

**Response of Dish TV India Limited
to the
Consultation Paper dated July 14, 2015
on
“Tariff issues related to Commercial Subscribers”**

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At the outset, Dish TV is of the opinion that since the Appeal against the judgment dated 09.03.2015 (Appeal No. 7 (c) of 2014) of the Hon'ble TDSAT is still pending for the final adjudication by the Hon'ble Supreme Court, it would be appropriate for the TRAI to wait for the final adjudication by the Hon'ble Supreme Court before any Regulation / Tariff order is issued by the TRAI in this regard.

PRELIMINARY SUBMISSION

Dish TV is of the opinion that the ultimate beneficiary of the Channels, whether availed at a residential premises or a Commercial premises is the Ordinary Customer. It is the same content which the customer is watching at his residential premises as well as at any Commercial Premises he visits. Since the content / product is the same, there is no justification for fixing any differential pricing for the Residential Premises or the Commercial Premise. It is a common knowledge that in all of the Commercial establishment, the customer do not go to watch the channels. The provisioning of the channels is only ancillary to the main service of the establishment. Any increased cost of the channels are passed on to the Ordinary Customer. Effectively, an Ordinary Customer ends up paying more for a channel at a Commercial Establishment that what he pays at his home. Such a differentiation falls foul of the Article 14 of the Constitution of India

A. Classification of subscribers:

We continue to maintain our stand, as mentioned in our response to the previous consultation paper dated 11.06.2014. It is stated that in absence of any justification, there should not be any difference between the ordinary and commercial subscribers for the purpose of tariff dispensation and our contention is based on the following reasons:

- a. The ultimate beneficiary of the channels, whether availed by Ordinary Customer or Commercial Customer is the Ordinary Customer. It is a common knowledge that in all of the Commercial establishment, the customer does not go to watch the channels. The provisioning of the channels is only ancillary to the main service of the establishment. The Hon'ble Supreme Court in its judgment dated 24.11.2006 in appeal (Civil) 2061 of 2006 Hotel and Restaurants Association and Anr. Vs Star India Pvt. Ltd. and Ors. has, amongst others, observed as under:

“...The owners of the hotels take TV signals for their customers/ guests. While doing so, they inter alia provide services to their customers. An owner of a hotel provides various amenities to its customers such as beds, meals, fans, television, etc. Making a provision for extending such facilities or amenities to the boarders would not constitute a sale by an owner to a guest. The owners of the hotels take TV signals from the broadcasters in the same manner as they take supply of electrical energy from the licensees. A guest may use an electrical appliance. The same would not constitute the sale of electricity by the hotel to him. For the said purpose, the 'consumer' and 'subscriber' would continue to be the hotel and its management. Similarly, if a television set is provided in all the rooms, as part of the services rendered by the management by way of an amenity, wherefor the guests are not charged separately, the same would not convert the guests staying in a hotel into consumers or subscribers....”

- b. One of the major contention in support of the charging higher from the Commercial Subscribers has been the fact that such subscribers are paying higher tariffs towards consumption of water and electricity. However as the Authority has rightly noticed in the consultation papers that water / electricity are vastly different in nature as compared to TV

signals, either on account of infrastructural requirement or for the reason that the domestic tariffs in case of water / electricity are highly subsidized. Clearly in the case of TV signals there is absolutely no difference either on the infrastructural requirement or quality of services and more so when there is no subsidy for the domestic subscribers, no question arises for having any difference in the tariff between the ordinary subscribers and commercial subscribers.

- c. The provision of TV signals is a telecommunication service which is akin to mobile services, both falling under the same definition under the applicable law/regulation. Therefore since there is no differential tariff for the mobile connections even to a commercial subscribers than an ordinary subscriber, the charges towards provision of TV signals to a commercial subscriber should be same as that of an ordinary subscribers.

In view of the above, we are in consonance with the view that where the TV facility is provided merely as an amenity/convenience in the commercial establishment and where there is no commercial exploitation the said services by the commercial establishments, there should not be any differential charges payable by the commercial establishments. However, if such establishments charge directly or indirectly for watching TV programs, higher charges should be permitted for such cases. For such cases, the rates should be declared by the broadcasters and payment of the same should be made as a preconditions for the commercial establishment for getting any license in order to ensure that there should not be any un-just enrichment by any entity in the value chain. It is stated that the Commercial Establishments (those who do not charge directly or indirectly for watching TV programs) should be able to receive the Channels at the rates prescribed under the Tariff Order for Ordinary subscribers. Any absence of such right in the favour of the Commercial establishment would enable the Broadcasters to misuse the monopolistic positions and charge astronomical rates from the Commercial Establishments. In this regards, it is

pertinent to note that even the Hon'ble Supreme Court, in its judgment dated 24.11.2006, has opined that such an interpretation would defeat the purpose and object for which TRAI was enacted.

