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December 5, 2013

Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg
(Old Minto Road)
New Delhi - 110002

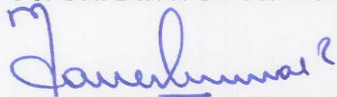
Kind Attention: Shri. Wasi Ahmad, Advisor (B&CS)

Dear Sir

Please find enclosed our response to the Supplementary Consultation Paper No.11/2013 on "*Issue related to New DTH Licences*" dated 14 November 2013 ("Consultation Paper"), on which comments have been sought from stakeholders.

Please note that this response is without prejudice to our rights and contentions with regards to the matters discussed. We reserve the right to furnish additional comments/ counter comments for the purpose of further clarifying our position on the proposals set out in the consultation paper.

Yours truly
For Sun Direct TV Private Limited



R. Mahesh Kumar
Managing Director



Encl: Our response to the consultation paper no. 11/2013 on "**Issue related to New DTH Licences**" dated November 14, 2013.

December 5, 2013

Submissions of Sun Direct TV (P) Ltd (“Sun Direct”) to Telecom Regulatory Authority of India (“Authority) in response to the Consultation Paper no. 11/2013 on Issue related to New DTH Licences” dated November 14, 2013. (“Consultation Paper”)

RESPONSE TO ISSUES FOR CONSULTATION

Issue 1:

Stakeholders are requested to give their views on the modification of clauses 1.4 and 1.5 of the DTH Guidelines, as mentioned in para 1.15, prescribing cross-holding/control restrictions. Stakeholders are welcome to suggest other options, if any, with justifications. Stakeholders are also requested to give their views on the timeframe to be given to the existing DTH licensees to comply with the new provisions and the justification thereof.

Response:

Sun Direct submits that the main objective for the provisions pertaining to cross-holdings was to ensure that the broadcasters and the different types of TV channel distribution operators do not control each other i.e. to prevent an outcome where vertical integration across segments and/or horizontal integration across TV channel distribution platforms could compromise or limit competition.

In the nascent stage, there was a legitimate concern that a vertically integrated DTH operator would have all the means to prevent entry or to drive-out channels of a competing broadcaster and thus have the potential to distort the market to further its own interests. However, the reality as can be seen today is far different. In the last five years, the nature of the Indian DTH broadcasting industry has changed significantly. Regulations framed by the TRAI, have largely addressed all the concerns stated above.

Moreover, the operationalization of the competition regulator, the Competition Commission of India (‘CCI’) has introduced another layer of regulatory oversight and the possibility of abuse of dominance in the DTH broadcasting sector is minimal.

In short, the self correcting nature of a highly competitive DTH broadcasting industry in India, coupled with the regulatory oversight from the TRAI and the CCI, completely negates the possibility of an enterprise to abuse its position or otherwise affects conditions of fair play in the DTH broadcasting industry.

Today, there are regulations governing provision of channels on non-discriminatory basis, must provide and must carry regulations. Bandwidth capacity issues no longer are relevant for considering whether Vertical integration should be regulated or not. Also, disputes in TDSAT are mostly in analog platforms, and that too for non-payment of dues, under declaration, area transgression, piracy, these in any case cannot be resolved through vertical integration restrictions.

Sun Direct submits that as there are sufficient laws to safeguard the interests of consumers issue, the definition of Control should be left untouched.



Sun Direct appreciates the intent of TRAI behind proposing a more comprehensive definition for the term 'control'. However, the question that needs to be asked is 'Isn't the current 20% equity holding restriction proving to be sufficient deterrent in meeting the intent behind the restriction. If the current restriction is sufficient then 'what is the need to make the definition so wide' that it will burden the DTH license holders and the business houses running the DTH business and make them undergo substantial costs to make changes to their corporate structures.

The Secretary Ministry of Information and Broadcasting has gone on record before the Standing Committee on Information and Technology contending:

"..... in DTH, there are roughly seven players today and they are having roughly 34-35 million TV homes. So, there is a plurality, but looking at the size of the country, it may be said that one particular DTH operator on an average takes care of about five million connections. There have been no complaints about monopoly on this....."

