

**VIEWS OF DEN NETWORKS LTD, NEW DELHI TO THE  
CONSULTATION PAPER (“CP”) NO. 3 OF 2015 DATED  
14.07.2015 OF TELECOM REGULATORY AUTHORITY  
OF INDIA PERTAINING TO THE TARIFF FIXATION OF  
COMMERCIAL SUBSCRIBERS BELONGING TO CABLE  
AND BROADCASTING SECTOR**

**INITIAL PERTINENT SUBMISSIONS**

1. It is the humble view of the undersigned that the robust, proactive and farsighted regulator is the backbone behind the overall development of any Industry either it is Electricity, Airport, Petroleum or for that matter Broadcasting Industry. It is further elaborated that by overall development it means the all round growth of all the stakeholders, right from the Broadcasters, MSOs, LCOs to the consumers residing in remotest corners of the country.

2. It is also the view of the undersigned that the Regulator while regulating the industry inadvertently may not over regulate. It should be emphasized that ambitious regulations, regulations contradictory/inconsistent with the existing Central Acts

are not framed. If the Regulations are being framed then it should be ascertained in advance whether the Regulations sought to be framed can be easily implemented or the same may lead to creation of stringent difficulties for the market participants who are working towards the objective of achieving digitalization within the prescribed timelines.

3. It is further respectfully stated that the current mood of the industry should be empirically judged by the Regulator before making Regulations. Mood of the industry means the real objectives sought to be achieved in the near future, expectations of the stake holders, problems being faced by the industry players at different layers and whether the objects of the Regulations being framed are matching up with the current objectives of the industry vis a vis its stakeholders. The endeavor of the Regulator should be to monitor the industry and decide whether the Regulation/Tariff Orders sought to be notified are actually required within the current framework of the industry. Regulation should be framed keeping in mind the present situation of all the stakeholders and also keeping in mind the prioritization

with respect to issues which is required under the present circumstances.

4. It is also our view that the Regulator must ascertain whether the Regulation sought to be notified would match the test of judicial scrutiny if challenged before the competent forum of jurisdiction. While doing this, the Regulator should keep in mind the latest applicable Judgments and relevant statutory provisions.

## **SUBMISSIONS PERTAINING TO THE CONSULATION**

### **PAPER IN ISSUE:**

1. After going through the entire Consultation Paper, it seems that the same is the sequitur to the various judicial pronouncements/orders of the Hon'ble Supreme Court, TDSAT and Delhi High Court.

2. It is further stated that as discussed in the CP itself, Hon'ble TDSAT in its last pronouncement on the subject directed TRAI to take holistic view in the matter afresh. It clearly means that the Regulator should look into the fact whether any Tariff Order or Regulation is necessary on the subject at the very first instance.

3. In the humble view of the undersigned, any kind of separate Tariff fixation for the Ordinary and Commercial subscriber seems highly misplaced in the current scenario on the basis of following factual and legal aspects:-

**FACTUAL ASPECTS**

- i) At present, the focus of the entire Broadcasting industry is in achieving 100 % digitization across the country. This process involves lots of planning, manpower, funds and support from the Government including the Regulator. It is respectfully stated that setting up digital control room, procuring set top boxes, maintaining cable lines, getting contents from the Broadcaster itself is a humungous task financially. Not only small independent MSOs but big Pan India DAS Operators are facing huge difficulties in meeting up with the financial requirements stood in front of them.

Keeping this in mind, if there is Tariff Order framed giving different rates for Commercial and Ordinary Subscribers, it may create unwanted

confusion/anxiety in the market and the same may shift the focus of the industry away from Digitization;

- ii) Secondly, Third and fourth phase of DAS is yet to start. If the industry is forced with any kind of Tariff Order pertaining to Commercial and Ordinary subscriber, the same is likely to create a tussle between the different layers of industry and the same may also result into umpteen number of litigations between the stakeholders from all across the country;
- iii) Thirdly, industry has set up itself in a certain fashion over the years. No sudden change should be brought about which could unsettle it so much so that the objective of complete digitization could not be achieved;
- iv) Fourthly, the charges being collected from ultimate consumers either ordinary or commercial, most of the time is the prerogative of the last mile operator. The information is in public domain that there are thousands of Cable Operators all around the country. Supposedly, if the last mile Operators are

not following the Tariff Order, what would be the penal consequences of the same?

- v) Fifthly, it would be in the interest of all if the Regulator conducts an elaborate study of the existing and upcoming DAS market and then comes out with a comprehensive scheme related to Tariff fixation.

### **LEGAL ASPECTS**

- i) TRAI Act, 1997 and Cable TV Network Regulation Act, 1994 are the main legislation which are governing the Broadcasting Industry. It is with utmost humility stated that nowhere in the aforesaid Acts, there has been any segregation between the commercial and ordinary subscribers. Moreover, DAS Regulations 2012 also does not contemplate any kind of segregation between the two. In view of the same, any exercise by the Regulator pertaining to creation of a class within the term “subscriber” would not only be an exercise overreaching the legislative powers of

the Parliament but also be a colorable endeavor to achieve a thing indirectly which cannot be achieved directly;

- ii) Broadcasting and Cable Industry is surviving on the basis of Interconnections Regulations as amended from time to time. Considering the current scenario, it is requested to the Hon'ble Regulator to wait till the completion of digitization and allow time to the industry as there is no urgent or immediate requirement to frame a Tariff Order which would create a regime which has not even been contemplated in the parent Acts or Regulations;
- iii) India is a big country comprising not only of metropolitan cities but also remote villages. Having the same thing in mind, any kind of criteria laying down the meaning of commercial and ordinary subscriber would not fit into the set up of the entire country especially when the industry is in transition phase from analogue to digital regime;
- iv) Rationale behind any enactment is of utmost importance. Whatever may be the intention of

the Regulator behind creating ordinary and commercial subscriber, the same should not become a hindrance towards achieving 100 % digitization.

### **SUMMARY**

In view of the above, we submit that the:-

- i) Regulator should help the stakeholders with its expertise and advice to achieve 100 % digitization.
- ii) Regulator should keep the thought process given in the CP under discussion in abeyance at least till the digitization is not achieved in the entire country.