

Reliance Digital TV's Response to the Consultation Paper on "Tariff Issues Related to Broadcasting and Cable TV Services for Commercial Subscribers"

- (I). This is with reference to the Consultation paper on Tariff Issues related to Broadcasting and Cable TV Services for Commercial Subscribers, which has been floated by TRAI seeking views of the stakeholders.
- (II). At the outset, we welcome the opportunity to comment on issues concerning tariff for commercial subscribers. Below are the question wise comments of Reliance BIG TV Limited. We believe that TRAI would consider the same before coming up with a final view.

Comments on Issues for Consultation

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.

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.

Definition of Commercial Subscribers:

Before commenting on the definition of commercial subscribers as proposed by TRAI in this consultation paper, it is necessary to analyse whether there is a requirement to differentiate the commercial subscribers from the ordinary ones or not.

The services which the ordinary subscribers receive and what is being offered to the consumers of the commercial establishments are identical in nature. The only difference is that in case of ordinary subscribers the services are for the purpose of self use whereas in case of commercial establishments it is meant for the purpose of their customers, thus, the end user remains same. The signals remain same irrespective of whether it is being provided to the ordinary subscribers or the commercial establishments.

The availability of television services may add value to the services offered by the hotels/commercial establishments but does not account for any significant commercial benefits *in toto*.

Availability of television services in the hotels/commercial establishments have become quite common these days and being treated as basic/common entertainment mode offered by the hotels. Also, no hotel/commercial establishments advertise regarding the offering of popular television channels in their hotel to attract the customers.

Further, as digitization is about to enter in its last phase, the question of under reporting the number of connections does not arise and hence every stakeholders involved in providing the television services to any commercial establishments will get their fair share.

Thus in our opinion, the separate definition of commercial subscribers should not be prescribed and the existing definition of Commercial subscribers should be done away with. There should not be a categorization of subscribers as ordinary and commercial and everyone should be treated equally.

Broadcasters direct engagement with Commercial Establishments:

The broadcasters have been defined as the entity having the permission of up-linking or downlinking, as may be applicable for its channels whereas the distribution platform operators e.g. DTH, cable operators have been defined as entity that receives programming services from the broadcasters and re-transmits the same to their subscribers.

If a commercial establishment will be allowed to receive signals directly from the broadcasters, that means the commercial establishments will manage their own network installed in their

premises themselves. The definition of cable operator, cable service and cable television network, as given in the Cable Television Network Rule 1994 states that:

'cable operator' means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television networks.

'cable service' means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals .

'cable television network' means any system consisting of a set of closed transmission paths and associated signals generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;

Thus, from above definition, if the commercial establishments receive signals directly from the broadcasters, then they will become *de facto* LCO, since they will be responsible for the management and operation of the network which they will build to provide the television services across their premises. Hence, it might be necessary for them to be registered as cable operator in view of the above definition which is unwarranted.

By allowing a broadcaster to reach the commercial establishments directly or through a particular cable operator will create a monopoly in the market and will also defeat the purpose of having effective competition and level playing field at retail level.

Thus, we suggest that the broadcasters should not be allowed to directly access the subscribers irrespective of whether the services being used at a commercial establishment or not. Also, the existing regulatory framework applicable in case of ordinary subscribers should be applicable for the commercial establishments.

Notwithstanding the above submission, if Authority still feels that there is a requirement of defining commercial subscribers separately from the ordinary subscribers, then TRAI should not allow the broadcasters to directly provide the programming services to the commercial establishments as reasoned above. **The distribution platform operators should be the entity from whom the commercial establishment can get the television services for their customers.**

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.

The manner of offering the television services to the normal subscribers is that the DPOs acquire the subscribers based on their different offerings and sign the agreement with the broadcasters to provide their content to the consumers and in return pass the part of the subscription fee as collected from the consumers to the broadcasters. This model of television service offering is regulated by TRAI vide their tariff orders both at the wholesale level (between broadcasters and DPOs) and at the retail level.

As explained in the response of Q1-3 above, there is no need for a distinction for the commercial establishments as a commercial subscriber and the existing model of offering television services to the normal subscribers should be followed for all the commercial establishments.

Howsoever, if TRAI distinguishes amongst the subscribers as ordinary and commercial, then the option (ii) that the commercial establishments should receive the channels from the DPOs as per the rates offered by different DPOs in accordance with the existing regulatory framework. This will allow the commercial establishments to use the benefit of competition at the retail level and the DPOs will negotiate with the broadcasters within the existing regulatory framework to offer the broadcasters' channels to such commercial establishments. If authority adopts this practice, then it will create a level playing field amongst all the DPOs at the retail level and also restrict the broadcasters to envisage their dominance in the television market.

The second model is the most conducive model to follow and is similar to the manner in which the ordinary cable subscriber can receive the channels for viewing. The DPOs should liaise to distribute and provide the channels to the commercial subscriber- as is being proposed and implemented by TRAI even for ordinary subscribers. We are of the view that the basic framework and principles of distributing and providing television channels to the subscribers should be similar irrespective of whether it's an ordinary or a commercial subscriber.

