



**TELECOM REGULATORY AUTHORITY OF INDIA**



Consultation Paper

On

**Tariff Issues Related to Broadcasting and Cable TV Services  
for Commercial Subscribers**

11<sup>th</sup> June, 2014

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Written view/comments on this paper are invited from the stakeholders by 27<sup>th</sup> June 2014. The comments may be sent, preferably in electronic form to Mr. Wasi Ahmad, Advisor (B&CS), Telecom Regulatory Authority of India, Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg, New Delhi - 110002, (Tel No.011-23237922, Fax No.011-23220442; Email: [traicable@yahoo.co.in](mailto:traicable@yahoo.co.in) or [advbcs@traigov.in](mailto:advbcs@traigov.in) ). Comments will be posted on the TRAI's website [www.traigov.in](http://www.traigov.in).

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## **Introduction**

1. The Telecom Regulatory Authority of India (TRAI) was entrusted with the responsibility of regulating 'broadcasting and cable TV' services in January, 2004. An interim Tariff Order was issued on 15.01.2004, which provided that the cable charges prevailing on 26.12.2003 shall be the ceilings at the respective levels. Thereafter, following extensive consultations, a detailed Tariff Order was issued on 01.10.2004. This order, while maintaining the sanctity of the ceiling of cable TV charges prevailing on 26.12.2003, as was in the earlier order dated 15.01.2004, also provided a window for introduction of new pay channels and conversion of existing Free-to-Air (FTA) channels to 'pay channels' subject to prescribed conditions. The underlying objective of these Tariff orders was simply to give relief and protection to the consumers of broadcasting and cable TV services from frequent hikes in cable TV charges.
2. Subscribers of broadcasting and cable TV services are basically of two kinds - on one hand there are the ordinary subscribers who consume TV services domestically and for their own pleasure, while on the other hand there are commercial subscribers who obtain TV services for the benefit of their clients, customers etc., at their commercial establishment i.e. for the furtherance of their business interests. The latter category directly or indirectly, builds in a cost which is finally recovered from their clients/customers who actually consume the TV services. Therefore, the two categories of subscribers are very different. While issuing the Tariff Orders in 2004, as mentioned above, the Authority, however, did not distinguish between the ordinary and the commercial subscribers.
3. The matter of Tariff for commercial subscribers has been under judicial scrutiny since 2005, when some associations of hotels and restaurants challenged differential tariffs imposed by some broadcasters before the Hon'ble Telecom Disputes Settlement Appellate Tribunal (TDSAT). The Hon'ble TDSAT disposed of these petitions *vide* its judgment dated 17.01.2006 wherein it concluded that the members of the petitioner associations couldn't be regarded as subscribers or consumers. It also asked the Authority to consider whether it was necessary or not to fix tariff for commercial cable TV subscribers.

4. As an interim measure, on 07.03.2006, the Authority issued an amendment to the principal Tariff Order of 01.10.2004. This Tariff Amendment Order defined the terms 'Ordinary cable subscriber' and 'Commercial cable subscriber'. In the meanwhile, the judgment of the Hon'ble TDSAT dated 17.01.2006 was appealed by the associations of hotels and restaurants before the Hon'ble Supreme Court. In an interim order on 19.10.2006, the Hon'ble Supreme Court directed the Authority to carry out the processes for framing the tariff under Section 11 of the TRAI Act, independently and not relying on or on the basis of any observation made by TDSAT. In its final order on 24.11.2006, the Hon'ble Supreme Court confirmed its interim orders and stated that it did not agree with the opinion of the Hon'ble TDSAT that the Authority should also consider whether it is necessary or not to fix tariff for commercial cable TV subscribers.
5. The Authority meanwhile based on the interim order of the Hon'ble Supreme Court dated 19.10.2006 had issued two Tariff Amendment Orders, on 21.11.2006, applicable on commercial subscribers in non-CAS<sup>1</sup> and CAS areas, respectively. In these orders the commercial subscribers were defined in further detail as also certain tariff ceilings were prescribed. These orders too were appealed against in the Hon'ble TDSAT. The order of the Hon'ble TDSAT, dated 28.05.2010, was then appealed before the Hon'ble Supreme Court. The latest order of Hon'ble Supreme Court, dated 16.04.2014, directs as follows:

*"...However, we direct that for a period of three months, the impugned tariff, which is in force as on today, shall continue. Within the said period, TRAI shall look into the matter de novo, as directed in the impugned judgment, and shall re-determine the tariff after hearing the contentions of all the stake holders...."*
6. The background to the evolution of a clear distinction between the two categories of subscribers and details of the legal challenges to the regulatory framework, established by the Authority for the commercial subscribers, is discussed in detail in Chapter I of this Consultation Paper (CP).

