

**Broadband India Forum (BIF) Response to the TRAI's Consultation Paper on Tariff issues
related to broadcasting cable TV service for commercial subscribers.**

2.1 Definition of Commercial Subscribers

TRAI:

1. Do you agree with the definitions of „commercial establishment, shops and commercial subscribers, given below?

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

“Commercial Establishment” means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, educational, healthcare or other institutions run for private gain, theatres, cinemas, restaurants, eating houses, pubs, bars, residential hotels, malls, airport lounges, clubs or other places of public amusements or entertainment but does not include a shop or a factory registered under the Factories Act, 1948 (43 of 1948);”

"Shop" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;”

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

BIF Response:

We disagree with the definition of Commercial Subscriber. As for the definition of Commercial establishments and shops are concerned; since these are legally defined there is no point in redefining it for the sake of the issues at hand. However one must understand that a commercial establishment or shop is established to do a specific business, trade, activity(ies) and to be brief, indulge in specific commercial activity or a number of activities which could be called its primary, secondary, tertiary activity so ON or so Forth. All Government and statutory regulations, laws will be applicable on the establishment or shops for which it has been established. It should therefore be appreciated that a shop or a commercial establishment not established for the purpose showing TV channels, programs on commercial terms to the Audiences can not be treated as a commercial Subscriber irrespective of the fact that the subscriber is a commercial establishment, a shop or not. Just by installing a TV receiver in one's place where some sort of commercial activity is being carried out cannot be considered to be a commercial Subscriber. As for the "furtherance of the business" is concerned both establishment/shop and broadcasters get benefitted and businesses of both stake holders gets promoted if at all it happens due to the installation of a TV receiver. Let us take a few examples:

- 1. A "Panwala" installs a TV set on his shop and tunes to a sport channel when a cricket match is "ON". People around gather to know the latest score. Panwala gets benefitted if his sale increases but broadcaster also gets many more eyeballs, which increases his ratings and he earns higher revenues. Panwala does not charge additional price for his product just because he has installed a TV set nor he charges for someone watching the TV. Why should than he be charged differently by Broadcaster and/ or DPO in spite of the fact that his place is shop. This is true for all shops be it a dress material shop, a tailoring shop, a sweetmeat (Halwai) shop etc. More footfalls and more eyeballs is what a broadcaster desires for his channel/ program content.***
- 2. Consider that the same as mentioned above match is being shown in a theatre, a community hall where audience is being charged. The organizers of such shows do it regularly or do it occasionally but this is what they do as a business or commercial activity to make money. Such organizations may have or may not have registered themselves as an establishment under the shop and establishments act. It is such organization, individual or group of individuals, a company established under the Indian Companies act or a proprietary***

Company, 100% owned by an individual or a partnership firm whose business or activity involves in showing/ screening the TV programs received from the broadcaster directly or through a DPO, who can really be termed as commercial subscriber.

- 3. Consider that a commercial establishment engages itself in the digital signage business. This establishment installs TV Screens at public places, such as Hotel Lobbies, Railway platforms, Hospital OPD halls, waiting halls. The primary purpose of these screens is to show advertisements to those who are present in these locations. Since waiting for anything is painful , people do watch these screens in order to kill time. Obviously people do not gather there to watch TV and owners of such places by themselves are not established to indulge in showing commercial content or TV programs yet they prefer if someone else keep their clients engaged while they wait at such places for the service they have come there. Now in order to break the monotony the establishment providing the digital signages at such locations may like to show some TV programs, News in particular, Music Videos etc and thus receives from one or multiple broadcasters the signal directly or through DPO. Similarly an Advertising agency indulging in OOH (Out of Home)advertising may install large displays in public places, or have even mobile vans having large HB-LED displays whose primary function is to screen Ads, but in between it shows live TV channels to make it more interesting. It is such kind of establishments whose business or commercial activity revolves around showing multimedia content irrespective of the fact whether they charge from the audience/public for watching their screens or not; that may be classified as commercial subscribers by the broadcasters and DPOs.*
- 4. Some establishments which can be classified as commercial establishments do subscribe to Cable TV for providing its clientele this as a facility in addition to the service which is their main/ primary business. For example Hospitals install TV sets in patient rooms. They do it because their customers are addicted to it and would otherwise get psychologically disturbed. There is no commerce involved. Should this be treated as a commercial subscription? No, not in our opinion. Patients would come there even if there is no TV set installed therein. To sat that TV service is for furtherance of the Hospital business shall be a far fetched argument.*
- 5. Suppose a gated Society or an RWA of a multi dwelling complex takes the signal directly from broadcaster or indirectly through a DPO or LCO and distributes it to its members, how shall we classify it? A bulk subscription, a commercial subscription or analogous to a Local Cable operator. Obviously as*

