

TRAI CONSULTATION PAPER NO. 4/2009 DATED MARCH 06, 2009 ON
DTH ISSUES RELATING TO TARIFF REGULATION
&
NEW ISSUES UNDER REFERENCE

RESPONSE OF DISH TV

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DISH TV Response on DT issues relating to Tariff Regulation & new issues under reference

Dish TV welcomes the Consultation paper of the TRAI on the issues related to DTH Tariff and New issues with respect to Value Added Services on the DTH platforms.

The DTH industry has, in past 5 years, grown many folds with the number of DTH operators increasing to 5 in addition to the DD Direct Free to Air DTH platform of Doordarshan. In past 5 years, the DTH Platform has been able to garner a registered subscriber base of more than 10 Million , which clearly indicates the consumer preference towards a transparent and cost effective service. In addition, Prasar Bharati claims a reach of 10 million subscribers in its free-to-air DD Direct DTH platform. The DTH is not only a movement in the urban areas but it has also become a phenomenon in the rural areas which clearly indicate that the DTH service has been able to cater to the interest of the masses at a very reasonable price.

However, despite the growth of the DTH industry, it is still in nascent stage and is heavily impacted by high content procurement cost, heavy transponder and other operational expenditure, subsidy on Set Top Boxes and high taxation which is impairing its growth and the DTH operators are incurring heavy losses. If urgent corrective measures are not initiated, the most preferred alternative digital delivery mechanism may become totally unviable forcing closure of the business by the service providers.

It may be pertinent to point out that DTH operators have also to incur huge cost in establishing the earth station recurring technical cost, satellite cost, WPC Charges and License fee etc which the DTH operators are not able to recover from the subscriber because of the competition prevalent in the television content distribution sector. These costs are not there in the cable distribution in CAS or Non CAS areas.

The DTH operators are also offering a wide range of Value added services to the customers , without charging the customers because of unhealthy competition from the cable sector whereas they are incurring substantial cost in providing these Value added services . The DTH operators are also offering the Set Top Boxes at a heavily subsidized rates. All the above factors are the reasons towards the continuous bleeding of the DTH operators and are hampering the growth of the DTH platform, which is not only a totally transparent and addressable platform, but also an effective tool of digitalization.

The TRAI, as a Regulator, of the DTH industry needs to review all the above factors. The present consultation process is a step towards fixation of the DTH tariff at the wholesale level for the DTH operator. It is pertinent to note that Non CAS area is heavily plagued by the under declaration by the cable operators and it is the claim of the broadcasters themselves that the prevalent level of under-declaration in non-CAS areas is to the tune of more than 75% percent. On the other hand, the DTH is a completely transparent system where each and every subscriber is accounted for and the Broadcasters / Content providers are getting paid for each and every subscriber. However despite this anomaly, the content rate for the DTH platform is quite high and the DTH operators are being forced to heavily subsidize their services to compete with the cable platforms. A process to finalize a rationale tariff towards procurement of content by a DTH operator through the present consultation exercise a positive step and the same would certainly help the DTH operators. However a lot still needs to be done primarily towards reducing the tax burden on DTH sector and also for reducing the license fee which no other Television distribution platform is required to pay.

The response and suggestions of Dish TV with respect to the issues raised in the present consultation paper are as under:

Tariff Fixation for DTH Services

Q 5.2.1: Whether there is a need to fix DTH Tariff?

Response:

Yes. We are of the firm view that there is a need to fix the content tariff for DTH platforms. In this regard we would like to bring the following to the kind attention of TRAI :

- (i) DTH industry is still in the nascent stage and is rolling out digitalization, which could not be initiated on the cable platforms except in miniscule notified areas of 4 metros where CAS has been implemented, due to various reasons. Even in CAS notified areas, the digitalization could not be implemented in 2003 as there was no regulatory support available at that time and in the absence of such support and issues of channel tariffs, the interconnection agreements between the stakeholders could not be concluded resulting into derailment of digitalization process. Even in 2006, when Hon'ble Delhi High Court ordered for implementation of CAS, TRAI had to come out with a structured tariff & interconnection regime so as to ensure the smooth implementation of digital addressable system – CAS. It is a prime example before the industry that digitalization in the cable sector also could be rolled out only because there was a clear cut mandate by the authority on the Tariff.
- (ii) Similarly in the DTH sector also, till the time there was no guideline from the authority, the Interconnect Agreements between DTH players and broadcasters were getting stuck or were being contested in the courts. However, by adopting a yardstick of 50% of the Non CAS cable rates, based on the judgment of the TDSAT in ASC Vs. Star, some benchmark was

established which considerably helped the process of finalization of agreements between the DTH operators and content providers.

- (iii) Fixation of Tariff for DTH platform is the need of hour so as to bring uniformity in the operation of DTH platforms and to ensure the non discriminatory treatment by the Broadcasters towards the DTH platforms. In furtherance to the same, it is pertinent to note that , TRAI, has already notified vide Press Release dated April 18, 2008 that the rates of the Channels for a DTH platform shall not be more than 50% of the NON CAS rates of the channels. The Regulator had notified the rate of 50% on the basis of the judgment of the Hon'ble TDSAT in ASC Vs. Star, however this benchmark of 50% needs to be reviewed and amended so as to bring a uniformity, rationality and conformity between the rates of the channels for Cable platform and DTH Platform. The detailed reasons for suggesting review of this benchmark are being provided in the response to query no. 5.2.4. **In addition, some broadcasters have also raised an issue of legal sanctity in respect of the press release/advisory/clarification dated 18th April 2008 of TRAI. It is therefore imperative that a formal tariff fixation be done u/s 11(2) of TRAI Act.**

- Q 5.2.2: If yes, whether Tariff Regulation should be at the wholesale level or at the retail level or both, i.e., whether tariff should be regulated between broadcasters and DTH operators or between DTH operators and subscribers?**

Response:

We are of the view that the Tariff Regulation should be at the wholesale level between the broadcasters and the DTH operators. There is absolutely no need to regulate the tariff at the retail level between DTH operators and subscribers.

In this regard it is pertinent to point out the following:

- (i) Dish TV, the first DTH operator, launched its service in October 2003, at the time when there was no regulation regarding the provision of channels by a Broadcaster / content owner to a DTH operator because of which Dish TV had to launch its services with a limited number of channels only. The TRAI notified the Interconnect Regulations on December 10, 2004. Under these Interconnect Regulations it was made mandatory for the Broadcasters / content providers to make available the signals of their channels on non-discriminatory terms to the distributors of TV Channels, which interalia include DTH operators. However, despite the regulations, Dish TV faced lot of problems in getting the channels from certain Broadcasters and had to approach the sector Tribunal - TDSAT. In a petition filed against Star, being petition no , 136 (c) of 2006 titled ASC Vs Star, the Hon'ble TDSAT, after hearing the parties passed a judgment dated 14.07.2006 holding that the Broadcasters / Content Providers have to offer their channels to DTH operators @ 50% rate of the Cable rates. The relevant extract of the said judgment read as under:

“In view of the above, there is logic in the statement of the petitioner that the rates laid down and being charged for the Cable TV platform cannot be made applicable to the DTH platform and we agree with this contention of the petitioner. We have no basis to lay down the actual rates per channel which we feel is the prerogative of the TRAI. However, to begin with we feel that 50 per cent of the rates being charged for cable platform be made applicable to DTH platform. In the instant case for both the bouquets we therefore, direct the respondent to make available all the channels to the petitioner at a rate not more than Rs.27/- per subscriber exclusive of taxes. Respondent is at liberty to introduce slab rate or give volume discount to the petitioner subject to maximum rate of Rs.27/- per subscriber.”

- (ii) The above judgment of the Hon'ble TDSAT became a benchmark for the Broadcasters and DTH operators for availing the channels.