Since this is the reality, there is no need to modify the definition of the term 'Control'. The Sectoral Innovation Council has been admirably forward thinking in addressing the fast-changing world of modern technology, recommending the alignment of media policies for the internet and personal wireless communications' market segments, among others, toward the future.

DTH has emerged successfully as an alternate medium of distribution and has overall benefitted the consumers by way delivering superior quality content and also imbibing and investing in State of the art technology. The DTH domain is highly competitive with six serious players in the fray excluding Doordarshan. All the DTH operators are backed by corporate house who has multitude of business interests. Over the past five years the market share is evenly spread among the DTH players on a Pan India. Even some of the late entrants in to the DTH could garner substantial market share in short span of time. This was achieved due the existing and prevailing regulatory environment of Must Provide and non discrimination mandated by inter connect regulations. Based on the available empirical data the present DTH regulations does not warrant any change.

All the DTH operators are large corporate entities of the country and they are going the extra mile to provide better products and services to the consumers than the competitors and therefore it would be best to leave the extant control definition intact and allow the DTH businesses to continue to operate under the present license conditions.



Issue 2:

**Do you agree with the approach discussed in para 1.25, on the aspect of Technical compatibility and effective interoperability of STBs among Different DTH service providers?
If not, an alternative approach may be suggested with justification.**

Response:

Rationale behind technical interoperability and its significance today:

Sun Direct humbly submits that the rationale behind technical interoperability is that customers should be able to switch from one DTH operator to another without having to purchase a new operator's Set Top Box. This rationale was relevant when the DTH market was in its nascent stage with only a few operators, and the cost of the STB was high. Today, there are six private DTH operators apart from DD Direct. The cost of the STB is very less. Over the last few years, competition has ensured affordability as all DTH operators have extended substantial subsidies to all their subscribers. Thus, today Interoperability is not of material significance.

Technical and commercial hurdles towards achieving 100% interoperability:

Application of different CAS, compression, encryption, middleware and EPG make the STB proprietary and hence such STBs cannot be 100% inter-operable.

Technical interoperability is possible only by way of a CAM and authorized card from the respective operator.

However, the possibility of providing technical inter-operability by the use of a CAM is economically not feasible, as on date.

While it is true that by inserting a CAM provided by the DTH operator whose services are required to be received, the STB will be in a position to receive the services of the concerned DTH operator, the cost of a CAM as on date is as high as an STB itself, making it an impracticable idea from an economic viewpoint.

It is common sense that a customer would buy a new STB from a new DTH operator, rather than purchasing only a CAM from a new operator (which would cost as much as availing of new operator services) that would be inserted into an old STB of his previous DTH operator.

Even with an Open Architecture-based STB for DTH, it is not possible to make it work across any operator without a CAM unless the Conditional Access software for each type is ported on such a box to make it work for decoding.

Technologies prevalent today:

Today, there are a number of combinations of technologies that can go into making of a single Set Top Box (STB). Different DTH operators are using different combinations.

If a single STB is to be made compatible with all different technologies, including: MPEG 2 and MPEG 4; DVB-S and DVB-S2; and different encryption technologies, the cost will skyrocket.



The increased cost of an STB would defeat the very purpose of technical inter-operability, as the additional cost would have to be recovered from customers.

Approach suggested by TRAI:

The alternative which has been proposed by TRAI is that:

- i. the BIS specifications are based on open architecture and should incorporate the latest technological developments with respect to the technical interoperability of DTH STBs, taking into account its practicability as well as the international experience;
- ii. The BIS specifications clearly specify the contours of interoperability between the STBs based on different technological standards.

This norm will naturally have to be in keeping with the latest available technologies.

This would mean that DTH operators using older, though not outdated technologies, such as MPEG 2 and DVB-S would have to develop, manufacture and procure new CPE.

The cost involved in such an exercise would be substantial, and would have to be borne by the Government which has mandated uniform technology norms in the first place and/or Customers.

