

(By E-mail)

July 31, 2015

Advisor (B & CS)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg,
New Delhi-110 002

Sub: Consultation Paper on “Tariff Issues related to Commercial Subscribers”

Kind Attn: Mr Wasi Ahmed

Dear Mr Ahmed,

At the outset we appreciate the opportunity given by the authority to provide our comments on the Consultation Paper referred hereinabove. In this context, we wish to make the following submissions with respect to the consultation raised there under:

We are enclosing our comments in this respect for your reference and records and it may be noted that the above views/ recommendations/ submissions/ suggestions have been made by us without prejudice to our legal rights and contentions with regard to jurisdiction and other legal issues and we reserve our right to modify our response at any time.

Thanking You,

For NEO Sports Broadcast Private Limited

Sd/-

Mukul Sharma
(C.S. and Vice President- Legal & Regulatory Affairs)

Encl: As above

TRAI CONSULTATION PAPER

No. 3/2015

ON

**“TARIFF ISSUES RELATED TO
COMMERCIAL SUBSCRIBERS”**

Dated 14th JULY 2015

RESPONSE OF

**NEO SPORTS BROADCAST PRIVATE
LIMITED**

Reply to Consultation Issues:

- 1. Is there a need to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals?**

***NEO'S Views:** It is quite consequential to define and differentiate between domestic subscribers and commercial subscribers for provision of TV signals.*

A domestic subscriber obtains the programming service of a service provider for the sole purpose of his entertainment or his family's or guests' without any intention of gaining monetary or commercial benefit.

Whereas Hotels, Bars, Pubs, Restaurants, Saloons, Hospitals, Shops, Malls, Café's, Clubs, Waiting rooms at Airports, Fitness Centers, Spas etc. who come under the purview of commercial subscriber obtain the programming service of a service provider and offer it as an additional amenity with the aim of earning monetary and commercial benefit. It cannot be seriously disputed that the provision of that service has an influence on the commercial subscriber's/commercial establishment's standing and consequently, on their services.

Moreover, it is irrelevant to put across a stand that whether or not the guests at the commercial establishment are interested in watching the programming service of the service order; what counts is whether they have access to it. This concept is aptly applicable on the premises of Hospitals, Restaurants, Waiting Rooms at Airports, Fitness Centers, Salons etc. In case of Hotels, it is necessary to take into account not only guests/customers in their rooms but also guests/customers in any other area of the hotel who could make use of a television set installed anywhere on the premises.

Another factor contributing to the differentiation of the two aforesaid terms is the atrocious difference in the prices charged for the product offered by Commercial Subscriber/Commercial Establishment in comparison to such product's Maximum Retail Price (MRP). For example, a bottle of mineral water priced at Rs. 20 (MRP) is offered to the guest/customer by the Commercial Subscriber/Commercial Establishment for Rs. 80-100. Such an act is solely done for commercial benefits. Accordingly, it would be diabolical on the part of the Commercial Subscriber to refuse to pay the service provider of programming service the rate mutually decided by both the parties.

- 2. In case such a classification of TV subscribers is needed, what should be the basis or criterion amongst either from those discussed above or otherwise? Please give detailed justification in support of your comments.**

NEO'S Views: *In our view, the tariff rates for commercial subscribers should be kept into total forbearance and subsequently sub- classification of commercial subscribers is not required at the very onset.*

However, if it is essential to protect the interests of small commercial subscribers in terms of financial status and size of commercial establishments, the exemption from application of commercial tariff rates should be restricted to the use of one television set of not more than 32" inches screen in the entire premises of such commercial establishment. Although, hotels i.e. heritage, resorts, motels, lodge, whether star rated or not shall remain exclusive to such exemption.

The reason for suggesting the aforesaid exemption is to protect the interests of those stakeholders who cater to small number of guests i.e. maximum 8-10 at a particular point of time.

However, Hotels are excluded from the exemption due to the fact that a television set is always a part of the experience/luxury package offered by a Hotel to a guest/customer. Therefore, it would be abrupt to charge a guest a substantial sum for the aforesaid package, of which a television set is a part, without creating a level playing field for the service provider of programming service i.e. paying the broadcaster a rate which is mutually decided between both the parties.