Post the above judgment, the DTH operators started availing the channels of the Broadcasters @ 50% of the cable rates. Another important & significant step towards ensuring the availability of channels to DTH operators both in the form of Bouquet and on ala-carte basis from the broadcasters and the prescription of Reference Interconnect Offer for facilitating the conclusion of interconnection agreements between broadcasters and DTH operators, was the notification of The Telecommunications (Broadcastings and Cable services) Interconnection (Fourth Amendment) Regulation 2007 (9 of 2007) dated 3.9.2007 by the TRAI. In furtherance to the said DTH RIO Regulation, the TRAI issued a Press Release dated April 18, 2008 where under it clarified that the rates of the channels for DTH platforms under the DTH RIO shall not be more than 50% of the Non CAS rates. It further clarified that the Broadcasters / content providers have to offer the channels in same bouquet format in which the channels are being made available to the cable platform in Non CAS areas.

In pursuance to the above said regulations and the clarification of the TRAI, the Broadcasters have published their respective DTH RIO however there are cases where the Broadcasters have not complied with the clarification dated April 18, 2008 of the TRAI on the ground that the same is just an advisory and the Broadcasters are not bound to comply with it.

The above indicates that although majority of the agreements for content in DTH sector has been completed, there is a need not only to formalize the arrangement detailed in press release dated 18/4/2008 of TRAI but also to review it. The detailed reasons for warranting the review of the said arrangement have been given in response to query No. 5.2.4.

- (iii) In view of the above, it is suggested that there should be a whole sale price fixation for DTH platforms and the Broadcasters / content providers should be

bound by the same to provide their channels on the rate so fixed & notified by the TRAI.

In the consultation paper issued in March 2007 relating to various issues in DTH sector, the TRAI itself had stated that the competitive environment in DTH which is not prevalent in cable, will keep the pricing at retail level under a check and it is a matter of record that all the DTH players are today offering competitive tariffs to consumers at retail level, not only in competition to cable services but to each other services also.

Despite the fact that as of date there is no retail price fixation between DTH operators and the consumers and also that the Broadcasters are offering their channels at not less than 50% of the cable rates, the existing DTH platforms are offering a high range of packages to the subscribers – ranging from Rs. 100 per month to Rs. 300 per month. In addition, the DTH platforms are also offering a wide range of value added services to the lowest priced bouquet also, at no extra cost to the consumer. It clearly reflects that a DTH consumer at present is getting a variety of services including various value added services at a very low and competitive rate.

- (iv) In this regard, it is pertinent to refer to the contents of page 2 of the present consultation paper wherein while referring to the consultation paper issued by TRAI in March 2007, it is stated :

*“....It was also stated in the said consultation paper that, “... **the retails tariffs payable by the consumers is invariably linked to wholesale tariffs payable by the DTH operators to the broadcasters/ distributors.** DTH platform by virtue of being inherently an addressable system, competitive play of market forces are likely to lead to discovery of efficient prices in the market in the interest of all stakeholders. To what extent this will become a reality particularly in non-CAS areas will depend upon the pace of penetration of DTH services...”.*

The said consultation paper also mentioned that, "... the Authority can intervene at any point of time against any retail tariff of DTH operators in any part of the country if such tariff packages are found to be not consumer friendly or are not transparent in the offer. Till such time and till the impact of the roll out of CAS can be assessed, it would be premature to initiate the consultation process on DTH tariff issues both at the retail level as well as the wholesale level..."

The above reflects the prevalent position of the industry where the consumer are getting benefited on account of the competitive environment between the DTH operators and there is no need for the TRAI to intervene with respect to fixation of pricing at retail level.

- (v) We are of the firm view that the fixation of retail price between DTH operators and consumers will only take away the flexibility from the DTH operators which as of date is enabling the DTH operators to offer highly competitive and a range of offering to the consumers. It is suggested that the retail prices should be left to the market forces and the competitive regime will ensure that the consumers will continue to get the DTH services at a low rate.

Q 5.2.3: Whether tariff regulation for DTH at wholesale level should be in terms of laying down some relationship between the prices of channels / bouquets and for DTH platforms?

5.2.4: Whether tariff regulation for DTH at wholesale level should be in terms of fixation of prices for different bouquets / channels? If yes, then the prices for different bouquets / channels may be suggested. The methodology adopted for arriving at the prices for such bouquets / channels may also be elucidated. Further, the methodology to fix prices for a new pay channel may also be given.

Response:

- (i) As suggested above, the tariff regulation for DTH should be at whole sale level. It has been stated above that in pursuance to the DTH RIO Regulations dated 3.9.2007 and in conformity with the order of the TDSAT in ASC Vs. Star, the TRAI has directed vide press release dated April 18, 2008 that the Broadcasters / content providers have to offer to the DTH operators the same bouquet of channels which they are offering to the cable platform and the offer has to be at a rate not more than 50% of the Non CAS rates. The said advisory /clarification of the TRAI based on the consensus arrived at with various broadcasters has been operating as a bench mark for the broadcasters to offer their channels to the DTH operators. This advisory/clarification of the TRAI as well as the order of the Hon'ble TDSAT in the matter of ASC Vs. Star does not provide for fixing the price for each bouquet and channels of the Broadcasters but prescribes a formula for making available the channels for the DTH operators, which is derived from the NON CAS rates of the Channels.

It is pertinent to point out that broadcasters have time & again pointed out that fixing of prices of the individual channels is a complex phenomena and in fact it is difficult to achieve because of the dynamic nature of content in a channel. It is an admitted stand of the broadcasters that it is not possible to determine the price for the content as it is an intellectual property which is not amenable to any straight jacket formula of pricing. It has also been categorically stated by TRAI in its various consultation papers and in other documents/Explanatory Memorandum to various interconnect regulations that in the past whenever the Authority has taken an initiative to start the process of determining the individual pricing of the channels, certain channels are not prepared to share with the Authority the relevant financial & costing data, thereby rendering virtually impossible for the TRAI to proceed with such exercise. Accordingly, in such a scenario, the clarification/press release of the

TRAI and the judgment of the Hon'ble TDSAT in ASC Vs. Star has become a benchmark today for the DTH operators to enter into arrangements with the Broadcasters. However certain broadcasters have raised the issue of legal sanctity and the binding force of the said clarification dated 18/04/2008 in the absence of any Tariff Order for DTH from TRAI in this regard, thus necessitating the need to issue a formal Tariff Order for DTH.

- (ii) The present consultation paper seeks to solicit the response from the stakeholders regarding the need to bring any kind of price regulation for DTH sector and also for the rates on which the channels of a Broadcaster should be made available to the DTH operators. Accordingly it has become imperative to evaluate whether the current practice of providing the channels of the Broadcaster @ 50% of Non CAS rates is rational and viable for DTH operators.

The rate of channels for DTH platform @50% of Non CAS rates was adopted in the ASC Vs. Star matter in the background of huge under declaration prevalent in the Non CAS areas vis-à-vis the addressable nature of the DTH platform. The Hon'ble TDSAT proceeded to lay down the formula for making available the content to DTH operators based on the basic premise that in DTH each and every subscriber receiving the services is accounted for as compared to the non-CAS areas in cable where because of absence of addressability it is not possible to determine the number of subscribers availing the service. Thus the industry estimates of the extent of under-declaration prevalent in the non-CAS areas was one of the main guiding factors for Hon'ble TDSAT to prescribe the formula based on price prevalent in the non-CAS sector.

According to the industry standards and as accepted by the Broadcasters also, the level of declaration of subscriber numbers in Non CAS areas is not more than 15% to 20% which indicates that Broadcasters have been receiving and

the Cable Operator is paying only 15% to 20% of the rate of a Channel / Bouquet to the Broadcasters.

