city limits and 10000 sq. ft outside city limits.
 - c) having shops and commercial premises within city limits of metropolitan cities, State capitals or A class & B Class cities.
 - d) An enterprise that **can't** be termed as 'Micro Enterprise' under the Micro, Small and Medium Enterprises Development Act, 2006.
2. Similarly, we suggest that Commercial Establishments should be categorized in following categories and broadcasters be allowed to charge separate tariffs for the below mentioned categories. The categories are as under:
 - a) Hotel Rooms
 - b) Commercial Outlets: Restaurant, Shops, Factories & Offices.

- c) Public Viewing Areas: Screening of special events in Hotel lobby, Banquet & Party Hall, Airport Lounges, Theaters & Auditoriums, etc.

Manner of Offering to the Commercial Subscribers

4. *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.*

TTN:

1. We agree with the model mentioned in sub-point (i) in para 1.27. The model predominate the present industry practice that is followed between commercial establishments and the broadcasters. The model is based on concept of 'License' and 'Access', where the Broadcasters, who publishes the RIO and commercial rates, grants the license directly or through its authorized agents to a commercial subscriber for the television channels. Once the license is granted, the commercial subscriber may choose the intermediary (MSO, DTH Operator, etc.) for access of the television services and arrive at some arrangement with them, and the broadcaster may give its 'No Objection' to intermediary for grant of access to that particular commercial subscriber for its channels, the intermediary gives access of the channels of that broadcaster to the commercial subscriber. This model has the following merits:
 - a) Direct relationship between broadcaster and commercial subscriber.
 - b) Role of intermediary restricted to providing access only.
 - c) Best deals & customized deals can be obtained directly from the broadcasters.
 - d) No middle-men commission or price-add.
 - e) Organized and systematic billing and collection process.
 - f) No multiple rate cards for the same channels.
 - g) One broadcaster switch-off will not affect the other broadcaster's channels.
 - h) Intermediary can't force commercial subscribers to take channels of other broadcasters.
2. In case option (ii) or (iii) is allowed, this may create confusion in the market as each DPO may start charging the rates from commercial subscribers which may be different from other DPO not only in the different areas but also in the same areas. Consequent upon which the same channel will be available at different rates which will not only create confusion in the market but will also lead to increase in unnecessary litigation
3. **Considering above we strongly propose the applicability of option (i) for distribution of channels.**

2.4 Tariff for Commercial Subscribers

There can be following four alternatives:

- (i) The tariff for commercial subscribers is same as that for ordinary subscribers.**
- (ii) The tariff for commercial subscribers has a linkage with tariff for ordinary subscribers.**
- (iii) The tariff for commercial subscribers has no linkage with the tariff for ordinary subscribers but there are some protective measures prescribed to protect all the stakeholders.**
- (iv) The tariff for commercial subscribers is kept under total forbearance.**

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

6. *In case your answer is “alternative (ii)” mentioned above, please give full details with justifications of as to what should be the tariff ceiling/ dispensation for each category/ group of commercial subscribers.*

7. *If in your view, none of the 4 alternatives mentioned above are to be followed, stakeholders may also suggest any other alternative with justifications.*

TTN:

1. The commercial subscription is currently under the regime that is described under the alternative (iii). We are of the view that it is sub-serving alternative, where the interest of both broadcasters and the commercial subscriber is adequately taken care of. Whilst the present regulatory regime for commercial subscription provides for complete forbearance of commercial tariffs offered by the broadcaster, but on the other hand protects the commercial subscriber from perverse pricing of channels vis-à-vis bouquets.

2. As rightly stated by the Authority in para 1.33 of the present consultation paper that:

“There has been an exponential growth in the number of channels in the last few years. As a result, many popular channels of different broadcasters are available in almost all the genres, thereby, creating competition amongst the broadcasters.

..... Along with all these factors, if the à la carte offering of channels is also mandated to offer channels in à la carte form, every commercial subscriber is

expected to have a viable option to negotiate with broadcasters/DPO and obtain channels required for its commercial needs.

Therefore, there could be a view that the tariff for commercial subscribers be kept under forbearance”

3. The present regulatory regime for forbearance is the most suitable option for the reasons as mentioned herein under:
 - a) In today’s scenario, the demand for channels amongst the commercial subscribers is not decided by competitive pricing alone but also the popularity and packaging of the channels.
 - b) Generally, the news channels and sports channels are heavy on demand in hotels and public viewing areas of restaurants, pubs, malls, etc. for the reason that these channels are events based & can be enjoyed even on low volume. By having tariff forbearance these genres can get a value for their content.
 - c) Since the television services can’t be termed as essential commodity for commercial establishments therefore price control of any type is not sustainable.
 - d) Hotels and commercial establishments also pass on the charges for subscribing to television services to their guests.
 - e) Most commercial deals with the hotels and commercial establishments and broadcasters are not strictly by RIOs, but on lump sum basis.
 - f) By getting into a central deal at the wholesale level directly with the broadcasters, hotels and commercial establishments get the most attractive and discounted deals.
 - g) The Authority has the data and resources with it to confirm that the deals between hotels and broadcasters have a per-room monthly subscription which is even lower than a day’s tariff for stay at that hotel.

Considering above we strongly recommend the alternative (iii), by which the interest of both broadcasters and the commercial subscriber is adequately taken care of.
