



Telecom Regulatory Authority of India
Supplementary Consultation Paper
on
Tariff Related Issues for DTH Services

New Delhi: December 24, 2009

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Preface

The pay Direct-to-Home (DTH) TV services in India started gaining momentum from 2006 onwards. With the entry of new DTH service providers, there has been a rapid growth in the number of subscribers using DTH services. This is most rapidly growing addressable distribution mode of TV channels in the broadcasting and cable TV sector in the country at present. Today, there are six pay DTH service providers providing services to more than fifteen million subscribers.

2. During the early phase of DTH services, the tariff dispensation at wholesale as well as at retail level was based on the market dynamics and business decisions of the players in the delivery chain. In year 2008, the Authority has issued the guiding principles for wholesale pricing of channels and bouquets.

3. On certain issues raised by some of the stakeholders, various judicial forums have indicated the need of examining tariff regulation for DTH services. The Authority has issued a consultation paper dealing with the issues of regulation of tariff of DTH services on March 06, 2009.

4. During the course of the above said consultation process, orders passed by Hon'ble TDSAT have added a new dimension to the DTH tariff consultation and have given rise to additional issue of 'add-on packs', with reference to DTH services. Since some of these new issues have not been specifically raised in the consultation paper dated March 06, 2009, the Authority has felt it appropriate to issue a supplementary consultation paper to consult the stakeholders on these issues.

5. Written comments on the issues raised in this consultation paper are invited from the stakeholders. The stakeholders may furnish the same to Secretary, TRAI by 18th January 2010. Those stakeholders who have submitted their comments on earlier occasions regarding issues raised in the consultation paper dated March 06, 2009 may also submit their revised comments or supplement their earlier comments. The comments may preferably be sent in electronic form to E-mail-ID: traicable@yahoo.co.in or bcsc@traigov.in . The fax numbers of TRAI are 011-23220442/011-23213294.

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Table of contents

Chapter 1. Introduction	4
Chapter 2. Extant Licensing and Regulatory Dispensations	7
Chapter 3. Relevant Issues.....	11
Chapter 4. Issues for Consultation	19

Chapter 1. Introduction

- 1.1 The Broadcasting and Cable services came under the purview of Telecom Regulatory Authority of India with effect from January 09, 2004, after the amendment to clause (k) of Sub Section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997, in the year 2000.
- 1.2 There has been substantial growth in DTH services in the country in last 2-3 years. It has become a major addressable service in distribution of TV signals to the viewers across the country. At present there are six private DTH operators, apart from Doordarshan which provide DTH services to around 15 million subscribers in the country.
- 1.3 Pursuant to the Hon'ble Punjab & Haryana High Court's directions in the Civil Writ Petition no. 16097 of 2007 in the matter of M/s Tata Sky vs. TRAI, the Authority issued a consultation paper titled 'DTH Issues relating to Tariff Regulation and new issues under reference' on March 06, 2009. The comments of the stakeholders were invited by March 31, 2009. Later on, based on the requests of stakeholders, the last date for the submission of the comments was extended to April 24, 2009.
- 1.4 Open House Discussions were held, first in New Delhi on April 29, 2009, and then in Pune on May 05, 2009. In the meantime, Hon'ble Supreme Court vide its order in Special Leave Petition (Civil) No. CC 5564-5566 of 2009 dated May 4, 2009 directed TRAI to proceed with its consultation paper uninfluenced by the views expressed by the Hon'ble High Court. During the course of the hearing before the Hon'ble Supreme Court, some of the stakeholders had raised the question of sufficient opportunity being given to them to respond to the consultation paper. Therefore, TRAI extended the dates for submission of comments by stakeholders up to May 18, 2009.
- 1.5 In a separate development, Hon'ble TDSAT vide its judgment dated May 13, 2009 in Appeal 10 (C) of 2008 in the matter of M/s ESPN Software vs TRAI observed that:

“...We are informed that it is only recently TRAI has initiated this exercise and circulated a consultation paper. We are further informed that the exercise is underway and a decision is likely to be taken by the Authority shortly. In this regard, we direct the Authority to take into consideration the situation arising in cases where ‘add on packages’ are involved.... We direct all interested parties including the Appellant to present its case to the respondent as part of the consultation process...”