The relevant paras of the Judgment dated 14.07.2007 of the Hon'ble TDSAT in the matter of ASC Vs. Star, which very clearly recognize that there is a huge underdeclaration in the cable market and that the rates of the channels prevalent in un-addressable cable distribution cannot be made applicable to DTH- an addressable platform are as under:

“3.2 Rates to be charged by the broadcaster from the DTH operator for supply of TV signals:

The learned Counsel for the petitioner stated that on the cable platform the respondent is charging Rs.32.10 for bouquet-1 and Rs.22/- for bouquet-2 from each subscriber (Rs.54.10 for both the bouquets). The petitioner contends that as against these rates the respondent is asking the petitioner to pay much higher rates, i.e., Rs.67/- per subscriber (for both the bouquets) for supply of its signals for DTH platform. The petitioner contends that these rates of Rs.54.10 for both bouquets are despite the under declaration being made by cable operators and for a subscriber base which is negotiated with MSO/Cable Operator. It means the Cable Operator/MSO is paying the Broadcaster for much less number of subscribers whereas in fact it is transmitting signals to much larger number of subscribers i.e., virtually the Broadcaster is losing revenue. Therefore, per subscriber rate should actually be much less, if it is to be worked out on actual number of subscribers. The petitioner contends that in the DTH system every consumer gets a viewing card with a specific code which identifies that particular consumer. It is stated that through the subscriber management system (“SMS”) it is ensured that there is no misuse of any box and therefore exact number of subscribers receiving particular channel is transparently known through the SMS system which is a central monitoring facility. The petitioner contends, therefore, that for such a platform where 100 per cent subscribers are paying, the rate of subscription should be less than that on the cable platform. It is also the contention of the petitioner that it has taken complete measures to ensure that there will be no piracy for which it is using Conax CAS5 system which is conditional access system for DTH service. The petitioner also states that the terms and conditions laid by the respondent including the cost of channels at Rs.67/- per month per subscriber are entirely unreasonable,

discriminatory, without any basis and as tactics to deny the signals to the petitioner. Mr.Rohtagi, Senior Counsel for the respondent, however, stated that this was the policy of the respondent to give either all the channels or none and the rate fixed by all channels was Rs.67/- per subscriber. It is stated that the rates for cable platform cannot be made applicable to DTH platform. The respondent contended that it was not charging Rs.67/- per subscriber for all the viewers, but it had its commercial offer whereby rates are laid down based on various slabs depending on number of subscribers i.e., volume of business.....

.....It is petitioner's contention that there can be no justification/permissibility of prescribing higher rates for its bouquet of channels by Star in the case of DTH platform. According to the petitioner, this in fact has been the stand of the respondent-Star in its communication dated 10.05.2002 (page 141 of the petition) wherein the respondent-Star while negotiating terms for supply of Zee bouquet of channels on its DTH platform has considered the reduction in rates to the extent of 75% as a rational and fair approach due to the under-declaration in the cable platform. The petitioner states that Respondent-Star has itself also proposed that the same principle will also apply to Star channels. Relevant portion of the communication dated 10.05.2002 of the respondent to petitioner is reproduced hereunder:

*“the rate/sub/month is derived by using the appropriate channels retail price to cable operators, then factoring in a flat 75% under declaration rate across the country to arrive at the rationalized rate described above. We believe this is a fair approach, as DTH Co. will pay broadcasters based on 100% declaration for its entire subscriber base. **Please also note that this principle will also apply to the STAR channels.**”*

The learned Counsel for the petitioner stated that the broadcaster themselves had at various occasions admitted to low declaration by the operators. He quoted Mr. Kunal Dasgupta, CEO, Sony Entertainment TV that only 10 per cent of the total of the subscribers base of 40 million (Page 173 of the petition) was being declared as subscriber base. Similarly statement made by Mr. James Murdoch, CEO of Star Group mentions that while outside India broadcaster earned 35 to 40 per cent of total subscription revenue, in India the broadcaster earned only 5 per cent of subscription revenues due to underdeclaration (page 182 of petition). Therefore, the rate being charged from DTH operator has to be much lower keeping in mind the fact that 100 per cent subscriber base is being declared.

We have seen in many other cases which have come before this Tribunal that under declaration is more or less a norm being followed in the cable industry. There are large number of cases where the petitioners come before us stating the negotiated figure which is not the actual number of subscribers and the MSOs & broadcasters have agreed to that lower figure in various agreements. In the discussion with the stakeholders as stated in the explanatory memorandum of the TRAI Regulation for interconnection, it was a point that the rates for DTH should be less than the cable platform. The relevant paras (ii) and (iii) as response to stakeholders comments at para 3.5 in this context is reproduced hereunder:

“It is necessary to retain these words as the intention is to allow volume based discrimination and also permit different terms and conditions of supply based on the different technologies being used. However, since in non-addressable systems, payment is normally made only for the number of subscribers negotiated and agreed upon while in an addressable system, payment is made for all the consumers it should normally be expected that price in an addressable system would be lower than in a similar non addressable system.”

In view of the above, there is logic in the statement of the petitioner that the rates laid down and being charged for the Cable TV platform cannot be made applicable to the DTH platform and we agree with this contention of the petitioner. We have no basis to lay down the actual rates per channel which we feel is the prerogative of the TRAI. However, to begin with we feel that 50 per cent of the rates being charged for cable platform be made applicable to DTH platform. In the instant case for both the bouquets we therefore, direct the respondent to make available all the channels to the petitioner at a rate not more than Rs.27/- per subscriber exclusive of taxes. Respondent is at liberty to introduce slab rate or give volume discount to the petitioner subject to maximum rate of Rs.27/- per subscriber. We hope the TRAI will soon come out with the regulations to lay down the charges for each channel.”

- (iii) In the above judgment, the Hon’ble TDSAT has categorically stated that the rate of 50% of the Non CAS area is just a starting rate and that the TRAI has

to finalise the same keeping in view various factors including the extent of the under declaration prevalent in the market.

It is also pertinent to note that the rates in the cable domain has been determined / fixed by the Broadcasters keeping in mind the low declaration level, i.e., had there been complete transparency, the cable rates of the channels would have been close to 15% to 20% of the current rates. However because of the under declaration in the cable sector, the Broadcasters have increased the rates of their channels so as to factor the extent of under-declaration in their rates and have declared the rates of their channels /bouquets accordingly.

The prevalent benchmark for DTH as adopted by TRAI is 50% of the Non CAS rates which makes DTH operators uncompetitive with cable cost because the cable has a declaration factor of only 20%. In addition cable is not burdened with License fee which is 10% of the total revenues and DTH being a national services, catering to subscribers in all parts of the country, the pricing at the whole sale level for DTH services need to factor these elements while prescribing the benchmark vis-a-vis pricing for non-CAS areas. Keeping in view the above, we would suggest that the authority needs to review the 50% benchmark now and revise it to 30% of the Non CAS cable rates. This is also justified considering the fact that there is an additional burden of 10% license fee also on DTH services which is not being recovered from the customers and there is high cost of service to the consumer as DTH service providers are continuously subsidizing the boxes.

- (iv) Since the DTH delivery platform has to compete with Cable, the tariff regulation for DTH has to be at whole sale level with a reference to Non CAS pricing, both for ala carte and bouquet as this will allow DTH to be effectively competitive and also to give ample choice to the consumers. On the retail level, the competition will keep the prices under check as there are going to be

six DTH players competing in the same market. At present the DTH operators are offering the channels at a very competitive rates to the subscribers. A DTH operator in its largest pack is generally offering around 150 -170 channels at a price range of around Rs. 300. If a retail price is fixed, it would be impossible for a DTH operator to offer these many channels at a rate even closer to this. Also, DTH operators are offering pack of around 100 channels at a rate cheaper than the cable and as such retail pricing for DTH is neither desirable nor advisable. In the present competitive scenario, DTH operators are offering huge subsidy to the subscribers on CPE, thus benefitting consumers even on hardware and accordingly it is in the interest of consumers to keep the retail level pricing out of the ambit of tariff fixation.

