

Without Prejudice

# **Cable Operators Federation of India**

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Ref/COFI/TRAI/16/2013

05 December 2013

The Chairman

Telecom Regulatory Authority of India

New Delhi-110002

**Kind Attention: Sh Wasi Ahmad (Advisor (B&CS))**

**Comments on TRAI Supplementary Consultation Paper on issues related to  
New DTH Licences Dated 14 November 2013**

Sir,

Ref Supplementary Consultation Paper No 11/2013 dated 14 November 2013 on issues related to New DTH Licences.

At the outset we wish to state that the basic essence of digitalisation of broadcast market was to create the level playing field between different stakeholders. Hence to create the level playing between MSO & DTH operator a minimum of 35% license fee should be levied on DTH operator as a MSO has to pay minimum 35% of its revenue to LCO for using its distribution network.

TRAI must recommend to the government that entertainment tax by states must be rationalised and made same to all subscribers of television services, DTH, Cable, IPTV or Mobile TV. There should be no need for operators to go to courts and get the entertainment tax waived or made not applicable.

Applicability of law should be same for every service provider.

If TRAI considers DTH as a telecom service, DTH operators should also be made to contribute

Our comments on the issues raised in the Consultation Paper are given in subsequent paras.

**Para 2.1 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 licencees to comply with the new provisions and the justification thereof.**

### **Comments**

There should be no cross holding / control in a DTH company by a broadcaster, TV channel Aggregator or TV channel distributor.

Modified clauses 1.4 and 1.5 are fine. Channel Aggregator should also be included among the entities that would be debarred from controlling any DTH or other distribution operator.

It may also be ensured that no cross holding company or another media company extends loan facility/ financial assistance to a DTH company.

**Para 2.2 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?**

We agree to the above in principle. Irrespective of the cost involved, Common Interface for technical interoperability must be mandated. This is the only way monopoly of a DTH can be broken as interoperable STBs (All types and qualities, BIS standard, BEE rating and of new technology could be made available in the open market. Also it would help consumers buy the latest IDTVs that come with a built-in STB and CI slot.

To encourage Indian Manufacturing it should be mandatory to procure 70% STBs from Indian Manufacturers.

**If not, an alternative approach may be suggested with justification.**

**Comments**

**Para 2.3 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.**

**Comments**

Yes, agreed.

It should also be ensured that any “**carriage fee**” collected by a DTH company in the form of cash or barter deal should be reflected in the AGR.

**Mandatory filling of carriage fee RIO by the DTH operator:** It should be mandatory for every DTH operator to file the carriage fee RIO so that they cannot discriminate between different broadcasters approaching them for carrying their channels.

This is also necessary to figure out the actual amount of Gross Revenue of DTH operator. As in some cases because of the barter deal the real amount of carriage paid for channels is not accounted for, so in such cases the carriage amount declared in RIO can be taken as the value for arriving at the correct figure of Gross revenue.

Cash received against an STB/ CPE in any transaction (sale, hire purchase/ rent) be reflected in the AGR. All STBs/ CPEs must be provided to the consumers strictly as per TRAI regulation for the purpose.

**Para 2.4 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 licencees on their migration to the new DTH licencing regime?**

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**Comments**

Yes, agreed.

**If not, an alternate formulation may be suggested along with justifications.**

**Comments**

**Para 2.5 Do you agree with approach regarding migration of existing DTH licencees to a new licensing regime, discussed in para 1.41?**

**Comments**

Yes, agreed.

**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 licencing regime?**

**Comments**

Six months, same as given to an MSO to migrate from analogue to DTH technology.

**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.**

**Para 2.6 (i) If any stakeholders 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.**

## **Comments**

1. DTH sector is still embroiled in endless litigations to avoid taxes or any provisions of the Guidelines like –
  - a) No interoperable STBs were provided
  - b) 'Must Carry' provisions for carrying TV channels were flouted. Many Broadcasters have gone to court.
  - c) Not providing a-la-carte channels to subscribers.
  - d) Cross Media ownership rules and FDI norms are violated.
  - e) Not using BIS certified / BEE rated STBs. No electrical safety norms followed as per Deity notification.
  - f) STBs are still not given to subscribers in compliance with TRAI Tariff Order. They are given on a payment of activation fee and no ownership. Subscribers do not get any refund if they return the STB after a few months to change their service provider. (Please see on google for numerous complaints against the DTH operators for poor service.)
  - g) Expenditure in procuring STBs is shown as Capex and depreciation claimed on the amount to save taxes as the large MSOs are doing in DAS.
  - h) MDU services are being provided without there being any provision in the Guidelines. Now since TRAI has given a state as a relevant market to an MSO, DTH operators have the all India market, MDU must not be allowed on DTH considering it anti competitive. MDU competes directly in the cable operator territory jeopardizing the employment of thousands of small cable operators creating mass

unemployment in the country.

