



(By Hand Delivery/ Email)

June 27, 2014

Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi, 110002

Kind Attention: Mr. Wasi Ahmed (Advisor B & CS)

Ref: Consultation Paper No. 6/2014 dated June 11, 2014 on Tariff Issues Related to Broadcasting and Cable TV Services for Commercial Subscribers ("Consultation Paper")

Dear Sir,

At the advent, we welcome the initiative taken by the TRAI in releasing the Consultation Paper and seeking views of the stakeholders on issues addressed therein, pursuant to the Hon'ble Supreme Court's Judgment of April 16, 2014, wherein, the Hon'ble Supreme Court has directed TRAI to look into the matter *de novo* in consonance of the Hon'ble TDSAT's judgment of May 28, 2010, and has further directed TRAI to re-determine the tariff after hearing the contentions of all the stakeholders.

We are grateful to the TRAI for giving us an opportunity, by way of this Consultation Paper, to express our views on the noteworthy business issue of the commercial subscribers under the broadcasting and cable services.

In this context, we are attaching herewith our views/comments on the various issues raised in the above refereed Consultation Paper for your kind perusal.

In the event you seek any clarification, you may write to us.

Yours Sincerely,

For IndiaCast UTV Media Distribution Private Limited



Authorized Signatory

Submissions of IndiaCast UTV Media Distribution Private Limited (“**IndiaCast UTV**”) to Telecom Regulatory Authority of India (“**TRAI**”) in response to the Consultation Paper No. 6/2014 dated June 11, 2014 on Tariff Issues Related to Broadcasting and Cable TV Services for Commercial Subscribers (“**Consultation Paper**”).

We welcome the initiative taken by the TRAI in releasing the Consultation Paper and seeking views of the stakeholders on issues addressed therein, pursuant to the Hon’ble Supreme Court’s Judgment of April 16, 2014, wherein, the Hon’ble Supreme Court has directed TRAI to look into the matter *de novo* in consonance of the Hon’ble TDSAT’s judgment of May 28, 2010, and has further directed TRAI to re-determine the tariff after hearing the contentions of all the stakeholders.

We are grateful to the TRAI for giving an opportunity, by way of this Consultation Paper, to the stakeholders to express their views on the noteworthy business issue of the commercial subscribers under the broadcasting and cable services.

INTRODUCTION

IndiaCast UTV is the authorized agent of various Broadcasters, namely, TV18 Broadcast Limited, UTV Entertainment Television Limited and Eenadu Television Private Limited, and distributes various channels on behalf of the said Broadcasters, pursuant to TRAI Regulations amended till date.

PRINCIPAL POSITION

The stated position of TRAI (vide its consultation paper dated April 21, 2006, Consultation paper no. 5/2006) has always been that the price regulation in the broadcasting sector is an interim measure and will be withdrawn upon (i) evidence of effective competition and (ii) introduction of addressability. It is abundantly clear that the twin conditions laid down by TRAI (i.e., effective competition and addressability) are likely to be fulfilled across India effective January 1, 2015 (with the implement of DAS – Phase IV). Further,

international experience, as provided in **Annexure A**, indicates that there is no instance of price regulation over residential and commercial subscribers.

Therefore, the price regulation, which has continued for over 10 years, should be ideally withdrawn on or before December 31, 2014. As a first step towards achieving such milestone, the tariff for commercial subscribers must be kept under total forbearance. We believe that any exercise at this stage to cover certain categories of commercial subscribers under price control is unfair and arbitrary and not supported by the basic principles of regulation. However, even if TRAI is considering certain categorization of subscriber, it should consider all type of subscriber within purview of a commercial subscriber except domestic/ ordinary subscriber and charitable non-profitable institutions.

ISSUES FOR CONSULTATION

In this background and without prejudice to our principal position, response to the issues for consultation is provided in the paragraphs below:

Defining of Commercial Subscribers

- 1. Do you agree with the definitions of “commercial establishment”, “shop” and “commercial subscriber”, as given in para 1.23?***

“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.

IndiaCast UTV Comments:

With respect to TRAI proposed definition of “commercial subscriber”:

We respectfully submit that the definition of “commercial subscriber” should be short and clear and not vague, to be misinterpreted or loosely used in future. Arrangements with commercial subscribers are not typically regulated in other countries, and there does not appear to be any compelling reason to justify such regulation in India.

If it is necessary to define the term “commercial subscriber”, it should be defined as all subscribers except residential/ordinary subscribers and may include charitable non-profit institutions.