- (v) It is pertinent to point out that at present the content cost constitutes about 65% to 70% of the total ARPU of the DTH operators. As a result of the said exorbitant content procurement cost coupled with various recurring costs in the form of technical costs towards downlinking, encryption, SMS & also keeping in view the substantial transponder cost, the DTH operators are suffering huge losses even without considering the huge subsidy on STBs that is being offered by the operators to the subscribers.

Internationally in the mature markets where the ARPU is much higher than the Indian Market, the content cost is approx 40% of the ARPU. In Indian Markets the ARPU is much lower and the DTH platforms are paying approx 30% of their ARPU as taxes and levies. We are reproducing herewith an extract from JP Morgan Analysis on the operations of Astro - a Malaysian DTH Platform, which would reflect the ARPUs as well as the content cost percentage vis-à-vis ARPU:-

“EBITDA margin: EBITDA margins fell to 21.3% in FY08 from 23.0% in FY07 mainly due to a jump in content costs and higher customer acquisition costs (CAC). Content costs as a % of revenues increased to 33% in FY08 vs. 30% in FY07 while CAC/box rose by 5%

from M\$667 in FY07 to M\$698 in FY08. Going forward, management expects content costs to rise by another 1ppt to 34% in FY09 due to the full-year impact of English Premier League costs, Euro 2008 and the Beijing Olympics. On the other hand, CAC/box is expected to Remain around the M\$700 levels.”

Thus there is an imperative need for an input tariff regulation for the DTH at whole sale level and also a reference point against which the tariff should be determined viz., the Non CAS prices in terms of the boque and ala carte.

Q 5.2.5: Whether retail regulation of DTH tariff should be in terms of maximum retail prices of various channels or is there any other way of regulating DTH tariff at retail level?

Response:

As suggested above, in the present competitive scenario where the Consumers are benefiting from the wide range of offers being made available by the existing DTH operators, there is no need for fixation of DTH tariff at retail level and the tariff at retail level be allowed to be determined by the market and the competition.

Q 5.2.6: In case DTH tariff is to be regulated at both wholesale level and retail levels, what should be the relationship between the wholesale and retail tariff?

Response:

As pointed out herein above, we are of the opinion that competition is driving the prices at the retail level and the channels are being made available to the consumers at the price which is not only competitive vis-à-vis cable prices but even lesser than that. Accordingly, no intervention is called for at the retail level. The wholesale level pricing for DTH should be fixed through pricing formula based on the rates prevalent

in the non-CAS cable distribution platform and as already suggested hereinabove, the same should be @ 30% of the non-CAS rates.

- Q 5.3.1: Whether the basic feature of tariff order dated 31st August, 2006 for cable services in CAS areas, namely fixing of ceiling for maximum retail prices for pay channels, at the level of the subscriber fixing of ceiling for basic service tier and standard tariff packages for renting of Set Top Boxes should be made applicable for DTH services also?**

Response:

- (i) Some stake holders have raised the argument that since Conditional Access System (CAS) & DTH both are addressable platforms, the DTH services should also be regulated in the same manner as has been done in case of CAS services in cable sector. At the outset, we would like to point that there is a fallacy in such an argument in as-much-as though both CAS & DTH operate on addressable technology, yet there are lot of technological and other differences between two platforms and as such the regulations which have been mandated for CAS areas cannot be made applicable to DTH services because of various reasons such as :-
- (a) World over the pay channel are delivered to the consumers through addressable systems. However, in India in cable sector reverse has happened. The pay channels came to India without addressability and have been distributed/delivered to subscribers in a non addressable manner. Accordingly, a specific amendment was required to be incorporated in The Cable Networks Regulation Act empowering the Central Govt. to notify the date from which it is obligatory upon cable operators to deliver the pay channels in the notified areas through addressable systems. Accordingly, the CAS areas have been notified by Govt. of India and

subscribers living in those areas have to mandatorily install addressable system in order to watch the pay channels. In other words, there is a compulsion on the subscribers living in CAS areas to install the STBs if they wish to view the pay channels. **In DTH on the other hand, it is purely a matter of choice. It is up to the consumer to opt for DTH service or not. If the consumer perceives value for money in opting for a DTH service, he makes a conscious decision to opt for DTH platform for receiving various channels**

- (b) The cable services have been historically plagued by non transparent functioning, lack of competition at ground level, lack of initiative on the part of cable operators to meet the quality of service and minimum concern for redressal of consumer grievances. DTH on the other hand being a new technology involving substantial capital investment and being a competing platform to cable services, are subjected to strict Quality of Service Regulations notified by the Authority prescribing the well defined norms pertaining to customer services, billing, consumer grievance redressal mechanism etc and are quite conscious of the need to provide best quality services to the subscribers.
- (c) The geographical spread of DTH services is much wider as compared to cable services. The cable services are mostly city-centric whereas DTH services are being provided throughout the country in accordance with the footprint of the satellite.
- (d) The DTH operator has to pay 10 crores as entry fee and 40 crores Bank Guarantee valid for the duration of the license. In addition, DTH operators are also liable to pay 10% of their gross revenue as recurring license fee to the Govt. The cable operators on the other hand can obtain the license for cable services by paying a license fee of Rs. 500/-.

The said discussion would have been relevant had the issue been in respect of applicability of CAS tariff regime to “Voluntary CAS” extending addressability in cable distribution sector. However, there is a considerable difference between the business model of DTH services and cable services. The above mentioned differences are only illustrative and as such it is not proper to treat DTH services as the same or similar to CAS services.

- (ii) Dish TV is of the opinion that the comparison of DTH with CAS is neither warranted nor appropriate, which view has also been taken by TRAI in its previous Tariff Orders, consultations papers, etc. To state broadly, for CAS, the tariff mandate was under the circumstance because (i) there were disputes and differences between the service providers as a result whereof no interconnect agreements were being signed. The ceiling on retail price in CAS areas was mandated in order to ensure the smooth transition from non-CAS regime to CAS regime in the interest of consumers. The issue in the present consultation paper is not in respect of extending the CAS Tariff regime to voluntary CAS in cable distribution sector for expanding digitalization and addressability (ii) TRAI has already come with notifications and clarification with respect to pricing of DTH (iii) CAS is a regional phenomena, DTH is national and involves substantial investment and high cost.
- (iii) With respect to comparison between DTH and CAS, the attention is invited to Clause 4.17 of the Explanatory Memorandum of The Telecommunication (Broadcasting and Cable) Services (Third) (CAS Areas) Tariff order, 2006 dated 31.08.2006 wherein the TRAI has categorically stated that the CAS rates cannot be made applicable to the DTH platforms because of the reason that the CAS has been implemented in limited geographical regions under the mandate of Government of India whereas the DTH is available all across the county and is available to the subscribers as a matter of choice. It may be mentioned that CAS & DTH services are governed by different licensing conditions. DTH is a

different mode of distribution from the CAS and any comparison is unwarranted. The said clause 4.17 reads as under:

“The provisions of the Tariff Order relating to STB schemes have not been proposed for the STB supplied by the Direct to Home (DTH) operators for the present as they are two different systems of delivery in several respects. Further, DTH is a matter of choice for the subscribers through out India while CAS has been notified by the Government of India for implementation in the specified areas of Chennai, Delhi, Mumbai and Kolkata. However, the Authority is closely monitoring the developments in the DTH market and will consider initiating a separate consultation process on all regulatory issues concerned with DTH in India at an appropriate time”

It is pertinent to note that in the above explanatory memorandum, the TRAI has very clearly and explicitly indicated that the rates specified for the CAS areas will not be applicable for a DTH platform and that it would come out with necessary consultation process at appropriate time for the regulatory issue concerned with DTH in India.

