



The Federation of Hotel & Restaurant Associations of India

President : T. S. Walia
Hony. Secretary : Vivek Nair
Vice President : Bharat Malkani
Vice President : K. Syama Raju
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Member of Honour : Dr Ajit B Kerkar
Hony. Treasurer : Sudesh Kumar Poddar
Jt. Hony. Secretary : Garish Oberoi
Jt. Hony. Secretary : K. Murali Rao
Secretary General : Amitabh Devendra

FH/1/2015
31st July, 2015

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Sub: FHRAI Comments to the Consultation Paper 3/2015 dated 14th July, 2015 on
Tariff issues related to commercial subscribers

Dear Sir,

Greetings from FHRAI!!

Please find enclosed herewith our comments to the Consultation Paper No.3/2015 dated 14th July, 2015 on Tariff issues related to commercial subscribers for your favourable consideration.

Thanking you,

Yours faithfully,

T S. Walia
President



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FHRAI COMMENTS TO THE CONSULTATION PAPER NO. 3/2015 DATED 14.7.2015 ON TARIFF ISSUES RELATED TO COMMERCIAL SUBSCRIBERS

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I. OPENING COMMENTS

1. Before we proceed to submit our representations, at the outset we, as request the Authority to please extend the time for submitting comments. Given the paucity of time, the present Representation is being filed as Preliminary Representation in view of the deadline, however we humbly request the Authority to extend the time for submitting representations, so that a more comprehensive exercise may be done. This representation is being made without prejudice to our submissions in the Civil Appeal pending before the Hon'ble Supreme Court and the Writ Petition before the Hon'ble High Court.
2. We are submitting the present suggestions on behalf of the Federation of Hotel and Restaurant Associations of India "FHRAI" which is the apex association of Hotels and Restaurants in India and represents over 3800 Hotels and Restaurants.
3. At the further outset, we would like to express our appreciation at the clarity and completeness evident in the consultation Paper issued by the Authority.
4. It is submitted that at a policy level, the Authority has been tasked with the responsibility of regulating "broadcasting and cable TV". The reason why such responsibility has been conferred on the authority is that by its very nature, a broadcaster and its channel enjoys a monopoly. Even if there are competing channels, each channel is unique and the channels are not substitutes for each other. Thus, the rest of the stake-holders are literally at the mercy of the broadcasters. Broadcasting is a natural monopoly and is thus required to be regulated and thus the power has been given to the Authority to so regulate the industry.
5. The question that then arises and which has been raised/elaborated in the consultation paper is whether the Authority should forebear with respect to all or some subscribers and whether any distinction can be drawn between different categories of subscribers.

6. In brief, FHRAI on behalf of its members submits as follows: the product/service in question, namely the TV signal is the same whether the consumer is using it at his/her house or in any other establishment. There is no distinction in the channel being supplied either in terms of quality or in terms of cost to the service providers.
7. As far as the ultimate beneficiaries are concerned, in our submission, again there is no real difference. Whether a person watches cable at his house or at a hospital or in a club or at a hotel or restaurant, it is the same person which is watching the same broadcast.
8. The real question therefore, in our submission, is whether commercial subscribers have a better bargaining power than ordinary subscribers. It is FHRAI's submission, particularly with the experience in the past that in fact non-residential establishments have no better bargaining power than residential subscribers, especially vis-a-vis the broadcasters. In fact the broadcasters have misused the forbearance on tariff in the past, as further enumerated, wherein they have increased the tariff from time to time; they charge differing tariffs from different customers and do not allow some platforms to supply their channels (say DTH) to certain kinds of customers. The hotels and restaurants have not been able to assert/ show any bargaining power.
9. In fact, as far as hotels are concerned, a Television is a necessity by virtue of the Ministry of Tourism Guidelines. Cable television has been recognised by the Telecom Dispute Settlement and Appellate Tribunal "TDSAT" as being in the nature of an essential service and a necessity in every household, in its judgment dated 27.02.2007.
10. At the end of the day, if TV is not availed or some channel is not available, the loss will be to the members of the public.
11. The distinction between one category of consumer and another is also not at all clear or sustainable. As the consultation paper itself observes, the Hon'ble Supreme Court of India has already found that the hotels are consumers or subscribers of cable broadcast.
12. A few illustrations would show that there is no clear distinction between ordinary and commercial subscribers. Suppose a person calls over a few friends for dinner to watch a cricket match, would he become a commercial subscriber. Similarly, if a government or a charity hospital shows TV in their waiting