### **Structure of this Consultation Paper**

7. The Authority has floated this CP to solicit the comments/views of all the stakeholders on the 'Tariff Issues related to Broadcasting and Cable TV Services

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<sup>1</sup> The Tariff Order dated 21.11.2006 applicable for commercial subscribers in Non-CAS areas is reproduced at Annexure-A to this CP.

for Commercial Subscribers', so that the regulatory framework for tariff applicable for commercial subscribers can be reconsidered *de novo*. In Chapter I of this consultation paper, the issues related to tariff for broadcasting and cable TV services to commercial subscribers have been analysed and some possible solutions have also been discussed. The consultation issues that have been formulated in Chapter I are summarized in Chapter II.

## Chapter I

### Issues Related to Tariff for Commercial Subscribers

#### *Background to Evolution of Category of and Tariff for Commercial Subscribers*

- 1.1 As discussed, the question of making a separate dispensation for commercial establishments which availed broadcasting and cable TV services not for their own domestic use but for the benefit of clients, customers, members, etc. was not in the realm of deliberation in the context of both the Tariff Orders issued in 2004.
- 1.2 Petitions were filed in the Hon'ble TDSAT [Petition No.32(C) of 2005 and Petition No.80(C) of 2005] by a couple of associations of hotels and restaurants against some broadcasters and their authorized distributors. The dispute basically pertained to the question whether hotels and restaurants can be equated with domestic consumers for the provision of cable TV service. The Hon'ble TDSAT disposed of these petitions vide its judgment dated 17.01.2006. The Hon'ble TDSAT had considered the following issues in its judgment dated 17.01.2006:
  - (a) Whether the hotels fall in the category of subscriber;
  - (b) Who is the consumer - the hotels or the occupants of the rooms;
  - (c) Is there a distinction between the domestic and commercial consumers and if so, whether the tariff fixed by the TRAI would apply to commercial establishments like the members of the petitioner associations.
- 1.3 On the first question, the Hon'ble TDSAT expressed the view that the managements of the hotels in Petition Nos. 32(C) and 80(C) cannot be termed as subscribers and, similarly, various restaurants using cable TV service for public viewing cannot be treated as consumers. On the second issue, the Hon'ble TDSAT came to the conclusion that members of the petitioner associations, on the facts of the case, cannot be treated as either subscribers or consumers for the purpose of relief sought in the petition. On the third question, whether tariff fixed by TRAI would apply to commercial establishments, the Hon'ble TDSAT made the following observations:

*“36. Now we come to the question whether the tariff laid down by the TRAI notification of 26<sup>th</sup> December, 2003 is applicable to the members of the petitioner associations. The said Tariff order covers the following in its ambit – the charges payable by (a) Cable subscribers to cable operator; (b) Cable operators to multi service operators/broadcasters (including their authorized distribution agencies); and (c) Multi*

*service operators to broadcasters (including their authorized distribution agencies). In the petition before us we find that the commercial relationship is between the members of the petitioner associations (viz., hotels, restaurants etc.) on the one hand and either cable operators or broadcasters on the other. We have already concluded that the members of the petitioner associations cannot be regarded as subscribers or consumers. As such we are of the view that the above tariff notification of the TRAI would not be applicable. It seems that TRAI has found it necessary to fix the tariff for domestic purpose. We think the Regulator should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring about greater degree of clarity and to avoid any conflicts and disputes arising in this regard."*

- 1.4 Pursuant to the said judgment of the Hon'ble TDSAT and representations made by the Federation of Hotel and Restaurant Association of India, the Authority decided to undertake a detailed consultation exercise to decide on the methodology and manner through which commercial tariffs can be fixed. As the consultation process was likely to take some time, an amendment to the principal Tariff Order of 01.10.2004 was issued on 07.03.2006 as an interim measure. In this tariff amendment order, the terms "Ordinary cable subscriber" and "Commercial cable subscriber" were defined as:

**'Ordinary cable subscriber'** means any person who receives broadcasting service from a cable operator and uses the same for his/her domestic purposes.

**'Commercial cable 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, multi system operator or cable operator, 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 such place.