- (iv) Without prejudice to the submission that CAS & DTH pricing is not comparable, it is pertinent to point out that the CAS tariff of Rs. 5/- per channel fixed by TRAI vide Tariff Order dated 31/8/2006 is the retail tariff applicable to the consumers with stipulated revenue share for various stakeholders – broadcasters 45% (Rs. 2.25) and MSO & cable operators 55% (Rs. 2.75). The distributors of channels in CAS areas are required to provide the channels to the consumers on ala-carte basis as per the choice of the consumers @Rs. 5/- per channel. In addition, vide the said Tariff Order dated 31/8/2006, the TRAI has also fixed the tariffs for set top boxes provided to the

subscribers by the service providers. It may be noted that under the garb of the petition/clarificatory filed by Tata Sky before Hon'ble Punjab and Haryana High Court the petitioner has sought the directions of the Hon'ble Court to TRAI, for fixing tariff u/s 11(2) only in respect of input content to be provided by the Broadcasters to the DTH operators. Thus the petitioner though claiming parity with CAS, wants to have the benefit of selective portion of the CAS Tariff Order, only regarding procurement of content from the broadcasters (ostensibly at Rs. 2.25 per channel) without having any tariff stipulation by TRAI in respect of the price applicable for making available its services to the end consumers at retail level and without having any obligation whatsoever to comply with the stipulations regarding the pricing of set top box as well as the manner of making available the channels to the subscribers as have been made applicable by TRAI in CAS areas vide Tariff Order dated 31/8/2006.

Q 5.3.2: Whether the ceiling for maximum retail prices of pay channels for DTH should be the same as laid down for cable services in CAS areas?

Response:

- (i) We have elaborately dealt with this aspect in our response to the issue 5.3.1 above. The ceiling at the Retail level in the CAS areas was mandated to ensure the smooth implementation of conditional access system and to bring the confidence among the common consumer that he will be able to pay for what he watches and will not be required to pay for what he is not willing to watch.

As pointed out hereinabove the issue in the present consultation paper is not in respect of extending the CAS Tariff regime to “voluntary CAS” in cable distribution sector for expanding digitalization and addressability and as such the parity argument between CAS and DTH Tariffs is entirely misplaced and misconceived.

- (ii) The attention in this regard is invited to the consultation paper dated 02/03/2007 issued by TRAI wherein it was inter-alia observed :-

“1.11 Needless to say, the retails tariffs payable by the consumers is invariably linked to wholesale tariffs payable by the DTH operators to the broadcasters/ distributors. DTH platform by virtue of being inherently an addressable system, competitive play of market forces are likely to lead to discovery of efficient prices in the market in the interest of all stakeholders. To what extent this will become a reality particularly in non-CAS areas will depend upon the pace of penetration of DTH services. Interconnection Regulation already exists which mandates non-discriminatory provision of channels to DTH operators.

1.12 Having said this, the Authority can intervene at any point of time against any retail tariff of DTH operators in any part of the country if such tariff packages are found to be not consumer friendly or are not transparent in the offer. Till such time and till the impact of the roll out of CAS can be assessed, it would be premature to initiate the consultation process on DTH tariff issues both at the retail level as well as the wholesale level.”

In view of the above and also in the light of clear distinction between CAS platform and DTH platform, we are of the firm view that there is no case for extending the CAS Tariff regime to DTH platforms and the tariff issues for DTH should be handled separately which in the present competitive scenario warrant the fixation of tariff only at the wholesale level.

- Q 5.3.3: Whether DTH operator should be mandated to provide a basic service tier of FTA channels and if so, what mechanism should be adopted by DTH operators to provide the service of unencrypted Basic Service Tier, which is available in CAS areas without having to invest in a Set Top Box?**

Response:

- (i) The DTH business is entirely different from the way the CAS system operates. As illustrated in the above responses, the CAS system cannot be equated with DTH system.. It may once again be mentioned that the DTH business is significantly different from the CAS Platform inter alia even on account of the expenses to be done for operation of the DTH platform and the heavy license fee and taxes payable by DTH platform which is not applicable for CAS. Moreover the DTH operators are providing huge subsidy on the set top boxes and also are incurring cost towards encryption of the channels, Viewing Card royalty, middleware cost etc.
- (ii) In CAS areas the concept of Basic Tier (minimum of 30 FTA channels) was introduced to take care of the interest of those subscribers who are not willing to watch the pay channels. Accordingly, in order to take care of the fact that such subscribers are not compelled to invest in set top box, it was mandated that in CAS areas the cable operators would provide Basic Tier to the subscribers which would essentially consist of minimum 30 unencrypted FTA channels so that no addressable system (set top box) is required to view these channels. Under the DTH License terms, a DTH operator has to necessarily provide the channels to the subscribers in an encrypted form. Accordingly a DTH subscriber cannot provide the signals of even Free to Air channels without encrypting the same. Thus even if a package of certain number of FTA channels is required to be provided by DTH Operator, which may be

akin to the Basic Tier prevalent in CAS regime, a DTH consumer will have to necessarily invest in set top box, dish antenna, LNB, etc.

- (iii) In view of these differences, the provision regarding providing the free to air channels to the subscribers without the requirement of having a set top box and / or providing the same in free to air mode is not possible. It is suggested that the DTH operators should not be forced to provide the Free to Air channels to the subscribers in unencrypted mode without the requirement to invest in the Set Top Box.

Without prejudice to the above, if the TRAI still feels that there is a need for the subscribers to receive a package of Free to Air Channels, the TRAI may mandate that subscribers will have to procure the Set Top Box and the necessary equipments to be able to receive the channels from the DTH platform. Thereafter the DTH platform should provide a bouquet of Free to Air Channels containing a minimum of 30 Free to Air Channels (in encrypted mode) @ Rs. 95/- plus applicable taxes (Entertainment Tax and Service Tax). It is pertinent to note that the amount payable by a DTH subscriber for a bouquet of Free to Air Channels should be higher than what a CAS subscriber pays in view of the following factors which are not there in cable CAS :

- (a) DTH subscribers are offering huge subsidy on the boxes;
- (b) a DTH operator has to incur expenses such as middle ware expenses, encryption cost, transponder fee, marketing and distribution cost etc. which are not applicable to a CAS service provider
- (c) a DTH operator has to pay, service tax, license fee, and other taxes which are not paid by CAS service provider
- (d) the CAS service is significantly different from the DTH service.

Q 5.3.4: Whether the DTH operator should be required to make available the pay channels on ala carte basis to the subscribers as the cable operators are required to do in CAS areas?

Response:

- (i) As stated above, the CAS area operation cannot be equated with DTH services and the reasons for the same are not being repeated for the sake of brevity. In view of the differences between CAS and DTH, it may not be appropriate to impose the same conditions on DTH which are applicable for CAS more so when the vice versa has not been proposed even since.

It is stated that even as on date of this consultation process, the DTH operators are offering certain channels on ala carte basis to the subscribers. However to prescribe that the DTH operators has to mandatorily provide **all the pay channels on ala carte basis** to the subscribers would neither be in the interest of the subscribers nor shall it be in the interest of the DTH platform from commercial and technical point of view. In case a DTH platform is required to make available all the pay channels on ala carte mode, it will be technical nightmare to the DTH operator and which may also cause unrest among the consumer and would adversely affect the quality of service. This would also mean creation of various packages by the DTH operator which will only create confusion in the minds of subscriber.

It is important to note that even today, the DTH operators today are offering packages and ala carte channels so as to suit the requirements and the interest of subscribers spread all across the country. Provision of all channels on ala carte basis would not be commercially viable for the DTH operators as well as the consumers and would lead to a lot of technical issues explained hereinafter.

