

RESPONSE OF ZEE NETWORK
ON
CONSULTATION PAPER
ON
“ISSUES RELATED TO BROADCASTING AND CABLE
TV SERVICES FOR COMMERCIAL SUBSCRIBERS”
ISSUED ON 11TH JUNE, 2014



||| VASUDHAIVA KUTUMBAKAM |||
THE WORLD IS MY FAMILY

From : A. MOHAN

E-mail ID: amohan@esselgroup.com

RESPONSE ON CONSULTATION PAPER ON “ISSUES RELATED TO BROADCASTING AND CABLE TV SERVICES FOR COMMERCIAL SUBSCRIBERS

In our opinion the issuance of Consultation paper on “Issues related to Broadcasting and Cable TV Services for Commercial Subscribers issued by the Telecom Regulatory Authority of India (TRAI) pursuant to the Order dated 16.04.2014 passed by the Hon’ble Supreme Court is apt for addressing all contentious issues which has been raised from time to time relating to the issue of commercial subscribers.

We hereby offer our response on various issues raised in the consultation paper:

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:- (i) We agree in principle with the definition of the “Commercial Establishment”, “Shop” and “Commercial Subscriber” proposed by TRAI. However, we would like to suggest certain amendments to the definition of “Commercial Establishment” and “Commercial Subscribers” which are highlighted in red colour below.

“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 ~~or trade or profession~~ or work in connection with, or incidental or ancillary thereto, journalistic, ~~and~~ printing ~~and publishing~~ 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);”

“Commercial Subscriber” means any person, other than a multi system operator 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~~, 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;”

(ii) In the above mentioned definition we have suggested the deletion of “Profession” as the same would also take within its ambit, the office establishments belonging to various professionals like lawyers, chartered accountants, architects etc. In this context it is pertinent to point out that Courts have consistently taken this view that the Professionals do not engage in any kind of business or trade for gain and that they offer their “Services” in lieu of “Fee”. Accordingly, it is not proper to club the professionals with other commercial establishments for the purpose of defining Commercial Subscribers.

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

Response: Not applicable

Issue No. 2: 2.2 Categorization of Commercial Subscribers

Q. 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.

Response: We agree that further sub-categorizing of the Commercial subscribers into similarly placed groups may not be the way to proceed as the same will again lead to disagreements and objections from the different stake holders depending on their respective commercial interests thereby resulting in further litigations.

Issue No. 3: 2.3 Manner of Offering to the Commercial Subscribers

Q. 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: (1) Of the three models suggested in the consultation paper, Model (i) should be prescribed for distribution of TV signals to the Commercial Subscribers.

(2) Model (ii) wherein it has been suggested that DPO publishes the rates for commercial tariff, negotiates with the Commercial Subscribers and then enter into arrangement with broadcasters for supplying the signals, is not practicable inasmuch as the channels are owned by the broadcasters and in case the DPO is not able to finalize the corresponding commercial terms with the broadcasters and /or the commercial terms between the broadcasters and DPO are not viable for DPO considering and keeping in view the commercial terms already agreed by the DPO with Commercial Subscribers, the supply of signals will not materialize to the Commercial Subscribers. This will create lot of uncertainty and in such an event renegotiations would be required and resorted to and/or the adjudicatory forum (TDSAT) would be approached to resolve the dispute. In all such cases there would be inevitable delay in provisioning of the signals to the Commercial Subscribers. Hence we do not recommend this option at all.

(3) So far as Model (iii) is concerned, it suggests for a combination of Model (i) and Model (ii) wherein it is provided that both the DPOs and the broadcasters would publish the RIOs. This would create lot of confusion. Different RIOs would start floating in the market

depending upon the number of DPOs and broadcasters. It will also lead to non-uniform rates and would give rise to various disputes alleging discriminatory treatment etc.

(4) We suggest the following methodology based on Model (i):

A. **Where Commercial Subscribers do not have their own headends:**

(a) The broadcaster would publish the rates for commercial tariff in the form of RIO. Such RIO shall form the basis for finalizing the agreement with Commercial Subscribers;

(b) The Commercial Subscribers would finalize the rates and agreements with the broadcaster;

(c) The broadcaster would authorize the DPOs in particular areas/territories i.e. it would authorize designated MSOs and DTH operators in particular areas who will supply signals to the Commercial Subscribers;

(d) The broadcaster shall enter into the agreement with these designated DPOs (authorized MSOs and DTH operators) based on mutual negotiations to enable them to provide signals to Commercial Subscribers.

(e) The DPOs would enter into a separate and distinct agreement with the Commercial Subscribers and such agreement would be clearly distinguishable from the agreement that DPOs enter for provision of signals to ordinary subscribers.

(f) The DPOs would form/devise a separate offering for Commercial Subscribers based on the RIOs of the broadcasters and such commercial offering would be clearly identifiable being meant for Commercial Subscribers only.

(g) Separate Customer Application Form (CAF) would be devised for Commercial Subscribers which would be different from the CAF for ordinary subscribers.

(h) Wherever the mandatory digital addressable system (DAS) is in force, DPOs would ensure that the delivery of channels to Commercial Subscribers is in encrypted mode through set top box.

(i) The DPOs would send a separate subscriber report on monthly basis to the broadcasters in respect of Commercial Subscribers.

(j) The Commercial Subscribers would make the payment to the broadcasters/DPOs depending upon the terms of the agreement executed with them.

(B) **In case the Commercial Subscribers have their own digital headends**

(a) The RIOs of the broadcasters would include the provisions for such Commercial Subscribers who would like to obtain the signals directly from the broadcasters.

(b) Such Commercial Subscribers should have their own digital headends.

(c) Such Commercial Subscribers should negotiate with the broadcasters based on such RIOs and directly enter into an agreement with them.

(d) The Commercial Subscribers would send periodic monthly subscriber reports to the broadcasters in such format as may be agreed between them and would make the monthly payments to the broadcasters.

Issue No.4: 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: We would like to mention that so far the tariff for Commercial Subscribers has been under forbearance and the same has worked well. Accordingly, we suggest that principle of market forces be continued without any price regulation i.e. the tariff for

Commercial Subscribers should be kept under total forbearance. The Commercial Subscribers have significant countervailing power and they are not end-consumers. There is no reason for prescribing any Tariff Regulation and let the agreements be concluded between the parties through mutual negotiation based on the RIO methodology.

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

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