- 1.5 More importantly, the amendment also provided for a ceiling on cable charges at the level prevailing on 01.03.2006 payable by one party to another in regard to the commercial cable subscribers. A CP, for the purpose of detailed consultations on the issue, was issued by the Authority on 21.04.2006.
- 1.6 In the meanwhile, the judgment of the Hon'ble TDSAT dated 17.01.2006 was carried in appeal by the associations of hotels and restaurants before the Hon'ble Supreme Court and the Hon'ble Supreme Court passed a "status quo" order on the 28.04.2006. This *status quo* order was modified by the Hon'ble Supreme Court on 19.10.2006, after final hearing of the appeal and while reserving its judgment. On the said date, the Hon'ble Supreme Court directed as under:-

*"We in modification of our said order dated 28.4.2006 direct the TRAI to carry out the processes for framing the tariff. While doing so, it must exercise its jurisdiction under Section 11 of the Act independently and not relying on or on the basis of any observation made by TDSAT to this effect. .... It has been brought to our notice that even in the consultation paper some references have been made to the recommendations made by the TDSAT. In view of our directions issued hereinbefore a fresh consultation paper need not be issued. We, however, make it clear that in framing actual tariff the provisions of Section 11 of the Act shall be complied with and all procedures laid down in relation thereto shall be followed".*

1.7 Keeping in view the above directions of the Apex Court requiring compliance with Section 11 of the TRAI Act 1997 (sans the need for a fresh consultation paper), draft of a tariff amendment order for Non-CAS areas in respect of commercial tariff was placed on the website of TRAI on 02.11.2006, seeking comments of the stakeholders by 10.11.2006. Upon completion of the exercise, the Authority came out with an amendment to the principal Tariff Order on 21.11.2006 vide the Telecommunications (Broadcasting & Cable) Services (Second) Tariff (Seventh Amendment) Order, 2006 (8 of 2006). This tariff amendment order categorised commercial subscribers into the following two groups, namely:-

- (a) A specified category of commercial subscribers comprising---
  - (i) Hotels with rating of 3 stars and above;
  - (ii) Heritage hotels (as defined by the Department of Tourism, Government of India);
  - (iii) Any hotel, motel, inn or commercial establishment providing board & lodging and having 50 or more rooms; and
- (b) All other commercial subscribers (not falling under the specified category of commercial subscribers).

1.8 The tariff for cable TV services for the specified category of commercial subscribers was put under forbearance, to be mutually determined by the parties. The tariff for commercial subscribers not falling in the specified categories and thereby coming under the second category was subject to the same charges as ordinary cable subscribers and thus the ceiling of rates prevailing as on 26.12.2003 was made applicable to them. The tariff amendment order also provided that whenever a commercial cable TV subscriber belonging to either of the two categories uses the programme of a broadcaster for public viewing by fifty or more persons on the occasion of special events at a place registered under the Entertainment Tax Act, the tariff will have to be mutually decided between the parties concerned. The order further provided that a commercial subscriber who falls in the 1<sup>st</sup> category

and has the facility of getting broadcasting services directly from the broadcaster, should be able to receive channels on *à la carte* basis from the broadcaster. To prevent perverse pricing of channels vis-à-vis bouquets, the following pricing conditions were specified:

- (i) maximum retail price of any individual channel shall not exceed three times the average channel price of the bouquet of which it is a part; and
- (ii) the sum of the individual maximum retail prices of the channels included in a bouquet shall not be more than 150% of the maximum price of the bouquet.

1.9 The Explanatory Memorandum to the tariff amendment order dated 21.11.06, *inter alia*, provided the following reasons for categorizing the big hotels as a separate category of commercial subscribers:-

- (i) The big hotels providing variety of services have the capacity to protect their interests and cannot be treated at the same level as that of an ordinary cable consumer or even as that of large variety of commercial establishments which may require protection as that of the ordinary cable consumer.
- (ii) They would ordinarily be in a position to deal with the broadcasters on an even keel in the negotiations.
- (iii) The Authority also noted that *vis-à-vis* the hotels which get a grading on the basis of the services provided, there is no such clear demarcation to identify or demarcate other institutions like hospitals, etc.

1.10 A similar dispensation was made in respect of commercial subscribers in CAS areas by an amendment to the Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff Order, 2006 (6 of 2006), for which a tariff amendment Order was issued on the same day, i.e., 21.11.2006.

1.11 The Civil Appeals filed by the associations [C.A. No.2061 of 2006 and 2247 of 2006] which had been filed against the judgment of the Hon'ble TDSAT dated 17.01.2006, wherein judgment was reserved on 19.10.2006, was finally disposed of by the Hon'ble Supreme Court vide its judgment dated 24.11.2006. The following observations of the Hon'ble Supreme Court in its final judgment are worth mentioning in this context:-

*".....It is one thing to say that TV signals are being used for commercial purpose but it is a question which TRAI has to address itself independently and in exercise of its power under Section 11(2) of TRAI Act. The same having not been done till date, in our opinion, it cannot be contended that a commercial consumer is not a consumer."*