- (ii) In DTH scenario the competition amongst the service providers and the freedom of the subscriber to choose his service platform has made the DTH players conscious of the requirement to provide the consumers the flexibility to choose the package meeting his requirement which have been designed keeping in mind the linguistic, regional and genre specific preferences of the consumers. Thus a consumer of Telgus Zone can pick the package specific to his linguistic preferences at a very competitive and economical price.

Thus the objective with which the ala carte was prescribed in the CAS areas have been fulfilled on the voluntary basis by the DTH service providers and hence there is no need to mandate the same.

- (iii) It is important to bring out the basic technical aspects and the likely issues arising out of the mandate of making available the ala carte channels to the subscribers which in technical parlance would constitute separate products. In other words, in the Conditional Access System, each channel or a bundle of a channel is taken as a product. If a platform is carrying 200 channels then in ala carte mechanism it will have 200 products constituting individual channels plus the products corresponding to the number of various packages, which a DTH service provider is making available to the consumer.

Now take an example that a platform has 5 million customers and let us assume that each customer on an average takes 20 ala carte products and 2 packages. In such a scenario there would be 5million X22 = 110 million keys which will have to be transmitted over the air for authorizing the consumers. This means that the cycle time after which the keys will be hitting the STB of the customers will increase beyond imagination and control thus impacting the customer service very badly, There can be an argument that to overcome this technological constraint why more bandwidth cannot be allocated, The response is that in the Cable Networks the bandwidth is not a constraint unlike DTH where there is a shortage of transponder space and the endeavor of the

DTH operators is to optimally utilize the available transponder capacity. In addition, in Cable the bandwidth has no recurring cost as it is a fixed capex, where as in DTH the Bandwidth has a huge recurring cost.

In case a DTH operator allocates on each transponder 3Mb space to take care of the requirement of authorization keys as mentioned above, then the said DTH player having 10 transponder will have to provide approx. 30Mb space which is as good a transponder capacity costing more than USD 1.5 million a year and also at the same time reducing the channel carrying capacity of the DTH operators. In other words, the consumer would get lesser number of channels and the DTH operator will have to incur increased cost which ultimately would impact the prices at which the services are being made available to the consumers apart from causing consumer distress on account of technological delays. Accordingly, the provision of ala carte channels is not in the interest of consumers from the service point of view as well.

- (iv) It is also pertinent to point out that world over the business practice in DTH is to offer the channels to the consumers in the form of packages with a flexibility to provide certain specific/limited number of channels on ala-carte basis depending upon the requirement of the consumers. It may also be noted that DTH players have made bundles which suit the pockets of all the class of consumers on the basis of the languages, regions and genre thereby providing the ample flexibility to the consumers to choose and pay for what they want to watch. The Authority may appreciate that this flexibility is the result of the enabling provisions in the regulations where in the rights of creation of packages of the channels is with the DTH service providers.

Accordingly, it is suggested that in the interest of consumers, DTH operators should be free to decide the packaging and placement of channels and should also be free to decide on the channels which they want to provide as Ala carte to the subscribers.

Q 5.3.5: Whether standard tariff packages for renting of Set Top Boxes should be prescribed for DTH operators?

Response:

- (i) Dish TV is of the opinion that the present competition amongst the DTH operators has already brought down the charges for the Set Top Boxes and each and every DTH operator is offering the Set Top Boxes at very competitive and attractive rates to the subscribers. A subscriber of DTH platform today is reaping the benefits of the competition between the DTH operators and is also getting high quality set top boxes. In this situation, there is no need for regulating the provision of Set Top Boxes to the subscribers.
- (ii) Another important issue to be noted is that each and every DTH operator is using a different model of set top box, different service providers with respect to the middleware services on the Set Top Boxes, different features on the boxes and to compare the boxes and to fix a single and standard price for each and every DTH operator may not be practically feasible.
- (iii) It may also be noted that as per the Quality of Service Regulations dated 31/08/2007 notified by TRAI, in the Explanatory Memorandum vide para 18 it has been provided that:

“18. The provisions relating to standard tariff packages for set top boxes for cable services in CAS areas were necessitated by the need for keeping entry barriers low for subscribers opting for pay channels in CAS areas. This was required to ensure that the existing cable subscribers would easily migrate to CAS without suffering loss of content due to compulsory implementation of CAS. However, DTH service is purely an optional service and any subscriber opting for DTH service makes a free choice and

therefore entry barrier need not be artificially lowered through regulation in the prevailing circumstance. At the same time, it is felt that mandating rental or hire purchase scheme has the advantage of offering an easy exit route for the subscribers who may not happy be happy with their service providers. Therefore, the Authority has mandated that the subscribers shall be given an option to procure DTH Consumer Premises Equipment (CPE) on out right purchase basis or hire purchase basis or rental basis. However, the hire purchase or rental schemes have not been specified by the Authority for the present and the DTH operators are free to come out with their own schemes in this regard.”

It may be pointed out that by way of above mentioned QoS Regulations, in addition to technical interoperability, the commercial interoperability has also been introduced in the DTH sector and the DTH service providers are already making available the set top boxes to the consumers on attractive rental schemes.

However if the TRAI so decides to fix the standard tariff for set top boxes, it would be imperative for the Authority to initiate a separate exercise in this regard asking for the details of costing of set top boxes from the DTH service providers and then fix an appropriate rental tariff keeping in view the investment, costing and interest factor. We are ready to share our costing in order to facilitate the fixation of standard tariff package for renting of Set Top Boxes for DTH operators.

Other relevant issues

Q 5.4.1: Whether the carriage fee charged by the DTH operators from the Broadcasters should also be regulated? If yes then what should be the methodology of regulation?

- Q 5.4.2: Whether any ceiling on carriage fee needs to be prescribed? If yes, then whether the ceiling should be linked with the subscriber base of the DTH operator or should it be same for all DTH operators.**

Response:

- (i) Carriage fee is the amount paid by a Broadcaster to a DTH operator who seeks the carriage of its channel for distribution through DTH platform. It may be appreciated that carriage of channel on DTH platform involves substantial technical cost which inter alia include the cost of hiring transponders. As it is a common knowledge, a DTH operator has to incur huge expenditure towards distribution of each and every channel and this carriage fee is attributed towards these costs. Another important point to note is that as of date, all the DTH operators are having scarcity of transponder space which has limited the number of channels which a DTH operator can distribute. In such scenario, it is imperative that the DTH operators expenses towards distributing the channels are reduced and carriage fee is one such revenue stream which enables a DTH operator to recover a part of infrastructure and other costs incurred towards distribution of channel.
- (ii) It may be pointed out that in case of “carriage” the Broadcaster is the seeker of space on a DTH distribution platform in order to maximize its advertisement revenue which is directly dependent upon the reach of the channel and its visibility. Accordingly, the carriage fee is paid by a Broadcaster to increase its revenues from the advertisements and as such warrants no Regulation. It would be totally unreasonable if an attempt is made to regulate the carriage fee so as to ensure the advertisement revenue of the channel. There is no regulation / restriction on the advertisement appearing on a TV channel or the rates thereof. These are governed by the market forces of demand and supply and also on the popularity and reach of the channel. The popularity and reach on the other hand depend upon the

visibility of the channel. The TRAI has elaborately dealt this issue in its earlier consultation papers as well as in the amendment to the Interconnect Regulations notified on 17/03/2009 as detailed hereinafter.

- (iii) In this regard, as pointed out hereinabove the TRAI has already amply covered the issues with regard the Carriage fee about the same in The Telecommunication (Broadcasting and Cable Services) Interconnection (Fifth Amendment) Regulations, 2009 dated March 17, 2009 and in the Explanatory Memorandum thereto which have been notified after following a due consultation process with the stake holders.