- i) DTH is a personal service and should not be permitted in commercial establishments like Hotels, resorts etc.
2. The sector enjoys the advantage of matters being in the courts and subjudice for a long time. TRAI must not ignore these important issues before renewing / issuing fresh licenses of existing DTH players and reframe licensing conditions to ensure such avoidance tactics are not encouraged.
3. Any renewal or fresh issuance of license should be put on hold in case where the licensee is not in conformity with the existing regulations until he brings in specific instructions from the court about renewal / fresh issuance of license from the court where the matter is subjudice.
4. I&B Ministry has recently cancelled license of a Independent MSO (ICC of Pune) working for the last 20 years having made crores of rupees in investment. In the same way earlier Home Cable license was also cancelled. The MSO had to go to the court to save his livelihood.
5. A similar treatment should be given to DTH operators and their Licenses should be suspended till all the guidelines are complied with and security clearance is received from the Home Ministry. The new DTH guidelines must ensure that no such partial treatment is made to the DTH operators just because they are the large corporate having deep pockets.
6. No new license should be issued if any outstanding amount or case is pending in any court of law eg. Service Tax, Entertainment Tax, Income Tax etc. or if they do not comply with the specified guidelines.

7. A DTH establishment should undergo a technical audit before it is cleared for issue of a new licence. This audit should be done every three years along with security clearance by the Home Ministry.
8. All equipment used for uplink and down link as well as all CPEs (Dish, LNB and STB) must be BIS certified.
9. Serious violation of Guidelines should invite heavy penalties.
10. All DTH operators must give quarterly reports on number of consumers subscribing a-la-carte, different packages and value added services as per the information retrieved from the SMS and billing system.
11. Information about the Directors of the company, their antecedents, investors, including foreign investors should be submitted to the regulator every year after the AGM and also should be available on their website.
12. All Doordarshan channels must be carried by all DTH operators as stipulated by law.

**Para 2.6 (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.**

**Conditions for renewal of license**

Since the sector is matured, growing and flourishing it is time that government treated it as a large scale industry and ensured that adequate revenue is collected from the industry commensurate with its earnings. Also the DTH players are all global companies with deep pockets having vertically integrated supporting companies but are in the habit of cribbing all the times using various forums like FICCI, ASSOCHAM, CII, CASBAA that they are paying heavy multiple taxes and incurring losses. **This is only to influence the mind of the policy makers.** Small cable operators also pay entertainment tax and service tax and other levies as DTH operators do. Government has to understand the scope of their nationwide business. On one hand in the public forums they

declare India as the largest DTH market in the world and on the other hand they crib that their business has become unviable due to multiple taxes which they have been actually avoiding taking matters to the courts. If their condition was so bad, they should have quit the business. Hence we request the Regulator and the government not to listen to the double-side talks of DTH players and regulate them as an old established industry.

Now, for renewal we suggest the following conditions before a DTH licence is renewed:-

- a)** All dues as required by existing regulations, irrespective of whether a court case is going on should be cleared unless a stay has been given by the concerned court.
- b)** There should not be any serious violations of licensing conditions at more than three occasions.
- c)** If a matter is in the court for any purpose, an NOC from the Court should be obtained and submitted to the government .
- d)** Details of investors including foreign investors, both individuals as well as institutional should be submitted to the Ministry.
- e)** A fresh security clearance from Home Ministry and clearance from Finance Ministry should be obtained since ten years is a long period and many changes would have taken place.
- f)** Any DTH operator having a criminal case against him during the licence period should become uneligible for renewal of licence.
- g)** Even during the licence period if the DTH operator gets convinced on criminal charges, his licence should be cancelled.
- h)** There should be an additional fee for advanced services like interactive television, games, 3D & HDTV services as they fetch higher subscriptions.

**(Roop Sharma)**