lounge; but doesn't charge their customer, would they be ordinary subscribers. Again, suppose a Television Set is installed in the waiting lounge of a government Ministry or the District Magistrates office or a police station where people come to lodge their complaints, would it be an ordinary subscriber or a commercial subscriber. Is the Airports Authority of India an ordinary subscriber or a commercial subscriber based on the fact that Television sets display programmes both in the open area as also in executive lounges at the airports? Are the two kinds of TV sets in the airport (one in the paid lounge and the other in the open area) to be treated differently. Are five star hospitals and government or charitable or poor people hospitals to be treated differently? Is a TV set installed at a government run Tuberculosis clinic to be treated as commercial subscriber or an ordinary subscriber?

13. It is the submission of FHRAI that there is no real distinction between one category of subscriber and another. If Hotels and Restaurants are placed under forbearance, the only ones who will suffer are the customers of the Hotel who will not get to watch their favourite programmes which they are used to watching and for which they have paid for in their own house; but they cannot watch the same, as they are not in their own town, either for business or leisure. In fact, hotels and restaurants do not recover the cost of cable subscription from their guests. Also, the capacity of different hotels is also different. There are non-starred hotels and one star to five star hotels. Even within the same class, like heritage hotels, some are big and some are small. Not all of them have even similar paying capacity. There are some boutique hotels which may not even have one star; but charge more than what the 5 star hotels charge. As a matter of interest, there are some airport hotels (outside India) which do not have a bathroom or a bed, but they all have cable TV!
14. The only real distinction that FHRAI believes to be permissible is if any organisation sells tickets for admission to watching any broadcast, then this would amount to commercial exploitation and in such a case, some distinction can be made. However, in this case also, some upper ceiling on tariff must be fixed by the Authority as forbearance has not and cannot work.
15. In fact, FHRAI would also like to bring to the notice of the Authority, the misuse and misbehaviour by various bodies. As enumerated hereafter, various broadcasters through their intermediaries seek to even charge separate charges for the same broadcast, even when charges are already being paid to the DPO for receipt of TV signal.

II. SUMMARY OF SUGGESTIONS/COMMENTS

16. In a nutshell the response of FHRAI to the issues for consultation is as follows:
17. There is no need to classify commercial and ordinary subscribers separately. The same tariff regulations applicable to ordinary subscribers must continue to apply to all subscribers. The only criterion to levy differential tariff, is whether the subscriber, be it domestic or non-domestic, is selling tickets i.e. charging separately from its guests/clients/customers for the TV signal or for a particular TV programme. In such a case, the subscriber be permitted to negotiate a mutually accepted tariff with the DPO, and not the broadcasters. Once the Broadcaster passes on the feed to the DPO, it passes on with it the right to distribute the said channel. Thus, any negotiation must occur between the DPO and the subscriber. The DPO will then in turn pass on a share of the revenue to the broadcasters in accordance with the agreement between them.
18. The cost of the content to the service provider in respect of all subscribers is identical. There is no element of heavy load as in electricity nor of cross-subsidisation as in case of water and electricity. Nor is TV signals a scarce commodity, and it is being provided by profit-motivated private entities.
19. With respect to all commercial subscribers, barring those that charge separately as mentioned above, a TV signal on their premises, is wholly incidental to the primary purpose of their existence. It is a part and parcel of the entire package of amenities being provided to the persons visiting the premises. There is no co-relation whatsoever between the revenue earned by a commercial establishment and the tariff paid by the establishment to for receipt of TV signal.
20. Furthermore, In the DAS regime, which is going to cover the entire country by end of next year, in any event, there is no retail upper tariff prescribed by TRAI. The DPO is free to fix a MRP subject to ceryai conditions. Thus, there will be no loss caused to the stake holders, if there is parity in tariff for all subscribers. Furthermore, in respect of subscribers such as hotels and airports, because of multiple connections, the tariff payable by such an establishment is many times over that payable by other subscribers. Thus, they should be able to negotiate a discounted rate with the DPO.

21. Also, it may be mentioned here that in any event there is no question of broadcasters dealing with subscribers directly. As the Authority is well-aware the Broadcasters are monopolists, and the subscribers have no negotiating power against them. Further, they are not the service providers in relation to the subscribers either. Subscribers get their signal from the DPO, thus there is no occasion for any privity of contract between subscribers and broadcasters.