It is noteworthy that Broadcasters execute rights agreements with various rights holders and the definition of “commercial subscriber” would differ in various rights agreements. If TRAI were to issue a standard definition of

“commercial subscriber”, it will cause difficulties with broadcasters’ existing, long term rights deals.

With respect to TRAI proposed definition of “Commercial Establishment”:

We respectfully submit that, factories and shops should also be included / covered in the definition of “commercial establishment” as it forms the part of it and other law also recognizes them under the commercial subscriber for the purpose of Income tax, Property Tax, Road Tax, water usages and electricity usages, LPG usages.

We would further like to mention that while drawing a distinction between ordinary and commercial subscriber TRAI should also look into the fact that even charitable institutions/ trusts envisage their activities for commercial benefits which includes Educational and healthcare, which have fallen under the category of business (private bodies), though they are registered under the charitable trusts. It is import to look into the objectives of such charitable institutions/ trusts.

To construct a meaningful definition of “commercial establishment” it is further more important to add “Public Viewing Areas” and define the same. As there can be many other forums/ platform which can be determined as commercial establishment” in future as and when come.

In the view of above mentioned points and concerns, the definition of “commercial establishment” can be construed as under:

“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, factories established under Factories Act, 1907, Shop Establishment Act, 1954, 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, theaters, cinemas, restaurants, eating house, pubs, bars, residential hotels, malls, airport lounges, clubs, metro stations, banking, automobiles stores, stadiums, auditorium, factories, shops registered under The Factories Act, 1907 or other places of public amusements or entertainment and Public Viewing Areas;”

TRAI may carve out a distinction in such a manner that charitable non profitable institutions and Government hospitals should not encompass within the definition of commercial establishment.

For the sake of clarity as to what should be construed as Public Viewing area's (PVA): Public viewing area's are more in trend, especially in case then there is major Sports event like Cricket match, Football match or any other events, major news, i.e., election result, cricket match, live events, grand finales of dance and singing programmes, place like hotels, resorts, malls, lounge, party halls, banquets, metro stations, receptions of hospitals, open theaters, clubs, gymkhana etc. There are many other places which is difficult to mention therefore, it should be kept open and word "Public Viewing Area" should be added in the definition of commercial Establishment.

We therefore suggest that TRAI should also define "Public Viewing Areas" as under:-

"Public Viewing Areas": *where special arrangement takes place for their guest to enjoy and view the special / major events on television sets or big screens, in such commercial establishment premises for their customers and further to gather more customers, for their business purposes.*

We are strongly advocating forbearance at all stages for the reason that commercial subscribers are not ordinary subscribers, who earn to run the family and the basic necessity of their own but are the organization/ companies / factories /hotels etc., who maintain profit and loss account books. Commercial subscribers are one who is to do business and provide their services to customers (third person). No commercial subscriber should be allowed to benefit of any tariff order for residential / domestic subscribers. The prices for commercial subscribers should not be regulated and left on market.

The services provided by the broadcasters are not very essential services of the nature of Electricity and water even where there are differential rates for domestic and commercial use, and the same falls in the category of luxury services, therefore there shall not be any price control and should be left for market force. The commercial subscriber/ hotels can always refuse to avail of the services if the price charged by the broadcasters is considered unreasonable. It has been indicated time and again by the broadcasters that even as international practice the price of the services to the hotels and commercial establishments is not regulated around the world. More so, none of the Government or any other organization has fixed a price freeze on the room fares of the hotel's, and left on market demand, similarly the their should not be any price fixation for commercial subscriber for cable TV services, and left for forbearance.

In view of the above facts we are in support of forbearance unlike the international market.

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.**

IndiaCast UTV Comments:

Any form of sub-categorization of Commercial Subscriber may not be suggested as it may have severe opposition from various stakeholders depending upon their interests. Moreover, interpretation of various definitions of such sub-categorized Commercial Subscriber may result in multiple litigations. Accordingly, it is suggested that 'Commercial Subscriber' be defined as all subscribers other than residential /ordinary subscriber except certain exceptions carved above in our response.

We would like to bring the kind attention of TRAI that even established law of the land also does not sub-categorized the commercial subscribers. Government of India has not sub-categorized as far as commercial subscribers are concern, and has differentiated between ordinary subscriber and Commercial subscriber. For e.g., Income Tax, Property Tax, Road Tax, Water usages, Electricity usages, LP Gas usages, all have differentiated between ordinary subscriber and commercial subscriber and not sub-categorized the commercial subscribers. As they are parliamentary enacted laws and has cleared the concept, the same should be followed. TRAI is aware that that such sub-categorization has led to various disputes and we have observed misuse/misinterpretation of the said provision which has caused tremendous business losses to the Broadcasters.