A serious detriment of any variation from a technology-neutral policy would be the need for constant updation of the stipulated technology norms so that the DTH industry in India keeps up with, and derives benefit from the latest technological developments internationally.

Every time the prescribed technology norms are revised by BIS, existing CPE would have to be replaced.

It is pertinent to mention that TRAI itself, in its last recommendations dated 22.07.2010 on "Policy Issues relating to Uplinking / Downlinking of Television channels in India", has recommended a technology neutral approach.

TRAI has endorsed the view that market forces will themselves ensure that the DTH operators adopt the best available technology, and there is no need to issue any mandate in this regard.

TRAI, in the aforesaid paper has also noted that choice of technology is not a one-time decision, but a decision that needs to be constantly reviewed and updated.

Also, the fact that some DTH operators are providing STB's free of cost cannot be lost sight of in the present highly competitive industry.

Any new requirement in the DTH license agreement that will push the cost of the CPE up, is likely to lead to the withdrawal of free STB schemes, currently on offer. Thus, it is the customer who will be the ultimate loser.

Also, it needs to be borne in mind that DTH is not the only pay T.V platform available to viewers of pay television. Cable TV and IPTV may also be chosen by customers. In this context, if a customer wishes to switch over from a DTH operator to a cable operator or IPTV, technical interoperability will be of little use. Therefore, the fact that there are other technologies with a very large market share, that exist along with DTH technology, cannot be ignored.



Technical interoperability conditions have become redundant:

It cannot be denied that existing technical inter-operability conditions have failed to realize the result that they were expected to achieve, i.e., facilitation of actual migration of customers from one DTH operator to another without the need for purchasing new CPE.

The Ministry of Information and Broadcasting in its letter dated 28.09.2007 to TRAI had unequivocally stated that “*the interoperability between set top boxes between two DTH operators is practically not feasible to the level of completeness*”. As the number of operators has multiplied, and newer technologies have arrived, the feasibility of technical interoperability (without significant addition to the cost of STB, thus defeating the very purpose of technical inter-operability), is even less today as compared to 2007 when the Ministry wrote the letter referred hereinabove.

Thus, the lack of interoperability is not on account of poor consumer awareness or the non-availability of CAMs, but because of unfeasibility on fundamental technical and economic grounds.

Protection of interests of consumers:

It is submitted that the interests of the consumers are now adequately protected given the extensive competition in the industry.

This has led to inexpensive hardware as well as rental schemes being made available to the subscriber by competing DTH operators.

The extremely low cost of the STB owing to the narrowly targeted subsidies as well as the commercial inter-operability provisions contained in the DTH QoS regulations ensure that the consumer interest is adequately addressed.

Conclusion:

It is therefore submitted that the present Clause 7 of the DTH license be done away with in view of the changed market situation.



Issue 3:

Do you agree that, in line with the Unified Licence, the licence fee for DTH services should be charged at the rate of 8% of the AGR where AGR be calculated by excluding Service Tax and Sales Tax actually paid to the Government, if Gross Revenue had included components of Sales Tax and Service Tax? If not, an alternative formulation may be suggested along with justifications.

Response:

Sun Direct submits that it is imperative that the annual license fee for DTH industry be rationalized and the recommendation of TRAI that: *“in view of the growing convergence between the broadcasting and Telecom sectors and the fact that the DTH licences are also granted under section (4) of Indian Telegraph Act 1885, as in the case of telecom licences, the licence fee and the definition of AGR for the DTH sector may be aligned with that in the Unified Licence. Presently, the licence fee, as prescribed in the Unified Licence, is 8% of AGR. Thus, for DTH services, license fees may be charged at 8% of the AGR where AGR could be calculated by excluding Service Tax on provision of service and Sales Tax actually paid to the Government if Gross Revenue had included components of Sales Tax and Service Tax”* is a step in the right direction, however we feel the earlier recommendations made by TRAI dated 01st October, 2004 shall be followed.

