

RESPONSE OF STAR INDIA NETWORK

ON

CONSULTATION PAPER

ON

**“ISSUES RELATED TO BROADCASTING AND CABLE TV SERVICES FOR
COMMERCIAL SUBSCRIBERS”**

ISSUED ON 11TH JUNE, 2014

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Consultation Issues

2.1 Definition of Commercial Subscribers

1. Do you agree with the definitions of “Commercial Establishment”, “Shop” and “Commercial Subscriber”, 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;”

RESPONSE

We agree with the proposed definitions; however we suggest a slight modification in the definition of Commercial Subscribers in order to ensure consistency throughout, as follows:

“Commercial Subscriber” means any person, other than a multi system operator or a cable operator **or a direct to home operator or a head end in the sky operator or a service provider offering Internet Protocol television service**, 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;”

Further, courts in India have taken a consistent stand that practice of a profession does not amount to an act of commerce. The reason is that professionals render their services on the basis of specialised knowledge and skill acquired through education and training in consideration of fees. We therefore recommend deletion of ‘Profession’ in the proposed definition of commercial establishment, accordingly the revised definition of commercial establishment is as follows:

“Commercial Establishment” means any premises wherein any trade, or 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);”

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

RESPONSE

Not applicable (response per 1 above)

2.2 Categorisation 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-categorised into similarly placed groups along with full justifications.

RESPONSE

We Agree. The TDSAT Judgment makes it amply clear why categorisation of Commercial Subscribers is not feasible and is only likely to result in exacerbating disputes and trigger aggravated perceptions of discrimination among those included within the category as opposed to those who have’nt been so included.

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.

RESPONSE:

We submit that only the first option is feasible, the second and third options are non-starters.

The second option whereby the DPO issues a RIO and privately negotiates with broadcasters is fraught with uncertainty as there is no guarantee that DPOs will be able to successfully negotiate with Broadcasters in a timely manner. This could in turn make channel availability uncertain for all such Commercial Subscribers.

It would also be unfair to have broadcasters and DPOs compete with each other as proposed in the third alternative as admittedly the channels that would be the subject matter of such competition belongs exclusively to the broadcasters.

The present arrangement whereby broadcasters directly negotiate with Commercial Subscribers (who have their own head ends or even otherwise) should be allowed to work unhindered as it has brought in the required stability and certainty of availability of channels by such Commercial Subscribers.

For those hotels who do not wish to negotiate directly with broadcasters, the first option that has been proposed is feasible whereby Broadcasters at their end shall publish the Commercial RIO containing the wholesale rates applicable for Commercial Subscribers that shall in turn form the basis of the DPO's agreements /retail rates with the Commercial Subscribers.

Broadcasters shall further designate/authorize certain DPOs in various areas to enter into agreements on its behalf. No MSO shall provide signals to a Commercial Subscriber without authorization from the Broadcaster. There should be a mandatory requirement for broadcasters to counter sign every agreement entered between the DPO and Commercial Subscriber, thereby bringing greater transparency in the dealing.

Also there is a need to ensure that a Commercial Subscriber once subscribed to the authorised DPO, is locked-in for a minimum period of 3 months with that authorised DPO of the broadcaster unless advised or instructed otherwise by such broadcaster. If the Commercial Subscriber intends to change from one authorised DPO to another then the Commercial Subscriber should take a No-Dues –

Certificate from the earlier DPO or have documentary proof that there is no outstanding dues. Commercial Subscriber should also satisfy itself that the new operator is duly authorised by the broadcaster and it should be no defence to claim ignorance. Commercial Subscribers should demand from LCOs/MSOs a written undertaking that they have the necessary authorisation to distribute signals of the channels to the Commercial Subscribers in the defined area of operation.

It should also be mandated that all the Commercial Subscribers need to sign the agreement with the Broadcasters or Broadcasters & operators in a time bound manner.

The Commercial Subscribers catered to by the DPOs shall be given a separate customer identification number (different from that of ordinary subscribers) by such DPO and shall be easily verifiable. Further the monthly SMS reports submitted by operators to broadcasters should report ordinary and Commercial Subscribers separately. While subscriber numbers may be reported for Ordinary Subscribers, full particulars of all Commercial Subscribers that are receiving signals, those that were activated during the month and those that were deactivated during the month should be clearly disclosed.

