

26th June, 2014

To,

Mr. Wasi Ahmad

Advisor (B & CS)

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhavan,

Jawahar Lal Nehru Marg,

New Delhi-110 002

Ref: - Consultation Paper on the Tariff Related to Broadcasting and Cable TV Services for Commercial Subscribers issued on 11th June 2014.

Sub: - Comments on the Consultation Paper dated 11th June 2014 related to Broadcasting and Cable TV Services for Commercial Subscribers.

Dear Sir,

At the outset we would like to put our appreciation on record for bringing in this Consultation Paper regarding the Tariff for Commercial Subscribers, which will give all stakeholders an opportunity to express their concerns regarding the same. It is not a secret that this issue has been long pending resolution as it was subject to numerous rounds of litigation.

2.1 Do you agree with the definitions of commercial establishment, “shop” and “commercial subscriber”?

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

At things stand today, there are two separate and distinct categories of Subscribers. One is the Ordinary Subscribers and the other is the excluded Commercial Subscribers. In this context it is interesting to note that in various Regulations the definitions of Ordinary Subscribers appear which has been brought down to the definition of a “Subscriber” vide the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012 issued on 30th April, 2012. We would like to reproduce verbatim the definition of a “Subscriber” for ready reference as follows:-

“(ze) “subscriber” means any individual, or association of individuals, or a company, or any other organization or body who receives the signals of multi-system operator or DTH operator or IPTV operator at a place indicated by him or it to multi-system operator or DTH operator or IPTV operator or HITS operator, without further transmitting it to any other person and includes ordinary subscriber and commercial subscribers unless specifically excluded.”

The bare reading of the above latest definition of a “Subscriber” makes it abundantly clear that all subscribers including ordinary subscribers, commercial subscribers are included in the category of a subscriber ***save and except the specifically excluded category of commercial subscribers.***

It is in this context we would like to reproduce the list of excluded category of commercial subscribers as follows:-

- (i) hotels with rating of three star and above;
 - (ii) heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India);
 - (iii) any other hotel, motel, inn, and such other commercial establishment providing board and lodging and having fifty or more rooms; and
- (b) In respect of programmes of such broadcaster, shown on the occasion of a special event for common viewing at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of fifty persons.

Thus, there are broad two categories of subscribers which are “subscribers” and “excluded category of commercial subscribers”.

We would like to urge the Hon Authority to kindly appreciate that since there is clarity with regarding to the commercial subscribers who form part of the excluded category, it is by implication that all other commercial subscribers would be included in the category of a “subscriber” as defined in the Telecommunication (Broadcasting and Cable) Services (Fourth) (Addressable Systems) Tariff (First Amendment) Order, 2012 issued on 30th April, 2012 and therefore it is submitted that there is no need to define the word “commercial establishment” or the word “Shop” as being envisaged under the consultation paper. We further urge that in order to avoid any kind of confusion in the minds of subscribers and also the service providers it would be in their best interests that the penultimate sub category of excluded commercial subscribers namely “any hotel, motel, inn or commercial establishment providing board and lodging and having 50 or more rooms” should be done away with.

Alternatively it may be amended to strike balance by substituting words “.....50 or more rooms” by words “.....100 or more rooms”.

The Direct to Home Broadcasting Services (Standard of Quality of Service and Redressal of Grievances) Regulations, 2007 has defined “Commercial Subscriber” as follows:-

“(e) “commercial subscriber” means any subscriber who receives a programming service at a place indicated by him to a service provider and uses signals of such service for the benefit of his clients, customers, members or any other class or group of persons having access to such place.”

The proposed definition as given in the Consultation Paper reads as follows:-

“Commercial Subscriber” means any person, other than a multi system operator or a cable operator, who receives broadcasting services 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.”

We are of the view that since the definition of a commercial subscriber which is already in vogue in the existing applicable regulations as mentioned above, is not required to be further modified and in doing so no specific purpose would be served or any benefit would entail in favor of any stakeholder. It is therefore our humble submission that there is no need to define the term “commercial subscriber”.