- 1.6 In a Civil Appeal No. D15117 (now 4139) of 2009, M/s Tata Sky Limited versus M/s ESPN Sports Software Ltd. & others before the Hon’ble Supreme Court, the Hon’ble Apex Court observed on July 06, 2009 that Telecom Regulatory Authority of India decide the entire matter within a period of two months from the date of receipt/production of copy of the said order without being influenced by any observation made in the impugned order of the Hon’ble TDSAT.
- 1.7 TRAI is simultaneously carrying out a *de novo* tariff exercise for cable TV services in non-CAS areas in compliance with the Hon’ble Supreme Court’s directions in a pending appeal.
- 1.8 Since the consultation paper dated March 06, 2009 has not specifically dealt with certain issues that emerged subsequently, such as “add-on-packs” as mentioned in the Hon’ble TDSAT’s order, the Authority felt it appropriate to raise the additional tariff related issues for consultation with the stakeholders.
- 1.9 As per sub-section (4) of section 11 of the TRAI Act, 1997, the Authority is required to ensure transparency while discharging its functions. TRAI is accordingly initiating a process of consultation to arrive at appropriate dispensation for the additional tariff related issues for DTH services.
- 1.10 Chapter 2 of this consultation paper discusses the relevant licensing and regulatory dispensations for DTH services. Chapter 3 mainly focuses on relevant issues. Chapter 4 summarises the issues raised for consultation.

1.11 This supplementary consultation paper should be seen in continuation with the consultation paper issued on “DTH Issues relating to Tariff Regulation & new issues under reference” dated March 06, 2009.

Chapter 2. Extant Licensing and Regulatory Dispensations

Manner of provisioning of the channels to DTH service providers

2.1 The Authority vide the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation 2007 dated September 03, 2007 made it compulsory for a broadcaster to offer its channels to DTH operators on *a-la-carte* basis. The relevant clause is reproduced below

“13.2A.11 It shall be mandatory on the part of the broadcasters to offer pay channels on a-la-carte basis to direct to home operators and such offering of channels on a-la-carte basis shall not prevent the broadcaster from offering such pay channels additionally in the form of bouquets:”

2.2 The provisioning of channels on *a-la-carte* basis are further regulated to avoid perverse pricing by the broadcasters by including the following provisions in the Telecommunications (Broadcasting and cable Services) Interconnection Regulation, 2004 vide the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation 2007 on September 03, 2007:

“13.2A.12 The rates for pay channels on a-la-carte basis and rates for bouquets shall be subject to the following conditions, namely:-

(a) The sum of the a-la-carte rates of the pay channels forming part of such a bouquet shall in no case exceed one and half times of the rate of that bouquet of which such pay channels are a part; and

(b) the a-la-carte rates of each pay channel, forming part of such a bouquet, shall in no case exceed three times the average rate of a pay channel of that bouquet of which such pay channel is a part and the average rate of a pay channel of the bouquet be calculated in the following manner, namely:-f the bouquet rate is Rs. ‘X’ per month per subscriber and the number of pay channels is ‘Y’ in a bouquet, then the average pay channel rate of the bouquet shall be Rs. ‘X’ divided by number of pay channels ‘Y’.

2.3 Further, as per the Telecommunications (Broadcasting and Cable Services) Interconnection Regulation, 2004, no broadcaster shall, directly or indirectly, compel any direct to home operator to offer any channel or channels or bouquets offered by the broadcaster to such operator in any package or scheme being offered by such direct to home operator to its direct to home subscribers. The Authority vide the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation 2007 dated September 03, 2007 also specified the manner of payment in case of certain type of packaging by the DTH operator. The relevant provision is as under:

“13.2A.13 Every direct to home operator, who, after the commencement of the Telecommunication (Broadcasting and Cable Services) Interconnection (Fourth Amendment) Regulation, 2007 (9 of 2007), opts for one bouquet or more bouquets (hereafter referred to as the opted bouquet) offered by a broadcaster, may decide the packaging of the channels from such bouquet or bouquets which may be offered by it to its direct to home subscribers:

Provided that in a case where a direct to home operator--

(a) does not offer such opted bouquet as a whole to its direct to home subscribers but offers to such subscribers only certain channels comprised in such opted bouquet ; or

(b) packages the channels comprised in such opted bouquet in a manner resulting in different subscriber base for different channels comprised in such opted bouquet, then, the payment, to the broadcaster for such entire opted bouquet by the direct to home operator, shall be calculated on the basis of the subscriber base for the channel which has the highest subscriber base amongst the channels comprised in that bouquet.”.

Existing Tariff Dispensations

2.4 On the basis of a general consensus which emerged during the course of interactive discussions with the broadcasters, a press advisory was issued on April 18, 2008 which essentially provides that the wholesale rates of bouquets and *a-la-carte* rates of pay channels for DTH platform are to be fifty per cent of

the applicable rates of these bouquets/channels for non-CAS cable distribution. This was broadly in consonance with the TDSAT judgment dated 31st March, 2007 in petition no. 189(C) of 2006 and judgment dated 14th July, 2006 in petition no. 136(C) of 2006. The Authority till date has not prescribed the tariff for DTH services at the subscriber level i.e. retail level. The tariff that a DTH service provider charges its subscriber has been left to market forces.

- 2.5 Subsequently, Hon'ble TDSAT vide its order dated May 13, 2009 in Appeal no. 10(C) of 2008 (ESPN Software India Private Limited versus TRAI) has observed that the general principle of fifty percent tariff applies in a general situation. Hon'ble TDSAT further held that this principle of fifty per cent should not be *mutatis mutandis* applied in the case of an 'add on package'. The Tribunal has left the issue of 'add on package' for negotiation between the parties till TRAI issues a Regulation in this regard.

Mandatory Carriage of Channels

- 2.6 The Ministry of Information and Broadcasting vide amendment dated September 10, 2007 to the license conditions for DTH services included compulsory carriage of Doordarshan channels by the licensee. The relevant clause is as under:

"7.8 The licensee shall carry or include in his DTH Service the TV channels which have been notified for mandatory & compulsory carriage as per the provisions of Section 8 of the Cable Television Networks (Regulation) Act, 1995 as amended, except for the regional TV channels, failing which the licensor shall be at liberty to take action as per clause 20.1 of this agreement.

Provided further that the licensee shall carry other channels of Prasar Bharati not covered under this clause, on most favourable financial terms offered to any other channel."

- 2.7 In pursuance of the above, all DTH licensees were directed by Ministry of Information and Broadcasting to ensure that all the listed Doordarshan channels

as in Office Memorandum No. 8(12)/2007-BP&L dated November 26, 2007 are compulsorily carried on each respective DTH platform.

Chapter 3. Relevant Issues

- 3.1 At present, six private DTH operators, apart from Doordarshan, are providing DTH service to around 15 million subscribers in India. The number of TV channels carried on a particular DTH platform varies depending upon the compression and transmission technology used in their system as well as upon the transponder bandwidth available with them.
- 3.2 In case of cable TV services in non-CAS areas, the geographical coverage of a cable operator is small, whereas in case of DTH operator, the service area is whole of India. Technically speaking, all the TV channels carried by a DTH operator on its platform are accessible to all of its subscribers. But the subscribers may not be interested to subscribe to all the TV channels. The subscribers' preferences would also vary with the regions in the country.
- 3.3 Currently, the DTH operators are offering different packages [sets of TV channels (pay and/or Free to Air channels)] to the subscribers. The numbers of packages are varying depending upon the business model of a particular DTH operator. The compositions of these packages depend upon the marketing strategies of these operators to cater to different market segments.
- 3.4 A study of the market scenario reveals that the DTH operators are offering various enrolment packages (also known as entry level packages), to the subscribers. The subscribers are compulsorily required to opt for one of these entry-level packages to avail the service of a particular DTH operator. In addition, the DTH operators are also offering various other packages, namely add-on packages (or top up packages) to the subscribers. These add-on packages can be availed only once a subscriber opts for one of the entry-level packages offered by the DTH operator.
- 3.5 Apart from the entry-level packages and add-on packages, the DTH operators are also offering some of the TV channels to the subscribers in *a-la-carte* mode. These *a-la-carte* offerings are available only when a subscriber opts for a entry-level package, i.e., as add-on channels to the entry-level package subscribed.