22. In view of what is stated hereinabove, the response of FHRAI to the issues set out in para 2.2.7 of the CP is as follows:

(a) *Is there a need to classify subscribers of TV broadcasting services into different categories?*

Ans: No

(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?*

Ans: Whether or not a subscriber charges separately for TV signal should be the sole criterion for classification for the purposes of tariff.

(ii) *Should there be differential tariffs for different subscriber categories?*

Ans: As stated above.

(iii) *What should be the criterion to determine the differential tariffs?*

Ans: As stated above.

(iv) *Who should have option to prescribe such differential tariffs?*

Ans: DPOs. DPOs are the ones who supply signal to the subscribers. Furthermore, between DPOs there is effective competition, and thus there is possibility of agreeing to mutually negotiate reasonable rates. Broadcasters have always adopted a take-it-or-leave-it policy, which ultimately hurts the interest of all stake-holders, and most importantly the general public at large is the loser; as explained in greater detail herein below.

(v) *What should be the regulatory framework to implement such differential tariffs?*

Ans: As stated below in response to Issue Nos. 3 & 4.

III. RESPONSE TO ISSUES/ SUGGESTIONS

23. It is submitted that the Authority is well aware that the monopolistic practices of the broadcasters towards other players in the field has been one of the major issues that have required intervention and regulation on behalf of the Authority. FHRAI would like to submit that its members have also been suffering from these practices.
24. Hotels and restaurants are subscribers and consumers of cable signal and are entitled to have the protection of the Authority as a regulator, like any other class of consumers.
25. Following is the response of FHRAI to the Issues in the Consultation Paper issued by TRAI dated 14th July 2014.
- 1. *Is there a need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals?***
26. There is no need to define commercial and ordinary subscribers separately. As already submitted hereinabove, in the preceding section, given the fact that (a) the large majority of subscribers do not charge their guests for viewing television on their premises, (b) given the fact that such television signal is merely one of the many amenities, offered as a package deal, (c) in any event there is no tariff ceiling prescribed by the Authority for retail tariff in DAS, which is going to cover the entire country by 2016; it is not necessary to define commercial and ordinary subscribers separately.
27. It is pertinent to mention here that in fact the Hon'ble Supreme Court in *Hotel & Restaurant Assn. v. Star India (P) Ltd.*, (2006) 13 SCC 753, while noting the initial introduction of separate definitions by the 7.3.2006 amendment, has further asked the Authority to consider the justifiability thereof as well. This amendment was effected in compliance with the judgment dated 17.1.2006, which itself was set aside by the Hon'ble Supreme Court in that judgment. Thus, it is submitted that the said definition, and distinction itself deserves to be done away with, and the criterion suggested herein may be adopted to have a simple, clear and logical tariff regime, which will also be in compliance with the copyright laws.

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.

28. FHRAI suggests that the only criterion for differentiating between subscribers is by making exception with respect to those subscribers who sell admission tickets for viewing TV signal, and thereby make quantifiable revenue earning from specifically from the provision of TV signal to their guests.
29. Such a criterion should apply equally irrespective of whether the subscriber is domestic or not. Thus, whilst there is no need to define commercial and ordinary subscribers separately, the Authority can provide for rates for the aforesaid category of subscribers to be mutually negotiated by the DPO and the subscriber directly.
30. Such a distinction would also be in line with section 37 of the Copyright Act, which provides for broadcast reproduction rights. It specifically stated that communication to public of a broadcast requires a licence from the person who owns the right, only if such communication is done upon payment of charges by the ultimate viewers.

Place of Viewing TV signals:

31. This criterion is invalid as the place *per se* is wholly irrelevant for determining tariff. There is a vast majority of places where TV signal is received. Merely because the place where signal is received is commercial, does not imply that the establishment is earning any discernible financial benefit there from, and merely because the place of viewing is residential does not necessarily preclude commercial exploitation of TV signal.

Type of Usage criteria for TV signals:

32. FHRAI is broadly in agreement with the comments of the Authority under this category, subject to the proviso that in our opinion, higher tariff is justified only in a situation where the subscriber is charging separately for viewing of TV signal, and such charge is separate, distinct and entirely attributable to the TV signal. To that extent, the latter half of sub-clause (c) and the sub-clause (d) of para 3.7 are vague and therefore, ought to be rejected. A cover charge is a composite charge which includes the food/drink as well as all other amenities being provided at

the premises. Thus, it is not equitable to charge higher tariff in that instance.