Drawback of other proposed models:

Option (i): Broadcasters signs agreement with the commercial establishments----

If Authority adopts option (i), it will create monopoly in the market as the broadcasters will sign the agreements with the commercial establishments and then it would be up to the discretion of broadcasters to finalise the DPO.

Further, if any commercial establishment would like to have different channels from different broadcasters, then the broadcasters may create agents who will sign the deal with the commercial establishments for their channels which will defeat the purpose of TRAI's own regulations for such distribution agencies.

Also, the option (i) will create a vertical integration in the market between the broadcasters and the DPOs who will be assigned by the broadcasters to supply their signals to the commercial establishments.

Option (iii): The DPOs and the Broadcasters both may allow offering channels to the commercial establishments

If authority adopts this option, then though notionally it will create more competition and provide more flexibility to the commercial establishments, but in practice, broadcasters will deny to sign agreements with the DPOs for commercial establishments. In this case, broadcasters, being in a dominant position, will kill the competition they may face from the DPOs, which will defeat the sole purpose of this model.

Hence, we suggest Authority that there is no requirement of having a classification amongst subscribers as ordinary and commercial and should done away with the existing definition of commercial subscribers. However, if Authority still feels the necessity of such classification then in our opinion, the model (ii) as discussed in Para 1.27 of the consultation paper should be prescribed for distribution of the TV signals to the commercial establishments.

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.

In our view, option (i) i.e. the tariff for commercial subscribers should be same as that for the ordinary subscribers, should be followed. As stated in our response of earlier issues, the Authority should not differentiate amongst the subscribers and both (the ordinary and the commercial) should be treated alike.

As the digitization of cable industry is entering in its last phase, the occurrence of under reporting of subscribers by the cable operators is minimal. The broadcasters will get their fair share of subscription revenue based on the number of connections set up by the commercial establishments.

The existing regulatory framework which regulates the wholesale and retail level for ordinary subscribers should be followed for the commercial establishments.

Drawbacks of other alternatives:

(ii) The tariff for commercial subscribers has a linkage with the tariff for ordinary subscribers:

Fixing a linkage between the existing tariff regime and one for the commercial establishments may not serve the purpose and neither it is practically feasible. If Authority would like to treat the commercial establishments, different from the ordinary subscribers then there would be a variety of commercial establishments who cannot be grouped along. Hence, the linkage between the existing tariff framework and one for the commercial establishments needs to be different for different classes and groups of commercial establishments. It may not be feasible to create a comprehensive list of groups amongst the commercial establishments and prescribing any linkage would only be feasible if the commercial establishments could be categorised inclusively. Authority has also recognized this fact and has stated that the sub-categorization has been a

major bone of contention resulting in litigation in the past. Thus, in our view, this option is not feasible and should not be adopted.

(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 stakeholder:

If Authority prescribes the protective measures as illustrated in Para 1.31 where there is a relation between the a-la-carte and bouquet rates but since no ceiling of rates at wholesale level will be prescribed, the broadcasters will be controlling the market of commercial establishments. Within the prescribed relation between the a-la-carte and bouquet rates, the broadcasters, being a dominant in the market, can fix any rate for their channels for DPOs and commercial establishments. This will hamper the sole purpose of TRAI regulations which is to create a level playing field in the market. As far as retail level is concerned (between DPOs and commercial establishments), there is enough competition to protect the interest of these establishments and provide them flexibility to choose the best offerings from the DPOs.

Also, the problem as described in case of alternative (ii) will again arise as there could be different rate (a-la-carte as well as bouquet) for different categories of commercial establishment which may not work suitably for the market and will result in litigations.

(iv) The tariff for commercial establishments is kept under total forbearance:

If Authority opts for total forbearance and will allow the broadcasters to fix the wholesale price of channels/bouquets to be offered for the commercial establishments, it will increase the control of the broadcasters in the television services. Authority, while notifying the Tariff Order for Addressable Systems, has itself observed that each channel is unique in terms of content and in that sense the distributor (and commercial establishments in this case) is limited in his choice of channels. Based on this observation and the data available, Authority has fixed a ceiling at the wholesale for smooth functioning of the sector and to avoid any type of monopoly in the market. **Thus, forbearance at the wholesale level may not be feasible and will hinder the rights of the DPOs as well as these commercial establishments.**

However, **at the retail level, the tariffs prevailing in the market will always be very competitive and the market forces are operating very effectively.** Thus, the forbearance at retail will easily work and drive the market efficiently even for the commercial establishments.

Thus, the forbearance should be continued at retail level and not at the level of wholesale, hence, option of total forbearance (i.e. at wholesale level) should be avoided and prevailing regulatory framework should be continued with the commercial establishments.

In view of the above, it is requested that Authority should done away with the classification of subscribers as ordinary and commercial and the existing regulatory framework for ordinary subscribers should be followed for the commercial establishments. If Authority still wishes to classify the subscribers as ordinary and commercial, then the alternative (i) should be adopted to prescribe the tariffs for commercial subscribers.