In view of the above, our response to the question asked in the consultation papers are as under:

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

Dish TV Response: For the reasons stated in the Preliminary Submissions and in the absence of any legal or logical reasoning, we do not feel that there is any need to create any differentiation between domestic subscribers and commercial subscribers for provision of TV signals. However in case where there is any commercial exploitation by the commercial establishments of the TV programs being made available to its customers/ guests etc. higher charges may be permitted however with a rider that such rates should be predefined.

B. Tariff related issues:

In the existing regulatory framework, both in digital as well as analog regime, the broadcasters are not allowed to provide its signals directly to any premises including any commercial establishment. With the entire country expected to be digitized by 31.12.2016, it is incumbent that like the areas having already been digitized, the commercial subscribers in the remaining areas, currently under analog regime, have also to be taking connection from the DPOs like MSO/DTH/IPTV/HITS operators. We therefore suggest that all the commercial establishments should be brought under one uniform regime

where irrespective of whether the area has been digitized or not, the commercial subscribers should be required to take connections from the DPOs only.

As regards the tariff for the commercial subscribers, as already stated hereinbefore, we are of the opinion that the commercial subscribers should be same as that of ordinary or domestic subscribers except where there is any commercial exploitation by the commercial establishments of the TV programs being made available to its customers/ guests etc. in which case higher charges may be permitted however with a rider that such rates should be predefined.

- 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?**
- 4. Is there is 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.**

Dish TV Response: We do not feel that there is any need to review the existing tariff framework (both at wholesale and retail levels) in relation to the commercial subscribers / establishments both in addressable as well as non-addressable system except to the extent that all the commercial establishments should be brought under one uniform regime of taking TV connections from distributions platforms only like MSO/DTH/IPTV/HITS operators irrespective of whether the area has been digitized or not.

Further, the tariff for commercial subscribers / establishments on each type of platform should be same as that of ordinary subscribers except where the commercial establishment is engaged in commercially exploiting the TV channels unlike where the said facility is provided merely as an amenity to the

visitors/guests etc. For the differential charges on account of commercial exploitation of any TV program, the broadcaster must publish and file the rates for commercial tariff in the form of RIO. Such rates on account of commercial exploitation of any program may be negotiated between the broadcaster and the commercial establishments. However in either case, the connection should be provided by the DPOs only. The broadcaster may collect the differential payment in advance. In fact, to avoid any misuse, the commercial establishments must be made to require a license for such specific programs and payment towards the same, either on RIO rates or on negotiated basis, should be made precondition for the same.

The counter argument to this arrangement that the commercial subscribers should be made to share their gains amongst the stakeholders falls flat on the ground that (i) such a facility is provided only as an amenity by the commercial subscribers, (ii) similar telecommunications services like mobile tariffs are same for both the commercial as well as ordinary subscribers and unless the commercial subscribers specifically charges from making the TV channels available to its guest/visitors there should not be any difference in the tariff for such subscribers. Provision of TV signals cannot be equated with the water/electricity services for the reasons that these services are vastly different in nature as compared to TV signals.

C. Additional Issues:

As stated above, we strongly feel that there is no need to separately define commercial subscriber. As a corollary of the same there is no requirement for any disclosure of such connection by the DPOs or any entity to the broadcasters. The hotels and similar establishments should be catered by the DPOs providing their connections as per the requirements of such establishments similar to an ordinary subscriber.

We have also maintained that any commercial exploitation by any commercial establishment should be amenable to payment of additional charges by such establishments. Towards this, the broadcasters should be required to publish their RIOs for the specific programs which should be filed with the authority. For any specific events, the commercial establishments may have an arrangement with the broadcasters on the RIO rates or negotiated rates and payment towards such programs should be made by the commercial establishments in order to get the permission/license from the broadcasters. This will ensure that the transparent sharing of revenues and that all the stakeholders are fairly compensated. Telecast of programs without specific license from the broadcasters should have some penal liability to deter any such usage.

In view of the above, our response to the question asked in the consultation papers are as under:

Issues for consultation:

- 5. Is the present framework adequate to ensure transparency and accountability in the value chain to effectively minimize disputes and conflicts among stakeholders?**
- 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?**
- 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?**
- 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?**
- 9. Any other suggestion which you feel is relevant in this matter. Please provide your comments with full justification.**

Dish TV Response: We are of the opinion that provision related to prior intimation by the broadcasters to the DPOs for any specific programs may be introduced by TRAI along with the requirement of wide publicity of the same by the broadcasters. This will in turn bring large scale awareness among the stakeholders. Further, more deterrent provision should be made for any commercial exploitation of any such programs by any commercial establishments without prior license from the broadcasters. Negotiation between the broadcaster and the commercial establishment will ensure that no entity in the value chain are at loss. Similarly, prior permission/license coupled with the penal provision will discourage / ensure that the TV signals are not misused for commercial purposes.