33. It is reiterated that even in such a case, the charges are to be negotiated between the DPO and the subscriber, not the broadcaster. Reasons therefore are given in greater detail herein below under the heading pertaining to "*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*" and Issue No. 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?*"

Method of Provisioning of TV signal:

34. Unlike water and electricity, the method of provisioning for both classes of subscribers is same and no extra cost is being incurred to provide the TV signals to a commercial subscriber. Thus, on the basis of method of provisioning, the commercial subscribers that take multiple connections are in fact entitled to a discount on the price being paid by other subscribers; just as such bulk consumers avail discounts in relation to other products, for example mineral water, furniture etc., including telecom and internet.

Number of TV signals at a location:

35. Having greater number of TV units also cannot be a valid criterion. For instance, if a house has 10 TV signal points, as per their requirement of consumption with all points active, this does not make the subscribers (home-viewers), a commercial subscriber only because they have 10 TV signal points in their house. In fact such domestic subscribers do get a discount on their subsequent connections from DPOs, and so should other subscribers.
36. As pointed out hereinabove, a subscriber that has multiple TV signal connections is already paying much higher to the DPO, than one that has a single connection, and the only difference in tariff on this basis should be to lower the price being charged on account of bulk consumption.

Perceived Value of TV Services:

37. This is a highly subjective field, and it is not possible to lay down any blanket rule on the basis of perceived value. To what extent, if at all, the presence of TV signal on a premises

enhances the experience of the persons there, is a realm of complete subjectivity. In some instances it may even be considered a bother. In all places, where the TV signal is incidental to the primary objective or is a mere part of the hundreds of amenities being provided as a package deal, it is not possible to conclude that there is any perceived value, and even in the instances where there may be some perceived value, it is impossible to ascertain, let alone quantify.

Type of Content of the TV Signal:

38. It is not possible to distinguish on the basis of type of content, and the FHRAI is in broad agreement with the Consultation Paper on this aspect as well. The suggestion to allow differential tariff in case the subscriber is charging separately would automatically take into account any specific TV programme/event that may be financially viable.

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

39. FHRAI is in agreement with this model, and in agreement with all the reasons stated in support of this model in the Consultation Paper. As already stated hereinabove there should continue to be parity in tariff and in fact commercial subscribers that by their very nature require multiple connections, must be given a discount as bulk consumers, just as in the case of other goods and services such as toiletries, bottled water etc. In all this instances, as in the case of TV signal, the cost per unit to the supplier is the same.
40. In addition, FHRAI would like to submit that it is in public interest that tariff parity be maintained. Ultimately, if commercial subscribers are charged higher for TV signal, they are likely to stop availing TV signals on their premises, which will ultimately be a loss to the members of the public. The members of public, who are able to enjoy TV signal at their homes, will be deprived of important news, sport matches, and their favourite TV shows, when they leave home, which will unfairly impact them.
41. If higher tariff is levied upon commercial subscribers, then all except the very affluent, luxury establishments will not be able to show TV signal, and thus the vast majority of the public will lose out on this amenity, and it is only the minority upper class that possibly will be able to view TV signal outside their homes.

42. In places such as airports, it will be passed on to the travellers in the form of higher Airport fees, making it unaffordable for citizens to travel by air.
43. It is relevant to mention here that the Hon'ble TDSAT has in the judgment of *Set Discovery* dated 27.2.2007 acknowledged the importance of TV signal and how it has become akin to essential services in our country.
44. It is also in the interests of the other stake-holders that the upper ceiling of tariff is kept at par for all subscribers, as this result in greater penetration of their signals. Thus, some members of the public who may not be availing TV signal at home or may not be availing a particular channel, may be persuaded to subscribe thereto, on account of viewing such channel in the premises of a commercial subscriber. Thus, in that sense, it is free advertising for the content being shown on the TV.
45. It is also important to point out that at least in so far as the hospitality industry is concerned it is common knowledge that what is charged by hotels or restaurants from their customers/guests does not fluctuate on the basis of the availability of TV signal or on the basis of change in TV signal subscription tariff.
46. In hotels, the Room tariff fluctuates on the basis of various factors, including the time of the year, but the cable subscription fees payable by the hotel remains the same throughout, and a hotel pays for each connection irrespective of occupancy. Usually hotel occupancy averaged out round the year is at 50% yet a hotel pays for the connection in 100% of its rooms. Thus, this also supports the understanding that in fact TV signal is just an amenity, and not separately charged for or sold to the guests of a hotel or restaurant as noted by the Hon'ble Supreme Court in *Paras 28 and 40 of Hotel & Restaurant Assn. v. Star India (P) Ltd.*, (2006) 13 SCC 753.
47. It is also important to note here that as per the Ministry of Tourism Guidelines that most star rating hotels are required to provide cable in their rooms mandatorily and all hotels, even those into eco-tourism, are mandatorily required to have a TV with cable in their common areas such as lobby. This direction is clearly to ensure that the public does not lose out on amenities that are considered as being essential. The net result is that most hotels do not have any bargaining power, as it is mandate of the law for them to have TV signal. Thus, they certainly need the protection of tariff regulation from this