DPOs should also form separate packages that specifically cater to Commercial Subscribers, unlike today's practice wherein only one set of packages are floated for all consumers regardless of such consumers being ordinary or commercial. DPOs should ensure that no Commercial Subscriber avails packages meant for ordinary subscribers. For this it should have a mandatory KYC policy that identifies subscribers into ordinary and commercial. Also the packages should factor in the rates published by broadcasters in their respective RIOs and any discounts at the retail end will be the DPO's responsibility.

It should also be mandated that while the signals obtained by the Commercial Subscriber from DPOs in DAS will, in any case, be digital and encrypted, it would be the responsibility of the Commercial Subscriber to ensure distribution of TV signals

in digital and encrypted form within its commercial establishment, in case it obtains signals directly from the broadcaster. Also it should be clearly provided that the Commercial Subscriber, unlike DPO, cannot re-transmit the TV signals to any other subscriber.

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.

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

RESPONSE

As held by the TDSAT, TV Channels are non-essential services from a Constitutional point of view. Accordingly for non-essential services it needs to be appreciated that free contract pricing should be the norm. However TRAI in its wisdom had decided to extend some tariff protection for Ordinary (household) Subscribers as an exception to that norm. It would thus be unfair and contrary to all tenets of freedom of contract if tariff protection is extended in a blanket manner to even include in one fell swoop, Commercial Subscribers as well.

Total forbearance for Commercial Subscribers is thus the only option. There is no necessity for the Authority to now set the clock back by prescribing otherwise as

that will result in uncertainty and will unsettle business practices that have evolved and settled over time resulting in unnecessary erosion of investor confidence. The Courts have recognised the Authority's power to regulate through forbearance and also adopt different approach qua different subscribers. The only point where there was an issue was classification and the mandate from the court is clear in that it has directed the Authority to:

"...consider the case of commercial establishments once over again in a broadbased manner."

Today even Ordinary Subscribers at the retail end are under tariff forbearance, there is no reason therefore for Commercial Subscribers to be not forborne.

In any event the definition proposed above does exempt players like shops and factories, hence there is no further safeguard that is required. Broadcasters may at their discretion evolve a discounting scheme for specific Commercial Subscribers based solely on business considerations.

As will be seen in almost all sectors and even in the case of 'utilities', 'Commercial Subscribers' are charged differentially and are mostly forborne (not subjected to any kind of ex ante tariff regulation). Please refer to ANNEXURE 1 in this regard.

Further instances of differential Satellite TV pricing for commercial subscribers also abound in other jurisdictions for example in UK broadcasters such as Skyfor Business TV and Virgin Media Inc have incorporated into their respective business models a differential pricing methodology for different categories of consumers like:

- a. Pubs
- b. Hotels
- c. Offices
- d. Betting Premises
- e. Retail
- f. Golf Clubs

- g. Gyms and leisure facilities
- h. Schools
- i. Any other businesses

Contractual safeguards will in any event be in place and should be enough. The regulator can always intervene ex-post, on specific conduct issues or abuse of power.

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.

RESPONSE

Not applicable (response per 5 above)

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.

RESPONSE

Not applicable (response per 5 above)

ANNEXURE I

Differential pricing

Differential pricing is a pricing strategy whereby a company establishes different price points for different customers based on a number of variables, including customer type, volume, and delivery and payments terms. Some of the examples are as follows:

1.1 Movie Theatres

Differential pricing is often a good fit with more intangible, service-oriented solutions where customers place different values on the merits of the service. Cinemas can differentiate pricing by charging full price to moviegoers who are willing to pay that amount. They can still offer incentives to more price-sensitive customers through the use of coupons, advanced ticket promotions and other types of discounts for certain types of customers.

1.2 Airlines

The airline industry is one of the most oft quoted instances for differential pricing strategies. Airlines commonly schedule flights with a low ticket price for high intensity traffic destinations. As time goes by, they gradually increase the price point because demand goes up. The strategy is exactly the opposite with low intensity traffic destinations.

1.3 Entertainment

Entertainment is certainly a broad category of products and services, but entertainment offerings are routinely presented with differential pricing for common reasons. Restaurants and amusement parks, for instance, often offer discounts for both senior citizens and children under a certain age. Buffet-style restaurants attract families and older customers with these discounts and feel comfortable in a lower price point because seniors and children are likely to consume less food than those in the age ranges in between.

1.4 Medical Care

It is the norm amongst many doctors and other medical service providers who charge regular service fees for standard patients but often charge lower fees for poorer patients. Not only is this attractive to lower-income people, but it is often perceived by the public as a socially responsible behaviour, thus enhancing the ethical reputation of the provider.

