
**CONSULTATION PAPER
ON
TARIFF ISSUES RELATED TO COMMERCIAL SUBSCRIBERS
14TH JULY, 2015**

The 'Times Network' (earlier known as 'Times Television Network') comprises of Bennett, Coleman & Co. Ltd. (of 'Movies Now', 'MN+', 'ET Now', 'Romeo Now' & 'Zoom' channels), Zoom Entertainment Network Ltd. (of 'Movies Now' channel) and Times Global Broadcasting Co. Ltd. (of 'Times Now' channel). In response to TRAI's consultation paper on tariff issues related to commercial subscribers, dated 14th July, 2015, our issue wise comments are stated herein under. You may kindly note that below comments are without prejudice to our rights and contentions, including in any ongoing or future litigations and we reserve our rights to modify, change and submission of further comments or counter comments to clarify our position on the issues under this consultation paper.

COMMENTS:

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

Yes, domestic and commercially should be differentiated. The first and foremost reason is the purpose of consuming the television service. The domestic user watches television solely for its own pleasure & entertainment purpose, while on the other hand the commercial subscriber commercially exploits the television service by providing it as an amenity to its guests and clients. 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 consumers. Thus, for the sake of brevity we have not dwelled into explaining the uniqueness of commercial establishments from the ordinary subscribers/ consumers and wish to recommend that there should be clear distinction between domestic subscriber and commercial subscriber by way of definition and tariff structure.

- 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.**

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We suggest that Commercial Establishments should be classified in following categories and broadcasters be allowed to charge separate tariffs for the below mentioned categories.

The categories are as under:

a) Hotel Rooms

Hotel Rooms have ever since been the main category of the Commercial Establishments. In the year 2006, TRAI by an amendment in the principal Tariff Order, carved out a niche category of Hotels that can be termed as Commercial Subscribers with respect to ones with ratings of 3 stars and above, heritage hotels and hotels with a capacity of 50 or more rooms. Such category of hotels could be charged as per mutual negotiation between them and the broadcasters. This distinction would be fair and reasonable for all categories of hotels and service providers & platform owners.

b) Commercial Outlets: Restaurant, Shops, Factories & Offices.

The fact remains that the shops and factories are a workplace and obviously do not have 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.

Further, the commercial establishments, including shops and factories, often use the television channel and services for their employees for the purpose of:

- i. Keep staff involved*
- ii. Boost morale of the staff*
- iii. Improve productivity*

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.

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 they should also be categorically included in the definition of

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Commercial subscribers and further, they should be charged at the rate that may be mutually decided between broadcasters and such commercial outlets.

c) *However, at the same time we also understand the requirements and commercial prospects of the small establishments or businesses which are sometimes family run small businesses and therefore, we recommend that the following categories may be excluded from the definition of commercial subscribers and can be charged as ordinary subscribers. The excluded categories can be any commercial outlets viz. Restaurant, Shops, Factories & Offices:*

- i. *Having less than twenty employees (similar to EPF provisions)*
- ii. *Having the premises of less than 2500 sq feet in city limits and 5000 sq. ft outside city limits.*
- iii. *Not having shops and commercial premises within city limits of metropolitan cities, State capitals or A class & B Class cities.*
- iv. *An enterprise that can be termed as 'Micro Enterprise' under the Micro, Small and Medium Enterprises Development Act, 2006.*

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

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 e.g. shopping malls, hotel lounges and party 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 separate commercial tariff be allowed for seeking a license from broadcaster for show casing television channel in a 'Public Viewing Area'.

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?

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At present, owing to the Hon'ble TDSAT's order of March 9, 2015, there doesn't exist any prescribed tariff that is applicable for commercial subscribers at the wholesale level, whereas a retail tariff framework has never been prescribed for commercial subscribers. While the court and tribunals have clearly and rightly stated that the domestic and commercial subscribers cannot be put on the same pedestal when it comes to tariff, therefore the tariff framework for commercial subscriber has to be distinguished from that of ordinary subscribers. Rather it would be the violation of the order of court and tribunal in case s similar is prescribed for domestic and commercial subscribers.

It is worth mentioning here that charging differential rates i.e. commercial rates from commercial establishment has been an established commercial practice of the industry not only in India but also in international market. It is pertinent to point out that organization such as PPL (Phonographic Performance Ltd.) and IPRS (Indian Performing Rights Society) also charge commercial establishments differential rates for playing music of various performers.

As it is evident that the cost of the channels are included inherently (at a high premium) in the tariff of the services provided by the commercial establishments and the cost of the channels to the main services is not more than 2-3%. E.g in case 100 channels are subscribed by a five star hotel (who is charging Rs. 10000/- per night) on an average price of 60 Rs. Per channel, the total cost of all 100 channels comes to 6000 rupees per month which comes out to Rs. 200 per day which is only 2% of total cost of the main service provided by such hotel.