However, it needs to be kept in mind that DTH does not compete with telecom but platforms competing with DTH are platforms such as HITS, CABLE, IPTV. HITS is not required to pay any annual fee. Even for IPTV, another competing platform-the annual license fee is in the range of 6% of AGR. For cable, the annual license fee is a few lakh rupees.

In comparison, DTH operators are paying several hundreds of crores each year to the Licensor as annual license fee. This results in lack of level playing field for DTH and is greatly impacting competitive edge of DTH industry vis-a-vis other competing platforms and also increases the cost for the consumers. DTH industry which is already saddled with the burden of exorbitant taxes cannot continue paying such high license fees. With the implementation of digitization across the country, the rationalization of license fee for the DTH industry will give a boost to the digitization process and come as a much sought after relief to the DTH industry.



Sun Direct submits that in this regard the Authority has already submitted its recommendations dated October 1, 2004 (Recommendation 7.9- Rationalization of License fees and taxation) is reproduced below:

- a) *“A reduction of 2% in the license fee for DTH as already proposed by the Authority in its recommendation on “Accelerated growth of internet and broadband penetrations” in line with the reduction in the license fee given for other telecom operators.*
- b) *The principle of application of license fee on the Adjusted Gross Revenue (AGR) as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by*
 - (i) *Subscription fee charges passed on to the pay channel broadcasters;*
 - (ii) *Sale of hardware including Integrated Receiver Decoder required for connectivity at the consumer premises;*
 - (iii) *Service/ Entertainment tax actually paid to the Central/ State Government, if gross revenue had included them.”*

Even the TDSAT vide its judgment dated 28th May 2010 in Petition no.92(C) of 2009 has laid down that:

“For DTH the license fees should be applied on the adjusted gross revenue – i.e. total revenues excluding items that are of a pass through nature. This would also be consistent with the government’s policy for the Telecom Sector to apply license fee on the adjusted gross revenue and not on the total revenue.... Therefore the Authority recommends:

- b) *The principle of application of license fee on the AGR as in the case of telecom may also be followed. The AGR in case of DTH service should mean total revenue as reflected in the audited accounts from the operation of DTH, as reduced by*
 - i) *subscription fee charges passed on to the pay channel broadcasters;*
 - ii) *sale of hardware including integrated receiver decoder required for connectivity at the consumer premise;*
 - iii) *service/entertainment tax actually paid to the central/state government, if gross revenue had included them,*



While Sun Direct is given to understand that the Licensor/ Central Government has preferred an appeal to the Hon'ble Supreme court and the appeals are pending, this measure on part of TRAI to reduce the license fee from GR basis to AGR basis shall come as a much needed relief to the entire industry and it shall also be in conformity with the DoT stated policy which stresses on affordability and Not revenue maximisation. Sun Direct humbly submits that Rationalisation of levies will serve this key objective and only submits that the % of AGR should be reduced from 8% to 6% and the definition of AGR should also exclude

- i) subscription fee charges passed on to the pay channel broadcasters;
- ii) sale of hardware including integrated receiver decoder required for connectivity at the consumer premise;
- iii) service/entertainment tax actually paid to the central/state government, if gross revenue had included them,

In line with the earlier recommendations of TRAI, judgment of TDSAT and also considering that the benchmark is telecom, even in telecom call charges being paid to other telecom providers are excluded from definition of AGR, like-wise, in DTH subscription fee paid to Broadcasters needs to be excluded. Regarding sale of hardware, it is not a licensed activity and should also be excluded from the computation of AGR. Also, in addition to service tax and sales tax , provision also needs to be made for exclusion of entertainment tax being paid by the DTH service providers.



Issue 4:

Do you agree with the approach discussed in para 1.39, for arriving at the quantum of migration fee to be charged from the existing DTH licensees on their migration to the new DTH licensing regime? If not, an alternate formulation may be suggested along with justifications.

Do you agree with approach regarding migration of existing DTH licensees to a new licensing regime, discussed in para 1.41? If yes, how much time, after notification of the new DTH licensing regime, should be given to the existing DTH operators for migration to new DTH licensing regime? If not, what should be the approach followed for migration of existing DTH operators to a new licensing regime? Please elaborate your response with justifications.