The Hon'ble Supreme Court, in its judgment, further observed: ---

*".....We, therefore, are of the opinion that it would not be correct to contend that the commercial cable subscribers would be outside the purview of regulatory jurisdiction of TRAI. If such a contention is accepted, the purport and object for which the TRAI Act was enacted would be defeated. TDSAT, with great respect, therefore, was not correct in opining that the regulators should also consider whether it is necessary or not to fix the tariff for commercial purposes in order to bring greater degree of clarity and to avoid any conflicts and disputes arising in this regard."*

1.12 The two tariff amendment orders of TRAI, both dated 21.11.2006, were challenged in the Hon'ble TDSAT by way of appeals [Appeal No.17(C) of 2006 - East India Hotel Ltd. Vs TRAI & Ors and Appeal No. 18 (C ) of 2006 - The Connaught Prominent Hotels Limited vs. TRAI & Ors] by the hotels and their associations.

1.13 During the pendency of the said appeals, the Federation of Hotel and Restaurants Association of India (FHRAI) submitted a representation to TRAI raising the following issues:

- (i) hotels or commercial subscribers do not need a separate definition as they are also end-users like ordinary cable subscribers. Additionally, hotels do not charge guests specifically for these services, and there is no difference in the value or quality of the product (signals are the same for all types of users with no differentiation).
- (ii) TRAI in the Explanatory Memorandum to the two Tariff Amendment Orders dated 21.11.2006 had indicated that a key reason for excluding larger hotels (as indicated in the broad categories mentioned in the definition of commercial subscribers supra) from regulation is that these establishments have the capacity to protect their interests and cannot be treated at the same level as ordinary cable subscribers or even other commercial establishments (which are smaller in nature) and may require protection. According to FHRAI, this supposition was arrived at without any proper methodology or analysis. According to them, this argument did not take into account that broadcasters have a monopoly and consumers have no choice but to take a signal. Additionally, as cable TV services are essential for hotels, there is no scope for mutual agreement as the Hotels cannot do without these services.
- (iii) there was no reason for distinguishing hotels from other commercial establishments if such distinctions have not been made for others. In specific, there was no clear reason that had been given for the inclusion of hotels in this

group of commercial establishments, and hence this could be viewed as being discriminatory.

1.14 It was in this backdrop, the Authority decided to include the issues relating to commercial tariffs in its CP on non-CAS tariff dated 25.03.2010<sup>2</sup> and this was also brought to the notice of the Hon'ble TDSAT. Even while the consultation process was going on, the Hon'ble TDSAT passed its judgment on 28.05.2010 in the two appeals filed by the hotels against the tariff amendment orders dated 21.11.2006. The operative portion of the judgment of the Hon'ble TDSAT read:

*"We, therefore, are of the opinion that it is a fit case where the impugned orders are required to be set aside. We direct accordingly. We, however, do not wish to issue any direction with regard to the refund of any amount but we would request the Authority to consider the case of commercial establishments once over again in a broad based manner".*

1.15 Thus, the sub-classification of commercial consumers into two categories was struck down by the Hon'ble TDSAT. Aggrieved by the TDSAT judgement dated 28.05.2010, M/s ESPN Software India Pvt. Ltd. filed an appeal (CA No. 6040-41 of 2010 -M/s ESPN Software India Pvt. Ltd. Vs TRAI and Ors.) in the Supreme Court mainly on the grounds that the reasoning adopted by TRAI to exclude certain category of hotels from the purview of the tariff order cannot be said to be arbitrary for the reasons that the excluded category are big hotels and that they have the capacity to protect themselves and that cable charges form an insignificant portion of the revenue of these hotels. One of the grounds for appeal was that the Authority had already initiated consultation process on the issue of tariff for commercial subscribers and this fact was brought to the notice of the Hon'ble TDSAT. However, ignoring these facts, TDSAT had set aside the impugned tariff orders, thus creating a vacuum. On 16.08.2010, the Supreme Court passed an interim order on the appeal stating that *"there shall be ad-interim order of stay of the impugned judgment of TDSAT till further directions"*.

