



MSM Discovery

(An ISO 9001:2008 Certified Company)

June 27, 2014

Submissions of Multi Screen Media Private Ltd. ("MSM") to Telecom Regulatory Authority of India ("TRAI") in response to the Consultation Paper on "Tariff Issues Related to Broadcasting and Cable TV Services for Commercial Subscribers" ("CP", "Consultation Paper")

Kind Attention: **Advisor (B&CS)**
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
Old Minto Road,
New Delhi - 110 002

We welcome TRAI's initiative in releasing the Consultation Paper and seeking views of the stakeholders. India is one of the most competitive and diverse pay TV markets in the world with thousands of MSOs and cable suppliers, six private operating DTH systems, IPTV offerings, HITs Offerings, Mobile Television etc. The cable and satellite TV industry operates in a highly competitive marketplace where there is furious competition among channels and various TV delivery systems for eyeballs and consumer rupees. We vehemently support the fact that there exists effective competition in the market and that the time has arrived when regulation of tariff should be done away and thus paving way for 'forbearance' where the price at all levels shall be determined by the market forces .

The TRAI in the recommendations on "Issues relating to Broadcasting and Distribution of TV Channels dated 1.10.2004; in para 4.43 had noted that -

"It must be emphasized that the regulation of prices as outlined above is only intended to be

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temporary and till such time as there is no effective competition. The best regulation of prices is done through competition. Therefore as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."

Similar observations were made by the TRAI in the explanatory memorandum to the Tariff Order. It is evident from the above that the Government is convinced of the fact that the regulation of cable prices should be dismantled once greater competitiveness is achieved in the pay-TV industry. However, in the absence of any benchmarking procedure in place, the Government and TRAI have failed to appreciate that the distribution chain has achieved sufficient market depth and there does exist an effective competition both at the wholesale and retail level. We believe that fixing of tariff in a competitive industry with a multitude of distribution platforms and service providers can be counter productive in terms of the dynamism, diversity and economic contribution of the industry. We strongly believe that there exists effective competition in the market and that the time has come when regulation of tariff should be done away and thus paving way for 'forbearance'

Multi Screen Media Pvt. Ltd. is the owner of a network of channels viz. 'Sony Entertainment Television ('SET')', 'SONY MAX', 'SONY SIX', 'SONY SIX HD', 'SAB', 'MIX', 'PIX' etc. The programming covers genres including drama, reality, comedy, horror, Bollywood, and live events. The company has built a rich library of original programming, which has received national and international acclaim, garnering successful ratings and viewership. MSM has been spending huge amounts to acquire best of exclusive contents for the subscriber to be entertained. The Channels are highly popular and have been available and distributed in India since 1995 and these Channels today have millions of subscribers across India.

Subscribers can be divided into two categories i.e Domestic subscribers and Commercial subscribers. Commercial Subscribers would broadly include persons who in their ordinary course of business or affairs permit the viewing of Pay Television by their employees, customers, clients, members, patients, guests or visitors within the premises of their place of business or where they



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carry out their affairs from, either for a fee that is specific for such viewing or as part of overall services rendered against a fee or as a means of direct or indirect incentive to its employees, customers, clients, members, patients, guests or visitors. In such a scenario it is submitted that there ought to be total forbearance both in tariffs as well as interconnection when it comes to dealing with commercial subscribers, as they cannot by any stretch of imagination be considered to be a disadvantaged section of society meriting any special regulatory or government care. Moreover there should not be any distinction among Commercial subscribers. Operators may be allowed to serve Commercial Establishments only consequent to approvals to this effect from the broadcaster concerned, which approval shall ensue once an agreement between the broadcaster and the commercial subscriber has been formalized. The broadcaster may at their discretion enter into commercial understandings with operators for servicing such commercial establishments.

In regard to the present consultation process, we submit that we have perused the consultation paper, specifically, the issues for consultation, contained therein. We hereby submit our issue-wise comments. In due course we may also submit our counter-comments to the comments received from the other stakeholders. However, the said comments are submitted without prejudice to our rights and contentions, including but not limited to our right to (a) appeal and/ or any such legal recourse or remedy available under the law against the Judgment; and (b) further submission of our comments or counter comments to this consultation process.

ISSUES FOR CONSULTATION:

I. Definitions of Commercial Subscribers

At the outset we wish to state that we do not agree with the definition of Commercial Subscribers as contemplated by the Hon'ble Regulator. The term Commercial Subscriber should be defined in an all-inclusive manner to include all subscribers except residential subscribers.

II. Categorization of Commercial Subscribers



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It is humbly submitted that there should not be any sub categorization of the commercial subscribers. It is significant to note that the Hotels and Commercial Establishments are one of the fastest growing segments in the market. The commercial subscribers have sufficient bargaining power and there is no need for sub categorization of commercial subscribers for reasons stated below:

- a. The hotels are charging anywhere from Rs.4000/- to Rs.9000/- per room per day from its customers depending upon the category of rooms (standard to deluxe).
- b. They are charging premium for different locations of their rooms ie hotel may charge upto 25% of their normal rate for a room which is sea facing and 15% in case of swimming pool facing.
- c. Most of the hotels in leading cities of India have a rate of the day ie if you book a week before, they may charge you Rs.10,000/- per night, but if you walk in they ask you to shell out 50% more.
- d. On special events like Christmas Eve or 31st December, hotels, pubs, restaurant's etc cover charges for entry into their public areas. The cover charges can be around Rs 10000 per person. In case of hotels, there are compulsory dinners added to the room tariff. Normally these dinners would have cost around Rs.1000 to Rs 3000 per person but on these special days, the cost is around Rs 3000 to 10,000 per person. Additional large screens are kept for entertainment of the guests by the commercial establishments in open/ground spaces for special screenings along with co promoting their services like food, liquor etc.
- e. Further, if a company owns three different hotels in three cities, e.g. Mumbai, Kolkata and Bangalore, the hotel rates are not uniform and fluctuates.
- f. In peak season and vacations, these rates are increased by another 25 to 30%.
- g. At convenience, these hotels charge the rate of the day which could go up three times the normal rate.
- h. At the time of live events, such as cricket and soccer, hotels, pubs, restaurant's etc charge entry fees ranging from Rs 10000 to Rs 50000 per person and make special packages to make more revenues. For the same they also tie up with sponsors who pay to the hotel



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sponsorship money. Such events are extensively exploited and marketed by sending mailers, pamphlets and SMS to attract a larger crowd.

- i. They are able to do the above activity purely on the exclusive content / copyright of the broadcasters.
- j. It is a well-known reality that food and beverages rates in these hotels are not uniform and vary because of various factors which are known and understood by the hoteliers themselves.
- k. It is also a well-known fact that aerated waters are sold minimum ten times above the market price by all these hotels.
- l. Again in the guise of extra services rendered, a biseleri water which is offered in the market at Rs.12/- per bottle, is sold at Rs. 150, 140, 130 by 5, 4 and 3 star hotels.
- m. The telephone calls, local or international are charged multiple times of their actual published tariff of the regulator.
- n. Even in case of photocopy, hotel charges Rs.25/- per page against 0.40 paise per page normally charged.
- o. There are many such commercial exploitation which are in contrast with the regular market being exploited by the hotel industry in pretext to being exclusive hotel premises.
- p. As there is no regulatory body governing the perishable items, the cost for various items / services are derived on hotel to hotel basis by the hotelier. Special strategic items/services related to the guest are given due importance not to compromise on the guest service standard by providing high end in-house entertainment for attracting high revenue clientele.
- q. Most of the 5, 4 and 3 star hotels have their headend in place ie their own personal control room to receive and transmit signals directly from satellite to the rooms and in the hotel premises.
- r. Due to the different type of guest like domestic and international, the hotel prefers to provide them with all possible variety of entertainment mainly TV channels / music etc. at the press of a button. The hotel normally would not want all possible content. The hotel also have the liberty to pick and choose the signals on ala carte basis.



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- s. It is a well-known fact and an industrial requirement of hotels to have very good professionals in place who are one of the best negotiators. TRAI has rightly described them in the last consultancy paper as the best negotiators.
- t. Almost all hotels are paying to the broadcasters only on occupancy basis. The hotels always prefer to refer to the room occupancy of the last accounting year as the base to negotiate of the agreement for the next accounting year. As such, there is no question of overcharging anyone as we have a fixed tariff already in place for the existing number of channels as and when and there is fierce competition between the broadcasters.
- u. The hotel also prefers such exclusive content which can be exclusively commercially exploited to generate revenues.

III. Manner of Offering to the Commercial Subscribers

The commercial subscribers should have to directly negotiate with the broadcasters and once the negotiations are settled and agreements are in place, the broadcaster shall identify the DPO who will supply the signals to the commercial subscriber. The Agreements can be both in the form of Reference Interconnect Offer as well be left to mutual negotiations between the parties. At present, the Broadcasters face huge loss of revenue (which can be substantiated) as there is lack transparency at ground level in relation to commercial subscribers, where Agreements are being directly entered into with DPO's. Therefore it becomes pertinent that the commercial establishments enter into Agreements directly with the Broadcasters. The broadcasters shall have their own agreement with the DPO, based on mutual negotiations. In case the commercial subscribers have their own digital headend then they would have to take signals directly from the Broadcaster and the Broadcaster would either offer their RIO or the parties would enter into Agreements based on mutual negotiations. Additionally, it needs to be ensured that the DPO's authorized by the Broadcasters in this regard, should have the necessary infrastructure to ensure that, in the event there is non-compliance of Regulations/violation of terms of Agreement by the Commercial Establishment, then the Broadcaster has effective control to switch off the Commercial Establishment and the DPO needs to ensure that signals being provided by the DPO to the residential subscribers is not affected. It is submitted that the Authority's objective of according



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protection to consumers should not be extended to commercial subscribers who unlike consumers have sufficient bargaining power to negotiate in their own interest.

IV. Tariff for Commercial Subscribers

We do not suggest for the adoption of any kind of tariff regulatory framework for Commercial Subscribers. We have consistently advocated forbearance at all levels as an option to price regulation in any form; which in our view, is inextricably linked and crucial in obtaining effective competition in the industry; a result as desired by the Government. We strongly believe that there exists effective competition in the market and that the time has come when regulation of tariff should be done away and thus paving way for 'forbearance' where the price at all levels shall be determined by the market forces. For the sake of brevity, we are not repeating the contents of our introductory paragraphs detailing the need for a forbearance regime in substitution to the present tariff regulation mechanism. 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.

CONCLUSION

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.

Thanking You

MSM Discovery Private Limited
for and on behalf of Multi Screen Media Private Limited

A handwritten signature in blue ink, appearing to read "Somvanshi", written over a horizontal line.

Authorized Signatory