



Telecom Regulatory Authority of India



Recommendations

On

Issues related to New DTH Licenses

(Response to back reference received from Ministry of Information and Broadcasting (MIB) on TRAI's Recommendations dated 23rd July 2014)

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**Response to back reference received from Ministry of
Information and Broadcasting (MIB) on TRAI's
Recommendations dated 23rd July 2014**

After considering the MIB views on various recommendations, the Authority has finalized its response. The earlier TRAI recommendations, views of MIB and the response of the Authority are provided below:

TRAI Recommendation

Under the new licensing regime for DTH, licenses should be issued for a period of 20 years. Upon request of the Licensee, the period of License may be renewed by 10 years at a time, on the terms and conditions specified by the Licensor in consultation with the Authority.

MIB View

Regarding the duration of the license in the new DTH regime, the IMC examined the technology advancement in the DTH sector along with the need to have reasonable continuity in the license period. It is, therefore, proposed to grant DTH license for an initial period of 10 years. Thereafter, renewal of the license to be for 10 years.

TRAI Response

MIB would appreciate that DTH is a highly capital intensive sector. The investments are required not only in the initial stages at the time of setting up the infrastructure but also at subsequent stages of operations for maintaining it. The DTH operator also needs to build long term relationships with the customers.

The investors look for certainty in Government policies with regard to the continuity in the business operations of an enterprise, subject to stipulated regulatory compliances.

Therefore, it is felt that a longer licence period would provide certainty in the market.

Keeping a short license period may adversely affect the potential investment in the sector and would also negate the efforts of the Government, *inter-alia*, including the liberalization of the FDI regime. As far as emergence of new technology is concerned, the license is technology neutral and service providers are free to adapt appropriate technology within overall licensing framework.

A longer duration of license helps in better futuristic business planning. The Authority further noted that in the telecom sector, the license period under the Unified License (UL) regime is 20 years and renewal is 10 years at a time.

In view of the growing convergence between the broadcasting and telecom sectors, it is logical to align the license period for DTH sector with that in the telecom sector under the UL.

In view of above, TRAI reiterates its earlier recommendations.

TRAI Recommendation

A one-time entry fee of Rs. 10 crore should be charged in the new DTH licensing regime. The Authority also recommends that the renewal shall be on the terms and conditions, including renewal fee, specified by the Licensor, in consultation with the Authority.

MIB View

Entry fee is proposed to be increased to Rs. 25 crore for the license period of 10 years, keeping in view inflation over the past 17 years.

TRAI Response

The basic purpose of levying an entry fee is to deter non-serious players. In fact, quantum of the fee should be such that it ensures a level-playing field between the providers of similar or substitutable services and also discourages non-serious players.

The goal of the Government is not just to maximize the revenue but also to provide efficient services to the public. DTH is an important tool to penetrate into the areas where the cable TV has not yet reached. Far flung rural and remote areas where the dwelling pattern is not clustered and Cable TV services are unviable, DTH being a satellite driven technology, can service these areas. Also people living in hilly areas and defence personnel deployed at high altitude can avail benefits of DTH service.

In the telecom sector, under the UL, Entry Fee is subject to a maximum of Rs. 15 crore for all the services for all the license service areas. Therefore, entry fee in DTH sector was prescribed less than UL.

At present, there are only a handful of DTH operators in the market, despite the fact that there is no restriction prescribed in the existing DTH Guidelines. In order to encourage more entrants in the DTH industry, and to compete with the cable industry, wherein there is no entry fee, TRAI recommends to retain the entry fee to Rs 10 crore.

In view of above, TRAI reiterates its earlier recommendations.

TRAI Recommendation

The license fee in the new DTH licensing regime should be charged as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding, Service Tax, Entertainment Tax and Sales Tax/VAT actually paid to the Government, from the Gross Revenue (GR).

The license should include a provision that prescribes that the Licensor reserves the right to modify the License Fee as a percentage of AGR any time during the currency of the agreement.

MIB View

While deliberating on the issue of rate of license fee it has been noted that the DTH sector is growing and being a network economy, the sector may get benefit of reducing marginal costs. It may also benefit from the technological innovation, thus reducing the costs of DTH operators. It is proposed to continue to charge license fee @ 10% of GR.

TRAI Response

The license fee is non-tax revenue being collected from a service provider against the privilege of being permitted to perform a particular licensed activity.

