

**CUTS' Comments on TRAI's Consultation Paper on "Issues relating to  
commercial tariff for Broadcasting and cable television services"  
(Consultation Paper No. 05/2006)**

**Questions:**

A) Should the definition as contained in the Tariff Amendment Order of 7th March 2006 and reproduced below be allowed to continue?

“(ddd) ‘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.”

B) If the problems and difficulties enumerated in Section 2 are to be addressed how this can be done without changing the definition?

C) If the definition as existing requires changes how should this be done?

**CUTS' response:**

The starting point should be to understand the meaning of term ‘consumer’. As brought in the consultation paper, ‘consumer’ should be viewed as an ultimate user of goods and services. Therefore, the distinction between ‘ordinary’ cable subscriber and ‘commercial’ cable subscriber should be on the basis of nature of end use. And the nature of end use should be distinguished as whether the service is used for own use or packaged as a value added service with other services provided and sold to consumers at a charge i.e. cable tariff is considered in determining the charge of overall package. Therefore, the key line of distinction should be whether the service is being commercially exploited or not.

Viewed in this backdrop, let us consider the existing definition:

Ordinary Cable subscriber as any person who receives broadcasting service from a cable operator and uses the same for his/her domestic purposes, and

Commercial Cable Subscriber as any person who receives broadcasting service at a place indicated by him 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.

The problem in the above definition lies in usage of the term ‘domestic’ while defining ordinary cable subscriber. If the term is replaced by ‘own’, consistent with the distinction brought out above, most of the debate is taken care of. The suggested definition is as follows:

Ordinary Cable subscriber as any person who receives broadcasting service from a cable operator and uses the same for his/her own purpose, and

Commercial Cable Subscriber as any person who receives broadcasting service at a place indicated by him and packages it as a value added service with other services provided by it and sells the package to consumers at a charge i.e. cable tariff is considered in determining the charge of overall package.

The suggested definition of ‘commercial cable subscriber’ will bring within its ambit hotels, restaurants, private hospitals (and not government hospitals, as private hospitals commercially exploit broadcasting services by offering it as a valued added service packaged with their other services, for which they charge patients, unlike government hospitals, which are already subsidised), private educational institutions (same reasoning applies as in the case of private vs government hospitals), bars, clubs, pubs, guesthouses, cinema halls, theatres, stadiums.

Considering the suggested definition, other establishments in the organised and unorganised sector (such as shopkeepers, offices) will not come under the category of ‘commercial cable subscribers’. Even though they are receiving broadcasting services other than for domestic purposes, but it should be considered that they are not commercially exploiting the service, as they use cable TV services for their own viewing pleasure and not to package it with their other services for selling to their clients, customers.

Comments on alternative approaches suggested in the consultation paper:

Alternative Approach suggested in consultation paper	Comments/Remarks
Start from the grouping or categorization done by broadcasters in their existing agreements to segregate commercial users and limit the term ‘Commercial Cable Subscriber’ to the groups identified in the agreements with the cable operator	This suggestion is an attempt to maintain the status quo rather than consider it an opportunity to address the root cause of this debate. Such suggestions should never be considered. Unfortunately, in our country we also try to maintain the status quo rather than think of overhauling the system to address the problems. TRAI, which has already established benchmarks for regulatory governance in India, should avoid articulating such suggestions.
Expand the list by identifying homogenous groups of establishments based on common criterion such as, institutions recognized under a particular statute say hotels and restaurants below a particular grade or having ‘X’ number of rooms etc; institutions having levels of income above a threshold level, on the basis of the place where establishment is situated.	The concerns in following this approach are quite well-laid out in the consultation paper: i.e. leaving out some types of establishment and including some others may give <b>rise to disputes</b> in a totally new area; criterion may raise <b>questions of unequal treatment, subjectivity</b> , etc. Accordingly, it should not be considered.
Adopt the source of receiving signals as a criterion for categorizing a consumer as a commercial cable subscriber i.e. group all consumers who receive signals for the use of clients directly from broadcaster by putting up their own headend to receive signals. The groups that receive signals through authorised cable operator would be kept out of the ambit of the term commercial cable subscriber.	This approach is inconsistent with the principle of ‘commercial exploitation of broadcasting services’. Moreover, as the consultation paper itself notes, this approach is not flawless because most commercial establishments receive feed through cable operators. Further, this approach will not help address dispute relating to revenue sharing in latter cases.
Categorisation between ‘ordinary’ and ‘commercial’ based on a broad set of criterion as benchmark and having two segments One, identified groups of institutions, for instance it could be hotels and restaurants above a particular grading, educational institutions with accreditation by Govt or Govt agency, bars, clubs, pubs located in metropolitan cities, social and religious organizations. Second segment would contain broad criterion for judging establishments	The two segments defined in this approach are not mutually exclusive. In fact, the criterion suggested for second segment also covers identified group of institutions as given in first segment. For instance, hotels and restaurants would meet criteria (i) as well as (ii). However, in case of educational institutions, the criteria as given for second segment would not apply strictly. For instance, private educational institutions might argue that they do not offer services with the objective to earn profit, hence