As mentioned in our reply to the aforesaid issue, it is necessary to take into account not only guests/customers in their rooms but also guests/customers in any other area of the hotel who could make use of a television set installed anywhere on the premises.

3. Is there a need to review the existing tariff framework (both at wholesale and retail levels) to cater for commercial subscribers for TV services provided through addressable systems and non-addressable systems?

NEO'S Views: *It is advisable that the tariff (both at wholesale and retail level) for commercial subscribers should be fixed on the basis of forbearance.*

Provided that "Must Provide" and "Must Carry" provisions for signals of the service provider are made mandatory on the part of the broadcaster i.e. service provider and the commercial subscriber who is registered as a cable operator.

Provided that at least 50% of the number of channels of the service provider, in case there are more than one channel, shall come under the "Must Provide" and "Must Carry" provisions.

The aforesaid provisions shall also be applicable if the signals of the broadcaster are given to the commercial subscriber vide an independent registered cable operator/DTH Operator/HITS Operator/IPTV Operator.

This way neither the interest of the service provider of channels nor the commercial subscriber nor the guest/customer of the commercial subscriber shall be affected. Both the parties shall be required as per the regulation to execute the agreement but at a rate favorable to each other.

- 4. Is there a need to have a different tariff framework for commercial subscribers (both at wholesale and retail levels)? In case the answer to this question is in the positive, what should be the suggested tariff framework for commercial subscribers (both at wholesale and retail levels)? Please provide the rationale and justification with your reply.**

NEO'S Views: In the light of our comments on the above points it is irrelevant to give our views on this point.

- 5. Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimise disputes and conflicts among stakeholders?**

NEO'S Views: The present framework shall become more transparent and accountable in the value chain to minimize disputes and conflicts among stakeholders if our view mentioned in Issue No. 3 is brought into effect.

- 6. In case you perceive the present framework to be inadequate, what should be the practical and implementable mechanism so as to ensure transparency and accountability in the value chain?**

NEO'S Views: In the light of our comments on the above points it is irrelevant to give our views on this point.

- 7. Is there a need to enable engagement of broadcasters in the determination of retail tariffs for commercial subscribers on a case-to-case basis?**

NEO'S Views: *If the tariff fixation is permitted on the basis of forbearance then, in that event engagement of broadcasters in the determination of retail tariffs for commercial subscribers on a case to case basis is not required.*

However, if a particular formula or tariff rate fixation is done by the Hon'ble Authority then, in that scenario engagement of broadcasters shall become essential from time to time on a case to case basis.

8. How can it be ensured that TV signal feed is not misused for commercial purposes wherein the signal has been provided for non-commercial purpose?

NEO'S Views: *When an agreement is executed between a service provider and the commercial subscriber registered as cable operator or a service provider and a registered cable operator/DTH Operator/IPTV Operator/HITS Operator, a voluntary declaration should be made with regard to the nature of connection i.e. whether ordinary or commercial.*

In case of addressable systems, by way of SMS and CAS reports and fingerprinting the events of piracy could be easily detected. However, in case of non-addressable systems, the ground surveys and effective reporting shall play a crucial role.

9. Any other suggestion which you feel is relevant in this matter. Please provide your comments with full justification.

NEO'S Views: *In our view the classification of TV Subscribers can also be done on the basis of whether the services availed by the establishment is incidental to their business or essential with direct impact on its fulfilling its core area of business. For example – a restaurant's core area of business is eating and any service that is additionally made available which has no direct impact on the food quality is optional.*

In the event they choose to use the "optional" service to enhance their business in any ways then it is clear that they are making use of it for their commercial gains. In such a scenario these services should have the right to charge separately as it is being used for a very clear commercial gain.

Conclusion

It is submitted that the Hon'ble Authority should take congruous and decisive steps at the time of taking a call on the mechanism of tariff rates of commercial subscribers while keeping in mind the welfare of all stakeholders.