3.6 As per prevailing market practice, the number of entry level packages, add-on packages and *a-la-carte* offerings by different DTH operators are currently varying as shown in the following table. It may be noted that the exact nomenclature of entry level or add-on package may vary with service provider.

DTH Operator	*Number of entry level packs	*Number of Add-on packs	<i>a-la-carte</i> offers (TV channels*)
1	10	15	1
2	10	24	10
3	10	35	02
4	07	09	05
5	07	11	07
6	02	12	03

* *Approximated count*

Definition of Different Packages

3.7 There can be different possible views for defining basic packages and add-on packages. One view could be that all the entry-level packages could be defined as basic packages since it is the basically essential to subscribe to a basic package in order to avail the service of a DTH operator. Moreover, a subscriber will choose the basic level package depending upon his preferences from amongst the different packages offered by a DTH operator. It may also be argued that the target audience for different types of channels may be different based primarily on its genre and language. In such a scenario, the packaging of a channel by the DTH operator may take into account the consumer preferences in various regions and the competitiveness of various channels targeting the consumers in those regions. Eventually, it leads to multiple entry-level packages.

3.8 Another view could be that the entry-level package, which is being opted, by maximum number of subscribers out of the total subscriber base of a particular DTH operator could be termed as basic package. It may be argued in support of

this definition that since this package is reaching to the maximum number of subscribers in a given set of subscribers, this package has the potential to maximize the subscription revenue. So, for the purpose of wholesale tariff dispensation, this package may be categorized separately.

- 3.9 Another argument may be given that a basic package may be defined as that set of channels which is reaching to each and every subscriber of that particular DTH operator. This is like cable services in non-CAS system where all the channels or bouquets of a broadcaster carried by the cable operator reach to its entire subscriber base. Practically this will consist of all common channels/bouquets available across all the entry level packages. These channels/bouquets will have the largest possible reach in the service of that DTH operator.
- 3.10 As far as definition of add-on-package is concerned, one way to define this is as the package offered over and above the entry-level package subscribed by the enrolled or registered subscriber.
- 3.11 In reference to stated definition of basic package as in para 3.7 above, it may also be argued that defining only starting package as basic package may not be right proposition as number of add on packages are also available to the consumers. These add on packages are also required to be taken into account for the purpose of defining basic package. This argument is primarily based on the premise that a subscriber has to choose one or more of the entry-level package and option to choose none to all add-on packages. In this scenario, a subscriber has option to choose from multiple combinations of these entry-level packages and add-on packages. These various combinations of packages offered to the subscriber tend to diminish the distinction between the entry-level packages and add on packages for the purpose of defining the basic package. It may be stated in this scenario that all combinations of packages available to the subscriber should be treated as basic packages.

3.12 There could also be a view that the packaging of channels into various packages are only for serving the customers better and there is no need to differentiate these for the purpose of wholesale tariff determination.

3.13 In view of forgoing, the issue for the consultation is:-

3.13.1 Whether there is a need to differentiate various packages for the purpose of wholesale tariff determination?

**3.13.2 If yes, how to define a basic package and add-on package for the purpose of wholesale tariff differentiation in relation to DTH services?
Please elaborate your comments with appropriate reasoning.**

Wholesale Price Formulation

3.14 Some of the possible options for wholesale prices for a TV channel/ bouquets of a broadcaster for a DTH platform may be either independent of their packaging by a DTH operator, or could be based on their placement in different type of packages formed by the DTH operator such as basic package or add on packages.