It is rightly observed by the Authority/courts and tribunals that the provision of cable TV by commercial establishments improves the perceived value of their service offering and increases their ability to command a higher price from the customers and due to the television services the footfall and the business at the commercial establishment is increased by all means, though it may not be the main services provided by the commercial establishment. Therefor it is imperative to have proportionately higher rates for commercial subscribers than domestic subscribers. It is also to be pointed out here that based on the reported results of listed entities, there has been significant financial performance improvement of hotels, F&B establishments and hospitals in the past 2 - 3 years, on the back of both occupancy and rate increases and hotel occupancy rates and ARRs have improved in the past years. There are no sectorial financial emergencies justifying a price control on cable TV services for commercial establishments.

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It is a matter of fact that the commercial subscribers charge more than the MRP or market price for their services or goods from their customers, clients or guests, while sometime charging even 10-15 times of the MRP/ market price. For Instances the Commercial Establishment charge the telephone calls at the rate of Rs.25/- to Rs. 500/- per minute for a telephone call while the cost comes to only 50 paise to 1 Re. and similarly for packaged drinking water and soft drinks, which are provided in the hotels and commercial establishments at price which are 10-15 times the cost of their MRP/ market price. If the price being charged from the commercial establishment are the same as of domestic consumers, then a commercial subscriber stand to hugely profit for a service where they have made no or very little value additions and would lead to unjust enrichment . This kind of scenario will lead to unequal distribution of profits television and cable distribution ecosystem.

Since, unlike food and beverages and other services, it is very difficult and impractical for commercial subscriber to have separate accounting & billing of television services from their clients and guests, therefore it would prudent to keep regulatory forbearance at both the whole sale and retail rates for channels and bouquets. Previously, when the forbearance was effective, there have been negligible instances of reporting or litigation by commercial subscriber for any denial of signals, discrimination or unfair practice by either the broadcaster or MSOs. This is evident enough to prove that the forbearance regime was fair and square for all stakeholders.

- 4. Is there is a need to have a different tariff framework for commercial subscribers (both at wholesale and retail levels)? In case 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.**

For the reasons stated in above responses, we suggest that there should be forbearance in rates at both wholesale and retail levels for the prime reason that it is very difficult and impractical to put effective restrictions on rates and pricing that are charged and offered by commercial subscribers to their clients and guests. Moreover, if there is any framework prescribed at the wholesale level only, it will cause great imbalance in distribution of profits in proportion to the value addition in the whole television services distribution chain.

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We would like to emphasize that price freeze has been a major concern to the broadcasters. It is submitted that the price freeze was introduced only as a temporary measures by the Authority till the stage of proper competition exist in the Industry and it was considered to abolish the price freeze once there is proper competition, but even after 11 years of price freeze. It is evident that now with the existence of more than 700 channels there is enough competition and the time has come to lift the price freeze, and not to introduce the price freeze into other stream of the business. The impact of price freeze is adversely affecting the broadcasters and in particular the news broadcasters, who majorly rely upon Hotels and commercial establishments for their subscription revenue.

We would like to submit that the need for regulation of any price is normally arise whenever there is a scarcity of services and/or the manufacturer/Service provider intends to take undue advantage of its monopolistic situation or there is not enough competition. Considering the pay channel industry where there are approximately more than 700 channels available in different genres and the market can play an effective role balancing the demand and supply not only in terms of quantity but also of quality, the market players are really compelled to fix up the price of the channel in a highly competitive manner as per the market forces.

In view of the above submissions, it is very clear that the market is matured enough to balance its equilibrium. Price regulation & controls will not only distort the market but also will lead to down gradation of quality of services and also reduction of investment in the industry. Hence we suggest that there should be forbearance in rates at both wholesale and retail levels

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

We recommend for regulatory forbearance in any fixation of channel and bouquet rates. Apparently, there were neither disputes resulting into litigation or complaints against the stakeholders for any for any denial of signals, discrimination or unfair practice in that regime.

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?

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Since the last mile service provider i.e. the commercial stakeholder has complete freedom to whatever collective rates he may charge for all his services, including television services, from its clients and guests, therefore the present framework does not warrant any restrictions on channel rates at the wholesale price, as well. However, in case of any complaints from one stakeholder against the other, the Authority can look into it case by case and further, any aggrieved stakeholder also has option to take legal recourse in case the issues are not resolved to their satisfaction.

- 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?**

We suggest for forbearance at all levels of pricing of channels.

- 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?**

By terming unauthorized use of TV signals feed as piracy that can result, besides other statutory remedies, in recommendation by the Authority against the errant for cancellation of its license of service.

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

No