1.5 Electricity

Distribution companies provide electricity at different rates to different categories of consumers. Every state has different categories that cater to the needs of the businesses prevalent in their states. But the most common categories are domestic (residential), commercial (shops and offices) and Industrial (manufacturing units) - with rates being lowest for residential consumers and highest for industrial consumers. Within these categories there are separate rates for LT and HT. So if we have to list down, following categories will be available in most states:

Domestic-LT: for most individual residential connections.

Commercial-LT: for small shops and offices. Also for hotels, guest houses, theatres, etc.

Industrial-LT: for very small manufacturing units (like bakery, stone cutting, poha mills, etc.)

Domestic-HT: Bulk supply for residential colonies.

Commercial-HT: for bigger offices, film studios, etc.

Industrial-HT: for most heavy industries

Many a times the categories are also differentiated depending on the connected load and the tariffs increase if the connected load is higher. Even though both NDHT and NDLT consumers use electricity for the same purpose i.e., 'Commercial Activity' and if merged, would have simplified things by reducing the number of categories and therefore simplifying tariff structure further and would have maybe helped to curb malpractice. However, it was

felt that such merger would not be in the consumer interest as it would impact the low end consumers (NDLT) the most. Therefore, the Commission took the view that the sub-categorization ought to continue.

1.5.1 Delhi Electricity Reforms Act, 2000

The government of national capital territory of Delhi under part VII (Tariffs) section 28 (7) (a) states-

The tariff implementation shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor or power factor, the consumer's total consumption of energy during any specified period, or the time at which supply is required.

1.5.2 Thus what needs to be ascertained and is backed by a plethora of Supreme Court judgments¹ is that the basis for fixation of tariff is normally based on the nature of supply and the purpose for which the supply is required without showing undue preference. The Electricity commission must give effect to concept of equality under article 14 of The Constitution of India to the extent that no discrimination between similarly placed subscribers, but it has been held in a plethora of judgments that favourable treatment to a certain class of consumers on account of economic disparity does not violate art 14.

1.6 Water

Even in the case of supply of water various state agencies such as the Delhi Jal Board make a clear distinction between Residential, Partly Residential and Industrial/Commercial consumers. The rate and volume of water supply is dependent on the categorization and even though all these categories use the

¹ *Coimbatore Stock Exchange Ltd & Ors v/s. Tamil Nadu Electricity Regulatory Commission & Ors; Rohtras Industries Ltd & Ors v/s. Chairman, Bihar State Electricity Board & Ors; Association of Hospitals v. Maharashtra Electricity Regulatory Commission; Association of Industrial Electricity User v. State of AP & Ors*

same standard and quality of commodity ie: water yet there is differential pricing being used by the Jal Board.

i) Residential: Water supplied to such plot/property which is used purely for residential purpose.

ii) Partially Residential/Mixed: Water supplied to such residential buildings where commercial activity having non-intensive use of water exists, such as private clinic, consulting chambers, shops, Atta Chakki, property dealer's office etc. For Group Housing Societies and Apartments with one bulk connection for water, the dwelling units which are having mixed use activity, shall be charged at tariff applicable for mixed use rates after taking average consumption for each unit. The office bearer with meter reader will assess such units after every two billing cycles.

iii) Industrial/Commercial :- Water supplied to plot/property where intensive use of water is envisaged such as institutes, hospitals, schools, offices, office complexes, Railway Stations/ yards, Police Stations, Airports, Bus- stand, Petrol Pumps, Hotels, restaurants, clubs, marriage halls, industry, cooling plants, factories, ice cream factory, amusement parks dhobi ghat etc.

The rationale again is that a consumer using water for its own use without gaining any commercial value cannot be equated with commercial establishments that gain monetarily and commercially from the existence of the water supply to their establishments.

2.7 Gas

Cooking Gas (LPG) is considered an essential commodity and is considered at par with Water and Electricity, even under the LPG distribution model followed by companies such as Indian Oil Corporation, Bharat Petroleum and Hindustan Petroleum there is a clear demarcation between a Commercial and Domestic Consumer.

Commercial consumer includes LPG used by non-manufacturing establishments or agencies primarily engaged in the sale of goods or services. Included are such establishments as hotels, restaurants, wholesale and retail stores and other service enterprises. These establishments are given no subsidy and their cost of purchase is directly linked to the market forces and global cues.

Domestic consumer includes usage by private dwellings, including but not limited to apartments for the purposes of cooking, heating and other household usages. These users are given gas via LPG cylinders/pipeline at a subsidized rate having no relation to the global market rates.

END