3.15 Taking a view that there should not be any price differentiation on the basis of packaging, it may be argued that since there are number of DTH players at present, the DTH operators will pack the TV channels/bouquets of broadcasters in such a manner so as to cater to the need of the consumers. As such this may not have any adverse effect on the reach/viewership of the channels. In other words, it is in the interest of the DTH operators also to ensure that a channel reaches all the subscribers who would like to view the same. Another possibility, which exists even today, is that a channel/bouquet of a broadcaster finds place in some of entry-level packages, and also in some of add-on packages. Taking into account these factors it could be argued that in competitive DTH scenario, the DTH operator while making packages ensures that every channel reaches the

intended subscriber and therefore, there is no need to differentiate the wholesale price of a channel/ bouquet based on its position in different packages.

- 3.16 Taking a contrary view, one may argue that the reach and viewership of a channel over a DTH platform depends on the type of package in which it has been placed by a DTH operator in terms of a basic package or an add-on package, and, therefore, there would be an impact on the advertisement revenue against that channel of the broadcaster, which is generally based on the reach and viewership of a channel. Therefore, it may be contented that the subscription revenue (which is based on the wholesale price) should be different so as to compensate any possible loss of advertisement revenue on account of a channel being carried to subscribers in different type of packages.
- 3.17 If the wholesale price is to be linked with the packaging of the TV channels/bouquets in the network of a particular DTH operator, then wholesale rates of these channels/bouquets may be different, depending upon the placement of such channels/bouquet in basic package or add-on-pack by the DTH operator.
- 3.18 There could be some other ways to differentiate the wholesale pricing. This could be based on the reach of a channel. However, the reach of a channel primarily depends upon the position of channels in different packages offered by the DTH service providers, and on the target audience of that channel.

3.19 The issues for consultation are:-

3.19.1 Whether there is a need for different wholesale price formulation for a TV channel/bouquet depending upon its inclusion in different packages offered to the subscribers by the DTH operators. You may also suggest any other option for differential wholesale price formulation. Please elaborate your comments with appropriate reasoning.

3.19.2 If the wholesale price is to be linked with packaging of the TV channels then what should be the relationship between wholesale prices of a TV channel/bouquet offered by a broadcaster to a DTH operator, if the channel/bouquet is packaged as a part of a basic package, or as a part of add-on-package or both by a DTH operator? Please elaborate your comments with appropriate reasoning.

***A-la-carte* Provisioning of TV Channels to DTH Subscribers**

- 3.20 As per clause 7.2 of the DTH license conditions, the licensee is required to ensure subscriber's interests through a Conditional Access System (CAS). The advantages of service being addressable should be made available to the subscriber. The DTH service providers use this feature to offer various packages to their subscribers.
- 3.21 As per the provisions of Interconnection Regulations mentioned in Chapter 2 earlier, a DTH operator can take TV channels from a broadcaster on *a-la-carte* basis. However, at present, the *a-la-carte* provisioning of the channels is not made available to the subscribers by their respective DTH operator.
- 3.22 The issue of *a-la-carte* provisioning of channels has been raised already in the consultation paper dated March 06, 2009. Since a DTH service is an addressable service, it is obvious, that a subscribers should enjoy the benefit of addressable feature attached to this service by choosing channels on *a-la-carte* basis.
- 3.23 As pointed out earlier, technically speaking, all the channels carried by a DTH operator are accessible by all of its subscribers. One of the arguments put forward by the DTH service providers against *a-la-carte* provisioning of TV channels to its subscribers is that the entertaining such request on frequent basis for all the channels may be a time consuming process. They further argued that this could load their system substantially, and may require additional transponder bandwidth on account of having to send large number of security keys to activate such *a-la-carte* provisioning.