Additionally, we would like to state that instead of revisiting the definitions of a subscriber or a commercial establishment or a shop

it would be in the interests of all stakeholders that the tariff for excluded category of subscribers is determined in order to close all possible issues emanating from the process of arriving at mutually acceptable tariff for carriage of channels on a service providers platform.

To put it simply, the hotels having the star ratings and other heritage hotels and other excluded category of commercial subscribers have no other options but to enter into the subscription agreement with different broadcasters at prices which are exorbitant as they are left to market forces. If this scenario is addressed by having a separate tariff then we are sure many adverse financial implications on either stakeholders would be avoided and such a step would be beneficial from the perspective of keeping the interests of large segment of end viewers. It is a fact that such hotels do not specifically charge its room occupants against the services being provided by different distribution platforms like DTH or IPTV or MSO.

In view of the aforesaid we are of the view that there should be no definition of a commercial subscriber as being envisaged under this consultation paper.

2.2 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.

If we go by the existing definitions of Commercial Subscribers we need to categorize them into certain definitive categories as there are many small scale, medium scale and large scale businesses across the country and therefore it will not be justified if the same yardstick of tariff can be applied to them. We are of the view that only with the perspective of determining the tariff that the categorization should be done and for no other matter or application of rules and regulations. The tariff for commercial subscribers should not be the same as that for ordinary subscribers, due to diversity of the size and scale of businesses. It is the need of the hour to fix scientifically derived tariff for different business classes and get the momentum going. One cannot compare selling a piece of bread in a dhaba with the one in a five star hotel. All selling the same product may have to spend differently on a large number of things including hygiene. There cannot, however, be any doubt or dispute that different rates could be fixed for the different consumers. There cannot however, be any doubt or dispute that different types of rates can be provided for different categories of consumers. Therefore we opine that categorization is a must for the purpose of having a different tariffs for different business groups.

We are of the view that sub categorization of commercial subscribers will help us in striking balance between differently placed diverse business groups and will help in drawing parity amongst them too. We are of the view that whilst determining the

tariff for such commercial establishments the rates of services provider's offer may be kept twice that of the ordinary domestic subscribers.

2.3 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.

In this case too we are of the view that only excluded category of commercial subscribers should have the right to publish their RIOs and negotiate with the DPOs. The rates for DPOS vis-à-vis broadcasters shall be half of the rates which DPOs will offer to excluded category of commercial subscribers. In this context we would prefer model (ii) given in paragraph 1.27 of the consultation paper.

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.

We are of the view that it will not be appropriate to conclude as to which one from the above four options would be ideal in the current existing scenario, but certainly not forbearance option. As

suggested above we are of the view a scientific approach needs to be adopted for determining the exact applicable tariff for different categories of businesses across the country vis-à-vis the tariff of a domestic subscribers. Thus without choosing any of the options given above we suggest a formation of a committee of experts to look into this diverse area and decide a formula for determining different tariffs for differently placed commercial subscribers.

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

Our comments for this point are mentioned in the preceding paragraph and we reiterate the same whilst answering this question.

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.

We are of the view a scientific approach needs to be adopted for determining the exact applicable tariff for different categories of businesses across the country vis-à-vis the tariff of a domestic subscribers. Thus without choosing any of the options given above we suggest a formation of a committee of experts to look into this diverse area and decide a formula for determining different tariffs for differently placed 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.

Taking into consideration the fact that the commercial subscribers of various types need to be bifurcated according to their size it is but natural that the Hon. Authority will have to align similarly categorize placed business groups and then determine the applicable tariff accordingly. It would not be out of place to mention here that even from the excluded category of commercial subscribers, commercial subscribers falling within the category (a)

(iii) Need to be brought within the authorized commercial subscriber's category or alternatively the number of rooms which are currently 50 needs to be substituted by 100 rooms. The rates for all commercial subscribers for such establishments may be kept twice the tariff amount of the tariff applicable for domestic/ordinary subscribers.

Thanking you

Yours Faithfully,

For Bharat Business Channel Limited



S.K.Singh

Authorized Representative