



Response to the Telecom Regulatory Authority of India “Tariff Issues Related to Broadcasting and Cable TV Services for Commercial Subscribers”

June 29, 2014

The Cable and Satellite Broadcasting Association of Asia (CASBAA) is an industry-based trade association dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Member organizations include some 130 Asia-based companies building, operating, and providing content for pay-TV systems, and include operators of cable, satellite, mobile and IPTV systems. Members are physically located in 15 countries in the Asia-Pacific region, and have broad experience in building a dynamic industry to meet the rapidly-growing demands of the region’s 3 billion people.

General Comments:

The practice of negotiating different terms for program supply to commercial customers from those prevailing for residential customers is well-established in most markets around the world. In the vast majority of markets, regulators – even those who intervene more actively to set rates for the protection of consumers – do not include commercial premises in their rate orders. Rather, supply of television programming – like other forms of entertainment destined for dissemination in the course of a trade or business activity – is left for negotiations between buyers and sellers.

Therefore, we suggest that the Authority adopt a policy parallel to that in other jurisdictions, and allow the conditions of program supply to commercial premises to be negotiated between content aggregators, distribution platforms, and owners of commercial premises. In considering this recommendation, we hope the Authority will bear in mind that the justification for regulatory intervention in pay-TV rates and supply arrangements is protection of the mass of consumers.

If, however, the Authority feels it must provide guidelines that will govern relationships and pricing by platform operators to commercial premises, we strongly suggest that the definition of “commercial” customers be aligned with that in other common-law jurisdictions: a commercial customer is one where the television programming is used in the course of a trade or business. No distinction should be made between various classes of commercial customers.

Responses to Specific Consultation Issues:

1. Do you agree with the definitions of „commercial establishment“, „shop“ and „commercial subscriber“, given below?

There are no internationally-agreed benchmarks for definitions of commercial subscribers. Contracts between content suppliers and channel aggregators typically specify definitions, which are different in different contracts.

In our view it would be preferable for the TRAI to abstain from providing detailed definitions, or attempting to distinguish between various commercial consumers. That said, the broad definition provided in the consultation paper is reasonable and clear. We would suggest that the Authority could consider removing “professions” from the definition of commercial establishment, as we understand that previous Indian court decisions have held that premises of doctors, lawyers, engineers etc. are not to be considered commercial establishments.

5. 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.**

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

As mentioned above, in the vast majority of international markets, regulation of supply of television programming is kept under forbearance, and contracts are negotiated between willing buyers and sellers. In most regulated sectors, including telecoms and utilities, commercial subscribers are treated differently than residential subscribers, and mostly kept under forbearance. This is a recognition of the greater market power of commercial subscribers (who will have both the technical capability and the financial resources to access several alternative sources of supply) as compared to individuals. Program suppliers often recognize the higher negotiating power of commercial subscribers and offer discounts for commercial subscribers based solely on business considerations.

Differentiation of commercial subscribers from residential subscribers also recognizes that the main purpose of rate regulation is to protect individual consumers, not to institute government controls on the price of television as a business input.

Finally, it is also worth noting that as we understand the operation of India’s current tariff regime, even ordinary residential subscribers (via digital networks) are now under regulatory forbearance, and it would make no sense to impose regulatory constraints for commercial customers.

For all these reasons, option (iv) is the most appropriate.

(For the avoidance of doubt: we have offered comments above on selected consultation issues. Where no text is provided above, we have no comment to offer.)