- 3.24 Based on above premise, if it is presumed that a DTH operator may be mandated to offer all of the TV channels (including pay channels) available on its DTH platform on *a-la-carte* basis in the consumer interest, then there could be three possible concerns which may be required to be addressed. First, in case many subscribers subscribe to only very few numbers of TV channels, then it may not be financially viable for the DTH operator to provide the service. This could be addressed by having a minimum subscription charge. The other concern could be that the frequent requests to add/remove the channels may cause DTH operator to absorb the volatility regarding subscriber base of a particular TV channel. The frequent requests of the subscribers could have impact on cost of providing the services by the DTH operators. The third concern could be that frequent request for change could put load on the system as the bandwidth could be used by the keys.
- 3.25 It may be possible to address these issues by prescribing minimum subscription period and servicing time in case a subscriber opts for a TV channel on *a-la-carte* basis at the retail level. This sort of dispensation is provided in respect of the Cable service in CAS area wherein the subscribers are required to subscribe to the opted channel for a period of at least four months. As per prevailing market scenario in DTH, in case of *a-la-carte* offering of some of the channels, the subscription of channels is under offer on monthly or annual basis by the DTH operators.
- 3.26 As far as retail pricing of channels is concerned in *a-la-carte* mode, the cost of carriage of any type of TV channel whether Free to Air (FTA) or Pay is going to be uniform. The cost of carriage of any TV channel depends upon factors such as Uplinking and Downlinking transmission costs, system and network costs etc., which are similar for FTA as well as pay channel.
- 3.27 The content cost to the DTH operators in case of free to air channels is nil. However, in case of pay channels, the DTH operators are required to pay to the broadcasters depending upon the wholesale price of the channel/bouquet.

3.28 The issue arises regarding the price differentiation between wholesale price and retail price, i.e. between price to the DTH operator and the price to the customer of that channel.

3.29 The issues for the consultation are:-

3.29.1 Why should not a DTH operator extend *a-la-carte* mode of service provisioning of a TV channel at the level of subscriber?

3.29.2 Can the DTH operator offer a-la-carte option as one of the entry level options for the subscribers?

3.29.3 If the DTH operators are required to make available the channels on *a-la-carte* basis to the subscriber, then what could be the minimum number of channels and/or minimum subscription price and/or minimum subscription period for subscribing to the channels? Please elaborate your comments with appropriate reasoning.

3.29.4 In case of *a-la-carte* provision to the subscribers, should there be a maximum permitted time frame for servicing request of a DTH subscriber? If so what should be such time frame? Please elaborate your comments with appropriate reasoning.

3.29.5 In case of *a-la-carte* offering of any TV channel by a DTH operator, whether there is a need to identify relationship between wholesale and retail price of that channel? Please elaborate your comments with appropriate reasoning.

Chapter 4. Issues for Consultation

- 4.1 The issues for consultations are summarised below:
- 4.1.1 Whether there is a need to differentiate various packages for the purpose of wholesale tariff determination?
 - 4.1.2 If yes, how to define a basic package and add-on package for the purpose of wholesale tariff differentiation in relation to DTH services? Please elaborate your comments with appropriate reasoning.
 - 4.1.3 Whether there is a need for different wholesale price formulation for a TV channel/bouquet depending upon its inclusion in different packages offered to the subscribers by the DTH operators. You may also suggest any other option for differential wholesale price formulation. Please elaborate your comments with appropriate reasoning.
 - 4.1.4 If the wholesale price is to be linked with packaging of the TV channels then what should be the relationship between wholesale prices of a TV channel/bouquet offered by a broadcaster to a DTH operator, if the channel/bouquet is packaged as a part of a basic package, or as a part of add-on-package or both by a DTH operator? Please elaborate your comments with appropriate reasoning.
 - 4.1.5 Why should not a DTH operator extend *a-la-carte* mode of service provisioning of a TV channel at the level of subscriber?
 - 4.1.6 Can the DTH operator offer a-la-carte option as one of the entry level options for subscribers?
 - 4.1.7 If the DTH operators are required to make available the channels on *a-la-carte* basis to the subscriber, then what could be the minimum number of channels and/or minimum subscription price and/or minimum subscription period for subscribing to the channels? Please elaborate your comments with appropriate reasoning

4.1.8 In case of *a-la-carte* provision to the subscribers, should there be a maximum permitted time frame for servicing request of a DTH subscriber? If so what should be such time frame? Please elaborate your comments with appropriate reasoning.

4.1.9 In case of *a-la-carte* offering of any TV channel by a DTH operator, whether there is a need to identify relationship between wholesale and retail price of that channel? Please elaborate your comments with appropriate reasoning.