Response:

Sun Direct submits that a pre-requisite to migration of existing DTH licensees is implementation of a Unified Licensing Regime.

Unlike FM radio sector, there do not appear to be any new players applying for a DTH license.

Also, unlike telecom, no licenses for additional services are required in DTH, there is also no expansion in the scope of the DTH license to include any additional service or licensed area therefore the proposal to formulate a new licensing regime appears to be unwarranted.

Notwithstanding the above, Sun Direct welcomes the proposal for a 20 year license period.

However, on the proposal to levy migration fee on existing licenses equal to entry fee for new operators, Sun Direct submits that the entire concept of charging an entry fee is generally applicable for new players who plan to procure a particular license for the 1st time.

Also, the extant DTH Guidelines in this regard clearly stipulate as under:

“3.1 The Licensee shall pay an initial non-refundable entry fee of Rs.10 crores before the issue of letter of intent to him by Licensor, and, after the issue of the Wireless Operational License by the Wireless Planning and Coordination (WPC) Wing of the Ministry of Communications, an annual fee equivalent to 10% of its gross revenue in that particular financial year within one month of the end of that year.”

Based on perusal of the above, it is clear that an entry fee has to be paid only in respect of new licenses and not in respect of renewal/ migration of existing licenses or issuance of new licenses to existing licensees as the existing licensees have already paid the initial non refundable entry fee of Rs.10 crores.

It is therefore submitted that in accordance with the extant DTH Guidelines, the new licensees should be continued to charge the entry fee at the same fee or such higher fee as the licensor may deem fit, however so far as the existing licensees are concerned who have already complied with the requirement of an entry fee, such existing licensees should not be charged an entry fee again as they are not obtaining a new license but merely renewing their license / migrating to new licensing regime as the case may be.



It needs to be kept in mind that entry fees are generally charged for the following reasons:

- (i) to establish the bonafides of prospective service providers,
- (ii) to act as a barrier for keeping out the non-serious fly-by-night entities,
- (iii) to ensure elimination of non-serious players only,
- (iv) to meet the cost of inducting a service provider,
- (v) raising resources for the budget,
- (vi) regulating scarce resources,
- (vii) recover cost of administering license.

So far as the existing licensees are concerned, all the above reasons have already been met with at the time of collecting the entry fee for the 1st time and to levy an entry fee again only for renewal/migration of licensee would cause great financial hardship and burden on the existing DTH industry which is already reeling under the burden of intense competition from cable and other mediums, high and varying rates of taxation across different States and continuous investment of capital to bring new and improved technologies to the consumers.

Even otherwise, the Licensor is collecting an annual license fee from the licensees which runs into several hundred crores of rupees each year and in view of the annual license fee, no further entry fee should be levied on existing licensees at the time of renewal / migration of their licenses.

It is humbly submitted that even for telecom players which are also S.4 licensees like DTH as well as platforms competing with DTH like Cable, HITS, IPTV- Sun Direct is given to understand that no entry fee is levied a second time at the time of renewal of the licenses.

It is therefore in the interest of maintaining parity and level playing field amongst competing platform especially as the digitization process is underway in the country to not levy an entry fee/ migration fee again merely for the renewal/ migration.

It is pertinent to observe the Authority's own views in this regard which also support the stand of Sun Direct that entry fee ought not to be levied on DTH operators at the time of renewing the license:

"1.6 If the entry fee levied at the time of granting the DTH License was solely to judge the seriousness of the entities seeking the DTH license and to cover the cost of inducting of a service provider then at the time of issue of a new license to an existing licensee, the entry fee ought not to be levied as the DTH Operator had already provided its bonafides in the sector and the cost of inducting a service provider is not a recurring cost to the licensor.