1.16 The Hon'ble Supreme Court in its order dated 16.04.2014, in CA No. 6040-6041 of 2010 with CA Nos. 8358-8359 of 2010 & 10476-10477 of 2010, upheld the Hon'ble TDSAT judgment and ordered as under:

*"Upon hearing the learned counsel and looking at the impugned judgment, we see no reason to interfere with the said judgment and, therefore, confirm the same. The civil appeals are dismissed... However, we direct that for a period of three months, the impugned tariff, which is in force as on today, shall continue. Within the said period, TRAI shall look*

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<sup>2</sup> Consultation paper on Tariff Issues related to Cable TV Services in Non-CAS Areas; dated 25.03.2010

*into the matter de novo, as directed in the impugned judgment, and shall re-determine the tariff after hearing the contentions of all the stake holders..."*

### ***Differential Tariff for Subscribers***

1.17 As mentioned in the 'Introduction' the TV services can either be used for personal/ domestic consumption of the subscriber or be used for the benefit of the clients/customer of the subscriber for the furtherance of the business interests of its commercial establishment. In the second case it also, directly or indirectly, builds in a cost towards the clients/customers for the TV services. In view of this fact, clear and separate definitions for the two categories of subscribers was put in place in order to lay down a comprehensive regulatory framework with respect to tariffs for these two categories. The first category was referred to as 'ordinary subscribers' and the other one as 'commercial subscribers'.

### ***Impact of Digitisation***

1.18 Before we discuss the issues related to tariff for broadcasting and cable TV services applicable for commercial subscribers, it would be prudent to take note of the fact that implementation of Digital Addressable Cable TV Systems (DAS) i.e. digitisation of the cable TV sector is underway in the country, in a phased manner, in four phases. The cut-off dates of the first two phases which cover approximately 30% of the total cable TV universe are already over. Also the first two phases cover the four metros and 38 major cities. The fourth and final phase is scheduled to be completed by December 2014. This would bring sun set of analog TV services in the country.

1.19 Digitisation addresses the capacity constraints and brings in complete transparency in the business transactions, opens up new business avenues for the service providers in the form of new innovative and interactive value added services, triple play including broadband etc. It also ensures variety and quality of service to the consumers along with effective choice to choose the desired services and pay accordingly. All these factors combined are great enablers for bringing in investment and competition. This would lead to market driven pricing based on transparent parameters and actual consumption of services. This would lead to organic growth in the sector, benefitting all the stakeholders, including the consumers.

1.20 In fact, in the present tariff regime, laid down for the broadcasting and cable TV services offered through digital addressable systems, the Distribution Platform

Operators (DPOs) namely Multi System Operators (MSOs), Headend-in-the-Sky (HITS) operator, Direct-to-Home (DTH) or IPTV operator, have been given the freedom to price and package the channels being offered to the consumers at the retail level, subject to certain conditions. It is mandatory that the service provider offers all channels, available on its platform, on *à la carte* basis and specify the maximum retail price for each channel, as payable by the ordinary subscriber. In addition to this, service providers are free to offer bouquet (packages) of channels. They can package and price their channels as per their business plan, subject to certain conditions, prescribed in the said tariff order, as explained below:

- a. In respect of retail tariff for DAS, every multi system operator (MSO) is required to offer a package of a minimum of one hundred free to air (FTA) channels as basic-service-tier (BST) including the prescribed channels of Prasar Bharati. If a subscriber chooses to subscribe only FTA channels, he can either choose the BST or any combination of up to 100 FTA channels, available on the operator's platform, in lieu of the BST offered by the MSO. For this, the operator can charge a maximum of Rs. 100/- per month (excluding taxes). However, as far as the *à la carte* pricing of FTA channels is concerned, the DPOs are free to price such channels subject to the condition that the channels are uniformly priced.
- b. The said tariff order also provides that a subscriber of DAS is free to subscribe to BST or/ and one or more pay channel or only FTA channels or only pay channels or pay channels and FTA channels. In case, a DAS subscriber opts for one or more pay channels, in *à la carte* or bouquet or a combination of *à la carte* and bouquet, with or without BST or other FTA channels, the service provider can specify a minimum monthly subscription not exceeding Rs. 150/- per month (excluding taxes). However, if the total value of the channels/bouquets opted by the subscriber exceeds the said limit, then the actual subscription charges are to be paid by the subscriber.
- c. In other addressable platforms such as DTH, a subscriber is free to subscribe to channels on *à la carte* basis or on bouquet basis or a combination thereof. The tariff order provides that a service provider can charge a minimum subscription amount from a subscriber which cannot exceed Rs. 150/- (exclusive of taxes) per month per subscriber towards channels chosen by the subscriber. However, if the total value of the channels/bouquets opted by the subscriber exceeds the said limits, then the actual subscription charges are to be paid by the subscriber.

- d. If a DPO chooses to offer pay channels only on *à la carte* basis, there are no conditions on pricing of channels. However, if channels are also offered in the form of bouquets, a DPO is required to comply with 'twin conditions' which define a set of relationship between the *à la carte* rate of channels, forming part of the bouquet, and the bouquet rate.