Hon'ble Authority, even more so than other subscribers, who may choose to take signal as matter of choice.

48. Thus, hotels by their very nature are at a disadvantage as they have to pay many times over the tariff being paid by other subscribers, on account of the number of connections, and moreover, on account of the Ministry of Tourism Guidelines, they have little, if any bargaining power in determining rates.
49. Thus, in our respectful submission, the simplistic and logical approach would be to have "separate chargeability" as the criterion for levying differential tariff; and for all other situations, to have parity in tariff.

➤ ***Tariff for Commercial subscribers would have a linkage with tariff for ordinary subscribers***

50. In view of what is stated above, it is submitted that this option is not required to be considered. This is because it is premised on the notion that commercial subscribers directly and specifically make monies out of the TV signals alone. Such a formulaic relationship to fix tariff for ordinary subscribers and commercial subscribers would lead to an ambiguous regime. In case of tariff parity ultimately it will be the members of the public who will benefit by having access to important news, sport events, and popular shows, even when they are outside their homes.

➤ ***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.***

51. FHRAI suggests that this is not a feasible option either. In addressable regimes, it is already up to the DPO to fix MRP, and the same regime can continue to apply for all subscribers. There is no need to have a different upper ceiling for commercial subscribers for reasons already stated hereinabove.
52. Furthermore, in any view of the matter, it is respectfully requested that under no circumstances should the broadcasters be permitted to mandate separate rates for commercial subscribers. Past experience shows that broadcasters set abnormally high rates thereby robbing the DPOs of any power to negotiate and agree to reasonable rates with the subscribers.

53. In broadcasting and cable, this ability to negotiate is only possible between the DPO and the subscriber, and not the broadcaster and subscriber (nor even the broadcaster and DPO). This is because the Broadcasters are monopolists. They can and do charge exorbitantly high tariff on a take-it-or-leave-it basis. On the other hand, with DPOs, a subscriber has a real choice in the sense that if a DPO charges exorbitant rates, a subscriber can go to another DPO.
54. As already stated hereinabove there should be parity in tariff and in fact commercial subscribers that by their very nature require multiple connections, must be given a discount as bulk consumers, just as in the case of other goods and services such as toiletries, bottled water etc. In all these instances, as in the case of TV signal, the cost per unit to the supplier is the same.
55. Thus, in the event that in spite of the aforesaid submissions, if the Authority is in favour of this option, it is imperative that there is a cap on rates a broadcaster can charge to and through a DPO, so that they do not arm-twist the DPOs to supply signal at exorbitant rates to commercial subscribers.
- ***Revenue share with MSOs/ DTH/ HITS/ IPTV operators and MSOs/ LCOs.***
56. Revenue sharing is not applicable to the present issue at all. Revenue sharing is possible between Broadcasters and DPOs and between MSOs and LCOs for the reason that the entire revenue earned is attributable solely to the supply of signal. However that is not the case when a subscriber receives signal even if it is for the benefit of its guests, clients. In the latter, TV signal is a mere amenity and cannot be quantified separately, thus there is no question of revenue share in such a situation.
57. The question of revenue sharing is feasible and logical only in situations where a subscriber, ordinary or commercial, is charging its guests for the TV signal on the premises as aforesaid. In this case alone is there any question of revenue share, and this can be done by mutually negotiating the tariff/subscription charges payable by the subscriber to the DPO.
58. It is imperative that even in the aforesaid situation the negotiating is between the DPO and the subscriber, and not the broadcasters, for the reasons already stated in the preceding section. They will of course get a share of the revenue made by the DPO from the same, but it is imperative to ensure that even in the aforesaid situation, they do not arm-twist DPOs to charge

exorbitant rates as ultimately this will deter subscribers from organising such, TV signal centric events.

