

Mr.Wasi Ahmad,
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Dear Sir,

RE: YOUR CONSULTATION PAPER DATED 11Th JUNE,2014.

On behalf of FRATERNITY GROUP,an organization of like minded Hotels,Reataurants and Hotel Consultants,the Stakeholders under the subject C.P. and as a fellow COMPANY SECRETARY,I wish to thank TRAI for issuing the C.P.on the burning issue of Tariff issue related to Commercial subscribers like our stakeholders. Before I answer the specified seven issues raised in the C.P,let me first bring in to focus the matter,that TRAI must consider,before proceeding further,as under:----

- 1 .In spite of the directions of the Supreme Court of India vide its order dated 16/4.2014,TRAI has elaborated the background on how the Tariff has evolved since 26/12.2003.This was not called for at all as the C.P exercise is to re-determine the Tariff earlier fixed by TRAI without reference to Section 11 of the TRAI Act.
- 2 The information circulated it seems is only to confuse the stakeholders,who are already aware of the matter and I regret to say to defend the past actions of TRAI.
- 3 It is the prerogative of the Parliament and State Legislatures to define terms like SHOP.COMMECIAL ESTABLISHMENT etc.TRAI need not go into this exercise just to carve its proposed definition of COMMERCIAL SUBSCRIBER.
- 4 These definitions have been proven and tested over the last 50 years and TRAI need not re-define them in support of its definition of Commercial Subscriber.
- 5 The attempt to equate CommeCIAL Establishment and Commercial Subscriber is an exercise in futility.
- 6 The tariff payable is not in the nature of a TAX and hence the question of affordability or capacity to bear the burden is irrelevant,unfounded,inequitable and unjust.
- 7 The fundamental concern of the Rulemakers while doing a classification exercise has to be in relation to the product or service being classified and not the capacity of the buyer of such product or service.
- 8 The utilization of a product or service by a commercial establishment does not make him a Commercial subscriber.
- 9 Fundamentally Hotels or Restaurants are not Commercial Establishments.Various Shops and Establishment Acts clearly define Residential Hotels and Restaurants to the exclusion of Commercial Establishments.TRAI should not and cannot superimpose its definition or classification,to prove its wrong vision that Hotels or Restaurants are Commercial Establishments and hence Commercial Subscribers.
- 10 The Supreme Court of India has vide its order dated 21/11/2006 has rejected TDSAT decision dated 17/1/2006 .This being the law now ,TRAI shall not refer to TDSAT rulings to arrive at the Tariff under the subject C.P.as has been

- specifically directed by the Supreme Court of India. It is pertinent to note that the Supreme Court has not expressed its opinion about distinguishing between Ordinary or Commercial Subscriber.
- 11 Prior to 2004, there was no distinction between Domestic or Commercial subscriber. It emerged out of the imagination of TRAI and the commercial interest of the Broadcasters and their so called agents, some of whom are only bill collectors and provide no service whatsoever to the subscriber.
 - 12 Hotels were forced to petition TDSAT only because of such commercial grid of the Service providers.
 - 13 TDSAT has also observed that Hotels are not Subscribers. Is the proposal of TRAI to define Hotels as Commercial Subscriber in tune with this view?
 - 14 Neither TRAI nor TDSAT can equate hotels as Commercial establishment and therefore Commercial Subscriber, as the State Legislatures have already defined hotels under a statute.
 - 15 The tariff order dated 7/3/2006 is fraught with defects and contradictions. If a domestic subscriber allows persons to his house to view the signals, he will be a commercial subscriber as per the definition. This clearly is not the intention of TRAI.
 - 16 The height of absurdity is that TRAI is excluding MSO's and Cable Operators from the definition of Commercial Subscriber. Are they not carrying on the business as dealers in signals?
 - 17 Hotels and Restaurants are not Commercial Subscribers as they are not in the business of dealing in signals and their business is Accommodation or Food.
 - 18 The Supreme Court of India vide its order dated 19/10/2006 has specifically restrained TRAI in making any reference to TDSAT ruling and pass orders u/s 11 of the TRAI Act. The present C.P. vitiates this direction.
 - 19 The tariff order dated 21/11/2006 is also arbitrary and unjust. The grouping of hotels under the Commercial Subscriber category has invoked the forbearance clause leaving hotels to the mercy of Broadcasters and their agents.
 - 20 The said order is also illegal in respect of obtaining of signals for 50 or more persons, as it is the prerogative of State Government to levy Entertainment Tax and not that of TRAI.
 - 21 TRAI's fixing the tariff of signals has made T.V. signals an Essential Commodity needing fixation of their prices by Government. Is this the objective?
 - 22 TRAI must recognize that the Broadcasters are part of a monopoly and the prices of their services must be fixed on their cost of production and cost of carrying the signals. Various Electricity companies (ERC's), Water supply bodies and Gas supply companies fix their prices on this universally accepted basis. What stops TRAI not following this path? If the Broadcasters overprice their services they will be driven out of the business but for their monopolistic hold. TRAI has to intervene to stop this exploitation.
 - 23 The explanatory memorandum to the tariff order dated 21/11/2006 is beyond comprehension. The reasoning of capacity to bear is out of place in the subject matter.
 - 24 The order dated 24/11/2006 by the Supreme Court, is crystal clear about usage of T.V. signals for commercial purpose. TRAI must follow that direction.