The Regulation provides that in case a DTH operator , provisions of Clause 3.2 of Principal Regulations (must provide clause) shall not apply in case where the DTH operator is seeking a channel from a Broadcaster and is also simultaneously demanding the carriage fee for the said channel. The relevant clause of the Interconnect Regulations dated 17.03.09 reads as under:

“3. In regulation 3 of the principal regulations, -----

- (a) after the second proviso to sub regulations 3.2, the following proviso shall be inserted namely :-*

“Provided also that the provisions of this sub regulation shall not apply in case of a distributor of TV Channels, who seek signals of a particular TV Channel from a Broadcaster, while at the same time demanding carriage fee for carrying that channel on its distribution platform”

The attention is invited to para 34 & 35 of the Explanatory Memorandum to the said amendment dated 17/03/2009 which reads as under:-

“34. The Authority has decided against regulation of carriage fee at this stage for the following reasons:-

- a. Carriage Fee is a market driven phenomenon and the levels of carriage Fee are determined by play of market forces.*

Carriage fee is a direct result of demand-supply mismatch due to capacity constraints of distribution platforms.

- b. Payment of Carriage/ Placement/ Technical Fee by a broadcaster is intimately linked with the perceived benefit that the broadcaster would enjoy by way of increased advertising revenue. This linkage is manifested by higher levels of Carriage Fee in TAM cities (cities where the rating agencies have installed their metering devices in sample households). Therefore, regulation of Carriage Fee cannot be done in isolation without regulating the advertising revenue.
- c. Payment of Carriage Fee ultimately gets recovered from the advertisers on TV channels by way of higher advertisement charges. However, no objections have been made by any advertiser in this regard so far.
- d. Carriage Fee has emerged in the market primarily as a result of inadequate digitalization in the Broadcasting & Cable TV market in the country. A view has also been expressed by some distributors of TV channels that Carriage Fee is genuinely required to promote digitalization. Any attempt to regulate it by way of ceiling or specifying a charge on carriage may slow down deployment of digital networks.
- e.
- f. If some kind of ceiling is laid down for carriage fee, then there is a possibility that more channels may be willing to pay the maximum permissible Carriage Fee than the number of available channel slots. Selection of which channels to carry in such a situation would again result in covert deals.
- g.
- h. Carriage Fee is also linked with popularity of a channel, which in turn is determined by the market. In such a scenario, laying down a carriage fee regime through regulation for channels of varying popularity will be extremely difficult.
- i. There is no suitable mechanism for enforcement of any regulation on carriage Fee.

35. However, the Authority has amended regulation 3.2 to restrict its applicability in respect of those channels in respect of which any fee is being demanded by the distributor of TV channels from a broadcaster for carriage of the channels on its distribution platform. This has been done to ensure that the broadcasters are not forced to supply their channel in terms of regulation 3.2 and at the same time forced to pay carriage fee for the same channel. This amendment has been made to prevent a distributor of TV channels from misusing the regulation 3.2.”

(iv) In this regard it is also important to note that as an industry practice, it is the Broadcaster of a Channel which approaches the DTH operator for distribution of their channel. It may be pointed out that because of the prevalent competition in the market, the DTH operators are showing the popular channels to the subscribers so the Carriage fee is in no way coming in way of protection of the interest of the consumers.

In the times when the consumers are offered CPE at highly subsidized costs, the service providers have to recover the technical costs of provision of the channel in order to keep the platform operational. Charging of technical fee from the broadcaster seeking to utilize the DTH as a carrier for their channels is one such segment of revenue stream.

The carriage fee is a commercial negotiation between the DTH operator and the Broadcaster which does not have an impact on the subscriber and accordingly the same should be left between the Broadcasters and the DTH operators to finalise. It is also important to note that as on date all the DTH operators are showing almost all the popular channels to the Subscribers and the Carriage fee is in no way becoming an hindrance for the subscribers to get the popular channels. Further more, even the competition among the DTH operators will keep the carriage fee in reasonable limits as no operator would be in a position to charge exorbitant carriage since the Broadcaster would always have the option to be available on other DTH platforms. In view of the

scarcity of the transponder space with the DTH operators and the high cost involved in distribution of the channels, it is suggested that the Carriage fee should not be regulated and it should be left for the market forces to determine and decide.

Accordingly, we are not in favour of regulation of carriage fee. If the content provider and the DTH operator agree through mutual negotiations for payment of carriage fee/placement charges or technical cost for carriage of the channels there can not and should not be any objection. It is a matter of demand & supply. It is purely a matter in the private contractual domain and no regulatory intervention is called for. The TRAI is not at all intervened on the issue of carriage fee in cable distribution. Accordingly in DTH context also there should not be any regulation

Q 5.2.4: Comments may also be offered on the prayers made in the writ petition of M/s Tata Sky Ltd.

Provisioning of new services on DTH platform

Q 6.1.5 (a): Whether Movie-on-demand, Video-on-Demand, Pay-per-view or other Value added services such as Active Stories should be recognized as a broadcast TV Channels?

Response:

This issue under consideration takes into account two kinds of services being provided by a DTH operator:

- (i) The first one is the “Movie on Demand” service where the subscribers of a DTH platform can watch the movies available on the Movie on Demand service by placing the order for the movie through SMS or through the call center of the DTH operator. Under the Movie on Demand Service, presently

the DTH operators are showing the movies which are procured from the producers / right holders of the Movies. There is a possibility of making the Movie on Demand Service a linear channel by allotting programs at different slots, which could defeat the entire objective of Downlinking Policy. Dish TV is of the opinion that MOD is a channel approved under downlinking policy and should be treated as an independent channel and a Broadcast service and the Downlinking Policy should be made applicable. Similar stipulations be done in respect of “event on demand”, “sports on demand” or other similar services. Another reason for treating the services like “movie on demand” as a separate channel/broadcast service is to prevent the anti-competitive practices which may be followed by certain operators to introduce exclusive content by way of pay-per-view and/or on demand by acquiring the rights of certain events/sports thus depriving the consumers of other platforms from enjoying the particular movie/event/sport. Once such services are treated as “channel”, the non-discriminatory requirement of Interconnect Regulation would ensure that it is available to all the distribution platforms and their consumers.

- (ii) The second kind of service is the Active services which are not broadcast services as they are primarily data services. Active services are a sub-set of and derived from a existing channels which have been approved under downlinking policy and as such these services can not and should not be treated as separate channel. Accordingly, the other active services should not be treated as Broadcast service. One of the kind of the active service is the Barker Channel on the DTH platforms which is an information channel, providing the information regarding the platform, its schemes, packages, payment methods etc. to its subscribers which again cannot be treated as a Broadcast service. By way of abundant clarity, suitable amendment be made in the DTH License clarifying that active services are not to be treated as broadcast services.

- Q 6.1.5 (b): In case these are termed as broadcast TV Channels, then how could the apparent violation of DTH license provision (Article 6.7, Article 10 and Article 14), Uplinking and Downlinking guidelines be dealt with so that the availability of new content to consumer does not suffer for want of supporting regulatory provisions?**

Response:

As suggested above, only the Movie on Demand / Video on Demand / Pay per View services including event/sports on demand, etc. should be treated as Broadcast service. In such case the provision of Downlinking Policy should be made applicable and the DTH operators should not be allowed to obtain the license for any channel under the Downlinking Policy. These channels / services should have the approval of the Ministry of Information and Broadcasting under the Downlinking Policy and the provisions of all applicable regulation including the Interconnect Regulations should be made applicable to such services / channels. On terming the Movie on Demand service as Broadcast service, the provision of the DTH license conditions would be met as well as the provision of Downlinking Policy would also be complied with.