### ***Defining a Commercial Subscriber***

- 1.21 Coming back to the subject matter, the first and foremost requirement would be to define a commercial subscriber. Since a commercial subscriber would be the one who utilizes the subscribed TV services at its commercial establishment, the same needs to be first defined appropriately.
- 1.22 Commercial establishment has been defined in various Shops and Establishments Acts, enacted in different states.

#### **As per the Delhi Shops and Establishments Act, 1954:**

*"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, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952 (35 of 1952), educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (43 of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment;"*

*"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 workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or a commercial establishment;"*

#### **The Bombay Shops and Establishments Act, 1948**

*"Commercial establishment" means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business,*

*trade or profession ^and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes] a society registered under the Societies Registration Act, 1866 (XXI of 1860), and a charitable or other trust, whether registered or not, which carries on [whether for purposes of gain or not] any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;"*

*"Shop" means any premises where goods are sold, either by retail, 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;"*

#### **As per the Gujarat Shops and Establishments Act, 1948**

*"Commercial establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860.), and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;"*

*"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;"*

- 1.23 Taking cue from the above definitions, possible definitions for ‘commercial establishment’, ‘shop’ and ‘commercial subscriber’, in the context of present consultation may be as under:

**“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;”

- 1.24 In the above definitions, the underlying idea is to shift the focus from the “end use” concept (i.e., whether the signals are put to use for domestic purpose or for the benefit of visitors, members, etc.) and, instead, define a commercial subscriber as a commercial establishment which avails the broadcasting service or cable service from broadcaster or a DPO, as the case may be. In order to ensure that only such commercial establishments which are engaged in commercial activities for private gain are covered by the definition, the term “commercial establishment” has also been defined.
- 1.25 It may also be noted that as per the proposed definition of ‘commercial subscriber’, the TV signals can be obtained by the commercial subscriber either from any of the DPOs or from the broadcaster directly. With implementation of DAS, it is natural that the TV signals will have to be distributed in the digital and encrypted form till

the end viewer. 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. However, the commercial subscriber, unlike DPO, cannot re-transmit the TV signals to any other subscriber.

#### **Issue for Consultation**

- 1. Do you agree with the definitions of 'commercial establishment', 'shop' and 'commercial subscriber' as given in para 1.23?**
- 2. If the answer is in the negative, alternate definitions with proper justification may be suggested.**

#### *Categorisation of Commercial Subscribers*

1.26 The commercial subscribers are of different kinds, varying on the basis of their size of business; paying capacity of their clients; objectives of the business; extent to which the TV services contribute to the same; etc. Therefore, one view could be that commercial subscribers may be further sub-categorized into groups of similarly placed entities. However, there could also be a view that given the wide range of parameters on the basis of which further sub-categorization may be done, it may not be practically feasible to work out a comprehensive list of similarly placed entities. This being the case, any such sub-categorization will be open to objections by different stakeholders depending upon their interests. From the details provided under the heading "Background to evolution of category of and tariff for Commercial subscribers", it may be seen that sub-categorization has been a major bone of contention resulting in litigation in the past.

#### **Issue for Consultation**

- 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.**

#### *Manner of Offering to the Commercial Subscribers*

1.27 Another relevant aspect is the manner in which the TV signals are made available to the commercial subscribers. The TV signals can be made available by the

broadcasters directly or through any of the DPOs. There could be following possible models:

- i. Only the broadcaster publishes the rates for commercial tariff in the form of RIO in accordance with the laid down regulatory framework for the same. Such RIO shall form the basis for finalizing the agreements with commercial subscribers. The commercial subscribers will have to 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 broadcasters shall have their own agreement with the DPO, based on mutual negotiations. In case the commercial subscribers have their own digital headend and would like to take signals directly from the broadcaster, the RIO of the broadcasters should also have distinct provisions for such commercial subscribers also.
- ii. The second possibility is that, the DPO publishes the rates for commercial tariff in the form of RIO in accordance with the laid down regulatory framework for the same. Such RIO shall form the basis for finalizing the agreements with commercial subscribers. The commercial subscribers will have to negotiate with the DPOs and once the negotiations are settled and the agreements are in place the DPOs shall supply the signals to the commercial subscribers. The DPOs shall have their own agreements with the broadcasters based on mutual negotiations.
- iii. The third model could be a combination of the above two models. In this model both the above options are available to the commercial subscribers. The DPOs and the broadcasters both publish the RIOs and there will be competition amongst the DPOs as well as between DPOs and broadcasters. The commercial subscribers will have more flexibility and options for negotiations to get competitive rates.

#### **Issues for Consultation**

- 4. Which of the models, discussed in para 1.27 above, 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.**

#### ***Tariff for Commercial Subscribers***

- 1.28 The next logical issue is that what should be the 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.