an LCO if it receives the signal directly from broadcaster or DPO/ MSO, otherwise bulk domestic customer if LCO makes the signal available.

- 6. In the very near future buses plying in the Metros and big cities will be able to receive DVBT 2 signal. If the operators so desired he may install individual TV receivers for each seat or a couple of them in the bus. Similarly Railways may do so. The fundamental principle should be the same. The passengers are not there to watch TV and they would be there even if the TV service was not there and hence it cannot be termed as a commercial subscription.*

It is therefore evident that Hotels, shops, Hospitals, restaurant or for that matter any commercial establishment should not be classified as a commercial subscriber of TV services unless it is engaged in commercial activity that involves showing, screening of multimedia content and TV channels whether on payment basis or by way of earning through advertisements. Hotels at best can be considered as a multi dwelling unit and if it receives signals directly from the broadcaster or DPO/ MSO it can be treated as an LCO; else as a bulk consumer if it receives signal from LCO. It can not be treated as a Commercial Consumer. Similarly Hospitals and resorts cannot be treated as commercial subscribers. Shops, Restaurants, Dhabas, eating and drinking Joints, Clubs, Panchayat ghar, Chaupals, or any place wherever people gather or come for a purpose which has nothing to do with watching TV or if in some cases it does involve, it is not for commerce / trade. The definition of commercial subscriber should therefore read as :

“Commercial Subscriber” means any person, or group of persons, a firm, a company registered under companies act, shops and establishment act or otherwise as a proprietary or partnership firm with limited liability or otherwise, other than a multi system operator or a cable operator, who receives broadcasting service 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 as a business or commercial activity or makes it as a part/ component of his main/ primary business, irrespective of the fact whether screening of TV programs are charged from the viewers/ audience present there or are shown without any charge.

2.2 Categorisation of Commercial Subscribers

BIF Response:

No need. as it is well defined in their respective commercial registration.

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-categorised into similarly placed groups along with full justifications.

BIF Response:

There is no need to do so. Scale of operations of the business involving screening and showing of TV programs as a commercial activity can be the criteria of determining tariffs; if TRAI feels it essential in view of legal directives of honorable TDSAT and the Honorable Supreme Court.

TRAI:

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.

BIF Response:

As per 1.27(iii). Commercial subscriber should have option of choosing his service provider.

TRAI:

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

BIF Response

protect all the stakeholders.

(iv) The tariff for commercial subscribers is kept under total forbearance.

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

BIF Response:

Tariff for commercial Subscriber should certainly be different and could be higher than from that of others. As the subscriber makes money he needs to share the revenue with broadcaster and others involved in the value chain. The tariff for commercial subscriber; if our definition of commercial subscriber is acceptable should be kept under total forbearance.

Since the genesis of this entire problem has started with Hotels, the tariff for such establishments including hospitals, resorts should have linkages with domestic tariffs. For example the following formula could be used.

Total Tariff to be paid to the service provider by the establishment= No. of Receivers/ Screens/ STB x by Domestic tariff for each receiver/screen/STB –bulk discount based on quantity involved.

Bulk discount can either be determined and specified by TRAI or kept under forbearance and judicious and not to hamper the viewership to the end user .

All others need to be charged as per prescribed domestic tariff.

TRAI:

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.

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.

BIF Response:

Our response to 5 refers.