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

59. FHRAI has no other approaches to suggest.

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 different tariff framework for commercial subscribers (both at wholesale tariff and retail levels)? If 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.***

60. In view of what has been stated above, the existing tariff regime is required to be amended to the limited extent:

- (a) In both regimes the separate definitions of "commercial" and "ordinary" be deleted.
- (b) In order to bring greater clarity in the DAS regime, deletion of the references to "ordinary" subscribers in various provisions of the DAS Tariff Orders. The use of the term "ordinary" randomly in various provisions of the DAS tariff orders are creating unnecessary confusion.
- (c) A provision be incorporated for payment of mutually negotiated charges by the subscriber to the DPO in the event that the subscriber is charging separately from third persons by selling tickets for viewing of the signal being received by it.

ADDITIONAL ISSUES:

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?***

61. The present frame-work suffers from only one major drawback in the opinion of FHRAI, and that is compliance. Even though the provisions of the Hon'ble Authority's Tariff Orders as well as Regulations have right from the start envisaged that subscribers will take signals from and enter into agreements with their respective DPOs, the broadcasters have been sending demand notices, threatening and carrying out disconnections, and criminal actions against subscribers. It is extremely difficult for the subscribers to get their grievances redressed in time. Especially FHRAI-members prove to be soft targets, since, for them, reputation and good-will is paramount to their very existence. Thus, most members cannot afford to wait to approach the TDSAT and often ending up succumbing to the exorbitant demands of broadcasters. This is even though the subscribers are already paying subscription charges to their DPOs.
62. FHRAI urges this Hon'ble Authority to provide penalties for non-compliance with the provisions of the Authority's orders and Regulations, and to take action against offenders.
63. This will promote accountability and ensure transparency at all levels i.e. from the broadcasters right up to the subscribers.

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?*

64. FHRAI submits that on the contrary it is absolutely essential to ensure that broadcasters do not interfere in the determination of retail tariff in any manner whatsoever. Even in the specific situations where a subscriber is charging separately for TV signal from third parties, the negotiations must take place only between DPO and broadcaster. Detailed reasons in support of this position have already been stated hereinabove.
65. In addition to the broadcasters abusing their monopoly by arm-twisting the DPOs, the broadcasters have throughout, in blatant violation of this Hon'ble Authority's Orders and Regulations, as well as the directions of the TDSAT; and contrary to their own undertakings before the TDSAT (in order dated 4.9.2013 passed in *Ras Resorts vs. Mediapro*), been directly sending demand notices and initiating civil and criminal proceedings against hotels and restaurants.
66. Shockingly this position is continuing even as on date. The directions of the Hon'ble TDSAT in judgment dated 9.3.2015 at

page 45, as well as the Press Release of this Hon'ble Authority dated 13.5.2015 are being blatantly flouted by the broadcasters by continuously sending threatening notices, and legal notices to hotels and restaurants enmasse. In these notices the broadcasters unashamedly state that they do not authorise any DPO to supply signal to a commercial subscriber and alleging the receipt of signal by all commercial subscribers is illegal, demand from the exorbitant sums, running into Lakhs of Rupees per annum even for smaller stand-alone three star hotels. Annexed hereto and marked **Annexure "A"** are some of the copies of such notices by way of example.

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?*

67. In response to the aforesaid question it is submitted that the same is easily possible and is in fact being done by due diligence on the part of the stake-holders. In fact world over, all intellectual property is protected in this fashion. Any Infringement of intellectual property is invariably for commercial gain. To reap maximum benefits of such gain, a subscriber is required to publicise the availability of the illicit TV signal as much as possible. Thus, it is not at all difficult for the remaining stake holders to keep a watch and report such abuse.
68. For example, when a subscriber seeks to invite people to come to his premises and watch TV on payment of charges, it is impossible for such subscriber to do so secretly, and it is in his interests that maximum number of people find out about the availability of such an offer. Thus, the stake holders can certainly keep a watch.
69. Further imposition of penalties for non-compliance with this Hon'ble Authority's Regulations and Orders will certainly have a preventive and deterrent effect with respect to this aspect as well.

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

70. There are no other suggestions. FHRAI is grateful for the opportunity of submitting its suggestions, and would be happy to clarify any aspect, and provide any further information that this Hon'ble Authority deems fit.