TRAI earlier in 2004, has recommended a reduction of 2% in the license fee for DTH operators i.e. 8% from the existing level of 10% which is to be calculated on Adjusted Gross Revenue(AGR)

TRAI in its subsequent recommendations dated 15th April 2008, in response to MIB's reference dated 17th March 2008 wherein TRAI's comments were sought on Government's proposal for reducing the annual licence fee in respect of DTH service providers from 10% of GR to 6% of GR, agreed for levying the license fee at 6% on Gross Revenue(GR) basis.

Further, in the recommendations dated 23rd July 2014 for DTH licenses, TRAI stated that the revenue on which the license fee is levied should not include the revenue which actually goes towards payment of taxes to the Government. Therefore, the license fee should not be charged on the GR; rather, it should be charged on AGR.

Deduction of taxes from Revenue could be a better option as it shall avoid license fee on the revenue collected by an operator on behalf of the Government.

The Authority is of the view that AGR should be calculated by excluding, Goods and Service Tax (GST) actually paid to the Government, from the Gross Revenue (GR) of the licensee company.

In view of the growing convergence of telecom and broadcasting services, it would be logical to align it with the percentage prescribed in the UL.

In view of above, TRAI reiterates its earlier recommendations to charge License Fee as 8% of Adjusted Gross Revenue (AGR) where AGR is calculated by excluding Goods and Services Tax (GST) actually paid to Government.

TRAI Recommendation

DTH licensees shall be required to furnish a Bank Guarantee(BG) for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.

The bank guarantee should be valid for a year which should be renewed year-on-year basis in such a manner that the BG remains valid during the entire license period.

For new entrants, a BG for a fixed amount of Rs. 5 crore shall be taken for the first two quarters, and thereafter, for an amount equivalent to the estimated sum payable, equivalent to License fee for two quarters and other dues not otherwise securitized.

MIB View

It is proposed to raise the bank guarantee to Rs.100 crore instead of the existing Rs. 40 crore, keeping in view inflation over the past 17 years.

TRAI Response

The bank guarantee is a safeguard against the non-payment of license fee and non-compliance with the license conditions.

As per present practice in the Telecom sector, a BG amount should be equal to at least two quarters License Fee. As per the data provided by MIB then, the annual license fee paid by the DTH operators in their first year of operation was around Rs. 10 crore.

Accordingly, the amount of BG for the new entrants, was recommended to Rs. 5 crore for the first two quarters and thereafter, for an amount equivalent to estimated license fee for the preceding two quarters and other dues not otherwise securitized.

Keeping the Bank Guarantee at a fixed amount of Rs. 100 crore will block the money of operators, which could be utilised for better delivery and expansion of their services and would also deter entry for new operators. There are well established practices in the telecom sector to calculate bank guarantee on the basis of license fee for two quarters, which dynamically takes care of small and big operators.

Hence making the bank guarantee as a fixed component does not appear to be an appropriate option.

In view of above, TRAI reiterates its earlier recommendations.

TRAI Recommendation

The DTH licensees shall be required to pay license fee on a quarterly basis, the quantum thereof shall be equal to the actual license fee payable for the preceding quarter. The annual settlement of the license fee shall be done at the end of the financial year.

MIB View

It is proposed that the DTH licensee shall be required to pay license fee on an annual basis, with an option of pre-payments by DTH operators.

TRAI Response

The payment of license fee on a quarterly basis is again a well established practice in the Telecom Sector. Synergy in telecom and broadcasting sector needs to be developed keeping in view the growing convergence.

This will also require a lower amount of BG from the operators. It will also lower the risk of collection of license fee from the operators and facilitate Government to get license fee on regular basis.

In view of above, TRAI reiterates its earlier recommendations.

MIB additional proposal

It is proposed that the

- (a) Ministry may allow renewal of license of only those DTH operators who have no dues outstanding, payable to Government and are security cleared. Further, nobody will be allowed to operate without the cover of a license.
- (b) It is also proposed to ask DTH operators to install a chip in the new Set-Top-Boxes which can give data about channels watched and their duration.

TRAI Response on proposal (a)

The proposal of the Ministry to allow renewal of license of only those DTH operators who have no dues outstanding, payable to Government and are security cleared is agreed by TRAI. This is in-line with the intent of the TRAI recommendations.

TRAI Response on proposal (b)

Regarding asking DTH operators to install a chip in the new Set-Top-Boxes, it is stated that this is a new issue and cannot be the part of reference back. If MIB desires TRAI's recommendation on this issue, it may send separate reference to TRAI as per the provisions of TRAI Act 1997.