1.29 The first alternative is to treat both commercial and ordinary subscribers alike. With respect to tariffs for the TV services, there could be a view that the two categories of subscribers may not be treated at par as the commercial subscribers utilize the TV services for commercial considerations. However, there may be a counter view in this regard, claiming that the ultimate end consumer is the same person only the place of viewing varies. Thus, there should not be any tariff differentiation.

1.30 In case of second alternative, a linkage could be in terms of fixing a tariff ceiling for commercial subscribers which is some factor of the tariff ceilings for the ordinary subscribers prescribed at the wholesale level. However, as discussed in para 1.26 above, fixing such a blanket ceiling for all the commercial subscribers may not serve the purpose. Prescribing ceilings would be meaningful only if the commercial subscribers are categorized into similarly placed groups and a ceiling is prescribed for each such group.

1.31 In the third alternative, there may not be any tariff or linkages prescribed for the commercial subscribers. However, to protect the interest of commercial subscribers, broadcasters and DPOs, providing TV signals to the commercial subscribers, certain provisions may be mandated. Some of the provisions could be as under:

- (i) The broadcasters be mandated to offer all their channels on *à la carte* basis and specify their rates. Similarly, DPOs be also mandated to offer all the channels, available on their platform, on *à la carte* basis.
- (ii) In case the channels are also offered in the form of bouquet of channels, relationship for pricing of such bouquets *vis-à-vis à la carte* rate of the channels, forming part of the bouquet, be defined. The relationship could be defined as under:

- (a) In case broadcaster is directly making available the signals to the commercial subscriber
  - i. the sum of the *à la carte* rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and
  - ii. the *à la carte* rate of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part.
- (b) In case DPO is making available the signals to the commercial subscriber.
  - i. In addition to the relationship prescribed in (i) and (ii) above an additional condition, that the *à la carte* rates for all the FTA channels should be uniform, may also be prescribed. This is required since the DPOs generally charge for the FTA channels.
- (iii) Broadcaster and DPO shall publish separate RIO for the commercial subscribers which shall form the basis for agreement between the commercial subscriber and broadcaster/DPO, as the case may be.
- (iv) The RIO, by the Broadcaster and or DPO, as the case may be, for the commercial subscribers would be required to be submitted to the Authority.
- (v) If a commercial subscriber seeks a channel from the broadcaster or a DPO who carries such channel on its network, the broadcaster or the DPO, as the case may be, shall not deny the same subject to technical feasibility

1.32 The fourth alternative is to keep the tariff for commercial subscribers under forbearance. As discussed, digitization will bring in adequate investment and healthy competition. This will lead to market driven pricing based on transparent parameters and actual consumption of services. Further, from the tariff stipulations for the ordinary subscribers served through digital addressable systems, it can be seen that greater the choice offered to the consumer, more is the freedom a DPO enjoys in pricing its offerings and in the ultimate scenario where the consumer has total choice i.e. pay channels are offered in *à la carte* form, the DPO enjoys total freedom in pricing the channels. Furthermore, the niche channels

such as HD TV channels, and also advertisement free channels have been kept under tariff forbearance.

- 1.33 There has been an exponential growth in the number of channels in the last few years. As a result, many popular channels of different broadcasters are available in almost all the genres, thereby, creating competition amongst the broadcasters. Similarly, on the DPOs side, there is sufficient competition as there are 6 pay DTH players already operating in the market, along with a number of MSOs. A HITS operator has also started distributing TV channels and another operator has obtained license to provide services. Along with all these factors, if the *à la carte* offering of channels is also mandated to offer channels in *à la carte* form, every commercial subscriber is expected to have a viable option to negotiate with broadcasters/DPO and obtain channels required for its commercial needs. Therefore, there could be a view that the tariff for commercial subscribers be kept under forbearance.

#### **Issues for Consultation**

- 5. In your view which of the 4 alternatives mentioned in para 1.28 above, should be followed? Please elaborate your response with justifications.**
- 6. In case your answer is “alternative (ii)” as mentioned in para 1.28 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.**

## Chapter II

### Summary of 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;"

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

## 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.

## 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.

## 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.
  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.

### List of Acronyms

<b>Abbreviation</b>	<b>Description</b>
BST	Basic Service Tier
CAS	Conditional Access System
CP	Consultation Paper
DAS	Digital Addressable Cable TV System
DPO	Distribution Platform Operator
DTH	Direct-to-Home
FHRAI	Federation of Hotel and Restaurants Association of India
FTA	Free-to-Air
HD TV	High Definition TV
HITS	Headend in the Sky
IPTV	Internet Protocol Television
MSO	Multi System Operator
RIO	Reference Interconnect Offer
TDSAT	Telecom Disputes Settlement and Appellate Tribunal
TRAI	Telecom Regulatory Authority of India