- 25 The contention of FHRAI that there is no need to distinguish between Ordinary and Commercial Subscriber(read Hotels) and that it is discriminatory is absolutely right.
- 26 It may be pertinent to note that even TDSAT has overruled such sub-classification vide its order dated 28/5/2010.
- 27 Both TDSAT and Supreme Court has negated the differentiation proposed by TRAI and TRAI shall not harp on its view to differentiate.The T.V.signals are not for the benefit of customers of hotels.Those are only a guest facility.TRAI shall not act in contempt of such Judicial orders.
- 28 As explained in the subject C.P.all consumers will reap the benefit of digital revolution and hotels are no exception.For better product.service every one including a hotels is willing to pay a price.
- 29 Usage of a product or service at a commercial establishment and therefore such consumer becomes a commercial consumer,is an idea,that is fraught with dangers.Hotels for example use more than 1000 products and services in their business.The suppliers taking a clue from TRAI's order will claim higher prices from hotels for such products or services.Will TRAI intervene to stop this?On the contrary hotels being bulk consumers get specially discounted rates.Will TRAI direct the Broadcasters to extend such discounts?There are hotels at places who have seasonal business.Will the TRAI direct the Broadcasters to waive of their charges for the off-season?
- 30 There is nothing commercial about hotels receiving the T.V.signals.For them it is just a guest facility like bed,towels,toiletries,T.V.,linen,fruits,sweets and the like.The argument that the cost of such guest facility is built in the Room tariff is irrelevant as hotels are in the business of Accommodation and do not deal in such guest facilities.
- 31 TRAI's attempt to shift the focus from End Use to Commercial subscriber is also uncalled for.The purpose of the C.P.is price fixation of the End use and not the place of the End Use.
- 32 Both TRAI and the Broadcasters and their agents are wrongly perceiving that hotels are re-transmitting the signals.The hotel has no control over the signals and it is the guest who decided what to view or not view at all.In fact it is the Broadcaster or the MSO/Cable operator who has the control over the service.

In view of what is stated above,the specific answers to the questions raised in the C.P are as under:-----

1..The attempt of TRAI to redefine SHOP.,COMMERCIAL ESTABLISHMENT and COMMERCIAL SUBSCRIBER is not acceptable.While the first two are well defined under the Shops and Establishment Acts of States,the third definition is not the subject matter of the C.P.

- 2 There is no need to define alternate definition,as subscriber to T.V.signals is the only issue under the C.P.

3. The sub-categorisation of Commercial Subscriber is also not required, as any classification has to be in relation to the nature of the product/service and not in relation to the capacity of the buyer or place of service. It is for the Broadcasters to decide whether he wants to provide his service thru' a DPO or RIO. His price will include this cost and it is for TRAI to see that monopolistic exploitation does not occur.
4. As stated above, none of the models suggested are practical and recognize ground reality. It is just and proper to leave it to the best business judgement of the supplier to choose the model and for TRAI to control the Monopolistic urge of the supplier to ensure competitive conditions. The subscriber really cannot impose his conditions in the given case.
5. Of the four alternatives mentioned in Para 1.28 only No.(i) is practical. There cannot be price difference as the product/service provided is same and identical. The alternatives (ii), (ii) and (iii) are out of place, as there is no element of commercial exploitation in the given case, for the subscriber to pay an extra price.
6. The question does not arise.
7. The question does not arise.