1.7 As per the data provided by the DTH operators, the two leading DTH operators, who are in the DTH business for over 7 years, have paid an annual license fee of Rs.112 crore and Rs.121 crore for the year 2012-2013, and, till date, they have paid Rs.354 crore and 372 crore as license fee to the Government. Since the entry fee of Rs.10 crore paid by an existing DTH operator is quite small as compared to its recurrent payment in the form of annual license fees paid during the license period of 10 year license period , there could be a view that existing DTH operators may not be asked to pay the entry fee again at the time of issue of a new license; however, for the sake of parity, entry fee should continue to be levied on new players who seek licenses for the first time.



1.8 DTH operators, have time and again, advanced the argument that it is important to maintain a level playing field between providers of similar or substitutable services, especially services provided by MSO's through DAS. In this context, DTH operators have pointed out that various levies imposed by the Government, on DTH Operators are not levied on the operators of DAS."

In view of what is stated above, Sun Direct humbly submits that at the most, a nominal renewal/migration fee may be levied on the DTH operators when their licenses come up for renewal / migration to new unified licensing regime to cover any administrative costs that may be incurred by the Licensor towards the renewal.



Issue 5:

(i) If any stakeholder has a view that any other provision of the DTH Guidelines requires any change or any provision is required to be added to these guidelines, the same be suggested along with justifications.

(ii) In light of the fact that a new DTH licensing regime is being discussed, stakeholders may also give their modified views, if any, on the issues that have been discussed in the consultation paper dated 1st October 2013.

Response:

A. FDI Restrictions under DTH License conditions to be changed to allow 49%/74%:

Sun Direct submits that the licensing conditions for DTH as laid down by the Government of India declared the 20% threshold limit. The FDI policy of the government of India, 2012, underwent changes and Press note 7 changed this by allowing up to 49% through the direct route. This can be further increased to 74% subject to government approvals. In the light of these changes allowed by the press note, which includes DTH, the option to increase stake to 49%/74% rests with the investor.

The recommendation of TRAI to define control at the 20% threshold would therefore need to be revisited and changes brought in accordingly. Likewise, the DTH Licensing conditions would also need to be reviewed to bring all the regulations at par with each other.

B. Satellite Bandwidth Optimization through providing more transponders, permitting Sharing of Bandwidth among DTH Operators etc:

Sun Direct submits that success of DTH business purely hinges on the availability of adequate bandwidth and satellite capacity. This has become more compelling due to the onslaught of mandatory digitalization.

Sun Direct submits that additional capacity has to be developed to be able to enhance the current DTH industry channel capacity base of 300 with 200 more channels and create a level-playing field with the digital cable operators who have the capacity to carry 500 channels.

All of the DTH operators could do with double the capacity they have right now. DirecTV, USA is apparently uplinking 3,000 channels today in a fairly homogenous market so the capacity that India will need going forward with its linguistic and cultural diversity is huge.

Sun Direct regrets to state that no concrete steps to address the severe satellite crunch are forthcoming from any quarters. A recent study on satellite capacity emphasizes an Open Sky policy as ISRO has not been able to keep pace on the availability of the transponders to DTH players.

ISRO has a responsibility to overcome this deficiency. Under the government's Satcom policy the user community in India is not allowed to procure transponders directly from foreign satellite operators; this can only be facilitated by ISRO, which has taken on lease 86.5 foreign transponders, but the requirement far exceeds the present availability.



India has already blocked a few orbital slots in advance for putting satellites in space as per international norms. India is not in a position to fill these slots in the near future by launching its own satellites. ISRO is exploring the possibility of allowing foreign satellites to fill these slots for the short term. By doing this, it will be possible to increase the transponder capacity to 320.

ISRO's move comes in the wake of acute Ku-band transponder shortage that the Indian DTH industry faces as they seek to add channels and offer HD services on their platform. ISRO has launched GSAT-12 recently, but DTH providers are not eligible for its transponder capacity. All DTH operators need more transponder space. ISRO has to speed up the satellite launches. There should also be an urgency to allow space for foreign satellites, so that the DTH industry can expand its channel offerings.

In the given scenario and also to rationalize /optimize the use of scarce satellite bandwidth, Sun Direct strongly recommends that the revised DTH license should be amended to allow sharing of bandwidth among DTH operators.