**Tariff Amendment Order for Non CAS Areas dated 21<sup>st</sup> November, 2006**

TELECOM REGULATORY AUTHORITY OF INDIA

NOTIFICATION

New Delhi, 21<sup>st</sup> November, 2006

F. No1-19/2006 – B&CS: In exercise of the powers conferred upon it under Subsection 1(2) and sub clauses (ii), (iii) and (iv) of clause (b) of Sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997) read with Notification No.39 (S.O. No. 44(E) and 45 (E) dated 09/01/2004) issued from file No.13-

1/2004- Restg by the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of Sub section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997, the Telecom Regulatory Authority of India, hereby amends the Telecommunication (Broadcasting and Cable) Services (Second) Tariff Order, 2004 (6 of 2004) (hereinafter called the “Principal Order”) as follows, namely:

1. Short title, extent and commencement:

i) This Order shall be called “The Telecommunication (Broadcasting and Cable) Services (Second) Tariff (Seventh Amendment) Order 2006, (8 of 2006)”

ii) This Order shall apply throughout the territory of India.

iii) This Order shall come into force on the date of its publication in the Official Gazette

2. In the Principal Order, the existing sub-clause (f) of Clause 2 and the entries relating thereto shall be deleted and substituted by the following sub-clause (f) and entries relating thereto;

“(f) ‘Charges’ means and includes

(i) for all ordinary cable subscribers and commercial cable subscribers except those specified in (ii) below, the rates (excluding taxes) payable by one party to the other by virtue of the written/oral agreement prevalent on 26<sup>th</sup> December, 2003. The principle applicable in the written/oral agreement prevalent on 26<sup>th</sup> December 2003, should be applied for determining the scope of the term “rates”.

(ii) for hotels with a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and having 50 or more rooms, the charges specified in (i) above shall not be applicable and for these subscribers the charges would be as mutually determined by the parties.

Explanation: It is clarified that in respect of programmes of a broadcaster, shown on the occasion of a special event for common viewing, at any place registered under the Entertainment Tax Law and to which access is allowed on payment basis for a minimum of 50 persons by the commercial cable subscribers, the tariff shall be as mutually determined between the parties.”

3. In the Principal Order, the existing sub-clause (a) of clause 3 and the entries relating thereto shall be substituted with the following sub-clause (a) and entries relating thereto;

“(a) Ordinary cable subscribers and commercial cable subscribers (except hotels with a rating of three star and above, heritage hotels (as described in the guidelines for classification of hotels issued by Department of Tourism, Government of India) and any other hotel, motel, inn, and such other commercial establishment, providing board and lodging and have 50 or more rooms) to cable operators, multi system operators or broadcasters as the case may be”

4. In the Principal Order, after the existing clause 3(c) and entries relating thereto, the following explanations and entries relating thereto, namely

Explanation -1 and Explanation -2 shall be inserted:

“Explanation 1: for the purpose of clause 3(a) above the question whether the commercial cable subscriber will pay the cable operator/multi system operator/the broadcaster will be determined by the terms of agreement(s) between the concerned parties, namely

i) broadcaster(s)

ii) MSO(s) and cable operator(s) who have been authorized to provide signals to the commercial cable subscribers on the one hand, and the commercial cable subscribers on the other.

Explanation 2 : for the purposes of clause 3(b) and (c) above the charges will be modified to take into account the payments to commercial cable subscribers where appropriate ”

5. In the Principal Order, after the existing second proviso below clause 3(c) the following proviso shall be inserted

“Provided further that in the case of a commercial cable subscriber, the charges in respect of whom by virtue of clause 2(f)(ii) read with clause 3(a), is determinable as per mutual agreement between the parties, having facilities to get broadcasting services directly from the broadcaster, the later shall at the option of the commercial cable subscriber be obliged to provide channels on *à la carte* basis. For such consumers whenever bouquets are offered, these shall be subject to the following conditions:

I The maximum retail price of any individual channel shall not exceed three times the average channel price of the bouquet of which it is a part;

Explanation: if the maximum retail price of a bouquet is Rs. “X” per month and the number of channels is “Y” then the average channel price of the bouquet is Rs. X divided by Y

II The sum of the individual maximum retail prices of the channels shall not be more than 150% of the maximum retail price of the bouquet.”

6. In the Principal Order, the existing clause 3A and entries relating thereto shall be deleted.

7. Explanatory Memorandum:

This Order contains an Explanatory Memorandum attached as Annex- A.

By Order  
(R.N Choubey)  
Advisor (B&CS-II)