- Q 6.1.5 (c): What should be the regulatory approach in order to introduce these services or channels while keeping the subscriber interest and suggested alterations in DTH service operations and business model?**

Response:

As stated above, the Movie on Demand / Video on Demand / Pay per View services should be termed as Broadcast Service. Accordingly, these services would be amenable to the applicable Downlinking Policy and would also be in compliance with the Advertisement Code / Broadcast Code. As regard the other Active services are concerned, either they are an extension of an already approved

Channel or are data services for which the no Regulatory intervention is required. The DTH operators are providing these services as Value added services for the benefit of the subscribers and such data active services cannot become a linear channel. In any case, as per the licensing requirements DTH operators are required to comply with the advertisement code and programming code so while providing these data active services, the DTH operator shall continue to comply with the advertisement code and programming code.

- Q 6.1.5 (d): In case these are not termed as broadcast TV Channels, then how could such a channel be prevented from assuming the role of a traditional TV Channel? How could bypassing of regulatory provisions – Uplinking / Downlinking, Programme Code and Advertisement code be prevented?**

Response:

Already covered in the response of 6.1.5 (a), 6.1.5 (b) and 6.1.5 (c).

- Q 6.1.5 (e): Whether it should be made mandatory for each case of a new Value added service to seek permission before distribution of such value added service to subscribers? Or whether automatic permission be granted for new services on the basis that the services may be asked to be discontinued if so becomes necessary in the subscribers' interest or in general public interest or upon other consideration such as security of state, public order etc.?**

Response:

As stated above, the Movie on Demand Service and other similar services such as video on demand, event on demand, sports on demand, etc. should be treated as Broadcast service for which the Broadcaster should take the necessary approvals and

permissions including the Downlinking Permission in which case the DTH operator should not be required to take any kind of permission and such channels should be treated as linear channels. However, with regard to other Active services which are data services in nature, the DTH operator should only be required to intimate the Licensor about the launch of such service. There should not be any requirement for the DTH operator to take any permission / approval prior to launch of such service. Having said that, it should be made mandatory that such data services should comply with the advertisement code and programming code.

Q 6.1.5 (f): In view of the above, what amendments shall be required in the present DTH license conditions and Uplink / Downlink guidelines?

Response:

In view of the suggestions made above, no change in DTH licensing conditions are required to be made. The Movie on Demand service, once termed as Broadcast Service, would be treated as any other channel for which the necessary approval would be obtained by the Broadcaster of the channel or any other person acting on behalf of the Broadcaster/right owner. For other Active services which are data services in nature, the same is not prohibited by the DTH licensing conditions and the DTH operators should only be required to intimate the Licensing Authority about launch / cessation of any Active service.

Q 6.1.5 (g): How could the selling of advertisement space on DTH Channels or Electronic Program Guide (EPG) or with Value added Service by DTH operators be regulated so that cross holding restrictions are not violated. In this view, a DTH operator may become a Broadcaster technically once the DTH operator independently transmits advertisement content which is not provided by any broadcaster. How could the broadcaster level responsibility for adherence to Program Code and Advertisement Code be shifted to

a DTH operator, in case the operator executes the sale and carriage of advertisements?

Response:

- (i) In the present competitive scenario and regime when DTH operators are incurring huge losses because of heavy content procurement cost and multiple taxation levies, the insertion of advertisement may constitute a potential source of revenue to a DTH operator to mitigate its losses and to make its business mode viable. The advertisement in the EPG, the data services, or the barker channels will not violate the cross holding restrictions as these are not the broadcast services but are essentially data services or the information services to the consumers, However the advertisements placed on platform on such services have to adhere to the standard guidelines and advertisement code.

The DTH operators should be allowed to sell the advertisement space on the data service / active services /EPG subject to the following conditions:

- The advertisement should fall in the definition of Advertisment, as specified by the Advertisement standards council of India (ASCI)
 - The advertisement should follow the standards and guidelines specified by ASCI
 - The advertisement should be in compliance with the Advertisement Codes and Programming Codes
 - The advertisement should have the necessary approval / certification as may be required under the prevailing laws / rules.
- (ii) However, there may be view that once the advertisement is inserted and aired by a DTH operator which has not been provided by a Broadcaster, a DTH operator may technically become a Broadcaster. In order to tackle these kinds of technical issues, a suitable amendment may be incorporated in the DTH

licenses clearly mentioning that mere insertion of advertisement by a DTH operator in the DTH service shall not amount to the broadcasting.

- Q 6.1.5 (h): Traditionally advertisements as well as program content fall in the domain of the Broadcasters. In case, DTH operator shares the right to create, sale and carry the advertisement on his platform, then the channels are necessarily distinguished on the basis of who has provided the advertisement with the same program feed. In what way any potential demand to supply clean feed without advertisement by a DTH operator be attended to (by a broadcaster)? Should “must provide” provision of the Interconnect Regulations be reviewed, in case supply of clean feed is considered necessary?**

Response:

The Broadcaster should not be obliged to make available clean feed to the DTH service provider on demand being made in this regard. The time is not yet ripe to warrant such a provision as it involves a lot of issues such as:

- (i) There would be issues regarding the applicability of must provide clause (Clause 3.2) of Interconnect Regulations.
- (ii) Once the clean feed is provided to the DTH operators, the other distribution platform may also demand the similar clean feed(s) citing the non-discriminatory requirement of Clause 3.2.
- (iii) There would be issues regarding the tariffs applicable for clean feed.
- (iv) There would be issues regarding the sharing of revenue arising out of insertion of advertisements in the clean feed by the DTH operator.

Q 6.2.4 (a): Whether carriage of radio channels by a DTH operator be permitted? Should such permission cover all kind of radio channels to be carried?

Response:

The DTH License condition grants the right to the DTH operator to distribute the Television Signals only and the rights to distribute the Radio channels have not been provided for. The distribution of the Radio channel is also a licensed activity, i.e., for distribution of a radio channel, the Government of India has laid down specific procedure and eligibility which have to be complied with in order to obtain the license to distribute the Radio Channels. Allowing the DTH operators to distribute the Radio Channels would be contrary to and the violation of the prescribed procedures and requirements to obtain the Radio License.

The contravention of the Radio License provisions will be even more apparent in case a DTH operator distributes a FM Channel. It is pertinent to note that the Government of India has allotted the FM Channel license to various private parties by following a bidding process. Individual parties have been granted the right for specific sectors and the licensee is allowed to operate the radio service only in the allotted sectors. The networking is not allowed. The Licensee of the Radio Service is also required to pay license fee to the Government of India. In case the DTH operators are allowed to distribute the Radio services, it would be in complete breach and derogation of the FM Licensing conditions. The DTH operators would also not be paying the License fee on the Radio Service. Allowing the DTH operators to provide the Radio Service would only create confusion among the Licensee of Radio Service.

Moreover, it is a public knowledge that the Government of India is mulling over the Policy on Radio. In view of the above, it is suggested that the DTH operators should not be allowed to provide and distribute the Radio Services to the subscribers.

- Q 6.2.4 (b): In case this is permitted, whether DTH license, Uplink / Downlink guidelines, Conflict of business interest conditions with existing radio system operators, should be amended keeping in view, the incumbent or new DTH operators?**

Response:

In view of our response to Query 6.2.4 (a), it is suggested that the DTH operators should not be allowed to provide the Radio Channels. If the same is allowed, the DTH Licensing conditions, the Uplink Downlink Guidelines, the conflict of business interest conditions with existing radio system operators, the provisions with respect to issuance of license to radio system operators, the license fee for radio services, the provision of restriction in networking of radio services would all need to be reviewed and changed. If the TRAI so feels to allow the DTH operators to distribute the Radio services, it should be done only after reviewing and making necessary changes / modifications in the above states provisions.

- Q 6.2.4 (c): If so what charges are needed in the existing regulatory provisions so that the general policy of must provide and non discriminatory offering of channels be extended to between radio channels and DTH operators.?**

Please refer to our response to para 6.2.4(a) and (b) above.