Freedom of pricing should be given for all other commercial subscribers without any sub-categorization for the reasons:-

- (a) Commercial establishments with their own head ends do not have capacity of more than 50-60 channels hence content providers will compete
- (b) Analog feed again has capacity issues giving rise to competition within content providers (c) Digitization will also usher competition as there are 860 channels in the country. Acting tough by content providers will only add fear of re-regulation.

We are also of the view that with the effective implementation of Regulations relating to disaggregation, bundling of broadcaster's Channels are no longer being pushed and signal seekers have the benefit of taking channels on a-la-carte basis.

Further, broad definition of commercial subscriber will encompass within its scope large volume of Commercial subscribers. This will force content providers to keep prices reasonable as the Content Providers will benefit from volume.

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.***
- 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.***

IndiaCast UTV Comments:

For reasons mentioned in our principal position, it is suggested that the tariff for commercial subscribers be kept under total forbearance. In such eventuality, Broadcasters need not publish RIOs specifying tariffs.

It is further suggested that if a Commercial Subscriber intends to receive signals of television channels, it may approach the relevant Broadcaster with the details of DPO from whom it intends to receive signals. Once the agreement is executed between the Broadcaster and the Commercial Subscriber (basis mutual negotiations), inter alia, capturing the subscription fees payable by the Commercial Subscriber to the Broadcaster, the Broadcaster may authorize the concerned DPO to provide signals to the Commercial Subscriber. In this regard, the Broadcaster and the DPO may execute an agreement (basis mutual negotiations), inter alia, capturing the fees payable by the Broadcaster to the DPO for providing such services. Only after execution of such agreement, the DPO may be entitled to provide signals of the television channels to the Commercial Subscriber. It is stated that multiplicity of RIO's may create confusion and may lead to various dispute between Broadcaster and DPO's

In case the Commercial Subscriber has its own headend, it is suggested that the Broadcaster directly provides signals to the Commercial Subscriber. In this regard, the Commercial Subscriber may execute an agreement (basis mutual negotiations), inter alia, capturing the subscription fees payable by the Commercial Subscriber to the Broadcaster.

Please note that implementation of the above suggestions may entail amendments to Clause 4(2) of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 (as amended) and 1st proviso to Clause 13.2A.1 of the Telecommunication (Broadcasting and Cable Services) Interconnection Regulation, 2004 (as amended), which disallows the Broadcasters to prohibit any DPO from providing its services to any subscriber (including Commercial Subscriber).

Conclusion:

With the implementation of digitalization, addressability has already been introduced in DAS Phase I & Phase II areas and effective competition is

evidenced from the market. Further, with effect from 1st January 2014 entire country will be effectively digitized and will further evidence effective competition through addressability. Hence, when we are moving ahead for achieving milestone of digitization with addressability the tariff for commercial subscribers must be kept under total forbearance.

Annexure A

OUR UNDERSTANDING OF THE INTERNATIONAL EXPERIENCE IN TARIFF REGULATION OF COMMERCIAL ESTABLISHMENTS

S. No	Country	Ordinary Subscriber	Commercial Subscriber
1.	Australia	No retail or wholesale rate regulation, though Foxtel has agreed with the competition regulator (ACCC) to include certain rate caps for its basic subscription tier as one of the conditions for allowing the content merger of Optus and Foxtel	No rate regulation
2.	Hong Kong	No retail or wholesale rate regulation	No rate regulation
3.	Japan	No retail or wholesale rate regulation. The Ministry of Internal Affairs and Communications (MIC) typically approves residential rates	No rate regulation
4.	Korea	Basic tier rate caps are set by regulators	No rate regulation
5.	Malaysia	No requirement for regulatory approval of retail or wholesale rates but the rates have to be filed with the regulator (MCMC) which could decide to open an “investigation” if it deems fit	No rate regulation
6.	Philippines	No notable retail or wholesale rate regulation	No rate regulation

7.	Singapore	No retail or wholesale rate regulation although the Singapore Media Development Authority has the powers to regulate rates	No rate regulation
8.	Thailand	Retail and wholesale rates need to be approved by the regulator but, in practice, such approval is reasonably granted	No rate regulation
9.	UK	No retail or wholesale rate regulation	No rate regulation
10.	USA	Rate regulations were relaxed in 1996	No rate regulation (at any time)