Alternative Approach suggested in consultation paper	Comments/Remarks
<p>falling outside the identified group. The illustrative criterion could be:</p> <p>i) If broadcasting services received are used exclusively for the purpose of clients, customers</p> <p>ii) If such service is packaged as a value added service and sold with the objective to earn profit in the ordinary course of carrying on the business of such product or service.</p> <p>iii) If the recipient satisfying the above criterion is a shop or commercial establishment having a turnover of more than Rs. 'X' lakhs.</p>	<p>be kept out of this category. Anyways, this can be taken care of, by removing 'objective to earn profit' from the entire criterion. This could be turned into a broad criterion as:</p> <p>“Commercial cable subscriber is any person who receives broadcasting service at a place indicated by him and packages it as a value added service with other services provided by him/her and sells the package to consumers at a charge i.e. cable tariff is considered in determining the charge of overall package.”</p>

**Questions:**

- D) Given the basic philosophy towards price control as brought out in para 3.5 should the commercial establishments be brought under the ambit of tariff regulation?
- E) If so should the tariff regulation cover all kinds of commercial establishments or should some categories be left out?
- F) If some categories are to be left out what should these be and how can they be identified easily without causing unnecessary disputes?

**CUTS' response:**

The definition of 'commercial cable subscriber' as suggested above brings out two key features of their operation:

- (i) They are able to pass on the tariff to their clients/customers.
- (ii) These subscribers offer significant countervailing power i.e. either they are bulk buyers or they are grouped into associations, which enables them to negotiate better tariffs. To recall an instance from Jaipur – In 2005, cable operators in Jaipur had raised cable TV tariffs by a certain percentage that exceeded what TRAI's tariff order had allowed. This led to a lot of tussle between hotels and cable operators leading to a boycott by the hotel association of cable TV services. Realising that they were losing out on important source of revenue, cable operators discussed the matter with the hotel association and arrived at a mutually acceptable agreement.

Due to (i) and (ii), fixing tariffs for commercial cable subscribers is not required. TRAI should instead concentrate on tackling woes of domestic cable TV subscribers, which it has failed to address.

The argument forwarded by hotels that they do not charge the guests separately and since there is no cross-subsidy involved, they should be treated on par with ordinary cable consumers, is ridiculous and misleading.

- (i) Hotels do not charge the guests separately but that does not imply that the service is not charged at all. There are hidden charges involved to recover such costs.
- (ii) Whatever is the tariff, hotels and other commercial subscribers (as per definition suggested above) can pass the burden on to their customers.
- (iii) They have effective bargaining power.

Due to (i) to (iii), it would be misleading to treat them at par with ordinary cable consumers.

**Questions:**

G) What should be the method for fixing the rates of commercial consumers? Which of the approaches suggested above should be used?

H) Is there any other reasonable method of fixing the commercial tariff?

**CUTS' response:**

As argued above, rates for commercial consumers should not be fixed and left to their mutual negotiating power.

**Question:**

I) What safeguards are required for those commercial consumers who are only paying the cable operator and do not have written agreements with the broadcasters?

**CUTS' response:**

Commercial establishments as per definition suggested above are easily identifiable unlike ordinary consumers. TRAI should mandate them to enter into an agreement with their cable service provider (either local cable operator or MSO or broadcasters), and register this agreement with the authority. In order to ensure proper distribution of subscription revenue from these establishments, TRAI should specify a formula for revenue sharing among service providers. This could be, for instance, equal revenue sharing amongst all service providers.

**Submitted by:**

Consumer Unity & Trust Society (CUTS),

D-217, Bhaskar Marg, Bani Park,

Jaipur 302 016, India

Ph: 91-141-228 2821

Fx: 91-141-228 2485

Email: [c-cier@cuts.org](mailto:c-cier@cuts.org)

Website: [www.cuts-international.org](http://www.cuts-international.org)

(Registration No. TRAI/CO/NGO/02/2003 – NO)